

CITY OF KELOWNA

BYLAW NO. 9870

Heritage Revitalization Agreement Authorization Bylaw HRA07-0002– 1869 Marshall Street

WHEREAS a local government may, by bylaw, enter into a heritage revitalization agreement with the Owner of property which Council deems to be of heritage value pursuant to section 966 of the *Local Government Act*,

AND WHEREAS the Municipal Council of the City of Kelowna is desirous of entering into a Heritage Revitalization Agreement with Murray Hindle and Sherry Briggs for the property located at 1869 Marshall Street, Kelowna, B.C.;

THEREFORE the Municipal Council of the City of Kelowna, in open meeting assembled, enacts as follows:

1. The Municipal Council of the City of Kelowna hereby authorizes the City of Kelowna to enter into a Heritage Revitalization Agreement with Murray Hindle and Sherry Briggs for the property located at 1869 Marshall Street Kelowna, B.C., and legally described as:

Lot 8, District Lot 14, ODYD, Plan 3286

In the form of such Agreement attached to and forming part of this bylaw as Schedule "A".

2. The Mayor and City Clerk are hereby authorized to execute the attached agreement, as well as any conveyances, deeds, receipts and other documents in connection with the attached agreement, and to affix the corporate seal of the City of Kelowna to same.

Read a first time by the Municipal Council this 1st day of October, 2007.

Considered at a Public Hearing on day of , 2007.

Read a second and third time by the Municipal Council this day of , 2007.

Approved under The Transportation Act this day of , 2007.

(Approving Officer - Ministry of Transportation)

Adopted by the Municipal Council of the City of Kelowna this day of , 2007.

Mayor

City Clerk

SCHEDULE "A" – Page 1

SCHEDULE "A"
HERITAGE REVITALIZATION AGREEMENT

DOCUMENT APPROVAL			
Document No. HRA07-0002			
Cir	Department	Date	Init.
✓	Planning	Sept 21/07	[Signature]
✓	Wrks. & Util.	07/09/21	[Signature]
✓	Insp. Serv.	Sept 22/07	[Signature]
✓	City Clerks	Sept. 17/07	[Signature]

THIS AGREEMENT dated as of the 21 day of September 2007

BETWEEN:

CITY OF KELOWNA, a Municipal Corporation having offices at
1435 Water Street, Kelowna, British Columbia V1Y 1J4

(herein called the "CITY")

OF THE FIRST PART

AND:

Murray Grant Hindle
Sherry Patricia Briggs
1869 Marshall Street
Kelowna, BC, V1Y 2B8

(herein called the "OWNER")

OF THE SECOND PART

WHEREAS a local government may, by bylaw, enter into a Heritage Revitalization Agreement with the Owner of property identified as having heritage value, pursuant to Section 966 of the *Local Government Act*;

AND WHEREAS the Owner owns certain real property on which is situated a building of heritage value, pursuant to the City's Heritage Register, which property and building are located at 1869 Marshall Street, Kelowna, British Columbia and legally described as:

Parcel Identifier: 001-537-474
Lot 8, District Lot 14, ODYD, Plan 3286

(herein called the "Heritage Lands")

AND WHEREAS the Owner has presented to the City a proposal for the use, development and preservation of the Heritage Lands and has voluntarily and without any requirement by the City, entered into this agreement pursuant to Section 966 of the *Local Government Act*;

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SCHEDULE "A" - Page 2.

AND WHEREAS a local government must hold a Public Hearing on the matter before entering into, or amending, a Heritage Revitalization Agreement if the agreement or amendment would permit a change to the use or density of use that is not otherwise authorized by the applicable zoning of the Heritage Lands and for these purposes Section 890 through 894 of the *Local Government Act* apply;

AND WHEREAS within thirty days after entering into, or amending, a Heritage Revitalization Agreement the local government must file a notice in the Land Title Office in accordance with Section 976 of the *Local Government Act* and give notice to the Minister responsible for the *Heritage Conservation Act* in accordance with Section 977 of the *Local Government Act*;

NOW THEREFORE in consideration of the mutual promises contained in this agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1.0 Heritage Revitalization

1.1 The parties agree that the Heritage Lands have heritage value, deserving of protection and conservation and the Owner specifically agrees to restore, maintain, preserve and protect the heritage character of the buildings located on the Heritage Lands in accordance with attached Schedules "AA", "BB", & "CC".

1.2 The parties agree that the Heritage Lands may, notwithstanding the RM5 – Medium Density Multiple Housing zoning on the Heritage Lands, be used for the following permitted uses:

A maximum of five residential units consisting of:

a) The reorganization and rehabilitation of the interior of the existing heritage home to allow for the development of four residential units.

b) The construction of a secondary suite located within the proposed accessory building.

1.3 The parties agree that, except as varied or supplemented by the provisions of this agreement, all bylaws and regulations of the City and all laws of any authority having jurisdiction shall apply to the Heritage Lands and the Heritage Building.

1.4 Where a Heritage Alteration Permit is required, the discretion to approve, refuse, or revise such permit is delegated by Council to the Director of Planning and Development Services.

2.0 Conservation and Maintenance of Existing Development.

2.1 The owner agrees not to alter the exterior of the heritage building except pursuant to a heritage alteration permit issued by the City, and in accordance with this agreement.

