

**SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA**

**Wednesday, 9:00 A.M.
November 7, 2018**

**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-18-184	Install (1) Minor Digital Off-premises Freestanding Sign (Facing East - HINGSTON INVESTMENTS PATTISON) 7218 - 82 Avenue NW Project No.: 136343550-003
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II	10:30 A.M.	SDAB-D-18-185	Operate a Major Home Based Business (Chiropractic services - DR. WILLIAM F. FARRELL CHIROPRACTIC & NEUROREHABILITATION SERVICES), Hours of operation between the hours of 9:30 AM - 6:30 PM from Monday to Friday. Maximum 12 visits per day by appointment only with no overlap, expires on October 5, 2023 118 – Rhatigan Road East NW Project No.: 292950452-001
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III	1:30 P.M.	SDAB-D-18-186	Construct an Accessory Building (detached Garage (12.19m x 24.38m)) 18445 - 122 Avenue NW Project No.: 293886709-001
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NOTE: *Unless otherwise stated, all references to “section numbers” refer to the authority under the Edmonton Zoning Bylaw 12800.*

ITEM I: 9:00 A.M.

FILE: SDAB-D-18-184

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 136343550-003

APPLICATION TO: Install (1) Minor Digital Off-premises
Freestanding Sign (Facing East -
HINGSTON INVESTMENTS |
PATTISON)

DECISION OF THE
DEVELOPMENT AUTHORITY: Refused

DECISION DATE: October 11, 2018

DATE OF APPEAL: October 19, 2018

MUNICIPAL DESCRIPTION
OF SUBJECT PROPERTY: 7218 - 82 Avenue NW

LEGAL DESCRIPTION: Plan 7884AH Blk 27 Lots 14-15

ZONE: (IB) Industrial Business Zone

OVERLAY: N/A

STATUTORY PLAN: N/A

Grounds for Appeal

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

As a representative of Pattison Outdoor Advertising, the Applicant in the above noted matter, and in consideration of the refusal of our Development Permit Application, I hereby appeal the refusal on the following grounds:

1. Minor Digital Off-premises Signs are a Discretionary Use in the IB Zone.

2. The Minor Digital Off-Premises Sign in question has existed at 7218 82 Avenue going as far back as April 2014. This Sign has existed under the same conditions referenced in the refusal for this application since installation. Prior to that, a Freestanding Off-Premises Sign existed on the same property going as far back as 1997.

This Sign co-existed with the conflicting Freestanding Off-Premises Sign 60 meters south for over 10 years.

3. To the extent any variance may be required, it is submitted that granting the same would be appropriate in the circumstances and that the proposed development would not unduly interfere with the amenities of the neighbourhood nor materially interfere with the use, enjoyment or value of neighbouring parcels of land.
4. Such further and other reasons as may be presented at the hearing of this appeal. We look forward to your advice regarding the scheduling of the requested hearing.

<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 written decision is given 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 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.

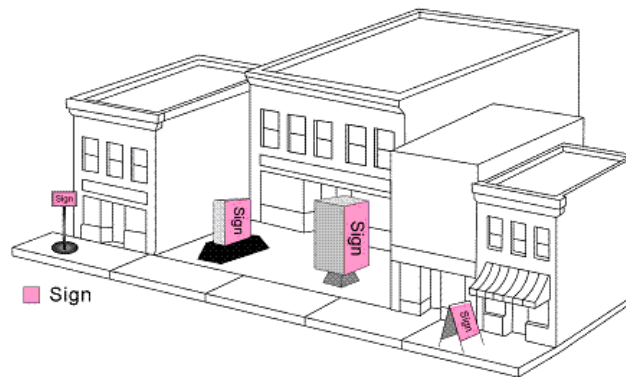
General Provisions from the *Edmonton Zoning Bylaw*:

Under section 400.3(42), **Minor Digital Off-premises Signs** is a **Discretionary Use** in the (IB) Industrial Business Zone.

