

**SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA**

**Thursday, 9:00 A.M.
October 11, 2018**

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

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

I	9:00 A.M.	SDAB-D-18-165	Change the use from General Retail to a Cannabis Retail Sales 100 - Mayfield Common NW Project No.: 286329359-001
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II	1:00 P.M.	SDAB-D-18-140	Install (1) Freestanding On-premises Sign (Wilfred's Restaurant) 11904 - 104 Avenue NW Project No.: 288510987-001
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III	2:30 P.M.	SDAB-D-18-166	Change the use from Health Services to Cannabis Retail Sales. 16703 - 82 Street NW Project No.: 286886504-001
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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-18-165

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 286329359-001

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

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: August 14, 2018

DATE OF APPEAL: August 28, 2018

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 100 - Mayfield Common NW

LEGAL DESCRIPTION: Plan 9022549 Blk A

ZONE: CSC-Shopping Centre Zone

OVERLAY: Major Commercial Corridors Overlay

STATUTORY PLAN: Jasper Place Area Redevelopment Plan

Grounds for Appeal

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

The Appellant respectfully appeals the decision of the development officer on the following grounds:

- (a) The proposed development represents an allowable use on the subject lands.
- (b) The provisions of s. 70 of the Edmonton Zoning Bylaw do not limit this Board's authority to approve the proposed development.
- (c) The Reason for Refusal dated August 14, 2018 is not clear as to what the prohibited use is – "The proposed Cannabis Retail Store does not comply with the minimum setback requirement from a (insert prohibited use such as park, school, etc.) (Section 70.3)" [Emphasis added]. The Development Authority failed to insert or identify the prohibited use in

the Reason for Refusal. It is difficult for the Appellant to put forward an appeal when it is uncertain as to the reason for the refusal.

- (d) If it is a nearby park (which is not clear from the Reason for Refusal), it is the position of the Appellant that any nearby park is not visible from the proposed development and the proposed development is not visible from any nearby park.
- (e) Furthermore, if it is a nearby park (which is not clear from the Reason for Refusal), the proposed development is sufficiently separated from any nearby park. Given that the Appellant is unsure of what use (park, school, etc.) is an issue for the Development Authority, the Appellant is unable to provide any distance calculations at this time.
- (f) If it is a nearby school (which is not clear from the Reason for Refusal), it is the position of the Appellant that there are no nearby schools within 100m of the proposed development.
- (g) The Site area where the proposed development will be located is 143,947.935 m² (just under 36 acres). There are multiple buildings within the Site which provide a buffer between the proposed development and any use like a park or school. Furthermore, the Site (i.e., the portion of the shopping centre) is not within 100m of any park.
- (h) The proposed development will not unduly interfere with the amenities of the neighbourhood nor materially interfere with or affect the use, enjoyment or value of neighbouring properties.
- (i) Such further and other reasons as may be presented at the hearing of this matter.

<i>General Matters</i>

Appeal Information:

The Appellant requested this appeal be heard on September 20, 2018.

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 320.2(3), **Cannabis Retail Stores** is a **Permitted Use** in the (CSC) Shopping Centre Zone.

Under section 7.4(9), **Cannabis Retail Stores** 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.

Under section 6.1, **Site** means “an area of land consisting of one or more abutting Lots.”

Section 330.1 states that the **General Purpose** of the (CSC) Shopping Centre Zone is:

to provide for larger shopping centre developments intended to serve a community or regional trade area. Residential, office, entertainment and cultural uses may also be included within such shopping complexes.

Section 819.1 states that the **General Purpose** of the **Major Commercial Corridors Overlay** is:

to ensure that development along Major Commercial Corridors is visually attractive and that due consideration is given to pedestrian and traffic safety.

