

**SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA**

**Wednesday, 9:00 A.M.
October 12, 2016**

**Hearing Room No. 2
Churchill Building,
10019 - 103 Avenue NW,
Edmonton, AB**

**SUBDIVISION AND DEVELOPMENT APPEAL BOARD
HEARING ROOM NO. 2**

I	9:00 A.M.	SDAB-D-16-225	Change the use of a portion of a Professional, Financial and Office Support Service to an Indoor Participant Recreation Service (gymnastics/dance/karate). 3564 Allan Drive SW Project No.: 187054079-007
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II	11:00 A.M.	SDAB-D-16-249	Construct interior alterations to an Accessory Building (Garage Suite: revise layout of bedrooms and flip direction of staircase) 10747 - 75 Avenue NW Project No.: 220310877-007
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NOTE: *Unless otherwise stated, all references to “Section numbers” refer to the authority under the Edmonton Zoning Bylaw 12800.*

TO BE RAISED

ITEM I: 9:00 A.M.

FILE: SDAB-D-16-225

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 187054079-007

ADDRESS OF APPELLANT: 3564 Allan Drive SW

APPLICATION TO: Change the use of a portion of a Professional, Financial and Office Support Service to an Indoor Participant Recreation Service (gymnastics/dance/karate).

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: August 18, 2016

DATE OF APPEAL: August 23, 2016

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 3564 Allan Drive SW

LEGAL DESCRIPTION: Plan 1524442 Blk 20 Lot 87

ZONE: DC1 Direct Development Control Provision (Bylaw 17411 – Area “A”)

OVERLAY: N/A

STATUTORY PLAN: Ambleside Neighbourhood Structure Plan
Windermere Area Structure Plan

Grounds for Appeal

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

1. Stalls required for this change of use appear excessive - we would like to conduct parking survey at similar businesses and provide report at hearing (if granted)
2. Our business is complimentary to nearby businesses and operates in between peak hours.

General Matters

Appeal Information:

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

Grounds for Appeal

685(1) If a development authority

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

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

Appeals

686(1) A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board within 14 days,

- (a) in the case of an appeal made by a person referred to in section 685(1), after
 - (i) the date on which the person is notified of the order or decision or the issuance of the development permit, or
 - ...

The decision of the Development Officer is dated August 18, 2016. The Notice of Appeal was filed on August 23, 2016.

On September 14, 2016, a panel of the Subdivision and Development Appeal Board passed a motion to table this appeal matter to October 12, 2016 or October 13, 2016.

Direct Control Districts

The *Municipal Government Act* states:

Designation of direct control districts

641(1) The council of a municipality that has adopted a municipal development plan, if it wishes to exercise particular control over the use and development of land or buildings within an area of the municipality, may in its land use bylaw designate that area as a direct control district.

(2) If a direct control district is designated in a land use bylaw, the council may, subject to any applicable statutory plan, regulate and control the use or development of land or buildings in the district in any manner it considers necessary.

(3) In respect of a direct control district, the council may decide on a development permit application or may delegate the decision to a development authority with directions that it considers appropriate.

(4) Despite section 685, if a decision with respect to a development permit application in respect of a direct control district

(a) is made by a council, there is no appeal to the subdivision and development appeal board, or

(a) 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*:

DC1 (17411) was passed by City Council on October 19, 2015.

Section 1 of DC1 (17411) states that the **General Purpose** of this direct control district is:

To accommodate low intensity commercial and residential mixed-use development. The purpose is to complement the adjacent residential and employment uses with a transition of mixed compatible uses. Development regulations shall create a pedestrian-friendly environment

Under Section 3(n), **Indoor Participant Recreation Services** is a **Listed Use** in this direct control district.

Section 7.8(4) states:

Indoor Participant Recreation Services means development providing facilities within an enclosed building for sports and active recreation where patrons are predominantly participants and any spectators are incidental and attend on a non-recurring basis. Typical Uses include athletic clubs; health and fitness clubs; curling, roller skating and hockey rinks; swimming pools; rifle and pistol ranges, bowling alleys and racquet clubs.

