

SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA

Wednesday, 9:00 A.M.
September 1, 2021

SUBDIVISION AND DEVELOPMENT APPEAL BOARD

I 9:00 A.M. SDAB-D-21-140

To construct a Driveway and parking pad in the Front Yard of a vacant Lot

12011 - 21 Avenue SW
Project No.: 397979517-002

II 10:30 A.M. SDAB-D-21-141

To construct a Single Detached House with Unenclosed Front Porch, front balcony, electric fireplace, and to develop a Secondary Suite in the Basement.

9333 - 148 Street NW
Project No.: 389495731-002

NOTE: *Unless otherwise stated, all references to "Section numbers" in this Agenda refer to the authority under the Edmonton Zoning Bylaw 12800.*

ITEM I: 9:00 A.M.

FILE: SDAB-D-21-140

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 397979517-002

APPLICATION TO: Construct a Driveway and parking pad in the Front Yard of a vacant Lot

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: July 20, 2021

DATE OF APPEAL: August 6, 2021

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 12011 - 21 Avenue SW

LEGAL DESCRIPTION: Plan 0620255 Blk 15 Lot 36

ZONE: (RSL) Residential Small Lot Zone

OVERLAY: N/A

STATUTORY PLAN: Rutherford Neighbourhood Area Structure Plan

Grounds for Appeal

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

The proposed plan is to construct a driveway and parking area on a surface lot I have purchased that is adjacent to my principal residence. The purpose is to provide a Hardsurface for activities for my children, like basketball and chalk drawing, and to park my own personal vehicles. The Parking Area would located behind a fence surrounding the land and would not be visible from the street.

I disagree with the Development Authority regarding the permitted use. They state that vehicle parking is not a permitted use in a RSL zone. However, the lot is an RSL zone in which a front driveway and parking area is part of the permitted use.

The Development Authority states that a parking area cannot be built as it would be an Accessory Use without a physical Principal Use. However, the bylaw language for the definition of a Use does not require a physical manifestation and allows a Use to describe the purpose for which the land was intended, in this case, a RSL single detached home with a front driveway and parking area/garage.

Bylaw Definition of Use:

Use means the purposes or activities for which a piece of land or its buildings are designed, arranged, developed, or intended, or for which it is occupied or maintained.

Shortened definition of Use:

Use means the purpose for which a piece of land was intended.

A front driveway and parking area would be consistent with the intended Use for this land.

I also feel that construction of a driveway and parking area, of the exact size and location that would have otherwise existed had a house been built on that land, does not materially interfere with or affect the use, enjoyment, or value of neighboring properties. The neighborhood plan has always meant for a driveway to exist in this spot.

Thank you for your consideration!

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.

...

(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 the decision in accordance with subsection (2.1).

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, or
 - (B) if no decision is made with respect to the application within the 40-day period, or within any extension of that period under section 684, within 21 days after the date the period or extension expires,
 - or
 - (ii) with respect to an order under section 645, within 21 days after the date on which the order is made, or
- (b) in the case of an appeal made by a person referred to in section 685(2), within 21 days after the date on which the notice of the issuance of the permit was given in accordance with the land use bylaw.

Hearing and Decision

687(3) In determining an appeal, the board hearing the appeal referred to in subsection (1)

...

- (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 clause (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*:

Vehicle Parking is **neither** a Permitted Use **nor** a Discretionary Use in the **(RSL) Residential Small Lot Zone**, pursuant to sections 115.2 and 115.3 respectively.

Under section 7.40(50), **Vehicle Parking** means “development that designates a Parking Area for automobiles.”

Section 50.1(1) states “A Use shall be Accessory to a Permitted or Discretionary Use which is a principal Use on the Site, if such Use complies with the definition of Accessory in this Bylaw.”

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

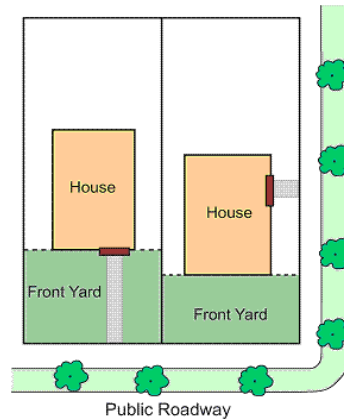
Under section 6.1, **Use** means “the purposes or activities for which a piece of land or its buildings are designed, arranged, developed or intended, or for which it is occupied or maintained.”

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, **Front Yard** means:

the portion of a Site abutting the Front Lot Line extending across the full width of the Site, situated between the Front Lot Line and the nearest wall of the principal building, not including projections.



