

**REPORT TO THE SUBDIVISION AND
DEVELOPMENT APPEAL BOARD**

DATE: December 9, 2021 ; January 20, 2022	APPEAL NO.: SDAB 2021-0081 a & b FILE NO.: DP2021-6749
APPEALS BY: (a) Marcel Design Studio, represented by Rick Grol, and (b) Peter Guo	
FROM A DECISION OF THE DEVELOPMENT AUTHORITY where a Changes to Site Plan: Multi-Residential Development (retaining wall) was approved at <u>711 5 Street NE</u>.	LAND USE DESIGNATION: M-C2 Permitted
COMMUNITY OF: Renfrew	DATE OF DECISION: October 21, 2021
APPLICANT: Marcel Design Studio, represented by Rick Grol	OWNER: Westmount Projects Inc.

The hearing commenced on December 9, 2021, with consideration of procedural and jurisdictional issues. The Board adjourned the hearing to January 20, 2022.

Notes:

- Notice has been given of the hearing pursuant to the *Municipal Government Act* and Land Use Bylaw, including notices to parties who may be affected by the appeal. The final determination of whether a party is an “affected person” will be made by the Board if required.
- This Report is provided as a courtesy only. The Board’s record may include additional materials, including notifications to affected parties and correspondence of a procedural or administrative nature.



NOTICE OF APPEAL

SUBDIVISION AND DEVELOPMENT APPEAL BOARD

CC 821 (R2014-01)

In accordance with Sections 678 and 686 of the Municipal Government Act and The City of Calgary Bylaw 25P95, as amended, an appeal to the Subdivision and Development Appeal Board must be filed within the legislated time frame and each Notice of Appeal must be accompanied by the legislated fee. For filing instructions and fee payment options, see the reverse side of this form.

ISC: Unrestricted

Online Store Information			
Confirmation Number 10395070	Order Number 36739822	Online Form Processed 2021-11-10 2:23:54 PM	
Site Information			
Municipal Address of Site Under Appeal 711 5 STREET NE		Development Permit/Subdivision Application/File Number DP2021-6749	
Appellant Information			
Name of Appellant MARCEL DESIGN STUDIO LTD		Agent Name (if applicable) RICK GROL	
Street Address (for notification purposes) 14 ROSSBURN CR SW			
City CALGARY	Province ALBERTA	Postal Code T3C 2N5	Residential Phone # 403-880-6065
Business Phone # 403-880-6065	Email Address alex@marceldesignstudio.com		

APPEAL AGAINST

Development Permit	Subdivision Application	Notice of Order
<input type="checkbox"/> Approval	<input type="checkbox"/> Approval	<input type="checkbox"/> Notice of Order
<input checked="" type="checkbox"/> Conditions of Approval	<input type="checkbox"/> Conditions of Approval	
<input type="checkbox"/> Refusal	<input type="checkbox"/> Refusal	

REASONS FOR APPEAL Sections 678 and 686 of the Municipal Government Act require that the written Notice of Appeal must contain specific reasons for the appeal.

<p>I do hereby appeal the decision of the Subdivision/Development Authority for the following reasons:</p> <p>We are appealing permanent condition # 6 of the conditions of approval of development permit DP2021-6749. This condition is ultra vires the Municipal Government Act, RSA 2000, c M-6, as amended, and the Land Use Bylaw (LUB). The condition is inappropriate and ambiguous, as it is too open ended. The Development Authority (DA) has sufficient enforcement powers under the MGA and section 43 of the LUB to deal with future enforcement issues. Section 43 limits the ability of the DA to cancel or suspend a development permit to specific grounds listed. Enforcement powers of DA are separate from the DA's decisions to approve a development permit.</p> <p>The subject development is for changes to the site plan of an approved and issued permit. The changes pertain to a retaining wall with a height of less than 1.2 m in height, which is a permitted use under the LUB. Under the LUB, section 28 (regarding permitted uses), the DA is limited in imposing conditions to a permitted use permit to those that are specifically listed in section 28.</p> <p>We respectfully request that the words and should any aspect of the use change to an extent that any objections are raised, the permit may be revoked, be deleted from the subject condition.</p> <p>Such other grounds that may be submitted and raised prior to or at the hearing.</p>

In order to assist the Board in scheduling, please answer the following questions to the best of your ability:

Estimated presentation time (minutes/hours) 30 MINUTES	Will you be using an agent/legal counsel? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown
Do you anticipate any preliminary issues with your appeal? (i.e. jurisdiction, parties status as affected persons, adjournment, etc.) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Unknown	
If yes, what are the issues?	
Do you anticipate bringing any witnesses/experts to your hearing? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown	If yes, how many will you be bringing? 2-3

This personal information is collected under the authority of the Freedom of Information and Protection of Privacy Act, Section 33(c) and the Municipal Government Act, Sections 678 and 686. NOTE: THIS INFORMATION WILL FORM PART OF A FILE AVAILABLE TO THE PUBLIC. If you have any questions regarding the collection of this information, contact the City Appeal Boards at 403-268-5312 or PO Box 2100 Stn. "M", #8110, Calgary, AB, T2P 2M5.

FOR OFFICE USE ONLY				
Final Date of Appeal YYYY MM DD 2021 11 25	SDAB Appeal Number SDAB2021-0081	Fee Paid <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Hearing Date YYYY MM DD 2021 12 09	Date Received November 10, 2021

SDAB2021-0081 ab



NOTICE OF APPEAL SUBDIVISION AND DEVELOPMENT APPEAL BOARD

CC 821 (R2014-01)

In accordance with Sections 678 and 686 of the Municipal Government Act and The City of Calgary Bylaw 25P95, as amended, an appeal to the Subdivision and Development Appeal Board must be filed within the legislated time frame and each Notice of Appeal must be accompanied by the legislated fee. For filing instructions and fee payment options, see the reverse side of this form.

ISC: Unrestricted

Online Store Information			
Confirmation Number 10396652	Order Number 36889945	Online Form Processed 2021-11-25 5:48:14 PM	
Site Information			
Municipal Address of Site Under Appeal 711 5 ST NE		Development Permit/Subdivision Application/File Number DP2021-6749	
Appellant Information			
Name of Appellant PETER GUO		Agent Name (if applicable)	
Street Address (for notification purposes) 713A 5 ST NE			
City CALGARY	Province ALBERTA	Postal Code T2E 3W7	Residential Phone # 587-429-9807
Business Phone # 587-429-9807	Email Address home713a@gmail.com		

APPEAL AGAINST

Development Permit	Subdivision Application	Notice of Order
<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Conditions of Approval <input type="checkbox"/> Refusal	<input type="checkbox"/> Approval <input type="checkbox"/> Conditions of Approval <input type="checkbox"/> Refusal	<input type="checkbox"/> Notice of Order

REASONS FOR APPEAL Sections 678 and 686 of the Municipal Government Act require that the written Notice of Appeal must contain specific reasons for the appeal.

I do hereby appeal the decision of the Subdivision/Development Authority for the following reasons:

1. Safety implications of this construction
2. Ambiguities over what will be constructed, which the Development Authority has not addressed
3. Misrepresentations

In order to assist the Board in scheduling, please answer the following questions to the best of your ability:

Estimated presentation time (minutes/hours) 2 HOURS	Will you be using an agent/legal counsel? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Unknown
Do you anticipate any preliminary issues with your appeal? (i.e. jurisdiction, parties status as affected persons, adjournment, etc.) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Unknown	
If yes, what are the issues?	
Do you anticipate bringing any witnesses/experts to your hearing? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Unknown	If yes, how many will you be bringing?

This personal information is collected under the authority of the Freedom of Information and Protection of Privacy Act, Section 33(c) and the Municipal Government Act, Sections 678 and 686. NOTE: THIS INFORMATION WILL FORM PART OF A FILE AVAILABLE TO THE PUBLIC. If you have any questions regarding the collection of this information, contact the City Appeal Boards at 403-268-5312 or PO Box 2100 Stn. "M", #8110, Calgary, AB, T2P 2M5.

FOR OFFICE USE ONLY				
Final Date of Appeal YYYY MM DD 2021 11 25	SDAB Appeal Number SDAB2021-0081 b	Fee Paid <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Hearing Date YYYY MM DD 2021 12 09	Date Received November 25, 2021

SDAB2021-0081 ab

Appeal Board rec'd: November 12, 2021
Submitted by: A. Dobrin for Marcel Design Studio, appellant/applicant

From: alex@marceldesignstudio.com
Sent: Friday, November 12, 2021 10:23 AM
To: Calgary SDAB Info
Cc: 'Rick Grol'; 'stefano'; 'Farhan Sattar'; 'calgary projects'
Subject: [EXT] Appeal SDAB2021-0081 (DP2021-6749 711 5 Street NE)

Follow Up Flag: Follow up
Flag Status: Flagged

Hello,

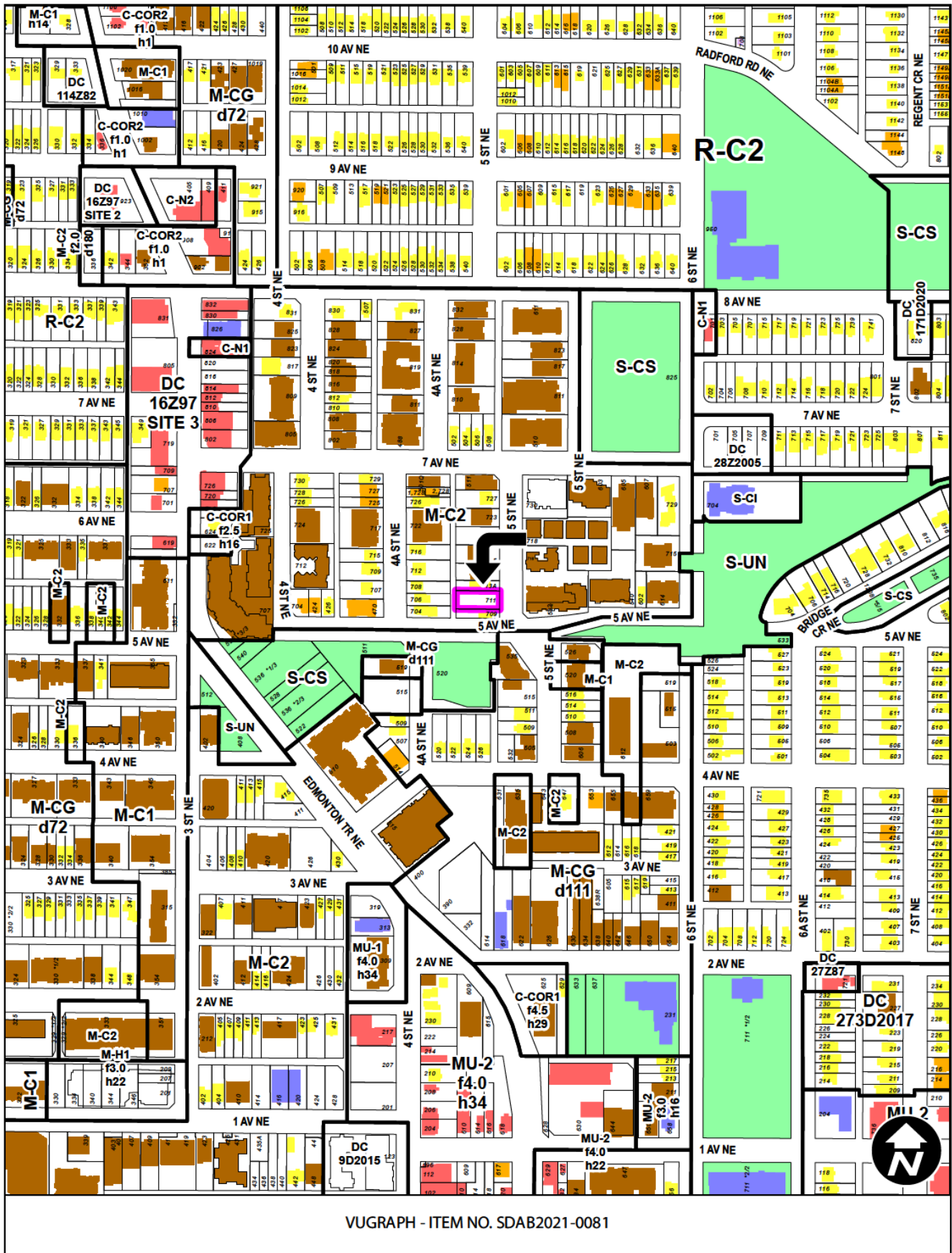
Our firm is the applicant of development permit application DP2021-6749 (Changes to Site Plan: Multi-Residential Development (retaining wall 711 5 Street NE)) and the appellant regarding appeal SDAB2021-0081.

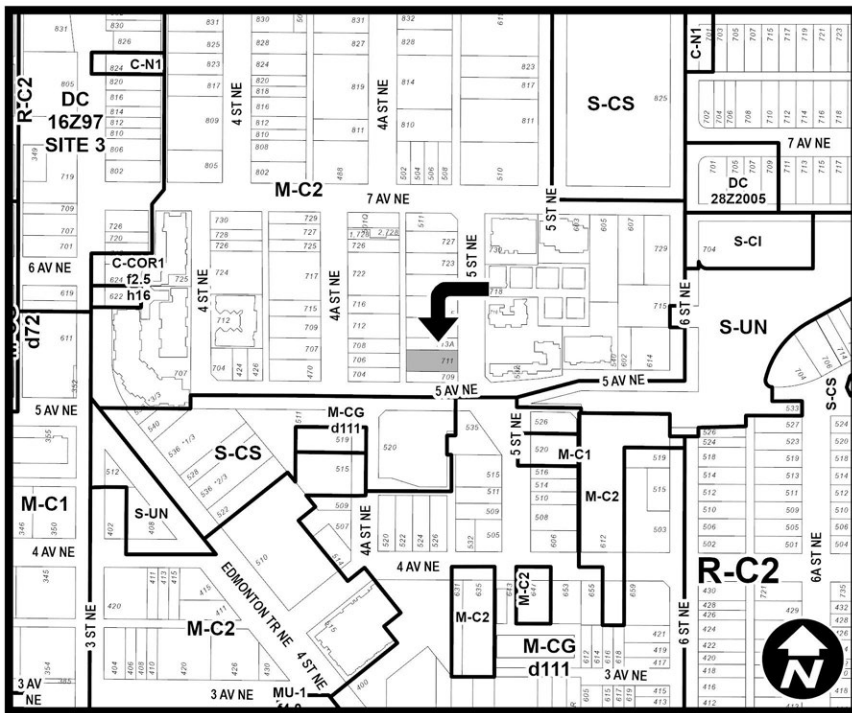
This Appeal against conditions of approval of the permit is scheduled for a Procedural and Jurisdictional Hearing on December 9, 2021. Please be advised that Mr. Rick Grol is our agent/representative with respect to the appeal and application. He was authorized to file the appeal.

Mr. Grol and I will attend the Procedural and Jurisdictional Hearing on December 1, 2021.

Regards,
Alex Dobrin

Marcel Design Studio Ltd
President | AT
403-880-6065







October 26, 2021

MARCEL DESIGN STUDIO
Alex Dobrin



Dear Sir/Madam:

RE: Notification of Decision: DP2021-6749

Subject: Changes to Site Plan: Multi-Residential Development (retaining wall)

Project: 711 5 ST RETAINING WALL

Address: 711 5 ST NE

This is your notification of decision by the Development Authority to approve the above noted application on October 21, 2021.

Read all of the Permanent Conditions of approval carefully as they form part of the approval decision. Advisory Comments, if applicable, are also attached and are intended to be of assistance in obtaining additional permits and supplementary information for the successful completion of your development.

Development approved by this permit must commence by October 21, 2023 or the development permit shall cease to be valid.

The decision will be advertised beginning November 4, 2021 at www.calgary.ca/publicnotices, which is the start of the mandatory 21-day appeal period. This appeal period will conclude at midnight November 25, 2021. Release of the permit will occur within 2-4 business days following the conclusion of the appeal period and upon receipt of all Prior to Release requirements.

An appeal along with reasons must be submitted, together with payment of \$200.00 fee, to the Subdivision and Development Appeal Board (4th floor, 1212 31 Avenue N.E., Calgary, AB T2E 7S8) within 21 days of receipt of this letter. An appeal may also be filed online at <http://www.calgarysdab.ca>. To obtain an appeal form, for information on appeal submission options or the appeal process, please call (403) 268-5312.

Please note that this letter is to advise you of the conditions of approval, the mandatory advertising appeal period and the timeframe in which you may appeal this decision. If no appeals have been filed during the appeal period, your Development Permit will be released. Should you require clarification of the above or further information, please contact me at (403) 968-2243 or by email at Chris.Wolfe@calgary.ca and assist me by quoting the Development Permit number.

Sincerely,

Chris Wolfe
Senior Planner
Planning and Development





**DEVELOPMENT PERMIT
LAND USE BYLAW NO 1P2007**

DP2021-6749

This permit relates to land in the City of Calgary municipally described as:

711 5 ST NE

Community: **Renfrew**

L.U.D.: **M-C2**

and legally described as:

5386L;C;30,31

and permits the land to be used for the following development:

Changes to Site Plan: Multi-Residential Development (retaining wall)

The present owner and any subsequent owner of the above described land must comply with any attached conditions.

The development has been approved subject to any attached conditions and to full compliance with the approved plans bearing the stamp of approval and the above development permit number.

Decision By: **Development Authority**

Date of Decision: **October 21, 2021**

Development Authority **John Hall**

File Manager: **Chris Wolfe**

Release Date: _____

This permit will not be valid if development has not commenced by: October 21, 2023

This Development Permit was advertised on: **November 04, 2021**

This is NOT a Building Permit

In addition to your Development Permit, a Building Permit may be required, prior to any work commencing. further information, you should contact the City of Calgary, Planning, Development & Assessment - Building Regulations Division.

WARNING

This permit does not relieve the owner or the owner's authorized agent from full compliance with the requirements of any federal, provincial or other municipal legislation, or the terms and conditions of any easement, covenant, building scheme or agreement affecting the building or land.

Applicant: **MARCEL DESIGN STUDIO**
Address: **14 Rossburn Cr SW**
City: **Calgary, Alberta, T3C2N5**
Phone: **[REDACTED]**

Complete Address and Legal Description listing for Development Permit DP2021-6749

Address Type	Address	Legal Description
Parcel	711 5 ST NE	5386L;C;30,31



Conditions of Approval – Development Permit

Application Number:	DP2021-6749
Application Description:	Changes to Site Plan: Multi-Residential Development (retaining wall)
Land Use District:	Multi-Residential - Contextual Medium Profile
Use Type:	Permitted
Site Address:	711 5 ST NE
Community:	RENFREW
Applicant:	MARCEL DESIGN STUDIO
CPAG Team	
Planning:	CHRIS WOLFE (403) 968-2243 Chris.Wolfe@calgary.ca
Development Engineering:	CHRIS FLEETWOOD (587) 576-4329 chris.fleetwood@calgary.ca
Parks:	TOM BLAKEMORE (587) 216-8658 Tom.Blakemore@calgary.ca
Transportation:	AL HOPKINS (587) 573-5946 alan.hopkins@calgary.ca

Prior to Release Requirements

The following requirements shall be met prior to the release of the permit. All requirements shall be resolved to the satisfaction of the Approving Authority:

Planning

1. No conditions.

Development Engineering

2. No conditions.

Transportation

3. No conditions.

Parks

4. No conditions.

Permanent Conditions

The following permanent conditions shall apply:

Planning

5. No changes to the approved plans shall take place unless authorized by the Development Authority. If changes to the development occur or are proposed, a new development permit or revised plan application may be required.
6. This approval is based on material submitted in conjunction with the application, and should any aspect of the use change to an extent that any objections are raised, the permit may be revoked.
7. Notwithstanding the Conditions of Approval in this document the Permanent Conditions of previous approved development permit(s) remain in effect, unless specifically modified by this Development Permit.

Development Engineering

8. Any / all Permanent Conditions captured by Development Engineering in the Conditions of Approval for the prior (parent) DP2019-2146 remain applicable for the subject site / development.

Transportation

9. The developer shall be responsible for the cost of public work and any damage during construction in City road right-of-ways, as required by the Director, Transportation Planning. All work performed on public property shall be done in accordance with City standards.
10. Indemnification Agreements are required for any work to be undertaken adjacent to or within City rights-of-way, bylawed setbacks and corner cut areas for the purposes

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of crane operation, shoring, tie-backs, piles, surface improvements, lay-bys, utility work, +15 bridges, culverts, etc. All temporary shoring, etc., installed in the City rights-of-way, bylawed setbacks and corner cut areas must be removed to the satisfaction of the Manager of Transportation Planning, at the applicant's expense, upon completion of the foundation. Prior to permission to construct, contact the Indemnification Agreement Coordinator, Roads at roadsia@calgary.ca

Parks

11. Any / all Permanent Conditions captured by Calgary Parks in the Conditions of Approval for the prior (parent) DP2019-2146 remain applicable for the subject DP2021-6749, unless otherwise noted below.
12. Public trees located on the boulevard adjacent to the development site shall be retained and protected unless otherwise authorized by Urban Forestry. Prior to construction, install a temporary fence around the extent of the branches ("drip line") and ensure no construction materials are stored inside this fence.
13. In order to ensure the integrity of existing public trees and roots, there shall be a minimum 3 metre separation, ideally the full length of the canopy, between the trunk and any new/proposed structures, (i.e. driveways and walkways).
14. In order to ensure the integrity of existing public trees and roots, no grade changes are permitted in the boulevard within the drip lines of the trees.
15. In order to ensure the integrity of existing public trees and roots, construction access is only permitted through the rear lane and outside the dripline of public tree(s), per the approved Tree Protection Plan.
16. Tree protection information given as per the approved development permit does not constitute Tree Protection Plan approval. Tree Protection Plan approval must be obtained separately through Urban Forestry. Visit www.calgary.ca, call 311, or email tree.protection@calgary.ca for more information.

Advisory Comments

The following advisory comments are provided as a courtesy to the Applicant and registered property owner. The comments represent some, but not all of the requirements contained in the Land Use Bylaw that must be complied with as part of this approval.

Planning

17. The Applicant may appeal the decision of the Development Authority, including any of the conditions of the development permit. If you decide to file an appeal, please refer to the notification of decision letter for the appropriate appeal body and appeal process.
18. The approval of this development permit does not limit in any way the application of any federal, provincial, or municipal law, policy, code, regulation, bylaw, and/or guideline, nor does it constitute any permit or permission under any federal, provincial, or municipal law, policy, code, regulation, bylaw, and/or guideline.
19. In addition to this development permit, building permits may also be required. Building permit applications may be submitted upon approval of the associated development permit. Contact Building Regulations at 403-268-5311 for further information.
20. There are many types of caveats and other agreements that can be registered on the title of the property that can restrict the ability to develop. The City has not reviewed or considered all instruments registered on the title to this property. Property owners must evaluate whether this development is in compliance with any documents registered on title.

Development Engineering

21. Any / all Advisory Comments captured by Development Engineering in the Conditions of Approval for the prior (parent) DP2019-2146 remain applicable for the subject DP2021-6749, unless otherwise noted below.
22. It is understood that the development scope is limited to the new private retaining wall within the development private site. Said wall system appears to be less than 1.2m in height.

That said:

The applicant is responsible for coordinating accordingly with the Engineering Consultant of record for the previously approved DSSP2020-0035 (related to parent DP2019-2146), if required. The Engineering Consultant will be responsible for determining if a new Development Site Servicing Plan (DSSP) submission is required.

Small Format DSSP revisions are no longer accepted by Water Resources (as per

Industry Bulletin, August 2021).

Transportation

23. The locations and design of driveways must be approved by Transportation Planning. New driveways including driveway modifications, removal and rehabilitations of unused driveway crossings or relocations, sidewalks, wheelchair ramps, and lane paving must be constructed to City standards at the developers expense. Obstructions such as storm catch basins, hydrants, power poles, etc., must be relocated to City standards at developers expense.
24. In accordance with the Encroachment Policy adopted by Council on June 24, 1996, and as amended on February 23, 1998, encroachments of retaining walls, planters, entry features, building projections, etc. are not permitted to extend into the City right-of-way. New encroachments that are a result of this development are to be removed at the developers expense. Encroachments are subject to approval by the Encroachment Administrator, Corporate Properties.
25. The development site is located within a residential parking zone as defined by the City of Calgary Traffic By-law and, as such, no long term non-residential parking is permitted on-street.

Parks

26. Any / all Advisory Comments captured by Calgary Parks in the Conditions of Approval for the prior (parent) DP2019-2146 remain applicable for the subject DP2021-6749, unless otherwise noted below.
27. The applicant will be required to provide compensation to the City of Calgary for any Public Trees that are removed or damaged. The Public Tree(s) adjacent to this development is/are valued at **\$41,965.29**. Applicants that are unfamiliar with tree protection or tree appraisal are advised to consult an arborist.
28. If clearance pruning of public trees is required, Urban Forestry must be notified (minimum two business days notice) and an indemnified contractor must be used at the applicants expense. Please contact Urban Forestry at 311 for more information.
29. As part of the Tree Protection Bylaw, a Tree Protection Plan will be required when a development, construction activity, or a disturbance occurring on the City Boulevard is within 6 metres of a boulevard tree. For more information about submitting your tree protection plan visit www.calgary.ca and search protecting trees during construction and development; alternatively, call 311 or email tree.protection@calgary.ca. Applicant is to apply for tree protection plan prior to demolition.
30. The Streets Bylaw (20M88) and the Tree Protection Bylaw (23M2002) contain clauses intended to protect trees growing on Public Land. No person shall remove, move, cut, or prune a Public Tree or cause a Public Tree to be removed, moved, cut or pruned without prior written authorization from the Director, Parks. A copy of the bylaw can be found at www.calgary.ca. Parks does not permit the removal of public

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trees to facilitate development unless all options to retain and protect are exhausted.

31. No stockpiling or dumping of construction materials is permitted on the adjacent boulevard.



**APPLICATION FOR A DEVELOPMENT PERMIT
LAND USE BYLAW NO 1P2007**

329548953-001
Taken By:

Application Date **Sep 21, 2021**

APPLICATION NO DP2021-6749

I/We hereby make application for a Development Permit under the provisions of the Land Use Bylaw in accordance with these plans and supporting information submitted herewith and which form part of this application.

Total Fees: \$1,143.00

Cart #:

Applicant: MARCEL DESIGN STUDIO
Address: 14 Rossburn Cr SW
City: Calgary, Alberta, T3C2N5
Phone: [REDACTED]

Contact: Dobrin, Alex
Phone: [REDACTED]
Fax: [REDACTED]
e-mail: [REDACTED]

Parcel Address: 711 5 ST NE
Legal: 5386L;C;30,31

Parcel Owner: HARDEV BANIPAL
811-3545 32 AVE NE
CALGARY AB CANADA T1Y 6M6
e-mail: Not Available

L.U.D.: M-C2

Community: RENFREW
Sec. Number: 22C Ward: 09

Description: Changes to Site Plan: Multi-Residential Development (retaining wall)

Proposed Development is: Permitted

Proposed Use: Multi-Residential Development

I agree to receive correspondence via electronic message related to this application.

By signing below, I confirm that the contact information provided above is accurate and further, acknowledge the ability of the General Manager - Planning and Development to inactivate and cancel incomplete applications.

Applicant / Agent Signature: _____ **Date:** _____

The personal information on this form is being collected under the authority of The Municipal Government Act, Section 640, and The City of Calgary Land Use Bylaw 1P2007 (Part 2) and amendments thereto. It will be used for the permit review and inspection processes. It may also be used to conduct ongoing evaluations of services received from Planning, Development & Assessment. The name of the applicant and the nature of the permit will be available to the public. Please send inquiries by mail to the FOIP Program Administrator, Planning, Development & Assessment, PO Box 2100, Station M, Calgary, AB T2P 2M5 or contact us by phone at 311.

Track your application on-line with **VISTA** Go to: www.calgary.ca/vista and enter your JOB ACCESS CODE (JAC) [REDACTED]
or call our Planning Support Centre at (403)268-5311.



LAND TITLE CERTIFICATE

B
 LINC SHORT LEGAL TITLE NUMBER
 0019 243 880 5386L;C;30,31 191 086 930

LEGAL DESCRIPTION
 PLAN 5386L
 BLOCK C
 LOTS 30 AND 31

ESTATE: FEE SIMPLE
 ATS REFERENCE: 5;1;24;22;SE

MUNICIPALITY: CITY OF CALGARY

REFERENCE NUMBER: 141 061 653

REGISTERED OWNER(S)				
REGISTRATION	DATE (DMY)	DOCUMENT TYPE	VALUE	CONSIDERATION
191 086 930	08/05/2019	TRANSFER OF LAND	\$640,000	\$640,000

OWNERS

HARDEV BANIPAL
 OF UNIT 811, 3545 - 32ND AVENUE NE
 CALGARY
 ALBERTA T1Y 6M6

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
181 214 372	03/10/2018	CAVEAT RE : PURCHASERS INTEREST CAVEATOR - HARDEV BANIPAL RELIANCE LEGAL GROUP LLP UNIT 1101, 3961-52 AVE NE CALGARY ALBERTA T3J0J7 AGENT - DAVID DAE-WON JUNG
191 139 803	11/07/2019	MORTGAGE

(CONTINUED)

ENCUMBRANCES, LIENS & INTERESTS

PAGE 2

191 086 930

REGISTRATION

NUMBER	DATE (D/M/Y)	PARTICULARS
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MORTGAGEE - ROYAL BANK OF CANADA.
 10 YORK MILLS ROAD
 3RD FLOOR
 TORONTO
 ONTARIO M2P0A2
 ORIGINAL PRINCIPAL AMOUNT: \$405,000

TOTAL INSTRUMENTS: 002

PENDING REGISTRATION QUEUE

DRR NUMBER	RECEIVED DATE (D/M/Y)	CORPORATE LLP TRADENAME	LAND ID
C0036YJ	30/06/2021	WATTS PARALEGAL 403-850-7479 CUSTOMER FILE NUMBER: B-0042	
001		TRANSFER OF LAND	5386L;C;30,31
002		MORTGAGE	5386L;C;30,31
C004G31	05/08/2021	TERANET COLLATERAL MANAGEMENT SOLUTIONS CORPORATION 604-637-4180 CUSTOMER FILE NUMBER: DI-927621-EYWUT	
001		DISCHARGE	0019 243 880

TOTAL PENDING REGISTRATIONS: 002

THE REGISTRAR OF TITLES CERTIFIES THIS TO BE AN
 ACCURATE REPRODUCTION OF THE CERTIFICATE OF
 TITLE REPRESENTED HEREIN THIS 21 DAY OF
 SEPTEMBER, 2021 AT 08:14 A.M.

ORDER NUMBER: 42656541

CUSTOMER FILE NUMBER:



END OF CERTIFICATE

(CONTINUED)

THIS ELECTRONICALLY TRANSMITTED LAND TITLES PRODUCT IS INTENDED FOR THE SOLE USE OF THE ORIGINAL PURCHASER, AND NONE OTHER, SUBJECT TO WHAT IS SET OUT IN THE PARAGRAPH BELOW.

THE ABOVE PROVISIONS DO NOT PROHIBIT THE ORIGINAL PURCHASER FROM INCLUDING THIS UNMODIFIED PRODUCT IN ANY REPORT, OPINION, APPRAISAL OR OTHER ADVICE PREPARED BY THE ORIGINAL PURCHASER AS PART OF THE ORIGINAL PURCHASER APPLYING PROFESSIONAL, CONSULTING OR TECHNICAL EXPERTISE FOR THE BENEFIT OF CLIENT(S) .

IF MORE INFORMATION IS REQUIRED ON A PENDING REGISTRATION WHERE THE CONTACT INFORMATION DISPLAYS N/A PLEASE EMAIL LTO@GOV.AB.CA.

Hardev Banipal

owner(s)

contact name

contact address

contact email

City of Calgary
Planning & Development
P.O. Box 2100, Stn. M, # 8108
Calgary, AB, Canada T2P 2M5

To Whom It May Concern,

With regards to 711 5th ST NE _____
property address project name (if applicable)

Please be advised that I, Hardev Banipal _____ am:
full name

(select one)

- ☒ the owner of the above mentioned property, and that I authorize
☐ an officer or director of the owner(s) of the above mentioned property,
and that I am authorized by that owner to authorize

Marcel Design Studio Ltd and/or its Alex Dobrin _____
agent or company name applicant, consultant, contractor (if applicable)

to apply for any and all Development Permit _____
permit type

for the above mentioned property.

I further agree to immediately notify The City of Calgary, in writing, of any changes regarding the above information.

Sept. 15, 2021

date signed

HBanipal
signature of owner

Hardev Banipal

name of owner (printed)

FOIP DISCLAIMER: The personal information on this form is being collected under the authority of The Freedom of Information and Protection of Privacy (FOIP) Act, Section 33(c). It will be used to provide operating programs, account services and to process payments received for said services. It may also be used to conduct ongoing evaluations of services received from Planning & Development. Please send inquiries by mail to the FOIP Program Administrator, Planning & Development, PO Box 2100, Station M, Calgary, AB T2P 2M5 or contact us by phone at 311.

22



SDAB2021-0081 ab

23



SDAB2021-0081 ab

24



SDAB2021-0081 ab

25



SDAB2021-0081 ab



Site Contamination Statement

Application # _____
for office use only

Site Address: 711 5th ST NE

Legal Description: 5386L; C; 30 & 31

The information provided in this disclosure statement will assist the Development, Land Use and Subdivision Authorities in processing planning applications. The Authorities rely on the information provided in this statement to assist in determining the potential for site contamination, which may have been caused by current or historic activities.

You are responsible for the accuracy of the information provided in this statement. The questions must be answered to the best of your knowledge based upon diligent inquiry and the thorough inspection and review of all documents and other information pertaining to the subject property. **Please be aware that further site assessments may be required as part of the review of your application.**

1. Are you aware of any environmental investigations (audits, assessments, tests, surveys or studies) for this site?

☐ Yes ☒ No

If yes, please provide copy(s).

2. Are you aware of any environmental requirements associated with any previous planning applications on this site?
(i.e. development permit, land use redesign or subdivision)

☐ Yes ☒ No

If yes please provided a brief description and the associated development application number(s):

3. Has there been site remediation or a request for such on the site?

☐ Yes ☒ No

If yes, please provide a brief description:

4. Are you aware of any regulatory actions, past or current, which have been applied to this site?

☐ Yes ☒ No

Examples include (but are not limited to):

- Environmental Protection Orders
- Reclamation Orders or Certificates
- Control / Stop Orders, fines, tickets or prosecutions
- Violations of environmental statutes, regulations and bylaws
- Administrative penalties and warning letters

If yes, please describe and provide copies of relevant documents:

5. Have any permits been issued or are you currently operating under a license or approval issued by federal or provincial authorities (including, but not limited to the Natural Resources Conservation Board, Energy Resources Conservation Board, Alberta Energy Regulator, Alberta Energy and Utilities Board, Alberta Utilities Commission, Minister of Environment and Parks) or the Calgary Fire Department for activities which may impact the property? (e.g. certificates of approval, storage tank regulations, plant operating permits)

☐ Yes ☒ No

If yes, please describe:

6. Has there been contact with Alberta Environment or Calgary Regional Health Authority regarding possible contamination on the site?

☐ Yes ☒ No

If yes, please provide a brief description:

NOTE: This form is to be signed by the titled owner(s) of the property or their authorized agents or consultants.

I, the ☐ owner, ☒ authorized agent, ☒ authorized consultant, state that, to the best of my knowledge, the information provided in this statement is accurate, complete and is based on diligent inquiry and thorough inspection and review of all the documents and other information reasonably available pertaining to the subject property. I am not aware of any other information that may indicate that the subject property is potentially contaminated.

Sept 20, 2021

Date

Alex Dobrin

Applicant Signature

FOIP DISCLAIMER: The personal information on this form is being collected under the authority of The Freedom of Information and Protection of Privacy (FOIP) Act, Section 33(c). It will be used to provide operating programs, account services and to process payments received for said services. It may also be used to conduct ongoing evaluations of services received from Planning, Development & Assessment. Please send inquiries by mail to the FOIP Program Administrator, Planning, Development & Assessment, PO Box 2100, Station M, Calgary, AB T2P 2M5 or contact us by phone at 311.

Alex Dobrin

Applicant Name (Please Print)

Marcel Design Studio Ltd

Company Name (Please Print)



Public Tree Disclosure Statement

The City of Calgary Street Bylaw (20M88) and the Tree Protection Bylaw (23M2002) protect trees growing on City (public) land. An approved Tree Protection Plan is required when construction activities occur within 6m of a public tree. More information regarding protecting trees during construction and development is found here. Public trees are required to be shown on plans submitted for this application.

1. Are there public trees on the City lands within six meters of and/or overhanging the development site? Yes ☒ No

If you answered yes, ensure all trees identified are shown on the submitted plans.

Note: if you are not sure how to determine which trees are yours and which are public, you can:

- Use the [City's tree map](#) (may not be up to date for your property)
- Contact 3-1-1 to put in a "development tree inquiry" to get confirmation from an Urban Forester
- Send inquiries to tree.protection@calgary.ca

2. Who will be submitting the Tree Protection Plan for this development?

☐ Applicant ☐ Owner ☐ Builder ☐ Other:

If Other: Name: _____ Phone: _____
Email: _____

The Tree Protection Plan must be submitted directly to Urban Forestry at tree.protection@calgary.ca following the [Tree Protection Plan Guidelines](#).

FOIP DISCLAIMER: The personal information on this form is being collected under the authority of The Freedom of Information and Protection of Privacy (FOIP) Act, Section 33(c). It will be used to provide operating programs, account services and to process payments received for said services. It may also be used to conduct ongoing evaluations of services received from Planning, Development & Assessment. Please send inquiries by mail to the FOIP Program Administrator, Planning, Development & Assessment, PO Box 2100, Station M, Calgary, AB T2P 2M5 or contact us by phone at 311.

Page 2 Multi-Residential – Contextual Medium Profile				D.P. # 2021-6749			
Rule	Requirements			Evaluation			
			Notes	Provided/Variance			
570 Retaining Walls	(1) A retaining wall must be less than 1.2m in height when measured from the lowest grade at any point adjacent to the retaining wall to the highest grade retained by the retaining wall.	(b) within 3.0m of a property line.		C	N/C	N/A	N/I
	(2) A min. horizontal separation of 1.0 m. must be maintained between retaining walls on a parcel:	(b) within 3.0m of a property line.		C	N/C	N/A	N/I

FILE: DP 2021-6749

DATE RECEIVED: September 21, 2021

Bylaw Discrepancies		
Regulation	Standard	Provided
570 Retaining Walls	(2) A min. horizontal separation of 1.0 m. must be maintained between retaining walls on a parcel: (b) within 3.0m of a property line.	Plans indicate the proposed retaining wall has a horizontal separation of 0.00m (-1.0m) from the existing retaining wall located within 3.0m from the property line.



ENMAX Power Corporation
 141 – 50 Avenue SE
 Calgary, AB T2G 4S7
 Tel (403) 514-3000
 enmax.com

October 2, 2021

File No: DP2021-6749

Location: 711 5 ST NE

ENMAX Power Corporation (EPC) has reviewed the above permit application dated 9/22/2021 and based on the information provided and as of the above noted date the proposed development does not conflict with ENMAX facilities in respect of the requirements set forth in 10-002 Overhead System (Table 7) and 12-002 Underground Systems of the Alberta Electrical Utility Code (AEUC) under the *Safety Codes Act* (Alberta). This non-conflict letter does not reduce or limit responsibility to comply with all laws and regulations regarding utility facilities and all requirements under the *Occupational Health & Safety Act* (Alberta) (OHS) and the applicant shall observe all such laws and regulations when commencing any work related to the permit application. If a situation arises where there is a discrepancy between ENMAX required setbacks and the AEUC or the OHS, the stricter set of requirements shall govern.

Pursuant to Section 225(1) of Part 17 of the *Occupational Health and Safety Code* (Alberta) (Code) anyone working near overhead powerlines must maintain safe limits of approach as provided for in Schedule 4, Table 1 of the Code or Table 1 in the AEUC and anyone excavating must contact Alberta One-Call prior to performance of such excavation. As a condition of this no-conflict letter, and despite any existence of a permit, the applicant must contact EPC (Powerline Inspections (403) 514-3117) prior to the commencement of any construction where any workers or equipment will be within 7.0m of existing overhead EPC facilities. If EPC is contacted in accordance with the above, no construction work shall be commenced thereafter unless and until EPC determines the minimum safe limit of approach distance in relation to the overhead facilities present at the project site.

