

**SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA**

**Wednesday, 9:00 A.M.
July 22, 2015**

**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-15-160	Change the Use from Indoor Participant Recreation Services to a Restaurant (221.3 square metres of Public Space) and to construct interior alterations - King of Dates 9308C - 34 Avenue NW Project No.: 172293063-001
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II	1:00 P.M.	SDAB-D-15-161	Construct 4 Dwellings of Row Housing with attached Garages and to demolish the existing Single Detached House and rear detached Garage 15104 - 110 Avenue NW Project No.: 149159648-001
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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-15-160

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

APPELLANT:

APPLICATION NO.: 172293063-001

APPLICATION TO: Change the Use from Indoor Participant
Recreation Services to a Restaurant (221.3
square metres of Public Space) and to
construct interior alterations - King of
Dates

DECISION OF THE
DEVELOPMENT AUTHORITY: Approved with conditions

DECISION DATE: June 5, 2015

DATE OF APPEAL: June 29, 2015

NOTIFICATION PERIOD: June 11, 2015 through June 24, 2015

RESPONDENT: s

MUNICIPAL DESCRIPTION
OF SUBJECT PROPERTY: 9308C - 34 Avenue NW

LEGAL DESCRIPTION: Condo Common Area (Plan
0426972,0727487,1220940)

ZONE: IB Industrial Business Zone

OVERLAY: N/A

STATUTORY PLAN: N/A

DEVELOPMENT OFFICER'S DECISION

APPROVED - The proposed development is approved subject to the following conditions:

1) Access from the site to 34 Avenue and 93 Street exists. Any modification to the existing accesses requires the review and approval of Transportation Services, as shown on the Enclosure I.

Transportation Advisements:

- According to Section 54.2, Schedule I - Vehicular Parking of Edmonton Zoning Bylaw 12800, the proposed change of use for the subject unit will result in a parking deficiency of 10 parking stalls (existing use 52 stalls; required use 62 stalls). The change of use will result in an overall on-site parking deficiency of 143 parking stalls (existing 147 stalls; required 290 stalls). The attached parking justification indicates that the maximum number of stalls that are simultaneously occupied on the site is 113, the existing 147 stalls are sufficient to satisfy the needs of the businesses present and proposed on the site. The parking justification is based on observations made by the applicant as shown on Enclosure II. On street parking is also available along both sides of 93 Street from 34 Avenue to 34A Avenue. Any further change of use or redevelopment will require parking justification.

- Any advertising signs for the development must be located entirely within private property.

2) No parking, loading, storage, trash collection, outdoor service or display area shall be permitted within a Setback (Reference Section 400.4(4)).

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

4) 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).

NOTES:

1) An approved Development Permit means that the proposed development has been reviewed only against the provisions of the Edmonton Zoning Bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the ERCB Directive 079, the Edmonton Safety Codes Permit Bylaw or any caveats, covenants or easements that might be attached to the Site.

2) The Development Permit shall not be valid unless and until the conditions of approval, save those of a continuing nature, have been fulfilled; and no notice of appeal from such approval has been served on the Subdivision and Development Appeal Board within the time period specified in subsection 21.1 (Reference Section 17.1).

3) Signs require separate Development Applications.

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

5) A Building Permit is Required for any construction or change in use of a building. For a building permit, and prior to the Plans Examination review, you require construction drawings and the payment of fees. Please contact the 311 Call Centre for further information.

6) This Development Permit is not a Business Licence. A separate application must be made for a Business Licence.

VARIANCE:

1) To vary 54.2 - Schedule 1, reducing the parking requirement from 290 to 147 parking spaces.

APPELLANT'S SUBMISSION

As a business owner in the same plaza, we never receive any notification so as no other business owners for this new development permit. We just discovered about it through word of mouth by a customer on Friday, June 26, 2015. We called City of Edmonton number 311 and were connected to someone who told us a Development Officer will either contact or meet with us. We called back on Monday, June 29, 2015 to this number 780-496-6079 and were told the deadline for appeal was on June 25, 2015, although we can submit a late appeal. Here is our reason for appeal:

Currently all business sites including 5 other restaurants in the shopping centre at Strathcona Industrial Park use already maximum use of parking stalls. Additional restaurant will significantly generate more parking demands especially in peak periods and busier seasons beyond capacity of current parking lot. Based on a ground given by the City of Edmonton to make an appeal when "you will be affected by a new development or a new use of someone else's property": King of Dates has already been in violation of lease agreement signed by the same landlord in its current location that yet has not been resolved.