2.2 The owner agrees to restore the exterior of the Heritage Building on the Heritage Lands in general accordance with the design proposal attached hereto as Schedule "BB", and forming part of this agreement, which restoration shall include, but not be restricted to the following:

a) Re-locating the front entranceway to its original location and adding a new front door;

b) Refinishing the exterior of the existing residential dwelling with "Heritage" colours;

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c) Coordinating the design and colours of the proposed accessory building with the existing residential dwelling.

2.3 If original features must be replaced, the new material shall be similar or identical to the original. Where original features were removed through earlier renovations or alterations and the replacements were not in keeping with the original style of the building, any subsequent replacement of these features shall complement the building's heritage style

3.0 Proposed Development

3.1 The parties agree that variances to the following subsections of **Section 13 – Urban Residential Zones & Section 8 – Parking and Loading** of City of Kelowna Zoning Bylaw No. 8000 be granted through this agreement:

Zoning Bylaw No. 8000 - 13.11.5 Subdivision Regulations:

Section 13.11.5 (a) – Subdivision Regulations – Lot Width

Vary the lot width from 30m required to 21.34m proposed as shown in Schedule "AA" (Page 1) attached to this agreement.

Section 13.11.5 (c) – Subdivision Regulations – Lot Width

Vary the lot area from 1400m² required to 678m² proposed as show in Schedule "AA" (Page 1) attached to this agreement.

Zoning Bylaw No. 8000 - 13.11.6 Development Regulations:

Section 13.11.6 (d) – Development Regulations – Front Yard Setback

Vary the front yard setback for the principal building from 6.0m required to 3.48m proposed as shown in Schedule "AA" (Page 1) attached to this agreement.

Section 13.11.6 (e) – Development Regulations – Side Yard Setback

Vary the northern side yard setback for the principal building from 4.5m required to 1.94m proposed as shown in Schedule "AA" (Page 1) attached to this agreement;

Vary the northern side yard setback for the accessory building with secondary suite from 4.5m required to 3.0m proposed as shown in Schedule "AA" (Page 1) attached to this agreement;

Vary the southern side yard setback for the accessory building with secondary suite from 4.5m required to 4.14m proposed as shown in Schedule "AA" (Page 1) attached to this agreement.

Zoning Bylaw No. 8000 - Table 8.1 – Parking Schedule:

Section 8.1 – Parking Schedule – Apartments

Vary the parking requirement from 7 stalls to 5 stalls as shown in Schedule "AA" (Page 1) attached to this agreement.

3.2 The Owner agrees to undertake and maintain landscaping on the subject property in general accordance with the landscape plans attached hereto as Schedules "CC" and forming part of this agreement.

(hereinafter called the "Landscaping Works")

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SCHEDULE "A" - Page 4.

- 3.3 The Owner agrees to provide and pay for all servicing required by the proposed development of the Heritage Lands and to provide required bonding for same, including, but not limited to: domestic water and fire protection, sanitary sewer, storm drainage, road improvements, road dedications and statutory rights-of-way for utility servicing, power and telecommunication services and street lighting all as noted in section 4.0 of this agreement.

(hereinafter called the "Works and Utilities Requirements")

4.0 **Works & Utilities Requirements**

4.1 Domestic Water

This property is currently serviced with a 19mm-diameter copper water services. The service will be adequate and no changes are required.

4.2 Sanitary Sewer

Our records indicate that this property is currently serviced with a 100mm-diameter PVC sanitary sewer service. An inspection chamber (IC) is in place and no further upgrades are required.

4.3 Site Access and Development Related Issues

Adequate off-street parking must be provided and parking modules must meet zone size requirements. It should be noted that parking stalls with access from a public lane must be a minimum of 1.2m longer.

Direct the roof drains into on-site rock pits. This will help dissipate the roof drain water and prevent additional concentrated flows onto the rear lane.

5.0 **Commencement and Completion**

- 5.1 The Owner agrees to commence the Restoration Works, Landscaping Works, and Works and Utilities Requirements forthwith upon adoption of City of Kelowna Heritage Revitalization Agreement Authorization Bylaw No. 9838 and to complete all such Works no later than December 31st, 2009.

6.0 **Damage or Destruction**

- 6.1 In the event that no more than 75% of the Heritage Building is damaged, the parties agree as follows:

a) The Owner may repair the Heritage Building in which event the Owner shall forthwith commence the repair work and complete same within one year of the date of damage;

OR, in the event that the Heritage Building is destroyed,

b) The City may, by bylaw, and after conducting a Public Hearing in the manner prescribed by Sections 890 through 894 of the *Local Government Act*, cancel this agreement, whereupon all use and occupation of the Heritage Lands shall thenceforth be in accordance with the zoning bylaws of the City and in accordance with all other bylaws or regulations of the City or any other laws of authority having jurisdiction.

7.0 Breach

- 7.1 In the event that the Owner is in breach of any term of this Agreement, the City may give the Owner notice in writing of the breach and the Owner shall remedy the breach within 30 days of receipt of the notice. In the event that the Owner fails to remedy the breach within the time allotted by the notice, the City may, by bylaw and after conducting a Public Hearing in the manner prescribed by Sections 890 through 894 of the *Local Government Act*, cancel this Agreement whereupon all use and occupation of the Heritage Lands shall thenceforth be in accordance with the zoning bylaws of the City and in accordance with all other bylaws or regulations of the City or any other laws of authority having jurisdiction.

8.0 Amendment

- 8.1 The parties acknowledge and agree that this Agreement may only be amended by one of the following means:
- a) By bylaw with the consent of the parties provided that a Public Hearing shall be held if an amendment would permit a change to use or density of use on site or;
 - b) By Heritage Alteration Permit (HAP), issued pursuant to Section 972 of the *Local Government Act*.