****NOTE:** This letter provided by ENMAX Power Corporation is intended for information purposes only and is not in any manner intended to nor shall be construed to derogate from applicant's obligations to follow any applicable law. The provision of this no-conflict letter is not a representation that work will meet any legislative or regulatory obligations. This no-conflict letter is provided as of the date first noted above – the applicant is still required to perform their own due diligence prior to any development activities and resolve any conflicts (new or existing) at the Developer's sole expense. ENMAX expressly disclaims any liability related to applicant's responsibility to comply with such laws and regulations and ENMAX's required setbacks.

If you require any additional information regarding this Development Permit, please contact the Project Administrator at EPC_Permits@enmax.com.

Sincerely,

Younglae Kim, P.Eng.
 Permits and Circulations

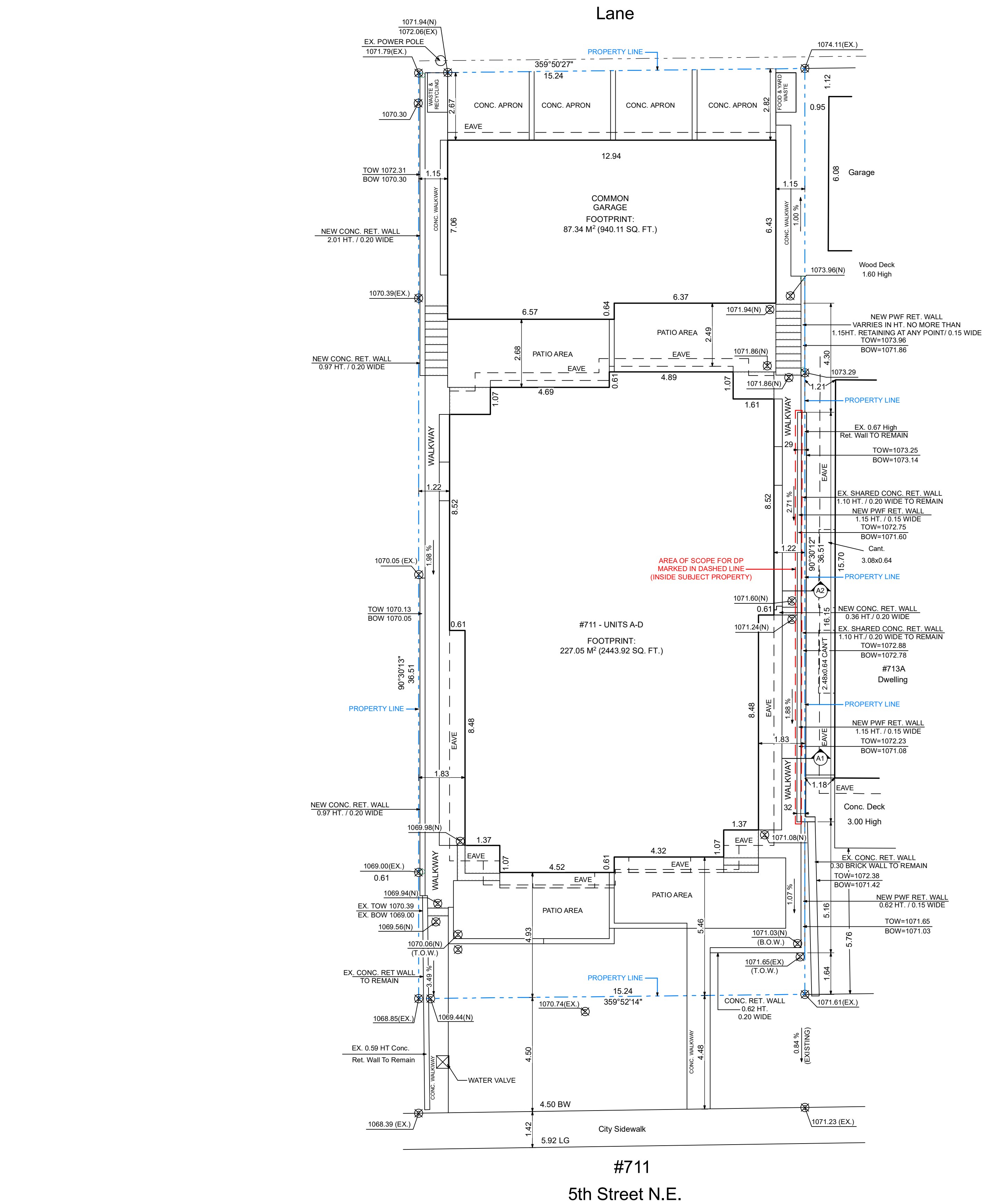
SDAB2021-0081 ab

From: [Ward9 - Milica Zjalic](#)
To: [Wolfe, Chris](#)
Cc: [DP Circ](#)
Subject: DP2021-6749 711 5 ST NE
Date: Tuesday, October 12, 2021 2:35:05 PM

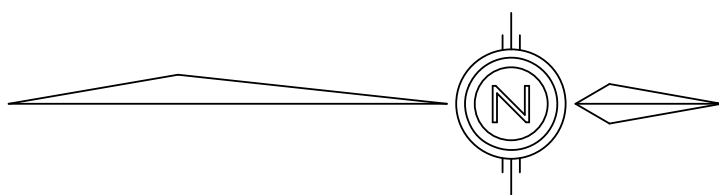
Hi Chris,
Cllr. Carra has no objections or comments at this time!
Cheers,

Milica Zjalic

Constituent Assistant
Councillor Gian-Carlo Carra, Ward 9
The City of Calgary | Office of the Councillors
Proudly serving on the territories of Treaty 7
P.O. Box 2100, Station M, Calgary, AB Canada T2P 2M5

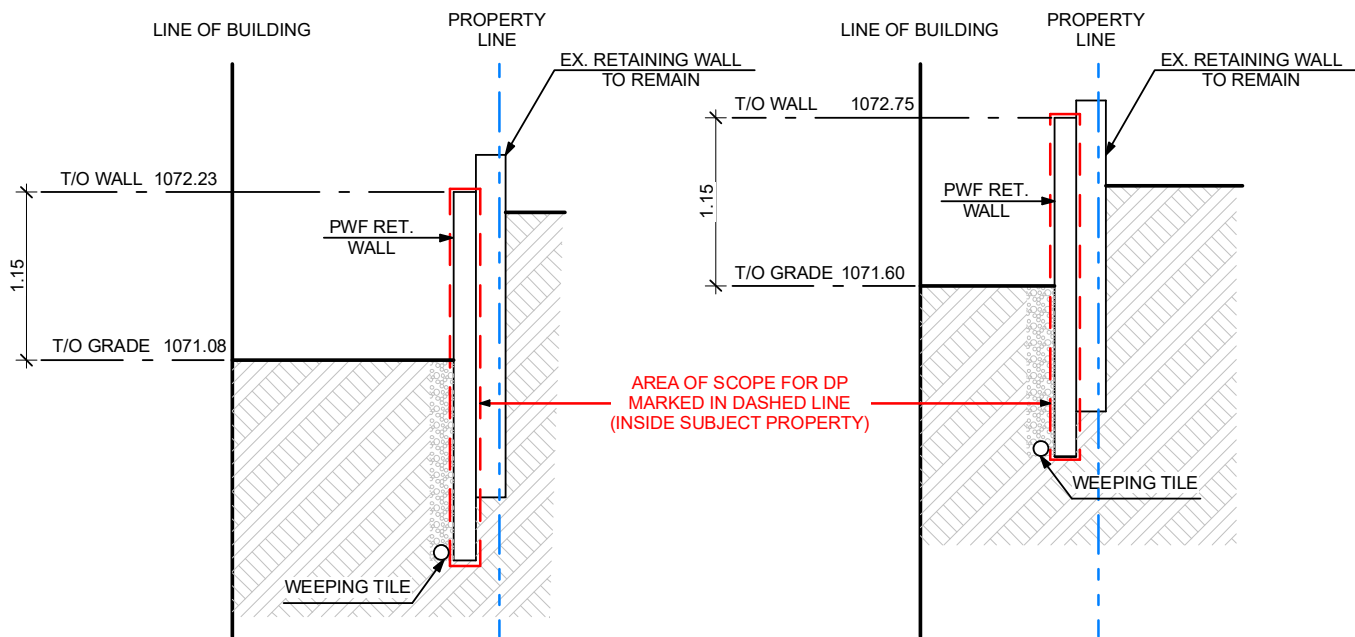


SITE PLAN
SCALE: 1:100



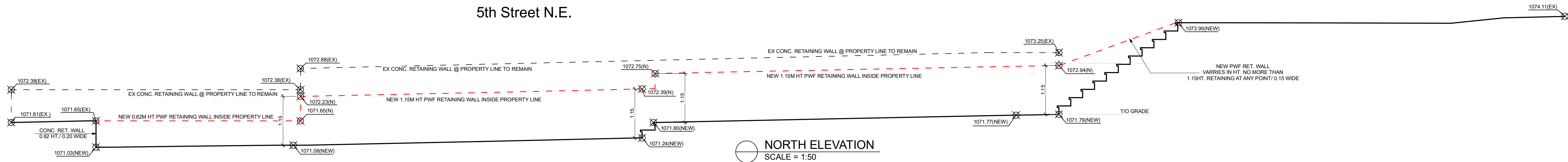
MUNICIPAL ADDRESS
711 5TH ST NE
CALGARY, ALBERTA
LEGAL DESCRIPTION
LOTS 30 & 31
BLOCK C
PLAN 5386 L
ZONING
MC-2

DEVELOPMENT
PERMIT
DECISION
RENDERED
ON THIS PLAN



SECTION A1
SCALE = 1:50

SECTION A2
SCALE = 1:50



NORTH ELEVATION
SCALE = 1:50

ADDRESS:	DWG. TITLE:	REVISIONS:	SCALE:	DATE:	DRAWN BY:	SHEET NO.:
711 5ST NE CALGARY, AB	SITE PLAN		1:100	SEPTEMBER 17, 2021	AD	1

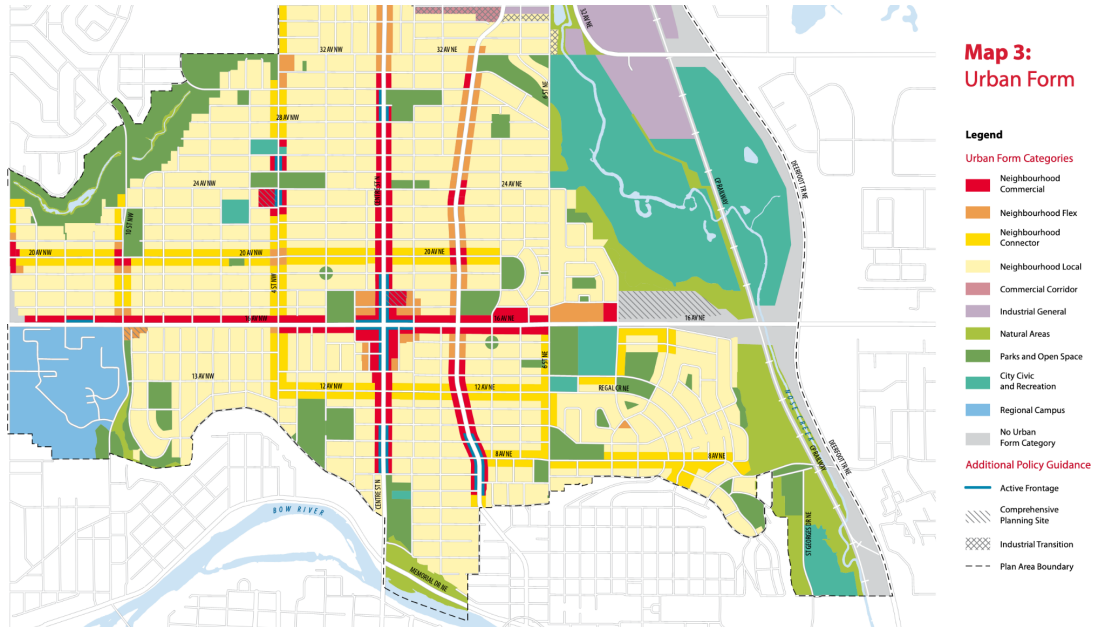
TERMS OF POSSESSION OF THESE DRAWINGS & GENERAL NOTES:

1. TERMS OF POSSESSION OF THESE DRAWINGS & GENERAL NOTES MUST BE READ PRIOR TO REVIEWING THESE DRAWINGS. 2. DO NOT SCALE DRAWINGS.
3. ALL CONSTRUCTION SHALL BE DONE IN ACCORDANCE WITH CURRENT ALBERTA BUILDING CODE.
4. THE MUNICIPAL AUTHORITY, BUILDER, TRADES, ENGINEER(S) OR ANY PROFESSIONAL OR NON PROFESSIONAL IN POSSESSION OF THESE DRAWINGS SHALL REVIEW EACH PAGE IN THEIR ENTIRETY AND REPORT ANY ERRORS OR DISCREPANCIES TO THE DESIGNER PRIOR TO START OF CONSTRUCTION.
5. THE DESIGNER IS NOT RESPONSIBLE FOR ANY ERRORS OR DISCREPANCIES THAT ARE NOT REPORTED TO THE DESIGNER PRIOR TO CONSTRUCTION. THEY ARE THE RESPONSIBILITY OF THE BUILDER.
6. ANY CHANGES DURING CONSTRUCTION SHALL BE REPORTED BY THE BUILDER TO THE DESIGNER PRIOR TO MAKING THAT CHANGE.
7. CONTRACTOR MUST CHECK ALL DRAWINGS PRIOR TO BUILDING PERMIT APPLICATION AND CONSTRUCTION OF PROJECT & DRAWINGS MUST BE REVIEWED IN THEIR ENTIRETY.
8. ALL BEAM AND POST LOCATIONS TO BE VERIFIED ON SITE DURING CONSTRUCTION.
9. M+B DESIGN WILL NOT BE RESPONSIBLE FOR MINOR DRAWING ERRORS AFTER CONSTRUCTION START. ANY ERRORS OR DISCREPANCIES MUST BE COMMUNICATED TO M+B DESIGN PRIOR TO CONSTRUCTION.
10. IF THIS IS NOT COMMUNICATED TO M+B DESIGN, THE RESPONSIBILITY OF THESE ERRORS ARE THE CONTRACTORS OR CLIENTS.

MARCEL DESIGN
STUDIO LTD
OFFICE: 403.880.6065

Appeal Board rec'd: January 5, 2022
Submitted by: P. Guo, Appellant B

1. Context of the neighbourhood



Policy

- Secondary suites are permitted where already allowed by the existing land use designation and are not considered a unit in the following policies.
- Building forms that contain one or two residential units are supported in Neighbourhood Local, Limited Scale.
- Building forms that contain three or more residential units should be supported in the following areas:
 - within **transit station areas**;
 - near or adjacent to an identified **Main Street** or **Activity Centre**;
 - on higher activity streets, such as where there are adjacent regional pathways or higher volumes of private vehicle or pedestrian activity in a community; and,
 - where the parcel has a lane and parking can be accommodated on site.
- Building forms that contain three or more residential units in Neighbourhood Local, Limited Scale should be designed to complement the surrounding context and consider the impacts of massing, lot coverage and setbacks on the following:
 - access to sunlight and shade on adjacent parcels; and,
 - protection of existing, healthy trees or landscaping on the parcel, where appropriate.

2. Suspension letter dated July 30, 2021 over the misrepresentations of this retaining wall



July 30, 2021

Marcel Design Studio
14 Rossburn Cr SW
Calgary AB, T3C2N5
DELIVERED VIA EMAIL & REGISTERED MAIL

Re: DP2019-2146
New: Multi-Residential Development (1 building), Accessory Residential Building (garage)
Address: 711 5 St NE

Dear Mr. Dobrin

The above mentioned development permit, which was approved by the Development Authority on October 24, 2019, and released on June 21, 2021, has been suspended pursuant to Sections 43(1)(a) and 43(1)(b) of the City of Calgary Land Use Bylaw 1P2007. These sections of the Bylaw provide for the suspension of an approved development permit if it is determined that the application contained a misrepresentation, or that facts have not been disclosed which should have been at the time of consideration of the application.

Following a development inspection, it came to the attention of the Development Authority that the existing retaining wall shown on your development plans as being entirely located on the development parcel and being replaced with a new retaining wall, is actually partially located on the property located at 713A 5 ST NE Calgary, AB. Excavation of an existing retaining wall is development under the Land Use Bylaw, and requires the authorization of the owner of the property on which the development is taking place.

The Development Authority will reinstate your Development Permit following approval of a new development permit application for changes to site plan showing a retaining wall located entirely on your property, with the existing retaining wall being retained. In the alternative, the Development Authority will reinstate your Development Permit upon receiving written confirmation from the owner of the property located at 713A 5 ST NE Calgary, AB that you have their authorization to remove the existing retaining wall and replace it with a new retaining wall located entirely on your property.

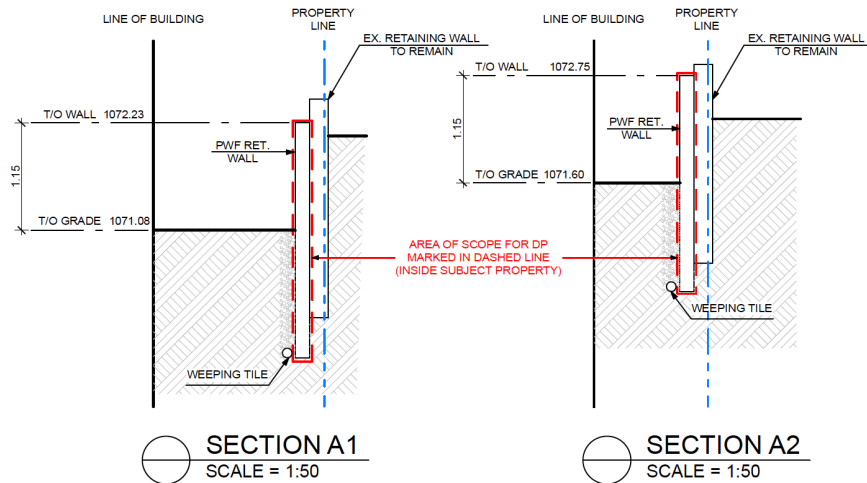
Please contact Rafal Cichowlas at 587 228-1541 or email Rafal.Cichowlas@Calgary.ca with any questions and to discuss the above options.

This written notice is provided in accordance with Section 43(2) of Bylaw 1P2007.

Sincerely,

Rafal Cichowlas
Coordinator - South

3. DP2021-6749 contains inaccurate drawings, the plan shows:



However, the EX. RETAINING WALL in reality has a footing that is not shown in the drawings.



The width of the footing is approximately 10cm on each side of the wall. This has not been considered in the Applicant's design. Applicant should not be allowed to modify the existing retaining wall to fit the Applicant's assumptions.

4. Bylaw 570 retaining wall requires minimum 1.0m horizontal separation. This had been flagged as a concern in the origins DP2019-2146 which resulted in a plan change.

5. ABC health and safety requirements 9.9.10.1

$$122 - 76 = 46$$

$$122 - 76 - 5 - 15 - 10 = 21 \text{ (- 54\%)}$$

Sidewalk width would be narrowed down to 21cm from 46cm. This is a shared walk-way by several residents in the quadplex and it's the only way to get to/from the garage.

6. Further relaxation of landscape is required.

$$\text{Lot size} = 556.36\text{m}^2$$

$$\text{Not counted} = 38.02\text{m}^2$$

$$\text{Required landscaping} = (556.36 - 38.02) \times 40\% = 207.34\text{m}^2$$

$$\text{Provided landscaping} = 130.85 + 73.27 = 204.12\text{m}^2$$

$$\text{Deficit} = 3.22\text{m}^2$$

Misrepresented calculations:

$$\text{Window wells: } 4 \times 0.76 \times 0.7 = 2.13\text{m}^2$$

$$\text{Area taken up by the new PWF retaining wall} = 0.15 \times 16 = 2.4\text{m}^2$$

$$\text{Lost landscaping} = 7.75 \text{ m}^2 \text{ (240\% increase over current relaxation)}$$

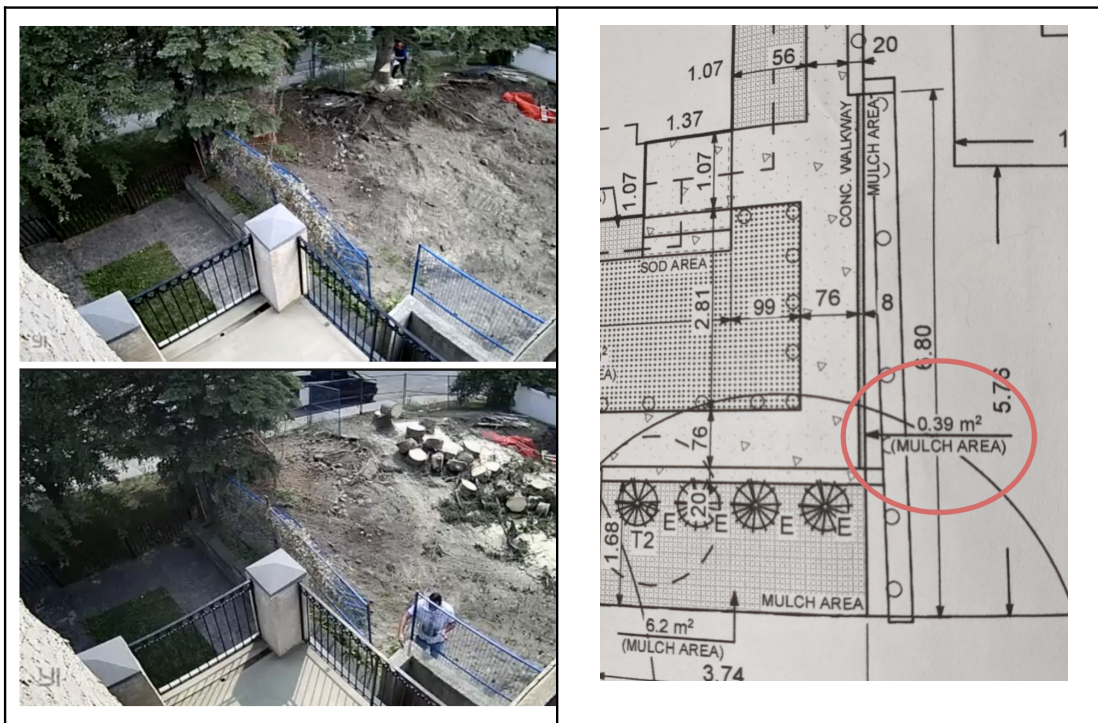
7. As a point of reference, DP2014-3672 is a DP applied for the same lot back in 2014. This plan proposed 188.25 m² of landscaping, but only consisted of 33.84% coverage.

552 Landscaped Area Reductions – Multi-Residential Development Addressed. Rationale provided.	The minimum landscaped area of 40.0% for Multi-Residential Development may be reduced to the three options as referenced in sections 554, 555 and 556 individually or in combination, to a total available reduction of 10.0% of the area of a parcel.	Plans indicate 33.84% (- 3.16%) or 188.25m ² (- 17.60m ²) of landscaped are provided.
---	--	--

8. There is already a lack of greenspace, the proposal exacerbates the situation. The plan had originally indicated T3 (large White Spruce with canopy of 12m) to remain. Since the DP was approved, one of the first things the applicant did was to chop down this tree and destroying green space. Close to 60% of existing trees around this lot have been removed to accommodate this plan, contrary to Northhill LAP.

ALREADY
REMOVED

DISPOSITION	QTY	REF	SERIAL	VARIETY	CALLIPER (M)	CANOPY (M)	HEIGHT (M)	LOCATION
REMAIN	1	T1	32130504	Colorado Spruce	0.41	8.00	11.00	CITY BOULEVARD
REMOVE	1	T2		Deciduous Tree	0.15	2.00	3.00	IN PROPERTY
REMAIN	1	T3	32130503	White Spruce	0.63	12.00	12.00	CITY BOULEVARD
REMOVE	1	T4		Japanese Maple	0.25	5.00	5.00	IN PROPERTY
REMAIN	1	T5	32303398	American Mountain Ash	0.15	3.00	3.00	CITY BOULEVARD
REMAIN	1	T6	32130502	American Mountain Ash	0.15	3.00	3.00	ADJ. PROPERTY
REMOVE	1	T7		Deciduous Clump	0.40	3.00	4.00	IN PROPERTY



9. Development Authority omitted the geotechnical requirements in this application.

i. According to City of Calgary Geotechnical Report Guidelines for Land Development Applications:

7.2 General

The general intent of a Slope Stability Report is to assess whether or not a slope is considered to be stable, and if not, to establish a Line of Stability beyond which structures and other facilities can be constructed.

Slope Stability Reports are required for all sites where existing or final grades exceed fifteen percent (15%) or where, in the opinion of the City's Geotechnical Engineer slope stability is considered to be a potential concern. In addition to natural slopes (e.g., river valley, ravines, gullies, coulees, and other sloping terrain), a slope assessment is typically required for fill slopes, cut slopes, constructed drainage features, constructed ponds (temporary and/or permanent water retention facilities), and retaining walls greater than 1.0 m in height.

Slope Stability Reports require site-specific geotechnical investigation and must consider pre- and post-development conditions. The Slope Stability Report should also outline operational rules and restrictions required for any portion of the lands to prevent unnecessary detrimental impacts to existing slopes and to maintain long-term stability of land deemed Suitable for Development.

ii. As explained by File Manager for DP2014-3762 (a previous DP on 711 5 st):

1. Geotechnical study was required for development on this lot
2. It is required any slope greater 15%
3. It is required by *Design Guidelines for Subdivision Servicing*
4. Required prior to decision was made

iii. Restrictive Caveat on lot 28/29 - 921288787

CAVEAT
FORBIDDING REGISTRATION

To the Registrar of the South Alberta Land Registration District

Take Notice that THE CITY OF CALGARY in the Province of Alberta
claims an interest in the following described lands namely:

Lots 27 to 29 inclusive, in Block C, Plan 5386 L
EXCEPTING THEREOUT ALL MINES AND MINERALS

('the said lands')

standing in the register in the name of Frank Nasi

by virtue of a Restrictive Covenant as to the Use of Land dated 1992 November 2
a copy of which is attached hereto as Schedule 'A' and made a part hereof,
executed by Frank Nasi

For the benefit of The City of Calgary by virtue of its ownership of streets,
lanes and public reserves, adjacent to the said lands which covenant provides
that:

the said lands shall not be developed or redeveloped in any way other than
in strict compliance with the Geotechnical Reports prepared by Geo-
Engineering (M.S.T.) Ltd. (File No. 6504) dated 1992 September 14 and
with City of Calgary Geotechnical Report Requirements then current at the
time development occurs and any further geotechnical reports, all reports
being subject to acceptance by the City Engineer.

It forbids the registration of any person as transferee or owner of, or of any
instrument affecting the said estate or interest unless the instrument or
certificate of title, as the case may be, is expressed to be subject to its
claim.

It appoints the office of the City Solicitor, City Hall, Box 2100 Station M
Calgary, Alberta
T2P 2H5

as the place at which notice and proceedings relating hereto may be served.

DATED this ⁵~~4~~ day of November A.D. 1992

THE CITY OF CALGARY
By its agent in that behalf



D. P. 92-901




Agent for the City of Calgary
Christopher S. Davis
Barrister & Solicitor

10. Insurance from the developer would be required for further work that involves contact with the retaining wall. The activities on site have already resulted in damages. These could be resolved by design rather than enforcement

July/August 2021

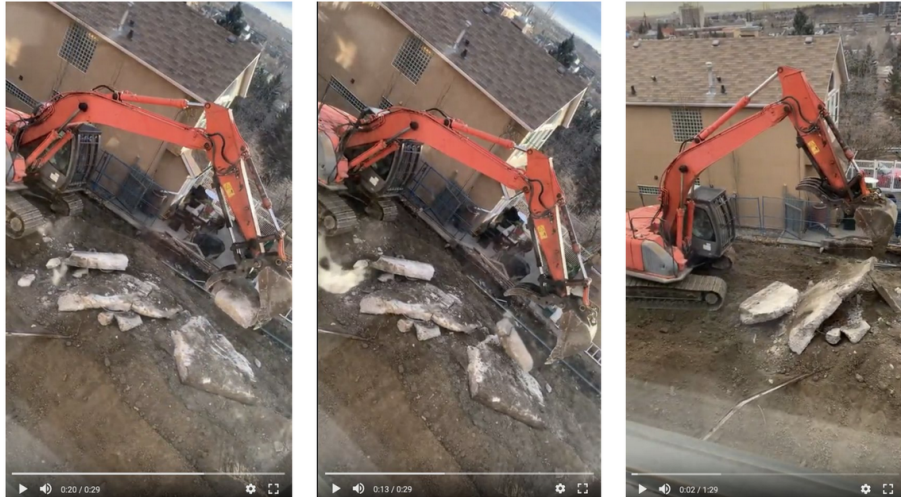


Starting November 2021 - the wall is shifting downhill, creating cracks

Mid November	Mid November	Late November
		

The developers' actions are often not enforceable.

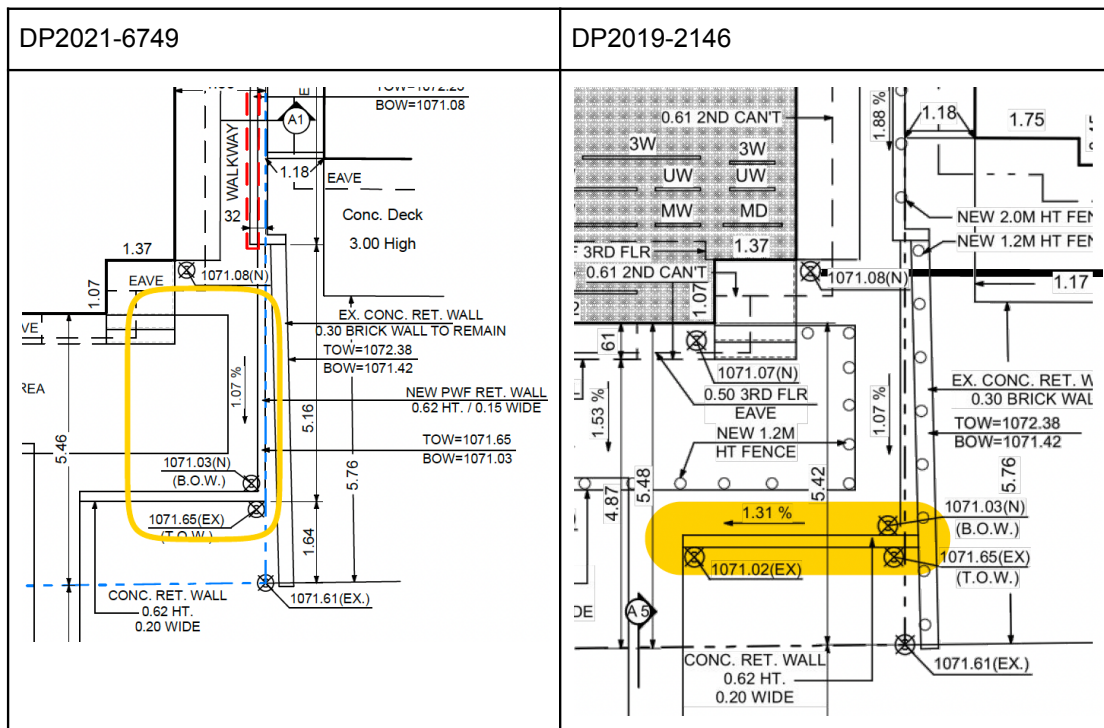
<https://photos.app.goo.gl/JdW5k7N24jEYDJd66>



11. DP2021-6749 contains changes outside of it's indicated scope. The DP notes:

“AREA OF SCOPE FOR DP MARKED IN DASHED LINE (INSIDE SUBJECT PROPERTY)”

However, there are changes outside of this area. If the intent is to have further changes, they should be identified for the development authority for review.



Appendix

Email from Geoff Walker

1. Was this required:
 - a. Yes the geo tech study/slope stability report was required
 - b. During the review, the application was circulated to our Development Eng group, and they requested this report for the purpose of the review of the application
2. Why was this required:
 - a. This screen shot (from the Detailed Review dated August 18th, 2016) will be able to better explain the why

Development Engineering:

10. Submit an electronic version of a Geotechnical Evaluation Report / Slope Stability Report to the Development Engineering Generalist, for review and acceptance, prepared by a qualified Geotechnical Engineer under seal and permit to practice stamp to the satisfaction of the Geotechnical Engineer, Roads.

Slope stability reports are required when:

- a. Any slope across the property line is fifteen (15%) percent or greater; and/or

Track your application on-line with VISTA. Go to: www.calgary.ca/vista and enter your JOB ACCESS CODE (JAC) from the application form or call Planning Services Counter at (403) 268-5311.

Page 4

DP2016-2899

- b. The development is to be located within a zone where an imaginary line, drawn from the toe to the top of an embankment, exceeds a slope of one to three, and/or
- c. Required by the Manager of Infrastructure Planning

Geotechnical Report requirements are outlined in Section V: Geotechnical and Hydro-Geological Requirements in the *Design Guidelines for Subdivision Servicing*. This publication can be found on the City of Calgary website at www.calgary.ca/ud under Publications. Contact the Geotechnical Engineer, Roads at 403-268-4568 for further details on the scope of the report.

3. What stage was it required
 - a. This report was listed as a prior to decision condition on the above noted Detailed Review
 - b. So this was required during the review of the application itself
 - c. It is not required for submission, but would be required prior to a decision being made

I hope this helps. Please don't hesitate to contact me if you need more info

Geoff Walker

Senior Planning Technician

Technical Planning

Community Planning

Planning & Development

Tel: (403) 333-5433

Check out www.calgary.ca/pdmap to learn more about the development activity in your community

Division B**A-9.10.3.1.**

A-9.9.10.1.(3) Window Opening into a Window Well. Sentence 9.9.10.1.(3) specifies that there must be a minimum clearance of 760 mm in front of designated escape windows to allow persons to escape a basement bedroom in an emergency. This specified minimum clearance is consistent with the minimum required width for means of egress from a floor area (see Article 9.9.5.5.) and the minimum required width for path of travel on exit stairs (see Article 9.9.6.1.). It is considered the smallest acceptable clearance between the escape window and the facing wall of the window well that can accommodate persons trying to escape a bedroom in an emergency given that they are not moving straight through the window but must move outward and up, and must have sufficient space to change body orientation.

Once this clearance is provided, no additional clearance is needed for windows with sliders, casements, or inward-opening awnings. However, for windows with outward-opening awnings, additional clearance is needed to provide the required 760 mm beyond the outer edge of the sash. (See Figure A-9.9.10.1.(3).)

Depending on the likelihood of snow accumulation in the window well, it could be difficult—if not impossible—to escape in an emergency. The window well should be designed to provide sufficient clear space for a person to get out the window and then out the well, taking into account potential snow accumulation.

Hopper windows (bottom-hinged operators) should not be used as escape windows in cases where the occupants would be required to climb over the glass.

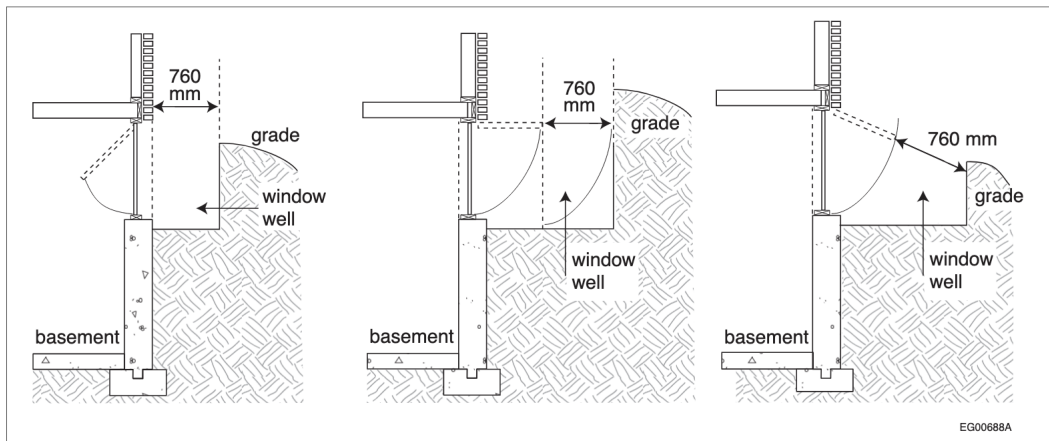


Figure A-9.9.10.1.(3)
Windows providing a means of escape that open into a window well

The logo for the City of Calgary, featuring the word "Calgary" in white text on a red rectangular background.