Under section 7.9(6), **Minor Digital Off-premises Signs** means:

a Freestanding or Fascia Sign that contains Digital Copy, is a Permanent Sign, displays Off-premises Advertising, and does not include moving effects, message transition effects, video images, or animation.

Under section 6.2, **Freestanding Signs** means a Sign supported independently of a building.



Section 400.4(6) states “Signs shall comply with the regulations found in Schedule 59F.”

Section 400.1 states that the **General Purpose** of the (IB) Industrial Business Zone is:

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

Schedule 59F – Sign Regulations

Schedule 59F.3(6)(e) states the following with respect to Minor Digital On-premises Off-premises Signs and Minor Digital Off-premises Signs shall be subject to the following regulations:

proposed Sign locations shall be separated from Signs with Digital Copy greater than 8.0 m² or Off-premises Signs as follows:

Proposed Sign Area	Minimum separation distance from Signs with Digital Copy greater than <u>8.0 m²</u> or Off-premises Signs
Greater than <u>8.0 m²</u> to less than <u>20 m²</u>	<u>100 m</u>
<u>20 m²</u> to <u>40 m²</u>	<u>200 m</u>
Greater than <u>40 m²</u>	<u>300 m</u>

The separation shall be applied from the location of the larger Off-premises Sign or Sign with Digital Copy.

Development Officer’s Determination

1. The proposed Sign location shall be separated from Off-premises Signs greater 8 m² by 100 m. The separation shall be applied from the Sign with Digital Copy (Reference Section 59F.3(5)(d)).

Area of Existing Sign (DP 268910833-001): 18 m²

Location: 7303 – 82 Avenue NW

Required Separation Distance: 100 m

Proposed Separation Distance: 63 m


Deficient by: 37 m [unedited]

Previous Subdivision and Development Appeal Board Decision

Application Number	Description	Decision
SDAB-D-13-098	To convert an Off-Premises Freestanding Sign to a Minor Digital Off-Premises Freestanding Sign (3m x 6m Single Sided Facing East - Reference DP# 000037210-001)	June 7, 2013; that the appeal be ALLOWED and the DEVELOPMENT GRANTED and the deficiency of 40 metres in the minimum required separation distance between Digital Signs or other Off-premises Signs be permitted, subject to conditions.

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: 136343550-003 Application Date: AUG 15, 2018 Printed: October 19, 2018 at 10:56 AM Page: 1 of 2
<h2 style="margin: 0;">Application for Sign Combo Permit</h2>	
This document is a Development Permit Decision for the development application described below.	
Applicant	Property Address(es) and Legal Description(s) 7218 - 82 AVENUE NW Plan 7884AH Blk 27 Lots 14-15
Scope of Application To install (1) Minor Digital Off-premises Freestanding Sign (Facing East - HINGSTON INVESTMENTS PATTISON).	
Permit Details	
ASA Sticker No./Name of Engineer: Construction Value: 100000	Class of Permit: Expiry Date:
Fascia Off-premises Sign: 0 Fascia On-premises Sign: 0 Roof Off-premises Sign: 0 Roof On-premises Sign: 0 Minor Digital On-premises Sign: 0 Minor Digital Off-premises Sign: 1 Minor Digital On/Off-premises Sign: 0	Freestanding Off-premises Sign: 0 Freestanding On-premises Sign: 0 Projecting Off-premises Sign: 0 Projecting On-premises Sign: 0 Replacement Panel on Existing Sign: 0 Comprehensive Sign Design: 0 Major Digital Sign: 0
I/We certify that the above noted details are correct. Applicant signature: _____	
Development Application Decision Refused Issue Date: Oct 11, 2018 Development Authority: MERCIER, KELSEY Reason for Refusal 1. The proposed Sign location shall be separated from Off-premises Signs greater 8 m2 by 100 m. The separation shall be applied from the Sign with Digital Copy (Reference Section 59F.3(5)(d)). Area of Existing Sign (DP 268910833-001): 18 m2 Location: 7303 – 82 Avenue NW Required Separation Distance: 100 m Proposed Separation Distance: 63 m Deficient by: 37 m 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	
THIS IS NOT A PERMIT	



