

SUBDIVISION

AND

DEVELOPMENT APPEAL BOARD

AGENDA

Tuesday, 9:00 A.M.
June 29, 2021

SUBDIVISION AND DEVELOPMENT APPEAL BOARD

I 9:00 A.M. SDAB-D-21-101

Construct a commercial building including two
General Retail Stores and a Specialty Food
Services with Drive-in Food Services

11226 - 82 Street NW
Project No.: 381414213-002

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-21-101

AN APPEAL FROM THE DECISION OF THE DEVELOPMENT OFFICER

APPELLANT:

APPLICATION NO.: 381414213-002

APPLICATION TO: Construct a commercial building including two General Retail Stores and a Specialty Food Services with Drive-in Food Services

DECISION OF THE DEVELOPMENT AUTHORITY: Refused

DECISION DATE: May 12, 2021

DATE OF APPEAL: June 1, 2021

MUNICIPAL DESCRIPTION OF SUBJECT PROPERTY: 11226 - 82 Street NW

LEGAL DESCRIPTION: Plan 5733HW Blk 9 Lot 4

ZONE: (CB1) Low Intensity Business Zone

OVERLAY: Main Streets Overlay

STATUTORY PLAN: Stadium Station Area Redevelopment Plan

Grounds for Appeal

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

This appeal seeks to overturn the Development Officers decision to refuse issuing a DP for the above-noted property to construct a commercial building including two General Retail Stores and Specialty Food Services with Drive-in Food Services. The property is zoned CB1 - Low Intensity Business Zone and due to being within 200 metres of the Stadium LRT Station, the Main Street Overlay (MSO) applies to the site. Deficiencies

identified by the DO on the refused DP application relate primarily to the proposed site design not complying with the MSO. It is our position that the MSO should not apply to the site.

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 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, 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 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 clause (d), must comply with any land use bylaw in effect;
- (a.4) must comply with the applicable requirements of the regulations under the *Gaming, Liquor and Cannabis Act* respecting the location of premises described in a cannabis licence and distances between those premises and other premises;

...

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

and

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

General Provisions from the *Edmonton Zoning Bylaw*:

Under section 330.2(7), **General Retail Stores**, up to a maximum Floor Area of 1 000 m², is a **Permitted Use** in the **(CB1) Low Intensity Business Zone**.

Under section 330.3(11), **General Retail Stores**, with a Floor Area greater than 1000 m², is a **Discretionary Use** in the **(CB1) Low Intensity Business Zone**.

Under section 330.2(17), **Specialty Food Services**, for less than 200 occupants and 240 m² of Public Space, is a **Permitted Use** in the **(CB1) Low Intensity Business Zone**.

Under section 330.3(35), **Specialty Food Services** is a **Discretionary Use** in the **(CB1) Low Intensity Business Zone**.

Under section 330.3(8), **Drive-in Food Services** is a **Discretionary Use** in the **(CB1) Low Intensity Business Zone**.

Under section 7.4(24), **General Retail Store** means:

development used for the retail or consignment sale of new goods or merchandise within an enclosed building, not including the sale of gasoline, heavy agricultural and industrial equipment, alcoholic beverages, or goods sold wholesale. Accessory Uses may include the assembly or repair of products sold on Site, or minor public services such as postal services or pharmacies. This Use does not include Aircraft Sales/Rentals, Automotive and Minor Recreation Vehicle Sales/Rentals, Cannabis Retail Sales, Flea Market, Gas Bars, Greenhouses, Plant Nurseries and Garden Centres, Pawn Stores, Liquor Stores, Major Service Stations, Minor Service Stations, Secondhand Stores, and Warehouse Sales.

Under section 7.4(47), **Specialty Food Service** means:

development where limited types of prepared foods and beverages, excluding alcoholic beverages, are offered for sale to the public, for consumption within the premises or off the Site. This Use typically relies primarily on walk-in clientele, and includes coffee, donut, bagel or sandwich shops, ice cream parlours, and dessert shops.

Under section 7.4(16), **Drive-in Food Service** means:

development used for eating and drinking which offer a limited menu produced in a manner that allows rapid customer service and include one

or more of the following features: car attendant services; drive-through food pickup services; or parking primarily intended for the on-site consumption of food within a motor vehicle.

