

K.1 Bylaws for 580 - 582 Niagara Street: Rezoning Application No. 00721

Moved By Councillor Young

Seconded By Councillor Thornton-Joe

That the following bylaw be given first and second readings:

- Zoning Regulation Bylaw, Amendment Bylaw (No. 1251) No. 21-028

CARRIED UNANIMOUSLY

Moved By Councillor Alto

Seconded By Councillor Andrew

That the following bylaw be given first, second, and third readings:

- Housing Agreement (580-582 Niagara Street) Bylaw (2021) No. 21-029

CARRIED UNANIMOUSLY



Council Report

For the Meeting of May 13, 2021

To: Council **Date:** May 6, 2021
From: C Kingsley, City Clerk
Subject: 580-582 Niagara Street: Rezoning Application No. 00721

RECOMMENDATION

That the following bylaw be given first and second readings:

1. Zoning Regulation Bylaw, Amendment Bylaw (No. 1251) No. 21-028

That the following bylaw be given first, second and third readings:

2. Housing Agreement (580-582 Niagara Street) Bylaw (2021)" 21-029

BACKGROUND

Attached for Council's initial consideration is a copy of the proposed Bylaw No. 21-028 and No. 21-029. The issue came before Council on November 28, 2020 where the following resolution was approved:

580-582 Niagara Street: Update to Rezoning Application No. 00721 (James Bay)

That Council amend condition 'b' in the June 18, 2020 Council resolution for the Rezoning Application No. 00721 for 580-582 Niagara Street, as follows:

That Council instruct staff to prepare the necessary Zoning Regulation Bylaw Amendment that would authorize the proposed development outlined in Rezoning Application No.00721 for 580- 582 Niagara Street, that first and second reading of the Zoning Regulation Bylaw Amendment be considered by Council and a Public Hearing date be set once the following conditions are met:

1. Preparation and Execution on the property's title to secure:
 - a. a statutory right-of-way, to the satisfaction of the Director of Engineering;
 - b. a Housing Agreement to secure two of the four units as rental for a period of 10 years and to ensure that strata bylaws cannot prevent rental of the units.

That Council request the applicant consider a period of at least 20 years of rental tenure in the housing agreement.

Respectfully submitted,

Curt Kingsley
City Clerk

Report accepted and recommended by the City Manager

List of Attachments:

- Bylaw No. 21-028
- Bylaw No. 21-029

HOUSING AGREEMENT
(Pursuant to section 483 of the *Local Government Act*)

BETWEEN:

THE CORPORATION OF THE CITY OF VICTORIA
#1 Centennial Square
Victoria, B.C. V8W 1P6

(the "City")

AND:

ROBERTA ANN HILL
2888 Leigh Road
Victoria, B.C. V9B 4G3

AND:

ALFRED HERBERT HASS
2888 Leigh Road
Victoria, B.C. V9B 4G3

(collectively the "Owner")

WHEREAS:

- A. Capitalized terms used herein will have the respective meanings ascribed to them in section 1.1 of this Agreement, unless the context otherwise clearly requires or they are elsewhere defined herein.
- B. Under section 483 of the *Local Government Act* the City may, by bylaw, enter into a housing agreement with an owner regarding the occupancy of the housing units identified in the agreement, including but not limited to terms and conditions referred to in section 483(2) of the *Local Government Act*.
- C. The Owner is the registered owner in fee simple of lands in the City of Victoria, British Columbia, with a civic address of 580-582 Niagara Street, Victoria, B.C. and legally described as:

PID: 000-003-671
LOT 16, BECKLEY FARM, VICTORIA CITY, PLAN 227

(collectively, the "Lands").
- D. The Owner has applied to the City to rezone the Lands to permit four (4) housing units within the Development in accordance with this Agreement.

- E. The City and the Owner wish to enter into this Agreement, as a housing agreement pursuant to section 483 of the *Local Government Act*, to secure the agreement of the Owner that two of the Dwelling Units within the Development on the Lands will be used and held only as rental housing.

