

**SUBDIVISION  
AND  
DEVELOPMENT APPEAL BOARD  
AGENDA**

**Thursday, 9:00 A.M.  
July 19, 2018**

**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-18-108

To increase seating from 44 to 88 in an existing Bar and Neighbourhood Pub (Nyala Ethiopian Restaurant)

10875 - 98 Street NW  
Project No.: 245489756-003

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II 9:00 A.M. SDAB-D-17-109

To develop an Outdoor Patio to an existing Bar and Neighbourhood Pub (8 seats) (Nyala Ethiopian Restaurant)

10875 - 98 Street NW  
Project No.: 245489756-004

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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-18-108

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 245489756-003

APPLICATION TO: Increase seating from 44 to 88 in an existing Bar and Neighbourhood Pub (Nyala Ethiopian Restaurant)

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: June 26, 2018

DATE OF APPEAL: June 22, 2018

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 10875 - 98 Street NW

LEGAL DESCRIPTION: Plan NA Blk 17 Lots 23-24

ZONE: DC1-Direct Development Control Provision (Area 5)

OVERLAY: N/A

STATUTORY PLAN: Boyle Street / McCauley Area Redevelopment Plan

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*Grounds for Appeal*

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

I have previously approved for 79 seats by SDAB Application number 120756432-001/File number SDAB-D-12-137.

*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), after
  - (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

**Designation of direct control districts**

**685(4)** Despite subsections (1), (2) and (3), if a decision with respect to a development permit application in respect of a direct control district

...

- (b) is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

Section 2 of the *Edmonton Zoning Bylaw* concerning Repeal, Enactment and Transition Procedures states the following:

2.4 Subject only to the provisions in the Municipal Government Act respecting legal non-conforming Uses and notwithstanding the effect it may have on rights, vested or otherwise, the provisions of this Bylaw govern from the Effective Date onward. In particular, no application for a Development Permit shall be evaluated under the procedural or substantive provisions of the previous Land Use Bylaw after the Effective Date, even if the application was received before the Effective Date.

...

- 2.6 Any Direct Control Districts that were in effect immediately prior to the Effective date are hereby deemed to continue in full force and effect and are hereby incorporated into Part IV of this Bylaw.
- 2.7 Unless there is an explicit statement to the contrary in a Direct Control District or Provision, any reference in a Direct Control District or Direct Control Provision to a land use bylaw shall be deemed to be a reference to the land use bylaw that was in effect at the time of the creation of the Direct Control District or Provision.

**At the time of the creation of the subject Direct Control Site, the *City of Edmonton Land Use Bylaw 5996* was in effect. An Alberta Court of Appeal decision in *Parkdale-Cromdale Community League Association v. Edmonton (City)*, 2007 ABCA 309 concluded that section 2.7 of the *Edmonton Zoning Bylaw* only applies if there is an express cross-reference in a Direct Control Bylaw passed before 2001 to a provision of the old *Land Use Bylaw*. In the absence of an express reference in the Direct Control Bylaw to the *Land Use Bylaw 5996*, it does not prevail over section 2.4 of the *Edmonton Zoning 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 and statutory plans and, subject to clause (d), the land use bylaw in effect;

...

- (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.

***Rationale***

DC1 (Area 5), Section 2 (Section 8.4.16.2) of the Boyle Street McCauley Area Redevelopment Plan states the **Rationale** is to provide for a District which will promote the conservation and rehabilitation of the existing housing stock until this area is redeveloped for low intensity business uses in order to achieve the intent of Section 7.2.3 of this Plan.

Section 7.2.3, Objective 4, states:

To protect residential areas from conflicts with commercial uses.

**Development Officer's Determination:**

The proposed development is located within the Boyle Street McCauley Area Redevelopment Plan (Area 5). The General Purpose is, "to provide for a District which will promote the conservation and rehabilitation of the existing housing stock until this area is redeveloped for low intensity business uses in order to achieve the intent of Section 7.2.3 of this Plan." (Reference Section DC1(Area 5)(2))

One of the objectives of Section 7.2.3 is to protect residential areas from conflicts with commercial uses. It is the opinion of the Development Officer that the proposed development, a Major Eating and Drinking Establishment (Nightclub), would not achieve this policy objective, as the adjacent and surrounding development is predominately single detached and duplex housing.

