

**SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA**

**Wednesday, 9:00 A.M.
November 20, 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-19-202	Construct a Single Detached House with Unenclosed Front Porch, balcony, Basement development (NOT to be used as an additional Dwelling) and fireplace, and to demolish an existing Single Detached House 7707 - 112S Avenue NW Project No.: 326683306-001
<hr/>			
II	10:30 A.M.	SDAB-D-19-203	Operate a Major Home Based Business (Bed and Breakfast - Airbnb with 1 Sleeping Unit) 9366 – Cameron Avenue NW Project No.: 340735686-001
<hr/>			
III	1:30 P.M.	SDAB-D-19-204	Change the use from a General Retail Store to a Cannabis Retail Sales, and construct interior alterations 9325 - 156 Street NW Project No.: 344042295-002

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-19-202

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 326683306-001

APPLICATION TO: Construct a Single Detached House with Unenclosed Front Porch, balcony, Basement development (NOT to be used as an additional Dwelling) and fireplace, and to demolish an existing Single Detached House

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: October 28, 2019

DATE OF APPEAL: November 4, 2019

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 7707 - 112S Avenue NW

LEGAL DESCRIPTION: Plan 4587AK Blk 1 Lot 12

ZONE: (RF1) Single Detached Residential Zone

OVERLAY(S): Mature Neighbourhood Overlay
North Saskatchewan River Valley and Ravine System Protection Overlay

STATUTORY PLAN: Cromdale/Virginia Park Area
Redevelopment Plan

Grounds for Appeal

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

I am filing an appeal for development permit (File 326683306-001) as it is in my opinion that development will not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land. The reasons for our appeal include, but are not limited to:

- a. The Single Detached Housing is a Permitted Use in the RF1 Single Detached Residential Zone.
- b. The additional height is contained within the first 11.53 metres (16.76m total) of the house, which means shadowing will not impact the use or enjoyment adjacent south facing yards.
- c. Sought and earned community support before making my development permit application. This includes support from both of my immediate neighbours. I would greatly appreciate the time and consideration of the Subdivision and Development Appeal Board to hear this appeal given our above noted reasons.

<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 110.2(7), **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 states that 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.

Section 811.1 states that the **General Purpose** of the **North Saskatchewan River Valley and Ravine System Protection Overlay** is “to provide a development Setback from the North Saskatchewan River Valley and Ravine System.”

<i>Height</i>

Section 814.3(5) states “The maximum Height shall not exceed 10.0 m in the RF5 Zone and 8.9 m in all other Zones.”

Section 52.2(c) states:

In determining whether a development conforms to the maximum Height permissible in any Zone, the following regulations shall apply:

...

- c. 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 m 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.

Under section 6.1, **Height** means “a vertical distance between two points.”

Development Officer’s Determination

Maximum Height - The maximum Height shall not exceed 10.0m in the RF5 Zone and 8.9m in all other Zones. (Section 814.3.5)

Height to Peak - 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 1.5m 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. (Section 52.2.c) [unedited]

Community Consultation

Section 814.5(1) states the following with respect to Proposed Variances:

When the Development Officer receives a Development Permit Application for a new principal building, or a 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) and 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 1	The municipal address and assessed owners of the land wholly or partially located within a distance of <u>60.0 m</u> 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 <u>60.0 m</u> of the Site of the proposed development and the President of each Community League	814.3(5) - Height