SUBDIVISION AND DEVELOPMENT APPEAL BOARD OFFICER'S COMMENTS

Section 686(1)(b) of the *Municipal Government Act* states 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, 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.

Section 685(2) of the *Municipal Government Act* states 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.

The Board is advised that the decision of approval by the Development Officer is dated June 5, 2015. The Notice of Appeal Period began June 11, 2015 and ended June 24, 2015 and the Notice of Appeal was filed on June 29, 2015.

Section 687(3) of the *Municipal Government Act* states in determining an appeal, the subdivision and development appeal board

....

- (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.

Restaurants, for less than 200 occupants and 240 square metres of Public Space, if adjacent to or across a Lane from a Site zoned residential, is a Discretionary Use in the IB Industrial Business Zone, Section 400.3(29).

Under Section 7.4(45), **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 Class typically has a varied menu, with a fully equipped kitchen and preparation area, and includes fast food and family restaurants.

This application was approved by the Development Officer subject to conditions.

Pursuant to Section 11.3 and 11.4 and subject to the right of appeal to the Subdivision and Development Appeal Board, Section 21.1, the Development Officer granted the following variance:

Section 54.1(2)(h) states in the case of the multiple Use of a Site, the Development Officer shall calculate the vehicular parking, Bicycle Parking and total off-street loading requirement for each individual Use and the total shall be deemed to be the required vehicular parking, Bicycle Parking or off-street loading for the Site, unless the applicant can demonstrate that there is complementary use of the parking or loading facilities which would warrant a reduction in the requirements. Where such reduction is made, this shall be considered a variance and the Development Officer shall state the reduction and the reasons for it on the Development Permit.

Section 54.2 Schedule 1(A)(24) states Restaurants require a minimum of 1 parking space per 3.6 square metres of Public Space.