9.0 Representations

- 9.1 It is mutually understood and agreed upon between the parties that the City has made no representations, covenants, warranties, promises or agreements expressed or implied, other than those expressly contained in this Agreement.

10.0 Statutory Functions

- 10.1 Except as expressly varied or supplemented herein, this Agreement shall not prejudice or affect the rights and powers of the City in the exercise of its statutory functions and responsibilities including, but not limited to, the *Local Government Act* and its rights and powers under any enactments, bylaws, order or regulations, all of which, except as expressly varied or supplemented herein, are applicable to the Heritage Lands.

11.0 Enurement

- 11.1 This Agreement enures to the benefit of and is binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

12.0 Other Documents

- 12.1 The Owner agrees at the request of the City, to execute and deliver or cause to be executed and delivered all such further agreements, documents and instruments and to do and perform or cause to be done and performed all such acts and things as may be required in the opinion of the City to give full effect to the intent of this Agreement.

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SCHEDULE "A" - Page 6.

13.0 Notices

13.1 Any notice required to be given pursuant to this Agreement shall be in writing and shall either be delivered mailed by registered mail as follows:

(a) To the City:

City of Kelowna
1435 Water Street
Kelowna, B.C. V1Y 1J4

ATTENTION: City Clerk

(b) To the Owner:

Murray Grant Hindle
Sherry Patricia Briggs
1869 Marshall Street
Kelowna, BC, V1Y 2B8

Or, to such other address to which a party hereto may from time to time advise in writing

14.0 No Partnership or Agency

14.1 The parties agree that nothing contained herein creates a relationship between the parties of partnership, joint venture or agency.

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SCHEDULE "A" - Page 7.

IN WITNESS WHEREOF this Agreement has been executed by the parties hereto on the day and year first above written.

CITY OF KELOWNA
by its authorized signatories

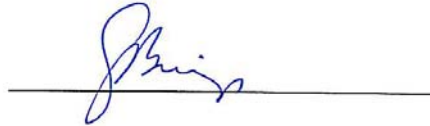
Mayor

City Clerk

Murray Grant Hindle
Signed by MURRAY GRANT HINDLE



Sherry Patricia Briggs
Signed by SHERRY PATRICIA BRIGGS



In the presence of:

MARDELLE A. CORBETT
A COMMISSIONER FOR TAKING
AFFIDAVITS FOR BRITISH COLUMBIA
1435 Water Street, Kelowna B.C.

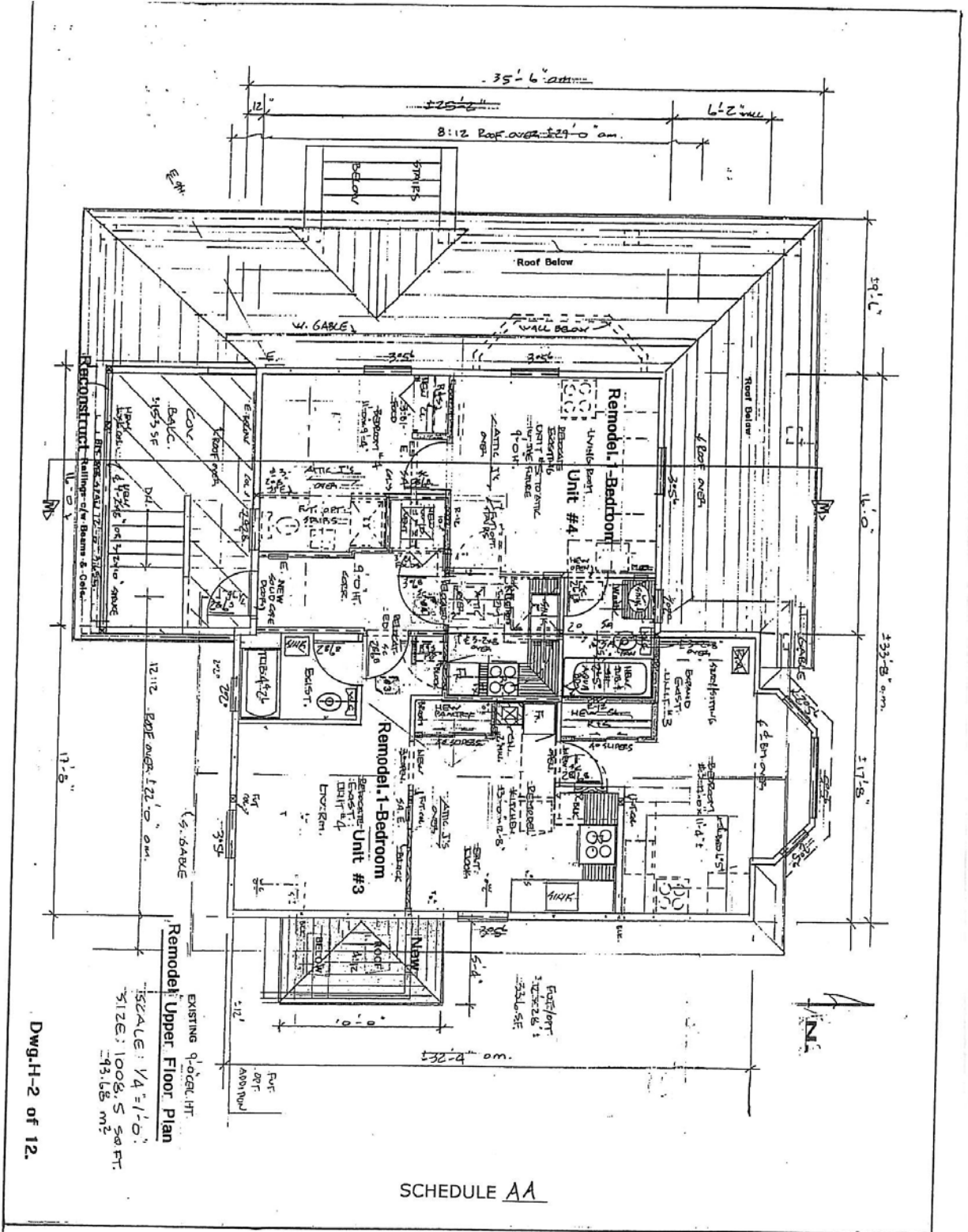
Witness (print name)