Off-street Parking – Change in Use

Section 54.1(1)(b)(ii) provides as follows:

Notwithstanding the above, the regulations contained within this Section shall not apply to buildings or Uses existing at the time of the adoption of this Bylaw, except that:

- ...
 (ii) where any building or Use undergoes a change of Use, intensity of Use or capacity and the change results in an increase in the parking requirements, the off-street parking, including parking for the disabled and visitors, shall be increased to equal or exceed the off-street parking requirements resulting from application of the provisions of this Bylaw to the entire building, structure or Use as modified in use;

Development Officer’s Determination

The Development Officer referenced Section 54.1(1)(b)(ii) and determined that notwithstanding the change in Use, the proposed development does not provide for an increase in off-street parking spaces:

Off-street parking required for Indoor Participant Recreation Service:
 29.7 spaces

Off-street parking provided for the existing Professional, Financial and Office Support Service: 10.1 spaces

Deficient by: 20 spaces

Proposed increase in off-street parking: 0

Off-street Parking

Section 4(i) of DC1(17411) states that: “Parking shall be in accordance with Section 54, Schedule 1.”

Section 54.2(1) states that “The minimum number of off-street parking spaces required for each Use is specified in Schedule 1.”

Section 54.2 Schedule 1 – Vehicular Parking Requirement provides as follows:

Schedule 1(A) Areas outside of the Downtown Special Area	
Use of Building or Site	Minimum Number of Parking Spaces or Garage Spaces Required
Community, Educational, Recreational and Cultural Service Use Classes	
38. Indoor Participant Recreation Services Except: ... c. Health and Fitness Clubs	1 parking space per 10 m ² of Floor Area

