

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: January 19, 2024

CASE NO(S).: OLT-22-004125

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant/Appellant	Augend 189 Dundas West Village Properties Ltd. c/o Augend Investments Ltd.
Subject:	Request to amend the Official Plan – Failure to adopt the requested amendment
Reference Number:	OZ/OPA 21 9
Property Address:	189 Dundas Street West
Municipality/UT:	Mississauga/Peel
OLT Case No:	OLT-22-004125
OLT Lead Case No:	OLT-22-004125
OLT Case Name:	Augend 189 Dundas West Village Properties Ltd. v Mississauga (City)

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Subject:	Application to amend the Zoning By-law – Refusal or neglect to make a decision
Reference Number:	OZ/OPA 21 9
Property Address:	189 Dundas Street West
Municipality/UT:	Mississauga/Peel
OLT Case No:	OLT-22-004126
OLT Lead Case No:	OLT-22-004125

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant/Appellant	Augend 189 Dundas West Village Properties Ltd.
Subject:	Request to amend the Official Plan – Refusal of request
Reference Number:	OZ/OPA 21-9 W7
Property Address:	(Various Addresses)(189 Dundas Street West and 3061 Parkerhill Road)
Municipality/UT:	Mississauga/Peel
OLT Case No:	OLT-23-000172
OLT Lead Case No:	OLT-22-004125

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Subject:	Application to amend the Zoning By-law – Refusal of Application
Reference Number:	OZ/OPA 21-9 W7
Property Address:	(Various Addresses) (189 Dundas Street West 3061 Parkerhill Road)
Municipality/UT:	Mississauga/Peel
OLT Case No:	OLT-23-000173
OLT Lead Case No:	OLT-22-004125

Heard:	November 14, 2023 by Appearance/Mississauga Civic Centre
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APPEARANCES:

Parties

Augend 189 Dundas West Village Properties Ltd.

City of Mississauga

Counsel

A. Frank
J. Park (*in absentia*)

M. Minkowski
J. Manser

MEMORANDUM OF ORAL DECISION DELIVERED BY S. GOPIKRISHNA AND S. MASTORAS ON NOVEMBER 14, 2023, AND ORDER OF THE TRIBUNAL

[Link to the Order](#)

INTRODUCTION AND BACKGROUND

[1] The matter before the Tribunal is a Settlement Proposal (“Settlement”) and is seeking an Interim Decision relating to an Appeal submitted by Augend 189 Dundas West Village Properties Ltd. (“Appellant”) based on the refusal or neglect to make a decision by the City of Mississauga (“City”). The Appeal is pursuant to s.22(7) and s.34(11) of the *Planning Act* (“Act”) regarding an Official Plan Amendment (“OPA”) and Zoning By-law Amendment (“ZBA”) Applications respectively. The properties are located at municipal address 189 Dundas Street West and 3061 Parkerhill Road (collectively the “Site”).

[2] The matter was previously before the Tribunal at two separate Case Management Conferences (“CMC”) in November 2022 and February 2023, followed by Tribunal-led mediation requested by the Parties. These previous appearances and mediation efforts ultimately resulted in the Settlement, which recently received approval in principle, by the City’s Council on September 27, 2023, and was brought before the Tribunal for approval.

[3] Before the commencement of the Hearing, the Panel identified the names of previously confirmed Participants at the two related Case Management Conferences (“CMC”) in November 2022 and February 2023 including:

1. Fred Stradiotto;
2. Lina Bottos;
3. Manessia Sungelee;
4. Mary Fedor and Bob Makuch;
5. Soonalaraja Sungelee; and
6. Vincent Chiappino.

[4] The Tribunal was also in receipt of two additional written requests for Participant Status from Freeda Ricardo, and Martino Sierra, expressing their concerns related to the development proposal. Concerns from these and other Participants include, but are not limited to, the following issues:

- a) Traffic, parking, secondary site access, noise and public safety;
- b) Built form, density, shadowing and setbacks; and,
- c) Construction activity, and the addition of 3061 Parkerhill Road.

[5] Counsel for the Parties did not object to these additional Status requests, and the Panel conferred Participant Status to Freeda Ricardo and Martino Sierra.

[6] The materials before the Panel consisted of the following:

- **Exhibit 1** - Affidavit of Service of the Notice of Hearing, properly circulated and signed by Christopher J. Drew on October 14, 2023.
- **Exhibit 2** - The Expert Witness Statement provided by Mr. Jim Levac, Planning Witness for the Appellants, dated October 31, 2023.
- **Exhibit 3A and 3B** - The Joint Document Book provided by the Parties, dated October 31, 2023.
- **Exhibit 4** - Architectural Plans electronically submitted to the Tribunal on November 17, 2023.
- **Exhibit 5** - Visual evidence, presented at the Hearing on November 14, 2023, and electronically submitted on November 17, 2023.

LEGISLATIVE FRAMEWORK

[7] When adjudicating such matters, the Tribunal must determine whether the Settlement Proposal and its amendments specific to this Subject Property:

- i. Are consistent with policy statements issued by the Minister, which in this case is the Provincial Policy Statement, 2020 (“PPS”), and conforms with the Growth Plan for the Greater Golden Horseshoe 2020 (“Growth Plan”);
- ii. Conforms with applicable Official Plans which in this case, includes the Region of Peel Official Plan 2014 (“ROP”), and the City’s Official Plan (“COP”);
- iii. Conforms with the City’s Zoning By-law (“ZBL”); and,
- iv. Represents good planning.

[8] In making a determination on the proposed Settlement, the Tribunal must also have regard for matters of Provincial interest set out in s. 2 of the Act and have regard to the information and materials that the Council received in relation to the matters under s. 2.1(2) of the Act.

SETTLEMENT PROPOSAL AND EVIDENCE

[9] Counsel for the Appellants introduced Jim Levac, a land use planner, with carriage of the matter from the beginning of the Application process. He was affirmed and recognized as an expert in the discipline of land use planning. Mr. Levac presented a comprehensive overview of the Settlement and opined that it is consistent, and conforms with applicable provincial policies, conforms with the requisite ROP, COP, and ZBL, and represents good planning.

[10] Mr. Levac outlined that the Site originally consisted of land municipally known as 189 Dundas Street West and was expanded through the addition of land municipally known as 3061 Parkerhill Road in late 2022. The dimensions of this parcel consist of a width of 16.44 metres (“m”) by 93.88 m. This acquisition resulted in a slight reduction in the Floor Space Index (“FSI”) of the proposal and helped to address “the City’s desire to secure an alternative access other than Dundas Street West.” He stated that currently, the entire Site is occupied by a vacant former auto repair building, and a single

detached dwelling and is comprised of an area of 3.86 acres, geographically situated within the “Cooksville Neighbourhood Character Area” (“CNCA”) of the City.