...

**ADVISEMENTS**

c. It is the opinion of the Development Officer that the proposed development would not be in keeping with the general purpose of the Direct Control Zone, which is to provide for low intensity business in order to achieve the policies of Section 7.2.3 of the Boyle Street/McCauley ARP.

***Listed Use***

Under DC1 (Area 5), Section 3(5) (Section 8.4.16.3.5), a **Minor Eating and Drinking Establishment**, is a Listed Use.

Under Section 10.3(18) of the *Land Use Bylaw*, **Eating and Drinking Establishment, Minor** means development where prepared foods and beverages are offered for sale to the public, for consumption within the premises or off the site. This Use Class includes neighbourhood pubs, licensed restaurants, cafes, delicatessens, tea rooms, lunch rooms, refreshment stands and takeout restaurants. This Use Class does not include Drive-in Food Services, Mobile Catering Food Services, or Major Eating and Drinking Establishments.

Under Section 10.3(17) of the *Land Use Bylaw*, **Eating and Drinking Establishments, Major** means development where prepared food and beverages are offered for sale to the public from establishments which are characterized by one or more of the following features: the provision of theatre, dancing or cabaret entertainment; facilities primarily intended for the on-premise catering of food to large groups; and facilities primarily intended for the provision and consumption of alcoholic beverages which have a seating capacity for 100 or more persons. Typical uses include beverage rooms, cocktail lounge, cabarets, nightclubs, theatre restaurants and banquet facilities.

Section 3.2(1) of the *Edmonton Zoning Bylaw*, states the following:

For the purpose of any Development Permit or Direct Control Provision:

e. Major Eating and Drinking Establishments is deemed to be Specialty Food Services, Restaurants, Bars and Neighbourhood Pubs and Nightclubs;

f. Minor Eating and Drinking Establishments is deemed to be:

- i. Specialty Food Services;
- ii. Restaurants; and
- iii. Bars and Neighbourhood Pubs for less than 100 Occupants.

Under Section 7.4(6) of the *Edmonton Zoning Bylaw*, **Bars and Neighbourhood Pubs** means development where the primary purpose of the facility is the sale of alcoholic beverages to the public, for consumption within the premises or off the Site. This Use typically has a limited menu and minors are prohibited from patronizing the establishment during at least some portion of the hours of operation. Typical Uses include neighbourhood pubs, bars, and cocktail lounges. This Use does not include Cannabis Lounges.

Under Section 7.4(39) of the *Edmonton Zoning Bylaw*, **Nightclubs** means development where the primary purpose of the facility is the sale of alcoholic beverages to the public, for consumption within the premises or off the Site, in a facility where entertainment facilities take up more than 10% of the Floor Area. This Use typically has a limited menu from a partially equipped kitchen/preparation area and prohibits minors from lawfully utilizing the facility. Typical Uses include dance clubs, cabarets, nightclubs, lounges, neighbourhood pubs and bars, beverage rooms, and cocktail lounges. This Use does not include Cannabis Lounges.

Under Section 7.4(47) of the *Edmonton Zoning Bylaw*, **Restaurants** mean 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 7.4(49) of the *Edmonton Zoning Bylaw*, **Specialty Food Services** means development where limited types of prepared foods and beverages, excluding alcoholic beverages, are offered for sale to the public, for consumption within the premises or off the Site. This Use typically relies primarily on walk-in clientele, and includes coffee, donut, bagel or sandwich shops, ice cream parlours, and dessert shops.

**Development Officer’s Determination:**

The Development Officer has determined that the proposed development is a Major Eating and Drinking Establishment (Nightclub). The proposed use is neither listed as a Permitted or Discretionary use under the Boyle Street McCauley Area Redevelopment Plan (Reference Section DC1 (Area 5)(3)

**ADVISEMENTS**

d. It is the opinion of the Development Officer that the late night activities of the proposed Use would adversely affect the amenities, use and enjoyment of neighbouring residential properties. (Reference Section 7.2.3.4 of the Boyle Street McCauley Area Redevelopment Plan).

***Parking***

DC1 (Area 5), Section 4 (Section 8.4.16.4) of the Boyle Street McCauley Area Redevelopment Plan states the following:

The following criteria shall apply to the prescribed uses pursuant to Section 710.4 of the Land Use Bylaw.