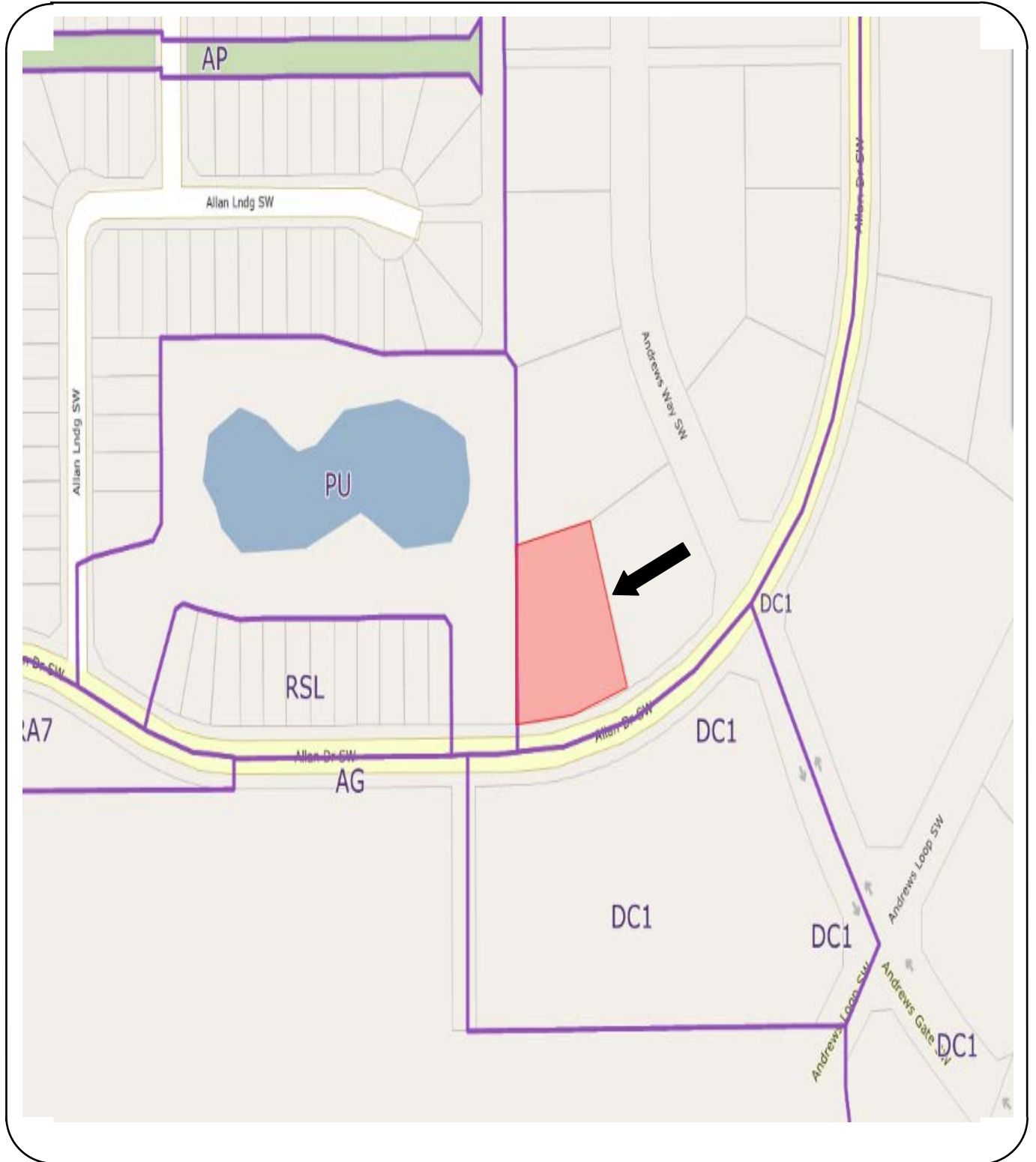
Development Officer's Determination

2) The total off-street parking spaces required for the Site, including the proposed Indoor Participant and Recreation Service Use, shall meet the minimum number of off-street parking spaces per Use as Specified in Section 54.2 - Schedule 1.

Required off-street parking for the Site including the proposed Indoor Participant Recreation Services: 56 spaces
Proposed off-street parking on Site: 34 spaces
The Site is deficient by: 22 spaces

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. Bylaw No. 11136 requires that a verbal announcement of the Board's decision shall be made at the conclusion of the hearing of an appeal, but the verbal decision is not final nor binding on the Board until the decision has been given in writing in accordance with the *Municipal Government Act*.



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-16-225



ITEM II: 11:00 A.M.

FILE: SDAB-D-16-249

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 220310877-007

ADDRESS OF APPELLANT: 10747 - 75 Avenue NW

APPLICATION TO: Construct interior alterations to an Accessory Building (Garage Suite: revise layout of bedrooms and flip direction of staircase)

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: September 14, 2016

DATE OF APPEAL: September 15, 2016

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 10747 - 75 Avenue NW

LEGAL DESCRIPTION: Plan 5765Q Blk 5 Lot 5

ZONE: RF3 Small Scale Infill Development Zone

OVERLAY: Mature Neighbourhood Overlay

STATUTORY PLAN: N/A

Grounds for Appeal

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

The intended use of the property is for a garage suite exactly as drawn. We have allowed for the parking required for the suite. We have designed it to follow the building code and meet our safety requirements. It will add value to the house and be aesthetically pleasing to the neighbourhood. The home owner wishes to house her daughter and grandchild and has no intentions of using it for any other purpose.
[unedited]

General Matters

Appeal Information:

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

Grounds for Appeal

685(1) If a development authority

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

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

Appeals

686(1) A development appeal to a subdivision and development appeal board is commenced by filing a notice of the appeal, containing reasons, with the board within 14 days,

- (a) in the case of an appeal made by a person referred to in section 685(1), after
 - (i) the date on which the person is notified of the order or decision or the issuance of the development permit, or
 - ...

The decision of the Development Officer is dated September 14, 2016. The Notice of Appeal was filed on September 15, 2016.

