

**SUBDIVISION  
AND  
DEVELOPMENT APPEAL BOARD  
AGENDA**

**Wednesday, 9:00 A.M.  
October 26, 2016**

**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-16-263	Erect a Fence higher than 1.2 metres in a Side Yard abutting a public roadway other than a lane.  10336 - 80 Street NW Project No.: 188934610-001
<hr/>			
II	10:30 A.M.	SDAB-D-16-264	To construct exterior alterations to an approved Accessory Building (rear detached Garage, 7.3 metres by 6.1 metres).  10927 - 97 Street NW Project No.: 176981065-003
<hr/>			
III	1:00 P.M.	SDAB-D-16-265	Construct a side, rear and front uncovered deck (rear deck is irregular shaped, 9.5 metres by 6.7 metres, attached front and side deck is irregular shaped, 18.5 metres long) with a maximum Height of 1.2 metres, with Privacy Screening (1.8 metres tall above the deck floor), pergola (Pergola is irregular shaped, 5.9 metres by 3.1 metres) and over Height gate in the west Side Yard, and to install a Hot Tub, existing without permits.  976 - Hollingsworth Bend NW Project No.: 142981618-003

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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-16-263

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 188934610-001

APPLICATION TO: Erect a Fence higher than 1.2 metres in a Side Yard abutting a public roadway other than a lane.

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: September 12, 2016

DATE OF APPEAL: September 28, 2016

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 10336 - 80 Street NW

LEGAL DESCRIPTION: Plan 3922HW Blk 36 Lot 19

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:

I have had a turbulent relationship with my neighbour, since I have moved into my house. She first started killing plants that were growing on my side against the chain link fence, and snapping flowers. My plants have been affected by weed killer that she sprays along the fence line. There had been many instances of garbage being thrown into my garden from her, which has been witnessed by some of my neighbours, who will also testify to this fact. The issue culminated in the neighbour throwing animal intestines in to my garden. I was alerted to this by the presence of numerous flies. I am a strict vegetarian and I consider this to be a hate crime. I have had the police investigate, and a file is present reflecting this crime. I was advised the fence hinders a view for a car. She does not drive, and has a back alley garage, for when she did drive.

Even if the decorative screen was reduced to the height of the chain link fence a car driving from the house the driver would still not be able to see over it. Since the erection of the fence things had improved between us, and it is a testament to the saying "good fences make good neighbours". Thank you for your consideration into this matter.

**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 12, 2016. The Notice of Appeal was filed on September 28, 2016. The Development Officer submitted a Registered Mail Delivery Confirmation dated September 16, 2016 that the delivery date of the Refusal of the Development Permit was signed by A. Tillay on September 15, 2016.**

**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.

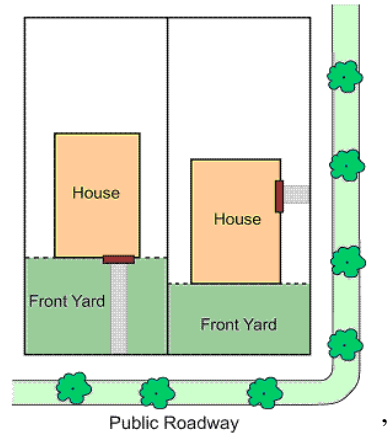
**General Provisions from the *Edmonton Zoning Bylaw*:**

Under section 140.2(9), **Single Detached Housing** is a **Permitted Use** in the RF3 Small Scale Infill Development Zone.

Under section 6.1(2), **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(34), **Fence** means “a structure constructed at ground level, used to prevent or restrict passage, provide visual screening, noise attenuation, Landscaping, or to mark a boundary.”

Under section 6.1(41), **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.



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

...to provide for Single Detached Housing while allowing other forms of small scale housing in the form of Secondary Suites, Semi-detached Housing and Duplex Housing under certain conditions.

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.

***Fences, Walls, Gates, and Privacy Screening in Residential Zones***

Section 49.1(d) states:

On an Interior Site, the Height of a Fence, wall, or gate shall not exceed:

- i. 1.2 m for the portion of the Fence, wall, or gate constructed in the Front Yard [...].

...

**Development Officer’s Determination:**

**Section 49(4)(a) - A fence on a Site in a Residential Zone shall be less than or equal to 1.2 m in Height for the portion of the fence that extends beyond the foremost portion or portions of the principal building on the Site, into the Front Yard.**


