

**SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA**

**Wednesday, 9:00 A.M.
July 19, 2017**

**Hearing Room No. 2
Churchill Building,
10019 - 103 Avenue NW,
Edmonton, AB**

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
HEARING ROOM NO. 2**

I	9:00 A.M.	SDAB-D-17-129	Construct a Single Detached House with a front veranda, attached Garage, 2-tiered rear uncovered deck (upper 2.82m x 3.05m, lower 5.64m x 5.49m), a rear attached Garage, and to demolish an existing Single Detached House and Accessory Building (rear detached Garage) 11819 - 73 Avenue NW Project No.: 239775603-001
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II	10:30 A.M.	SDAB-D-17-130	Operate a Major Home Based Business - Health Enhancement Centre - (EVA'S MASSAGE THERAPY) 9723 - 72 Avenue NW Project No.: 253206169-001
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III	1:30 P.M.	SDAB-D-17-131	Erect a 2.44 m tall Fence along 24.1 metres of the southeast side lot line (to be constructed beside existing fence) 2015 - 139 Avenue NW Project No.: 252373077-001
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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-17-129

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 239775603-001

APPLICATION TO: Construct a Single Detached House with a front veranda, attached Garage, 2-tiered rear uncovered deck (upper 2.82m x 3.05m, lower 5.64m x 5.49m), a rear attached Garage, and to demolish an existing Single Detached House and Accessory Building (rear detached Garage)

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: June 16, 2017

DATE OF APPEAL: June 23, 2017

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 11819 - 73 Avenue NW

LEGAL DESCRIPTION: Plan 2938HW Blk 10 Lot 12

ZONE: RF1 Single Detached Residential Zone

OVERLAY: Mature Neighbourhood Overlay

STATUTORY PLAN: McKernan/Belgravia Station Area Redevelopment Plan

Grounds for Appeal

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

We are appealing the refusal of our development application on the grounds that the 2 variances we requested be granted and the development sought would not unduly interfere with the amenities of the neighborhood or materially interfere with or affect the use, enjoyment or value of the neighboring parcels of land, and on the basis that the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

We will submit evidence in support of our appeal in advance of the appeal including the various neighborhood consultations we did which demonstrate that there were absolutely no concerns voiced by any of the property owners within the 60 meter radius of the home regarding the variances sought or the development itself, and photographs of numerous other homes in the immediate vicinity which have both front and rear attached garages; in particular, a recent development across the back-alley from our property where the SDAB granted the development of that property with the exact 2 variances being sought as we are seeking with the proposed development of our property. We look forward to the scheduling of this appeal.

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 within 14 days,

- (a) in the case of an appeal made by a person referred to in section 685(1), after
 - (i) the date on which the person is notified of the order or decision or the issuance of the development permit, or

...

The decision of the Development Officer is dated June 16, 2017. The Notice of Appeal was filed on June 23, 2017.

Determining an Appeal

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 from the *Edmonton Zoning Bylaw*:

Section 110.1 states that the **General Purpose** of the **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, Semi-detached Housing and Duplex Housing under certain conditions.

Under Section 110.2(4), **Single Detached Housing** is a **Permitted Use** in the RF1 Single Detached Residential Zone.

Section 7.2(9) states:

Single Detached Housing means development consisting of a building containing only one Dwelling, which is separate from any other Dwelling or building.

Where a Secondary Suite is a Permitted or Discretionary Use in a Zone, a building which contains Single Detached Housing may also contain a Secondary Suite. This Use includes Mobile Homes which conform to Section 78 of this Bylaw.

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

...to ensure that new low density development in Edmonton's mature residential neighbourhoods is sensitive in scale to existing development, maintains the traditional character and pedestrian-friendly design of the streetscape, ensures privacy and sunlight penetration on adjacent properties and provides opportunity for discussion between applicants and neighbouring affected parties when a development proposes to vary the Overlay regulations.

Mature Neighbourhood Overlay Community Consultation

Section 814.3(24) of the Mature Neighbourhood Overlay provides as follows:

24. When a Development Permit application is made and the Development Officer determines that the proposed development does not comply with the regulations contained in this Overlay:

- a. the applicant shall contact the affected parties, being each assessed owner 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;
- b. the applicant shall outline, to the affected parties, any requested variances to the Overlay and solicit their comments on the application;
- c. the applicant shall document any opinions or concerns, expressed by the affected parties, and what modifications were made to address their concerns; and
- d. the applicant shall submit this documentation to the Development Officer no sooner than twenty-one calendar days after giving the information to all affected parties.

Site Depth

Section 814.3(5) states: "The minimum Rear Setback shall be 40% of Site depth. Row Housing not oriented to a public roadway is exempt from this Overlay requirement."

