

SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA

Thursday, 9:00 A.M.
July 11, 2019

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

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

I	9:00 A.M.	SDAB-D-19-107	Construct a Single Detached House with front attached Garage, Unenclosed Front Porch, electric fireplace, and Basement development (NOT to be used as an additional Dwelling). 4112 - 122 Street NW Project No.: 310374109-001
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NOTE: ***Unless otherwise stated, all references to “Section numbers” in this Agenda refer to the authority under the Edmonton Zoning Bylaw 12800.***

ITEM I: 9:00 A.M.

FILE: SDAB-D-19-107

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 310374109-001

APPLICATION TO: Construct a Single Detached House with front attached Garage, Unenclosed Front Porch, electric fireplace, and Basement development (NOT to be used as an additional Dwelling).

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: May 30, 2019

DATE OF APPEAL: June 17, 2019

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 4112 - 122 Street NW

LEGAL DESCRIPTION: Plan 6773MC Blk 11 Lot 12

ZONE: RF1 Single Detached Residential Zone

OVERLAY: MNO Mature Neighbourhood Overlay

STATUTORY PLAN: N/A

Grounds for Appeal

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

This is our letter of appeal regarding the refusal of development permit for the above addressed lot. The project consists of a single family, wood frame, 2.5 story house, 2972 square feet in total with front attached garage. Details of the proposed house can be found in the attached drawing set – 4112 – 122 Street NW (Custom Prairie Modern).

We were officially issued the refusal on June 3, 2019 by email from the development officer Rowley Zhou, however the issue date is listed as May 30, 2019 on the refusal document we received from him. The refusal was listed for seven reasons, all of which we had sought variances for. Those issues are outlined here:

1. Reduced Side Setback – The side setbacks shall total 20% of the site width (Section 814.3.3.c.i) Required total: 4.1m (20% of 20.5m) Proposed: 3.2m (16% of 20.5m) Deficient by 0.9m.
2. Reduced Left Side Setback – The minimum interior Side Setback shall be 2.0m (Section 814.3.3.c.ii) Required: 2.0m - Proposed: 1.6m from the house to the property line shared with 4108 – 122 Street NW (south lot line) – Deficient: 0.4m.
3. Reduced Right Side Setback – The minimum interior Side Setback shall be 2.0m (Section 814.3.3.c.ii) Required: 2.0m – Proposed: 1.6m from the house to the property line shared with 4116 – 122 Street NW (north lot line) – Deficient: 0.4m.
4. Vehicular Access: Where the site abuts a lane, vehicular access shall be from the lane (Section 814.3.17). Proposed: The vehicular access is located off of 122 Street (front).
5. Total Side Projection – Eaves may project into a required setback provided it does not exceed 0.6m in the case of setbacks or separation spaces of 1.2m or greater (Section 44.1) – Required Total: 2.9m (4.1m-1.2m) – Proposed 2.0m – Deficient by: 0.9m 6.
6. Left Side Projection – Eaves may project into a required setback provided it does not exceed 0.6m in the case of setbacks or separation spaces of 1.2m or greater (Section 44.1) – Required: 1.4m (2.0m-0.6m) – Proposed 1.0m from the eaves to the property line shared with 4108 – 122 Street NW (south lot line) – Deficient by: 0.4m 7.
7. Right side Projection – Eaves may project into a required setback provided it does not exceed 0.6m in the case of setbacks or separation spaces of 1.2m or greater (Section 44.1) – Required: (1.4m (2.0m-0.6m) - Proposed: 1.0m from the eaves to the property line shared with 4116 – 122 Street NW (north lot line) – Deficient by: 0.4m.

On behalf of our clients, we would like to appeal these issues based on the following reasoning:

1. Side setbacks – We are seeking a small variance on the side set-backs. Because this lot is reverse-pie shaped (and not square or rectangular), we have taken the lot width to be defined as the side to side midpoint width of the lot, where it measures 17.07 meters wide. Zoned as an RF1, the bylaw requires side setbacks to total 20% of the lot width, which equals 3.4 meters. In our case, we would like to apply for an allowance of 3.2 meter setbacks to properly maintain the design of the house. With side setbacks of approximately 1.6m per side, this home would still be within the 1.2 minimum side setback allowance as outlined in section 110.4.11.a for the RF1 zone.

