

**SUBDIVISION  
AND  
DEVELOPMENT APPEAL BOARD  
AGENDA**

**Thursday, 9:00 A.M.  
January 3, 2019**

**Hearing Room No. 3  
Churchill Building,  
10019 - 103 Avenue NW,  
Edmonton, AB**

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD  
HEARING ROOM NO. 3**

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I 9:00 A.M. SDAB-D-19-003

To change the Use from a Single Detached House to a Child Care Service (maximum 53 children) and to construct interior and exterior alterations (outdoor play space and rear concrete pad).

16210 - 87 Avenue NW  
Project No.: 284529038-001

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II 11:00 A.M. SDAB-D-19-004

To construct interior and exterior alterations to a Restaurant and Drive-in Food Service (facade improvement, reconfigure parking area and drive-in, improved Landscaping, and construct a covered patio; Public Area: 152 square metres) (McDonalds)

8415 - 109 Street NW  
Project No.: 263121901-001

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**NOTE:** *Unless otherwise stated, all references to “section numbers” refer to the authority under the Edmonton Zoning Bylaw 12800.*

ITEM I: 9:00 A.M.

FILE: SDAB-D-19-003

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER BY AN ADJACENT PROPERTY OWNER

APPELLANT:

APPLICATION NO.: 284529038-001

APPLICATION TO: Change the Use from a Single Detached House to a Child Care Service (maximum 53 children) and to construct interior and exterior alterations (outdoor play space and rear concrete pad).

DECISION OF THE DEVELOPMENT AUTHORITY: Approved with Conditions

DECISION DATE: August 16, 2018

DATE OF APPEAL: September 9, 2018

NOTIFICATION PERIOD: August 23, 2018 through September 13, 2018

RESPONDENT: A. Siddiqui

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 16210 - 87 Avenue NW

LEGAL DESCRIPTION: Plan 6151KS Blk 8 Lot 90

ZONE: (RF1) Single Detached Residential Zone

OVERLAY: Mature Neighbourhood Overlay

STATUTORY PLAN: N/A

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***Grounds for Appeal***

The Appellant provided the following reasons for appealing the decision of the Development Authority:

1. Access to the day care property is poor. The property sits at the end of the service road on the north side of 87 Ave. It is a dead end. In the morning this service road is full of parked cars. Drop off vehicles entering this service road

will have difficulty finding parking and may have to back out of the service road once they have left their children.

2. Due to situation above, customers travelling east on 87 Ave may use the service road on the south side of the avenue. Our house sits directly at the traffic lights. This will be a prime location for parking and drop off. We have a front driveway which historically gets blocked regularly by cars parking illegally. This is dangerous for us backing out of the driveway and for traffic using this service road.

3. Customers travelling east on 87 Ave and turning north on 163 Street to drop off their children will have a difficult time. There is a large volume of commuter traffic going north on 163 Street due to two high schools Jasper Place High School and St. Francis Xavier High School and access to Stony Plain Road and 107th Ave. Again, the service road access to the day care property is a dead end.

4. The day care permit allows a maximum of 53 children. The staff parking required may be inadequate on the proposed rear concrete pad. Therefore, there will be more full-time parkers utilizing the already maxed out street parking.

5. How can that size of the house and yard accommodate 53 children plus staff required to look after that number of children?

6. Winter concerns are that traffic moves very slowly due to the road conditions. This will cause more delays and frustration for commuters resulting in more chances for vehicles running amber lights, etc.

7. Where will the day care empty their snow from the concrete pad? Will they be getting it commercially removed?

8. Safety concerns with customers driving/parking appropriately. Drivers already using the south side service roads as shortcuts. This service road itself has a high pedestrian traffic. -This is one of the reasons that the north side service road in front of the proposed day care property was blocked over fifteen years ago.

9. There is poor access to the property for emergency vehicles to the property. Will there be Muster Points for the children?

10. The west end LRT line is scheduled to go down 87 Ave. This will reduce the number of lanes on 87 Ave and the removal of the service roads. This will affect available parking. Especially when there is a snow route ban. This may generate increased parking in the area by LRT users.

<i>General Matters</i>
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**Appeal Information:**

The Subdivision and Development Appeal Board made and passed the following motion on September 13, 2018:

**"That the appeal hearing be scheduled for January 3, 2019."**

The *Municipal Government Act*, RSA 2000, c M-26 states the following:

**Grounds for Appeal**

**685(1)** If a development authority

- (a) fails or refuses to issue a development permit to a person,
- (b) issues a development permit subject to conditions, or
- (c) issues an order under section 645,

the person applying for the permit or affected by the order under section 645 may appeal to the subdivision and development appeal board.

**(2)** In addition to an applicant under subsection (1), any person affected by an order, decision or development permit made or issued by a development authority may appeal to the subdivision and development appeal board.

**Appeals**

**686(1)** A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board,

- (a) in the case of an appeal made by a person referred to in section 685(1)
  - (i) with respect to an application for a development permit,
    - (A) within 21 days after the date on which the written decision is given under section 642, or
    - (B) if no decision is made with respect to the application within the 40-day period, or within any extension of that period under section 684, within 21 days after the date the period or extension expires,
  - or
  - (ii) with respect to an order under section 645, within 21 days after the date on which the order is made, or
- (b) in the case of an appeal made by a person referred to in section 685(2), within 21 days after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.

**Hearing and Decision**

**687(3)** In determining an appeal, the subdivision and development appeal board

...

- (a.1) must comply with the land use policies;
- (a.2) subject to section 638, must comply with any applicable statutory plans;
- (a.3) subject to clauses (a.4) and (d), must comply with any land use bylaw in effect;
- (a.4) must comply with the applicable requirements of the regulations under the Gaming, Liquor and Cannabis Act respecting the location of premises described in a cannabis licence and distances between those premises and other premises;

...

- (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;
- (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,

(i) the proposed development would not

- (A) unduly interfere with the amenities of the neighbourhood, or
- (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

(ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

**General Provisions from the *Edmonton Zoning Bylaw*:**

Under section 110.3(1), **Child Care Services** is a **Discretionary Use** in the **(RF1) Single Detached Residential Zone**.

Under Section 7.8(2), **Child Care Services** means:

a development intended to provide care, educational activities and supervision for groups of seven or more children under 13 years of age during the day or evening, but does not generally include overnight accommodation. This Use typically includes daycare centres; out-of-school care centres; preschools; and dayhomes/group family care providing child care to seven or more children within the care provider's residence.

Section 110.1 states that the **General Purpose** of **(RF1) Single Detached Residential Zone** is:

to provide for Single Detached Housing while allowing other forms of small scale housing in the form of Secondary Suites, and Garden Suites, as well as Semi-detached Housing and Duplex Housing under certain conditions.

