



**Public Submission**

CC 968 (R2024-05)

**FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT**

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**ENDORSEMENT STATEMENT ON TRUTH AND RECONCILIATION, ANTI-RACISM, EQUITY, DIVERSITY, INCLUSION AND BELONGING**

The purpose of The City of Calgary is to make life better every day. To fully realize our purpose, we are committed to addressing racism and other forms of discrimination within our programs, policies, and services and eliminating barriers that impact the lives of Indigenous, Racialized, and other marginalized people. It is expected that participants will behave respectfully and treat everyone with dignity and respect to allow for conversations free from bias and prejudice.

First name [required] **Ryder**

Last name [required] **McRitchie**

How do you wish to attend? **In-person**

You may bring a support person should you require language or translator services. Do you plan on bringing a support person?

What meeting do you wish to comment on? [required] **Council**

Date of meeting [required] **Jan 14, 2025**

What agenda item do you wish to comment on? (Refer to the Council or Committee agenda published [here](#).)

[required] - max 75 characters **Land use redesignation - LOC2024-0183**

Are you in favour or opposition of the issue? [required] **In opposition**



### Public Submission

CC 968 (R2024-05)

ATTACHMENT\_01\_FILENAME

Land use redesignation Opposition Comments.docx

ATTACHMENT\_02\_FILENAME

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

Please see attached comments

Land use redesignation - LOC2024-0183

In opposition

Back in 2021 and 2022 I was part of a group that submitted an appeal to the initial design (approved by City planners) for the location at 218 19th street (one of the 4 properties included in the current application). The applicant operated under the name EagleCrest at that time (now EC for the current applications). We dedicated many hours into preparing and delivering what was ultimately a successful SDAB Appeal 2021-0091.

The SDAB decision rejected the development on this site with a FAR of 3.3 and height of about 19m, or five floors. Among the Board's findings was a determination that "the proposed development is insensitive to adjacent development and amenities of the neighborhood" and should not be approved. The Board deemed it was not a "modest development as envisioned by the MDP" and that the height of the building would "unduly interfere with the use, enjoyment and value of neighbouring properties."

Further, the Board found "significant overlooking issues into the appellants' properties since the lane is narrow, there are no trees providing a separation buffer and the higher floors (of a five-storey building) would have an unobstructed view into backyards and rear living area windows of the applicants' homes directly across from the development."

In contrast, the newly proposed development that accompanied this current land use application is massed closer to the laneway than either the rejected 2021 project and or its adjacent 19+2 development; rises six storeys, vs. the five storeys rejected in 2021; has more east-facing overlooking windows than the rejected project; also features east-facing balconies, promising additional intrusion, and requires excessive parking relaxations beyond which local transit and other factors would justify.

In short, the applicants intended design, facilitated by the proposed change in land use, will be even more insensitive to surrounding properties.

Emphasizing a prior point, the significant overlook issues found by SDAB for the rejected 2021 project are only set up to be worsened with an increase in height from 19m to 24m. This goes in exactly the opposite direction of the Board's conclusions, and it seems illogical that the applicant would propose this change and make us all go through a repeat of the prior process – a waste of time and taxpayers money. It begs the questions: Why has the City planning department not intervened before getting to this point? Why is the City planning group not holding the applicant accountable to address the feedback already received?

We recognize that this is a land use designation, and key issues related to the building design are not in scope, but why ignore where this is headed? Don't set us (and the applicant) on a path to failure when a precedent setting decision has already ruled against what this application is ultimately asking for.

To be clear, we are not opposed to the City's goals for increased densification, but it should be done within reason. In this case, a reasonable design/development would be 4 storeys max with appropriate transition & parking, but it should be done within the existing height restriction of 19m.

So please respect the time and effort put in by many people (both residents and City staff) that resulted in the prior decision against the applicant (from only a few years ago) and rule against the proposed land use change. Don't allow this applicant to ignore and not learn from the past and waste more of our time.



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First name [required] Chris

Last name [required] Wong

How do you wish to attend? In-person

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[required] - max 75 characters LOC2024-0183

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ATTACHMENT\_01\_FILENAME                      LOC2024-0183 Public Meeting v1.5.1.pdf

ATTACHMENT\_02\_FILENAME

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

Ryder McRitchie (he has previously submitted a request to speak), myself, and Will Overend (request to speak coming) will speak to the same attached presentation. I will use the 1st 5 minutes for the 1st half of the presentation, while Ryder will use his 5 minutes for the last half. Will will use his 5 minutes if we go over 10 minutes. Please contact me if there are questions about this.



# Public Hearing Appeal Submission

**LOC2024-0183**

**(DP2024-06339, 206, 210, 214, 218 19  
Street NW)**

# INTRODUCTIONS

## Ryder McRitchie

- ✓ Vice President, Western Canada for a Canadian engineering firm
- ✓ Resident / homeowner in the West Hillhurst area for over 30 years

## Chris Wong

- ✓ Regulatory Advisor and Forensic Auditor with credentials in physical security assessment
- ✓ 15+ years serving on various condo boards

## Will Overend

- ✓ Management Consultant & Strategic Planner
- ✓ Multi-family residential property investor



- **We believe the existing land use is sufficient to enable high density development (if sufficient scale transitions are made)**
  - ✓ Existing land use of 19m currently in place
  - ✓ Applicant's previous "19+2" development has a FAR of 3.3m and demonstrates that a high density development is possible with the existing land use
  
- **This presentation will show that this additional height as proposed will exacerbate impact to the surrounding community given its "insensitive" and inconsequential scale transition features**
  - ✓ The purpose of this Application is to build a bigger and taller building, with no other purpose

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**The existing MU-1f3.3h19 land use is sufficient for high density development**

# SIMILARITIES TO PREVIOUSLY DENIED APPLICATION

- **The proposed project exhibits substantially the same character, design, and land use deficiencies as the previously denied application (SDAB 2020-0091)**
  - ✓ Decision details at: <https://tinyurl.com/SDABLINK>
- **The Applicant has failed to address the fundamental concerns raised by the Board in its previous denial that impact the land use**
  - ✓ Deficiencies have been intensified, not improved



# OVERLOOK / LACK OF TRANSITION TO ADJACENT PROPERTIES

- “The Board finds that there are significant overlooking issues into the appellants' properties since the lane is narrow, there are no trees providing a separation buffer and three of the five floors have an unobstructed view into the backyards and rear living area windows of the appellants' homes directly across from the development”



**Applicant has not addressed overlook concerns, and actually worsened them**

# LACK OF MASSING SHIFTS / CUTOUTS

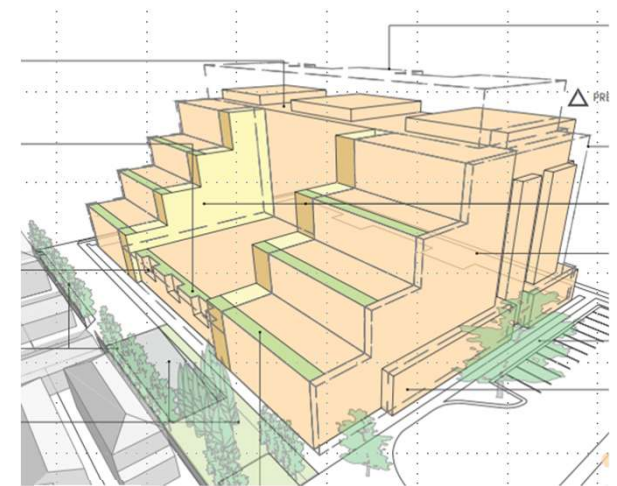
- **The Application lacks materially significant massing shifts and cutouts from similar developments in the areas (and the Applicants own adjacent development)**

SDAB Ruling Quote *"The Bylaw, in section 1333(g), states that one of the purposes of mixed-use districts is to achieve transition to lower scale residential buildings on adjacent parcels. The Board finds that the proposed development does not achieve such a transition for adjacent east parcels.*

*It maximizes the envelope in terms of height and massing and provides no transitional landscaping, especially considering the inner-city lane separation is narrower at 5.5 metres than the current City width standard."*



(above) Applicant's previous "19+2" (left half) and "West 19<sup>th</sup>" (right half) Development showing non continuity of massing shifts, and non-contiguous cutouts on West 19<sup>th</sup>



(above) Massing Shifts on Truman Homes Kensington Redevelopment (see Appendix A for additional details)

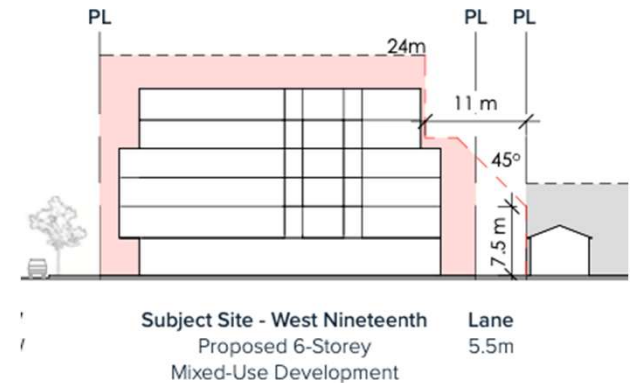


(right) East Elevation of Massing Shifts, Cutouts, and Stepbacks on Applicant's Adjacent 19+2 Development

**Applicant's Previous Massing Shifts Should Be Continued On This Application**

# LACK OF MASSING SHIFTS / CUTOUTS (CONT.)

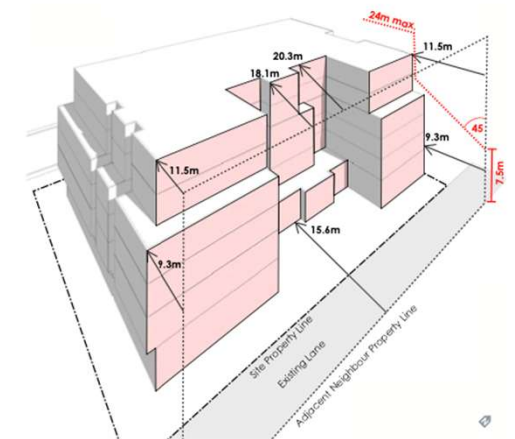
- The massing shifts and cutouts of this application are materially insignificant and do not provide sufficient transitions for shadowing impact
  - ✓ Shadow studies indicate a prevailing impact on the properties to the NE of the Application past 4pm
  - ✓ The proposed courtyard **cut-out would need to be the full-width** of the building to be effective in providing relief
  - ✓ 5<sup>th</sup> / 6<sup>th</sup> floor step backs are insufficient to achieving scale transitions



December 21 4:00pm



June 21 4:00pm



# NON-COMPLIANCE WITH THE FUTURE RILEY PLAN

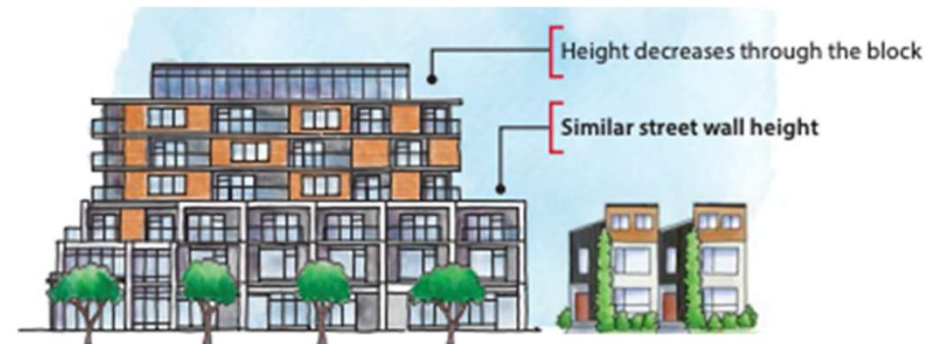
- This Application breaches specific guidance re 19<sup>th</sup> Street NW development guidelines in the Riley LAP regarding scale transitions (step-backs in particular)

## 2.5.6.1 19<sup>th</sup> Street NW Community Corridor (Specific Guidance)

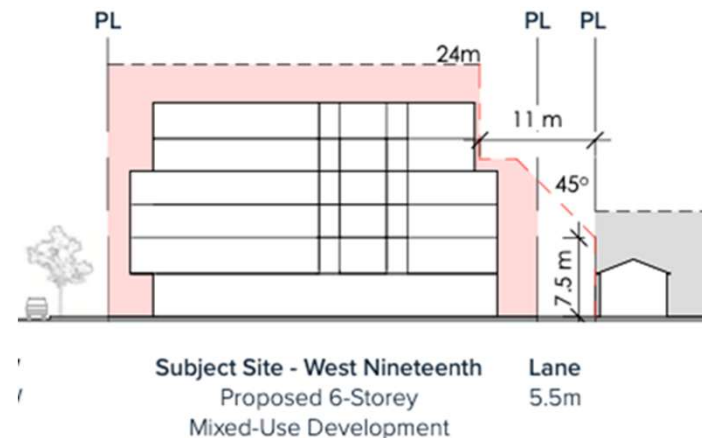
When adjacent parcels have different scale modifiers, development in these areas **should be designed to respect their neighbourhood context**. This includes considering existing site context, parcel layout, building massing, and landscaping in the design of the development, while still achieving the future Vision for where growth is accommodated in the community.

d. Development that shares a property line or lane with parcels developed with single detached, semi-detached, or duplex residential development **should step back the building above the third storey along the shared property line with the lower density development**.

i. Development on the commercial site located along 16 Avenue NW between 19 Street NW and 20A Street NW **should provide for height transitions** across the site towards adjacent low-density residential areas.