...

Section 4(4) (Section 8.4.16.4.4) - Parking and loading shall, wherever possible, be located in the rear areas. Required off-street parking shall be in accordance with Section 66 of the *Land Use Bylaw*.

...

Section 4(8) (Section 8.4.16.4.8) - Development in this district shall be evaluated with respect to compliance with the General Development Regulations of Sections 50 to 79 inclusive, of the *Land Use Bylaw*.

Section 4(9) (Section 8.4.16.4.9) - The Development Officer may grant relaxations to the regulations contained in Sections 50 through 79 of the *Land Use Bylaw* and the provisions of this District, if, in his opinion, such a variance would be in keeping with the general purpose of this District and would not adversely affect the amenities, use and enjoyment of neighbouring properties.



Section 66.2, Schedule 66A(10), of the *Land Use Bylaw* states Eating and Drinking Establishments requires 1 Parking Space per 4 seats.

Section 66.5 of the *Land Use Bylaw* states:

66.5 Location of Vehicular Parking Facilities

- 1) For residential buildings the required parking spaces shall be wholly provided on the same site as the building.
- 2) For all other uses, the parking spaces shall be not more than 120 metres (393.7 feet) from the building, unless otherwise approved by the Development Officer. Such distance shall be measured along an accessible public roadway from the nearest point of the parking area to the nearest point of the site where the building or use is located. In addition, notwithstanding the definition of Accessory in this Bylaw, accessory parking spaces for non-residential Uses may be located on another site where:
  - a) the principal Use Class to which the parking is an accessory use is a Permitted or a Discretionary Use on the site to be used for parking;  
or
  - b) non-accessory parking is a Permitted or a Discretionary Use on the site to be used for parking.
- 3) Where required parking spaces are not on the same site as the building, the owner shall covenant with the City by agreement that the parking spaces shall be used for such purposes as long as required under this Bylaw.

Section 54.2.2.b of the *Edmonton Zoning Bylaw* states for all other Uses, parking spaces may be provided on a Site located remotely, but no further than 120.0 metres from the Site. Such distance shall be measured along the shortest public pedestrian route from the nearest point of the parking area to the nearest point of the Site where the building or Use is located. Where off-site parking is provided pursuant to this provision, the development shall be considered as Class B Development.

**Development Officer's Determination:**

3) Required off-street parking shall be in accordance with Section 66 of the Land Use Bylaw (Reference Section 8.4.16.4.4 of the Boyle Street McCauley Area Redevelopment Plan).

Required Parking Spaces: 25

Proposed Parking Spaces: 3

Deficiency: 22 Parking Spaces.

ADVISEMENTS:

a. There is a current application (DP#245489756-004) to develop an outdoor patio space with 8 seats. Should this be approved the parking deficiency will be 24 spaces.

b. Current aerial photographs of the site identify that the required parking spaces at the rear of the building have been deleted, and developed as a rear outdoor patio. There is no record of a valid development permit for the conversion of the rear parking spaces to an outdoor patio. The property owner must remove the rear outdoor patio and provide the required parking spaces, in accordance to Development Permit No. 120756432-001.

...

e. Parking spaces may be provided on a Site located remotely, but no further than 120.0 m from the Site. Such distance shall be measured along the shortest public pedestrian route from the nearest point of the parking area to the nearest point of the Site where the building or Use is located. Where off-site parking is provided pursuant to this provision, the development shall be considered as Class B Development. (Reference Section 54.2.2.b)

Proposed: The provided parking as applied for by the applicant at 9910 108A Avenue NW is 135m away from the applicant's still along the shortest pedestrian route, contrary to Section 54.2.2.b.