[11] Mr. Levac expanded on his witness statement and through his testimony he further outlined the following essential and relevant elements of the Settlement:

- i. The proposal includes the construction of a total of three buildings including:
 - a) Building one, consisting of a total of 18-storeys (reduced from 20-storeys-Exhibit 5, pg.9) plus a mechanical level, with a six-storey base podium at the northerly end of the Site, and stepped back to nine-storeys in the middle, and three-storeys to the top;
 - b) Building two, consisting of 25-storeys in height, plus mechanical level (reduced from 32 storeys) with a 14-storey podium; and,
 - c) Building three, consisting of 16-storeys in height, plus mechanical level (reduced from 20-storeys) with a 5.096 m step back at 15-storeys, and a widened footprint, allowing improved internal vehicle access, plus ground floor commercial space only along Dundas Street West.
- ii. Slight reductions to tower separation distances are proposed with revised minimum setbacks of Buildings one and two of 15 m from property lines, a 4 m setback from Building three to Dundas Street West, and below grade setbacks of 3.0 m to Dundas Street West and along the north property line. Also proposed is a 3.0 m setback along the north portion of the west lot line and south portion of the east lot line, and 1.5 m setbacks at all other locations, to accommodate a landscape buffer;
- iii. There are a total of 935 units proposed (Exhibit 5, pg.10) reduced from 966 units with an FSI of 3.71 (reduced as a result of the additional property) and an increase of the provision of 851 parking spaces.

- iv. The important issue of Site access is addressed from Confederation Parkway, noting that when and if such vehicular and pedestrian access is provided, the existing entrance from Dundas Street West would eventually be closed with an application to remove the Holding Zone (“H”) provision. However, if the City is unable to facilitate access to the Site from Confederation Parkway, then the owner shall agree to utilize two-way vehicular access points from Parkerhill Road, which will be provided in all circumstances as required by the City, noting the preference of Confederation Parkway access, with no vehicular access to Dundas Street West.

[12] A draft OPA and draft ZBA were submitted for the Tribunal’s reference, but because they were not in a final form, the Parties agreed to delay their submission to a later point in time to the Tribunal. A Site Plan application (“SPA”) referenced in Exhibit 3B, (pg.790) would appropriately follow in its final form for the Tribunal’s consideration and approval of the Settlement as incorporated in the anticipated final ZBL, once confirmed by the Parties.

Planning Act

[13] Mr. Levac’s analysis provided in his Witness Statement (Exhibit 2, pg.6) and testimony, opines that the OPA and ZBA have the appropriate and sufficient regard for matters of provincial interest and s.2 of the Act noting some of the following points:

- a) There is adequate and efficient use of communication, transportation, sewage and water services and waste management systems, and the proposed development will be fully serviced with existing municipal sanitary, water and stormwater management services to the satisfaction of the City and Region of Peel;
- b) There is adequate provision and distribution of educational, health, social, cultural and recreational facilities, the proposed development is located

within an existing mature neighbourhood with access to a full range of existing schools, healthcare facilities and community services.

- c) The proposed development will create an opportunity to intensify an existing underutilized site and proposes an opportunity for intensification on a parcel of land within walking distance of existing and planned transit infrastructure, the Downtown Cooksville area and all of the locational attributes associated with it;
- d) The Site is designed to be sustainable, supported by public transit and oriented to pedestrians within walking distance of the Cooksville GO Station, Hurontario Light Rail Transit (“LRT”) and Dundas Bus Rapid Transit (“BRT”) as well as a variety of personal service and retail facilities within the Downtown Cooksville area.

Provincial Policy Statement, 2020

[14] Mr. Levac evaluated the proposal as relates to the PPS, with specific reference to s. 1.1.1(e), 1.1.3.1, and 1.1.3.3. He asserted that the proposal increases density through the creation of three buildings, makes efficient use of an underutilized site, and supports new uses for land which is transit-supportive. On the basis of this evidence, and based on his analysis of the sections above, he concludes that the proposal is consistent with the PPS.

Growth Plan for the Greater Golden Horseshoe 2020

[15] Mr. Levac then discussed how the proposal conforms with the Growth Plan, with specific reference to s. 1.2.1, 2.2.1.2, 2.2.2.3 and 2.2.4. He explained that the proposal supports the achievement of complete communities through prioritizing intensification to make efficient use of land and will be constructed on settlement areas that have a delineated built boundary, as well as at a location where higher order transit exists.

Region of Peel Official Plan 2014, the City's Official Plan and Cooksville Neighbourhood Character Area

[16] Mr. Levac spoke next to the relationship between the proposal, and the ROP. Mr. Levac demonstrated how the Site had been identified as a Strategic Location in the growth plan of the ROP and is in close proximity to existing and planned higher-order transit facilities. He reiterated that the proposed development is within a protected Major Transit Station Area ("MTSA") and fronts onto a designated Transit Corridor.

[17] Mr. Levac pointed out that the determinant ROP which was in place at the time of the original submission was the 1996 Regional Official Plan ("1996 ROP"), which had designated the lands as an "Urban System". He added that this designation permits all forms of urban development, or "urban residential areas". He specifically referred to Policies 5.3.1.3 to 5.3.1.5 of the 1996 ROP, which promotes complete communities and encourages efficient use of existing community services, infrastructure and built-form densities that are pedestrian-friendly as well as transit supportive. He added that the proposal conforms to the current ROP, with special reference to Policies 5.6.2- 5.6.4 and 5.6.7, which support compact, transit-supportive intensification in areas that efficiently utilize land, services, infrastructure and public finances while respecting the character of existing communities while providing opportunities to age in place. He reiterated that the proposed development supports the stated objectives, and that no opposition had been expressed by the Region of Peel. On the basis of this evidence, Mr. Levac concluded that the Settlement's proposed OPA and ZBA conform to both the 1996 and current ROPs.

[18] Regarding the COP, Mr. Levac focused on s. 5.3 and its "Neighbourhood Policies", which apply to the entire City. He specifically referenced s. 5.3.5.1 and 5.3.5.2, which state that Neighbourhoods are regarded as stable residential areas, where intensification takes place through infills, or the development of existing commercial sites as "Mixed Use Areas".

[19] Mr. Levac also asserted that s. 5.3.5.3 states that where higher density uses are proposed, they should be located on sites identified by a local area review, along “Corridors”, or in conjunction with existing apartment sites or commercial centres. He highlighted how “Dundas Street West” was designated by the City as both an Intensification Corridor on Schedule 1c of the COP, as well as a Higher Order Transit Corridor on Schedule 6. He opined that intensification occurs in neighbourhoods, with specific reference to “Sites” that are suitable for intensification, before applying the principle of intensification to the Site in question, where it is within an Intensification Corridor.