Development Officer's Determination

1. Reduced Rear Setback - The distance from the house to the rear property line is 10.75 m (20.3% of site depth) instead of 21.1m (40% of site depth). (Section 814.3.5)

Site Depth

Section 814.3(18) states: "Rear attached Garages shall not be allowed, except on Corner Sites where the Dwelling faces the flanking public roadway."

Development Officer's Determination

2. Attached Garage - A rear attached garage is proposed on an interior lot, instead of a corner lot (Section 814.3.18).

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. Bylaw No. 11136 requires that a verbal announcement of the Board's decision shall be made at the conclusion of the hearing of an appeal, but the verbal decision is not final nor binding on the Board until the decision has been given in writing in accordance with the *Municipal Government Act*.



Project Number: **239775603-001**
 Application Date: JAN 20, 2017
 Printed: July 13, 2017 at 12:46 PM
 Page: 1 of 2

House Development and Building Permit

This document is a record of a Development Permit and/or Building 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, Safety Codes Act RSA 2000, Safety Codes Act Permit Regulation, Alberta Building Code 2006 and City of Edmonton Bylaw 15894 Safety Codes Permit

<p>Applicant</p> <div style="background-color: black; width: 100%; height: 50px; margin-top: 10px;"></div>	<p>Property Address(es) and Legal Description(s)</p> <p style="text-align: center;">11819 - 73 AVENUE NW Plan 2938HW Blk 10 Lot 12</p>
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Scope of Application

To construct a Single Detached House with a front veranda, attached Garage, 2-tiered rear uncovered deck (upper 2.82m x 3.05m, lower 5.64m x 5.49m), a rear attached Garage, and to demolish an existing Single Detached House and Accessory Building (rear detached Garage).

<p>Permit Details</p> <p>Affected Floor Area (sq. ft.): 3175 Class of Permit: Front Yard (m): 10.72 Rear Yard (m): 10.75 Side Yard, left (m): 1.3 Site Area (sq. m): 902.96 Site Width (m): 12.95</p>	<p>Building Height to Midpoint (m): 8.53 Dwelling Type: Single Detached House Home Design Type: Secondary Suite Included?: N Side Yard, right (m): 1.81 Site Depth (m): 41.93 Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay</p>
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I/We certify that the above noted details are correct.

Applicant signature: _____

Development Application Decision
 Appealed to SDAB

Reason for Refusal

1. Reduced Rear Setback - The distance from the house to the rear property line is 10.75 m (20.3% of site depth) instead of 21.1m (40% of site depth). (Section 814.3.5)
2. Attached Garage - A rear attached garage is proposed on an interior lot, instead of a corner lot (Section 814.3.18).

Rights of Appeal
 The Applicant has the right of appeal within 14 days of receiving notice of the Development Application Decision, as outlined in Chapter 24, Section 683 through 689 of the Municipal Government Amendment Act.

Issue Date: Jun 16, 2017 **Development Authority:** ROBINSON, GEORGE **Signature:** _____

Fees	Fee Amount	Amount Paid	Receipt #	Date Paid
Safety Codes Fee	\$106.00	\$106.00	03945201	Feb 27, 2017
Water Usage Fee	\$84.70	\$84.70	03945201	Feb 27, 2017
Building Permit Fee	\$2,650.00	\$2,650.00	03945201	Feb 27, 2017

