

**SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA**

**Thursday, 9:00 A.M.
June 27, 2019**

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

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

I 9:00 A.M. SDAB-D-19-099

To operate a Major Home Based Business
(massage center)

9517 - 71 Avenue NW
Project No.: 310729074-001

II 10:30 A.M. SDAB-D-19-100

To construct a two-Storey Garden Suite (main
floor Garage 7.32 metres by 12.19 metres,
second floor Garden Suite 7.06 metres by 12.19
metres), existing without permits

7222 - 119 Street NW
Project No.: 301374010-001

III 1:30 P.M. SDAB-D-19-101

To cease the nightclub Use immediately and
cease the operation of the Bar and
Neighborhood Pub until the property is in
compliance with the approved Development
Permit or acquire Development Permit that
reflects the current development

10344 - 105 Street NW
Project No.: 267185799-003

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

ITEM I: 9:00 A.M.

FILE: SDAB-D-19-099

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

APPELLANT:

APPLICATION NO.: 310729074-001

APPLICATION TO: Operate a Major Home Based Business (massage center - YACYSHYN A.). 5 visits per day by appointment only - no overlapping appointments. Hours of operation are from 10 AM to 6 PM from Monday to Friday. Expires on May 14, 2024

DECISION OF THE DEVELOPMENT AUTHORITY: Approved with Conditions

DECISION DATE: May 14, 2019

DATE OF APPEAL: May 22, 2019

NOTIFICATION PERIOD: May 21, 2019 through June 11, 2019

RESPONDENT: A. Yacyshyn

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 9517 - 71 Avenue NW

LEGAL DESCRIPTION: Plan 1223429 Blk 22 Lot 9A

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 received a letter from the city of Edmonton on Friday, May 17 in which the letter dated May 14, is only allowing us 21 days to file an appeal.

Our letter will outline the reasons for our notice of appeal regarding this permit. I am the owner of the residence in the other half of the duplex and I feel that both owners of this property should have their rights heard and the impact weighed in regarding this permit regarding the setting up a store front commercial business with road sign frontage advertising their business on the other side of the duplex.

As we share this duplex, this will greatly affects my property value. It was my intent to selling my residence last year but I postponed it because of the noise and dust created by the four new infill homes that were being built next to me. I was waiting for them to replace my fencing that they torn down and landscape my grading that was damaged during construction, as agreed upon. Once this is completed, I am able to move forward with selling my property

Unfortunately, after talking to a real estate agent, it was brought to my attention that having a store front commercial business on the other half of the duplex may have dyer negative consequences against me and are outlined below:

- 1.It may reduce the property value of my side of the duplex because the other side is a store front commercial business with advertising signage for the public to see and for drawing in customers.
- 2.When selling my side of the duplex, it will reduce the number of potential buyers interested in purchasing my home.
- 3.I will have buyers that will refuse to purchase because of the negative image it presents having a store front commercial business with the advertising in front of the duplex.
- 4.There may be some buyers who won't care but will use it to their advantage to make an offer to purchase far below it selling price.
- 5.I will have buyers that will refuse to purchase because of the increased danger to their children being hit by a vehicle because of the high congestive traffic in front of their home and not being able to relax on their front lawn when clients are entering and leaving the property. Not good at all.
- 6.As the business grows, more staff will be need to be hired and resulting in increases in vehicle traffic, parking and noise on our shared property.
7. There may have individuals who may want to smoke and have to go outside to smoke, leaving butts and garbage that may be carried over to my property, result in increased maintenance.

Additionally, there is an equally significant parking problem on our street. To the right of my home, there is four new homes constructed in place of two previous homes, each having two cars. Across the street there is another duplex with four cars parked outside and there large white house that, at times, can have as many as four to six cars parked there, which typically overflows to my side. In addition, the owner wanting the permit for the store front commercial business has two cars. Not to mention there are two more duplexes being built on my street.

At times, when I have had to park in front of other homes, I receive notes and complaints from the neighbours and, as I explained to them, since it is a public street, I cannot control where my neighbours park and I have to park wherever space is available.

In addition, the owner of the business who is seeking the commercial permit, confronted a family friend who was visiting me at my home and complained to him regarding having his car parked on the street. Are you kidding me, this business owner confronted a family friend who was visiting while he was parking his vehicle on the street? And they want to increase traffic flow for more parking confrontations and road rage. I couldn't believe hearing about this bullying attitude and I'm afraid if this permit proceeds, what types of confrontations and escalations can be expected in the future? This is the type of atmosphere that is brewing in the neighbourhood and having a store front commercial business in a residential neighbourhood should not be permitted because it affects so many of the residents negatively.

My husband I prefer not to be confrontational for years, my husband would go out of his way to clear neighbours sidewalks in the winter, rake up the leaves and cleaned the front of the sidewalk where we park out of goodwill and "being a good neighbour". However, I felt compelled to refuse signing the letter that the new owners of the other half of the duplex presented to me, stating that it's alright for them to operate a store front commercial business, which would result in another 5 to 6 cars parking in front of our duplex.

Unfortunately, I am going to have to decline and appeal any attempts to make part of our duplex a store front commercial business as an increase parking on our street to an already impossible situation. I also fear it may cause an escalation of hostilities amongst all the neighbours when it comes to parking, which I have already been experiencing.

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

Appeal Information:

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

Grounds for Appeal

685(1) If a development authority

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

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

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

Appeals

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

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

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

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

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

or

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

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

Hearing and Decision

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

...

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

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

- (a.3) subject to clauses (a.4) and (d), must comply with any land use bylaw in effect;
- (a.4) must comply with the applicable requirements of the regulations under the Gaming, Liquor and Cannabis Act respecting the location of premises described in a cannabis licence and distances between those premises and other premises;
- ...
- (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;
- (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,
 - (i) the proposed development would not
 - (A) unduly interfere with the amenities of the neighbourhood, or
 - (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,
 - and
 - (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

General Provisions from the *Edmonton Zoning Bylaw*:

Section 140.3(5) states a **Major Home Based Business** is a **Discretionary Use** in the **(RF3) Small Scale Infill Development Zone**.

