



PARENTE • BOREAN
BARRISTERS AND SOLICITORS

Lawyer Direct Dial: (905) 850 -6068
E-mail: gborean@parenteborean.com
Law Clerk: (905) 850 -6066 ext. 234
Email: cpresenza@parenteborean.com

May 8, 2023
Our File No.: 23-0039

HAND DELIVERED AND BY EMAIL TO: slandry@owensound.ca

The Corporation of the City of Owen Sound
Deputy Clerk's Department
808 2nd Avenue East
Owen Sound, ON N4K 2H4

Attention: Staci Landry, Deputy Clerk

Re: Notice of Appeal of Villarboit (Owen Sound) Holdings Limited Partnership and Heritage Grove Centre Inc. (jointly referred to as "Villarboit") with respect to By-Law 2023-045 ("ZBL 2023-045") under Section 34 of the Planning Act, R.S.O. 1990 c.P13 (the "Act").

We are counsel for Villarboit. Villarboit is the owner of the lands municipally known as 2125 16th Street East, Owen Sound, Ontario (referred to as the "Villarboit Lands").

Villarboit is appealing the passing of Zoning By-law Amendment No. 44, passed by By-law No. 2023-045 ("ZBL 2023-045") with respect to the lands municipally known as 2275 16th Street East, Owen Sound, Ontario (the "Applicant's Lands").

On April 17, 2023, the Council of the Corporation of the City of Owen Sound (the "City") passed ZBL 2023-045, for the purpose of adopting amendments to the City's Zoning By-law No. 2010-078, as amended.

Villarboit, also referred to herein as the "Appellant", made written submissions to the City, via submissions dated January 25, 2023, raising the Appellant's concerns with respect to the proposed amendment. Attached hereto is a copy of the Appellant's written submissions, in the form of a letter from Parente Borean LLP to the City Clerk, dated January 25, 2023 (the "Villarboit Submissions").

Villarboit hereby appeals Council's Decision to enact ZBL 2023-045, pursuant to s. 34 of the Act. This shall serve as notice of Villarboit's appeal of ZBL 2023-045.

REASONS FOR THE APPEAL

Villarboit appeals for the following reasons:

3883 Highway 7
Suite 207
Woodbridge, ON
L4L 6C1



Toronto: 416 798-7077
Vaughan: 905 850-6066
Fax 905 850-6069
www.parenteborean.com

1. Villarboit repeats and relies on the Villarboit Submissions.
2. The Villarboit Lands are adjacent to the Applicant's Lands.
3. Villarboit has existing land use permissions. Pursuant Villarboit's last Zoning Amendment and Site Plan approvals which came into force on June 10, 2020 (i.e., Zoning By-law Amendment No. 29 and Site Plan Approval ST2019-005) the easterly lane along the east part of Villarboit's Property, adjacent to the Applicant's Lands, was approved and is ready to be constructed (**see Attachment 1 to Villarboit's Submissions**). As a condition of those approvals, the City required that an access easement be created on the subject lane in favour of the Applicant's Lands (**See Attachment 2 to Villarboit's Submissions**).
4. Since the 2020 approvals, Villarboit has re-engaged the City for another set of applications to change the use of the Northeast part of the site from the approved 40,000 square foot hotel to a 35,000 square foot grocery store but keeping the Villarboit lane intact (**See Attachment 3 to Villarboit's Submissions re Sketch**). Villarboit has received written comments from the City dated February 28, 2022 and later held another meeting with City Staff on March 9, 2022 whereby Villarboit raised several major concerns with respect to the City's comments and the City's future plans as related to the subject lane, and the impacts on the proposed Villarboit development. Among the concerns included, the possibility for the Villarboit lane to be converted to part of a future public road (with 9.5m coming from the Villarboit site and 9.5m from the Applicant's Lands). Villarboit has objected to any additional taking of lands, other than that shown on the approved lane and corresponding registered access easement. This is due to the grocery store size and parking requirements, which cannot be reduced.
5. As part of those discussions, the City agreed that Villarboit's Traffic Study be scoped to determine whether the grocery store traffic volumes can be accommodated on Villarboit's site and lane.
6. Since the March 9, 2022 meeting, Villarboit and its consultants have prepared the necessary Market Study (in support of the grocery store use) and a Traffic Opinion report (to account for the grocery store traffic volumes). It should be noted that the Traffic report confirms that the existing lane will satisfactorily accommodate the proposed grocery store traffic.
7. Villarboit's concerns with the proposed Zoning By-law Amendment No. 44 applications include, but are not limited to, the following:
 - A) **The easement granted by Villarboit to the Applicant's Lands and provided to accommodate the development of the Villarboit Lands, including but not limited to, proper access to loading spaces on the Villarboit Lands, contemplates a private driveway whereas the Staff Report dated March 27, 2023, indicates that access to the Applicant's Lands is to be provided via a new public street or a private roadway.**