2. Eave projection – Our proposed eaves are to only extend 24” from the side walls of the home, leaving space of over 1 meter between eave and property line on either side. We feel that the deficiency of 0.4m per side is less intrusive on neighboring properties than the numbers would suggest, as the deficient eaves are on the main floor areas only (Den on south property line, Garage on north property line) with the home being setback from these planes on the upper floor. With these eaves lower to the ground, the home will not give off a “towering” feel over the neighboring properties and sideyards.
3. Front attached garage – (see MNO 814.17) As proposed, we would like to proceed in building the house with a front attached garage, but we understand this contradicts article 814.17 of the MNO that requests vehicular access to be from laneways where they exist. In our case we do have rear lane access, but a detached rear garage detrimentally affects our clients for a number of reasons. First, our clients are concerned for the safety of vehicular access from the narrow rear laneway, especially for their elderly parents. The laneway is narrow and currently only allows single lane traffic with little to no room on either side, so driving in the laneway is much more difficult when compared to the front street. Also, there is a significant concern about the accumulation of snow that occurs in Edmonton winters. Vehicular access becomes much riskier in the rear laneway when compared to the broader front streets that have more regular snow blading and removal. An attached garage would eliminate and mitigate these risks and provide a safe entryway to the home.

Our clients are also hoping to construct the front attached garage so that they can have room for a backyard space for their children. They feel that a backyard space provides an important safe space for their children to play. A rear garage would greatly diminish the available space for their children, and they would like to utilize their already small backyard space to the fullest. They have written a personal letter to relay how important this is to them and their children, which is appended to this letter of appeal.

Given the lot’s pie-shape where it widens to the front, we also think the front garage takes better advantage of the lot shape as it sets the garage into the wider portion, where it does not crowd the narrower backyard. The design of the home would also provide a wide, welcoming frontage to the street face, as demonstrated by the large windows in the foyer and den areas.

In addition to these personalized reasons for a front attached garage, we have identified 7 other properties along the same stretch of street that have either existing front attached garages or front drive access to 122 street or 41 Avenue. All of these properties have access to existing laneways at the rear. Due to these existing properties, we do not feel we are introducing any type of home that is unfamiliar to the neighborhood, or that will negatively affect the flow of traffic along 122 street.

Finally, respecting the neighborhood opinion and understanding the City of Edmonton’s efforts to ensure proper development in mature neighborhoods, our clients have personally taken the time to try and talk to all neighbors that they feel would be affected by the development of their property.

Our clients have indicated to us that they feel that the support of their neighbors is just as important in this development, as they want to foster strong relationships within their community and have the support of their neighbors in the construction of their home. Of the 37 houses in the surrounding neighborhood, 21 have expressed their support for all of the requested variances and an additional 2 homeowners expressed support for the front garage specifically (4 homes were undergoing a change of ownership, so no homeowners were available for comment). All of the signed letters of support have been appended to this appeal package for review.

General Matters

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.

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...

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*:

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, Garden Suites, Semi-detached Housing and Duplex Housing.

Section 814.1 states that the **General Purpose** of the **Mature Neighbourhood 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.

Under section 110.2(5), **Single Detached Housing** is a **Permitted Use** in the (RF1) **Single Detached Residential Zone**.

Under section 7.2(8), **Single Detached Housing** means:

development consisting of a building containing one principal Dwelling which is separate from any other principal Dwelling or building. This Use includes Mobile Homes which conform to Section 78 of this Bylaw.

Mature Neighbourhood Overlay – Side Setbacks

814.3 Development Regulations

3. Side Setbacks shall be established on the following basis:
 - a. where the Site Width is 12.0 m or less, the minimum required setback shall be 1.2 m;
 - b. where a Site Width is greater than 12.0 m and less than 18.3 m, the Side Setback requirements of the underlying Zone shall apply;
 - c. where a Site Width is 18.3 m or wider:
 - i. Side Setbacks shall total 20% of the Site Width but shall not be required to exceed 6.0 m in total;
 - ii. the minimum interior Side Setback shall be 2.0 m, except if the requirements of the underlying Zone are greater, the underlying Zone requirements shall apply; and
 - iii. on a Corner Site, the Side Setback requirements along a flanking public roadway, other than a Lane, shall be in accordance with the requirements of the underlying Zone.

Development Officer's Determination

1.Reduced Side Setback - The side setbacks shall total 20% of the Site Width (Section 814.3.3.c.i).

Required total: 4.1m (20% of 20.5m)
Proposed: 3.2m (16% of 20.5m)
Deficient by: 0.9m

2.Reduced Left Side Setback - The minimum interior Side Setback shall be 2.0m (Section 814.3.3.c.ii).