Under Section 7.3(7), **Major Home Based Business** means:

a development consisting of the Use of an approved Dwelling or Accessory building by a resident of that Dwelling for one or more businesses that 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 includes Bed and Breakfast Operations but does not include General Retail Sales, Cannabis Retail Sales or Cannabis Production and Distribution.

Section 115.1, 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 principal Dwellings under certain conditions, including Secondary Suites and Garden Suites.

Major Home Based Business regulations – Section 75

A Major Home Based Business shall comply with the following regulations:

1. there shall be no exterior display or advertisement other than an identification plaque or Sign a maximum of 20 cm x 30.5 cm in size located on the Dwelling;
2. 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;
3. the Major Home Based Business shall not generate pedestrian or vehicular traffic, or parking, in excess of that which is characteristic of the Zone in which it is located;
4. the number of non-resident employees or business partners working on-site shall not exceed two at any one time;
5. 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;
6. the Major Home Based Business shall not change the principal character or external appearance of the Dwelling or Accessory buildings;
7. a Bed and Breakfast Operation, operating as a Major Home Based Business shall have a maximum of two Sleeping Units. Cooking facilities shall not be located within the Sleeping Units. In addition to any other parking requirements of this Bylaw, one additional parking space shall be provided for each Sleeping Unit;
8. in addition to the information requirements of subsection 13.1 of this Bylaw, each application for a Development Permit for the Use Major Home Based Business shall include a description of the business to be undertaken at the premises, an indication of the number of business visits per week, provision for parking, and where any materials or equipment associated with the business use are to be stored; and

9. the Major Home Based Business shall not be allowed if, in the opinion of the Development Officer, such Use would be more appropriately located in a Commercial or Industrial Zone having regard for the overall compatibility of the Use with the residential character of the area.

10. 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 Garden Suite and an associated principal Dwelling, unless the Home Based Business is a Bed and Breakfast Operation and the Secondary Suite or the Garden Suite is an integral part of the Bed and Breakfast Operation.

Development Officer's Determination

You are receiving this notice because a Discretionary Use Development Permit has been issued, pursuant to Section 12.4 and 20.3 of the Edmonton Zoning Bylaw. [unedited]

Notice to Applicant/Appellant

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

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|  | Project Number: 310729074-001 Application Date: APR 10, 2019 Printed: June 5, 2019 at 2:42 PM Page: 1 of 3 |
| <h2>Application for Home Occupation</h2> | |
| <p>This document is an application for a Development Permit for the development described below.</p> | |
| Applicant | Property Address(es) and Legal Description(s) |
| <div style="border: 1px solid black; width: 100%; height: 100%;"></div> | 9517 - 71 AVENUE NW Plan 1223429 Blk 22 Lot 9A |
| | Specific Address(es) Entryway: 9517 - 71 AVENUE NW |
| Scope of Permit | |
| <p>To operate a Major Home Based Business (massage center - YACYSHYN ANDREA). 5 visits per day by appointment only -no overlapping appointments. Hours of operation are from 10 AM to 6 PM from Monday to Friday. Expires on May 14, 2024.</p> | |
| Permit Details | |
| # of business related visits/day: 5 Administration Office Only?: N Class of Permit: Class B | # of vehicles at one time: 1 Business has Trailers or Equipment?: N Description of Business: Massage therapy offered by a Registered Massage Therapist. 5 visits per day by appointment only -no overlapping appointments. Hours of operation are from 10 AM to 6 PM from Monday to Friday. Expires on May 14, 2024. Expiry Date: 2024-05-14 00:00:00 |
| Do you live at the property?: Y Outdoor storage on site?: N | |
| I/We certify that the above noted details are correct. | |
| Applicant signature: _____ | |
| Development Permit Decision | |
| Appealed to SDAB | |
| Issue Date: May 14, 2019 Development Authority: POTTER, CHRISTINA | |
| THIS IS NOT A PERMIT | |



Application for Home Occupation

Project Number: **310729074-001**
Application Date: APR 10, 2019
Printed: June 5, 2019 at 2:42 PM
Page: 2 of 3

Subject to the Following Conditions

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

1. The business owner must live at the site. 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 (Section 7.3(7)).
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 (Section 75.1).
3. The Major Home Based Business shall not generate pedestrian or vehicular traffic, or parking, in excess of that which is characteristic of the Zone in which it is located (Section 75.3).
4. There shall be no non-resident employees or business partners working on-site.
5. There shall be no more than 5 visits associated with the business per day. Clients visit must be by-appointment only and appointments shall not overlap.
6. Hours of operations must be between 10 AM and 6 PM from Monday to Friday.
7. There shall be no outdoor business activities, or outdoor storage of material or equipment associated with the business (Section 75.5).
8. No offensive noise, odour, vibration, smoke, litter, heat or other objectionable effect shall be produced.
9. The business use must maintain the privacy and enjoyment of adjacent residences and the characteristic of the neighborhood.
10. All parking for the Dwelling and Home Based Business must be accommodated on site unless a parking variance has been granted for this Major Home Based Business.
11. This Development Permit may be cancelled at any time if the Home Based Business as stated in the Permit Details changes (Section 17.2).
12. This approval is for a 5 year period from the date of this decision. A new Development Permit must be obtained to continue to operate the business from this location. This Development Permit expires on ****May 14, 2024****.

Notes:

1. 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 Edmonton Building Permit Bylaw or any caveats, covenants or easements that might be attached to the Site (Section 5.2).
2. This Development Permit is not a Business License.
3. Subject to the right of appeal. The permit is not valid until the required Notification Period expires (date noted below in accordance with Section 21.1 and 17.1).

VariANCES

You are receiving this notice because a Discretionary Use Development Permit has been issued, pursuant to Section 12.4 and 20.3 of the Edmonton Zoning Bylaw.

