

Applicant Submission



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May 31, 2023

Overview

This is an applicant's planning overview detailing specific information about this parcel, background on why this amendment is required, and our intended direct control proposal, with regards to a land-use amendment proposal for 2309 23 Av St NW and 2304 23 Av NW. This update, dated May 31 2023, includes minor key updates compared to the originally submitted applicant submission dated November 2, 2022. Specific updates are highlighted and noted.

Note: 2309 23 Av NW is formerly 2363 22 St NW, with the address change following approved DP plans.

2309 23 Av NW legal address is Lot 20, Block 10, Plan 9110GI

2304 23 Av NW legal address is Lot 26, Block 11, Plan 9110GI

Summary

Ellergodt Design is submitting this application for a land-use amendment on these two properties on behalf of the landowners, Filip and Lorena Hrazdira for #2309, and Lubomir and Maria Hrazdira for #2304. The currently existing land zoning is R-CG, intended for low-density row housing. The proposed land zoning is a Direct Control, with a base of R-CG, intended for low-density row housing but with a modifier requiring a **minimum density of 55 units per hectare and a maximum density of 75 units per hectare** (update the minimum density from 50 to 55, May 31 2023), effectively restricting new development on these parcels to 3 or 4 units. This direct control land-use amendment is further reinforcing the prior City-initiated land-use amendments for increased density in the area, following principles in the Municipal Development Plan (MDP) and the local Banff Trail Area Redevelopment Plan (ARP), all of which have been supported by the Calgary Planning Commission (CPC) and City Council previously.

Currently existing on title for each of these properties is a restrictive covenant registered by the City of Calgary in 1952 titled "1358GL". This covenant was used as a restriction of development before there was a land-use bylaw providing zoning requirements, and thus restricts development on the affected parcels at 1 to 2 dwellings per 50 feet of lot width.

In late 2021, Ellergodt Design had applied for a development permit for 2309 23 Av NW (formerly 2363 22 St NW) including a 4-unit rowhouse dwelling with 4 basement suites. In 2022, this development was fully approved, and no appeals were submitted following the due course of the DP. Refer to DP2021-8595. There is currently no development permit in place for the 2304 23 Av NW property, however the future plans for this property are to develop a similar 4-unit rowhouse with basement suites.

In order to confidently move forward with construction, the restrictive covenant needs to be discharged from the title. In order to do this through the legal court system, the zoning of the lot must provide a distinct conflict to the covenant currently registered on title. Quoting from legal precedent from the Court of Queen's Bench of Alberta,

"The use of a Direct Control District under section 20(1) of Land Use By-laws contemplates "unique characteristics, innovative ideas or unusual site constraints". This analysis is not limited to the property itself (which may or may not have unique characteristics or constraints), but also covers other unique situations or



“innovative ideas” where the proposed development requires a more specific or customized land-use. In this particular case, the unique site constraint is the presence of the covenant registered on title for the two properties. While a restrictive covenant in itself is not necessarily “unique”, what is unusual about these two sites is that (i) one (2309 23 Ave NW) has already received development permit approval, (ii) the Restrictive Covenant acts as a constraint that prevents those proposed developments from proceeding, and (iii) the inability to proceed with these projects means that the City of Calgary’s goals and objectives under the ARP cannot be implemented or fulfilled. In other words, it is unusual to have a restrictive covenant that directly impedes the implementation of Calgary’s statutory planning goals. Calgary has recognized this unusual situation within the Banff Trail ARP, which states that “where such conflict occurs, Calgary supports the direction of this plan”.

Furthermore, the restrictive covenant impedes Calgary’s Climate Resiliency Strategy approved by Council on July 5, 2022. This development is needed in order to fulfill the ‘Calgary Climate Plan - Pathways to 2050’ plan, given its central location in Banff Trail specifically under the theme of low carbon neighborhoods. This land-use amendment will ensure that Calgary uses land more efficiently to transition to a denser, more compact city with minimal driving distance.