**Proposed Fence Height in Front Yard: 1.83 m**  
**Exceeds by: 0.63 m [unedited].**

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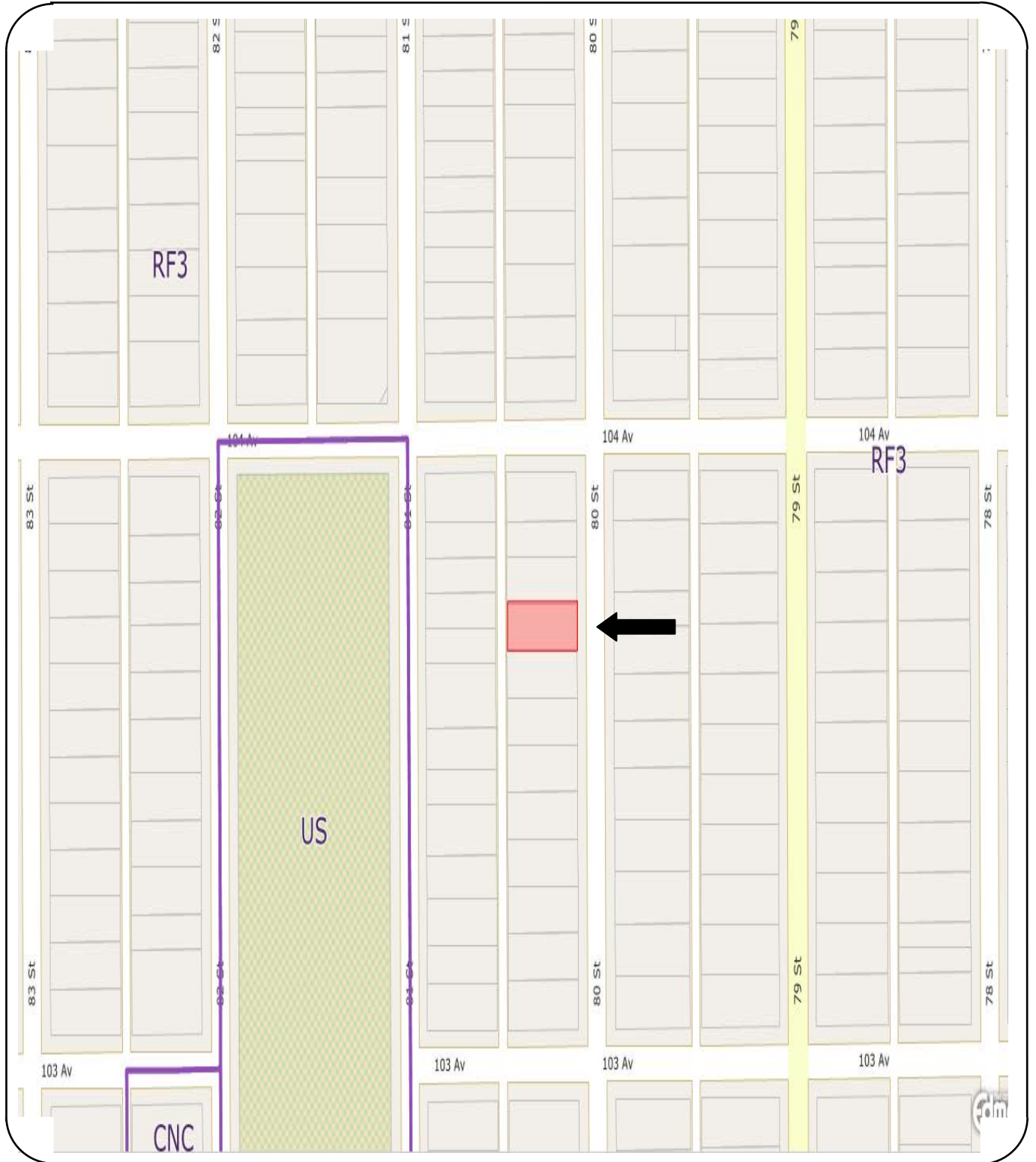
Notice to Applicant/Appellant

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. 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*.

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	Project Number: <b>188934610-001</b> Application Date: MAR 21, 2016 Printed: September 12, 2016 at 3:32 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.																										
<b>Applicant</b>	<b>Property Address(es) and Legal Description(s)</b> 10336 - 80 STREET NW Plan 3922HW Blk 36 Lot 19  <b>Specific Address(es)</b> Suite: 10336 - 80 STREET NW Suite: BSMT, 10336 - 80 STREET NW Entryway: 10336 - 80 STREET NW Building: 10336 - 80 STREET NW																									
<b>Scope of Application</b> To erect a fence higher than 1.2m in a Side Yard abutting a public roadway other than a lane.																										
<b>Permit Details</b>  <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border-right: 1px solid black; padding-right: 5px;">                     # of Dwelling Units Add/Remove: 0                      Client File Reference Number:                      Minor Dev. Application Fee: Fence                      Secondary Suite Included?: N                 </td> <td style="width: 50%; padding-left: 5px;">                     Class of Permit: Class B                      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: Fence Secondary Suite Included?: N	Class of Permit: Class B Lot Grading Needed?: N New Sewer Service Required: N Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay																							
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I/We certify that the above noted details are correct.  Applicant signature: _____																										
<b>Development Application Decision</b> Refused  <b>Reason for Refusal</b> Section 49(4)(a) - A fence on a Site in a Residential Zone shall be less than or equal to 1.2 m in Height for the portion of the fence that extends beyond the foremost portion or portions of the principal building on the Site, into the Front Yard.  Proposed Fence Height in Front Yard: 1.83 m Exceeds by: 0.63 m  <b>Rights of Appeal</b> 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 12, 2016      Development Authority: WATTS, STACY      Signature: _____																										
<b>Fees</b> <table style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="width: 60%;"></th> <th style="text-align: right; width: 15%;">Fee Amount</th> <th style="text-align: right; width: 15%;">Amount Paid</th> <th style="text-align: left; width: 10%;">Receipt #</th> <th style="text-align: left; width: 10%;">Date Paid</th> </tr> </thead> <tbody> <tr> <td>Dev. Application Fee</td> <td style="text-align: right;">\$165.00</td> <td style="text-align: right;">\$165.00</td> <td>03143342</td> <td>Mar 21, 2016</td> </tr> <tr> <td>DP Notification Fee</td> <td style="text-align: right;">\$41.00</td> <td style="text-align: right;">\$41.00</td> <td>03143342</td> <td>Mar 21, 2016</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;">\$206.00</td> <td style="text-align: right; border-top: 1px solid black;">\$206.00</td> <td></td> <td></td> </tr> </tbody> </table>			Fee Amount	Amount Paid	Receipt #	Date Paid	Dev. Application Fee	\$165.00	\$165.00	03143342	Mar 21, 2016	DP Notification Fee	\$41.00	\$41.00	03143342	Mar 21, 2016	Total GST Amount:	\$0.00				Totals for Permit:	\$206.00	\$206.00		
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<b>THIS IS NOT A PERMIT</b>																										





**SURROUNDING LAND USE DISTRICTS**

Site Location ←

File: SDAB-D-16-263



ITEM II: 10:30 A.M.