Application for Sign Combo Permit

Project Number: **136343550-003**
Application Date: AUG 15, 2018
Printed: October 19, 2018 at 10:56 AM
Page: 2 of 2

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Sign Dev Appl Fee - Digital Signs	\$451.00	\$451.00	05277994	Aug 22, 2018
Total GST Amount:	<u>\$0.00</u>			
Totals for Permit:	<u>\$451.00</u>	<u>\$451.00</u>		

THIS IS NOT A PERMIT



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-18-184



ITEM II: 10:30 A.M.

FILE: SDAB-D-18-185

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

APPELLANT:

APPLICATION NO.: 292950452-001

APPLICATION TO: Operate a Major Home Based Business
(Chiropractic services - DR. WILLIAM F.
FARRELL CHIROPRACTIC &
NEUROREHABILITATION
SERVICES), Hours of operation between
the hours of 9:30 AM - 6:30 PM from
Monday to Friday. Maximum 12 visits per
day by appointment only with no overlap,
expires on October 5, 2023

DECISION OF THE
DEVELOPMENT AUTHORITY: Approved with conditions

DECISION DATE: October 5, 2018

DATE OF APPEAL: October 18, 2018

NOTIFICATION PERIOD: October 16, 2018 through November 6,
2018

RESPONDENT: W. Farrell

MUNICIPAL DESCRIPTION
OF SUBJECT PROPERTY: 118 – Rhatigan Road East NW

LEGAL DESCRIPTION: Plan 8621495 Blk 107 Lot 15

ZONE: (RF1) Single Detached Residential Zone

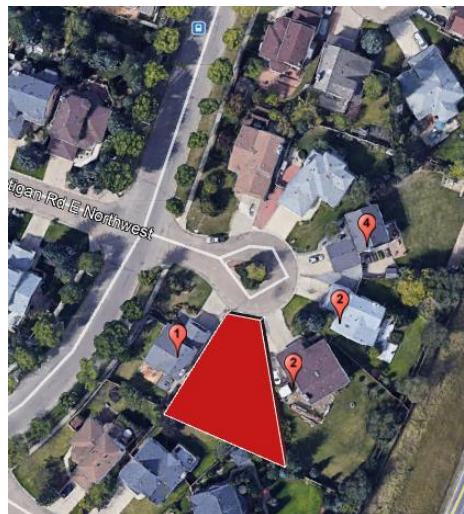
OVERLAY: N/A

STATUTORY PLAN(S): Rhatigan Ridge Neighbourhood Structure
Plan
Riverbend Area Structure Plan

Grounds for Appeal

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

We wish to appeal the above noted approval based on the fact that in our cul-de sac, which contains seven houses, there are NINE children living in these residences, all under the age of nine years old. The proposed development approval for a major home based business will generate too much traffic for our kids who enjoy playing in the cul-de sac and the green space contained therein. We have outlined below the locations of where these children live. Highlighted in red is the residence for which the application for a major home based business has been filed.



We have tried to build our neighborhood to be one where families can meet and gather with their kids outside, in our cul-de sac. The proposed home based business, where clients who are unfamiliar with the surroundings and the fact that there are children playing about, causes serious safety concerns for our children. The stated maximum visits of 12 visits per day results in a potential 60 additional vehicles entering the area where our kids play PER WEEK. Extrapolated over a 50 working week calendar year, this is 3,000 potential additional vehicles per year that are currently not coming into our cul-de sac, but now could be.

It is our sincere belief that the type of business that has generated this application should be located in an appropriately zoned commercial property, one where the appropriate considerations for traffic and parking have been considered throughout the entirety of the planning and approval process. The application is in essence asking the current residences to change their understanding of the properties they have already invested substantial monies in, and in our mind, this is an unfair request.