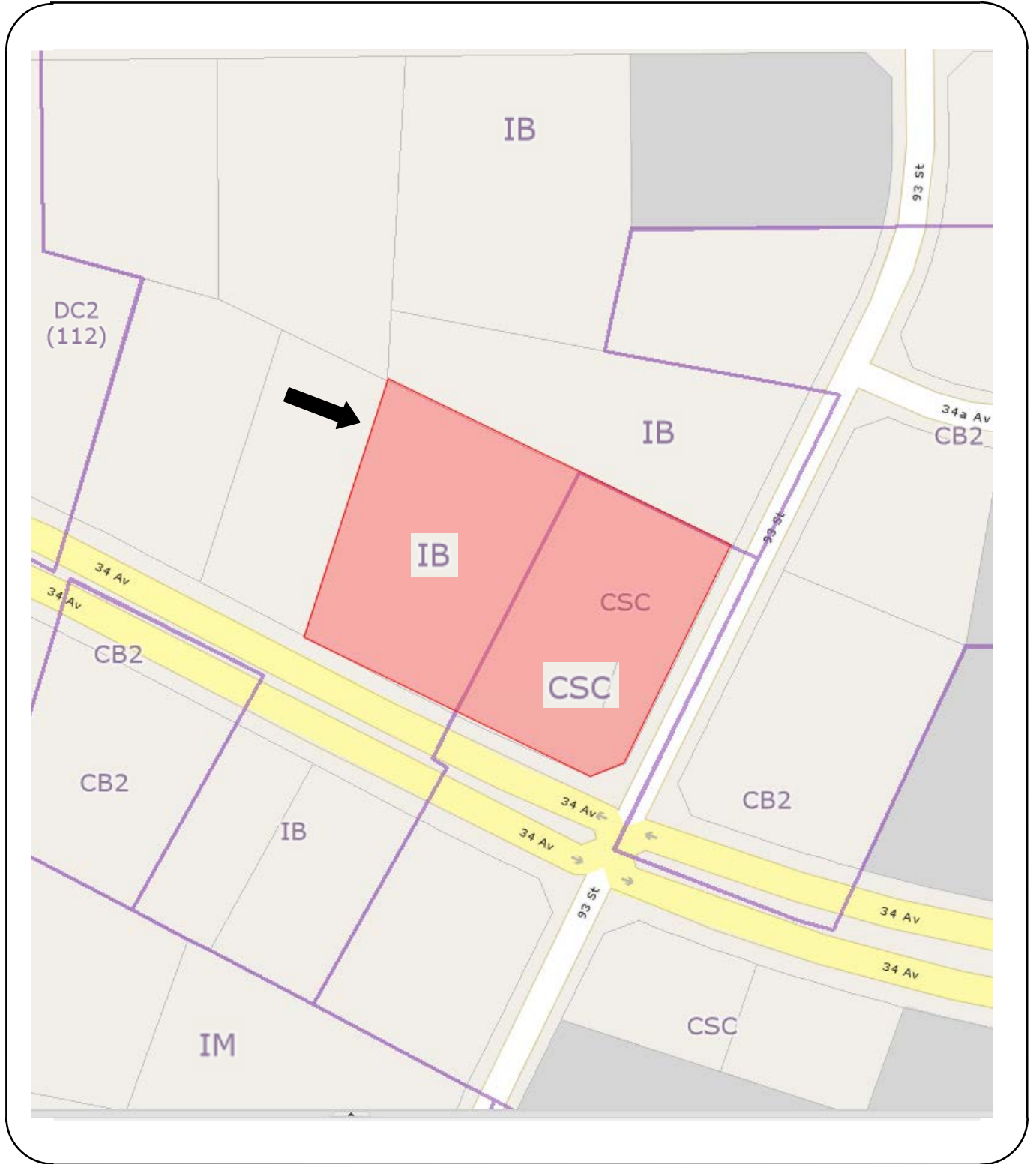
The Development Officer determined a total of 290 on-site parking spaces are required; 147 parking spaces are proposed; and a relaxation of 143 parking spaces was granted.

The decision of approval by the Development Officer has been appealed by an adjacent business owner located on the subject site.

Section 400.1 states the purpose of the IB Industrial Business Zone is to provide for industrial businesses that carry out their operations such that no nuisance is created or apparent outside an enclosed building and such that the Zone is compatible with any adjacent non-industrial Zone, and to accommodate limited, compatible non-industrial businesses. This Zone should normally be located on the periphery of industrial areas and adjacent to arterial or major collector roadways.

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.



SURROUNDING LAND USE DISTRICTS

Site Location



File: SDAB-D-15-160



ITEM II: 1:00 P.M.

FILE: SDAB-D-15-161

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 149159648-001

APPLICATION TO: Construct 4 Dwellings of Row Housing with attached Garages and to demolish the existing Single Detached House and rear detached Garage

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: April 10, 2015

DATE OF APPEAL: June 29, 2015

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 15104 - 110 Avenue NW

LEGAL DESCRIPTION: Plan 4874HW Blk 12 Lot 1

ZONE: RF3 Small Scale Infill Development Zone

OVERLAY: Mature Neighbourhood Overlay

STATUTORY PLAN: N/A

DEVELOPMENT OFFICER'S DECISION

REFUSED - The proposed development is refused for the following reasons:

1. The general purpose of this 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. (Reference Section 814.1)

Proposed Row Housing shows a 26.51 m long rear facade with multiple windows facing the adjacent Site. This will interfere with the privacy and enjoyment of the neighbouring property.

2. The minimum Rear Setback shall be 40% of Site depth. (Reference Section 814.3(5))

Required 40% = 37.19m x 40%= 14.876m

Proposed: 4.55m

Deficient by 10.327m

3. Regardless of whether a Site has existing vehicular access from the front or flanking public roadway, there shall be no such access where an abutting Lane exists and a Treed Landscaped Boulevard is present along the roadway adjacent to the property line. (Reference Section 814.3(10))

Proposed vehicular access is from the Flanking public road which has an abutting Lane and a Treed Landscaped Boulevard.