Under section 6.1, **Floor Area** means:

the total Floor Area of the building or structure, contained within the outside surface of the exterior and Basement walls, provided that in the case of a wall containing windows, the glazing line of windows may be used.

Under section 6.1, **Public Space** means:

space that is part of an establishment, which is open to the public and not restricted to only employees. Public Space includes any private non-sale hospitality area where products manufactured within the premises are provided to private groups for tasting and sampling. This definition does not include kitchens, administration offices, food or drink preparation areas.

Under section 6.1, **Occupants** means:

when referring to Specialty Food Services, Restaurants, Bars and Neighbourhood Pubs and Nightclubs, people that may occupy Public Space within any of these Uses, to be calculated at 1 Occupant per 1.2 m² of Public Space.

Section 330.1 states that the **General Purpose** of the **(CB1) Low Intensity Business Zone** is:

to provide for low intensity commercial, office and service uses, and limited Residential-related Uses located along arterial roadways that border residential areas. Development shall be sensitive and in scale with existing development along the commercial street and any surrounding residential neighbourhood.

Section 819.1 states that the **General Purpose** of the **Main Streets Overlay** is:

to encourage and strengthen the pedestrian-oriented character of Edmonton's main street commercial areas that are located in proximity to residential and transit-oriented areas, by providing visual interest, transparent storefront displays, and amenities for pedestrians.

Main Streets Overlay - General Purpose

Development Officer's Determination

The Site is Zoned Low Intensity Business Zone (CB1, Section 330) and subject to Main Street Overlay (Section 819). Upon the review, the proposed development is refused to the reasons as follows:

1. Section 819.1 - The General Purpose of the Main Street Overlay is to encourage and strengthen the pedestrian-oriented character of Edmonton's main street commercial areas that are located in proximity to residential and transit-oriented areas, by providing visual interest, transparent storefront displays, and amenities for pedestrians.

Proposed: The development does not meet the General Purpose of the Main Street Overlay as it is Vehicular Oriented with no transparent storefront displays and amenities provided for pedestrians. The proposed drive aisle and parking spaces divides the the building from the public sidewalk further discouraging a pedestrian oriented character and pedestrian friendly connection.

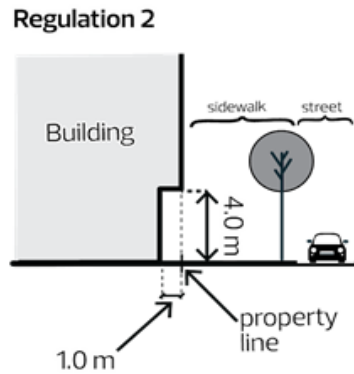
[unedited]

Main Streets Overlay - Setback

Section 819.3(2) states:

A Setback of 1.0 m shall be required where a Site Abuts a public roadway, other than a Lane. The 1.0 m Setback shall be paved and visually incorporated into the public Walkway to the satisfaction of the Development Officer in consultation with the applicable City department. The Development Officer may allow this Setback to be increased to a maximum of 2.5 m to accommodate street related activities, such as patios and seating areas, or to retain existing mature landscaping, that contribute to the pedestrian-oriented shopping character of the area. Buildings may project to the front and side property lines above 4.0 m in Height.

Diagram of Regulation 2 - for illustrative purposes



Under section 6.1, **Setback** means “the distance that a development or a specified portion of it, must be set back from a property line. A Setback is not a Yard, Amenity Space, or Separation Space.”

Development Officer’s Determination

2. Section 819.3.2 - A Setback of 1.0 m shall be required where a Site Abuts a public roadway, other than a Lane. The 1.0 m Setback shall be paved and visually incorporated into the public Walkway to the satisfaction of the Development Officer in consultation with the applicable City department.

Proposed is contrary to Section 819.3.2 as:

- a. 5.1m Setback abutting 112 Avenue and 20.5m Setback abutting 82 Street, further conflicts with the General Purpose of the Main Streets Overlay.**
- b. Sod area abutting the south and east property lines instead of a pedestrian sidewalk within the 1.0 m required Setback.**

[unedited]

Main Streets Overlay - Vehicular Access

Schedule 814.3(8) states:

All vehicular access shall be from an Abutting Lane. Where there is no Abutting Lane, vehicular access shall be provided from a flanking public roadway. When a Site with existing vehicular access from a public roadway other than a Lane is redeveloped, the existing vehicular access shall be closed where an Abutting Lane exists, or relocated to a flanking public roadway where an Abutting Lane does not exist.