(above) Illustrative guidance from the Riley LAP showing meaningful step-backs above the 3<sup>rd</sup> storey



(above) Cross-section of Application showing **failure to step back at the 3<sup>rd</sup> storey** and the immaterial stepbacks / massing shifts creating insensitive transitions to the adjacent 18A St NW properties

# NON-COMPLIANCE WITH THE FUTURE RILEY PLAN (CONT.)

## 2.3.7 Scale Transition (General Guidance)

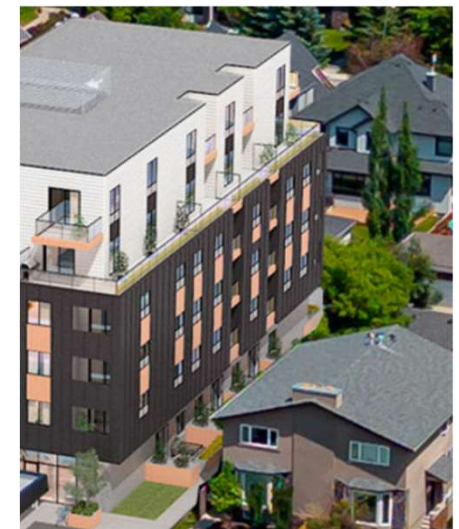
When adjacent parcels have different scale modifiers, development in these areas should be designed to respect their neighbourhood context. This includes considering existing site context, parcel layout, building massing, and landscaping in the design of the development, while still achieving the future Vision for where growth is accommodated in the community.

- a. Development **should provide transitions** in building height and massing where different scale modifiers are located adjacent to each other in Map 4: Building Scale. This may include, but is not limited to, a combination of the following strategies:
  - i. Using similar street wall heights and building massing along a street;
  - ii. **building setbacks and angular planes to step down heights and decrease scales incrementally through a block to shift building massing** away from adjacent lower intensity development;
  - iii. reducing the street wall height to transition the visible mass of a taller building to match the cornice line for a shorter building;
  - iv. **setbacks and landscaping** to buffer higher intensity development from lower-intensity development; or
  - v. the **use of smaller or narrower floorplates** and increased distances between towers to reduce shadowing impact, provide more light for surrounding residential units, and allow flexibility for potential conversion of office buildings to residential.
- b. Higher density development that shares a property line or lane with low density residential development **should setback the building where it interfaces with the lower density development. The setback should provide a clear and distinct transition in scale** between the two development types.

(right) Dwellings immediately to the south of the Application have north facing windows and entrances that will be affected by this development



(right) Dwellings immediately to the south of the Application will not have meaningful setbacks and will have insensitive transitions in scale.



# INADEQUATE LOADING ZONES FOR LAND USE

- **The size of the loading / garbage zones are inadequate for the land use**
  - ✓ This has been proven by the Applicant's adjacent previous 19+2 development

SDAB Ruling Quote *"The Board finds that the proposed development does not have an adequate loading zone. The proposal to use the adjacent development's parking stalls only demonstrates further that the building is too much to allow the proposed development to function on its own."*



(above) Tri-weekly AGLC deliveries to the Liquor Store obstruct the alley given inadequately sized loading zone – can not accommodate standard size delivery trucks



(left) Bi-weekly garbage pickup deliveries obstruct alley given inadequately sized loading zone

(right) Daily Sysco food deliveries are unable to use the undersized loading zone, and now utilize 19<sup>th</sup> Street Travel Lanes for deliveries



(right) Move in / out of residential units use the 19<sup>th</sup> St bus stop given inadequate loading zone proximity to elevator – note that there is no curbside parking here





SDAB Ruling Quote: *“The Board therefore determines there is not sufficient justification for the parking relaxation based on the current conditions of offerings, services and infrastructure in the area.”*

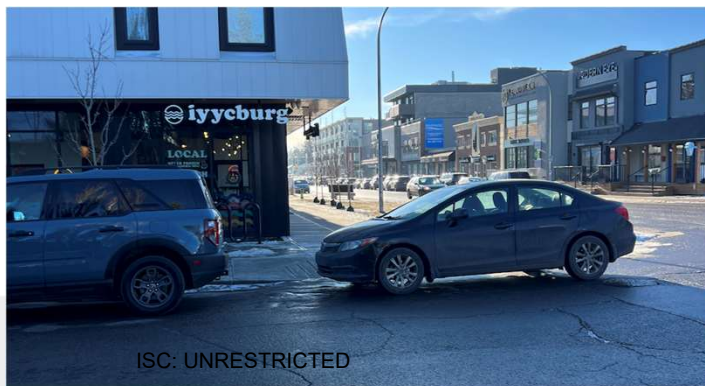
- **The Land Use of the Applicant’s previous 19+2 development has negatively impacted on-street parking issues in the adjacent areas**
  - ✓ Issues include customer driven issues related to the land use (i.e. “Rogue Parking”)
  - ✓ The land use of the current Application will intensify these problems
  
- **Without the 25% parking reduction, this application would have a 13 stall parking deficit, not a surplus of 5 as indicated by the Application**
  - ✓ Primary transit service levels do not currently exist to negate parking requirements
  - ✓ “Creating current parking problems, on the uncertainty of tomorrow’s transit plans”

# IMPACT ON PARKING – ROGUE PARKING

- Customer behaviors of the MU-1 land use has impacted the surrounding community
- These are magnified by the inadequate parking and loading zones of this application
  - ✓ Deliveries / garbage pickup / residential move in / out (as per previous slide)
  - ✓ Skip Deliveries from restaurants
  - ✓ Daycare pickup / drop-off



(Above) North / South daycare children have pedestrian movements obstructed by Rogue parking



(Above and Left) Photos demonstrating customer impacts on "rogue parking" affecting pedestrian and traffic movements



(Above) Skip Driver and U-Haul residential move in Rogue Parking on Transit Bus Stop 12  
Note there is no available on street parking on this section of 19<sup>th</sup> St NW

# FUTURE ON STREET PARKING REDUCTIONS

- City Re-development plans for 19<sup>th</sup> Street will result in a reduction of on street parking, voiding current parking studies

## 19 St NW

### Proposed Condition A

Between Kensington Rd NW – 7/8 Ave NW

#### General Moves

- Widen sidewalks for increased pedestrian comfort and accessibility
- Integrate protected bike lanes to invite all ages and abilities to ride
- Introduce a flexible planting and parking zone that alternates on either side of the street with trees to improve microclimate, manage stormwater and slow traffic speeds
- Reduce the width of vehicular travel lanes for improved safety



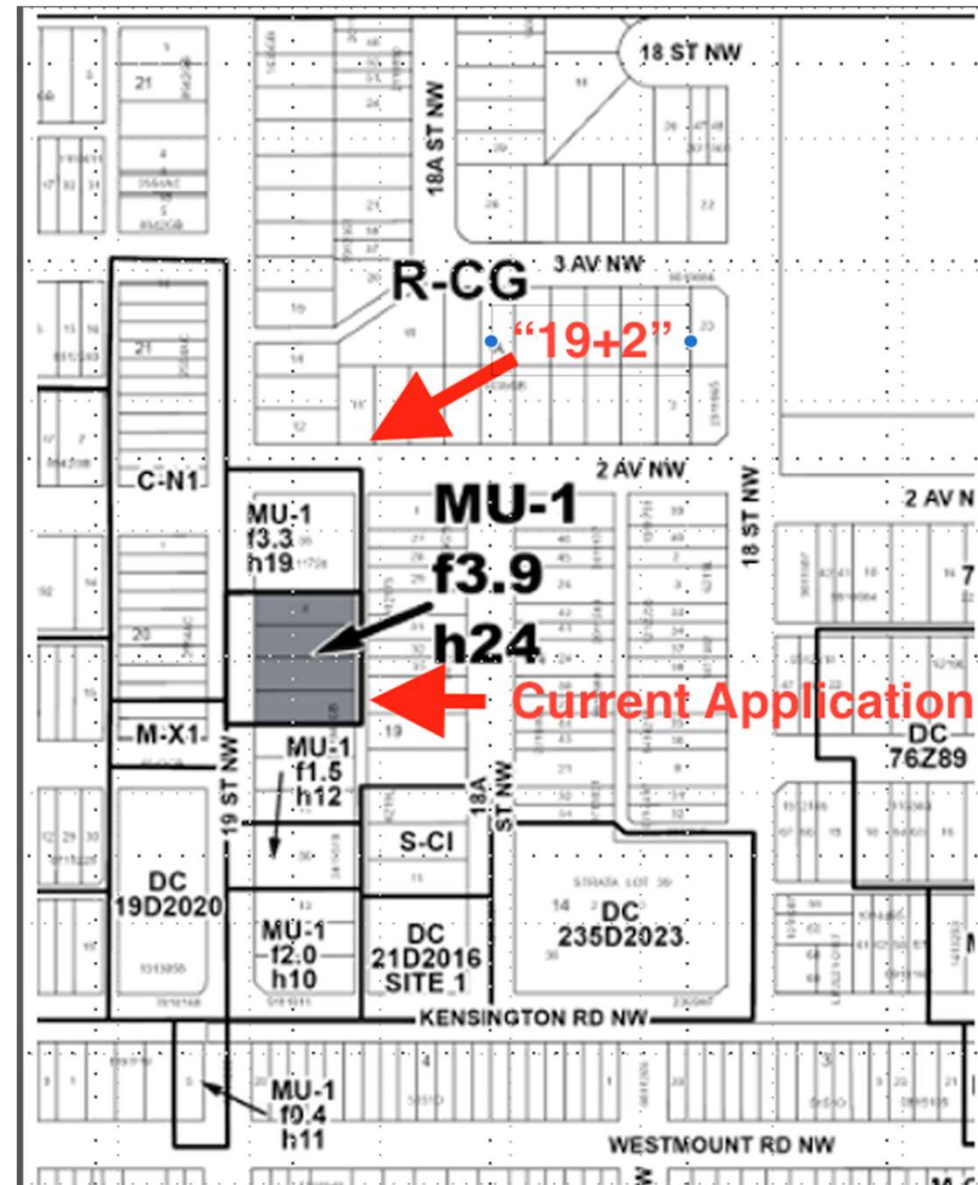
- In addition, newly constructed “bump-outs on 2<sup>nd</sup> Ave will necessitate a 3-4 stall on street reduction for a “no stopping zone” to avoid single lane operations and obstruction of the north / south

- ✓ Required to prevent obstruction of the north / south crosswalk by rogue parking (see previous slide)



