

**SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA**

**Thursday, 9:00 A.M.
March 28, 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-19-043	Construct exterior alterations to a Single Detached House, existing without permits (increase in building Height) 11214 - 61 Street NW Project No.: 273816898-010
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II	11:00 A.M.	SDAB-D-19-044	Construct a General Industrial Use structure (Crane Shelter, existing w/o permits) 6603 - 30 Street NW Project No.: 292728469-001
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TO BE RAISED

III	1:30 P.M.	SDAB-D-18-200	Construct an Accessory Building, existing without permits (shed (2.21 metres by 3.11 metres)) 9725 - 85 Avenue NW Project No.: 263481709-002
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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-19-043

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 273816898-010

APPLICATION TO: Construct exterior alterations to a Single Detached House, existing without permits (increase in building Height)

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: February 27, 2019

DATE OF APPEAL: February 28, 2019

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 11214 - 61 Street NW

LEGAL DESCRIPTION: Plan 1525573 Blk 12 Lot 17

ZONE: RF1 Single Detached Residential 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:

Dear SDAB,

In January of 2018, after submitting all necessary documents to the City of Edmonton for both our Building and Development Permits a City of Edmonton Planner reached out to us and explained that based on the proposed plans we had submitted our house was not in accordance with the Mature Neighborhood Overlay (i.e. our home was elevated too high). During this discussion, he indicated that our two best options were either to revise the structure/drawings of the home or simply drop the elevation of the home. We decided to choose the latter and reached out to our surveyor Gilmore Surveys.

A decision was made to drop the home by 0.6m. In the days that followed, we received an email from the City Planner explaining that he had been in contact with Gilmore Surveys and that the City had received revised documents from the Gilmores to reflect the necessary changes.

Although a final decision had not yet been rendered, in the Planner's estimation, it appeared as if the new values were fully compliant and within the limits of the MNO. A few days later, following this communication, we received an official notification from the City of Edmonton that our Development Permit had been approved! We were excited to take the next steps in our construction process.

Eventually, in the spring of 2018, the time came for our excavator to dig the basement and foundation. He requested that we give him the approved plot plan that had been examined by the City in order to determine how deep to excavate. We gave him the plot plan that had been stamped and approved by both the City of Edmonton Development officer and Building officer.

We continued the construction process which moved along steadily into late 2018. In or around late fall, a City of Edmonton Compliance officer reached out to us and explained that he had conducted a development compliance inspection. He explained that his measured elevation value did not match the elevation that we had been approved for. He explained that our best solution would be to contact our surveyor and have an 'As Built Real Property Report' done to confirm the actual elevation of our main floor. Immediately we reached out to the surveyor, and within a few weeks, he was able to produce a report for us. Unfortunately, our fears had been confirmed as our main floor elevation was indeed too high (660.80)!

As requested, we submitted this new RPR to the Compliance Officer. Soon after, he explained that we had to apply for an 'Alteration to Existing Structure' Development Permit.

Now having confirmed that we were indeed higher than what we had intended to be, we re-traced our steps in the construction process to try and understand how this error was made. Knowing that our home was not deep enough we directed our focus to the approved and stamped plot plan. Here we discovered an error. The exchanged documents (revised plot plan) between Gilmore Surveys and City in early 2018 had been revised, but only partially. The main floor elevation had been adjusted by 0.6m as requested, but the bottom of footing elevation was never changed; it remained at the original value. Unfortunately, this unadjusted value was missed by all parties and the plans were approved. This was literally the foundation to which we constructed our home. We built in good faith assuming that all information was correct. As one would expect, our excavator set the footing depth to this value and followed exactly what was on the approved plot plan.

Hence, this is how we arrived at our over height issue. All requested variances are directly related to the elevation of our home.

If given the opportunity through this Board, our formal evidence submission will re-state the above cause for needing these variances, discuss any material impacts, or lack thereof, to our surrounding neighbors and community, and any other necessary information relating to this situation.

General Matters

Appeal Information:

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

Grounds for Appeal

685(1) If a development authority

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

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

(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(7) states **Single Detached Housing** is a **Permitted Use** in the **(RF1) Single Detached Residential Zone**.

Under Section 7.2(8), **Single Detached Housing** means development consisting of a building containing one principal Dwelling which is separate from any other principal Dwelling or building. This Use includes Mobile Homes which conform to Section 78 of this Bylaw.

Section 110.1, the **General Purpose** of **(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.

Section 814.1 states that the **General Purpose** of the **Mature Neighbourhood Overlay** is to regulate residential development in Edmonton's mature residential neighbourhoods, while responding to the context of surrounding development, maintaining the pedestrian-oriented design of the streetscape, and to provide an opportunity for consultation by gathering input from affected parties on the impact of a proposed variance to the Overlay regulations.

