

Memorandum to the City of Markham Committee of Adjustment

November 14, 2023

File: A/166/23
Address: 10 Fincham Avenue, Markham
Applicant: Stefan Balakji
Owner: 10-20 Fincham Inc. (Eugene Kim)
Hearing Date: Wednesday, November 29, 2023

The following comments are provided on behalf of the East Team:

The applicant is requesting relief from the following requirements of By-law 163-78, as amended, to permit:

a) By-law 28-97, Section 3.9, Table B:

a minimum of 51 parking spaces, whereas the by-law requires a minimum of 62 parking spaces

b) By-law 61-92, Section 1.2.3:

a day care and/or child care facility, whereas the by-law does not permit this use; as it relates to a proposed child care facility

BACKGROUND

Property Description

The 4076.76 m² (43,881.88 ft²) subject property is located on the south side of 16th Avenue and east of Fincham Avenue. The property is located within an established residential neighbourhood comprised of two-storey detached dwellings. Mature vegetation exists across the property. A townhouse development has been approved in principle for the subject land and final approval will be issued by the Ontario Land Tribunal (OLT) once the implementing documents are finalized.

There is an existing commercial plaza on the property, which according to assessment records was constructed in 1988, with an addition being constructed in 1991.

Proposal

The applicant is proposing a child care facility in the interim (until the proposed townhouse development receives approval and building permits are acquired) to occupy the building located at 20 Fincham Avenue. As a result, the applicant is requesting relief from By-law 61-92 to allow a day care facility as they have a tenant who wants to occupy the space immediately. It is preferred to have the building occupied instead of vacant. The applicant is also proposing a reduction in parking spaces on-site to accommodate the required outdoor play area for the proposed child care facility. The number of available parking spaces will be reduced to 51 from 56. The applicant has provided a Transportation Impact Study that supports this parking reduction.

Official Plan and Zoning

Official Plan 2014 (partially approved on November 24/17, and updated on April 9/18)

The Official Plan designates the subject property “Mixed-Use Low Rise”, which provides for multi-use, multi-purpose areas that offer a diverse range of small-scale retail, service, and professional offices. This designation also allows community, institutional and recreational uses serving nearby residents. “Day Care Centre” is an allowed use in all mixed-use designations.

Zoning By-Law 61-92

The subject property is zoned LC under By-law 61-92, amending parent bylaw 163-78, which permits a Bank or Financial Institution, Personal Service Shop, Business or Professional Office, Restaurants, and retail stores. A child care facility is currently not permitted under By-law 163-78.

Applicant’s Stated Reason(s) for Not Complying with Zoning

According to the information provided by the applicant, the reason for not complying with Zoning is, “The Proposed use is not permitted within existing By-law”.

Zoning Preliminary Review (ZPR) Not Undertaken

The owner has confirmed that a Zoning Preliminary Review (ZPR) has not been conducted. It is the owner’s responsibility to ensure that the application has accurately identified all the variances to the Zoning By-law required for the proposed development. If the variance request in this application contains errors, or if the need for additional variances is identified during the Building Permit review process, further variance application(s) may be required to address the non-compliance.

COMMENTS

The Planning Act states that four tests must be met in order for a variance to be granted by the Committee of Adjustment:

- a) The variance must be minor in nature;
- b) The variance must be desirable, in the opinion of the Committee of Adjustment, for the appropriate development or use of land, building or structure;
- c) The general intent and purpose of the Zoning By-law must be maintained;
- d) The general intent and purpose of the Official Plan must be maintained.

Proposed Day Care and/or Child Care Facility

The Applicant is requesting relief to permit a Child Care facility, whereas the By-law does not permit the use. Staff note that the 2014 Official Plan provides for a Day Care or Child Care on the Subject Lands as it is designated as “Mixed-Use Low Rise”. Staff considers that the requested variance also maintains the general intent and purpose of the Zoning By-law as a Child Care facility provides non-residential uses to serve the local community, as intended by the LC designation of the Zoning By-law. Staff are of the opinion that the requested variance is minor in nature and meets the general intent and purpose of both the Zoning By-law and Official Plan.

Parking Reduction

The site currently provides a total of 58 parking spaces. The proposed use will increase the parking requirement to 62 parking spaces. As a result of the proposed Day Care Facility, 7 parking spaces will be removed to accommodate the required outdoor playground area. This will result in a deficiency of 11 parking spaces. Staff note that the applicant has provided a detailed Transportation Impact Study demonstrating that the reduction will not adversely affect the subject property and surrounding neighborhood.

Staff have no objections to the approval of the proposed parking reduction, provided that dedicated parking spaces are reserved for the daycare facility – refer to Appendix ‘A’ Conditions

EXTERNAL AGENCIES

Refer to Appendix “C” – External Agency Comments

PUBLIC INPUT SUMMARY

No written submissions were received as of November 20, 2023. It is noted that additional information may be received after the writing of the report, and the Secretary-Treasurer will provide information on this at the meeting.

CONCLUSION

Planning Staff have reviewed the application with respect to Section 45(1) of The Planning Act, R.S.O. 1990, c. P.13, as amended, and are of the opinion that the variance request meets the four tests of the Planning Act and have no objection. Staff recommend that the Committee consider public input in reaching a decision.

The onus is ultimately on the applicant to demonstrate why they should be granted relief from the requirements of the zoning by-law, and how they satisfy the tests of the Planning Act required for the granting of minor variances.

Please refer to Appendix “A” for conditions to be attached to any approval of this application.

PREPARED BY:



Aaron Chau, Planner I, East District

REVIEWED BY:



Stacia Muradali, Development Manager, East District

APPENDICES

Appendix "A" – Conditions

Appendix "B" – Aerial Photo

Appendix "C" – External Agency Comments

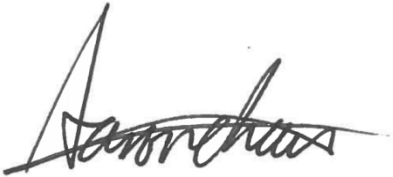
Appendix "D" – Drawings

APPENDIX "A"

CONDITIONS TO BE ATTACHED TO ANY APPROVAL OF FILE A/166/23

1. The variances apply only to the proposed development as long as it remains;
2. A minimum of 7 Parking Spaces are to be dedicated exclusively for use by the Daycare Facility, with clear signage posted at all times, and as identified on a Site Plan, to the satisfaction of Transportation Staff

CONDITIONS PREPARED BY:

A handwritten signature in black ink, appearing to read 'Aaron Chau', written over a horizontal line.