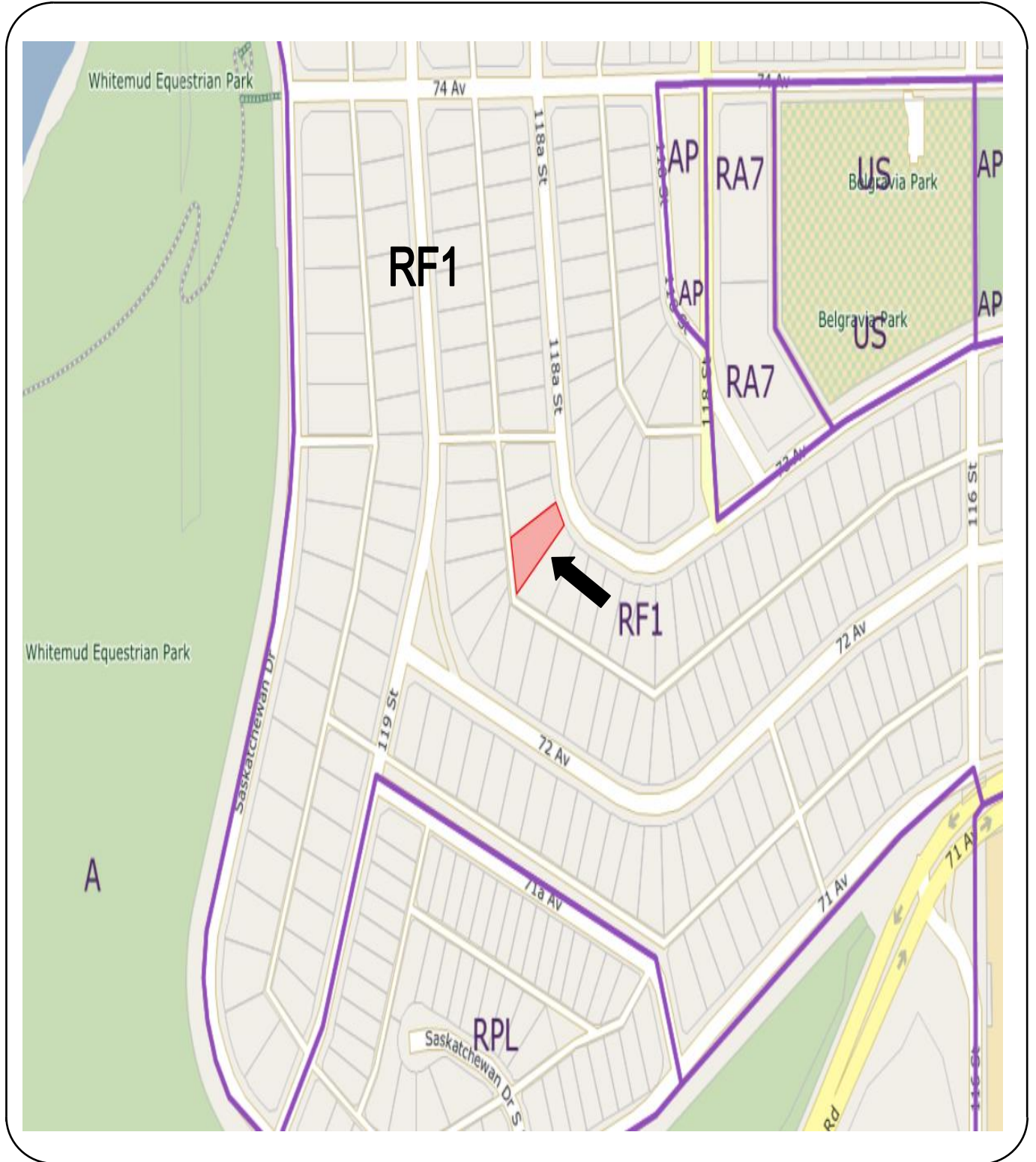


Project Number: **239775603-001**
Application Date: JAN 20, 2017
Printed: July 13, 2017 at 12:46 PM
Page: 2 of 2

House Development and Building Permit

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Lot Grading Fee	\$140.00	\$140.00	03945201	Feb 27, 2017
Electrical Fees (House)	\$330.00	\$330.00	03945201	Feb 27, 2017
Electrical Safety Codes Fee	\$17.70	\$17.70	03945201	Feb 27, 2017
Electrical Fee (Service)	\$79.00	\$79.00	03945201	Feb 27, 2017
Total GST Amount:	<u>\$0.00</u>			
Totals for Permit:	\$3,407.40	<u>\$3,407.40</u>		



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-17-129



ITEM II: 10:30 A.M.

FILE: SDAB-D-17-130

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

APPELLANT:

APPLICATION NO.: 253206169-001

APPLICATION TO: Operate a Major Home Based Business - Health Enhancement Centre - (EVA'S MASSAGE THERAPY)

DECISION OF THE DEVELOPMENT AUTHORITY: Approved with Notices

DECISION DATE: June 12, 2017

DATE OF APPEAL: June 25, 2017

NOTIFICATION PERIOD: Jun 20, 2017 through Jul 4, 2017
(See page 3 of permit)

RESPONDENT:

ADDRESS OF RESPONDENT: 9723 - 72 Avenue NW

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 9723 - 72 Avenue NW

LEGAL DESCRIPTION: Plan 2239X Blk 13 Lot 11

ZONE: RF3 Small Scale Infill Development Zone

OVERLAY: Mature Neighbourhood Overlay

STATUTORY PLAN: N/A

Grounds for Appeal

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

We believe the business is operating at this time (not sure if this is allowed currently or if the business license and permits are still pending) and is actually a "Body Rub Centre" and not a Health Enhancement Centre which shouldn't be allowed to operate in a residential house and neighborhood, close to schools and with children living nearby.

The house is currently in significant disrepair, and over the past 9 years the landlord has rented out rooms to numerous different (up to 7) tenants at the same time. A massage business is not suitable for a residential neighborhood and would be more suited to a commercially zoned environment. There are already parking issues in this area as well and the landlord does not allow any parking in the back alley and garage so the tenants and customers will all be parking on the street at all hours of the day and night causing further congestion. This development permit should not be approved as it will cause significant loss of enjoyment, degradation of the neighborhood and disturb the peace in the area.