Section 115.1 states that the **General Purpose** of the **(RSL) Residential Small Lot Zone** is:

to provide for smaller lot Single Detached Housing with attached Garages in a suburban setting that provides the opportunity for the more efficient utilization of undeveloped suburban areas and includes the opportunity for Secondary Suites and Garden Suites.

Use

Development Officer’s Determination

1. The proposed plan is to construct a driveway and parking pad (Surface Parking Lot for Vehicle Parking) in the Front Yard of a vacant Lot where no principal building exists. The parking is therefore not an Accessory Use. It is Vehicle Parking. Vehicle Parking is neither a permitted Use nor Discretionary Use in RSL Zone (ref. Section 7.4.50, Section 115.2 and Section 115.3)

[unedited]

Surface Parking Lot

Section 54.8(2)(b) states “A Surface Parking Lot shall be fully associated with the principal Use where the principal Use is Single Detached Housing, Duplex Housing or Semi-Detached Housing.”


Development Officer’s Determination

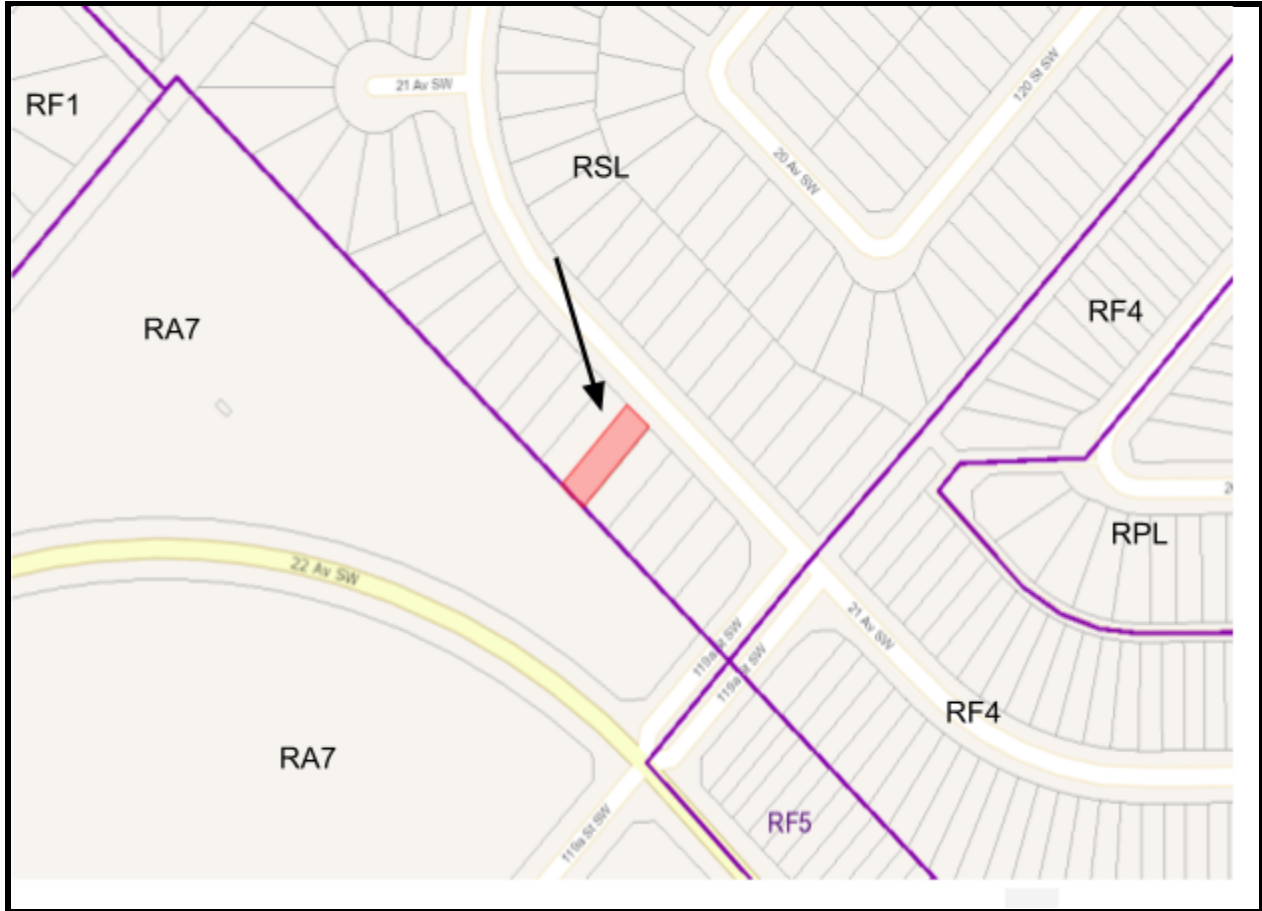
A Surface Parking Lot not fully associated with the principal Use where the principal Use is Single Detached Housing, Duplex Housing or Semi-Detached Housing is not allowed in RLS Zone. (ref. Section 54.8.2.b, and Section 54.8.2.b)

[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.

