

**SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA**

**Thursday, 9:00 A.M.
October 31, 2019**

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

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

I	10:30 A.M. WITHDRAWN	SDAB-D-19-191	Construct a Restaurant, Drive-in Food Service, and General Retail Stores use building. 11226 - 82 Street NW Project No.: 289009264-001
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II	1:30 P.M.	SDAB-D-19-192	Change the Use from a General Retail store to a Cannabis Retail sales store and to construct interior alterations. 10104 - 149 Street NW Project No.: 340006601-001
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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: 10:30 A.M.

FILE: SDAB-D-19-191

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER BY AN
ADJACENT PROPERTY OWNER

APPELLANT:

APPLICATION NO.: 289009264-001

APPLICATION TO: Construct a Restaurant, Drive-in Food Service, and General Retail Stores use building.

DECISION OF THE DEVELOPMENT AUTHORITY: Approved with Notices

DECISION DATE: September 13, 2019

DATE OF APPEAL: October 9, 2019

NOTIFICATION PERIOD: October 11 to October 22, 2019

RESPONDENT: D & R Construction Ltd

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 11226 - 82 Street NW

LEGAL DESCRIPTION: Plan 5733HW Blk 9 Lot 4

ZONE: CB1-Low Intensity Business Zone

WITHDRAWN

ITEM II: 1:30 P.M.

FILE: SDAB-D-19-192

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.:	340006601-001
APPLICATION TO:	Change the Use from a General Retail store to a Cannabis Retail sales store and to construct interior alterations.
DECISION OF THE DEVELOPMENT AUTHORITY:	Refused
DECISION DATE:	October 3, 2019
DATE OF APPEAL:	October 7, 2019
MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY:	10104 - 149 Street NW
LEGAL DESCRIPTION:	Plan 965AH Blk 61 Lots 19-23
ZONE:	CB1-Low Intensity Business Zone
OVERLAY:	Main Streets Overlay
STATUTORY PLAN:	Jasper Place Area Redevelopment Plan

Grounds for Appeal

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

The Appellant respectfully appeals the decision of the City of Edmonton Development Officer and requests that the SDAB exercise its variance power to grant two variances to the Edmonton Zoning Bylaw for the following reasons:

- (a) the proposed development is located in an existing commercial area adjacent to 149th Street NW, which is an appropriate location for the Cannabis Retail Sales use;

- (b) with respect to the conflicting site located 96m to the north of the proposed development:
 - (i) the proposed development is not visible from the conflicting site and is separated by commercial and residential buildings;
 - (ii) the conflicting site is a passive area that is not used for community or recreation activities. It is a long stretch of public land directly adjacent to 149th Street NW with a mixed use path for bicycle and pedestrian travel. There are no playing fields, playgrounds, sitting areas or picnic areas for public use;
- (c) with respect to the conflicting site located 60m to the south-east of the proposed development:
 - (i) the proposed development is separated from the conflicting site by at least six lanes of arterial roadway and a major intersection (the intersection of 149th Street and Stony Plain Road);
 - (ii) the conflicting site, MacKinnon Ravine, is a passive area that is not used for community or recreation activities. In the area closest to the proposed development, it has a steep slope and no useable public land. Farther away, it provides a pedestrian bridge and a mixed use path for bicycle and pedestrian access to the river valley. There are no playing fields, playgrounds, sitting areas or picnic areas for public use;
- (d) the actual walking distance between the proposed development and both of the conflicting site is greater than the required separation distances set out in section 70 of the Edmonton Zoning Bylaw;
- (e) the City of Edmonton Development Officer was prohibited from considering a variance under the Edmonton zoning bylaw;
- (f) other than the two conflicting sites, the proposed development conforms with all of the requirements in the Edmonton Zoning Bylaw and Cannabis Retail Sales is a permitted use under the applicable CB1 zoning;
- (g) the proposed development would not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land; and
- (h) such further and other grounds as may be determined and raised during 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 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, **Cannabis** means:

- 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 330.1 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.

Under section 819.1 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>

- 1. Any Cannabis Retail Sales shall not be located less than 200 metres from any other Cannabis Retail Sales. For the purposes of this subsection only:
 - a. the 200 metre 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 metres 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 metres 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 metres 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 metre 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 metre 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 public lands zoned A or AP (Section 70.2.b.):

Required Setback: 100 m
Proposed Setback: 96 m & 60 m
Deficient by 4 m & 40 m

Under Sections 70.1(b) and 70.5 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.



Project Number: **340006601-001**
 Application Date: SEP 03, 2019
 Printed: October 7, 2019 at 3:28 PM
 Page: 1 of 2

Application for Major Development Permit

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

Applicant	Property Address(es) and Legal Description(s) 10104 - 149 STREET NW Plan 965AH Blk 61 Lots 19-23 Specific Address(es) Suite: 10124 - 149 STREET NW Entryway: 10124 - 149 STREET NW Building: 10118 - 149 STREET NW
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Scope of Application
 To Change the Use from a General Retail store to a Cannabis Retail sales store and to construct interior alterations.

