# SUBDIVISION

# AND

# DEVELOPMENT APPEAL BOARD

# AGENDA

Wednesday, 9:00 A.M. October 31, 2018

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

# SUBDIVISION AND DEVELOPMENT APPEAL BOARD HEARING ROOM NO. 3

I	9:00 A.M.	SDAB-D-18-179	Ogilvie LLP
			Construct a Major Alcohol Sales building on part of a Site
			503 - Griesbach Parade NW Project No.: 284016770-001
II	1:00 P.M.	SDAB-D-18-180	Dentons Canada LLP
			Change the Use from a Health Services to a Cannabis Retail Sales
			12225 - 107 Avenue NW Project No.: 286311022-001

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-18-179

### AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT: Ogilvie LLP

APPLICATION NO.: 284016770-001

APPLICATION TO: Construct a Major Alcohol Sales building

on part of a Site

**DECISION OF THE** 

DEVELOPMENT AUTHORITY: Refused

DECISION DATE: September 26, 2018

DATE OF APPEAL: October 4, 2018

MUNICIPAL DESCRIPTION

OF SUBJECT PROPERTY: 503 - Griesbach Parade NW

LEGAL DESCRIPTION: Plan 1523747 Blk 27 Lot 5

ZONE: (GVC) Griesbach Village Centre Zone

OVERLAY(S): Griesbach Special Area

Main Streets Overlay

STATUTORY PLAN: Griesbach Neighbourhood Area Structure

Plan

### Grounds for Appeal

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

We are solicitors for Brentwood Developments Inc., developers of the Griesbach Village Square Shopping Centre in respect of which the referenced Major Alcohol Sales development permit application was refused. On behalf of our clients and their architects, Dialog, we hereby appeal the refusal on the following grounds:

1. The proposed Major Alcohol Sales Use is a discretionary use in the Griesbach Village Centre Zone and is appropriate at the proposed location.

- 2. Regarding the building setback, the relaxation is requested to accommodate a registered easement running the length of the property. Similar relations were requested and approved in Phases 1 and 2 of the development. The proposed building will not be situated on a pedestrian oriented corridor, and street related activities are not contemplated at this location.
- 3. Regarding the parking deficiency, the site has been subject to an engineered parking review and, since that time, the site's parking requirements pursuant to the Edmonton Zoning Bylaw have decreased dramatically owing to the large reduction in parking requirements for food and beverage style uses. Moreover, the site remains within the TOD transit oriented development boundary to the adjacent LRT/Transit Centre located to the East.
- 4. Regarding the setback from the Rosslyn Hotel Liquor Store, effective separation is provided by the bordering around the Centre, itself, and the intervening major roadways. Moreover, the proposed development and the other outlet will serve different communities, and the proposed development will provide an expected amenity for residents of the Griesbach Village community in accordance with the General Purpose of the applicable zoning and the expectations of the Griesbach Neighbourhood Area Structure Plan.
- 5. The proposed development is appropriate at this location and otherwise meets the requirements for a variance as provided in Section 687(3)(d) of the Municipal Government Act.
- 6. Such further and other reasons as may be presented at the hearing of this appeal.

#### 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 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 940.6(4) **Major Alcohol Sales** is a **Discretionary Use** in the (GVC) Griesbach Village Centre Zone.

Under section 7.4(30), **Major Alcohol Sales** means:

development used for the retail sales of any and all types of alcoholic beverages to the public where the Floor Area for the individual business premises is greater than 275 square metres. This Use may include retail sales of related products such as soft drinks and snack foods.

Section 940.1 states that the **General Purpose** of the **Griesbach Special Area** is:

The purpose of this designation is to designate Griesbach as shown on Appendix I to this Section, as a Special Area and to adopt appropriate land use regulations for this Special Area in order to achieve the objectives of the Griesbach Neighbourhood Area Structure Plan, as adopted by Bylaw 12936, as amended.

Section 940.6(1) states that the **General Purpose** of the (**GVC**) **Griesbach Village Centre Zone** is:

to allow for a mixed Use of businesses, residences, and institutional Uses in a village centre format promoting pedestrian orientation in accordance with the design objectives in the Griesbach Neighbourhood Area Structure Plan.

Section 819.1 states 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.

#### Setback

Section 940.6(5)(d) states:

Buildings shall be built to the Front and Side Lot Lines except that buildings may have a maximum Setback of 3.0 m to accommodate street related activities, such as sidewalk cafes, architectural features and landscaping that contribute to the pedestrian oriented shopping character of the area or to accommodate roadway design or to preserve existing trees.