THIS IS NOT A PERMIT



Application for Home Occupation

Project Number: **310729074-001**
Application Date: APR 10, 2019
Printed: June 5, 2019 at 2:42 PM
Page: 3 of 3

Rights of Appeal

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

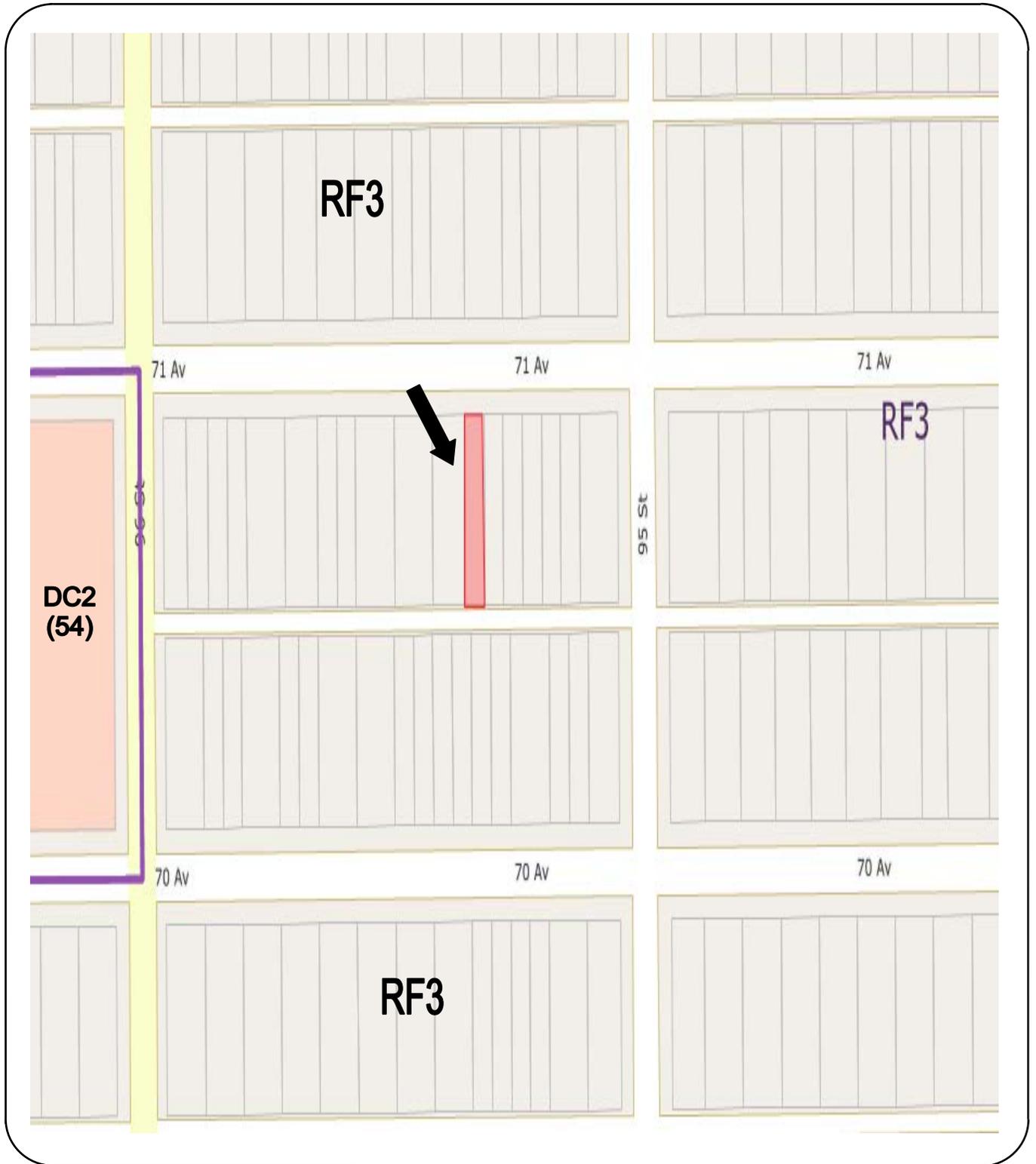
Notice Period Begins: May 21, 2019

Ends: Jun 11, 2019

Fees

| | Fee Amount | Amount Paid | Receipt # | Date Paid |
|----------------------|-------------------|--------------------|------------------|------------------|
| Dev. Application Fee | \$321.00 | \$321.00 | 8248800409010010 | Apr 12, 2019 |
| Total GST Amount: | \$0.00 | | | |
| Totals for Permit: | <u>\$321.00</u> | <u>\$321.00</u> | | |

THIS IS NOT A PERMIT



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-19-099



ITEM II: 10:30 A.M.

FILE: SDAB-D-19-100

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 301374010-001

APPLICATION TO: Construct a two-Storey Garden Suite (main floor Garage 7.32 metres by 12.19 metres, second floor Garden Suite 7.06 metres by 12.19 metres), existing without permits

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: April 25, 2019

DATE OF APPEAL: May 14, 2019

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 7222 - 119 Street NW

LEGAL DESCRIPTION: Plan 2938HW Blk 16 Lot 6

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:

The Development Officer’s decision to refuse this application included some errors in both the characterization of the Garden Suite as two storeys, and in calculating the Total Floor Area and the second Floor Area of the Garden Suite.

We believe that the requested variance to the maximum floor area is in keeping with the large-sized homes in the area and would not negatively impact the enjoyment nor value of adjacent properties.

The 1.0 metre Side Setback from the north property line is in accordance with the approved Development Permit issued for the Garage. There is no

practicable way to achieve the greater setback required by the Garden Suite in a situation of an existing Garage.

The homeowner who shares this property line does not object to this reduced side setback nor the distance to the eaves from his property. We request that the required side yard setback and eave projection be varied.

We have canvassed a significant number of the property owners within 60 metres of the subject site. The majority of respondents including the adjacent property owners do not object to leaving the Garden Suite as built.