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: 326683306-001 Application Date: JUL 30, 2019 Printed: October 28, 2019 at 9:05 AM Page: 1 of 2																				
<h2 style="margin: 0;">Application for Minor Development Permit</h2>																					
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Scope of Application To construct a Single Detached House with Unenclosed Front Porch, balcony, Basement development (NOT to be used as an additional Dwelling) and fireplace, and to demolish an existing Single Detached House.																					
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I/We certify that the above noted details are correct. Applicant signature: _____																					
Development Application Decision Refused Issue Date: Oct 28, 2019 Development Authority: PAYNE, KYLE Reason for Refusal Maximum Height - The maximum Height shall not exceed 10.0m in the RF5 Zone and 8.9m in all other Zones. (Section 814.3.5) Height to Peak - 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 1.5m 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. (Section 52.2.c) Rights of Appeal The Applicant has the right of appeal within 21 days after the date on which the decision is made, as outlined in Section 683 through 689 of the Municipal Government Act.																					
Fees <table style="width: 100%; border: none;"> <thead> <tr> <th style="width: 60%;"></th> <th style="width: 10%;">Fee Amount</th> <th style="width: 10%;">Amount Paid</th> <th style="width: 10%;">Receipt #</th> <th style="width: 10%;">Date Paid</th> </tr> </thead> <tbody> <tr> <td>Dev. Application Fee</td> <td>\$493.00</td> <td>\$493.00</td> <td>865788008217001</td> <td>Aug 08, 2019</td> </tr> <tr> <td>Lot Grading Fee</td> <td>\$145.00</td> <td>\$145.00</td> <td>865788008217001</td> <td>Aug 08, 2019</td> </tr> <tr> <td>Development Permit Inspection Fee</td> <td>\$207.00</td> <td>\$207.00</td> <td>865788008217001</td> <td>Aug 08, 2019</td> </tr> </tbody> </table>			Fee Amount	Amount Paid	Receipt #	Date Paid	Dev. Application Fee	\$493.00	\$493.00	865788008217001	Aug 08, 2019	Lot Grading Fee	\$145.00	\$145.00	865788008217001	Aug 08, 2019	Development Permit Inspection Fee	\$207.00	\$207.00	865788008217001	Aug 08, 2019
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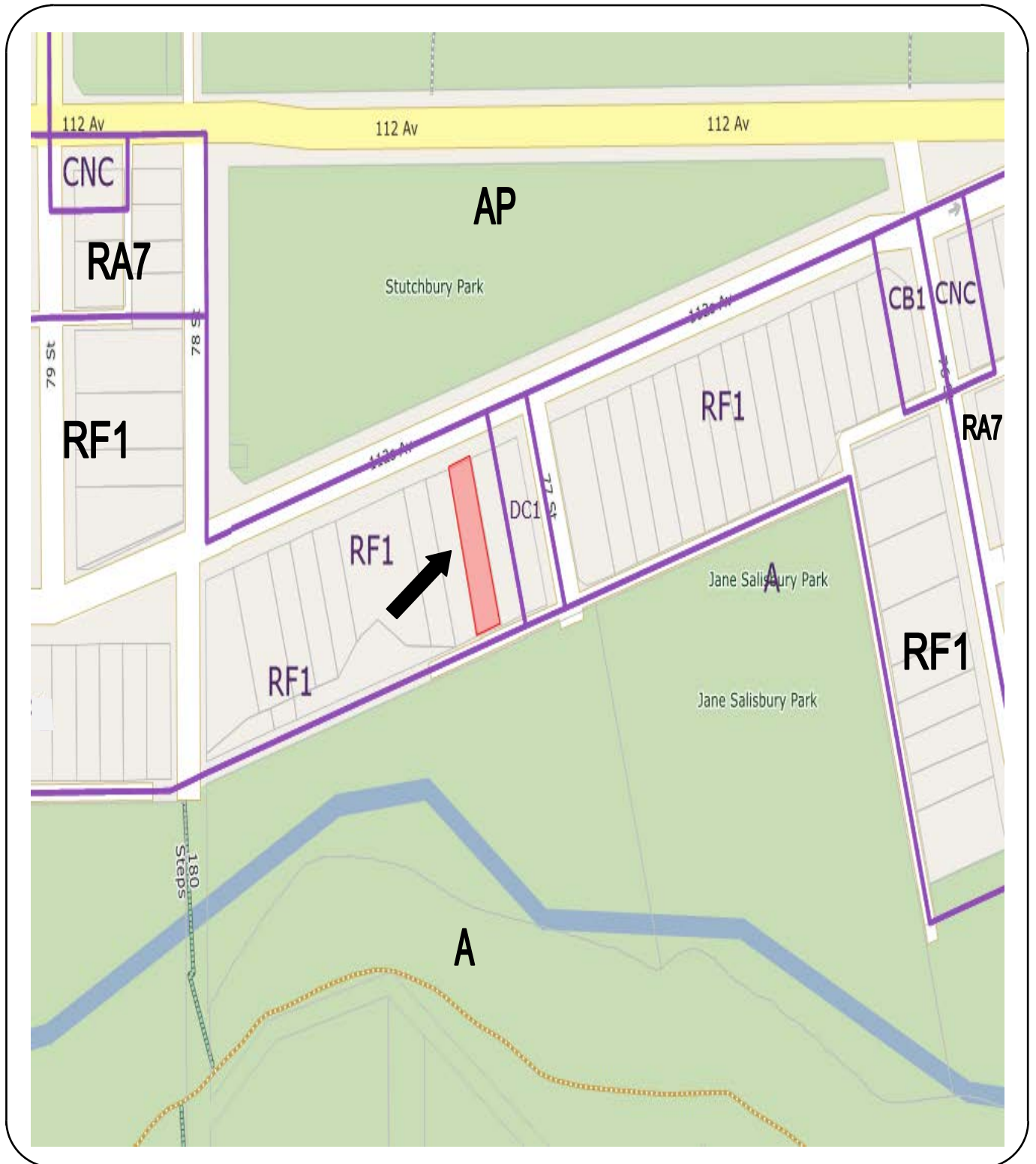
Application for Minor Development Permit