<i>Section 70 - Cannabis Retail Sales regulations</i>
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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 a Cannabis Retail Sales shall not be located less than 200 m from any Site being used for a public library, or for public or private education at the time of the application for the Development Permit for the 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 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 in the form of books, manuscripts, recordings and films for public use, and does not include private libraries, museums or art galleries; and
 - c. the term "public or private education" is limited to elementary through to high schools inclusive only, and does not include dance schools, driving schools or other Commercial Schools.
3. **Any Site containing a Cannabis Retail Sales shall not be located less than 100 m from any Site being used for Community Recreation Services Use, a community recreation facility, a provincial health care facility, as public lands, or any Site that is designated as school reserve or municipal and school reserve at the time of the application for the Development Permit for the Cannabis Retail Sales. For the purposes of this subsection only:**
- a. **the 100 m separation distance 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 “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
 - c. **the term "public lands" is limited to Sites zoned AP, and Sites zoned A.**
4. Notwithstanding Section 11 of this Bylaw, a Development Officer shall not grant a variance to subsection 70(2) or 70(3).
5. 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 store front that is visible from the street other than a Lane, or a shopping centre parking lot, or a 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.
6. The Development Officer shall impose a condition on any Development Permit issued for Cannabis Retail Sales requiring that the development:
- a. shall not commence until authorized by and compliant with superior legislation; and
 - b. must commence within nine (9) months of the date of approval of the Development Permit.
7. For the purposes of Section 70(6), development commences when the Cannabis Retail Sales Use is established or begins operation.

Development Officer's Determination


The proposed Cannabis Retail Store does not comply with the minimum setback requirement from a park Zoned AP (Section 70.3):

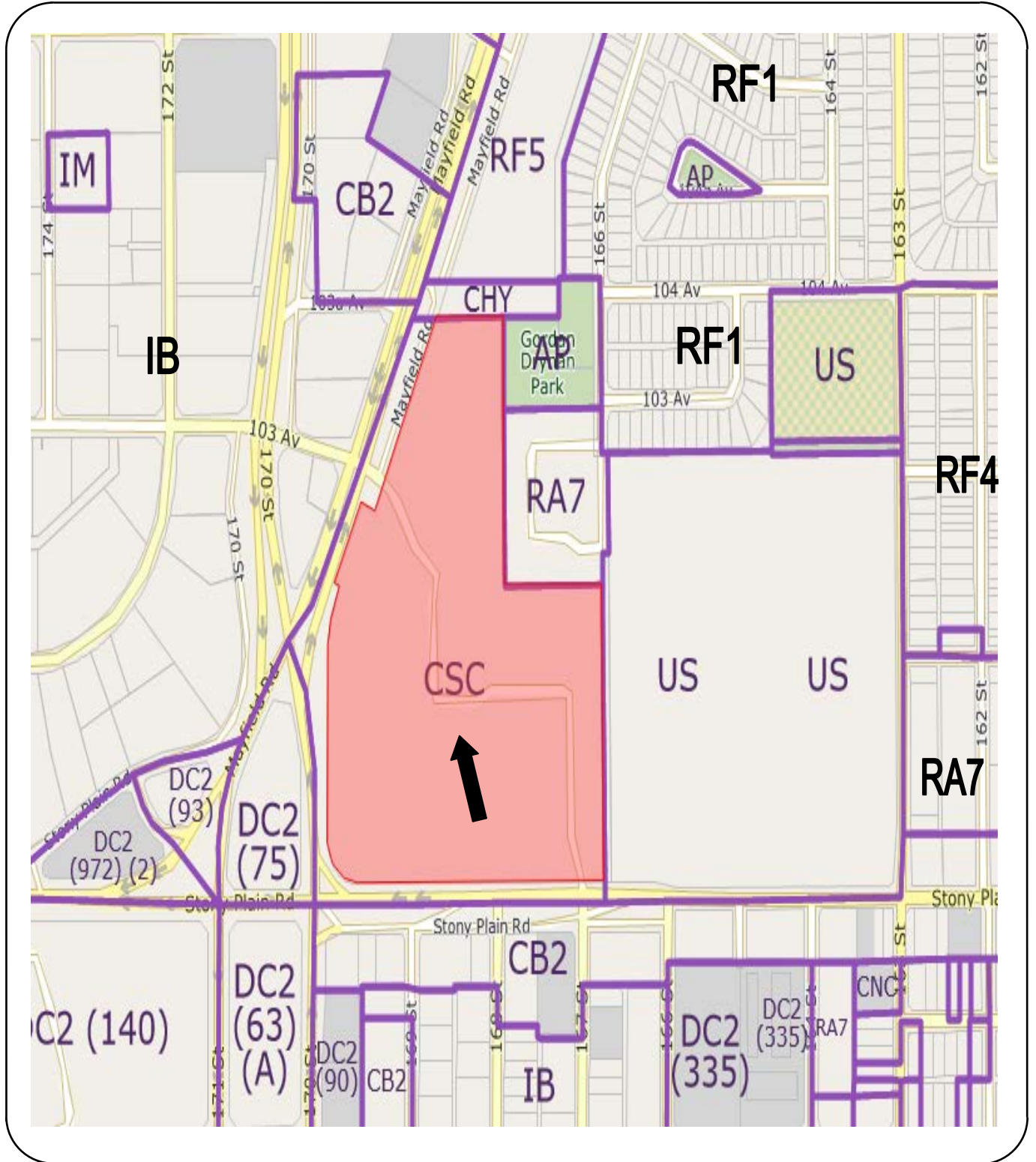
Required Setback: 100m
Proposed Setback: 0m
Deficient by 100m

Under Sections 70.1(b) and 70.4 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.