4. Neither the width nor the length of any Private Outdoor Amenity Area shall be less than 4.0 m. (Reference Section 47.5)

Proposed minimum dimension is 3.25m.

Deficient by 0.75 m

5. Schedule 1- Vehicular Parking Requirement (Reference Section 54.2)

Required: 4 Dwellings x 1.7= 6.8 or 7 spaces

Proposed: 7 spaces, but 4 of them (in attached garages) have access from the flanking road and parking # 5 located on required front yard is not allowed.

NOTE: All Sections are referenced from the Edmonton Zoning Bylaw as amended.

APPELLANT'S SUBMISSION

The rear 40 percent Setback is applicable given the corner lot and the allowances for such the underlined zoning.

The flanking side driveway access is consistent with other properties in the area.

We are willing to provide landscaping and features as required to buffer the adjacent neighbour.

Given the other higher density projects that exist we meet the intent and characteristics of the neighbourhood.

SUBDIVISION AND DEVELOPMENT APPEAL BOARD OFFICER'S COMMENTS

Section 686(1)(a)(i) of the *Municipal Government Act* states 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....after the date on which the person is notified of the order or decision or the issuance of the development permit.

The decision of refusal by the Development Officer is dated April 10, 2015. Fourteen days from the decision date is April 24, 2015 and the Notice of Appeal was filed on June 29, 2015.

Sustainable Development has submitted to the SDAB, a Canada Post Registered Mail Delivery, dated May 20, 2015 that confirms the notice of refusal was delivered on May 19, 2015. **A copy of the Canada Post Registered Mail Delivery is on file.**

Row Housing is a Permitted Use in the RF3 Small Scale Infill Development Zone, Section 140.2(5).

Under Section 7.2(6), **Row Housing** means development consisting of a building containing a row of three or more Dwellings joined in whole or in part at the side only with no Dwelling being placed over another in whole or in part. Individual Dwellings are separated from one another by a Party Wall. Each Dwelling has separate, individual, and direct access to Grade. This Use Class does not include Stacked Row Housing or Blatchford Townhousing.

Section 814.1 states the 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.

The Development Officer determined that the proposed Row Housing shows a 26.51 metre long rear façade with multiple windows facing the adjacent Site. The Development Officer determined this will interfere with the privacy and enjoyment of the neighbouring property.

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

The Development Officer determined the existing Site depth is 37.19 metres and 40 percent of the Site depth is 14.876 metres. The Development Officer determined the proposed (west) Rear Setback is 4.55 metres, which is deficient by 10.327 metres.

Section 814.3(10) states regardless of whether a Site has existing vehicular access from the front or flanking public roadway, there shall be no such access where an abutting Lane exists, and

- a. a Treed Landscaped Boulevard is present along the roadway adjacent to the property line;
- b. the Site Width is less than 15.5 metres; or
- c. fewer than 50 percent of principal Dwellings on the blockface have vehicular access from the front or flanking roadway.

The Development Officer determined that the proposed vehicular access is from the flanking public roadway which has an abutting Lane and a Treed Landscaped Boulevard.

Section 140.4(15) states a Private Outdoor Amenity Area shall be provided on Site in accordance with Section 47 of this Bylaw.

Section 47.5 states neither the width nor the length of any Private Outdoor Amenity Area shall be less than 4.0 metres, except that if it is provided above the first Storey the minimum dimensions shall be 3.0 metres.

The Development Officer determined the proposed Private Outdoor Amenity Area has a dimension of 3.25 metres, which is deficient by 0.75 metres.