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

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

Grounds for Appeal

685(1) If a development authority

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

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

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

Appeals

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

- (a) in the case of an appeal made by a person referred to in section 685(1)
 - (i) with respect to an application for a development permit,
 - (A) within 21 days after the date on which the written decision is given under section 642, or
 - (B) if no decision is made with respect to the application within the 40-day period, or within any extension of

that period under section 684, within 21 days after the date the period or extension expires,

or

- (ii) with respect to an order under section 645, within 21 days after the date on which the order is made, or
- (b) in the case of an appeal made by a person referred to in section 685(2), within 21 days after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.

Hearing and Decision

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

...

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

...

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

- (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,
- and
- (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

General Provisions from the *Edmonton Zoning Bylaw*:

Section 110.2(2) states a **Garden Suite** is a **Permitted Use** in the **(RF1) Single Detached Residential Zone**.

Under Section 7.2(3), **Garden Suite** means:

an Accessory building containing a Dwelling, which is located separate from the principal Use which is Single Detached Housing, and which may contain a Parking Area. A Garden Suite has cooking facilities, food preparation, sleeping and sanitary facilities which are separate from those of the principal Dwelling located on the Site. This Use Class does not include Secondary Suites, Blatchford Lane Suites, or Blatchford Accessory Suites.

Section 110.1, 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, Garden Suites, Semi-detached Housing and Duplex Housing.

Floor Area

Section 87.3(b) state the maximum total Floor Area for a Garden Suite shall be 130 square metres.

Development Officer's Determination

Total Floor Area - The total floor area of the garden suite is 173m² instead of 130m² (Section 87.3.b). [unedited]

Second Floor Area

Section 87.3(c) states in the RF1, RF2, RF3, RF4, RF5, RF6, RA7, RA8, and RA9 Zones, the maximum Second Storey Floor Area shall be 50 square metres, except where the Garden Suite complies with the regulations of Section 93 the maximum Second Storey Floor Area shall be 60 square metres.

Development Officer's Determination

Second Floor Area - The second floor area of the garden suite is 84m² instead of 50m² (Section 87.3.c). [unedited]

Side Setback

Section 87.8 states the minimum Side Setback shall be the same as that prescribed for Single Detached Housing within the underlying Zone or applicable Overlay.

Section 814.3(3)(c)(i) states the minimum interior Side Setback shall be 2.0 metres, except if the requirements of the underlying Zone are greater, the underlying Zone requirements shall apply.

Development Officer's Determination

Side Setback - The distance from the garden suite to the property line shared with 7226 - 119 Street NW (north property line) is 1.0m instead of 2.0m (Section 87.8). [unedited]

Projection

Section 44.1 states eaves or similar architectural features on Accessory buildings, may project into a required Setback or Separation Space, provided that such projections do not exceed 0.6 metres in the case of Setbacks or Separation Spaces of 1.2 metres or greater, and 0.46 metres for Setbacks or Separation Spaces of less than 1.2 metres.

Development Officer's Determination

Projection - The distance from the eaves of the garden suite to the property line shared with 7226 - 119 Street NW (north property line) is 0.8m, instead of 1.4m (Section 44.1). [unedited]

Notice to Applicant/Appellant

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

|  | Project Number: 301374010-001 Application Date: DEC 27, 2018 Printed: May 14, 2019 at 1:23 PM Page: 1 of 2 | | | | | | | | | | |
|--|---|---|---|--------------|-----------|-----------|----------------------|----------|----------|------------------|--------------|
| <h2 style="margin: 0;">Application for Minor Development Permit</h2> | | | | | | | | | | | |
| This document is a Development Permit Decision for the development application described below. | | | | | | | | | | | |
| Applicant <div style="border: 1px solid black; width: 100%; height: 50px;"></div> | Property Address(es) and Legal Description(s) 7222 - 119 STREET NW Plan 2938HW Blk 16 Lot 6 Specific Address(es) Suite: 7222G - 119 STREET NW Entryway: 7222G - 119 STREET NW Building: 7222G - 119 STREET NW | | | | | | | | | | |
| Scope of Application To construct a two-Storey Garden Suite (main floor Garage 7.32m x 12.19m, second floor Garden Suite 7.06m x 12.19m), existing without permits. | | | | | | | | | | | |
| Permit Details <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none; vertical-align: top;"> # of Dwelling Units Add/Remove: 1 # of Secondary Suite Dwelling Units To Construct: 1 Client File Reference Number: Minor Dev. Application Fee: Garden Suite Secondary Suite Included?: Y </td> <td style="width: 50%; border: none; vertical-align: top;"> # of Primary Dwelling Units To Construct: 0 Class of Permit: Class B Lot Grading Needed?: New Sewer Service Required: Y Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay </td> </tr> </table> | | # of Dwelling Units Add/Remove: 1 # of Secondary Suite Dwelling Units To Construct: 1 Client File Reference Number: Minor Dev. Application Fee: Garden Suite Secondary Suite Included?: Y | # of Primary Dwelling Units To Construct: 0 Class of Permit: Class B Lot Grading Needed?: New Sewer Service Required: Y Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay | | | | | | | | |
| # of Dwelling Units Add/Remove: 1 # of Secondary Suite Dwelling Units To Construct: 1 Client File Reference Number: Minor Dev. Application Fee: Garden Suite Secondary Suite Included?: Y | # of Primary Dwelling Units To Construct: 0 Class of Permit: Class B Lot Grading Needed?: New Sewer Service Required: Y Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay | | | | | | | | | | |
| I/We certify that the above noted details are correct. Applicant signature: _____ | | | | | | | | | | | |
| Development Application Decision Refused Issue Date: Apr 25, 2019 Development Authority: ZHOU, ROWLEY Reason for Refusal Total Floor Area - The total floor area of the garden suite is 173m ² instead of 130m ² (Section 87.3.b). Second Floor Area - The second floor area of the garden suite is 84m ² instead of 50m ² (Section 87.3.c). Side Setback - The distance from the garden suite to the property line shared with 7226 - 119 Street NW (north property line) is 1.0m instead of 2.0m (Section 87.8). Projection - The distance from the eaves of the garden suite to the property line shared with 7226 - 119 Street NW (north property line) is 0.8m, instead of 1.4m (Section 44.1). 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. | | | | | | | | | | | |
| Fees <table style="width: 100%; border: none;"> <thead> <tr> <th style="text-align: left;"></th> <th style="text-align: right;">Fee Amount</th> <th style="text-align: right;">Amount Paid</th> <th style="text-align: right;">Receipt #</th> <th style="text-align: right;">Date Paid</th> </tr> </thead> <tbody> <tr> <td>Dev. Application Fee</td> <td style="text-align: right;">\$283.00</td> <td style="text-align: right;">\$283.00</td> <td style="text-align: right;">7989460371410010</td> <td style="text-align: right;">Jan 22, 2019</td> </tr> </tbody> </table> | | | Fee Amount | Amount Paid | Receipt # | Date Paid | Dev. Application Fee | \$283.00 | \$283.00 | 7989460371410010 | Jan 22, 2019 |
| | Fee Amount | Amount Paid | Receipt # | Date Paid | | | | | | | |
| Dev. Application Fee | \$283.00 | \$283.00 | 7989460371410010 | Jan 22, 2019 | | | | | | | |
| THIS IS NOT A PERMIT | | | | | | | | | | | |