<i>Previous Subdivision and Development Appeal Board Decisions</i>
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<b>SDAB Number</b>	<b>Application</b>	<b>DECISION</b>
<b>SDAB-D-17-150</b>	To develop an Outdoor Patio to an existing Restaurant. (Nyala Ethiopian Restaurant).	<b>September 7, 2017;</b> The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is REFUSED.
<b>SDAB-D-17-149</b>	To change the Use from a Restaurant to a Bar and Neighbourhood Pub. (NYALA LOUNGE)	<b>September 7, 2017;</b> The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED as applied for to the Development Authority, subject to the following CONDITIONS:  a) At no time shall there be more than 44 patrons (as applied for) on subject site including the main floor and

		<p>the basement.</p> <p>b) The Applicant must develop the main floor and basement in accordance with the floor plans submitted by the Applicant to the Development Officer, including but not limited to, all specified sitting areas, tables, chairs, benches, sofas and planters.</p> <p>c) 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)</p> <p>d) 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)</p>
<p><b>SDAB-D-12-137</b></p>	<p>To increase the existing 12 seat capacity and Public Space of an existing Restaurant on the main floor and into the basement, and construct interior and exterior alterations to a Restaurant, Personal Service Shop, and Apartment House building (Nyala Ethiopian</p>	<p>July 6, 2012; that the appeal be ALLOWED and the DEVELOPMENT GRANTED and the deficiency of 17 on-site parking spaces be permitted, subject to the following condition:</p> <p>1. The basement level of the Restaurant operation is</p>

	Restaurant)	restricted to a 5 p.m. opening on any given business day.
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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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# Application for Major Development Permit

Project Number: **245489756-003**  
Application Date: APR 05, 2018  
Printed: June 26, 2018 at 9:41 AM  
Page: 1 of 3

This document is a Development Permit Decision for the development application described below.

<b>Applicant</b>  <div style="border: 1px solid black; width: 280px; height: 40px;"></div>	<b>Property Address(es) and Legal Description(s)</b> 10875 - 98 STREET NW Plan NA Blk 17 Lots 23-24
	<b>Specific Address(es)</b> Suite: 10875 - 98 STREET NW Entryway: 10875 - 98 STREET NW Building: 10875 - 98 STREET NW

**Scope of Application**

To increase seating from 44 to 88 in an existing Bar and Neighbourhood Pub. (Nyala Ethiopian Restaurant).

**Permit Details**

Class of Permit:  
Gross Floor Area (sq.m.):  
New Sewer Service Required: N  
Site Area (sq. m.): 334.54

Contact Person:  
Lot Grading Needed?: N  
NumberOfMainFloorDwellings: 0  
Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay

I/We certify that the above noted details are correct.

Applicant signature: \_\_\_\_\_

**Development Application Decision**

Refused

**THIS IS NOT A PERMIT**



Project Number: 245489756-003  
Application Date: APR 05, 2018  
Printed: June 26, 2018 at 9:41 AM  
Page: 2 of 3

## Application for Major Development Permit

### Reason for Refusal

1) The proposed development is located within the Boyle Street McCauley Area Redevelopment Plan (Area 5). The General Purpose is, "to provide for a District which will promote the conservation and rehabilitation of the existing housing stock until this area is redeveloped for low intensity business uses in order to achieve the intent of Section 7.2.3 of this Plan." (Reference Section DC1(Area 5)(2))

One of the objectives of Section 7.2.3 is to protect residential areas from conflicts with commercial uses. It is the opinion of the Development officer that the proposed development, a Major Eating and Drinking Establishment (Nightclub), would not achieve this policy objective, as the adjacent and surrounding development is predominately single detached and duplex housing.

2) The Development Officer has determined that the proposed development is a Major Eating and Drinking Establishment (Nightclub) and not a Minor Eating and Drinking Establishment (Bar and Neighbourhood Pub). The proposed use is neither listed as a Permitted or Discretionary use under the Boyle Street McCauley Area Redevelopment Plan (Reference Section DC1 (Area 5) (3)).

3) Required off-street parking shall be in accordance with Section 66 of the Land Use Bylaw (Reference Section 8.4.16.4.4 of the Boyle Street McCauley Area Redevelopment Plan).

Required Parking Spaces: 25  
Proposed Parking Spaces: 3  
Deficiency: 22 Parking Spaces.