Section 814.1 states that the **General Purpose** of the **Mature Neighbourhood Overlay Overlay** is:

to regulate residential development in Edmonton's mature residential neighbourhoods, while responding to the context of surrounding development, maintaining the pedestrian-oriented design of the streetscape, and to provide an opportunity for consultation by gathering input from affected parties on the impact of a proposed variance to the Overlay regulations.

***Fence Height***

Section 49.1 states the following with respect to Fences, walls and gates:

...

- e. On a Corner Site, the Height of a Fence, wall, or gate shall not exceed:
  - i. 1.2 m for the portion of the Fence, wall, or gate constructed in the Front Yard,
  - ii. 1.2 m for the portion of the Fence, wall, or gate situated between the flanking Side Lot Line and the foremost side Façade of the principal structure, and extending from the Front Lot Line to the Rear Lot Line, and
  - iii. 1.85 m in all other Yards.

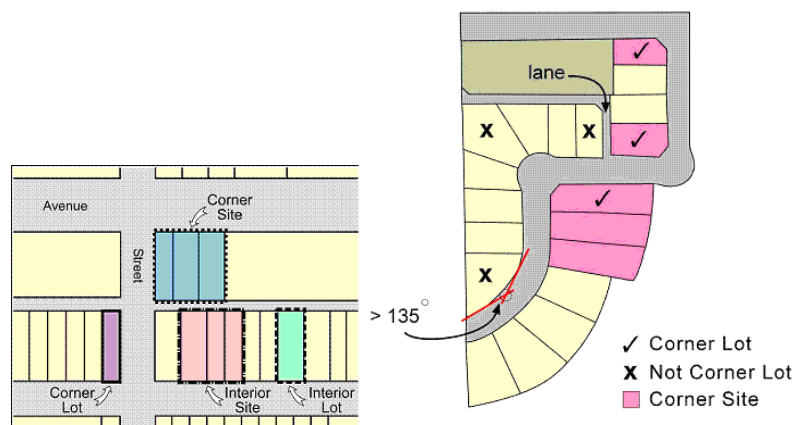
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Under section 6.1, **Corner Site** means:

an area of land consisting of one or more adjacent Lots where at least one Lot is:

- a. located at the intersection of two public roadways, other than Lanes; or
- b. abuts a public roadway, other than a Lane, which changes direction at any point where it abuts the Site;

provided that in both cases the Site shall not be considered a Corner Site where the contained angle formed by the intersection or change of direction is an angle of more than 135 degrees. In the case of a curved corner, the angle shall be determined by the lines tangent to the property line abutting the public roadways, provided the roadway is not a Lane, at the point which is the extremity of that property line. In the case of a curved corner, the point which is the actual corner of the Site shall be that point on the property line abutting the public roadway, provided the roadway is not a Lane, which is nearest to the point of intersection of the tangent lines.



Under section 6.1, **Façade** means:

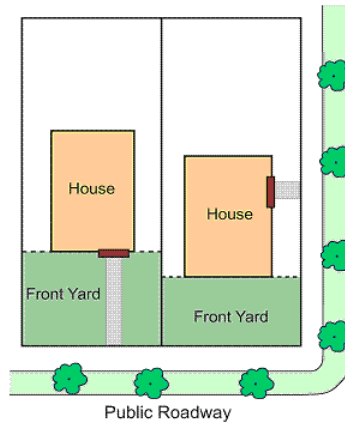
the exterior outward face of a building. Typically, the façade of interest is that surface that serves as the front of that building and faces a building’s primary street. Buildings on the corner of two streets or a street and an alley present two public façades.

Under section 6.1, **Fence** means “a structure constructed at ground level, used to prevent or restrict passage, provide visual screening, noise attenuation, Landscaping, or to mark a boundary.”



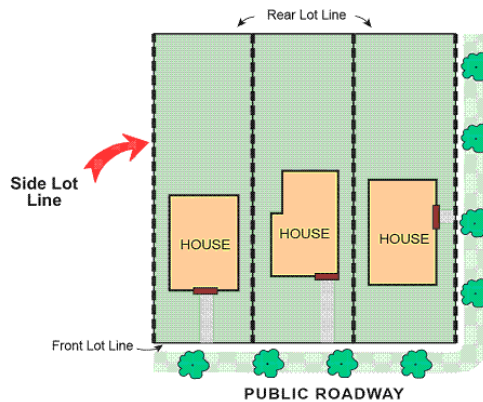
Under section 6.1, **Front Yard** means:

the portion of a Site abutting the Front Lot Line extending across the full width of the Site, situated between the Front Lot Line and the nearest wall of the principal building, not including projections.



Under section 6.1, **Side Lot Line** means:

the property line of a lot other than a Front Lot Line or Rear Lot Line;



**Development Officer's Determination**

**Fence Height - The fence along 163 Street NW is 1.83m high, instead of 1.2m (Section 49.1(e)) [unedited]**

***Section 80 – Child Care Services***

A Child Care Service shall comply with the following:

1. Child Care Services Site Plan and Development Application Content:

- a. In addition to the requirements of Section 13, every application for a Development Permit for a Child Care Services Use shall include a Site plan and floor plan that combined, includes all information required in the Child Care Services Checklist.

2. Location requirements:

- a. No portion of a Child Care Services Use, including the building bay and on-Site outdoor play space, where provided, shall be located adjacent to a building bay with an approved development permit for the following Uses:
  - i. Automotive and Equipment Repair Shops
  - ii. Fleet Services
  - iii. Funeral, Cremation and Internment Services
  - iv. General Industrial Uses
  - v. Rapid Drive-through Vehicle Services, or
  - vi. Vehicle and Equipment Sales/Rentals.
- b. No portion of a Child Care Services Use, including the building, building bay or on-Site outdoor play space, where provided, shall be located on a Site or adjacent to a Site with an approved development permit for the following Uses:
  - i. Land Treatment
  - ii. Major Impact Utility Services, or
  - iii. Minor Impact Utility Services.
- c. No portion of a Child Care Services Use, including the building, building bay and on-Site outdoor play space, where provided, shall be located within 50 m of a Major Service Station, a Minor Service Station or a Gas Bar. This distance shall be measured from the closest pump island, fill pipes, vent pipes, or service station or gas bar building, to the Child Care Services Use.
- d. Where Site conditions exist which may negatively impact the Child Care Services Use, including but not limited to trash collection areas, large parking lots, loading docks, rail lines, or arterial public roadways, the applicant shall design the building, entrances, playspaces, landscaping, and Fencing, or similar, to mitigate these conditions to the satisfaction of the Development Officer.
- e. Where Child Care Services is proposed on a Site zoned (IB) Business Industrial Zone, (IL) Light Industrial Zone, or (EIB) Ellerslie Business Industrial Zone, it shall only be allowed if the Site development forms part of an office park development or commercial strip mall.