- B) The creation of a public road will have impacts to the overall development of the Villarboit Lands and shall negatively impact the full-build out of the Villarboit Lands, including but not limited to the fact that:
- i. The current layout, of the Villarboit Development, requires a very long curb cut along the laneway for trucks to enter and exit the loading area which is suitable from an internal laneway design but does not satisfy public road requirements.
 - ii. Additionally, if the two grocery store loading spaces are occupied, then the southerly loading space can only be accessed by reversing in from the laneway (as opposed to pulling into the shared loading area and then reversing). If this were a public roadway, this reverse movement could not occur. This would not be an issue for the current commercial laneway, as proposed.
 - iii. Similarly, this would be acceptable from an internal laneway, but not from a public roadway.
 - iv. Further, if a public road were to be reintroduced, a commercial driveway would be needed with a curb cut in the order of 45 metres to allow for truck maneuvering into and out of the loading spaces. This would result in the driveway width greatly exceeding typical driveway widths and significantly and negatively impacting the development of the Villarboit Lands.
- C) The Owen Sound Official Plan does not provide for a new/future local or collector road on Schedule 'A' – Land Use Plan, Schedule 'A2' - Sydenham Heights Phase One and Phase 2 Planning Areas Land Use Plan or Schedule 'C' – Transportation Plan. Similarly, the City's 2010 Transportation Master Plan, does not identify a future public road in this location.
- D) The number of access points on the lane (or future public road) by the Applicant's Lands. Villarboit anticipated only the southerly access onto its lane (pursuant to the registered easement).
- E) The possibility of high-density residential traffic using the Villarboit lane (or future public road) will prove challenging given that normal commercial uses were historically contemplated for the Applicant's Lands (hence the easement as shown). It is Villarboit's position that no one anticipated this level of traffic volumes to be using the easterly lane, which per the Transportation Impact Study will amount to 238 vehicles in the a.m. peak hour and 158 vehicles in the p.m. peak hour. These volumes assume the completion of 20th Avenue East, so will be even greater prior to that occurrence. Perhaps an additional access point needs to be investigated on the Applicant's Lands to offset traffic volume on the lane.

- F) There is no need for a public road, given that the Applicant can accommodate an access point to the Applicant's Lands towards the north easterly portion of the Applicant's Lands, which would provide for appropriate access onto Highway 26 in conjunction with the supplementary use of the existing lane access.
- G) Villarboit's easterly lane is meant primarily for trucks and delivery activity, with some use by commercial customers arriving from and departing to the east away from the City's urban areas. The proposed lane shows medians, various access points, etc. However, this area of Villarboit's site is to function as the main delivery area for the grocery store, which must be accommodated pursuant to Villarboit's Tenant/Lease obligations. For truck loading operations, a curb cut approximately 45 metres in length is needed as loading spaces are parallel to the lane. Villarboit has concerns whether such an access width would be permissible under a public road tenure, irrespective of the greatly increased vehicle volumes attributable to the Adjacent Lands.
- H) The Transportation Impact Study has analyzed the lane as having a northbound left turn lane and a northbound right turn lane under an unsignalized configuration. Having two outbound lanes can result in safety concerns as a simultaneous left-turning driver and a right-turning driver can impede each other's view of the traffic flow on 16th Avenue.
- I) The Transportation Impact Study has concluded that no right-turn lane on 16th Avenue is necessary at the lane intersection, however, the study forecast 96 eastbound right turns in the a.m. peak hour and 119 eastbound right turns in the p.m. peak hour. A right turn lane should be required with this volume of vehicles.
- J) In addition, public meetings are required to be open and transparent processes to show that community input and feedback, as well as available data and technical expertise, are all taken into account. However, adequate information and material has not been made available to the public. The Notice of Public Meeting and the documentation available on the City's website does not contain a copy of the Draft Zoning By-law being considered as part of Zoning By-law Amendment (ZBA) #44. *The Planning Act, as amended* requires that sufficient information and material is made available to enable the public to understand generally the zoning proposal that is being considered by Council (please reference Section 34.12). As such, Villarboit and others in the general public are unable to fully ascertain the extent of the site-specific exceptions being requested to facilitate Sydenham Square Inc. ZBA application and weigh the potential impacts.
- K) Similarly, Villarboit also notes that the overall Commercial C2 Zoning proposed for the Applicant Lands is not supported by a Market Study, which is an Official Plan requirement. It is difficult to assess impacts of this proposed zoning without market justification.