<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.

685(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 within 14 days,

...

- (b) in the case of an appeal made by a person referred to in section 685(2), after the date on which the notice of the issuance of the permit was given *in accordance with the land use bylaw*. [emphasis added]

The *Edmonton Zoning Bylaw 12800* provides as follows:

20. Notification of Issuance of Development Permits

20.2 Class B Development

1. Within seven days of the issuance of a Development Permit for a Class B Discretionary Development, the Development Officer shall dispatch a written notice by ordinary mail to all relevant parties listed below that are wholly or partially within 60.0 m of the boundaries of the Site which is the subject of the Development Permit:
 - a. each assessed owner of the Site or a part of the Site of the development;
 - b. each assessed owner of land;
 - c. the President of each Community League; and
 - d. the President of each Business Revitalization Zone.
2. The notice shall describe the development and state the decision of the Development Officer, and the right of appeal therefrom.
3. Within 10 days of the issuance of a Development Permit for Class B Discretionary Development, the Development Officer shall cause to be published in a daily newspaper circulating within the City, a notice describing the development and stating their decision, and the right to appeal therefrom.
4. Where, in the opinion of the Development Officer, a proposed development is likely to affect other owners of land beyond 60.0 m, the Development Officer shall notify owners of land at such additional distance and direction from the Site as, in the opinion of the Development Officer, may experience any impact attributable to the development.

The decision of the Development Officer is dated June 12, 2017. Notice of the development was published in the *Edmonton Journal* on June 20, 2017. The Notice of Appeal was filed on June 25, 2017.

Determining an Appeal

The *Municipal Government Act* states the following:

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 from the *Edmonton Zoning Bylaw*:

Section 140.1 states that the **General Purpose** of the **RF3 Small Scale Infill Development Zone** is:

... to provide for Single Detached Housing and Semi-detached Housing while allowing small-scale conversion and infill redevelopment to buildings containing up to four Dwellings, and including Secondary Suites under certain conditions.

Under Section 140.3(7), **Major Home Based Business** is a **Permitted Use** in the RF3 Small Scale Infill Development Zone.

Section 7.3(7) states:

Major Home Based Business means development consisting of the use of an approved Dwelling or Accessory building by a resident of that Dwelling for one or more businesses such businesses may generate more than one business associated visit per day. The business use must be secondary to the residential Use of the building and shall not change the residential character of the Dwelling or Accessory building. The Dwelling may be used as a workplace by a non-resident.

This Use Class includes Bed and Breakfast Operations but does not include General Retail Sales.

Section 7.4(43) states:

Personal Service Shops means development used for the provision of personal services to an individual which are related to the care and appearance of the body, or the cleaning and repair of personal effects. This Use includes barbershops, hairdressers, beauty salons, tailors, dressmakers, shoe repair shops, and dry cleaning establishments and laundromats. This Use does not include Health Services.

Section 6.1(14) states:

Body Rub Centre means a Personal Service Shop development where services are provided that involve the physical external manipulation of the soft tissues of the human body that are performed, offered or solicited for a fee in a manner that appeals to or is designed to appeal to erotic or sexual appetites or inclinations. This includes but is not limited to a body rub advertised by any means as “sensual”, “sexy” or by any other word or any depiction having like meaning or implication.

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

...to ensure that new low density development in Edmonton’s mature residential neighbourhoods is sensitive in scale to existing development, maintains the traditional character and pedestrian-friendly design of the streetscape, ensures privacy and sunlight penetration on adjacent properties and provides opportunity for discussion between applicants and neighbouring affected parties when a development proposes to vary the Overlay regulations.

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. Bylaw No. 11136 requires that a verbal announcement of the Board’s decision shall be made at the conclusion of the hearing of an appeal, but the verbal decision is not final nor binding on the Board until the decision has been given in writing in accordance with the *Municipal Government Act*.



Project Number: 253206169-001
Application Date: JUN 01, 2017
Printed: June 26, 2017 at 12:44 PM
Page: 1 of 3

Home Occupation

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.

Applicant 	Property Address(es) and Legal Description(s) 9723 - 72 AVENUE NW Plan 2239X Blk 13 Lot 11 Specific Address(es) Suite: 9723 - 72 AVENUE NW Entryway: 9723 - 72 AVENUE NW
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Scope of Permit
To operate a Major Home Based Business - Health Enhancement Centre - (EVA'S MASSAGE THERAPY)

Permit Details # of business related visits/day: 4 Administration Office Only?: N Class of Permit: Class B Do you live at the property?: Y Outdoor storage on site?: N	# of vehicles at one time: 1 Business has Trailers or Equipment?: N Description of Business: Health Enhancement Centre - Natural health, massage practitioner Expiry Date: 2022-06-12 00:00:00
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I/We certify that the above noted details are correct.
Applicant signature: _____

Development Permit Decision
Approved

The permit holder is advised to read the reverse for important information concerning this decision.



