

**SUBDIVISION
AND
DEVELOPMENT APPEAL BOARD
AGENDA**

**Thursday, 9:00 A.M.
July 25, 2019**

**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-19-113	Construct an addition (loft, 293.29m ²) to approved fourth floor Apartment Hotel units in an approved mixed-use building, and to construct interior alterations 17104 - 90 Avenue NW Project No.: 266010257-021
---	-----------	---------------	---

II	10:30 A.M.	SDAB-D-19-114	Erect a Fence @ 2.44m in Height in the Rear Yard abutting the Rear Lot Line 10527 - 35A Avenue NW Project No.: 313062198-001
----	------------	---------------	--

NOTE: *Unless otherwise stated, all references to “Section numbers” refer to the authority under the Edmonton Zoning Bylaw 12800.*

ITEM I: 9:00 A.M. FILE: SDAB-D-19-113

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 266010257-021

APPLICATION TO: Construct an addition (loft, 293.29m2) to approved fourth floor Apartment Hotel units in an approved mixed-use building, and to construct interior alterations

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: June 24, 2019

DATE OF APPEAL: June 26, 2019

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 17104 - 90 Avenue NW

LEGAL DESCRIPTION: Plan 8220508 Blk 30 Lot 9

ZONE: CSC Shopping Centre Zone

OVERLAY: N/A

STATUTORY PLAN: Summerlea Neighbourhood Area Structure Plan

Grounds for Appeal

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

On the top floor of this apartment hotel there is a large attic space. With this attached design we have added a loft inside this attic above most of the top floor hotel units. This change does not change the approved Development permit drawings with the one exception. We need the extra FAR or building area to make these lofts possible.

- The building Height will be the same,
- the exterior elevations will be the same,
- the setbacks all stay the same and will not change,
- the number parking required verses parking supplied will be the same.

- The site plan stays exactly the same and does not change
- The number of Apartment Hotel units stays the same at 48 rooms

We want to provide these feature loft units beside one of the largest shopping malls in the world (West Edmonton Mall). We are very confident there will be a market for these unique units?

We suggest the development officer has incorrectly identified the FAR as 1.1 when it is really 1.065. Therefore the percentage over the allowed FDR of 1.0 is 6.5% or 2858 ft.².

We suggested these feature loft units will add an extra level of choice for people staying in hotels in the area close to WEM. They will be a unique hotel rooms and we expect the demand for them will be high.

We hope you will allow this extra floor area so we can make these feature loft units a reality.

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*:

Section 320.1 states that the **General Purpose** of (CSC) **Shopping Centre Zone** is:

The purpose of this Zone is to provide for larger shopping centre developments intended to serve a community or regional trade area.

Residential, office, entertainment and cultural uses may also be included within such shopping complexes.

Under section 320.3(2), **Apartment Hotels** is a **Discretionary Use** in the (CSC) Shopping Centre Zone.

Section 7.3(1) states:

Apartment Hotels means development consisting of Dwellings contained within a building or a part of a building having a principal common entrance, in which the Dwellings are not available for daily lease and there are cooking facilities within each Dwelling, the Dwellings are furnished including dishes and linen, and either maid service, telephone service, or desk service is provided. Apartment Hotels shall not contain Commercial Uses, unless such Uses are a Permitted or Discretionary Use in the Zone where the Apartment Hotel is located.

Section 6 defines **Dwelling** as follows:

Dwelling means 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.

Maximum Floor Area Ratio

Section 320.4(2) states: "The maximum Floor Area Ratio [FAR] shall be 1.0."

Development Officer's Determination


Provided: 1.1 FAR
Deficiency: 0.1 FAR

Notes:

- A. The Development Officer has no authority to issue a variance to FAR as per Section 11.4(1)(b).
- B. Apartment Hotels is a Discretionary Use in the Shopping Centre (CSC) Zone. (Section 320.3(2))