Height

Section 814.3(5) states the maximum Height shall not exceed 8.9 metres.

Section 52.2(c) states where the maximum Height as determined by Section 52.1 is measured to the midpoint, the ridge line of the roof shall not extend more than 1.5 metres above the maximum permitted building Height of the Zone or overlay, or in the case of a Garden Suite the maximum permitted building Height in accordance with Section 87 of this Bylaw.

Development Officer's Determination

1. Height - The Height to midpoint between ridge and eave is 9.2m high, instead of 8.9m (Section 814.3.5). [unedited]
2. Height - The Height to ridge is 10.9m high, instead of 10.4m (Sections 814.3.5 and 52.2.c). [unedited]

Basement Elevation

Section 814.3(6) states the Basement elevation shall be no more than 1.5 m above Grade. The Basement elevation shall be measured as the distance between Grade and the finished floor of the first Storey.

Development Officer’s Determination

3. Basement elevation - The Basement elevation is 1.6m above Grade, instead of 1.5m above Grade (Section 814.3.6). [unedited]

Site Coverage

Section 110.4(6)(a) states the maximum Site Coverage shall be as follows:

	Principal Dwelling / building	Accessory building	Principal building with attached Garage	Total Site Coverage
a. Single Detached Housing – Site greater than 300 m2	28%	12%	40%	40%

Under section 6.1, **Site Coverage** means:

the total horizontal area of all buildings or structures on a Site which are located at or higher than 1.0 m above Grade, including Accessory buildings or Structures, calculated by perpendicular projection onto a horizontal plane from one point located at an infinite distance above all buildings and structures on the Site. This definition shall not include:

- a. steps, eaves, cornices, and similar projections;
- b. driveways, aisles and parking lots unless they are part of a Parking Garage which extends 1.0 m or more above Grade; or
- c. unenclosed inner and outer courts, terraces and patios where these are less than 1.0 m above Grade.

Development Officer’s Determination

4. Site Coverage - The House (excluding the Unenclosed Front Porch) covers 31% of the site, instead of 28% (Section 110.4.6.a). [unedited]

Community Consultation

Section 814.5, Proposed Variances, states:


1. When the Development Officer receives a Development Permit Application for a new principal building or new Garden Suite that does not comply with any regulation contained within this Overlay, or receives a Development Permit for alterations to an existing structure that require a variance to Section 814.3(1), 814.3(3), 814.3(5) or 814.3(9) of this Overlay:
 - a. the Development Officer shall send notice, to the recipient parties specified in Table 814.5(2), to outline any requested variances to the Overlay and solicit comments directly related to the proposed variance;
 - b. the Development Officer shall not render a decision on the Development Permit application until 21 days after notice has been sent, unless the Development Officer receives feedback from the specified affected parties in accordance with Table 814.5(2); and
 - c. the Development Officer shall consider any comments directly related to the proposed variance when determining whether to approve the Development Permit Application in accordance with Sections 11.3 and 11.4.

Table 814.5(2)

Tier #	Recipient Parties	Affected Parties	Regulation of this Overlay Proposed to be Varied
Tier 1	The municipal address and assessed owners of the land wholly or partially located within a distance of 60.0 metres of the Site of the proposed development and the President of each Community League	The assessed owners of the land wholly or partially located within a distance of 60.0 metres of the Site of the proposed development and the President of each Community League	814.3(5) – Height 814.3(6) – Basement Elevation

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.