NOW THIS AGREEMENT WITNESSES that pursuant to section 483 of the *Local Government Act*, and in consideration of the premises and covenants contained in this agreement (the "Agreement"), the parties agree each with the other as follows:

1.0 DEFINITIONS

1.1 In this Agreement:

"**Business Day**" means Monday to Friday, other than any such day which is a statutory holiday in Victoria, British Columbia;

"**Development**" means the four (4) unit building consisting of residential housing and related facilities on the Lands;

"**Dwelling Units**" means any or all, as the context may require, of the four (4) self-contained residential dwelling units within the Development and includes any dwelling unit that is developed on the Lands in future, whether as part of the Development or otherwise, and "**Dwelling Unit**" means any of such residential dwelling units located on the Lands;

"**Immediate Family**" includes a person's spouse, child, grandchild, parent, grandparent, sibling, niece and nephew, and includes the Immediate Family of the person's spouse;

"**Non-owner**" means a person other than a Related Person or the Owner;

"**Owner**" includes a person who acquires an interest in the Lands or any part of the Lands or the Development and is thereby bound by this Agreement, as referred to in section 8.3;

"**Related Person**" includes, where the registered or beneficial owner of the Lands or Dwelling Unit, as applicable, is:

- (a) a corporation or society:
 - (i) an officer, director, shareholder, or member of such corporation or society, or of another entity which is a shareholder or member of such corporation or society; or
 - (ii) an Immediate Family of a person to whom paragraph (i) applies, or
- (b) an individual, an Immediate Family of the registered or beneficial owner;

"**Strata Corporation**" means, for the portions of the Lands or any building on the Lands that is subdivided under the *Strata Property Act*, a strata corporation as defined in that Act, including the Owner while in control of the strata corporation and

subsequently the individual strata lot owners collectively acting as the strata corporation.

"Tenancy Agreement" means a tenancy agreement pursuant to the *Residential Tenancy Act* that is regulated by that Act.

2.0 TWO DWELLING UNITS TO BE USED AND OCCUPIED ONLY AS RENTAL UNITS

2.1 The Owner covenants and agrees that two of the Dwelling Units shall only be used as rental housing for a period of twenty years, starting on the day the City issues an occupancy permit for the Development, and for that purpose shall only be occupied by a Non-owner under the terms of a Tenancy Agreement between the Owner and the Non-owner who occupies the Dwelling Unit.

3.0 NO RESTRICTIONS ON RENTALS

3.1 The Owner covenants and agrees that the Owner shall not take any steps, or enter into any agreements, or impose any rules or regulations whatsoever, the effect of which would be to prevent or restrict the Owner of a Dwelling Unit from renting that Dwelling Unit to a Non-owner under the terms of a Tenancy Agreement.

3.2 Without limiting the generality of section 3.1, the Owner covenants and agrees that it will not make application to deposit a strata plan for or in respect of the Lands or a building on the Lands unless the strata bylaws in no way restrict rental of any Dwelling Unit to a Non-owner under the terms of a Tenancy Agreement.

4.0 REPORTING

4.1 The Owner covenants and agrees to provide to the City's Director of Sustainable Planning and Community Development, within thirty (30) days of the Director's written request, a report in writing confirming that:

- (a) two Dwelling Units are being rented to Non-owners or are vacant, and
- (b) all other requirements of this Agreement are being complied with by the Owner and the Development,

along with such other information as may be requested by the Director from time to time.

4.2 The Owner hereby authorizes the City to make such inquiries as it considers necessary in order to confirm that the Owner is complying with this Agreement.

4.3 The Owner acknowledges that it is within the City's sole discretion to consent or not to consent to modifications of this Agreement and that such consent may be withheld for any reason.

5.0 NOTICE TO BE REGISTERED IN LAND TITLE OFFICE

5.1 Notice of this Agreement (the "Notice") will be registered in the Land Title Office by the City at the cost of the Owner in accordance with section 483 of the *Local Government*

Act, and this Agreement is binding on the parties to this Agreement as well as all persons who acquire an interest in the Lands after registration of the Notice.

6.0 LIABILITY

- 6.1** The Owner agrees to indemnify and saves harmless the City and each of its elected and appointed officials, employees and agents and their respective administrators, successors and permitted assigns, of and from all claims, demands, actions, damages, costs and liabilities, which all or any of them shall or may be liable for or suffer or incur or be put to by reason of or arising out of failure of the Owner to comply with the terms and conditions of this Agreement, or otherwise that would not have arisen "but for" this Agreement.
- 6.2** The Owner hereby releases and forever discharges the City and each of its elected and appointed officials, employees and agents and their respective administrators, successors and permitted assigns, of and from any and all claims, demands, actions, damages, economic loss, costs and liabilities which the Owner now has or hereafter may have with respect to or by reason of or arising out of the fact that the Lands are encumbered by and affected by this Agreement, or otherwise that would not have arisen "but for" this Agreement.