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: 286329359-001 Application Date: JUN 29, 2018 Printed: August 29, 2018 at 12:28 PM Page: 1 of 1		
This document is a Development Permit Decision for the development application described below.				
Applicant	Property Address(es) and Legal Description(s) 100 - MAYFIELD COMMON NW Plan 9022549 Blk A			
	Specific Address(es) Entryway: 120 - MAYFIELD COMMON NW Building: 100 - MAYFIELD COMMON NW			
Scope of Application To change the use from General Retail to a Cannabis Retail Sales				
Permit Details				
Class of Permit: Gross Floor Area (sq.m.): New Sewer Service Required: N Site Area (sq. m.): 434.7	Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: Stat. Plan Overlay/Annex Area: (none)			
I/We certify that the above noted details are correct. Applicant signature: _____				
Development Application Decision Refused Issue Date: Aug 14, 2018 Development Authority: Chow, Stephen Reason for Refusal The proposed Cannabis Retail Store does not comply with the minimum setback requirement from a (insert prohibited use such as park, school, etc.) (Section 70.3): Required Setback: 100m Proposed Setback: 0m Deficient by 100m Under Sections 70.1(b) and 70.4 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	05146411	Jun 29, 2018
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-18-165



ITEM II: 1:00 P.M.

FILE: SDAB-D-18-140

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 288510987-001

APPLICATION TO: Install (1) Freestanding On-premises Sign (Wilfred's Restaurant)

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: July 30, 2018

DATE OF APPEAL: August 16, 2018

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 11904 - 104 Avenue NW

LEGAL DESCRIPTION: Plan 1425753 Blk 21 Lot 2

ZONE: DC1 Direct Development Control Provision

OVERLAY: Main Streets Overlay

STATUTORY PLAN: 104 Avenue Corridor Area Redevelopment Plan

Grounds for Appeal

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

This tenant will need a freestanding sign to help guide customers to their premises

General Matters

The Subdivision and Development Appeal Board made and passed the following motion on September 12, 2018:

"That SDAB-D-18-140 be TABLED to October 10 or 11, 2018 at the request of Legal Counsel representing the Appellant."

Appeal Information:

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

Grounds for Appeal

685(1) If a development authority

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

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

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.

General Provisions from the *Edmonton Zoning Bylaw*:

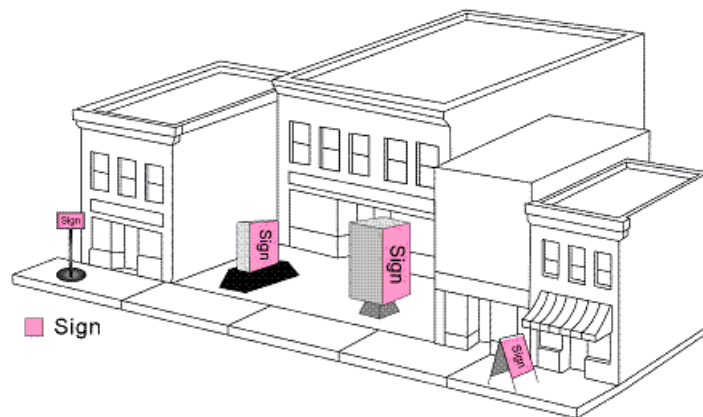
A **Freestanding On-premises Sign** is **not** a **listed** Use in the DC1 (Bylaw 18099 – Area 1) Direct Development Control Provision (the “DC1”).

Under section 7.9(4), **Freestanding On-premises Signs** means:

any Sign supported independent of a building, displaying Copy that identifies or advertises a business, activity, service or product located on the premises or Site where the Sign is displayed.