3. Playspace requirements

- a. Where outdoor play space is provided at ground level it shall be allowed in any Yard. It shall be Fenced on all sides and all gates shall be self-latching. Fencing shall not be required where outdoor play space is proposed to share existing play equipment on Sites zoned (US) Urban Services Zone or (AP) Public Parks Zone, or if an exemption is permitted by the Government of Alberta.
- b. Where outdoor play space is provided above the first level such as on a Rooftop Terrace, balcony, or similar, the following regulations shall apply:
  - i. Perimeter guard rails, or parapet walls, or a combination thereof that is at least 1.83 m in Height and provides a secure perimeter shall be installed and shall be consistent with the architectural materials and style of the building.
  - ii. Mechanical equipment and exhaust systems shall be designed to be integrated into the play space so the Development Officer is satisfied that it does not create adverse effects related to noise, fumes or safety, or shall be located a minimum of 2 m outside of the perimeter of the outdoor play space.

4. Development in Residential Zones

- a. Where a Child Care Services Use is proposed in a building with a valid development permit for Apartment Housing or Row Housing, the Child Care Services shall not be part of a Dwelling.
- b. Where a Child Care Services Use is proposed as part of a Dwelling, or is proposed in a converted Single Detached Housing, the Use shall only be located:
  - i. on a Corner Lot; or
  - ii. on a Site Abutting a Site that is actively used for a Community, Educational, Recreational and Cultural Service Use Class; or
  - iii. Abutting a Site with zoning that lists Apartment Housing, General Retail Stores or Convenience Retail Stores as a permitted Use.
- c. A converted Dwelling shall not change the principal character or external appearance of the Dwelling in which it is located.
- d. If a new building is constructed for a Child Care Services Use, it shall retain the external appearance of a residential Dwelling, unless it is built as part of a development where the primary use is a Religious Assembly Use.

5. Sign Requirements

- a. Signs shall conform to the regulations found in the Sign Schedule for the underlying zone.

**Section 54.2 Schedule 1 – Vehicular Parking Requirement**

Section 54.2, schedule 1(C) provides the following:

<b>Schedule 1(C) Transit Oriented Development and Main Streets Overlay</b>	
<b>Use of Building or Site</b>	<b>Minimum or Maximum Number of Parking Spaces Required</b>
<b>Residential and Residential-Related Uses</b>	
Area of application	<p>Where the following Uses are outside of the boundary of 54.2 Schedule 1(B) but are located within:</p> <ul style="list-style-type: none"> <li>· 600 metres of an existing LRT station, or a future LRT station with the most recent version of a Council-approved Concept Plan;</li> <li>· 600 metres of an existing Transit Centre, or a future Transit Centre with the most recent version of a Council-approved Concept Plan;</li> <li>· 150 metres of a Transit Avenue; or</li> <li>· the boundaries shown in the Main Streets Overlay Section 819.2,</li> </ul> <p>the minimum and maximum parking requirements shown below shall apply, except Schedule 1(A) shall apply for Residential and Residential-Related Uses not listed here.</p> <p>For the purpose of Schedule 1(C), measurements shall be made from the nearest point of the LRT station, Transit Centre, or Transit Avenue to the Site Boundary where the Use(s) are to be located. Where a LRT station or Transit Centre exists in concept only, the radius shall be measured from the centre of the proposed location on the concept diagrams, or of the nearest roadway intersection at the discretion of the Development Officer.</p>

Section 54.2, Schedule 1(C)(7) provides the following:

<b>Use of Building or Site</b>	<b>Minimum or Maximum Number of Parking Spaces Required</b>
All other non-residential Uses	1 parking space per <u>100.0 m<sup>2</sup></u> of


	Floor Area
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Notice to Applicant/Appellant

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing.

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	Project Number: <b>284529038-001</b> Application Date: JUN 08, 2018 Printed: September 10, 2018 at 7:58 AM Page: 1 of 2						
<b>Major Development Permit</b>							
This document is a record of a Development Permit application, and a record of the decision for the undertaking described below, subject to the limitations and conditions of this permit, of the Edmonton Zoning Bylaw 12800 as amended.							
<b>Applicant</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;"><b>Property Address(es) and Legal Description(s)</b></td> </tr> <tr> <td style="padding: 5px;">16210 - 87 AVENUE NW Plan 6151KS Blk 8 Lot 90</td> </tr> <tr> <td style="padding: 5px;"><b>Specific Address(es)</b></td> </tr> <tr> <td style="padding: 5px;">Suite: 16210 - 87 AVENUE NW</td> </tr> <tr> <td style="padding: 5px;">Entryway: 16210 - 87 AVENUE NW</td> </tr> <tr> <td style="padding: 5px;">Building: 16210 - 87 AVENUE NW</td> </tr> </table>	<b>Property Address(es) and Legal Description(s)</b>	16210 - 87 AVENUE NW Plan 6151KS Blk 8 Lot 90	<b>Specific Address(es)</b>	Suite: 16210 - 87 AVENUE NW	Entryway: 16210 - 87 AVENUE NW	Building: 16210 - 87 AVENUE NW
<b>Property Address(es) and Legal Description(s)</b>							
16210 - 87 AVENUE NW Plan 6151KS Blk 8 Lot 90							
<b>Specific Address(es)</b>							
Suite: 16210 - 87 AVENUE NW							
Entryway: 16210 - 87 AVENUE NW							
Building: 16210 - 87 AVENUE NW							
<b>Scope of Permit</b> To change the use from a Single Detached House to a Child Care Service (maximum 53 children) and to construct interior and exterior alterations (outdoor play space and rear concrete pad).							
<b>Permit Details</b> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">                     Class of Permit: Class B                      Gross Floor Area (sq.m.):                      New Sewer Service Required: N                      Site Area (sq. m.): 647.25                 </td> <td style="width: 50%; padding: 5px;">                     Contact Person:                      Lot Grading Needed?: N                      NumberOfMainFloorDwellings:                      Stat. Plan Overlay/Annex Area: (none)                 </td> </tr> </table>		Class of Permit: Class B Gross Floor Area (sq.m.): New Sewer Service Required: N Site Area (sq. m.): 647.25	Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: Stat. Plan Overlay/Annex Area: (none)				
Class of Permit: Class B Gross Floor Area (sq.m.): New Sewer Service Required: N Site Area (sq. m.): 647.25	Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: Stat. Plan Overlay/Annex Area: (none)						
I/We certify that the above noted details are correct.  Applicant signature: _____							
<b>Development Permit Decision</b> Approved <b>Issue Date:</b> Aug 16, 2018 <b>Development Authority:</b> KIM, JENNIFER							



