

**SUBDIVISION  
AND  
DEVELOPMENT APPEAL BOARD  
AGENDA**

**Wednesday, 9:00 A.M.  
October 24, 2018**

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

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

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I	9:00 A.M.	SDAB-D-18-171	Change the use from a Health Service to Cannabis Retail Sales 9629 - 82 Avenue NW Project No.: 287111261-001
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II	1:30 P.M.	SDAB-D-18-172	Construct exterior alterations to a Single Detached House (additional driveway) 4131 - Cameron Heights Point NW Project No.: 258185317-005
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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-18-171

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 287111261-001

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

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: September 18, 2018

DATE OF APPEAL: October 2, 2018

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 9629 - 82 Avenue NW

LEGAL DESCRIPTION: Plan 4575S Blk 12 Lot 9

ZONE: CB2-General Business Zone

OVERLAY: Main Streets Overlay

STATUTORY PLAN: Strathcona Area Redevelopment Plan

Grounds for Appeal

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

1. The actual distance between the boundary of 9629 — 82 Avenue and Mill Creek Public School is more than 200m rather than the 199m ascribed to it by the City. The proposed use is a permitted use and there are no variances required — see Sections 640(2)(b)(i) and 642(1) of the Municipal Government Act ("MGA") and Sections 11.1.e and 12.3 of the Edmonton Zoning Bylaw 12800.
2. In the alternative, if the separation between the lot boundaries of the subject site and the school is 199m, then, the Appellant respectfully requests that the SDAB use its variance power to grant a 1m variance in the required separation distance for the following reasons:
  - a. a 1m difference between 200m and 199m is *de minimis*;

- b. the distance between the school building and the subject building is greater than 200m;
  - c. the travelling distance between the school boundary and the front door access to the subject premises is greater than 200m;
  - d. there is no visibility from the school boundary to the subject premises;
  - e. the proposed development is located in an existing building in a small commercial area located on both sides of Whyte Avenue immediately west of 96 Street which is an appropriate area for the type of development proposed;
  - f. the proposed development would not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the usage or value of neighbouring parcels of land and the proposed development conforms with the use prescribed for the land and building in the Zoning Bylaw — s. 687(3)(d) MGA.
3. Such further and other grounds as may be determined from reviewing the file.

<i>General Matters</i>
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**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 340.2(6), **Cannabis Retail Stores** is a **Permitted Use** in the (CB2) General Business 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 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.

***Section 70 - Cannabis Retail Sales regulations***

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 public education facility (Mill Creek School) (Section 70.2):

Required Setback: 200m

Proposed Setback: 199m

Deficient by 1m


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.

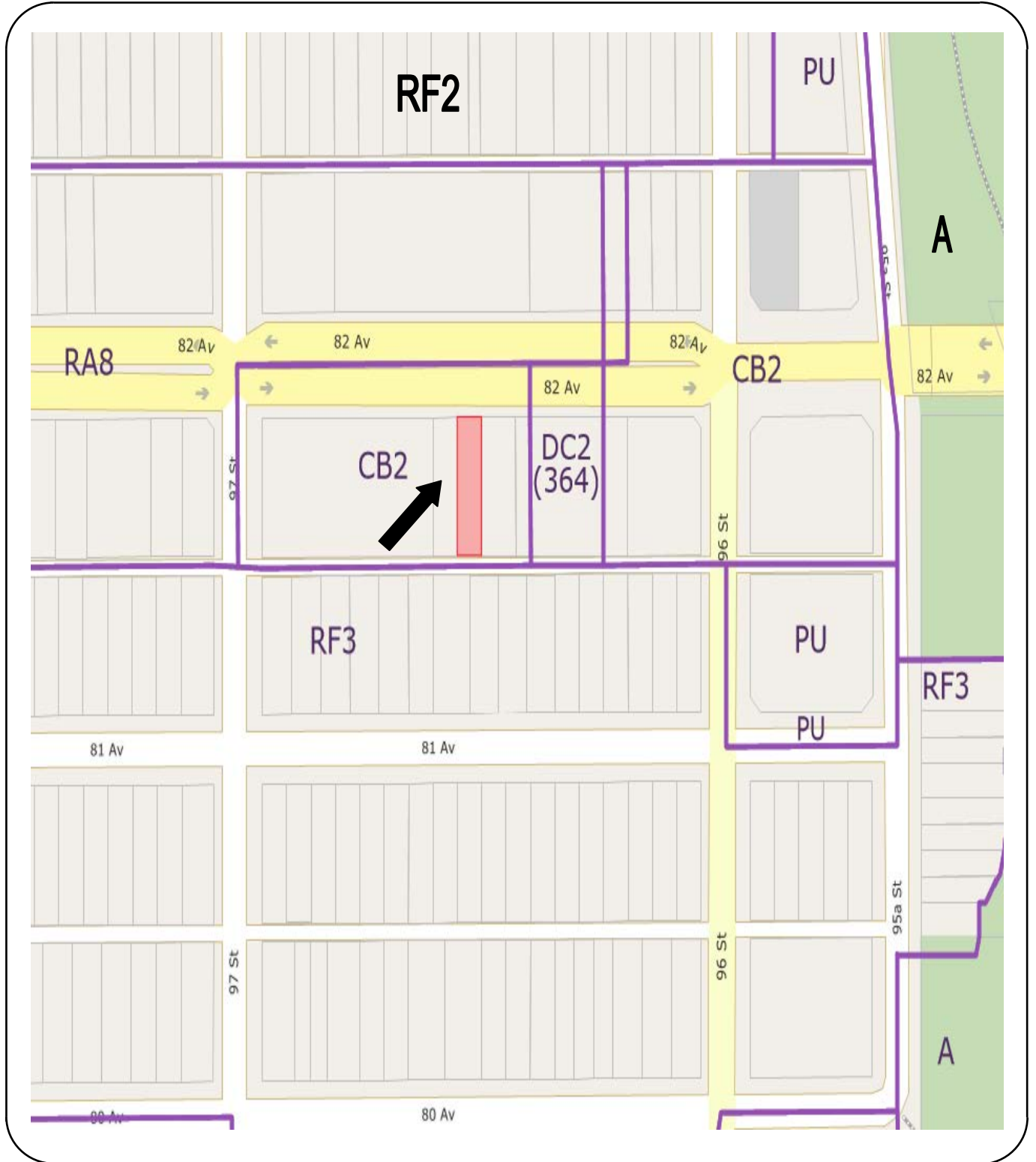
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**Notice to Applicant/Appellant**