	<h2 style="margin: 0;">Application for Alterations Permit</h2>	Project Number: 273816898-010 Application Date: DEC 06, 2018 Printed: February 27, 2019 at 12:10 PM Page: 1 of 2																				
This document is a Development Permit Decision for the development application described below.																						
Applicant <div style="border: 1px solid black; height: 40px; width: 100%;"></div>	Property Address(es) and Legal Description(s) 11214 - 61 STREET NW Plan 1525573 Blk 12 Lot 17 Location(s) of Work Entryway: 11214 - 61 STREET NW Building: 11214 - 61 STREET NW																					
Scope of Application To construct exterior alterations to a Single Detached House, existing without permits (increase in building Height).																						
Permit Details <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;"> Class Of Permit: Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay </td> <td style="width: 50%; border: none;"> Site Area (sq. m.): 361.57 </td> </tr> </table>			Class Of Permit: Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay	Site Area (sq. m.): 361.57																		
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I/We certify that the above noted details are correct. Applicant signature: _____																						
Development Application Decision Refused Issue Date: Feb 27, 2019 Development Authority: XIE, JASON Reason for Refusal <ol style="list-style-type: none"> 1. Height - The Height to midpoint between ridge and eave is 9.2m high, instead of 8.9m (Section 814.3.5). 2. Height - The Height to ridge is 10.9m high, instead of 10.4m (Sections 814.3.5 and 52.2.c). 3. Basement elevation - The Basement elevation is 1.6m above Grade, instead of 1.5m above Grade (Section 814.3.6). 4. Site Coverage - The House (excluding the Unenclosed Front Porch) covers 31% of the site, instead of 28% (Section 110.4.6.a). 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.																						
Building Permit Decision Refused																						
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;">\$170.00</td> <td style="text-align: right;">\$170.00</td> <td style="text-align: right;">05520775</td> <td style="text-align: right;">Dec 06, 2018</td> </tr> <tr> <td>Safety Codes Fee</td> <td style="text-align: right;">\$4.50</td> <td style="text-align: right;">\$4.50</td> <td style="text-align: right;">05520775</td> <td style="text-align: right;">Dec 06, 2018</td> </tr> <tr> <td>Building Permit Fee (Construction Value)</td> <td style="text-align: right;">\$108.00</td> <td style="text-align: right;">\$108.00</td> <td style="text-align: right;">05520775</td> <td style="text-align: right;">Dec 06, 2018</td> </tr> </tbody> </table>				Fee Amount	Amount Paid	Receipt #	Date Paid	Dev Application Fee	\$170.00	\$170.00	05520775	Dec 06, 2018	Safety Codes Fee	\$4.50	\$4.50	05520775	Dec 06, 2018	Building Permit Fee (Construction Value)	\$108.00	\$108.00	05520775	Dec 06, 2018
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THIS IS NOT A PERMIT																						