### Advisements

a. There is a current application (DP#245489756-004) to develop an outdoor patio space with 8 seats. Should this be approved the parking deficiency will be 24 spaces.

b. Current aerial photographs of the site identify that the required parking spaces at the rear of the building have been deleted, and developed as a rear outdoor patio. There is no record of a valid development permit for the conversion of the rear parking spaces to an outdoor patio. The property owner must remove the rear outdoor patio and provide the required parking spaces, in accordance to Development Permit No. 120756432-001.

c. It is the opinion of the Development Officer that the proposed development would not be in keeping with the general purpose of the Direct Control Zone, which is to provide for low intensity business in order to achieve the policies of Section 7.2.3 of the Boyle Street/McCauley ARP.

d. It is the opinion of the Development Officer that the late night activities of the proposed Use would adversely affect the amenities, use and enjoyment of neighbouring residential properties. (Reference Section 7.2.3.4 of the Boyle Street McCauley Area Redevelopment Plan).

e. Parking spaces may be provided on a Site located remotely, but no further than 120.0 m from the Site. Such distance shall be measured along the shortest public pedestrian route from the nearest point of the parking area to the nearest point of the Site where the building or Use is located. Where off-site parking is provided pursuant to this provision, the development shall be considered as Class B Development. (Reference Section 54.2.2.b)

Proposed: The provided parking as applied for by the applicant at 9910 108A Avenue NW is 135m away from the applicant's still along the shortest pedestrian route, contrary to Section 54.2.2.b.

### Rights of Appeal

The Applicant has the right of appeal within 21 days after the date on which the decision is made, as outlined in Section 683 through 689 of the Municipal Government Act.

Issue Date: Jun 26, 2018    Development Authority: ADAMS, PAUL

**THIS IS NOT A PERMIT**



## Application for Major Development Permit

Project Number: **245489756-003**  
Application Date: APR 05, 2018  
Printed: June 26, 2018 at 9:41 AM  
Page: 3 of 3

**Fees**

	<b>Fee Amount</b>	<b>Amount Paid</b>	<b>Receipt #</b>	<b>Date Paid</b>
Major Dev. Application Fee	\$277.00	\$277.00	04919860	Apr 05, 2018
Total GST Amount:	\$0.00			
Totals for Permit:	<u>\$277.00</u>	<u>\$277.00</u>		

**THIS IS NOT A PERMIT**



**SURROUNDING LAND USE DISTRICTS**

Site Location ←

File: SDAB-D-18-108





ITEM II: 9:00 A.M.

FILE: SDAB-D-17-109

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 245489756-004

APPLICATION TO: Develop an Outdoor Patio to an existing Bar and Neighbourhood Pub (8 seats) (NYALA Ethiopian Restaurant)

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: June 26, 2018

DATE OF APPEAL: July 3, 2018

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 10875 - 98 Street NW

LEGAL DESCRIPTION: Plan NA Blk 17 Lots 23-24

ZONE: DC1-Direct Development Control Provision (Area 5)

OVERLAY: N/A

STATUTORY PLAN: Boyle Street / McCauley Area Redevelopment Plan

***Grounds for Appeal***

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

I have provided a parking lot on site located at 9910 - 108 Avenue. It is 120 metres from 10875 - 98 Street.

***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), after
  - (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

**Designation of direct control districts**

**685(4)** Despite subsections (1), (2) and (3), if a decision with respect to a development permit application in respect of a direct control district

...

- (b) is made by a development authority, the appeal is limited to whether the development authority followed the directions of council, and if the subdivision and development appeal board finds that the development authority did not follow the directions it may, in accordance with the directions, substitute its decision for the development authority's decision.

Section 2 of the *Edmonton Zoning Bylaw* concerning Repeal, Enactment and Transition Procedures states the following:

2.4 Subject only to the provisions in the Municipal Government Act respecting legal non-conforming Uses and notwithstanding the effect it may have on rights, vested or otherwise, the provisions of this Bylaw govern from the Effective Date onward. In particular, no application for a Development Permit shall be evaluated under the procedural or substantive provisions of the previous Land Use Bylaw after the Effective Date, even if the application was received before the Effective Date.

...

2.6 Any Direct Control Districts that were in effect immediately prior to the Effective date are hereby deemed to continue in full force and effect and are hereby incorporated into Part IV of this Bylaw.

2.7 Unless there is an explicit statement to the contrary in a Direct Control District or Provision, any reference in a Direct Control District or Direct Control Provision to a land use bylaw shall be deemed to be a reference to the land use bylaw that was in effect at the time of the creation of the Direct Control District or Provision.