Appeal Board rec'd: January 12, 2022
Submitted by: Development Authority

Subdivision & Development Appeal Board

SDAB2021-0081 / DP2021-6749
Appeal against the approval of:
Changes to Site Plan: Multi-Residential Development
(Retaining Wall)

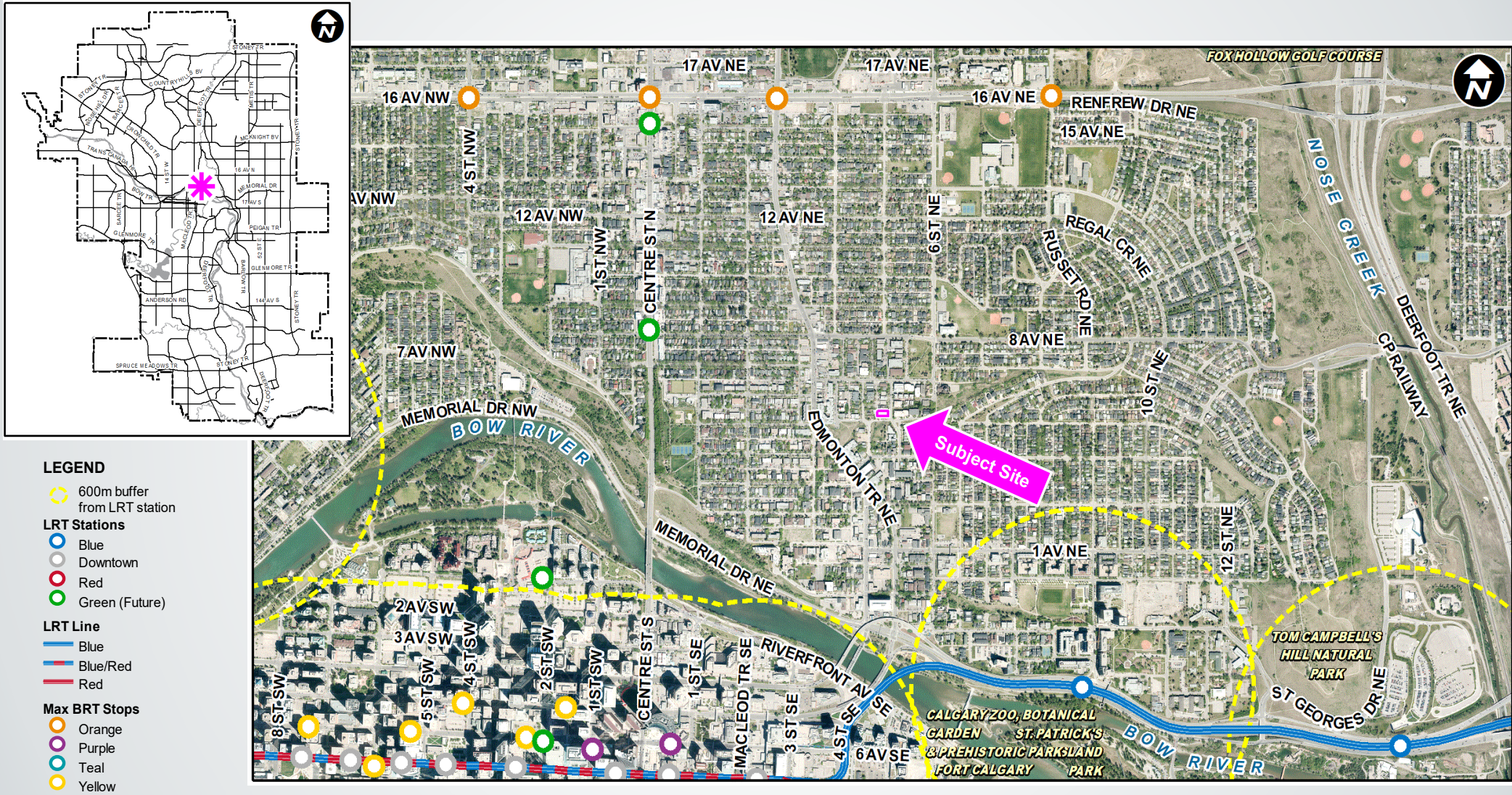
Proposed Development



DP2021-6749

- Retaining Wall
(1.15 metres high)

Location Maps



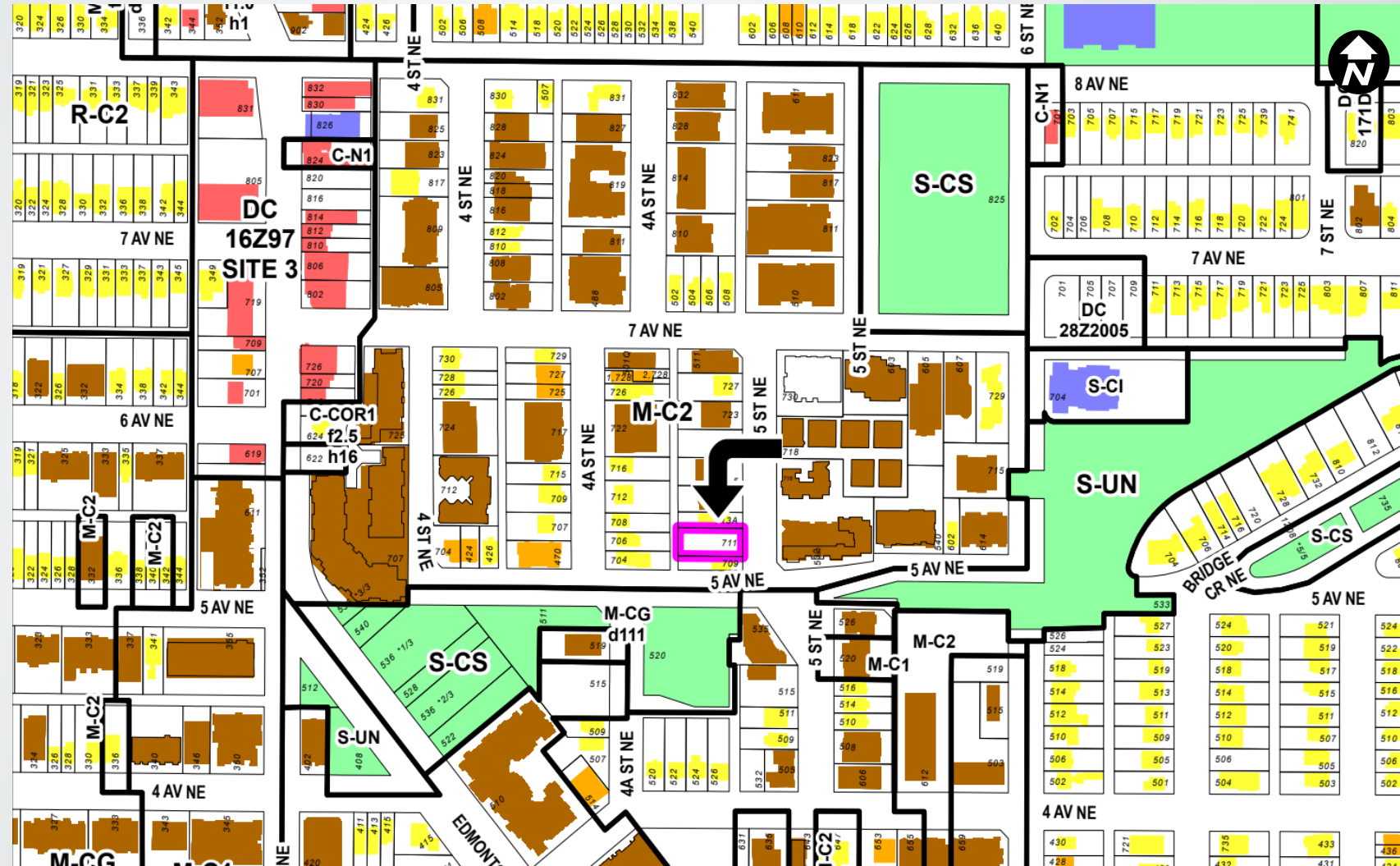
Local Context



Surrounding Land Use

LEGEND

- Residential Low Density
- Residential Medium Density
- Residential High Density
- Commercial
- Heavy Industrial
- Light Industrial
- Parks and Openspace
- Public Service
- Service Station
- Vacant
- Transportation, Communication, and Utility
- Rivers, Lakes
- Land Use Site Boundary



Site Photos



View of subject site looking west



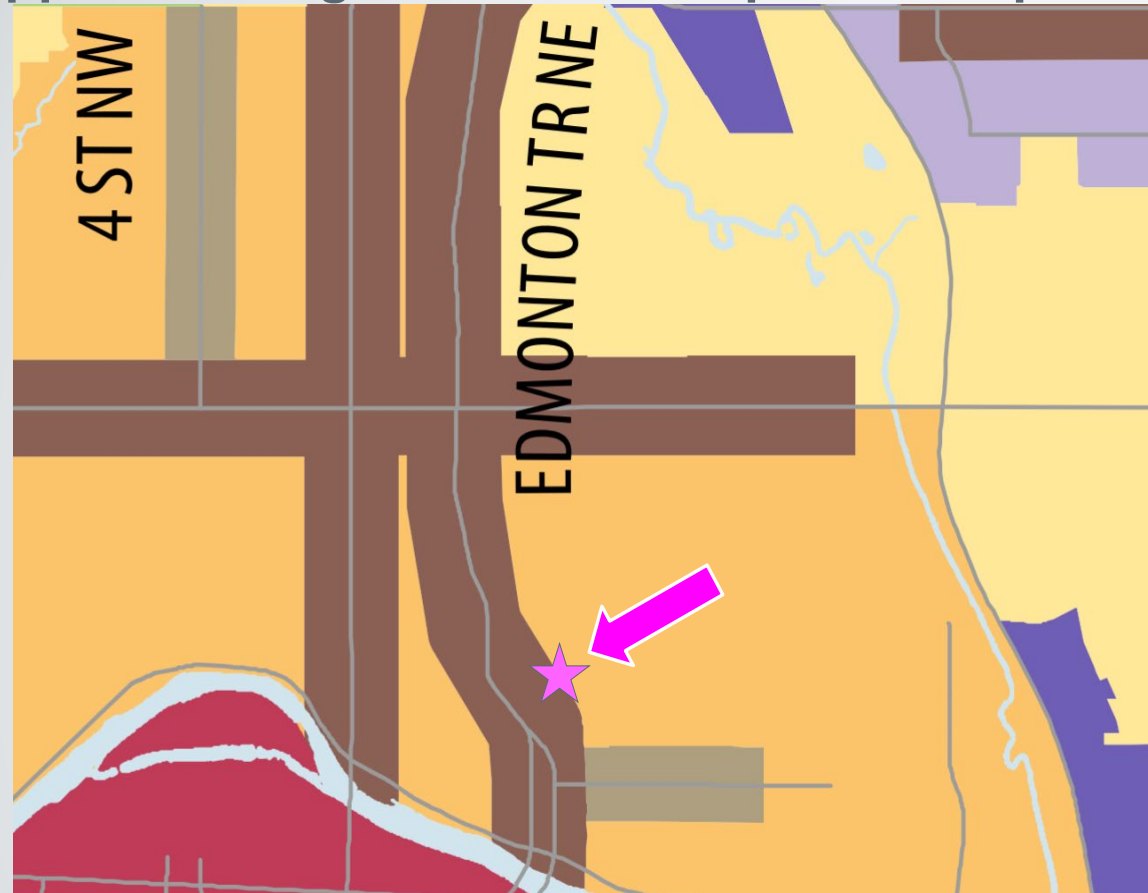
View of subject site looking east

Site Photos



View of subject site looking northwest

Applicable Legislation: Municipal Development Plan



Activity Centres

- Greater Downtown
- Major Activity Centre
- Community Activity Centre

Main Streets

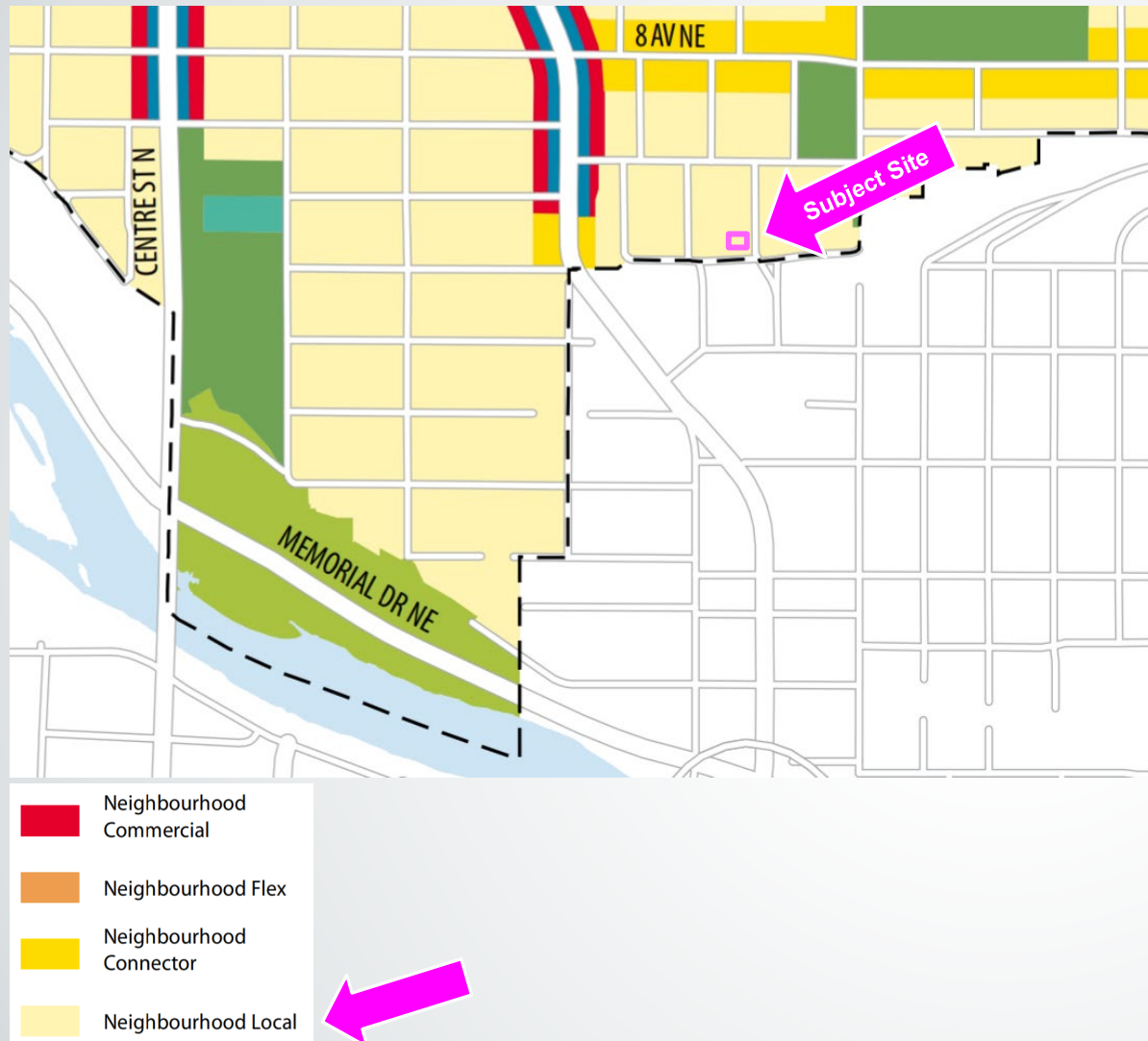
- Urban Main Street
- Neighbourhood Main Street

Developed Residential

- Inner City
- Established

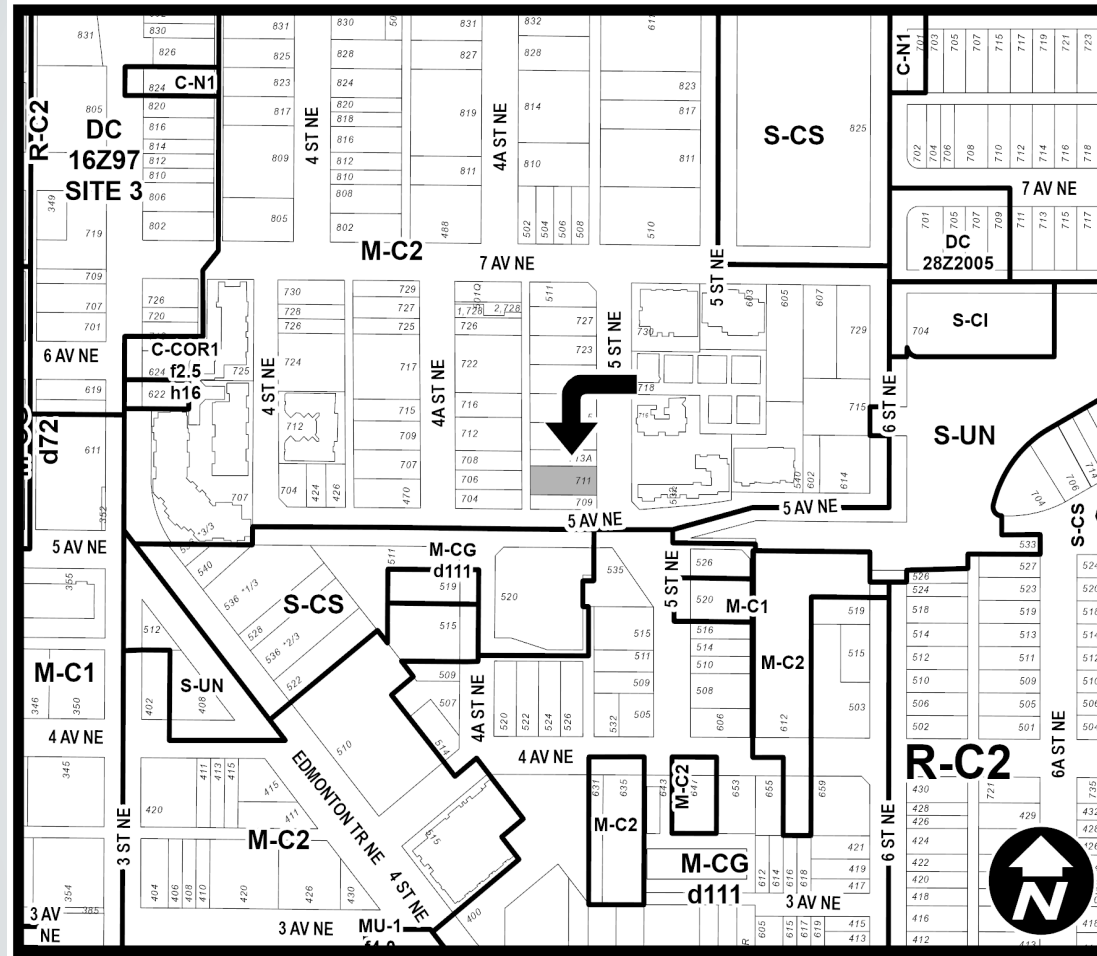
- Municipal Development Plan (Map 1): Identified as *Residential – Developed – Inner City* area
 - Encourage higher residential densities in areas of the community that are more extensively served by existing infrastructure, public facilities, and transit (Page 37, Section 2.2.5.c).
 - Inner city sites may intensify, particularly in transition zones adjacent to areas designated for higher density (i.e., Neighbourhood Main Streets) (Page 103, Section 3.5.2.a).

Applicable Legislation: North Hill Communities Local Area Plan



- North Hill Communities Local Area Plan (Map 3): Identified as *Neighbourhood Local* area
 - The Neighbourhood Local category is the most common category and is applied to the primarily residential areas of the North Hill Communities.
 - LAP does not contain any relevant policy specific to retaining walls.

Existing Land Use Map



Multi-Residential – Contextual Medium Profile (M-C2) District

- Is intended to apply to the Developed Area
- Provides for Multi-Residential Development in a variety of forms of medium height and medium density
- Is in close proximity to, or adjacent to, low density residential development

Applicable Legislation: Land Use Bylaw

Retaining Walls

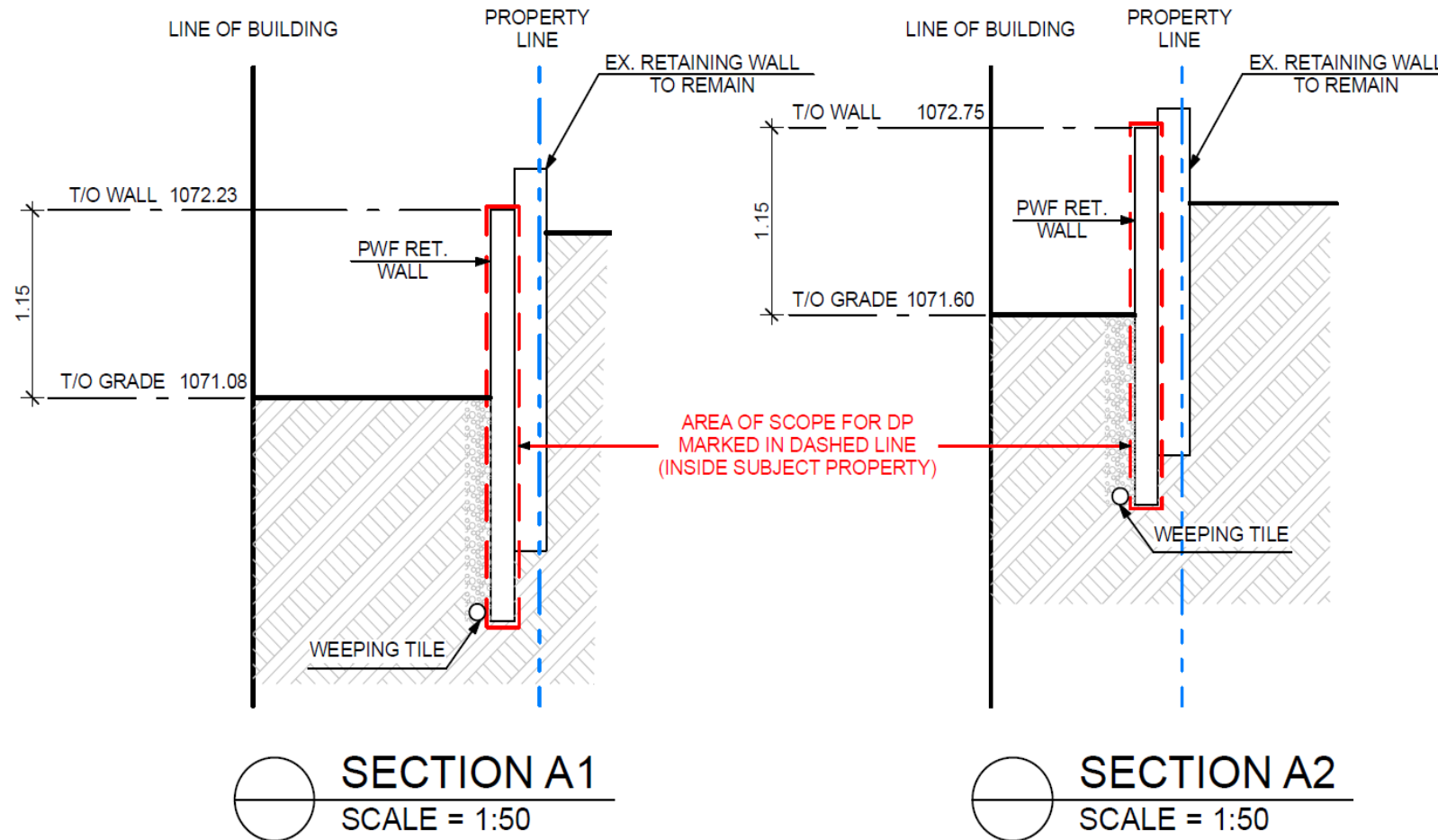
- 570 (1) A ***retaining wall*** must be less than 1.2 metres in height when measured from lowest ***grade*** at any point ***adjacent*** to the ***retaining wall*** to the highest ***grade*** retained by the ***retaining wall***:
- (a) in the case of a **Multi-Residential Development – Minor**; and
 - (b) for all other ***developments***, within 3.0 metres of a ***property line***.
- (2) A minimum horizontal separation of 1.0 metres must be maintained between ***retaining walls*** on a ***parcel***:
- (a) in the case of **Multi-Residential Development – Minor**; and
 - (b) for all other ***developments***, within 3.0 metres of a ***property line***.

Applicable Legislation: Land Use Bylaw (Relaxation)

Bylaw Discrepancies		
Regulation	Standard	Provided
570 Retaining Walls	<p>(2) A minimum horizontal separation of 1.00 metres must be maintained between retaining walls on a parcel:</p> <p>(b) within 3.0m of a property line.</p>	Plans indicate the proposed retaining wall has a horizontal separation of 0.00m (-1.0m) from an existing retaining wall located within 3.0m of the property line.

The full Bylaw check can be found on Pages 29-31 of the board report.

Plans (Page 34 of the Board Report)



Summary

In the opinion of the Development Authority the proposed development:

- Complies with Council direction set out in the *North Hill Communities Local Area Plan* and *Land Use Bylaw 1P2007*, with one relaxation; and
- Would not unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

Land Use Bylaw 1P2007

PART 1: INTERPRETATION OF THIS BYLAW

Division 2: Definitions and Methods

General Definitions

(121) "**retaining wall**" means a structure constructed to withstand lateral pressure in order to hold back earth, loose rock, or similar materials.

PART 2: ADMINISTRATION

Division 3: Development Permits

- (2) The following developments do not require a development permit if they are not located in the flood fringe or overland flow areas and the conditions of section 24 are met:
- (e) retaining walls that are less than 1.2 metres in height, measured from the lowest grade at any point adjacent to the retaining wall to the highest grade retained by the retaining wall;

PART 6: MULTI-RESIDENTIAL DISTRICTS

Division 1: General Rules for Multi-Residential Land Use Districts

Retaining Walls

- 570 (1) A retaining wall must be less than 1.2 metres in height when measured from lowest grade at any point adjacent to the retaining wall to the highest grade retained by the retaining wall:
- (a) in the case of a Multi-Residential Development – Minor; and
 - (b) for all other developments, within 3.0 metres of a property line.
- (2) A minimum horizontal separation of 1.0 metres must be maintained between retaining walls on a parcel:

- (a) in the case of Multi-Residential Development – Minor; and
- (b) for all other developments, within 3.0 metres of a property line.

16P2018



The City of Calgary
Planning and Development

Development Authority Response to Notice of Appeal

Appeal number: SDAB2021-0081

Development Permit: DP2021-6749

Address: 711 – 5 Street NE

Description: Changes to Site Plan: Multi-Residential
Development (retaining wall)

Land Use: Multi-Residential – Contextual Medium Profile (M-C2)
District

Community: Renfrew

DA Attendance: Yes

Use: Discretionary

Notice Posted: No

Objections: None received

Support: None received

Bylaw relaxations:

Regulation	Standard	Provided
570 Retaining Walls	(2) A min. horizontal separation of 1.0 m. must be maintained between retaining walls on a parcel: (b) within 3.0m of a property line.	Plans indicate the proposed retaining wall has a horizontal separation of 0.00m (-1.0m) from the existing retaining wall located within 3.0m from the property line.

Introduction

This document was prepared in response to an appeal (SDAB2021-0081) against the approval of an application for Changes to Site Plan: Multi-Residential Development (retaining wall) granted by the Development Authority on 2021 October 26. The Response to Notice of Appeal is intended to provide a summary of the proposal, applicable legislation, review process, rationale for any relaxations to Land Use Bylaw 1P2007 granted by the Development Authority, and directly respond to concerns raised by the Appellants.

Development Summary

A development permit application (DP2021-6749) was submitted by Marcel Design Studio on 2021 September 21 for Changes to Site Plan: Multi-Residential Development (retaining wall). The subject parcel is located at 711 – 5 Street NE in the community of Renfrew.

The site is designated as Multi-Residential – Contextual Medium Profile (M-C2) District which allows for Multi-Residential Development in a variety of forms at medium height and density. Without modifiers, the District allows for a maximum height of 16.0 metres and a maximum floor area ratio of 2.5. Surrounding land use districts in this area are predominantly M-C2.

The property is approximately 0.06 hectares in size with approximate dimensions of 15 metres wide by 36 metres deep. The property is currently under development (pursuant to DP2019-2146) for a four-unit multi-residential building with a detached garage. There is rear lane access to the site along the west property line.

The scope of the subject DP2021-6749 is to allow for a new retaining wall on the subject property. The scope of the application is limited to an area that is approximately 0.15 metres wide by 16.15 metres in length and is located approximately 0.1 metres south of the north property line which starts approximately 13.55 metres west of the property line to the east along 5 Street NE.

Applicable ARP, ASP or Design Brief

The application was evaluated with respect to applicable planning policies including:

- South Saskatchewan Regional Plan (Statutory – 2014)
- Municipal Development Plan (Statutory – 2009)
- North Hill Communities Local Area Plan (Statutory – 2021)
- Land Use Bylaw 1P2007

Comments on Relevant Planning Policies & Legislation

No policies were found to be relevant to the scope of the proposed Development Permit application; therefore, none of the existing planning policies or legislation were considered.

Additional Factors, Considerations, and Rationale for the Decision

An existing retaining wall is located on the property line shared by the subject parcel and the neighbouring property at 713A - 5 Street NE. As such, the retaining wall is partially owned by each landowner, and consent is required from both landowners to remove or repair it. The owner of the subject parcel mistakenly thought that the retaining wall was entirely on their property and this was shown on the plans for DP2019-2146. The applicant sought to remove the existing retaining wall and reconstruct another one in conjunction with their residential development; however, the owner of 713A would not provide permission to remove and replace it. Therefore, the landowner of the subject site proposed to build a new retaining wall next to the existing one, wholly on their own property. This was approved under the subject application DP2021-6749.

The proposed retaining wall would abut the existing retaining wall. The proposed wall would have a height of less than 1.2 metres, measured from the lowest grade at any point adjacent to the retaining wall to the highest grade retained by the retaining wall. Retaining walls less than 1.2 metres high and separated from another wall by more than 1.00 metres are an exempt development under Section 25(2)(e) of Land Use Bylaw 1P2007. However, because the proposed retaining wall is intended to be built less than one metre away from the existing retaining wall (i.e. zero-metre separation), it requires a relaxation under Section 570 of the Land Use Bylaw 1P2007, and therefore requires a development permit.

The Development Authority granted the relaxation because the new retaining wall does not raise any safety concerns and will be constructed pursuant to relevant standards. It is the opinion of the Development Authority that this is a reasonable development in compliance with policy that does not unduly interfere with adjacent properties.

Application Review Timeline

The review milestones (timeline) of the application process is summarized below:

- **September 21, 2021** – Application received by City
- **October 26, 2021** – Application Approved. No prior to release conditions.

- **October 26, 2021** – Conditions of Approval sent to Applicant.
- **November 10, 2021** – Applicant files appeal with SDAB.

Circulation and Notice Posting

During the circulation period, the following referees were circulated:

1. **Enmax** – responded with no objections on October 2, 2021.
2. **Ward Councillor** – responded with no objections on October 12, 2021.
3. **Renfrew Community Association** – no comments received.
4. **Notice Posting** – Notice posting was not required under Section 27 of Land Use Bylaw 1P2007.

Response to Reasons for Appeal

Appeal A: Marcel Design Studio Ltd / Rick Grol

This appeal is of Condition of Approval #6 which reads as follows:

“This approval is based on material submitted in conjunction with the application, and should any aspect of the use change to an extent that any objections are raised, the permit may be revoked.”

The first part of the appeal rationale relates to the appropriateness of the condition. The first claim is that the condition is ultra vires to the Municipal Government Act; however no rationale or elaboration is provided. The City has the power to enforce a Development Permit, so this claim is invalid.

The second claim is that the condition is inappropriate and ambiguous. Condition #6 makes a clear statement that the approval is based on the information as provided and that if a discrepancy is found, it is within the power of The City to revoke the Development Permit.

The last claim is that the clause is redundant with Section 43 of the Land Use Bylaw (LUB) and that enforcement and approval are separate functions of the Development Authority. The Development Authority objects to this line of reasoning as it is within City discretion to reinforce and repeat aspects of the LUB that are of particular relevance to an application. The condition also does not negate the separation of approval and enforcement functions, it explains how enforcement may come about.

The second part of the appeal rationale relates to the ability of the Development Authority to impose conditions on a Permitted Use. The Appellant refers to the retaining wall as a permitted use under Section 28 of the Land Use Bylaw (LUB). The Development Authority maintains that it is not. Retaining Wall is not a listed use under Section 28 of the LUB, it is an Exempt Development under LUB Section 25(e) when the height is less than 1.2 metres, which in this case it is. However, since the proposed retaining wall abuts an existing retaining wall, Section 570 Retaining Walls is not adhered to in the following manner:

- a. Plans indicate the proposed retaining wall has a horizontal separation of 0.00 m (-1.00 m) from the existing retaining wall on site.

Under LUB Section 24 (a), a development listed in Section 25 will only be exempt from the requirement to obtain a development permit if it complies with the rules of this Bylaw. The proposed retaining wall does not meet this condition. This application is proposing a change to the site plan of DP2019-2146, which was for Multi-Residential Development (1 building), Accessory Residential Building (garage). Since the current application is associated with that, the Development Permit for Changes to Site Plan is a *Discretionary with Relaxation(s)* application.

It is the opinion of the Development Authority that the appeal is based on inaccurate and misleading information and should be dismissed.

Appeal B: Peter Guo

This appeal is of the approval of the application and consists of three parts.

The first part pertains to the 'Safety implications of this construction'. The design of the retaining wall was evaluated, and no safety concerns were identified by City staff. The proposed retaining wall is of a height that is normally an exempt development under City Land Use Bylaw rules. The safety of construction is regulated by the building permit process and is not within the scope of an appeal of a Development Permit. The Development Authority believes this reason for appeal is invalid.

The second part pertains to 'Ambiguities over what will be constructed, which the Development Authority has not addressed'. The location and dimensions of the proposed retaining wall are shown on the approved plans. No ambiguities have been identified that would cause a safety concern or affect the use and enjoyment of the adjacent property. No specific ambiguities were identified in the appeal submission. The Development Authority believes this reason for appeal is invalid.

The third part pertains to 'Misrepresentations'. No misrepresentations have been identified by the Development Authority. Note that during the Development Completion Permit process, the adherence of actual site development to approved and released plans are evaluated by a Development Inspector. If misrepresentations are found, the Development Completion Permit may not be issued. Further clarity on the exact items covered by this one-word reason for appeal would be appreciated. The Development Authority believes this reason for appeal is invalid.

It is the opinion of the Development Authority that the appeal is based on speculation and an implausibly inflated estimation of development risk and should be dismissed.

Appeal Board rec'd: January 12, 2022
Submitted by: R. Grol, Agent for Appellant A / Applicant

Calgary Subdivision and Development Appeal Board

In the Matter of:

- (a) Appeal by Marcel Design Studio (c/o Alex Dobrin) against the Conditions of Approval of DP2021-6749 (Appeal A); and
- (b) Appeal by Peter Guo against the Development Authority's decision to approve Changes to Site Plan: Multi-Residential Development (retaining wall) at 711 5 Street NE (Appeal B).

SDAB2021-0081
DP2021-6749

Hearing: December 9, 2021
Adjourned to: January 20, 2022

SUBMISSIONS
of:

- (a) Marcel Design Studio Ltd., the Applicant; and
- (b) Westmount Projects Inc., the property owner

Date: January 11, 2022

Submitted by Rick Grol, Agent for the Applicant and property owner

SDAB2021-0081 ab Additional Submission

I. Introduction

1. The Applicant appealed to the Board permanent condition number 6 of development permit DP2021-6749 (Appeal A).
2. Mr. Peter Guo, who is the owner and resident at 713A 5 Street, appealed the Development Authority's approval of development permit DP2021-6749 for Changes to Site Plan: Multi-Residential Development (retaining wall) at 711 5 Street NE (Appeal B). The development is a permitted use with a required Bylaw relaxation respecting a retaining wall.
3. In the Land Use Bylaw 1P2007 (LUB) the subject property has the land use designation of M-C2 District. The subject property is located to the immediate south of the Appellant's property. The subject site is downhill from and below the grade of the Appellant's property. There is an uphill slope on 5 Street NE sloping north.
4. We assume that the Board, in accordance with its past practises, and the Board's typical hearing procedure, will hold a combined hearing for Appeal A and Appeal B, and will hear from the Development Authority (DA) first followed by the Appellant of Appeal B and then the Applicant and developer in response to Appeal B and who also address Appeal A. Further, that each party be requested to address Appeal A in their primary submission. Consequently, in this submission document we will address Appeal B first and then later Appeal A.
5. Notwithstanding the Applicant's appeal against the conditions of the permit (Appeal A), for ease of reference in this submission Mr. Peter Guo will be called "the Appellant" and the Applicant & property owners "the Respondents".
6. The Respondents agree with the reasons for the decision of the Development Authority (DA), which are outlined on pages 32-41 of the Board report.
7. The Respondents submit that in approving the proposed development the DA properly exercised its jurisdiction with respect to the development permit application and appropriately exercised its discretion in accordance with the LUB, in particular section 31 of the LUB.

II. Background

8. The subject application is for a revision/amendment to the site plan of DP2019-2146 that approved a Multi-Residential Development 9 (1 building) & Accessory Residential Building

(garage) at 711 5 Street NE in the community of Renfrew. The context of the site is indicated in photographs found on pages 22 - 25 of the Board report.

9. There is a history of several development permit approvals for the subject site. They are outlined below.

Facts

10. On April 2, 2015, the DA approved DP2014-3672 for a Multi-Residential Development (1 building, 4 units) and Accessory Residential Building (garage) at the site. By decision July 24, 2015, the Board allowed the appeal with respect to the approved development and overturned the DA's decision (SDAB2015-0053). [Appendix A]
11. On December 21, 2016, the DA approved DP2016-2899 for a Semi-detached Dwelling & Accessory Residential Building (garage) at the site. By decision SDAB2017-0008, May 23, 2017 the Board denied an appeal against the approval and upheld the DA's decision. [Appendix A] The development permit lapsed on May 23, 2019 and that development never proceeded.
12. On October 24, 2019, the DA approved DP2019-2146 for Multi-Residential Development (1 building – 4 dwelling units) and Accessory Residential Building (garage) at the site. No appeal was filed within the legislative appeal period and the DA released the development permit to the Applicant.
13. On July 2, 2021, the Appellant became the owner of the adjacent property 713A 5 Street NE, located to the immediate north of the subject site. The Appellant's property contains a Single Detached Dwelling.
14. The subject property was purchased by Westmount Projects Inc., a development company. The company became the registered property owner (on Title) on October 1, 2021. The company intended to construct the approved development in accordance with DP2019-2146. While the approved development had not commenced yet, the development permit was still a valid permit since issued permits run with the land.
15. On July 19, 2021, a Safety Codes Officer of The City of Calgary issued a partial Building Permit (BP2021-1109) for excavation and foundation work for the development approved under DP2019-2146 (the Multi-Residential Development). In accordance with the Building Permit the developer started excavation work on the site.
16. Subsequently, the Appellant filed complaints with the City regarding the undertaken excavation and construction work. A Development Inspector from The City of Calgary conducted a site inspection on July 29, 2021. Subsequently, by letter dated July 30, 2021 the DA (Rafal Chichowlas) suspended development permit DP2019-2146 pursuant to section 43(1)(a)&(b) of the LUB. [Appendix B] The DA determined that the application

contained a misrepresentation or facts that should have been disclosed at the time of the application. It came to the attention of the DA that the existing retaining wall along the northerly property shown on the development plans as being entirely located on the development parcel, is actually partially located on the property located at 713A 5 Street NE. In the same letter the DA advised the applicant that the DA will reinstate the development permit following approval of a new development permit application for changes to the site plan showing a retaining wall entirely on the subject development site.

17. The Respondents acknowledge that there is a civil dispute between the property owner of the site and the appellant about the retaining wall that runs along the northerly property line, the property line between 711 and 713A 5 Street NE.
18. On September 9, 2021, the Appellant filed an appeal (SDAB2021-0067) with the Board against the approval of development permit DP2019-2146. In his appeal the Appellant raised concerns about the suspension of the permit and enforcement issues with respect to the permit. [Appendix A]
19. On September 21, 2021, the Applicant submitted the subject development permit application (DP2021-6749) to the DA for Changes to Site Plan of DP2019-2146 that approved the proposed development.
20. On September 23, 2021, the DA advised the Applicant that the suspension of DP2019-2146 was lifted for the portion of the site not within the scope of DP2021-6749. [Appendix B]
21. By decision SDAB2021-0067, issued October 7, 2021, the Board struck the Appellant's appeal with respect to DP2019-2146, as the Board determined that it had no jurisdiction with respect to the appeal. [Appendix B]
22. On October 21, 2021, the DA approved development permit DP2021-6749 for "Changes to Site Plan: Multi-Residential Development (retaining wall)" at 711 5 Street NE.
23. On November 10, 2021, the Applicant filed an appeal against condition number 6 of the subject permit (Appeal A).
24. On November 25, 2021, the Appellant filed an appeal against the approval of the subject permit (Appeal B)

III. Reasons for the Appeal B

25. The Appellant in his notice of appeal submitted the following concerns: (1) Safety implications of the construction of the development; (2) Ambiguities over what will be constructed, which the DA has not addressed; and (3) Misrepresentation. In his written submission to the Board the appellant elaborated on the issues raised in his notice of appeal (pages 35 - 45 of the Board report).

26. The Applicant has provided a detailed response to the Appellant's subsequent submission comments. See the Applicant's submission letter to the Board which follows this Respondent's submission.

IV. Response to Appeal B

27. The Respondents acknowledge that there is a civil dispute between the property owner of the site and the appellant about the retaining wall that runs along the northerly property line, the property line between 711 and 713A 5 Street NE. Westmount Projects, the property owner, has tried to resolve the dispute about the retaining wall with the appellant, to no avail. The matter is currently before the Court of Queen's Bench.
28. Since the start of excavation of the site, the appellant and his spouse have aggressively objected to the developer's development activities on the site. They tried to interfere with contractors and trades working on site. The Appellant advised Westmount Projects' representative Mr. Stefano Piscitelli, the project manager, that he objected to the height of the approved multi-residential development as he would lose his views. He requested changes to the approved development and requested removal of the top storey of the building. Nonetheless, the Respondents tried to negotiate with the Appellant about the existing retaining wall that straddles the property line. At one time the Appellant was represented by Ms. Bonnie Anderson of Dentons Canada LLP. Ms. Anderson advised the property owner's legal counsel that she is no longer acting for the Appellant. Currently, the Appellant is not represented by legal counsel or an agent.
29. In his previous appeal to the Board the Appellant alleged that the DA approved DP2019-2146 under pretense of false information in violation of the LUB. Further, the Appellant alleged that the DA approved the permit without adequate information that is inconsistent with its internal processes, procedures and guidelines. In addition, in that appeal the Appellant raised that the DA's approval contradicted previous SDAB decisions on protection of mature trees on City land. In that regard the Appellant referenced the previous decisions SDAB2015-0053 and SDAB2017-0008 with respect to the site. He also referenced the suspension of the development permit.
30. As stated above, the Board struck the Appellant's appeal and in its decision SDAB2021-0067 at para 24 stated:

The Board agrees that the matter of suspension of the development permit and any actions resulting from this suspension are matters between the City of Calgary and the applicant/property developer who was originally awarded the development permit. Enforcement orders, if appealed by the applicant can be addressed by the Board, but development permit suspensions, reactivations, construction issues and other matters as may arise with respect to the ongoing

development are not issues for this Board can consider after a development permit has been released. [Appendix A]

31. Essentially the same issue is the case with the subject appeal. In essence the Appellant is trying to retroactively attack the approval of the subsisting development permit for the site. The Respondents submit that the issues raised by the Appellant in his current appeal before the Board are outside of the scope of the development permit application. The approved development permit that is the subject of the appellant's appeal is limited to Changes to the Site plan of development permit DP2019-2146. Neither the DA nor the Board has jurisdiction with respect to construction issues pertaining to a proposed development that has development approval with a valid development permit. These issues fall under the scope of the *Safety Codes Act*, RSA 2000, c S-1, as amended. Neither the DA nor the Board has jurisdiction with respect to Alberta Building Code Issues.
32. As stated above, regarding the facts pertaining to the site, the suspension of development permit DP2019-2146 has been lifted by the DA [Appendix B].
33. The retaining wall shown on the plans of the subject development permit in itself does not require a development permit. This retaining wall is less than 1.2 metres in height. Pursuant to section 25(2)(e) of the LUB retaining walls that are less than 1.2 metres in height, measured from the lowest grade at any point adjacent to the retaining wall to the highest grade retained by the retaining wall do not require a development permit. The only reason the applicant requires a new development permit is for the changes to the site plan of approved DP2019-46 pertaining to the retaining wall shown on the approved plans. Contrary to the Appellant's assertion, the Applicant and property owner are not modifying the existing retaining wall. While the property owner offered to remove that retaining wall and replace it with a new retaining wall for the benefit of both properties, the Appellant refused to accept that offer. Consequently, the property owner Westmount Projects decided to propose a new retaining wall entirely within its property.
34. The Respondents have cooperated with the Development Authority's direction to rectify the situation regarding the retaining wall through the submission of a new development permit application that is a revision to the Site Plan of the approved development permit.
35. Due to an oversight the Applicant relied on an old survey that did not clearly indicate the location of the retaining wall on the property line between the subject site and the appellant's property. The previous owner of the subject site obtained a Survey, dated March 11, 2019 for the purpose of redevelopment of the site. This survey clearly indicated that the subject retaining wall is on the property line and more or less straddles the property line. This retaining wall appears to have been constructed as part of the appellant's Single Detached Dwelling. The Appellant claims that the retaining wall is entirely within the Appellant's property. However, the 2019 survey by Element Land Surveys Inc. shows that the retaining wall encroaches into the subject site. [Appendix C] The appellant's photographic evidence contained in his submission on page 37 of the

Board report indicates that the footings of the existing retaining wall are encroaching on the subject site.

