

**SUBDIVISION  
AND  
DEVELOPMENT APPEAL BOARD  
AGENDA**

**Thursday, 9:00 A.M.  
October 17, 2019**

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

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

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I	9:00 A.M.	SDAB-D-19-168	Construct an Unenclosed Front Porch, exterior alterations (new windows and facade improvements), interior alterations (Basement development, NOT to be used as an additional Dwelling), a rear addition (rear attached garage, 6.09m x 12.18m), and a front driveway (existing without permits, 8.85m x 32.42m) to a Single Detached House.  12942 – Sherbrooke Avenue NW Project No.: 309470115-001
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II	10:30 A.M.	SDAB-D-19-178	Change the Use from a Limited Contract Services use to a Cannabis Retail Sales and to construct interior alterations.  8203 - 127 Avenue NW Project No.: 324487918-001
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**NOTE:**            *Unless otherwise stated, all references to “section numbers” refer to the authority under the Edmonton Zoning Bylaw 12800.*

ITEM I: 9:00 A.M.

FILE: SDAB-D-19-168

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 309470115-001

APPLICATION TO: Construct an Unenclosed Front Porch, exterior alterations (new windows and facade improvements), interior alterations (Basement development, NOT to be used as an additional Dwelling), a rear addition (rear attached garage, 6.09m x 12.18m), and a front driveway (existing without permits, 8.85m x 32.42m) to a Single Detached House

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: August 22, 2019

DATE OF APPEAL: September 4, 2019

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 12942 – Sherbrooke Avenue NW

LEGAL DESCRIPTION: Plan 5596KS Blk 8 Lot 28

ZONE: (RF1) Single Detached Residential 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:

Below is written support for the 5 issues identified as reasons for refusal of our development permit.

- 1. Support for frontal setback and addition

- a) The proposed enclosed frontal addition sits in alignment with the plan of the existing house.
- b) The proposed additional unenclosed front landing does not impede the view from either neighboring properties and acts as a safe landing for the front steps.
- c) The distance from the proposed front addition and the sidewalk and boulevard still exceeds zoning requirements.
- d) Increase in curb appeal helps improve the neighbourhood aesthetics and property values.

### 3. Support for Vehicle Access- front driveway

- a) According to neighbours, the driveway has been here for at least 20+ years with no reported concerns.
- b) The driveway is well maintained and not disproportionate to the size of the large front yard.
- c) It allows for vehicle parking within the property lines and disallows street parking close to the intersection of 129th St and Sherbrooke Ave. As this is a prominent walking route to the elementary school playground across the street, it contributes to improved sight lines for traffic thus increasing safety for the children walking to school.
- d) As the property on the East side is on 129th street, the driveway abuts their side yard and does not affect vision from their house or yard. The driveway is not visible from the house on the West side due to a row of mature trees on that property.

### 2, 4,& 5 Support for Rear set back, rear attached garage, and rear projection

- a) Proposed attached garage will increase the alignment of the garage to the house thus improving sight lines between properties at 12942 and 12946. This will improve fencing and safety as the route has been used by vagrants to pass from the dead end back alley to the front of the properties.
- b) Improved privacy for residents living at 12942 and 12946. The row of mature trees on 12946 acts as a barrier to morning shading. The addition proposed would have minimal, if any shading effects and even then, only in the early morning as shade would fall on 12942 in the afternoon.

- c) Attached garage allows for more effective and economical roof lines for the house and garage. This would increase the aesthetic appeal from the back as well as allowing for greatest distance for the eave projection to the rear property.
- d) The proposed attached garage allows for temporary parking behind the garage within the property line. This would eliminate parking in the alleyway and improve traffic flow for city utility vehicles for garbage collection, snow removal, and alley road maintenance.
- e) As vehicles exiting from the rear need to turn west out of the alleyway, the further setback of the garage on 12942 allows for better sight lines to vehicles entering and exiting from 12946 and improves safety for both residents.

The above development permit was made after extensive forethought with efficient property utilization and aesthetic appeal in mind. The footprint of the existing house and yard would not be significantly changed with the new proposed additions.

We look forward to meeting with you to discuss your concerns and will plan to present further documentation and photographs in defence of our development plan in hopes that it will be approved by the appeal board.  
Thank you

<i>General Matters</i>
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**Appeal Information:**

**In response to a written request received from the Appellant, this hearing was scheduled on September 18, 2019.**

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.