	Project Number: 397979517-002 Application Date: JUN 01, 2021 Printed: July 20, 2021 at 5:08 PM Page: 1 of 1																				
<h2 style="margin: 0;">Application for Driveway Extension Permit</h2>																					
This document is a Development Permit Decision for the development application described below.																					
Applicant	Property Address(es) and Legal Description(s) 12011 - 21 AVENUE SW Plan 0620255 Blk 15 Lot 36																				
Scope of Application To construct a Driveway and parking pad in the Front Yard of a vacant Lot.																					
Permit Details																					
Class Of Permit: Class A Stat. Plan Overlay/Annex Area: (none)	Site Area (sq. m.): 387.07																				
Development Application Decision Refused Issue Date: Jul 20, 2021 Development Authority: TESSERA, HERAN Reason for Refusal 1. The proposed plan is to construct a driveway and parking pad (Surface Parking Lot for Vehicle Parking) in the Front Yard of a vacant Lot where no principal building exists. The parking is therefore not an Accessory Use. It is Vehicle Parking. Vehicle Parking is neither a permitted Use nor Discretionary Use in RSL Zone (ref. Section 7.4.50, Section 115.2 and Section 115.3) A Surface Parking Lot not fully associated with the principal Use where the principal Use is Single Detached Housing, Duplex Housing or Semi-Detached Housing is not allowed in RLS Zone. (ref. Section 54.8.2.b, and Section 54.8.2.b)																					
Rights of Appeal The Applicant has the right of appeal to the Subdivision and Development Appeal Board (SDAB) within 21 days after the date on which the decision is made as outlined in Chapter M-26, Section 683 through 689 of the Municipal Government Act.																					
Building Permit Decision No decision has yet been made.																					
Fees <table style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="width: 60%;"></th> <th style="text-align: right; width: 15%;">Fee Amount</th> <th style="text-align: right; width: 15%;">Amount Paid</th> <th style="text-align: left; width: 10%;">Receipt #</th> <th style="text-align: left; width: 10%;">Date Paid</th> </tr> </thead> <tbody> <tr> <td>Development Application Fee</td> <td style="text-align: right;">\$176.00</td> <td style="text-align: right;">\$176.00</td> <td>10651809314J001</td> <td>Jun 01, 2021</td> </tr> <tr> <td>Total GST Amount:</td> <td style="text-align: right;">\$0.00</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Totals for Permit:</td> <td style="text-align: right; border-top: 1px solid black;">\$176.00</td> <td style="text-align: right; border-top: 1px solid black;">\$176.00</td> <td></td> <td></td> </tr> </tbody> </table>			Fee Amount	Amount Paid	Receipt #	Date Paid	Development Application Fee	\$176.00	\$176.00	10651809314J001	Jun 01, 2021	Total GST Amount:	\$0.00				Totals for Permit:	\$176.00	\$176.00		
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THIS IS NOT A PERMIT																					



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-21-140

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N

ITEM II: 10:30 A.M.

FILE: SDAB-D-21-141

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 389495731-002

APPLICATION TO: Construct a Single Detached House with an Unenclosed Front Porch, front balcony, electric fireplace, and a Secondary Suite in the Basement

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: July 30, 2021

DATE OF APPEAL: August 9, 2021

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 9333 - 148 Street NW

LEGAL DESCRIPTION: Plan 1821891 Blk 5 Lot 25B

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:

I wish to appeal the decision of the Development Authority based on the refusal of permit # 389495731-002 due to the height at the midpoint of the roof. The building is compliant with the max height requirements along with all other building requirements and therefore I am looking to obtain a variance on the required height at the midpoint.

In the builders opinion, this variance in midpoint roof height while maintaining a legal maximum building height will not provide any problems or have any negative impacts on the surrounding houses.

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.

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(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 the decision in accordance with subsection (2.1).

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Hearing and Decision

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- (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;
- (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,
 - (i) the proposed development would not
 - (A) unduly interfere with the amenities of the neighbourhood, or
 - (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

and

- (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.

General Provisions from the *Edmonton Zoning Bylaw*:

Under section 110.2(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.

Height

Section 814.3(5) states “The maximum Height shall not exceed 10.0 m in the RF5 Zone and 8.9 m in all other Zones.”