[20] Mr. Levac also discussed Policy 5.3.5.5, which requires that such intensification be compatible in scale and built form with the surrounding neighbourhood, which this proposal achieves as a permitted land use/built form.

[21] He highlighted how the expression “*compatible*” is defined in the COP as:

development which may not necessarily be the same as, or similar to, the existing or desired development, but nonetheless enhances an established community and coexists with existing development without unacceptable adverse impact on the surrounding area.

[22] Mr. Levac asserted that the proposed development is compatible with what exists in the neighbourhood, and that the revised proposal more accurately achieves the objectives of a complete community that allows community members to have to access to opportunities for work, living, recreation and socializing.

[23] Mr. Levac also discussed the application of the Urban Design Policies of the COP and focused on s. 9.2.1.8, which speaks to how new development will be in proximity to existing and planned MTSA's, followed by a highlighting of how the proposed development satisfies this requirement through the provision of podiums, stepped roof terrace levels, and a piazza achieving gradual transitions, respect angular planes, and fit within the surrounding context.

[24] Furthermore, Mr. Levac explained that s. 11 of the COP discusses the “General Land Use Designations” which allow permitted uses within the subject lands, which are designated Residential High-Density, as previously mentioned. He asserted that the proposed built form of the three buildings is permitted under the current COP land use designation, without any requirement for an amendment to the land use designation, followed by an explanation of how an OPA is required only for the portion of the land designated presently as 3061 Parkerhill Road. He notes that the lands must be redesignated from “Residential Low-Density” to “Residential High-Density.”

[25] Mr. Levac lastly spoke to the CNCA policies and focused on c. 16.6, which specifically identifies the subject lands to be within a density range of 1.5-2.9 FSI. He discussed how a Special Site Area Policy would be required under s. 16.6 because the proposed density of 3.71 x Site Area, which exceeds what is allowed under c. 16.6.

Zoning By-law No. 0225-2007

[26] Mr. Levac then presented a high-level summary of changes to be made to the City’s ZBL, as a result of the aforementioned OPA. He prefaced his remarks by stating that the specifics of the proposed changes, as well as the exact subsections of the existing ZBL, would have to be modified as a result of the changes. Following discussions between the Parties, a more detailed ZBA would be submitted to the Tribunal for its consideration and approval, in its final form. He specifically referred to Map 22 of Schedule “B” attached to the ZBA, which would result in the redesignation of some of the subject lands from the present “RA1-40”, and “R3” zoning to RA5-XX”, provided that the RA5-XX zoning shall apply only to the lands shown on Schedule A, as submitted to the Tribunal at the Hearing.

[27] Additional consideration through the proposed ZBA process will also be reviewed carefully, in the interim period as the final ZBA is drafted, allowing for exceptions that introduce additional permitted uses, such as townhouses, as well as uses such as Retail, Restaurants, Financial Institutions, Offices and Veterinary Clinics.

[28] Finally, Mr. Levac concluded that the Settlement, as proposed, should be approved, in principle, and recommended the Tribunal issue an Interim Order .

ANALYSIS AND FINDINGS

[29] The Tribunal accepts the uncontroverted evidence in support of the Settlement Proposal from Mr. Levac and is persuaded that the development promotes efficient development of land, intensifies uses within the settlement area, contributes to the range of housing options, and is supported by existing municipal infrastructure.

[30] As a result ,the Tribunal finds that the Settlement and proposed OPA and ZBA are consistent with the PPS, conforms with the Growth Plan, the ROP (1996 and 2022), the COP, and the CNCA. The Settlement also has due regard for matters of provincial interest and the criteria set out pursuant to s. 2 of the Act, represents good land use planning and is in the public interest.

[31] The Tribunal has also considered the concerns raised by the Participants and is satisfied that, based on the uncontested evidence from Mr. Levac, these concerns have been effectively addressed through the very thorough consideration of the land use planning merits of the Settlement. Furthermore, the Tribunal finds that the revised Final Architectural Plan submitted as Exhibit 4 quite accurately represents the Settlement as proposed, and is attached to the Order as Schedule 1 below.

[32] In conclusion, the Tribunal notes that on the consent of the Parties, it is satisfied that the Parties intend to proceed with the Final OPA and Final ZBA approvals guided by the Settlement and Final Architectural Plan. The Tribunal also directs that the Parties shall submit these Instruments for final approval of the Tribunal, on or before April 1, 2024, as the appropriate next step in the process. This request also allows the necessary time for the Parties to perfect the Instruments for the Tribunal's Final Order.

INTERIM ORDER**[33] THE TRIBUNAL ORDERS THAT:**

1. The appeals are allowed, in part, on an interim basis, contingent upon confirmation, satisfaction or receipt of those prerequisite matters identified in paragraph 3 below and the proposed development of the lands municipally known as 189 Dundas Street West and 3061 Parkerhill Road are approved in principle and generally in accordance with the architectural plans and drawings filed as Exhibit 4 (Final Architectural Plan) and as attached to this Order as Schedule 1;
2. The draft Official Plan Amendment and draft Zoning By-law Amendment generally in accordance with drafts presented in Exhibit 3A and 3B and in Exhibit 1 of the Affidavit of Mr. Levac, are hereby approved in principle and may be further refined by the Parties prior to the request for a Final Order;
3. The Tribunal shall withhold the issuance of its Final Order on the Official Plan Amendment and the Zoning By-law Amendment contingent upon confirmation of the City Solicitor, of the following pre-requisite matters on or before April 1, 2024:
 - a) The Tribunal has received, and approved, the Official Plan Amendment submitted in a final form, confirmed to be satisfactory to City Planning and the City Solicitor; and,
 - b) The Tribunal has received, and approved, the Zoning By-law Amendment submitted in a final form, confirmed to be satisfactory to City Planning and the City Solicitor; and,
4. The Panel Members will remain seized for the purposes of reviewing and approving the Final drafts of the Official Plan Amendment, the Zoning By-law Amendment, and the issuance of the Final Order.

[34] **THE TRIBUNAL FURTHER ORDERS** that If the Parties do not submit the Final drafts of the Zoning By-law Amendment, and provide confirmation that all contingent pre-requisites to the issuance of the Final Order set out in paragraph 3 a) and b) above have been satisfied, and do not request the issuance of the Final Order, by Monday April 1, 2024, the Applicant and the City shall provide a written status report to the Tribunal by that date, as to the timing of the expected confirmation and submission of the final form of the draft Zoning By-law Amendment and request for the issuance of the Final Order by the Tribunal.