# THE HEIGHT INCREASE IS CONTEXTUALLY INAPPROPRIATE

- The Applicant's previous "19+2" building immediately to the north of this Application is at 19 metres of height and the current land use is 19 metres
- The middle three parcels are designated R-CG and the building height is 11 metres
- The new development at the south part of the block is at 12 metres and the shopping centre at Kensington Road is at 10 metres
- Any additional height should be at the south end of 19<sup>th</sup> St NW to complement the Legion re-development – and not be mid-block
- The existing MU-1f3.3h19 land use is sufficient for high density development



There is no reason this land use should be at such a building height given its surroundings

## 4) CONCLUSION

Previous SDAB Ruling Quote:

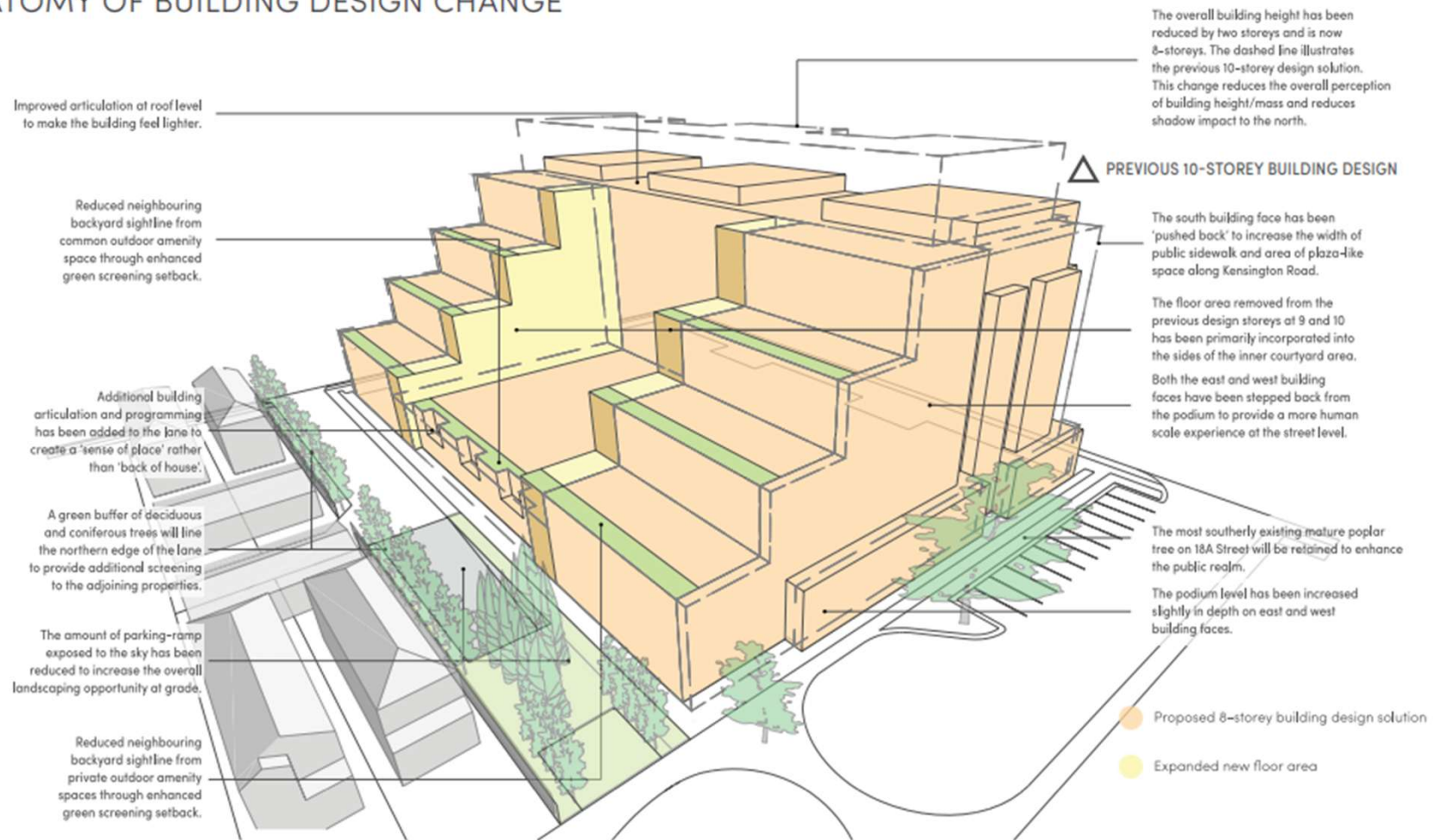
*“The proposed development does not meet the criteria of section 35 of the Bylaw for approval of a discretionary use. It is not consistent with the purpose statements for multi-residential districts and will have a negative impact on adjacent development. It does not have adequate parking or access by means of the transportation network. The proposed development is over height and a height relaxation is not warranted. The Board finds that the development, from a planning perspective, is not based on sound planning principles and is inappropriate for the parcel. Therefore, the application does not warrant approval.*”

- **Current and future residents of West Hillhurst are affected as this Land Use Application does not comply with the MDP or Riley Local Area Plan**
- **This Land Use will affect neighboring sightlines, create overlook issues, congest the laneway, and create parking problems**
- **We ask that this Application be denied**
  - ✓ The existing MU-1f3.3h19 land use is sufficient to enable high density development (if sufficient scale transitions are made)

# APPENDIX A – LEGION NO.264 REDEVELOPMENT

- Truman Homes’s Kensington Legion Re-development on the south end of the block incorporated height transitions (‘tiering’) and other measures to achieve a sensitive transition to neighboring residential properties

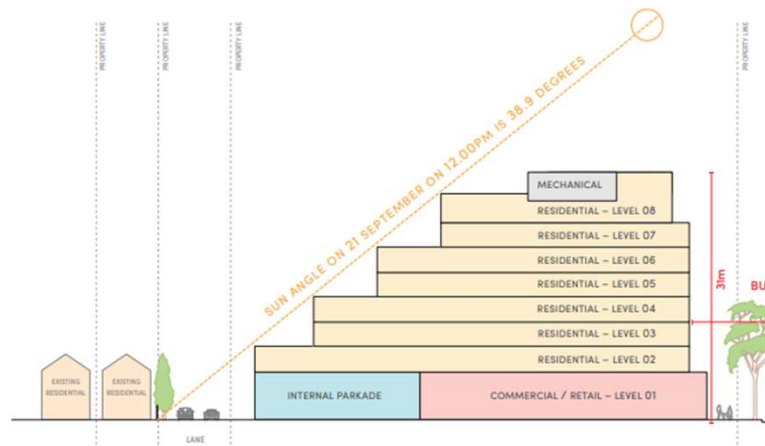
## ANATOMY OF BUILDING DESIGN CHANGE



# APPENDIX B – LEGION NO.264 REDEVELOPMENT

- Truman Homes not only met, but exceeded City Bylaw parking stall requirements for commercial-retail and multi-residential for residents and visitors

BUILDING SECTION DIAGRAM



## SITE 1

### USE TYPE & AREA

Social Organization (The Legion)  
BUILDING STOREYS 1 & 2  
**8,900** (GROSS) SQUARE FEET

Commercial-Office Space  
BUILDING STOREYS 3 & 4  
**19,200** (GROSS) SQUARE FEET

### PARKING

**45** Vehicle Parking Stalls Provided for The Legion  
42 WITHIN UNDERGROUND PARKADE AND 3 AT SURFACE

**16** Vehicle Parking Stalls Provided for the Office Component  
WITHIN UNDERGROUND PARKADE

**61** Total Vehicle Parking Stalls Provide On-Site  
INCLUDES 4 DISABLED-VEHICLE STALLS

**10** Total Bike Parking Stalls Provided  
OVER DEDICATION OF 2 STALLS

## SITE 2

### USE TYPE & AREA

Commercial-Retail  
BUILDING STOREY 1 (PODIUM)  
**25,500** (GROSS) SQUARE FEET

Multi-Residential  
BUILDING STOREYS 2 - 8  
**203,500** (GROSS) SQUARE FEET

Estimated Multi-Residential Units  
BUILDING STOREYS 2 - 8  
**210** DWELLING UNITS

### PARKING

**60** Vehicle Parking Stalls Provided for Retail Uses  
(29 WITHIN THE AT-GRADE INTERNAL PARKADE AND 31 WITHIN THE UNDERGROUND PARKADE)

**231** Vehicle Parking Stalls Provided for Multi-Residential  
WITHIN UNDERGROUND PARKADE

**21** Vehicle Parking Stalls Provided for Visitors  
WITHIN UNDERGROUND PARKADE

**312** Total Vehicle Parking Stalls Provided On-Site

**149** Total Bike Parking Stalls Provided  
12 STALLS FOR RETAIL, 105 FOR RESIDENTS, 32 FOR MULTI-RESIDENTIAL VISITORS  
OVER DEDICATION OF 19 STALLS TOTAL



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First name [required] **Jim**

Last name [required] **MacDonald**

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[required] - max 75 characters **LOC2024-0183 Bylaw 14D2025**

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We are extremely opposed to this proposed land use re-designation for the following reasons:

- increase to the size and height of building beyond original approval
- there was insufficient parking for the first submission - this re-designation will further impact lack of available parking on the streets, there can be no additional on-site parking other than what was originally approved. This impacts the surrounding residents negatively
- not sufficient green space on the first submission - all trees removed during excavation and demolition
- additional shadowing on adjacent single family houses, loss of privacy to surrounding residents
- further impact to old infrastructure in the area by adding additional residential units
- Received this notice on December 19 - very timely for the applicant to take advantage of the mail strike, - most people are away on Christmas break and may not receive this notice until it is too late to register a complaint,
- nothing of this development speaks to affordability - only greed by developer/builders taking advantage of the blanket rezoning - the City will realize on increased property taxes for all these additional units
- people are not familiar with the changes proposed - an increase from f3.3 to f3.9 FAR and a building height increase from 19 to 24. This is an increase of 5.0m or 2 additional floors for residential units. NO. enough is enough.
- increasing the height infringes on privacy in private homes, condos, and surrounding buildings,
- No site plans included with this new application to show the impact of this building height increase - lack of transparency to inform affected property owners.
- allowing this re-designation will set a precedent for height relaxation for future development along 19 Street NW
- the City should not allow land use re-designations - once an application is approved it should not be allowed to be changed.



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ATTACHMENT\_01\_FILENAME

ATTACHMENT\_02\_FILENAME

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

We are opposed to this re-designation for the following important reasons:

- amendments should not be allowed once the original DP has been approved.
- this amendment was released during the Postal strike, resulting in a shortened appeal period for affected residents. Released during the Christmas/News Years holiday when most people are distracted and may miss the deadlines imposed by this notice.
- because of the large footprint, these buildings already impact the surrounding residential homes,. Additional height should not be allowed due to shadowing, privacy of surrounding properties, etc.
- PARKING (lack of), noise,
- strain on the old infrastructure,
- traffic congestion,

The City needs to STOP approving these types of massive developments and start having consideration and compassion for the people most affected by the negative impact these buildings impose on their neighborhoods. Seems the City does not care about long term taxpayers, but are only interested in increasing the City tax base. This speaks of total GREED for the Developer/builder and the City and has nothing to do with affordability.

Thank you for your consideration and listening to our concerns.  
We really appreciate your review of our concerns.



## Public Submission

CC 968 (R2024-05)

## FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

Personal information provided in submissions relating to matters before Council or Council Committees is collected under the authority of Bylaw 35M2017 and Section 33(c) of the *Freedom of Information and Protection of Privacy (FOIP) Act* of Alberta, and/or the Municipal Government Act (MGA) Section 636, for the purpose of receiving public participation in municipal decision-making and scheduling speakers for Council or Council Committee meetings. **Your name and comments will be made publicly available in the Council or Council Committee agenda and minutes.** If you have questions regarding the collection and use of your personal information, please contact City Clerk's Legislative Coordinator at 403-268-5861, or City Clerk's Office, 700 Macleod Trail S.E., P.O. Box 2100, Postal Station 'M' 8007, Calgary, Alberta, T2P 2M5.