**At the time of the creation of the subject Direct Control Site, the *City of Edmonton Land Use Bylaw 5996* was in effect. An Alberta Court of Appeal decision in *Parkdale-Cromdale Community League Association v. Edmonton (City)*, 2007 ABCA 309 concluded that section 2.7 of the *Edmonton Zoning Bylaw* only applies if there is an express cross-reference in a Direct Control Bylaw passed before 2001 to a provision of the old *Land Use Bylaw*. In the absence of an express reference in the Direct Control Bylaw to the *Land Use Bylaw 5996*, it does not prevail over section 2.4 of the *Edmonton Zoning 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 and statutory plans and, subject to clause (d), the land use bylaw in effect;

...

(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:**

DC1 (Area 5), Section 4 (Section 8.4.16.4) of the Boyle Street McCauley Area Redevelopment Plan states the following:

The following criteria shall apply to the prescribed uses pursuant to Section 710.4 of the *Land Use Bylaw*.

...

8.4.16.4.4 Parking and loading shall, wherever possible, be located in the rear areas. Required off-street parking shall be in accordance with Section 66 of the *Land Use Bylaw*.

...

8.4.16.4.8 Development in this district shall be evaluated with respect to compliance with the General Development Regulations of Sections 50 to 79 inclusive, of the *Land Use Bylaw*.

8.4.16.4.9 The Development Officer may grant relaxations to the regulations contained in Sections 50 through 79 of the *Land Use Bylaw* and the provisions of this District, if, in his opinion, such a variance would be in keeping with the general purpose of this District and would not adversely affect the amenities, use and enjoyment of neighbouring properties.

<b><i>Parking</i></b>
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Section 66.2, Schedule 66A(10), of the *Land Use Bylaw* states Eating and Drinking Establishments requires 1 Parking Space per 4 seats.

Section 54.2, Schedule 1(A)(24), of the *Edmonton Zoning Bylaw* states a Restaurant requires 1 parking space per 3.6 square metres of Public Space except where the proposed development is on a Lot within the boundaries described in Section 54.2 Appendix II - Boundaries for Reduced Parking Requirement:

Section 66.5 of the *Land Use Bylaw* states:

66.5 Location of Vehicular Parking Facilities

- 1) For residential buildings the required parking spaces shall be wholly provided on the same site as the building.
- 2) For all other uses, the parking spaces shall be not more than 120 metres (393.7 feet) from the building, unless otherwise approved by the Development Officer. Such distance shall be measured along an accessible public roadway from the nearest point of the parking area to the nearest point of the site where the building or use is located. In addition, notwithstanding the definition of Accessory in this Bylaw, accessory parking spaces for non-residential Uses may be located on another site where:
  - a) the principal Use Class to which the parking is an accessory use is a Permitted or a Discretionary Use on the site to be used for parking;  
or
  - b) non-accessory parking is a Permitted or a Discretionary Use on the site to be used for parking.
- 3) Where required parking spaces are not on the same site as the building, the owner shall covenant with the City by agreement that the parking spaces shall be used for such purposes as long as required under this Bylaw.

Section 54.2.2.b of the *Edmonton Zoning Bylaw* states for all other Uses, parking spaces may be provided on a Site located remotely, but no further than 120.0 metres from the Site. Such distance shall be measured along the shortest public pedestrian route from the nearest point of the parking area to the nearest point of the Site where the building or Use is located. Where off-site parking is provided pursuant to this provision, the development shall be considered as Class B Development.

**Development Officer's Determination:**

1. Required off-street parking shall be in accordance with Section 66 of the Land Use Bylaw (Reference Section 8.4.16.4.4 of the Boyle Street McCauley Area Redevelopment Plan).

Required Parking Spaces: 16  
Proposed Parking Spaces: 3  
Deficiency: 13 Parking Spaces.

Notes:

There is a current application (DP#245489756-003) to expand the seats from 44 to 88. Should this be approved the parking deficiency will be 24 spaces.

Notwithstanding that the applicant has submitted a proposal for 4 seats within the outdoor patio, the public space area of 61 sq.m. proposed, would require 17 parking spaces in accordance to the current Zoning Bylaw. This would increase the parking requirement by 16 parking spaces. The area of the proposed outdoor patio would accommodate significantly more than 4 seats, as proposed.

