

**SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA**

**Wednesday, 9:00 A.M.
October 7, 2015**

**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-15-229	Change the Use from a Commercial School to a Restaurant (68.75 sqm of Public Space with 40 seats, expansion of an existing Restaurant-CHUTNEY RESTAURANT) 6104 - 172 Street NW Project No.: 168506849-001
<hr/>			
II	11:00 A.M.	SDAB-D-15-230	Convert an existing Semi-detached House into 4 Dwellings of Apartment Housing 11135 - 127 Street NW Project No.: 146204539-007
<hr/>			
III	2:00 P.M.	SDAB-D-15-231	Construct 3 Dwellings of Apartment Housing 11041 - 84 Avenue NW Project No.: 169981523-001
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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-15-229

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 168506849-001

ADDRESS OF APPELLANT: 6104 - 172 STREET NW

APPLICATION TO: Change the Use from a Commercial School to a Restaurant (68.75 sqm of Public Space with 40 seats, expansion of an existing Restaurant- CHUTNEY RESTAURANT).

DECISION OF THE DEVELOPMENT AUTHORITY: Refused (See pages 8-9)

DECISION DATE: August 13, 2015

DATE OF APPEAL: September 9, 2015

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 6104 - 172 Street NW

LEGAL DESCRIPTION: Plan 7722037 Blk 12 Lot 46

ZONE: DC2 Site Specific Development Control Provision

OVERLAY: N/A

STATUTORY PLAN: N/A

Grounds for Appeal

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

- Approval from Transportation.
- When they did inspection it was done on Friday from 2:30 to 3:30 p.m.
- at the time of prayer and the restaurant is closed.
- The restaurant was there before the building was bought by MAC.
- Parking is available on the street and in the parking lot.

[unedited]

<i>General Matters</i>

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 Authority was dated August 13, 2015. The Notice of Appeal Period expired on August 27, 2015 and the Notice of Appeal was filed on September 9, 2015.

The Development Authority submitted a Canada Post Delivery Confirmation signed by R KHAN D1 on September 1, 2015.

Appeal Limitation

The *Municipal Government Act* states the following:

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.

Relevant Bylaw Provisions:

Section DC2.697 of the *Edmonton Zoning Bylaw 12800* states the following with respect to the **General Purpose** of the **DC2 Site Specific Development Control Provision:**

The purpose of this Site Specific Development Control Provision is to accommodate Professional, Financial and Office Support Services, Convenience Commercial uses, Personal Service uses and Public Libraries and Cultural Exhibits which are intended to serve the day to day needs of residents within new or established neighbourhoods.

Section DC2.697.4(b) states:

Development on this site shall comply with Sections 310.4 and 310.5 of the Zoning Bylaw; excepting subsection 1 of Section 310.4 (maximum floor area of any individual business premise shall not exceed 275m²) shall not apply to the development of Professional, Financial, and Office Support Services.

Sections 310.4 and 310.5 address Development Regulations within the **CNC Neighbourhood Convenience Commercial Zone**.

Under Section 310.3(21), "**Restaurants**, for less than 100 occupants and 120 m² of Public Space" is a **Discretionary Use** in the **CNC Neighbourhood Convenience Commercial Zone**.

Section 7.4(45) defines **Restaurants** as follows:

Restaurants mean development where the primary purpose of the facility is the sale of prepared foods and beverages to the public, for consumption within the premises or off the Site. Minors are never prohibited from any portion of the establishment at any time during the hours of operation. This Use Class typically has a varied menu, with a fully equipped kitchen and preparation area, and includes fast food and family restaurants.

Section DC2.697.3(c) lists **Minor Eating and Drinking Establishments** as a Use in the DC2 Site Specific Development Control Provision. In 2011, the subject property was approved for a Minor Eating and Drinking Establishments Use.

The *Edmonton Zoning Bylaw 12800* does not define Minor Eating and Drinking Establishments. However, Section 10.3(18) of the *Edmonton Land Use Bylaw 5996*, Version 10, November 1999, defines **Eating and Drinking Establishments, Minor** as follows:

...development where prepared foods and beverages are offered for sale to the public, for consumption within the premises or off the site. This Use Class includes neighbourhood pubs, licensed restaurants, cafes, delicatessens, tea rooms, lunch rooms, refreshment stands and takeout restaurants. This Use Class does not include Drive-in Food Services, Mobile Catering Food Services, or Major Eating and Drinking Establishments.

Required Vehicular Parking Spaces

Section 24 under Schedule 1(A) of Section 54.2 of the *Edmonton Zoning Bylaw 12800* states that the minimum number of parking spaces or garage spaces required for Restaurants is “1 parking space per 3.6 m² of Public Space.”

Development Officer’s Determination

Section 54.2, Schedule 1 - The overall number of required vehicular parking spaces has not been provided on this site.

Required: 189
Proposed: 166
Deficient: 23
[unedited]

Advisements

Development Officer’s Advisements:

ADVISEMENTS:

1) Applicant has provided the operation hours of the existing Restaurant used for Parking Justification, which is contrary to the condition of SDAB decision on Oct 07, 2011 (SDAB-D-11-207. Job # 113605354-003).