Project Number: **284529038-001**  
 Application Date: JUN 08, 2018  
 Printed: September 10, 2018 at 7:58 AM  
 Page: 2 of 2

## Major Development Permit

**Subject to the Following Conditions**

NOTE: This Development Permit is NOT valid until the Notification Period expires in accordance to Section 21.1. (Section 17.1)

- 1) All required parking and loading facilities shall only be used for the purpose of accommodating the vehicles of clients, customers, employees, members, residents or visitors in connection with the building or Use for which the parking and loading facilities are provided, and the parking and loading facilities shall not be used for driveways, access or egress, commercial repair work, display, sale or storage of goods of any kind. (Reference Section 54.1.c)
- 2) Any outdoor lighting for any development shall be located and arranged so that no direct rays of light are directed at any adjoining properties, or interfere with the effectiveness of any traffic control devices. (Reference Section 51)
- 3) Where outdoor play space is provided at ground level it shall be Fenced on all sides and all gates shall be self-latching.

**ADVISEMENTS:**

- 1) A Building Permit is Required for any construction or change in use of a building. For a building permit, and prior to the Plans Examination review, you require construction drawings and the payment of fees. Please contact the 311 Call Centre for further information.
- 2) This Development Permit is not a Business Licence. A separate application must be made for a Business Licence.
- 3) Signs require separate Development Applications.
- 4) The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the suitability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, in issuing this Development Permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.
- 5) An approved Development Permit means that the proposed development has been reviewed against the provisions of this bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments including, but not limited to, the Municipal Government Act, the Safety Codes Act or any caveats, restrictive covenants or easements that might be attached to the Site (Reference Section 5.2).

**Variations**

Fence Height - The fence along 163 Street NW is 1.83m high, instead of 1.2m (Section 49.1(c))

**Rights of Appeal**

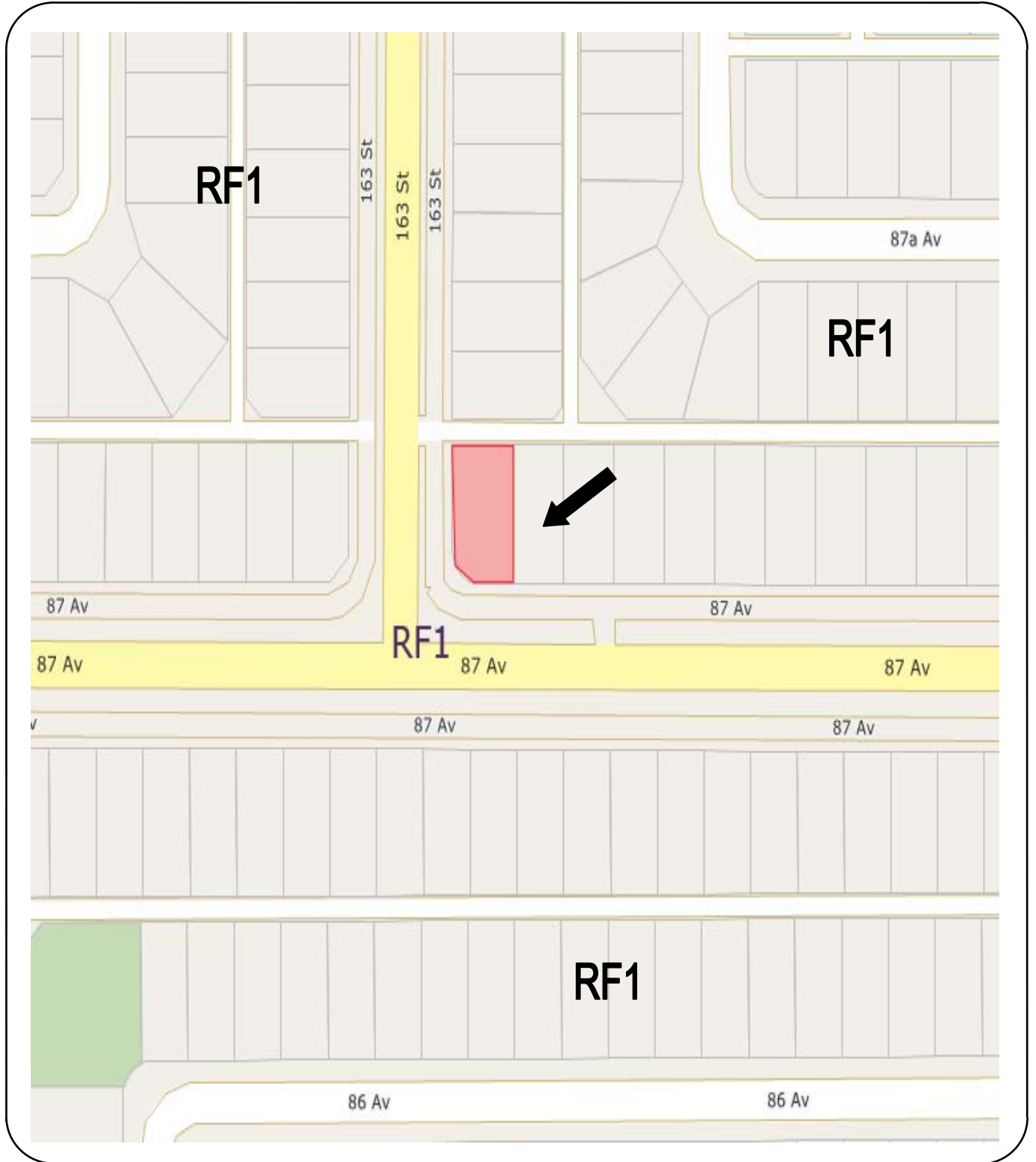
This approval is subject to the right of appeal as outlined in Chapter 24, Section 683 through 689 of the Municipal Government Amendment Act.

**Notice Period Begins:** Aug 23, 2018

**Ends:** Sep 13, 2018

**Fees**

	Fee Amount	Amount Paid	Receipt #	Date Paid
Major Dev. Application Fee	\$510.00	\$510.00	05087973	Jun 08, 2018
Total GST Amount:	\$0.00			
Totals for Permit:	\$510.00	\$510.00		



**SURROUNDING LAND USE DISTRICTS**

Site Location 

File: SDAB-D-19-003





ITEM II: 11:00 A.M.

