



FORM TITLE

Header text

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- I have read and understand that my name and comments will be made publicly available in the Council agenda. My email address will not be included in the public record.

First name (required)

April

Last name (required)

Kojima

What do you want to do?
(required)

Submit a comment

Public hearing item (required -
max 75 characters)

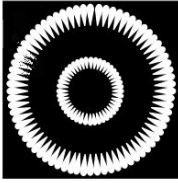
LOC2019-0138, CPC2021-1052

Date of meeting

Sep 13, 2021

Comments - please refrain from
providing personal information in
this field (maximum 2500
characters)

As the applicant for this land use redesignation, please find attached our written submission to Council for LOC2019-0138.



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September 1, 2021

Re: **LOC2019-0138 | CPC2021-1052**
1635 & 1639 – 38 Street SW, 3902 – 17 Avenue SW

Dear Mayor Nenshi and Members of Council;

The following is intended to clarify our intent and position with respect to the above-captioned land use application.

While this site is somewhat complex, the land use proposal before you is simple and appropriate. Further, it brings an existing rather messy situation into direct line with current statutory policy and will facilitate more appropriate future development.

THE SITE

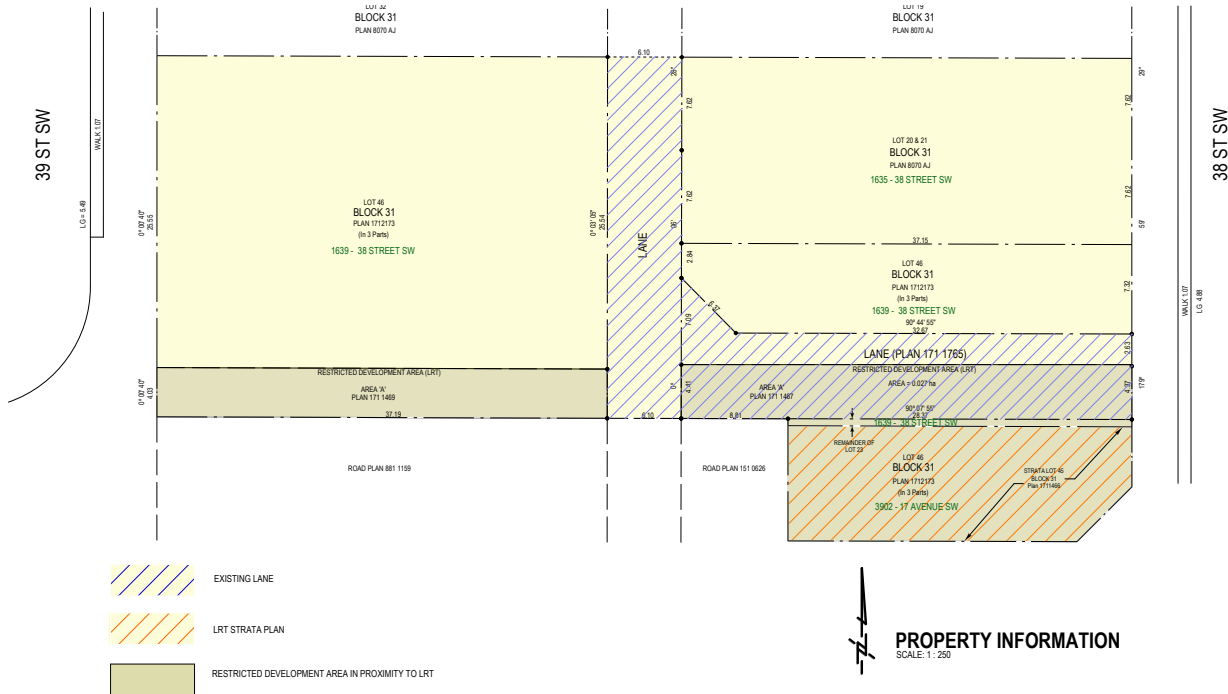
The subject site is currently comprised of two parcels with three zonings: C-COR2f1.0h10, C-COR2f3.0h23 and M-C1. Located between 38 and 39 Street SW and directly adjacent to the LRT track on the north side of 17th Avenue SW, the parcels are currently occupied by a vacant former paint store and a single family home. Existing development is primarily residential to the west and north, and commercial to the south and east:



The paint store parcel is fragmented into three physical pieces, bisected by a north-south and east-west lane, and was formerly owned by the City of Calgary.

The 45 Street LRT station is located $\pm 600\text{m}$ to the west, and the Westbrook LRT station $\pm 500\text{m}$ to the east, and the LRT tracks pass directly in front of the subject property.

This diagram illustrates the restricted and unrestricted areas of the site:



The gray-shaded areas are subject to restrictive covenants primarily related to structural loading in these areas. City approval is required to utilize these areas, and no building structure is permitted. Note the current lane is located partially in this restricted area. The orange stripe represents the area of the LRT tunnel that is encompassed by a strata plan owned by the City of Calgary. Ownership here is shared volumetrically.

The pale yellow areas are fully developable areas. Note the partial east-west lane and the north-south lane. Both lanes are used quite frequently, and shortcutting to 39 Street in front of the existing building to the west is common.