Project Number: **326683306-001**
Application Date: JUL 30, 2019
Printed: October 28, 2019 at 9:05 AM
Page: 2 of 2

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Total GST Amount:	\$0.00			
Totals for Permit:	\$845.00	\$845.00		

THIS IS NOT A PERMIT



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-19-202



ITEM II: 10:30 A.M.

FILE: SDAB-D-19-203

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 340735686-001

APPLICATION TO: Operate a Major Home Based Business
(Bed and Breakfast - Airbnb with 1
Sleeping Unit)

DECISION OF THE
DEVELOPMENT AUTHORITY: Refused

DECISION DATE: October 28, 2019

DATE OF APPEAL: November 3, 2019

MUNICIPAL DESCRIPTION
OF SUBJECT PROPERTY: 9366 – Cameron Avenue NW

LEGAL DESCRIPTION: Plan 194AW Lots A,X

ZONE: (RF2) Low Density Infill Zone

OVERLAY: Mature Neighbourhood Overlay

STATUTORY PLAN: Riverdale Area Redevelopment Plan

Grounds for Appeal

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

Reason for refusal: Insufficient off street parking available

Reasons that off street parking is not required:

Our occasional Airbnb guests don't drive. They book with us because our residence is within walking distance of:

- Citadel Theater: 1.3 km
- Canada Place: 800m
- Edmonton Convention Centre: 700m
- Italian Centre Shop: 1.7km
- Rogers Place: 1.9km

Transit options available- When our guests do need to travel to the University or Northlands Coliseum they take the LRT which they can access by a 1.1km walk.

If their destination is not on the LRT line then they can access it by bus from a stop 350m from our front door.

In addition Taxicabs, Uber, Turo, and Lyft are readily available. We're also in the pilot area for POGO car share.

Our Airbnb would not result in increased traffic or negatively affect the neighbourhood since we only ever host 1 guest at a time and IF they did bring a vehicle then there would only be one car on the rare occasion that a guest drives. Traffic and parking would be more heavily affected if we opted to have a permanent full-time roommate, for which no permits are required.

In the event that a guest does bring a car and needs to park at our residence during the day between the hours of 10 am and 4pm then they would use one of our 2 passes since both of the permanent residents (us) work during the day.

<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

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- (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 120.3(5), **Major Home Based Business** is a **Discretionary Use** within the **(RF2) Low Density Infill Zone**.

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

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.

Under section 6.1, **Bed and Breakfast Operation** means “a Dwelling where temporary sleeping accommodations, with or without meals, are provided for remuneration to members of the public.”

Section 120.1 states that the **General Purpose** of the **(RF2) Low Density Infill Zone** is “to allow for Single Detached Housing, infill on narrow lots, Semi-detached Housing, Duplex Housing, 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>Parking</i>

Section 54.2, Schedule 1(A)(8)(a) states:

Use of Building or Site	Minimum Number of Parking Spaces Required
Major Home Based Business Except:	1 parking space in addition to parking required for principal Dwelling.
a. Bed and Breakfast	1 parking space per guest room is required in addition to the parking required for the principal Dwelling.

Section 54.2, Schedule 1(A)(3) states:

Use of Building or Site	Minimum Number of Parking Spaces Required
Single Detached Housing	1 parking spaces per Dwelling

Development Officer’s Determination

This Major Home Based Business (Bed and Breakfast) application is refused for the following reasons:

1) For Bed and breakfast operation, 1 parking space per guest room is required in addition to the parking required for the principal Dwelling (Section 54.2 and Schedule 1(A)).

Required: 2 parking spaces
Proposed: 0 parking spaces
Deficient: 2 parking spaces
 [unedited]

Section 75 – Major Home Based Business Regulations

Under 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;
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; and
10. a Major Home Based Business shall not be allowed within the same principal Dwelling containing a Secondary Suite or within the same Site containing a Garden Suite and an associated principal Dwelling, unless the Home Based Business is a Bed and Breakfast Operation and the Secondary Suite or the Garden Suite is an integral part of the Bed and Breakfast Operation.

