

**SUBDIVISION  
AND  
DEVELOPMENT APPEAL BOARD  
AGENDA**

**Wednesday, 9:00 A.M.  
November 27, 2019**

**Hearing Room No. 3  
Churchill Building,  
10019 - 103 Avenue NW,  
Edmonton, AB**

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD  
HEARING ROOM NO. 3**

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I	9:00 A.M.	SDAB-D-19-181	Change the use from General Retail Stores to Cannabis Retail Sales  10803 - Jasper Avenue NW Project No.: 339507277-001
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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-19-181

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 339507277-001

APPLICATION TO: Change the use from General Retail Stores to Cannabis Retail Sales

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: September 26, 2019

DATE OF APPEAL: September 30, 2019

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 10803 - Jasper Avenue NW

LEGAL DESCRIPTION: Plan 1222211 Blk 8 Lot 46A

ZONE: (JAMSC) Jasper Avenue Main Street Commercial Zone

OVERLAY: Downtown Special Area

STATUTORY PLAN: Capital City Downtown Plan

***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 for a development permit (made through their architects, Planworks Design and Planning Inc.) for a Cannabis Retail Sales Use at the above captioned address was refused by the Development Authority. We hereby appeal the refusal of our client's development permit application on the grounds that:

- Cannabis Retail Sales is a Permitted Use within the Jasper Avenue Main Street Commercial Zone;
- The proposed Cannabis Retail Sales Use is appropriate at the subject location;

- The proposed Cannabis Retail Sales Use will not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land; and
- Such further and other grounds as may be presented at the hearing of the within appeal.

<i>General Matters</i>
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**The Subdivision and Development Appeal Board made and passed the following motion on October 24, 2019:**

**"That the appeal hearing be scheduled for November 27, 2019."**

**Appeal Information:**

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

**Grounds for Appeal**

**685(1)** If a development authority

- (a) fails or refuses to issue a development permit to a person,
- (b) issues a development permit subject to conditions, or
- (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 910.9(2)(d), **Cannabis Retail Sales** is a **Permitted Use** in the **(JAMSC) Jasper Avenue Main Street Commercial 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 910.9(1) states that the **General Purpose** of the (JAMSC) **Jasper Avenue Main Street Commercial Zone** is:

to provide a Zone that accommodates at ground level, predominantly retail commercial, office and service Uses suitable for Downtown's Main Street, Jasper Avenue and to ensure that infill developments and the retrofitting and preservation of historical and older buildings incorporate human scale design characteristics to enhance revitalized, dynamic Main Street atmosphere.

Section 910.1 states that the **General Purpose** of the **Downtown Special Area Zoning Regulations** is:

to designate the Downtown area as a Special Area and to adopt the following land use regulations to achieve the objectives of the Capital City Downtown Plan.

***Section 70 – Cannabis Retail Sales***

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 Sales does not comply with the minimum setback requirement from another Cannabis Retail Sales (DPs 287614739-001 and -007, 10105-109 Street):**

**Required Setback: 200 m  
Proposed Setback: 31.5 m  
Deficient by 168.5 m**

**Under Section 70.1 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]**

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#### **Notice to Applicant/Appellant**

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

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Project Number: **339507277-001**  
 Application Date: AUG 28, 2019  
 Printed: September 26, 2019 at 2:36 PM  
 Page: 1 of 2

## Application for Major Development Permit

This document is a Development Permit Decision for the development application described below.

<b>Applicant</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center;"><b>Property Address(es) and Legal Description(s)</b></td> </tr> <tr> <td style="text-align: center;">10803 - JASPER AVENUE NW Plan 1222211 Blk 8 Lot 46A</td> </tr> <tr> <td style="text-align: center;"><b>Specific Address(es)</b></td> </tr> <tr> <td>Suite: 10835 - JASPER AVENUE NW</td> </tr> <tr> <td>Entryway: 10835 - JASPER AVENUE NW</td> </tr> <tr> <td>Building: 10803 - JASPER AVENUE NW</td> </tr> </table>	<b>Property Address(es) and Legal Description(s)</b>	10803 - JASPER AVENUE NW Plan 1222211 Blk 8 Lot 46A	<b>Specific Address(es)</b>	Suite: 10835 - JASPER AVENUE NW	Entryway: 10835 - JASPER AVENUE NW	Building: 10803 - JASPER AVENUE NW
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<b>Specific Address(es)</b>							
Suite: 10835 - JASPER AVENUE NW							
Entryway: 10835 - JASPER AVENUE NW							
Building: 10803 - JASPER AVENUE NW							

**Scope of Application**

To change the use from General Retail Stores to Cannabis Retail Sales.

**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: Downtown

I/We certify that the above noted details are correct.