**Non-conforming use and non-conforming buildings**

**643(1)** If a development permit has been issued on or before the day on which a land use bylaw or a land use amendment bylaw comes into force in a municipality and the bylaw would make the development in respect of which the permit was issued a non-conforming use or non-conforming building, the development permit continues in effect in spite of the coming into force of the bylaw.

(2) A non-conforming use of land or a building may be continued but if that use is discontinued for a period of 6 consecutive months or more, any future use of the land or building must conform with the land use bylaw then in effect.

(3) A non-conforming use of part of a building may be extended throughout the building but the building, whether or not it is a non-conforming building, may not be enlarged or added to and no structural alterations may be made to it or in it.

(4) A non-conforming use of part of a lot may not be extended or transferred in whole or in part to any other part of the lot and no additional buildings may be constructed on the lot while the non-conforming use continues.

(5) **A non-conforming building may continue to be used but the building may not be enlarged, added to, rebuilt or structurally altered except**

- (a) **to make it a conforming building,**
- (b) **for routine maintenance of the building, if the development authority considers it necessary, or**
- (c) **in accordance with a land use bylaw that provides minor variance powers to the development authority for the purposes of this section.**

(6) If a non-conforming building is damaged or destroyed to the extent of more than 75% of the value of the building above its foundation, the building may not be repaired or rebuilt except in accordance with the land use bylaw.

(7) The land use or the use of a building is not affected by a change of ownership or tenancy of the land or building.

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

Under section 110.2(7), **Single Detached Housing** is a **Permitted Use** in the **(RF1) Single Detached Residential Zone**.

Under section 7.2(8), **Single Detached Housing** means “development consisting of a building containing one principal Dwelling which is separate from any other principal Dwelling or building. This Use includes Mobile Homes which conform to Section 78 of this Bylaw.”

Section 110.1 states that the **General Purpose** of the **(RF1) Single Detached Residential Zone** is “to provide for Single Detached Housing while allowing other forms of small scale housing in the form of Secondary Suites, Garden Suites, Semi-detached Housing and Duplex Housing.”

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

to regulate residential development in Edmonton’s mature residential neighbourhoods, while responding to the context of surrounding development, maintaining the pedestrian-oriented design of the streetscape, and to provide an opportunity for consultation by gathering input from affected parties on the impact of a proposed variance to the Overlay regulations.

***Non-conforming building (Front Setback)***

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

**Non-conforming use and non-conforming buildings**

**645(5)** A non-conforming building may continue to be used but the building may not be enlarged, added to, rebuilt or structurally altered except

- (a) to make it a conforming building,
- (b) for routine maintenance of the building, if the development authority considers it necessary, or
- (c) in accordance with a land use bylaw that provides minor variance powers to the development authority for the purposes of this section.

Section 814.3(1) states the Front Setback shall be in accordance with the following:

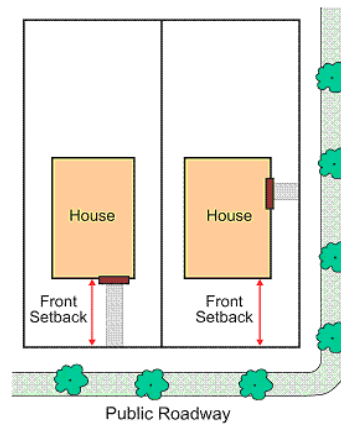
- a. the minimum Front Setback shall be 20% of site depth or 1.5 m less than the average Front Setback on Abutting Lots, whichever is less. In no case shall the Front Setback be less than 3.0 m;



- b. the maximum Front Setback shall be 1.5 m greater than the average Front Setback on Abutting Lots; and
- c. where an Abutting Lot is vacant, the vacant Lot shall be deemed to have a Front Setback of the next Abutting Lot.

Under section 6.1 **Front Setback** means:

the distance that a development or a specified portion of it, must be set back from a Front Lot Line. A Front Setback is not a Front Yard, Amenity Space or Separation Space.



**Development Officer’s Determination**

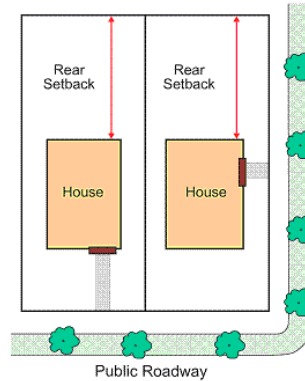
**1. Non-Conforming Front Setback - This existing front setback of the house no longer conforms to current zoning rules, which has changed since it was originally constructed (Section 11.2.2 and Section 814.3.1).. [unedited]**

***Rear Setback***

Section 814.3(4) states “the minimum Rear Setback shall be 40% of Site Depth.”