FILE: SDAB-D-19-004

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER BY AN  
ADJACENT CONDOMINIUM ASSOCIATION AND PROPERTY OWNER

APPELLANT NO. 1:

APPELLANT NO. 2:

APPLICATION NO.: 263121901-001

APPLICATION TO: Construct interior and exterior alterations to a Restaurant and Drive-in Food Service (facade improvement, reconfigure parking area and drive-in, improved Landscaping, and construct a covered patio; Public Area: 152 square metres) (McDonalds)

DECISION OF THE DEVELOPMENT AUTHORITY: Approved with Conditions

DECISION DATE: November 13, 2018

DATE OF APPEALS: December 10, 2018 and December 11, 2018.

NOTIFICATION PERIOD: November 20, 2018 through December 11, 2018

RESPONDENT: IBI Group Geomatics (Canada) Inc.

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 8415 - 109 Street NW

LEGAL DESCRIPTION: Plan N4000R Blk 178 Lots 16-20

ZONE: (CB1) Low Intensity Business Zone

OVERLAY: Main Streets Overlay

STATUTORY PLAN(S): 109 Street Corridor Area Redevelopment Plan  
Garneau Area Redevelopment Plan

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*Grounds for Appeal*

The Appellant provided the following reasons for appealing the decision of the Development Authority:

**Appellant No. 1: The Andross: The Owners: Condominium Plan No. 9420916:**

I am appealing on behalf of The Andross: The Owners Condominium Plan No. 9420916, 15 Condominium Units Directly East of the McDonalds which is located at 8415 109 Street N.W. Edmonton Alberta. The property details above would not allow me to list all 15 Units. I am the Secretary Treasurer for The Andross: The Owners Condominium Plan No. 9420916 and used my Unit Number for the affected Property Detail above. Several owners have expressed their intention to attend the appeal hearing and to speak to the board.

1. Setback Along Public Roadway - Proposed .84m setback from property line abutting 109 Street, instead of 1.0m (Section 819.3.2)

The McDonald's landscape plan indicates an outdoor patio along 109th Street. In the last two years this McDonalds has become a meeting point and hang out for street gangs operating in the Garneau area. The Andross Condominium parkade has been broken into three times since the spring of 2018 costing owners over \$5000 to replace stolen bikes, video computer system, smashed vehicle windows, fire department key lock box, replacement of locks and rekeying the entire building. We feel the installation of the patio will encourage, especially the night time people currently seen sleeping inside the McDonalds or hanging around the doors and entrances, to continue to meet and do business from McDonalds. If the variance is required to install the patio, then the variance should not be allowed.

2. Set back from a Residential Zone - The setback is a minimum of 1.7 m from the abutting Residential Zone to the East, (us The Andross), instead of 6.0 m (Reference Section 819.3.4.a)

The parking lot currently set back 1.7m from the property line, has been an issue with owners and residents, primarily the condominium units abutting the McDonads. Had we known the parking lot should be 6m from the property line, we would have asked the City to enforce the 6m in 2009 referencing City File No SDAB-D-09-175 when the City Development Appeal Board found that the noise produced from a drive through and speaker system would have an adverse effect on adjacent properties and was not appropriate nor compatible with the uses and development in the immediate area. The application for a speaker system was denied. Nothing has changed since 2009 except McDonalds now proposes a double drive through, meaning two speakers and a short in length 1.8 m high sound attention fence. This fence does not address the sound from the vehicles, people in the vehicles and speaker voices from moving up, forwards or backwards.

We will be submitting statements from owners who cannot attend the appeal hearing.

**Appellant No. 2: P. Gervais et al (Mr. Kaszor & Ms. Hartman; Mr. & Mrs. Eng; Mr. Minaker & Ms. Sargent):**

We object to the decision by the Development Authority to permit variances to Zoning Bylaw 12800 for the following reasons:

- 1) The variance to the Setback from a Residential Zone from 6 m to 1.7 m is significant. Providing this variance to the Main Street Overlay would allow the Restaurant and Drive-in Food Services to make substantial modifications to the site impacting negatively on neighbouring residents and will be in direct opposition to the 109 Street Corridor Area Redevelopment Plan.
  - a) The proposed development plan will substantially increase vehicular traffic on this site with access from the bike/bus lane on 108 Street and 85 Avenue by doubling the drive through lanes and increasing the size of the queuing area.
  - b) The proposed development plan also included a loud speaker system, a speaker ordering system that was denied in 2002 (SDAB-D-02-097) and the modern speaker system that was denied in 2009 (SDAB-D-09-175).
  - c) It is also a concern of residents that the doubling of the drive-through lanes will inevitably see significant increases in both vehicle noises from patrons and service vehicles and loud speaker noise exacerbated by extended hours. Also, with the increased traffic flow comes an increase in exhaust fumes.
  - d) In 2002 the McDonald's representative, Mr. Horst, "advised the Board that in this particular area the homes are much closer to the commercial property than in most other areas" (SDAB-D-02-097, p. 2). This statement is still applicable today. We see this as a unique McDonald's located in a Mature Neighbourhood. This establishment is the only establishment boarding on a residential community within the 109 Street corridor that is open 24 hours a day 7 days a week.
  - e) Due to the scale and hours of operation and a lack of sensitivity to the surrounding residential neighbourhood we have witnessed a substantial increase in crime in our neighbourhood, e.g. thefts, break-ins, damage to property, and drug related crime. The frequency and intensity of these events can easily be corroborated by the EPS.
  - f) McDonald's development plan for this site shows vast improvement over the current above-ground garbage bins with their intended use

of Earthbins. This has the potential to reduce odour and minimize animal pests. However, the proposed location of these Earthbins is well within the 6 m setback of the residential property to the east and closer to more condominium units given its proposed central location in the parking lot. Servicing of these bins is still by traditional noisy means. Also given their proposed location, servicing would inevitably block the car queuing area thus suggesting that the current practice of servicing the bins during the wee hours of the night will continue.

- 2) We oppose the approved variance to the setback along 109 Street for the following reasons:
  - a) As stated above there has been a substantial increase in crime in the area much if not all during the night hours when McDonald's, the only restaurant open 24 hrs/day, has been operating in our neighbourhood. The proposed development would see a non-fenced in permanent outdoor patio that would invite patrons and non-patrons to use at any time of day. Our concern is that this patio will attract a night time crowd whose ultimate purpose is not eating a quick burger and moving on.
  - b) 109 Street is a very busy high traffic roadway. Entry to and from McDonalds is from 109 Street. We believe that at least one purpose of the required setback of 1 m is to provide a safe pedestrian friendly environment.

Currently, this McDonald's setback to the east and its garbage bin location is non-compliant with CB1 and Main Street Zoning Bylaws and does not meet the Policy Directives of City Council for land use and density in the 108 Street Corridor ARP. We, for the reasons listed above, oppose the decision of the development Authority in granting approval for variance and this development plan.