Project Number: **253206169-001**
 Application Date: JUN 01, 2017
 Printed: June 26, 2017 at 12:44 PM
 Page: 2 of 3

Home Occupation

Subject to the Following Conditions

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

This Development Permit may be revoked or invalidated, at any time, if the Home Based Business as stated in the Permit Details, or if the character or appearance of the Dwelling or Accessory Building, changes. This includes mechanical or electrical equipment used which creates external noise or interference with home electronic equipment in adjacent Dwellings. (Reference Section 75.2)

There shall be no exterior display or advertisement other than an identification plaque or sign a maximum of 20 cm (8") x 30.5 cm (12") in size located on the dwelling. (Reference Section 75.1)

This approval is for a 5 year period ONLY from the date of this decision. A new Development Permit must be applied for to continue to operate the business from this location.

There shall be no more than five business associated visit per day at the Dwelling. The business Use must be secondary to the residential Use of the building and no aspects of the business operations shall be detectable from outside the property. The number of non-resident employees or business partners working on-site shall not exceed two at any one time. (Reference Section 75.4)

There shall be no mechanical or electrical equipment used that creates external noise, or visible and audible interference with home electronics equipment in adjacent Dwellings. No offensive noise, odour, vibration, smoke, litter, heat or other objectionable effect shall be produced. (Reference Section 75.2)

No person shall keep in any part of a Site in any Residential Zone any commercial vehicle, loaded or unloaded, having a maximum gross vehicle weight (G.V.W.R.) exceeding 4 600 kg or more than one commercial vehicle having a maximum gross vehicle weight (G.V.W.R.) of 4 600 kg or less, for longer than reasonably necessary while loading or unloading such vehicle. (Reference Section 45.1)

The business Use must maintain the privacy and enjoyment of adjacent residences and the character of the neighbourhood.

No commodity shall be displayed on the premises.

Clients visits must be by-appointment only and appointments shall not overlap with each other.

A new Development Permit must be obtained should the business change or expand.

There shall be no outdoor business activity, or outdoor storage of material or equipment associated with the business. Indoor storage related to the business activity shall be allowed in either the Dwelling or Accessory buildings. (Reference Section 75.5)

All parking for the Home Based Business must be accommodated on site. Parking on the street in conjunction with this Home Based Business is not permitted.

All commercial, industrial and overweight vehicles shall be parked at an approved storage facility when not in use. The Development Permit will be revoked if any commercial, industrial and overweight vehicles are parked/stored on the Residential Site.

Advisements:

A Major Home Based Business shall not be allowed within the same principal Dwelling containing a Secondary Suite or within the same Site containing a Garage Suite or a Garden Suite and an associated principal Dwelling, unless the Home Based Business is a Bed and Breakfast Operation and the Secondary Suite or the Garage Suite or the Garden Suite is an integral part of the Bed and Breakfast Operation.

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 21.1)

The permit holder is advised to read the reverse for important information concerning this decision.



Project Number: **253206169-001**
Application Date: JUN 01, 2017
Printed: June 26, 2017 at 12:44 PM
Page: 3 of 3

Home Occupation

Site. (Reference Section 5.2)

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

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.