Aaron Chau, Planner I, Planning and Urban Design Department

To: Shawna Houser, Secretary-Treasurer, Markham Committee of Adjustment
From: *Adjacent Developments GO Expansion & LRT - Third Party Projects Review - Metrolinx*
Date: October 17th, 2023
Re: A/166/23 - 10 Fincham Ave, Markham

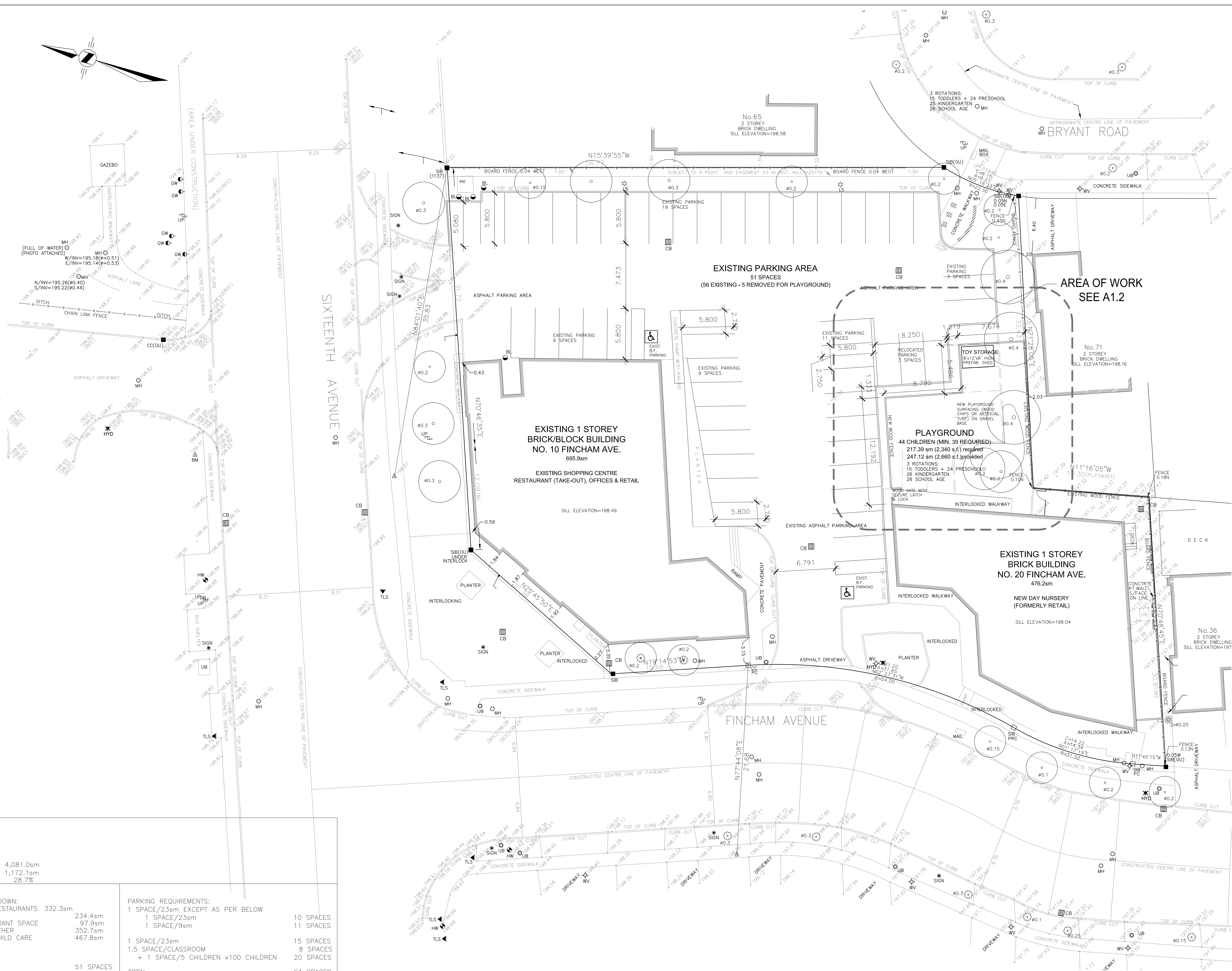
File: 23.141426.000.00.MNV
Date: 11/23/23
MM/DD/YY

Metrolinx is in receipt of the minor variance application for 10 Fincham Ave, Markham, to permit the reorganization of the parking lot (reduced parking) to allow an outdoor play area in support of the proposed daycare at the subject site. Metrolinx's comments on the subject application are noted below:

- The subject property is located within 300m of Metrolinx's Uxbridge Subdivision which carries Metrolinx's Stouffville GO Train service.
- The Proponent is advised the following:
 - **Warning:** The Applicant is advised that the subject land is located within Metrolinx's 300 metres railway corridor zone of influence and as such is advised that Metrolinx and its assigns and successors in interest has or have a right-of-way within 300 metres from the subject land. The Applicant is further advised that there may be alterations to or expansions of the rail or other transit facilities on such right-of-way in the future including the possibility that Metrolinx or any railway entering into an agreement with Metrolinx to use the right-of-way or their assigns or successors as aforesaid may expand or alter their operations, which expansion or alteration may affect the environment of the occupants in the vicinity, notwithstanding the inclusion of any noise and vibration attenuating measures in the design of the development and individual lots, blocks or units.
- Please note that Metrolinx is a stakeholder that has provided comments on the comprehensive application including the Site Plan Application and any requirements set out in prior comments are still applicable.

Should you have any questions or concerns, please do not hesitate to contact me.

Best regards,
Farah Farouque
Project Analyst, Third Party Projects Review
Metrolinx
10 Bay Street | Toronto | Ontario | M5J 2N8



SITE STATISTICS

ZONING:

SITE AREA: 4,081.0sm
 BUILDING AREA/GFA: 1,172.1sm
 COVERAGE: 28.7%

LEASEABLE AREA BREAKDOWN:
 SHOPPING CENTRE - RESTAURANTS 332.3sm
 20% OF TOTAL
 REMAINING RESTAURANT SPACE 234.4sm
 SHOPPING CENTRE - OTHER 97.9sm
 SHOPPING CENTRE - CHILD CARE 352.7sm
 467.8sm

PARKING PROVIDED: 51 SPACES
 (previously existing - 56 spaces)

PARKING REQUIREMENTS:
 1 SPACE/23sm EXCEPT AS PER BELOW
 1 SPACE/23sm 10 SPACES
 1 SPACE/9sm 11 SPACES
 1 SPACE/23sm 15 SPACES
 1.5 SPACE/CLASSROOM 8 SPACES
 + 1 SPACE/5 CHILDREN x100 CHILDREN 20 SPACES
 TOTAL: 64 SPACES
 (previous requirement - 56 spaces including 20 spaces for 20 Fincham as retail/shopping centre)

DATE	NO.	ISSUE
2023-04-12	1	COORDINATION

CONTRACTOR MUST VERIFY ALL DIMENSIONS ON THE JOB AND REPORT ANY DISCREPANCY TO THE ARCHITECT BEFORE PROCEEDING WITH THE WORK. ALL DRAWINGS AND SPECIFICATIONS ARE THE PROPERTY OF THE ARCHITECT AND MUST BE RETURNED AT THE COMPLETION OF THE WORK. THIS DRAWING IS NOT TO BE USED FOR CONSTRUCTION UNTIL COUNTERSIGNED. DO NOT SCALE DRAWINGS.