Development Officer’s Determination

3. Section 819.3.8 - All vehicular access shall be from an abutting Lane. Where there is no abutting Lane, vehicular access shall be provided from a flanking public roadway.

Proposed: A Vehicular access is proposed from 112 Ave instead of the abutting existing lane, contrary to Section 819.3.8, further conflicts with the General Purpose of the Main Street Overlay by discouraging a pedestrian oriented character.

[unedited]

Main Streets Overlay - Surface Parking

Schedule 814.3(9) states “All surface parking and underground parking access shall be located at the rear of the building.”

Development Officer’s Determination

4. Section 819.3.9 - All surface parking shall be located at the rear of the building.

Proposed: The surface parking is located at the front of the building abutting 82 Street, contrary to Section 819.3.9.

[unedited]

Main Streets Overlay - Principal Entrance

Schedule 814.3(12) states “Where a Commercial Use is provided at ground level Abutting a public roadway, other than a Lane, the principal entrance shall have direct external access to the adjacent public sidewalk.”

Development Officer’s Determination

5. Section 819.3.12 - Where a Commercial Use is provided at ground level Abutting a public roadway, other than a Lane, the principal entrance shall have direct external access to the adjacent public sidewalk.

Proposed: The principal entrances of the commercial Uses do not have direct external accesses to the adjacent public sidewalk,

contrary to Section 819.3.12, and further conflicts with the General Purpose of the Main Street Overlay by discouraging a pedestrian friendly connection.

[unedited]

Main Streets Overlay - Screening

Schedule 814.4(3) states:

No new parking facilities, drive through aisles, and queuing spaces shall be added between an existing building and a public roadway other than a Lane. All existing and proposed surface parking, underground parking access, drive through aisles, and queuing spaces shall be screened from view from a public roadway other than a Lane and adjacent Sites using methods such as Landscaping, fencing or other materials. Crime Prevention Through Environmental Design principles shall be used to enhance the appearance, natural surveillance and safety of the parking area.

Development Officer's Determination

6. Section 819.4.3 - All proposed surface parking, drive through aisles, and queuing spaces shall be screened from view from a public roadway other than a Lane and adjacent Sites using methods such as Landscaping, fencing or other materials.

Proposed: Lack of screening material to block the view from the abutting public roadways (82 Street and 112 Avenue), contrary to Section 819.4.3.

[unedited]

(CB1) Low Intensity Business Zone - Development Regulations

Schedule 330.4(5) states:

No parking, loading, storage, trash collection, outdoor service or display area shall be permitted within a Setback. Vehicular parking, loading, storage and trash collection areas shall be located to the rear or sides of the principal building and shall be screened from view from any adjacent Sites, public roadways or a LRT line in accordance with the provisions of Section 55.5 of this Bylaw. If the rear or sides of a Site are used for parking, an outdoor service or display area or both, and Abut a Residential Zone or a Lane serving a Residential Zone, such areas shall

be screened in accordance with the provisions of subsection 55.4 of this Bylaw.

Development Officer's Determination

7. Section 330.4.5 - No parking, loading, storage, trash collection, outdoor service or display area shall be permitted within a Setback. Vehicular parking, loading, and trash collection areas shall be located to the rear or sides of the principal building and shall be screened from view from any adjacent Sites, public roadways in accordance with the provisions of Section 55.5 of this Bylaw.

Proposed is contrary to Section 330.4.5 as:

- a. Loading Space within the required Setback abutting 82 Street,**
- b. Vehicular parking, Loading space and Trash collection located to the front side of the building, and**
- c. No screening material provided to screen the view from adjacent Sites and public roadways in accordance with the provisions of Section 55.5.**

[unedited]

<i>On-site Vehicle Parking Quantities</i>
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Schedule 54.2(2)(b)(i) states:

Maximum Number of Vehicle Parking spaces to be provided on a Site, within the defined radius of a Transit Centre or LRT station; or within the boundary of the Main Streets Overlay shall comply with the following:

- b. Non-Residential Uses
 - i. Maximum 1 Vehicle Parking space per 50 m2 of Floor Area.

Development Officer's Determination

8. Section 54.2.2.i - For Non-Residential Uses, maximum number of Vehicle Parking spaces to be provided on a Site is 1 Vehicle Parking space per 50 sq.m. of Floor Area.