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: 266010257-021 Application Date: MAY 01, 2019 Printed: June 27, 2019 at 2:19 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 <div style="background-color: black; width: 100%; height: 15px; margin-bottom: 5px;"></div> <div style="background-color: black; width: 100%; height: 15px; margin-bottom: 5px;"></div> <div style="background-color: black; width: 100%; height: 15px;"></div>	Property Address(es) and Legal Description(s) 17104 - 90 AVENUE NW Plan 8220508 Blk 30 Lot 9 Specific Address(es) Suite: 17128 - 90 AVENUE NW Entryway: 17104 - 90 AVENUE NW Entryway: 17108 - 90 AVENUE NW Entryway: 17112 - 90 AVENUE NW Entryway: 17116 - 90 AVENUE NW Entryway: 17120 - 90 AVENUE NW Entryway: 17128 - 90 AVENUE NW Building: 17104 - 90 AVENUE NW		
Scope of Application To construct an addition (loft, 293.29m2) to approved fourth floor Apartment Hotel units in an approved mixed-use building, and to construct interior alterations.			
Permit Details <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: Y Site Area (sq. m.): 4043.45 </td> <td style="width: 50%; border: none;"> Contact Person: Lot Grading Needed?: N/A NumberOfMainFloorDwellings: Stat. Plan Overlay/Annex Area: (none) </td> </tr> </table>		Class of Permit: Gross Floor Area (sq.m.): New Sewer Service Required: Y Site Area (sq. m.): 4043.45	Contact Person: Lot Grading Needed?: N/A NumberOfMainFloorDwellings: Stat. Plan Overlay/Annex Area: (none)
Class of Permit: Gross Floor Area (sq.m.): New Sewer Service Required: Y Site Area (sq. m.): 4043.45	Contact Person: Lot Grading Needed?: N/A NumberOfMainFloorDwellings: Stat. Plan Overlay/Annex Area: (none)		
I/We certify that the above noted details are correct. Applicant signature: _____			
Development Application Decision Refused Issue Date: Jun 24, 2019 Development Authority: ADAMS, PAUL Reason for Refusal 1. The maximum Floor Area Ratio (FAR) shall be 1.0. (Reference Section 320.4(2)) Provided: 1.1 FAR Deficiency: 0.1 FAR Notes: A. The Development Officer has no authority to issue a variance to FAR as per Section 11.4(1)(b). B. Apartment Hotels is a Discretionary Use in the Shopping Centre (CSC) Zone. (Section 320.3(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.			
THIS IS NOT A PERMIT			



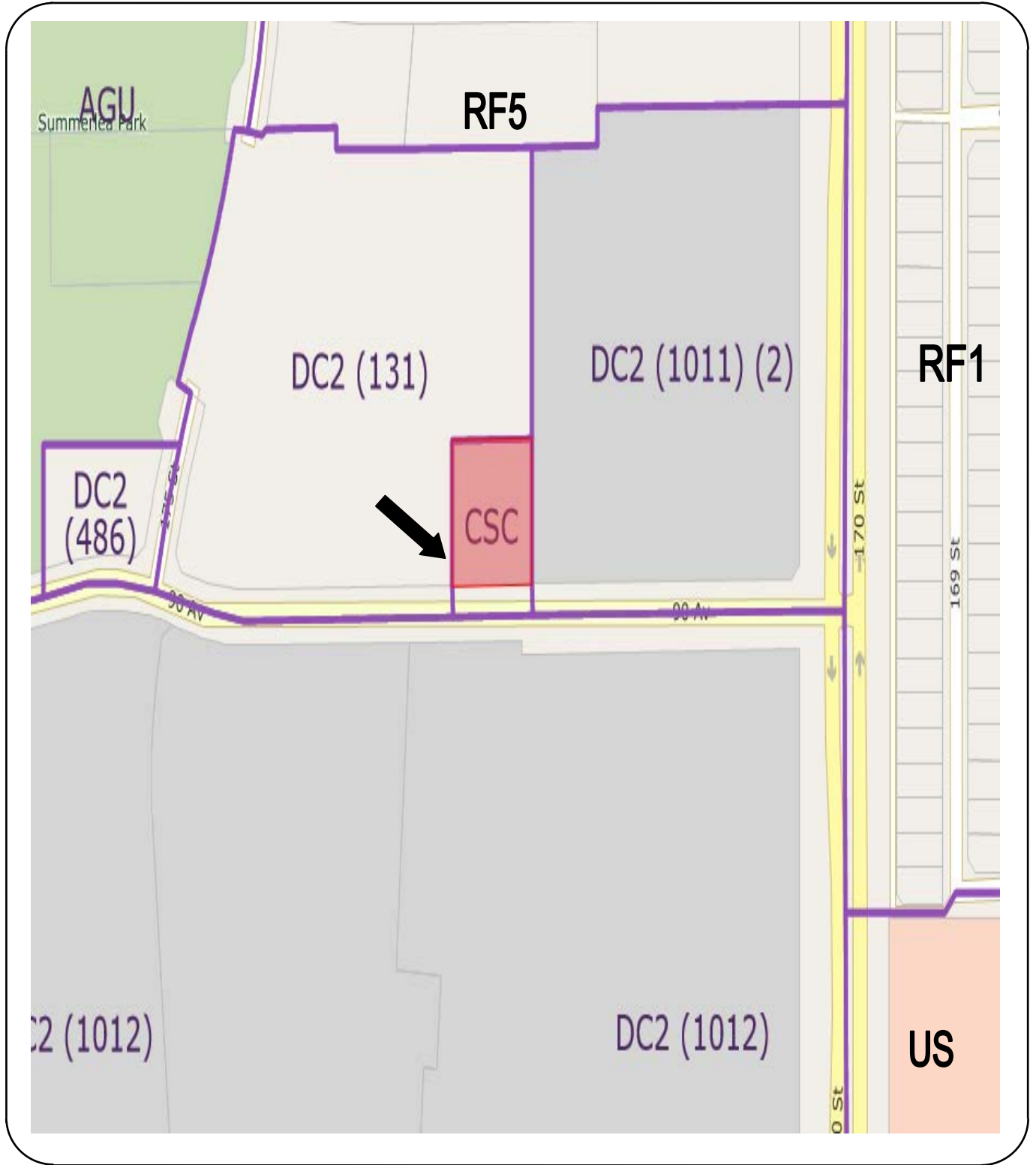
Application for Major Development Permit

