

**SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA**

**Thursday, 9:00 A.M.
May 31, 2018**

**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-18-077	Construct an Accessory Building (detached Garage 6.71m x 6.10m). 10305 - 132 Street NW Project No.: 270509418-004
---	-----------	---------------	--

II	10:30 A.M.	SDAB-D-18-078	Change the Use from Single Detached House to Lodging House (7 Sleeping Units) 11003 - 85 Avenue NW Project No.: 274185671-001
----	------------	---------------	--

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-18-077

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 270509418-004

APPLICATION TO: Construct an Accessory Building
(detached Garage 6.71m x 6.10m).

DECISION OF THE
DEVELOPMENT AUTHORITY: Refused

DECISION DATE: April 24, 2018

DATE OF APPEAL: April 26, 2018

MUNICIPAL DESCRIPTION
OF SUBJECT PROPERTY: 10305 - 132 Street NW

LEGAL DESCRIPTION: Plan 2803AF Blk 88 Lot 14

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:

Background

This garage development is part of a concept to make additions to the house that require the garage to be removed from its present position at the side of the house to the lane. This is in keeping with the mature neighbourhood overlay which encourages garages to be located in the lane. The house addition has been approved but the set back for the garage has not.

Appeal

We are appealing the garage section of this project because in the first place we wish to maximise the green space between the addition and the garage as well as the distance between the neighbours house to the East

and this garage. For similar reasons the double garage is planned as small as possible. This distance is proposed at 21ft (6.41m) on the property from garage rear to house. The required 1.2m set back at the front of the garage i.e. at the lane would decrease this dimension. In the lane it serves no useful purpose for parking or turning etc. In fact it provides a definite blind area where intruders can hide because the garage doors will be behind the fence/property line. There have been two attempted home intrusions at this address while the occupants were at home in the last two years. Furthermore it should be pointed out that this is not a busy lane and in fact does not lead anywhere beyond a few neighbouring houses. The garage design will be designed to compliment the proposed house renovation both in design and quality of style. Please see attached drawing of the proposal.

In the neighbourhood there are a number of examples of garages being placed at the edge of the lane (see attached). Also the owners have talked to neighbours who have been shown the proposal and who find no objection to this approach. Signatures are provided (attached) For security reasons the neighbours are in favour of no set back at the lane so that the line of sight down the lane is uninterrupted.

In the original development application the garage was set on the rear property line so that the distance between the house and garage can be maximised. We then moved it back 0.15m to prevent the eaves being over the property line at the request of the Planning Department so that there is no encroachment into the lane.

We have been told to contact Epcor and Telus with regard to the pole which is somewhat close to the garage. The owner reports as follows:

I (the owner) spoke with Ron Hewitt at EPCOR just now on the phone. He said as long as the garage is contained within our property (which it is of course), EPCOR does not have any issues with us building the garage at 0.15m setback. He did state we have to maintain a safe work distance of at least 1 m from the 'lower lines' (which we will) and 3 m from the highest lines (which we will). Finally, as there are no wires that go above our proposed garage, EPCOR isn't too concerned with what we do on our property.

<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.

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 decision is made under section 642,

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

Section 110.1 states that the **General Purpose** of the **RF1 Single Detached Residential Zone** is:

... to provide for Single Detached Housing while allowing other forms of small scale housing in the form of Secondary Suites, and Garden Suites, as well as Semi-detached Housing and Duplex Housing under certain conditions.

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.

Rear Setback

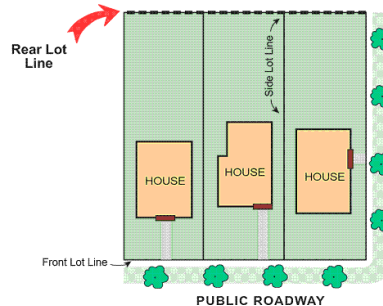
Section 814.3 (22) states that the minimum distance from the rear lot line to a rear detached garage where the vehicle door faces the lane shall be 1.2 metres.

Under section 6.1(90), **Rear Setback** means “the distance that a development or a specified portion of it, must be set back from a rear lot line. A rear setback is not a rear yard, amenity space or separation space.”

Under section 6.1(47), **Garage** means “an Accessory building, or part of a principal building designed and used primarily for the storage of motor vehicles and includes a carport.”