Under section 6.1, **Rear Setback** means:

the distance that a development or a specified portion of it, must be set back from a Rear Lot Line. A Rear Setback is not a Rear Yard, Amenity Space or Separation Space.



**Development Officer’s Determination**

**2. Rear Setback - The minimum Rear Setback shall be 40% of Site Depth. (Section 814.3.4)**  
**Required: 20.4m (40% of 50.9m)**  
**Proposed: 5.9m (12% of 50.9m)**  
**Deficient by: 14.5m**  
[unedited]

***Vehicular Access***

Section 814.3(17) states “where the Site Abuts a Lane, vehicular access shall be from the Lane and no existing vehicular access from a public roadway other than a Lane shall be permitted to continue.”

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, **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.”

**Development Officer’s Determination**

**3. Vehicular Access - Where the Site Abuts a Lane, vehicular access shall be from the Lane (Section 814.3.17).**  
**Proposed: The vehicular access is located off of Sherbrooke Avenue NW (front).**  
[unedited]

***Attached Garage***

Section 814.3(21) states “rear attached Garages shall not be allowed.”

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.”

**Development Officer’s Determination**

**4. Rear Attached Garage - Rear attached Garages shall not be allowed (Section 814.3.19).**

**Proposed: A rear attached Garage is proposed.**

[unedited]

***Rear Projection***

Section 44.1 states the following features may project into a required Setback or Separation Space as provided for below:

- a. verandas, porches, eaves, shade projections, unenclosed steps, chimneys, belt courses, sills, together with any other architectural features which are of a similar character, provided such projections do not exceed 0.6 m in the case of Setbacks or Separation Spaces of 1.2 m or greater. Where unenclosed steps extend into Side Setbacks, such steps shall not exceed a Height of 1.0 m;

...

**Development Officer’s Determination**

**5. Rear Projection - Eaves may project into a required Setback provided it does not exceed 0.6m in the case of Setbacks or Separation Spaces of 1.2 m or greater (Section 44.1).**

**Required: 19.8m (20.4m - 0.6m)**

**Proposed: 5.3m from the eaves to the rear property line (north lot line).**

**Deficient by: 14.5m**

[unedited]

***Community Consultation***

Section 814.5(1) states the following with respect to Proposed Variances:

When the Development Officer receives a Development Permit Application for a new principal building or new Garden Suite that does

not comply with any regulation contained within this Overlay, or receives a Development Permit for alterations to an existing structure that require a variance to Section 814.3(1), 814.3(3), 814.3(5) or 814.3(9) of this Overlay:

- a. the Development Officer shall send notice, to the recipient parties specified in Table 814.5(2), to outline any requested variances to the Overlay and solicit comments directly related to the proposed variance;
- b. the Development Officer shall not render a decision on the Development Permit application until 21 days after notice has been sent, unless the Development Officer receives feedback from the specified affected parties in accordance with Table 814.5(2); and
- c. the Development Officer shall consider any comments directly related to the proposed variance when determining whether to approve the Development Permit Application in accordance with Sections 11.3 and 11.4.


Section 814.5(2) states:

<b>Tier #</b>	<b>Recipient Parties</b>	<b>Affected Parties</b>	<b>Regulation of this Overlay to be Varied</b>
Tier 1	The municipal address and assessed owners of the land wholly or partially located within a distance of 60.0 metres of the Site of the proposed development and the President of each Community League.	The assessed owners of the land wholly or partially located within a distance of 60.0 m of the Site of the proposed development and the President of each Community League.	814.3(1) – Front Setback 814.3(17) – Driveway Access
Tier 2	The municipal address and assessed owners of the land Abutting the Site, directly adjacent across a Lane from the Site of the proposed development and the President of each Community League.	The assessed owners of the land Abutting the Site and directly adjacent across a Lane from the Site of the proposed development.	814.3(4) – Rear Setback 814.3(19) – Rear Attached Garage