Project Number: **266010257-021**
Application Date: MAY 01, 2019
Printed: June 27, 2019 at 2:19 PM
Page: 2 of 2

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Major Dev. Application Fee	\$848.00	\$848.00	05819533	May 01, 2019
Development Permit Inspection Fee	\$518.00	\$518.00	05819533	May 01, 2019
Sanitary Sewer Trunk Fund 2012+	\$3,360.14			
Total GST Amount:	\$0.00			
Totals for Permit:	<u>\$4,726.14</u>	<u>\$1,366.00</u>		
(\$3,360.14 outstanding)				

THIS IS NOT A PERMIT



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-19-113



ITEM II: 10:30 A.M.

FILE: SDAB-D-19-114

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

APPELLANT:

APPLICATION NO.: 313062198-001

APPLICATION TO: Erect a Fence @ 2.44m in Height in the Rear Yard abutting the Rear Lot Line

DECISION OF THE DEVELOPMENT AUTHORITY: Approved with Notices

DECISION DATE: June 10, 2019

DATE OF APPEAL: June 24, 2019

RESPONDENT:

ADDRESS OF RESPONDENT: 10527 - 35A Avenue NW

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 10527 - 35A Avenue NW

LEGAL DESCRIPTION: Plan 4823RS Blk 16 Lot 27

ZONE: RF1 Single Detached Residential Zone

OVERLAY: Mature Neighbourhood Overlay

STATUTORY PLAN: Duggan Neighbourhood Area Structure Plan

Grounds for Appeal

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

I received a Development Permit Notice in Duggan dated June 12, 2019 from the City of Edmonton. I was surprised to see that the City of Edmonton approved a property @10527-35A Avenue, Edmonton, Alberta, Class B for the development of a fence @2.44 m in height which is 8.00564 feet in height. I then learned that the owner paid the City of Edmonton \$200.00 in order to be permitted to build such a fence as noted. This does sound like a bribe, unless someone informs me, otherwise.

I have lived on my property @3511-105 B Street, Edmonton, Alberta, for 47 consecutive years. I have no knowledge of any homeowner in Duggan with an 8 foot fence. To confirm this, I actually drove around Duggan about 4:00PM today, on June 22, 2019 and found only six foot fences or less in the neighborhood of Duggan. It would have been appropriate for the City of Edmonton to have studied the community of Duggan before issuing a permit for the requested 8 foot fence.

An 8.00564 foot fence or 2.44 meter fence "abutting the Rear Lot Line" as indicated in the letter from the City of Edmonton, would be unsightly if built and could easily lessen property value in the area. That height of fence could create suspicion in the buyer as well as with other people seeing it. I definitely object to having a 2.44 m fence which is an 8.00564 foot fence built @10527-35A Avenue, Edmonton, Alberta. A 6 foot fence would be reasonable and acceptable.