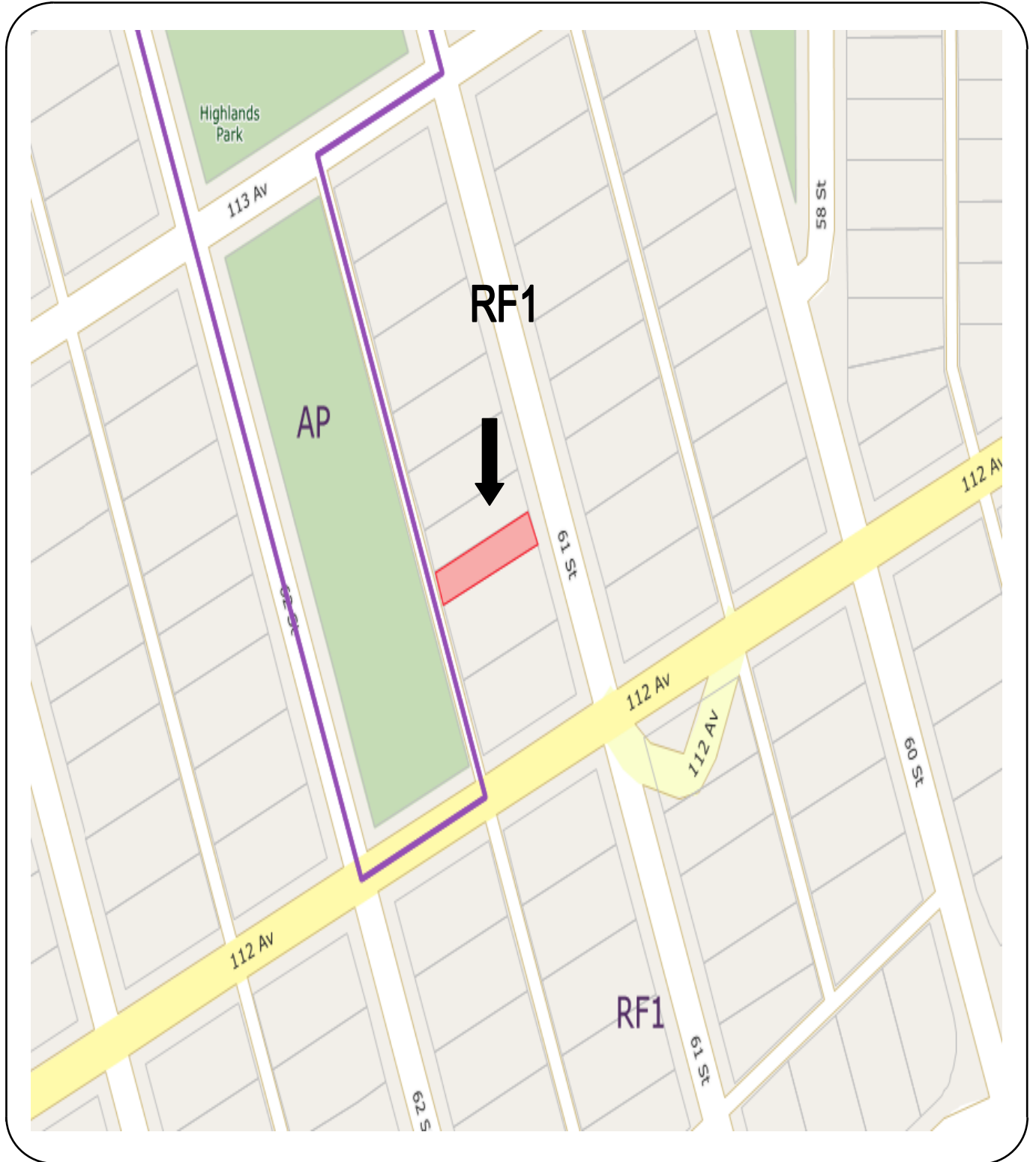
Application for Alterations Permit

Project Number: **273816898-010**
Application Date: DEC 06, 2018
Printed: February 27, 2019 at 12:10 PM
Page: 2 of 2

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Total GST Amount:	\$0.00			
Totals for Permit:	\$282.50	\$282.50		

THIS IS NOT A PERMIT



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-19-043



ITEM II: 11:00 A.M.

FILE: SDAB-D-19-044

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 292728469-001

APPLICATION TO: Construct a General Industrial Use structure (Crane Shelter, existing w/o permits)

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: December 20, 2018

DATE OF APPEAL: December 31, 2018

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 6603 - 30 Street NW

LEGAL DESCRIPTION: Plan 1723034 Blk 33 Lot 1

ZONE: IM Medium Industrial Zone

OVERLAY: N/A

STATUTORY PLAN: Maple Ridge Industrial Area Structure Plan

Grounds for Appeal

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

This appeal is a request to the Subdivision and Development and Appeal Board to repeal the requirement for Section 55.3(1)(b)Required Landscaping. The subject Application for Major Development Permit is a retroactive application for an open walled non-enclosed overhead crane shelter that was constructed in 2002. This appeal is based upon recognizing the existing non-occupiable open walled structure as only an initial preliminary development of the property. Future development of a permanent occupiable structure would very likely be located near the western portion of the property due to the proximity for egress and regress from 30th Street.

The placement of this occupied structure could very conceivably require relocation of the two existing 30th Street approaches thus requiring significant alterations to any boundary landscaping.

Notwithstanding the foregoing, the appellant respectfully submits the surrounding neighborhood has primarily limited boundary landscaping and therefore this relatively undeveloped subject property would not adversely impact the visual appearance of nearby developed properties. This is consistent with Section 11.4 Limitation of Variance Subsection (a) “a variance may be considered only in cases of unnecessary hardship or practical difficulties peculiar to the Use, character, or situation of land or a building, which are not generally common to other land in the same Zone:”

Accompanying this on-line appeal submission are 1/ Illustration 1 (existing shelter) 2/ Illustration 2 (existing shelter) 3/ Google Earth image 1 4/ COE Application for Major Development Permit – Refusal – December 20, 2018 - Project Number 292728469-001.

<i>General Matters</i>

The Board is advised that the Appellant requested the matter be heard on March 28, 2019.

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

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- (A) within 21 days after the date on which the written decision is given under section 642, [...]

Hearing and Decision

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

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- (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*:

Under section 420.2(6), **General Industrial Uses** is a **Permitted Use** in the **(IM) Medium Industrial Zone**

Under section 7.5(3), **General Industrial Uses** means:

development used principally for one or more of the following activities:

- a. the processing of raw materials;
- b. the making, manufacturing or assembling of semi-finished or finished goods, products or equipment;
- c. the cleaning, servicing, repairing or testing of materials, goods and equipment normally associated with industrial or commercial businesses or cleaning, servicing and repair operations to goods and equipment associated with personal or household use, where such operations have impacts that would make them incompatible in Non-industrial Zones;
- d. the storage or transshipping of materials, goods and equipment;
- e. the distribution and sale of materials, goods and equipment to institutions or industrial and commercial businesses for their direct use or to General Retail Stores or other sales Uses defined in this Bylaw for resale to individual customers; or
- f. the training of personnel in general industrial operations.

This Use includes vehicle body repair and paint shops and Cannabis Production and Distribution licensed and operating pursuant to provincial or federal legislation. This Use does not include Major Impact Utility Services and Minor Impact Utility Services or the preparation of food and beverages for direct sale to the public.

Section 420.1 states that the **General Purpose** of the **(IM) Medium Industrial Zone** is:

to provide for manufacturing, processing, assembly, distribution, service and repair Uses that carry out a portion of their operation outdoors or require outdoor storage areas. Any nuisance associated with such Uses should not generally extend beyond the boundaries of the Site. This Zone should normally be applied on the interior of industrial areas adjacent to collector and local industrial public roadways such that Uses are separated from any adjacent residential areas by a higher quality Industrial or Commercial Zone.