7.0 GENERAL PROVISIONS

7.1 NOTICE. If sent as follows, notice under this Agreement is considered to be received:

- (a) upon confirmation of delivery by Canada Post if sent by registered mail,
- (b) on the next Business Day if sent by facsimile or email with no notice of failure to deliver being received back by the sender, and
- (c) on the date of delivery if hand-delivered, and

in the case of the City, addressed to:

City of Victoria
#1 Centennial Square
Victoria, BC V8W 1P6

Attention: Director of Sustainable Planning and
Community Development
Fax: 250-361-0386
Email: khoese@victoria.ca

and in the case of the Owner, addressed to:

963 Lobo Vale
Victoria, B.C.
V9C 0H8

Attention: Roberta Ann Hill
Email: bobbi.victoria@hotmail.com

or upon registration of a strata plan for the Lands, to the Strata Corporation, and to the Owner of any Dwelling Unit that is subject to the restrictions under section 2.1.

If a party identifies alternate contact information in writing to another party, notice is to be given to that alternate address.

If normal mail, email or facsimile service is interrupted by strike, work slowdown, force majeure, or other cause,

- (d) notice sent by the impaired service is considered to be received on the date of delivery, and
- (e) the sending party must use its best efforts to ensure prompt receipt of a notice by using other uninterrupted services, or by hand-delivering the notice.

7.2 TIME. Time is of the essence of this Agreement.

7.3 BINDING EFFECT. This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors, and permitted assignees. In accordance with section 483(6) of the *Local Government Act*, this Agreement and all obligations hereunder is binding on all who acquire an interest in the Lands, and the Owner only during the Owner's ownership of any interest in the Lands, and with respect only to that portion of the Lands of which the Owner has an interest.

7.4 WAIVER. The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar.

7.5 HEADINGS. The division of this Agreement into articles and sections and the insertion of headings are for the convenience of reference only and will not affect the construction or interpretation of this Agreement.

7.6 LANGUAGE. Words importing the singular number only will include the plural and vice versa, words importing the masculine gender will include the feminine and neuter genders and vice versa, and words importing persons will include individuals, partnerships, associations, trusts, unincorporated organizations and corporations and vice versa.

7.7 LEGISLATION. Reference to any enactment includes any regulations, orders or directives made under the authority of that enactment, and is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided.

7.8 EQUITABLE REMEDIES. The Owner acknowledges and agrees that damages would be an inadequate remedy for the City for breach of this Agreement and that the public interest strongly favours specific performance, injunctive relief (mandatory or otherwise), or other equitable relief, as the only adequate remedy for a default under this Agreement

7.9 CUMULATIVE REMEDIES. No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity.

- 7.10 ENTIRE AGREEMENT.** This Agreement when executed will set forth the entire agreement and understanding of the parties as at the date it is made.
- 7.11 FURTHER ASSURANCES.** Each of the parties will do, execute, and deliver, or cause to be done, executed, and delivered all such further acts, documents and things as may be reasonably required from time to time to give effect to this Agreement.
- 7.12 AMENDMENT.** This Agreement may be amended from time to time, by consent of the Owner and a bylaw duly passed by the Council of the City and thereafter if it is signed by the City and the Owner.
- 7.13 LAW APPLICABLE.** This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.
- 7.14 NO DEROGATION FROM STATUTORY AUTHORITY.** Nothing in this Agreement shall:
- (a) limit, impair, fetter or derogate from the statutory powers of the City all of which powers may be exercised by the City from time to time and at any time to the fullest extent that the City is enabled and no permissive bylaw enacted by the City, or permit, licence or approval, granted, made or issued thereunder, or pursuant to statute, by the City shall estop, limit or impair the City from relying upon and enforcing this Agreement; or
 - (b) relieve the Owner from complying with any enactment, including the City's bylaws, or any obligation of the Owner under any other agreement with the City.
- 7.15 SEVERABILITY.** If any section, term or provision of this Agreement is found to be partially or wholly illegal or unenforceable, then such sections or parts will be considered to be separate and severable from this Agreement and the remaining sections or parts of this Agreement, as the case may be, will be unaffected thereby and will remain and be enforceable to the fullest extent permitted by law as though the illegal or unenforceable parts or sections had never been included in this Agreement.
- 7.16 JOINT AND SEVERAL.** The Owner, if more than one, are jointly and severally obligated to perform and observe each and every of the covenants, warranties and agreements herein contained by the Owner to be observed and performed.
- 7.17 COUNTERPARTS.** This Agreement may be executed in counterparts and delivered by emailed PDF file, each of which will have the same effect as if all parties had signed the same document. Each counterpart shall be deemed to be an original. All counterparts shall be construed together and shall constitute one and the same Agreement.

7.18 EFFECTIVE DATE. This Agreement is effective as of the date of the signature of the last party to sign.

IN WITNESS WHEREOF the parties hereto have set their hands and seals as of the day and year last below written.