Section 54.2 Schedule 1(A)(1) provides the following with regard to the minimum parking requirements for Row Housing:

	Minimum	Maximum	TOD minimum	TOD maximum
3 or more Bedroom Dwelling	1.7	N/A	1.25	1.75
Visitor Parking	1 per 7 Dwellings	N/A	1 per 7 Dwellings	N/A

Where such Uses contain three or more dwelling units (or where Semi-Detached Housing, Duplex Housing, or Apartment Housing consisting of fewer than three dwelling units, comprise part of a Multi-Unit Project Development) and are located within 400 metres of an existing LRT station or a future LRT station with a Council-approved Concept Plan, within 400 metres of an existing Transit Centre or a future Transit Centre with a Council-approved Concept Plan, or within 100 metres of a Transit Avenue, the following minimum parking requirements and maximum parking requirements shall apply.

The visitor parking must be readily available to an entrance of the building and be clearly identified as visitor parking.

The Development Officer may accept Tandem Parking spaces of a number that is equivalent to the total required parking minus the total number of Dwellings and minus visitor parking. Visitor parking spaces shall not be in tandem.

Section 54.2(2)(e) states except as otherwise provided for in this Bylaw, parking spaces, not including Driveways, that are required in accordance with the minimum standards of this Bylaw shall be located in accordance with the following:

- i. parking spaces shall not be located within a Front Yard; and

- ii. on a Corner Lot in a Residential Zone, parking spaces, in addition to complying with the other provisions of this Bylaw, shall not be located within the Side Yard abutting the flanking public roadway, other than a Lane. Where the amount of parking provided on a Corner Lot is in excess of the minimum requirements of this Bylaw, the Development Officer shall have the discretion to allow such additional spaces within a Side Yard flanking a public roadway, other than a Lane.

The Development Officer determined 7 on-site parking spaces are required. The Development Officer determined a parking space is located in the required Front Yard, which is not allowed.

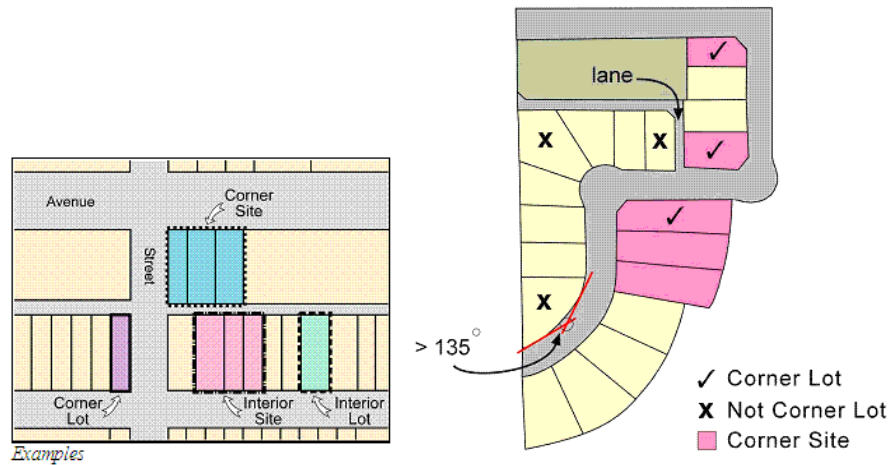
Section 814.3(24) states when a Development Permit application is made and the Development Officer determines that the proposed development does not comply with the regulations contained in this Overlay:

- a. the applicant shall contact the affected parties, being each assessed owner of land wholly or partly located within a distance of 60.0 metres 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

Under Section 6.1(18), **Corner Lot** means:

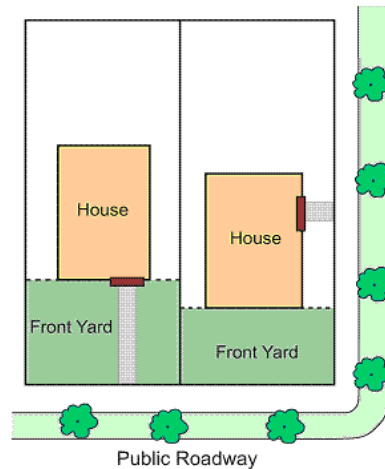
- a. a Lot located at the intersection of two public roadways, other than Lanes; or
- b. a Lot located abutting a public roadway, other than a Lane, which changes direction at any point where it abuts the lot;