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 Addition Permit</h2>	Project Number: <b>309470115-001</b> Application Date: APR 10, 2019 Printed: August 22, 2019 at 2:54 PM Page: 1 of 2
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> 12942 - SHERBROOKE AVENUE NW Plan 5596KS Blk 8 Lot 28	
	<b>Location(s) of Work</b> Entryway: 12942 - SHERBROOKE AVENUE NW Building: 12942 - SHERBROOKE AVENUE NW	
<b>Scope of Application</b> To construct an Unenclosed Front Porch, exterior alterations (new windows and facade improvements), interior alterations (Basement development, NOT to be used as an additional Dwelling), a rear addition (rear attached garage, 6.09m x 12.18m), and a front driveway (existing without permits, 8.85m x 32.42m) to a Single Detached House.		
<b>Permit Details</b>		
Class Of Permit: Class B Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay	Site Area (sq. m.): 850.63	
I/We certify that the above noted details are correct. Applicant signature: _____		
<b>Development Application Decision</b> Refused  <b>Issue Date:</b> Aug 22, 2019 <b>Development Authority:</b> ZHOU, ROWLEY  <b>Reason for Refusal</b> <ol style="list-style-type: none"> <li>1. Non-Conforming Front Setback - This existing front setback of the house no longer conforms to current zoning rules, which has changed since it was originally constructed (Section 11.2.2 and Section 814.3.1).</li> <li>2. Rear Setback - The minimum Rear Setback shall be 40% of Site Depth. (Section 814.3.4)                      Required: 20.4m (40% of 50.9m)                      Proposed: 5.9m (12% of 50.9m)                      Deficient by: 14.5m</li> <li>3. Vehicular Access - Where the Site Abuts a Lane, vehicular access shall be from the Lane (Section 814.3.17).                      Proposed: The vehicular access is located off of Sherbrooke Avenue NW (front).</li> <li>4. Rear Attached Garage - Rear attached Garages shall not be allowed (Section 814.3.19).                      Proposed: A rear attached Garage is proposed.</li> <li>5. Rear Projection - Eaves may project into a required Setback provided it does not exceed 0.6m in the case of Setbacks or Separation Spaces of 1.2 m or greater (Section 44.1).                      Required: 19.8m (20.4m - 0.6m)                      Proposed: 5.3m from the eaves to the rear property line (north lot line).                      Deficient by: 14.5m</li> </ol>		
<b>THIS IS NOT A PERMIT</b>		



# Application for Addition Permit

Project Number: **309470115-001**  
Application Date: APR 10, 2019  
Printed: August 22, 2019 at 2:54 PM  
Page: 2 of 2