#### **Development Officer's Determination**

Buildings shall be built to the Front and Side Lot Lines except that buildings may have a maximum Setback of 3.0 m to accommodate street related activities, such as sidewalk cafes, architectural features and landscaping that contribute to the pedestrian oriented shopping character of the area or to accommodate roadway design or to preserve existing trees. [Reference Section 940.6(5)(d)]

Proposed: 4.8 m Excessive by: 1.8 m

# Location from any other Major Alcohol Sales or Minor Alcohol Sales

Section 85.1 states "Any Major Alcohol Sales or Minor Alcohol Sales shall not be located less than 500 m from any other Major Alcohol Sales or Minor Alcohol Sales."

#### **Development Officer's Determination**

Any Major Alcohol Sales or Minor Alcohol Sales shall not be located less than 500 m from any other Major Alcohol Sales or Minor Alcohol Sales. (Reference Section 85.1)

Proposed: 202 m Deficient by: 298 m

#### **Parking**

Section 819.3(11) of the Main Streets Overlay states "the minimum number of off-street parking spaces required shall be in accordance with Section 54, Schedule 1C."

Section 54.2, Schedule 1(C)(7), states All other non-residential Uses requires 1 parking space per 100.0 square metres of Floor Area.

#### **Development Officer's Determination**

The minimum number of parking provided shall be 18. (Reference Section 54.2, Schedule 1(A)

Proposed: 0

**Deficient by: 18** 

# Previous Subdivision and Development Appeal Board Decisions

<b>Application Number</b>	Description	Decision
SDAB-D-18-059	To install (3) Freestanding	May 8, 2018; the appeal is
	On-premises Signs	ALLOWED and the decision
	(GRIESBACH VILLAGE).	of the Development Authority
		is REVOKED. The
		development is GRANTED as
		applied for to the
		Development Authority,
		subject to CONDITIONS.
SDAB-D-16-146	To install (2) Freestanding	July 7, 2016; The appeal is
	On-premises Signs	ALLOWED and the decision
	(GRIESBACH VILLAGE).	of the Development Authority
		is REVOKED. The
		development is GRANTED as
		applied for to the
		Development Authority,
		subject to CONDITIONS.

# 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.



# Application for

Project Number: **284016770-001**Application Date: JUN 04, 2018

Printed: October 4, 2018 at 2:05 PM

Page: 1 of 2

# **Major Development Permit**

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

Applicant

Property Address(es) and Legal Description(s)

503 - GRIESBACH PARADE NW

Plan 1523747 Blk 27 Lot 5

Specific Address(es)

Entryway: 9960 - 137 AVENUE NW Building: 9960 - 137 AVENUE NW

#### Scope of Application

To construct a Major Alcohol Sales building on part of a Site.

#### Permit Details

Class of Permit: Class B

Gross Floor Area (sq.m.): 403

New Sewer Service Required: N

Site Area (sq. m.): 53517

Contact Person:

Lot Grading Needed?: Y

NumberOfMainFloorDwellings:

Stat. Plan Overlay/Annex Area: (none)

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

Applicant signature:

#### **Development Application Decision**

Refused

Issue Date: Sep 26, 2018 Development Authority: KOWAL, PAUL

#### Reason for Refusal

Buildings shall be built to the Front and Side Lot Lines except that buildings may have a maximum Setback of 3.0 m to accommodate street related activities, such as sidewalk cafes, architectural features and landscaping that contribute to the pedestrian oriented shopping character of the area or to accommodate roadway design or to preserve existing trees. [Reference Section 940.6 (5)(d)]

Proposed: 4.8 m Excessive by: 1.8 m

Any Major Alcohol Sales or Minor Alcohol Sales shall not be located less than 500 m from any other Major Alcohol Sales or Minor Alcohol Sales. (Reference Section 85.1)

Proposed: 202 m Deficient by: 298 m

The minimum number of parking provided shall be 18. (Reference Section 54.2, Schedule 1(A)

Proposed: 0 Deficient by: 18

### Rights of Appeal

The Applicant has the right of appeal within 21 days after the date on which the decision is made, as outlined in Section 683 through 689 of the Municipal Government Act.

### Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Lot Grading Fee	\$1,241.59	\$1,189.37	05077121	Jun 05, 2018
Major Dev. Application Fee	\$948.00	\$948.00	05077121	Jun 05, 2018

#### THIS IS NOT A PERMIT

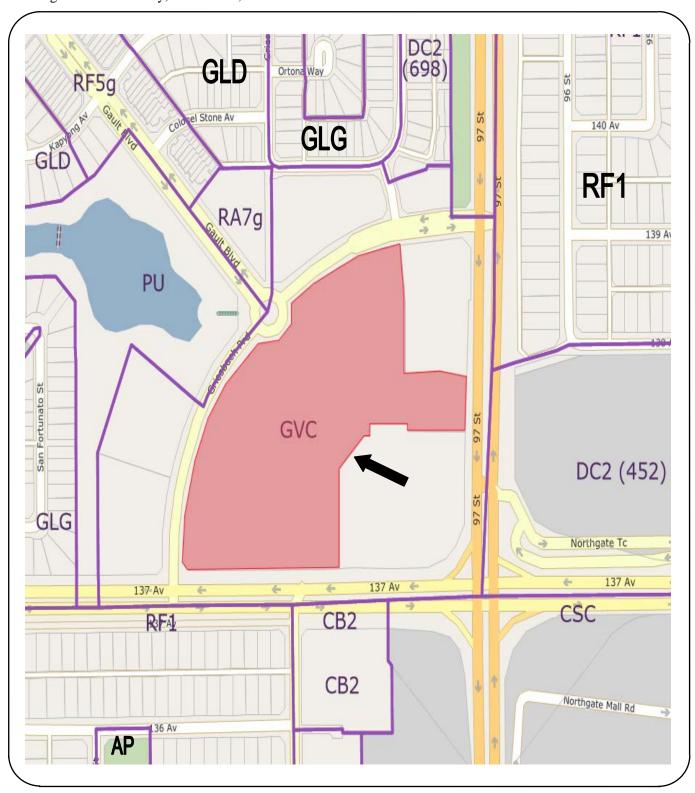


# Application for Major Development Permit

Project Number: **284016770-001**Application Date: JUN 04, 2018
Printed: October 4, 2018 at 2:05 PM
Page: 2 of 2

Fees					
	Fee Amount	Amount Paid	Receipt #	Date Paid	
Sanitary Sewer Trunk Fund 2012+	\$0.00	\$678.73	05077121	Jun 05, 2018	
Development Permit Inspection Fee	\$510.00	\$510.00	05077121	Jun 05, 2018	
Total GST Amount:	\$0.00				
Totals for Permit:	\$2,699.59	\$3,326.10			
(overpaid by (\$626.51))					

THIS IS NOT A PERMIT



# SURROUNDING LAND USE DISTRICTS

Site Location

File: SDAB-D-18-179

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# <u>ITEM II: 1:00 P.M.</u> <u>FILE: SDAB-D-18-180</u>

# AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT: Dentons Canada LLP

APPLICATION NO.: 286311022-001

APPLICATION TO: Change the Use from a Health Services to

a Cannabis Retail Sales

**DECISION OF THE** 

DEVELOPMENT AUTHORITY: Refused

DECISION DATE: September 18, 2018

DATE OF APPEAL: October 5, 2018

MUNICIPAL DESCRIPTION

OF SUBJECT PROPERTY: 12225 - 107 Avenue NW

LEGAL DESCRIPTION: Plan RN22 Blk 7 Lots 1-2

ZONE: (CB1) Low Intensity Business Zone

OVERLAY: Main Streets Overlay

STATUTORY PLAN: West Ingle Area Redevelopment Plan

# **Grounds for Appeal**

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

- 1. The permit application was refused due to proximity of the subject site to an approved Cannabis Retail Sales location. However, the approved location in question submitted to the City multiple expressions of Interest ("EOI") for the same or substantially the same site in violation of the City's ground rules.
- 2. Further, and in the alternative, the Appellant respectfully request that the SDAB use it variance power to grant a variance in the required separation distance for the following reasons:

- a. 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 permitted 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.

#### 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 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 330.2(3), Cannabis Retail Sales is a Permitted Use in the (CB1) Low Intensity Business Zone.

Under section 7.4(9), Cannabis Retail Sales means:

development used for the retail sale of Cannabis that is authorized by provincial or federal legislation. This Use may include retail sales of Cannabis accessories. This Use does not include Cannabis Production and Distribution.

Under section 6.1, Cannabis means:

a cannabis plant and anything referred to in subsection (a) of this definition but does not include anything referred to in subsection (b) of this definition:

#### a. Cannabis includes:

- i. any part of a cannabis plant, including the phytocannabinoids produced by, or found in, such a plant, regardless of whether that part has been processed or not, other than a part of the plant referred to in subsection (b) of this definition.
- ii. any substance or mixture of substances that contains or has on it any part of such a plant;
- iii. any substance that is identical to any phytocannabinoid produced by, or found in, such a plant, regardless of how the substance was obtained.
- b. Notwithstanding subsection (a) of this definition, Cannabis does not include:
  - i. a non-viable seed of a cannabis plant;
  - ii. a mature stalk, without any leaf, flower, seed or branch, of such plant;
  - iii. fibre derived from a stalk referred in subsection (b)(ii) of this definition; and
  - iv. the root or any part of the root of such a plant.