36. The Respondents submit that the only reason the Appellant can appeal the subject development permit approval is because the DA determined that a Bylaw relaxation is required. The subject development permit is a permitted use development with one Bylaw relaxation.
37. Pursuant to section 685(4) of the *Municipal Government Act*, RSA 2000 c-M-26, as amended (MGA or Act), 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 or the development permit was deemed to be refused under section 63.1(8).
38. Consequently, the DA and Board's jurisdiction regarding the subject application and appeal is limited to the required relaxation only.
39. It is important to note that section 35 of the LUB does not apply. This section only applies to discretionary use permit applications. It does not apply to permitted use development permit applications. While the subject application is a change of the site plan of an approved development permit for a Multi-Residential Development, which is a discretionary use under the LUB, that in and of itself doesn't make the subject application a discretionary use application. The application only applies to a change to a retaining wall configuration on a site plans. The subject wall is under 1.2 metres in height and pursuant to the LUB is exempt from a development permit. This is similar to a fence with a height of 2.0 metres or less which pursuant to the LUB does not require a development permit. We respectfully request that the Board keeps this in mind when determining the appeal.

Bylaw Relaxation

40. The development permit application requires a relaxation of section 570(2) of the LUB. Pursuant to section 570(2), a minimum horizontal separation of 1.0 metres must be maintained between retaining walls on a parcel: [... [(b) for all other developments within 3.0 metres of a property line. [Appendix D] The plans indicate the proposed retaining wall has a horizontal separation of 0.0 metre from the existing retaining wall located within 3.0 metres from the property line.
41. It is relevant to note that the Applicant measured the height of the soil to be retained from the grade of the Appellant's property and the finished grade of the proposed development on the subject site. The existing wall supports a small grade difference and has minimal value. The proposed height of the new wall will support not only the grade difference but also some of the existing retaining wall. There is no negative impact on the use and enjoyment of the Appellant's property.

Relaxation Test is met

42. The Respondents submit that the test for relaxation is met.
43. The required Bylaw relaxation does not negatively impact on the appellant's property or on the amenities of the neighbourhood. The Appellant has not sufficiently demonstrated that the relaxation adversely or materially interferes with the use and enjoyment of his property. The size or magnitude of relaxations/variances is not determinative; it is the context of relaxations and whether on its own the test is met. The subject development and Bylaw relaxation meet the test of section 31 of the LUB and section 687(3)(d) of the MGA, as the proposed development does not unduly interfere with the amenities of the neighbourhood, and does not materially interfere with or affect the use, value or enjoyment of neighbouring parcels of land.

V. Appeal A

44. The applicant appealed permanent condition number 6 of the development permit. This condition states:
 6. This approval is based on material submitted in conjunction with the application, and should any aspect of the use change to an extent that any objections are raised, the permit may be revoked.
45. The Respondent submits that the condition is *ultra vires* the MGA and LUB. The condition is inappropriate and ambiguous, as it is too open ended. The condition is prejudicial to the Applicant, developer and property owner. It assumes that the proposed development for the site will not commence in accordance with the issued development permit and will contravene the conditions of the permit. It also would yield power to a complainant about the permit, which is unfair and legally inappropriate.
46. The DA has sufficient enforcement powers under the MGA and section 43 of the LUB to deal with future enforcement issues. Section 43 limits the ability of the DA to cancel or suspend a development permit to specific grounds listed. Under the scheme of the Act and the LUB, and its operations, enforcement powers of DA are separate from the DA's decisions to approve a development permits.
47. The subject development is for changes to the site plan of an approved and issued permit. As noted above, the changes pertain to a retaining wall with a height of less than 1.2 metre, which is a permitted use under the LUB. Under the LUB, section 28 (regarding permitted uses), the DA is limited in imposing conditions to a permitted use permit to those that are specifically listen in section 28. The Alberta Court of Appeal in decision 274099 *Alberta Ltd. v. Sturgeon (Development Appeal Board)*, 1990 ABCA 333 (CanLII) held

that conditions on permitted uses ought to be kept to a minimum and need to be in accordance with the LUB. [See Appendix E]

48. The textbook Frederick A. Laux, Q.C., & Gwendolyn Stuart – Palmer, *Planning Law and Practice in Alberta* (4th ed., looseleaf), (Edmonton: Juriliber, 2019) cautions for the imposition of improper conditions on a permit for a permitted use. [Appendix F] With respect to a condition in a permit to revoke a permit if the applicant fails to comply with any terms and conditions of the permit Laux states on page 9-33 and 9-34: “This is of doubtful validity because the Act expressly provides that breach of the permit may be sanctioned by way of a stop order, or through prosecution.”
49. We respectfully request that the words “and should any aspect of the use change to an extent that any objections are raised, the permit may be revoked.” be deleted from the subject permit condition. Therefore the Respondents respectfully request that the Board amends the subject condition accordingly.

VI. Summary

50. It is the position of the respondents that:

- (a) The DA correctly applied section 31 of the LUB, which is the equivalent of section 687(3)(d) of the MGA; The Bylaw relaxation meets the test of section 31 and section 687(3)(d) of the MGA;
- (b) The approval of the development permit application is in accordance with the LUB and the approval is appropriate;
- (c) Appeal B is without merit and the use and enjoyment of the appellant’s property is not genuinely and materially affected by the proposed development permit application; and
- (d) Condition number 6 of the permit be amended accordingly.

VII. Conclusion

51. In conclusion, the Respondents agree with the DA’s approval of the subject development permit. In the Respondents’ opinion, the DA correctly applied the rules of the LUB.
52. We respectfully request that:

- (a) Appeal B be denied, and the Development Authority’s decision be upheld; and
- (b) Appeal A be allowed, and the development permit be issued as approved by the Development Authority with an amendment to permanent condition

number 6 by deleting the words “and should any aspect of the use change to an extent that any objections are raised, the permit may be revoked.”

Respectfully submitted on behalf of the Respondents,



Rick Grol, Agent for the Applicant and property owner

Encl.:

- Appendix A –SDAB Decisions
- Appendix B – Suspension letter
- Appendix C – Survey
- Appendix D – Excerpts LUB
- Appendix E – Case Law
- Appendix F – Excerpts Laux

APPENDIX A

SDAB decisions regarding the site

SDAB2021-0067

SDAB2017-0008

SDAB2015-0053

SDAB2021-0081 ab Additional Submission

Calgary Subdivision and Development Appeal Board
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CALGARY SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: 2021 CGYSDAB 67

Case Name: SDAB2021-0067 (Re)

File No: DP2019-2146

Appeal by: Peter Guo
Appeal against: Development Authority of The City of Calgary
Hearing date: October 1, 2021
Decision date: October 7, 2021
Board members: Bill Chomik, Presiding Officer

DECISION

SDAB2021-0081 ab Additional Submission

Description of Application:

1 The appeal before the Subdivision and Development Appeal Board was brought by Peter Guo.

2 On October 24, 2019, the Development Authority approved the application of Alex Dobrin – Marcel Design Studio for a New: Multi-Residential Development (1 building), Accessory Residential Building (garage) at 711 5 Street NE in the community of Renfrew. The property is owned by Hardev Banipal and has a land use designation of M-C2. The development is a discretionary use within the district.

Procedural History:

3 The hearing commenced on October 1, 2021 by video conference with consideration of jurisdictional and procedural issues. The hearing concluded on that same date.

Decision:

4 The appeal is struck. The Board has no jurisdiction to hear this appeal.

Submissions:

5 The Board received oral and/or written submissions from:

- a) Peter Guo, the appellant;
- b) Rick Grol, on behalf of the applicant; and
- c) Shannon Belvedere, on behalf of the Development Authority.

Preliminary Issue

6 The Board raised a preliminary issue regarding whether it had jurisdiction to hear the matter brought forward by the appellant.

Submission of the appellant

7 Peter Guo, the appellant, noted the length of time that has passed since the approval of the proposed development. However, Mr. Guo made further submissions in support of his appeal as follows:

8 The Development Authority approved the Development Plan (2019-2146) on the pretense of false information submitted by the developer. DP2019-2146 proposes to destroy an existing retaining wall that is currently attached to his house. He was not sure how the City did not catch this as it contradicts previous RPRs (2018 and 1998). The DP allows the Developer to rebuild this wall entirely outside of his property. In doing so, the City effectively transferred his property rights over to neighbouring developer. It does not seem right that the Development Authority could yield this kind of power over private properties.

9 Moreover, there are two previous appeal cases (SDAB2015-0053, SDAB2017-0008) on the same lot. In the hearings, precedent has been set by the previous owners of 711 that the retaining wall belongs to 713A. These facts are well documented.

10 The Development Authority approved the permit without adequate information that is inconsistent with its internal processes, procedures, and guidelines. Mr. Guo was shocked that a geotechnical report was not required in DP2019-2146. Given the history of attempts to build on this lot, one consistency is its geotechnical complexity, situated on one of the steepest hills in the city with elevation changes in both vectors of the lot. Previous applications had all required an extensive geotechnical study as per Section V of Design Guidelines for Subdivision Servicing.

11 This report was also applicable in the development of the lot to the north of 713A. But somehow, Yet, the Development Authority did not require a similar study for DP2019-2146, despite the application for a massive quadplex. In one aspect of the Developer's plan, the engineer assumed "stiff to very stiff soil" when the actual material is gravel. I believe this was omitted in error on behalf of the development authority as it did not require a proper geotechnical report to be completed by qualified engineers. The inconsistency shows the Development Authority did not follow its internal procedures and process in its evaluation.

12 The Development Authority's decision contradicted a previous SDAB decision on protection of mature trees on City land. As per appeal cases, SDAB2015-0053 and SDAB2017-0008 on the same lot, the Board ordered mature trees on City property in front the proposed development to be protected. However, the Development Authority approved the removal of these trees as part of DP2019-2146. This decision completely disregarded the spirit and principle delivered by the Board in previous appeal hearings. The inconsistency shows the Development Authority did not conduct proper due diligence in its review of DP2019-2146 in accordance with the Bylaw.

13 SDAB2021-2146 is currently suspended. The DP is approved, but neither released nor cancelled. Mr. Guo opined that this is a legally grey area which puts the community at risk. A City Inspector visited the site on July 30, 2021. Following the inspection, DP2019-2146 was suspended. Effectively, the City had recognized it had mistakenly approved misrepresentations on the proposal but failed to cancel the Development Permit. There is no clarity in our Bylaw on whether an appeal can be made when a permit is suspended / no longer released. Leaving this Development Permit as suspended creates a legally grey area.

14 The permit is approved, but not released, but also not cancelled. There is no precise language in the Bylaw to govern its implications. This creates significant risks for the health and safety of the community. Mr. Guo believed that had an appeal been made within the appeal window, this permit would have and should have been cancelled.

15 This appeal is outside of the 21-day appeal window after the DP's approval in October 2019. However, Mr. Guo asked consideration of the following:

- Mr. Guo had only taken possession of the adjacent property on July 2, 2021 to become an Affected Person(s);
- The information leading to the discovery of misrepresentation was not made available to him until mid-July 2021; and
- There are no clear indications in the Bylaw as to how the appeal window applies to permits that are suspended.

Submission of the Development Authority

16 Shannon Belvedere, on behalf of the Development Authority, submitted that the Board should not take jurisdiction on the enforcement steps that have been taken against this development.

17 She advised that it was up to the developer who was issued the suspension order to appeal and they did not. Now, it is unsuspended and being dealt with as an enforcement matter. However, the case law remains consistent that the only appellant in enforcement matters is the person most directly affected.

Submission of the applicant

18 Mr. Grol, on behalf of the applicant, agreed with Ms. Belvedere. He advised that it only came to light a few days before the hearing of 23 September that the Development Authority lifted the suspension of the development permit and that this was solely an enforcement issue.

19 He agreed that stop orders and enforcement issues cannot be appealed by affected neighbors. Only the applicant and the property owner are affected.

20 He submitted that this appeal is almost a year late. The development permit has been released and has been issued by the Development Authority.

21 Whilst Mr. Grol noted that construction has recently started, he advised that the developer has two years to commence the development.

22 He respectfully submitted that the Board has no jurisdiction and requested the appeal be struck.

Reasons:

23 The Board reviewed all evidence and arguments, written and oral, submitted by the parties and will focus on key evidence and arguments in outlining its reasons.

24 The Board agrees that the matter of suspension of the development permit and any actions resulting from this suspension are matters between the City of Calgary and the applicant/property developer who was originally awarded the development permit. Enforcement orders, if appealed by the applicant, can be addressed by this Board, but development permit suspensions, reactivations, construction issues and other matters as may arise with respect to the ongoing development are not issues for this Board can consider after a development permit has been released.

25 The Board notes that section 686 (1) of the MGA provides that a notice of appeal, containing reasons, must be filed within 21 days after the date on which the notice of issuance of the permit was given according to the Bylaw.

26 There was insufficient evidence to satisfy the Board that the Development Authority failed to issue notice of its decision in the ordinary course. The Board therefore finds that the appellant failed to file an appeal within the 21-day filing period as prescribed by section 686 of the MGA.

27 The Board finds, in accordance with the requirements of section 686(1) of the MGA, that it has no jurisdiction to hear the appeal.

Conclusion:

28 For the reasons set out above, the appeal is struck. The Board has no jurisdiction to hear this appeal.



Bill Chomik, Chair and Decision Writer
Subdivision and Development Appeal Board

Issued on this day the 7th of October 2021

Calgary Subdivision and Development Appeal Board
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CALGARY SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: 2017 CGYSDAB 8

Case Name: SDAB2017-0008 (Re)

File No: DP2016-2899

Appeals by: Barrie Robb and Edward Morgan

Appeal against: Development Authority of The City of Calgary

Hearing date: January 26, 2017; April 27, 2017

Decision date: May 23, 2017

Board members: Bill Chomik, Chair
Dale Hodges
Bob Merchant
Michael Meredith
Natasha Pashak

DECISION

Basis of Appeal:

This is an appeal from an approval by the Development Authority for a development permit made on the application of **Design House of Calgary** for a **new: semi-detached dwelling, accessory residential building (garage)** at 711 5 Street NE.

Description of Application:

The appeal before the Subdivision and Development Appeal Board (Board) deals with an approval by the Development Authority of a development permit application for a new semi-detached dwelling, accessory residential building (garage) at 711 5 Street NE. The property is located in the community of Renfrew and has a land use designation of Multi-Residential – Contextual Medium Profile (M-C2) District.

Adjournment:

The hearing commenced on January 26, 2017 with consideration of procedural issues. The Board adjourned the hearing to April 27, 2017 with the consent of all parties involved.

Preliminary Issue:

The Board dealt with the preliminary issue of whether or not the appeal filed by Edward Morgan was submitted within the legislated time period, as prescribed under the Municipal Government Act, R.S.A. 2000, c.M-26, as amended. Mr. Morgan confirmed that he had filed his appeal outside the legislated time period and agreed to present as an affected party instead of an appellant. The Board accepted Mr. Morgan's affected party status as he is the neighbor immediately to the south of the proposed development.

Hearing:

The Board heard verbal submissions from:

Barrie Robb, appellant, in favour of the appeal;
Edward Morgan, affected neighbour, in favour of the appeal;
Rodney Jenkins of Design House of Calgary Ltd, applicant, opposed to the appeal; and
Brian Pogany of Design House of Calgary Ltd, applicant, opposed to the appeal.

Summary of Evidence:

The Board Report forms part of the evidence presented to the Board. It contains the Development Authority's decision respecting the development permit application and the materials submitted by the Development Authority that pertain to the application.

The Board report further contains the notice(s) of appeal and the documents, materials or written submissions of the appellant(s), applicant and any other party to the appeal.

Development Authority's Submission

The Development Authority did not appear at the hearing. The Development Authority provided its Reasons for Approval for DP2016-2899 on Pages 10 – 13 of the Board Report, and provided its Conditions of Approval in Pages 14 – 19 of the Board Report.

Prior to the hearing, the Development Authority submitted a response to the appeal and referenced the reasons for approval of the development permit application. This response is provided below (edited).

Bylaw Discrepancies (Nov 24th Bylaw Check)		
Regulation	Standard	Provided
345 Accessory Residential Building	(6) The height of an Accessory Residential Building must not exceed: (b) 3.0 m at any eaveline, when measured from the finished floor of the building; and	Plans indicate the interior wall height of the accessory residential building as 3.1m (+0.1m).
342 Retaining Walls	A retaining wall must be less than 1.0m in height when measured from grade.	The proposed retaining wall along the south property line varies in height from 1.5m to 1.9m (+0.5m to +0.9m)

Applicable ARP, ASP or Design Brief:

- The Low Density Residential Housing Guidelines for Established Areas (Infill Guidelines)
- City of Calgary Slope Adaptive Development Policy and Guidelines (Slope Adaptive Guidelines)
- North Bow Design Brief
- North Bow Special Study

Additional Factors, Considerations and Rationale for the Decision:

- The parcel falls outside the boundary of the Bridgeland/Riverside Area Redevelopment Plan and outside of the Crescent Heights Area Redevelopment Plan.

- There is no area-specific statutory policy for this parcel. The Development Authority notes that the North Bow Design Brief and the North Bow Special Study apply to this area. When considering these policies, it must be noted that at the time they were written houses were a permitted use in the Development Control Bylaw of the time (Bylaw 8600). At that time new houses, even those in older areas, were exempt from the requirement of a Development Permit (section 5.4)). Although the policies for the area are not “frozen in time” to the date they were written, the Development Authority must still consider the context of the statements within these policies.
- The City of Calgary Slope Adaptive Development Policy and Guidelines (Slope Adaptive Guidelines) are a city-wide non-statutory policy adopted in 2009. Part 5.0 of the Slope Adaptive Guidelines indicates that the guidelines are applicable to areas with a slope of 20% or greater. Section 4.0 of the guidelines includes a definition of these slopes and indicates that slopes at an angle greater than 20% shall be defined in future Area Structure Plans. This area is not identified in an Area Structure Plan. Section 6.0 of the guidelines includes elements which should be considered when reviewing different developments based on the mechanisms in section 3.0. Section 3.0 of the guideline discusses various planning processes and applications; however, the only Development Permit process discussed is stripping and grading. This parcel is small and under section 25 of the Land Use Bylaw does not require a permit for stripping and grading.
- The Low Density Residential Housing Guidelines for Established Areas (Infill Guidelines) were significantly updated in 2008. Although the Slope Adaptive Guidelines were adopted after the Infill Guidelines the Development Authority has concluded that the Infill Guidelines are more specific to this development. The Development Authority further notes that the Infill Guidelines are more specific than the design or special area study.
- The Reasons for Approval Document includes a detailed analysis of this development in relation to the Infill Guidelines and outlines how the Development Authority feels this Semi-detached Development follows those guidelines and the rules of the Land Use Bylaw.

In Response to the Reasons for Appeal:

Drainage

- The Land Use Bylaw does not contain rules related to drainage. The Drainage Bylaw works in conjunction with the Lot Grading Bylaw and Community Standards Bylaw to ensure appropriate drainage on private properties. It is the property owner's responsibility to ensure their parcel is drained correctly in compliance with the City's various drainage bylaws.
- The Development Authority notes that the Lot Grading Bylaw requires a survey to be submitted once the development is occupied, thus confirming that the requirements

of the Lot Grading Bylaw have been met. Information related to drainage bylaws may be found on The City's website, Calgary.ca, or by contacting the general call centre at 3-1-1.

- As part of the review, the Development Authority gave careful consideration to the site layout, elevations and proposed grades. Based on the application material, specifically the height of the foundation, main floor, and geodetic datum points on the parcel, the Development Authority is confident that the site can be graded in a way that complies with the above noted drainage bylaws.

Rear Detached Garage

- Accessory Residential Buildings are a permitted use in this Land Use district. Generally speaking, they do not require a Development Permit; however due to the fact that this garage exceeds 75.0 square metres, they require a development permit. A further relaxation is required to accommodate their height.
- The minimum length for a garage driveway is 0.6 metres, there is no maximum length. As these garages access a public lane, there is an expectation that the driveways comply with City specifications.
- In this case, a longer (than typical) driveway is required in order to provide a driveway with an acceptable slope to comply with City specifications. These specifications are designed to ensure an average vehicle can navigate the transition from the lane to the garage.
- The Infill Guidelines suggest a detached garage should be at least 3.0 metres from the principle building. This garage is separated by over nine metres, triple the requirement.
- A height relaxation is required for this garage based on the fact that the maximum wall height of 3.0 metres is measured from the floor to the ceiling of the garage. Due to the slope of the parcel the garage floor is "stepped" thus following grade in a way ensuring it can be utilized by cars. This creates a "technical" relaxation of height where the garage floors step down. The relaxation of 0.1 metres is not significant, especially given the proximity and height of the garage on the adjacent parcel to the south.

Trees

- The trees at the front of the parcel are located within the City road right-of-way; therefore these trees are an off-site consideration. As an off-site consideration, conditions as set out in section 38 of the Land Use Bylaw could be imposed on these trees. A tree protection plan was circulated to Urban Forestry. The trees were not identified for removal and a tree protection plan was requested. Generally speaking, these trees appear to be healthy and should be protected. Any

nuisance relating to the trees are a pre-existing condition and are not specific to this development. As these trees age further, they may at some point need to be removed and potentially replaced. This can be managed through the City's Tree Protect Bylaw separate from this Development Permit process.

Appellant's Submission:

Barrie Robb, the Appellant, referred to photographs and read the materials submitted prior to the hearing, Pages 137 to 147 and Pages 156 to 161 of the Board Report, and material submitted at the hearing, Exhibit B Robb, in favour of the appeal.

Additionally, Mr. Robb, occasionally utilizing photographs of the neighbouring properties and streetscapes, stated the following,

The previous appeal, SDAB 2015-0053, is relevant as a reference in this decision since it involved a similar development on the same parcel.

Relevant sections of the current Land Use Bylaw 1P2007, particularly sections 35 and 36, must be considered in assessing the development in relation to how the development will affect neighbouring properties.

Relevant sections of the North Bow Design Brief and North Bow Special Study must be considered in assessing the development in relation to landscaping, massing and other negative impacts, as well as the need for the development to fit into the community.

The difference in elevation between the proposed development and the Appellant's property is the major issue of the Appellant's concern. The development should be terraced in a way that enables it to fit contextually within the surrounding buildings. The Slope Adaptive Guidelines are not being followed.

The design of the proposed development has been intensely oriented towards saving costs. The compatibility with the neighbourhood is paramount to the planning considerations, therefore cost should be irrelevant as a planning consideration.

The setback from the front of the property of the proposed development is approximately 2 metres less than any other development on the street.

The Applicant was requested (by Mr. Robb) to remove the two large trees in the front of the proposed development and terrace the land to match the elevation of the neighbouring parcels. This will eliminate drainage problems, and permit the whole proposed development to be lowered.

The Applicant was requested (by Mr. Robb) to provide a further setback from the front property line than currently proposed so as not to damage the trees' root systems which would, in turn, minimize the shadowing effect on his front property and provide a wider view to the southeast. This would also shift the garages closer to the rear lane, reducing shadowing in his back yard.

The driveway apron to the garages should be reduced from the currently proposed 2.8 metres to something in line with what most other properties have along that lane.

Upon questioning by the Board, Mr. Robb stated the following:

The North Bow Design Brief previously referenced is not a statutory plan.

Although the front setbacks to the residences of both his property and the proposed development look similar on the plans, his setback is measured from his front deck. His house is set back another 3 metres from the deck.

The garage of the proposed development will continue to partially block the view from his back deck (as does the current garage), but the garage will not impact the quality of life in his backyard.

All of his concerns would be alleviated if the entire proposed development were shifted westward, resulting in a larger front yard setback and shortened aprons to the garages off the rear lane.

There is an existing drainage issue at present but with the proposed development, the problem would be exacerbated.

He owns the retaining walls both to the north and to the south of his residence. These walls have enabled his property to be flat with no terraces required. He is amenable to having the retaining wall to the south of his residence removed and rebuilt as part of the proposed development.

Affected Persons' Submission:

Edward Morgan, an affected neighbor to the south of the proposed development, referred to photographs and read the materials submitted prior to the hearing, Pages 148 to 155 of the Board Report, in favour of the appeal.

Additionally Edward Morgan, occasionally using photographs and drawings, stated the following:

Relevant sections of the current Land Use Bylaw 1P2007, particularly section 36, must be considered in assessing the development in relation to how the development will affect neighbouring properties.

Due to its massing, the proposed development will cause shadowing onto neighbours' properties.

Construction of the proposed development's retaining wall will affect the enjoyment of his property. Because the retaining wall is going to be built on the property line

separating his parcel from the proposed development, he will be affected negatively by the construction of the retaining wall during the construction period.

The distance from the proposed retaining wall to the north face of his garage will restrict his access to the garage, utility device and stored items.

Upon questioning by the Board, Edward Morgan stated the following:

The neighbourhood contains a variety of different housing styles.

He owns the trees by the current retaining wall. These trees will have to be removed if the proposed development is built as planned.

The present retaining wall to the north and another retaining wall along the west property at the rear lane render the entire lot flat.

Although the proposed development is to the north of his property, shadowing is still a concern during the early morning and late afternoon times because of the height and proximity of the retaining wall.

Although his property is taller than the proposed development, the proposed development is a concern to him because of the tallness of the neighbouring structure as well as its large mass.

Applicant's Submission:

Rodney Jenkins and Brian Pogany, of Design House, the applicant, referred to photographs and read the materials submitted at the hearing, Exhibit R Jenkins, opposed to the appeal.

Additionally Mr. Jenkins and Mr. Pogany stated the following:

The land was redesigned from MC to R-C2.

The design objectives of the proposed development were to keep the height below the allowable height (3 feet lower than allowed), minimize relaxations, work with the topography of the existing lot (slope adaptive), keep the large trees at the front of the property (owner request), and make the development friendly to both neighbours.

Many of the issues brought forward against the proposed development are related to the grading of City land, the alleyway and the street that the applicant cannot change.

There are no relaxations for the proposed development and the proposed development adheres to all setback bylaws. The new design has less massing than the old 2015 plans.

For the south neighbouring parcel, the majority of the use and enjoyment of the south site is between the garage and the house. The proposed development does not provide any shadowing in that area of the south site.

For the neighbours to the north, the proposed development does not intrude on the privacy or use of the parcel in any form.

There are height differences both from the front to the back of the parcel and from side to side of the parcel. To accommodate these differences, terracing has been provided in both north/south and east/west directions. Due to the slopes in the area, many sites are terraced and many homes are tiered.

Each individual stall in the garage has been terraced and the garage has been placed as close to the laneway as allowable within the City's rules - 2.8 metres is the minimum length allowed to meet the City's rules.

The roof of the garage is flat and has been terraced to minimize the impact of massing and shadowing.

The new retaining wall on the south property line facing the south neighbour's property will be slightly lower (8 inches to 1 foot on average) than the existing retaining wall which will be removed. The existing retaining wall was built into the parcel of the proposed development to align with a utility pole in the back lane. The new retaining wall will follow the natural contours of the land as it exists today, and be built to follow the property line. It will be properly engineered to meet the City's requirements.

The Appellant's home is not slope adaptive and does not fit into the context of the neighbourhood as most houses on the block only have one retaining wall on the north side of their property.

The bylaw does not limit the retaining walls to 1 metres, but rather states that if a retaining wall is greater than 1 metre, it must be designed and inspected by an engineer.

Because the parcel slopes downward from west to east and north to south, all site drainage will flow over the City property and then onto the sidewalk downhill (southward). There will be no drainage onto the Appellant's property.

Upon questioning by the Board, the Rodney Jenkins and Brian Pogany stated the following:

The trees in the front of the proposed development are City trees. Because of these trees, the grading of the proposed development cannot be lowered.

The new retaining wall on the south property line will be lower than the existing retaining wall.

The City has requested the retaining wall on the south side in the front of the proposed development which currently sits on City property must be removed. However, as it is on City land it can only be replaced by the City. Grading will be adjusted in this location.

Pushing the proposed development back onto the property will affect the privacy of both north and south neighbours and additional shadowing of the Appellant's back yard will occur.

A completed copy of the retaining wall design disclosure statement was provided to the Development Authority.

The downspouts will be located so that storm water will flow towards the front of the house then onto the street from there.

Because of the steep grade at the front yard, generous space was allocated to the enclosed rear yard making it a safer place for children to play.

Pushing the garages back would require relaxations and causes practical issues because of the slope of the laneway.

The difference in elevation of the patios is 1.5 feet.

The grade will be lowered with the proposed development from what it is today.

The elevation of the proposed development is set at the lowest point it can be without potentially causing harm to the two trees at the front of the property. The City has requested that these City-owned trees remain.

Rebuttal:

During Rebuttal Mr. Robb stated the following:

New developments should fit in with the existing developments in the neighbourhood, so therefore terracing should occur on the proposed development.

The close proximity of the proposed development to the existing large trees at the front of the property will likely damage the trees' root systems.

He has many windows on the south elevation of his house; the proposed development will block his view, generally impacting the enjoyment of his property.

During Rebuttal Mr. Morgan stated the following:

The height of the proposed development is an issue.

There are several relaxations for the proposed development.

During Rebuttal Mr. Jenkins and Mr. Pogany stated the following:

There are no relaxations for the proposed development.

Decision:

In determining this appeal, the Board:

- Complied with the provincial legislation and land use policies, applicable statutory plans and, subject to variation by the Board, The City of Calgary Land Use Bylaw 1P2007, as amended, and all other relevant City of Calgary Bylaws;
- Had regard to the subdivision and development regulations;
- Considered all the relevant planning evidence presented at the hearing and the arguments made; and
- Considered the circumstances and merits of the application.

1. The appeal is denied and the decision of the Development Authority is upheld.

2. A development permit shall be issued.

Reasons:

1 The Board considered the written, verbal, and photographic evidence submitted, and notes that the appeal pertains to the Development Authority's approval of a development permit for a new, semi-detached dwelling with an accessory residential building (a garage) at 711 5 Street NE in the community of Renfrew. The application is for a discretionary use within a land use designation of M-C2.

Legislative Framework:

2 The Board has particular regard to the following sections of Land Use Bylaw 1P2007, among others:

- Part 2, Division 5, section 35
- Part 2, Division 5, section 36
- Part 5, Division 2, General Rules including sections 342 and 345
- Part 5, Division 11, R-CG
- Part 6, Division 1, General Rules
- Part 6, Division 4, M-C2

3 The Board has regard to the Municipal Government Act.

4 The Board has regard to the Low Density Residential Housing Guidelines for Established Communities (Infill Guidelines).

5 The Board has regard to the City of Calgary Slope Adaptive Development Policy and Guidelines (Slope Adaptive Guidelines).

6 The Board has regard to the North Bow Design Brief.

7 The Board has regard to the North Bow Special Study.

Analysis

8 The Board finds that the proposed development meets the requirements outlined in the Low Density Residential Housing Guidelines for Established Communities, City of Calgary Slope Adaptive Development Policy and Guidelines, the North Bow Design Brief and the North Bow Special Study.

9 Having regard to the merits of the application and sound planning principles, the Board, in keeping with section 35 of the Calgary Land Use Bylaw 1P2007, finds that the proposed development is compatible with the adjacent homes and neighbourhood, and is appropriate for the subject parcel.

10 Having regard to the merits of the application and sound planning principles, and in assessing the two relaxations being provided for the development, the Board, in keeping with section 687 (3) (d) (i) (A) (B) of the Municipal Government Act, finds that the proposed development would not unduly interfere with the amenities of the neighbourhood, nor materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land.

11 While the Board acknowledges that a previous appeal for a development on the same parcel had been allowed, the Board recognizes that there are revisions to the design which address concerns previously raised. The Board looks to the planning merits of this new application only, and makes its decision solely on the current application before it.

12 The Board finds that the proposed development fits well into the community in that its building envelope and mass (both residences and garages) fall substantially within the bylaw requirements, it utilizes the natural slope of the land as it currently exists as do a majority of the residences on the street, it protects existing trees that form part of the makeup of the streetscape, and it respects all mandated setback requirements.

13 Although the Appellant stated that there was insufficient terracing to the proposed development, the Board finds that there is sufficient terracing, particularly since the contours of the existing site are being retained. The Board finds that the proposed development successfully negotiates the elevation of the existing site from side to side, basically neither adding nor removing significant amounts of earth to achieve its outcome. The Board notes that although the Appellant argued for additional terracing within the proposed development, the Appellant's property, which is flat, does not provide any terracing further exacerbating the developer's ability to further terrace his site.

14 The Board places no weight to the Appellant's statements regarding alleged cost savings by the developer as the reason for the development as proposed and presented.

15 The Board does not support the Appellant's argument that the proposed development's front yard setback does not respect the general street alignment of the other residences. From the New Block Plan evidence presented, the Board finds that the proposed development aligns with the south neighbour's residence and then steps back in a consistent line to meet the north neighbour's residence (at the southeast corner of the front deck).

16 The Board supports the retention of the two existing large coniferous trees in the front yard of the proposed development and recognizes that the development has been designed in a manner to minimally impact the health of these trees, including establishing a building elevation at the lowest possible point.

17 The Board finds that the distance between the proposed residences and garages is generous, thus permitting sunshine to enter into the Appellant's property to a greater extent than currently exists due the presence of an existing garage (which will be removed as part of the development). To further reduce the impact of shadowing on the Appellant's property, the applicant has designed the roof of the proposed garages to be flat.

18 The Board supports the proposed setback of 2.8 metres for the garages, recognizing that this distance is necessary to practically negotiate access to and from the garages in strict accordance with specifications set out by the City.

19 The Appellant presented no compelling evidence that drainage from the proposed development would adversely affect his property, particularly since the subject parcel is downhill from the Appellant's property at the point where the front grade meets the City sidewalk. The Board accepts that the developer will, through the permitting processes required, ensure that storm water is managed in a manner consistent with City regulations.

20 The neighbour to the south, Mr. Morgan, stated that the proposed development would cause shadowing to his property. The Board does not accept this as the

proposed development is entirely to the north of Mr. Morgan's property. The south sun will continue to be present on Mr. Morgan's property in the same manner it does currently once the proposed development is completed. The massing of the proposed development is within the bylaw requirements and, although will be visible from the south property, will not impose any shadowing to the south.

21 Mr. Morgan stated that the construction of a new retaining wall to replace the old retaining wall will affect the use and enjoyment of his property. The Board recognizes that this may indeed be the case during the period of construction, but acknowledges that the developer has the right to construct this new retaining wall (which is lower than the current retaining wall) and the impact to Mr. Morgan will be limited to the time of construction only. The Board makes no comment on the potential damage to the landscaping on Mr. Morgan's property – this is a matter to be addressed between the parties.

22 The Board supports the two relaxations being applied to the development. The Board finds the accessory residential building's (the garage's) height infringement of 0.1 metre to be insignificant, and recognizes that the retaining wall to the south which replaces an existing retaining wall (at a slightly lower elevation when completed) is necessary in order to address the prevalent site conditions

Conclusion:

23 In reviewing and weighing all the evidence, the Board finds that the development permit application as presented warrants approval.

24 For the above reasons, the Board denies the appeal. A development permit will be issued.

Bill Chomik, Chair
Subdivision and Development Appeal Board

Issued on this 23rd day of May, 2017

Calgary Subdivision and Development Appeal Board
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CALGARY SUBDIVISION AND DEVELOPMENT APPEAL BOARD

Citation: 2015 CGYSDAB 053

Case Name: SDAB2015-0053 (Re)

File No: DP2014-3672

Appeals by: Michelle Colleton; and Barrie Robb

Appeal against: Development Authority of The City of Calgary

Hearing date: May 21, 2015 and June 11, 2015

Decision date: July 24, 2015

Board members: Jo Anne Atkins, Presiding Officer
John Attrell
Katherine Camarta
Jeff Gilmour
Dale Hodges
Michelle Pink

DECISION

Basis of appeal:

These are appeals from an approval by the Development Authority for a development permit made on the application of **Design House of Calgary** for a **new: multi-residential development (1 building, 4 units), accessory residential building (garage)** at 711 5 Street NE.

Description of Application:

The appeals before the Subdivision and Development Appeal Board (Board) deal with an approval by the Development Authority of a development permit application for a new multi-residential development (1 building, 4 units), accessory residential building (garage) at 711 5 Street NE. The property is located in the community of Renfrew and has a land use designation of Multi-Residential – Contextual Medium Profile (M-C2) District.

Adjournment:

On May 21, 2015 the hearing commenced with considerations of procedural issues. The Board adjourned the item to June 11, 2015 with the consent of all parties.

Hearing:

The Board heard verbal submissions from:

Andy Orr, representing the Development Authority;
Peter Clark of Christopher Davis Law, student-at-law, counsel for Michelle Colleton, an appellant, and Edward Morgan, in favour of the appeal;
Michelle Colleton, an appellant, and Edward Morgan, in favour of the appeal;
Barrie Robb, an appellant, and Jackie Robb, in favour of the appeal; and
Brian Pogany of Design House of Calgary, the applicant, opposed to the appeal.

Summary of Evidence:

The Board report forms part of the evidence presented to the Board. It contains the Development Authority's decision respecting the development permit application and the materials submitted by the Development Authority that pertain to the application.

The Board report further contains the notices of appeal and the documents, materials or written submissions of the appellants, applicant and any other party to the appeal.

Development Authority's Submission

At the hearing the Development Authority, represented by Mr. Andy Orr, presented exhibits including the report, viewgraphs, relaxation chart, and a power point presentation, including photographs. He submitted the following [unedited]:

The item being presented is an appeal of the Development Authority's decision to approve an application for a 4 unit multi-residential development located 711 5 Street NE, in the community of Renfrew. The subject parcel is designated M-C2 multi-residential contextual medium profile District, and this is a discretionary application. The adjacent land uses are single -detached dwellings to the north, south and west of the parcel. Fifth Street and apartments abuts the site to the east.

[Mr. Orr presented several photographs and described the context of the site.]

The site was notice posted and circulated to affected parties. Concerns were expressed about the building height and mass and the appropriateness of the design, in addition the challenges of building a new retaining wall. Due to the sloping nature of the parcel, the applicant as requested by urban development did provide a geotechnical design report. It is noted that in the purpose statement of this M-C2 land use District, it recognizes that it will typically have higher numbers of dwellings units than low density districts and provide for multi-residential developments in a variety of forms of a medium height including varied height and front setbacks that reflects the immediate context. In addition this land use does not have a density maximum, it is based on a Floor Area Ratio (FAR) maximum of 2.5 and this proposed FAR is 1.42 FAR, well under the maximum allowed by the Land Use Bylaw.

Site plan – The minimum 4.88m front setback line is indicated in red and is provided. The foot print has varied projection points and the development is actually further setback than the adjacent single detached dwelling to the south and in an appropriate setback context with the parcel to the north. There is an existing retaining wall on the north property line noted to be approx. 0.2 to 0.3m in height that is remaining and a new one to be added abutting the south property line contained with the parcel that varies from 1.4m to 2.16m in height. There is a 4 car garage accessed from the rear lane providing one vehicle stall for each unit and one visitor stall located on a parking pad.

Site plan/ landscaping – There is significant slope on the parcel from the front and side setbacks, with an approx. 3m grade change from the rear downwards towards the front setback, and 2.5m grade change along the 15 m front setback area, from the north to the south. Each unit has an at grade amenity area noted in yellow and the front and rear setbacks have a series of cedar mulch, coniferous trees, juniper and mugo pine shrub landscaping.