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

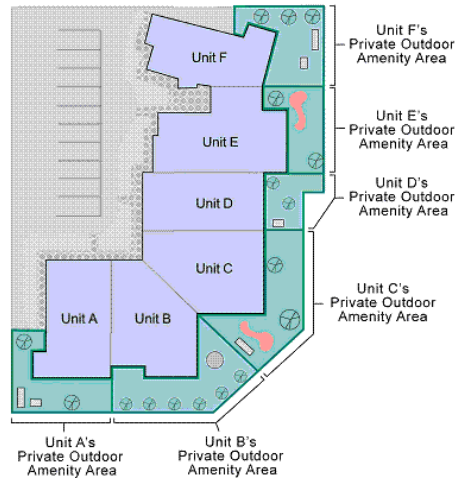


Under Section 6.1(27), **Dwelling** means a self contained unit comprised of one or more rooms accommodating sitting, sleeping, sanitary facilities, and a principal kitchen for food preparation, cooking, and serving. A Dwelling is used permanently or semi-permanently as a residence for a single Household.

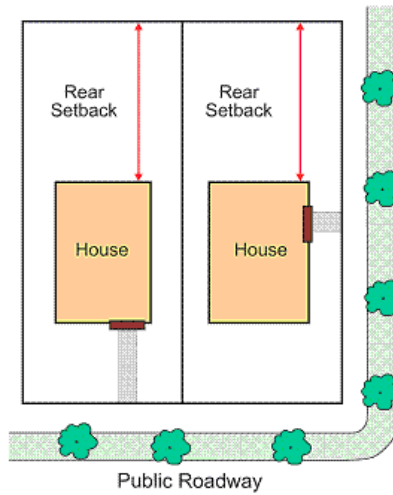
Under Section 6.1(40), **Front Yard** means the portion of a Site abutting the Front Lot Line extending across the full width of the Site, situated between the Front Lot Line and the nearest wall of the principal building, not including projections.



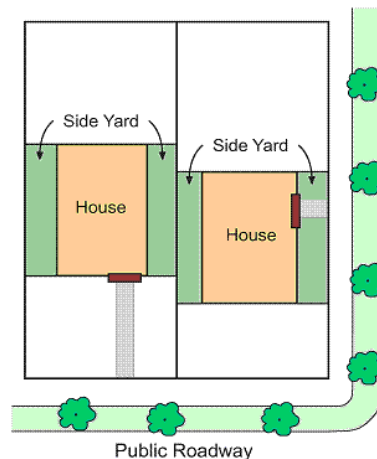
Under Section 6.1(78), **Private Outdoor Amenity Area** means required open space provided and designed for the active or passive recreation and enjoyment of the residents of a particular Dwelling and which is immediately adjacent to and directly accessible from the Dwelling it is to serve.



Under Section 6.1(82), **Rear Setback** means the distance that a development or a specified portion of it, must be set back from a Rear Lot Line. A Rear Setback is not a Rear Yard, Amenity Space or Separation Space.



Under Section 6.1(91), **Side Yard** means that portion of a Site abutting a Side Lot Line extending from the Front Yard to the Rear Yard. The Side Yard is situated between the Side Lot Line and the nearest wall of principal building, not including projections.



Under Section 6.1(100), **Tandem Parking** means two parking spaces, one behind the other, with a common or shared point of access to the manoeuvring aisle.