FILE: SDAB-D-16-264

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 176981065-003

APPLICATION TO: To construct exterior alterations to an approved Accessory Building (rear detached Garage, 7.3 metres by 6.1 metres)

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: September 26, 2016

DATE OF APPEAL: October 3, 2016

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 10927 - 97 Street NW

LEGAL DESCRIPTION: Plan ND Blk 34 Lot 26

ZONE: DC1 (Area 5) Northwest McCauley Direct Development Control Provision

OVERLAY: N/A

STATUTORY PLAN: Boyle Street / McCauley Area Redevelopment Plan

***Grounds for Appeal***

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

The Phoigraphic Arts Society of Alberta (Camera Club) is an organization with over 100 members. Because of the large membership a larger building is required to perform all their activities. The reason they are exceeding the height restrictions of 3.7m is that lighting equipment that will be installed requires the extra .5m.

The reason that 14% of the area is required is that more members would be able to work together on their projects. Some properties in the area exceed the height and area requirements. We feel this building will be accepted and approved by residents in this area.

<i>General Matters</i>
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**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

...

**Designation of direct control districts**

**641(4)** Despite section 685, 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.

Section 2 of the *Edmonton Zoning Bylaw* concerning Repeal, Enactment and Transition Procedures states the following:

2.4 Subject only to the provisions in the Municipal Government Act respecting legal non-conforming Uses and notwithstanding the effect it may have on rights, vested or otherwise, the provisions of this Bylaw govern from the Effective Date onward. In particular, no application for a Development Permit shall be evaluated under the procedural or substantive provisions of the previous Land Use Bylaw after the Effective Date, even if the application was received before the Effective Date.

...

2.6 Any Direct Control Districts that were in effect immediately prior to the Effective date are hereby deemed to continue in full force and effect and are hereby incorporated into Part IV of this Bylaw.

2.7 Unless there is an explicit statement to the contrary in a Direct Control District or Provision, any reference in a Direct Control District or Direct Control Provision to a land use bylaw shall be deemed to be a reference to the land use bylaw that was in effect at the time of the creation of the Direct Control District or Provision.

At the time of the creation of the subject DC site, the *City of Edmonton Land Use Bylaw 5996* was in effect. An Alberta Court of Appeal decision in *Parkdale-Cromdale Community League Association v. Edmonton (City)*, 2007 ABCA 309 concluded that section 2.7 of the *Edmonton Zoning Bylaw* only applies if there is an express cross-reference in a Direct Control bylaw passed before 2001 to a provision of the old *Land Use Bylaw*. In the absence of an express reference in the Direct Control Bylaw to the *Land Use Bylaw 5996*, it does not prevail over section 2.4 of the *Edmonton Zoning Bylaw*.

### **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 DC1 (Area 5) Northwest McCauley Direct Development Control Provision**

Under section 8.4.16.3.10, **Single Detached** and Duplex **Housing** where lawfully existing on a site in this District on the effective date of this Bylaw on the same site only, is a **listed Use** in the DC1 (Area 5) Northwest McCauley Direct Development Control Provision.

Section 8.4.16.2 states that the **Rationale** of the **DC1 (Area 5) Northwest McCauley Direct Development Control Provision** is:

...To provide for a District which will promote the conservation and rehabilitation of the existing housing stock until this area is redeveloped for low intensity business uses in order to achieve the intent of Section 7.2.3 of this Plan.

**General Provisions from the Edmonton Land Use Bylaw 5996**

Under section 9.1(2), **Accessory** means, “when used to describe a use or building, a use or building naturally or normally incidental, subordinate, and exclusively devoted to the principal use or building, and located on the same lot or site.”

Under section 9.1(25), **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 9.1(28), **Height** means:

when used with reference to a building or structure, the vertical distance between the horizontal plane through grade and a horizontal plane through:

- a) the highest point of the roof in the case of a building with a flat roof or a roof having a slope of less than 20 degrees; and

- b) the average level between eaves and ridges in the case of a pitched, gambrel, mansard or hipped roof, or a roof having a slope of more than 20 degrees; provided that in such cases the ridge line of the roof shall not extend more than 1.5 m (4.9 ft.) above the maximum permitted building Height of the District.”

Under section 9.1(14), **Site Coverage** means:

the total horizontal area of all buildings or structures on a site which are located at or higher than 1.0 m (3.28 ft.) above grade, including accessory buildings or structures, calculated by perpendicular projection onto a horizontal plane from one point located at an infinite distance above all buildings and structures on the site. This definition shall not include:

- a) steps, eaves, cornices, and similar projections;
- b) driveways, aisles and parking lots unless they are part of a parking garage which extends 1.0 m (3.28 ft.) or more above grade; or
- c) unenclosed inner and outer courts, terraces and patios where these are less than 1.0 m (3.28 ft.) above grade.

Under section 9.1(16), **District** means:

a specific group of listed Use Classes and Development Regulations which regulate the use and development of land within specific geographic areas of the City. The Use Classes and Development Regulations are contained in Parts II, IV and V of this Bylaw, and may be subject to the regulations contained in Part I of this Bylaw, while the geographic areas to which they apply are shown on the Land Use District Map, comprising Part III of the Bylaw.

***Development Criteria of the DCI (Area 5) Northwest McCauley Direct Development Control Provision***

Section 8.4.16.4 states:

The following criteria shall apply to the prescribed uses pursuant to Section 710.4 of the Land Use Bylaw.