2) Upon site inspection on July 31, 2015 from 14:30 to 15:30 and Inspection Photos (April 10, 2015) under Development Compliance job # 094742909-005, the Parking Justification which applicant provided is not accurate.
[unedited]



Board Officer Comments:

The Advisement references SDAB-D-11-207, which was an appeal to the Subdivision and Development Appeal Board (“SDAB”) that was heard on September 22, 2011. The decision was issued in writing on October 7, 2011. In that decision, the SDAB permitted the deficiency of eight parking spaces and granted the appeal to change the Use from a Commercial Schools Use to a Minor Eating and Drinking Establishments Use, subject to the following conditions:

1. Hours of operation shall be from 11:00 a.m. to 9:00 p.m. Saturday through Thursday.
2. Hours of operation on Fridays shall be from 3:00 p.m. to 9:00 p.m.
3. A new separate Development Permit Application is required for the following:
 - a) any structural interior alterations;
 - b) any increase in public floor space;
 - c) any increase in the intensity of the use; including, but not limited to the number of seats; and any change in the hours of operation; and
 - d) any changes in use.

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*.

	Project Number: 168506849-001 Application Date: FEB 23, 2015 Printed: September 29, 2015 at 6:33 PM 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.			
Applicant CHUTNEY RESTAURANT 	Property Address(es) and Legal Description(s) 6104 - 172 STREET NW Plan 7722037 Blk 12 Lot 46 Specific Address(es) Suite: 128, 6104 - 172 STREET NW Entryway: 6104 - 172 STREET NW Building: 6104 - 172 STREET NW		
Scope of Application To change the Use from a Commercial School to a Restaurant (68.75 sqm of Public Space with 40 seats, expansion of an existing Restaurant- CHUTNEY RESTAURANT).			
Permit Details <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <tr> <td style="width: 50%; vertical-align: top;"> Class of Permit: Gross Floor Area (sq.m.): 157.94 New Sewer Service Required: N Site Area (sq. m.): 13122.44 </td> <td style="width: 50%; vertical-align: top;"> Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: 0 Stat. Plan Overlay/Annex Area: (none) </td> </tr> </table>		Class of Permit: Gross Floor Area (sq.m.): 157.94 New Sewer Service Required: N Site Area (sq. m.): 13122.44	Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: 0 Stat. Plan Overlay/Annex Area: (none)
Class of Permit: Gross Floor Area (sq.m.): 157.94 New Sewer Service Required: N Site Area (sq. m.): 13122.44	Contact Person: Lot Grading Needed?: N NumberOfMainFloorDwellings: 0 Stat. Plan Overlay/Annex Area: (none)		
I/We certify that the above noted details are correct. Applicant signature: _____			
Development Application Decision Refused Reason for Refusal Section 54.2, Schedule 1 - The overall number of required vehicular parking spaces has not been provided on this site. Required: 189 Proposed: 166 Deficient: 23 ADVISEMENTS: 1) Applicant has provided the operation hours of the existing Restaurant used for Parking Justification, which is contrary to the condition of SDAB decision on Oct 07, 2011 (SDAB-D-11-207. Job # 113605354-003). 2) Upon site inspection on July 31, 2015 from 14:30 to 15:30 and Inspection Photos (April 10, 2015) under Development Compliance job # 094742909-005, the Parking Justification which applicant provided is not accurate.			
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 13, 2015 Development Authority: LI, CINDY Signature: _____			
THIS IS NOT A PERMIT			



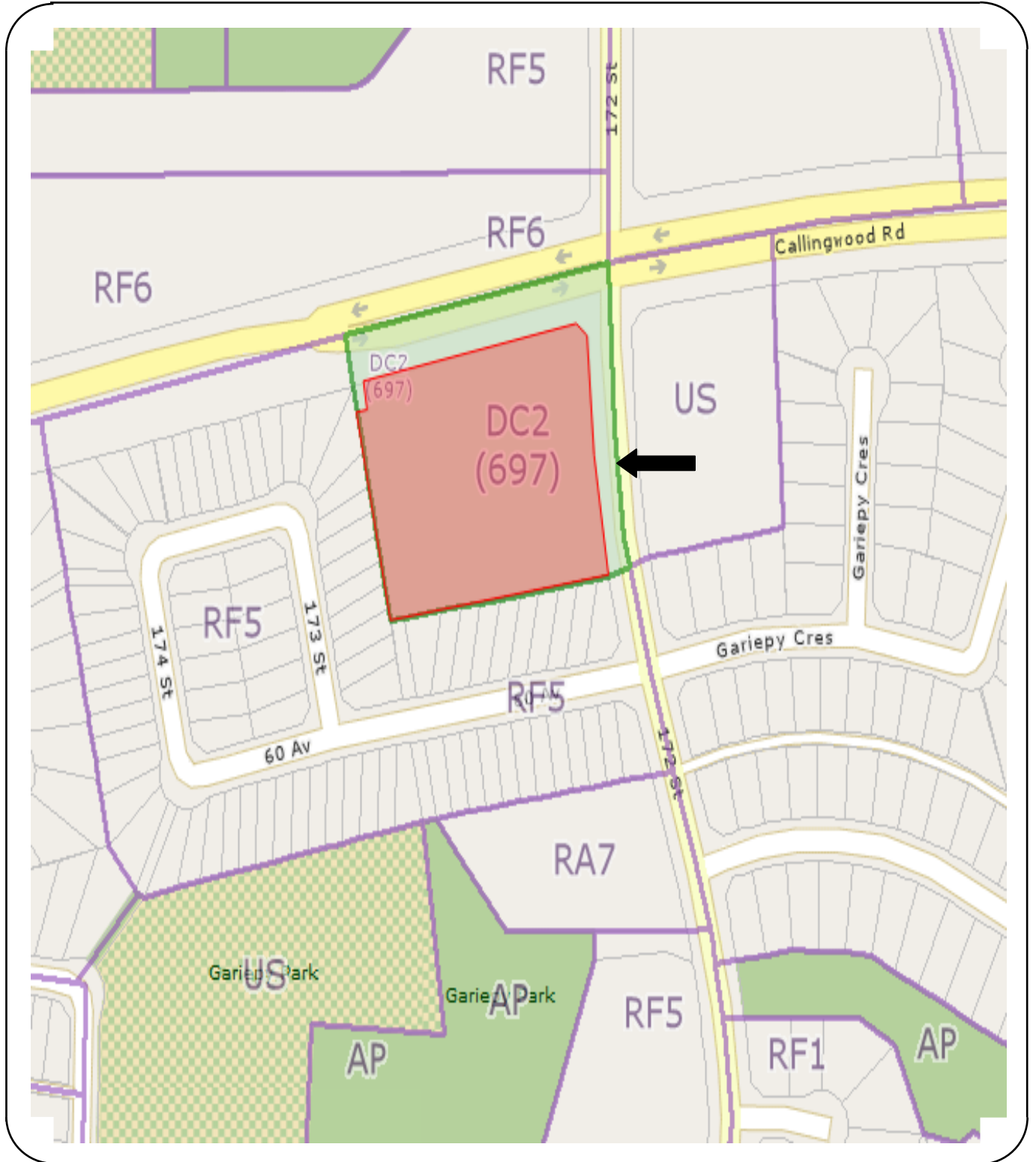
Project Number: **168506849-001**
Application Date: FEB 23, 2015
Printed: September 29, 2015 at 6:33 PM
Page: 2 of 2