### 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.

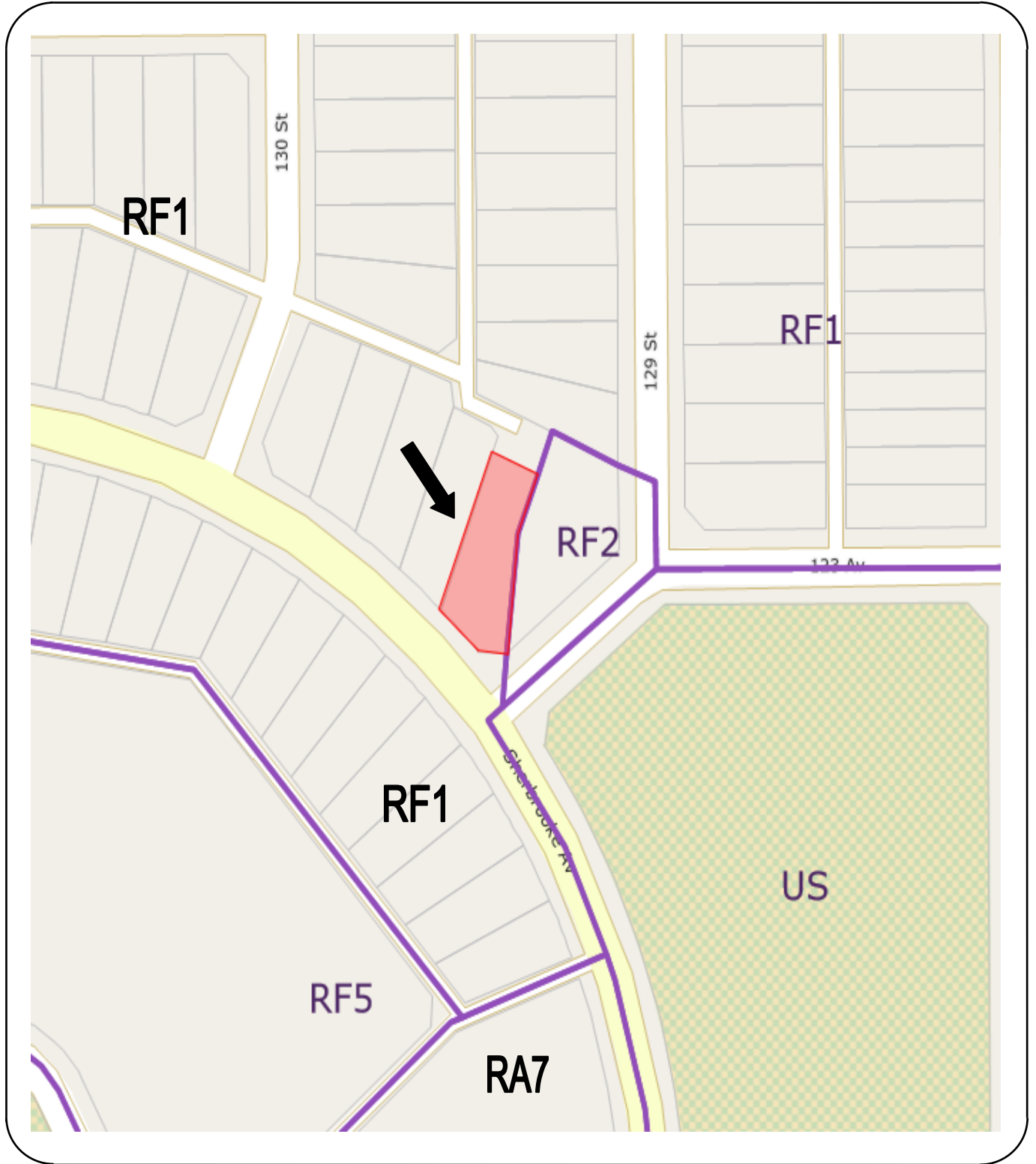
### Building Permit Decision

Refused

### Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Safety Codes Fee	\$20.12	\$20.12	05772534	Apr 10, 2019
Building Permit Fee (Construction Value)	\$503.00	\$503.00	05772534	Apr 10, 2019
Development Application Fee	\$425.00	\$425.00	05772534	Apr 10, 2019
Total GST Amount:	\$0.00			
Totals for Permit:	\$948.12	\$948.12		

**THIS IS NOT A PERMIT**



**SURROUNDING LAND USE DISTRICTS**

Site Location ←

File: SDAB-D-19-168





ITEM II: 10:30 A.M.

FILE: SDAB-D-19-178

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 324487918-001

APPLICATION TO: Change the Use from a Limited Contract Services use to a Cannabis Retail Sales and to construct interior alterations

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: September 4, 2019

DATE OF APPEAL: September 23, 2019

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 8203 - 127 Avenue NW

LEGAL DESCRIPTION: Plan 3409MC Blk 60A Lot 1

ZONE: (CB1) Low Intensity Business Zone

OVERLAY: Main Streets Overlay

STATUTORY PLAN: CN Intermodal Facility and Area (Area Redevelopment Plan)

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***Grounds for Appeal***

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

Please be advised that we are counsel for 2205336 Alberta Ltd. operating as Elevate Cannabis ("Elevate").

Notice of Appeal

Pursuant to section 686 of the *Municipal Government Act*, R.S.A. 2000, c. M-26 as amended (the "MGA") Elevate hereby appeals the decision of the City of Edmonton (the "City") which refused to grant a Major Development Permit identified as Permit #324487918-001(the "Permit Application") to change the Use from a Limited Contract Services use to a Cannabis Retail Sales use and to construct interior alterations. A copy of the Permit Application is enclosed [Tab 1].

As you can note from reviewing the Permit Application, Elevate was seeking a Major Development Permit in relation to property legally described as Plan 3409MC; Block 60A; Lot 1 and municipally described as 8209 - 127 Avenue (the "Property"). The Property is owned by PHL and has been partially leased to Elevate. A copy of a Land Title Certificate for the Property along with correspondence from PHL to Elevate is enclosed [Tab2].

The Property in question is zoned as low intensity business zone (CB1) under Edmonton Zoning By-law 12800 [Tab 3]. Pursuant to section 330.2 of Edmonton Zoning By-law 12800, cannabis retail sales are a permitted use for property zoned as CB1 [Tab 4].

Enclosed for your convenience, are copies of the following:

1. A picture of the front of the proposed business taken from 127 Avenue [Tab 5];
2. A schematic of the Elevate Site Plan located on the corner of 127 Avenue and 82 Street [Tab 6]; and
3. Google Earth photographs of the proposed Elevate location and the proposed cannabis retail store located 174 metres away from the Elevate store [Tab 7].