[35] **THE TRIBUNAL FURTHER ORDERS** that, in accordance with Rule 24.3 of the Tribunal's Rules of Practice and Procedure, this Order is effective on November 14, 2023.

[36] The Tribunal may, as necessary, arrange the further attendance of the Parties by Telephone Conference Call to determine any additional timelines and deadlines for the submission of the final form of the instrument(s), the satisfaction of the contingent pre-requisites and the issuance of the Final Order.

[37] So orders the Tribunal.

“S. Gopikrishna”

S. GOPIKRISHNA
MEMBER

“Steven T. Mastoras”

STEVEN T. MASTORAS
MEMBER

Ontario Land Tribunal

Website: www.olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

SCHEDULE 1

BDP. Quadrangle

Quadrangle Architects Limited
901 King Street West, Suite 701, Toronto, ON M5V 3H5
t 416 598 1540 www.bdpquadrangle.com

189 Dundas Street West & 3061 Parkerhill Road

MISSISSAUGA, ONTARIO L5B 1H8

for
Gala Developments

Project No. 20061
Date 24 October 2023
Issued for Settlement Hearing



ARCHITECTURAL DRAWINGS

101	Site Plan
102	Site Plan
103	Site Plan
104	Site Plan
105	Site Plan
106	Site Plan
107	Site Plan
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109	Site Plan
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200	Site Plan

LANDSCAPE ARCHITECT

ALBERTA LANDSCAPE ARCHITECTS LTD.
10000 100th Street, Suite 100, Edmonton, AB T5C 1C1
T 416 777 3001

TRAFFIC ENGINEER CONSULTANT

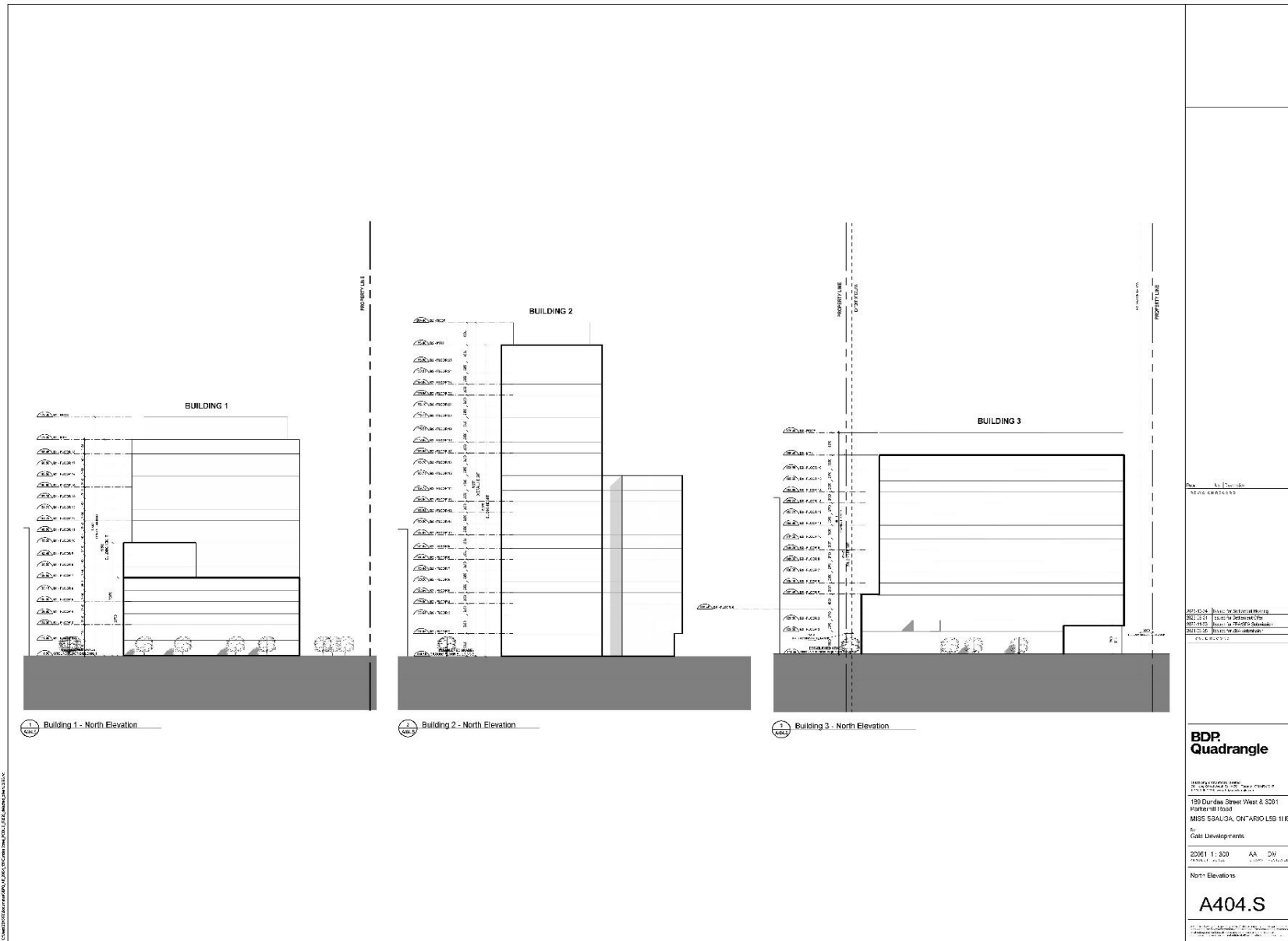
MR. CONWAY
10000 100th Street, Suite 100, Edmonton, AB T5C 1C1
T 416 777 3001