Development Officer's Determination

2) The 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).

There are no parking spaces available on this property. On-street parking is available through the residential parking program. Residents are only permitted 2 parking permits per address per year, and there are two vehicles registered to this property. Additional on-street parking will generate vehicular traffic and parking in the neighbourhood.

NOTES:


- This property is a non-conforming site (no parking spaces available). It no longer conforms to current zoning rules, which may have changed since it was originally constructed.


- Parking Services does not support this business request on Cameron Avenue. The permit program does not support the use of a residential house for a business given it cannot provide at least one stall for the guest off street.

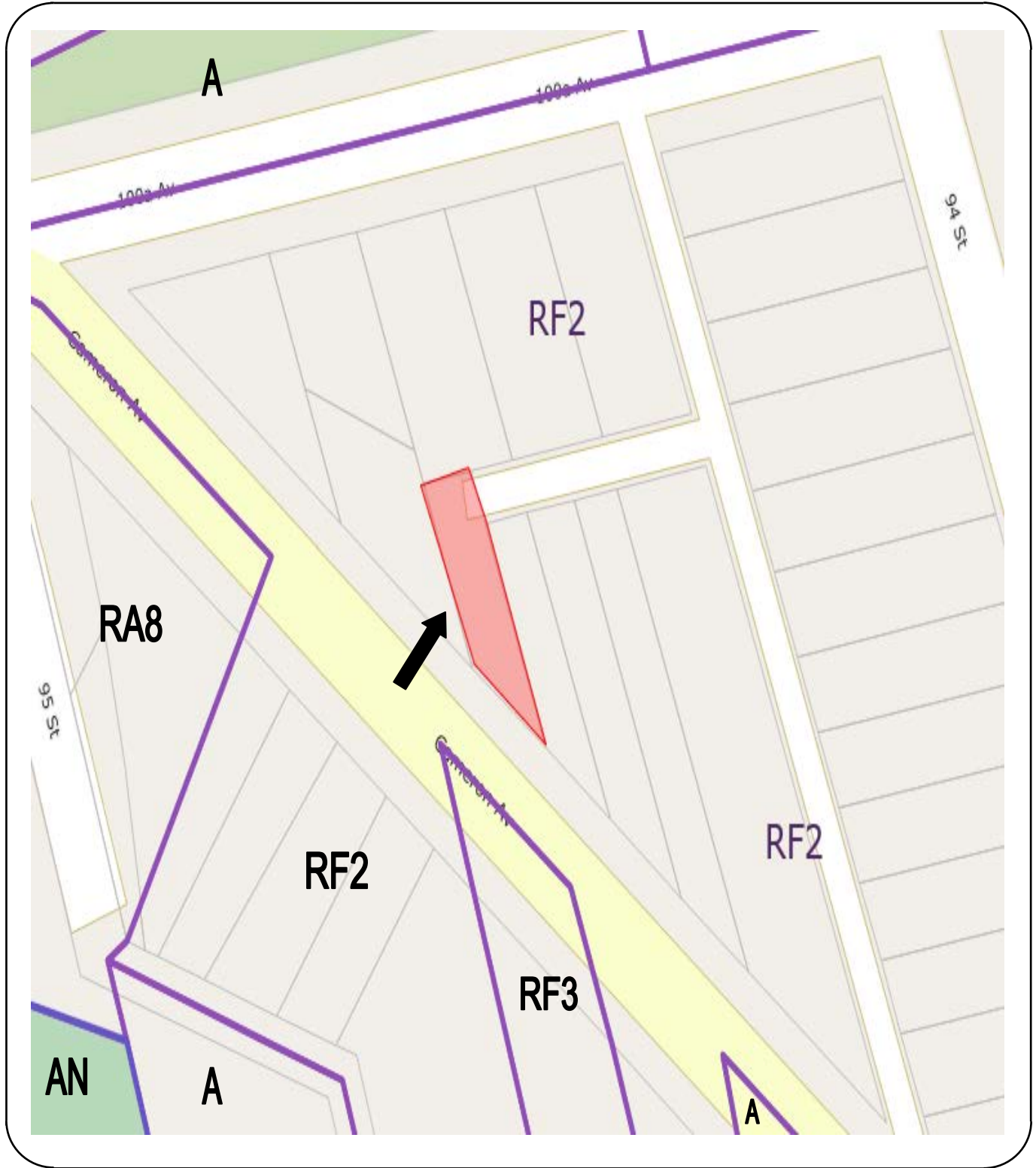
[unedited]