Proposed Floor Area: 467 sq.m.
Maximum number of Vehicular Parking: 10 stalls
Provided number of Vehicular Parking: 14 stalls
Deficient by : 4 stalls

[unedited]

<i>Landscaping</i>

Schedule 55.5(5) states:

Any parking lot having eight or more parking spaces that is visible from an Abutting Site in a Residential or Commercial Zone, or from a public roadway other than a Lane, or from a LRT line, shall have perimeter planting. The location, length, thickness and Height of such perimeter planting at maturity shall, in conjunction with a change in Grade or other natural or man-made features, be sufficient to provide substantial interruption of the view of the parking lot.

Development Officer's Determination

9. Section 55.5.5 - Any parking lot having eight or more parking spaces that is visible from an abutting Commercial Zone, or from a public roadway other than a Lane, shall have perimeter planting.

Proposed: No perimeter planting is proposed, contrary to Section 55.5.5.

[unedited]

Schedule 55.5(6) states:

Any trash collection area, open storage area, or outdoor service area, including any loading, unloading or vehicular service area that is visible from an Abutting Site in a Residential or Commercial Zone, or from a public roadway other than a Lane, or from a LRT line, shall have screen planting a minimum of 1.85 m in Height. The location, length, thickness and Height of such screen planting at maturity shall, in conjunction with a change in Grade or other natural or man-made features, be sufficient to block the view from any Abutting Residential or Commercial Zone, or from the public roadway or a LRT line. If, in the opinion of the Development Officer, screen planting cannot reasonably be expected to survive, earth berming, masonry walls, wood Fencing or other man-made features may be permitted as a substitution.

Development Officer's Determination

10. Section 55.5.6 - Any trash collection area, outdoor service area, including any loading, unloading that is visible from an abutting Site in a Commercial Zone, or from a public roadway other than a Lane, shall have screen planting a minimum of 1.85 m in Height.

Proposed: No screen planting for trash collection, parking and loading area that is visible from abutting Sites and public roadways, contrary to Section 55.5.6.

[unedited]

Access to Sites - Transportation Services

Schedule 53.1 states “All access locations and curb crossings shall require the approval of Transportation Services.”

Development Officer’s Determination

11. Section 53.1 - All access locations and curb crossings shall require the approval of Transportation Services.

Subdivision Planning (Transportation) has reviewed the proposed development application and OBJECTS to the submitted proposal. The proposed development results in several operational and safety concerns related to access, internal drive aisle circulation and site operation.

[unedited]

Development Officer’s Notes

Development Officer’s Determination

Note:

A Development Permit was issued previously for the subject site with identical Land Uses (city file no. 289009264-001). The approved Development Permit reasonably respected Zoning Bylaw and worked for Transportation Services.

[unedited]

Community Consultation

Section 819.5(3) states:

When the Development Officer determines that a Development Permit application does not comply with the regulations contained in this section

of the Overlay the notification process outlined in subsection 819.4(15) shall apply.


Section 819.4(15) states:

When the Development Officer determines that a Development Permit application does not comply with the regulations contained in this Overlay:

- a. the Development Officer shall send notice to the municipal address and assessed owners of land wholly or partly located within a distance of 60.0 m of the Site of the proposed development, and the President of each affected Community League and each Business Improvement Area Association operating within the distance described above 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 mailed, unless the Development Officer receives feedback from all specified recipients; 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 Section 11.3.

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: 381414213-002 Application Date: DEC 19, 2020 Printed: June 2, 2021 at 7:33 AM Page: 1 of 3																												
<h2 style="margin: 0;">Application for Major Development Permit</h2>																													
This document is a Development Permit Decision for the development application described below.																													
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Project Number: **381414213-002**
Application Date: DEC 19, 2020
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Page: 2 of 3

Application for Major Development Permit

Proposed is contrary to Section 819.3.2 as:

- a. 5.1m Setback abutting 112 Avenue and 20.5m Setback abutting 82 Street, further conflicts with the General Purpose of the Main Streets Overlay.
- b. Sod area abutting the south and east property lines instead of a pedestrian sidewalk within the 1.0 m required Setback.

3. Section 819.3.8 - All vehicular access shall be from an abutting Lane. Where there is no abutting Lane, vehicular access shall be provided from a flanking public roadway.