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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	<h2 style="margin: 0;">Application for Major Development Permit</h2>	Project Number: <b>287111261-001</b> Application Date: JUL 10, 2018 Printed: October 2, 2018 at 3:01 PM Page: 1 of 1		
This document is a Development Permit Decision for the development application described below.				
<b>Applicant</b>	<b>Property Address(es) and Legal Description(s)</b> 9629 - 82 AVENUE NW Plan 4575S Blk 12 Lot 9  <b>Specific Address(es)</b> Suite: 9629 - 82 AVENUE NW Entryway: 9629 - 82 AVENUE NW Building: 9629 - 82 AVENUE NW			
<b>Scope of Application</b> To change the use from a Health Service to Cannabis Retail Sales.				
<b>Permit Details</b>				
Class of Permit: Class A 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: Main Street Overlay			
I/We certify that the above noted details are correct.  Applicant signature: _____				
<b>Development Application Decision</b> Refused  <b>Issue Date:</b> Sep 18, 2018 <b>Development Authority:</b> WELCH, IMAI  <b>Reason for Refusal</b> The proposed Cannabis Retail Store does not comply with the minimum setback requirement from a public education facility (Mill Creek School) (Section 70.2):  Required Setback: 200m Proposed Setback: 199m Deficient by 1m  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.  <b>Rights of Appeal</b> 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.				
<b>Fees</b>				
	<b>Fee Amount</b>	<b>Amount Paid</b>	<b>Receipt #</b>	<b>Date Paid</b>
Major Dev. Application Fee	\$5,600.00	\$5,600.00	05172848	Jul 10, 2018
Total GST Amount:	\$0.00			
Totals for Permit:	\$5,600.00	\$5,600.00		
<b>THIS IS NOT A PERMIT</b>				



**SURROUNDING LAND USE DISTRICTS**

Site Location ←

File: SDAB-D-18-171



ITEM II: 1:30 P.M.

FILE: SDAB-D-18-172

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 258185317-005

APPLICATION TO: Construct exterior alterations to a Single Detached House (additional driveway)

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: September 25, 2018

DATE OF APPEAL: September 25, 2018

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 4131 - Cameron Heights Point NW

LEGAL DESCRIPTION: Plan 1424124 Blk 14 Lot 91

ZONE: RSL-Residential Small Lot Zone

OVERLAY: N/A

STATUTORY PLAN: Cameron Heights Neighbourhood Structure Plan

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*Grounds for Appeal*

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

We are asking for a second driveway to service our third garage door on the front of the house (other two doors are for side drive access). The city approved the house plans with the door on the front and there are other houses in the neighborhood (5 houses down) with two driveways (same as we are asking for). The city's suggestion was to access the garage door from the side driveway and just pour concrete across for access. This will look much worse and will take up much more landscape area then adding the second driveway would. There are also other driveways in the neighborhood-triple door front garages that have a driveway width greater than the two driveways that we are proposing put together. This is a new bylaw that changed multiple times over the past 3 years so it is obvious that it needs some exceptions.

