

**SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA**

**Thursday, 9:00 A.M.
March 19, 2015**

**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-15-036	Change the Use from Convenience Retail Stores to a Restaurant (79.15 square metres of Public Space) and construct interior alterations 11949 – Jasper Avenue NW Project No.: 162665810-001
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NOTE: *Unless otherwise stated, all references to “Section numbers” refer to the authority under the Edmonton Zoning Bylaw 12800.*

TO BE RAISED
ITEM I: 9:00 A.M.

FILE: SDAB-D-15-036

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 162665810-001

APPLICATION TO: Change the Use from Convenience Retail Stores to a Restaurant (79.15 square metres of Public Space) and construct interior alterations

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: January 20, 2015

DATE OF APPEAL: January 27, 2015

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 11949 - Jasper Avenue NW

LEGAL DESCRIPTION: Plan 1021575 Blk 19 Lot 24

ZONE: DC2.825 Site Specific Development Control Provision

OVERLAY: N/A

STATUTORY PLAN: Oliver Area Redevelopment Plan

DEVELOPMENT OFFICER'S DECISION

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

1) The proposed development does not meet the parking requirements as per S. DC2.825.4(2)(a):

Required parking: 36 spaces

Proposed parking: 9 spaces

Deficiency: 27 spaces

The Development Officer notes that the above-cited clause only allows for a maximum parking variance of 5 spaces, which was previously granted under Development Permit 092489538-021.

A review of the site and proposal by Transportation Services notes that normally, high-density, mixed-use areas can handle a reduced parking supply. However, given the current parking demands and geography of the area surrounding the subject property, the additional parking demands to the area caused by the proposed development may cause undue levels of competition for parking within the development and within the surrounding area. This would create an undue negative impact and material interference on the neighbourhood amenities and surrounding properties, in contravention of S. 11.3(3) of the Zoning Bylaw.

It is therefore the Development Officer's opinion that the proposed development does not meet the requirements of the Zoning Bylaw, does not qualify for a variance and, based on the wording of the DC2 Zone regulations, does not follow the direction of City Council in regards to the DC2 Zone.

APPELLANT'S SUBMISSION

1. By the terms of the Zoning Bylaw, a variance is not required. Rather, the Bylaw allows for a reduction in parking requirements based on an engineered parking study. We have commissioned such a study, and will present the same to the Board at the hearing of this matter.
2. Given the location and the nature of the area, it is anticipated that parking demand for this facility will be minimal.
3. Such further and other reasons as may be presented at the hearing of this appeal.

SUBDIVISION AND DEVELOPMENT APPEAL BOARD OFFICER'S COMMENTS

This is an application to change the Use from Convenience Retail Stores to a Restaurant (79.15 square metres Public Space) and construct interior alterations.

SUBDIVISION AND DEVELOPMENT APPEAL BOARD OFFICER'S COMMENTS
(CONTINUED)

The site is located on the south side of Jasper Avenue and west of 119 Street and is zoned DC2.825 Site Specific Development Control Provision, Section 720 of the Edmonton Zoning Bylaw 12800. DC2.825 was approved by Council on January 21, 2013, under Bylaw 16318. **A copy of Bylaw 16318 is on file.** The site is within the Oliver Area Redevelopment Plan, Bylaw 11618, as amended, approved by Council on December 9, 1997.

The Subdivision and Development Appeal Board at a hearing on January 29, 2015 made and passed the following motion:

“that the appeal hearing be scheduled for February 25, 2015 or February 26, 2015 at the written request of Legal Counsel for the Appellant.”

The Subdivision and Development Appeal Board at a hearing on February 26, 2015 made and passed the following motion:

“that SDAB-D-15-036 be TABLED to March 19, 2015 in order to provide the Board the opportunity to review the Technical Brief regarding the parking considerations and to allow a copy of the Technical Review to be circulated to Transportation Services for review.”

Section 641(4) of the *Municipal Government Act*, Chapter M-26 states despite section 685, 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 following 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.

A **Restaurant**, 200 occupants or less and 240 square metres of Public Space is a listed Use in the DC2.825 Site Specific Development Control Provision, Section DC2.825.3(n).

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.

Section DC2.825.4.2(a) states the Development shall provide parking in accordance with Schedule 1 of Section 54.2 of the Zoning Bylaw with the variance of five stalls to the satisfaction of the Development Officer.

SUBDIVISION AND DEVELOPMENT APPEAL BOARD OFFICER’S COMMENTS
(CONTINUED)

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

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.

The Development Officer determined 36 parking spaces are required. The proposed development provides 9 parking spaces, which is deficient by 27 parking spaces.