8. Such other reasons as counsel may provide and the Tribunal may permit.

APPEAL DOCUMENTS

In support of this appeal, we enclose, as necessary, the following:

1. Completed OLT Appellant Form (A1) with respect to the appeal;
2. Our Firm cheque in the amount of \$1,100.00, payable to the Minister of Finance, representing the Tribunal's filing fee;
3. Villarboit's submissions as defined above, and three (3) attachments as described above.
4. USB (being hand delivered) containing Appellant Form A1, Appeal Letter and copy of cheques.

Kindly confirm receipt of this Notice of Appeal package by reply email to the undersigned.

I confirm your confirm your conversation with my law clerk, Ms. Christina Presenza, with respect to advising that the City **does not** require any further filing fee(s); save and except; the OLT filing fee attached hereto.

We trust this is satisfactory. However, please do not hesitate to contact the undersigned if you have any questions or require any further information.

Yours truly,

PARENTE, BOREAN LLP

Per:


Gerard C. Borean
GCB/cp

Encls.: as noted above

cc: client via email

SITE PLAN INFORMATION TAKEN FROM SITE PLAN PREPARED BY SCOLER & LEE ASSOCIATES ARCHITECTS INC. DRAWINGS A1, DATED FEB. 2011, REV 12, DATED OCT. 2, 2013 AND FROM PLAN OF SURVEY OF PART OF PARK LOTS 8 AND 9 RANGE 5, EAST OF THE GARAFRAX ROAD GEOGRAPHIC TOWNSHIP OF SYDENHAM CITY OF OWEN SOUND COUNTY OF GREY BY HEWETT & MILNE LIMITED

SITE PLAN

SITE AREA 7.6 Ha 18.78 AC
COVERAGE 23.2%

BUILDING GFA	SM	SF
BLDG A1	1,772.40	19,078
BLDG A2	1,913.30	20,595
BLDG B	2,000.50	21,533
BLDG C	780.30	8,399
BLDG D	789.70	8,500
BLDG E	1,858.10	20,000
BLDG F	796.30	8,571
BLDG G	1,418.50	15,269
BLDG H1	464.49	5,000
BLDG H2	199.75	2,150
BLDG H3	204.37	2,200
BLDG I1	241.54	2,600
BLDG J1	116.08	1,250
BLDG J2	464.43	5,000
BLDG J2	204.89	2,206
BLDG K	3,716.10	40,000
BLDG L1	232.39	2,501
BLDG L2	297.30	3,200

TOTAL GFA 17,470.44 188,052
ZONING AS PER BYLAW 2010-078
(SEE ZONING ANALYSIS)

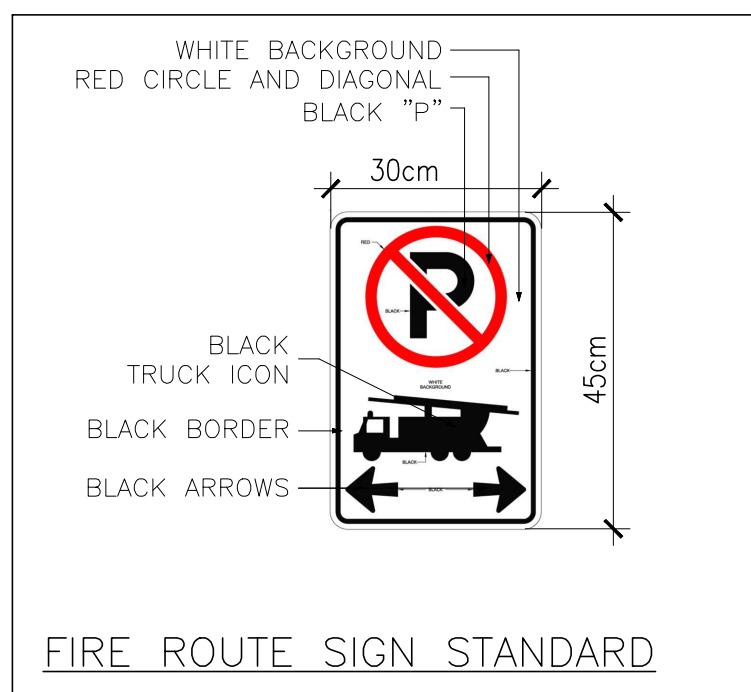
PARKING (2.65m x 6m W/ 6m drive aisle)