Under section 6.2, **Freestanding Signs** means:

any On-premises or Off-premises Sign supported independently of a building. The Sign may take the form of single or multiple icons, product or corporate symbol, may involve a three dimensional or volumetric representation, may have single or multiple faces and may or may not be permanently fixed to the ground;



Section 9 of the DC1 states the following with respect to Signage:

- a. Signs shall comply with the General Provisions of Section 59 and the regulations found in Schedule 59F of the Zoning Bylaw.
- b. A Comprehensive Sign Design Plan in accordance with the Provisions of Section 59.3 shall be required to the satisfaction of the Development Officer.
- c. Notwithstanding Section 9(a) of this Provision, Major Digital Signs, Minor Digital On-premises Signs, Minor Digital Off-premises Signs, and Minor Digital On-premises Off-premises Signs, shall comply with the regulations found in Schedule 59F.2 and 59F.3.
- d. Any application for a Major or Minor Digital Sign Use may require the submission of a Traffic Safety Study prepared by a qualified engineer and shall be to the satisfaction of Development Officer in consultation with Transportation Services prior to the issuance of a Development Permit.
- e. Major Digital Signs and Minor Digital Signs shall be permitted only if affixed to a building.

Section 1 of the **DC1** states that the **General Purpose** of this Provision is:

to facilitate the development of a pedestrian friendly and transit-supportive area that is characterized by its strong mix of retail, office, entertainment, and residential uses and its accessibility, open spaces, and sensitive interface between developments.