<i>General Matters</i>
------------------------

**Appeal Information:**

The *Municipal Government Act*, RSA 2000, c M-26 states the following:

**Grounds for Appeal**

**685(1)** If a development authority

- (a) fails or refuses to issue a development permit to a person,
- (b) issues a development permit subject to conditions, or
- (c) issues an order under section 645,

the person applying for the permit or affected by the order under section 645 may appeal to the subdivision and development appeal board.

(2) In addition to an applicant under subsection (1), any person affected by an order, decision or development permit made or issued by a development authority may appeal to the subdivision and development appeal board.

### **Appeals**

**686(1)** A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board,

(a) in the case of an appeal made by a person referred to in section 685(1)

(i) with respect to an application for a development permit,

(A) within 21 days after the date on which the written decision is given under section 642, or

(B) if no decision is made with respect to the application within the 40-day period, or within any extension of that period under section 684, within 21 days after the date the period or extension expires,

or

(ii) with respect to an order under section 645, within 21 days after the date on which the order is made, or

(b) in the case of an appeal made by a person referred to in section 685(2), within 21 days after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.

### **Hearing and Decision**

**687(3)** In determining an appeal, the subdivision and development appeal board

...

(a.1) must comply with the land use policies;

(a.2) subject to section 638, must comply with any applicable statutory plans;

(a.3) subject to clauses (a.4) and (d), must comply with any land use bylaw in effect;

(a.4) must comply with the applicable requirements of the regulations under the Gaming, Liquor and Cannabis Act respecting the location of premises described in a cannabis licence and distances between those premises and other premises;

...

(c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;

(d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,

(i) the proposed development would not

(A) unduly interfere with the amenities of the neighbourhood, or

(B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

(ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

**General Provisions from the *Edmonton Zoning Bylaw*:**

Under section 330.2(15), **Restaurants**, for less than 200 occupants and 240 m<sup>2</sup> of Public Space, is a **Permitted Use** in the **(CB1) Low Intensity Business Zone**.

Under section 7.4(47), **Restaurants** means:

development where the primary purpose of the facility is the sale of prepared foods and beverages to the public, for consumption within the premises or off the Site. Minors are never prohibited from any portion of the establishment at any time during the hours of operation. This Use typically has a varied menu, with a fully equipped kitchen and preparation area, and includes fast food and family restaurants.

Under section 330.3(9), **Drive-in Food Services** is a **Discretionary Use** in the **(CB1) Low Intensity Business Zone**.

Under section 7.4(16), **Drive-in Food Services** means:

development used for eating and drinking which offer a limited menu produced in a manner that allows rapid customer service and include one

or more of the following features: car attendant services; drive-through food pickup services; or parking primarily intended for the on-site consumption of food within a motor vehicle.

Under section 6.1, **Public Space** means:

space that is part of an establishment, which is open to the public and not restricted to only employees. Public Space includes any private non-sale hospitality area where products manufactured within the premises are provided to private groups for tasting and sampling. This definition does not include kitchens, administration offices, food or drink preparation areas.

Section 330.1 states that the **General Purpose of (CB1) Low Intensity Business Zone** is:

to provide for low intensity commercial, office and service uses located along arterial roadways that border residential areas. Development shall be sensitive and in scale with existing development along the commercial street and any surrounding residential neighbourhood.

Section 819.1 states that the **General Purpose of the Main Streets Overlay** is:

to encourage and strengthen the pedestrian-oriented character of Edmonton's main street commercial areas that are located in proximity to residential and transit-oriented areas, by providing visual interest, transparent storefront displays, and amenities for pedestrians.

<b><i>Setbacks</i></b>
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Under section 6.1, **Setback** means “the distance that a development or a specified portion of it, must be set back from a property line. A Setback is not a Yard, Amenity Space, or Separation Space.”

Section 819.3(2) states:

A Setback of 1.0 m shall be required where a Site Abuts a public roadway, other than a Lane. The 1.0 m Setback shall be paved and visually incorporated into the public Walkway to the satisfaction of the Development Officer in consultation with Integrated Infrastructure Services. The Development Officer may allow this Setback to be increased to a maximum of 2.5 m to accommodate street related activities that contribute to the pedestrian-oriented shopping character of the area. Buildings may project to the front and side property lines above 4.0 m in Height.

**Development Officer's Determination**

**1. Setback Along Public Roadway- Proposed 0.84m setback from property line abutting 109 Street, instead of 1.0m (Section 819.3.2). [unedited]**

Section 819.3(4) states:

On all Sites Abutting a Zone that allows Single Detached Housing as a Permitted Use or a Zone that allows for Row Housing as a Permitted Use:

- a. The minimum Setback Abutting the residential Zone shall be 6.0 m; and
- b. ...

**Development Officer's Determination**

**2. Setback from a Residential Zone - The Setback is a minimum of 1.7m from the abutting Residential Zone to the East, instead of 6.0m (Reference Section 819.3.4.a) [unedited]**

***Community Consultation***

Section 819.3(28) states:

When the Development Officer determines that a Development Permit application does not comply with the regulations contained in this Overlay:

- a. the Development Officer shall send notice to the municipal address and assessed owners of land wholly or partly located within a distance of 60.0 m of the Site of the proposed development, and the President of each affected Community League and each Business Improvement Area Association operating within the distance described above to outline any requested variances to the Overlay and solicit comments directly related to the proposed variance;
- b. the Development Officer shall not render a decision on the Development Permit application until 21 days after notice has been mailed, unless the Development Officer receives feedback from all specified recipients; and
- c. the Development Officer shall consider any comments directly related to the proposed variance when determining whether to



approve the Development Permit application in accordance with Section 11.3.

***Previous Subdivision and Development Appeal Board Decisions***

<b>Application Number</b>	<b>Description</b>	<b>Decision</b>
SDAB-D-16-117	To permit a Freestanding Off-Premises Sign, existing without permits (Outfront Media).	May 26, 2016; The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is REFUSED.
SDAB-D-09-175	To construct exterior alterations to a Restaurant with a Drive-through Food Service (McDonald's, install new customer order display and close order booth).	August 28, 2009; that the appeal be ALLOWED and the DEVELOPMENT REFUSED.

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Notice to Applicant/Appellant

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing.