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

Section 330.1 states that the **General Purpose** of the **(CB1) Low Intensity Business Zone** is:

to provide for low intensity commercial, office and service uses located along arterial roadways that border residential areas. Development shall be sensitive and in scale with existing development along the commercial street and any surrounding residential neighbourhood.

### 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 <u>200 m</u> 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;
  - 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 <u>Section 11</u> 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;
  - 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 an approved Cannabis Retail Sales location (Section 70.1):

Required Setback: 200 m Proposed Setback: 122 m

Deficient by 78 m

Under Sections 70.1(b) and 70.4 of the Zoning Bylaw, the Development Officer is prohibited from granting a variance to the minimum setback to allow for the proposed Cannabis Retail Store.

# Notice to Applicant/Appellant

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



# Application for

Project Number: 286311022-001
Application Date: JUN 29, 2018
Printed: September 18, 2018 at 5:03 PM
Page: 1 of 1

# **Major Development Permit**

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

Applicant Property Address(es) and Legal Description(s)

12225 - 107 AVENUE NW Plan RN22 Blk 7 Lots 1-2

Specific Address(es)

Suite: 12225 - 107 AVENUE NW Entryway: 12225 - 107 AVENUE NW Building: 12225 - 107 AVENUE NW

#### Scope of Application

To change the use from a Health Services to a Cannabis Retail Sales

#### **Permit Details**

Class of Permit:
Gross Floor Area (sq.m.):
New Sewer Service Required: N
Site Area (sq. m.): 156

Contact Person:

Lot Grading Needed?: N

NumberOfMainFloorDwellings:

Stat. Plan Overlay/Annex Area: (none)

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

Applicant signature:

#### **Development Application Decision**

Refused

Issue Date: Sep 18, 2018 Development Authority: Chow, Stephen

#### Reason for Refusal

The proposed Cannabis Retail Store does not comply with the minimum setback requirement from an approved Cannabis Retail Sales location (Section 70.1):

Required Setback: 200 m Proposed Setback: 122 m Deficient by 78 m

Under Sections 70.1(b) and 70.4 of the Zoning Bylaw, the Development Officer is prohibited from granting a variance to the minimum setback to allow for the proposed Cannabis Retail Store.

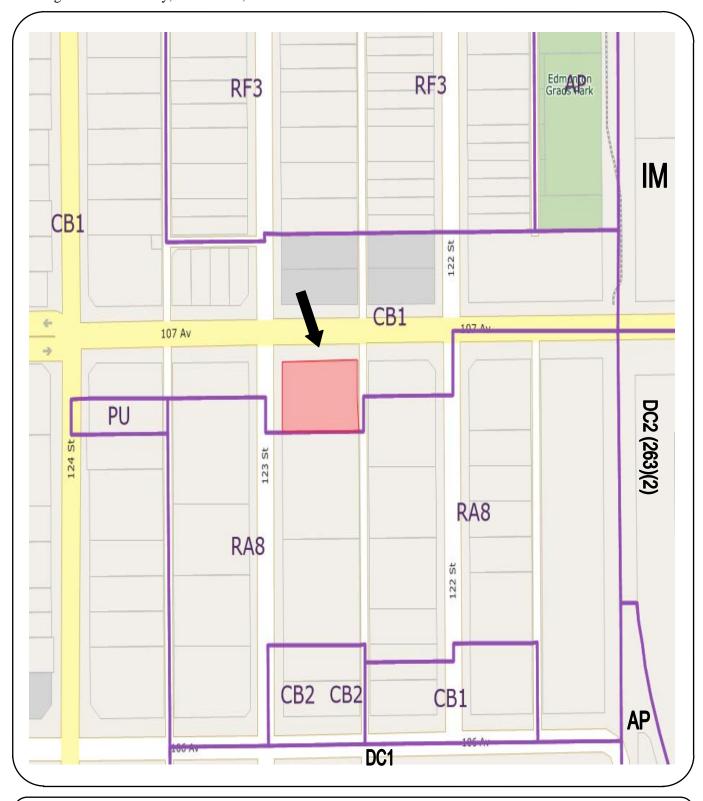
#### Rights of Appeal

The Applicant has the right of appeal within 21 days after the date on which the decision is made, as outlined in Section 683 through 689 of the Municipal Government Act.

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	Fee Amount	Amount Paid	Receipt #	Date Paid
Major Dev. Application Fee	\$5,600.00	\$5,600.00	05145217	Jun 29, 2018
Total GST Amount:	\$0.00			
Totals for Permit:	\$5,600.00	\$5,600.00		

#### THIS IS NOT A PERMIT





Site Location

File: SDAB-D-18-180



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