Application for Major Development Permit

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Major Dev. Application Fee	\$254.00	\$254.00	02242662	Feb 23, 2015
Total GST Amount:	<u>\$0.00</u>	<u> </u>		
Totals for Permit:	\$254.00	\$254.00		

THIS IS NOT A PERMIT



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-15-229



ITEM II: 11:00 A.M.FILE: SDAB-D-15-230AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 146204539-007

ADDRESS OF APPELLANT: 11135 - 127 STREET NW

APPLICATION TO: Convert an existing Semi-detached House
into 4 Dwellings of Apartment HousingDECISION OF THE
DEVELOPMENT AUTHORITY: Refused (See pages 15-16)

DECISION DATE: September 1, 2015

DATE OF APPEAL: September 11, 2015

MUNICIPAL DESCRIPTION
OF SUBJECT PROPERTY: 11135 - 127 Street NW

LEGAL DESCRIPTION: Plan 7239AH Blk 6 Lot 13

ZONE: RF3 Small Scale Infill Development Zone

OVERLAY: Mature Neighbourhood 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:

The reason given for refusing the development application was "the existing built form was designed and constructed as a semi-detached house. It was not designed to be converted into an apartment housing" but that is precisely why we are applying for a change of use major development permit. We understand there will be some expenses involved in bringing certain items to within the guidelines for this type of dwelling, and that there will some items which we will need to ask a variance for but the current zoning is RF3 which does allow up to 4 dwellings, so we would like to do what is required to make this property into 4 legal units thereby providing safe affordable housing. If there is a more suitable development permit we should have applied for, then please inform us and we can make the application but it is our

understanding that this is the most suitable and was used for a similar property, 12126 & 12128 85 Street which was before the appeal board 23rd May, 2013 (67652490-011)
[unedited]

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 Authority was dated September 1, 2015. The Notice of Appeal Period expired on September 15, 2015 and the Notice of Appeal was filed on September 11, 2015.

Development Officer's Determination

Relevant Provisions:

Under Section 140.2(8), **Semi-detached Housing** is a **Permitted Use** in the RF3 Small Scale Infill Development Zone.

Section 7.2(8) defines **Semi-detached Housing** as follows:

Semi-detached Housing means development consisting of a building containing only two Dwellings joined in whole or in part at the side or rear with no Dwelling being placed over another in whole or in part. Each Dwelling has separate, individual, and direct access to Grade. This type of development is designed and constructed as two Dwellings at the time of initial construction of the building. This Use Class does not include Secondary Suites or Duplexes.

Under Section 140.1(1), **Apartment Housing** is a **Permitted Use** in the RF3 Small Scale Infill Development Zone.

Section 7.2(1) defines **Apartment Housing** as follows:

Apartment Housing means development consisting of one or more Dwellings contained within a building in which the Dwellings are arranged in any horizontal or vertical configuration, which does not conform to the definition of any other Residential Use Class.

With respect to the **General Purpose** of the **RF3 Small Scale Infill Development Zone**, Section 140.1 states:

The purpose of this Zone is to provide for Single Detached Housing and Semi-detached Housing while allowing small-scale conversion and infill redevelopment to buildings containing up to four Dwellings, and including Secondary Suites under certain conditions.

Section 6.1(27) defines **Dwelling** as follows:

...a self contained unit comprised of one or more rooms accommodating sitting, sleeping, sanitary facilities, and a principal kitchen for food preparation, cooking, and serving. A Dwelling is used permanently or semi-permanently as a residence for a single Household.

Section 6.1(2) defines **Accessory** as follows:

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;

Section 7.2(7) defines **Secondary Suite** as follows:

Secondary Suite means development consisting of a Dwelling located within, and Accessory to, a structure in which the principal use is Single Detached Housing. A Secondary Suite has cooking facilities, food preparation, sleeping and sanitary facilities which are physically separate from those of the principal Dwelling within the structure. A Secondary Suite also has an entrance separate from the entrance to the principal Dwelling, either from a common indoor landing or directly from the side or rear of the structure. This Use Class includes the Development or Conversion of Basement space or above Grade space to a separate Dwelling, or the addition of new floor space for a Secondary Suite to an

existing Single Detached Dwelling. This Use Class does not include Apartment Housing, Duplex Housing, Garage Suites, Garden Suites, Semi-detached Housing, Lodging Houses, Blatchford Lane Suites, Blatchford Accessory Suites, or Blatchford Townhousing.