<i>Use</i>

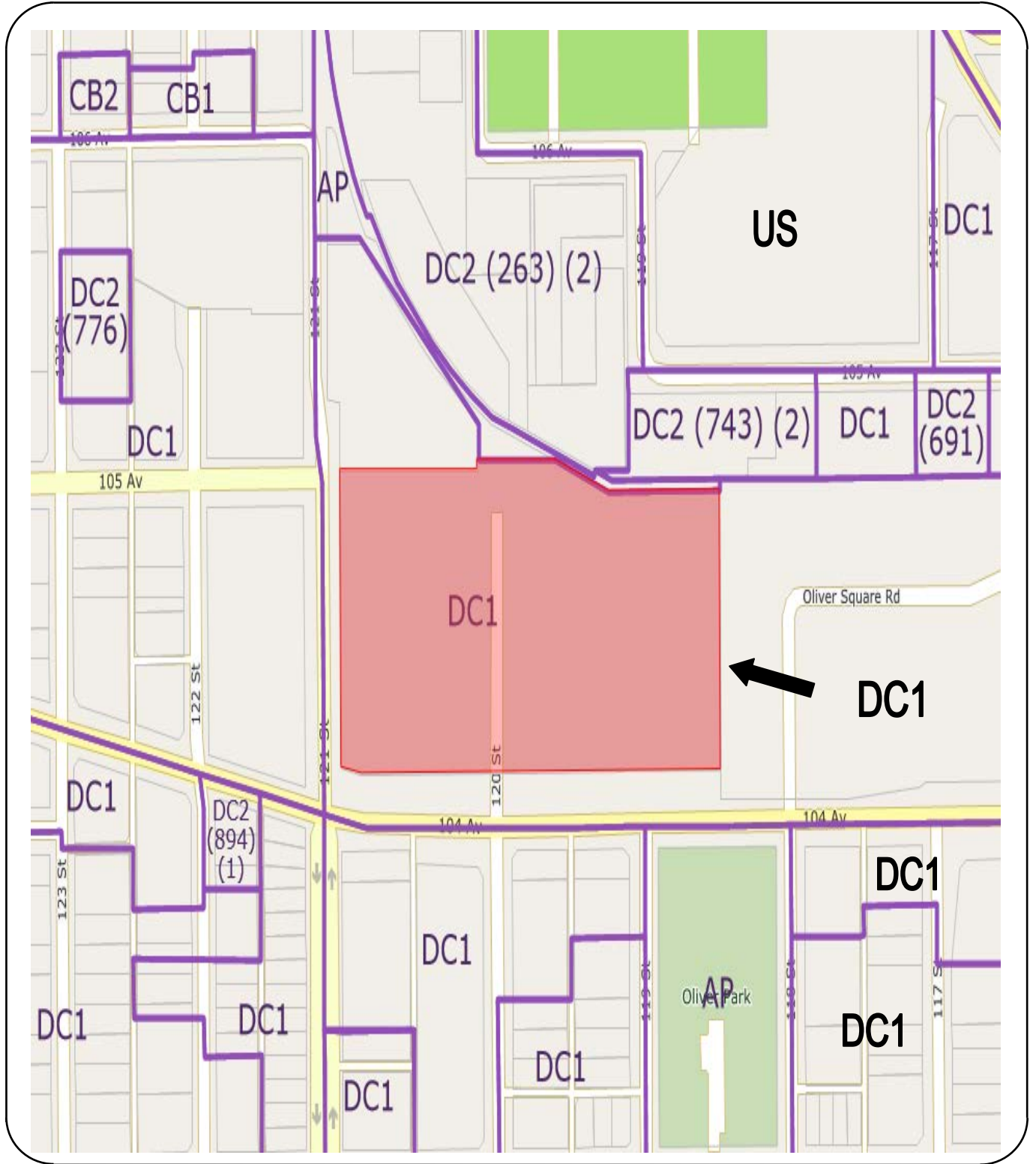
Development Officer's Determination

The proposed development, a Freestanding On-premises Sign, is not a listed use within the DC1, Area 1, 104 Avenue Corridor Area (Bylaw 18099 - July 10, 2017). [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 Sign Combo Permit</h2>	Project Number: 288510987-001 Application Date: JUL 26, 2018 Printed: August 17, 2018 at 9:31 AM Page: 1 of 1																																			
This document is a Development Permit Decision for the development application described below.																																					
Applicant	Property Address(es) and Legal Description(s) 11904 - 104 AVENUE NW Plan 1425753 Blk 21 Lot 2 Location(s) of Work Suite: 10429 - 121 STREET NW Entryway: 10429 - 121 STREET NW Building: 10425 - 121 STREET NW																																				
Scope of Application To install (1) Freestanding On-premises Sign (Wilfred's Restaurant).																																					
Permit Details																																					
ASA Sticker No./Name of Engineer: Construction Value: 0	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: 0 Minor Digital On/Off-premises Sign: 0	Freestanding Off-premises Sign: 0 Freestanding On-premises Sign: 1 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: Jul 30, 2018 Development Authority: MERCIER, KELSEY Reason for Refusal The proposed development, a Freestanding On-premises Sign, is not a listed use within the DC1, Area 1, 104 Avenue Corridor Area (Bylaw 18099 - July 10, 2017). 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-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;">\$6.24</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Sign Building Permit Fee</td> <td style="text-align: right;">\$156.00</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Sign Development Application Fee</td> <td style="text-align: right;">\$0.00</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Total GST Amount:</td> <td style="text-align: right;">\$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;">\$162.24</td> <td style="text-align: right; border-top: 1px solid black;">\$0.00</td> <td></td> <td></td> </tr> <tr> <td colspan="5">(\$162.24 outstanding)</td> </tr> </tbody> </table>				Fee Amount	Amount Paid	Receipt #	Date Paid	Safety Codes Fee	\$6.24				Sign Building Permit Fee	\$156.00				Sign Development Application Fee	\$0.00				Total GST Amount:	\$0.00				Totals for Permit:	\$162.24	\$0.00			(\$162.24 outstanding)				
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SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-18-140



N

ITEM III: 2:30 P.M.

FILE: SDAB-D-18-166

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 286886504-001

APPLICATION TO: Change the use from Health Services to Cannabis Retail Sales.

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: August 30, 2018

DATE OF APPEAL: September 17, 2018

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 16703 - 82 Street NW

LEGAL DESCRIPTION: Plan 1722889 Blk 1 Lot 47

ZONE: CSC-Shopping Centre Zone

OVERLAY: N/A

STATUTORY PLAN: Edmonton North Area Structure Plan
Schonsee Neighbourhood Structure Plan

Grounds for Appeal

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

1. Section 687 (3) of the Municipal Government Act affords the SDAB the authority to grant a Permit if, in its opinion, the proposed development would not
 - a. Unduly interfere with the amenities of the neighborhood, or
 - b. Materially interfere with or affect the use, enjoyment or value of neighboring parcels of land, and
 - c. The proposed development conforms with the use prescribed for that land or building in the land use bylaw.

The subject site is zoned CSC and the proposed use is listed as a permitted use in the bylaw meets all bylaw requirements. There were no objections to the development from neighboring property owners.

The Applicant submits these Section 687 (3) tests have been met.