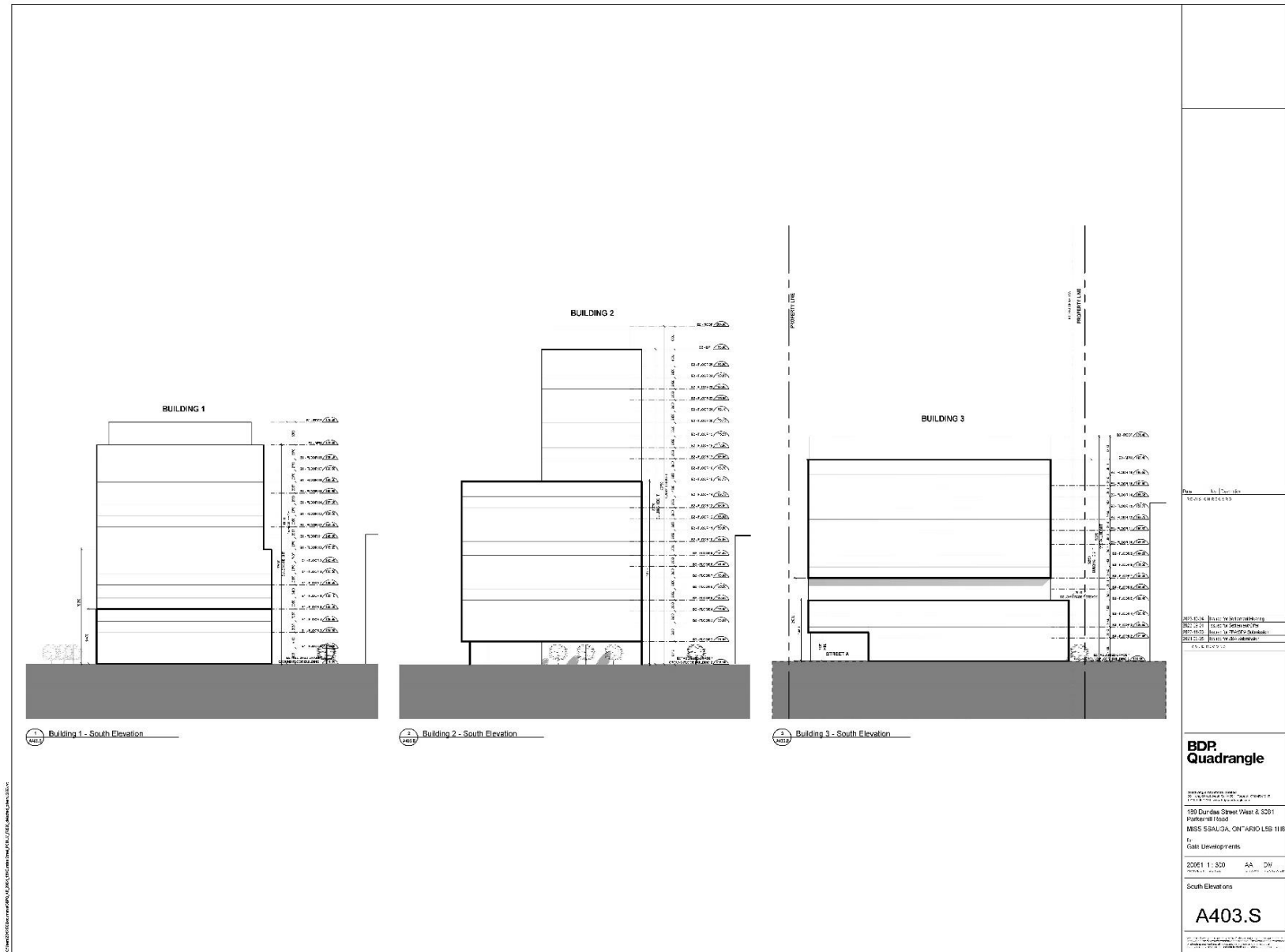
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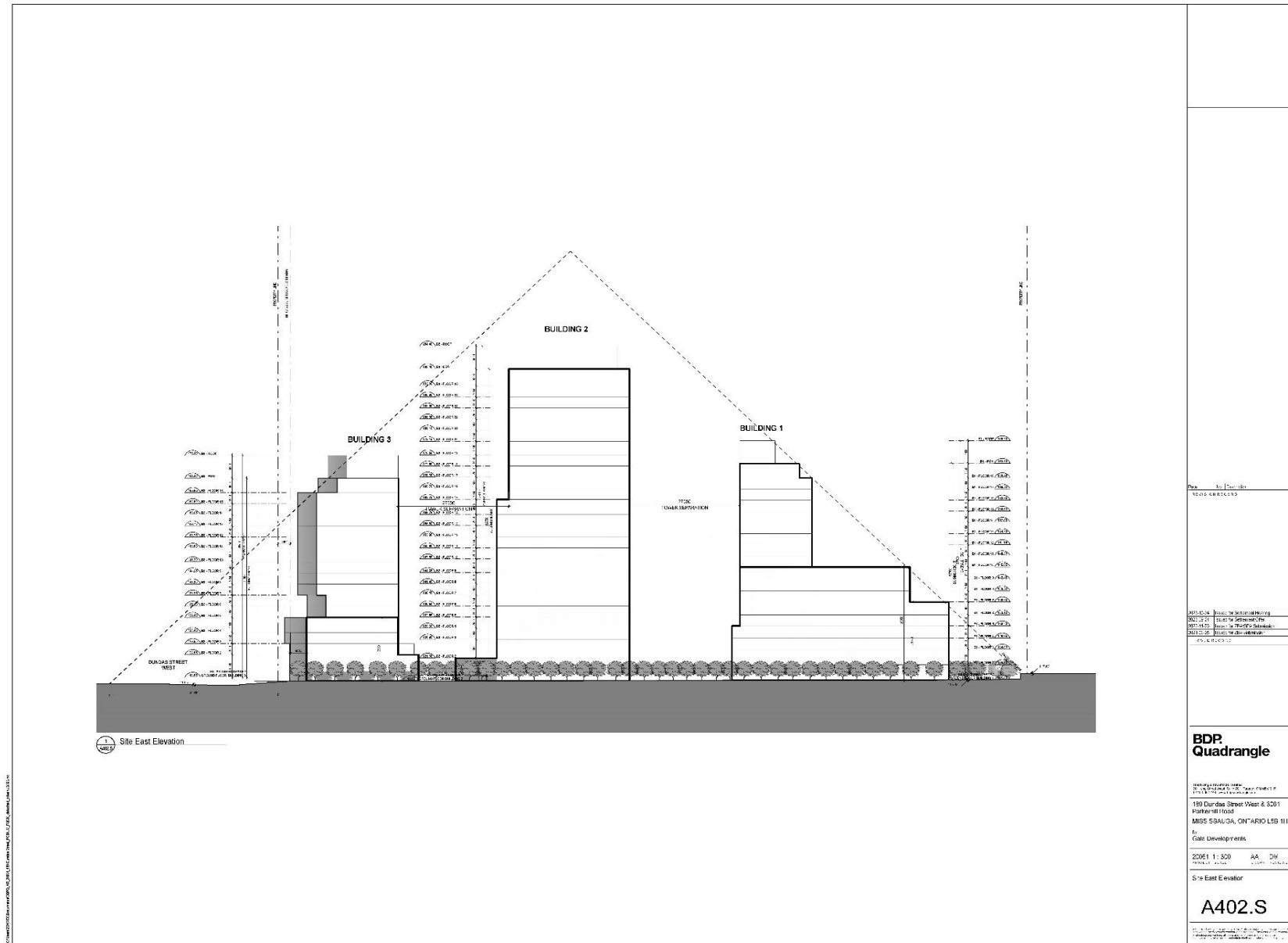
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T 416 777 3001