Under section 6.1(2), **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.”

Under section 6.1(89), **Rear Lot Line** means “either the property line of a lot which is furthest from and opposite the Front Lot Line, or, where there is no such property line, the point of intersection of any property lines other than a Front Lot Line which is furthest from and opposite the Front Lot Line.”



Development Officer’s Determination

The detached Garage where the vehicle doors face the lane, is 0.2m from the rear lot line, instead of 1.2m (s 814.3.22)

Community Consultation

Under section 814.5, when the Development Officer receives a Development Permit Application for a new principal building, new Garage Suite, 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.

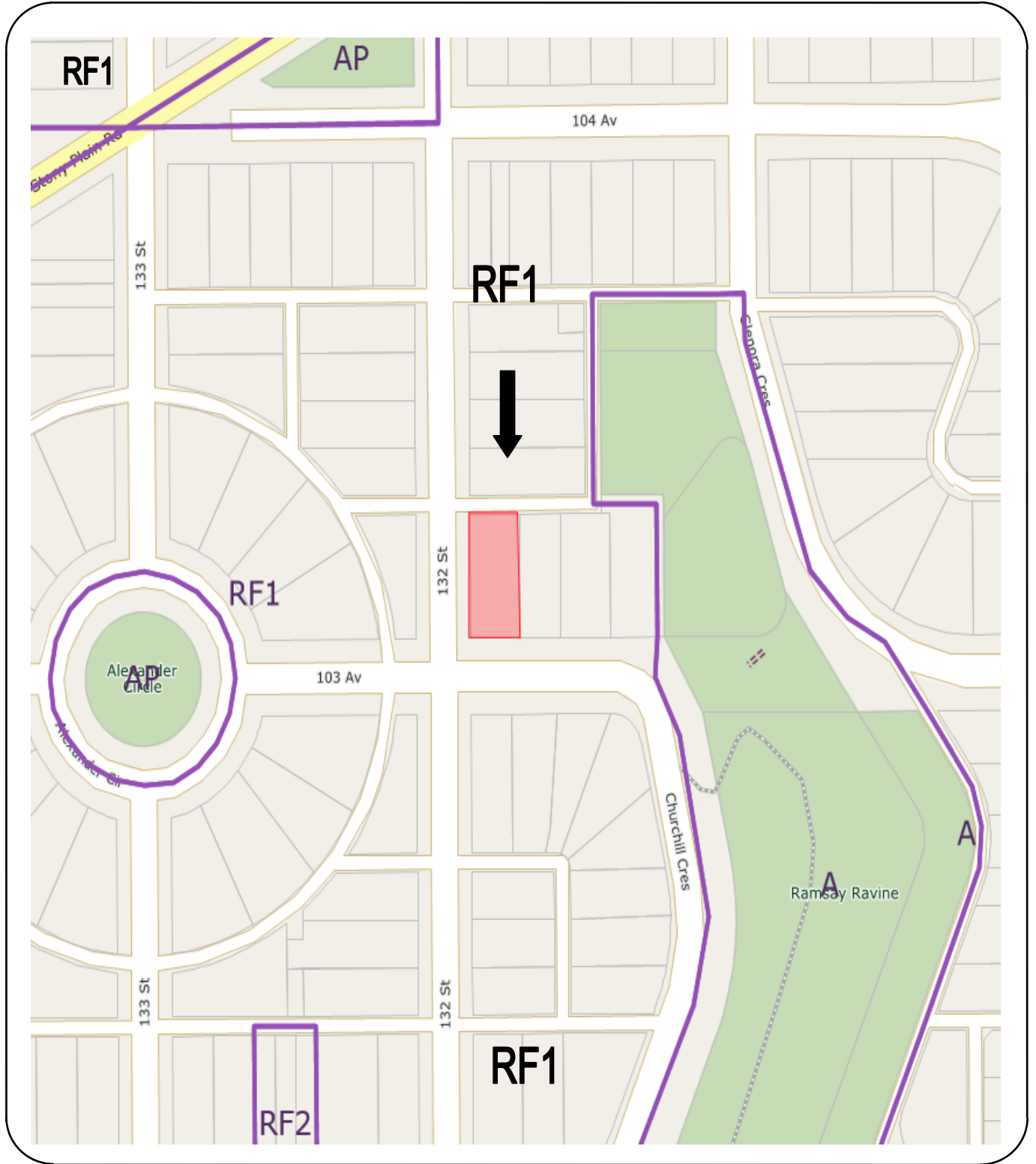
Section 814.5(2) states:

Tier #	Recipient Parties	Affected Parties	Regulation of this Overlay to be Varied
Tier 2	The municipal address and assessed owners of the land Abutting the	The assessed owners of the land Abutting the Site and directly	814.3(22) – Detached Garage Rear Setback

	Site, directly adjacent across a Lane from the Site of the proposed development and the President of each Community League	adjacent across a Lane from the Site of the proposed development	
--	--	--	--

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.



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-18-077



ITEM II: 10:30 A.M.

FILE: SDAB-D-18-078

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 274185671-001

APPLICATION TO: Change the Use from Single Detached House to Lodging House (7 Sleeping Units)

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: April 27, 2018

DATE OF APPEAL: May 2, 2018

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 11003 - 85 Avenue NW

LEGAL DESCRIPTION: Plan I23A Blk 161 Lot 32

ZONE: DC1 (Garnea Area Redevelopment Plan) Direct Development Control Provision

OVERLAY: N/A

STATUTORY PLAN: Garneau Area Redevelopment Plan

Grounds for Appeal

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

This permit was declined due to the fact that there was 7 bedrooms in the house rather than 4 (as it was explained afterward to me not at the time of application). Due to the size of the home and the large footprint of the home I am asking for an exception to this ruling. There is plenty of square footage to accommodate the request. 4 rooms are above ground 3 are in the basement. I do not fully understand this as I was originally told 8 would be permitted for this home or I may not have applied in the first place. I depend on the city to provide accurate information at one of the 3 previous meetings I had with the city before submitting the application. This application will not affect the neighbourhood in any negative way nor will it change anything structurally to the home. It is truly the fairest single best use for the home.

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.

685(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) ...
- (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.

Section 2 of the *Edmonton Zoning Bylaw* concerning Repeal, Enactment and Transition Procedures states the following:

2.4 Subject only to the provisions in the Municipal Government Act respecting legal non-conforming Uses and notwithstanding the effect it may have on rights, vested or otherwise, the provisions of this Bylaw govern from the Effective Date onward. In particular, no application for a Development Permit shall be evaluated under the procedural or substantive provisions of the previous Land Use Bylaw after the Effective Date, even if the application was received before the Effective Date.

...

2.6 Any Direct Control Districts that were in effect immediately prior to the Effective date are hereby deemed to continue in full force and effect and are hereby incorporated into Part IV of this Bylaw.

- 2.7 Unless there is an explicit statement to the contrary in a Direct Control District or Provision, any reference in a Direct Control District or Direct Control Provision to a land use bylaw shall be deemed to be a reference to the land use bylaw that was in effect at the time of the creation of the Direct Control District or Provision.

At the time of the creation of the subject Direct Control Site, the *City of Edmonton Land Use Bylaw 5996* was in effect. An Alberta Court of Appeal decision in *Parkdale-Cromdale Community League Association v. Edmonton (City)*, 2007 ABCA 309 concluded that section 2.7 of the *Edmonton Zoning Bylaw* only applies if there is an express cross-reference in a Direct Control Bylaw passed before 2001 to a provision of the old *Land Use Bylaw*. In the absence of an express reference in the Direct Control Bylaw to the *Land Use Bylaw 5996*, it does not prevail over section 2.4 of the *Edmonton Zoning Bylaw*.

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 decision is made under section 642, [...]

General Provisions from the DC1 (Garneau Area Redevelopment Plan) Direct Development Control Provision (“the DC1”):

Under section 12, **Boarding and Lodging Houses** is a **listed Use** in the DC1.

The DC1 provides the following with respect to **Development Criteria**:

The following development criteria shall apply to developments within this District pursuant to Section 710.4 of the Land Use Bylaw.

1. The General Regulations and Special Land Use Provisions of the Land Use Bylaw.
2. The development regulations of the RF3 (Low Density Redevelopment) District, provided that the Development Officer may relax these regulations for individual applications, where such relaxations would assist in the achievement of the development criteria in Clauses 3, 4 and 5 below.

...