Proposed: A Vehicular access is proposed from 112 Ave instead of the abutting existing lane, contrary to Section 819.3.8, further conflicts with the General Purpose of the Main Street Overlay by discouraging a pedestrian oriented character.

4. Section 819.3.9 - All surface parking shall be located at the rear of the building.

Proposed: The surface parking is located at the front of the building abutting 82 Street, contrary to Section 819.3.9.

5. Section 819.3.12 - Where a Commercial Use is provided at ground level Abutting a public roadway, other than a Lane, the principal entrance shall have direct external access to the adjacent public sidewalk.

Proposed: The principal entrances of the commercial Uses do not have direct external accesses to the adjacent public sidewalk, contrary to Section 819.3.12, and further conflicts with the General Purpose of the Main Street Overlay by discouraging a pedestrian friendly connection.

6. Section 819.4.3 - All proposed surface parking, drive through aisles, and queuing spaces shall be screened from view from a public roadway other than a Lane and adjacent Sites using methods such as Landscaping, fencing or other materials.

Proposed: Lack of screening material to block the view from the abutting public roadways (82 Street and 112 Avenue), contrary to Section 819.4.3.

7. Section 330.4.5 - No parking, loading, storage, trash collection, outdoor service or display area shall be permitted within a Setback. Vehicular parking, loading, and trash collection areas shall be located to the rear or sides of the principal building and shall be screened from view from any adjacent Sites, public roadways in accordance with the provisions of Section 55.5 of this Bylaw.

Proposed is contrary to Section 330.4.5 as:


- a. Loading Space within the required Setback abutting 82 Street,
- b. Vehicular parking, Loading space and Trash collection located to the front side of the building, and
- c. No screening material provided to screen the view from adjacent Sites and public roadways in accordance with the provisions of Section 55.5.

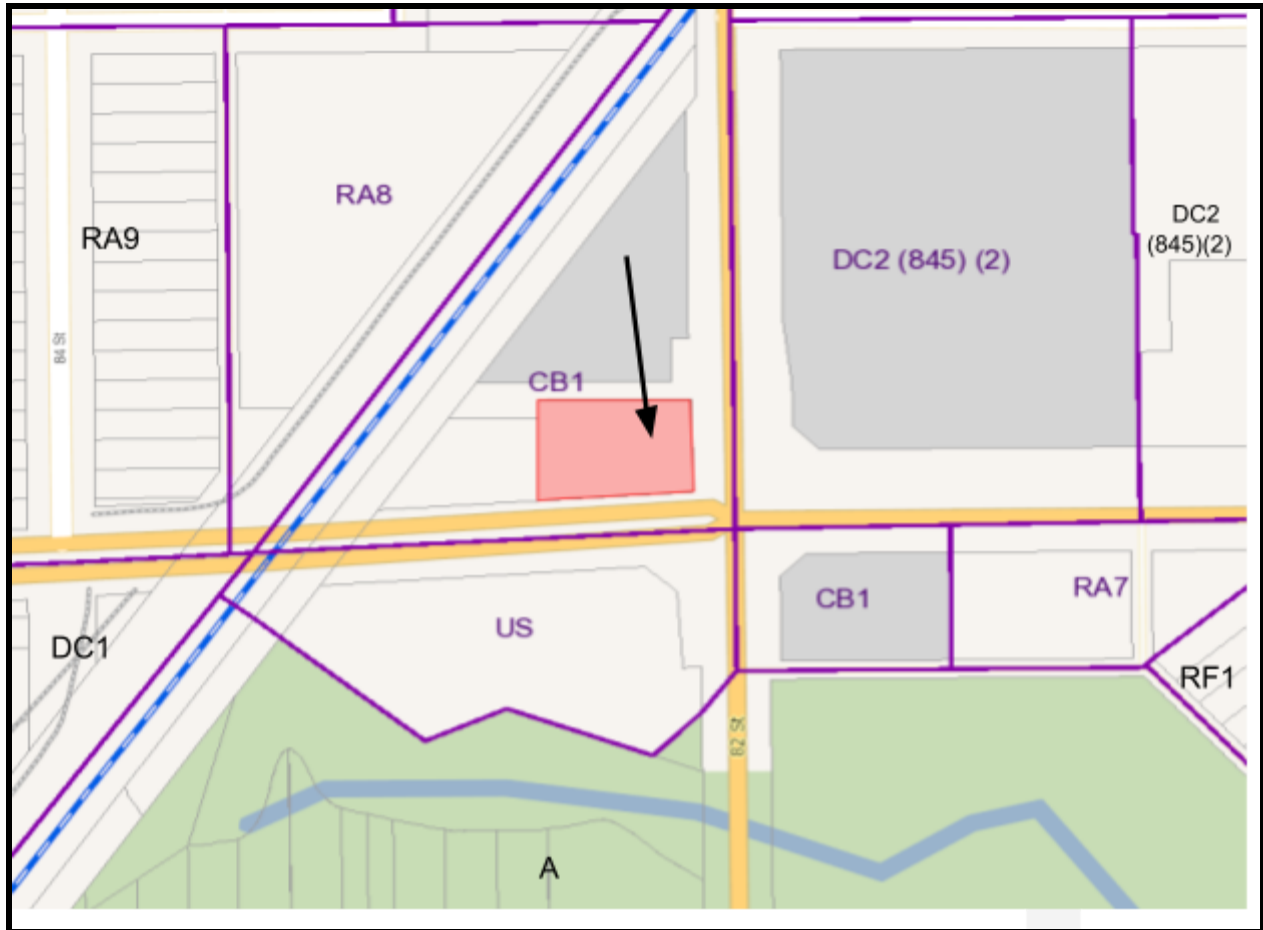
8. Section 54.2.2.i - For Non-Residential Uses, maximum number of Vehicle Parking spaces to be provided on a Site is 1 Vehicle Parking space per 50 sq.m. of Floor Area.