Section 8.4.16.4.2 states “The maximum building height shall not exceed 12 m (39.4 ft.) nor 3 storeys.”

Section 8.4.16.4.8 states:

Development in this district shall be evaluated with respect to compliance with the General Development Regulations of Sections 50 to 79 inclusive, of the Land Use Bylaw.

***Accessory Buildings in Residential Districts of the Edmonton Land Use Bylaw 5996***

Section 61.3(2) states “In a Residential District an Accessory Building or Structure shall not exceed 3.7 m (12.0 ft.) nor one storey in Height, except as provided in Sections 61.4 and 61.5.”

Section 61.3(3) states “In a Residential District the site coverage of Accessory Buildings or Structures shall not exceed 12%, except for the RPL District, where the site coverage shall not exceed 15%.”

***Accessory Buildings in Non-residential Districts of the Edmonton Land Use Bylaw 5996***

Section 61.2(1) states “In any District other than a Residential District, an Accessory Building or Structure is subject to the Development Regulations for that District.”

**Development Officer’s Determination:**

**1. An Accessory Building shall not exceed 3.7 m (Section 61.3.2 of the Land Use Bylaw 5996).**

**Proposed Height = 4.2 m  
Exceeds by = +0.5 m**

**2. The Site Coverage of Accessory Buildings shall not exceed 12% (Section 61.3.3 of the Land Use Bylaw 5996).**


**Proposed Site Coverage = 14%  
Exceeds by = +2%**

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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. 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*.

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	<p style="text-align: right;">Project Number: <b>176981065-003</b>                  Application Date: SEP 02, 2016                  Printed: September 26, 2016 at 3:27 PM                  Page: 1 of 2</p>																				
<h2 style="margin: 0;">Application for</h2> <h1 style="margin: 0;">Accessory Building Development and Building Permit</h1>																					
<p>This document is a record of a Development Permit and/or Building Permit application, and a record of the decision for the undertaking described below, subject to the limitations and conditions of this permit, of the Edmonton Zoning Bylaw 12800 as amended, Safety Codes Act RSA 2000, Safety Codes Act Permit Regulation, Alberta Building Code 2006 and City of Edmonton Bylaw 15894 Safety Codes Permit</p>																					
<p><b>Applicant</b></p>	<p><b>Property Address(es) and Legal Description(s)</b>                  10927 - 97 STREET NW                  Plan ND Blk 34 Lot 26</p> <hr/> <p><b>Location(s) of Work</b>                  Entryway: 10927 - 97 STREET NW                  Building: 10927 - 97 STREET NW</p>																				
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<p><b>Permit Details</b></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;">                     Building Area (sq. ft.): 480                      Stat. Plan Overlay/Annex Area: Boyle Street/McCauley                 </td> <td style="width: 50%; border: none;">                     Class of Permit: Class B                      Type of Accessory Building: Detached Garage (010)                 </td> </tr> </table>		Building Area (sq. ft.): 480 Stat. Plan Overlay/Annex Area: Boyle Street/McCauley	Class of Permit: Class B Type of Accessory Building: Detached Garage (010)																		
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<p>I/We certify that the above noted details are correct.                  Applicant signature: _____</p>																					
<p><b>Development Application Decision</b>                  Refused</p> <p><b>Reasons for Refusal</b></p> <ol style="list-style-type: none"> <li>1. An Accessory Building shall not exceed 3.7 m (Section 61.3.2 of the Land Use Bylaw 5996).                       Proposed Height = 4.2 m                      Exceeds by = +0.5 m</li>   <li>2. The Site Coverage of Accessory Buildings shall not exceed 12% (Section 61.3.3 of the Land Use Bylaw 5996).                       Proposed Site Coverage = 14%                      Exceeds by = +2%</li> </ol> <p><b>Rights of Appeal</b>                  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.</p>																					
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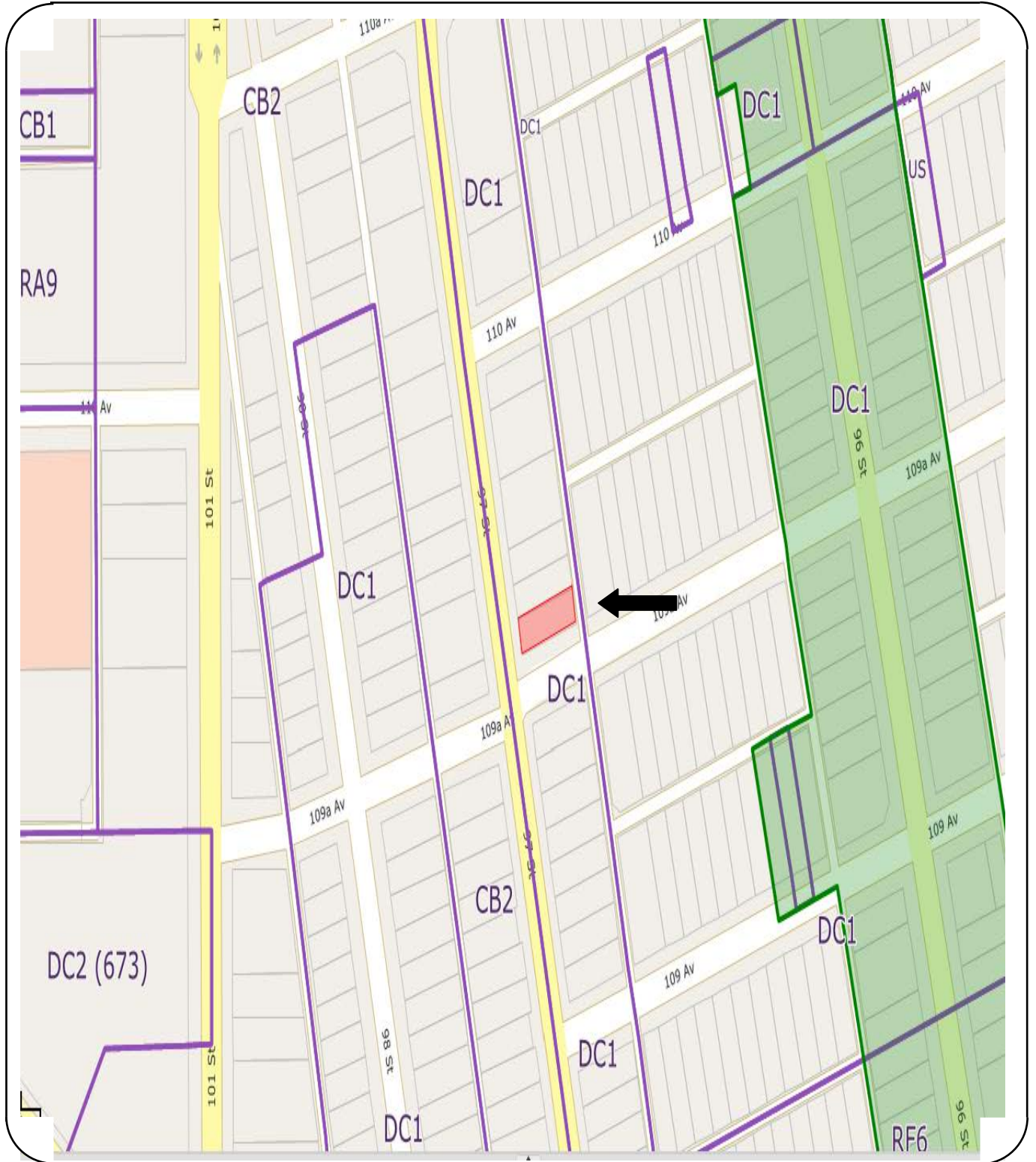
Project Number: **176981065-003**  
Application Date: SEP 02, 2016  
Printed: September 26, 2016 at 3:27 PM  
Page: 2 of 2