Development Officer's Determination:

The Development Officer notes that the existing built form was designed and constructed as a Semi-Detached House (DP # 121670208-001). It was not designed to be converted to an Apartment Housing.



It is the opinion of the Development Officer that the proposed development consists of a Dwelling within, and accessory to the approved structure on the Site, which is a Semi-Detached House.

By definition, a Secondary Suite cannot be developed within a Semi-Detached House.

Therefore, the Development Officer does not have the authority to approve the proposed Secondary Suites.

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*.

	Project Number: 146204539-007 Application Date: MAY 07, 2015 Printed: September 1, 2015 at 12:59 PM 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.											
Applicant CHEN, YAN YUN 	Property Address(es) and Legal Description(s) 11135 - 127 STREET NW Plan 7239AH Blk 6 Lot 13 Specific Address(es) Entryway: 11135 - 127 STREET NW Entryway: 11137 - 127 STREET NW Building: 11135 - 127 STREET NW										
Scope of Application To convert an existing Semi-detached House into 4 Dwellings of Apartment Housing.											
Permit Details <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;"> Class of Permit: Gross Floor Area (sq.m.): 377 New Sewer Service Required: Y Site Area (sq. m.): 664.33 </td> <td style="width: 50%; border: none;"> Contact Person: Lot Grading Needed?: N/A NumberOfMainFloorDwellings: 2 Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay </td> </tr> </table>		Class of Permit: Gross Floor Area (sq.m.): 377 New Sewer Service Required: Y Site Area (sq. m.): 664.33	Contact Person: Lot Grading Needed?: N/A NumberOfMainFloorDwellings: 2 Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay								
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I/We certify that the above noted details are correct. Applicant signature: _____											
Development Application Decision Refused Reason for Refusal The Development Officer notes that the existing built form was designed and constructed as a Semi-Detached House (DP # 121670208-001). It was not designed to be converted to an Apartment Housing. It is the opinion of the Development Officer that the proposed development consists of a Dwelling within, and accessory to the approved structure on the Site, which is a Semi-Detached House. By definition, a Secondary Suite cannot be developed within a Semi-Detached House. Therefore, the Development Officer does not have the authority to approve the proposed Secondary Suites.											
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: Sep 01, 2015 Development Authority: ANGELES, JOSELITO Signature: _____											
Fees <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;">\$254.00</td> <td style="text-align: center;">\$254.00</td> <td style="text-align: center;">02411645</td> <td style="text-align: center;">May 08, 2015</td> </tr> </tbody> </table>			Fee Amount	Amount Paid	Receipt #	Date Paid	Major Dev. Application Fee	\$254.00	\$254.00	02411645	May 08, 2015
	Fee Amount	Amount Paid	Receipt #	Date Paid							
Major Dev. Application Fee	\$254.00	\$254.00	02411645	May 08, 2015							
THIS IS NOT A PERMIT											



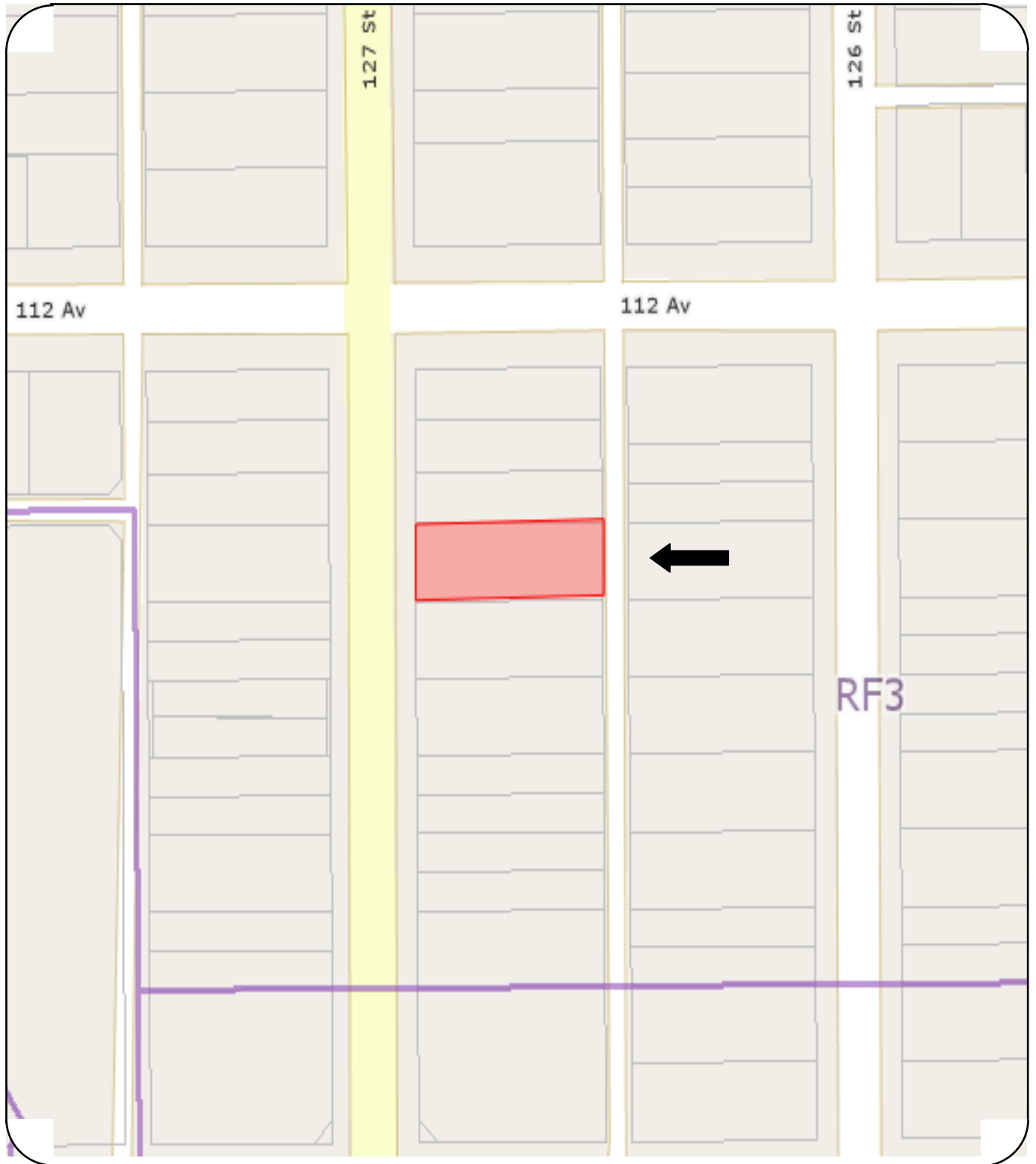
Project Number: **146204539-007**
Application Date: MAY 07, 2015
Printed: September 1, 2015 at 12:59 PM
Page: 2 of 2