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: 340735686-001 Application Date: SEP 11, 2019 Printed: October 28, 2019 at 12:36 PM Page: 1 of 2		
<h2>Application for Home Occupation</h2>			
This document is a Development Permit Decision for the development application described below.			
Applicant	Property Address(es) and Legal Description(s) 9366 - CAMERON AVENUE NW Plan 194AW Lots A,X Specific Address(es) Suite: 9366 - CAMERON AVENUE NW Entryway: 9366 - CAMERON AVENUE NW Building: 9366 - CAMERON AVENUE NW		
Scope of Application To operate a Major Home Based Business (Bed and Breakfast - Airbnb with 1 Sleeping Unit).			
Permit Details <table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> # of businesss related visits/day: 1 Administration Office Only?: N Class of Permit: Class B Do you live at the property?: Y Outdoor storage on site?: N </td> <td style="width: 50%; vertical-align: top;"> # of vehicles at one time: 1 Business has Trailers or Equipment?: N Description of Business: Not a full bed and breakfast, renting a single bedroom on airbnb within our home. Expiry Date: </td> </tr> </table>		# of businesss related visits/day: 1 Administration Office Only?: N Class of Permit: Class B Do you live at the property?: Y Outdoor storage on site?: N	# of vehicles at one time: 1 Business has Trailers or Equipment?: N Description of Business: Not a full bed and breakfast, renting a single bedroom on airbnb within our home. Expiry Date:
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I/We certify that the above noted details are correct.			
Applicant signature: _____			
Development Application Decision Refused Issue Date: Oct 28, 2019 Development Authority: YEUNG, KENNETH			
THIS IS NOT A PERMIT			

	<h2 style="margin: 0;">Application for Home Occupation</h2>	<p>Project Number: 340735686-001 Application Date: SEP 11, 2019 Printed: October 28, 2019 at 12:36 PM Page: 2 of 2</p>																				
<p>Reason for Refusal</p> <p>This Major Home Based Business (Bed and Breakfast) application is refused for the following reasons:</p> <p>1) For Bed and breakfast operation, 1 parking space per guest room is required in addition to the parking required for the principal Dwelling (Section 54.2 and Schedule 1(A)).</p> <p>Required: 2 parking spaces Proposed: 0 parking spaces Deficient: 2 parking spaces</p> <p>2) The 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).</p> <p>There are no parking spaces available on this property. On-street parking is available through the residential parking program. Residents are only permitted 2 parking permits per address per year, and there are two vehicles registered to this property. Additional on-street parking will generate vehicular traffic and parking in the neighbourhood.</p> <p>NOTES:</p> <ul style="list-style-type: none"> - This property is a non-conforming site (no parking spaces available). It no longer conforms to current zoning rules, which may have changed since it was originally constructed. - Parking Services does not support this business request on Cameron Avenue. The permit program does not support the use of a residential house for a business given it cannot provide at least one stall for the guest off street. <p>Rights of Appeal</p> <p>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.</p>																						
<p>Fees</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 40%;"></th> <th style="width: 15%; text-align: right;">Fee Amount</th> <th style="width: 15%; text-align: right;">Amount Paid</th> <th style="width: 15%; text-align: right;">Receipt #</th> <th style="width: 15%; text-align: right;">Date Paid</th> </tr> </thead> <tbody> <tr> <td>Dev. Application Fee</td> <td style="text-align: right;">\$321.00</td> <td style="text-align: right;">\$321.00</td> <td style="text-align: right;">06159274</td> <td style="text-align: right;">Sep 23, 2019</td> </tr> <tr> <td>Total GST Amount:</td> <td style="text-align: right; border-top: 1px solid black;">\$0.00</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Totals for Permit:</td> <td style="text-align: right; border-top: 1px solid black; border-bottom: 1px solid black;">\$321.00</td> <td style="text-align: right; border-top: 1px solid black; border-bottom: 1px solid black;">\$321.00</td> <td></td> <td></td> </tr> </tbody> </table>				Fee Amount	Amount Paid	Receipt #	Date Paid	Dev. Application Fee	\$321.00	\$321.00	06159274	Sep 23, 2019	Total GST Amount:	\$0.00				Totals for Permit:	\$321.00	\$321.00		
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Total GST Amount:	\$0.00																					
Totals for Permit:	\$321.00	\$321.00																				
<p>THIS IS NOT A PERMIT</p>																						



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-19-203



ITEM III: 1:30 P.M.