Issue Date: Jun 12, 2017 **Development Authority:** ZIOBER, MELISSA

Signature: _____

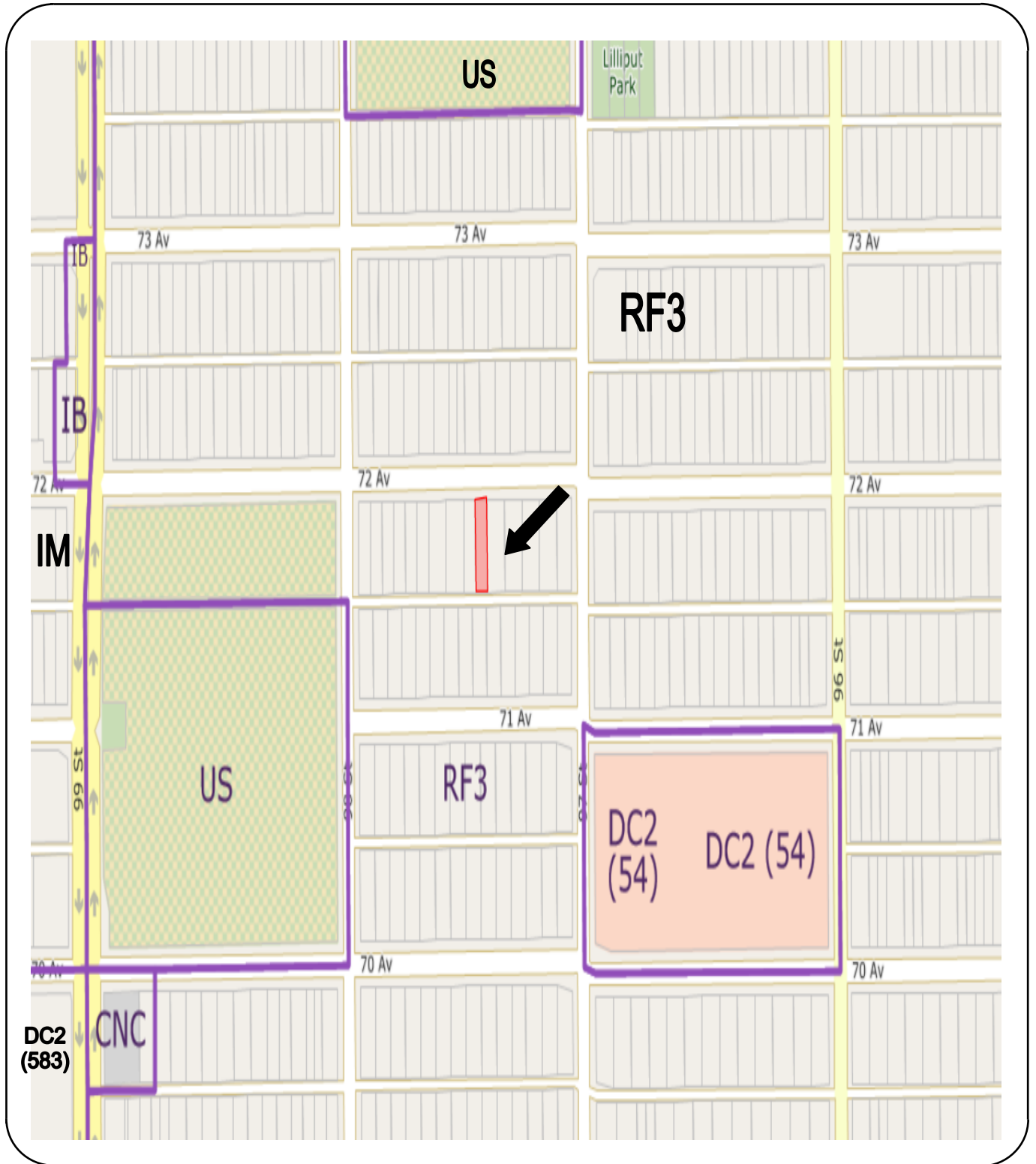
Notice Period Begins: Jun 20, 2017

Ends: Jul 04, 2017

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Dev. Application Fee	\$309.00	\$309.00	04171281	Jun 01, 2017
Total GST Amount:	<u>\$0.00</u>	<u> </u>		
Totals for Permit:	\$309.00	\$309.00		

The permit holder is advised to read the reverse for important information concerning this decision.



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-17-130



ITEM III: 1:30 P.M.

FILE: SDAB-D-17-131

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

APPELLANT:

APPLICATION NO.: 252373077-001

APPLICATION TO: Erect a 2.44 m tall Fence along 24.1 metres of the southeast side lot line (to be constructed beside existing fence)

DECISION OF THE DEVELOPMENT AUTHORITY: Approved with Notices

DECISION DATE: June 5, 2017

DATE OF APPEAL: June 22, 2017

NOTIFICATION PERIOD: Jun 5, 2017 through Jun 19, 2017 (See page 2 of permit)

RESPONDENT:

ADDRESS OF RESPONDENT: 2015 - 139 Avenue NW

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 2015 - 139 Avenue NW

LEGAL DESCRIPTION: Plan 7820905 Blk 71 Lot 3

ZONE: RF1 Single Detached Residential Zone

OVERLAY: N/A

STATUTORY PLAN: N/A

Grounds for Appeal

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

We Andrew and Irene smith are appealing the construction of a fence on the southeast line of our property at the height of 2.44m tall, along 24.1m of the southeast side lot line. We are not opposed to the construction of a new fence of the existing height. The fence we oppose is being proposed to be 2.44m tall along this line only.