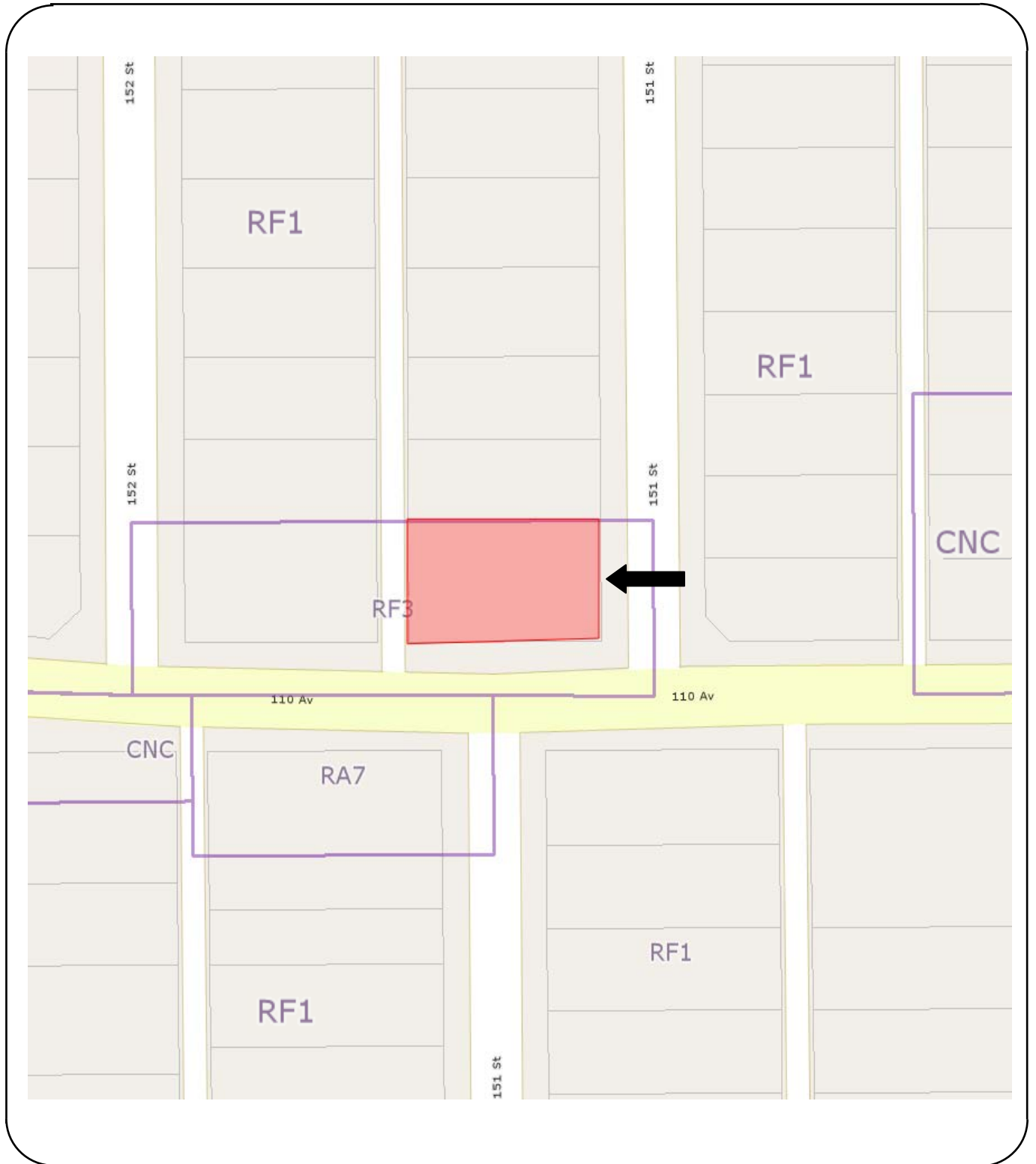
Under Section 6.1(106), **Treed Landscaped Boulevard** means that portion of public road right-of-way which has been landscaped with trees planted at intervals.

Section 140.1 states the purpose of the 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.

Sustainable Development has submitted to the SDAB, a Memorandum dated March 12, 2015 from Karen Haromy, Senior Transportation Technician, Development Planning, Transportation Planning Branch, Transportation Services. **A copy of the Memorandum from Transportation Services is on file.**

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.



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-15-161



BUSINESS LAID OVER

SDAB-D-15-136	An appeal to construct and operate a Residential Sales Centre <i>July 30, 2015</i>
SDAB-D-15-138	An appeal to develop a Secondary Suite in an existing Single Detached House <i>August 5 or 6, 2015</i>
SDAB-D-15-145	An appeal to change the Use from a General Industrial Use to a Personal Service Shop operating as a Body Rub Centre <i>August 5, 2015</i>

APPEAL HEARINGS TO BE SCHEDULED

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