RENEWarchitect
 215 WITHROW AVE., TORONTO M4K 1E2
 647-907-3532 lea@renewarchitect.ca

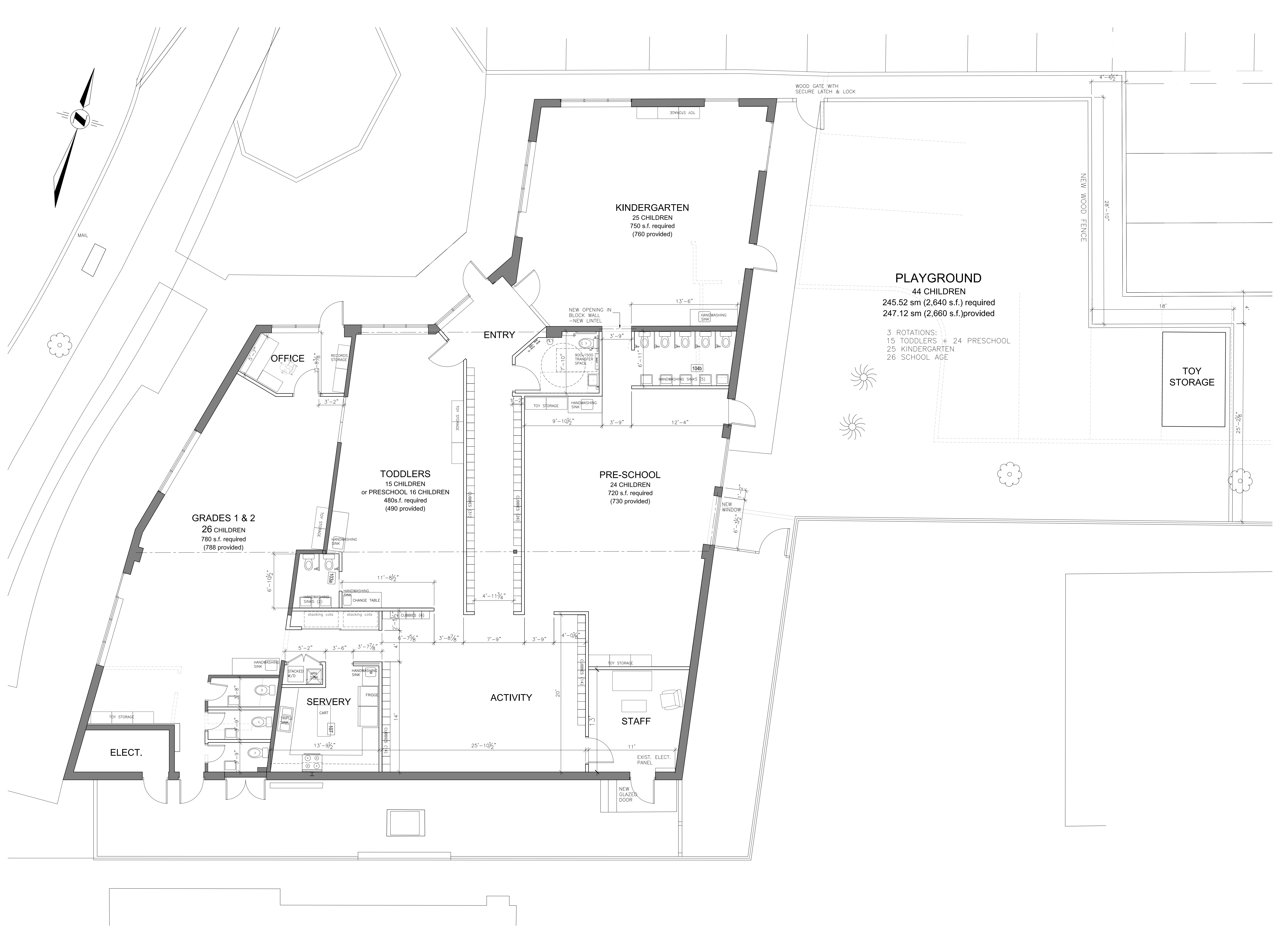
**20 FINCHAM AVE.
 MARKHAM, ON.**

**RENOVATIONS FOR
 NEW CHILD CARE CENTRE**

SITE PLAN

PROJECT:	23.01
DATE:	APRIL 2023
SCALE:	1:200

A1.1



DATE	NO.	ISSUE
2023-04-12	1	COORDINATION

CONTRACTOR MUST VERIFY ALL DIMENSIONS ON THE JOB AND REPORT ANY DISCREPANCY TO THE ARCHITECT BEFORE PROCEEDING WITH THE WORK. ALL DRAWINGS AND SPECIFICATIONS ARE THE PROPERTY OF THE ARCHITECT AND MUST BE RETURNED AT THE COMPLETION OF THE WORK. THIS DRAWING IS NOT TO BE USED FOR CONSTRUCTION UNTIL COUNTERSIGNED. DO NOT SCALE DRAWINGS.

RENEWarchitect
 215 WITHROW AVE., TORONTO M4K 1E2
 647-907-3532 lea@renewarchitect.ca

20 FINCHAM AVE.
 MARKHAM, ON.

**GREAT LAKES MONTESSORI
 RENOVATIONS FOR
 NEW CHILD CARE CENTRE**

PRELIMINARY LAYOUT
 DAY NURSERY

PROJECT:	23.02
DATE:	APRIL 2023
SCALE:	$\frac{3}{16}'' = 1'-0''$

LANDSCAPE SPECIFICATIONS
 CONTRACTOR MUST CONTACT ALL UTILITY COMPANIES FOR STAKE OUTS PRIOR TO ANY EXCAVATION OR PLANTING.

ROUGH GRADING
 ROUGH GRADE AND FILL AREAS TO ESTABLISH SUBGRADE AS REQUIRED. PROVIDE DRAINAGE PATTERN AS INDICATED ON DRAWINGS. ROUND SMOOTHLY ALL TOPS AND TOES OF SLOPES. COMPACT ALL AREAS TO 90% STANDARD PROCTOR DENSITY UNLESS SPECIFIED OTHERWISE. EXISTING TREES TO REMAIN ON SITE ARE TO BE PROTECTED AS DETAILED.

