

**SUBDIVISION  
AND  
DEVELOPMENT APPEAL BOARD  
AGENDA**

**Wednesday, 9:00 A.M.  
March 13, 2019**

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

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

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I	9:00 A.M.	SDAB-D-19-029	Fire & Flower Inc. VS. Canndara Canada Inc. Change the use from General Retail Stores to Cannabis Retail Sales 11404 - Jasper Avenue NW Project No.: 296169793-001
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***NOTE:*** *Unless otherwise stated, all references to “Section numbers” refer to the authority under the Edmonton Zoning Bylaw 12800.*

ITEM I: 9:00 A.M.

FILE: SDAB-D-19-029

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

APPELLANT:	Fire & Flower Inc.
APPLICATION NO.:	296169793-001
APPLICATION TO:	Change the use from General Retail Stores to Cannabis Retail Sales.
DECISION OF THE DEVELOPMENT AUTHORITY:	Approved with conditions
DECISION DATE:	January 23, 2019
DATE OF APPEAL:	February 12, 2019
RESPONDENT:	Canndara Canada Inc.
MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY:	11404 - Jasper Avenue NW
LEGAL DESCRIPTION:	Plan B3 Blk 14 Lots 78-79
ZONE:	DC1 (Oliver Area Redevelopment Plan – Area 8) Direct Development Control Provision
OVERLAY:	N/A
STATUTORY PLAN:	Oliver Area Redevelopment Plan

***Grounds for Appeal***

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

1. The triage process adopted by the Development Authority for the consideration of development permit applications was not authorized by law;
2. The triage process adopted by the Development Authority for the consideration of development permit applications was not reasonably and fairly implemented;

3. The triage process adopted by the Development Authority for the consideration of the development permit application was an improper exercise of the Development Authority's discretion;
4. The Development Authority misled the Appellant with respect to the proper email address to which development applications were to be sent;
5. The development application was wrongly considered by the Development Authority before the development application of the Appellant;
6. The development permit application was non-compliant and incomplete, in particular, it did not include the narrative required under section 710.5 of the Edmonton Zoning Bylaw 12800.
7. Development permit was deemed refused pursuant to Section 684 of the Municipal Government Act by reason of the passage of more than 40 days from the development authority's Notice of Completeness dated October 26, 2018.

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

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

**Grounds for Appeal**

**685(1)** If a development authority

- (a) fails or refuses to issue a development permit to a person,
- (b) issues a development permit subject to conditions, or
- (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 to the subdivision and development appeal board.

**(3)** Despite subsections (1) and (2), no appeal lies in respect of the issuance of a development permit for a permitted use unless the provisions of the land use bylaw were relaxed, varied or misinterpreted or the application for the development permit was deemed to be refused under section 683.1(8).

**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.

**685(4)** Despite subsections (1), (2) and (3), 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.

**General Provisions of the DC1 (Oliver Area Redevelopment Plan – Area 8) Direct Development Control Provision (the “DC1”):**

Under section 15.9.3(e), **Cannabis Retail Sales** is a **Listed Use** in the **DC1**.

Section 15.9.2 states that the **Rationale** of the **DC1** is:

To provide for a range of uses, with the objective of promoting the continuing development of a pedestrian oriented commercial strip in

terms of land use activities and design elements. The district also provides opportunity for the inclusion of residential uses above the ground floor level.

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

Under section 7.4(9), **Cannabis Retail Sales** means:

development used for the retail sale of Cannabis that is authorized by provincial or federal legislation. This Use may include retail sales of Cannabis accessories. This Use does not include Cannabis Production and Distribution.

Under section 6.1, **Cannabis** means:

a cannabis plant and anything referred to in subsection (a) of this definition but does not include anything referred to in subsection (b) of this definition:

- a. Cannabis includes:
  - i. any part of a cannabis plant, including the phytocannabinoids produced by, or found in, such a plant, regardless of whether that part has been processed or not, other than a part of the plant referred to in subsection (b) of this definition.
  - ii. any substance or mixture of substances that contains or has on it any part of such a plant;
  - iii. any substance that is identical to any phytocannabinoid produced by, or found in, such a plant, regardless of how the substance was obtained.
- b. Notwithstanding subsection (a) of this definition, Cannabis does not include:
  - i. a non-viable seed of a cannabis plant;
  - ii. a mature stalk, without any leaf, flower, seed or branch, of such plant;
  - iii. fibre derived from a stalk referred in subsection (b)(ii) of this definition; and
  - iv. the root or any part of the root of such a plant.