#### Refusal to Grant Permit

The City refused to grant the Major Development Permit on September 4, 2019. The reason for the refusal is that the proposed cannabis retail store does not comply with the minimum setback requirement from another proposed cannabis retail store use. The required setback is 200 metres whereas the proposed setback is 174 metres. Thus, a 26 metre variance to the minimum setback is required in order for the Major Development Permit to be granted. Unfortunately, the Development Officer, Stephen Chow, is prohibited from granting a variance to the minimum setback to allow for the proposed cannabis retail store.

#### Grounds for Appeal

Elevate submits that there are meritorious reasons for the Subdivision and Development Appeal Board (the "SDAB") to grant a variance to the minimum setback requirement of 200 metres from another cannabis retail store to allow the proposed development to proceed. The grounds include, *inter a/ia*, the following:

1. Section 687(3)(d) of the MGA gives the SDAB the jurisdiction to grant a variance to the required separation distance. Section 687(3)(d) of the MGA states:
  - (3) In determining an appeal, the subdivision and development appeal board
  - (d) may make an order, decision or confirm the issue of a development permit even though the proposed development does not comply with the land use by-law 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 the neighbourhood parcels of land;

and

ii. The proposed development conforms with the use prescribed for the land or building in the Land Use By-law.

2. The proposed development would not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of the neighbourhood parcels of land.;
3. Elevate intends to install a state-of-the-art security system exceeding all requirements and designed to deter crime including 24/7 video surveillance, panic buttons at each cash till, 24- hour live monitoring as well as a quick response system in the event of emergency;
4. All staff will be trained and familiar with the relevant AGLC rules and regulations;
5. All inventory that is not on the active retail sales floor will be kept in a secure storage room in accordance with AGLC guidelines;
6. Elevate is focused on ensuring that the sale of cannabis products is managed properly and safely utilizing only quality cannabis products;
7. The two proposed developments are separated by a fence and a small grove of trees and do not share a common parking lot;
8. There is ample parking available to customers of Elevate;
9. Strict application of the set-off requirement would lead to an undue hardship for Elevate and would capriciously favour one business owner over another simply because the former was fortuitous enough to have applied for a Development Permit shortly before Elevate;
10. The other cannabis retail store has not been constructed and it is unknown whether the first development will operate as a long term, viable business;
11. The Property is located in a predominately commercial/industrial area (CB1) away from schools, daycares, playgrounds, health care facilities or any other area predominately used by minors;
12. Operating a retail cannabis store is a permitted use for the Property;

13. 127 Avenue is a major thoroughfare in North Edmonton and experiences significant vehicular and pedestrian traffic. There is more than enough sufficient customer volume to accommodate both cannabis retail stores;
14. The next closest cannabis retail store is Alternative Greens located a fair distance away at 12451 - 97 Street;
15. The location of two cannabis retail stores along a busy thoroughfare will benefit the local community through retail attraction, market competition and product choice;
16. The two properties are not visible to each other;
17. Signage will be designed to be discreet;
18. The walking distance between the two stores is greater than 200 metres;
19. The variance would only represent a 26 metre variance equivalent to a 13% variance of the setback requirement; and

Such further and other grounds as may be submitted at the hearing of this Appeal.

<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
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- (a) in the case of an appeal made by a person referred to in section 685(1)
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- (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

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- (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.

<i>Section 70 – Cannabis Retail Sales</i>
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1. **Any Cannabis Retail Sales shall not be located less than 200 m from any other Cannabis Retail Sales. For the purposes of this subsection only:**
  - a. the 200 m separation distance shall be measured from the closest point of the Cannabis Retail Sales Use to the closest point of any other approved Cannabis Retail Sales Use;
  - b. **A Development Officer shall not grant a variance to reduce the separation distance by more than 20 m in compliance with Section 11; and**
  - c. The issuance of a Development Permit which contains a variance to separation distance as described in 70(1)(b) shall be issued as a Class B Discretionary Development.
2. Any Site containing Cannabis Retail Sales shall not be located less than:
  - a. 200 m from any Site being used for a public library, at the time of the application for the Development Permit for the Cannabis Retail Sales; and
  - b. 100 m from any Site being used for Community Recreation Services Use, a community recreation facility or as public lands at the time of application for the Development Permit for the Cannabis Retail Sales.
3. For the purposes of subsection 2:
  - a. separation distances 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 and learning resources in the form of books, electronic files, computers, manuscripts, recordings and films for public use, and does not include private libraries, museums or art galleries.
  - c. 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
  - d. the term "public lands" is limited to Sites zoned AP, and Sites zoned A.
4. Subsection 105(3) of the Gaming, Liquor and Cannabis *Regulation*, is expressly varied by the following:
- a. any Site containing a Cannabis Retail Sales shall not be located less than:

***Public or private education***

- i. 200 m from a Site being used for public or private education, at the time of the application for the Development Permit for the Cannabis Retail Sales;

***Provincial health care facility***

- ii. 100 m from a Site being used for a provincial health care facility at the time of the application for the Development Permit for the Cannabis Retail Sales; and

***School reserve or municipal and school reserve***

- iii. 100 m from a Site designated as school reserve or municipal and school reserve at the time of the application for the Development Permit for the Cannabis Retail Sales.