Permit Details Class of Permit: Gross Floor Area (sq.m.): New Sewer Service Required: N Site Area (sq. m.):	Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: Stat. Plan Overlay/Annex Area: (none)
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I/We certify that the above noted details are correct.
 Applicant signature: _____

Development Application Decision
 Refused

Issue Date: Oct 03, 2019 **Development Authority:** Chow, Stephen

Reason for Refusal
 The proposed Cannabis Retail Store does not comply with the minimum setback requirement from public lands zoned A or AP (Section 70.2.b.):

 Required Setback: 100 m
 Proposed Setback: 96 m & 60 m
 Deficient by 4 m & 40 m

 Under Sections 70.1(b) and 70.5 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.

Fees				
	Fee Amount	Amount Paid	Receipt #	Date Paid
Major Dev. Application Fee	\$5,600.00	\$5,600.00	06115309	Sep 04, 2019

THIS IS NOT A PERMIT



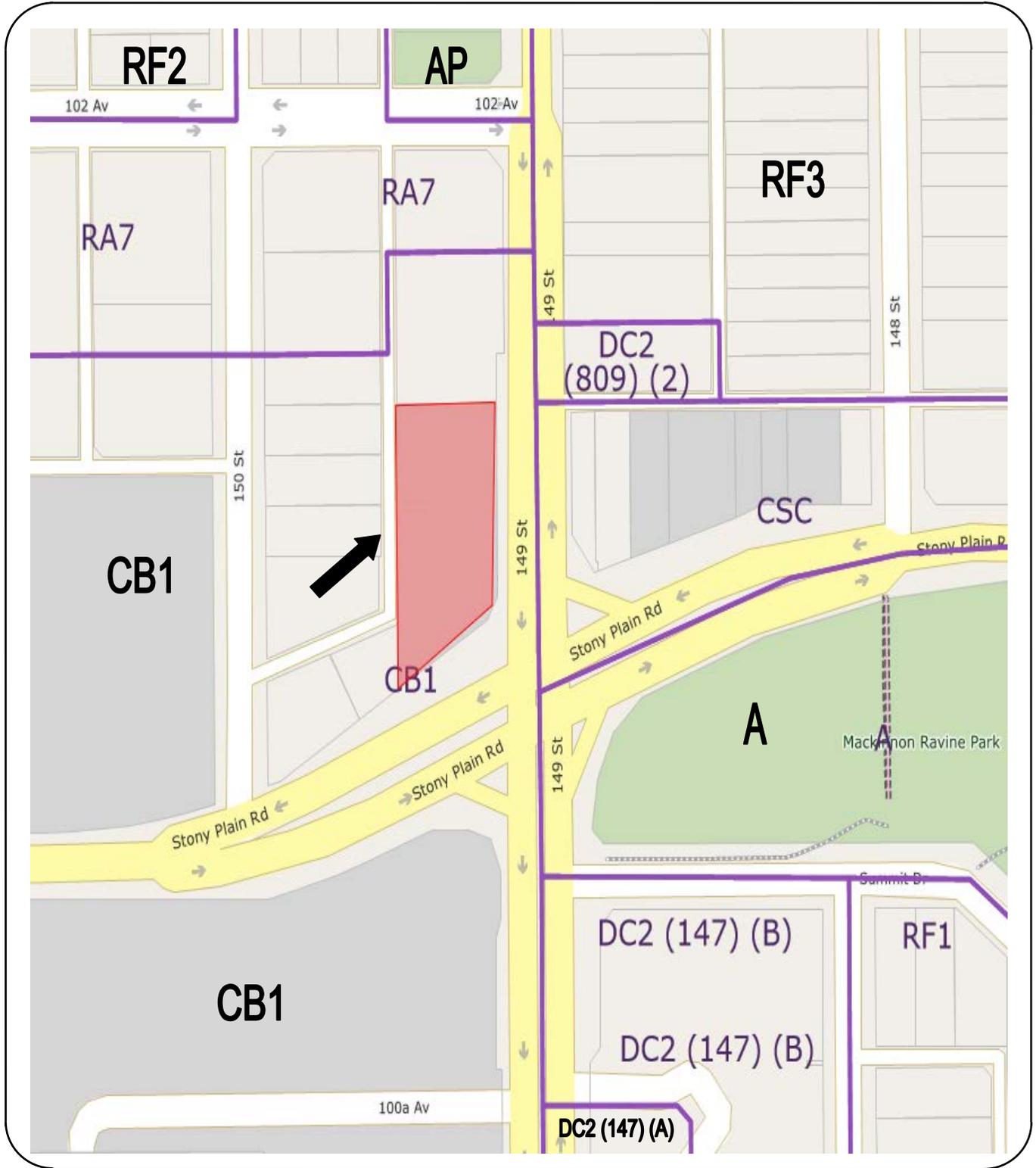
Application for Major Development Permit

Project Number: **340006601-001**
Application Date: SEP 03, 2019
Printed: October 7, 2019 at 3:28 PM
Page: 2 of 2

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Total GST Amount:	\$0.00			
Totals for Permit:	\$5,600.00	\$5,600.00		

THIS IS NOT A PERMIT



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-19-192