Section 12.3 provides the following with respect to ***Class A Permitted Developments***:

1. This class includes all developments for which applications are required and are for a Permitted Use or Accessory building or activities and the Development Permit Application complies in all respects to the regulations of this Bylaw. Applications for Signs, Accessory functions and the occupancy of existing buildings on Sites regulated by a Direct Control Provision and conforming to that provision shall also be considered a Class A Permitted Development.

Section 12.4 provides the following with respect to ***Class B Discretionary Developments***:

1. This class includes all developments for which applications are required and are for a Discretionary Use or require a variance to any of the regulations of this Bylaw. This class of Development Permit also includes all applications on Sites designated Direct Control not noted in Section 12.3.

<p><b><i>Section 70 – Cannabis Retail Sales (amended February 25, 2019)</i></b></p>
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1. Any Cannabis Retail Sales shall not be located less than 200 m from any other Cannabis Retail Sales. For the purposes of this subsection only:
  - a. the 200 m separation distance shall be measured from the closest point of the Cannabis Retail Sales Use to the closest point of any other approved Cannabis Retail Sales Use;
  - b. A Development Officer shall not grant a variance to reduce the separation distance by more than 20 m in compliance with Section 11; and
  - c. The issuance of a Development Permit which contains a variance to separation distance as described in 70(1)(b) shall be issued as a Class B Discretionary Development.
2. Any Site containing Cannabis Retail Sales shall not be located less than:
  - a. 200 m from any Site being used for a public library, at the time of the application for the Development Permit for the Cannabis Retail Sales; and
  - b. 100 m from any Site being used for Community Recreation Services Use, a community recreation facility or as public lands at the time of application for the Development Permit for the Cannabis Retail Sales.
3. For the purposes of subsection 2:
  - a. separation distances shall be measured from the closest point of the subject Site boundary to the closest point of another Site

- boundary, and shall not be measured from Zone boundaries or from the edges of structures;
- b. the term “public library” is limited to the collection of literary, artistic, musical and similar reference materials and learning resources in the form of books, electronic files, computers, manuscripts, recordings and films for public use, and does not include private libraries, museums or art galleries.
  - c. the term “community recreation facilities” means indoor municipal facilities used primarily by members of the public to participate in recreational activities conducted at the facilities, as per the Municipal Government Act; and
  - d. the term "public lands" is limited to Sites zoned AP, and Sites zoned A.
4. Subsection 105(3) of the *Gaming, Liquor and Cannabis Regulation*, is expressly varied by the following:
- a. any Site containing a Cannabis Retail Sales shall not be located less than:

***Public or private education***

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

***Provincial health care facility***

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

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

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

***Measurement of Separation Distances***

- b. For the purposes of this subsection, separation distances shall be measured from the closest point of the subject Site boundary to the closest point of another Site boundary, and shall not be measured from Zone boundaries or from the edges of structures.



***Sites Greater than Two Hectares***

- c. For Sites that are greater than 2.0 ha in size and zoned either CSC or DC2, that do not contain a public library at the time of application for the Development Permit for the Cannabis Retail Sales:
    - i. Subsection 70(2), and 70(4)(a) shall not apply; and
    - ii. the distances referred to in Subsection 105(3) of the *Gaming, Liquor and Cannabis Regulation* shall be expressly varied to 0 m.
  - d. For the purposes of subsection 70(4)(a)(i), the term "public or private education" means a school as defined in subsection (1)(y)(i) and (1)(y)(ii) of the *School Act (as amended from time to time)*.
5. Notwithstanding Section 11 of this Bylaw, a Development Officer shall not grant a variance to subsection 70(2), 70(3)(a) or 70(4).