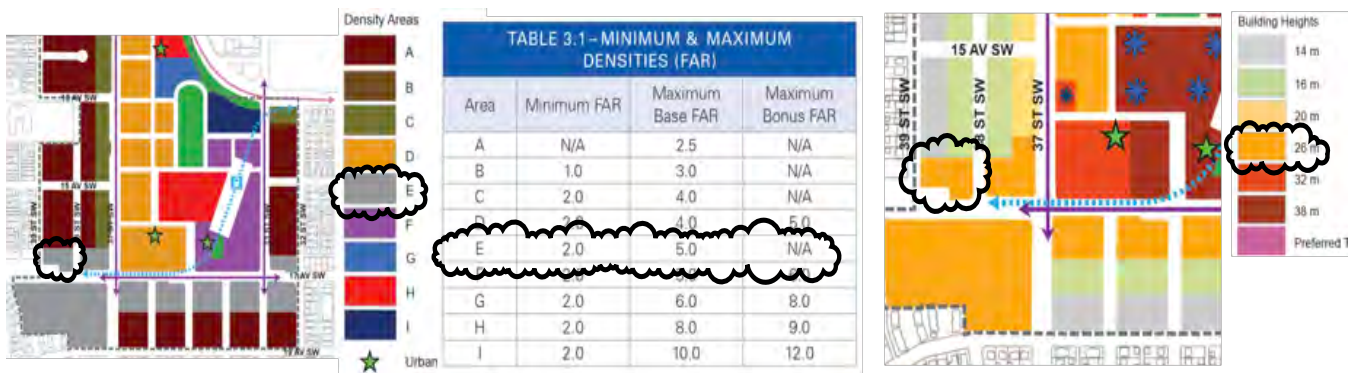
THE POLICY

The applicable Westbrook Village Area Redevelopment Plan notes that ‘Along a portion of north side of the street, buildings will be required to be located back from 17th Avenue SW in order to accommodate the right of way for the LRT line. This provides an opportunity to ‘announce’ the Plan area from the 17th Avenue SW corridor and establish a special character retail district on the ‘sunny side’ of the street.’

This is specifically one such site.

Prescribed density for this site is between 2.0 and 5.0, with prescribed height up to 26m.

The MU-1f3.0h23 proposal is directly in line with the Westbrook Village ARP and is part of the 17th Avenue Precinct.



CONCEPTUAL DESIGN AND CONSOLIDATION

A lot of time prior to the application was spent discussing the land use proposal with the City of Calgary and developing concepts. These concepts were developed primarily to work out potential development constraints and solutions. One such concept is shown here:



This particular concept is only possible with consolidation of the north-south lane into the parcel, and potential access easements. The potential closure review was undertaken, contributing a large part of the application’s extended timeline.

Ultimately, the applicant was advised that the north-south purchase could not be considered without a detailed development concept. The east-west lane is available for the landowner to consider.

Based on further and recent discussion with Real Estate & Development Services and Development Engineering, the north-south lane purchase discussion can continue, and existing infrastructure in the lane (ie. storm lines) can be relocated.

Early discussions with Administration further made clear a desire by Transportation to see a permanent east-west vehicle and pedestrian connection between the building and the LRT tracks, which should be easily accommodated. Something like this:



CALGARY PLANNING COMMISSION

On August 5, 2021, Calgary Planning Commission carried a motion to refer this application back to Administration to better reflect the encumbered lands, and for further outreach with the community association and adjacent landowners. Later, Calgary Planning Commission reconsidered at the request of the Applicant and carried a motion to file and abandon the proposed bylaw.

We respectfully disagreed with the motion to refer the application back to Administration. We understood the implication of the referral to be consideration of a Direct Control District to reflect the restrictions on the site.