The DC1 states the following with respect to the **Rationale** of the **DC1**:

The Garneau Plan in Policy 1.1 identifies the subject area as a "Special Character Residential Area" contributing to the city as a whole a precinct of older detached housing having interesting architectural detailing and variety in built form. This District is intended to encourage the retention and rehabilitation of existing structures while allowing for infill redevelopment. The regulations associated with this District are intended to ensure that all rehabilitation and redevelopment activities are sensitive to the existing character of both the built form and its relationship to existing streetscapes.

General Provisions from the *Edmonton Zoning Bylaw 12800*:

***It should be noted that General Provisions from the *Edmonton Land Use Bylaw 5996* are attached to the SDAB-D-18-078 file.**

Under section 7.3(6), **Lodging House** means:

a building or part of building, used for Congregate Living, containing Sleeping Units and four or more persons, and where there is no provision of on-site care, treatment or professional services of a physical or mental health nature. This Use does not include Extended Medical Treatment Services, Detention and Correction Facilities, Fraternity and Sorority Housing, Group Homes, and Limited Group Homes.

Under section 6.1(19), **Congregate Living** means:

four or more individuals occupying Sleeping Units in a building where the occupants share access to facilities such as cooking, dining, laundry, or sanitary facilities. Typical Uses where Congregate Living is found include Fraternity and Sorority Housing, Group Homes, Limited Group Homes, and Lodging Houses.

Under section 6.1(32), **Dwelling** means:

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

Under section 6.1(107), **Sleeping Unit** means:

a Habitable Room in a building used for Congregate Living in which the room is occupied by a person under any form of accommodation agreement providing remuneration for the room, and the room:

1. does not include provision for cooking or food preparation except as provided for in Section 76 and 79 of this Bylaw;

2. may or may not be equipped with sanitary facilities; and
3. provides accommodation for a maximum of two persons.

Section 140.4(25) of the **(RF3) Small Scale Infill Development Zone** states:

For Lodging Houses, the following regulations shall apply:

- a. no more than four Sleeping Units may be developed, whether or not in combination with a Dwelling;
- b. the minimum Site area shall be 360 m² in all cases and the Site area shall be comprised of the aggregate of 200 m² for each Sleeping Unit, or for each of the Dwelling and each Sleeping Unit when they are in combination; and
- c. the Development Officer shall exercise discretion with respect to the number of Sleeping Units developed, having regard to the character and density of existing Residential Uses.

Development Officer's Determination

1. Maximum Sleeping Units - The proposal has 7 sleeping units, instead of the maximum of 4 (Reference Section 140.4.25(a))

2. Minimum Site Area - The Site has 619.92m², instead of 1400m² (Reference Section 140.4.25(b)) [unedited]

<i>Section 76 – Lodging Houses (Edmonton Zoning Bylaw 12800)</i>

In addition to the regulations in Section 96 of this Bylaw, Lodging Houses shall comply with the following regulations:

1. The maximum occupancy of a Lodging House in a Zone where Lodging Houses are a Discretionary Use shall be a maximum of 6 residents;
2. The maximum occupancy of a Lodging House in a Zone where Lodging Houses are a Permitted Use shall be the greater of 6 residents or 1 resident per 60 m² of Lot size;
3. The Development Officer may restrict the occupancy of a Lodging House to less than the maximum number of residents allowed having regard for the threshold purpose identified in Section 96, the level of traffic generation, parking demand, and frequency of visits by emergency vehicles relative to that which is characteristic of the Zone in which the Lodging House is located;

4. A Lodging House shall be developed as either a purpose-built freestanding structure, or Single Detached Housing converted for the purpose, or part of an Apartment Housing development;
5. A Lodging House may be located in Duplex Housing or Semi-detached Housing converted for the purpose in a Zone where Lodging Houses are a Permitted Use and both units are operated by a single provider;
6. In a Zone where Lodging Houses are a Permitted Use and where more than 12 Sleeping Units are allowed in a development, Sleeping Units may include limited food preparation facilities such as bar fridge, mini-sink, and microwave;
7. No Major Home Based Business, Secondary Suite, Garden Suite or Garage Suite shall be permitted as part of a Lodging House development or on the Site of such development;
8. Where a Lodging House is designed as a freestanding structure it shall be of a size, scale, and outward appearance that is typical of surrounding residential development; and
9. Increases in vehicular traffic generation and parking demand must be to the satisfaction of the Development Officer and/or Transportation Services.