Witness (Signature)

Address

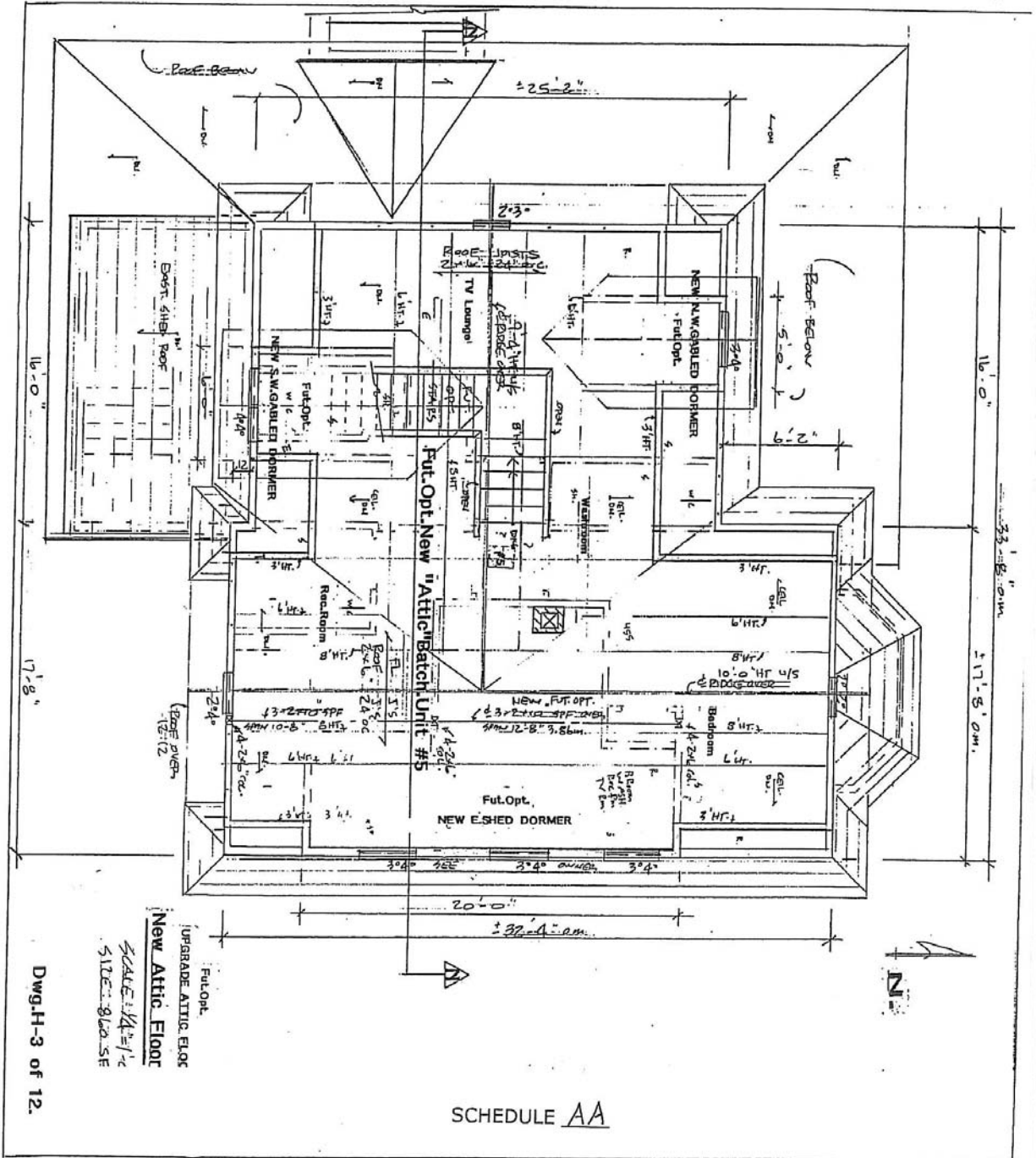
Occupation



Dwg.-H-2 of 12.