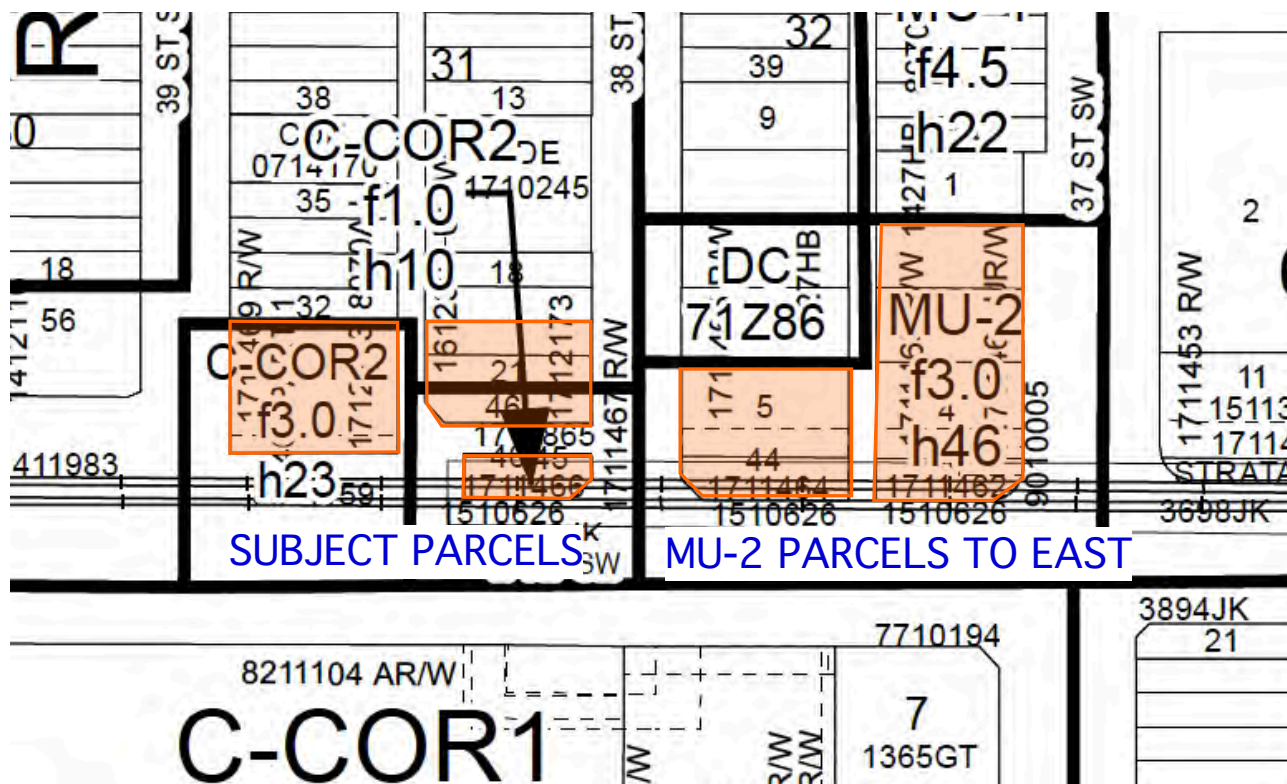
We would submit that a Direct Control District requires compliance with the rules of the Land Use Bylaw as they apply to implementing Direct Control Districts. Employing a Direct Control to reflect site constraints is in contravention of the Land Use Bylaw, in particular Section 20(2). This section states that Direct Control Districts must not be used:

- (a) in substitution of any other land use district in this Bylaw that could be used to achieve the same result either with or without relaxations of this Bylaw; or
- (b) to regulate matters that are regulated by subdivision or development permit approval conditions.

Put simply, the MU-1 district across the entirety of the parcels would result in the same development as a Direct Control limiting development on the restricted areas. More importantly, zoning should not be used as a replacement for the discretion of the Development Authority where it's not necessary or justifiable.

It is our opinion that site constraints are not unusual on any site - and easements, rights-of-way and restrictive covenants are typical methods of appropriately constraining development. In our decades of experience as applicants, it would be fair to say we have not yet run into a situation where zoning was used to reinforce a restrictive covenant where it concerns the LRT or otherwise.

We would further note the site directly east across 38 Street SW is subject to the same physical LRT condition and is fully zoned MU-2:



ENGAGEMENT

To speak briefly about engagement beyond the information available in the report, at the onset of the application we reached out to all of the nearby homes on 38th Street, 39th Street and the east side of 40th Street up to 15th Avenue SW. This is an approach we find helps us gauge interest in the project and decide whether wider engagement would be beneficial, particularly where there is no concurrent development permit. No response was received from this outreach.

We have seen a similar lack of expressed interest where the subject properties are not currently attractive and/or exist on busy corridors:



There was also quite a bit of public and private engagement occurring in the area at the time. Coupled with positive discussion with the Rosscarrock Community Association, we continued with the application process.

The site has been continuously and conspicuously signed with two large signs since early February 2020. My name and number is clearly represented on these signs as the applicant. I have received two or three calls since then as a result of these large signs - from the Calgary Police. The site is attracting a growing homeless population of late and the owners have repeatedly cleaned up the site after their removal.

The City of Calgary has similarly received no comment on the application as a result of its typical notification process.

We have further reconnected recently with the Rosscarrock Community Association, who indicated they would endeavor to formalize their support for this application.

SUMMARY

To summarize why we believe this application is appropriate and should be supported:

- **The MU-1f3h23 proposed is directly in line with the Westbrook Village ARP and is one of the gateway parcels to the 17th Avenue Precinct.**
- **The site is located within 600m of LRT stations to both the east and west, and is located directly on a busy corridor.**
- **The site currently a mish-mash of zoning, including C-COR2, which notably considers auto-oriented uses and varied setbacks. This land use proposal gets rid of uneven, and even undesirable existing land use districts in favour of an appropriate district.**
- **A Direct Control or split zoning proposal is not appropriate under the Land Use Bylaw to reflect site constraints.**
- **Additional consolidation of lanes only makes possible more comprehensive development, and is negotiable.**
- **The properties can be developed as they exist and regardless of further lane acquisition as two developments on either side of the north-south lane.**

We hope this provides you with a clear outline of this land use application, and would respectfully request your support.

Yours truly,
April Kojima, B.Sc.E.



RICK BALBI ARCHITECT LTD.