<p><i>Lodging Houses Thresholds (Edmonton Zoning Bylaw 12800)</i></p>
--

Section 96 provides the following with respect to *Lodging Houses Thresholds*:

1. Special Residential Facilities

For the purpose of this section, Fraternity and Sorority Housing, Group Homes, Limited Group Homes, and Lodging Houses shall be collectively referred to as Special Residential Facilities. Group Homes developed in combination with Apartment Housing either in one building or on one Site, and which meet the criteria of Section 94, Supportive Community Provisions, shall be exempt from the requirements of subsection 96(3)(b) and (c) of this Bylaw.

2. Threshold Purpose

The purpose of the Fraternity and Sorority Housing, Limited Group Homes, Group Homes, and Lodging Houses Thresholds is to:

- a. ensure that the capacity of any neighbourhood to accommodate Special Residential Facilities is not exceeded;

- b. ensure that Special Residential Facilities are available in all neighbourhoods; and
- c. protect existing Special Residential Facilities from concentration that could impair their proper functioning.

3. General Regulations

Special Residential Facilities shall comply with all thresholds contained in this Section in addition to any other regulations in this Bylaw including any relevant Special Land Use Provisions that apply. In all cases, the most restrictive threshold shall apply.

- a. When determining the threshold for the number of Special Residential Facilities per neighbourhood, a maximum of 3 facilities per 1000 persons shall be allowed in any neighbourhood.
- b. When determining the threshold for the number of Special Residential Facilities by Use per block.
 - i. a maximum of 2 Special Residential Facilities shall be allowed on a single block in a residential Zone;
 - ii. a maximum block length of 150 m measured from the nearest intersection shall be used to determine this threshold.
- c. When determining the threshold for the number of residents of Special Residential Facilities per opposing block face;
 - i. accommodation for a maximum of 12 residents shall be allowed on an opposing block face in Special Residential Facilities in any residential Zone where either Group Homes or Lodging Houses are a Discretionary Use;
 - ii. accommodation for a maximum of 30 residents shall be allowed on an opposing block face in Special Residential Facilities in any residential Zone where either Group Homes or Lodging Houses are a Permitted Use; and
 - iii. a maximum block face length of 150 m measured from the nearest intersection shall be used to determine this threshold.

4. Density


For the purposes of calculating Density for a Group Home or Lodging House each Sleeping Unit shall be considered a Dwelling when a development contains seven or more Sleeping Units.