It is also our contention that the result of this approval will have an adverse effect on our property values. When it comes time to sell these properties in the open market, a segment of buyers will not consider

these properties because they are located in such proximity to a major home based business that generates the amount of traffic that is stated. Less buyers = less demand and a downward pressure on the achievable market prices for our properties.

But the major concern is that of safety for our children. We ask that the SDAB overturn this approval, for safety reasons. Our children depend on your protection with regards to this matter. We want it stated for the record that should the SDAB not overturn this approval and there is an accident with one of the applicants clients, agents, employees or visitors we will seek the appropriate damages (Including but not limited to from the City of Edmonton) for disregarding our raised concerns through this appeal process.

<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 110.3(5) states a **Major Home Based Business** is a **Discretionary Use** in the (RF1) Single Detached Residential 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 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.

Development Officer's Determination

Discretionary Use - Major Home Based Business is approved as a Discretionary Use (Section 110.3(5)). [unedited]

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.

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: 292950452-001 Application Date: SEP 19, 2018 Printed: October 18, 2018 at 11:49 AM Page: 1 of 3		
Home Occupation			
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) 118 - RHATIGAN ROAD EAST NW Plan 8621495 Blk 107 Lot 15		
Scope of Permit To operate a Major Home Based Business. (Chiropractic services - DR. WILLIAM F. FARRELL CHIROPRACTIC & NEUROREHABILITATION SERVICES), Hours of operation between the hours of 9:30 AM - 6:30 PM from Monday to Friday. Maximum 12 visits per day by appointment only with no overlap. Expires on October 5, 2023.			
Permit Details <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none; vertical-align: top;"> # of businesss related visits/day: 12 Administration Office Only?: N Class of Permit: Class B Do you live at the property?: N Outdoor storage on site?: N </td> <td style="width: 50%; border: none; vertical-align: top;"> # of vehicles at one time: 2 Business has Trailers or Equipment?: N Description of Business: Administrative office and chiropractic services. Hours of operation between the hours of 9:30 AM - 6:30 PM from Monday to Friday. Maximum 12 visits per day by appointment only with no overlap. Expires on October 5, 2023. Expiry Date: 2023-10-05 00:00:00 </td> </tr> </table>		# of businesss related visits/day: 12 Administration Office Only?: N Class of Permit: Class B Do you live at the property?: N Outdoor storage on site?: N	# of vehicles at one time: 2 Business has Trailers or Equipment?: N Description of Business: Administrative office and chiropractic services. Hours of operation between the hours of 9:30 AM - 6:30 PM from Monday to Friday. Maximum 12 visits per day by appointment only with no overlap. Expires on October 5, 2023. Expiry Date: 2023-10-05 00:00:00
# of businesss related visits/day: 12 Administration Office Only?: N Class of Permit: Class B Do you live at the property?: N Outdoor storage on site?: N	# of vehicles at one time: 2 Business has Trailers or Equipment?: N Description of Business: Administrative office and chiropractic services. Hours of operation between the hours of 9:30 AM - 6:30 PM from Monday to Friday. Maximum 12 visits per day by appointment only with no overlap. Expires on October 5, 2023. Expiry Date: 2023-10-05 00:00:00		
I/We certify that the above noted details are correct. Applicant signature: _____			
Development Permit Decision Approved Issue Date: Oct 05, 2018 Development Authority: POTTER, CHRISTINA			
(Empty space for additional notes or comments)			



Project Number: **292950452-001**
 Application Date: SEP 19, 2018
 Printed: October 18, 2018 at 11:49 AM
 Page: 2 of 3

Home Occupation

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 12 visits associated with the business per day.
6. Clients visit must be by-appointment only and appointments shall not overlap.
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. Hours of operations must be between 9:30 AM and 6:30 PM from Monday to Friday.
13. The business must only operate in the main floor of house.
14. 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 ****October 5, 2023****.

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

Discretionary Use - Major Home Based Business is approved as a Discretionary Use (Section 110.3(5)).