FINE GRADING
 FINE GRADE ALL AREAS TO FINISHED GRADES AS SHOWN ON LAYOUT OR GRADING PLAN OR ARCHITECT'S SITE PLAN. PROVIDE UNIFORM SLOPES AWAY FROM THE BUILDING, UNLESS SPECIFIED OTHERWISE. SLOPES MAY NOT EXCEED 3:1 (3:1).

SPREADING OF TOPSOIL
 SCARIFY THE SUBSOIL PRIOR TO THE SPREADING OF THE TOPSOIL. REMOVE ALL DEBRIS AND LEAVE A FINE-TEXTURED EVEN SURFACE ALL TOPSOIL TO BE IMPORTED UNLESS PREVIOUSLY APPROVED BY LANDSCAPE ARCHITECT. OBTAIN APPROVAL FOR THE QUALITY OF ANY IMPORTED TOPSOIL BEFORE DELIVERY TO THE SITE. TOPSOIL IS TO BE COMPACTED TO CREATE A FIRM AND EVEN SURFACE.

SOD
 USE NO. 1 GRADE TURF-GRASS NURSERY SOD WHICH CONFORMS WITH THE SPECIFICATIONS OF THE NURSERY SOD GROWERS ASSOCIATION OF ONTARIO. ALL LAWN AREAS SHALL RECEIVE A MINIMUM OF 100MM (4") OF COMPACTED TOPSOIL, AND SHALL BE SODDED WITH #1 KENTUCKY BLUEGRASS - FESCUE. NO SOD SLOPES ARE TO EXCEED 3:1. SLOPE IN EXCESS OF 4:1 TO BE PEGGED.

MINERAL FERTILIZER
 APPLY THE FOLLOWING MINERAL FERTILIZER UNLESS SOIL TESTS SHOW OTHER REQUIREMENTS:

- SODDED AREAS - 11% NITROGEN, 8% PHOSPHORUS AND 4% POTASH (11-8-4) AT THE RATE OF 4.5 KG OVER M2 (10 LBS OVER 1000 SQ. FT.).
- PLANTING BEDS - 7% NITROGEN, 7% PHOSPHORUS AND 7% POTASH (7-7-7) AT THE RATE OF 40 GRAMS (4 OZ) FOR EVERY BUSH/OF TOPSOIL.

PREPARATION OF PLANTING BEDS
 ALL PLANT BEDS TO BE CONTINUOUS. EXCAVATE ALL PLANTING BEDS TO THE DEPTH AS INDICATED ON THE DRAWINGS AND DETAILS. MIN 450mm (18") BACKFILL ALL PLANTING BEDS WITH A SOIL MIXTURE CONSISTING OF SIX (6) PARTS OF SAND LOAM, ONE (1) PART OF FINELY PULVERIZED PEAT MOSS, TWO (2) PARTS OF HELL-ROTTED MANURE AND THE MINERAL FERTILIZER AS SPECIFIED ABOVE. ALSO ADD .58 KILOS BONE MEAL/CUBIC METER OF PLANTING SOIL (1 LB./CUBIC YARD). PREPARE THE PLANTING BEDS FOR PLANTING BEFORE THE DELIVERY OF THE PLANT MATERIAL TO THE JOB SITE.

NOTE: IF THE EXISTING SOIL CONDITIONS ARE CLAY OR WET IN NATURE, CONTACT THE LANDSCAPE ARCHITECT FOR INSTRUCTIONS OF A SUITABLE SOIL MIXTURE. FAILURE TO DO THIS MAY RESULT IN DELAY OF APPROVAL AND ACCEPTANCE.

PLANT MATERIALS
 ALL PLANT MATERIAL SHALL CONFORM TO THE STANDARDS OF THE CANADIAN NURSERY TRADES ASSOCIATION FOR SIZE AND SPECIES.

ALL SHRUB AND TREE MATERIAL SHALL BE CONTAINER GROWN, POTTED, SB OR BB, UNLESS OTHERWISE NOTED. BARE ROOT PLANTING SHALL BE ACCEPTABLE FOR CERTAIN SPECIES DURING EARLY SPRING OR LATE FALL PLANTING SEASON. CONTRACTOR SHALL MAKE REQUESTS FOR ROOT CONDITION SUBSTITUTION IN WRITING TO THE LANDSCAPE ARCHITECT PRIOR TO COMMENCEMENT OF PLANTING OPERATIONS. ALL PLANT MATERIAL TO BE CLAY GROWN STOCK UNLESS OTHERWISE NOTED.

LANDSCAPE SPECIFICATIONS
 SCALE: N.T.S. DATE: LD-01

PLANT MATERIAL INSTALLATION
 ALL TREES, SHRUBS AND GROUNDCOVERS SHALL BE PLANTED AS DETAILED & AS SHOWN ON THE PLANTING PLAN. ALL BEDS TO RECEIVE A COVER OF CLEAN MULCH TO A DEPTH OF 75mm(3") FOR GUYING AND STAKING TREES, REFER TO PLANTING DETAILS. WRAP ALL DECIDUOUS TREES UNDER EXPERIENCED SUPERVISION ONLY TO THE SPECIFICATIONS OF THE ONTARIO LANDSCAPE CONTRACTORS ASSOCIATION.

PLANT MATERIAL SIZES AND CONDITIONS ARE TO BE AS INDICATED ON THE LANDSCAPE DRAWING.

THE INDIVIDUAL PLANT GROUPING TOTAL AS ILLUSTRATED ON THE PLANTING PLAN SUPERSEDES THE ESTIMATED QUANTITY ON THE MASTER PLANT LIST. CONTRACTOR MUST REPORT ANY DISCREPANCIES TO THE LANDSCAPE ARCHITECT IN WRITING BEFORE COMMENCING ANY WORK. CONTRACTOR WILL ASSUME FULL RESPONSIBILITY IF LANDSCAPE ARCHITECT IS NOT NOTIFIED OF DISCREPANCIES.

*MULCH - SHREDDED PINE MULCH BY "GRO BARK" OR APPROVED EQUAL. LANDSCAPE ARCHITECT TO APPROVE MULCH BEFORE INSTALLATION.

GENERAL MAINTENANCE
 PROPER MAINTENANCE PROCEDURES ARE TO BE FULLY ADMINISTERED FOR ALL NEWLY CONSTRUCTED LANDSCAPE WORK, IN ACCORDANCE WITH LANDSCAPE ONTARIO SPECIFICATIONS (SECTION 16 - MAINTENANCE WORK). THIS SHALL APPLY ONLY DURING THE CONSTRUCTION PERIOD, UNLESS OTHERWISE SPECIFIED. CONTRACTOR IS RESPONSIBLE FOR MAINTENANCE OF SOD AND PLANTING UNTIL FINAL ACCEPTANCE BY LANDSCAPE ARCHITECT.