Proposed Floor Area: 467 sq.m.
Maximum number of Vehicular Parking: 10 stalls
Provided number of Vehicular Parking: 14 stalls
Deficient by : 4 stalls

9. Section 55.5.5 - Any parking lot having eight or more parking spaces that is visible from an abutting Commercial Zone, or from a

THIS IS NOT A PERMIT

	<h2 style="margin: 0;">Application for Major Development Permit</h2>	Project Number: 381414213-002 Application Date: DEC 19, 2020 Printed: June 2, 2021 at 7:33 AM Page: 3 of 3																				
<p>public roadway other than a Lane, shall have perimeter planting.</p> <p>Proposed: No perimeter planting is proposed, contrary to Section 55.5.5.</p> <p>10. Section 55.5.6 - Any trash collection area, outdoor service area, including any loading, unloading that is visible from an abutting Site in a Commercial Zone, or from a public roadway other than a Lane, shall have screen planting a minimum of 1.85 m in Height.</p> <p>Proposed: No screen planting for trash collection, parking and loading area that is visible from abutting Sites and public roadways, contrary to Section 55.5.6.</p> <p>11. Section 53.1 - All access locations and curb crossings shall require the approval of Transportation Services.</p> <p>Subdivision Planning (Transportation) has reviewed the proposed development application and OBJECTS to the submitted proposal. The proposed development results in several operational and safety concerns related to access, internal drive aisle circulation and site operation.</p> <p>Note: A Development Permit was issued previously for the subject site with identical Land Uses (city file no. 289009264-001). The approved Development Permit reasonably respected Zoning Bylaw and worked for Transportation Services.</p> <p>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.</p>																						
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; font-weight: normal;">Fees</th> <th style="text-align: right; font-weight: normal;">Fee Amount</th> <th style="text-align: right; font-weight: normal;">Amount Paid</th> <th style="text-align: left; font-weight: normal;">Receipt #</th> <th style="text-align: right; font-weight: normal;">Date Paid</th> </tr> </thead> <tbody> <tr> <td>Major Dev. Application Fee</td> <td style="text-align: right;">\$981.00</td> <td style="text-align: right;">\$981.00</td> <td>04088004401G001</td> <td style="text-align: right;">Dec 25, 2020</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;">\$981.00</td> <td style="text-align: right; border-top: 1px solid black;">\$981.00</td> <td></td> <td></td> </tr> </tbody> </table>			Fees	Fee Amount	Amount Paid	Receipt #	Date Paid	Major Dev. Application Fee	\$981.00	\$981.00	04088004401G001	Dec 25, 2020	Total GST Amount:	\$0.00				Totals for Permit:	\$981.00	\$981.00		
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<p>THIS IS NOT A PERMIT</p>																						



SURROUNDING LAND USE DISTRICTS

Site Location ←

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File: SDAB-D-21-101