Application for Major Development Permit

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Sanitary Sewer Trunk Fund 2012+	\$1,224.00			
Total GST Amount:	<u>\$0.00</u>	<u> </u>		
Totals for Permit:	\$1,478.00	\$254.00		
(\$1,224.00 outstanding)				

THIS IS NOT A PERMIT



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-15-230



ITEM III: 2:00 P.M.

FILE: SDAB-D-15-231

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

APPELLANT:

APPLICATION NO.: 169981523-001

ADDRESS OF APPELLANT:

APPLICATION TO: Construct 3 Dwellings of Apartment Housing

DECISION OF THE DEVELOPMENT AUTHORITY: Approved with Notices (See pages 25-27)

DECISION DATE: August 24, 2015

DATE OF APPEAL: September 11, 2015

NOTIFICATION PERIOD: Sep 1, 2015 through Sep 14, 2015

RESPONDENT:

ADDRESS OF RESPONDENT: 11041 - 84 Avenue NW

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 11041 - 84 Avenue NW

LEGAL DESCRIPTION: Plan I23A Blk 160 Lot 20

ZONE: DC1 Direct Development Control Provision

OVERLAY: Mature Neighbourhood Overlay

STATUTORY PLAN: Garneau Area Redevelopment Plan

Grounds for Appeal

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

An application was previously made to build a duplex on this lot by the same developer. That permit was appealed to the SDAB which issued a

decision on 16 May 2014 (Application no. 149851148-001; SDAB file D-14-121.)

The Board found in its May 2014 decision that (inter alia)

- the site is within the Special Character Residential Area of the GARP, a direct control zone;
- the regulations which must be followed when reviewing developments in the GARP DC1 zone are the RF3 regulations from the Land Use Bylaw 5996 which were in effect when the GARP bylaw was passed in 1982;
- Council's intention was and remains to crystalize the regulations then in force for this area; no changes were or are contemplated;
- the aim of the GARP and Council's intention is to maintain an area of detached houses on small lots;
- Council's intention is specific that a 15 metre site width is required for duplex housing;
- Council's intention was not to allow development on sites which are significantly smaller than those prescribed in the LUB 5996.

This application is not for a single detached house, not for a duplex. It is for a triplex.

The variances being requested are directly contrary to City Council direction, and contravene the GARP.

Under Direct Control, when evaluating and approving a development the Administration is required to adhere to the direction that City Council has established in the applicable bylaw. That direction is set out in Bylaw 6221, the Garneau ARP, within Section 5.

Council direction included under "Development Criteria" in Section 5 stipulates that a one-dwelling development is allowed only on a site of at least 360 sq.m. in area and at least 12 m. in width. Further, under the General Regulations and Special land Use

Provisions of the LUB (also included under "Development Criteria") the site width may be reduced to 10 m. where that is the original lot width common to the area, as is the case in The Garneau.

Council direction included under "Development Criteria" in Section 5 stipulates that a two-dwelling development is allowed only on a site of at least 600 sq.m. in area and at least 15 m. in width.

Council direction included under "Development Criteria" in Section 5 stipulates that a three or four-dwelling development is allowed only on a site of at least 800 sq.m. in area and at least 20 m. in width.

Nowhere in Section 5 is there any Council direction allowing for those minimum site requirements to be reduced, or for the use types on variously sized sites to be varied. Criterion 2 does contain Council

direction that authorizes the Administration to exercise discretion. However, in doing so, Council direction restricts the Administration's discretion in terms of the form, nature and justification to those aspects cited in Criteria 3 and 5.

Criteria 3 and 5 limit the exercise of discretion to the size and situation of a building on a site only, and to the appearance of a building only. Criteria 3 and 5 do not authorize discretion related to use type or the size or dimensions of site.

The applicant may cite the existence of a few other three-dwelling developments on deficient sites recently approved, after appeal to the SDAB, as justification for ignoring stipulated Council direction. However, any such reference would ignore the decision of the SDAB regarding a proposed three-dwelling development on another deficient site at the northwest corner of 110 Street and 83 Avenue. (Application no. 125391047-001; SDAB file D-12-251.)