REQUIRED	
1/15 sm gfa up to 300 sm	20 spaces
1/20 sm gfa thereafter	860 spaces
TOTAL	880 spaces
	(18 BF spaces)
PROVIDED	1005 spaces
	(47 BF spaces)

NOTES:
CONC. BARRIERS CURB AT THE EDGE OF ALL HARD SURFACES IS REQ'D INCL. ADJACENT TO ALL NATURALIZED AREAS

FIRE VEHICLE ACCESS ROUTE SIGNS SHALL BE INSTALLED TO MEET THE REQUIREMENTS OF THE CITY OF OWEN SOUND FIRE ROUTE BYLAW.

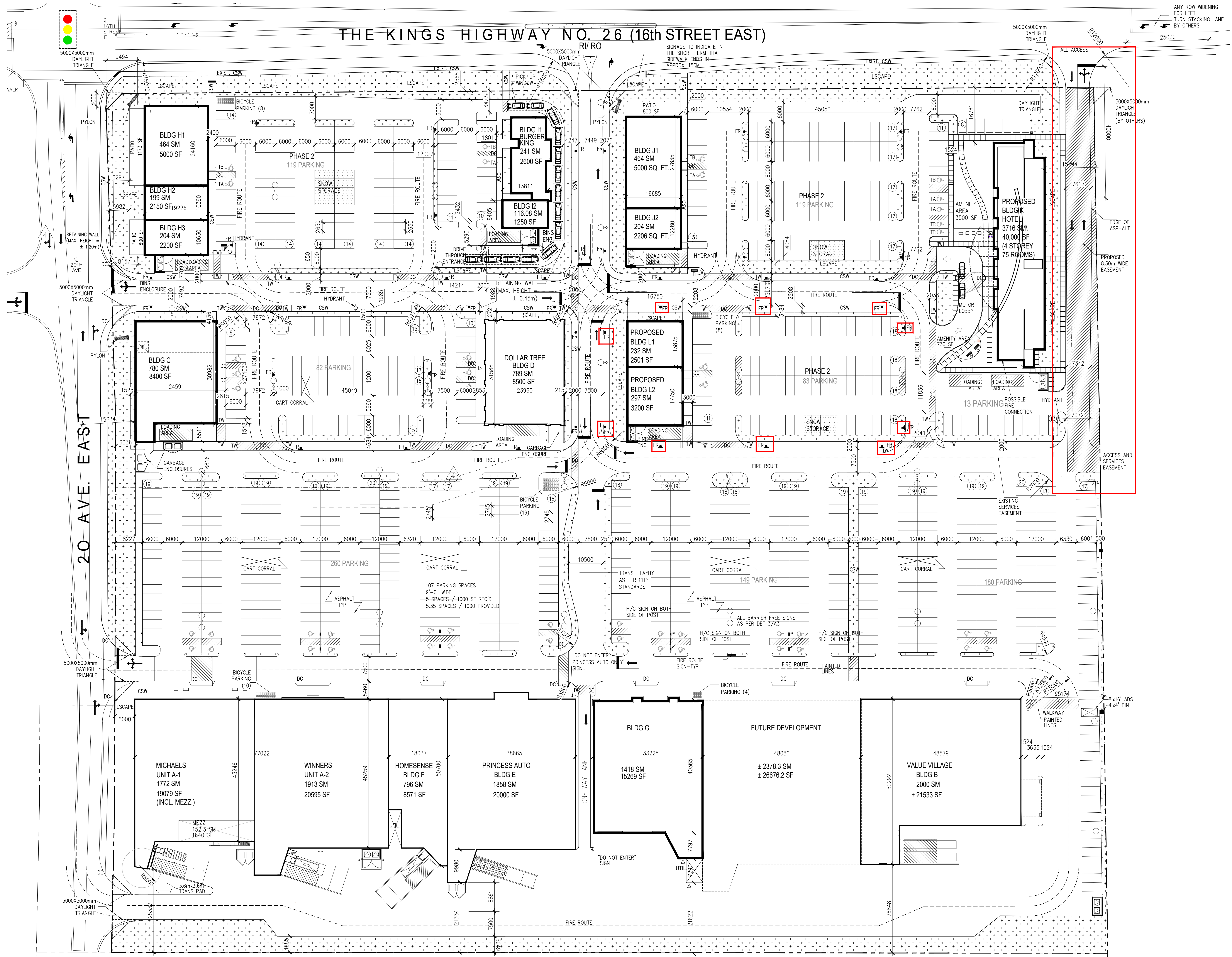
INSTALL TACTILE SURFACE WALKING INDICATOR PLATES IN THE INTERSECTIONS BETWEEN THE CONCRETE SIDEWALK AND THE DESIGNATED CROSS WALK