## Application for Accessory Building Development and Building Permit

**Fees**

	Fee Amount	Amount Paid	Receipt #	Date Paid
DP Notification Fee	\$41.00			
Total GST Amount:	\$0.00			
Totals for Permit:	\$255.50	\$214.50		
(\$41.00 outstanding)				

**THIS IS NOT A PERMIT**



### SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-16-264



ITEM III: 1:00 P.M.

FILE: SDAB-D-16-265

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 142981618-003

APPLICATION TO: Construct a side, rear and front uncovered deck (rear deck is irregular shaped, 9.5 metres by 6.7 metres, attached front and side deck is irregular shaped, 18.5 metres long) with a maximum Height of 1.2 metres, with Privacy Screening (1.8 metres tall above the deck floor), pergola (Pergola is irregular shaped, 5.9 metres by 3.1 metres) and over Height gate in the west Side Yard, and to install a Hot Tub, existing without permits

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: August 31, 2016

DATE OF APPEAL: September 28, 2016

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 976 - Hollingsworth Bend NW

LEGAL DESCRIPTION: Plan 0223933 Blk 162 Lot 1

ZONE: RF1 Single Detached Residential Zone

OVERLAY: N/A

STATUTORY PLAN: Hodgson Neighbourhood Area Structure Plan

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*Grounds for Appeal*

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

We have worked with City on changing the requested alterations as per meetings with the city we have tried to comply with as much as possible but still require minor variances.

**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 31, 2016. The Notice of Appeal was filed on September 28, 2016. The Development Officer submitted a Registered Mail Delivery Confirmation dated September 8, 2016 that the delivery date of the Refusal of the Development Permit was signed by G. Hilbrecht on September 6, 2016.**

**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*:**

Under section 110.2(4), **Single Detached Housing** is a **Permitted Use** in the RF1 Single Detached Residential Zone.

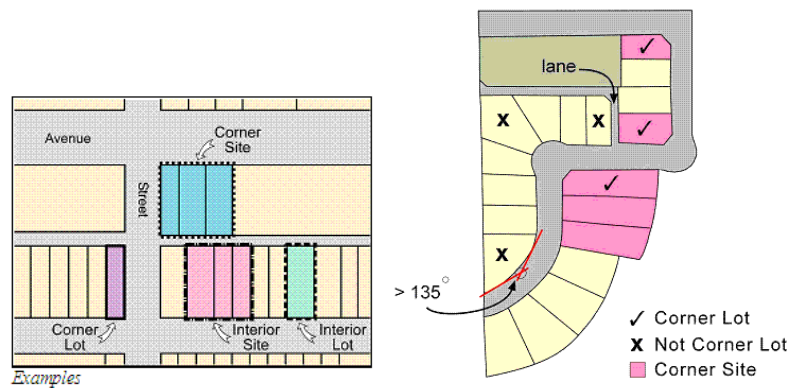
Under section 6.1(2), **Accessory** means “when used to describe a Use or building, a Use or building naturally or normally incidental, subordinate, and devoted to the principal Use or building, and located on the same lot or Site.”

Under section 6.1(19), **Corner Site** means:

an area of land consisting of one or more adjacent Lots where at least one Lot is:

- a. located at the intersection of two public roadways, other than Lanes; or
- b. abuts a public roadway, other than a Lane, which changes direction at any point where it abuts the Site;

provided that in both cases the Site shall not be considered a Corner Site where the contained angle formed by the intersection or change of direction is an angle of more than 135 degrees. In the case of a curved corner, the angle shall be determined by the lines tangent to the property line abutting the public roadways, provided the roadway is not a Lane, at the point which is the extremity of that property line. In the case of a curved corner, the point which is the actual corner of the Site shall be that point on the property line abutting the public roadway, provided the roadway is not a Lane, which is nearest to the point of intersection of the tangent lines.