**Please note that your name and comments will be made publicly available in the Council or Council Committee agenda and minutes. Your e-mail address will not be included in the public record.**

## ENDORSEMENT STATEMENT ON TRUTH AND RECONCILIATION, ANTI-RACISM, EQUITY, DIVERSITY, INCLUSION AND BELONGING

The purpose of The City of Calgary is to make life better every day. To fully realize our purpose, we are committed to addressing racism and other forms of discrimination within our programs, policies, and services and eliminating barriers that impact the lives of Indigenous, Racialized, and other marginalized people. It is expected that participants will behave respectfully and treat everyone with dignity and respect to allow for conversations free from bias and prejudice.

First name [required] Alif

Last name [required] Noorani

How do you wish to attend?

You may bring a support person should you require language or translator services. Do you plan on bringing a support person?

What meeting do you wish to comment on? [required] Council

Date of meeting [required] Jan 14, 2025

What agenda item do you wish to comment on? (Refer to the Council or Committee agenda published [here](#).)

[required] - max 75 characters Land use redesignation - LOC2024-0183

Are you in favour or opposition of the issue? [required] In opposition



Public Submission

CC 968 (R2024-05)

ATTACHMENT\_01\_FILENAME

ATTACHMENT\_02\_FILENAME

2021-0091 - SDAB Appeal Conclusion.pdf

Good morning,

I would like to provide comments on the proposed land use change from address 206, 210, 214 218 19 ST NW (LOC2024-0183. I am a resident of 18a ST and am very concerned about the added density and traffic this would allow for in an already narrow alley with limited access. The proposal as it stands does not represent a sensitive transition to the single family homes that share the laneway. Please consider the following comment:

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

This proposal includes a parcel of land that was previously included in DP2020-7757 that was successfully appealed in 2022. The appeal was heard on the grounds that the scope of the project that included a height of 19 M and a FAR of 3.3 does not represent modest redevelopment and a sensitive transition to lower scale residential buildings, among other issues. I have included the SDAB report as reference. The proposed increase in height to 24 M goes against many of the findings of the appeals board including but not limited to points 134 and 135 on page 22 that discuss overlook and points 149 and 150 on page 25 that discuss the lack of transition to adjacent housing given the less than city standard narrow laneway of 5.5 M. The proposed massing and scale of this project represents an overdevelopment of the land and would put considerable strain on the already narrow and limited laneway. With the existing development we have already experienced damage to houses and the power poles in the laneway. Exiting the laneway is primarily done through 2nd avenue as the other side is Kensington Road and only allows for right turns when traffic permits. This 2nd avenue exit and road is already difficult to navigate with the current density. My main concern is the increased traffic this project would bring and safety implications for 2nd avenue and 19 street. This street is a major entry point to the community and has significant foot traffic with the current amenities as well a significant number of children on foot and bicycle that use 2nd avenue to access the neighborhood and Queen Elizabeth elementary, junior and senior high school. I hope that the city sees merit in the findings of the appeals board and does not allow for this height and density increase to go through. I, as well as many other members of the community, support reasonable densification but this proposal of a 24 M building directly across a 5.5 M laneway to 11 M single family homes is not reasonable.

Thank you for your time and consideration.

Calgary Subdivision and Development Appeal Board  
PO Box 2100, Station M, #8110  
Calgary, AB T2P 2M5  
Email: info@calgarysdab.ca



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## CALGARY SUBDIVISION AND DEVELOPMENT APPEAL BOARD

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*Citation: 2021 CGYSDAB 91*

Case Name: SDAB2021-0091(Re)

File No: DP2020-7757

Appeal by: Ryder McRitchie, Bill Overend, Alif Noorani, and Chris Wong

Appeal against: Development Authority of The City of Calgary

Hearing dates: January 13, 2022  
March 17, 2022  
April 14, 2022

Decision date: May 2, 2022

Board members: Jim Palmer, First Vice-Chair and Presiding Officer  
Carol Hampton  
Patricia McCunn-Miller  
Earl William  
Jacob Weber

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## DECISION

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**Description of Application:**

1 The appeal before the Subdivision and Development Appeal Board was brought by Ryder McRitchie, Bill Overend, Alif Noorani and Chris Wong. All four individuals are represented by Carol McClary.

2 On December 1, 2021, the Development Authority approved the application of Formed Alliance Architecture Studio for a New: Dwelling Unit, Retail and Consumer Service at 218 19 Street NW in the community of West Hillhurst. The property is owned by Hillhurst Boutique Ltd. and has a land use designation of Mixed Use - General (MU-1 f3.3h19) District. The proposed development is a discretionary use within the district.

**Procedural History:**

3 The hearing commenced on January 13, 2022 with consideration of procedural issues. The Board adjourned the hearing to March 17, 2022. The hearing, conducted via video conferencing, concluded on April 14, 2022.

**Decision:**

4 The appeal is allowed and the decision of the Development Authority is overturned. A development permit shall not be issued.

**Submissions:**

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

- a) Ms. Lindsay Ganczar, for the Development Authority;
- b) Mr. Manish Singh, for the Development Authority;
- c) Mr. Cole Piechotta, for the Development Authority;
- d) Mr. Ryder McRitchie, co-appellant;
- e) Mr. Bill Overend, co-appellant;
- f) Mr. Alif Noorani, co-appellant;
- g) Mr. Chris Wong, co-appellant

- h) Ms. Carol McClary, agent for the appellants;
- i) Ms. Wendy Richards, for the applicant's team;
- j) Mr. Michael Farrar, for the applicant's team;
- k) Mr. Zach Hoefs, for the applicant's team;
- l) Mr. Amrit Uppal, for the applicant's team;
- m) Mr. Preet Mudhar, for the applicant's team;
- n) Mr. Jason Gulas, for the owner/applicant's team; and
- o) Mr. Rick Grol, agent for the applicant and owner.

6 The Board also received and acknowledges written submissions from West Hillhurst Community Association Planning Committee, Glenna Healey, Chad Donald, Shawn Jubinvile, Margaret Robertson, Richard Simpson, Elisabeth Caines, Patti Dibski, Brad and Sarah Marks, Kylie Brown, Patrick and Jennifer Craddock, Kasey Fukada, Gillian Stark-Fukada and Connor Fukada, in favour of the appeal and from Calvin Treacy against the appeal. These letters are contained in the Board Report.

### **Background and Summary of Evidence:**

#### *Submissions of the Development Authority*

7 Lindsay Ganczar stated that the proposed development is for a Mixed Use development, located at 218 19 Street NW in the community of West Hillhurst. The purpose of the Mixed Use - General District (MU-1) is to accommodate a mix of residential and commercial uses within the same building facing commercial streets.

8 The subject parcel is located on the east side of 19 Street NW, between 2 Avenue NW to the north and Kensington Road NW to the south. It is approximately 0.06 hectares in size with approximate dimensions of 14 metres wide by 41 metres deep. The property had contained a single detached dwelling, but it is currently vacant.

9 She referred to the site photos contained in the Board Report showing the view of the subject site from various directions. The adjacent building development under



construction to the north is referred to as the 19+2 building. Surrounding land uses consist of a five-storey Mixed Use development under construction, Single and Semi-detached dwellings.

10 The proposed development is within the Inner City Area of the Developed Residential Land Use as identified on Map 1 of the Municipal Development Plan (the “MDP”). There is no Local Area Plan for the area.

11 In approving the development, the Development Authority reviewed and applied the policies in the MDP that support the development and redevelopment of a broad range of housing choices to help stabilize population decline and support the demographic needs of the communities. The MDP provides that the inner city may intensify, particularly in transition zones, adjacent to areas designated for higher density, like Neighborhood Main Streets.

12 The Land Use Bylaw (the “Bylaw”) designates dwelling units, retail and consumer services as a discretionary use in a Mixed Use district. The proposed development permits a maximum density of 3.3 Floor Area Ratio (FAR) and a maximum building height of 19.0 metres. The proposed development consists of a commercial unit on the ground floor and 24 dwelling units on floors above with a FAR of 3.3 and a building height of 18.23 metres at the north elevation, 17.99 metres at the east elevation, 17.82 metres at the south elevation and 17.78 metres at the west elevation. All the elevations comply with the building height rule. The highest building point is measured at 18.23 metres.

13 Ms. Ganczar pointed out that the MU-1 District includes chamfering rules that mitigate building mass when adjacent to a residential district. The proposed development meets this rule.

14 The residential units have an at-grade entrance at the front of the building separate from the commercial unit entrance. Amenity space is provided in two locations; a rooftop patio with seating, barbecues and planters; and at the lower level inside the building, designated as a fitness area. There are two trees and a planter located on the boulevard along the front of the building.

15 There are six vehicle stalls, three residential stalls and three visitor stalls located at-grade in the rear and accessed from the rear lane of the building. In addition, Class 2 bicycle stalls are provided at the front and rear entrances to the residential units. Class 1 bicycle stalls are provided inside the building at the lower level. The number of bicycle parking stalls provided is more than the minimum required in the Bylaw.

16 Ms. Ganczar stated that the proposed development required three relaxations of the Bylaw rules, one for landscaping and two for parking. The landscaping relaxation is for the rear setback area. Section 1348 of the Bylaw provides that where a setback area shares a property line with a lane, the portion of the setback area not required for access from the lane must have a soft-surface landscaped area. The garbage staging area is located in the east rear setback area adjacent to a lane and this relaxation was granted.

17 The other two relaxations are associated with parking. The Bylaw requires 14 resident parking stalls for the 24 residential units where three parking stalls are provided. Ms. Ganczar stated that the parking stall requirement was relaxed because of nearby transit and bicycle infrastructure, the additional bike stalls provided and the memo provided by the applicant showing support for the parking relaxation. In addition, the subject site is located in a walkable area with many amenities and on-street parking restrictions which would limit off-site impacts.

18 The Bylaw requires two loading stalls and none are provided. The loading stall requirement was relaxed because there will be a shared loading stall agreement with the adjacent 19+2 building. The site plan shows a paved walkway access that connects its loading stall to the proposed development.

19 In the opinion of the Development Authority, the proposed development was approved with the relaxations because it complies with Council direction set out in the Municipal Development Plan and the Bylaw 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.

20 Cole Piechotta stated that the proposed development is within 200 metres of Kensington Road NW with proximity to Bus transit Route 1 and BRT Route 305, which is among the best bus transit routes in the City of Calgary. It also has proximity to pathways and bikeways and is an approximately two-kilometre walk to the City Centre.

21 The applicant's parking memo was reviewed in the context that a segment of the population seeks to live a vehicle-free lifestyle and because it supports the larger policy goals that the City has around active transportation, healthy lifestyle, less auto dependence, creation of better neighbourhoods and a more sustainable city. The three visitor stalls are compliant with the Bylaw.

22 In addition, the location of the proposed development is a viable option or incentive not to own a vehicle. He noted that though the bike stalls were located in the basement of the proposed development, it would not deter residents seeking to live a vehicle-free lifestyle.

23 Mr. Piechotta stated that the subject site is in a parking permit zone. Not all blocks within the parking zone have parking restrictions and the community could add further block restrictions if required. Part of the permanent condition is that the residents of the proposed development are not eligible for residential parking permits. This measure reinforces the applicant's target resident audience as people who have chosen to live a vehicle-free lifestyle. He considered the Transit Demand Management (TDM) measure offered by the applicant for a five-year transit pass credit with each residential unit to be a motivating factor, but ultimately not required to incent the target vehicle-free resident lifestyle for this building.

24 He confirmed the rear lane is narrower than the standard of 6.0 metres but turning sweep requirements for vehicle circulation in the lane were sufficient.

25 Manish Singh stated the Development Authority did not perform a separate Crime Prevention Through Preventative Design (CPTED) analysis for the building because the parking area, though partially underneath the residential units on the upper floors, is adjacent to the proposed development which has commercial and residential components. The proposed lighting elements underneath the overhang area are sufficient.

Submissions of the appellant's team

26 Ryder McRitchie, lives directly to the east of the proposed development across the rear lane. He presented a background perspective regarding the community's active engagement on planning matters for 19 Street NW redevelopment, new development in the area and how individual developments had been approved despite the absence of a promised master plan. He referred to the 19+2 building adjacent to the proposed development, stating that some consideration was incorporated into the design transitioning to the existing single-family homes. However, the proposed development provides no accommodation for interface with the existing residential development.

27 The proposed development sets a negative precedent for future development in the community. It affects the privacy and quality of life of surrounding buildings because of its height. The parking relaxations will have a negative effect on the safety of children and pedestrians that are walking around the neighbourhood.