***Measurement of Separation Distances***

- b. For the purposes of this subsection, separation distances 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.

***Sites Greater than Two Hectares***

- c. For Sites that are greater than 2.0 ha in size and zoned either CSC or DC2, that do not contain a public library at the time of application for the Development Permit for the Cannabis Retail Sales:



- i. Subsection 70(2), and 70(4)(a) shall not apply; and
    - ii. the distances referred to in Subsection 105(3) of the *Gaming, Liquor and Cannabis Regulation* shall be expressly varied to 0 m.
  - d. For the purposes of subsection 70(4)(a)(i), the term "public or private education" means a school as defined in subsection (1)(y)(i) and (1)(y)(ii) of the *School Act (as amended from time to time)*.
5. Notwithstanding Section 11 of this Bylaw, a Development Officer shall not grant a variance to subsection 70(2), 70(3)(a) or 70(4).

### **Design Requirements**

6. 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 storefront that is visible from the street other than a Lane, or a shopping centre parking lot, or 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.

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

**The proposed Cannabis Retail Store does not comply with the minimum setback requirement from another Cannabis Retail Sales use (70.1(b)):**

**Required Setback: 200 m**

**Proposed Setback: 174 m**

**Deficient by 26 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.**


[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.

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	Project Number: <b>324487918-001</b> Application Date: JUL 04, 2019 Printed: September 23, 2019 at 11:34 AM Page: 1 of 2										
<h2 style="margin: 0;">Application for Major 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> 8203 - 127 AVENUE NW Plan 3409MC Blk 60A Lot 1  <b>Specific Address(es)</b> Suite: 8209 - 127 AVENUE NW Entryway: 8209 - 127 AVENUE NW Building: 8203 - 127 AVENUE NW										
<b>Scope of Application</b> To Change the Use from a Limited Contract Services use to a Cannabis Retail Sales and to construct interior alterations.											
<b>Permit Details</b> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;">                     Class of Permit:                      Gross Floor Area (sq.m.):                      New Sewer Service Required:                      Site Area (sq. m.):                 </td> <td style="width: 50%; border: none;">                     Contact Person:                      Lot Grading Needed?: N                      NumberOfMainFloorDwellings:                      Stat. Plan Overlay/Annex Area: Main Street Overlay                 </td> </tr> </table>		Class of Permit: Gross Floor Area (sq.m.): New Sewer Service Required: Site Area (sq. m.):	Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: Stat. Plan Overlay/Annex Area: Main Street Overlay								
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I/We certify that the above noted details are correct.  Applicant signature: _____											
<b>Development Application Decision</b> Refused  <b>Issue Date:</b> Sep 04, 2019 <b>Development Authority:</b> Chow, Stephen  <b>Reason for Refusal</b> The proposed Cannabis Retail Store does not comply with the minimum setback requirement from another Cannabis Retail Sales use (70.1(b)):  Required Setback: 200 m Proposed Setback: 174 m Deficient by 26 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.  <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: none;"> <thead> <tr> <th style="text-align: left;"></th> <th style="text-align: center;">Fee Amount</th> <th style="text-align: center;">Amount Paid</th> <th style="text-align: center;">Receipt #</th> <th style="text-align: center;">Date Paid</th> </tr> </thead> <tbody> <tr> <td>Major Dev. Application Fee</td> <td style="text-align: center;">\$5,600.00</td> <td style="text-align: center;">\$5,600.00</td> <td style="text-align: center;">06020335</td> <td style="text-align: center;">Jul 26, 2019</td> </tr> </tbody> </table>			Fee Amount	Amount Paid	Receipt #	Date Paid	Major Dev. Application Fee	\$5,600.00	\$5,600.00	06020335	Jul 26, 2019
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Major Dev. Application Fee	\$5,600.00	\$5,600.00	06020335	Jul 26, 2019							
<b>THIS IS NOT A PERMIT</b>											