Streetscape - The streetscape shows the proposed 4 unit development with a traditional 4/12 pitched roof, abutted by single detached dwelling infill developments on either side that were constructed in Nov. 1986 for the left/south infill dwelling and Oct. 1995 for the north infill dwelling. The main floor is raised to accommodate the slope change on the parcel and the roof pitch and building projections help to reduce the appearance of building mass.

Front Elevation – The front elevation shows mix of two tones of stucco, asphalt shingles and manufactured stone accents create some visual variation and interest from the street. Note also the new retaining wall circled in yellow, near the south property line and existing retaining wall which appears to be inside the adjacent parcel to the north, near the north property line.

Rear Elevation – The rear elevation has very similar material treatment as well as upper level balconies noted in yellow, which are located internally on the floor away from the side setback area, projecting modestly beyond the bldg. footprint which makes them less imposing onto the adjacent single detached dwelling rear setback areas. The new retaining wall near the south property line and circled in red is also indicated.

Right / North Side Elevation – The material treatment is largely stucco with modest stone accents at the lower level. Note that the max. Height for this land use district is 16m, shown by the line in red. This elevation is approx. 11.3m in height. Only the south elevation at 12m and west elevation at 12.3m are over 12m in height which is well below the 16m height maximum. The roof is also pitched back from the front and rear facades which helps massing and circled in red all side windows have provided manufactured obscured glass to respect the adjacent dwellings privacy.

Left / South Side Elevation – On the left or south side elevation again you can see similar material treatments and obscured windows being provided and circled in red.

Floor plans – The left floor plan shows an undeveloped basement with a kitchen and family room on the main floor. There are two bedrooms on the upper level.

Floor plan (upper) – The master bedroom is on the upper third level, with each unit providing 3 bedrooms.

Accessory building detail – The accessory building is accessed from the rear lane and provides one stall per unit and visitor parking pad for a total of 5 stalls on site. Due to the slope of the parcel the building is sloped downward to accommodate access for each stall.

Accessory building floor plan– The floor plan shows the 4 parking stalls and garbage and recycling bins located internally.

Bylaw Relaxations

Section 553, Landscaped Area Relaxations – Multi-residential Development: Plans indicate 33.84 percent landscaping is provided. This is a deficiency of 3.16 percent which is in total an area of 17.60 square metres that requires a relaxation. The applicant amended the drawings to provide enhanced landscaping and due to the enclosure of the garbage bins into the garage larger accessory building was required. Placing the garbage bins outside would have compromised the visitor stall. Relaxation granted.

Section 551(3), Hard Surface Landscaping. Plans indicate 48.74 percent (+8.74 percent) hard landscaping provided. This is a relaxation of 8.74 percent which is in total an area of 17.99 square metres that requires a relaxation. Due to the access points to the site along the front, side and rear areas there is a significant amount of hard landscaping required and the extent of the relaxation was not considered unreasonable.

Section 570(1), Retaining Walls: Plans indicate the proposed retaining wall located near the south property line varies in height from 1.70 metres to 2.31 metres. This requires a relaxation of up to 1.31 metres (131 percent). This is necessary to accommodate the severe slope change on the parcel and based on the dimensions of the existing retaining wall on the parcel this proposed wall is similar in height to what is existing. Relaxation granted.

There is no ARP for this area, however there are general comments noted from the North Bow Design Brief which is a non-statutory document dating back to 1977 noting the need for design integration with appropriate massing and exterior finish and height. The North Bow Special Study which is another non-statutory document from 1979 notes redevelopment will be at a scale which respects the surrounding housing stock and streetscape. The MDP in section 1.3.3 (pages 1-7) encourages a variety of housing choices, walkable environments and intensification within existing communities in a sensitive manner (2.2.5).

[Mr. Orr showed photographs of the parcel and the street.]

Mr. Chairman, in conclusion the Development Authority felt the application was respectful of the Land Use Bylaw requiring reasonable relaxations well below the height and FAR maximums allowed in the district. Consequently the application was approved with the conditions noted in your report, and that concludes my presentation.

Upon questioning by the Board, Mr. Orr stated he was not sure why the south retaining wall was not flagged as the City prefers to see retaining walls removed from City property.

Appellants' Submissions

Mr. Peter Clark, legal counsel for the appellant, Michelle Colleton, and Edward Morgan, detailed his arguments in favour of the appeal (written submission contained in the Board report on pages 262-317). He requested the Board uphold the appeal and revoke the development permit for the following reasons.

He stated the Development Authority did not correctly consider section 35 of the Land Use Bylaw including sound planning principles, policies affecting the parcel, the purpose statements in the land use district, the access and transportation requirements, and vehicle circulation within the parcel. He stated that the proposed development is not compatible with adjacent development or the neighbourhood and is not appropriate for the site. Further, in his opinion, the proposed development does not conform with The City of Calgary Slope Adaptive Development Policy and Guidelines. The proposal attempts to replace the existing contours and slope of the parcel with a large flat terrace to expand the developable area which is in conflict with section 1.3.3 of the Slope Guidelines. The proposed development also conflicts with sections 1.3.9 and 1.3.11 of the Slope Guidelines which address minimizing the visual impact of retaining walls.

He further noted that the Proposed Location Criteria for Multi-Residential Infill, while developed for land use amendment applications, is instructive regarding the suitability of the proposed development for the site. The criteria encourages such developments to be located on a corner parcel and on a collector, or higher standard roadway on at least one frontage in order to mitigate interfaces between multi-family and low density development and traffic on local streets. This application does not fulfill the criteria.

He also raised the planning considerations in the Low Density Residential Housing Guidelines for Established Communities which recommend infill development be contextually sensitive in established communities by reducing massing and the contrast between newer, larger buildings and existing, smaller buildings. He stated that while the proposed building does not reach the maximum height allowed, the width and movement of the retaining wall will create a massing effect.

He stated the proposed development fails to comply with the purpose statements for the M-C2 District including section 595(f) which stipulates varied building height and setback areas are to reflect the immediate context. The proposed development infringes setbacks and could be lowered to adjust to the hillside context. Section 595(h) provides that M-C2 development is typically located at community nodes or transportation corridors and nodes, however, this development is not in close proximity to such nodes or corridors. Section 595(i) provides that outdoor space for social interaction is a purpose, however, this development provides only minimum outdoor space because the parcel is dominated by the building, garage, and hard landscaping. Section 595(j) provides that landscaping should complement the design of the development and help screen and buffer elements of the development that may have impacts on residents or nearby parcels. The proposed development seeks to move the existing retaining wall closer to the appellants' property to maximize the building envelope and provide viewing benefits for the occupants which may be their right, but if it requires a wall height relaxation, the test of 687 is not satisfied.

Mr. Clark went on to note the proposed visitor parking stall is undersized and requires a relaxation. It will be difficult to access and use due to the severe slope of the rear lane and the fact that a power pole blocks part of the stall. This will force visitors to park on 5 Street NE. If visitors do park in this stall, there is an increased risk of striking the power pole and triggering damage to the power supply and the appellants' property. As 5 Street NE is a narrow roadway with limited parking, there may be increased congestion on this street.

He noted that under section 36 of the Land Use Bylaw, the Development Authority has limited discretion to approve a development permit that does not comply with the Bylaw. He stated the proposed development requires significant relaxations that will materially interfere with or affect the use, enjoyment and value of the appellants' property. The reasons for this include (a) moving the existing retaining wall will reduce access to the north side of their property and reduce options for redeveloping their land; (b) the landscaping relaxations combined with the context of the hillside, size of the development, and lack of a buffer will create a massing effect; (c) the relaxation of the height of the retaining wall will create a massing effect; (d) the parking relaxation will likely create congestion, safety, and accessibility problems. Therefore, the proposed development is not contextually appropriate for the parcel and will adversely impact the appellants' use, enjoyment, and property value.

Mr. Edward Morgan and Ms. Michelle Colleton, one of the appellants, both of whom reside at 711 – 5 Street NE, presented photographs and spoke in favour of the appeal. They noted they live directly to the south of the site. They used the photographs to illustrate the impact on their property of moving the existing retaining wall to the property line. The planters with tall trees and mature vegetation will be replaced with a 2.3 metre concrete retaining wall which will have a negative impact on the enjoyment of their property as they cannot add landscaping to buffer the large, uniform wall face of concrete. The new wall will be too close to their house making it difficult and impractical to do repairs. The three storey building is a massive structure that will be significantly

higher than their property and will create overlooking and overshadowing problems. They also noted there is inadequate turning radius in the lane for vehicles to easily access the proposed garage and a power pole partially blocks the visitor stall.

Mr. Barrie Robb, one of the appellants, and Mrs. Jackie Robb, who reside at 713A – 5 Street NE, stated they are the adjacent property owners to the north of the site and they concur with and support the arguments presented by the other appellants, Mr. Morgan and Ms. Colleton. They believe the development does not fit with the existing context of the neighbourhood and that it will overpower the streetscape and be visually jarring. It will create massing and privacy issues. Despite the fact they are uphill from the site, the proposed development would be two metres higher than their house which would block the view of downtown from their south windows. It would tower over the other nearby properties and create privacy issues. The building could have been set lower on the lot and terraced to take advantage of the hill and reduce the impact. The elevation for the development should be measured from the lowest point on the lot as was enforced on the north and south adjacent properties which would require greater excavation into the hillside. The fact that the building has a walkout basement plus three storeys above creates the appearance of a four storey building from the street. Their home will be dwarfed between large developments to the south and the north creating a tunnel effect. They also objected to the front setback of 4 metres as all other homes on the west side of 5 Street are set back about 5.5 metres. This adds to the inconsistency with the streetscape.

They are concerned about drainage issues which may affect their property. The plans show the parcel to the south is approximately one metre higher than their lot to the north at the front of the property. As there is more cement than grass which is a relaxation of the landscaping requirements, this will add to the drainage problems.

They noted the proposed development extends over one metre past their house in the rear which creates massing and interferes with sunlight and destroys the views in their back yard and on their deck. They believe the proposed development which is to the south of their property will overshadow their house, yard, and deck which will negatively affect their garden and enjoyment of their property. They also noted the wall of the proposed garage will be constructed with cinder block which would create an unsightly blank wall on the property line. They would prefer flat roofs on the garage to minimize the massing and overshadowing. There would only be 2.5 metres of open space in the back to provide a view and the lack of landscaping would not provide any buffer between the properties. All of this will have a significant negative impact on their property.

They noted the retaining walls are a fundamental concern and the walls on both the north and south sides need to be engineered to ensure slope stability issues are properly addressed. They are unclear how the developer proposes to replace or preserve the integrity of the existing retaining wall between their properties. They would also ask that any damage be repaired at the sole cost of the developer. Terraces would eliminate the need for large retaining walls and would be more appropriate for the site.

They stated the design of the development makes it difficult to see the doors into the two back units as they are located in a small alcove midway along the side of the building. Also, it is not clear how pedestrian access from the lane will be addressed.

They believe the lack of a fence in the front setback area creates a safety and privacy issue due to the difference in height between the properties. They would prefer to see a fence built during construction for safety reasons. They are concerned about the minimal sideyard which will increase icing in the winter. They would prefer new trees to replace the existing spruce trees in the front.

They note the back lane is very narrow and steep and a utility pole obstructs access to the visitor's stall. Also, 5 Street is very steep and narrow and is very congested with parking on both sides of the street creating safety concerns especially in inclement weather. It is difficult for emergency vehicles to use this street. This development will contribute to serious parking and safety problems.

They are concerned that the plans contain many errors including orientation and elevations. They are also concerned with the lack of consultation as they have yet to meet the developer. There has been no effort by the developer to address their concerns and they believe the project should be redesigned.

In response to questioning by the Board, the appellants confirmed that the closest public transit is 3.5 blocks from the site. There is permit parking on the avenue but not on the street. The relaxation regarding hard landscaping could cause possible runoff to the property to the south. The appellants agreed the south retaining wall is on the subject site due to an agreement between previous owners many years ago. The existing mature vegetation and landscaping is what prevents massing but that will be lost with the relocation of the retaining wall.

Applicant's Submission

Mr. Brian Pogany of Design House of Calgary, the applicant, submitted the following in opposition to the appeal. He stated it is his belief the development is respectful of the neighbours and the streetscape. He stated the development complies with the required front setback and height and no relaxations were required for these items. The height of the development is 38 feet 6 inches on the north side and the neighbour's house on the north is 34 feet 3 inches high while the house to the south is 34 feet 7 inches in height. He noted the four-plex design fits within the M-C2 District and will provide a more affordable housing choice than a single family or semi-detached design. The units are being sold, not rented. He stated it fits within the context of the area as there is already a mix of multi-family apartment style dwellings along with single and semi-detached units. He stated they kept the development as low as possible and that terracing of the lot is not as easy as it would appear from the front.

He noted the width of the lane is 4.57 metres and most laneways are 6 metres. They are proposing to build the garage back from the lane to help with the turning radius and to help with drainage. He believes the visitor stall will work although it is tight and noted they have an approval from Enmax. He agreed that parking is limited on 5 Street, however, noted all developments contribute to this and they have provided the required one stall per unit plus one visitor stall. They do not want a flat roof but would be willing to change the roofline of the garage from a 4/12 pitch to a 3/12 pitch. He also noted there is pedestrian access from the lane as there is a sidewalk attached to the visitor parking pad.

The balconies for each unit are on the interior side of the bay windows which avoids privacy and overlooking issues. In addition, the windows on the north and south sides of the building will be made from obscured glass.

He agreed that the existing retaining wall on the south is on their property and there is no history on when it was built. The property owners want to have the full use of their fifty foot lot and they intend to replace the wall and keep the current grade. They would not be increasing the height of the wall at its maximum point. The small corrections to the wall as it moves south are to compensate for grade and the overall height is almost exactly the same. They intend to keep the existing retaining wall on the north side of the parcel and agree any damage would be their responsibility. They will endeavour to ensure any new retaining walls are built, designed, and engineered properly. The City of Calgary has accepted the Geotechnical Evaluation and Slope Stability Report prepared by McIntosh Lalani Engineering. The Design Site Servicing Plan is not part of the development permit process but will be prepared for the building permit stage. Drainage will be adequately addressed and water will be drained to the rear and front property lines.

He stated that due to the limited lot size of 50 X 120 feet and the severe slope of the lot, a large amenity space is not practical. He maintained that the landscaping does meet the bylaw requirements.

He further stated they had discussions with the previous property owner to the south but have not received any communications from the appellants.

In conclusion, they believe there are many merits to the proposed development, the design complements the neighbourhood, and it is appropriate for the site.

Upon questioning by the Board, the applicant confirmed that the lot slopes from the top right (NW) corner down to the bottom left (SE) corner. There is a three metre slope from north to south and a five to six metre slope diagonally from the NW to SE. He agreed the slope adaptive guidelines do apply to this site. A slope stability report was required and provided. For the two rear units the slope from side to side is minimal and they are normal at-grade units with three steps up to the rear units. They did not consider stepping down the building at the front because they wanted uniform construction to minimize building costs. He agreed the south units could be lowered

which would reduce the massing, however, because the house to the south is facing south the current proposal does not create overshadowing. He noted the rear units are identified from the street with signs on the fireplace cantilevers on the front units. The depth of the garage provides 18 feet 6 inches for vehicles and 3 feet 6 inches for recycling and garbage bins. The cinder block wall on the north side of the garage provides a fireproof barrier. Each unit has an independent amenity space which is a raised patio accessed from the doors and stairs. Concrete was chosen for landscaping as it is maintenance free. He agreed the visitor stall is less than the required 3 metre width as it is 2.95 metres wide. He agreed a fence or railing would be required on top of the retaining wall beside the visitor stall. They would be willing to obscure part of the bay window in the NW unit to prevent overlooking. They did not submit a shadow study as the Development Authority did not require one.

Affected Persons' Submissions

There were no verbal submissions from affected persons at the hearing. However, there were the comments from the Renfrew Community Association regarding the application which are included on pages 90-92 of the Board report. They were concerned about the height and massing, lack of amenity space and soft landscaping, replacement of the existing retaining wall, drainage problems, poor accessibility for visitor parking, and the major negative impact on the adjacent neighbours.

In addition there were letters from the adjacent property owner to the south, Ms. Gjoa Taylor, on pages 94-100 of the Board report, opposing the development for numerous reasons and outlining the negative effect it would have on her property. The Board notes that subsequent to this correspondence, the property was sold in November 2014 to the appellant Michelle Colleton and Edward Morgan.

Rebuttal

The Development Authority clarified that the east portion of the south retaining wall is located on City property but they did not require the applicant to remove the wall. The height of the retaining wall is similar to the existing wall and is in fact reduced at the rear. He noted this is a discretionary application and accessory buildings on a standalone basis are a permitted use. As noted on page 107 of the Board report, Enmax does not have any issues with the proposed development. There is no parking restriction in front of the site. There is no relaxation for front setback as 4.88 metres is provided. The power pole may have been missed by the Transportation Technician. The power pole is a problem and would have to be moved. A minimum width of 3 metres is required for the visitor stall and so a relaxation would be required. The Development Authority felt the landscaping relaxation was not excessive. He noted the Infill Guidelines do not apply to this application.

Ms. Colleton, Mr. Morgan and their counsel stated the development could be terraced to reduce the height of the main floor and comply with the Slope Guidelines in order to mitigate the massing impact and that the added cost is not a planning consideration.

They stated overshadowing is also a concern for the property owners to the south and the lack of a shadow study is a problem. The visitor parking stall is too small. The development does not fit the context of the neighbourhood. They acknowledge the Infill Guidelines do not apply to the site, however, the overall planning considerations for established communities and design principles are informative. This application maximizes lot coverage and is inappropriate for the site. The development does not meet the purpose statements in section 595 of the Land Use Bylaw. The Robbs are concerned with drainage running through the cinder block portion of the north retaining wall. They are also concerned with safety and privacy issues due to the absence of a fence between the properties and would prefer the garage to be moved away from the north property line.

The applicant stated if the visitor stall was moved to the north side of the garage it would create a more imposing wall for the south property. The retaining wall to the north is on the appellants' property so they are unable to change it. He agreed discussion was needed regarding the fence.

Decision:

In determining this appeal, the Board:

- Complied with the provincial legislation and land use policies, applicable statutory plans and, subject to variation by the Board, The City of Calgary Land Use Bylaw 1P2007, as amended, and all other relevant City of Calgary Bylaws;
- Had regard to the subdivision and development regulations;
- Considered all the relevant planning evidence presented at the hearing and the arguments made; and
- Considered the circumstances and merits of the application.

1. The appeal is allowed and the decision of the Development Authority is overturned.

2. The development permit is null and void.

Reasons:

1 The Board considered the written, verbal, and photographic evidence submitted, and notes that the appeal pertains to the Development Authority's approval of a development permit application for a new multi-residential development (1 building, 4 units) and accessory residential building (garage) at 711 5 Street NE. The property is located in the community of Renfrew and has a land use designation of Multi-Residential – Contextual Medium Profile (M-C2) District pursuant to Land Use Bylaw 1P2007.

Application

2 The application is for a new multi-residential development consisting of one building with four units and an accessory residential building (garage). The application requires relaxations of Land Use Bylaw 1P2007 for: (a) section 553 – landscaped area: 37 percent required, 33.84 percent provided, relaxation of 3.16 percent (17.60 square metres); (b) section 551(3) – hard surface landscaping: 40 percent maximum, 48.74 percent provided, relaxation of +8.74 percent (17.99 square metres); and (c) section 570(1) – retaining walls: 1.0 metre maximum, 1.70 to 2.31 metres provided, relaxation of up to 131 percent (1.31 metres).

Legislative Framework

3 The Board has particular regard to the following sections of Land Use Bylaw 1P2007 among others:

Section 35 states:

Discretionary Use Development Permit Application

35 When making a decision on a **development permit** for a **discretionary use** the **Development Authority** must take into account:

- (a) any plans and policies affecting the **parcel**;
- (b) the purpose statements in the applicable land use district;
- (c) the appropriateness of the location and **parcel** for the proposed **development**;
- (d) the compatibility and impact of the proposed **development** with respect to **adjacent development** and the neighbourhood;
- (e) the merits of the proposed **development**;
- (f) the servicing requirements;
- (g) access and transportation requirements;
- (h) vehicle and pedestrian circulation within the **parcel**;
- (i) the impact on the public transit system; and
- (j) sound planning principles.

Section 36 states:

Discretionary Use That Does Not Comply

- 36 The **Development Authority** may approve a **development permit** application for a **discretionary use** where the proposed **development** does not comply with all of the applicable requirements and rules of this Bylaw if in the opinion of the **Development Authority**:
- (a) the proposed **development** would not unduly interfere with the amenities of the neighbourhood or materially interfere with or affect the use, enjoyment or value of neighbouring properties; and
 - (b) the proposed **development** conforms with a **use** prescribed by this Bylaw for that land or **building**.

Section 551(3) states:

Specific Rules for Landscaped Areas

- 551 (3) The maximum **hard surfaced landscaped area** is:
- (a) 50.0 per cent of the required **landscaped area** for a **parcel** containing a **street-oriented multi-residential building**; and
 - (b) 40.0 per cent of the required **landscaped area**, in all other cases.

Section 553 states:

Landscaped Area Reductions – Multi-Residential Development

- 553 The minimum **landscaped area** of 40.0 per cent for **Multi-Residential Development** may be reduced by the three options as referenced in sections 554, 555 and 556 individually or in combination, to a total available reduction of 10.0 per cent of the area of a **parcel**.

Section 570(1) states:

Retaining Walls

- 570 (1) A **retaining wall** must be less than 1.0 metres in height, measured from lowest **grade** at any point next to the **retaining wall**:
- (a) in the case of a **Multi-Residential Development – Minor**; and
 - (b) for all other **developments**, within 3.0 metres of a **property**

line.

Section 595(f) states:

Purpose

595 The Multi-Residential – Contextual Medium Profile District:

- (a) is intended to apply to the ***Developed Area***;
- (b) has **Multi-Residential Development** that will typically have higher numbers of **Dwelling Units** and traffic generation than low density residential dwellings and the M-CG and M-C1 Districts;
- (c) provides for **Multi-Residential Development** in a variety of forms;
- (d) has **Multi-Residential Development** of medium height and medium ***density***;
- (e) has **Multi-Residential Development** where intensity is measured by floor area ratio to provide flexibility in ***building*** form and **Dwelling Unit** size and number;
- (f) allows for varied ***building height*** and ***front setback areas*** in a manner that reflects the immediate context;
- (g) is in close proximity to, or ***adjacent*** to, low density residential development;
- (h) is typically located at community nodes or transit and transportation corridors and nodes;
- (i) provides outdoor space for social interaction; and
- (j) provides landscaping to complement the design of the ***development*** and to help screen and buffer elements of the ***development*** that may have impacts on residents or nearby ***parcels***.

Section 597(1)(j) lists “Multi-residential Development” as a discretionary use in the M-C2 District.

Section 596(1)(a) lists “Accessory Residential Building” as a permitted use in the M-C2 District.

4 The Board further has regard to the Municipal Development Plan (MDP).

5 The Board has regard to the North Bow Design Brief. On page 12 it states, in part:

- Proper integration with the surrounding area by appropriate landscaping and design such as orientation, massing and exterior finish of buildings shall be ensured.
- The massing and height of new developments should not impose negative environmental impacts on the surrounding areas, e.g. effects of shadow.
- All garbage and storage areas are to be adequately provided and screened.

6 The Board also has regard to the North Bow Special Study. On page 14 it states, in part:

Redevelopment, where it is desirable, will be accommodated at a scale which respects the surrounding housing stock and streetscape. The quality and character of new development should reinforce the existing physical and demographic character of the area.

7 The Board has regard to The City of Calgary Slope Adaptive Development Policy and Guidelines (Slope Adaptive Guidelines).

Analysis

8 The Board acknowledges the written and oral submissions of all parties, including but not limited to the appellants, applicant, Development Authority, and affected parties. The Board considered all relevant evidence and arguments either in favour or against the application.

9 The Board reviewed the context of the proposed development, having regard to sound planning considerations, the merits of the application, the circumstances of the case, the evidence presented, and the arguments made by the parties.

10 The proposed development is a discretionary use. Therefore, pursuant to Land Use Bylaw 1P2007, the development permit application can either be granted or refused on the basis of sound planning considerations.

11 Pursuant to section 35 of Land Use Bylaw 1P2007, when making a decision on a development permit application for a discretionary use the Development Authority must take into account the things listed in subsections (a) through (j). Subsection (a) of this section lists the plans and policies affecting the parcel. Therefore, the North Bow Design Brief, North Bow Special Study, Slope Adaptive Guidelines, and other applicable policies must be taken into account by the Development Authority. In addition, the compatibility and impact of the proposed development with respect to adjacent development and the neighbourhood as well as the merits of the proposed development and sound planning principles, among other things, must be taken into account.

12 Although the appellants referenced the Low Density Residential Housing Guidelines for Established Communities (Infill Guidelines) the Board notes that the Infill Guidelines do not apply to multi-residential developments. Therefore this policy document is not relevant for the subject development permit application.

13 The Slope Adaptive Guidelines are a policy affecting the parcel, as the slope of the parcel exceeds 20 percent. Therefore these guidelines are a relevant consideration regarding a development permit application for a discretionary use development permit even though they are not a statutory plan binding on the Board pursuant to section 687 of the *Municipal Government Act*.

14 The Board recognizes that the steep slope of the site from rear to front and north to south presents significant challenges in developing the property.

15 The applicant stated the slope adaptive design of stepping the building was not considered in order to minimize the cost of construction. He also indicated terraced retaining walls were not considered due to the increased cost and reduction in the footprint of the building that would be required to accommodate the walls. The Board does not find this argument persuasive. The fact that compliance may increase the cost of a development does not impact the applicability of relevant policies. Planning matters can have financial impacts on businesses and individuals, but not all financial considerations are relevant planning considerations.

16 The Board, in weighing the evidence, finds that the Slope Adaptive Guidelines have not been followed sufficiently in this instance. In particular, the proposed development conflicts with section 1.3.3 which states “creating large flat terraces in order to expand the developable area is discouraged”. It also conflicts with section 1.3.7 which states “stepped building design and terraced retaining walls should be constructed to facilitate slope adaptation to the site.” In the Board’s opinion, the applicant has not adequately explored alternative design options and a more slope-adaptive design could have been used which would have lowered the main floor level and reduced the overall impact of height and mass on the street and adjacent properties.

17 While the North Bow Special Study and the North Bow Design Brief are non-statutory documents, they contain policies which provide guidance for the review of discretionary development permit applications. Therefore they are factors to be considered.

18 The North Bow Design Brief indicates that proper integration with the surrounding area by appropriate landscaping and design such as orientation, massing and exterior finish of buildings shall be ensured. The Design Brief also indicates the massing and height of new developments should not impose negative environmental impacts on the surrounding areas, e.g. effects of shadow. The North Bow Special Study further states that redevelopment, where it is desirable, will be accommodated at a scale which respects the surrounding housing stock and streetscape.

19 The Board takes into consideration the immediate context of the streetscape of 5 Street NE. The adjacent parcels both contain two storey single detached dwellings on 25 foot lots. There is also a vacant lot and another single detached dwelling further north on 5 Avenue. Across 5 Avenue to the east are multi-family developments. The purpose statement in section 595 of Land Use Bylaw 1P2007 states building height and front setback areas should reflect the immediate context. In the Board's opinion, while the development is compatible with the multi-family development on the east side of 5 Avenue, the height and mass is significantly greater than the homes on the west side of 5 Avenue and has a negative impact on the streetscape and the neighbours to the north and south of the site.

20 The proposed development and the slope conditions on the site create a partially exposed basement façade to the street, which adds effectively a fourth storey to the perceived height of the front building (although the basement under the Bylaw is not regarded as a "storey"). This results in an imposing front façade particularly on the south side of the building.

21 Even though the style of the proposed development, roof treatment, and use of exterior materials is well designed, it is apparent to the Board that the siting of the building on the parcel, the visual prominence, and the massing of the development on the whole is composed in such a manner that it dominates the streetscape rather than harmonizes with it.

22 In the Board's opinion the height and mass of the proposed development does not relate to the neighbourhood context and has a negative impact on adjacent properties. The three storey height in the rear and four storey height in the front, in conjunction with minimum side yard setbacks and the fact that the building depth extends beyond the neighbouring homes in both the front and the rear, presents an imposing mass in close proximity to the adjacent residential buildings which is not sensitive to the scale and form of the appellants' and other neighbouring homes.

23 In the Board's opinion, the massing of the development is significant and the landscaping is inadequate to properly integrate this development into the surrounding area. In the Board's view, the massing and height does impose a negative impact including overshadowing on the surrounding areas. The Board, based on the evidence, finds that the development is not of a scale that respects the adjacent neighbours and streetscape. Therefore, in the Board's opinion, the proposed development is not consistent with the policies of the Design Brief and Special Study.

24 The Board notes that the applicant has tried to maximize the building envelope for the development as much as possible. Relative to the adjacent homes, the proposed development is significantly larger and taller. In the Board's opinion the subject lot is too small for the subject development or there is too much development proposed for the parcel. Based on all of the evidence and aforementioned factors, the Board finds that the proposed development is not compatible with the streetscape and that it is not sensitive and responsive to the context of the adjacent homes and the streetscape.

25 The Board notes that the existing south retaining wall is not on the property line but encroaches onto the applicant's site. It is very unfortunate that existing mature vegetation and amenity space will be disturbed on the adjacent property, however, it is the property owner's right to rebuild a new retaining wall on the property line. A relaxation of section 570(1) of Land Use Bylaw 1P207 is required as the wall is over 1.0 metre in height. The relaxation required is significant as the wall varies in height from 1.70 to 2.31 metres, a relaxation of 131 per cent. The proposed wall is similar in height to the existing wall. Due to the steep slope from north to south and the height of the retaining wall there is a significant visual impact to the neighbour to the south.

26 The Slope Adaptive Guidelines recommend that the visual impact of retaining walls be minimized. Section 1.3.9 states "Retaining walls should avoid presenting large uniform wall faces through the use of tools such as screening, planting and/or textured materials." Section 1.3.11 states "In order to minimize the visual impact of expansive retaining structures, these structures should not be higher than 1.5 metres. Where additional retaining walls are required, the use of multiple stepped or terraced walls is encouraged to avoid tall flat surfaces that restrict views." The Board finds that the proposed retaining wall does not meet these sections of the Slope Adaptive Guidelines. The existing retaining wall and the proposed retaining wall have a significant massing effect on the neighbour to the south. The visual impact of the existing wall is buffered by mature vegetation, however, the proposed retaining wall will not be buffered which will increase the negative impact on the neighbouring appellants. The Board believes that in this situation, terracing portions of the retaining wall should have been considered.

27 With respect to overlooking and privacy issues, the Board finds that there is potential overlooking from the rear windows which should have been addressed. However, this is not determinative for the Board's decision.

28 The Board takes into consideration that the Renfrew Community Association expressed concerns regarding the proposed development respecting the height and massing, lack of amenity space and soft landscaping, replacement of the existing retaining wall, drainage problems, poor accessibility for visitor parking, and the major negative impact on the adjacent neighbours.

29 The Board finds the landscaping relaxations of Land Use Bylaw 1P2007 are significant. The combination of a 3.16 per cent relaxation in the minimum landscape area under section 553 and an 8.74 percent relaxation of the maximum hard surface landscape area under section 551(3) of the Bylaw results in deficient usable outdoor amenity space. This conflicts with the requirement for appropriate landscaping as outlined in the North Bow Design Brief. The purpose statement in section 595(i) of the Bylaw states development in the M-C2 District should provide outdoor space for social interaction and section 595(j) states development should provide landscaping to complement the design of the development and to help screen and buffer elements of the development that may have impacts on residents or nearby parcels. In the Board's

opinion, these sections of the Land Use Bylaw have not been adequately addressed. Therefore, in weighing the evidence, the Board finds that these relaxations are not appropriate having regard to sound planning considerations.

30 The Board notes that the visitor parking stall has obstructions on both sides and does not meet the minimum required width of 3 metres. Therefore, a relaxation of section 122 of Land Use Bylaw 1P2007 would be required. In addition, a power pole partially obstructs access to the visitor stall. The inadequate stall width and obstruction, combined with the narrow, steep lane access, greatly reduces the likelihood of visitors using the parking stall.

31 The Board accepts the verbal and photographic evidence presented that adjacent roadways are congested with parking being in high demand. In the Board's view, from a planning perspective, the relaxation for the one visitor stall has a negative impact on the neighbourhood and the adjacent properties, as visitors will more than likely be forced to park on the street. Therefore, the relaxation for the visitor parking stall does not meet the criteria of section 687(3)(d) of the *Municipal Government Act*.

32 The Board, in weighing the evidence, finds that the aforementioned relaxations are from a planning perspective substantial and would have an adverse impact on the use and enjoyment of the adjacent properties, and therefore these relaxations do not meet the criteria of section 687(3)(d) of the *Municipal Government Act*.

33 Accordingly, pursuant to section 687(3)(d) of the *Municipal Government Act*, the Board finds that the proposed development and required relaxations would unduly interfere with the amenities of the neighbourhood, or materially interfere with or affect the use or enjoyment of neighbouring parcels of land.

34 On the balance of all the evidence, the Board accepts the evidence of the appellants over the evidence the applicant and the Development Authority. The appellants provided compelling evidence of a planning rationale and arguments in support of their appeals.

35 In light of the above findings by the Board, it is not necessary to deal with the other issues raised by the appellants.

36 Having regard to the merits of the application, or lack thereof, and to sound planning considerations, the Board, based on the evidence and aforementioned factors, in keeping with section 35 of Land Use Bylaw 1P2007, finds that the proposed development is not compatible with the adjacent developments and the immediate neighbourhood. The Board based on planning rationale finds that the development as proposed is not appropriate for the site.

37 In reviewing and weighing all of the evidence, the Board thus finds that the application does not warrant approval.

Conclusion

38 For the above reasons the Board allows the appeal and overturns the decision of the Development Authority.

39 The development permit is null and void.

Jo Anne Atkins, Presiding Officer
Subdivision and Development Appeal Board

Issued on this 24th day of July, 2015

APPENDIX B

Letters DA regarding Suspension of Development Permit



July 30, 2021

Marcel Design Studio
14 Rossburn Cr SW
Calgary AB, T3C2N5
DELIVERED VIA EMAIL & REGISTERED MAIL

Re: DP2019-2146
New: Multi-Residential Development (1 building), Accessory Residential Building (garage)
Address: 711 5 St NE

Dear Mr. Dobrin

The above mentioned development permit, which was approved by the Development Authority on October 24, 2019, and released on June 21, 2021, has been suspended pursuant to Sections 43(1)(a) and 43(1)(b) of the City of Calgary Land Use Bylaw 1P2007. These sections of the Bylaw provide for the suspension of an approved development permit if it is determined that the application contained a misrepresentation, or that facts have not been disclosed which should have been at the time of consideration of the application.

Following a development inspection, it came to the attention of the Development Authority that the existing retaining wall shown on your development plans as being entirely located on the development parcel and being replaced with a new retaining wall, is actually partially located on the property located at 713A 5 ST NE Calgary, AB. Excavation of an existing retaining wall is development under the Land Use Bylaw, and requires the authorization of the owner of the property on which the development is taking place.

The Development Authority will reinstate your Development Permit following approval of a new development permit application for changes to site plan showing a retaining wall located entirely on your property, with the existing retaining wall being retained. In the alternative, the Development Authority will reinstate your Development Permit upon receiving written confirmation from the owner of the property located at 713A 5 ST NE Calgary, AB that you have their authorization to remove the existing retaining wall and replace it with a new retaining wall located entirely on your property.

Please contact Rafal Cichowlas at 587 228-1541 or email Rafal.Cichowlas@Calgary.ca with any questions and to discuss the above options.

This written notice is provided in accordance with Section 43(2) of Bylaw 1P2007.

Sincerely,

Rafal Cichowlas
Coordinator - South

Community Planning

- CC. Hardev Banipal, Owner
Melissa Senek, City of Calgary Law Department
David Serieska, City of Calgary Building Services
Chris Wolfe, City of Calgary Community Planning



September 23, 2021

Marcel Design Studio
14 Rossburn Cr Sw
DELIVERED VIA EMAIL & REGISTERED MAIL

Re: DP2019-2146
New: Multi-Residential Development (1 building), Accessory Residential Building (garage)
Address: 711 5 St NE

Dear Mr. Dobrin

Further to our letter dated July 30, 2021 communicating the enforcement action of suspension of DP2019-2146, and ongoing communications respecting same, we have now received a new development permit application for changes to site plans for the portion of the site that includes the existing retaining wall. Accordingly, the suspension of DP2019-2146 is now lifted for the portion of the site not within the scope of DP2021-6749.

Please note that by lifting the suspension, the Development Authority does not make any representations respecting the approval of DP2021-6749, and that a decision on DP2021-6749 will be made in the normal course. Proceeding with development under DP2019-2146 prior to obtaining approval of DP2021-6749 is at your risk.

Please contact Rafal Cichowlas at 587 228-1541 or email Rafal.Cichowlas@Calgary.ca with any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rafal Cichowlas".

Rafal Cichowlas
Coordinator - South
Community Planning

CC. Hardev Banipal, Owner
Melissa Senek, City of Calgary Law Department
David Serieska, City of Calgary Building Services
Chris Wolfe, City of Calgary Community Planning

APPENDIX C
Survey Element Land Surveys
March 11, 2019

SITE PLAN

LEGEND

ELEVATIONS ARE SHOWN THUS: \boxtimes = 1000.00 METRES. (GEODETIC)
DISTANCES ARE IN METRES AND DECIMALS THEREOF.
ELEVATIONS ARE REFERRED TO GEODETIC DATUM
AND ARE DERIVED FROM ASCMS 91793 AND 157990
ASCM 157990 IS HELD FOR VERTICAL POSITIONING.