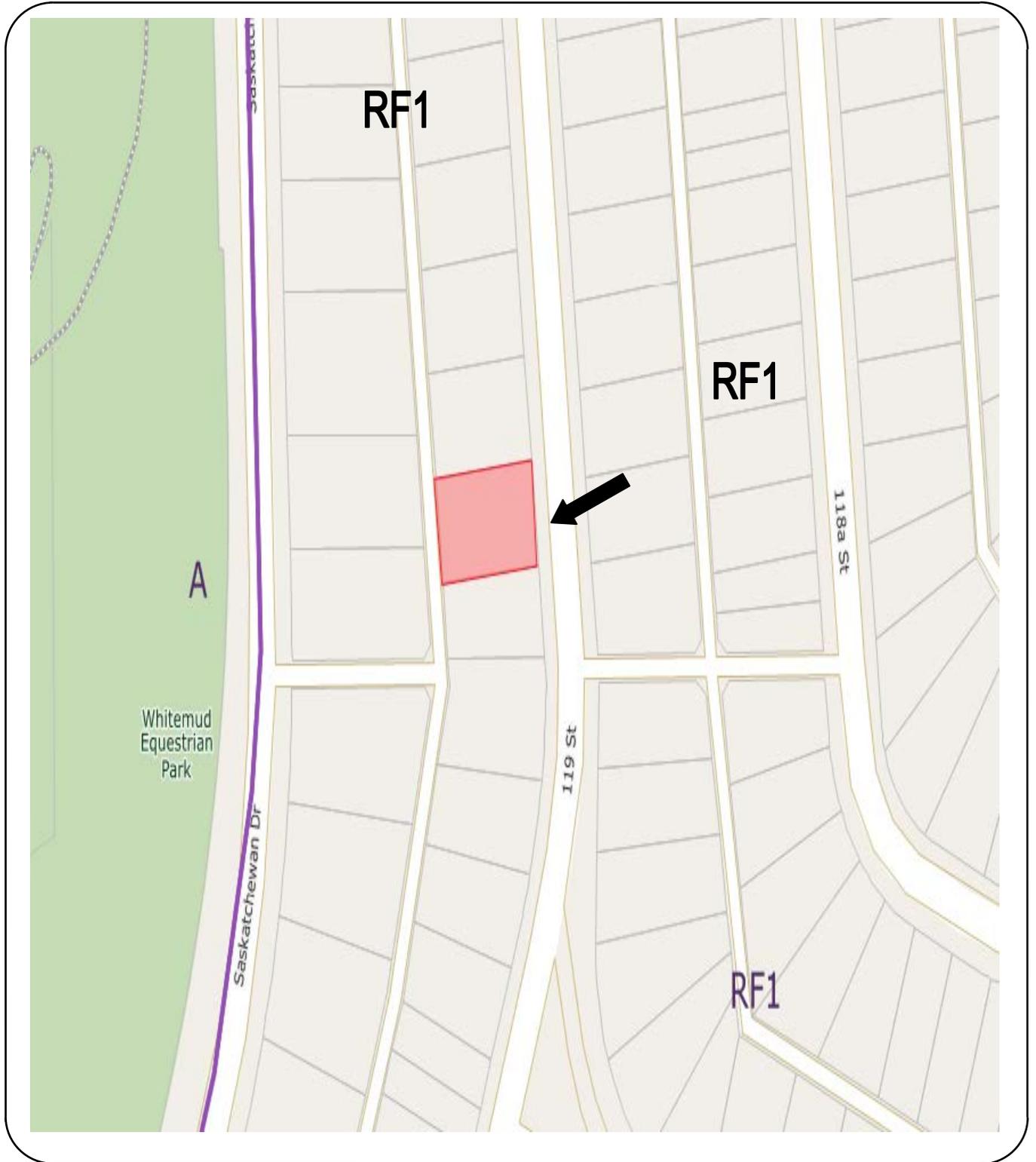
Application for Minor Development Permit

Project Number: **301374010-001**
Application Date: DEC 27, 2018
Printed: May 14, 2019 at 1:23 PM
Page: 2 of 2

Fees

| | Fee Amount | Amount Paid | Receipt # | Date Paid |
|---|-------------------|--------------------|------------------|------------------|
| Sanitary Sewer Trunk Fund (Secondary/Garden Suite) | \$721.00 | \$721.00 | 7989460371410010 | Jan 22, 2019 |
| Existing Without Permit Penalty Fee | \$283.00 | \$283.00 | 05659830 | Feb 22, 2019 |
| Development Permit Inspection Fee | \$204.00 | \$204.00 | 7989460371410010 | Jan 22, 2019 |
| Total GST Amount: | \$0.00 | | | |
| Totals for Permit: | <u>\$1,491.00</u> | <u>\$1,491.00</u> | | |

THIS IS NOT A PERMIT



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-19-100



ITEM III: 1:30 P.M.