2. The reason listed for the development permit refusal is that, "the proposed Cannabis Retail Store does not comply with the minimum setback requirement from a school (Florence Hallock School)(Section 70.2)." It is the submission of the Applicant that the school site is in fact situated upon a different site located West of Poplar District Park. Poplar District Park which is adjacent to the school lies between the proposed development and the school sites.
3. The school is located on a large municipal reserve site legally described as Plan 0425915; Block 118; Lot 2MR owned by The City of Edmonton (herein referred to as, "City Lands) and zoned CS3 (Community Services 3 zone). The City granted the School Authority permission to occupy a portion of the City reserve land for Public Education Services (Florence Hallock School). The granting or use of a portion of land by the school board does not transform the balance of the City-owned municipal reserve lands into a school site.
4. The City and the school boards entered into a Joint Use Agreement (the "JUA") that governs the relationship of the parties on joint use facilities such as sports fields and school gyms. In the JUA the City agrees to be responsible to maintain all sport fields adjacent to schools and in Schedule A-2 permits the school boards to jointly use 1,689 City-owned sport fields, including Standard Fields, which are described as "Generally neighborhood-level fields on school/parks sites (grass only)." The JUA also provides in Schedule A-3 that school owned facilities, such as gyms, can be considered joint use facilities. The gymnasiums of Florence Hallock School are listed in the schedule as being a joint use facility however there are no school board owned outdoor fields listed in the schedule as joint use. The City of Edmonton maintains a booking system which includes all joint use facilities be they owned by the City or the school boards to make reservations in one internet portal (ereg.edmonton.ca). A search of Florence Hallock School facilities available for bookings yielded only a gymnasium option, not an outdoor field (exhibit to be provided). These facts taken together suggest that the fields adjacent the school are the usual City sport fields and are therefore not part of the school site. The fields are maintained by the City and school has permission to use them but they are not school sites, they are City sites.
5. Paragraph 4.4 of the Belle Rive Neighborhood Structure Plan specifies the use of the lands which include the City Lands shall include district level athletic playing fields. These district level athletic playing fields are currently in place along the Eastern 3/4 of the City Lands separating the school site from the proposed development.
6. CS3 Zoning lists both Public Education Services and Public Park as a discretionary uses. These separate and distinct uses serve to divide the site into two sections, a school use and a park use. This bolsters the assertion that the

school site is in fact separated from the proposed development by the park site which lies between. There is no development permit which has been issued for the East portion of site for Public Education Services.

7. Via Bylaw 15495 which is an amendment to Bylaw 15248 City Council, in paragraph 1, changed the designation of the City Lands to Reserve. It is important to note that in the recital the City reiterates that section 665 (1) of the MGA affords it through passage of bylaw to designate parcels of land it owns as municipal reserve, school reserve or municipal and school reserve. In paragraph 1 the City chooses to make the designation municipal only. As a result of Bylaw 15495 the legal description of the City Lands is amended to bear the "MR" designation and does not include either "SR" or "MSR" in accordance with section 665 of MGA, therefore it is the Applicant's position that the entire parcel of City Lands is municipal reserve only. The City Lands are divided into two uses, however the lands are reserve in their entirety and the school site comprises only a small part of the larger reserve site.
8. The strict application of the minimum required separation distance serves no purpose because of the size of the site on which the school is located. The Court of Appeal has determined that the Board has the authority to vary a general regulation.
9. Section 105(5) of the Gaming, Liquor and Cannabis Regulations states that a municipality may, in a land use bylaw, expressly vary the distance set by subsection (3) and set a different distance that is applicable to one or more of the types of properties referred to in subsection (3)(a) to (c), and where a municipality has done so, subsection (3) does not apply to a premises to the extent the variation in the land use bylaw is applicable to it.
10. Section 70(2) of the Edmonton Zoning Bylaw is not enacted pursuant to 105(5) of the Gaming, Liquor and Cannabis Regulation. It does not expressly "set a different distance". Instead, it establishes an entirely new "property line to property line" separation distance criteria in addition to, but not in substitution for, the "building to building" and "building to property line" established in section 105(3).
11. The distance set by subsection (3) is 100 metres. This subsection allows a municipality to set a different distance. It does not allow the municipality to establish a different mode of measurement. Subsection 105(5) allows a municipality to set a different distance; it does not allow them to establish a different mode of distance.

<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 320.2(3), **Cannabis Retail Stores** is a **Permitted Use** in the **(CSC) Shopping Centre Zone**.

Under section 7.4(9), **Cannabis Retail Stores** 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.

Under section 7.8(9), **Private Education Services** means:

development for instruction and education which is not maintained at public expense and which may or may not offer courses of study equivalent to those offered in a public school or private instruction as a Home Based Business. This Use includes dormitory and Accessory buildings. This Use does not include Commercial Schools.