Applicant signature: \_\_\_\_\_

**Development Application Decision**

Refused

**Issue Date:** Sep 26, 2019    **Development Authority:** WELCH, IMAI

**Reason for Refusal**

The proposed Cannabis Retail Sales does not comply with the minimum setback requirement from another Cannabis Retail Sales (DPs 287614739-001 and -007, 10105-109 Street):

Required Setback: 200 m  
 Proposed Setback: 31.5 m  
 Deficient by 168.5 m

Under Section 70.1 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	06134690	Sep 12, 2019

**THIS IS NOT A PERMIT**



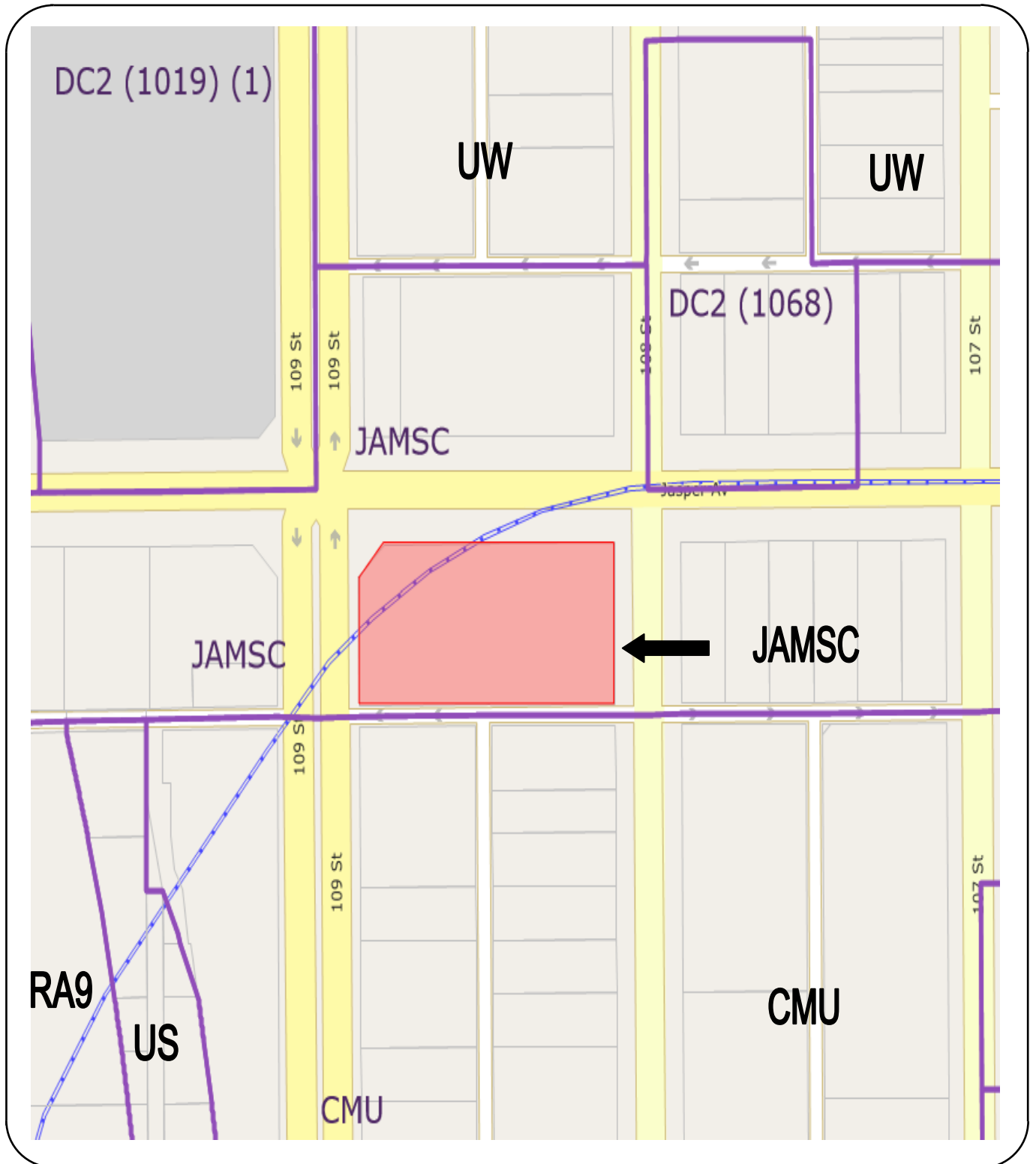
## Application for Major Development Permit

Project Number: **339507277-001**  
Application Date: AUG 28, 2019  
Printed: September 26, 2019 at 2:36 PM  
Page: 2 of 2

**Fees**

	<u>Fee Amount</u>	<u>Amount Paid</u>	<u>Receipt #</u>	<u>Date Paid</u>
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-19-181