Required: 2.0m

Proposed: 1.6m from the house to the property line shared with 4108 - 122 Street NW (south lot line)

Deficient: 0.4m

3.Reduced Right Side Setback - The minimum interior Side Setback shall be 2.0m (Section 814.3.3.c.ii).

Required: 2.0m

Proposed: 1.6m from the house to the property line shared with 4116 - 122 Street NW (north lot line)

Deficient: 0.4m

Mature Neighbourhood Overlay – Vehicular Access

Section 814.3(17) states: “Where the Site Abuts a Lane, vehicular access shall be from the Lane and no existing vehicular access from a public roadway other than a Lane shall be permitted to continue.”

Development Officer’s Determination

4.Vehicular Access - Where the Site Abuts a Lane, vehicular access shall be from the Lane (Section 814.3.17). Proposed: The vehicular access is located off of 122 Street (front).

Side Projections

Section 44(1) states:

44. Projection into Setbacks and Separation Spaces

The following features may project into a required Setback or Separation Space as provided for below:

1. a. verandas, porches, eaves, shade projections, unenclosed steps, chimneys, belt courses, sills, together with any other architectural features which are of a similar character, provided such projections do not exceed 0.6 m in the case of Setbacks or Separation Spaces of 1.2 m or greater. Where unenclosed steps extend into Side Setbacks, such steps shall not exceed a Height of 1.0 m;

b. Notwithstanding subsection 44.2(a), unenclosed steps, including a landing 1.5 m² or less, may project into a required Setback, provided:

i. the unenclosed steps or landing provide access to the main floor or lower level of the building;

ii. the unenclosed steps or landing do not exceed a Height of 1.0 m above finished ground level;

iii. a minimum of 0.15 m between the structure and the property line at ground level remains unobstructed to provide drainage; and

iv. at the discretion of the Development Officer, Privacy Screening is provided to prevent visual intrusion into the Abutting property.

c. Notwithstanding subsection 44.2(a) or 44.2(b):

i. Platform Structures and unenclosed steps, including landings, shall not project into a required Setback used for vehicular access; and

ii. eaves or similar architectural features on Accessory buildings, provided that such projections do not exceed 0.6 m in the case of Setbacks or Separation Spaces of 1.2 m or greater, and 0.46 m for Setbacks or Separation Spaces of less than 1.2 m.

Development Officer's Determination

5.Total Side Projection - Eaves may project into a required Setback provided it does not exceed 0.6m in the case of Setbacks or Separation Spaces of 1.2 m or greater (Section 44.1).

Required total: 2.9m (4.1m - 1.2m)
Proposed: 2.0m
Deficient by: 0.9m

6.Left Side Projection - Eaves may project into a required Setback provided it does not exceed 0.6m in the case of Setbacks or Separation Spaces of 1.2 m or greater (Section 44.1).

Required: 1.4m (2.0m - 0.6m)
Proposed: 1.0m from the eaves to the property line shared with 4108 - 122 Street NW (south lot line)
Deficient by: 0.4m

7.Right Side Projection - Eaves may project into a required Setback provided it does not exceed 0.6m in the case of Setbacks or Separation Spaces of 1.2 m or greater (Section 44.1).

Required: 1.4m (2.0m - 0.6m)
Proposed: 1.0m from the eaves to the property line shared with 4116 - 122 Street NW (north lot line)
Deficient by: 0.4m


Mature Neighbourhood Overlay – Community Consultation


Table 814.5(2)			
Tier #	Recipient Parties	Affected Parties	Regulation of this Overlay Proposed to be Varied
Tier 1	The municipal address and assessed owners of the land wholly or partially located within a distance of <u>60.0 m</u> of the Site of the proposed development and the President of each Community League	The assessed owners of the land wholly or partially located within a distance of <u>60.0 m</u> of the Site of the proposed development and the President of each Community League	814.3(1) – Front Setback 814.3(2) – Front Setback (RF3 Corner Sites) 814.3(5) – Height 814.3(6) – Basement Elevation 814.3(7) – Dormer Width 814.3(13) – Façade Articulation between Semi-Detached Dwellings 814.3(14) – Façade Articulation for Row Housing Dwellings 814.3(15) – Architectural Treatment 814.3(16) – Variation of Building Design 814.3(17) – Driveway Access 814.3(18) – Attached Garage 814.4(1) – Additional Development Regulations for Specific Areas
Tier 2	The municipal address and assessed owners of the land Abutting the Site, directly adjacent across a Lane from the Site of the proposed development and the President of each Community League	The assessed owners of the land Abutting the Site and directly adjacent across a Lane from the Site of the proposed development	814.3(4) – Rear Setback 814.3(19) – Rear Attached Garage
Tier 3	The municipal address and assessed owners of the land Abutting the Site of the proposed development and the President of each Community League	The assessed owners of the land Abutting the Site of the proposed development	814.3(3) – Side Setbacks 814.3(8) – Side Setbacks and Privacy 814.3(9) – Privacy Screening on Platform Structures 814.3(10) – Platform Structures (Front Yard) 814.3(11) – Platform Structures (Flanking Side Yard)