EXISTING 9'-0" OVER HT.
 Remodel Upper Floor Plan
 SCALE: 1/4" = 1'-0"
 SIZE: 1008.5 SQ. FT.
 = 93.68 m²

SCHEDULE AA

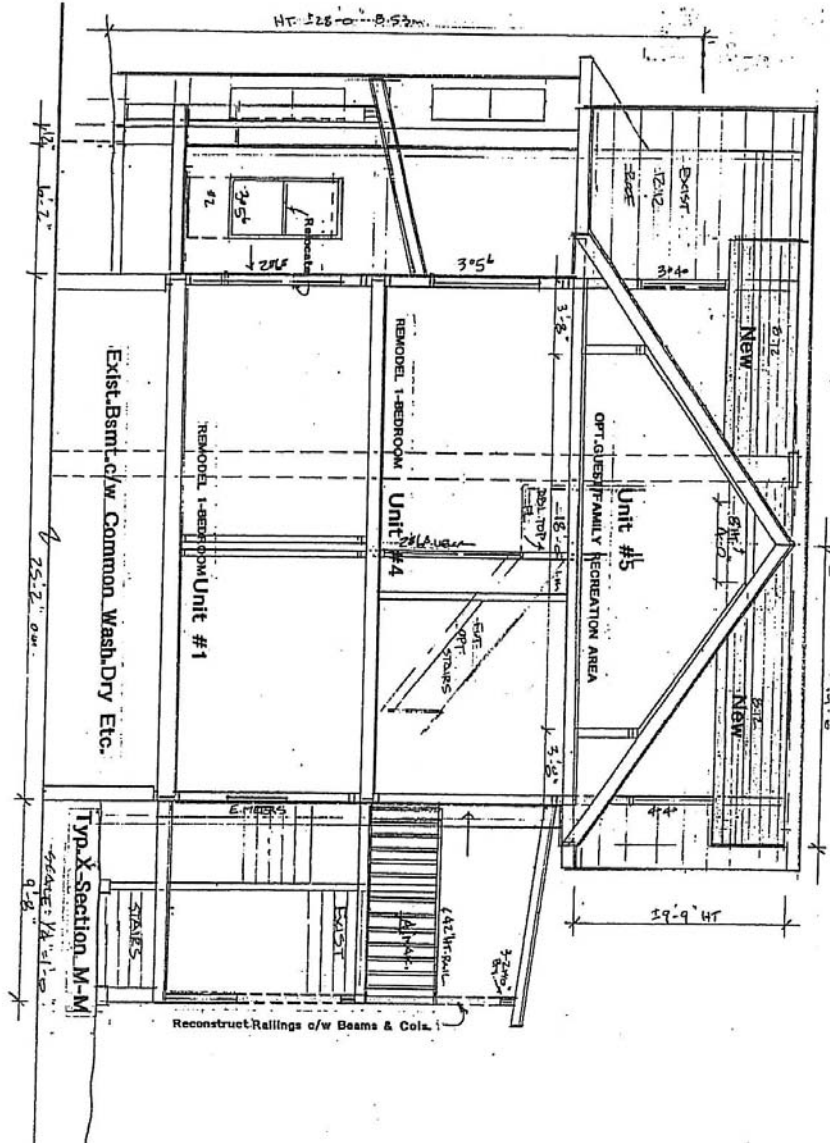


DWG. H-3 of 12.

Fut. Opt.
UPGRADE ATTIC FLOOR
New Attic Floor
SCALE: 1/4" = 1'-0"
SIZE: 8 1/2" x 11 1/2"