PLAN LEGEND		FIRE ROUTE	
CSW	CONCRETE SIDEWALK		SINGLE LIGHTPOLE
TW	TACTILE WALKING SURFACE INDICATOR (COLOUR RED)		DOUBLE LIGHTPOLE
DC	DESIGNATED CROSSWALK		PYLON
	FIRE HYDRANT AND VALVE		LANDSCAPE AREA
	DIRECTION OF TRAFFIC FLOW		
	BENCH		TYP. ACCESIBLE PARKING STALL TYPE "A"
	FIRE ROUTE SIGNS		TYP. ACCESIBLE PARKING STALL TYPE "B"

ZONING USE ANALYSIS (m²)

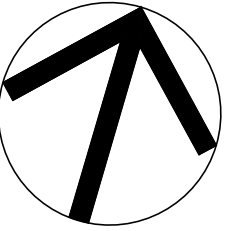
RETAIL	BLDG A UNIT A-1 MICHAELS	UNIT A-2 WINNERS	BLDG B VALUE VILLAGE	BLDG C	BLDG D DOLLAR TREE	BLDG E PRINCESS AUTO	BLDG F HOMESENSE	BLDG G	BLDG J2	BLDG L1	BLDG L2	TOTAL	PERMITTED
FURNITURE HOME FURNISHINGS & ELECTRONICS							692.80					692.80	3716.40
PHARMACEUTICALS & PERSONAL CARE													1393.60
CLOTHING & ACCESSORIES		1913.30			626.20	1605.70						1913.30	3716.40
GENERAL MERCHANDISE												2231.90	2322.80
MISCELLANEOUS RETAIL	1772.40		2000.50	780.30				1234.10				5007.00	5170.00
UNASSIGNED RETAIL SPACE									204.89	232.39	297.30	1514.88	
TOTAL RETAIL	1772.40	1913.30	2000.50	780.30	626.20	1605.70	692.80	1234.10	204.89	232.39	297.30	11359.88	
NON-SHOWROOM SPACE					163.50	252.40	103.50	184.40				703.80	
SUB-TOTAL	1772.40	1913.30	2000.50	780.30	789.70	1858.10	796.30	1418.50	204.89	232.39	297.30	12,063.68	
RESTAURANTS (BLDG H1, H2, H3, I1, I2, J1)												1690.66	
HOTEL												3716.10	
GRAND TOTAL												17,470.44	



1 SITE PLAN
SCALE: 1:500

Point.
Architects

522 Mt. Pleasant Road
Suite 200
Toronto, Ontario
M4S 2M3
Tel.: (416) 440-0058
Fax: (416) 440-1404
mail@pointarchitects.ca
www.pointarchitects.ca



54	ISSUED FOR REVIEW	OCT. 09, 2020
53	ISSUED FOR REVIEW	SEP. 14, 2020
52	ISSUED FOR REVIEW	AUG. 21, 2020
51	ISSUED FOR REVIEW	AUG. 18, 2020
50	ISSUED FOR REVIEW	AUG. 07, 2020
49	ISSUED FOR REVIEW	JUL. 15, 2020
48	ISSUED FOR REVIEW	JUN. 30, 2020
47	ISSUED FOR REVIEW	JUN. 30, 2020
46	ISSUED FOR REVIEW	JUN. 29, 2020
45	ISSUED FOR REVIEW	JUN. 26, 2020
44	ISSUED FOR REVIEW	FEB. 06, 2020
43	ISSUED FOR REVIEW	FEB. 05, 2020
42	ISSUED FOR REVIEW	JAN. 30, 2020
41	ISSUED FOR REVIEW	JAN. 16, 2020
40	ISSUED FOR REVIEW	JAN. 06, 2020
NO. REVISIONS:		ISSUED:

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CLIENT:

HERITAGE
GROVE
CENTRE INC.