THE CORPORATION OF THE CITY OF VICTORIA by its authorized signatory:)

Karen Hoese, Director of Sustainable Planning and Community Development)

Date signed: _____)

SIGNED, SEALED AND DELIVERED in the presence of:)

Witness _____)

Address **TODD R. FERGUSON**
Barrister and Solicitor
7th Floor, 1175 Douglas Street
Victoria BC V8W 2E1)

Lawyer _____)
Occupation _____)

Date signed: _____)

R Hill

ROBERTA ANN HILL

SIGNED, SEALED AND DELIVERED
in the presence of:

Witness

Address

~~_____
Notary Public
Occupation~~

~~Date signed: 15/2/2021~~

Alfred Hass
ALFRED HERBERT HASS



A BYLAW OF THE CITY OF VICTORIA

The purposes of this Bylaw are to amend the Zoning Regulation Bylaw by creating the R-101 Zone, Niagara Street Multiple Dwelling District, and to rezone land known as 580-582 Niagara from the R-2 Zone, Two Family Dwelling District, to the R-101 Zone, Niagara Street Multiple Dwelling District.

The Council of The Corporation of the City of Victoria enacts the following provisions:

- 1 This Bylaw may be cited as the “ZONING REGULATION BYLAW, AMENDMENT BYLAW (NO. 1251)”.
- 2 Bylaw No. 80-159, the Zoning Regulation Bylaw, is amended in the Table of Contents of Schedule “B” under the caption PART 3 – Multiple Dwelling Zones by adding the following words:

“3.135 R-101 Zone, Niagara Street Multiple Dwelling District”
- 3 The Zoning Regulation Bylaw is also amended by adding to Schedule B after Part 3.134 the provisions contained in Schedule 1 of this Bylaw.
- 4 The land known as 580-582 Niagara Street, legally described as PID: 000-003-671, Lot 16, Beckley Farm, Victoria City, Plan 227, and shown hatched on the attached map, is removed from the R-2 Zone, Two Family Dwelling District, and placed in the R-101 Zone, Niagara Street Multiple Dwelling District.

READ A FIRST TIME the	day of	2021
READ A SECOND TIME the	day of	2021
Public hearing held on the	day of	2021
READ A THIRD TIME the	day of	2021
ADOPTED on the	day of	2021

CITY CLERK

MAYOR

PART 3.135 – R-101 ZONE, NIAGARA STREET DISTRICT**3.135.1 Permitted Uses in this Zone**

The following uses are the only uses permitted in this Zone:

- a. Uses permitted in the R-2 Zone, Two Family Dwelling District, subject to the regulations set out in Part 2.1 of the Zoning Regulation Bylaw
- b. Multiple dwelling, subject to the regulations set out in this Part
- c. Public Building
- d. Home occupation subject to the regulations in Schedule “D”
- e. Accessory Buildings subject to the regulations in Schedule “F”

3.135.2 Lot Area, Site Area Per Unit, Lot Width

- | | |
|---|------------------------------|
| a. <u>Lot area</u> (minimum) | 679m ² |
| b. <u>Site area</u> for each <u>dwelling unit</u> (minimum) | 169m ² |
| c. <u>Lot width</u> (minimum) | 17m average <u>lot width</u> |

3.135.3 Floor Area, Floor Space Ratio

- | | |
|---------------------------------------|----------------------|
| a. <u>Total floor area</u> (maximum) | 318.52m ² |
| b. <u>Floor space ratio</u> (maximum) | 0.47:1 |

3.135.4 Height, Storeys, Roof Decks

- | | |
|---|---------------|
| a. Principal <u>building height</u> (maximum) | 7.6m |
| b. <u>Storeys</u> (maximum) | 2 |
| c. <u>Roof deck</u> | Not permitted |

PART 3.135 – R-101 ZONE, NIAGARA STREET DISTRICT

3.135.5 Setbacks, Projections

- | | |
|--|---|
| a. <u>Front yard setback</u> (minimum) | 7.5m |
| Except for the following maximum projections into the setback: | |
| • Steps less than 1.7m in <u>height</u> | 2.5m |
| • porch | 1.5m |
| b. <u>Rear yard setback</u> (minimum) | 13.0m |
| c. <u>Side yard setback</u> from interior <u>lot lines</u> (minimum) | 1.5m or 10% of the lot width
whichever is greater

3.0m for one side yard when the
lot is not serviced by a rear lane |
| d. Combined <u>side yard setbacks</u> (minimum) | 4.5m |