FILE: SDAB-D-19-101

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT COMPLIANCE OFFICER

APPELLANT:

APPLICATION NO.: 267185799-003

ORDER TO: Cease the nightclub Use immediately and cease the operation of the Bar and Neighborhood Pub until the property is in compliance with the approved Development Permit or acquire Development Permit that reflects the current development

DECISION OF THE DEVELOPMENT AUTHORITY: Order Issued

DECISION DATE: May 28, 2019

DATE OF APPEAL: May 31, 2019

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 10344 - 105 Street NW

LEGAL DESCRIPTION: Plan B2 Blk 5 Lot 166

ZONE: UW-Urban Warehouse Zone

OVERLAY: Special Area Downtown

STATUTORY PLAN: Capital City Downtown Plan

Grounds for Appeal

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

- The directors of the business believe that we are operating within the conditions and guidelines of our approved permit.
- No proper notice to make changes before order to cease operations.
- City fails to allow us to operate as "bar and neighbourhood pub.
- City approved and inspected development and issued permit but now states there are issues in their approval.

General Matters

Appeal Information:

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

Stop order

645(1) Despite section 545, if a development authority finds that a development, land use or use of a building is not in accordance with

- (a) this Part or a land use bylaw or regulations under this Part, or
- (b) a development permit or subdivision approval,

the development authority may act under subsection (2).

(2) If subsection (1) applies, the development authority may, by written notice, order the owner, the person in possession of the land or building or the person responsible for the contravention, or any or all of them, to

- (a) stop the development or use of the land or building in whole or in part as directed by the notice,
- (b) demolish, remove or replace the development, or
- (c) carry out any other actions required by the notice so that the development or use of the land or building complies with this Part, the land use bylaw or regulations under this Part, a development permit or a subdivision approval,

within the time set out in the notice.

(2.1) A notice referred to in subsection (2) must specify the date on which the order was made, must contain any other information required by the regulations and must be given or sent to the person or persons referred to in subsection (2) on the same day the decision is made.

(3) A person who receives a notice referred to in subsection (2) may appeal to the subdivision and development appeal board in accordance with section 685.

Permit

683 Except as otherwise provided in a land use bylaw, a person may not commence any development unless the person has been issued a development permit in respect of it pursuant to the land use bylaw.

Grounds for Appeal

685(1) If a development authority

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

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

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

Appeals

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

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

| |
|------------------------------|
| <i>Edmonton Zoning Bylaw</i> |
|------------------------------|

Section 5.1 states:

1. No person shall commence, or cause or allow to be commenced, a development without a Development Permit issued in accordance with Section 12 of this Bylaw.
2. No person shall carry on, or cause or allow to be carried on a development without a Development Permit issued in accordance with Section 12 of this Bylaw.

Under Section 910.11(1), the **General Purpose** of the **(UW) Urban Warehouse Zone** is to develop a unique mixed-use business commercial, educational and residential neighbourhood, accommodating a diversity of Uses, including residential, commercial, institutional, light manufacturing and assembly in a safe, walkable, human-scaled built environment that builds on the existing land use pattern and respects the architectural characteristics and functions of the area.

Under Section 910.11(2)(c), **Bars and Neighbourhood Pubs**, for less than 100 occupants and 120 square metres of Public Space, is a **Permitted Use** in the **(UW) Urban Warehouse Zone**.

Under Section 910.11(3)(d), **Bars and Neighbourhood Pubs**, for more than 100 occupants and 120 square metres of Public Space, is a **Discretionary Use** in the **(UW) Urban Warehouse Zone**.

Under Section 7.4(6), **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 910.11(3)(r), **Nightclubs**, but not to exceed 200 occupants and 240 m² of Public Space if the Site is adjacent to or across a Lane from a Residential zoned Site, is a **Discretionary Use** in the **(UW) Urban Warehouse Zone**.

Under Section 7.4(39), **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.

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.

City of Edmonton
Development and Zoning Services
Development Compliance & Inquiries

5th Floor, Edmonton Tower
10111 104 Avenue NW
Edmonton, AB T5J 0J4
Canada

edmonton.ca/developmentcompliance



May 28, 2019

Our File: 267185799-003



MUNICIPAL GOVERNMENT ACT ORDER

Dear Sir/Madam:

An Alberta Land Titles search identifies you as the registered owner(s) of the property located at #102, 10344 105 Street NW in Edmonton, Alberta, legally described as Plan B2 Blk 5 Lot 166. (hereafter identified as "The Property")

The Property was inspected by Justin Young, a City of Edmonton Development Compliance Officer with delegated authority to conduct site inspections and exercise development powers pursuant to Sections 542 and 624 of the Municipal Government Act.

ZONING BYLAW INFRACTION:

The following Zoning Bylaw contraventions have been identified:

- 1) The development of a Nightclub Use without an approved Development Permit.
- 2) Contravention of the conditions of approved Development Permit No. 227514182-006 to develop a Bar and Neighbourhood Pub (118 sq.m. public space/100 occupants).

This property is zoned UW (Urban Warehouse Zone) in accordance with Section 910.11 of Edmonton Zoning Bylaw 12800. Indicating factors that a Nightclub has been developed include, but are not limited to: the primary purpose of the development is the sale of alcoholic beverages, entertainment facilities and dancing that exceed 10% of the Floor Area and the development restricts minors during all hours of operation. This is a contravention of Section 5.1 of Edmonton Zoning Bylaw 12800, and Section 683 of the Municipal Government Act.

Section 5.1 of the Edmonton Zoning Bylaw 12800 states that:

1. No person shall commence, or cause or allow to be commenced, a development without a Development Permit issued in accordance with Section 12 of this Bylaw.
2. No person shall carry on, or cause or allow to be carried on a development without a Development Permit issued in accordance with Section 12 of this Bylaw.

As defined in Section 7.4(39) of Zoning Bylaw 12800:

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.