Project Number: **292950452-001**
Application Date: SEP 19, 2018
Printed: October 18, 2018 at 11:49 AM
Page: 3 of 3

Home Occupation

Rights of Appeal

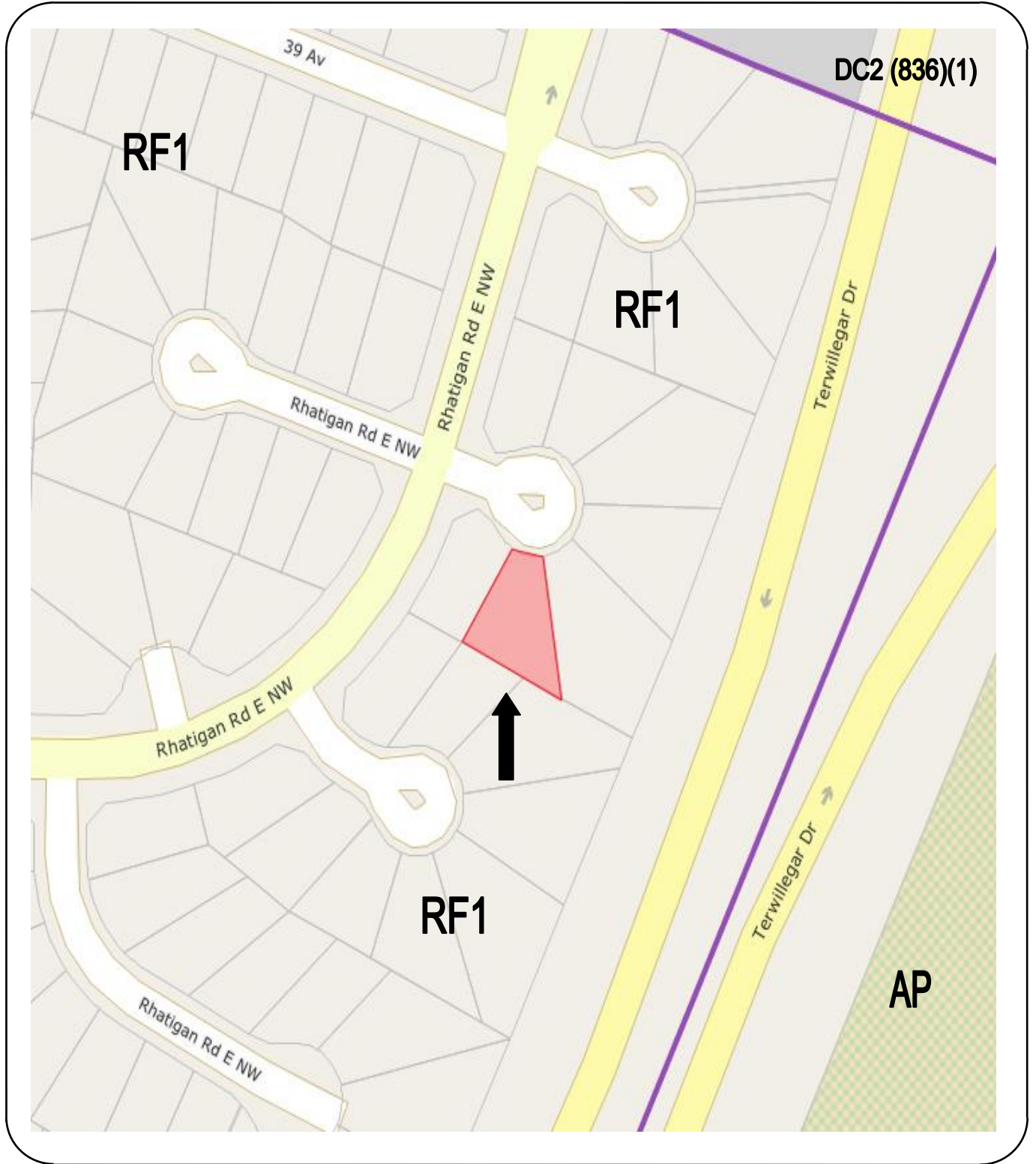
This approval is subject to the right of appeal as outlined in Chapter 24, Section 683 through 689 of the Municipal Government Amendment Act.