THE FOLLOWING ABBREVIATIONS MAY APPEAR ON THIS PLAN:

- \times ----- denotes Calculation points
- \boxtimes ----- denotes Water Valve
- \diamond ----- denotes Gas Valve
- \blacklozenge ----- denotes Manhole
- \odot ----- denotes Tree
- \otimes ----- denotes Power Pole
- \triangle ----- denotes Sign
- denotes Light Standard
- X-X-X- denotes Fence
- G- denotes Gas Line
- P- denotes Power Line
- S- denotes Sanitary Line
- ST- denotes Storm Line
- T- denotes Telus Communication Line
- V- denotes Water Line
- - - - - denotes Utility Right of Way Line
- denotes Property Line
- denotes Door
- denotes Main Floor Windows
- denotes Second Floor Windows
- denotes Basement Floor Windows
- denotes Main Building
- denotes Detached Garage
- denotes Shed
- denotes Concrete or Asphalt
- denotes Wood
- denotes Roof

'Cant.' denotes Cantilevers
'Enc.' denotes Encroach(es)
'BW' denotes Back of Walkway
'BOW' denotes Bottom of Wall
'LOG' denotes Lip of Gutter
'MFE' denotes Main Floor Elevation
'Conc.' denotes Concrete
'Ret.' denotes Retaining
'BC' denotes Back of Curb
'TOW' denotes Top of Wall
'RPE' denotes Roof Peak Elevation

SCALE 1:200

LEGAL DESCRIPTION:

Lots 30 & 31
Block C
Plan 5386 L

MUNICIPAL ADDRESS:

711 5th Street N.E.
Calgary, Alberta

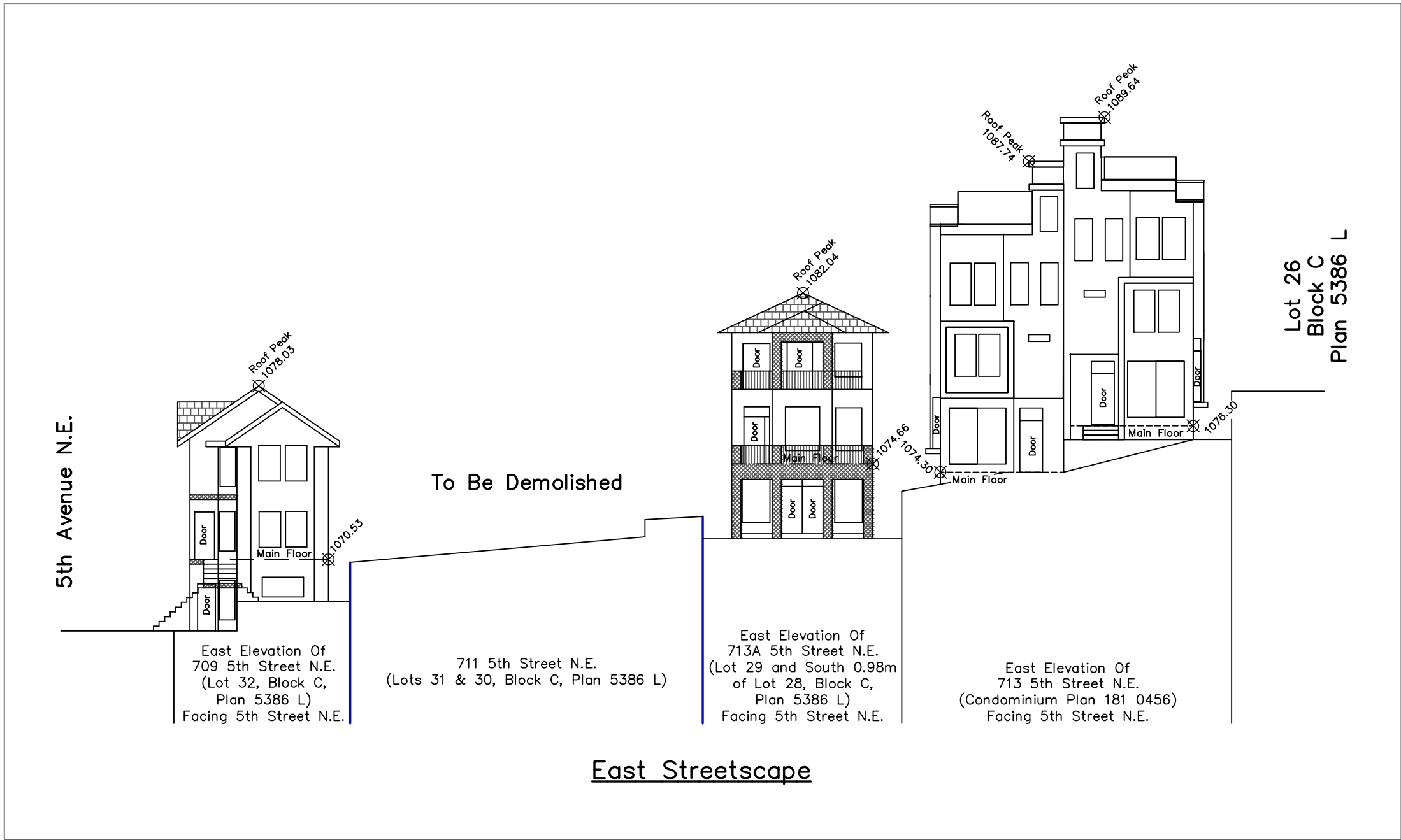
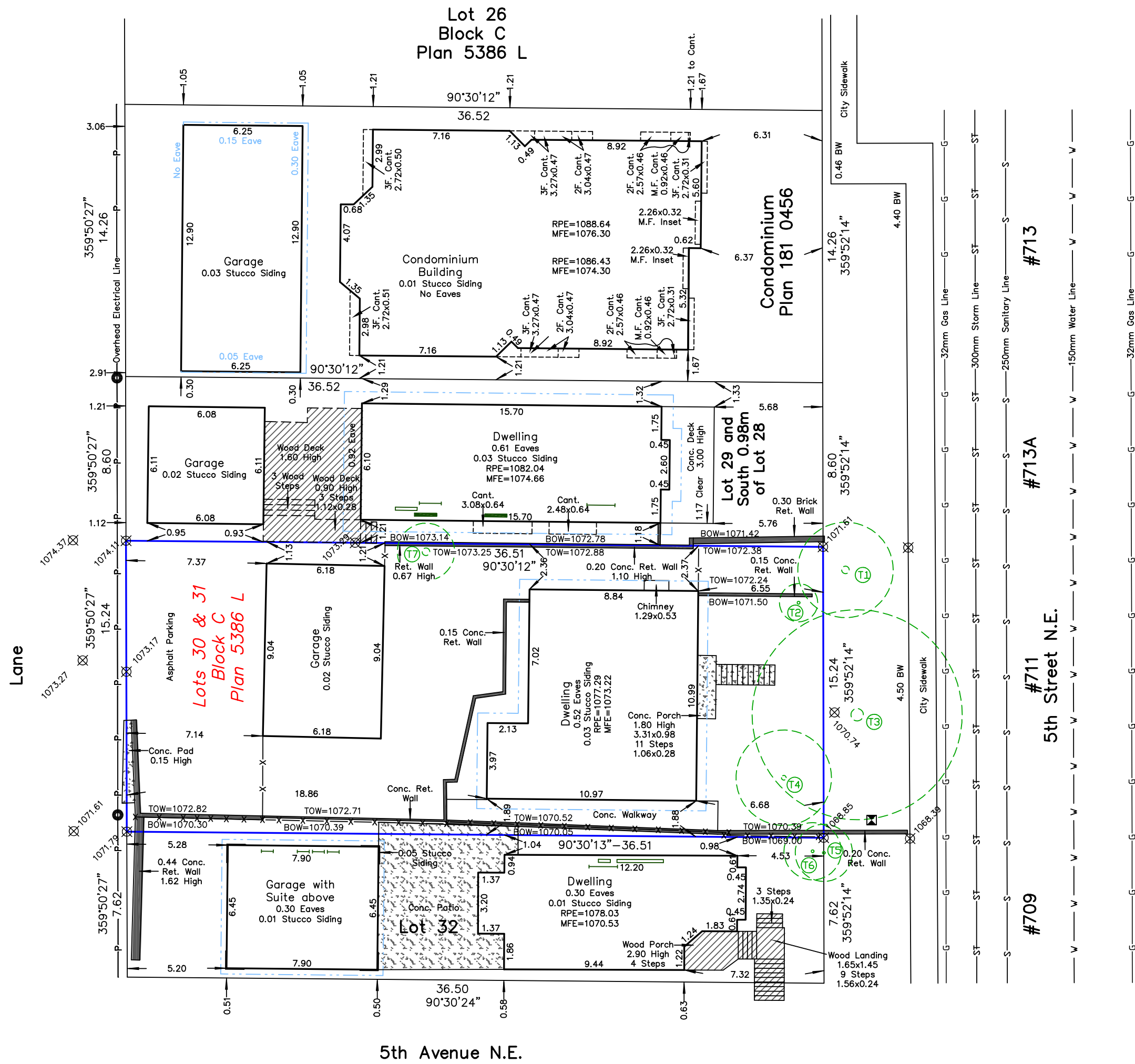
PREPARED FOR: Winter Green Homes
DATE OF SURVEY: November 8th, 2013 To
March 5th, 2019

NOTE:

Title information is based on the C. of T. 141 061 653
which was searched on the 1st day of March, 2019,
and is subject to the following instruments:

Mortgage No. 141 061 654
Caveat No. 141 061 655
Mortgage No. 181 082 375
Caveat No. 181 095 183
Caveat No. 181 214 372

All Utilities Are Taken From 'The City Of Calgary
Engineering Department' Drawing No. 251
In Section 22, Township 24, Range 1. W5thM.
Element Land Surveys accepts no responsibility for its
accuracy. It is the responsibility of the Developer and
Excavator to have all Utilities located by Alberta One Call
prior to conducting any excavation or ground disturbance.



TREE SCHEDULE

NO.	VARIETY	CALLIPER(±)	CANOPY(±)	HEIGHT(±)	LOCATION
T1	Species	0.40	8.00	14.00	In City Property
T2	Deciduous Tree	0.15	2.00	3.00	In Subject Property
T3	Species	0.65	11.00	16.00	In City Property
T4	Japanese Maple	0.25	5.00	5.00	In Subject Property
T5	Deciduous Tree	0.15	3.00	3.00	In Adjacent's Property
T6	Deciduous Tree	0.15	3.00	3.00	In Adjacent's Property
T7	Deciduous Tree	0.40	3.00	4.00	In Subject Property



Element Land Surveys Inc.
#203, 1201 5th Street S.W. Ph.: 286-7937
Calgary, Alberta T2R 0Y6 Fax: 247-0325

Surveyed: TB Drawn: WX
File No.: 190150 Date: Mar. 11, 2019

APPENDIX D
Excerpts Land Use Bylaw 1P2007

Division 2: Definitions and Methods

General Definitions

13 (1) In this Bylaw, the following terms have the following meanings.

(121) “**retaining wall**” means a structure constructed to withstand lateral pressure in order to hold back earth, loose rock, or similar materials.

Exempt Developments

- 25 (1) The following **developments** do not require a **development permit** if the conditions of section 24 are met:
- (2) The following **developments** do not require a **development permit** if they are not located in the **flood fringe** or **overland flow** areas and the conditions of section 24 are met:
- (e) **retaining walls** that are less than 1.2 metre in height, measured from the lowest **grade** at any point **adjacent** to the **retaining wall** to the highest **grade** retained by the **retaining wall**;

Division 4: Permitted Use Development Permit

Permitted Uses That Meet All Requirements

- 28 (1) Where a **development permit** application is for a **permitted use** in a **building** or on a **parcel** and the proposed **development** conforms to all of the applicable requirements and rules of this Bylaw, the **Development Authority** must approve the application and issue the **development permit**.
- (2) The **Development Authority** may, as a condition of issuing a **development permit** for a **permitted use**, require the applicant to construct or pay for the construction of the following that are necessary to serve the **development**:
- (a) public utilities, other than telecommunications systems or works; and
 - (b) vehicular and pedestrian access.
- (3) The **Development Authority** may, as a condition of issuing a **development permit** for a **permitted use**, impose conditions in respect of the following matters:
- (a) an environmental site assessment; and
 - (b) phasing of the **development**.
- (4) The **Development Authority** may, as a condition of issuing a **development permit** for a **permitted use**, require the applicant to enter into an agreement with the **City** to do any or all of the following:
- (a) to construct or pay for the construction of a public thoroughfare required to give access to the **development**;
 - (b) to construct or pay for the construction of:
 - (i) a pedestrian walkway system to serve the **development**; or
 - (ii) pedestrian walkways to connect the pedestrian walkway system serving the **development** with a pedestrian walkway system that serves or is proposed to serve an **adjacent development**; or
 - (iii) both (i) and (ii);
 - (c) to install or pay for installation of public utilities, other than telecommunications systems or works, that are necessary to serve the **development**;
 - (d) to construct or pay for the construction of:
 - (i) off-street or other parking facilities; and
 - (ii) loading and unloading facilities.

- (e) to pay an off-site levy or redevelopment levy; and
 - (f) to give security to ensure that the terms of the agreement under this section are carried out.
- (5) Where a **development** is located in the **floodway**, **flood fringe** or **overland flow** area, the **Development Authority** may, as a condition of issuing the **development permit**, require **building** or site design measures to mitigate the potential impact or obstruction of floodwaters.
- (6) Where a **development permit** application for a **permitted use** does not show that the **development** conforms to all of the applicable requirements and rules of this Bylaw, the **Development Authority** may, as a condition of issuing the **development permit**, require that the applicant amend specific elements of the plans to conform with the applicable requirements.
- (6.1) The **Development Authority** may, as a condition of issuing a **development permit** for a **permitted use** on a **parcel adjacent** to a **freight rail corridor**:
- (a) require additional information as necessary to mitigate the impact of a potential train derailment and noise impact associated with freight rail operations; and
 - (b) require the mitigations identified in subsection (a) to be incorporated into the **development** for the life of the **development**.
- (7) The **Development Authority** may require the fulfillment of the conditions referred to in this section before releasing the **development permit**.

Retaining Walls

- 570 (1) A **retaining wall** must be less than 1.2 metres in height when measured from the lowest **grade** at any point **adjacent** to the **retaining wall** to the highest grade retained by the **retaining wall**.
- (2) A minimum horizontal separation of 1.0 metres must be maintained between **retaining walls** on a **parcel**:
- (a) in the case of **Multi-Residential Development – Minor**; and
 - (b) for all other **developments**, within 3.0 metres of a **property line**.

APPENDIX E

Case Law

In the Court of Appeal of Alberta

Citation: 274099 Alberta Ltd. v. Sturgeon (Development Appeal Board), 1990 ABCA 333

Date: 19901123

Docket: 9003-0392-AC

Registry: Edmonton

Between:

274099 Alberta Ltd.

Appellant

- and -

**The Development Appeal Board of the Municipal District of Sturgeon No. 90
and the Municipal District of Sturgeon No. 90**

Respondents

The Court:

**The Honourable Mr. Justice Lieberman
The Honourable Mr. Justice Haddad
The Honourable Mr. Justice Irving**

Reasons for Judgment of the Court

COUNSEL:

K.D. Wakefield, Esq., for the Appellant

W.H. Hurlburt, Esq., Q.C., for the Respondents

MS. S.C. McNaughtan, for the Respondents

REASONS FOR JUDGMENT OF THE COURT

[1] The issue in this appeal concerns whether the respondent development appeal board erred in law or in jurisdiction in imposing certain conditions in a development permit which it issued to the appellant.

[2] This dispute has an unusual background. The appellant sought to develop its land in the Municipal District of Sturgeon as a public campground. The respondent's development officer refused a development permit, reasoning that the proposed use was not a permitted use under the By-law, but was only a discretionary use which ought to be refused. On appeal by the appellant, the development appeal board affirmed the decision of the development officer. The appellant then obtained leave to appeal to this Court which on the 28th day of February, 1990 allowed the appellant's appeal holding that the user proposed by the appellant - that of a public campground was a permitted use within the respondent's land use By-law. After allowing the appellant's appeal this Court then remitted the application to the development appeal board for further consideration.

[3] The development appeal board then received additional recommendations from its development officer and held further public hearings before deciding on April 12th, 1990 that the development permit sought by the appellant should be issued but subject to 16 conditions.

[4] The appellant disputes the jurisdiction of the development appeal board to attach any conditions to the development permit but on the hearing of this appeal has limited its argument to eight of the conditions which are said to be particularly onerous. The other were said to be of little concern to the appellant and are therefore not in issue before us.

[5] The eight conditions which are in issue before us are as follows:

1. The approval is issued for a public campground as outlined in the site plan of March 26, 1990 except that a gas bar, repair shop, store-concession, and boat launch are not approved.
7. Berms shall be constructed adjoining the northwesterly boundaries of Lots 1-7 inclusive, Lots 9 and 10 and the westerly boundaries of Lots 11-5 inclusive, Block 1, Plan 762-1624. Berms shall also be constructed adjoining the southeasterly boundary of the road known as Fairway Boulevard (as shown on Plans of Subdivision 832-0463 and 872-2373) and adjoining the northeasterly boundary of Lot 3, Plan 873-0463. All berms shall be constructed in accordance with the specifications attached as Schedule "A" hereto.
8. Trees shall be planted around the entire circumference of the development at no more than fifteen feet apart. In addition, a second row of trees shall be planted along the Starkey Road side of the development so they will be in a staggered pattern. All trees must be at least 5 feet in height and chosen from the following list:

White Spruce

Laurel Leaf Willow

Brandon Elm
 Green Ash
 Northwest Poplar
 Black Ash
 Golden Willow
 Scotch Pine
 Mayday
 Schubert Choke Cherry

At least fifty percent of the trees shall be coniferous. All trees are to be at the Developer's expense. The Developer shall submit a site plan showing landscape information prior to commencement of the project which shall be done in consultation with and to the satisfaction of the M.D. development officer.

9. A six foot chain link fence shall be constructed around the entire perimeter of the development. This shall be done in consultation with and to the satisfaction of the M.D. development officer.
10. The Developer shall ensure all campfires are within approved metal containers approved by the development officer, and limited to four campfire locations in the campground. This shall be done in consultation with and to the satisfaction of the M.D. development officer.
11. The Developer shall contribute to the Municipality one half of the costs of upgrading Starkey Road with acceleration and deceleration lanes.
14. The Developer shall ensure the group campsites, washrooms, laundry facilities and sani dumps are located not closer than one hundred and fifty metres from adjoining private lands.
15. The Developer shall provide to the Municipality an irrevocable letter of credit equal to the estimated values of the development, the terms of which are acceptable to the M.D. development officer.

[6] Before us the appellant urged several arguments, only one of which we need consider. It argues that since the public campground use was a permitted use under the land use By-law, that any conditions to such user must be stipulated by the By-law and not left to the discretion of the development officer or of the development appeal board.

[7] For its part the respondents rely on certain provisions of the land use By-law, viz:

SECTION 6. APPLICATION FOR A DEVELOPMENT PERMIT

- 2) The development Officer may require an application for a development permit to include a detailed landscaping plan in triplicate of the entire site to show grading, loading and parking areas, tree planting, or removal, grassed areas including location and species of shrubs and trees, playgrounds, and parks.
- 3) The development officer may require an irrevocable letter of credit from the developer to secure performance of any of the conditions of a development permit.
- 4) An application for development permit shall be considered by the development officer who shall
 - a) approve, with or without conditions, an application for a permitted use where the proposed development conforms to this By-law, or
 -
- 6) The development officer may impose such conditions on the approval of an application as, in his opinion are necessary
 - c) to ensure the orderly and economical development of land within the Municipality.
- 7) The development officer may require with respect to a development that, as a condition of issuing a development permit, the applicant enter into an agreement with the Municipal Council to construct, install or pay for any local improvements which will be needed to serve the development.

[8] Under section 27 of the respondent's By-law, the proposed use was a permitted one. Section 27 provided:

SECTION 27 DISTRICT REGULATIONS POTENTIAL WILDLIFE AND RECREATIONAL 1.

Permitted Uses	Discretionary Uses
1) Public Parks	1) Market garden
2) Public campground	2) Tree nursery
3) Public golf course	3) Home occupation
4) Public picnic ground	4) Private park
5) Cereal and forage crop raising	5) Private campground
6) Pasture	6) Private golf course
7) Single family residence and ancillary buildings	7) Marina
8) Livestock raising (extensive)	8) Such other recreational uses which in the opinion of the development officer, will

not have a restrictive effect upon the zone

2. Site Requirements

- a) The minimum parcel size shall be 32.4 ha (80 acres) except where:
 - i) (Deleted by By-law 428/82).
 - ii) the parcel to be created represents the first parcel to be subdivided from the quarter section and does not exceed 1 ha (2.47 acres) unless a greater area is required to include the shelterbelt;
 - iii) the parcel to be created is separated by natural boundaries or by surveyed rights-of-way.
- b) The minimum building setbacks shall be:
 - i) 45 m (150 ft) from the front property line;
 - ii) 45 m (150 ft) sideyard abutting a public roadway;
 - iii) 6 m (20 ft) sideyard not abutting a public roadway or 10% of the mean parcel width, whichever is lesser;
 - iv) 6 m (20 ft) from rear property line.
- c) No driveway shall be located closer than 100 m (330 ft) from the intersection of two municipal roadways.
- d) The minimum floor area of a single family residence shall be 70m² (750 sq. ft.).

[9] It is axiomatic that the land use By-law must reflect and conform to the relevant requirements of the *Planning Act*.

[10] The respondent municipal district urged that the conditions (other than condition no. 11) imposed by the Board were permitted by Section 6(6)(c) of the By-law

"to ensure the orderly and economic development of land"

and that condition 11 was properly imposed pursuant to s. 6(7).

[11] Section 69 of the *Planning Act* contemplates that land uses may be permitted or discretionary; s. 69(2)(d)(iv) contemplates that a development By-law will include provision for

"the conditions that are to be attached, or that the development officer is empowered to attach to a development permit either generally or with respect to a specific type of permit,"

[12] Section 71 requires the municipal council to "prescribe" (ray emphasis) in the By-law

"the one or more uses of land or buildings that are permitted in each district, with or without conditions,"

[13] Section 71(2) requires that the development officer, when considering an application for a permit for a permitted use, to issue the permit

"... if the application otherwise conforms to the land use by-law,"

[14] Section 77(1)(a) provides:

"77(1) A council may require with respect to a development that, as a condition of issuing a development permit, the applicant enter into an agreement to do all or any of the following:

(a) to construct or pay for the construction of a public roadway required to give access to the development;"

[15] Section 85(3)(a) requires that a development appeal board shall

"comply with ... any land use bylaw ... in effect."

[16] During argument, the appellant suggested that the magnitude of the conditions imposed by the Board, and the resultant costs of complying with them would effectively prevent any public campground development, and that the effect of the conditions changed the proposed use from a permitted use, to a discretionary use. While certainly some of the conditions imposed appear draconian, we hesitate to accept the suggestion that the conditions imposed were colorable, or done in bad faith to defeat the proposed project, and so allay the objections from neighbouring owners.

Condition No. 15

[17] Condition No. 15 - the requirement of a letter of credit flows from Section 6(3) of the By-law. However, there was simply no authority in the *Planning Act* enabling a provision permitting the municipal council to require such a bond. Accordingly, we find it to be *ultra vires*.

Condition No. 11

[18] This condition required the developer to pay the municipality one-half of the cost of upgrading Starkey Road with acceleration and de-acceleration lanes. Presumably the Board considered such lanes to be needed.

[19] Section 6(7) of the By-law permits the development officer to require the applicant for a development permit to enter into an agreement with the municipal council to pay for any local improvement which may be needed to serve the development.

[20] Section 77(1)(a) of the *Planning Act* permits the Council to require a developer, as a condition of issuing a development permit to enter into an agreement to construct or pay for the construction of a road required to give access to the development.

[21] The proper course to be followed in relation to condition 11 would be to refer this issue back to the Board which might, pursuant to s. 6(7) of the By-law, require the appellant developer to enter into a development agreement with the municipal district in relation to costs for increased roadway access if such is needed.

The Remaining Conditions

[22] In our view, the Council cannot delegate to the development officer, or to the development appeal board, the discretion purported to be given by sections 3, 4, and 6 of this By-law to impose whatever conditions he or it considers appropriate. The sections of the *Planning Act* quoted above clearly intend that the By-law will prescribe, with particularity, what conditions the development officer may impose. The omnibus powers of s. 6(6) (c) of the By-law, - i.e. the imposition by the development officer of conditions necessary;

"to ensure the orderly and economic development of land ..."

is an excessively broad delegation of the powers granted to the municipal council itself of prescribing, or providing for what conditions may be imposed on a permitted use of land.

[23] There is a common thread throughout the *Planning Act* which proscribes such an excessive delegation by the municipal district to its development officer. Section 69(2) provides that the By-law will "prescribe ... with or without conditions, the permitted uses of lands or buildings." Section 69(2)(d)(iv) requires that the By-law will:

"establish a method of making decisions on development permits ... including provision for the conditions ... that the development officer is empowered to attach ..."

[24] Section 71(1)(a) requires the council to "prescribe ... in the By-law ... the uses

"of land or buildings that are permitted ... with or without conditions ...".

[25] Section 71(2) is not consistent with such a delegation of discretion to the development officer, since he must issue the permit for a permitted use "if the application otherwise conforms to the land use by-law".

[26] The *Planning Act* does contemplate some discretion available to the development officer. Section 69(5) permits the land use By-law to authorize the development officer the discretion to issue a permit for a non-permitted development, which conforms with the permitted land use, and in appropriate circumstances.

[27] These provisions of the *Planning Act* demonstrates that the land use By-law must set out with particularity what conditions the development officer, or a development appeal board may impose. Such conditions, properly prescribed in the By-law, are *intra vires*. But an omnibus clause such as section 6(6)(c) which permits the development officer to impose conditions

"to ensure the orderly and economic development of land"

is an excessive delegation and *ultra vires*.

[28] It is clearly the intent of the *Planning Act* that an applicant for a permit will know from the land use By-law what conditions he may encounter in developing land for a permitted use. Any other interpretation would leave the applicant wishing to develop land for a permitted use at the mercy of the development officer (or the development appeal board), if he is entitled to impose whatever conditions seem fit to him, perhaps reacting to local opposition to the development.

[29] If, however, the sort of development proposed is so unusual as to require special and perhaps unique conditions applicable to it, then the municipality can readily arm itself and its development officer with appropriate discretion by providing that use to be discretionary rather than permitted.

[30] I do not suggest that a development officer or a development appeal board are left without any discretion.

[31] Laux, on Planning Law and Practice in Alberta (1990) comments at p. 154:

"The question is, what kind of conditions may a development officer attach to a development permit where the proposed development conforms to the use provisions and the development standards of the district in which the development is to be

effected? While the above-noted subsections seem to confer a substantial amount of discretion on a council to empower a development officer to impose conditions in respect of permitted use permits, they ought to be read in a limited way, lest they excessively detract from the fundamental principle underlying a permitted use. If too much scope is given to attaching conditions, the distinction between a permitted use and a discretionary use becomes blurred, and could even be eliminated. A clear example of a permissible condition for a permitted use is one requiring an applicant to provide or pay for certain specified municipal services necessary to serve the development. Similarly, a condition that a proposed development be modified to bring it into conformity with a particular development standard prescribed in the land use by-law would be equally inoffensive."

[32] The conditions in issue go far beyond what Laux suggests would be a permissible delegation to the development officer. Indeed, at least one of the conditions imposed (Condition 14) imposes set back and sideyard clearances (150 meters) much in excess set out in the governing section 27 of the By-law (up to 150').

[33] The conclusion is consistent with earlier decisions of this court in *Chrumka v. Calgary Development Appeal Board* (1981) 16 Alta. L.R. (2d) 328 at 334 to 336, and in *Furnival v. Calgary et al.* (1979) 10 Alta. L.R. (2d) 289 at 292.

[34] The respondent relied on *Figol v. Edmonton* (1969) 71 W.W.R. 321. However this case was considered in the context of much different provisions of the enabling statute, which gave the development appeal board a much wider discretion than the development officer; the development officer was then obliged to conform to the land use classification guide but the development appeal board was not; additionally the *Planning Act* then in force and considered in *Figol* permitted the Board, when considering an appeal, to "impose such conditions or limitations as it considers proper and desirable in the circumstances" which provision is no longer contained in the *Planning Act* and would be inconsistent with the duty of the Board of complying with the provisions of the land use By-law (s. 85(3)(a)).

[35] Section 27 of the By-law prescribed the regulations applicable to the permitted use - the public campground. There was no suggestion during argument of the appeal that the provisions of s. 27 would justify any of the conditions imposed.

[36] Accordingly we consider that none of the conditions in issue, with the possible exception of condition no. 11, were available to the respondent Board.

[37] Accordingly we conclude that the Board erred in jurisdiction in imposing the contested conditions other than condition 11. Condition 11 will be referred back to the Board

to consider whether a development agreement between the appellant and the Municipal District relating to road access is required. The appellant's appeal is allowed accordingly.

[38] The appellant will be entitled to costs of the appeal.

DATED at Edmonton, Alberta this
23rd day of November, A.D. 1990

APPENDIX

The *Planning Act*, Chapter P-9:

69(1) A land use By-law may prohibit or regulate and control the use and development of land and buildings within a municipality.

(2) A land use By-law shall

(a) divide the municipality into districts of the number and area the council considers appropriate;

(b) unless the district is designated as a direct control district pursuant to section 70, prescribe with respect to each district, in accordance with section 71 and with or without conditions,

(i) the permitted uses of land or buildings, or

(ii) the discretionary uses of land or buildings,

or both;

....

(d) establish a method of making decisions on applications for development permits and issuing development permits to persons for any development including provision for

....

(iv) the conditions that are to be attached, or that the development officer is empowered to attach, to a development permit either generally or with respect to a specific type of permit,

71(1) Subject to section 70, on the establishment of districts under a land use By-law, the council shall prescribe in the By-law

(a) the one or more uses of land or buildings that are permitted in each district, with or without conditions, or

(b) the one or more uses of land or buildings that may be permitted in each district in the discretion of a development officer with or without conditions,

or both.

(2) When a person applies for a development permit in respect of a development permitted by a land use Bylaw pursuant to subsection (1)(a), the development officer shall, if the application otherwise conforms to the land use By-law, issue a development permit.

(3) When a person applies for a development permit in respect of a development that may, in the discretion of a development officer, be permitted pursuant to subsection (1)(b), the development officer may issue a development permit.

85(1) At the public hearing referred to in section 84, the development appeal board shall hear

....

(3) In determining an appeal, the development appeal board

....

(b) 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;

By-Law 388/81

APPENDIX F

Excerpts

Frederick A. Laux, Q.C., & Gwendolyn Stuart - Palmer
Planning Law and Practice in Alberta

PLANNING LAW AND PRACTICE IN ALBERTA

FOURTH EDITION

**FREDERICK A. LAUX, Q.C.
GWENDOLYN STEWART-PALMER**

Juriliber

LAND USE DISTRICTS

§6.2(1)(a)

that a land use bylaw can provide for attaching "conditions" to a permitted use permit. Similarly, s. 640(2)(c)(iv) states that a bylaw may provide for "the conditions that are to be attached, or that the development authority may attach, to a development permit either generally or with respect to a specific type of permit." The question is: What kind of conditions may a development authority attach to a development permit where the proposed development conforms to the use provisions and the development standards of the district in which the development is to be effected?

While the above noted subsections seem to confer a substantial amount of discretion on a council to empower a development authority to impose conditions in permitted use permits, they ought to be read in a limited way lest they excessively detract from the fundamental principle underlying a permitted use; namely, one is entitled as of right to a permit if the rules are met. If too much scope is given to attaching conditions, the distinction between a permitted use and a discretionary use becomes blurred, and could even be eliminated.²⁶ A clear example of a permissible condition for a permitted use is one requiring an applicant to provide or pay for certain specified municipal services necessary to serve the development.²⁷ Similarly, a condition that a proposed development be modified to make it conform with a particular development standard prescribed in the land use bylaw would be equally inoffensive.

The matter of imposing conditions in development permits for permitted uses was discussed at some length in *274099 Alberta Ltd. v. Sturgeon (Municipal District No. 90) Development Appeal Board*.²⁸ In that case a development permit had been issued by the development appeal board for a permitted use, but subject to sixteen conditions. Most of the conditions were claimed to be supported under a general clause in the land use bylaw which provided that "the development officer²⁹ may impose such conditions on the approval of an application as are necessary to ensure orderly and economic development of

26 It is acknowledged that this may be an overly conservative point of view. A council has no obligation to label a particular use as a permitted use - it may designate any use as a discretionary use. A discretionary use, by its nature, imports even greater uncertainty as to the "rights" of an applicant for a permit than does a relatively broad power in the development authority to impose conditions in a permitted use development permit. Consequently, an applicant would likely feel less prejudiced if a condition is attached to his permit for a permitted use limiting his business hours of operation than if his proposed use were listed as a discretionary use and his application was refused outright because of his proposed hours of operation.

27 *Municipal Government Act*, ss. 650 and 651.

28 *274099 Alberta Ltd. v. Sturgeon No. 90 (Municipal District) Development Appeal Board* (Alta. C.A.), [1990] A.J. No. 1067, 75 D.L.R. (4th) 326, 112 A.R. 122, 3 M.P.L.R. (2d) 265, 24 A.C.W.S. (3d) 92.

29 The 1977 *Planning Act* used the term "development officer" to describe the person charged with the responsibility of processing development permit applications. Pt. 17 has substituted the words "development authority," thereby leaving it to municipalities to devise whatever titles they wish for persons charged with that task. The term development officer will likely continue to be used by most municipalities.

§6.2(1)(b)

LAND USE BYLAWS

land within the municipality". The Court of Appeal cited the provisions of the *Planning Act* to the effect that a land use bylaw may prescribe the conditions that may be imposed in development permits³⁰ and stated that the bylaw at issue failed to prescribe conditions. Instead, it improperly delegated the task to the development officer, leaving him with an unacceptably broad discretion. In particular, the court emphasized that an applicant is entitled to know from the bylaw what obstacles he may encounter in the form of conditions when applying for a permitted use permit. In short, the court was sympathetic to the proposition that if permitted uses were to be authorized in a land use bylaw, the entitlement should not be diminished by conferring excessive discretion on planning administrators in connection with conditions. ~~Indeed, the court stated that conditions on permitted uses ought to be kept to a minimum.~~

§6.2(1)(b) Discretionary Uses

As the name implies, these are the uses for which the issuance of a development permit is dependent on the exercise of discretion by the development authority.³² Unlike permitted uses, which were adjudged by council at the time of adopting the bylaw as being unquestionably appropriate for the district, the listed discretionary uses, while generally appropriate for the district, are those that are of such a nature that they may or may not be reasonably compatible with neighbouring uses, depending upon the circumstances. To illustrate, the use of part of one's home for the purpose of earning income from a trade or calling (usually called a "home occupation" use) in a district in which single family homes are the sole permitted use, is generally acknowledged to be appropriate, provided the use will not unreasonably detract from the amenities of the neighbourhood or otherwise unnecessarily interfere with the use, enjoyment and value of neighbouring properties.

Whether a particular home occupation use on a particular site meets the test will depend upon a variety of factors: the type of home occupation proposed, the amount of vehicular or pedestrian traffic the use will generate, the business hours, and the physical layout of streets and alleys in the neighbourhood, to name a few. A given home occupation may be appropriate on one site in the district but not on another. Accordingly, it is appropriate that the development authority be in a position, in its discretion, to permit or refuse

30 The provisions then in effect were essentially the same as the current subss. 640(2)(b) and (c)(iv) and 642.

31 Other cases considering the ability of development authorities to impose conditions on permitted uses include: *Civeo Canada Inc. v Wood Buffalo (Regional Municipality) Subdivision and Development Appeal Board*, 2016 ABCA 63, 2016 ABCA 63; *Grand Central Properties Inc. v. Cochrane (Town)*, 2013 ABCA 69, [2013] A.J. No. 636; and *Van Bezooeyen v. Cardston County (Subdivision and Development Appeal Board)*, [2011] A.J. No. 1021, 2011 ABCA 263, 7 C.L.R. (4th) 1, 2011 CarswellAlta 1638, 207 A.C.W.S. (3d) 149. See §9.7(3) for more a detailed examination of conditions respecting permitted uses.

32 *Municipal Government Act*, s. 642(2).

ATTACHING CONDITIONS TO A PERMIT

§9.7(2)

It is noteworthy that if conditions are imposed in a development permit, including a condition that a development agreement be entered into, it is not open to the municipality to impose further conditions in the agreement that either conflict with or are not contemplated in the permit approval.¹²⁴

§9.7(2) Conditions in a Discretionary Use Permit

It is clear that the Act contemplates that a bylaw may delegate a much broader power to attach conditions to permits for discretionary uses than to permits for permitted uses.¹²⁵ Even though an application for a discretionary use meets all of the bylaw's development standards, the application can be refused by the development authority if it has a sound planning basis for concluding that the use is inappropriate. It follows that the development authority is entitled to allow the development conditional upon the applicant doing such things, or making such modifications to its plans, as the development authority considers appropriate to meet the planning concerns that might otherwise result in a legitimate refusal. In other words, conditions can properly be imposed in discretionary use permits so as to require the applicant to go beyond the development standards provided for in the bylaw. Consequently, development standards should be viewed as minimums only in respect of discretionary uses.¹²⁶

§9.7(3) Conditions in a Permitted Use Permit

The situation is considerably different for permitted use applications. The Act anticipates that an applicant has the right to a permit for a permitted use where the development conforms with all of the land use bylaw's requirements. Hence, it would be improper for the development authority to impose conditions on a permit that would require the applicant to do things that are beyond the requirements of the development standards set out in the bylaw.¹²⁷ This may be so even if the land use bylaw purports to confer such a power.

¹²⁴ *Starland (Municipal District) No. 47 v. Hutterian Brethren Church of Starland* (1996), 32 M.P.O.R. (2d) 15 (sub nom. *Hutterian Brethren Church of Starland v. Starland No. 47 (Municipal District)*) (1996), 182 A.R. 373 (Q.B.).

¹²⁵ *Burnco Rock Products Ltd. v. Rocky View (Municipal District)* (2000), 11 M.P.L.R. (3d) 109, 80 Alta. L.R. (3d) 24, 261 A.R. 148, 225 W.A.C. 148 (C.A.).

¹²⁶ A condition requiring a convenience store to remain closed between certain hours to reduce its impact on a residential neighbourhood and a condition limiting the height of a building to three stories, rather than the authorized five, to conserve light, air and view for nearby buildings are examples of proper conditions where attached in respect of discretionary uses. In *Burnco Rock Products Ltd. v. Rocky View (Municipal District)*, *ibid.*, a condition imposing days of operation of a sand and gravel mining operation was upheld.

¹²⁷ *274099 Alberta Ltd. v. Sturgeon No. 90 (Municipal District) Development Appeal Board* (Alta. C.A.), [1990] A.J. No. 1067, 75 D.L.R. (4th) 326, 112 A.R. 122, 3 M.P.L.R. (2d) 265, 24 A.C.W.S. (3d) 92.

§9.7(4)

DEVELOPMENT PERMITS

However, not all of the development standards in a given bylaw are necessarily articulated in objective terms. Some provisions may confer a discretion on the development authority to prescribe whatever standards it considers appropriate in a given case. For example, a bylaw may state that landscaping of a development site shall be as required by the development authority. In such a case, it would be proper for the authority to impose as a condition of a development permit for a permitted use that the landscaping shall be as specified in the condition.¹²⁸ It is also appropriate for the development authority to impose conditions in permitted use permits that are designed to ensure that the development is carried out in accordance with the requirements of the land use bylaw. For instance, an application may disclose that the developer proposes a side yard set-back for a building of three feet when the bylaw requires five feet.¹²⁹ In such a case, the development officer may impose a condition that the setback be five feet. Where a particular condition may be imposed in a permitted use permit, *a fortiori* it is open to the development authority to impose a similar condition in a permit for a discretionary use.

That said, a word of caution is in order. It is the intent of the Act that, where a permitted use is authorized, an applicant is entitled as of right to a permit, if the project meets the bylaw requirements. As pointed out in one case,¹³⁰ it is inconsistent with this principle to leave an applicant at the mercy of a development authority through a bylaw that gives the authority an excessively broad discretion to impose conditions. Hence, it is incumbent on a council to prescribe with particularity which conditions can be attached to a permitted use permit. If, for legitimate planning reasons, there is a need to build in substantial flexibility, it is more appropriate to make the use a discretionary one, rather than a permitted use.

§9.7(4) Conditions Must Achieve Planning Objectives

A few more observations are in order about conditions. The development authority exercises a delegated discretionary power when it attaches a condition to a permit. Consequently, in addition to the express limits contained in the *Municipal Government Act* and the governing land use bylaw, the development authority is constrained by the same implicit limitations that the common law imposes on any administrative body exercising a discretionary

128 Similarly, conditions respecting design, character or appearance of a building would be permissible where such matters are left to the development authority's discretion by the land use bylaw. The extent to which a bylaw can lawfully confer a discretionary power on a development authority in respect of development standards applicable to permitted uses is not clear. See discussion in §6.2(1)(a), §6.3(8) and §9.7(3).

129 Such a condition is no more than an alternative to the development authority refusing the application on the ground of non-conformity with the bylaw. A condition requiring a performance bond of some type to ensure compliance with all the developer's undertakings set out in the application and in the permit would be another example.

130 274099 *Alberta Ltd. v. Sturgeon No. 90 (Municipal District) Development Appeal Board* (Alta. C.A.), *supra*, n. 127.

REVOCATION OF A PERMIT

§9.10

Many bylaws provide that, once development has commenced, it must be carried on with reasonable diligence and, if not, the permit lapses.¹⁵⁴ There is authority in some bylaws for the development authority to extend the period of validity, notwithstanding that the development has not been commenced or pursued diligently.¹⁵⁵ In some instances, bylaws make it clear that an extension must be obtained within the original period of validity. In others that seems to be implicit.¹⁵⁶ It would appear that such an extension is not the same as the granting of a new permit and, therefore, the procedures and rights of appeal pertaining to new permits do not apply to decisions to extend a permit, nor should they.¹⁵⁷ But, where a development permit has lapsed, a fresh application must be made to renew it, with all the attendant procedures and rights of appeal that apply to any application. If a dispute arises as to whether a development permit is subsisting, the issue can be resolved either in enforcement proceedings taken by the municipality, or through a declaratory action commenced by the applicant or some other interested party.

§9.10 REVOCATION OF A PERMIT

Section 640(2)(c)(iii) contemplates that a land use bylaw may provide for the cancellation or suspension of a development permit, but there is nothing in the Act indicating when that can be done and by whom. This suggests that council has the power to set the rules in that regard, subject to such rules not conflicting with the Act.

The occasional bylaw authorizes the development authority to revoke a permit if the applicant fails to comply with any terms and conditions of the

[Footnote 153 continued from prior page]

be held to be a commencement of a change in use and, therefore, a start of "development" within the meaning of that word as defined by the Act. With respect, this conclusion seems to stretch out of proportion the ordinary meaning of the term "commencement of a change in use". Does the decision mean that construction of a building is commenced if a building permit is obtained?