28 Mr. McRitchie submitted that the proposed development is too big for the subject site. He referred to it as an overdevelopment with congested access to the rear parking area, a non-existent loading zone, violations over setbacks on all dimensions of the proposed development and rooftop access that makes the proposed development appear as a six-storey building.

29 He read a testimonial statement of support from an coffee shop retailer familiar with similar dynamics that the proposed development will face, highlighting the negative experience with buildings that have restricted loading zones and tight back alleys similar to the proposed development and urged the Board to deny the development permit.

30 Bill Overend also lives directly to the east of the proposed development across the rear lane. He referred to the topographic map in the Board Report and pointed out developments in the vicinity of the proposed development. On the image, he showed the three lots that were acquired by the applicant in 2018 and used for the 19+2 building as well as the adjacent orphan lot to the south where the proposed development is located; currently being used as a construction staging area.

31 The shared north-south alley to the east of the proposed development has high volumes of pedestrian and vehicle traffic. Referring to photographs, he stated the lane is narrow with the garages located adjacent to property lines and utility poles located in the lane pathway, further reducing vehicle maneuverability. He has had to install locks on his gate to mitigate unlawful entry into his property related to the pedestrian circulation.

32 The garbage disposal area for the proposed development is located in the alley within the setback area. This feature is not in compliance with the Bylaw that requires soft surface landscaping or a sidewalk. The 19+2 building is already short one loading area and the proposed development is now designed to share it.

33 He stated that the first floor commercial area of the proposed development is 4.35 metres high which is the height to the top of his garage. This building design does not offer any buffer between the proposed development and the existing residential dwellings. He referred to an imposed image in the Board Report to show the overlooking impact from the proposed development with his sightlines. The proposed development is higher and closer to his dwelling than the 19+2 building, 8.5 metres from his property line. The windows on the third, fourth and fifth floors of the proposed development would have a direct view into his deck, kitchen, family and master bedroom areas.

34 He referred to a study report on the valuation of micro and small units conducted by the Urban Land Institute in 2014. He noted that the building design elements will create an adverse impact on the users. The study pointed out that the target audience of micro-units like the proposed development, is young professionals who tend not to reside in them for the long term. This dynamic will create a large turnover of people moving in and out at the proposed development and place a strain on the shared loading zone.

35 He expressed concern that the size of the proposed stalls was not Bylaw compliant and that a recessed HVAC area on the south side of the building would encourage vagrancy.

36 Mr. Overend submitted that section 3.5.2(b) of the Municipal Development Plan provides that a range of intensification strategies should be employed to modestly intensify the inner city; however, the proposed development does not constitute modest intensification.

37 He submitted that the proposed development unduly affects the amenities, use and enjoyment of the neighbouring sites and should not have been approved by the Development Authority. The neighbourhood is vehicle-dependent and the proposed development does not fit the vehicle-free lifestyle that the proposed development purports to create. He urged the Board to allow the appeal.

38 Alif Noorani resides east of the proposed development and referenced the study report on the valuation of micro and small units conducted by Urban Land Institute in 2014 in addressing walkable necessities and amenities.

39 He referred to the submission of the applicant used to indicate amenity context. He stated that the grocery stores listed are specialty health stores and convenience stores, not grocery stores. The closest regular grocery stores are Safeway and Co-op, the closest about a 25-minute walk from the proposed development which is not walkable, especially during the winter. Furthermore, there are no significant employment centers within a 10-minute walking radius of the proposed development. The neighbourhood has a low walkability rating compared to the Beltline where such a Mixed Use development

could be located and the Beltline as well has more available parking than this area of West Hillhurst.

40 The internal amenities of the proposed development are limited. He noted that the rooftop patio is the only green space and that it would be usable for about one-third of the year. The lack of necessities and amenities that are walkable or internal to the proposed development will increase the need for transportation. The proposed development is far from walkable to satisfy daily essentials for the target audience, such as nightlife, restaurants, employment and groceries.

41 Chris Wong's residence is to the east and north of the proposed development. He stated that the City is contemplating streetscape improvements to 19 Street NW with traffic calming measures and bike lanes added, that could result in the loss of an entire lane of on-street parking. This upgrade would result in fewer on-street parking options for the neighbourhood. He referred to the parking report and submitted that the proposed development would utilize 90% of the on-street parking if those on-street spaces were removed. He also noted that the 19+2 building had been granted parking stall relaxations when it was approved.

42 The applicant's justifications for parking stall relaxation are insufficient. Firstly, he noted that guidelines around transit-oriented development emphasize primary transit. The proposed development claims to be near Bus Rapid Transit (BRT) primary transit, however, it was downgraded to an express bus route with only three trips in the morning and evening. The timing of the bus routes does not fit into the lifestyle of the target audience for the proposed development as they cannot rely on public transit for their complete transportation needs. He pointed out Bus Route 89 that the applicants referred to as a part of the transit services is a school bus route primarily for students and runs a few times a day and Bus Routes 404 and 414 provided limited service as well.

43 Car sharing availability is limited in the area and is insufficient for the 24 units in the proposed development. He referred to the study marked as appendix B in the Board Report conducted for two weeks within a two-block radius of the proposed development that showed that on average, only one car was available from 6 PM to 9 PM.

44 Use of alternate transportation alternatives such as electric scooters is limited by weather and thus only effective for five months of the year. He, therefore, submitted that the application for the development permit does not satisfy the high-quality travel options required to justify the parking relaxations granted to the proposed development as referenced in Calgary Parking Policies section 4.2.1.

45 He stated that the rear parking and garbage areas of the proposed development are likely to generate crime referencing CPTED principles listed in the Board Report; the windowless covered parking area, parked cars, cave-like space with only four pot lights and lack of sightlines from the building lobby, street and frontage area as well as overhead residential units, is the ideal location for crime to occur. There is no indication that cameras or a surveillance service would be part of the proposed development.

46 The proposed development lacks the ability to present territorial reinforcement at the rear parking area because its design does not allow for an active relationship with the surrounding neighbourhood. The lack of space on the site results in the inability of physical measures (i.e., gate or fence) in the parking and garbage area to delineate private and public spaces. Furthermore, with only two regular resident stalls, there will be few reasons for residents to venture into the parking and garbage loading areas, further reducing the sense of ownership and encouraging an increase in criminal activities.

47 There are no cut-out features in the proposed building façade and it uses the full envelope unlike the 19+2 building and will therefore create shadowing issues and adversely affect the site lines of the appellants' properties.

48 Mr. Wong noted that the proposed development lacked a dedicated loading zone to support the move-in and move-out activities. The applicant has proposed to share the loading zone with the adjoining 19+2 building. He noted that the loading zone for 19+2 was insufficient as a relaxation had been granted for that development's loading zones. The 19+2 loading zone has a ramp, utility pole, and transformer vault that compromises its ability to accommodate easy maneuverability. It is perpendicular to the alley and at a particularly narrow section of the lane, limiting its use by larger trucks. The 90-degree turn required to access it along with other obstructions would limit many truck sizes from accessing this loading zone. Trucks will instead, stop in the alley to offload, preventing traffic flow and obstructing resident garages. It will be a challenge for waste removal services to use the rear lane access. In addition, the spillover parking from the units of the proposed development will also affect the already limited on-street parking in the area. He urged the Board to allow the appeal.

49 Carol McClary stated that the subject site is designated as part of a Mixed Use – General District that encompasses 50 metres by 40 metres for an area of 2,000 square metres. The MU-1 District defined in the Bylaw, does not set a built form but creates a building envelope. The proposed development has a maximum floor area ratio of 3.3 and a maximum building height of 19 metres. Section 1365 (1) of the Bylaw provides that the MU-1 District is intended to be located along a commercial street, accommodate a mix of residential and commercial uses and respond to local area context by establishing maximum building height for individual parcels.

50 Section 1365 (2) of the Bylaw provides that it should only be located where a local area plan or other policy, support land use and development aligned with the purpose statements in subsection (1). There is, however, no Local Area Plan or planning policy specific to the West Hillhurst community and where the proposed development is located. The existing policy is the MDP which has a very high level context.

51 The subject parcel is located approximately 36 metres south of the 2 Avenue NW and 19 Street NW intersection. The parcel is flat and is vacant, as the existing house has been removed. The parcel has a 13.72 metres-wide frontage onto 19 Street NW and is 41.09 metres long for an area of 563.75 square metres. There is a 5.5-metre-wide gravel lane to the rear of the parcel. An overhead power line is located in the rear lane next to the subject parcel's rear property line. The parcel stands alone and is not part of any

other Mixed Use development to the north or south. There are small stores located in the C-N1 District zoning within the neighbourhood.

52 She provided history, context and evolution of the zoning changes and development in the area along 19 Street NW.

53 She pointed out that the proposed parking for east residents is located off the rear lane with a width of 5.5 metres that has direct north-south access onto Kensington Road NW; 18A Street NW, where the appellants reside, is a cul-de-sac. In the vicinity, the residential parcels along 2 Avenue NW are laneless and each house has a front-drive garage with a driveway.

54 Ms. McClary submitted that section 35 of the Bylaw requires that when deciding on a discretionary development permit application, the Development Authority must take into account, among other things, any plans and policies affecting the parcel; the compatibility and impact of the proposed development to adjacent development in the neighbourhood; and sound planning principles.

55 She provided a description of the building design. It has a front setback at grade of 1.2 metres but the setback is 0.6 metres when considering the overhang of the upper floors. The north entrance matches the 19+2 building and the south entrance is located in the overhang of the upper floors. The side setbacks are 0.35 metres and it is 8.7 metres from the lane with a 12.85 metre rear overhang. She described the residential units and noted the window locations are limited to the front and rear of the façades where the living spaces are located. There are few parking stalls, inadequate landscaping and waste management and only hard surfaces.

56 She submitted that the proposed development fills the parcel and is disproportionately large unlike the 19+2 and Savoy developments where land parcels were assembled and therefore, there was ability to adhere to the building standards of the Bylaw and accommodate for parking, waste management, private amenity balconies, windows in rooms, etc.

57 In the MU-1 District, building mass is expressed as Floor Area Ratio. It limits the size of a building based on the area of the parcel. Section 13 (1) of the Bylaw defines floor area ratio as the quotient of the total gross floor area of all buildings on a parcel divided by the area of the parcel. The gross floor area is measured as the sum of the areas of all above grade floors of a building, measured to the glass line or the outside surface of the exterior walls, or where buildings are separated by firewalls, to the centre line of the common firewalls and includes all mechanical equipment areas and all open areas inside a building that do not contain a floor, including atriums, elevator shafts, stairwells and similar areas.

58 She submitted that the firewall constructed along the north property line was not considered as being shared or related to the proposed development. The firewalls built on the property line have the same effect as if they were built to support the proposed development and therefore, that area on the main floor, should have been considered in

the calculation of the FAR. This area between the two firewalls is 12.8 metres long and 13 metres wide for an area of 166.4 square metres. The main floor front entry area is recessed and that area of 8.8 square metres should be counted as part of the gross floor area.

59 The applicant's calculation of the FAR is in error, which makes the proposed development to be larger than it should be. The use of stilts or columns has given it additional floor area that was not included in the Floor Area Ratio calculation. The proximity of the firewalls along the property line encloses the front entry and the majority of the rear parking areas add to the mass of the building. These spaces should be included in the calculation of gross floor area.

60 She stated that the building height should include the portion of the structure on the roof of the proposed development that is associated with the elevator. The elevator is used to gain access to the common amenity space, hence the elevator shaft, the lobby and two stairwells depicted in the building plans must be included in the overall building height. These portions of the building protrude above the maximum height allowed by the Bylaw.

61 Ms. McClary also noted that a significant parking relaxation was granted for the proposed development. The Bylaw requirement for parking is 14 stalls for residential units. The visitor parking required is three stalls. If the Bylaw was followed, a total of 17 parking stalls and two loading stalls would be required to satisfy the parking demand for the proposed development. The Bylaw reduced the parking requirements for retail and consumer service uses, but there would still be a requirement for owners, employees and customers to park somewhere and there is no practical solution provided for their parking needs.