Nevertheless, I was just was about to finish my letter of Appeal when I noticed in the afternoon of June 22, 2019 around 3:00 PM posts, huge posts standing upright on the property @10527-35A Avenue, Edmonton, Alberta, and two sides of the old fence were already dismantled.

My next door neighbor to the north of me who is a renter did not know an 8 foot fence was beginning to be built. He escorted me to the back of his property where contractors were busy at work; they were hired to build a 2.44m fence and one of the contractors checked his cell phone for proof. I then showed the two contractors my letter from the City of Edmonton that indicated a Notification Appeal Period June 18, 2019 - July 9, 2019. I told them that I assumed that no construction would take place until the Appeal Period expired. I would think that the City of Edmonton informed the owner @10527-35A Avenue, Edmonton, Alberta of the Notification Appeal Period.

To add further to what was already occurring, one of the contractors said that the owner is building the fence on his own property as if to show neighbors he is in control and the rest of us need to be quiet.

I cannot understand why anyone would want to build a barricade in the Duggan neighborhood which has appealed to so many for so many years. I have not met the property owner @10527-35A Avenue, Edmonton, Alberta, but that property has been known to entertain drug use and loud parties in the past. If perhaps he is a new owner, then why must he build an 8 foot fence?

Just as an aside, the property south of 10527-35A Avenue @10536-35 Avenue has had their old fence already dismantled. They are people from China who struggle with English. I would expect that the City of Edmonton made it clear to them about the 8 foot fence perhaps by using an interpreter of some sort.

Someone from Appeals needs to look at this case seriously. There exist too many red flags, so far.

Continued: Sunday, June 23, 2019:

Since about 1:00 PM, today, June 23, 2019, the two young male contractors continued to build the fence even though they both knew about the City of Edmonton's Notification Appeal Period June 18, 2019 - July 9, 2019. The side "abutting the Rear Lot Line" now has a visible 8 foot fence! It is 7:00PM and the contractors are now putting up the slabs of fence on the side facing south of 10527-35A Avenue. It almost seems they are rushing to complete.

The contractors and, of course, the owner defied what the City of Edmonton ordered and by doing so they took my rights away as a homeowner, so they think. I happen to know law and I live to abide by it. The owner @10527-35A Avenue, Edmonton, Alberta, broke the order from the City of Edmonton that included conditions for neighboring homeowners the right to appeal first before the owner would commence to build, regarding a Development Permit that had been approved for that property by the City of Edmonton.

It seems quite often that those who do wrong tend to get away with it. I am appealing to the Subdivision and Development Appeal Board, that in this case, it will not happen. The good values in society must be respected before the defiance of the owner @10527-35A Avenue who pushed for his own selfish needs without regards for anyone else around him. It is you, at the Appeals Board, who can enforce what went up against orders to be ordered to come down and in its place, a fence to be built according to the normal standards in Duggan. The City of Edmonton will have to be notified by Appeals and I plan to call them myself. Also, I noted that the City of Edmonton did not specify in its letter, the reason for the owner's request for a 2.44m fence, so one must conclude that the real reason was not given.

If there is any other way that I may help in stopping a 2.44m fence from being completed, next to me, let me know, soon. It is my hope that the Appeals Board will view my appeal as urgent and react accordingly. I will be delivering my appeal to you tomorrow morning, June 24, 2019.

<i>General Matters</i>

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,

- (a) ...
- (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.

Section 20 of the *Edmonton Zoning Bylaw* sets out the requirements for Notification of Development Permit Decisions. Section 20.3 provides as follows:

20.3 Class B Discretionary Development

1. Within seven days of the issuance of a Development Permit for a Class B Discretionary Development, the Development Officer shall dispatch a written notice by ordinary mail to all relevant parties listed below that are wholly or partially within 60.0 m of the boundaries of the Site which is the subject of the Development Permit:
 - a. each assessed owner of the Site or a part of the Site of the development;
 - b. each assessed owner of land;
 - c. the President of each Community League; and
 - d. the Executive Director of each Business Improvement Area.
2. The notice shall describe the development and state the decision of the Development Officer, and the right of appeal therefrom.
3. Within 10 days of the issuance of a Development Permit for Class B Discretionary Development, the Development Officer shall cause to be published in a daily newspaper circulating within the City, a notice describing the development and stating their decision, and the right to appeal therefrom.
4. Where, in the opinion of the Development Officer, a proposed development is likely to affect other owners of land beyond 60.0 m, the Development Officer shall notify owners of land at such additional distance and direction from the Site as, in the opinion of the Development Officer, may experience any impact attributable to the development.