Under section 7.8(11), **Public Education Services** means:

development which is publicly supported or subsidized involving public assembly for educational, training or instruction purposes, and includes the administration offices required for the provision of such services on the same Site. This Use includes public and separate schools, community colleges, universities, and technical and vocational schools, and their administrative offices. This Use does not include Private Education Services and Commercial Schools.

Under section 6.1, **Site** means “an area of land consisting of one or more abutting Lots.”

Section 320.1 states that the **General Purpose** of the **(CSC) Shopping Centre Zone** is to provide for larger shopping centre developments intended to serve a community or regional trade area. Residential, office, entertainment and cultural uses may also be included within such shopping complexes.

<i>Section 70 - Cannabis Retail Sales regulations</i>
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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 a Cannabis Retail Sales shall not be located less than 200 m from any Site being used for a public library, or for public or private education at the time of the application for the Development Permit for the 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 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 in the form of books, manuscripts, recordings and films for public use, and does not include private libraries, museums or art galleries; and
 - c. the term "public or private education" is limited to elementary through to high schools inclusive only, and does not include dance schools, driving schools or other Commercial Schools.
 3. Any Site containing a Cannabis Retail Sales shall not be located less than 100 m from any Site being used for Community Recreation Services Use, a community recreation facility, a provincial health care facility, as public lands, or any Site that is designated as school reserve or municipal and school reserve at the time of the application for the Development Permit for the Cannabis Retail Sales. For the purposes of this subsection only:
 - a. the 100 m separation distance 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 “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
 - c. the term "public lands" is limited to Sites zoned AP, and Sites zoned A.
 4. **Notwithstanding Section 11 of this Bylaw, a Development Officer shall not grant a variance to subsection 70(2) or 70(3).**
 5. 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 store front that is visible from the street other than a Lane, or a shopping centre parking lot, or a 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.
6. The Development Officer shall impose a condition on any Development Permit issued for Cannabis Retail Sales requiring that the development:
- a. shall not commence until authorized by and compliant with superior legislation; and
 - b. must commence within nine (9) months of the date of approval of the Development Permit.
7. For the purposes of Section 70(6), development commences when the Cannabis Retail Sales Use is established or begins operation.

Development Officer's Determination

The proposed Cannabis Retail Store does not comply with the minimum setback requirement from a school (Florence Hallock School) (Section 70.2):