Determining an Appeal

Hearing and decision

687(3) In determining an appeal, the subdivision and development appeal board

- (a.1) must comply with the land use policies and statutory plans and, subject to clause (d), the land use bylaw in effect;
- ...
- (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;

(d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,

(i) the proposed development would not

(A) unduly interfere with the amenities of the neighbourhood, or

(B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

(ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

General Provisions from the *Edmonton Zoning Bylaw*:

Section 140.1 states that the **General Purpose** of the **RF3 Small Scale Infill Development Zone** is:

... to provide for Single Detached Housing and Semi-detached Housing while allowing small-scale conversion and infill redevelopment to buildings containing up to four Dwellings, and including Secondary Suites under certain conditions.

Under Section 140.3(4), **Garage Suite** is a **Discretionary Use** in the RF3 Small Scale Infill Development Zone.

Section 7.2(3) states:

Garage Suite means an Accessory Dwelling located above a detached Garage (above Grade); or a single-storey Accessory Dwelling attached to the side or rear of, a detached Garage (at Grade). A Garage Suite is Accessory to a building in which the principal Use is Single Detached Housing. A Garage Suite has cooking facilities, food preparation, sleeping and sanitary facilities which are separate from those of the principal Dwelling located on the Site. A Garage Suite has an entrance separate from the vehicle entrance to the detached Garage, either from a common indoor landing or directly from the exterior of the structure. This Use Class does not include Garden Suites, Secondary Suites, Blatchford Lane Suites, or Blatchford Accessory Suites.

Section 7.2(9) states:

Single Detached Housing means development consisting of a building containing only one Dwelling, which is separate from any other Dwelling or building. Where a Secondary Suite is a Permitted or Discretionary Use Class in a Zone, a building which contains Single

Detached Housing may also contain a Secondary Suite. This Use Class includes Mobile Homes which conform to Section 78 of this Bylaw.

Section 6.1(27) defines **Dwelling** as “a self contained unit comprised of one or more rooms accommodating sitting, sleeping, sanitary facilities, and a principal kitchen for food preparation, cooking, and serving. A Dwelling is used permanently or semi-permanently as a residence for a single Household.”

Section 814.1 states that the **General Purpose** of the **Mature Neighbourhood Overlay** is:

...to ensure that new low density development in Edmonton’s mature residential neighbourhoods is sensitive in scale to existing development, maintains the traditional character and pedestrian-friendly design of the streetscape, ensures privacy and sunlight penetration on adjacent properties and provides opportunity for discussion between applicants and neighbouring affected parties when a development proposes to vary the Overlay regulations.

Characterization of Accessory Building as Single Detached House



Section 140.4(19)(a) states: “The maximum number of Dwellings per Site shall be as follows: ...a maximum of one Single Detached Dwelling per Site, and, where the provisions of this Bylaw are met, up to one Secondary Suite, Garage Suite, or Garden Suite”.

Development Officer’s Determination

1. The proposed development is not considered a Garage Suite. The Development Officer has determined that the revised layout will change the structure into a Single Detached House. (Reference Section 6.1.27, 7.2.3)
2. A maximum of one Single Detached House per Site is allowed. (Reference Section 140.4.19.a) [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. Bylaw No. 11136 requires that a verbal announcement of the Board’s decision shall be made at the conclusion of the hearing of an appeal, but the verbal decision is not final nor binding on the Board until the decision has been given in writing in accordance with the *Municipal Government Act*.