Under section 6.1(75), **Platform Structures** means:

a raised structure on which people can stand, that projects from the wall of a building, may be surrounded by guardrails, parapet walls or similar features, and is intended for use as an Amenity Area. Common examples include: balconies, raised terraces and decks. This definition does not include a Rooftop Terrace.

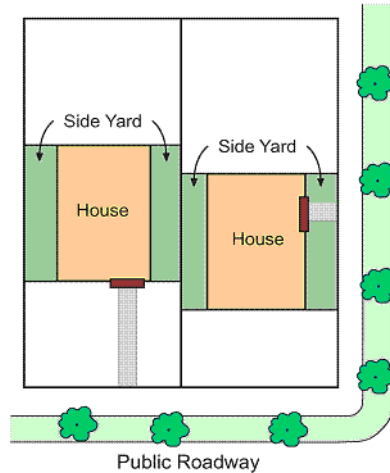
Under section 6.1(50), **Height** means “a vertical distance between two points.”

Under section 6.1(78), **Privacy Screening** means:

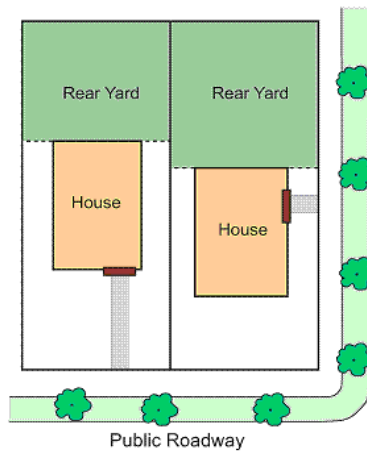
a feature that obscures direct and otherwise unimpeded sightlines. Common examples include: vegetative screening, such as shrubs and trees, lattice, masonry or wooden walls, parapet walls, translucent glass or any combination of these or like features. Privacy Screening does not include a balustrade railing or similar railing system.

Under section 6.1(34), **Fence** means “a structure constructed at ground level, used to prevent or restrict passage, provide visual screening, noise attenuation, Landscaping, or to mark a boundary.”

Under section 6.1(95), **Side Yard** means that portion of a Site abutting a Side Lot Line extending from the Front Yard to the Rear Yard. The Side Yard is situated between the Side Lot Line and the nearest wall of principal building, not including projections.



Under section 6.1(85), **Rear Yard** means the portion of a Site abutting the Rear Lot Line extending across the full width of the Site, situated between the Rear Lot Line and the nearest wall of the principal building, not including projections.



Section 110.1 states that the **General Purpose** of the **RF1 Single Detached Residential Zone** is:

... The purpose of this Zone is to provide for Single Detached Housing while allowing other forms of small scale housing in the form of Secondary Suites, Semi-detached Housing and Duplex Housing under certain conditions.

***Projection into Setbacks and Separation Spaces***

Section 44.3 states:

The following features may project into a required Setback or Separation Space as provided for below:

- b) Platform Structures greater than 0.6 m in Height or less than 0.6 m in Height and located within the flanking Side Yard provided such projections do not exceed 2.0 m into Setbacks or Separation Spaces with a depth of at least 4.0 m.
- c) Platform Structures greater than 0.6 m in Height or less than 0.6 m in Height and located within the flanking Side Yard provided such projections do not exceed 0.6 m for Setbacks or Separation Spaces with a depth of less than 4.0 m; and
- d) ...

***Fences, Walls, Gates, and Privacy Screening in Residential Zones***

Section 49.2(c) states:

Privacy Screening, excluding vegetative screening, constructed on a Platform Structure located within a Front Yard, required Side Setback or within 2.5 m of a Rear Lot Line shall not exceed 1.2 m in Height, and 1.85 m in Height in all other Yards, when measured from the surface of a Platform Structure.

Section 49.1(e) states:

On a Corner Site, the Height of a Fence, wall, or gate shall not exceed:

- i. ...
- ii. 1.2 m for the portion of the Fence, wall, or gate situated between the flanking Side Lot Line and the foremost side Façade of the principal structure, and extending from the Front Lot Line to the Rear Lot Line, and
- iii. 1.85 m in all other Yards.

***Accessory Buildings in Residential Zones***

Section 50.3(4) states:

Accessory buildings and structures shall be located on an Interior Site as follows:

- b. an Accessory building or structure shall be located not less than 0.9 m from the Side Lot Line, except where it is a mutual Garage erected on the common property line to the satisfaction of the Development Officer, or where a Garage is placed on the common property line in accordance with the provisions of the RPL Zone, or where the Accessory building does not exceed the permitted Fence Height or in the case of Garage Suites, where



the minimum Side Setback shall be in accordance with Section 87.

- c. an Accessory building or structure shall be located not less than 0.9 m from a principal building and any other Accessory building or structure.
- d. ...

Section 50.3(5) states:

Accessory buildings and structures shall be located on a corner Site as follows:

- a. in addition to the provisions of subsection 50.3(4)(b), and subject to subsection 50.3(5)(b), the distance between an Accessory building and the lot line running parallel to any flanking public roadway, other than a Lane, shall not be less than the Side Setback required for the principal building; and
- b. ...