Related Land-use Amendment providing Context and Legal Precedent

A similar land-use amendment occurred on a nearby parcel, 2404 22 St NW. Refer to LOC2019-0019 with reference to CPC2021-0758 and DP2018-5224. The intent of this land-use amendment, through the applicant’s submission, was to reinforce the original intent of City of Calgary initiated rezoning to R-CG in 2017. This further creates a conflict (in addition to the MDP, the Banff Trail ARP, and the zoning of R-CG) to the restrictive covenant registered on title, which led to a later court ruling. In 2021, this land-use amendment was approved by CPC and Council.

On August 15, 2022, the Court of Queen’s Bench of Alberta made a legal ruling on this matter that ordered the discharge of the restrictive covenant 1358GL for this property (2404 22 St NW) on the grounds that there is a distinct conflict between the DC zoning of the property and the restrictive covenant itself.

This legal judgement relates to the subject parcels at 2309 23 Av NW and 2304 23 Av NW in that it demonstrates a clear path forward for development. A development permit should be in place (DP2021-8595), the zoning needs to be changed to Direct Control to create a conflict in zoning, and then the restrictive covenant can be discharged from the property.

Subject Parcels

This proposed land-use amendment covers two parcels of land located in the community of Banff Trail, in Calgary’s Northwest. Located at 2309 23 Av NW and 2304 23 Av NW, each of these two parcels is situated on a corner parcel at the intersection of 23 Av and 22 St NW. Each parcel is relatively flat in nature, rectangular in shape, and 15.24 x 36.57m in dimension (50’ x 120’). Currently existing on 2304 23 Av NW is an original bungalow and detached garage built around 1952-53. Currently existing on 2309 23 Av is bare land. Each property has access to a rear lane and have some existing trees and landscaping.



Banff trail is uniquely located within the city amidst several primary road networks and city amenities. Located approximately 900m to the Northwest is the University of Calgary campus; 1.75km to the Southeast is the SAIT campus and adjacent AUArts; and 800m Northeast is the west side of Confederation Park. Located 400m to the west is Crowchild Trail NW; 600m to the south is 16th Avenue NW; 400m to the east is 19th St NW; and 200m to the north is 24th Av NW. There is great access to public transit notably including the Banff Trail C-train platform just 290m to the southwest; additional bus stops and bus access are located nearby along 16th Av NW, 19th St NW, and 20th Av NW.

There are several schools within walking and biking distance, including primary, secondary, and post secondary institutions. Within a 1.5km radius, schools include: Branton School, Capitol Hill School, William Aberhart High School, Banff Trail School, Collingwood School, St Francis High School, Calgary Montessori School, St Pius X School, St Margaret School, Maria Montessori Education Centre, SAIT, AUArts, and the U of C. Further, there are several parks, green spaces, community centers, gathering places, and open spaces nearby and within walking distances.

With proximity to good road networks, public transit, access to green space and schools, and in prime location for modest densification, these reasons support a DC zoning specifically targeted at 3- to 4-unit rowhouse with suites. Further, this follows council-approved and City-initiated policy amendments with the goal of allowing modest densification to inner city community to help the City grow and increase housing stock.

Direct Control Zoning

The proposed land-use district is a Direct Control in order to narrow down the current zoning of R-CG. We are proposing a base zoning of R-CG, exactly as the lands are currently zoned, to support a corner parcel rowhouse. The specific DC modifiers are proposed as a **minimum density of 55 units per hectare and a maximum density of 75 units per hectare** (update the minimum density from 50 to 55, May 31 2023). Further, the permitted use of Contextual Semi-detached dwelling should be removed, and the discretionary uses of cottage housing cluster, duplex dwelling, semi-detached dwelling, and single detached dwelling should be removed.

This proposed DC zoning will therefore only allow residential units of 3 or 4 for each parcel. This will subsequently implement the transit-oriented development vision for this area, as previously approved by council, by accommodating rowhouse development with a minimum and maximum density requirement.

Regards,

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