FILE: SDAB-D-19-204

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 344042295-002

APPLICATION TO: Change the use from a General Retail Store to a Cannabis Retail Sales, and construct interior alterations

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: November 6, 2019

DATE OF APPEAL: November 7, 2019

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 9325 - 156 Street NW

LEGAL DESCRIPTION: Plan 1822765 Blk 13 Lot 64

ZONE: (CB2) General Business Zone

OVERLAY: Main Streets Overlay

STATUTORY PLAN: N/A

Grounds for Appeal

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

We are solicitors for CC Growth Corp., whose application (made through their architects) for a development permit for Cannabis Retail Sales at the captioned address was refused on November 6, 2019. We hereby appeal the refusal of our client's development permit application on the grounds that:

- Cannabis Retail Sales is a permitted Use in the CB2 General Business Zone;
- The required reduction in the separation distance from Sherwood Community Park will not have any adverse effect on the

amenities of the neighbourhood, or the use, enjoyment and value of neighbouring parcels of land;

- The proposed development is appropriate at the subject location; and
- Such further and other grounds as may be presented at the hearing of the within appeal.

<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 340.2(6), **Cannabis Retail Sales** is a **Permitted Use** in the **(CB2) General Business Zone**.

Under section 7.4(9), **Cannabis Retail Sales** means:

development used for the retail sale of Cannabis that is authorized by provincial or federal legislation. This Use may include retail sales of Cannabis accessories. This Use does not include Cannabis Production and Distribution.

Under section 6.1, **Cannabis** means:

a cannabis plant and anything referred to in subsection (a) of this definition but does not include anything referred to in subsection (b) of this definition:

- a. Cannabis includes:
 - i. any part of a cannabis plant, including the phytocannabinoids produced by, or found in, such a plant, regardless of whether that part has been processed or not, other than a part of the plant referred to in subsection (b) of this definition.
 - ii. any substance or mixture of substances that contains or has on it any part of such a plant;
 - iii. any substance that is identical to any phytocannabinoid produced by, or found in, such a plant, regardless of how the substance was obtained.
- b. Notwithstanding subsection (a) of this definition, Cannabis does not include:
 - i. a non-viable seed of a cannabis plant;
 - ii. a mature stalk, without any leaf, flower, seed or branch, of such plant;
 - iii. fibre derived from a stalk referred in subsection (b)(ii) of this definition; and
 - iv. the root or any part of the root of such a plant.

Section 340.1 states that the **General Purpose** of the **(CB2) General Business Zone** is “to provide for businesses that require large Sites and a location with good visibility and accessibility along, or adjacent to, major public roadways.”

Section 819.1 states that the **General Purpose** of the **Main Streets Overlay** is:

to encourage and strengthen the pedestrian-oriented character of Edmonton’s main street commercial areas that are located in proximity to residential and transit-oriented areas, by providing visual interest, transparent storefront displays, and amenities for pedestrians.

<i>Section 70 – Cannabis Retail Sales</i>

1. Any Cannabis Retail Sales shall not be located less than 200 m from any other Cannabis Retail Sales. For the purposes of this subsection only:

- a. the 200 m separation distance shall be measured from the closest point of the Cannabis Retail Sales Use to the closest point of any other approved Cannabis Retail Sales Use;
- b. A Development Officer shall not grant a variance to reduce the separation distance by more than 20 m in compliance with Section 11; and
- c. The issuance of a Development Permit which contains a variance to separation distance as described in 70(1)(b) shall be issued as a Class B Discretionary Development.

2. Any Site containing Cannabis Retail Sales shall not be located less than:

- a. 200 m from any Site being used for a public library, at the time of the application for the Development Permit for the Cannabis Retail Sales; and
- b. **100 m from any Site being used for Community Recreation Services Use, a community recreation facility or as public lands at the time of application for the Development Permit for the Cannabis Retail Sales.**

3. For the purposes of subsection 2:

- a. separation distances shall be measured from the closest point of the subject Site boundary to the closest point of another Site boundary, and shall not be measured from Zone boundaries or from the edges of structures;
- b. the term “public library” is limited to the collection of literary, artistic, musical and similar reference materials and learning resources in the form of books, electronic files, computers, manuscripts, recordings and films for public use, and does not include private libraries, museums or art galleries.
- c. the term “community recreation facilities” means indoor municipal facilities used primarily by members of the public to participate in recreational activities conducted at the facilities, as per the Municipal Government Act; and
- d. the term "public lands" is limited to Sites zoned AP, and Sites zoned A.