62 There is a relaxation of 11 parking stalls for the residential units and two loading stalls. The parking stall adjacent to the enclosed garbage container is deficient in size; the required dimension is 2.85 metres where there is a barrier on one side. The parking relaxation was based on a false notion that the subject development was close to a bus route stop on Kensington Road NW and 19 Street NW or near either LRT stations at North Hill or Kensington. The BRT Route 305 stops in the mornings and evenings only. Bus Route 1 is a cross-town service from Bowness to Forest Lawn; Bus Routes 404 and 414 go up and down 14 Street NW to the North Hill shopping transit node; Bus Route 104 goes to the University of Calgary and Foothills Medical Centre. There are no grocery stores and places of employment close to 19 Street NW; the two closest grocery stores are 1.8 km and 2 km away respectively.

63 She advised that the arrangement to provide a shared loading area with the 19+2 building to the north further indicates that the proposed development does not fit the parcel nor can stand on its own. The parcel is too narrow and not long enough to provide for multiple layers of underground parking stalls and ramps that would meet the Bylaw required number of vehicle parking stalls. There is no space on the parcel to provide adequate loading and unloading for residential or commercial uses.



64 With respect to the relaxation of the rear setback, the Bylaw provides that when the MU-1 District shares a lane with a low-density residential land use district such as the proposed development, the rear setback is to be softened using landscaping or other methods so that activity on the rear lane is minimized. This requirement has not been met with the proposed development, as the space closest to the rear lane will be a hard surface used for the emptying of garbage, which would bring noise and activity closer to the residential dwellings.

65 The proposed development as is, does not fit into the adjacent and neighbouring buildings. It is higher and longer than the adjacent building. The massive grey wall will shadow the balconies and central courtyard of the adjacent 19+2 building. The rear wall of the proposed development is dominant, massive and overpowering to the residents in the houses to the east. There will be overlooking into the residential area to the east and west. The bedrooms have no windows for ventilation and natural light, no balconies and no private amenity spaces. Consideration should be given to the future residents of the proposed development that would entice them to stay. The proposed development demonstrates insensitivity, incompatibility and abandonment of applicable development rules and standards. It has significant Bylaw relaxations which creates an overdevelopment of the parcel with a disproportionately large building.

66 From a planning perspective, Ms. McClary stated that the proposed development is inappropriate. It is incompatible with the adjacent development on the block and is overdevelopment for the subject parcel. The development does not enhance the public realm along 19 Street NW as the building is too close to the front property line and eliminates any opportunity to contribute positively to the street environment.

67 The Bylaw relaxations do not meet the test of section 36 of the Bylaw and section 687(3)(d) of the Municipal Government Act. The proposed development materially interferes with and negatively affects the use and enjoyment of the neighbouring parcels of land.

#### Submissions of the applicant's team

68 Rick Grol stated that the application is for a New: Dwelling Unit; Retail and Consumer Service at 218 19 Street NW in the community of West Hillhurst. The proposed development is a discretionary use in the MU-1 District. It is comprised of 24 residential dwelling units above one commercial retail unit located on the main floor of the building. It has amenity space located on the roof of the building, which is accessed by an elevator. He referred to the definition of ancillary structure in section 13(7) of the Bylaw and submitted that access to the rooftop is necessary for the functioning of the building and should not be included in the calculation of the building height.

69 He presented various photographs of the neighbourhood located in the Board Report. The area has a mix of low residential and multi-family, medium density developments, consisting of condominium developments, apartment buildings of different heights and storeys, low-density homes in the form of Single and Semi-detached dwellings and Townhouses. There is a diversity of architectural styles in the area and the

proposed development aligns with the occurring developments in the area. The building height and massing comply with the provisions of the Bylaw.

70 The applicable statutory plan is the Municipal Development Plan. The applicable non-statutory plan is the Calgary Parking Policies. He noted that there is no Area Redevelopment Plan for the West Hillhurst community. The purpose statements of the Mixed Use district illustrate the intent of the land use district; they are general and all characteristics need not be met to satisfy the intent of the district. Therefore, the lack of an Area Redevelopment Plan does not nullify the development permit.

71 The proposed development is located in the local neighbourhood commercial corridor of 19 Street NW which is evolving and maturing into an eclectic growth corridor, following the objectives of the MDP and the City's Main Street Study Initiative.

72 Sections 3.5.1 and 3.5.2(a-d) of the MDP contain policies that encourage densification in areas that are adjacent to Neighbourhood Main Streets. It also encourages higher residential densities in areas that are well serviced by existing infrastructure, public amenities and transit. Sections 1.1.1 and 2.3.1 (a) & (b) encourage a wide range of housing types, tenures and densities.

73 He submitted that the proposed development provides a form of residential housing that contributes to higher density in the neighbourhood that is well serviced with public amenities like shopping, schools and transit in the near vicinity. It constitutes moderate intensification that respects the scale and character of the neighbourhood and complies with the objectives and purpose statement of the MDP, Calgary Transportation Plan and Bylaw.

74 He identified the three bylaw relaxations approved by the Development Authority regarding landscaping areas, motor vehicle parking stalls and loading zones. These are the only relaxations applicable to the proposed development. Bylaw relaxations outside of these that were raised by the appellant's team are mere assertions and not based on evidence. The concerns raised in respect of the construction surrounding the adjacent 19+2 development were not planning issues.

75 Mr. Grol submitted that the submissions of the appellants are subjective statements and personal opinions not backed by evidence. He referred to the case of *Esposito v Alberta (Workers' Compensation Board)*, 2009 ABQB 188 where the court held that the opinions of witnesses must be referenced to evidence or fact; simply raising an issue without more is not evidence. There must be some basis in fact for the Board to be able to consider it.

76 The test for Bylaw relaxation is set out in section 687(3)(d) of the Municipal Government Act. The size, percentage or magnitude of the relaxation is irrelevant and is not determinative; it is the context of the proposed development and whether the test is met. In the case of *White v Okotoks (Subdivision and Development Appeal Board)*, 2018 ABCA 86, at para 21, the Court of Appeal held that the relaxation power of the Development Authority and the Board is unlimited. The Court stated: "...Moreover, the

*relevant inquiry is whether the variance does not unduly affect the amenities, use or enjoyment of the site of neighbouring properties”*

77 In *Newcastle Centre GP Ltd v Edmonton (City)*, 2014 ABCA 295 (Canlii) the Court of Appeal directed that the factors contained in section 617 of the Municipal Government Act are not relevant and should not be considered when applying the test in section 687(3)(d). The Parking Policies that guide the Development Authority in granting relaxations are irrelevant to the relaxation test. He noted that the Board's jurisdiction to vary or relax rules and requirements of the Bylaw stems from the MGA, not from the Bylaw. According to the case of *Newcastle*, it would be incorrect for the Board to consider the City's Parking Policy Guidelines when applying the test of section 687(3)(d) of the Municipal Government Act.

78 The test is not whether each individual relaxation meets the test; rather it is whether the overall proposed development meets the relaxation test. Mr. Grol submitted that the proposed development meets the relaxation test. It 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. He noted that there is no evidence showing otherwise.

79 Mr. Grol stated the adjacent 19+2 building and the proposed development are different legal entities; however, they have the same management and ownership structure. They are able to share parking stalls and loading zones with the proposed development. He pointed out that a recent amendment of the Bylaw eliminated the parking requirement for commercial units, hence the 19+2 building has excess commercial parking stalls that can be offered to the residents of the proposed development. The parking requirement for the 19+2 building was further reduced since the original development permit approval, as some of the space was converted to live-work units. He stated that the applicant was willing to accept a permanent condition in the permit indicating that 5 parking stalls from 19+2 building be offered to the residential units of the proposed development and if the situation changes in future, the applicant would have to apply for a new development permit.

80 He referred to paragraph 30 of the development permit that requires a transportation credit for a term of five years for the residential units that do not have a parking stall. He stated that the applicant was willing to extend the transportation credit for ten years or the life of the permit. The applicant offered to implement a minimum rental term limit of 12 months with no Airbnb rentals allowed; a condition that the CCTV camera in the rear of the development be monitored continuously; provision for additional lighting to be installed in the parking area.

81 Michael Farrar noted that the proposed development was designed to fit into the context of the community. It is composed of a main floor commercial space with 24 residential suites above. There are six proposed parking stalls on-site, 28 Class 1 bike stalls and 4 Class 2 bike stalls. The outdoor amenity space is 182 square metres with a 66 square metres indoor amenity space on the lower level.

82 He referred to an image in the Board Report to show an architectural depiction of the proposed development alongside the 19+2 building under construction. It fits into the various architectural style, designs and scales of surrounding developments.

83 He presented a graphic image that depicted the parcel envelope and the proposed development massing shorter than this envelope, with the underneath parking area further reducing the building's mass. The proposed development massing is reduced by 3 metres from the allowable chamfer rule for the development.

84 The rear of the adjacent building aligns with the rear of the proposed development, specifically to the parking ramp and waste and recycling, which is 8.7 metres from the property line. The front of the proposed development is 1.2 metres from the front setback; the recessed entry provides protection from inclement weather conditions. He pointed out that the recycling unit located at the rear of the proposed development is enclosed with access only to the residents of the building.

85 Mr. Farrar noted that the distance from the back of the proposed development to the adjacent neighbours' property line is 46 feet. He stated that the rear setback was incorporated into the design of the building to accommodate and fit into the surrounding buildings.

86 He presented a cross section image in the Board Report which depicts the height of the proposed development and distance to Mr. Overend's dwelling. He stated that the consistent interpretation of the Bylaw on an ancillary structure is that elevator access and stairs do not form part of the building height calculation; it is not a habitable space. The common rooftop amenity space is at the front of the building and faces 19 Street NW.

87 He stated that the floor area ratio calculation does not include the parking area, because it is not enclosed, has no wall surrounding it, no functional floor space and is not mechanically serviced. Hence, the correct dimension of the FAR of the proposed development is 3.27 which is within the Bylaw maximum rule and this calculation is consistently applied with other developments in the City.

88 He confirmed that the owners of the 19+2 building and the proposed development would be entering into an agreement that allows for shared access to the loading zone located at the 19+2 building. This condition is included as part of the prior to release conditions of the development permit.

89 Mr. Farrar referred to the shadow study in the Board Report to highlight the existing shading and the shading from the proposed development. He noted that the design of the proposed development was done to minimize the impact of shading limited to the front of the garage on the adjacent east properties.

90 In his opinion, the building met CPTED conditions but reiterated a willingness to add motion and shield lighting to the parking area and monitored security cameras. The common waste area underneath the residential floors would be secured and is fully

enclosed. Private waste services would be used and providers have no concerns maneuvering in this area.

91 Mr. Farrar stated that the proposed development is consistent with the provisions of the Municipal Development Plan; it conforms to the purpose statement of the M-U1 District; and the rules of the Bylaw. It meets the test of relaxation in section 36 of the Bylaw and section 687(3)(d) of the Municipal Government Act. It is compatible with adjacent development and is appropriate for the site based on sound planning principles.

92 Mr. Hoefs stated that the subject site was no longer part of the corner lot development; it retains the lane access and can accommodate high volumes of vehicles; there is sufficient bicycle infrastructure in the area. It meets the criteria for multi-residential infill guidelines listed in the Board Report.

93 The proposed development is located within a 5-minute walk of schools, playground, sports field, gym, pool and other community amenities. He pointed out that there are several restaurants, personal and health services, specialty convenience and retail stores and professional services that are within 500 metres of the proposed development. There are currently 47 commercial and retail employment opportunities in the area within a six minute walk. He noted that the number of businesses would continue to grow as new developments are completed. In addition, a full-service grocery store is about 1.8 kilometres from the proposed development and can be accessed using transit Routes 1 or 104. There are plans for another grocery store 250 metres away in the Frontier development and he identified a number of approved and proposed developments, evolving 19 Street NW into a double-fronted, Mixed Use multi-residential corridor.

94 Mr. Gulas stated that the applicant has a rigorous tenant screening process to ensure that the property is leased to only tenants who meet a certain threshold on income and credit score, ensuring that the tenants are responsible and trustworthy. The target audience for the proposed development is young professionals, couples and recent immigrants to Calgary. He stated that the target audience desires a convenient, walkable vibrant community and prefers not to own a vehicle.