*General Matters*

**Appeal Information:**

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

**Grounds for Appeal**

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

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

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

**Appeals**

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

- (a) in the case of an appeal made by a person referred to in section 685(1)
  - (i) with respect to an application for a development permit,
    - (A) within 21 days after the date on which the written decision is given under section 642,

**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 clause (a.4) and (d), must comply with any 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 115.2(5) states a **Single Detached House** is a **Permitted Use** in the (RSL) Residential Small Lot Zone.

Under Section 7.2(8), **Single Detached House** 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 in a Zone, a building which contains Single Detached Housing may also contain a Secondary Suite. This Use includes Mobile Homes which conform to Section 78 of this Bylaw.

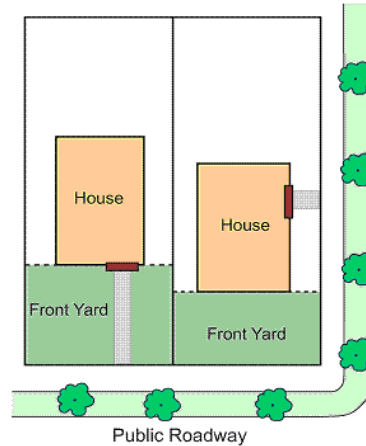
Section 115.1 states that the **General Purpose** of the (RSL) **Residential Small Lot Zone** is to provide for smaller lot Single Detached Housing with attached Garages in a suburban setting that provides the opportunity for the more efficient utilization of undeveloped suburban areas and includes the opportunity for Secondary Suites and Garden Suites.

Under section 6.1, **Accessory** means “when used to describe a Use or building, a Use or building naturally or normally incidental, subordinate, and devoted to the principal Use or building, and located on the same lot or Site.”

Under section 6.1, **Driveway** means “an area that provides access for vehicles from a public or private roadway to a Garage or Parking Area and does not include a Walkway.”

Under section 6.1, **Front Yard** means:

the portion of a Site abutting the Front Lot Line extending across the full width of the Site, situated between the Front Lot Line and the nearest wall of the principal building, not including projections.



Under section 6.1, **Garage** means “an Accessory building, or part of a principal building designed and used primarily for the storage of motor vehicles and includes a carport.”

Under section 6.1, **Parking Area** means “an area that is used for the parking of vehicles. A Parking Area is comprised of one or more parking spaces, and includes a parking pad, but does not include a Driveway.”

Under section 6.1, **Walkway** means “a path for pedestrian circulation that cannot be used for vehicular parking.”

***Off-street Parking and Loading Regulations***

Section 54.1(4) states:

The Front Yard of any ground level Dwelling in any Residential Zone, or in the case of a corner Site, either the Front Yard or the flanking Side Yard in any Residential Zone, may include a maximum of one Driveway. The Driveway shall:

- a. lead directly from the roadway to the Garage or Parking Area;
- b. for a Garage or Parking Area with one parking space, have a maximum width of 4.3 m, or the width of the Garage or Parking Area, whichever is the lesser;

- c. For a Garage or Parking Area with two or more parking spaces, have a maximum width that shall be calculated as the product of 3.7 m multiplied by the total number of adjacent side-by-side parking spaces contained within the Garage or Parking Area, or the width of the Garage or Parking Area, whichever is the lesser; and
- d. ...

**Development Officer's Determination**

The Front Yard of any ground level Dwelling in any Residential Zone, may include a maximum of one Driveway. (Reference Section 54.1(4))