**Development Officer's Determination:**

**1. Section 49.2.c - Privacy Screening constructed on a Platform Structure located within a required Side Setback shall not exceed 1.2 m in Height, when measured from the surface of a Platform Structure.**

**Proposed: The Privacy Screen constructed on the rear uncovered deck located within the required interior Side Setback is 1.82 m in Height, when measured from the surface of a Platform Structure.**

**Deficiency: +0.62 m.**

**2. Section 44.3.b - Platform Structures greater than 0.6 m in Height may project into a required Setback, provided such projections do not exceed 2.0 m into Setbacks with a depth of at least 4.0 m.**

**Proposed: Rear uncovered deck projects 5.2 m into the required 7.5 m Rear Setback. The distance from the rear uncovered deck to the back property line (rear lot line) is 2.3 m, instead of 5.5 m.**

**Deficiency: +3.2 m.**

**3. Section 44.3.c - Platform Structures greater than 0.6 m in Height may project into a required Setback, provided such projections do not exceed 0.6 m for Setbacks with a depth of less than 4.0 m.**

**Proposed: A 1.5 m long portion of the side uncovered deck projects 1.2 m into the required 1.2 m Interior Side Setback. The distance**

**from this portion of deck to the property line shared with 974 Hollingsworth Bend NW (side lot line) is 0 m, instead of 0.6 m.**

**Deficiency: +0.6 m.**

**4. Section 50.3.4.b - An Accessory building or structure shall be located not less than 0.9 m from the Side Lot Line.**

**Proposed: The Pergola is located 0.6 m from the interior Side Lot Line.**

**Deficiency: -0.3 m.**

**5. Section 50.3.4.c - An Accessory building or structure shall be located not less than 0.9 m from a principal building and any other Accessory building or structure.**

**Proposed: The Pergola is located 0.5 m from the Principal Dwelling.**

**Deficiency: -0.4 m**

**6. Section 49.1.d.ii - On an interior Site, the Height of a Gate shall not exceed 1.85 m in all other Yards than a Front Yard.**

**Proposed: A 2.4 m tall gate is located in the Interior Side Yard.**

**Deficiency: +0.55 m.**

*Previous Subdivision and Development Appeal Board Decision*


<b><u>Application Number</u></b>	<b><u>Description</u></b>	<b><u>Decision</u></b>
<u>SDAB-D-13-312</u>	Construct an uncovered deck with attached pergola (irregular shape, maximum 6.70 metres by 14.17 metres at 1.22 metres in height) and to install a Hot Tub, existing without permits, constructed right up to the property line.	December 19, 2013:  “that the appeal be DENIED and the decision of refusal by the Development Authority CONFIRMED.”

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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. 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*.

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	Project Number: <b>142981618-003</b> Application Date: FEB 19, 2016 Printed: August 31, 2016 at 3:17 PM Page: 1 of 3
<h2 style="margin: 0;">Application for Minor Development Permit</h2>	
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> 976 - HOLLINGSWORTH BEND NW Plan 0223933 Blk 162 Lot 1
<b>Scope of Application</b> To construct a side, rear and front uncovered deck (rear deck is irregular shape, 9.5 m x 6.7 m, attached front and side deck is irregular shape, 18.5 m long) with a maximum Height of 1.2 m, with Privacy Screening (1.8 m tall above the deck floor), pergola (Pergola is irregular shape, 5.9 m x 3.1 m) and overheight gate in the west side yard, and to install a Hot Tub, existing without	
<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?: N New Sewer Service Required: N Stat. Plan Overlay/Annex Area: (none)
I/We certify that the above noted details are correct.  Applicant signature: _____	
<b>Development Application Decision</b> Refused	
<b>THIS IS NOT A PERMIT</b>	



Project Number: 142981618-003  
Application Date: FEB 19, 2016  
Printed: August 31, 2016 at 3:17 PM  
Page: 2 of 3

## Application for Minor Development Permit

### Reason for Refusal

1. Section 49.2.c - Privacy Screening constructed on a Platform Structure located within a required Side Setback shall not exceed 1.2 m in Height, when measured from the surface of a Platform Structure.

Proposed: The Privacy Screen constructed on the rear uncovered deck located within the required interior Side Setback is 1.82 m in Height, when measured from the surface of a Platform Structure.

Deficiency: +0.62 m.

2. Section 44.3.b - Platform Structures greater than 0.6 m in Height may project into a required Setback, provided such projections do not exceed 2.0 m into Setbacks with a depth of at least 4.0 m.

Proposed: Rear uncovered deck projects 5.2 m into the required 7.5 m Rear Setback. The distance from the rear uncovered deck to the back property line (rear lot line) is 2.3 m, instead of 5.5 m.

Deficiency: +3.2 m.

3. Section 44.3.c - Platform Structures greater than 0.6 m in Height may project into a required Setback, provided such projections do not exceed 0.6 m for Setbacks with a depth of less than 4.0 m.

Proposed: A 1.5 m long portion of the side uncovered deck projects 1.2 m into the required 1.2 m Interior Side Setback. The distance from this portion of deck to the property line shared with 974 Hollingsworth Bend NW (side lot line) is 0 m, instead of 0.6 m.

Deficiency: +0.6 m.

4. Section 50.3.4.b - An Accessory building or structure shall be located not less than 0.9 m from the Side Lot Line.

Proposed: The Pergola is located 0.6 m from the interior Side Lot Line.

Deficiency: -0.3 m.

5. Section 50.3.4.c - An Accessory building or structure shall be located not less than 0.9 m from a principal building and any other Accessory building or structure.

Proposed: The Pergola is located 0.5 m from the Principal Dwelling.

Deficiency: -0.4 m

6. Section 49.1.d.ii - On an interior Site, the Height of a Gate shall not exceed 1.85 m in all other Yards than a Front Yard.

Proposed: A 2.4 m tall gate is located in the Interior Side Yard.

Deficiency: +0.55 m.