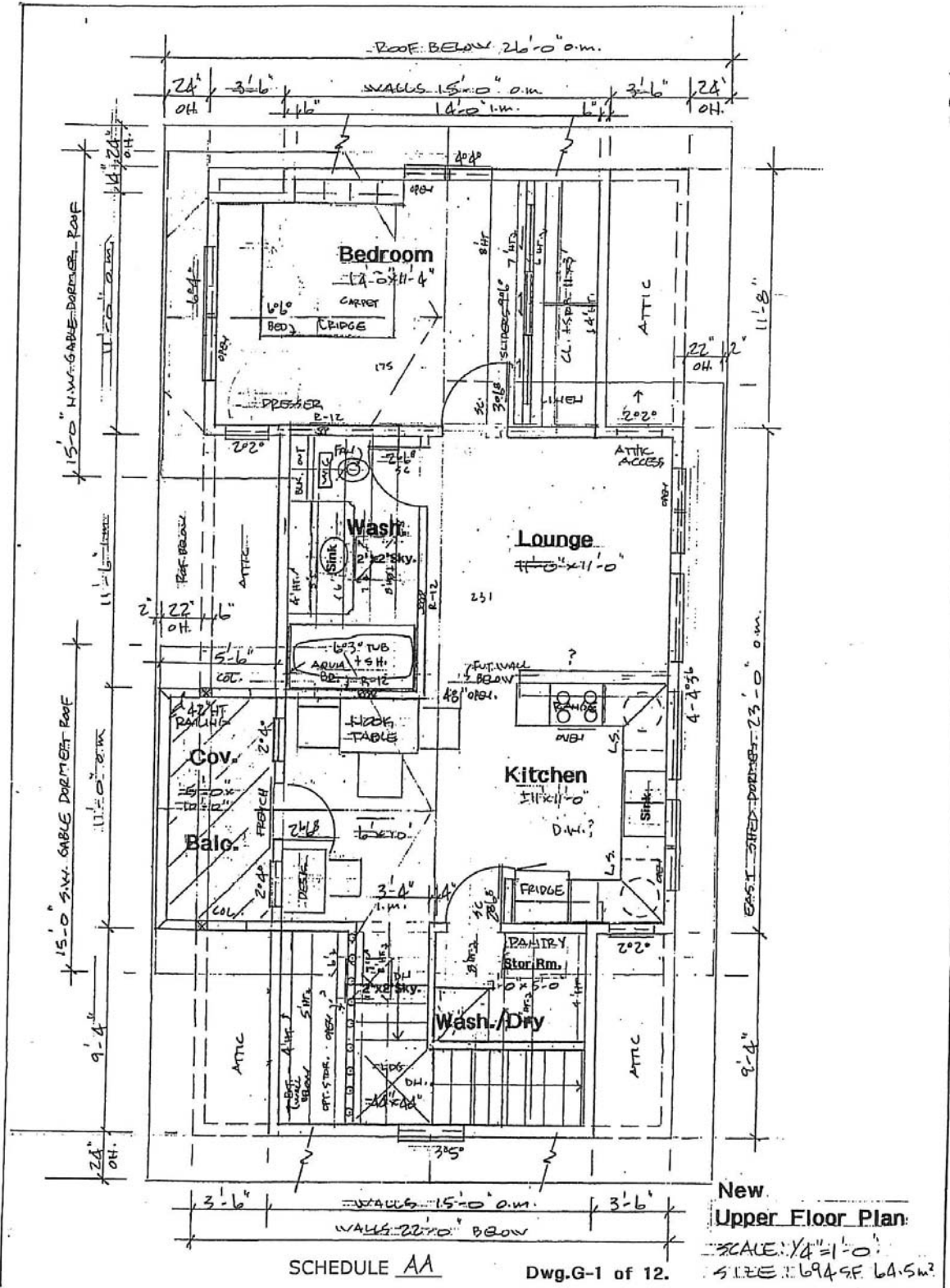
SCHEDULE AA

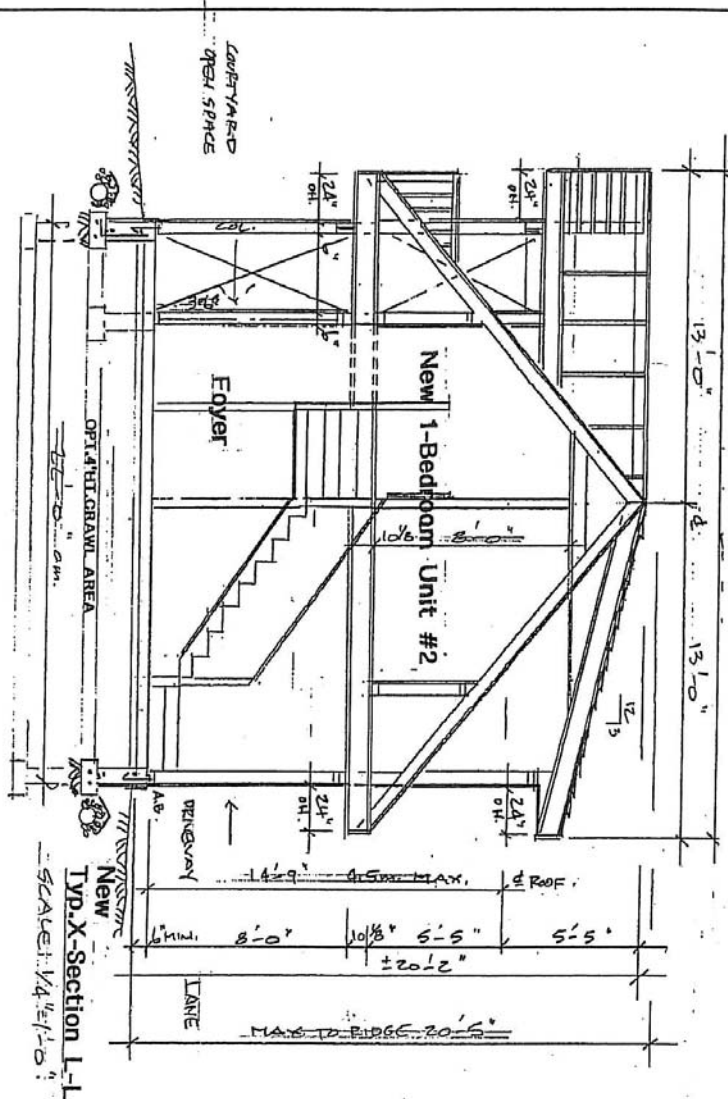
SCHEDULE "A" - Page 12



SCHEDULE AA

DWG. NO. H-4 OF 12.	Marshal Manor House (BUILT 1900) H.R.A.	
	1889 MARSHAL STREET, KELOWNA, B.C. V1Y-2B8 Remodel.	
	SCALE: 1/4" = 1'-0"	PROJ. NO. 2007-01-01
	DATE: April 27'07.	DWG. PIC.





NEW
TYP. X-SECTION L-L
SCALE: 1/4" = 1'-0"

SCHEDULE AA

New H.R.A.

Hindle/Briggs "Carriage" House (MARSHALL MANOR)