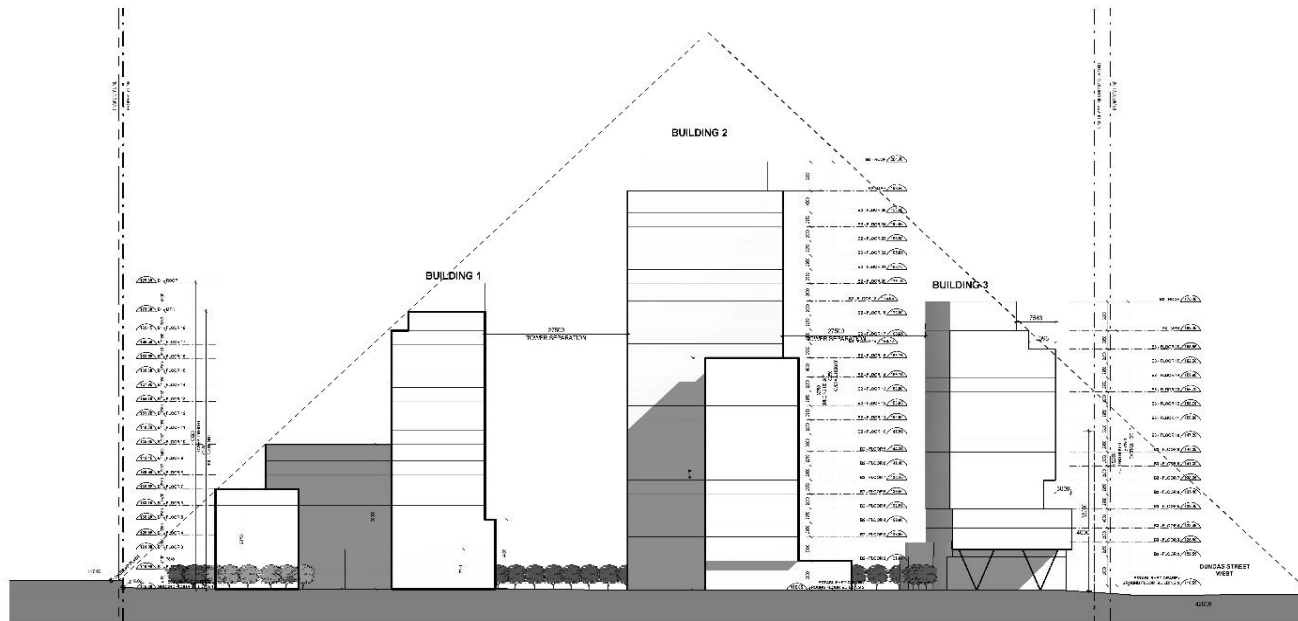
PLANNING CONSULTANT

MR. CONWAY
10000 100th Street, Suite 100, Edmonton, AB T5C 1C1
T 416 777 3001









1 Site West Elevation

Run	by	Description
REVISED CHECKS		

2075-12-34	Issue: for September/October
2076-12-31	Issue: for September/October
2077-11-30	Issue: for September/October
2078-12-31	Issue: for September/October