<u>Relevant Dates</u>	
Decision Issued:	June 10, 2019
Mailing Notice:	June 12, 2019
Newspaper Notice:	June 18 to July 9, 2019
Appeal Filed:	June 24, 2019

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

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*:

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.

Section 7 states that “**Fence** means a structure constructed at ground level, used to prevent or restrict passage, provide visual screening, noise attenuation, Landscaping, or to mark a boundary.

<i>Fence Height</i>

Section 49(1) provides, in part:

49. *Fences, Walls, Gates, and Privacy Screening in Residential Zones*

- 1. Fences, walls and gates
 - d. On an Interior Site, the Height of a Fence, wall, or gate shall not exceed:
 - i. 1.2 m for the portion of the Fence, wall, or gate constructed in the Front Yard, and
 - ii. 1.85 m in all other Yards.

...


g. In the case where the permitted Height of a Fence, wall, or gate is 1.85 m, the Development Officer may vary the Height of the Fence, wall, or gate to a maximum of 2.44 m, in order to provide additional screening from public roadways or incompatible adjacent Uses,

Development Officer’s Determination

Fence Height - The fence abutting the rear lot line is 2.44m high, instead of 1.85m (Section 49.1.d.ii and Section 49.1.g).

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: 313062198-001 Application Date: MAY 07, 2019 Printed: June 10, 2019 at 10:47 AM Page: 1 of 2		
<h2 style="margin: 0;">Overheight Fence Permit</h2>			
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.			
Applicant <div style="background-color: black; width: 100%; height: 20px; margin-top: 5px;"></div>	Property Address(es) and Legal Description(s) 10527 - 35A AVENUE NW Plan 4823RS Blk 16 Lot 27 Location(s) of Work Suite: 10527 - 35A AVENUE NW Entryway: 10527 - 35A AVENUE NW Building: 10527 - 35A AVENUE NW		
Scope of Permit To erect a Fence @ 2.44m in Height in the Rear Yard abutting the Rear Lot Line.			
Permit Details <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;"> Class Of Permit: Class B Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay </td> <td style="width: 50%; border: none;"> Site Area (sq. m.): 1050.1 </td> </tr> </table>		Class Of Permit: Class B Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay	Site Area (sq. m.): 1050.1
Class Of Permit: Class B Stat. Plan Overlay/Annex Area: Mature Neighbourhood Overlay	Site Area (sq. m.): 1050.1		
I/We certify that the above noted details are correct. Applicant signature: _____			
Development Permit Decision Approved Issue Date: Jun 10, 2019 Development Authority: PAYNE, KYLE Subject to the Following Conditions This Development Permit is NOT valid until the Notification Period expires in accordance to Section 21. (Reference Section 17.1) This Development Permit authorizes the development of a Fence @ 2.44m in Height in the Rear Yard abutting the Rear Lot Line. The development shall be constructed in accordance with the stamped and approved drawings. The fence shall be installed entirely on the subject property. As far as reasonably practicable, the design and use of exterior finishing materials used shall be similar to, or better than, the standard of surrounding development (Reference Section 57.3(1)). Immediately upon completion of the development of the fence, the site shall be cleared of all debris. ADVISEMENTS: 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 including, but not limited to, the Municipal Government Act, the Safety Codes Act or any caveats, restrictive covenants or easements that might be attached to the Site. (Reference Section 5.2) Unless otherwise stated, all above references to section numbers refer to the authority under the Edmonton Zoning Bylaw 12800.			
Variances Fence Height - The fence abutting the rear lot line is 2.44m high, instead of 1.85m (Section 49.1.d.ii and Section 49.1.g).			



Project Number: **313062198-001**
Application Date: MAY 07, 2019
Printed: June 10, 2019 at 10:47 AM
Page: 2 of 2

Overheight Fence Permit

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.