This affects one of three sides of our property and will therefore require us to incur additional costs to match the entire property and will therefore affect our property resale value. If this neighbour agrees to replace the entire property line to match to this height, including all sides of my fence line, at their expense, with the inclusion of any tax increases for a five year period, we would possibly agree. It is our understanding that the readily available online bylaws for residential fencing heights do state that a fence should be no more than 1.85m tall. We are opposed to the supposed need for a higher fence for the security of our neighbours dogs. It our opinion that the dogs, of a large breed with aggressive behaviours exhibited, should instead be managed through training and other resources of a behavioural nature. The fencing material currently erected by our neighbour consists of lattice, wood, and corrugated metal cladding. We are adamantly opposed to having three types of material. These products have currently been firmly affixed directly to the existing fence. This hinders our ability to access the fence for any repairs. If a repair is needed in the future we will need to change the layout of the boards and it will cause the aesthetics to be of a poor quality. Three direct neighbours are also opposed to this development. Or surrounding community fencing is not of this height. This property would be singled out and not in a positive way for resale or value addition. We would like an opportunity to provide photos of existing fence during this process. Thank you for your time and I look forward to discussing this matter with you in the near future.

<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.

685(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 within 14 days,

...

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

The *Edmonton Zoning Bylaw 12800* provides as follows:

20. Notification of Issuance of Development Permits

20.2 Class B Development

1. Within seven days of the issuance of a Development Permit for a Class B Discretionary Development, the Development Officer shall dispatch a written notice by ordinary mail to all relevant parties listed below that are wholly or partially within 60.0 m of the boundaries of the Site which is the subject of the Development Permit:
 - a. each assessed owner of the Site or a part of the Site of the development;
 - b. each assessed owner of land;
 - c. the President of each Community League; and
 - d. the President of each Business Revitalization Zone.
2. The notice shall describe the development and state the decision of the Development Officer, and the right of appeal therefrom.
3. Within 10 days of the issuance of a Development Permit for Class B Discretionary Development, the Development Officer shall cause to be published in a daily newspaper circulating within the City, a notice describing the development and stating their decision, and the right to appeal therefrom.
4. Where, in the opinion of the Development Officer, a proposed development is likely to affect other owners of land beyond 60.0 m, the Development Officer shall notify owners of land at such additional distance and direction from the Site as, in the opinion of the Development Officer, may experience any impact attributable to the development.

The decision of the Development Officer is dated June 5, 2017. Notice of the development was published in the Edmonton Journal on June 5, 2017. The Notice of Appeal was filed on June 22, 2017.

Determining an Appeal

The *Municipal Government Act* states the following:

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 from the *Edmonton Zoning Bylaw*:

Section 110.1 states that the **General Purpose** of the **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, Semi-detached Housing and Duplex Housing under certain conditions.

Section 6.1(39) states: “**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.”

Fence Height

Section 49(1)(d)(ii) states: “On an Interior Site, the Height of a Fence, wall, or gate shall not exceed: ... 1.85 m in all other Yards.”

Section 49(1)(g) states: “In the case where the permitted Height of a Fence, wall, or gate is 1.85 m, the Development Officer may vary the Height of the Fence, wall, or gate to a maximum of 2.44 m, in order to provide additional screening from public roadways or incompatible adjacent Uses”.

Development Officer’s Determination

1. Fence Height - The fence along the property line abutting 2011 139 Avenue NW is 2.44 m high, instead of 1.85 m (Section 49.1.d.ii)

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. Bylaw No. 11136 requires that a verbal announcement of the Board’s decision shall be made at the conclusion of the hearing of an appeal, but the verbal decision is not final nor binding on the Board until the decision has been given in writing in accordance with the *Municipal Government Act*.



Project Number: **252373077-001**
 Application Date: MAY 23, 2017
 Printed: June 5, 2017 at 4:35 PM
 Page: 1 of 2

Minor Development Permit

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.

Applicant 	Property Address(es) and Legal Description(s) 2015 - 139 AVENUE NW Plan 7820905 Blk 71 Lot 3 Specific Address(es) Suite: 2015 - 139 AVENUE NW Entryway: 2015 - 139 AVENUE NW Building: 2015 - 139 AVENUE NW
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Scope of Permit
 To erect a 2.44 m tall Fence along 24.1 metres of the southeast side lot line (to be constructed beside existing fence).

Permit Details # of Dwelling Units Add/Remove: Client File Reference Number: Minor Dev. Application Fee: Fence Secondary Suite Included?: N	Class of Permit: Class B Lot Grading Needed?: N New Sewer Service Required: N Stat. Plan Overlay/Annex Area:
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I/We certify that the above noted details are correct.
 Applicant signature: _____

Development Permit Decision
 Approved

Subject to the Following Conditions

1. This Development Permit ONLY authorizes the development of a 2.44 m tall Fence along 24.1 metres of the southeast side lot line (to be constructed beside existing fence). The development shall be constructed in accordance with the stamped and approved drawings.
2. This Development Permit is NOT valid until the Notification Period expires in accordance to Section 21.1. (Reference Section 17.1).
3. The fence shall not encroach onto municipal property or onto adjacent properties.
4. The design and use of exterior finishing materials used on the fence shall be similar to, or better than, the standard of surrounding development (Section 57.2.1)

NOTE: 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 such as the Municipal Government Act, the Alberta Building Code, or any caveats, covenants, or easements that might be registered on the site.