RODENT PROTECTION
 THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL TREES AND SHRUBS FOR WINTER PROTECTION AND FROM RODENT INJURY FOR THE DURATION OF GUARANTY PERIOD. PROTECTIVE GUARDS SHALL BE EMPLOYED AROUND ALL DECIDUOUS TREES. GUARDS TO BE 150MM DIA. PVC PIPE OR AS MUNICIPAL GUIDELINES. GUARDS SHALL BE INSTALLED PRIOR TO THE APPLICATION OF THE MULCH AND SHOULD BE PLACED A MINIMUM OF 50MM (2") OUT FROM THE TREE TRUNK ON ALL SIDES.

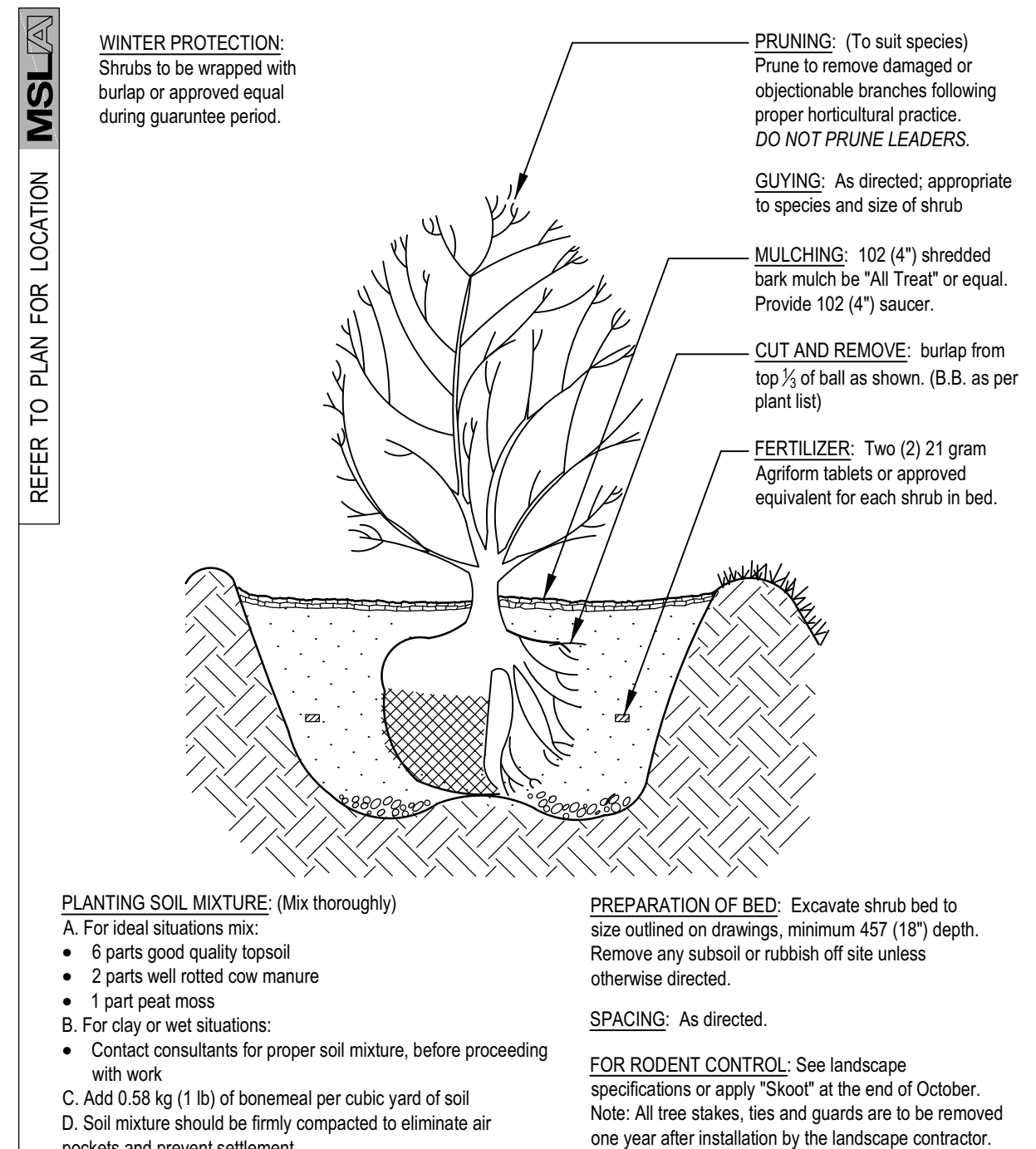
ALL SHRUBS AND CONIFEROUS TREES SHALL HAVE AN APPLICATION OF "SKOOT" OR APPROVED EQUIVALENT RODENT FORMULA TO BE APPLIED AT THE END OF OCTOBER. FOLLOW MANUFACTURER'S DIRECTIONS FOR APPLICATION.

GENERAL REQUIREMENTS
 USE ABOVE SPECIFICATIONS IN CONJUNCTION WITH THE GENERAL LANDSCAPE SPECIFICATIONS OF THE ONTARIO LANDSCAPE CONTRACTORS ASSOCIATION, THE NURSERY SOD GROWERS ASSOCIATION OF ONTARIO AND WITH THE GUIDE SPECIFICATIONS FOR NURSERY STOCK OF THE CANADIAN NURSERY TRADES ASSOCIATION. USE ONLY PLANT MATERIAL, TRUE TO NAME, SIZE AND GRADE AS SPECIFIED ON PLANTING PLAN. PROVIDE SUFFICIENT LABELS OR MARKINGS TO INDICATE CLEARLY THE VARIETY, SIZE AND GRADE OF EACH SPECIMEN OR BUNDLE.