2125 16TH ST. E.
OWEN SOUND, ON

PROJECT:
HERITAGE GROVE
CENTRE

SHEET TITLE:
SITE PLAN

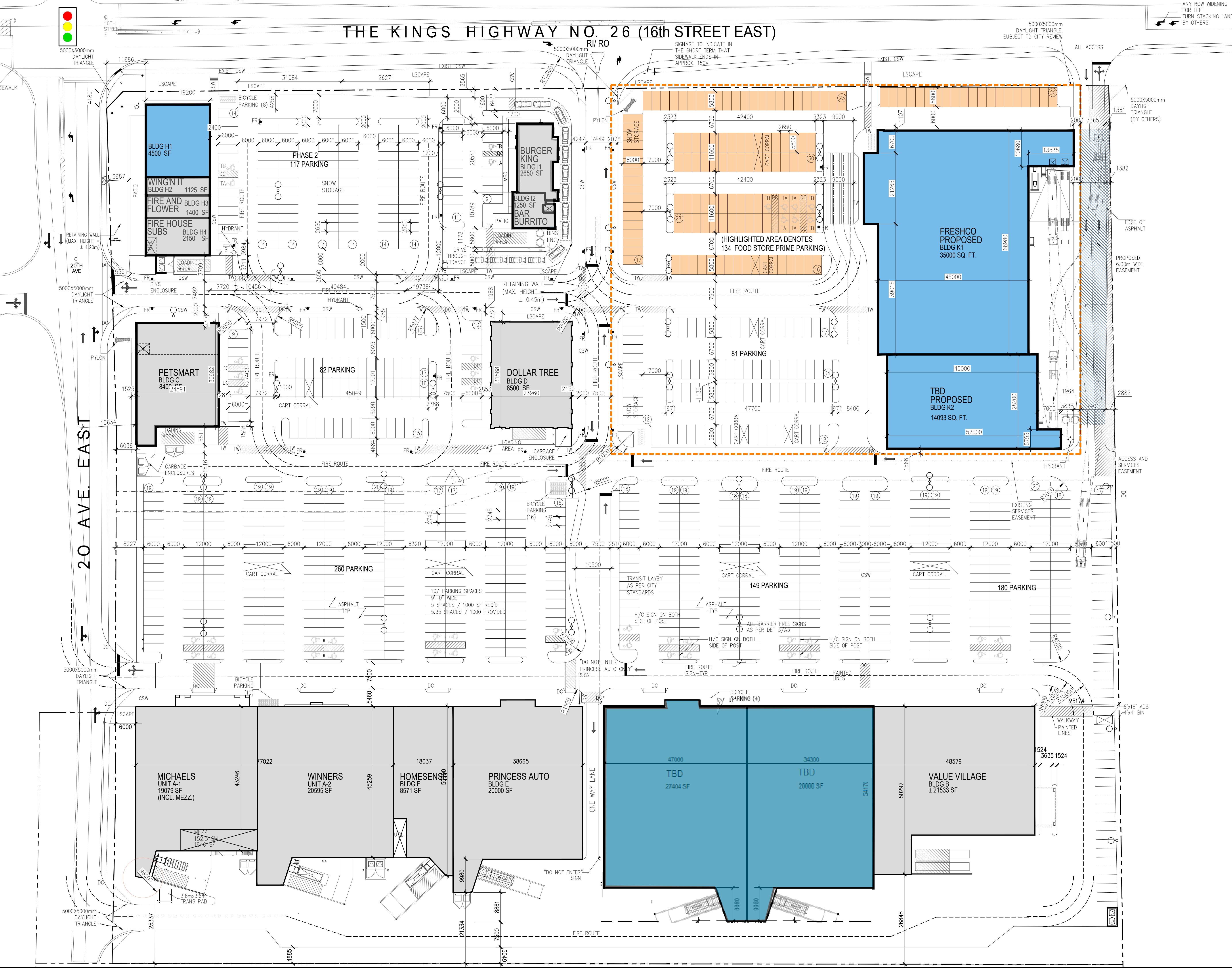
PROJECT NO. 3027	DATE: SEE REV.
SCALE: 1:500	SHEET NO:
DRAWN: PP	
CHECKED: GP	
FILE NO. 3027	