Variations

1. Fence Height - The fence along the property line abutting 2011 139 Avenue NW is 2.44 m high, instead of 1.85 m (Section 49.1.d.ii)

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.

The permit holder is advised to read the reverse for important information concerning this decision.



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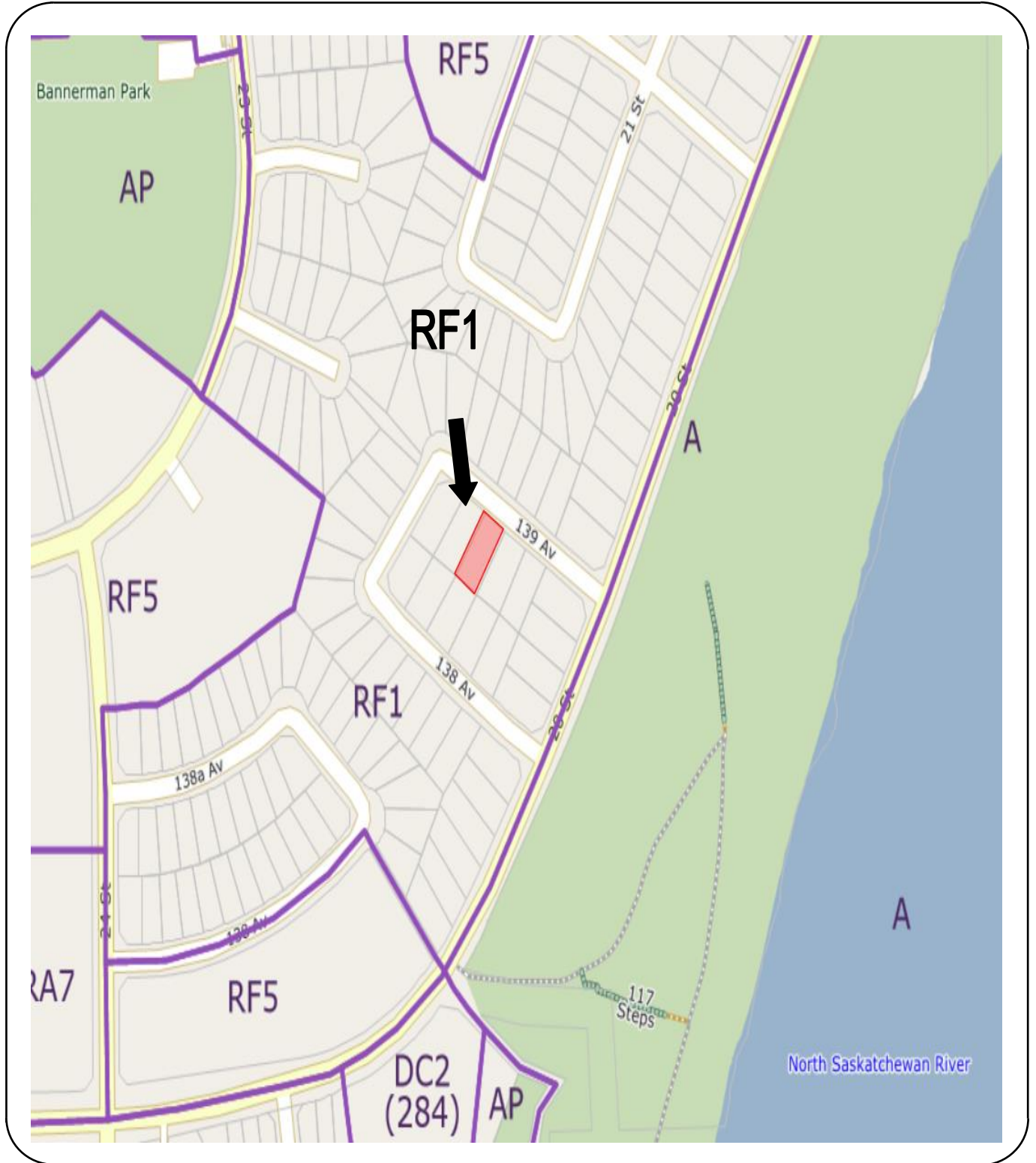
Minor Development Permit

Issue Date: Jun 05, 2017 **Development Authority:** LIANG, BENNY **Signature:** _____
Notice Period Begins: Jun 08, 2017 **Ends:** Jun 22, 2017

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Dev. Application Fee	\$172.00	\$172.00	04143225	May 23, 2017
Total GST Amount:	<u>\$0.00</u>			
Totals for Permit:	\$172.00	<u>\$172.00</u>		

The permit holder is advised to read the reverse for important information concerning this decision.



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-17-131