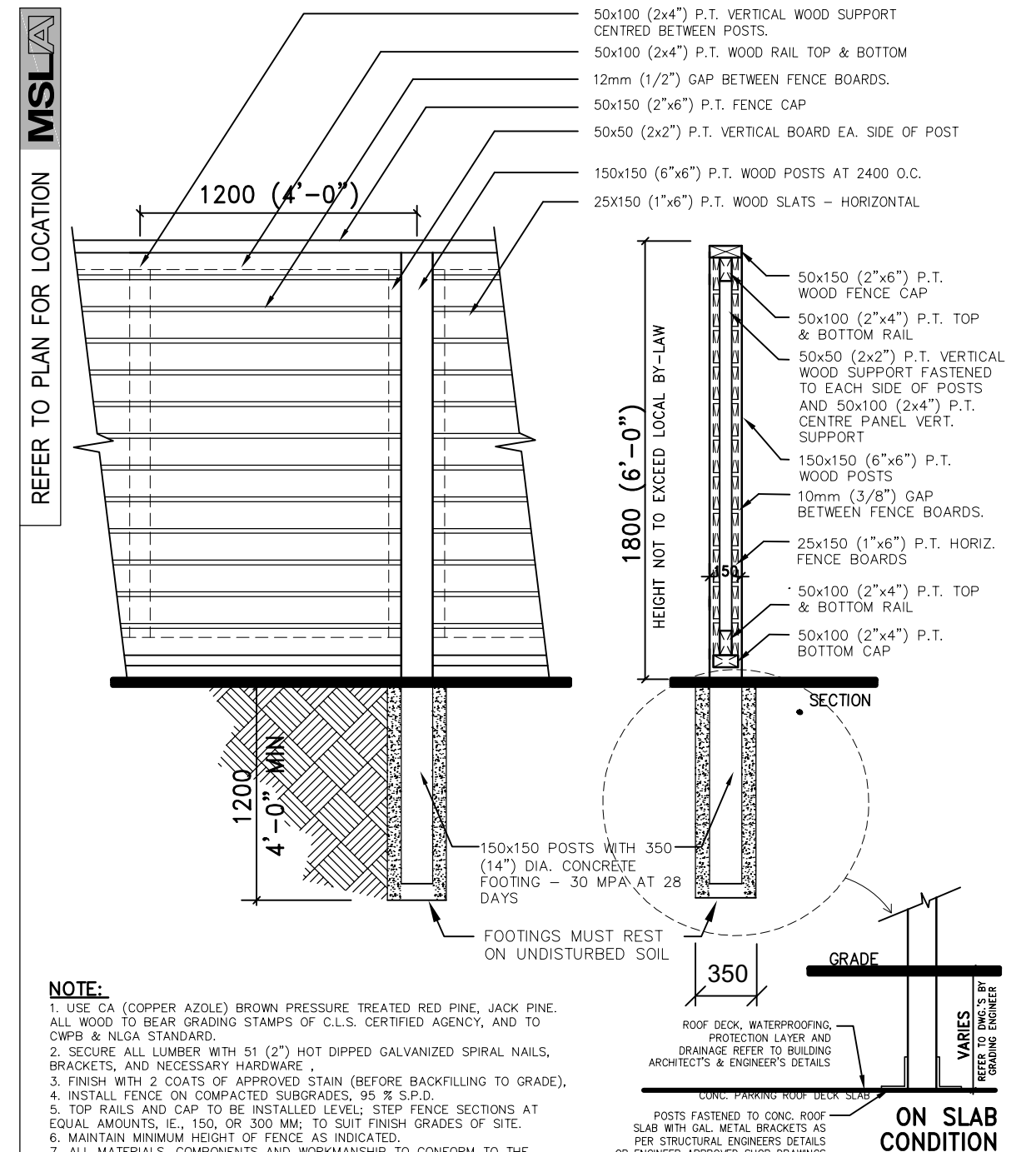
OBTAIN APPROVAL FOR SUBSTITUTIONS AS TO VARIETY, SIZE OR GRADE FROM THE LANDSCAPE ARCHITECT. USE ONLY NURSERY STOCK GROWN UNDER PROPER HORTICULTURAL PRACTICES. VIABLE, FREE FROM PEST AND DISEASE AND UNDAMAGED. CHECK LOCATIONS AND OBTAIN STAKEOUTS OF ALL UTILITY LINES BEFORE EXCAVATION. OBTAIN ALL NECESSARY PERMITS BEFORE COMMENCEMENT OF CONSTRUCTION. REPORT IN WRITING ANY DISCREPANCIES IN THE DRAWINGS, SPECIFICATIONS AND CONTRACT DOCUMENTS TO THE LANDSCAPE ARCHITECT BEFORE THE END OF THE BIDDING PROCESS AND COMMENCEMENT OF CONSTRUCTION. THESE SPECIFICATIONS MAY BE SUPERCEDED BY ADDITIONAL SPECIFICATIONS SET OUT IN THE TENDER DOCUMENTS. CONTRACTOR TO REVIEW ALL DOCUMENTS.

GUARANTY PERIOD
 PROVIDE ONE FULL YEAR GUARANTEE ON ALL LANDSCAPE WORK FROM DATE OF FINAL ACCEPTANCE BY LANDSCAPE ARCHITECT. GUARANTEE PERIOD MAY BE EXTENDED TO TWO FULL YEARS DEPENDING ON MUNICIPAL STANDARDS. CONTRACTOR TO VERIFY WITH OWNER AND LANDSCAPE ARCHITECT.