**Design Requirements**


6. Cannabis Retail Sales shall include design elements that readily allow for natural surveillance to promote a safe urban environment, where applicable and to the satisfaction of the Development Officer, including the following requirements:
- a. customer access to the store is limited to a storefront that is visible from the street other than a Lane, or a shopping centre parking lot, or mall access that allows visibility from the interior of the mall into the store;
  - b. the exterior of all stores shall have ample transparency from the street;
  - c. Any outdoor lighting shall be designed to ensure a well-lit environment for pedestrians and illumination of the property; and
  - d. Landscaping shall be low-growing shrubs or deciduous trees with a high canopy at maturity to maintain natural surveillance.

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Notice to Applicant/Appellant

Provincial legislation requires that the Subdivision and Development Appeal Board issue its official decision in writing within fifteen days of the conclusion of the hearing.

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	<p>Project Number: <b>296169793-001</b>                  Application Date: OCT 26, 2018                  Printed: January 23, 2019 at 12:25 PM                  Page: 1 of 2</p>		
<h2 style="margin: 0;">Major Development Permit</h2>			
<p>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>			
<p><b>Applicant</b></p>	<p><b>Property Address(es) and Legal Description(s)</b>                  11404 - JASPER AVENUE NW                  Plan B3 Blk 14 Lots 78-79</p> <hr/> <p><b>Specific Address(es)</b>                  Building: 11408 - JASPER AVENUE NW</p>		
<p><b>Scope of Permit</b>                  To change the use from General Retail Stores to Cannabis Retail Sales.</p>			
<p><b>Permit Details</b></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;">                 Class of Permit: Class A                  Gross Floor Area (sq.m.):                  New Sewer Service Required: N                  Site Area (sq. m.):             </td> <td style="width: 50%; border: none;">                 Contact Person:                  Lot Grading Needed?: N                  NumberOfMainFloorDwellings:                  Stat. Plan Overlay/Annex Area: (none)             </td> </tr> </table>		Class of Permit: Class A 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)
Class of Permit: Class A 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)		
<p>I/We certify that the above noted details are correct.</p> <p>Applicant signature: _____</p>			
<p><b>Development Permit Decision</b>                  Approved    <b>Issue Date:</b> Jan 23, 2019    <b>Development Authority:</b> Chow, Stephen</p>			



Project Number: **296169793-001**  
 Application Date: OCT 26, 2018  
 Printed: January 23, 2019 at 12:25 PM  
 Page: 2 of 2

## Major Development Permit

**Subject to the Following Conditions**

- 1) The Cannabis Retail Sales shall not commence operations until such time as the non-medical sale and distribution of Cannabis is authorised by federal and provincial law.
- 2) The Cannabis Retail Sales must commence operations within nine (9) months of the date of issuance of this Development Permit.
- 3) Exterior lighting shall be developed to provide a safe lit environment in accordance with Sections 51 and 58 and to the satisfaction of the Development Officer.
- 4) Any outdoor lighting for any development shall be located and arranged so that no direct rays of light are directed at any adjoining properties, or interfere with the effectiveness of any traffic control devices. (Reference Section 51 of the Edmonton Zoning Bylaw 12800).