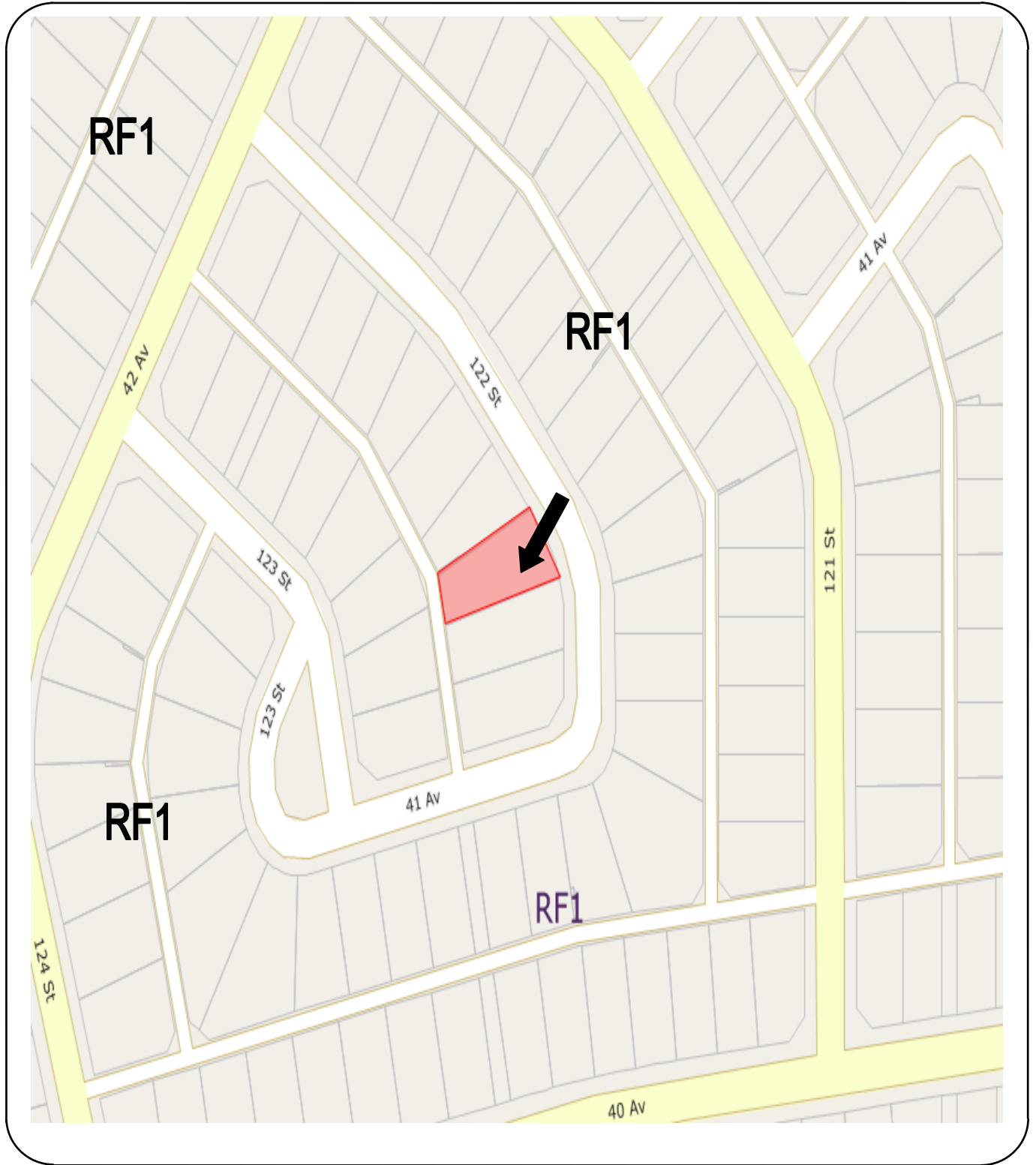
			814.3(12) – Cantilevers in Side Setbacks 814.3(21) - Garden Suite Location
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Notice to Applicant/Appellant

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.