1869 MARSHALL STREET, KELOWNA, B.C. V1Y-2B8

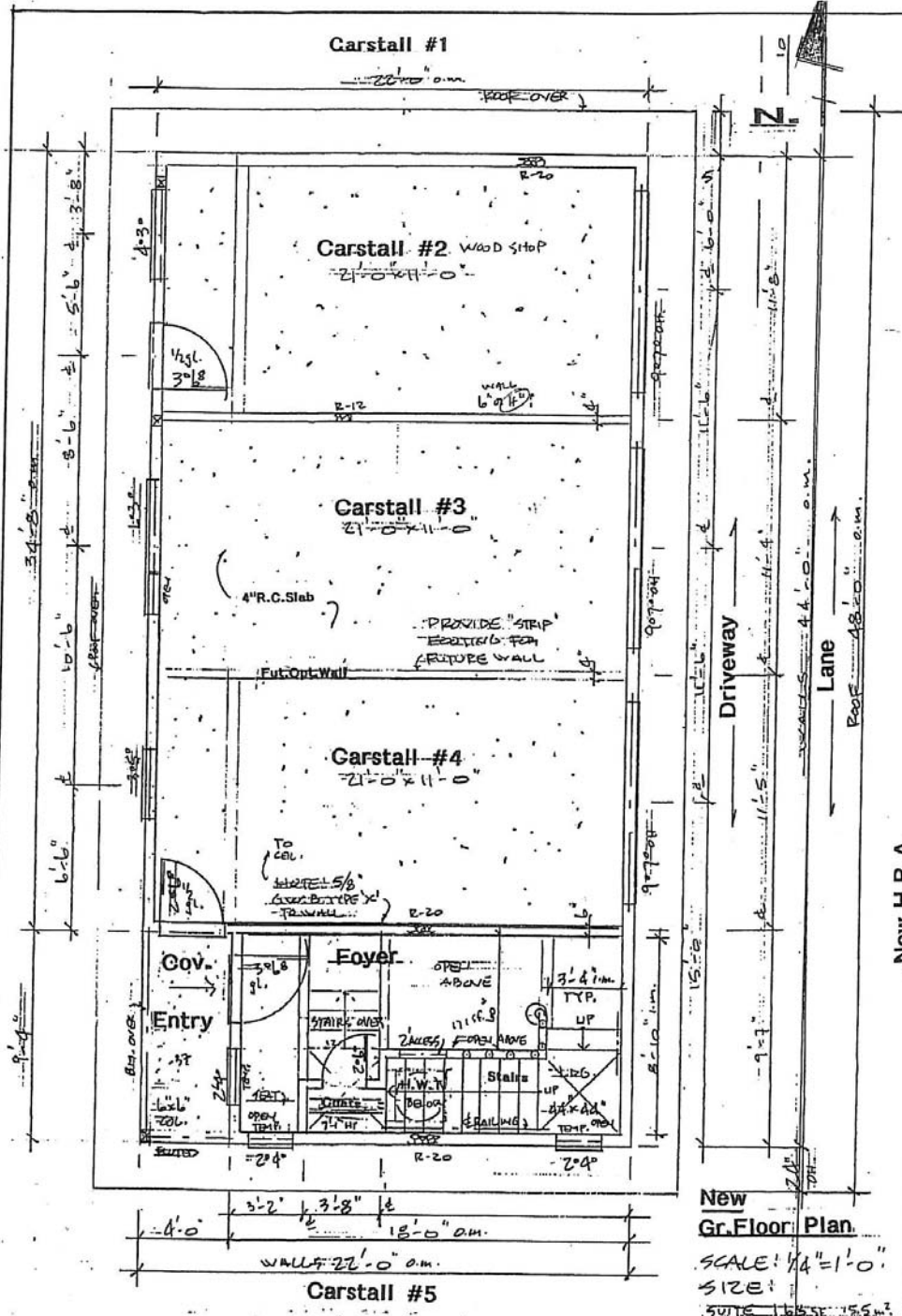
SCALE: AS SHOWN

PROJ. NO. 2007-01-01

DATE: April 27'07.

DWG. P/C

Dwg. G-6 of 12.