In that appeal the Board, upon hearing a more complete and accurate interpretation of the GARP and the DC1, ruled that variances to the site size, the use type and certain siting regulations were not consistent with Council direction and refused that application. The Board agreed that a three-dwelling development is not allowed on a site that is less than 800 sq.m. in area and 20 m. in width.

We ask the Board to respect City Council's stipulated direction, and to support the goals and objectives of The Garneau ARP as they relate to the last low density enclave in the entire neighbourhood. We ask the Board to deny this application which contradicts Council direction and is contrary to the policies and regulations of the approved ARP.
[unedited]

General Matters

Appeal Information:

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

Grounds for Appeal

685(2) In addition to an applicant under subsection (1), any person affected by an order, decision or development permit made or issued by a development authority 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,

...

- (b) in the case of an appeal made by a person referred to in section 685(2), after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.

The decision of the Development Authority was dated August 24, 2015. The Notice of Appeal Period expired on September 14, 2015. An adjacent property owner filed the Notice of Appeal on September 11, 2015.

Appeal Limitation

The *Municipal Government Act* states the following:

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.

Land Use Bylaw 5996, Version 10, November 1999:

Under *Land Use Bylaw 5996*, Version 10, November 1999, Section 710.1 states the following with respect to the **General Purpose** of the **DC1 Direct Development Control District**:

710.1 General Purpose

The purpose of this Provision is to provide for detailed, sensitive control of the use, development, siting and design of buildings and disturbance of land where this is necessary to establish, preserve or enhance:

- a) areas of unique character or special environmental concern, as identified and specified in an Area Structure Plan or Area Redevelopment Plan; or
- b) areas or Sites of special historical, cultural, paleontological, archaeological, prehistorical, natural, scientific or aesthetic interest, as designated under the Historical Resources Act, 1980.

With respect to **Development Criteria** under the DC1 Direct Development Control District of *Land Use Bylaw 5996*, Version 10, November 1999, Section 710.4 states:

710.4 Development Criteria

- 1) All developments shall comply with the development criteria contained in an approved Area Redevelopment Plan or Area Structure Plan, except that any criteria or conditions applying as a result of designation of a historical resource under the Historical Resources Act, 1980, shall take precedence.
- 2) ...
- 3) A development may also be evaluated with respect to its compliance with:
 - a) the objectives and policies of an applicable Statutory Plan;
 - b) the General Regulations and Special Land Use Provisions of this Bylaw; and
 - c) the regulations of abutting Land Use Districts.

Garneau Area Redevelopment Plan (“ARP”):

The Garneau ARP, Bylaw 6221, was approved by City Council on May 25, 1982.

The Garneau ARP DC1 District states:

Rationale: The Garneau Plan in Policy 1.1 identifies the subject area as a "Special Character Residential Area" contributing to the city as a whole precinct of older detached housing having interesting architectural detailing and variety in built form. This District is intended to encourage the retention of rehabilitation of existing structures while allowing for infill redevelopment. The regulations associated with this District are intended to ensure that all rehabilitation and redevelopment activities are sensitive to the existing character of both the built form and its relationship to existing streetscapes.

...

710.4 Development Criteria

The following development criteria shall apply to developments within this District pursuant to Section 710.4 of the Land Use Bylaw.

1. The General Regulations and Special Land Use Provisions of the Land Use Bylaw.

2. The development regulations of the RF3 (Low Density Redevelopment) District, provided that the Development Officer may relax these regulations for individual applications, where such relaxations would assist in the achievement of the development criteria in Clauses 3, 4 and 5 below.
3. New developments or additions to existing buildings shall be compatible with the scale, massing and siting of adjacent buildings along the same street frontage.
4. The rehabilitation and renovation of existing buildings shall retain the original details of rooflines, doors and windows, trim, exterior finishing materials and similar architectural features to the greatest extent practical.
5. The design and appearance of new developments shall incorporate building details and finishing materials which are common to the domestic architecture of the turn of the century and early 1920's detached housing in the area.
6. Existing trees and vegetation shall be retained wherever possible and where removal for new construction is required, mature trees shall be planted to maintain the appearance of the streetscape.

<p><i>Permit Variances: Site Area, Site Width, and Side Yard</i></p>

The following Development Regulations apply to the RF3 Low Density Redevelopment District under the *Land Use Bylaw 5996*, Version 10, November 1999:

140.4 Development Regulations for Permitted and Discretionary Uses

- 1) the minimum site area shall be provided as follows:
...
f) 800 m² (8,611.1 sq. ft.) for each Apartment Housing or Stacked Row Housing Development;
- 2) the minimum site width shall be provided as follows:
...
e) 20 m (65.6 ft.) for each Apartment Housing or Stacked Row Housing development;
...
- 8) Side Yards shall be established on the following basis:
 - a) Side Yards shall total at least 20% of the site width, but the requirement shall not be more than 6.0 m (19.7 ft.) with a

minimum Side Yard of 1.2 m (3.94 ft.) except that the minimum Side Yard for buildings over 7.5 m (24.6 ft.) in Height shall be 2 m (6.6 ft.);

...

Development Officer's Decision:

VARIANCES:

Variations granted pursuant to section 11.4 of the Edmonton Land Use Bylaw 5996.

Relaxed Minimum Site Area, Minimum Site Width, and Minimum Side Yard.

Notes:

1. Pursuant to Section 140.4 (1) (f) the minimum Site Area is relaxed from 800 m² to 404 m².
 2. Pursuant to Section 140.4 (2) (e) the minimum Site Width is relaxed from 20 m to 10 m.
 3. Pursuant to Section 140.4 (8) (a) the minimum Side Yard is relaxed from 2.0 m to 1.2 m.
- [unedited]

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*.