Notice Period Begins: Oct 16, 2018

Ends: Nov 06, 2018

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Dev. Application Fee	\$316.00	\$316.00	05344128	Sep 19, 2018
Total GST Amount:	\$0.00			
Totals for Permit:	<u>\$316.00</u>	<u>\$316.00</u>		



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-18-185



ITEM III: 1:30 P.M.

FILE: SDAB-D-18-186

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 293886709-001

APPLICATION TO: Construct an Accessory Building
(detached Garage (12.19m x 24.38m))

DECISION OF THE
DEVELOPMENT AUTHORITY: Refused

DECISION DATE: October 16, 2018

DATE OF APPEAL: October 18, 2018

MUNICIPAL DESCRIPTION
OF SUBJECT PROPERTY: 18445 - 122 Avenue NW

LEGAL DESCRIPTION: Plan 9323292 Lot 11A

ZONE: DC2.369 Site Specific Development
Control Provision

OVERLAY: N/A

STATUTORY PLAN: Kinokamau Plains Area Structure Plan

Grounds for Appeal

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

We applied for the permit to build a garage 12.19m x 24.38m which is taller than what allowed by bylaw. DP has been refused. But we can't comprehend that most accessory building / structures in the neighborhood exceed the limit, some are with mezzanines or 2nd floors. This is the reason we want to appeal.

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.

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, [...]

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*.

General Provisions from the DC2.369 Site Specific Development Control Provision:

Under DC2.369.3.a, **Single Detached Housing** is a **listed Use** in the DC2.369 District.

DC2.369.1 states that the **General Purpose** of the **DC2.369 District** is:

To establish a Site Specific Development Control District to accommodate rural residential development on lots a minimum of 0.4 ha in size, without the full range of piped urban utility services. The proposed District provides an interim solution to fulfil City Council's directive that Mooncrest Park be designated as a residential development, recognizing the current rural unserved nature of the area and the long term likelihood of neighbourhood area structure plans being prepared for the Mooncrest Park Subdivision and adjacent areas, as proposed in the Kinokamau Plains Servicing Concept Design Brief.

DC2.369.4.c states “The maximum building height shall be 10 m (32.8 ft.) or 2½ storeys.”

DC2.369.4.h states “An Accessory Building or Structure shall be in accordance with Section 61.3 of the Land Use Bylaw.”

General Provisions from the *Edmonton Land Use Bylaw 5996*

Under section 9.1(2), **Accessory** means “when used to describe a use or building, a use or building naturally or normally incidental, subordinate, and exclusively devoted to the principal use or building, and located on the same lot or site.”

Under section 9.1(25), **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 9.1(16), **District** means:

a specific group of listed Use Classes and Development Regulations which regulate the use and development of land within specific geographic areas of the City. The Use Classes and Development Regulations are contained in Parts II, IV and V of this Bylaw, and may be subject to the regulations contained in Part I of this Bylaw, while the geographic areas to which they apply are shown on the Land Use District Map, comprising Part III of the Bylaw.

Accessory Buildings in Non-residential Districts

Section 61.2 states the following with respect to Accessory Buildings in Non-residential Districts

- 1) In any District other than a Residential District, an Accessory Building or Structure is subject to the Development Regulations for that District.

...

Accessory Buildings in Residential Districts

Height

Section 61.3 states the following with respect to Accessory Buildings in Residential Districts:

In a Residential District:

...

- 2) an Accessory Building or Structure shall not exceed 3.7 m (12.0 ft.) nor one storey in Height, except as provided in Sections 61.4 and 61.5;

...