95 He referred to similar developments located within and outside the neighbourhood that do not have parking stalls for some of the units. The proposed development supports a diversity of housing options and needs.

96 Amrit Uppal stated the loading stall requirements for a development are broad-based and are always rounded up; there is one stall required for 20 up to 400 units. Both the proposed development and 19+2 development have loading requirements well below one stall but rounding up to one stall each.

97 There are no commercial Bylaw parking requirements in the MU-1 District. If the proposed development was located 20 metres closer to Kensington Road NW, it would qualify for an additional reduction of five parking stalls; a 25% reduction related to qualifying as a Transit Supportive Development. The proposed development provides

three visitors parking stalls which complies with the Bylaw requirement. The parking relaxation is for the residential units and the proposed development provides for three residential parking stalls as opposed to the required 14 parking stalls.

98 It is within a residential parking permit area digitally enforced. The development permit restricts the residents of the proposed development from obtaining residential parking permits.

99 In terms of alternate travel options, Bus Route 1 is compliant as primary transit and Route 305 will be enhanced in the future. The cycling path will be extended to along 19 Street NW in future.

100 Mr. Uppal referred to the memo in the Board Report on the alternative travel options to address the proposed residential parking relaxation and confirmed that it provides sufficient technical justification and additional measures to support the proposed residential parking relaxation, without impacting on-street parking in the surrounding neighbourhood.

101 He reviewed the truck turning requirements provided by the architect on the 19+2 building and confirmed they are sufficient.

102 Mudhar Preet stated the proposed development and the adjacent 19 + 2 building has the same shareholder and will be managed together.

### *Rebuttal*

#### *Development Authority*

103 Ms. Ganczar confirmed that the on-street parking on 19 Street NW block will be restricted to one hour after construction is completed. The size of the proposed surface parking stalls meets the minimum requirement of the Bylaw. She stated that the Bylaw relaxations were correct and verified multiple times through the DTR process.

104 She confirmed that the elevator portion on the roof was not included in the building height measurement in accordance with the rules of the Bylaw.

105 Mr. Singh confirmed that Enmax provided a clearance in May 2021 before the proposed development was approved.

#### *Appellant's team*

106 Ms. McClary stated that the elevator is integral to the amenity space, it leads to the rooftop patio area and it is much more than a mechanical requirement for the building and should be added to the overall height calculation. She stated that this would bring the overall height to 19.96 metres, which is more than the maximum building height allowed for the proposed development in the Bylaw. She maintained the FAR is not correct as per her original submission and is related to the unplanned shared firewall.

Any deviation from the building height or floor area ratio can only be granted by City Council.

107 She re-stated that the setback from the front property line is 0.6 metres and not 1.2 metres as stated by the applicant's team. She referred to the side elevations plan, the mass of black brick projects from the building that encircled the windows on the main floor to the top.

108 She submitted that the application process missed out on certain important requirements; it did not show the relationship between the proposed development and the surrounding building; the streetscape plan was not provided so plans are incomplete; no CPTED analysis was done as required, the utility poles and cable lines that cross the lanes were also not adequately addressed.

109 The loading dock and waste bins are designed to be located on the residential side of the lane. This will impact the sweep drawings that were presented as evidence.

110 Ms. McClary stated that the basis for granting the parking relaxations was misrepresented. There is only Bus Route 1 as a regular service and it does not meet the criteria for frequent service. She stated that the adjacent 19+2 building had obtained parking relaxations and does not have extra parking stalls to offer the proposed development. The agreement for a shared loading zone can also be dissolved in case of bankruptcy where all legal agreements are removed from the title.

111 Section 116 of the Bylaw provides that motor vehicle parking stalls, visitor parking stalls, bicycle parking stalls and loading stalls required for use may only be located on a separate parcel from the use where: (a) the stalls are on parcels that form part of a comprehensive development, and (b) all parcels forming part of the comprehensive development are indicated on the same development permit. This is not the case for the proposed development, hence the additional parking stalls from the adjacent 19+2 building should not be accepted as a relaxation for the proposed development. They are two separate buildings as shown by the site plans and design.

112 Mr. Overend stated the proposed development is too large for the small lot size. The cross-section image in the Board Report does not reflect the correct distance between the proposed development and the appellant's dwelling. It exaggerates the distance from the east wall of the proposed development to the west wall of his house by 15%, exaggerates the rear setback distance by 17% and the lane width by 50%.

113 The number of windows on the east side of the proposed development is maximized at 21 windows, with a direct line-of-sight to his backyard and deck.

114 Ms. McClary stated that the proposed development had gone through many changes and should be incorporated into a new development permit.

*Applicant's team*

115 Mr. Farrar stated that the cross-section image in the Board Report depicts the accurate dimensions of the proposed development vis-a-vis the adjacent dwelling. The rear setback of the proposed development is 8.7 metres from the property line, which complies with the requirement of the Bylaw. The third party-produced legal survey confirms the rear lane to be 5.5 metres in width.

116 He referred to the floor plans in the Board Report and pointed out that the dimension of the front façade of the proposed development is 1.2 metres. The FAR Bylaw definition details the appropriate calculations and the Development Authority has consistently applied it with all developments including this one. The graphic overlay the appellants' used to depict the proposed development line-of-sight to their properties is not accurate, positioning the structure as taller and closer than it will be.

117 Mr. Hoefs stated that the proposed development aligns with the purpose statement of Mixed Use 1 and 2 Districts as noted in section 1365 of the Bylaw. A Safeway store is the closest grocery store but a new one at the Truman facility is going forward. The Main Street Study Area Initiative will be completed in 2022. The transit memo was developed by Bunt and audited by Watt.

118 Mr. Grol stated that condition 5 of the prior to release condition states that the applicant must execute and register on title an access agreement for the shared loading zone with the adjacent 19+2 building. The City will be a part of the agreement and cannot typically be removed from the title except without the consent of the Director of Transportation and Planning. If bankruptcy occurs, it is the Court that will decide whether the agreement stays on the title or not and it is not easy to remove this condition.

119 He noted that the issues regarding power lines and utility cables were not planning issues nor regulated by the Bylaw. It is between the property owner of a commercial site and Enmax and governed by provincial legislation. Enmax is governed by separate bylaws and regulations that deal with the right-of-way and setbacks under the Electricity Code.

120 He noted that the provision on shared parking between two commercial sites can be relaxed through an agreement that is registered on the title.

121 He stated that the windows on the east side elevations of the proposed development can be frosted to address the issue of overlooking.

**Reasons:**

122 In determining its ruling of this discretionary use, the Board considered the relevant provincial legislation and land use policies, applicable statutory plans, the MDP, the Bylaw, Calgary Parking Policies and considered all the relevant planning evidence



presented in writing and at the hearing, the arguments made and the context and merits of the application.

123 The applicant provided information with respect to planned new development, infrastructure and transportation upgrades that will affect the proposed development and immediate area. The Board did not consider these submissions in its decision, as they do not reflect current conditions of the immediate area and future development plans are prone to changing.

124 Both the applicant and appellants presented information with respect to the users of the proposed development. The Board considers planning matters, the use, not the users, and therefore, did not consider these submissions in its decision.

125 The appellants, through their agent, did not agree with the FAR calculation provided by the Development Authority, expressing an opinion that it should have included in the gross floor calculation, the front and rear at-grade areas underneath the upper floors. In addition, they expressed an opinion that the front setback should be reduced to account for the overhang of the building above the main floor. The Development Authority confirmed Bylaw checks were completed at each stage of the Development Permit application and affirmed the accuracy of these dimensions. The applicant, in his opinion, stated they are accurate. The Board recognizes the expertise and experience of all of the parties. However, the Board did not receive evidence to satisfy it that the FAR and front setback dimensions were inaccurate and therefore accepts that they are correct as submitted by the Development Authority. As such, the Board accepts that the FAR calculations comply with Bylaw requirements.

126 The appellants presented a number of Crime Prevention Through Environmental Design (CPTED) concerns related to side and rear specific design features of the building. The Development Authority submitted that a CPTED analysis had not been completed for the proposed development. The applicant stated there are no CPTED issues but offered to provide additional lighting and active security monitoring in the parking area underneath the upper floors as preventative measures. The Board finds the appellants' submission compelling considering the design of the building includes secluded areas and they presented evidence of existing security issues in the neighbourhood. Noting the applicant was willing to provide additional safety and security measures, the Board finds the development should have included a fulsome CPTED assessment and appropriate measures incorporated in the development permit conditions. Without such an assessment the Board is not in a position to comment on the safety of this aspect of the proposed development, but nothing turns on this as the Board has based its decision on other matters.

127 The appellants submitted that there would be safety concerns in the lane with respect to two-way vehicle circulation and truck turning movements based on the narrowness of the lane and the location of Enmax poles and overhead wires in proximity to the loading area. The appellants also submitted concerns related to pedestrian safety traversing the lane. The Board did not have any evidence of pedestrian or vehicle safety incidents related to lane circulation and notes that, by the fact the lane is quite narrow,

traffic would generally have to move slowly. The applicant stated these issues had been assessed and approved by the relevant authorities. The Board accepts the applicant's submissions based on the assessment and approval of the accountable authorities.

### *Parking*

128 The applicant submitted that the parking reduction relaxation of 11 stalls is justified based on eight qualifying criteria for multi-residential development. The Board agrees that it meets the five criteria of having direct lane access; situated on collector road frontage; located adjacent to multi-residential uses; a short walk to open space; and main street proximity.

129 Regarding the remaining three criteria, the proposed development is not located on a corner lot. In the Board's opinion, the existing retail and commercial uses in the area are limited, speciality and small-scale services and the Board finds it significant that the most important use, a major grocery store, is not within a walkable distance. The existing amenities seem to reflect the older local neighbourhood offerings of West Hillhurst and not the evolving nature of a vibrant main street with a variety of retail options to satisfy everyday needs. Therefore, the Board finds these two criteria are not satisfied.

130 Additionally, the Board does not agree that the primary transit criterium is adequately satisfied; there is a walkable distanced bus stop for Bus Route 1 at Kensington Road but there is no BRT route available as presented by the applicant; Route 305 is a limited-service express route only. The other bus routes are limited in service availability and at best, provide feeder service to primary transportation nodes. The Transit Demand Measure of transit passes for the proposed development would not be effective as primary service use is not convenient in this case. The appellants provided evidence that carshare is currently a limited alternative in the area and E-scooters are seasonally restricted by the Calgary climate. The Board determines that walking and bicycle transportation alternatives are the only effective methods for this area. The Board therefore determines there is not sufficient justification for the parking relaxation based on the current conditions of offerings, services and infrastructure in the area.

131 The Board considered the submissions and transportation memos provided by the applicant. The Board disagrees with their conclusions. The Bunt memo, as reviewed by the Watt memo, relied for its conclusion on the availability of frequent bus service consisting of Bus Route 1 and BRT Route 305. The evidence before the Board was that Route 305 currently only stops in the mornings and evenings. While the applicant's representative did state that Route 305 would be upgraded in the future, the applicant did not provide satisfactory evidence to the Board regarding the extent or certainty of such service upgrades. The applicant also did not satisfy the Board that car sharing would be a feasible alternative.

132 This development is a discretionary use, and according to section 35 of the Land Use Bylaw, adequacy of parking is a relevant consideration when determining whether or not a discretionary use should be approved. Section 35 also directs that plans and policies affecting the parcel are relevant considerations when deciding whether to

approve a proposed discretionary use and the Parking Policies are therefore appropriately considered by the Board, not in the context of the test for a Bylaw relaxation, but in the context of this development as a discretionary use. The Board finds that in this case, there is not adequate parking such that this development should be approved.

133 The Board further finds that the development, with the parking relaxations will unduly interfere with the use, enjoyment and value of neighbouring properties and neighbourhood amenities because they will put further stress on an area that already has limited on-street parking. The neighbourhood is a restricted parking zone area, and there are currently few unrestricted on-street parking spaces available for visitors unless they are staying 1-2 hours. There is limited curb space located along the west side of 19 Street NW only and along 2 Avenue NW where the homes have front driveways therefore limiting curb availability. As a result of the narrowness of the rear lane and abutting properties with buildings at property lines, there is no parking available adjacent to the lane. The 11 stall relaxation is significant for the proposed development, limiting on-site availability to 3 stalls in the rear with no parking stalls for the commercial-retail use. The development, with the parking relaxation, will increase the demand for the limited parking which is available in the area.