4. Subsection 105(3) of the Gaming, Liquor and Cannabis *Regulation*, is expressly varied by the following:

- a. any Site containing a Cannabis Retail Sales shall not be located less than:

Public or private education

- i. 200 m from a Site being used for public or private education, at the time of the application for the Development Permit for the Cannabis Retail Sales;

Provincial health care facility

- ii. 100 m from a Site being used for a provincial health care facility at the time of the application for the Development Permit for the Cannabis Retail Sales; and

School reserve or municipal and school reserve

- iii. 100 m from a Site designated as school reserve or municipal and school reserve at the time of the application for the Development Permit for the Cannabis Retail Sales.

Measurement of Separation Distances

- b. For the purposes of this subsection, separation distances shall be measured from the closest point of the subject Site boundary to the closest point of another Site boundary, and shall not be measured from Zone boundaries or from the edges of structures.

Sites Greater than Two Hectares

- c. For Sites that are greater than 2.0 ha in size and zoned either CSC or DC2, that do not contain a public library at the time of application for the Development Permit for the Cannabis Retail Sales:
 - i. Subsection 70(2), and 70(4)(a) shall not apply; and
 - ii. the distances referred to in Subsection 105(3) of the *Gaming, Liquor and Cannabis Regulation* shall be expressly varied to 0 m.
- d. For the purposes of subsection 70(4)(a)(i), the term "public or private education" means a school as defined in subsection (1)(y)(i) and (1)(y)(ii) of the *School Act (as amended from time to time)*.

5. Notwithstanding Section 11 of this Bylaw, a Development Officer shall not grant a variance to subsection 70(2), 70(3)(a) or 70(4).

Design Requirements

6. Cannabis Retail Sales shall include design elements that readily allow for natural surveillance to promote a safe urban environment, where applicable

and to the satisfaction of the Development Officer, including the following requirements:

- a. customer access to the store is limited to a storefront that is visible from the street other than a Lane, or a shopping centre parking lot, or mall access that allows visibility from the interior of the mall into the store;
- b. the exterior of all stores shall have ample transparency from the street;
- c. Any outdoor lighting shall be designed to ensure a well-lit environment for pedestrians and illumination of the property; and
- d. Landscaping shall be low-growing shrubs or deciduous trees with a high canopy at maturity to maintain natural surveillance.

Development Officer's Determination

The proposed Cannabis Retail Store does not comply with the minimum setback requirement from public lands (Sherwood Community Park) (Section 70.2):

Required Setback: 100 m


Proposed Setback: 71 m

Deficient by 29 m

Under Section 70.5 of the Zoning Bylaw, the Development Officer is prohibited from granting a variance to the minimum setback to allow for the proposed Cannabis Retail Store. [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: 344042295-002 Application Date: OCT 17, 2019 Printed: November 7, 2019 at 10:47 AM Page: 1 of 2		
This document is a Development Permit Decision for the development application described below.				
Applicant	Property Address(es) and Legal Description(s) 9325 - 156 STREET NW Plan 1822765 Blk 13 Lot 64			
	Specific Address(es) Suite: 9325 - 156 STREET NW Entryway: 9325 - 156 STREET NW Building: 9325 - 156 STREET NW			
Scope of Application To change the use from a General Retail Store to a Cannabis Retail Sales, and construct interior alterations.				
Permit Details				
Class of Permit: Gross Floor Area (sq.m.): New Sewer Service Required: Site Area (sq. m.):	Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: Stat. Plan Overlay/Annex Area: Main Street Overlay			
I/We certify that the above noted details are correct. Applicant signature: _____				
Development Application Decision Refused Issue Date: Nov 06, 2019 Development Authority: WELCH, IMAI Reason for Refusal The proposed Cannabis Retail Store does not comply with the minimum setback requirement from public lands (Sherwood Community Park) (Section 70.2): Required Setback: 100 m Proposed Setback: 71 m Deficient by 29 m Under Section 70.5 of the Zoning Bylaw, the Development Officer is prohibited from granting a variance to the minimum setback to allow for the proposed Cannabis Retail Store. 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				
	Fee Amount	Amount Paid	Receipt #	Date Paid
Major Dev. Application Fee	\$5,600.00	\$5,600.00	06219152	Oct 17, 2019
THIS IS NOT A PERMIT				