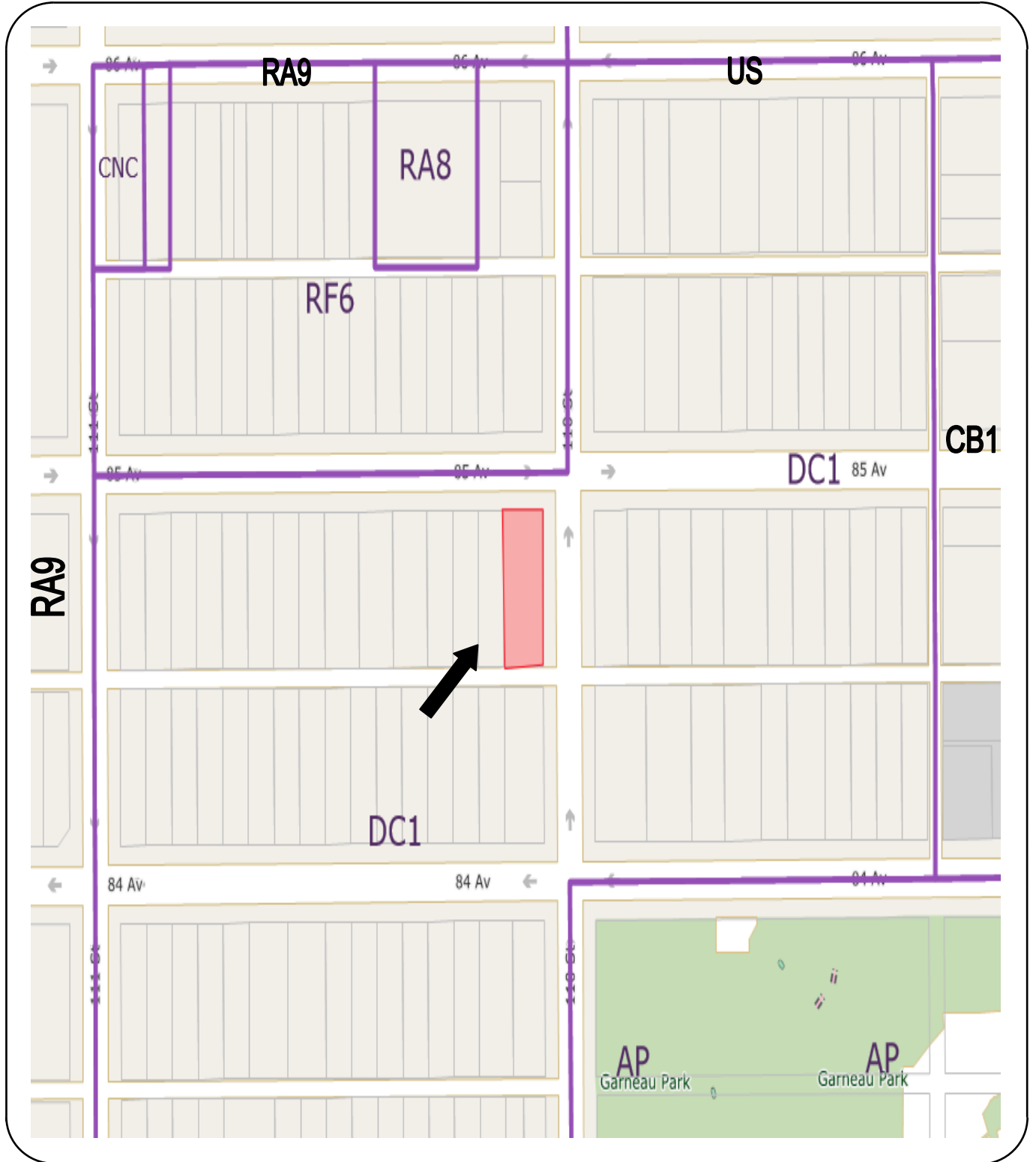
5. Register

For the purpose of applying these regulations the Development Officer shall maintain a register of all approved Special Residential Facilities. The register shall include the address of the facility, maximum occupancy of the facility, and any other necessary information.

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: 274185671-001 Application Date: FEB 06, 2018 Printed: May 2, 2018 at 3:45 PM Page: 1 of 1		
This document is a Development Permit Decision for the development application described below.				
Applicant	Property Address(es) and Legal Description(s) 11003 - 85 AVENUE NW Plan I23A Blk 161 Lot 32			
	Specific Address(es) Suite: 11003 - 85 AVENUE NW Entryway: 11003 - 85 AVENUE NW Building: 11003 - 85 AVENUE NW			
Scope of Application To change use from Single Detached House to Lodging House (7 sleeping units)				
Permit Details				
Class of Permit: Class B Gross Floor Area (sq.m.): New Sewer Service Required: N Site Area (sq. m.):	Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: 6 Stat. Plan Overlay/Annex Area: Garneau			
I/We certify that the above noted details are correct. Applicant signature: _____				
Development Application Decision Refused Reason for Refusal 1. Maximum Sleeping Units - The proposal has 7 sleeping units, instead of the maximum of 4 (Reference Section 140.4.25(a)) 2. Minimum Site Area - The Site has 619.92m2, instead of 1400m2 (Reference Section 140.4.25(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.				
Issue Date: Apr 27, 2018 Development Authority: LANGILLE, BRANDON Signature: _____				
Fees				
	Fee Amount	Amount Paid	Receipt #	Date Paid
Major Dev. Application Fee	\$277.00	\$277.00	04784521	Feb 06, 2018
Development Permit Inspection Fee	\$0.00	\$510.00	04784521	Feb 06, 2018
Dev. Application Fee # of dwelling units	\$150.00	\$150.00	04784521	Feb 06, 2018
Total GST Amount:	\$0.00			
Totals for Permit:	\$427.00	\$937.00		
(overpaid by (\$510.00))				
THIS IS NOT A PERMIT				



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-18-078