#### *Overlooking*

134 The appellants submitted that the proposed development would create overlooking concerns while the applicant submitted that it provides significant separation from the residences to the east, exceeding the chamfer requirements. The applicant offered to further mitigate overlooking concerns by frosting the windows on the upper residential floors. The Board finds that there are significant overlooking issues into the appellants' properties since the lane is narrow, there are no trees providing a separation buffer and three of the five floors have an unobstructed view into the backyards and rear living area windows of the appellants' homes directly across from the development.

135 Because the proposed development maximizes FAR and has limited design alternatives for window placement, it maximizes the number of windows located on the east façade. Those windows are located in each unit's living areas and therefore, viewing outside would be more frequent than if the views were from bedrooms. The frosting option is not a practical solution since the windows are the only means of providing natural light and views for each of the units.

#### *Shadowing*

136 The appellants submitted there would be adverse shadowing impacts related to the height and massing of the building. The applicant provided a shadow study that concluded there would be minimal incremental shadow impacts from the proposed development to the appellants' properties. There may be some impact to the future 19+2 building residents but that issue was not before the Board. The Board accepts the shadow study and determines the proposed development would not have a material shadowing impact on the appellants' properties.

## Height

137 The Board determines that the building exceeds the maximum height permitted on the subject site. The subject parcel is designated MU-1 f3.3 h19, therefore the maximum building height is 19.0 metres. The height to the top of the building is depicted on development permit drawing DP.200, elevations 1 (North Elevation and 2 (South Elevation)) as exceeding the 19.0 metre height envelope.

138 The Board noted that section 40(c.1) of the Bylaw states:

*“The Development Authority must refuse a development permit application when the proposed development: (c.1) exceeds the maximum building height when specified on a Land Use District Map except where portions of the building exceed the maximum building height due to:*

- (i) Grade variations within the parcel;*
- (ii) Design elements of the building that extend above the eaveline where there is no usable floor area associated with the element;”*

139 The applicant submitted that the portion of the building which exceeded the maximum building height was considered an “ancillary structure” and should therefore not be considered in the measurement of building height as referenced section 13(24) of the Bylaw which states:

*““building height” means the height of a building, excluding ancillary structure, determined:*

- (c) by measuring from grade in a multi-residential district where the use is not a Duplex Dwelling, Semi-detached Dwelling, or Single Detached Dwelling;”*

140 Where the definition of an “ancillary structure” is described in section 13(7) of Bylaw which states:

*““ancillary structure” means, with reference to building height, an essential component, other than a sign or flag pole, that protrudes above the roof of a building and which is necessary for the functioning of a building including, but not limited to:*

- (a) An elevator housing;*
- (b) A mechanical penthouse;*
- (c) A chimney;*
- (d) Solar collectors;*
- (e) Portions of a building or a structure used to provide screening of mechanical systems or equipment located outside of a building;*
- (f) An architectural feature commonly associated with a Place of Worship; or*

(g) A Wind Energy Conversion System – Type 1 or a Wind Energy Conversion System – Type 2.

141 The applicant further stated that the portions of the building which exceed the maximum building height were ancillary structures as they contained: an elevator stop, a lobby for the elevator, and two access stairwells which they determined should be interpreted to fall under the definition of being an essential component necessary for the functioning of the building and are not classified as useable floor space.

142 The Development Authority stated that the components of the building which exceed 19.0 metres should be classified as ancillary structures because the definition of ancillary structure stated “including, but not limited to” and that the list provided in section 13(7) was not an exhaustive list of ancillary structures.

143 The Appellants argued that the building components exceeding the 19.0 metres height do not service the building but rather service the roof top outdoor amenity and therefore should not be considered ancillary structures, resulting in the building being over height.

144 The Board reviewed the relevant sections of the Bylaw and determines that the portions of the building exceeding the height of 19.0 metres are not ancillary structures. The definition in section 13(7) states that an ancillary structure is an essential component which is necessary for the functioning of a building. Section 13(20) defines a building as:

*Building includes anything constructed or placed on, in, over or under land but does not include a highway or public roadway or a bridge forming part of a highway or public roadway.*

145 Therefore, a building is an object of which an essential component would be an item that is associated with the typical core functionality of the structural, mechanical, or electrical portions thereof, other than a sign, flag pole, or architectural feature for a place of worship. The building components on the approved plans which exceed the 19.0 metre maximum height - the elevator stop and lobby, and the two stairwells – exist to service people accessing the outdoor amenity area, not unusable floor area.

146 Furthermore, the Board notes that the definition of ancillary structure provides several examples. While this is not a closed list as the Bylaw states “including, but not limited to”, these examples provided in the definition give guidance to Council’s intent with regard to what should be considered an ancillary structure.

- (a) An elevator housing – this is a mechanical override for pulleys and cables associated with an elevator shaft and does not include an elevator stop;
- (b) A mechanical penthouse – this is a separate room typically for HVAC equipment on the roof of a building to service the heating, ventilation, and air conditioning of a building.
- (c) A chimney – this services heating equipment to exhaust gasses.

- (d) Solar collectors – this is equipment to provide electrical power to a building.
- (e) Mechanical screening – screens for HVAC units in lieu of a full mechanical penthouse.
- (f) A feature for a place of worship – the building in question is not identified as a place of worship.
- (g) A wind energy system – this is equipment to provide electrical and/or mechanical power to a building.

147 None of the examples in subsections (a) through (g) relate to human occupancy or amenity activity on the roof of a building. The proposed development involves areas which do involve human occupancy on a regular basis and which do not fit in with these examples. The Board finds that the rooftop features of this development do not meet the definition of “ancillary structures”, and as such there is a building height relaxation.

148 The Board finds that a relaxation of the building height requirements is not appropriate in this case. The development with this relaxation will unduly interfere with the use, enjoyment and value of neighbouring properties and neighbourhood amenities because it adds to the mass of an already imposing development that maximizes the parcel envelope with almost no articulated features. The appellants’ line-of-sight view would be an imposing, unarticulated wall filling the full width of the parcel at maximum height and a visible structure adding further height on top of the roof.

#### *Land Use Purpose*

149 The Bylaw, in section 1333(g), states that one of the purposes of mixed use districts is to achieve transition to lower scale residential buildings on adjacent parcels. The Board finds that the proposed development does not achieve such a transition for adjacent east parcels. It maximizes the envelope in terms of height and massing and provides no transitional landscaping, especially considering the inner-city lane separation is narrower at 5.5 metres than the current City width standard. The Board finds that the chamfer reduction does not adequately compensate for maximizing the building height and mass on a proportionally small envelope parcel.

150 The Board finds that the proposed development is overbuilt in relation to the parcel size. This is demonstrated by the parking relaxation, the building being over height, the developer maximizing FAR so that amenity space is concentrated to a common area on the rooftop, the window intensity for the east-facing units concentrated solely across the east façade of the building, and the lack of loading stalls. The proposal to use the adjacent development’s parking stalls only demonstrates further that the building is too much to allow the proposed development to function on its own. The proposed development requires an agreement with the adjacent building to provide a loading area, a connector walkway and vehicle access to the loading area that it cannot provide within its own design. It requires a garbage staging area to be located in the rear setback area that compromises landscaping requirements.

151 In addition to maximizing the parcel building envelope, it further takes advantage of the 3.3 FAR maximum. The Board determines that it is not a modest redevelopment as envisioned by the MDP.

152 The proposed development does not meet the criteria of section 35 of the Bylaw for approval of a discretionary use. It is not consistent with the purpose statements for multi-residential districts and will have a negative impact on adjacent development. It does not have adequate parking or access by means of the transportation network. The proposed development is over height and a height relaxation is not warranted. The Board finds that the development, from a planning perspective, is not based on sound planning principles and is inappropriate for the parcel. Therefore, the application does not warrant approval.

153 The Board, based on the three relaxations the Development Authority identified and the fourth one related to height, finds that the proposed development is insensitive to adjacent development and the amenities of the neighbourhood. The proposed development with these relaxations will negatively impact the use, enjoyment, or value of the neighbouring parcels. The test for relaxation set forth in section 687(3)(d) of the Municipal Government Act has not been satisfied.

**Conclusion:**

154 For the reasons set out above, the appeal is allowed, and the decision of the Development Authority is overturned. A development permit shall not be issued



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Jim Palmer, First Vice Chair and Decision Writer  
Subdivision and Development Appeal Board

Issued on this 2nd day of May 2022



**Public Submission**

CC 968 (R2024-05)

**FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT**

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**ENDORSEMENT STATEMENT ON TRUTH AND RECONCILIATION, ANTI-RACISM, EQUITY, DIVERSITY, INCLUSION AND BELONGING**

The purpose of The City of Calgary is to make life better every day. To fully realize our purpose, we are committed to addressing racism and other forms of discrimination within our programs, policies, and services and eliminating barriers that impact the lives of Indigenous, Racialized, and other marginalized people. It is expected that participants will behave respectfully and treat everyone with dignity and respect to allow for conversations free from bias and prejudice.

First name [required] Will

Last name [required] Overend

How do you wish to attend? In-person

You may bring a support person should you require language or translator services. Do you plan on bringing a support person? No

What meeting do you wish to comment on? [required] Council

Date of meeting [required] Jan 14, 2025

What agenda item do you wish to comment on? (Refer to the Council or Committee agenda published [here](#).)

[required] - max 75 characters LOC2024-0183 Land Use Amendment Reading

Are you in favour or opposition of the issue? [required] In opposition





### Public Submission

CC 968 (R2024-05)

ATTACHMENT\_01\_FILENAME

Submission to LOC2024-0183 Will Overend 7Jan25.pdf

ATTACHMENT\_02\_FILENAME

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

Subject to timing and time allotted, my intent is to refer to the attached submission while supporting a presentation developed jointly with neighbours Ryder McRitchie and Christopher Wong.

Will Overend  
219 18A St. NW  
Calgary AB T2N2H1

7 Jan. 2025

TO: Calgary City Mayor and Council

RE: Public Hearing Meeting of Council to Consider Land Use Redesignation at 206, 210, 214 and 218 – 19 St. NW  
(LOC2024-0183)

Mayor and Councillors:

I am writing to state my concerns about CPC's recommendation that the above-stated parcel be redesignated from Mixed Use - General (MU-1f3.3h19) to Mixed Use - General (MU-1f3.9h24).

My concerns are as follows:

The proposed Riley Communities plan envisions higher mixed-use developments along the 19<sup>th</sup> Street NW Community Corridor but at this date, this plan has not been statutorily processed. The MDP is currently the only approved municipal plan that applies to LOC2024-0183. The application for FAR of 3.9 and height of 24 metres across a narrow alley from single-family residences is grossly incompatible with MDP's provision for "modest intensification of the inner city."

**Please side with the intent of the currently applicable plan.**

In early 2022, SDAB rejected a DP on this site (specifically at 218 – 19 St. NW; Appeal 2021-0091) finding significant overlook issues and concluding that the height of the proposed five-floor building would "unduly interfere with the use, enjoyment and value of neighbouring properties." At the time the zoning was MU-1f3.3h19. We as residents put literally hundreds of hours into our submission, its presentation, and its defence from the professionals opposing us. Yet LOC2024-0183 seeks to enable a greater FAR and taller structure on the same land. CPC is moving in the opposite direction of SDAB's findings and it's a slap in the faces of West Hillhurst residents who supported reasonable densification while opposing poor transition.

**Please uphold the spirit of SDAB's conclusions.**

In summary, the land use redesignation recommended by CPC would enable the construction of a building taller and more massive what has previously been rejected. It is opposed by the West Hillhurst Community Association and it would go against the City's own policies, guidelines and directions for such a mid-block site across a narrow alley from single-family homeowners.

**The existing zoning permits enough extra density in this location.**

Thank you for your service to the community as elected representatives. Please do the right thing on this file.