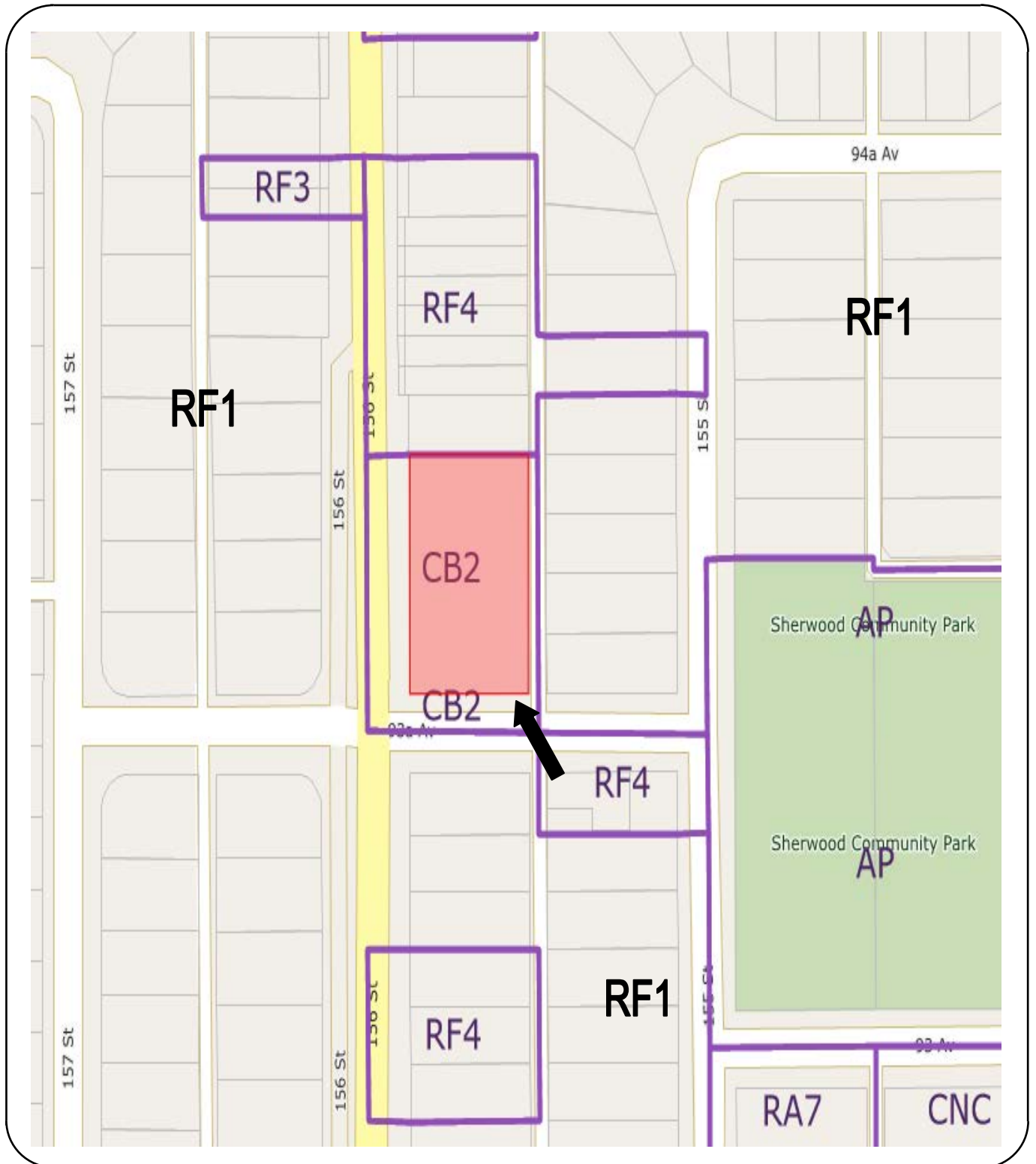
Application for Major Development Permit

Project Number: **344042295-002**
Application Date: OCT 17, 2019
Printed: November 7, 2019 at 10:47 AM
Page: 2 of 2

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Total GST Amount:	\$0.00			
Totals for Permit:	\$5,600.00	\$5,600.00		

THIS IS NOT A PERMIT



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-19-204