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	Project Number: <b>263121901-001</b> Application Date: SEP 26, 2017 Printed: December 10, 2018 at 12:50 PM Page: 1 of 4		
<h2 style="margin: 0;">Major Development Permit</h2>			
This document is a record of a Development Permit application, and a record of the decision for the undertaking described below, subject to the limitations and conditions of this permit, of the Edmonton Zoning Bylaw 12800 as amended.			
<b>Applicant</b>	<b>Property Address(es) and Legal Description(s)</b> 8415 - 109 STREET NW Plan N4000R Blk 178 Lots 16-20  <b>Specific Address(es)</b> Suite: 8415 - 109 STREET NW Entryway: 8415 - 109 STREET NW Building: 8415 - 109 STREET NW		
<b>Scope of Permit</b> To construct interior and exterior alterations to a Restaurant and Drive-in Food Service (facade improvement, reconfigure parking area and drive-in, improved Landscaping, and construct a covered patio; Public Area: 152m2). (McDonalds)			
<b>Permit Details</b> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;">                             Class of Permit: Class B                              Gross Floor Area (sq.m.): 323.4                              New Sewer Service Required: Y                              Site Area (sq. m.): 2146.43                         </td> <td style="width: 50%; border: none;">                             Contact Person:                              Lot Grading Needed?: Y                              NumberOfMainFloorDwellings: 0                              Stat. Plan Overlay/Annex Area: Main Street Overlay                         </td> </tr> </table>		Class of Permit: Class B Gross Floor Area (sq.m.): 323.4 New Sewer Service Required: Y Site Area (sq. m.): 2146.43	Contact Person: Lot Grading Needed?: Y NumberOfMainFloorDwellings: 0 Stat. Plan Overlay/Annex Area: Main Street Overlay
Class of Permit: Class B Gross Floor Area (sq.m.): 323.4 New Sewer Service Required: Y Site Area (sq. m.): 2146.43	Contact Person: Lot Grading Needed?: Y NumberOfMainFloorDwellings: 0 Stat. Plan Overlay/Annex Area: Main Street Overlay		
I/We certify that the above noted details are correct.  Applicant signature: _____			
<b>Development Permit Decision</b> Approved  <b>Issue Date:</b> Nov 13, 2018 <b>Development Authority:</b> ADAMS, PAUL			
(Empty space for additional information or comments)			



Project Number: **263121901-001**  
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## Major Development Permit

### Subject to the Following Conditions

1. PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall pay a Lot Grading Fee of \$227.00.

2. PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall pay a Sanitary Sewer Trunk Charge fee of \$1680.75. All assessments are based upon information currently available to the City. The SSTC charges are quoted for the calendar year in which the development permit is granted. The final applicable rate is subject to change based on the year in which the payment is collected by the City of Edmonton.

3. All access locations and curb crossings shall have the approval of Transportation Services. (Reference Section 53.1)

a. The proposed hard surfacing along 109 Street within road right-of-way, as shown on the Enclosure, is acceptable to Subdivision Planning. Prior to construction, the owner/applicant must contact Annie Duong of Development Inspections at 780-496-1799 a minimum of 48 hours in advance to arrange for inspection of the hard surfacing.

b. There is an existing traffic signal pole and pedestal within road right-of-way that may be affected by installation of the proposed hard surfacing, as shown on the Enclosure. The owner/applicant should contact Lori David of Network Operations at 780-496-2670 for more information.

c. There may be utilities within road right-of-way not specified that must be considered during construction. The owner/applicant is responsible for the location of all underground and above ground utilities and maintaining required clearances as specified by the utility companies. Alberta One-Call (1-800-242-3447) and Shaw Cable (1-866-344-7429; www.digshaw.ca) should be contacted at least two weeks prior to the work beginning to have utilities located. Any costs associated with relocations and/or removals shall be at the expense of the owner/applicant.

d. Any Hoarding or Construction taking place on Road Right-of-Way (ROW) requires an OSCAM (On-Street Construction and Maintenance) Permit. OSCAM. Permit applications require Transportation Management Plan (TMP) information. The TMP must include:

- the Start / Finish date of project;
- accommodation of pedestrian connectivity during all phases of construction for access to the adjacent roadways and intersections;
- accommodation of vehicles during construction;
- confirmation of lay down area within legal road right of way if required;
- confirmation of sidewalk and / or boulevard crossings for temporarily site access.

It should be noted that the hoarding must not damage boulevard trees. The owner or Prime Contractor must apply for an O.S.C.A.M. online at:  
[https://www.edmonton.ca/business\\_economy/licences\\_permits/oscaml-permit-request.aspx](https://www.edmonton.ca/business_economy/licences_permits/oscaml-permit-request.aspx),  
<https://www.edmonton.ca/documents/ConstructionSafety.pdf>

e. Any alley, sidewalk or boulevard damage occurring as a result of construction traffic must be restored to the satisfaction of Development Inspections, as per Section 15.5(f) of the Zoning Bylaw. All expenses incurred for repair are to be borne by the owner/applicant.

4. Landscaping shall be in accordance with the approved landscaping plan and Section 55 of the Zoning Bylaw, to the satisfaction of the Development Officer.

A. Any changes to an approved Landscape Plan require the approval of the Development Officer prior to the Landscaping being installed.

B. Landscaping shall be maintained in a healthy condition for a minimum of 24 months after the landscaping has been installed, to the satisfaction of the Development Officer.

C. A Guaranteed Landscaping Security shall be provided to the City of Edmonton at the time of Development Permit Inspection, to the satisfaction of the Development Officer.



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## Major Development Permit

5. All required parking and loading facilities shall only be used for the purpose of accommodating the vehicles of clients, customers, employees, members, residents or visitors in connection with the building or Use for which the parking and loading facilities are provided, and the parking and loading facilities shall not be used for driveways, access or egress, commercial repair work, display, sale or storage of goods of any kind. (Reference Section 54.1.1.c)

6. The off-street parking, loading and unloading (including aisles or driveways) shall be hardsurfaced, curbed, drained and maintained in accordance to Section 54.6.

7. Any outdoor lighting for any development shall be located and arranged so that no direct rays of light are directed at any adjoining properties, or interfere with the effectiveness of any traffic control devices. (Reference Section 51)

8. All outdoor trash collection areas shall be located and screened to the satisfaction of the Development Officer in accordance with Sections 55(4) & (5).