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

Development Officer’s Determination

- 1. Midpoint Height - The house shall not exceed a Height of 8.9m (Section 814.3.5).**
 - Maximum: 8.9m**
 - Proposed: 10.0m**

Exceeds by: 1.1m

[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 a 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) and 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:


Tier #	Recipient Parties	Affected Parties	Regulation of this Overlay to be Varied
Tier 1	The municipal address and 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	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(5) – Height

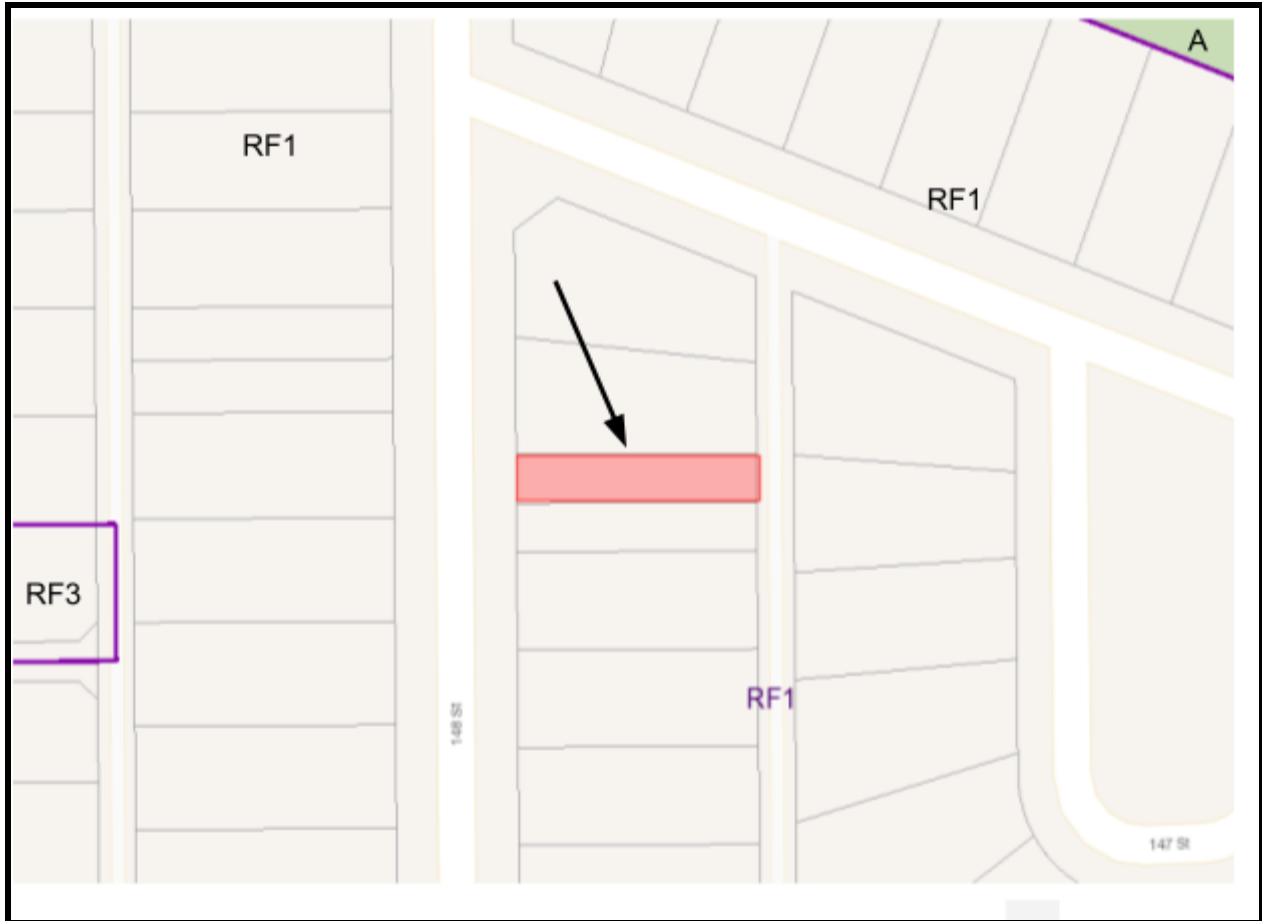
	Community League		
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Notice to Applicant/Appellant

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.

	<h2 style="margin: 0;">Application for Minor Development Permit</h2>	Project Number: 389495731-002 Application Date: MAR 16, 2021 Printed: July 30, 2021 at 11:04 AM Page: 1 of 2																														
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THIS IS NOT A PERMIT																																

	Application for Minor Development Permit			Project Number: 389495731-002 Application Date: MAR 16, 2021 Printed: July 30, 2021 at 11:04 AM Page: 2 of 2
Fees				
Total GST Amount:	Fee Amount	Amount Paid	Receipt #	Date Paid
Totals for Permit:	\$0.00 <hr/> \$1,885.00	<hr/> \$1,885.00		
THIS IS NOT A PERMIT				



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-21-141

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N