General Planting Requirements

Section 55.3(1)(b) states:

Unless otherwise specified in this Bylaw, Landscaping shall be provided in accordance with the following:

...

b. for new development consisting of Residential-Related Use Classes, Commercial Use Classes, Industrial Use Classes, Basic Services Use Classes, and Community, Educational, Recreational and Cultural Service Use Classes, the number of trees and shrubs provided shall be determined on the basis of the following:

i. one tree for each 25 square metres and one shrub for each 15 square metres of Setback;

ii. one tree for each 20 square metres and one shrub for each 10 square metres of parking area islands, as determined by subsection 54.2(3); and

iii. in no case shall there be less than one tree per parking area island;

...

Section 420.4(2) states:

A minimum Setback of 3.0 metres shall be required where any lot line of a Site abuts a public roadway, other than a Lane. If any lot line of the Site abuts a property line of a Residential Zone, a minimum Setback of 6.0 metres shall be required.


Under section 6.1, **Setback** means “the distance that a development or a specified portion of it, must be set back from a property line. A Setback is not a Yard, Amenity Space, or Separation Space.”

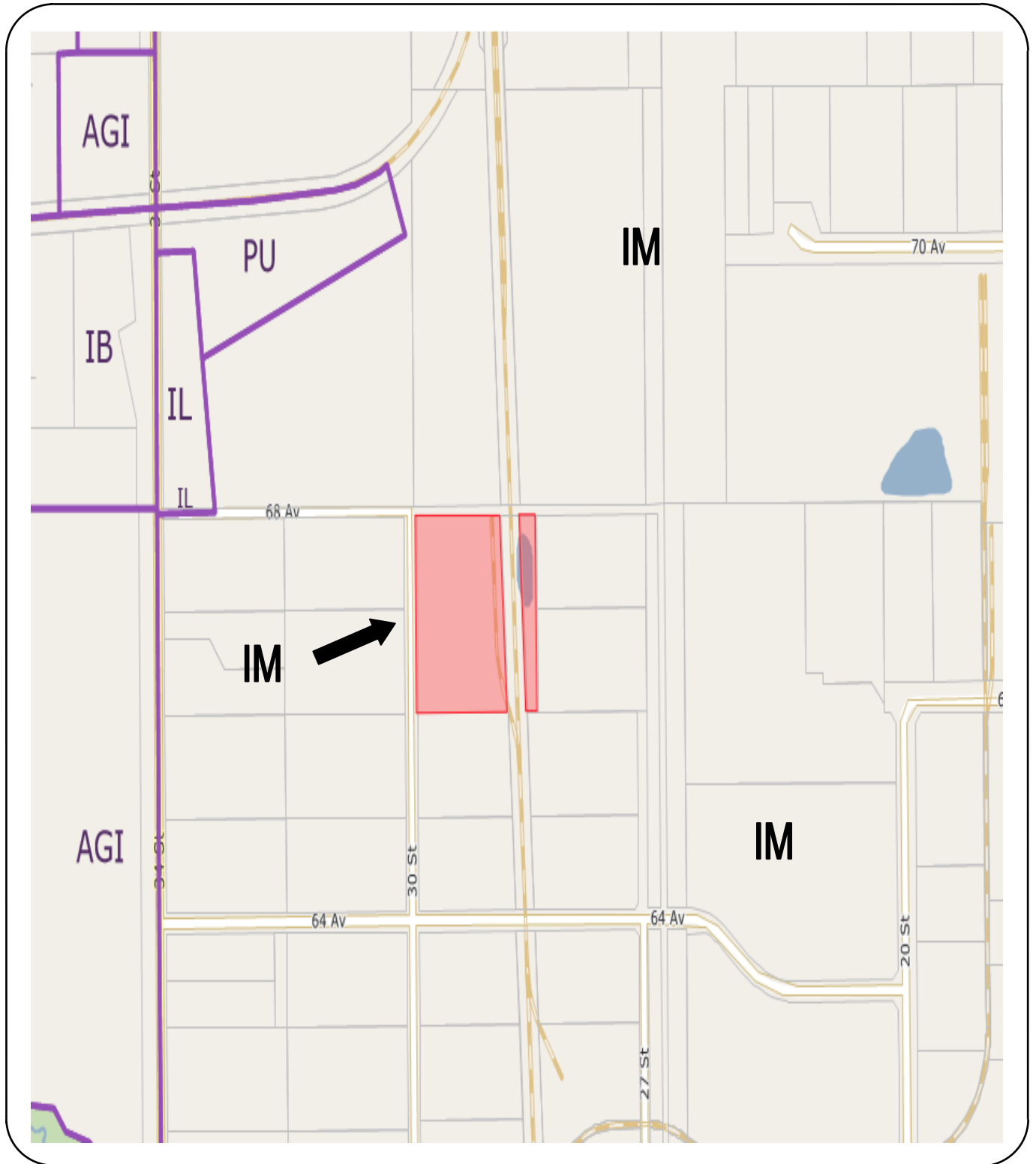
Development Officer’s Determination

1) Required Landscaping - There is no landscaping in the 3m Setback abutting 30 Street and 68 Avenue, instead of 40 trees and 67 shrubs (Reference Section 55.3(1)(b)). [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.