154 E.g., Sturgeon County Land Use Bylaw No. 1385/17, s. 2.11(3).

155 Strathcona County Land Use Bylaw No. 6-2015, s. 2.13(4).

156 *Ibid.*

157 This is not, however, free of doubt given that s. 685(2) of the Act confers a right of appeal on affected third parties from any "decision ... made ... by a development authority". In the case of *Skibstead v. Calgary (City) Development Appeal Board* (1994), 16 Alta L.R. (3d) 25 (C.A.) a person proceeded to build a house on a residential lot without a development permit. An objecting neighbour was informed by the development officer that no permit was required under the land use bylaw. The neighbour appealed this "decision" to the development appeal board (as it was then called) which ordered that a permit was required. The owner appealed this to the court which held that the ruling of the development officer was not a "decision" within the meaning of the appeal section. The court said a "decision" for purposes of the appeal rights means a decision following an application for a permit. This case suggests that a decision on a request for an extension is not the same as a decision on a permit application, so no appeal is available to either the applicant requesting the extension or other affected persons.

permit.¹⁵⁸ This is of doubtful validity because the Act expressly provides that breach of the permit may be sanctioned by way of a stop order,¹⁵⁹ or through prosecution.¹⁶⁰ It is one thing for a development authority to take steps to enforce the terms of the development permit, it is entirely another for it to revoke the permit in its entirety on the ground of its breach. Some bylaws empower the development authority to suspend, revoke or modify a development permit where it is of the opinion that the permit was obtained by fraud or misrepresentation. Other bylaws authorize the suspension or revocation of a permit in the case of misrepresentation, non-disclosure of facts at the time of application, or where the permit was issued in error.¹⁶¹ There is probably nothing illegal about suspending or revoking a permit in such circumstances, since the permit is likely voidable or void in any event.¹⁶²

Case law supports the proposition that, once a development authority issues a development permit, it is *functus officio* and may not revoke that permit and unilaterally issue another.¹⁶³ Similarly, it is not open to a development authority (e.g., a municipal planning commission) to delegate permit-issuing power to another (e.g., a development officer) only to revoke the permit after it has been issued by the delegate.¹⁶⁴ These cases suggest that, contrary to what

158 E.g., Edmonton Zoning Bylaw No. 12800, s. 17.2(1).

159 *Municipal Government Act*, s. 645(1).

160 *Ibid.*, s. 557. Other enforcement provisions of the *Municipal Government Act* are also apposite. They include the right of a municipality to seek injunctive relief under s. 554.

161 For examples of different approaches see Strathcona County Land Use Bylaw No. 6-2015, s. 2.13.9; City of St. Albert Land Use Bylaw No. 9/2005, s. 3.12(14) and City of Lethbridge Land Use Bylaw No. 5700, s. 5.11.1. Some bylaws purport to authorize the development officer or municipal planning commission to suspend or cancel the permit if there is non-compliance with a stop order issued under s. 645 of the Act. This is of questionable validity. Leave to appeal was denied in *Northwest Value Partners Inc. v. Calgary (Subdivision and Development Appeal Board)*, 2008 A.B.C.A. 250 on the question of whether a development authority had legal authority to cancel and reissue a permit due to error in issuing the original permit. In that case the SDAB upheld a cancellation. It is also questionable why a development authority should be able to cancel a permit which it issued in error. If an applicant has made a *bona fide* application for development which the development authority issues, albeit in error, it is difficult to see a rationale to permit the cancellation of a permit after the appeal period has lapsed, particularly if the applicant has expended money in reliance on the permit. If a permit were cancelled in such circumstances, it is likely that an applicant could sue for negligent misstatement.

162 See generally H.W.R. Wade & C.F. Forsyth, *Administrative Law*, 11th ed. (Oxford University Press, 2014), at 194. For a more detailed discussion of revocation of a permit see Rogers & Butler, *Canadian Law of Planning and Zoning*, 2nd ed. (Toronto: Thompson Reuters, 2005) (Loose-Leaf updated in 2017), c. 5 at 58(12).

163 *Cross Country Homes Marketing (1993) Ltd. v. Grande Cache (Town)*, [2000] A.J. No. 52, 2000 ABCA 27, 250 A.R. 245, 9 M.P.L.R. (3d) 78, 94 A.C.W.S. (3d) 380. However, cancellation of a permit as a form of enforcement action is not likely affected by the *functus* rule.

164 *Ibid.* In *Cross Country Homes* the municipal planning commission was named by the land use bylaw as the development authority but it had delegated the task of issuing certain development permits to the development officer. The officer issued a permit and development proceeded. An issue arose as to whether the development was in accordance with the permit and the land use bylaw, and a stop order was issued. The matter came before the municipal planning commission, which decided the development was in compliance with the bylaw but, nonetheless, decided it was appropriate to revoke the permit and issue a new one subject to certain conditions. The court held that there was no power in the commission to review its own delegate's decision and revoked the permit.

**Appeal Board rec'd: January 12, 2022 Submitted
by: A. Dobrin, Appellant A Applicant**



To: The Subdivision and Development Appeal Board
 Regarding: SDAB 2021-0081/ DP2021-6749
 Date: January 11, 2022

This letter is in response to the submission made by Peter Guo against the approval of a change to the site plan DP2019-2146 (With respect to the retaining wall on the north property line)

1. The original purpose of the existing wall was to hold the grade difference from the originally higher grade at #711 5 ST NE. #713A 5 ST NE was redeveloped in 1997 and it was their responsibility to maintain the grade at the property line of 711 5 ST NE, hence the retaining wall. The submitted pictures (pages of the board report) show the south side of this wall. It's height from the top of footing to the top of the wall is 46". Site measurements also show that on the northside of this wall the height varies along its length from 32" at the west end to 43" in the middle and 46" tall at the east end. These measurements show that the wall only supports a maximum of 14" grade difference on the one end. There is however portion of the wall that is a few feet in length at the east end that appears to be taller than 46". This section transitions lower to the east patio and holds that grade difference.
 If the owner at #713A 5 ST NE ever removes their existing retaining wall, the newly proposed wall will maintain the grade at #713A 5 ST NE and lower the grade on the 711 5 ST NE side with the difference being between 6" and 1'-3". Because the existing owner at #713A 5 ST NE does not want to remove the existing retaining wall even though that wall supports a small grade difference and has minimal structural value, the proposed height of the new wall will support not only the grade difference but also some of the existing retaining wall.
2. Regarding item #4:
 It is common to build a retaining wall along the property line to maintain the neighboring grade. Furthermore, the majority of the existing retaining wall no longer has a purpose and could now be considered a solid wall fence because the majority of it no longer meets the definition of a retaining wall as per section 13 (121) of the Land Use Bylaw. This bylaw section states that a retaining wall is a structure to withstand lateral pressure in order to hold back earth, loose rock, or similar materials.
3. Regarding items 5, 6, 7 & 8:
 The landscaped area is not within the scope of this development permit.
4. Regarding item 9:
 A geotechnical report was not required for this retaining wall. It is below 1.20 meters and doesn't require engineering to hold back the proposed grade.
5. Regarding item 10:
 The images on page 42 of the board report show the retaining wall's original intent, however all of the grade that it was once holding back is now gone.

6. Regarding items 11:
Other parts of this development are not within the scope of this development permit.

7. Regarding the image on page 45 of the board report:
The Alberta Building Code has clearance requirements for basement windows and window wells which service a bedroom. There are no bedrooms in the proposed basements. This is a building code issue, not a development issue.

Attached are pictures (Appendix 1, Images 1, 2, 3) showing the existing retaining wall which illustrate that the grade on either side is nearly at the same level. Also a picture (Image 3) showing the site which under construction from the south west corner off the lane.

Thank you for your time considering this letter.

Regards,
Alex Dobrin
Marcel Design Studio Ltd

Attached:
Appendix 1, Images 1, 2, 3
Appendix 2, DP2019-2146 Stamped Approved DP Drawings

APPENDIX 1



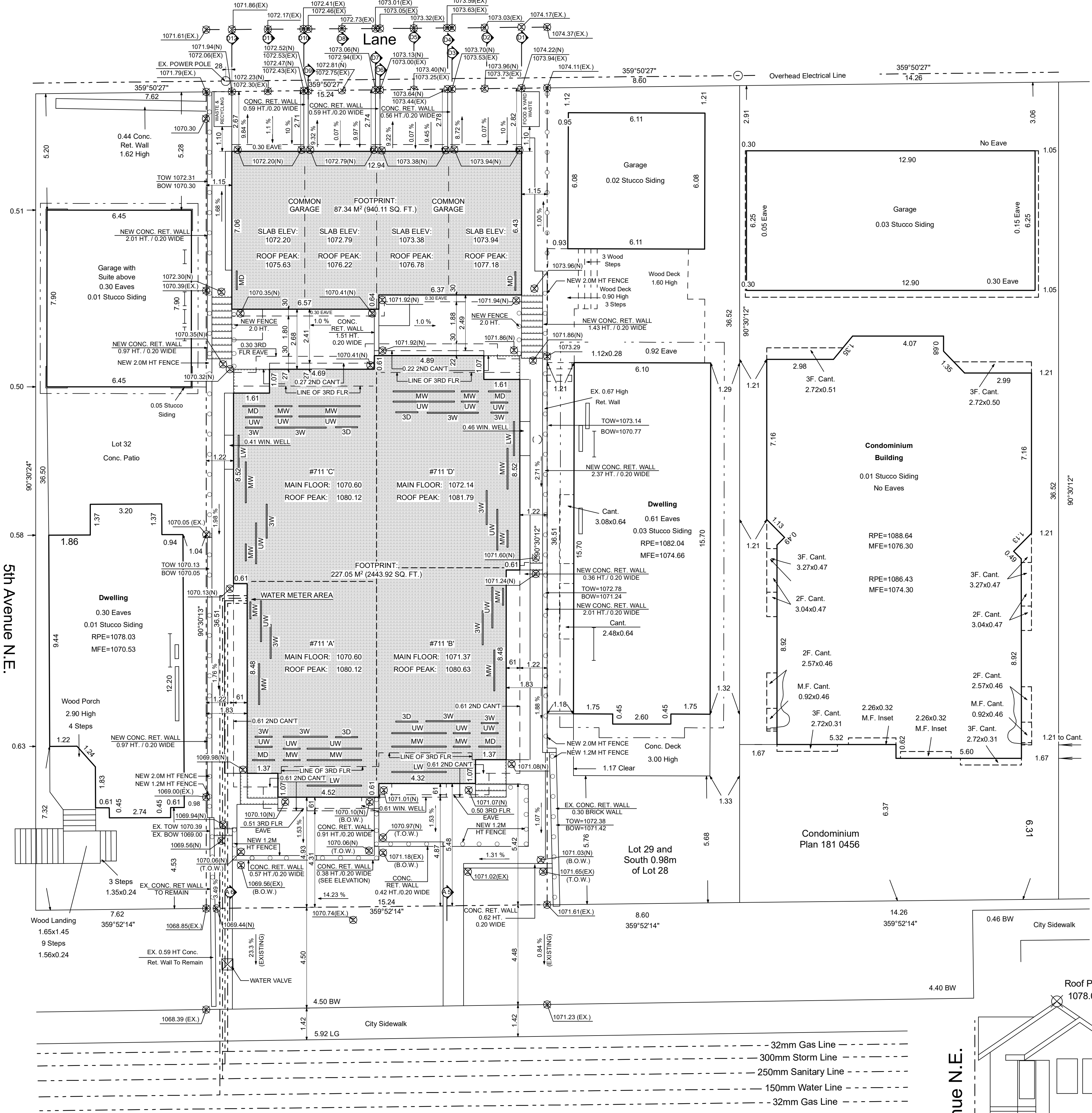
Image 1.



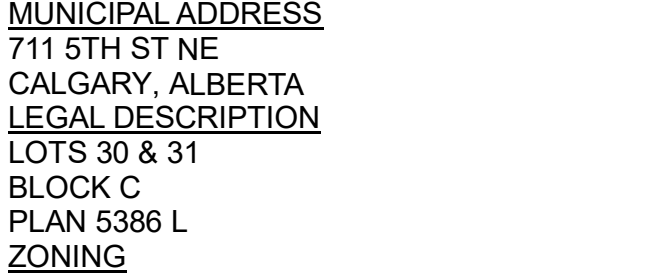
Image 2.



Image 3.



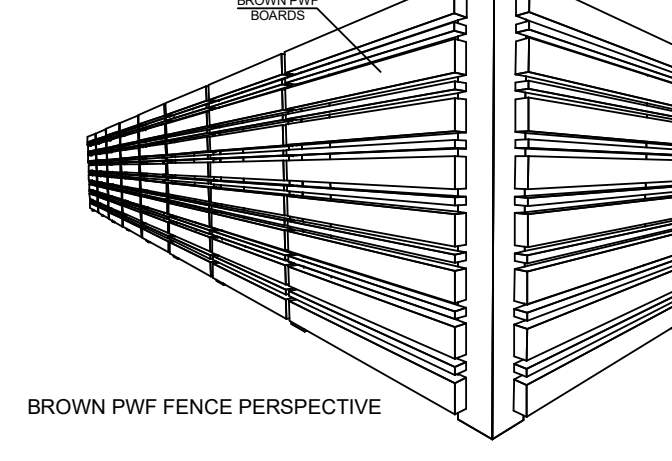
SITE PLAN
SCALE: 1:100



MUNICIPAL ADDRESS
711 5TH ST NE
CALGARY, ALBERTA
LEGAL DESCRIPTION
LOTS 30 & 31
BLOCK C
PLAN 5386 L
ZONING
MC-2
GROSS FLOOR AREA
7232 SQ. FT.
FLOOR AREA RATIO
6869 SQ. FT. / 5988.60 SQ. FT. = 1.14%
PARCEL COVERAGE
PARCEL AREA = 556.36 M²
BUILDING AREA = 227.05 M²
GARAGE AREA = 87.34 M²
TOTAL BUILDING COVERAGE = 314.39 M²
(56.50% OF PARCEL)

GARAGE APRON AREA = 35.53 M²
EXTERIOR WASTE & RECYCLING AREA (UNIT 'B' & UNIT 'D') = 2.49 M²
HARD LANDSCAPING AREA = 73.27 M²
SOFT LANDSCAPING AREA = 130.85 M²
LANDSCAPED AREA = 204.12 M² OR 36.68% OF PARCEL

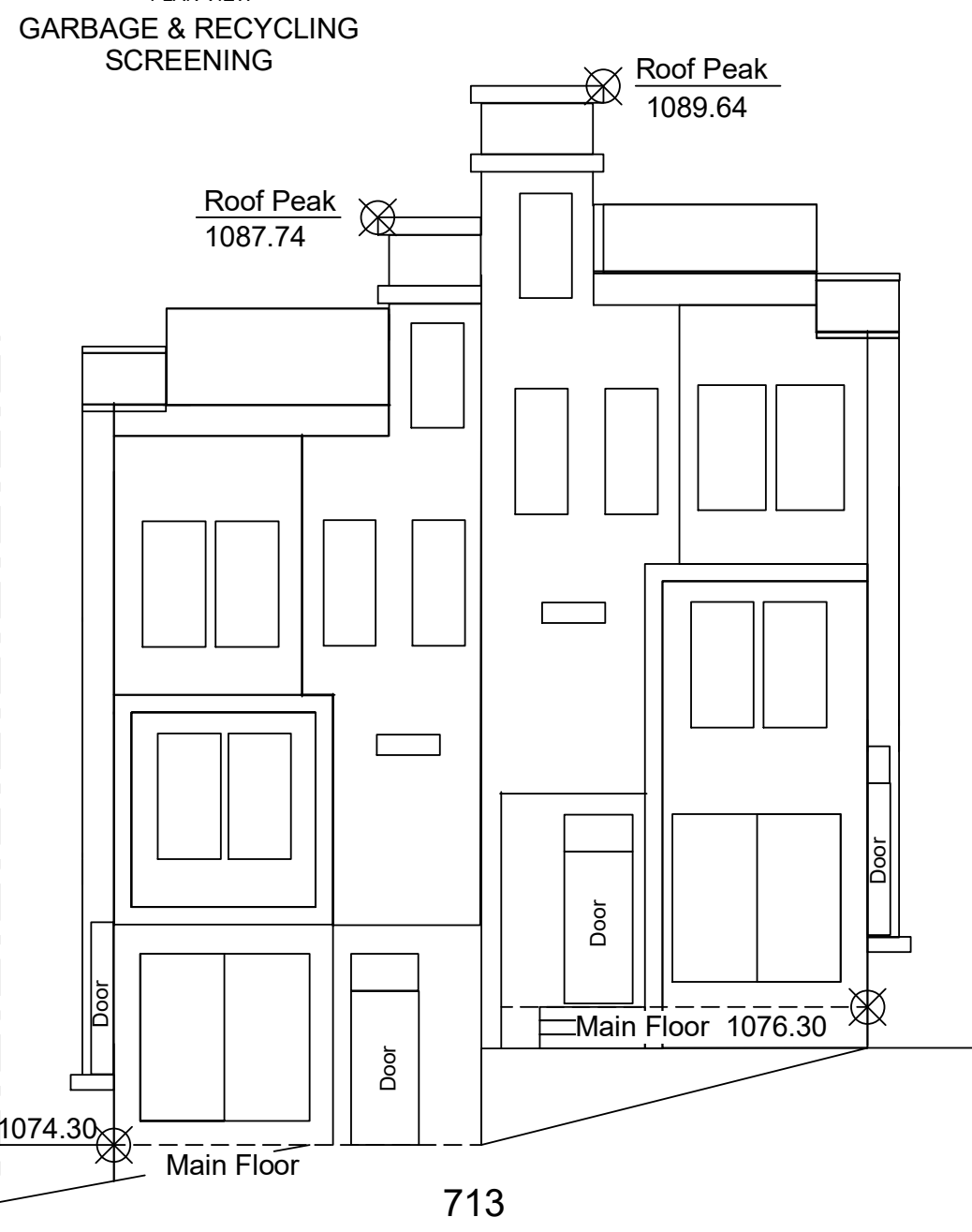
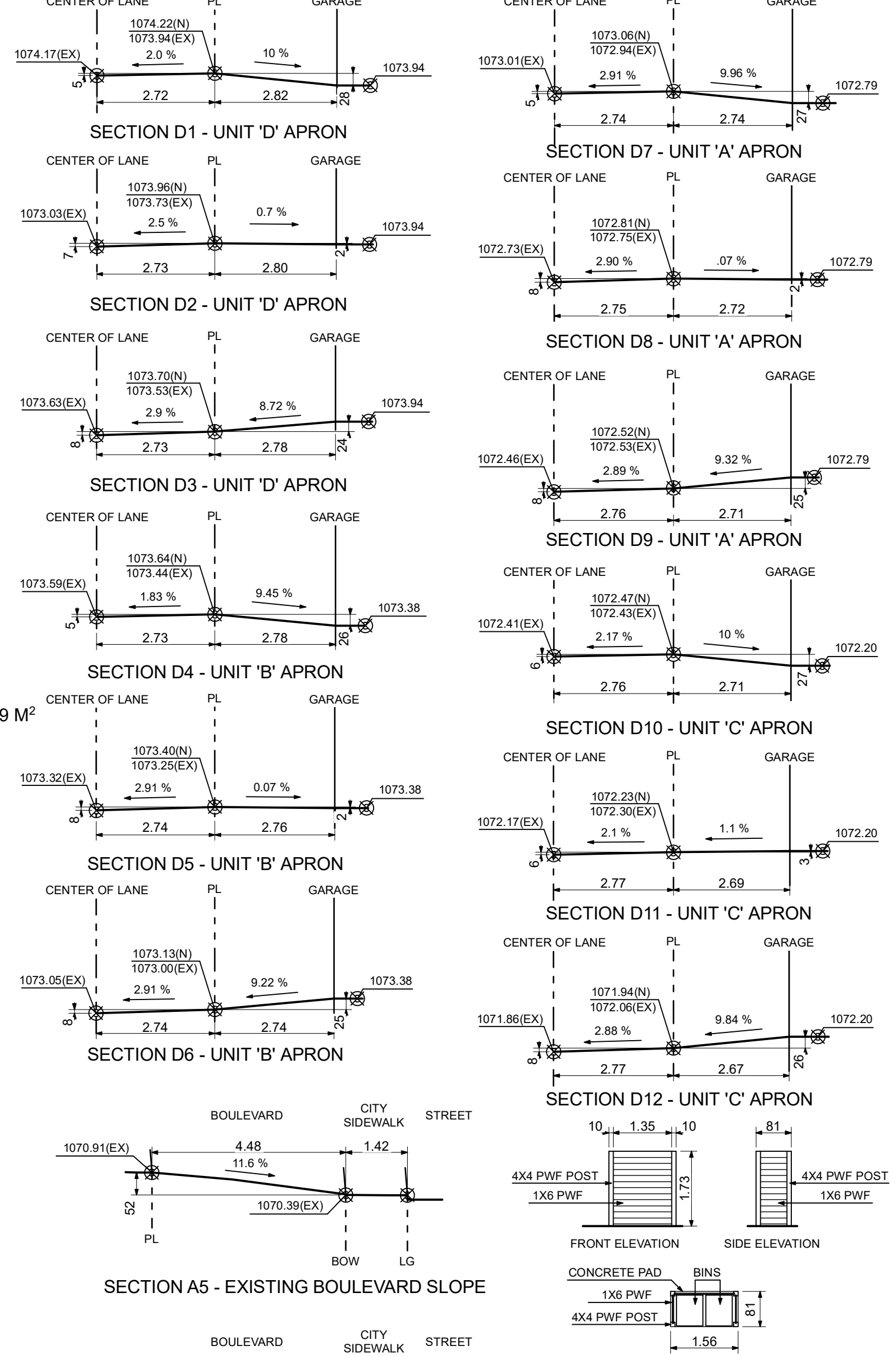
GARBAGE / RECYCLING
SECTION 566 (A)
INDIVIDUAL GARBAGE CANS TO BE STORED IN
GARAGE AND PICKED UP AT LANE
SECTION 567
INDIVIDUAL RECYCLING CANS TO BE STORED IN
GARAGE AND PICKED UP AT LANE
PARKING
SECTION 558 (1) (2)
TOTAL REQUIRED PARKING STALLS = 0.9 x 4 = 3.6 or 4
TOTAL PROVIDED PARKING STALLS = 4
TOTAL REQUIRED VISITOR PARKING STALLS = 0.25 x 4 = 1.00
TOTAL PROVIDED VISITOR PARKING STALLS = 0

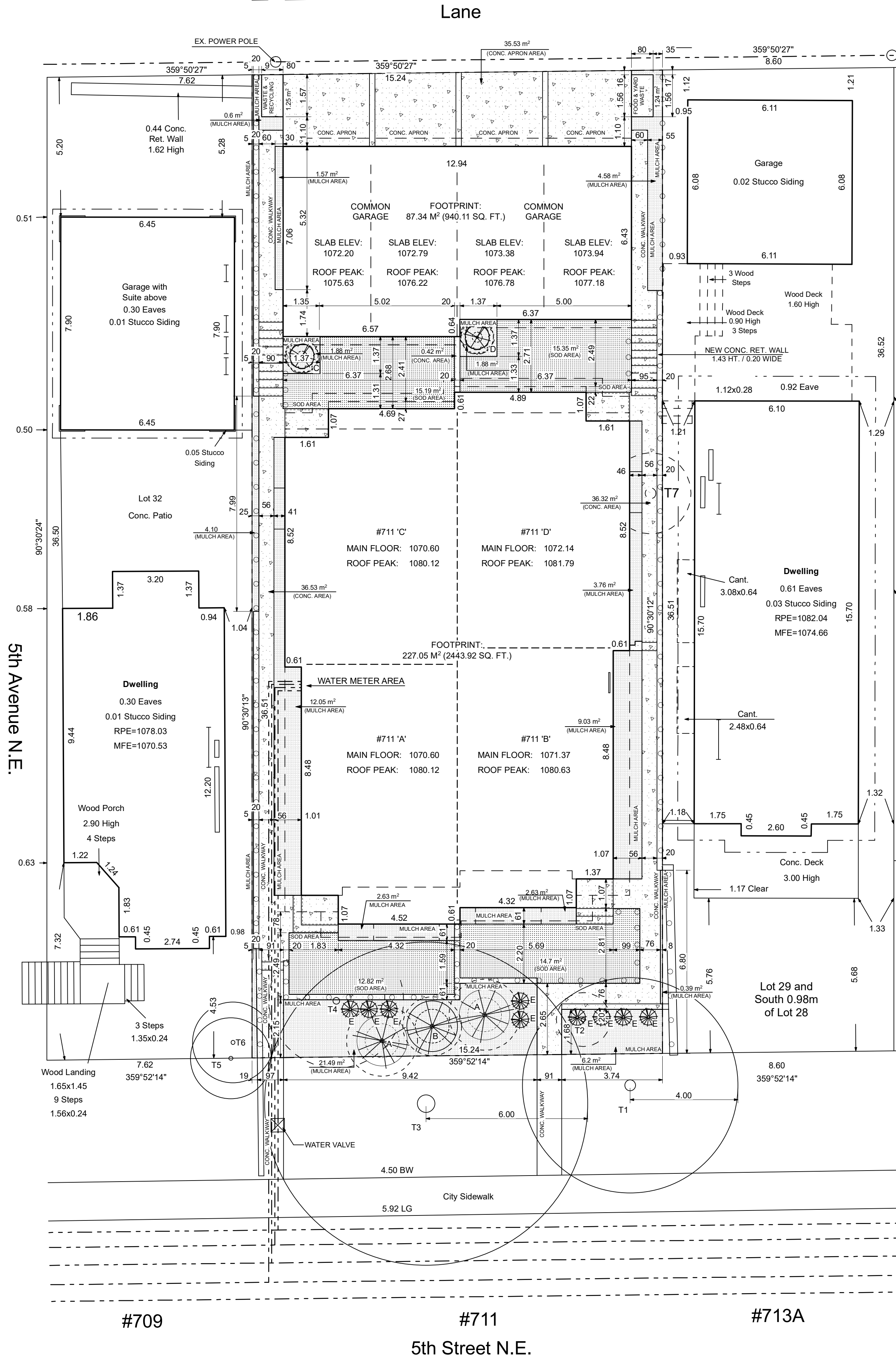


NOTE: An Urban Forestry Technician must be on-site during the removal, excavation, and reconstruction of the retaining walls, the installation of servicing, as well as, the proposed concrete walkways in order to mitigate any damage to adjacent public trees. Contact Urban Forestry by phoning 311 at least three (3) business days in advance of excavation

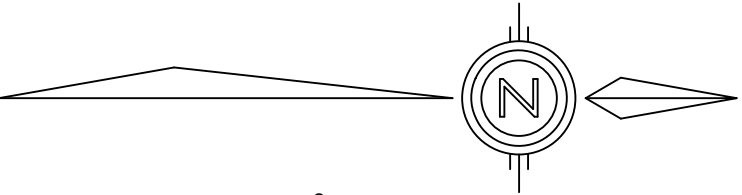
CITY OF CALGARY - PLANNING, DEVELOPMENT AND ASSESSMENT
THESE ARE THE PLANS REFERRED TO IN DEVELOPMENT PERMIT NO.
DP No 2019-2146 Date Issued Oct 24 2019
WHICH ARE APPROVED SUBJECT TO THE ALTERATIONS IF ANY SHOWN HEREIN IN RED OR AS OTHERWISE NOTED IN THE DEVELOPMENT PERMIT.
DEVELOPMENT AUTHORITY: Chris Wolfe

AMENDED DRAWINGS
DP No DP2019-2146 Date Received Sept 02 2020
THESE DRAWINGS REFER TO THE ABOVE DEVELOPMENT PERMIT NO.





LANDSCAPE PLAN
SCALE: 1:100



LOT AREA = 556.36 M²

ITEMS NOT INCLUDED IN LANDSCAPE CALCULATION (BYLAW 551(1))
GARAGE APRON = 35.53M²
EXTERIOR WASTE & RECYCLING AREA (UNIT 'B' & UNIT 'D') = 2.49 M²

LANDSCAPE CALCULATION

EQUATION 1: 556.36 M² X 40% = 222.54 M² (REQUIRED LANDSCAPING)
EQUATION 2: 222.54 M² - 38.02 M² (GARAGE APRON) = 184.52 M²

LANDSCAPING REQUIREMENTS:
BYLAW 551

SUBSECTION (3)
REQUIRED:
THE MAXIMUM HARD SURFACED LANDSCAPE AREA IS:
(B) 40% OF THE REQUIRED LANDSCAPED AREA

EQUATION 4: 184.52 M² X 40% = 73.80 M²
THEREFORE, THE MAXIMUM HARD SURFACE IS 73.80 M²

PROVIDED HARD LANDSCAPING: 73.27 M² = 39.70%

BYLAW 552

SUBSECTION (2)

A MINIMUM OF 1.0 TREES AND 2.0 SHRUBS MUST BE
PLANTED FOR EVERY 45 M² OF LANDSCAPED AREA PROVIDED

EQUATION 1: 184.52 M² / 45 M² = 4.1 TREES, 8.17 SHRUBS REQUIRED
PROVIDED: 5 TREES, 9 SHRUBS

SUBSECTION (3)

REQUIRED:
A MINIMUM OF 25% OF ALL TREES MUST BE CONIFEROUS
REQUIRED: 5 TREES, 1.25 CONIFEROUS (25%)
PROVIDED: 2 CONIFEROUS TREES; 3 DECIDUOUS TREES

PROVIDED LANDSCAPING

PROVIDED SOD LANDSCAPING: 58.06 M²
PROVIDED MULCH LANDSCAPING : 72.79 M²

TOTAL SOFT LANDSCAPING: 130.85 M²
PROVIDED HARD LANDSCAPING: 73.27 M²
TOTAL LANDSCAPING PROVIDED: 204.12 M² = 110.55% OF REQUIRED LANDSCAPING

CONIFEROUS TREES

LOWER WATER	QTY	REF	SCIENTIFIC NAME	COMMON NAME	PLANT SIZE
YES	2	A	PICCEA PUNGENS 'GLAUCA'	COLORADO BLUE SPRUCE	2.0M HT
YES	1	B	PICCEA PUNGENS 'GLAUCA'	COLORADO BLUE SPRUCE	3.0M HT

DECIDUOUS TREES

LOWER WATER	QTY	REF	SCIENTIFIC NAME	COMMON NAME	PLANT SIZE
YES	1	C	POPULUS X CANESCENS	TOWER POPLAR	50mm CAL.
YES	1	D	POPULUS X CANESCENS	TOWER POPLAR	75mm CAL.

CONIFEROUS SHRUBS

LOWER WATER	QTY	REF	SCIENTIFIC NAME	COMMON NAME	PLANT SIZE
YES	9	E	RIBES ALPUNUM	APLINE CURRANT	MIN. 600 SPR

EXISTING LANDSCAPING

DISPOSITION	QTY	REF	SERIAL	VARIETY	CALLIPER (M)	CANOPY (M)	HEIGHT (M)	LOCATION
REMAIN	1	T1	32130504	Colorado Spruce	0.41	8.00	11.00	CITY BOULEVARD
REMOVE	1	T2		Deciduous Tree	0.15	2.00	3.00	IN PROPERTY
REMAIN	1	T3	32130503	White Spruce	0.63	12.00	12.00	CITY BOULEVARD
REMOVE	1	T4		Japanese Maple	0.25	5.00	5.00	IN PROPERTY
REMAIN	1	T5	32303398	American Mountain Ash	0.15	3.00	3.00	CITY BOULEVARD
REMAIN	1	T6	32130502	American Mountain Ash	0.15	3.00	3.00	ADJ. PROPERTY
REMOVE	1	T7		Deciduous Clump	0.40	3.00	4.00	IN PROPERTY

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2019-2146 Oct 24 2019
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DEVELOPMENT AUTHORITY: Chris Wolfe

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STUDIO LTD

OFFICE: 403.880.6065

ADDRESS:

711 5ST NE
CALGARY, AB

DWG. TITLE:

LANDSCAPE PLAN

REVISIONS:

SCALE:

1:100

DATE:

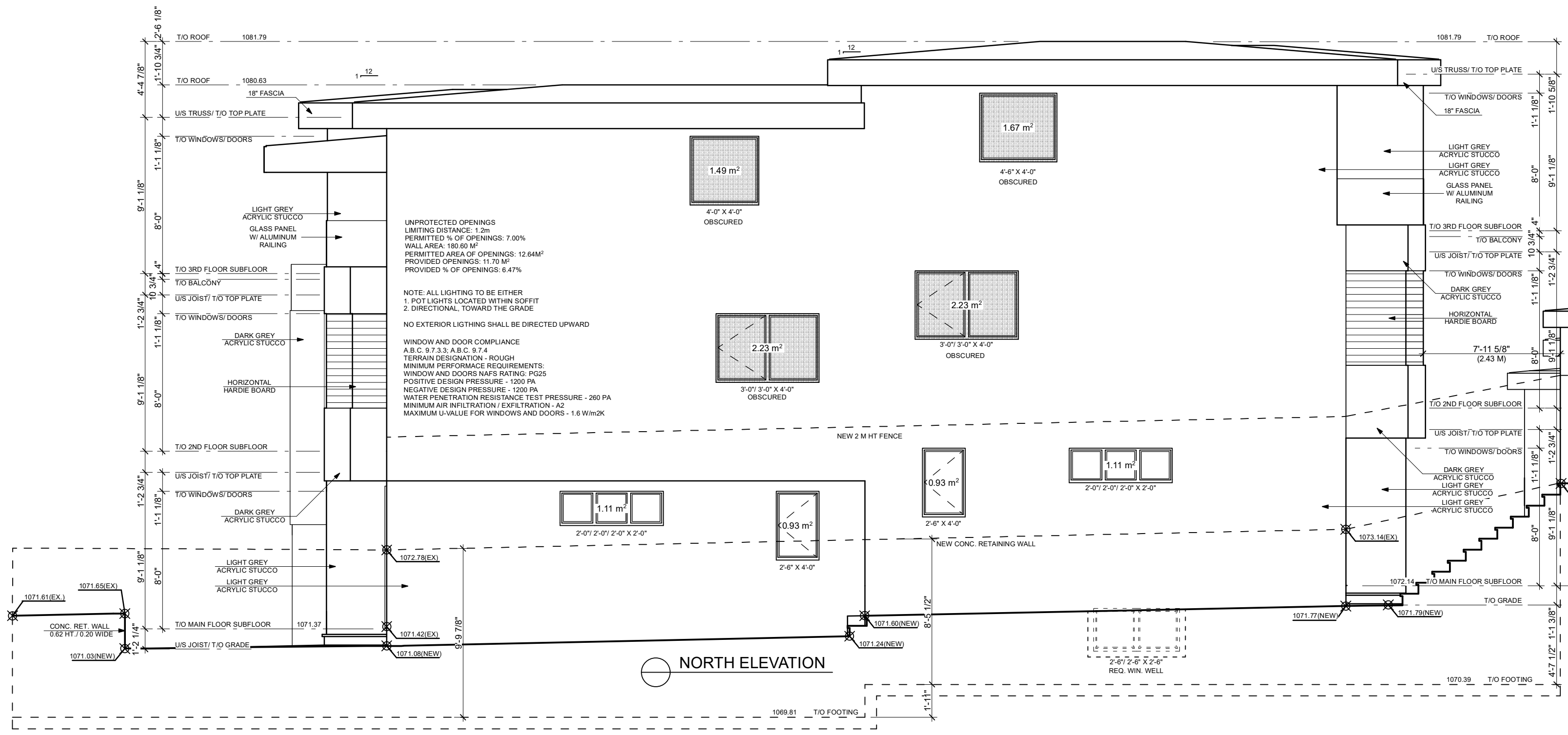
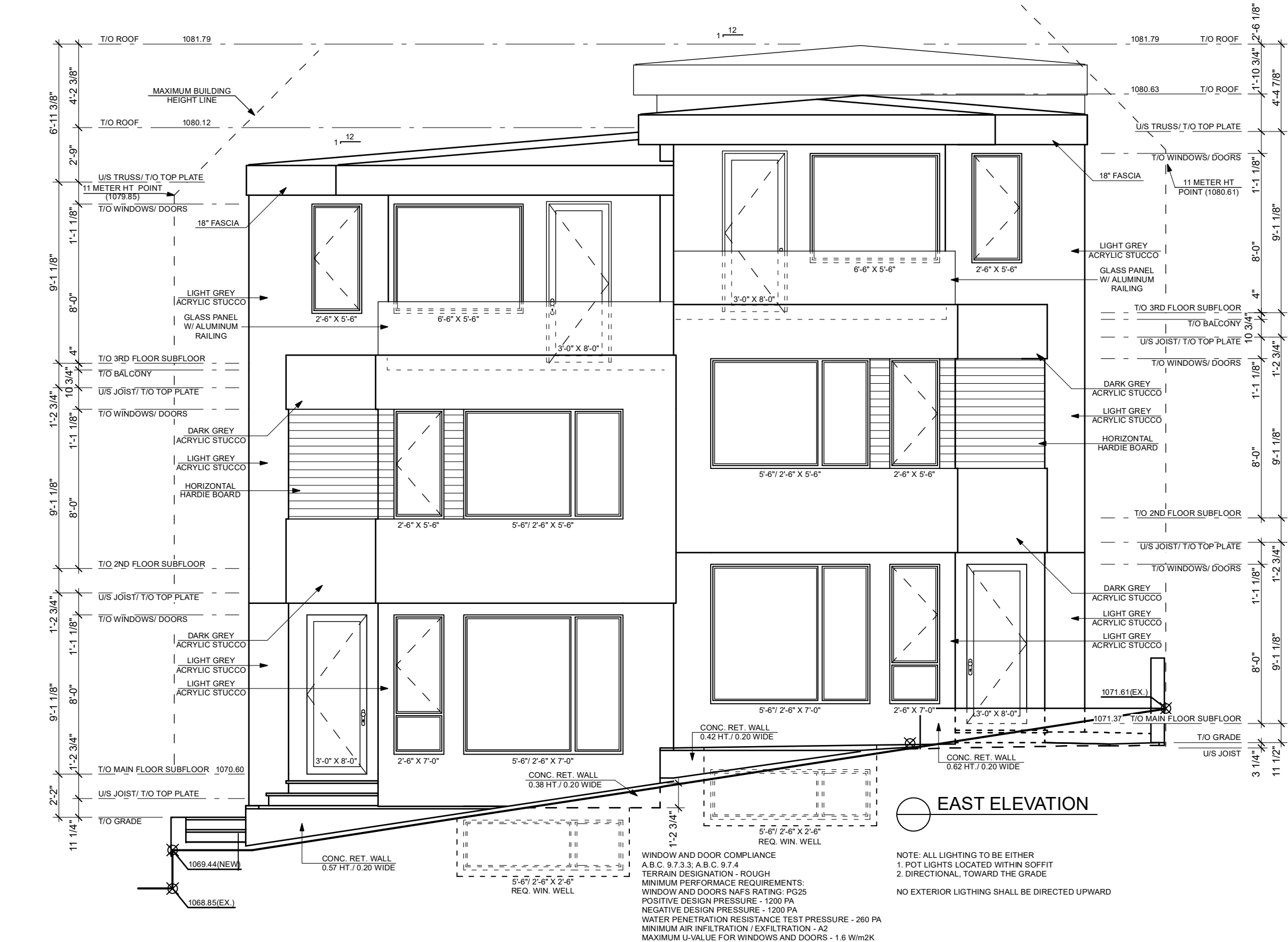
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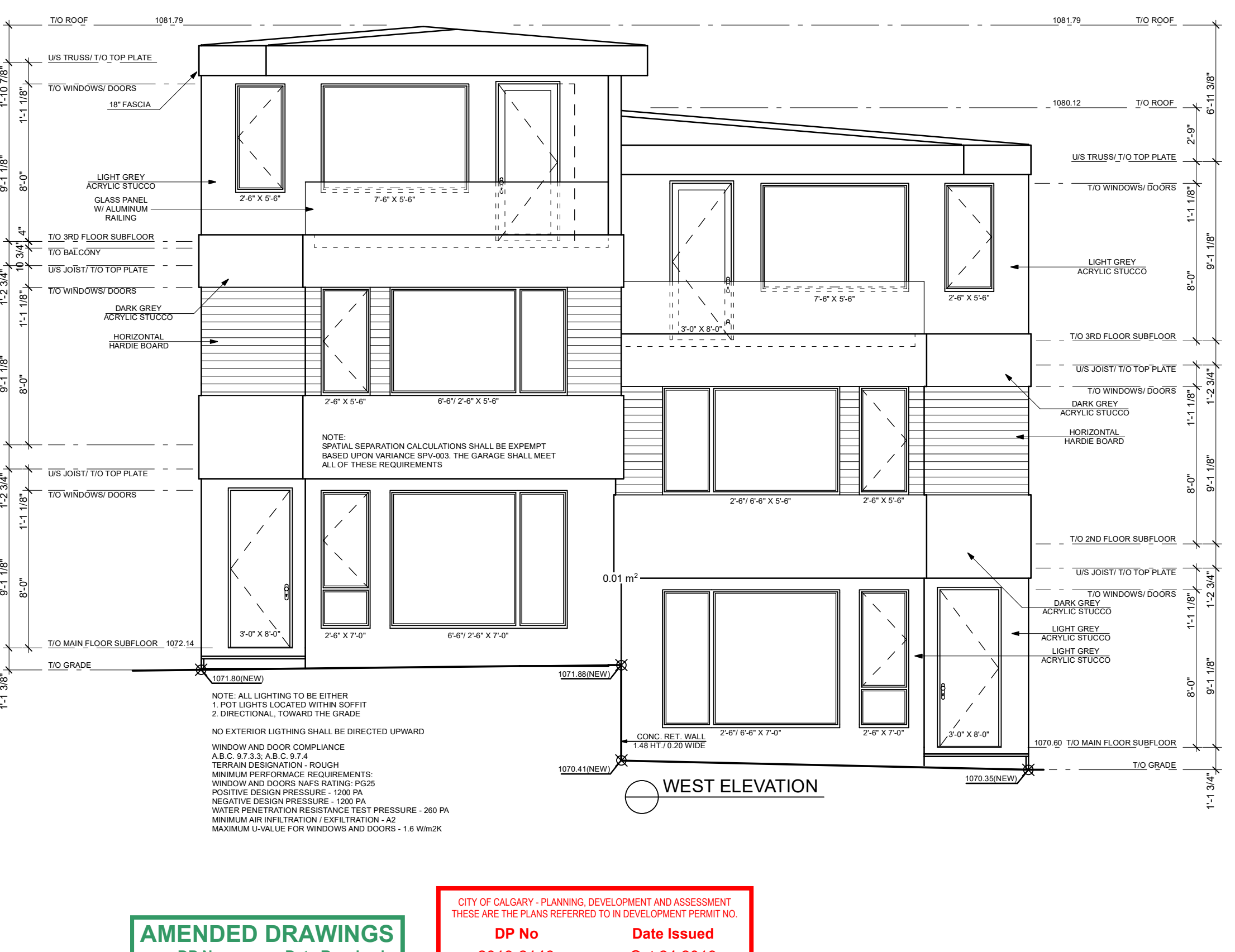
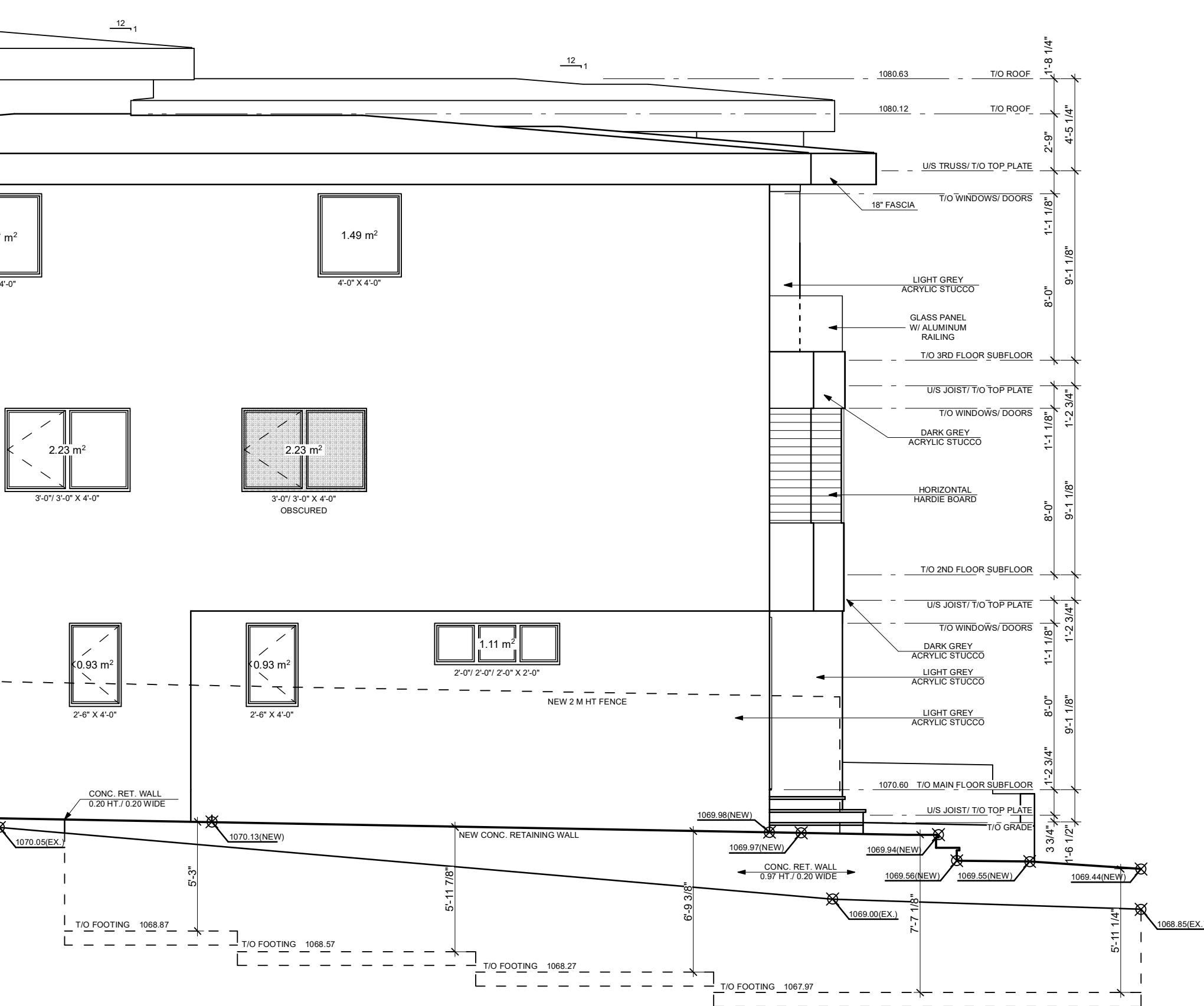
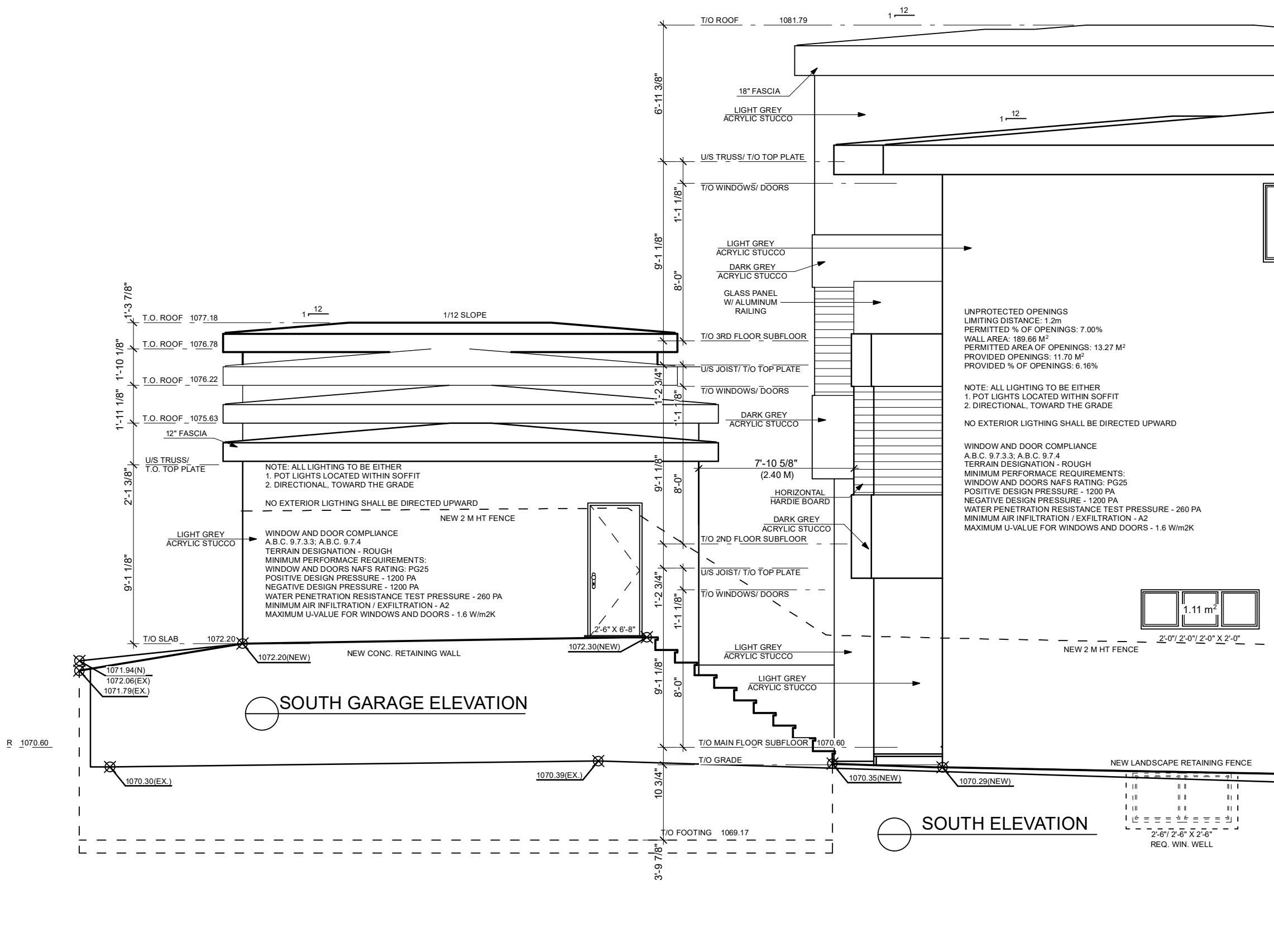
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SHEET NO.:

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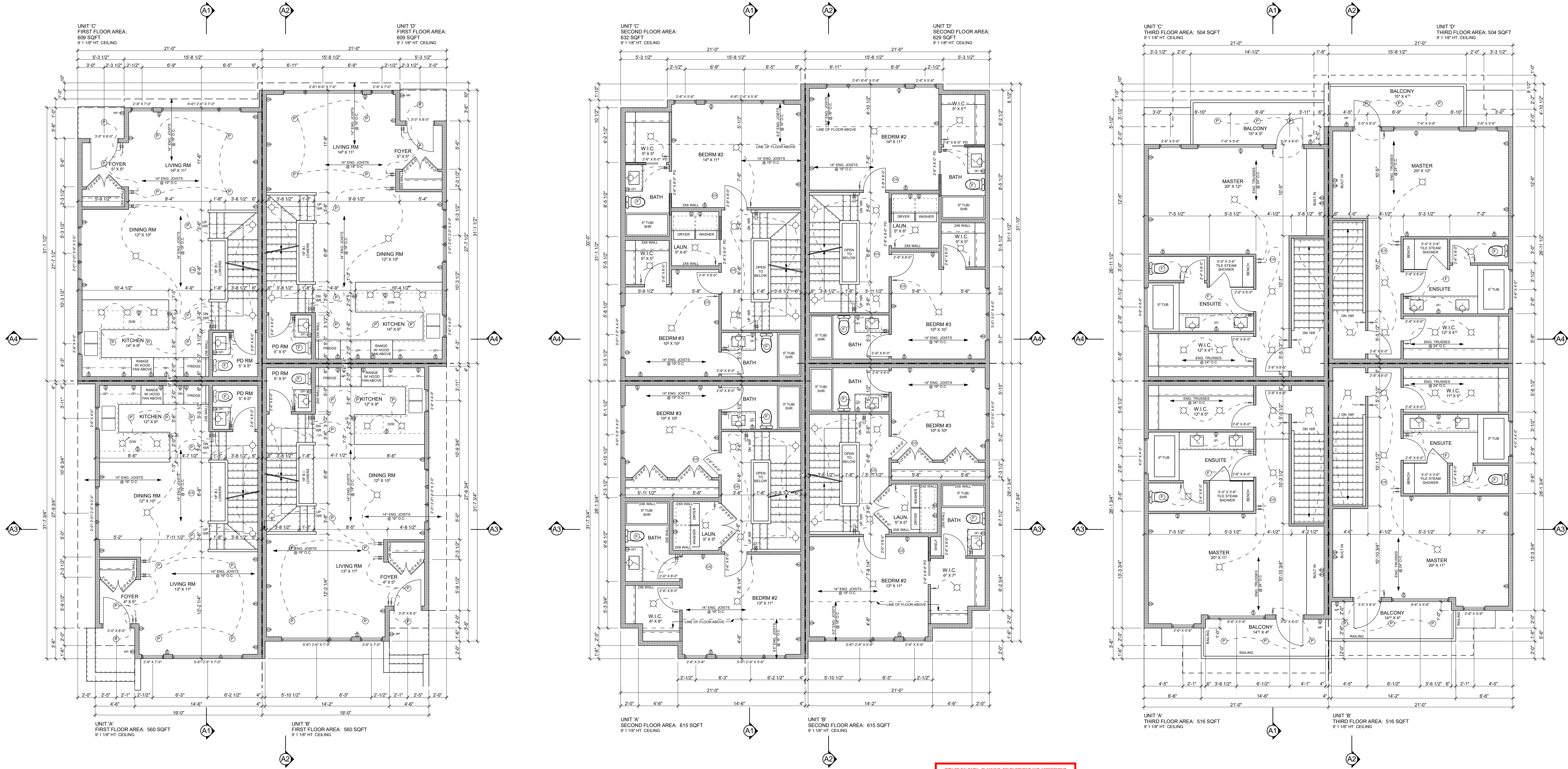
NORTH GARAGE ELEVATION



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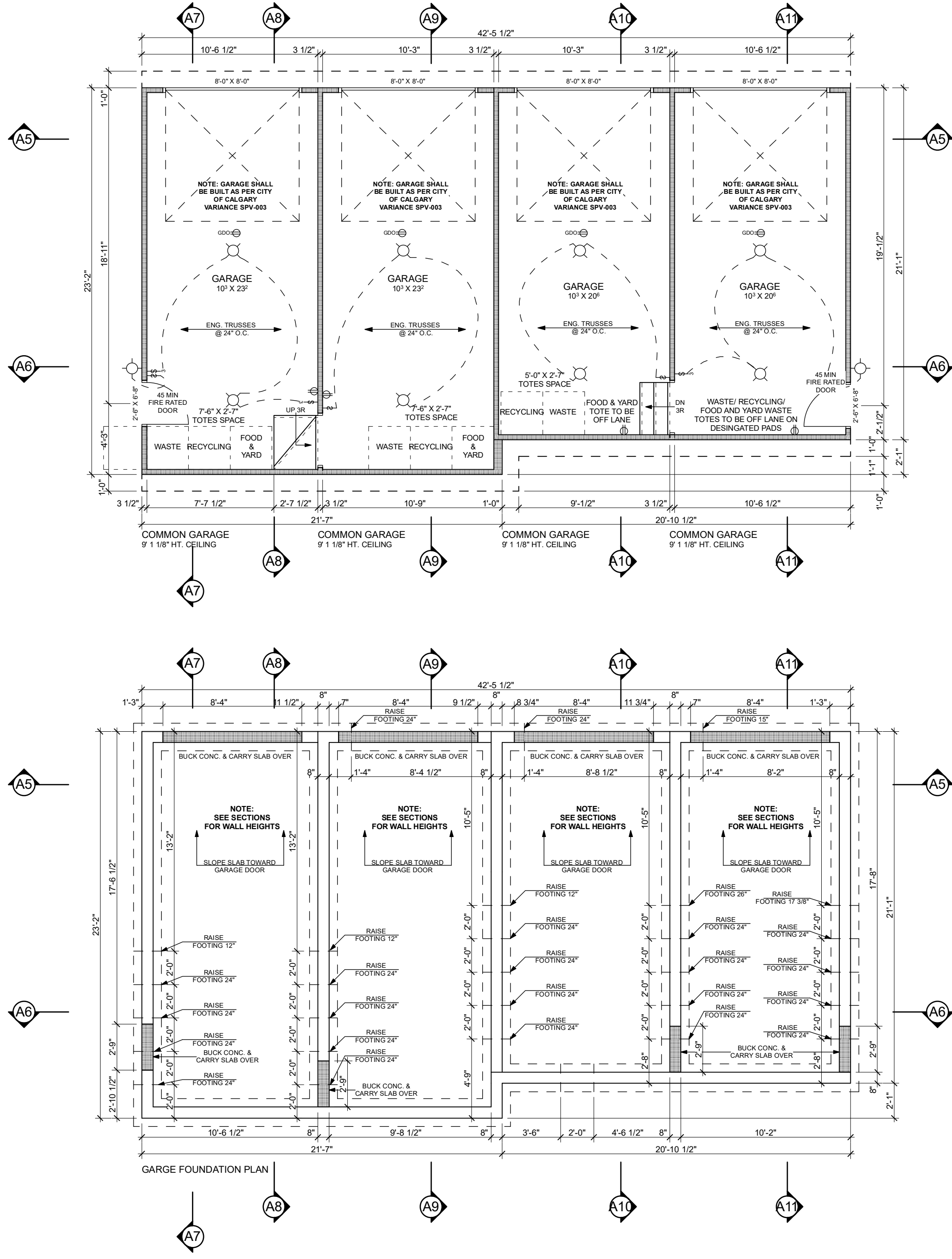
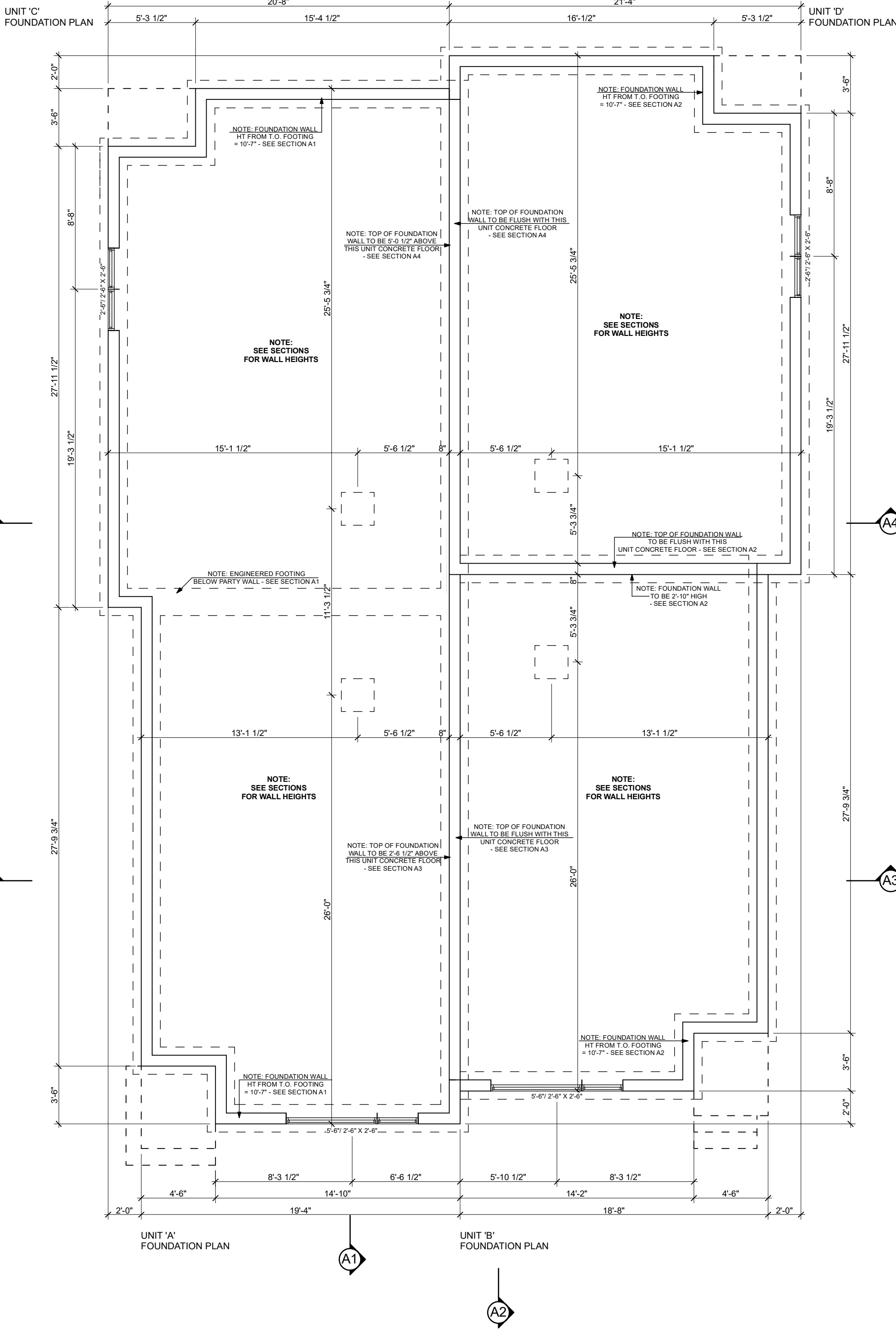
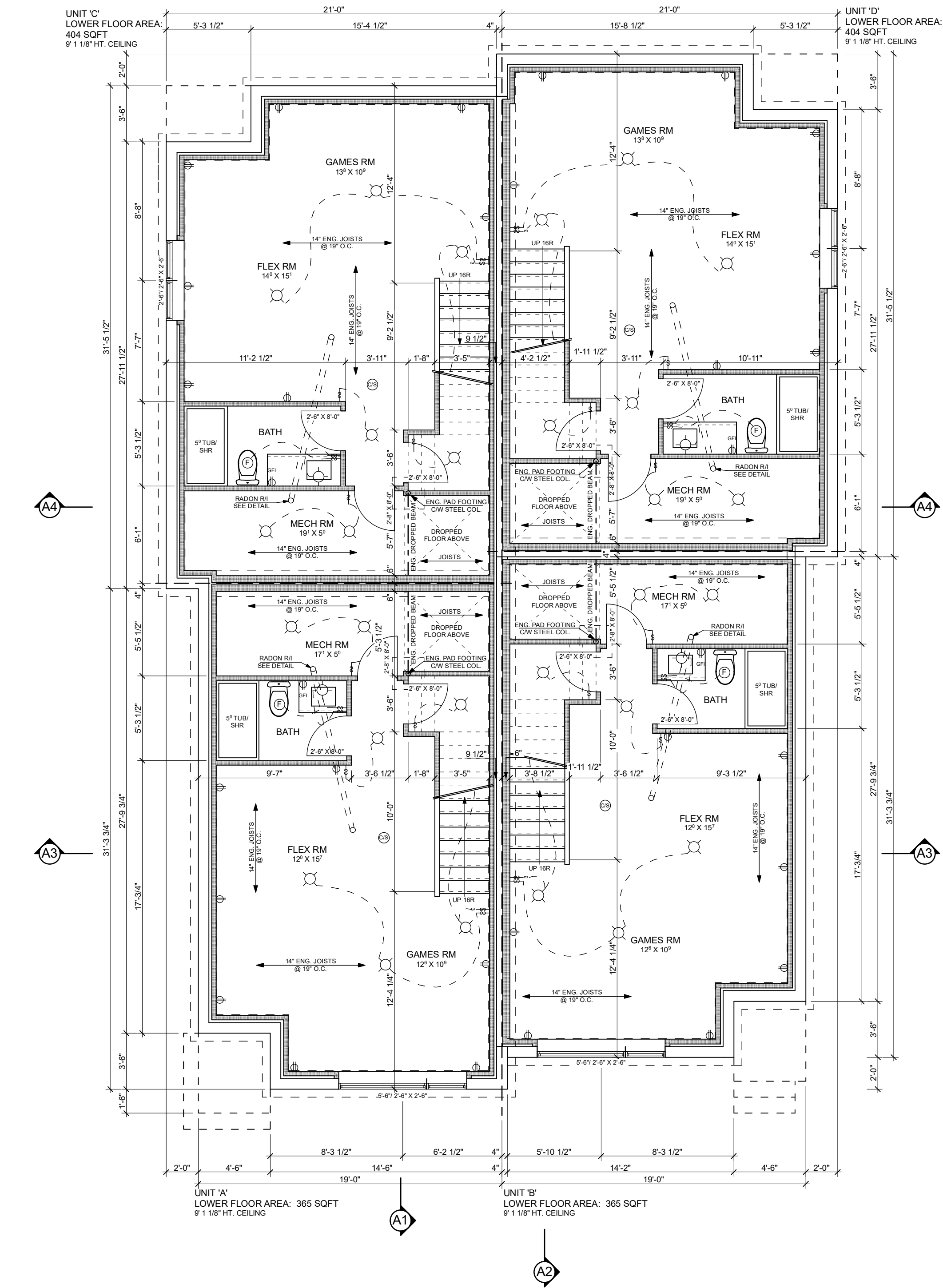
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ADDRESS:	DWG. TITLE:	REVISIONS:	SCALE:	DATE:	DRAWN BY:	SHEET NO.:
711 5ST NE CALGARY, AB	MAIN FLOOR, SECOND FLOOR, THRID FLOOR		3/16" = 1'-0"	AUGUST 5, 2019	AD	4

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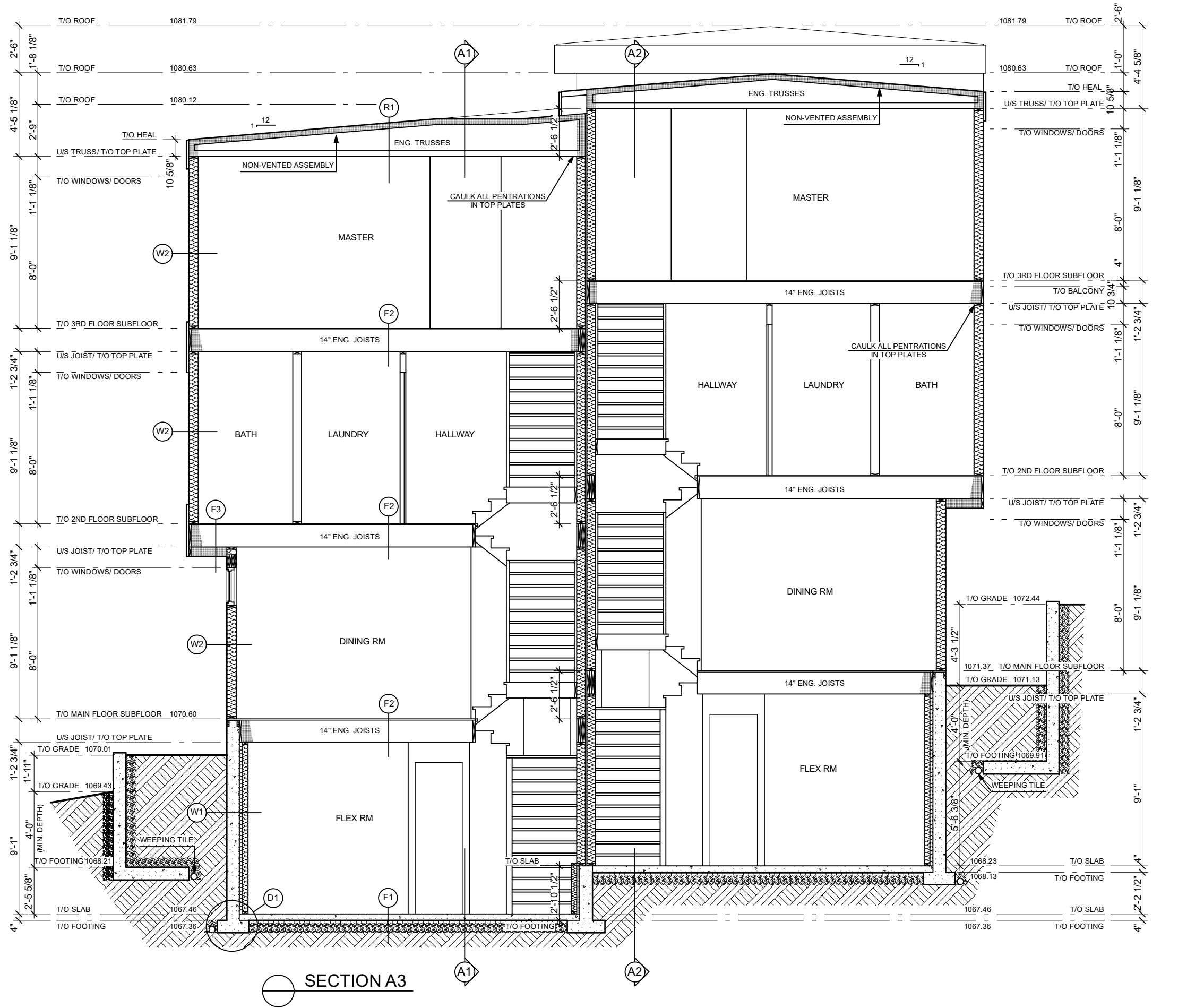
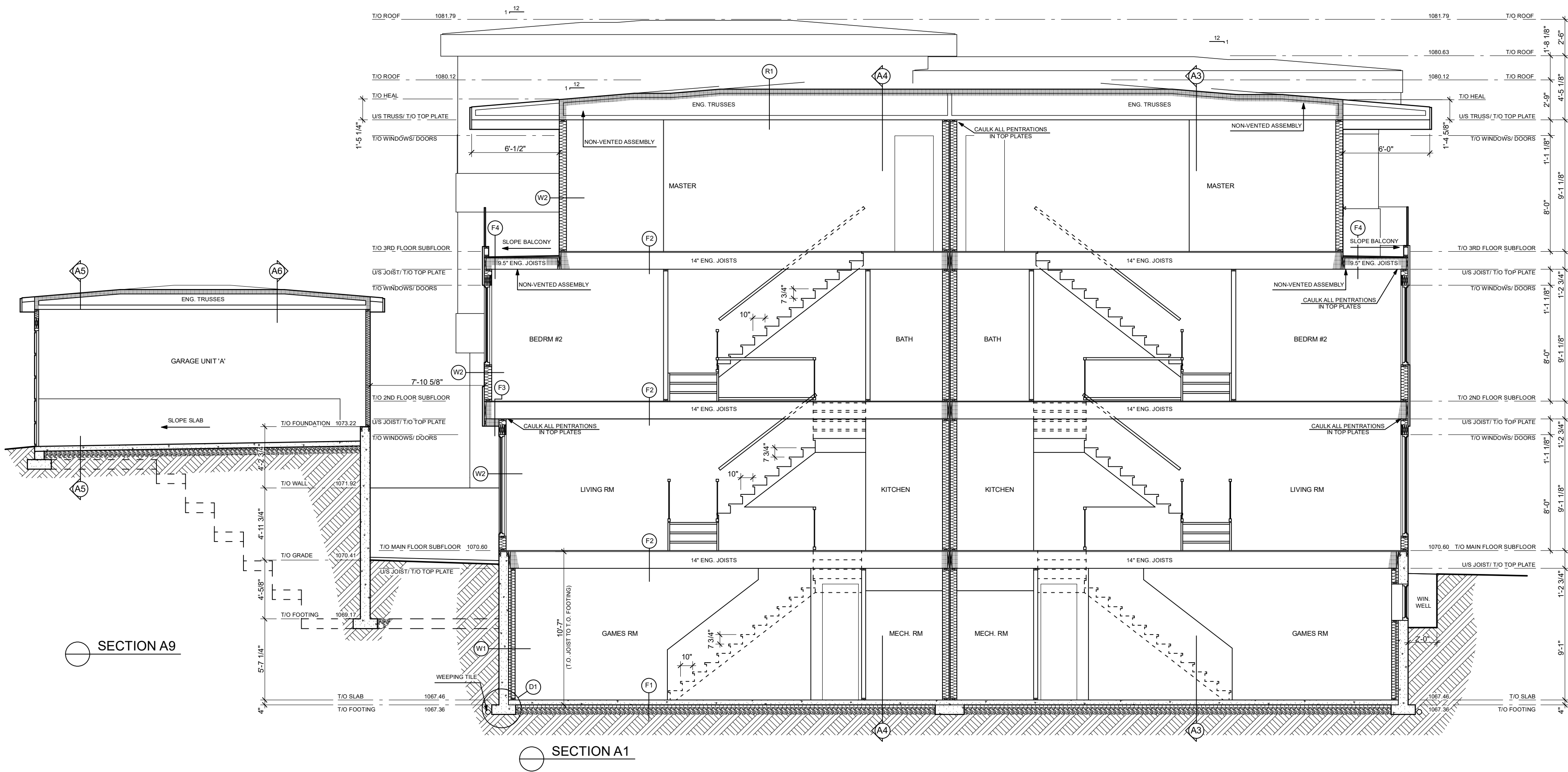
ADDRESS: 711 5ST NE CALGARY, AB
DWG. TITLE: LOWER FLOOR, GARAGE FLOOR PLAN, FOUNDATION PLAN
REVISIONS:
SCALE: 3/16" 1'-0"

DATE: AUGUST 5, 2019
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SHEET NO.: 5

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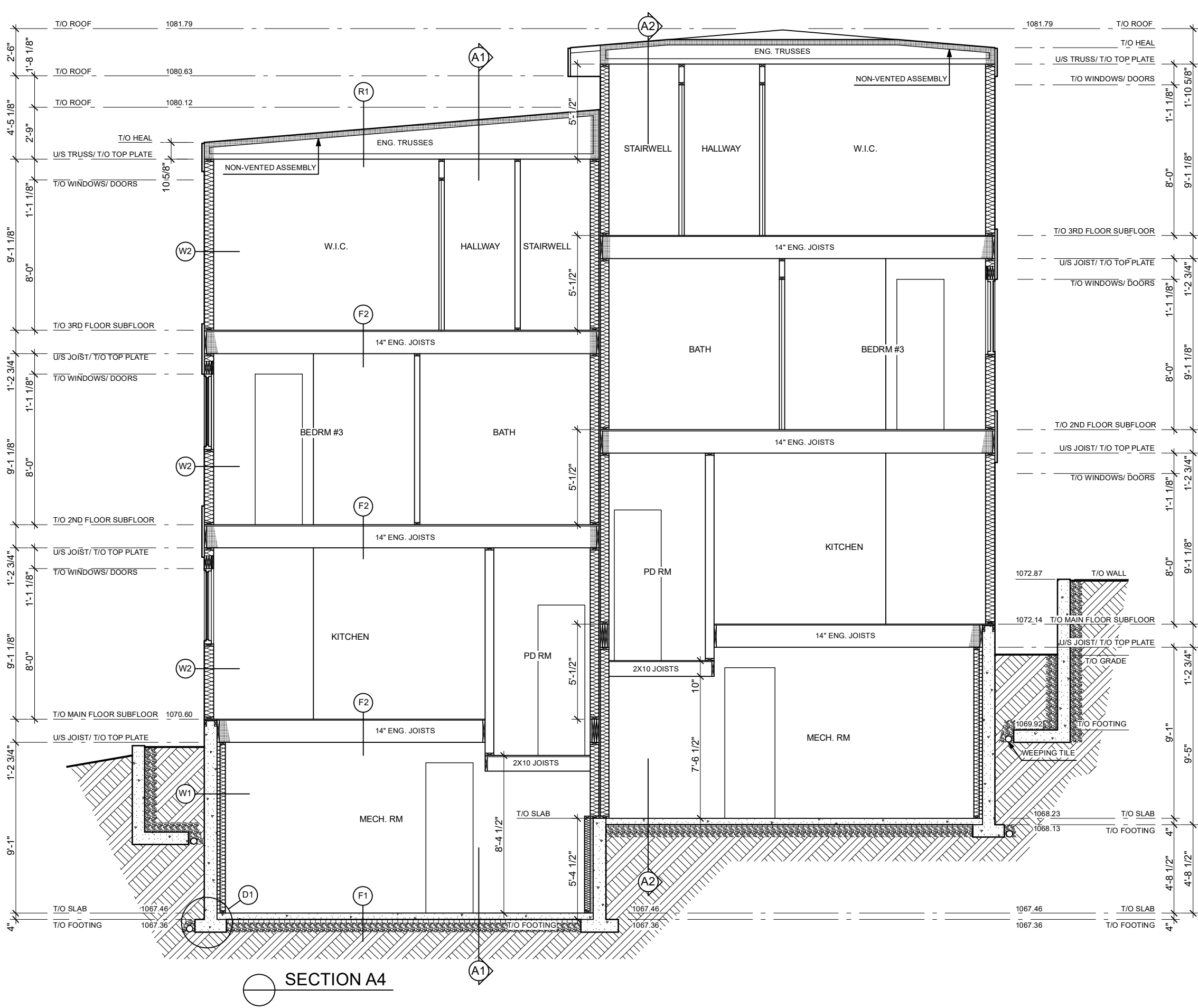
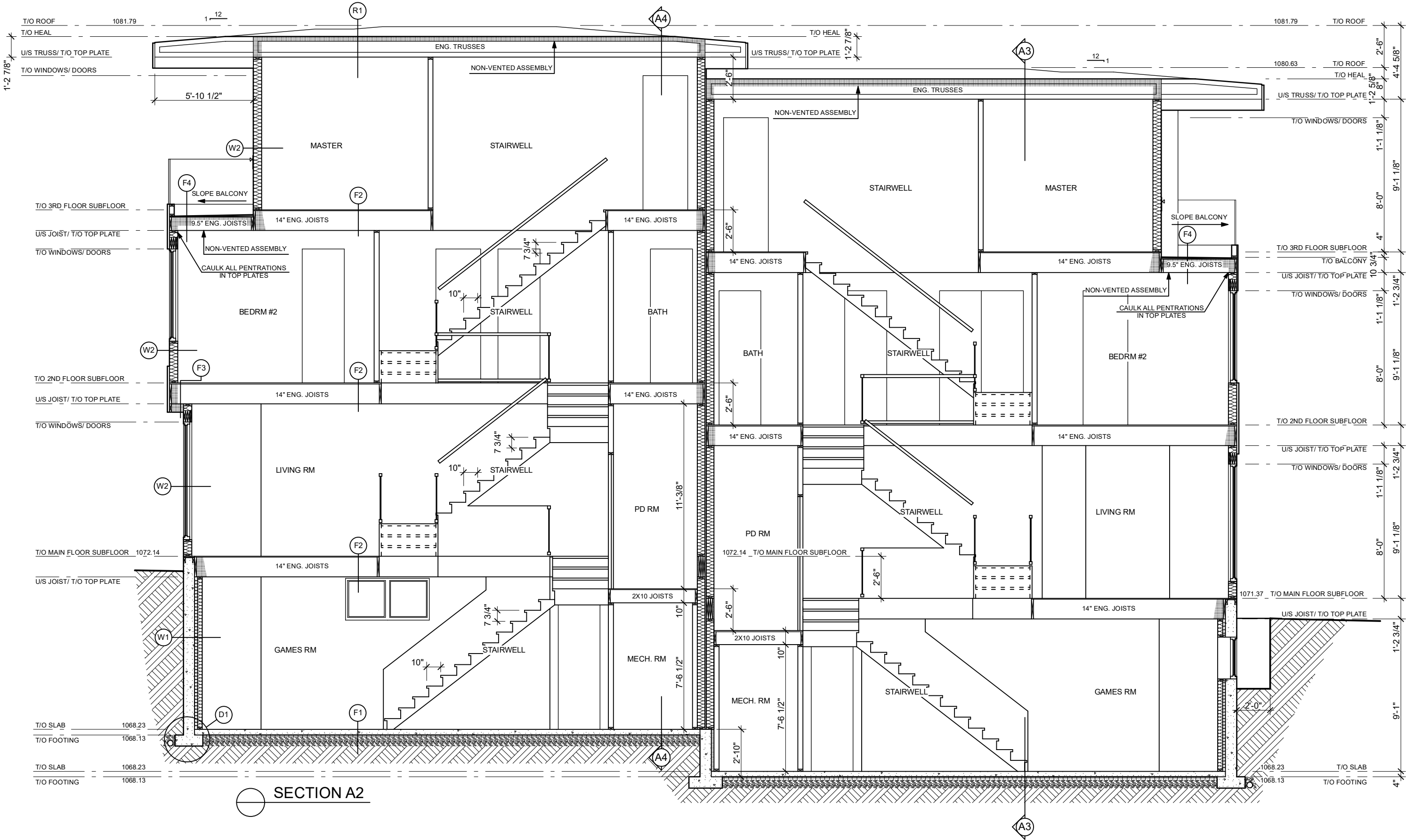
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711 5ST NE CALGARY, AB	SECTIONS A1, A2, A3, A4		3/16" 1'-0"	AUGUST 5, 2019	AD	6

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