Additionally, the site has not been developed in accordance with Development Permit No. 227514182-006, issued on May 29, 2017 "To change the Use of an approved General Retail Stores to a Bar & Neighbourhood Pub" (118 sq.m. public space/100 occupants) and to construct interior alterations.

Specifically:

The development at The Property does not conform to the approved floor plan, exceeds 118 square meters of public space and has more than 10% of the floor area dedicated to entertainment facilities.

This represents a contravention of Section 15 of Edmonton Zoning Bylaw 12800.

ORDER:

Pursuant to Section 645 of the Municipal Government Act, R.S.A. 2000, you are hereby ordered to:

1. Cease the Nightclub Use IMMEDIATELY.

AND

2. Cease the operation of the Bar & Neighbourhood Pub (118 sq. m. public space / 100 occupants) IMMEDIATELY AND UNTIL SUCH TIME THAT The Property is in compliance with the approved plans and all conditions of Development Permit No. 227514182-006.

OR

3. Acquire a Development Permit that accurately reflects the current development at The Property before June 19, 2019.

CONSEQUENCES FOR NON-COMPLIANCE:

The property will be inspected to determine compliance with this Order.

In the event that a person fails to comply with this Order issued under Section 645, Section 646 of the Municipal Government Act authorizes the City to enter the land and take any action necessary to carry out the Order. Section 646 authorizes the City to register a caveat under the Land Titles Act.

Section 553(1)(h.1) of the Municipal Government Act provides that the costs and expenses of carrying out an order may be added to the tax roll of the property and Section 566(1), subject to 566(2), a person who is found guilty of an offence under this Act is liable to a fine of not more than \$10,000.00 or to imprisonment for not more than one year, or to both fine and imprisonment.

Affected persons may appeal this Order by filing within the prescribed time to the Subdivision and Development Appeal Board. Visit the website at <https://sdab.edmonton.ca> or call 780-496-6079 for more information on how to file an appeal.

Following are Sections 553, 645, 646, 683, 685 and 686 of the Municipal Government Act, R.S.A. 2000, c.M-26.1, which provides you with the right to appeal this Order and enables the City to add all costs associated with this action to the tax roll of the property.

If you have any questions in regards to this matter, please contact the writer at 780-496-2687.

Regards,

Justin Young
Development and Zoning
Development Services
Phone Number: 780-496-2687
Email Address: Justin.Young@edmonton.ca

A handwritten signature in black ink, appearing to read 'Justin Young', is written over the typed name and contact information.

**Adding Amounts
Owing to tax roll**

- 553(1)** A council may add the following amounts to the tax roll of a parcel of land:
- (a) unpaid costs referred to in section 35(4) or 39(2) relating to service connections of a municipal public utility that are owing by the owner of the parcel;
 - (b) unpaid charges referred to in section 42 for a municipal utility service provided to the parcel by a municipal public utility that are owing by the owner of the parcel;
 - (c) unpaid expenses and costs referred to in section 549(3), if the parcel's owner contravened the enactment or bylaw and the contravention occurred on all or a part of the parcel;
 - (d), (e) repealed 1999 c11 s35;
 - (f) costs associated with tax recovery proceedings related to the parcel;
 - (g) if the municipality has passed a bylaw making the owner of a parcel liable for expenses and costs related to the municipality extinguishing fires on the parcel, unpaid costs and expenses for extinguishing fires on the parcel;
 - (g.1) if the municipality has passed a bylaw requiring the owner or occupant of a parcel to keep the sidewalks adjacent to the parcel clear of snow and ice, unpaid expenses and costs incurred by the municipality for removing the snow and ice in respect of the parcel;
 - (h) Unpaid costs awarded by a composite assessment review board under section 468.1 or the Municipal Government Board under section 501, if the composite assessment review board or the Municipal Government Board has awarded costs against the owner of the parcel in favour of the municipality and the matter before the composite assessment review board or the Municipal Government Board
 - (h.1) the expenses and costs of carrying out an order under section 646;
 - (i) any other amount that may be added to the tax roll under an enactment.

Stop order

- 645(1)** Despite section 545, if a development authority finds that a development, land use or use of a building is not in accordance with
- (a) this Part or a land use bylaw or regulations under this Part, or
 - (b) a development permit or subdivision approval,
- the development authority may act under subsection (2).
- (2)** If subsection (1) applies, the development authority may, by written notice, order the owner, the person in possession of the land or building or the person responsible for the contravention, or any or all of them, to
- (a) stop the development or use of the land or building in whole or in part as directed by the notice,
 - (b) demolish, remove or replace the development, or
 - (c) carry out any other actions required by the notice so that the development or use of the land or building complies with this Part, the land use bylaw or regulations under this Part, a development permit or a subdivision approval,
- within the time set out in the notice.
- (2.1)** A notice referred to in subsection (2) must specify the date on which the order was made, must contain any other information required by the regulations and must be given or sent to the person or persons referred to in subsection (2) on the same day the decision is made.
- (3)** A person who receives a notice referred to in subsection (2) may appeal to the subdivision and development appeal board in accordance with section 685.

Enforcement of stop order

- 646(1)** If a person fails or refuses to comply with an order directed to the person under section 645 or an order of a subdivision and development appeal board under section 687, the municipality may, in accordance with section 542, enter on the land or building and take any action necessary to carry out the order.
- (2)** A municipality may register a caveat under the Land Titles Act in respect of an order referred to in subsection (1) against the certificate of title for the land that is the subject of the order.
- (3)** If a municipality registers a caveat under subsection (2), the municipality must discharge the caveat when the order has been complied with.

Permit

- 683** Except as otherwise provided in a land use bylaw, a person may not commence any development unless the person has been issued a development permit in respect of it pursuant to the land use bylaw.