Project Number: **169981523-001**
 Application Date: MAR 25, 2015
 Printed: October 2, 2015 at 10:32 AM
 Page: 1 of 3

Major Development Permit

This document is a record of a Development 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.

<p>Applicant</p> <p>CRESTWOOD CONDOMINIUMS INC </p>	<p>Property Address(es) and Legal Description(s)</p> <p>11041 - 84 AVENUE NW Plan I23A Blk 160 Lot 20</p> <hr/> <p>Specific Address(es)</p> <p>Suite: 1, 11041 - 84 AVENUE NW Suite: 2, 11041 - 84 AVENUE NW Suite: BSMT, 11041 - 84 AVENUE NW Entryway: 11041 - 84 AVENUE NW Building: 11041 - 84 AVENUE NW</p>
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Scope of Permit
 To construct 3 Dwellings of Apartment Housing.

Permit Details	
Class of Permit: Gross Floor Area (sq.m.): 552.95 New Sewer Service Required: Y Site Area (sq. m.): 808.3	Contact Person: Lot Grading Needed?: Y NumberOfMainFloorDwellings: 1 Stat. Plan Overlay/Annex Area: (none)

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

Applicant signature: _____

Development Permit Decision
 Approved

The permit holder is advised to read the reverse for important information concerning this decision.



Project Number: **169981523-001**
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Major Development Permit

Subject to the Following Conditions

All planting shall be installed to the finished grade. Where, in the opinion of the Development Officer, this is not practical, planters may be used. Such planters shall be of adequate design, having sufficient soil capacity and insulation to promote healthy growth.

Landscaping which extends onto or over City-owned lands shall be developed in accordance with the Boulevard Bylaw No. 7829, as amended.

Any future deck development greater than 0.6m (2ft) in height will require development and building permit approvals.

Note: A Building Permit is Required for any construction or change in use of a building. For a building permit, and prior to the Plans Examination review, you require construction drawings and the payment of fees. Please contact the 311 Call Centre for further information.

1. The fence shall be installed entirely on or within property lines
2. The fence shall not impede any sightlines for vehicular or pedestrian traffic
3. The fence shall not exceed <height of approved fence> in height as approved in this permit
4. The materials of the fence shall be similar to, or better than, the standard of surrounding development (Section 57.2)

An approved Development Permit means that the proposed development has been reviewed against the provisions of this bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the Edmonton Building Permit Bylaw or any caveats, covenants or easements that might be attached to the Site (Section 5.2).

PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall pay a Lot Grading Fee of \$ 220.00

A detailed landscaping plan shall be submitted by the applicant in accordance to Sections 15.4 and 69.2 of the Edmonton Zoning Bylaw 12800 and shall be to the satisfaction of the Development Officer.

PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall provide a guaranteed security to ensure that landscaping is provided and maintained for two growing seasons. The Landscape Security may be held for two full years after the landscaping has been completed. This security may take the following forms:

- a) cash to a value equal to 100% of the established landscaping costs;
- or
- b) an irrevocable letter of credit having a value equivalent to 100% of the established landscaping costs.

Any letter of credit shall allow for partial draws. If the landscaping is not completed in accordance with the approved Landscape Plan(s) within one growing season after completion of the development or if the landscaping is not well maintained and in a healthy condition two growing seasons after completion of the landscaping, the City may draw on the security for its use absolutely. Reference Section 55.6

This Development Permit is NOT valid until the Notification Period expires in accordance to Section 21.1. (Reference Section 17.1)

An approved Development Permit means that the proposed development has been reviewed only against the provisions of the Edmonton Zoning Bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the ERCB Directive 079, the Edmonton Safety Codes Permit Bylaw or any caveats, covenants or easements that might be attached to the Site.

PRIOR TO THE RELEASE OF DRAWINGS FOR BUILDING PERMIT REVIEW, the applicant or property owner shall pay a

The permit holder is advised to read the reverse for important information concerning this decision.



Project Number: **169981523-001**
 Application Date: MAR 25, 2015
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 Page: 3 of 3

Major Development Permit

Sanitary Sewer Trunk Fund fee of \$ 2,042.00. All assessments are based upon information currently available to the City. The SSTF charges are quoted for the calendar year in which the development permit is granted. The final applicable rate is subject to change based on the year in which the payment is collected by the City of Edmonton.

Exterior finishes should primarily emphasize subdued colours.

There may be utilities within road right-of-way not specified that must be considered during construction. The owner/applicant is responsible for the location of all underground and above ground utilities and maintaining required clearances as specified by the utility companies. Alberta One-Call (1-800-242-3447) and Shaw Cable (1-866-344-7429; www.digshaw.ca) should be contacted at least two weeks prior to the work beginning to have utilities located. Any costs associated with relocations and/or removals shall be at the expense of the owner/applicant.

Any alley, sidewalk or boulevard damage occurring as a result of construction traffic must be restored to the satisfaction of Transportation Services, as per Section 15.5(f) of the Zoning Bylaw. The alley, sidewalks and boulevard will be inspected by Transportation Services prior to construction, and again once construction is complete. All expenses incurred for repair are to be borne by the owner.

ADVISEMENTS

Bicycle parking should meet the requirements of the Zoning Bylaw

Transportation Services has no objection to the proposed tandem parking stalls.

The applicant is advised that reconstruction of the sidewalk on 84 Avenue would be supported with the redevelopment of the site.

Variations

Variations granted pursuant to section 11.4 of the Edmonton Land Use Bylaw 5996.

Relaxed Minimum Site Area, Minimum Site Width, and Minimum Side Yard.