	<h2 style="margin: 0;">Application for Major Development Permit</h2>	Project Number: 292728469-001 Application Date: SEP 17, 2018 Printed: January 2, 2019 at 8:43 AM Page: 1 of 1																									
This document is a Development Permit Decision for the development application described below.																											
Applicant <div style="border: 1px solid black; height: 60px; width: 100%;"></div>	Property Address(es) and Legal Description(s) 6603 - 30 STREET NW Plan 1723034 Blk 33 Lot 1																										
Scope of Application To construct a General Industrial Use structure (Crane Shelter, existing w/o permits).																											
Permit Details <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;"> Class of Permit: Gross Floor Area (sq.m.): 1165 New Sewer Service Required: N Site Area (sq. m.): 31058 </td> <td style="width: 50%; border: none;"> Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: Stat. Plan Overlay/Annex Area: (none) </td> </tr> </table>			Class of Permit: Gross Floor Area (sq.m.): 1165 New Sewer Service Required: N Site Area (sq. m.): 31058	Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: Stat. Plan Overlay/Annex Area: (none)																							
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I/We certify that the above noted details are correct. Applicant signature: _____																											
Development Application Decision Refused Issue Date: Dec 20, 2018 Development Authority: SHAH, NIKHIL Reason for Refusal 1) Required Landscaping - There is no landscaping in the 3m Setback abutting 30 Street and 68 Avenue, instead of 40 trees and 67 shrubs (Reference Section 55.3(1)(b)). Rights of Appeal The Applicant has the right of appeal within 21 days after the date on which the decision is made, as outlined in Section 683 through 689 of the Municipal Government Act.																											
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	Fee Amount	Amount Paid	Receipt #	Date Paid																							
Major Dev. Application Fee	\$948.00	\$948.00	05338577	Sep 17, 2018																							
Dev. Application Fee for GFA	\$672.00	\$672.00	05338577	Sep 17, 2018																							
Total GST Amount:	\$0.00																										
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THIS IS NOT A PERMIT																											



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-19-044



TO BE RAISED
ITEM III: 1:30 P.M.

FILE: SDAB-D-18-200

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

APPELLANT:

APPLICATION NO.: 263481709-002

APPLICATION TO: Construct an Accessory Building, existing without permits (shed (2.21 metres by 3.11 metres))

DECISION OF THE DEVELOPMENT AUTHORITY: Approved with Notices

DECISION DATE: November 6, 2018

DATE OF APPEAL: November 20, 2018

NOTIFICATION PERIOD: Nov. 13, 2018 through Dec. 4, 2018

RESPONDENT:

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 9725 - 85 Avenue NW

LEGAL DESCRIPTION: Plan I7 Blk 91 Lot 26

ZONE: RF2-Low Density Infill Zone

OVERLAY: Mature Neighbourhood Overlay

STATUTORY PLAN: Strathcona Area Redevelopment Plan

Grounds for Appeal

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

The shed is one foot inside my property. A surveyor marked the property line after the shed was built and they were removed.

General Matters

The Subdivision and Development Appeal Board made and passed the following motion on December 5, 2018:

“That SDAB-D-18-200 is TABLED to March 27 or 28, 2019, at the written request of legal counsel for the Appellant.”

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, [...]

(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 clause (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 120.2 (7) states **Single Attached Housing** is a **Permitted Use** in the **(RF2) Low Density Infill Zone**.

Under Section 7.2(8), **Single Detached Housing** means

development consisting of a building containing one principal Dwelling which is separate from any other principal Dwelling or building. This Use includes Mobile Homes which conform to Section 78 of this Bylaw.

Under Section 6.1, **Accessory** means when used to describe a Use or building, a Use or building naturally or normally incidental, subordinate, and devoted to the principal Use or building, and located on the same lot or Site

Section 50.1(1) states a Use shall be Accessory to a Permitted or Discretionary Use which is a principal Use on the Site, if such Use complies with the definition of Accessory in this Bylaw. Notwithstanding the foregoing, Accessory parking may be on the same Site as the principal Use or comply with subsection 54.2(2) of this Bylaw.

Section 50.1(2) states Accessory Uses and buildings are permitted in a Zone when Accessory to a principal Use which is a Permitted Use in that same Zone and for which a Development Permit has been issued.