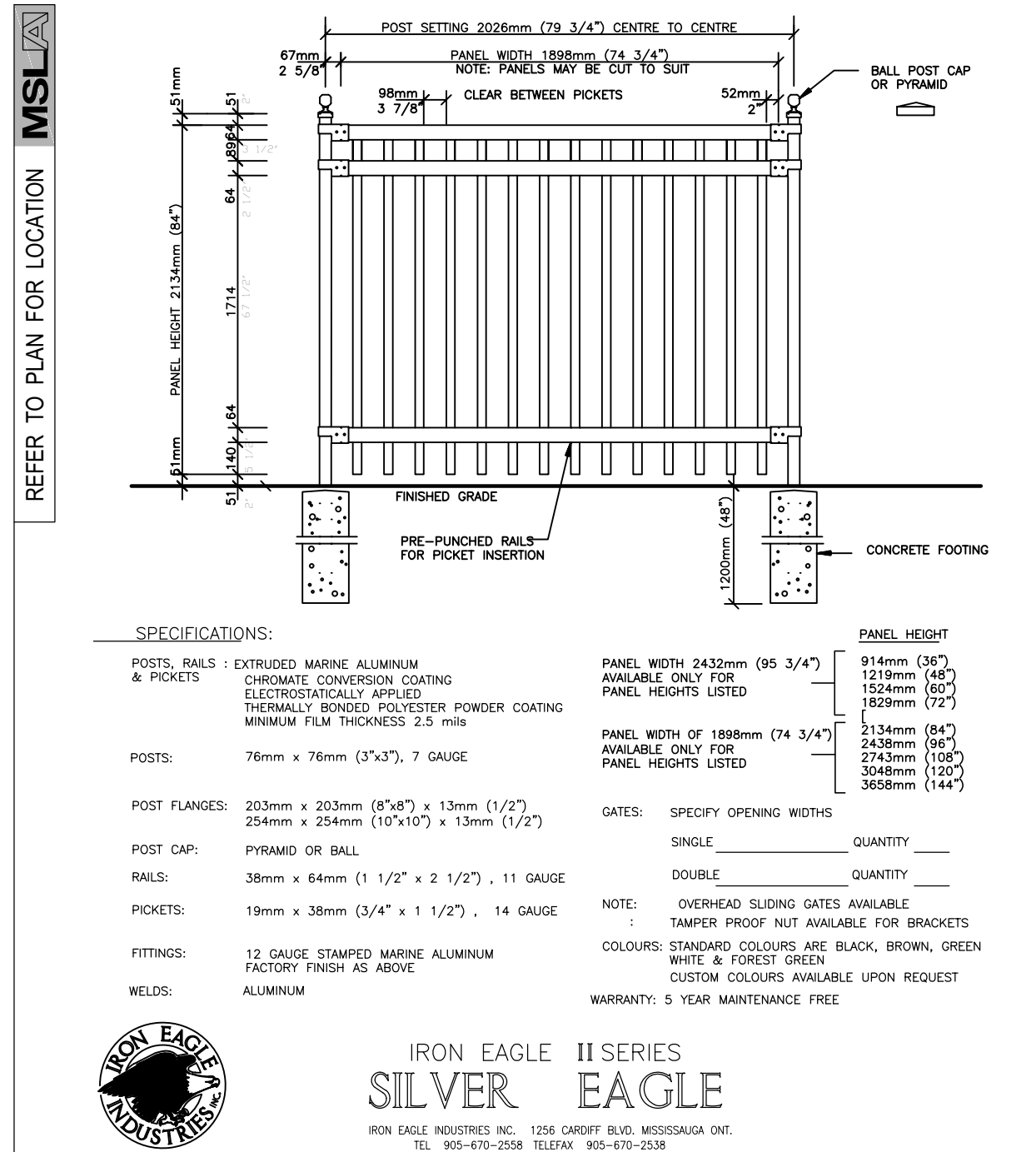
PLANT MATERIAL INSTALLATION
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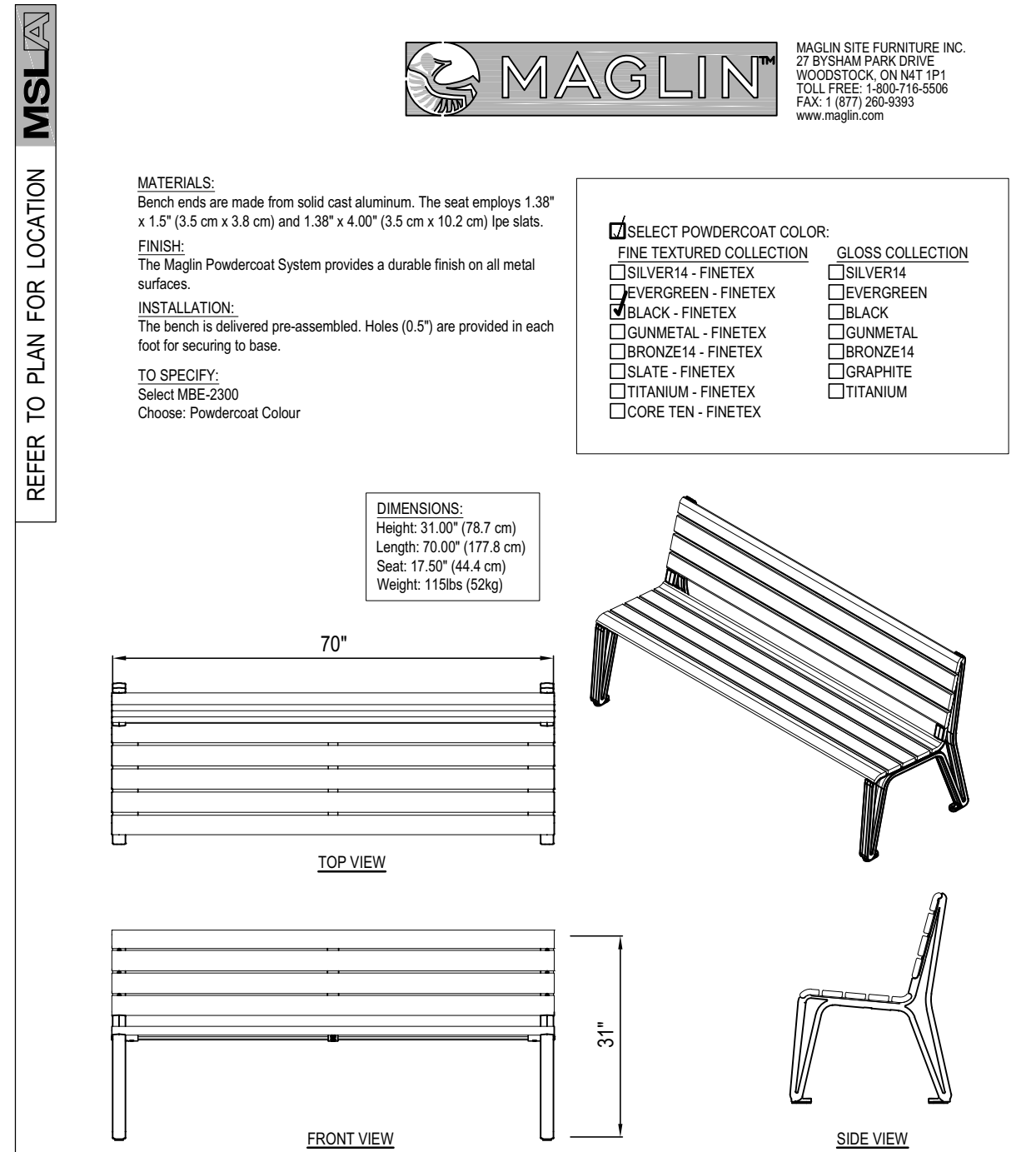
STANDARD SHRUB PLANTING DETAIL
 SCALE: N.T.S. DATE: LD-01