Under section 9.1(28), **Height** means:

when used with reference to a building or structure, the vertical distance between the horizontal plane through grade and a horizontal plane through:

- a) the highest point of the roof in the case of a building with a flat roof or a roof having a slope of less than 20 degrees; and
- b) the average level between eaves and ridges in the case of a pitched, gambrel, mansard or hipped roof, or a roof having a slope of more than 20 degrees; provided that in such cases the ridge line of the roof shall not extend more than 1.5 m (4.9 ft.) above the maximum permitted building Height of the District.

Development Officer's Determination

An Accessory Building or Structure shall not exceed 3.7m (12 ft) nor one storey in Height. (Reference Section DC2 (369)(4)(h) and Land Use Bylaw 61.3(2))


**Proposed Height: 4.29 m
Exceeds by: 0.59m**

DC2 (369)(4)(h) - An Accessory Building or Structure shall be in accordance with Section 61.3 of the Land Use Bylaw.

Land Use Bylaw 61.3(2) - 2) - an Accessory Building or Structure shall not exceed 3.7 m (12.0 ft.) nor one storey in Height [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: 293886709-001 Application Date: SEP 28, 2018 Printed: October 16, 2018 at 10:07 AM Page: 1 of 2																				
<h2 style="margin: 0;">Application for Accessory Building Permit</h2>																					
This document is a Development Permit Decision for the development application described below.																					
Applicant	Property Address(es) and Legal Description(s) 18445 - 122 AVENUE NW Plan 9323292 Lot 11A Location(s) of Work Entryway: 18445 - 122 AVENUE NW Building: 18445 - 122 AVENUE NW																				
Scope of Application To construct an Accessory Building (detached Garage (12.19m x 24.38m)).																					
Permit Details																					
Class Of Permit: Stat. Plan Overlay/Annex Area: (none)	Site Area (sq. m.): 8090.99																				
I/We certify that the above noted details are correct. Applicant signature: _____																					