Section 120.1, the **General Purpose** of **(RF2) Low Density Infill Zone** is to retain Single Detached Housing, while allowing infill on narrow lots, and Secondary Suites and Garden Suites.

Section 814.1 states that the **General Purpose** of the **Mature Neighbourhood Overlay** is to regulate residential development in Edmonton’s mature residential neighbourhoods, while responding to the context of surrounding development, maintaining the pedestrian-oriented design of the streetscape, and to provide an opportunity for consultation by gathering input from affected parties on the impact of a proposed variance to the Overlay regulations.

<i>Site Coverage</i>

Section 120.4 (7) and (8) states that Maximum Site Coverage shall be as follows:

	Principal Dwelling/ building	Accessory building	Principal building with attached Garage	Total Site Coverage
a. Single Detached and Duplex Housing - Site area <u>300 m²</u> or greater	28%	12%	40%	40%
b. Single Detached and Duplex Housing - Site area less than <u>300 m²</u>	28%	14%	42%	42%

c. Semi-detached Housing - Site area <u>600 m²</u> or greater	28%	12%	40%	40%
d. Semi-detached Housing - Site area less than <u>600 m²</u>	28%	14%	42%	42%
e. All other Uses	28%	12%	40%	40%

Notwithstanding subsection 120.4(7), the maximum Site Coverage for the Principal Dwelling/building and the maximum total Site Coverage shall be increased by up to 2% of the Site Area, in addition to any increase allowed under Section 87, to accommodate single Storey Unenclosed Front Porches.

Under Section 6.1, **Site Coverage** means the total horizontal area of all buildings or structures on a Site which are located at or higher than 1.0 metres above Grade, including Accessory buildings or Structures, calculated by perpendicular projection onto a horizontal plane from one point located at an infinite distance above all buildings and structures on the Site. This definition shall not include:

- a. steps, eaves, cornices, and similar projections;
- b. driveways, aisles and parking lots unless they are part of a Parking Garage which extends 1.0 metres or more above Grade; or
- c. unenclosed inner and outer courts, terraces and patios where these are less than 1.0 metres above Grade.

Development Officer's Determination

Site Coverage - The Accessory Buildings (shed and detached garage) cover 14.2% of the site, instead of 12%. In total, all the buildings cover 42.3% of the site, instead of 42% (Section 120.4.7 and 8). [unedited]

Eaves Projection


Section 44.1(c)(ii) states that the following features may project into a required Setback or Separation Space as provided for below: eaves or similar architectural features on Accessory buildings, 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

Eaves projection is 0.65 metres into the required setback instead of 0.46 metres (Section 44.1(c.ii)). [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: 263481709-002 Application Date: SEP 06, 2018 Printed: November 6, 2018 at 12:21 PM Page: 1 of 2
<h2 style="margin: 0;">Accessory Building Permit</h2>	
This document is a record of a Development Permit application, and a record of the decision for the undertaking described below, subject to the limitations and conditions of this permit, of the Edmonton Zoning Bylaw 12800 as amended.	
Applicant	Property Address(es) and Legal Description(s) 9725 - 85 AVENUE NW Plan 17 Blk 91 Lot 26
	Location(s) of Work Entryway: 9725 - 85 AVENUE NW Building: 9725 - 85 AVENUE NW
Scope of Permit To construct an Accessory Building, existing without permits (shed (2.21m x 3.11m)).	
Permit Details	
Class Of Permit: Class B Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay	Site Area (sq. m.): 404.11
I/We certify that the above noted details are correct. Applicant signature: _____	
Development Permit Decision Approved Issue Date: Nov 06, 2018 Development Authority: ANGELES, JOSELITO	
Subject to the Following Conditions This Development Permit authorizes the development of an Accessory Building, existing without permits (shed (2.21m x 3.11m)). The development shall be constructed in accordance with the stamped and approved drawings. This Development Permit is NOT valid until the Notification Period expires in accordance to Section 21. (Reference Section 17.1)	
ADVISEMENTS: An approved Development Permit means that the proposed development has been reviewed against the provisions of this bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments including, but not limited to, the Municipal Government Act, the Safety Codes Act or any caveats, restrictive covenants or easements that might be attached to the Site. (Reference Section 5.2)	
Unless otherwise stated, all above references to section numbers refer to the authority under the Edmonton Zoning Bylaw 12800.	
Variations Site Coverage - The Accessory Buildings (shed and detached garage) cover 14.2% of the site, instead of 12%. In total, all the buildings cover 42.3% of the site, instead of 42% (Section 120.4.7 and 8). Eaves projection is 0.65 m into the required setback instead of 0.46 m (Section 44.1(c.ii)).	
Rights of Appeal This approval is subject to the right of appeal as outlined in Chapter 24, Section 683 through 689 of the Municipal Government Amendment Act.	
Notice Period Begins: Nov 13, 2018 Ends: Dec 04, 2018	
Building Permit Decision No decision has yet been made.	