SP1

ISO 9001 REGISTERED

SITE PLAN INFORMATION TAKEN FROM SITE PLAN PREPARED BY SCOLER & LEE ASSOCIATES ARCHITECTS INC. DRAWINGS A1, DATED FEB. 2011, REV 12, DATED OCT. 2, 2013 AND FROM PLAN OF SURVEY OF PART OF PARK LOTS 8 AND 9 RANGE 5, EAST OF THE GARAFRAXA ROAD GEOGRAPHIC TOWNSHIP OF SYDENHAM CITY OF OWEN SOUND COUNTY OF GREY BY HEWETT & MILNE LIMITED

PLAN LEGEND			
CSW	CONCRETE SIDEWALK		FIRE ROUTE
TW	TACTILE WALKING SURFACE INDICATOR		SINGLE LIGHTPOLE
DC	DESIGNATED CROSSWALK		DOUBLE LIGHTPOLE
	FIRE HYDRANT AND VALVE		PYLON
	DIRECTION OF TRAFFIC FLOW		LANDSCAPE AREA
	BENCH		TYPE. ACCESSIBLE PARKING STALL TYPE "A"
	FIRE ROUTE SIGNS		TYP. ACCESSIBLE PARKING STALL TYPE "B"

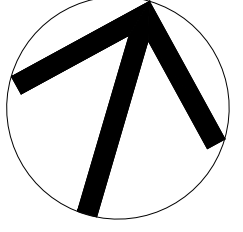


1 SITE PLAN
SCALE 1:500

AS OF JULY 01, 2021, DESIGN AND DOCUMENTS BY GREYSTONE ARCHITECTURAL PARTNERS INC.



ORIGINAL DESIGN AND DOCUMENTS BY POINT ARCHITECTS, TO JUNE 30TH, 2021
Point.
Architects



IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO:
- CHECK AND VERIFY ALL DIMENSIONS ON SITE.
- REPORT ALL ERRORS AND/OR OMISSIONS TO GREYSTONE BEFORE CONTINUING WITH ANY WORK.

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THESE DRAWINGS ARE NOT TO BE SCALED. ERRORS MADE BY PERSONS SCALING THESE DRAWINGS SHALL NOT BE THE RESPONSIBILITY OF GREYSTONE

THESE DRAWINGS ARE TO BE READ IN CONJUNCTION WITH ALL OTHER RELATED DOCUMENTS

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NO.	REVISIONS:	ISSUED:
21	ISSUED FOR REVIEW	OCT 31, 2022
20	ISSUED FOR REVIEW	MAR 14, 2022
19	ISSUED FOR REVIEW	MAR 09, 2022
18	ISSUED FOR REVIEW	FEB 11, 2022
17	ISSUED FOR REVIEW	FEB 10, 2022
16	ISSUED FOR REVIEW	FEB 07, 2022
15	ISSUED FOR REVIEW	FEB 04, 2022
14	ISSUED FOR REVIEW	JAN 31, 2022
13	ISSUED FOR REVIEW	OCT 26, 2021
12	ISSUED FOR REVIEW	OCT 25, 2021
11	ISSUED FOR REVIEW	OCT 22, 2021
10	ISSUED FOR EASEMENT COORDINATION	JUL 19, 2021
09	ISSUED FOR REVIEW	MAY 05, 2021
08	ISSUED FOR REVIEW	APR 29, 2021
07	ISSUED FOR REVIEW	APR 26, 2021
06	ISSUED FOR REVIEW	APR 20, 2021
05	ISSUED FOR REVIEW	APR 16, 2021
04	ISSUED FOR COORDINATION	OCT 14, 2020
03	ISSUED FOR COORDINATION	OCT 01, 2020
02	ISSUED FOR COORDINATION	SEP 28, 2020
01	ISSUED FOR REVIEW	AUG 25, 2020

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CLIENT:
HERITAGE GROVE CENTRE INC.
2125 16TH ST. E.
OWEN SOUND, ON

PROJECT:
HERITAGE GROVE CENTRE

SHEET TITLE:
SITE PLAN UPDATE,

PROJECT NO. 21496 (3027)	DATE: SEE REV.
SCALE: 1:500	SHEET NO:
DRAWN: PP	
CHECKED: GP	
FILE NO. 21496 (3027)	

SP1.1