	Project Number: 220310877-007 Application Date: SEP 08, 2016 Printed: September 28, 2016 at 1:03 PM Page: 1 of 1		
<h2 style="margin: 0;">Application for Minor Development Permit</h2>			
This document is a Development Permit Decision for the development application described below.			
Applicant 	Property Address(es) and Legal Description(s) 10747 - 75 AVENUE NW Plan 5765Q Blk 5 Lot 5 Specific Address(es) Entryway: 10747A - 75 AVENUE NW Building: 10747A - 75 AVENUE NW		
Scope of Application To construct interior alterations to an Accessory Building (Garage Suite: revise layout of bedrooms and flip direction of staircase).			
Permit Details <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none; vertical-align: top;"> # of Dwelling Units Add/Remove: 0 Client File Reference Number: Minor Dev. Application Fee: Class A Occupancy Secondary Suite Included?: N </td> <td style="width: 50%; border: none; vertical-align: top;"> Class of Permit: (none) Lot Grading Needed?: N New Sewer Service Required: N Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay </td> </tr> </table>		# of Dwelling Units Add/Remove: 0 Client File Reference Number: Minor Dev. Application Fee: Class A Occupancy Secondary Suite Included?: N	Class of Permit: (none) Lot Grading Needed?: N New Sewer Service Required: N Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay
# of Dwelling Units Add/Remove: 0 Client File Reference Number: Minor Dev. Application Fee: Class A Occupancy Secondary Suite Included?: N	Class of Permit: (none) Lot Grading Needed?: N New Sewer Service Required: N Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay		
I/We certify that the above noted details are correct. Applicant signature: _____			
Development Application Decision Refused Reason for Refusal 1. The proposed development is not considered a Garage Suite. The Development Officer has determined that the revised layout will change the structure into a Single Detached House. (Reference Section 6.1.27, 7.2.3) 2. A maximum of one Single Detached House per Site is allowed. (Reference Section 140.4.19.a) Rights of Appeal The Applicant has the right of appeal within 14 days of receiving notice of the Development Application Decision, as outlined in Chapter 24, Section 683 through 689 of the Municipal Government Amendment Act.			
Issue Date: Sep 14, 2016 Development Authority: YEUNG, KENNETH Signature: _____			
THIS IS NOT A PERMIT			



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-16-249



BUSINESS LAID OVER

SDAB-D-16-242	An appeal by <u>Ogilvie Law LLP</u> to change the Use from a General Retail Store to a Minor Alcohol Sales Use. <i>October 20, 2016</i>
SDAB-D-16-237	An appeal by <u>Pattison Outdoor Advertising</u> to install (1) Freestanding Minor Digital Off-premises Sign (6.1 m x 3 m facing E/W) <i>November 3, 2016</i>
SDAB-D-16-144	An appeal by Kiewit Energy Canada Corp to construct 6 Accessory General Industrial Use buildings - existing without permits (Kiewit Energy Canada Corp - 3 lunchroom buildings, 2 office buildings, and 1 office/lunch building) <i>November 30 or December 1, 2016</i>
SDAB-S-14-001	An appeal by Stantec Consulting Ltd. to create 78 Single Detached residential lots, 36 Semi-detached residential lots, 31 Row Housing lots and three (3) Public Utility lots from SE 13-51-25-4 <i>January 25, 2017</i>

APPEAL HEARINGS TO BE SCHEDULED

188282372-001	An appeal by <u>Kennedy Agrios</u> to change the use from general Retail to a Bar and Neighbourhood Pub (maximum of 400 occupants and 691 square metres of Public Space) <i>November 2 or 3, 2016</i>
000413016-003	An appeal by <u>Wigalo Holding Ltd. / Kennedy Agrios</u> to Comply with a Stop Order to Cease the Non-Accessory Parking, REMOVE all meters, signage and material related to parking and REFRAIN from allowing Non-Accessory Parking. <i>November 17, 2016</i>
000413016-004	An appeal by <u>Wigalo Holding Ltd. / Kennedy Agrios</u> to Comply with a Stop Order to Cease the Non-Accessory Parking, REMOVE all meters, signage and material related to parking and REFRAIN from allowing Non-Accessory Parking. <i>November 17, 2016</i>
188283359-001	An appeal by <u>Kennedy Agrios</u> to change the use from a Flea Market Use to a Night Club and Major Amusement Establishment (1757 square metres of Public space) <i>November 23 or 24, 2016</i>
182548244-007	An appeal by <u>Stephanie Chan VS Deborah & Terence Nikolaichuk</u> to construct an Accessory Building (Shed, 3.20 metres by 3.12 metres), existing without permits <i>December 7 or 8, 2016</i>
128010578-001	An appeal by <u>Jeffrey Jirsch VS Anna Bashir</u> to erect a Privacy Screen 8ft in height along the Southwest portion of the property, along a Required Side Yard <i>December 7 or 8, 2016</i>