Grounds for appeal

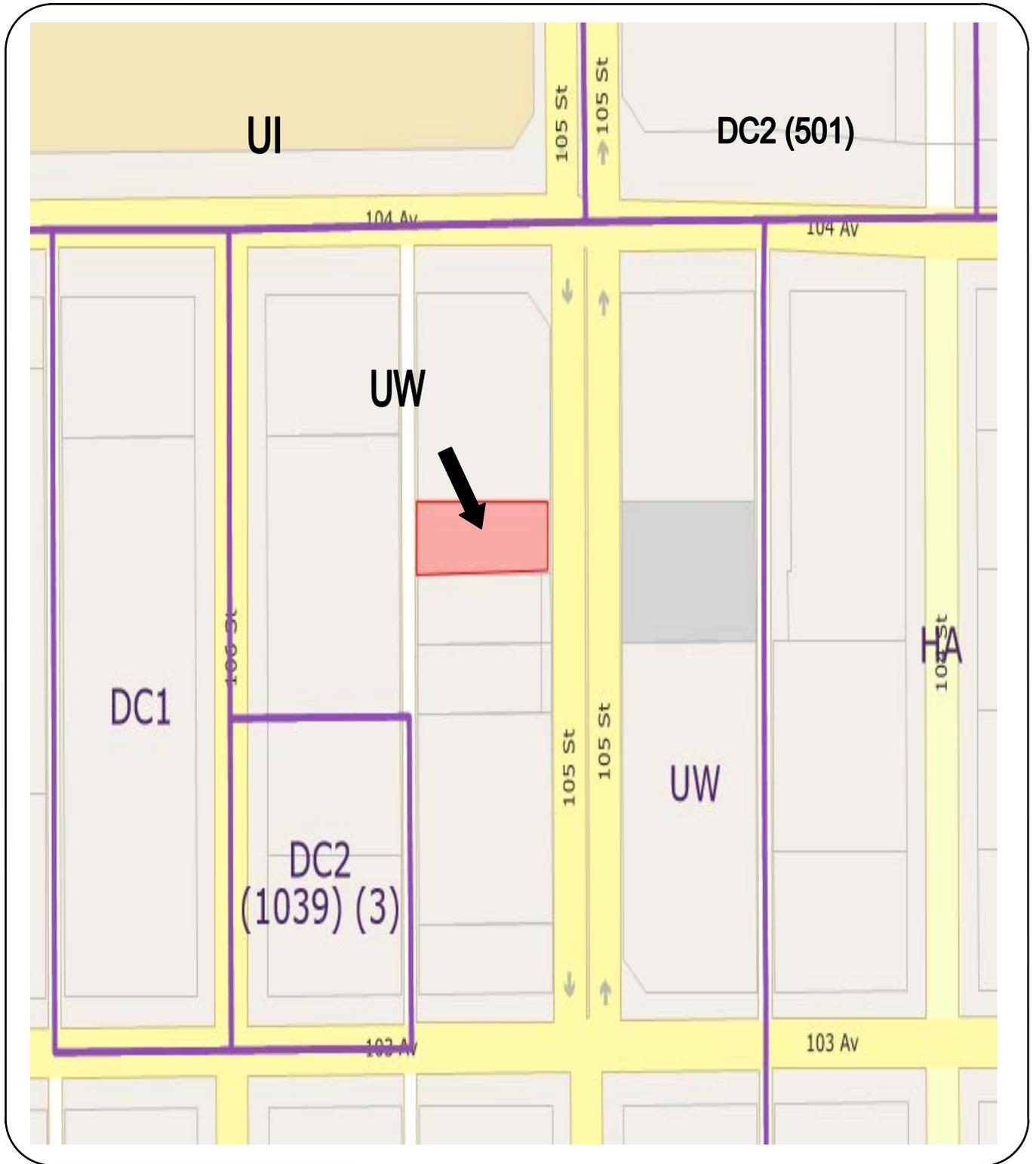
- 685(1)** If a development authority
 - (a) fails or refuses to issue a development permit to a person,
 - (b) issues a development permit subject to conditions, or
 - (c) issues an order under section 645,
 the person applying for the permit or affected by the order under section 645 may appeal to the subdivision and development appeal board.
- (2)** In addition to an applicant under subsection (1), any person affected by an order, decision or development permit made or issued by a development authority may appeal to the subdivision and development appeal board.
- (3)** Despite subsections (1) and (2), no appeal lies in respect of the issuance of a development permit for a permitted use unless the provisions of the land use bylaw were relaxed, varied or misinterpreted or the application for the development permit was deemed to be refused under section 683.1(8).
- (4)** Despite subsections (1), (2) and (3), if a decision with respect to a development permit application in respect of a direct control district
 - (a) is made by a council, there is no appeal to the subdivision and development appeal board, or
 - (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.

Appeals

- 686(1)** A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board
 - (a) in the case of an appeal made by a person referred to in section 685(1)
 - (i) within 21 days after the date on which the decision is made under section 642, or
 - (A) The subdivision and development appeal board must hold an appeal hearing within 30 days after receipt of a notice of appeal.
 - (B) if no decision is made with respect to the application within the 40-day period, or within any extension of that period under section 684, within 21 days after the date the period or extension expires,
 - or
 - (ii) if no decision is made with respect to the application within the 40-day period or within any extension under section 684, the date the period or extension expires,

or

- (b) in the case of an appeal made by a person referred to in section 685(2), within 21 days after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.
- (2)** The subdivision and development appeal board must hold an appeal hearing within 30 days after receipt of a notice of appeal.
- (3)** The subdivision and development appeal board must give at least 5 days notice in writing of the hearing
 - (a) to the appellant,
 - (b) to the development authority whose order, decision or development permit is the subject of the appeal, and
 - (c) to those owners required to be notified under the land use bylaw and any other person that the subdivision and development appeal board considers to be affected by the appeal and should be notified.
- (4)** The subdivision and development appeal board must make available for public inspection before the commencement of the hearing all relevant documents and materials respecting the appeal, including
 - (a) the application for the development permit, the decision and the notice of appeal, or
 - (b) the order under section 645.
- (4.1)** Subsections (1)(b) and (3)(c) do not apply to an appeal of a deemed refusal under section 683.1(8).
- (5)** In subsection (3), "owner" means the person shown as the owner of land on the assessment roll prepared under Part 9.



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-19-101