ADVISEMENTS:

A. Current aerial photographs of the site identify that the required parking spaces at the rear of the building have been deleted, and developed as a rear outdoor patio. There is no record of a valid development permit for the conversion of the rear parking spaces to an outdoor patio. The property owner must remove the rear outdoor patio and provide the required parking spaces, in accordance to Development Permit No. 120756432-001.

B. Parking spaces may be provided on a Site located remotely, but no further than 120.0 m from the Site. Such distance shall be measured along the shortest public pedestrian route from the nearest point of the parking area to the nearest point of the Site where the building or Use is located. Where off-site parking is provided pursuant to this provision, the development shall be considered as Class B Development. (Reference Section 54.2.2.b)

Proposed: The provided parking as applied for by the applicant at 9910 108A Avenue NW is 135m away from the applicant's still along the shortest pedestrian route, contrary to Section 54.2.2.b.

<b><i>Outdoor Seating</i></b>
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Section 90 of the *Edmonton Zoning Bylaw* states the following:

***Outdoor Seating Associated With Specialty Food Services, Restaurants, Bars and Neighbourhood Pubs, and Nightclubs***

1. If any Specialty Food Service, Restaurant, Bar and Neighbourhood Pub or Nightclub abuts or is across a Lane from a Site zoned residential or a Site with a residential development, the Development Officer shall draw a line parallel to the boundary or Lane separating each such residential development or Zone and bisecting the Site containing the Specialty Food Service, Restaurant, Bar and Neighbourhood Pub or Nightclub Uses and shall not allow any outdoor seating on the side of any such line that is closest to the Residential Zone or development.
2. Outdoor speakers or amplification systems shall not be allowed on a Site that abuts or is across the Lane from a Site zoned residential.

**Development Officer’s Determination:**

2. If any Bar and Neighbourhood Pub abuts or is across a Lane from a Site zoned residential or a Site with a residential development, the Restaurant shall not allow any outdoor seating on the side of the Residential Zone or development (Reference Section 90.1).

Proposed: The proposed outdoor seating is next to a residential development, abutting a Single Detached House to the North (10879 98 Street), contrary to Section 90.1 of the Edmonton Zoning Bylaw.

<i><b>Previous Subdivision and Development Appeal Board Decisions</b></i>
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<b>SDAB Number</b>	<b>Application</b>	<b>DECISION</b>
<b>SDAB-D-17-150</b>	To develop an Outdoor Patio to an existing Restaurant. (Nyala Ethiopian Restaurant).	<b>September 7, 2017;</b> The appeal is DENIED and the decision of the Development Authority is CONFIRMED. The development is REFUSED.
<b>SDAB-D-17-149</b>	To change the Use from a Restaurant to a Bar and Neighbourhood Pub. (NYALA LOUNGE)	<b>September 7, 2017;</b> The appeal is ALLOWED and the decision of the Development Authority is REVOKED. The development is GRANTED as applied for to the Development Authority, subject to the following CONDITIONS:  a) At no time shall there be more than 44 patrons (as applied for) on subject site including the main floor and the basement.  b) The Applicant must develop the main floor and basement in accordance with the floor plans submitted by the Applicant to the Development Officer, including but not limited to, all specified sitting areas, tables, chairs, benches, sofas and planters.  c) All required parking and

		<p>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)</p> <p>d) 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)</p>
<p><b>SDAB-D-12-137</b></p>	<p>To increase the existing 12 seat capacity and Public Space of an existing Restaurant on the main floor and into the basement, and construct interior and exterior alterations to a Restaurant, Personal Service Shop, and Apartment House building (Nyala Ethiopian Restaurant)</p>	<p>July 6, 2012; that the appeal be <b>ALLOWED</b> and the <b>DEVELOPMENT GRANTED</b> and the deficiency of 17 on-site parking spaces be permitted, subject to the following condition:</p> <p>1. The basement level of the Restaurant operation is restricted to a 5 p.m. opening on any given business day.</p>





# Application for Major Development Permit

Project Number: **245489756-004**  
Application Date: APR 05, 2018  
Printed: June 26, 2018 at 8:41 AM  
Page: 1 of 2

This document is a Development Permit Decision for the development application described below.