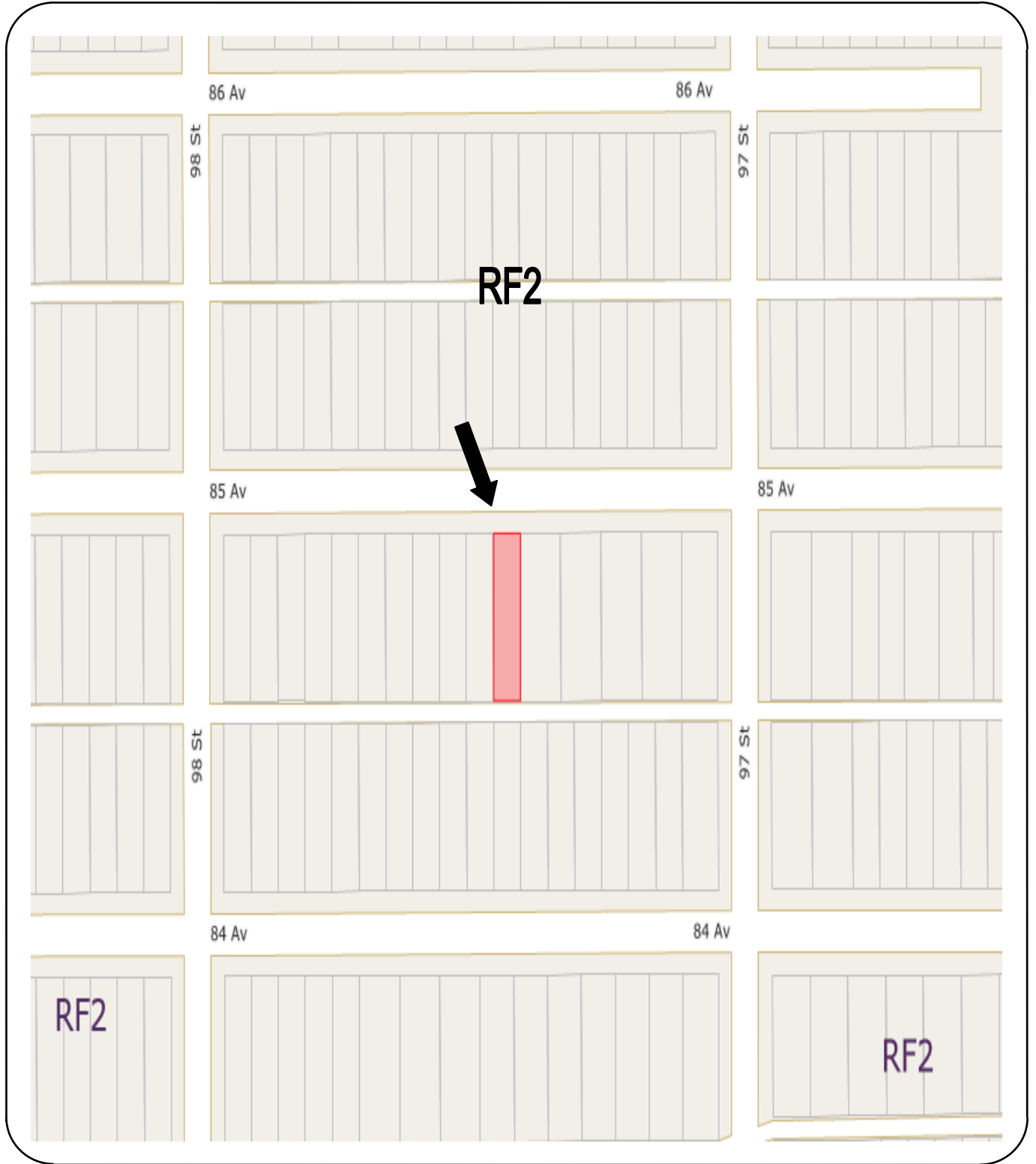


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Accessory Building Permit

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Safety Codes Fee	\$4.50	\$4.50	05316542	Sep 06, 2018
Existing Without Permit Building Penalty Fee	\$108.00	\$108.00	05316542	Sep 06, 2018
Building Permit Fee (Accessory Building)	\$108.00	\$108.00	05316542	Sep 06, 2018
Dev Application Fee	\$116.00	\$116.00	05316542	Sep 06, 2018
Existing Without Permit Dev Application Penalty Fee	\$116.00	\$116.00	05316542	Sep 06, 2018
Total GST Amount:	<u>\$0.00</u>			
Totals for Permit:	<u>\$452.50</u>	<u>\$452.50</u>		



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-18-200