Required Setback: 200 m


Proposed Setback: 95 m

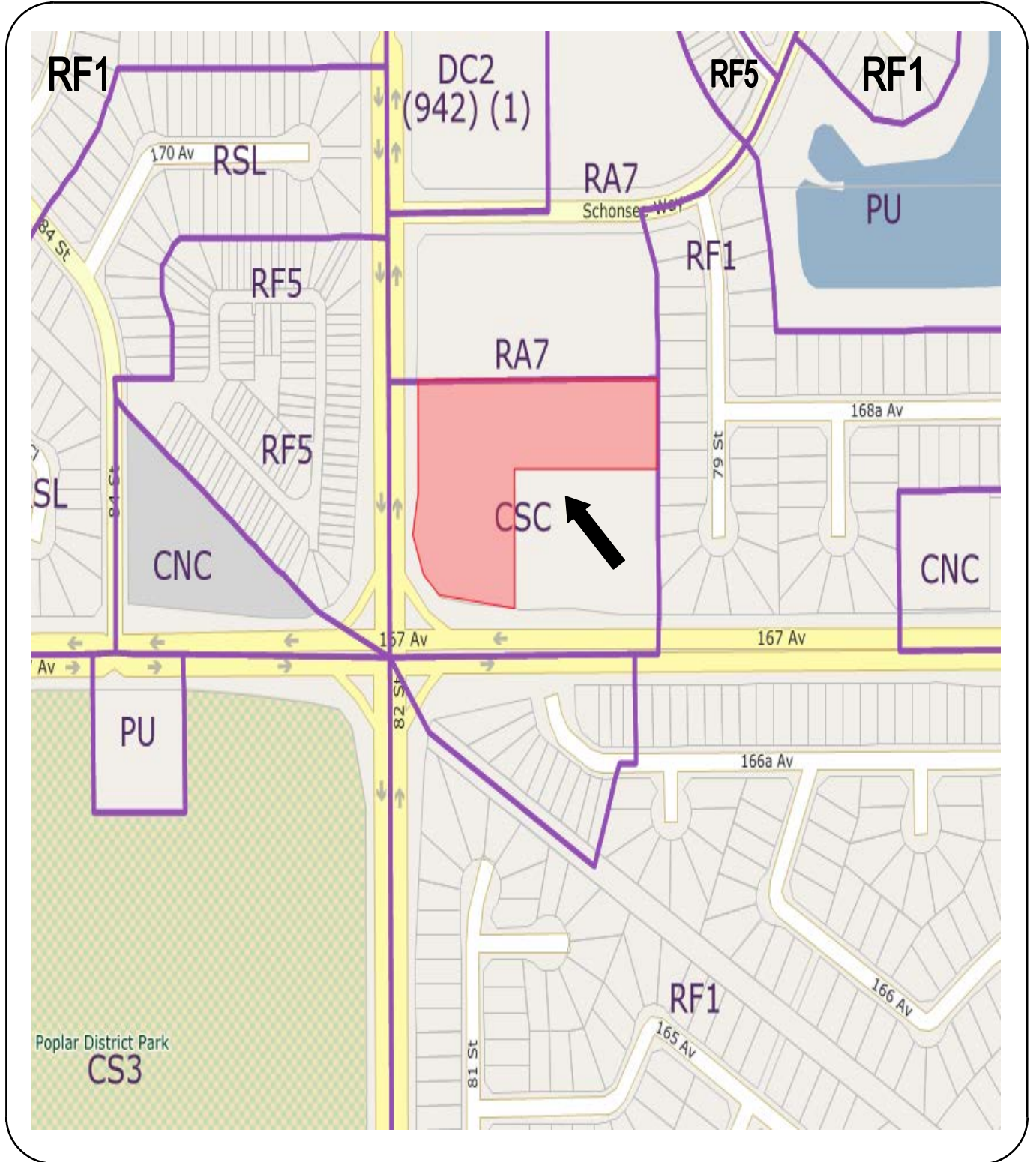
Deficient by: 105 m

Under Section 70.4 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.

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: 286886504-001 Application Date: JUL 06, 2018 Printed: September 18, 2018 at 8:55 AM Page: 1 of 1																				
This document is a Development Permit Decision for the development application described below.																						
Applicant : : :	Property Address(es) and Legal Description(s) 16703 - 82 STREET NW Plan 1722889 Blk 1 Lot 47 Specific Address(es) Suite: 8062 - 167 AVENUE NW Entryway: 8062 - 167 AVENUE NW Building: 8060 - 167 AVENUE NW																					
Scope of Application To change the use from Health Services to Cannabis Retail Sales.																						
Permit Details <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;"> Class of Permit: Gross Floor Area (sq.m.): New Sewer Service Required: N Site Area (sq. m.): </td> <td style="width: 50%; border: none;"> Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: Stat. Plan Overlay/Annex Area: (none) </td> </tr> </table>			Class of Permit: Gross Floor Area (sq.m.): New Sewer Service Required: N Site Area (sq. m.):	Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: Stat. Plan Overlay/Annex Area: (none)																		
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I/We certify that the above noted details are correct. Applicant signature: _____																						
Development Application Decision Refused Issue Date: Aug 30, 2018 Development Authority: WELCH, IMAI Reason for Refusal The proposed Cannabis Retail Store does not comply with the minimum setback requirement from a school (Florence Hallock School) (Section 70.2): Required Setback: 200 m Proposed Setback: 95 m Deficient by 105 m Under Section 70.4 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 <table style="width: 100%; border: none;"> <thead> <tr> <th style="text-align: left;"></th> <th style="text-align: right;">Fee Amount</th> <th style="text-align: right;">Amount Paid</th> <th style="text-align: right;">Receipt #</th> <th style="text-align: right;">Date Paid</th> </tr> </thead> <tbody> <tr> <td>Major Dev. Application Fee</td> <td style="text-align: right;">\$5,600.00</td> <td style="text-align: right;">\$5,600.00</td> <td style="text-align: right;">05164611</td> <td style="text-align: right;">Jul 06, 2018</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;">\$5,600.00</td> <td style="text-align: right; border-top: 1px solid black;">\$5,600.00</td> <td></td> <td></td> </tr> </tbody> </table>				Fee Amount	Amount Paid	Receipt #	Date Paid	Major Dev. Application Fee	\$5,600.00	\$5,600.00	05164611	Jul 06, 2018	Total GST Amount:	\$0.00				Totals for Permit:	\$5,600.00	\$5,600.00		
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THIS IS NOT A PERMIT																						



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-18-166