Under Section 6.1(80), **Public Space** means space within an establishment, which is open to the public and not restricted to employees only. This definition does not include kitchens, administrative offices, food or drink preparation areas.

Section DC2.825.1 states the purpose of the DC2 Site Specific Development Control Provision is to accommodate a 36 storey mixed use, high rise, high density development with commercial uses on the main and second floor of a three storey podium that provides for an active and inviting pedestrian oriented streetscape fronting onto Jasper Avenue and a publicly accessible garden linking Jasper Avenue and the Victoria Trail Promenade, with site specific design controls to reduce the mass, sun shadow and view impacts of the tower on adjacent developments.

The following jobs are listed in the Sustainable Development POSSE system:

Application Number	Description	Decision
167317805-001	To change the Use from Convenience Retail Stores to Business Support Services and to construct interior alterations (tenant improvements).	January 29, 2015; Approved with conditions.
167312998-001	To change the Use from Convenience Retail Stores to Business Support Services and to construct interior alterations (tenant improvements).	January 29, 2015; Approved with conditions.

SUBDIVISION AND DEVELOPMENT APPEAL BOARD OFFICER'S COMMENTS
(CONTINUED)

92489538-022 SDAB-D-13-054	Increase the number of Storeys from 35 to 36 for an Apartment House building (the Pearl), and to increase the number of Dwellings from 128 to 130.	March 28, 2013; that the appeal be DENIED and the decision of approval by the Development Authority CONFIRMED
92489538-021	To increase the number of Storeys from 35 to 36 for an Apartment House building (the Pearl), and to increase the number of Dwellings from 128 to 130.	January 22, 2013; Approved with conditions.
130858107-002 LDA12-0398- REZ	Application to Rezone – To rezone DC2 to DC2.	January 21, 2013; Passed by Council.
92489538-018	To reduce the number of Dwellings in an Apartment House from 174 to 128 (The Pearl).	June 27, 2012; Approved with conditions.
92489538-014	To increase the maximum floor plate area for level 35 from 320 square metres to 326 square metres for an Apartment House building (the Pearl).	May 23, 2012; Approved with conditions and the following variance: Section DC2.755.4.1.1(vi) relaxed - the maximum floor plate area for level 35 is increased from 320 square metres to 326 square metres NOTE: The Subdivision and Development Appeal Board in their decision of June 10, 2011 increased the maximum level 35 floor plate area from 300 square metres to 320 square metres.
92489538-009 SDAB-D-11-098	Construct exterior and interior alterations to an Apartment House / Convenience Retail building (The Pearl).	June 10, 2011; that the appeal be ALLOWED and the DEVELOPMENT GRANTED.
92489538-008	To construct exterior and interior alterations to an Apartment House / Convenience Retail building (The Pearl).	May 3, 2011; Refused.
92489538-003	To excavate for an underground parkade.	March 24, 2010; Approved with conditions.
92489538-002	Encroachment Agreement	Completed August 19, 2010.

SUBDIVISION AND DEVELOPMENT APPEAL BOARD OFFICER’S COMMENTS
(CONTINUED)

92489538-001	To construct an Apartment House (174 Dwellings) with main floor Convenience Retail, and an underground parkade (The Pearl).	March 28, 2011; Approved with conditions and the following variance: Section DC2.755.4.2(c) relaxed - the location of the proposed parkade access off of the rear lane is deemed to be in accordance to Appendix Ia to the satisfaction of the Development Officer.
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NOTICE TO APPLICANT/APPELLANT

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing. 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-15-036



BUSINESS LAID OVER

SDAB-D-15-047	An appeal to operate a Major Home Based Business (administration office for a home renovation contractor) <i>March 25 or 26, 2015</i>
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APPEAL HEARINGS TO BE SCHEDULED

161821680-001	An appeal to construct four Dwellings of Stacked Row Housing with front verandas (four at 2.13 metres by 6.10 metres) and uncovered rear decks (two irregulars at 3.66 metres by 6.10 metres) and to demolish the existing Single Detached House and Accessory Building (rear detached Garage) <i>March 25 or 26, 2015</i>
166420267-001	An appeal to construct a Single Detached House with a front attached Garage, front balcony, front veranda, fireplace, Secondary Suite development in the Basement, rear partially covered balcony and rear uncovered deck (3.05 metres by 7.62 metres) <i>April 9, 2015</i>
84287777-004	An appeal to convert an existing Semi-Detached House into a 4 Dwelling Apartment (existing without permits) <i>April 1, 2015</i>