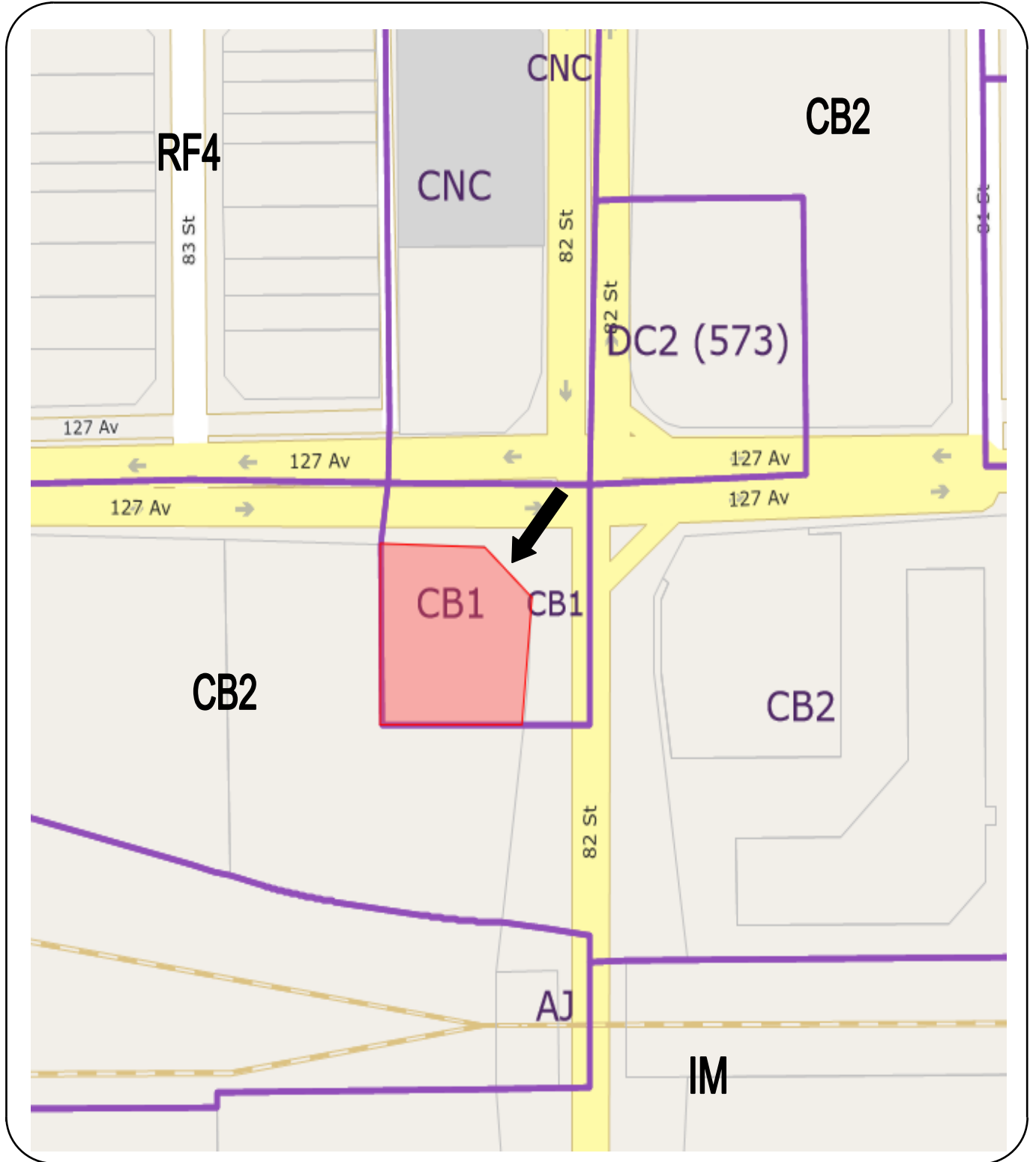
## Application for Major Development Permit

Project Number: **324487918-001**  
Application Date: JUL 04, 2019  
Printed: September 23, 2019 at 11:34 AM  
Page: 2 of 2

**Fees**

	<b>Fee Amount</b>	<b>Amount Paid</b>	<b>Receipt #</b>	<b>Date Paid</b>
Total GST Amount:	\$0.00			
Totals for Permit:	<u>\$5,600.00</u>	<u>\$5,600.00</u>		

**THIS IS NOT A PERMIT**



**SURROUNDING LAND USE DISTRICTS**

Site Location ←

File: SDAB-D-19-178