Development Application Decision Refused Issue Date: Oct 16, 2018 Development Authority: WATTS, STACY Reason for Refusal An Accessory Building or Structure shall not exceed 3.7m (12 ft) nor one storey in Height. (Reference Section DC2 (369)(4)(h) and Land Use Bylaw 61.3(2)) Proposed Height: 4.29 m Exceeds by: 0.59m DC2 (369)(4)(h) - An Accessory Building or Structure shall be in accordance with Section 61.3 of the Land Use Bylaw. Land Use Bylaw 61.3(2) - 2) - an Accessory Building or Structure shall not exceed 3.7 m (12.0 ft.) nor one storey in Height 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-collapse: collapse;"> <thead> <tr> <th style="width: 60%;"></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>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;">05376670</td> <td style="text-align: right;">Sep 28, 2018</td> </tr> <tr> <td>Dev Application Fee</td> <td style="text-align: right;">\$116.00</td> <td style="text-align: right;">\$116.00</td> <td style="text-align: right;">05376670</td> <td style="text-align: right;">Sep 28, 2018</td> </tr> <tr> <td>Building Permit Fee (Accessory Building)</td> <td style="text-align: right;">\$108.00</td> <td style="text-align: right;">\$108.00</td> <td style="text-align: right;">05376670</td> <td style="text-align: right;">Sep 28, 2018</td> </tr> </tbody> </table>			Fee Amount	Amount Paid	Receipt #	Date Paid	Safety Codes Fee	\$4.50	\$4.50	05376670	Sep 28, 2018	Dev Application Fee	\$116.00	\$116.00	05376670	Sep 28, 2018	Building Permit Fee (Accessory Building)	\$108.00	\$108.00	05376670	Sep 28, 2018
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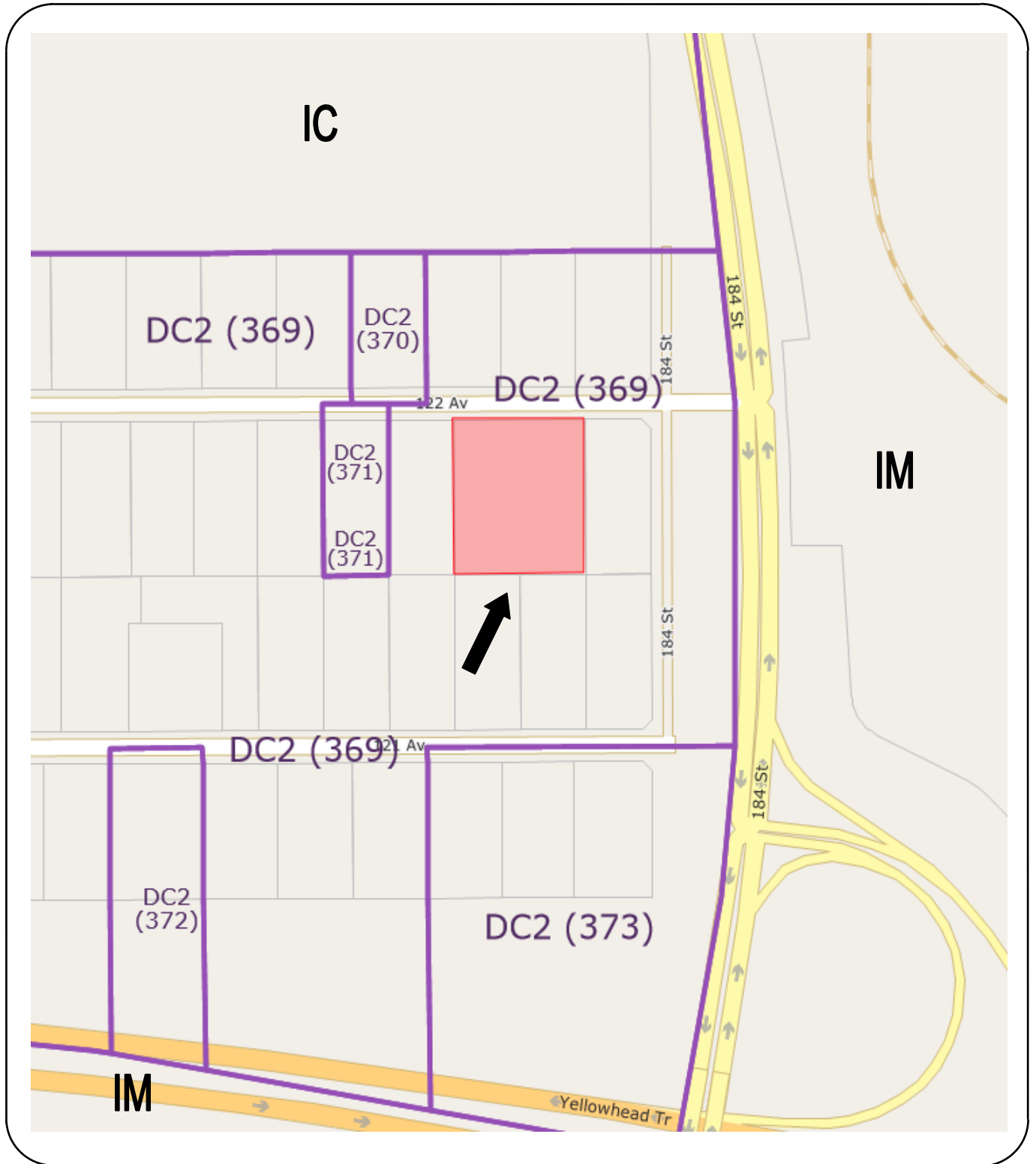
Application for Accessory Building Permit

Project Number: **293886709-001**
Application Date: SEP 28, 2018
Printed: October 16, 2018 at 10:07 AM
Page: 2 of 2

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Total GST Amount:	\$0.00			
Totals for Permit:	<u>\$228.50</u>	<u>\$228.50</u>		

THIS IS NOT A PERMIT



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-18-186