9. Bicycle parking shall be provided in accordance to Section 54.3 and to the satisfaction of the Development Officer.

10. A 1.8m tall wood screen fence shall be required to screen the site from along the East and South property lines to the Satisfaction of the Development Officer. (Reference Sections 819.3.8 & 72.2.8.c.i )

11. A Comprehensive Sign Design Plan shall be required for all Signs on this Site. All future and current Signage shall comply with this Comprehensive Sign Design Plan. (Reference Section 819.3.26)

### ADVISEMENTS:

a. This Development Permit is NOT valid until the Notification Period expires in accordance to Section 21.1. (Reference Section 17.1)

b. This Development Permit is NOT a Business Licence. A separate application must be made for a Business Licence. Please contact the 311 Call Centre (780-442-5311) for further information.

c. Signs require separate Development Applications.

d. A building permit is required for any construction or change in Use of a building. For a building permit, and prior to the plans examination review, you require construction drawings and the payment of fees. Please contact the 311 Call Centre (780-442-5311) for further information.

e. The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the suitability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, in issuing this Development Permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.

f. An approved Development Permit means that the proposed development has been reviewed against the provisions of this bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments including, but not limited to, the Municipal Government Act, the Safety Codes Act or any caveats, restrictive covenants or easements that might be attached to the Site. (Reference Section 5.2)

g. Unless otherwise stated, all above references to section numbers refer to the authority under the Edmonton Zoning Bylaw 12800 as amended.

h. Upon the first Development Permit Inspection and determination that landscape construction has been completed in compliance with the approved Landscape Plan, 20% of the approved Guaranteed Landscape Security shall be collected and retained for a period of 24 months from the date of first Development Permit Inspection.



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## Major Development Permit

i. Sites that are not completed or are not compliant with approved Landscape Plans at the first Development Permit Inspection, shall be required to submit a Security for incomplete work, up to and including the full value of the approved Guaranteed Landscape Security value.

j. Access from the site to 109 Street and 85 Avenue exists, as shown on the Enclosure. Any modification to the existing accesses requires the review and approval of Subdivision Planning.

k. Upon future redevelopment of the site, the existing access to 109 Street may be required to be removed and filled-in in accordance with the Main Streets Overlay.

**Variations**

1. Setback Along Public Roadway- Proposed 0.84m setback from property line abutting 109 Street, instead of 1.0m (Section 819.3.2).
2. Setback from a Residential Zone - The Setback is a minimum of 1.7m from the abutting Residential Zone to the East, instead of 6.0m (Reference Section 819.3.4.a)

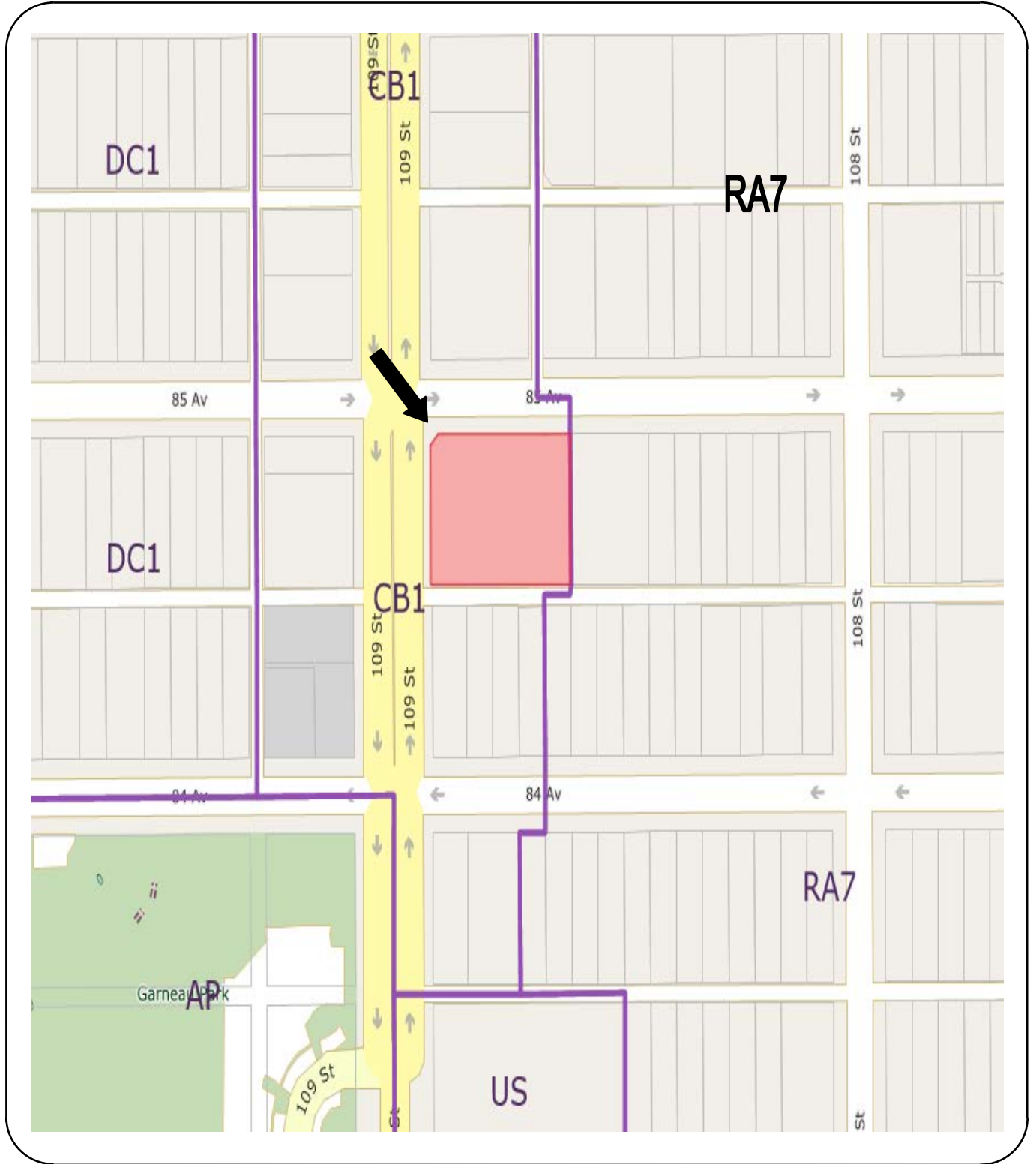
**Rights of Appeal**

This approval is subject to the right of appeal as outlined in Chapter 24, Section 683 through 689 of the Municipal Government Amendment Act.

**Notice Period Begins:** Nov 20, 2018      **Ends:** Dec 11, 2018

**Fees**

	Fee Amount	Amount Paid	Receipt #	Date Paid
Development Permit Inspection Fee	\$500.00	\$500.00	04487578	Sep 28, 2017
Major Dev. Application Fee	\$354.00	\$354.00	04487578	Sep 28, 2017
Sanitary Sewer Trunk Fund 2012+	\$1,680.75			
Lot Grading Fee	\$227.00			
Total GST Amount:	\$0.00			
Totals for Permit:	\$2,761.75	\$854.00		
(\$1,907.75 outstanding)				



**SURROUNDING LAND USE DISTRICTS**

Site Location ←

File: SDAB-D-19-004