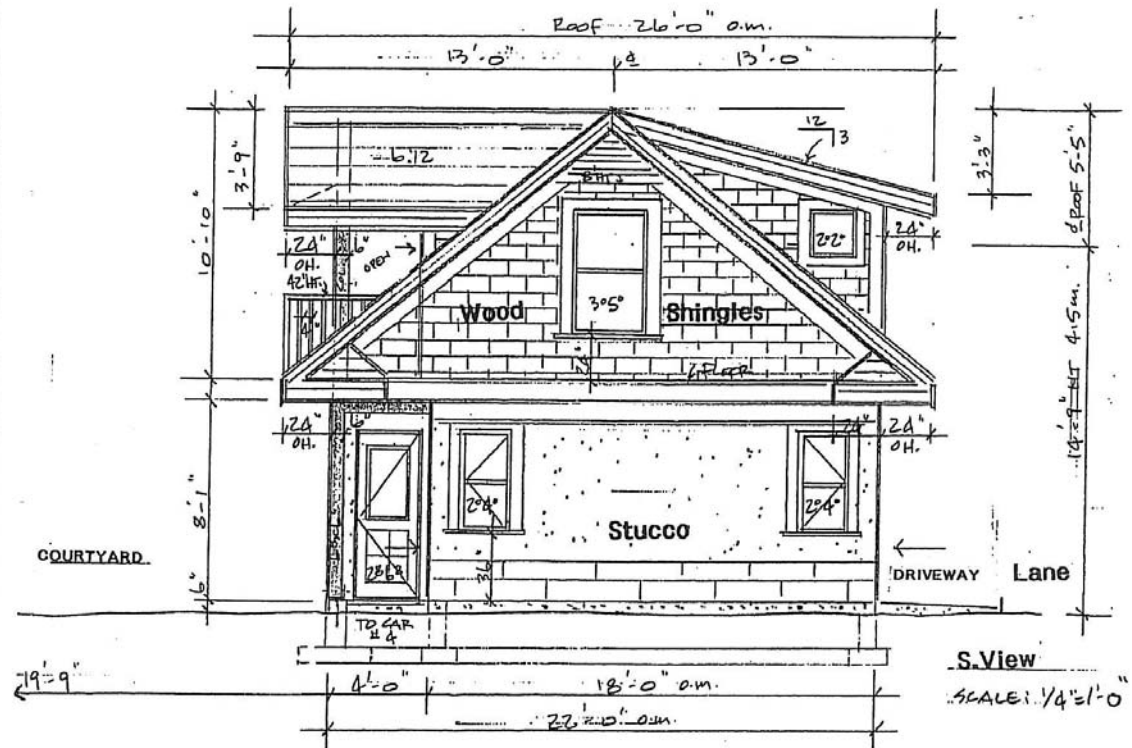
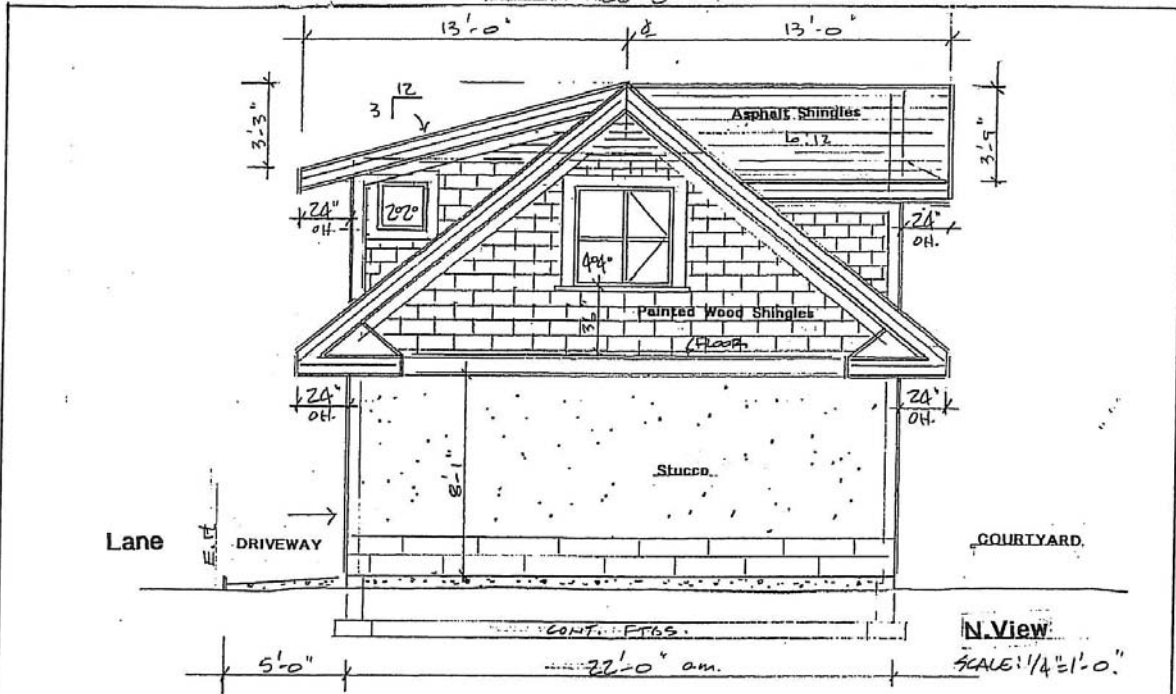


New Gr. Floor Plan
 SCALE: 1/4" = 1'-0"
 SIZE:
 SUITE 1 BASE 35.5 m²
 GARAGE 1 BASE 71 m²
 TOTAL 93.5 SF 86.5 m²
 COV. ENTRY 27 SF 2.5 m²
 BLDG. 1 BASE 90 m²

SCHEDULE AA

New H.R.A.

Hindle/Briggs' Carriage House (MARSHALL MANOR)	
1888 MARSHALL STREET, KELOWNA, B.C. V1Y 2B8	
SCALE: AS SHOWN	PROJ. NO. 2007-01
DATE: April 27'07.	DWG. PJC
DWG. No. G-2	OF 12



SCHEDULE BB

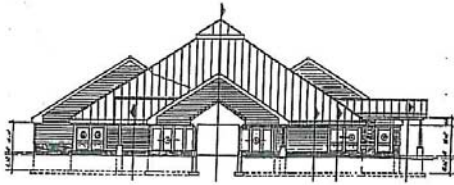
Dwg.G-3 of 12.



Photograph 20

This photograph represents a mock-up of a front door and approximate paint colors being considered for both the house and proposed carriage house. The colors were selected from the Historical True Colours for Western Canada put out by Benjamin Moore paints with the Vancouver Heritage Foundation support. This photograph is a test only and does not necessarily reflect the true end result.

SCHEDULE BB



Peter J. Chataway, B.Sc., B.Arch.

HOUSE PLANS AND DESIGN

368 Cadder Ave., Kelowna, B.C. V1Y 5N1

Office: 763-1334

Home: (250) 763-5367

1869 MARSHALL STREET

Colour Board

Heritage House

'Carriage' House

Roof : EXISTING

'Tite-Lok' 1/2 Tone Tan To Match Existing.

Walls : Upper -

WOOD SHINGLES

VC 27

VC-7
Edwardian Cream

Lower - STUCCO-

HORIZ.BANDS

& BASE

Med. Ivory
3 - 53

VC-7
Edwardian Cream

Trim :

VC-27
Strathcona Red

VC-1
Oxford Ivory

Sash :

VC-35
Gloss Black**

SCHEDULE BB

Note: All Paint Colours From Benjamin Moore Historical True Colours Exterior Paint.