Notes:

1. Pursuant to Section 140.4 (1) (f) the minimum Site Area is relaxed from 800 m2 to 404 m2.
2. Pursuant to Section 140.4 (2) (e) the minimum Site Width is relaxed from 20 m to 10 m.
3. Pursuant to Section 140.4 (8) (a) the minimum Side Yard is relaxed from 2.0 m to 1.2 m.

Rights of Appeal

This approval is subject to the right of appeal as outlined in Chapter 24, Section 683 through 689 of the Municipal Government Amendment Act.

Issue Date: Aug 24, 2015 **Development Authority:** HARRISON, MARK

Signature: _____

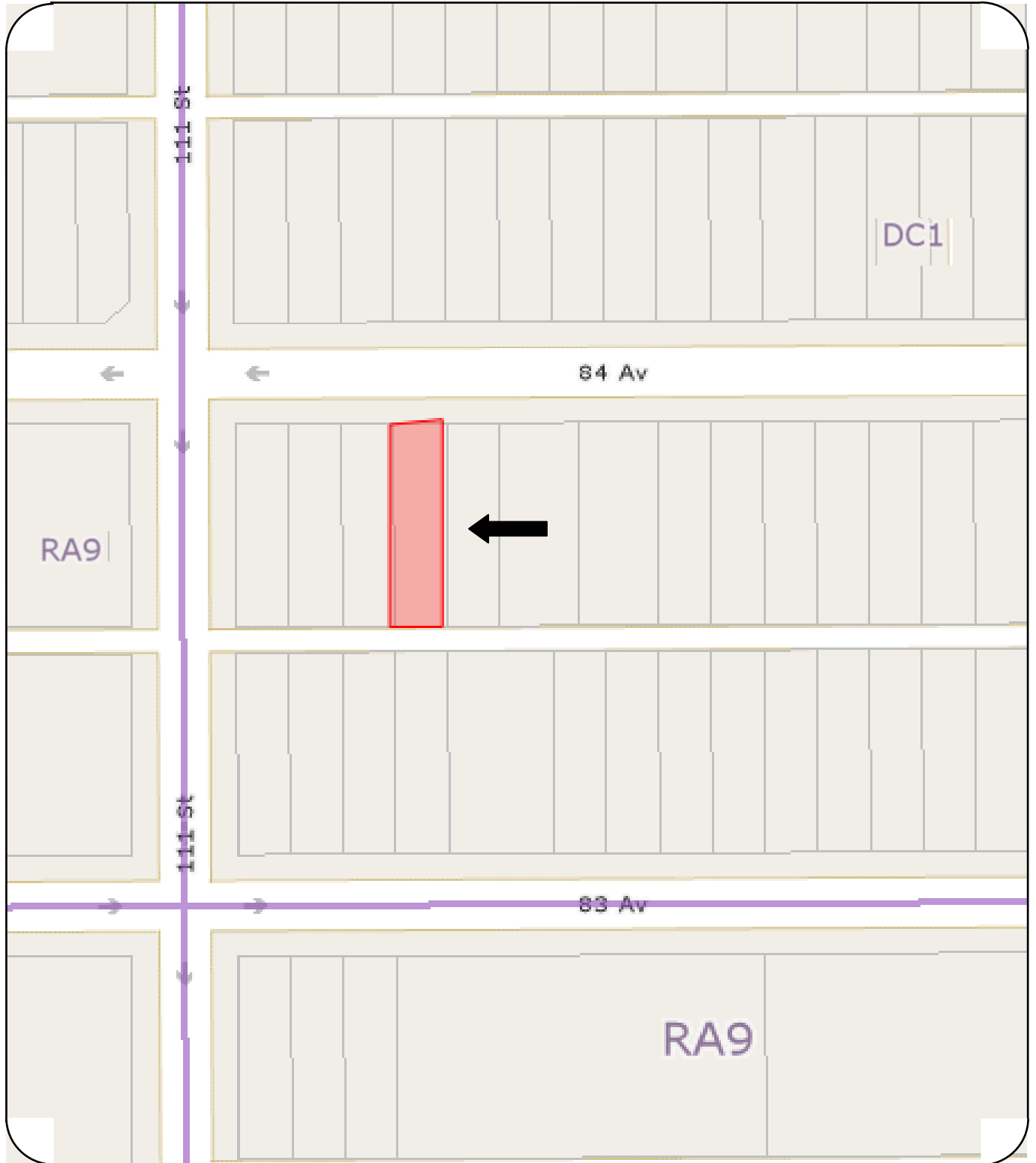
Notice Period Begins: Sep 01, 2015

Ends: Sep 14, 2015

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Major Dev. Application Fee	\$770.00	\$770.00	02307263	Mar 25, 2015
Lot Grading Fee	\$275.00			
Sanitary Sewer Trunk Fund 2012+	\$3,063.00			
Total GST Amount:	\$0.00			
Totals for Permit:	\$4,108.00	\$770.00		
(\$3,338.00 outstanding)				

The permit holder is advised to read the reverse for important information concerning this decision.



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-15-231



BUSINESS LAID OVER

SDAB-D-15-211	An appeal by <u>Bigstone Health Commission</u> to change the Use from Professional, Financial, and Office Support Services to General Retail Stores (main floor) and Health Services (2 nd floor), and construct additions, interior alterations, and exterior alterations <i>October 29, 2015</i>
SDAB-D-15-236 to 241	An appeal by <u>Ogilvie LLP</u> to comply with six Orders to acquire valid development permits by September 25, 2015 or cease the Use and demolish and remove all materials by September 25, 2015; and to comply with all conditions of development permit No. 149045660-001. <i>November 19, 2015</i>

APPEAL HEARINGS TO BE SCHEDULED

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