**NOTES:**

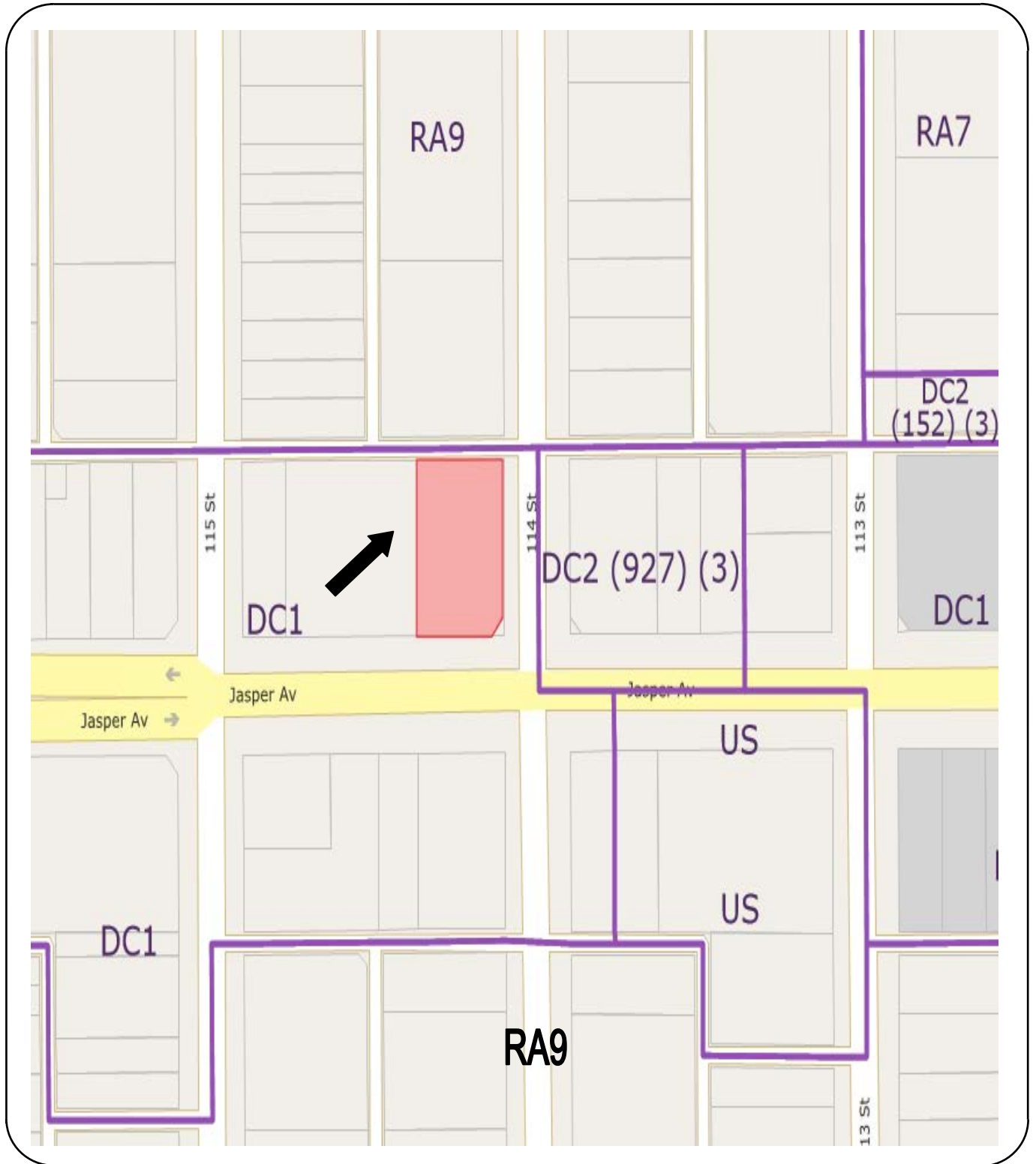
- 1) An approved Development Permit means that the proposed development has been reviewed only against the provisions of the Edmonton Zoning Bylaw. It does not remove obligations to conform with other legislation, bylaws or land title instruments such as the Municipal Government Act, the ERCB Directive 079, the Edmonton Safety Codes Permit Bylaw or any caveats, covenants or easements that might be attached to the Site.
- 2) The Development Permit shall not be valid unless and until the conditions of approval, save those of a continuing nature, have been fulfilled; and no notice of appeal from such approval has been served on the Subdivision and Development Appeal Board within the time period specified in subsection 21.1 (Ref. Section 17.1).
- 3) Signs require separate Development Applications.
- 4) The City of Edmonton does not conduct independent environmental checks of land within the City. If you are concerned about the suitability of this property for any purpose, you should conduct your own tests and reviews. The City of Edmonton, in issuing this Development Permit, makes no representations and offers no warranties as to the suitability of the property for any purpose or as to the presence or absence of any environmental contaminants on the property.
- 5) 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.
- 6) This Development Permit is not a Business Licence. A separate application must be made for a Business Licence.

**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.

**Fees**

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



**SURROUNDING LAND USE DISTRICTS**

Site Location ←

File: SDAB-D-19-029