	Project Number: 310374109-001 Application Date: APR 05, 2019 Printed: May 30, 2019 at 9:18 AM Page: 1 of 2												
<h2>Application for Minor Development Permit</h2>													
<p>This document is a Development Permit Decision for the development application described below.</p>													
Applicant [Redacted]	<table border="1"> <tr> <td data-bbox="818 506 1203 533">Property Address(es) and Legal Description(s)</td> <td></td> </tr> <tr> <td data-bbox="850 533 1110 583"> 4112 - 122 STREET NW Plan 6773MC Blk 11 Lot 12 </td> <td></td> </tr> <tr> <td data-bbox="818 596 987 623">Specific Address(es)</td> <td></td> </tr> <tr> <td data-bbox="808 623 1101 651">Suite: 4112 - 122 STREET NW</td> <td></td> </tr> <tr> <td data-bbox="808 651 1101 678">Entryway: 4112 - 122 STREET NW</td> <td style="text-align: right; vertical-align: middle;"><i>RFI</i></td> </tr> <tr> <td data-bbox="808 678 1101 705">Building: 4112 - 122 STREET NW</td> <td></td> </tr> </table>	Property Address(es) and Legal Description(s)		4112 - 122 STREET NW Plan 6773MC Blk 11 Lot 12		Specific Address(es)		Suite: 4112 - 122 STREET NW		Entryway: 4112 - 122 STREET NW	<i>RFI</i>	Building: 4112 - 122 STREET NW	
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Permit Details <table border="1" style="width: 100%;"> <tr> <td data-bbox="298 856 802 982"> # of Dwelling Units Add/Remove: 0 # of Secondary Suite Dwelling Units To Construct: Client File Reference Number: Minor Dev. Application Fee: Single Detached House Secondary Suite Included?: N </td> <td data-bbox="802 856 1349 1003"> # of Primary Dwelling Units To Construct: 1 Class of Permit: Class B Lot Grading Needed?: New Sewer Service Required: N Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay </td> </tr> </table>		# of Dwelling Units Add/Remove: 0 # of Secondary Suite Dwelling Units To Construct: Client File Reference Number: Minor Dev. Application Fee: Single Detached House Secondary Suite Included?: N	# of Primary Dwelling Units To Construct: 1 Class of Permit: Class B Lot Grading Needed?: New Sewer Service Required: N Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay										
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I/We certify that the above noted details are correct. Applicant signature: _____													
Development Application Decision Refused Issue Date: May 30, 2019 Development Authority: ZHOU, ROWLEY													
THIS IS NOT A PERMIT													

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<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Fees</th> <th style="text-align: right;">Fee Amount</th> <th style="text-align: right;">Amount Paid</th> <th style="text-align: left;">Receipt #</th> <th style="text-align: left;">Date Paid</th> </tr> </thead> <tbody> <tr> <td>Lot Grading Fee</td> <td style="text-align: right;">\$145.00</td> <td style="text-align: right;">\$145.00</td> <td>82348505699I0010</td> <td>Apr 09, 2019</td> </tr> <tr> <td>Dev. Application Fee</td> <td style="text-align: right;">\$493.00</td> <td style="text-align: right;">\$493.00</td> <td>82348505699I0010</td> <td>Apr 09, 2019</td> </tr> <tr> <td>Development Permit Inspection Fee</td> <td style="text-align: right;">\$207.00</td> <td style="text-align: right;">\$207.00</td> <td>82348505699I0010</td> <td>Apr 09, 2019</td> </tr> <tr> <td>Total GST Amount:</td> <td style="text-align: right;">\$0.00</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Totals for Permit:</td> <td style="text-align: right; border-top: 1px solid black;">\$845.00</td> <td style="text-align: right; border-top: 1px solid black;">\$845.00</td> <td></td> <td></td> </tr> </tbody> </table>			Fees	Fee Amount	Amount Paid	Receipt #	Date Paid	Lot Grading Fee	\$145.00	\$145.00	82348505699I0010	Apr 09, 2019	Dev. Application Fee	\$493.00	\$493.00	82348505699I0010	Apr 09, 2019	Development Permit Inspection Fee	\$207.00	\$207.00	82348505699I0010	Apr 09, 2019	Total GST Amount:	\$0.00				Totals for Permit:	\$845.00	\$845.00		
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SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-19-107