BDP.
Quadrangle

180 Dundas Street West & 3201
Parkmill Road
MISSISSAUGA, ONTARIO L5B 1H6
Tel:
Galt Developments

2C051	1:320	AA	DH
2C051	1:320	AA	DH

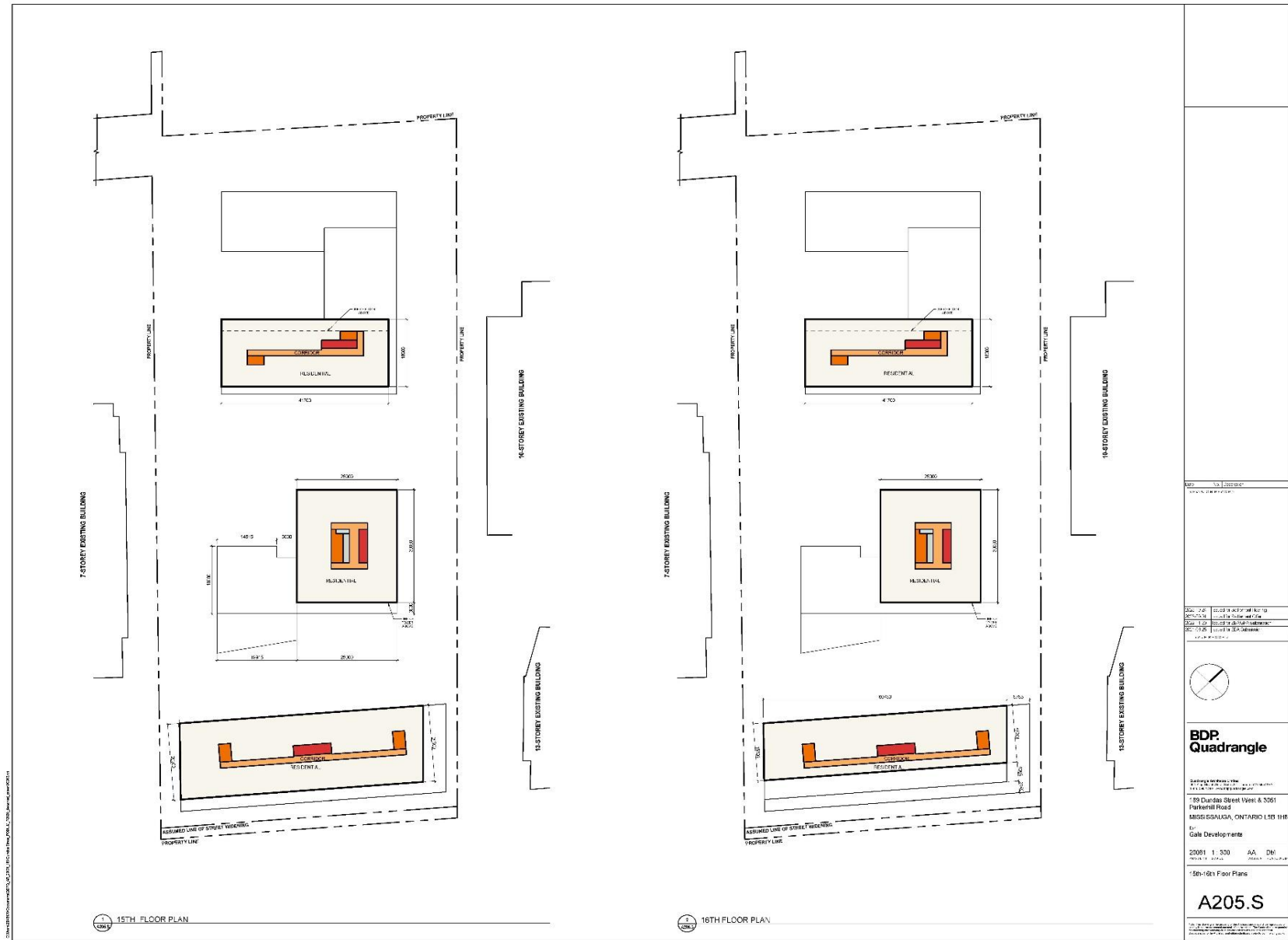
Side West Elevation

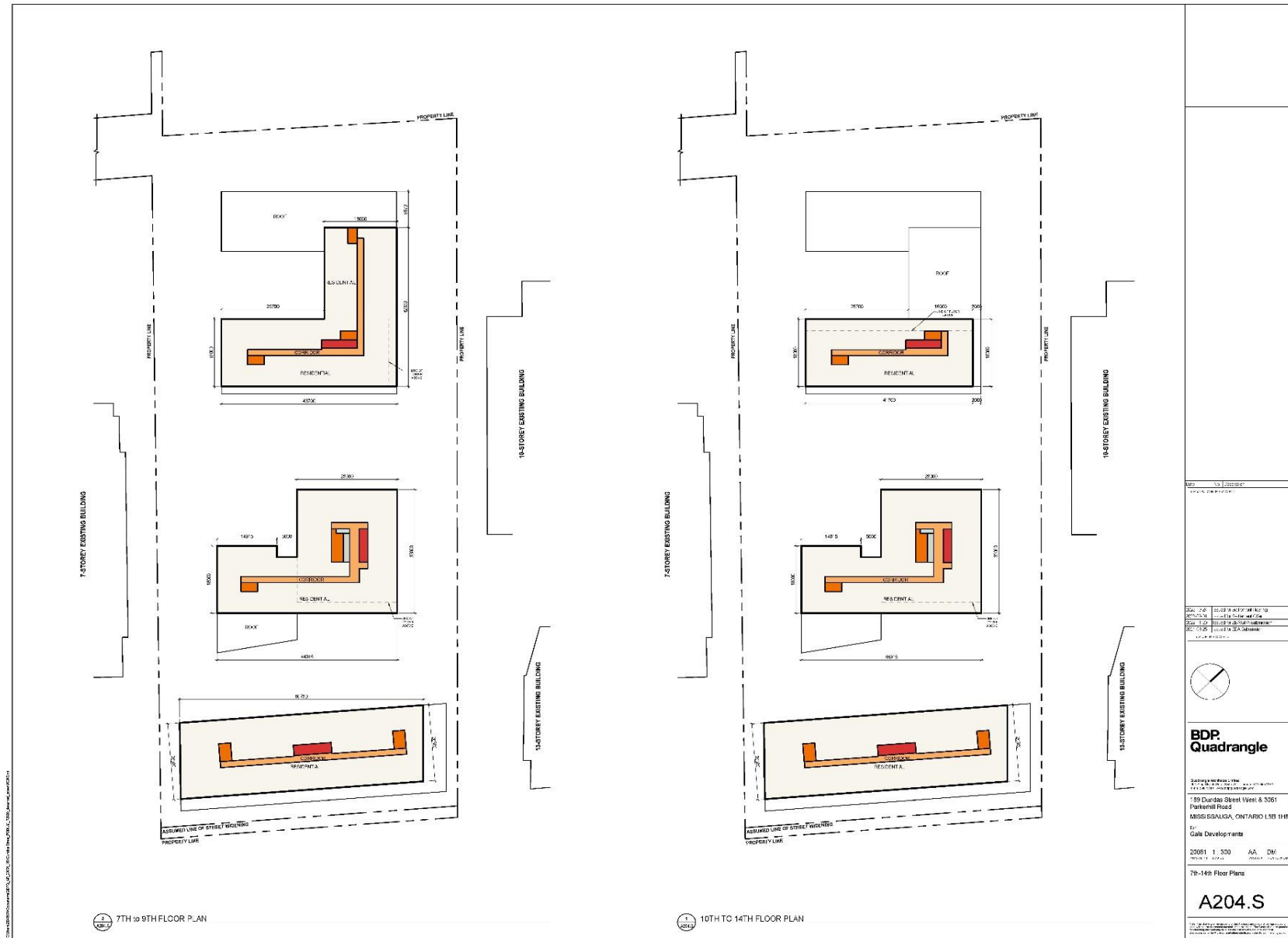
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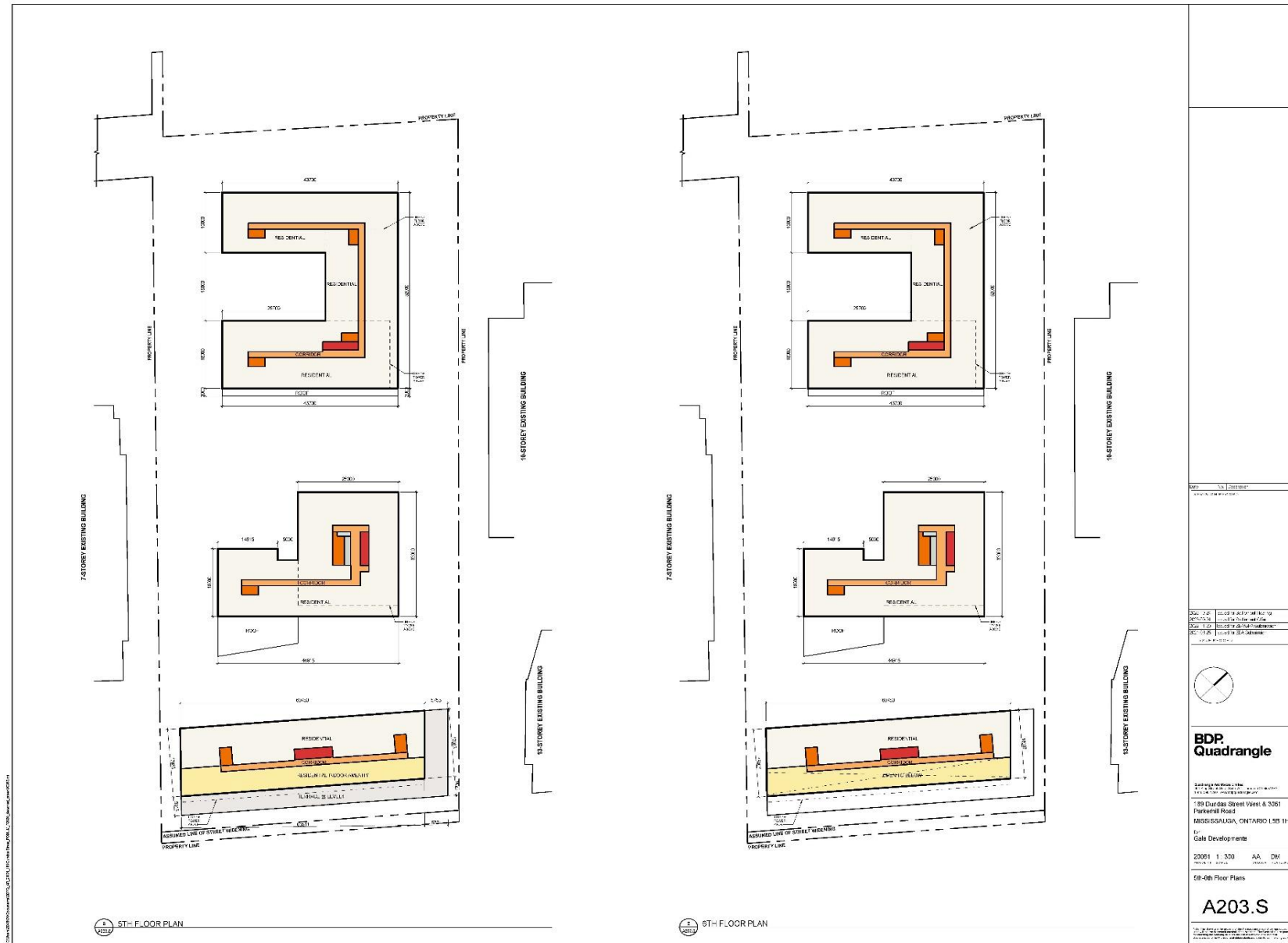
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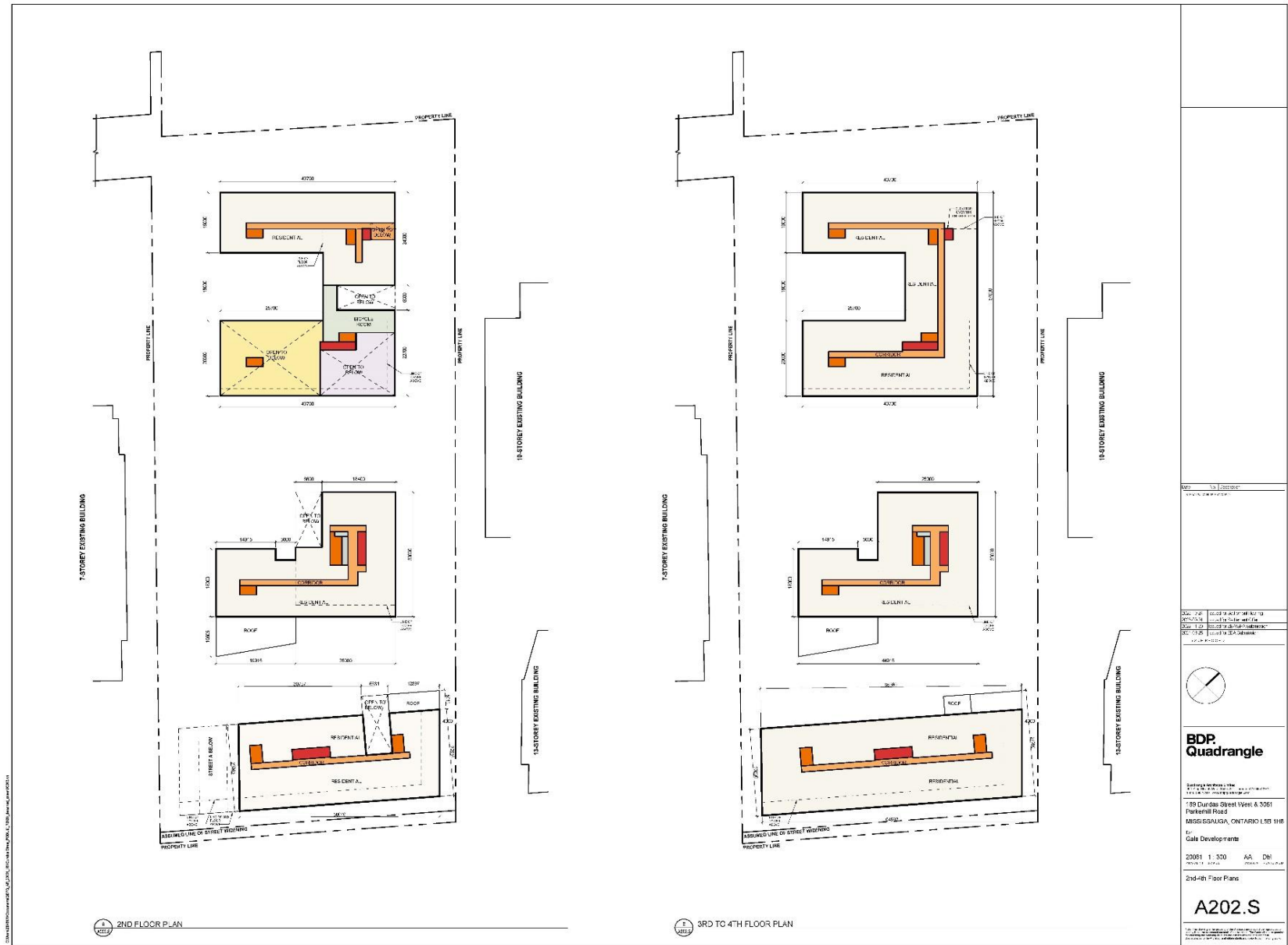
















[illegible]

*0.5% has been estimated based on 1.2% of 0.04.

VEHICULAR PARKING			Proposed Parking Rate	Provided Parking
			Residential	Residential
	Estimated Park Unit Number (R0 R04 J83)	LR03	181 sq ft	251
		915	501	
	TOTAL		TOTAL REQUIRED	TOTAL PROVIDED
			881	851

2
STATISTICS

Page	No.	Date: / /
2019年12月10日		

2023-12-04	Reaktion für Schweizer Medien
2023-12-01	Reaktion für Schweizer Medien
2023-11-03	Reaktion für Schweizer Medien
2023-10-26	Reaktion für Schweizer Medien

4. 11. 2023



BDP.
Quadrangle

199 Dundas Street West & 3061
Parkhill Road
MISSISSAUGA, ONTARIO L5B 1H6

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5 to Context and Statistics

A101.S

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