<b>Applicant</b>  <div style="border: 1px solid black; width: 300px; height: 40px;"></div>	<b>Property Address(es) and Legal Description(s)</b> 10875 - 98 STREET NW Plan NA Blk 17 Lots 23-24
	<b>Specific Address(es)</b> Suite: 10875 - 98 STREET NW Entryway: 10875 - 98 STREET NW Building: 10875 - 98 STREET NW


**Scope of Application**  
To develop an outdoor patio to an existing Bar and Neighbourhood Pub (8 seats). (Nyala Ethiopian Restaurant).

<b>Permit Details</b>	
Class of Permit: Class B Gross Floor Area (sq.m.): 3144.86 New Sewer Service Required: N Site Area (sq. m.): 334.54	Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: 0 Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay

I/We certify that the above noted details are correct.  
Applicant signature: \_\_\_\_\_

**Development Application Decision**  
Refused

**THIS IS NOT A PERMIT**

	Project Number: <b>245489756-004</b> Application Date: APR 05, 2018 Printed: June 26, 2018 at 8:41 AM Page: 2 of 2																				
<h2 style="margin: 0;">Application for Major Development Permit</h2>																					
<p><b>Reason for Refusal</b></p> <p>1. Required off-street parking shall be in accordance with Section 66 of the Land Use Bylaw (Reference Section 8.4.16.4.4 of the Boyle Street McCauley Area Redevelopment Plan).</p> <p style="margin-left: 40px;">Required Parking Spaces: 16                  Proposed Parking Spaces: 3                  Deficiency: 13 Parking Spaces.</p> <p>Notes:                  There is a current application (DP#245489756-003) to expand the seats from 44 to 88. Should this be approved the parking deficiency will be 24 spaces.</p> <p>Notwithstanding that the applicant has submitted a proposal for 4 seats within the outdoor patio, the public space area of 61 sq.m. proposed, would require 17 parking spaces in accordance to the current Zoning Bylaw. This would increase the parking requirement by 16 parking spaces. The area of the proposed outdoor patio would accommodate significantly more than 4 seats, as proposed.</p> <p>2. If any Bar and Neighbourhood Pub abuts or is across a Lane from a Site zoned residential or a Site with a residential development, the Restaurant shall not allow any outdoor seating on the side of the Residential Zone or development (Reference Section 90.1).</p> <p>Proposed: The proposed outdoor seating is next to a residential development, abutting a Single Detached House to the North (10879 98 Street), contrary to Section 90.1 of the Edmonton Zoning Bylaw.</p> <p><b>ADVISEMENTS:</b></p> <p>A. Current aerial photographs of the site identify that the required parking spaces at the rear of the building have been deleted, and developed as a rear outdoor patio. There is no record of a valid development permit for the conversion of the rear parking spaces to an outdoor patio. The property owner must remove the rear outdoor patio and provide the required parking spaces, in accordance to Development Permit No. 120756432-001.</p> <p>B. Parking spaces may be provided on a Site located remotely, but no further than 120.0 m from the Site. Such distance shall be measured along the shortest public pedestrian route from the nearest point of the parking area to the nearest point of the Site where the building or Use is located. Where off-site parking is provided pursuant to this provision, the development shall be considered as Class B Development. (Reference Section 54.2.2.b)</p> <p>Proposed: The provided parking as applied for by the applicant at 9910 108A Avenue NW is 135m away from the applicant's still along the shortest pedestrian route, contrary to Section 54.2.2.b.</p> <p><b>Rights of Appeal</b></p> <p>The Applicant has the right of appeal within 21 days after the date on which the decision is made, as outlined in Section 683 through 689 of the Municipal Government Act.</p>																					
<p><b>Issue Date:</b> Jun 26, 2018     <b>Development Authority:</b> ADAMS, PAUL</p>																					
<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>Major Dev. Application Fee</td> <td style="text-align: right;">\$362.00</td> <td style="text-align: right;">\$362.00</td> <td>04919861</td> <td>Apr 05, 2018</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;">\$362.00</td> <td style="text-align: right;">\$362.00</td> <td></td> <td></td> </tr> </tbody> </table>		Fees	Fee Amount	Amount Paid	Receipt #	Date Paid	Major Dev. Application Fee	\$362.00	\$362.00	04919861	Apr 05, 2018	Total GST Amount:	\$0.00				Totals for Permit:	\$362.00	\$362.00		
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**SURROUNDING LAND USE DISTRICTS**

Site Location ←

File: SDAB-D-18-109