3.135.6 Site Coverage

- | | |
|-----------------------------------|-----|
| a. <u>Site Coverage</u> (maximum) | 40% |
|-----------------------------------|-----|

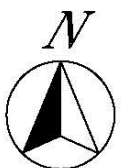
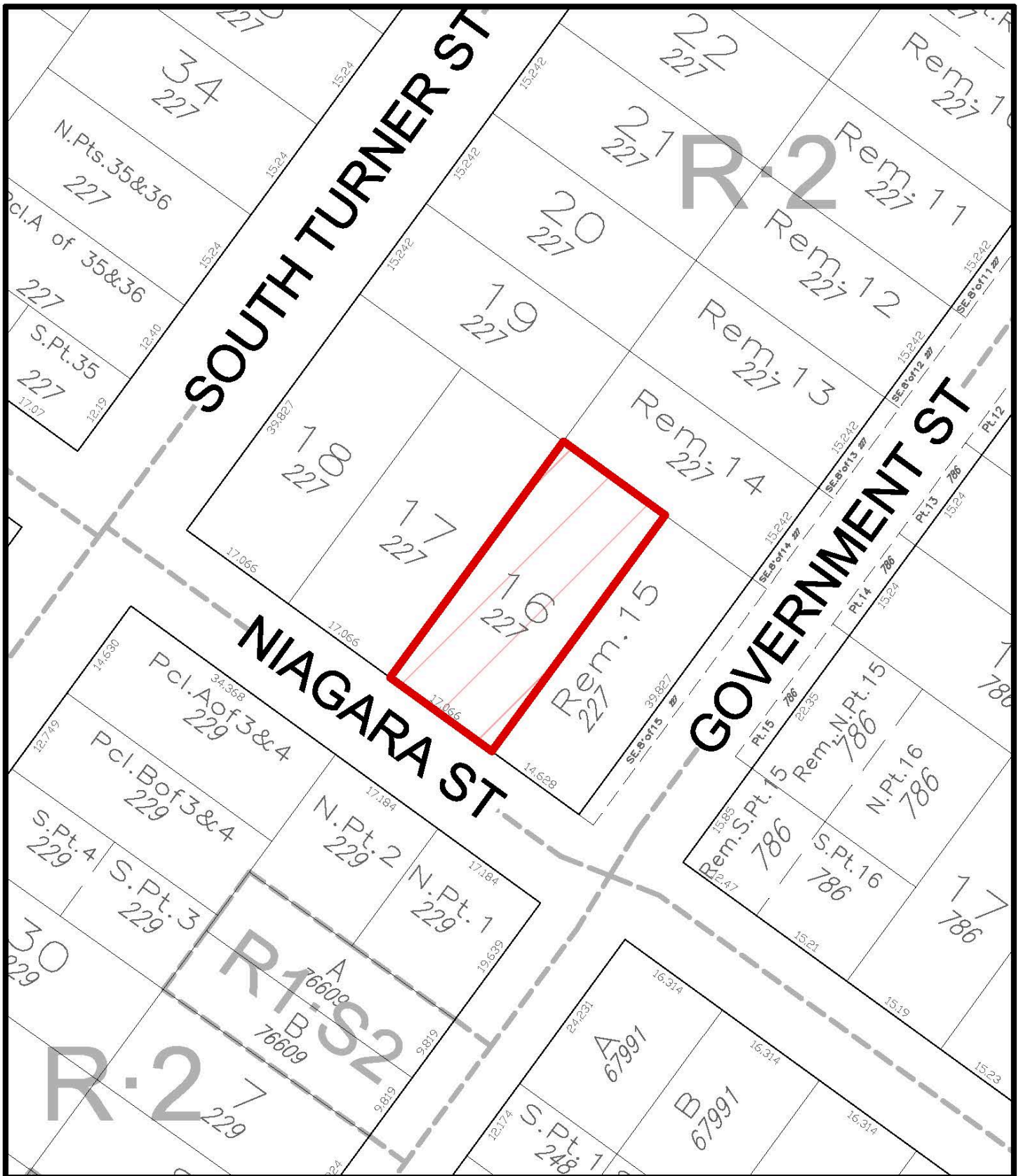
3.135.7 Outdoor Features

The setbacks set out in Section 3.132.5 apply to outdoor features as though they are buildings.

Outdoor features shall not exceed a height of 3.5m from natural grade or finished grade, whichever is lower.

3.135.8 Vehicle and Bicycle Parking

- | | |
|-------------------------------------|---|
| a. <u>Vehicle parking</u> (minimum) | Subject to the regulations in
Schedule “C” |
|-------------------------------------|---|



580/82 Niagara Street
Rezoning No.00721