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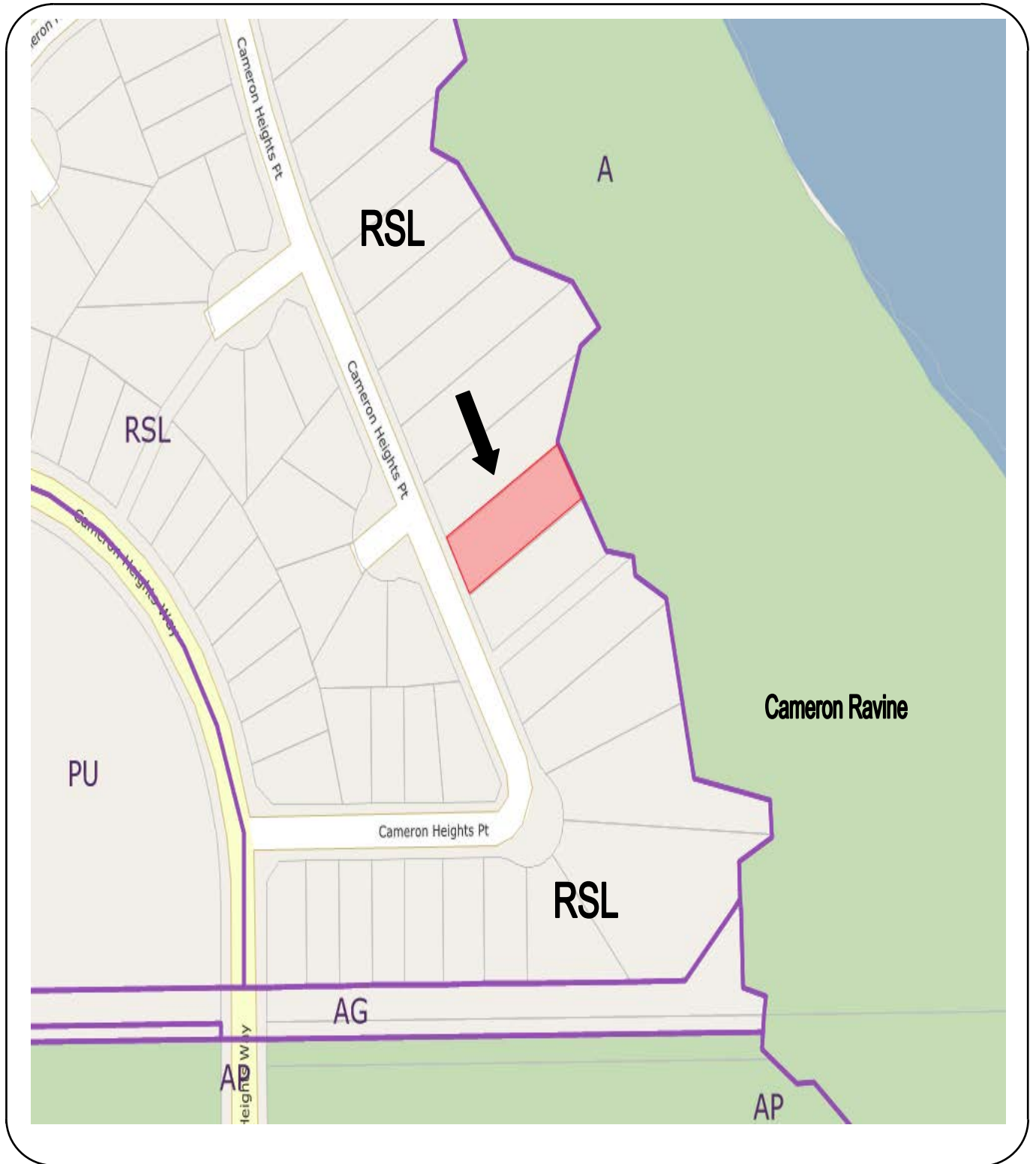
Notice to Applicant/Appellant

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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	<h2 style="margin: 0;">Application for Minor Development Permit</h2>	Project Number: <b>258185317-005</b> Application Date: AUG 16, 2018 Printed: September 26, 2018 at 9:13 AM Page: 1 of 1																				
This document is a Development Permit Decision for the development application described below.																						
<b>Applicant</b>	<b>Property Address(es) and Legal Description(s)</b> 4131 - CAMERON HEIGHTS POINT NW Plan 1424124 Blk 14 Lot 91																					
<b>Scope of Application</b> To construct exterior alterations to a Single Detached House (additional driveway).																						
<b>Permit Details</b>																						
# of Dwelling Units Add/Remove: 0 Client File Reference Number: Minor Dev. Application Fee: Exterior Alterations (Res.) Secondary Suite Included?: N	Class of Permit: Class B Lot Grading Needed?: New Sewer Service Required: Y Stat. Plan Overlay/Annex Area:																					
I/We certify that the above noted details are correct. Applicant signature: _____																						
<b>Development Application Decision</b> Refused <b>Issue Date:</b> Sep 25, 2018 <b>Development Authority:</b> FOLKMAN, JEREMY  <b>Reason for Refusal</b> The Front Yard of any ground level Dwelling in any Residential Zone, may include a maximum of one Driveway. (Reference Section 54.1(4))  <b>Rights of Appeal</b> 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.																						
<b>Fees</b> <table style="width: 100%; border-collapse: collapse; font-size: x-small;"> <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>Dev. Application Fee</td> <td style="text-align: right;">\$170.00</td> <td style="text-align: right;">\$170.00</td> <td style="text-align: right;">05271373</td> <td style="text-align: right;">Aug 20, 2018</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;">\$170.00</td> <td style="text-align: right; border-top: 1px solid black;">\$170.00</td> <td></td> <td></td> </tr> </tbody> </table>				Fee Amount	Amount Paid	Receipt #	Date Paid	Dev. Application Fee	\$170.00	\$170.00	05271373	Aug 20, 2018	Total GST Amount:	\$0.00				Totals for Permit:	\$170.00	\$170.00		
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**SURROUNDING LAND USE DISTRICTS**

Site Location ←

File: SDAB-D-18-172