### 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: Aug 31, 2016    Development Authority: LIANG, BENNY

Signature: \_\_\_\_\_

**THIS IS NOT A PERMIT**



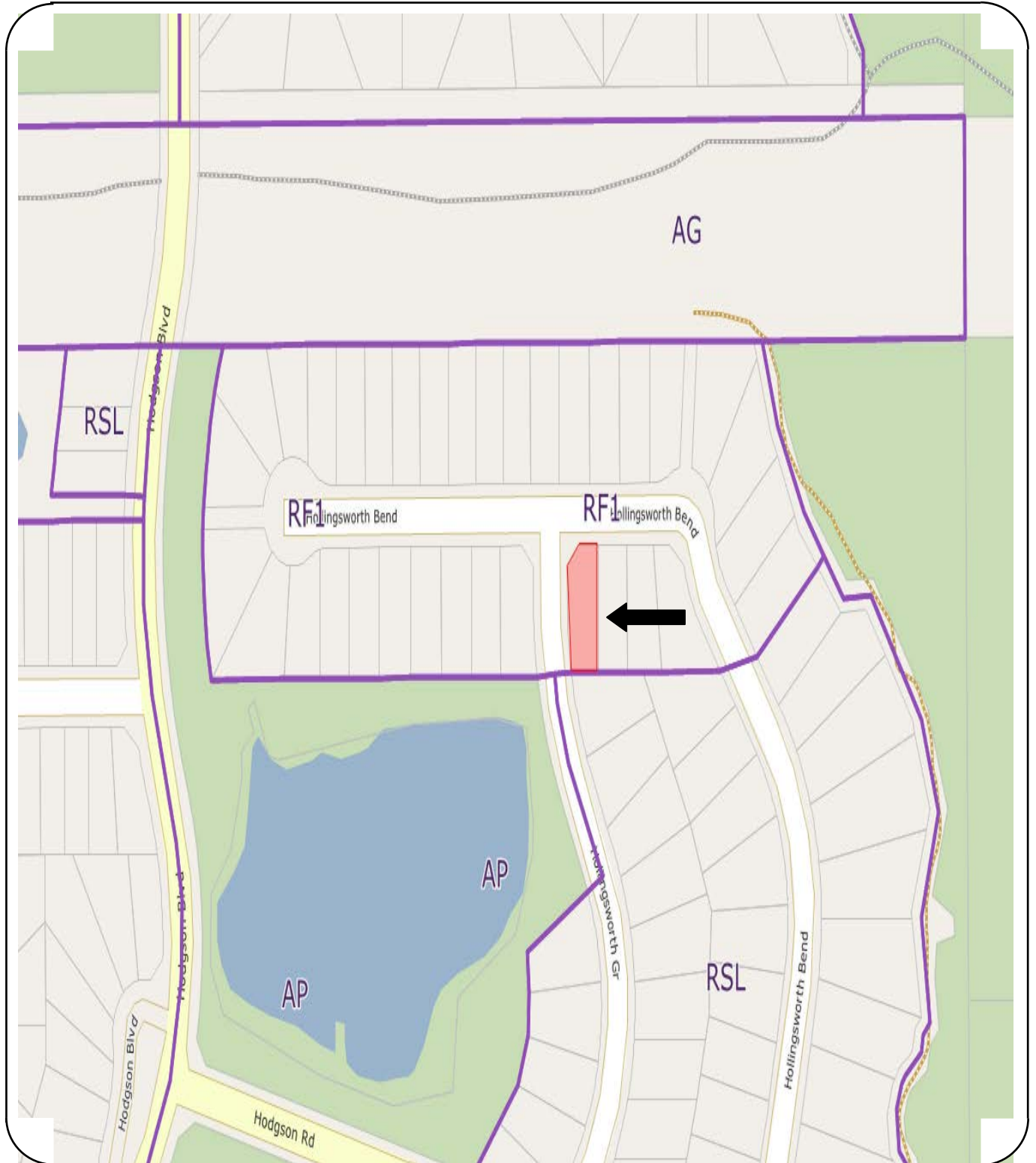
Project Number: **142981618-003**  
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Printed: August 31, 2016 at 3:17 PM  
Page: 3 of 3

## Application for Minor Development Permit

**Fees**

	<b>Fee Amount</b>	<b>Amount Paid</b>	<b>Receipt #</b>	<b>Date Paid</b>
Dev. Application Fee	\$159.00	\$159.00	03087228	Feb 25, 2016
DP Notification Fee	\$41.00	\$41.00	03354126	Jun 13, 2016
Total GST Amount:	\$0.00			
Totals for Permit:	\$200.00	\$200.00		

**THIS IS NOT A PERMIT**



**SURROUNDING LAND USE DISTRICTS**

Site Location ←

File: SDAB-D-16-265



***BUSINESS LAID OVER***

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) <b><i>November 3, 2016</i></b>
SDAB-D-16-252	An appeal by <u>Tahir Jutt</u> to operate a Major Home Based Business (Filling Sandbags – Sandbags.ca) <b><i>November 23 or 24, 2016</i></b>
SDAB-D-16-144	An appeal by <u>Kiewit Energy Canada Corp</u> 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) <b><i>November 30 or December 1, 2016</i></b>
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 <b><i>January 25, 2017</i></b>

***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) <b><i>November 2 or 3, 2016</i></b>
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. <b><i>November 17, 2016</i></b>
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. <b><i>November 17, 2016</i></b>
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) <b><i>November 23 or 24, 2016</i></b>
182548244-007	An appeal by <u>Stephanie Chan VS Deborah &amp; Terence Nekolaichuk</u> to construct an Accessory Building (Shed, 3.20 metres by 3.12 metres), existing without permits <b><i>December 7 or 8, 2016</i></b>
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 <b><i>December 7 or 8, 2016</i></b>