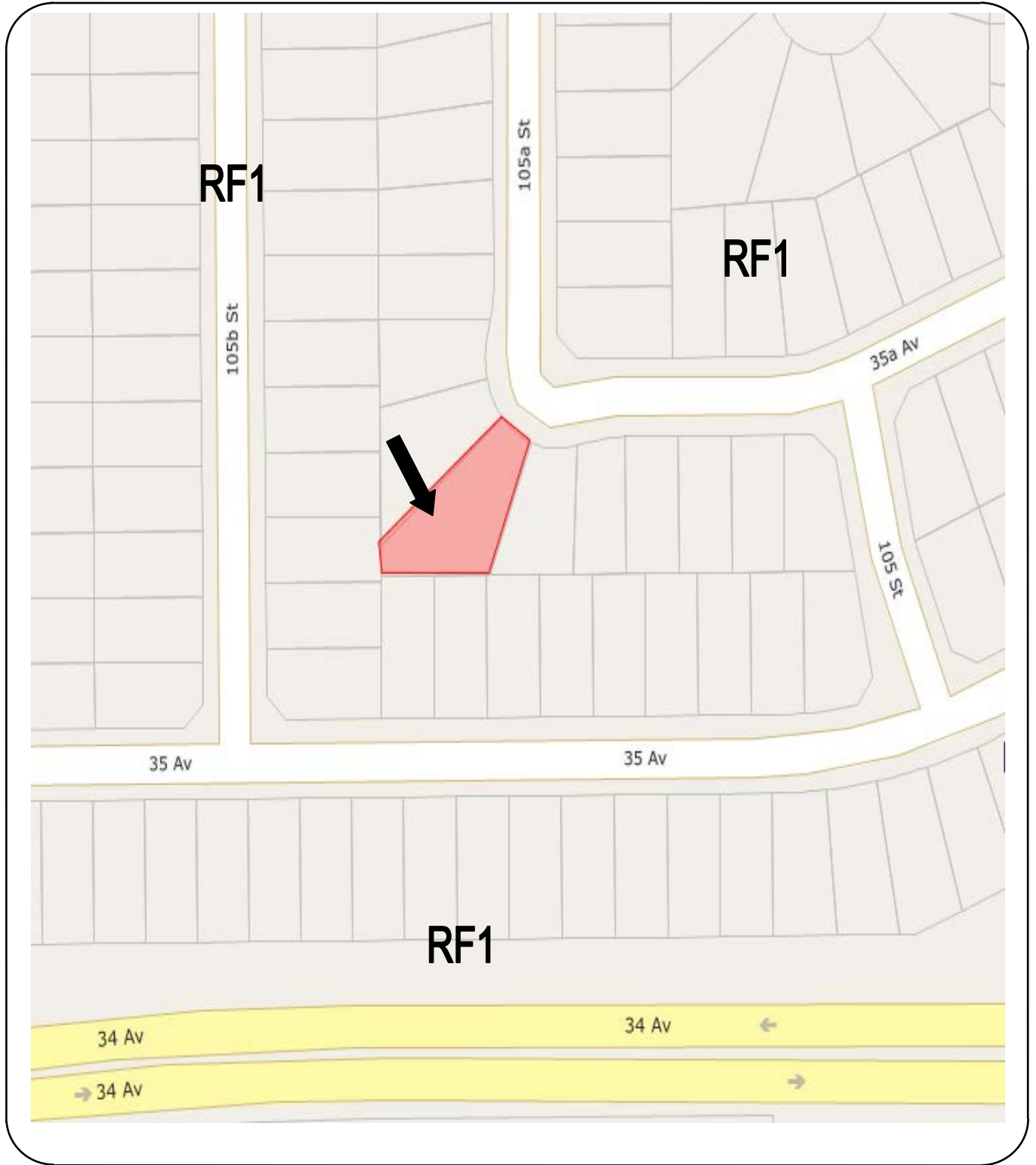
Notice Period Begins: Jun 18, 2019 **Ends:** Jul 09, 2019

Building Permit Decision

No decision has yet been made.

Fees

	Fee Amount	Amount Paid	Receipt #	Date Paid
Development Application Fee	\$179.00	\$179.00	8346210193110010	May 07, 2019
Total GST Amount:	\$0.00			
Totals for Permit:	\$179.00	\$179.00		



SURROUNDING LAND USE DISTRICTS

Site Location ←

File: SDAB-D-19-114