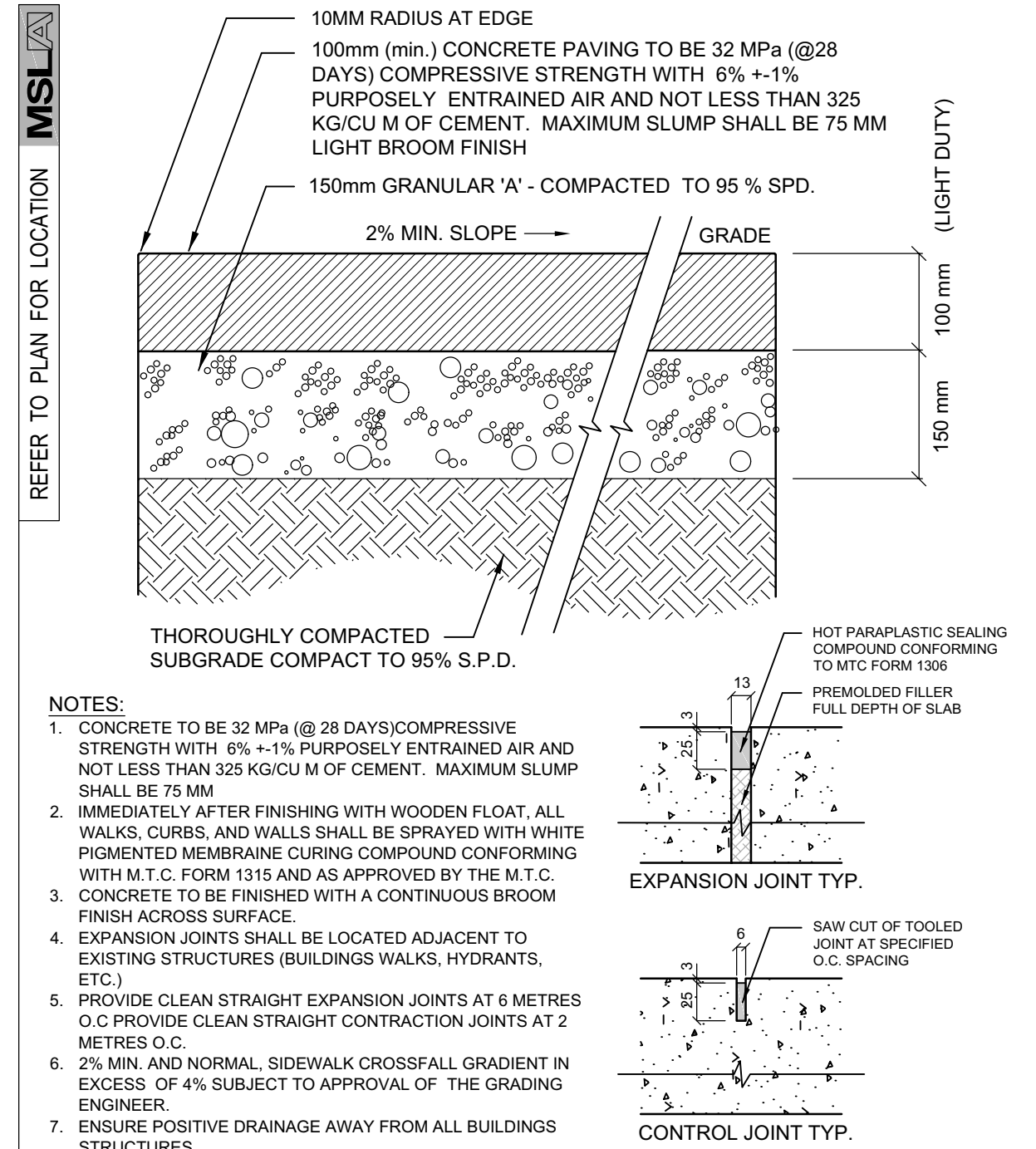
1800 HT. WOOD PRIVACY FENCE DETAIL
 SCALE: N.T.S. DATE: LD-01



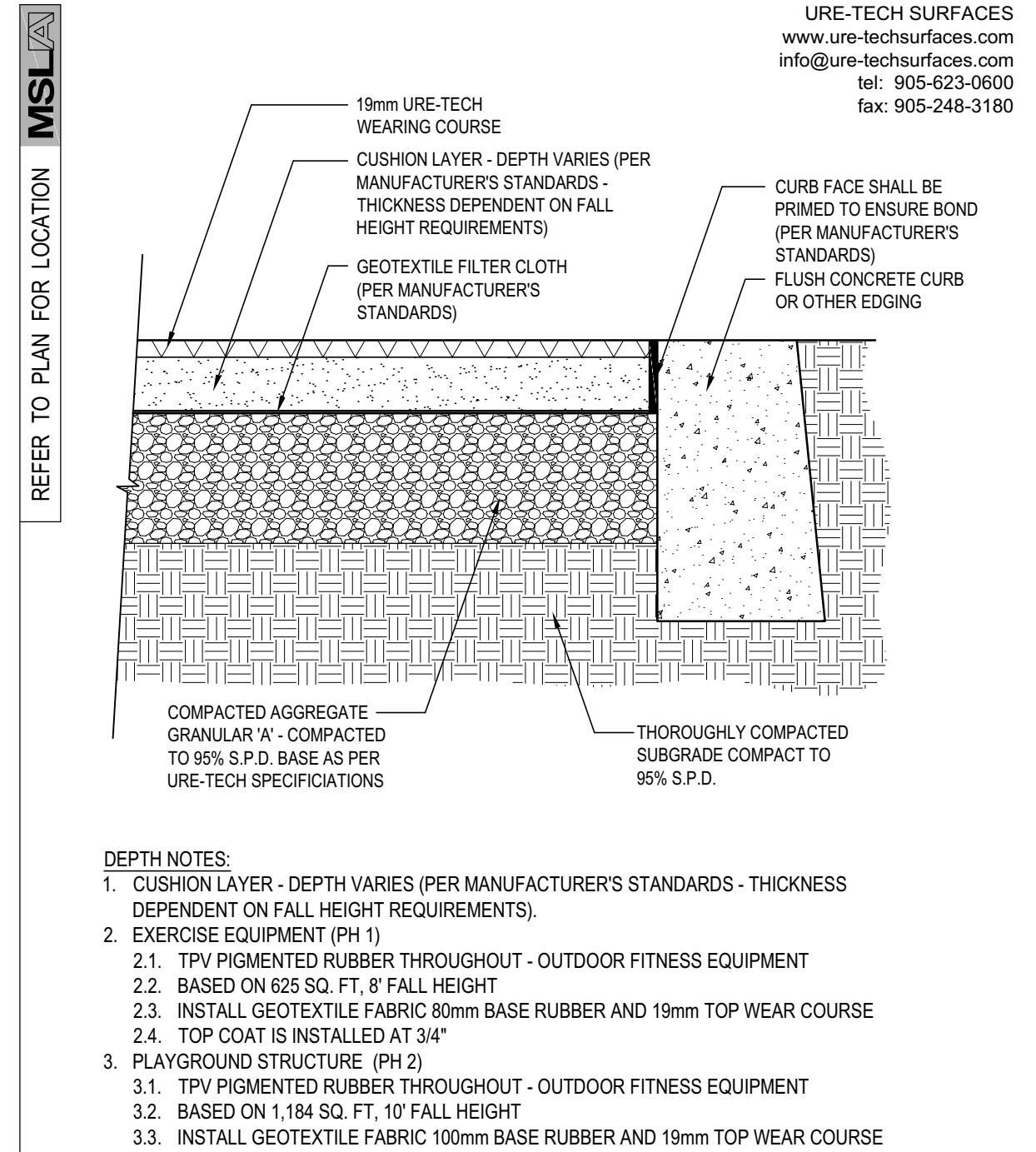
ORNAMENTAL METAL FENCE DETAIL - ALUMINUM
 SCALE: N.T.S. DATE: LD-01



ICONIC BENCH BY MAGLIN: MODEL MBE-2300-00015
 SCALE: N.T.S. DATE: LD-01



LIGHT DUTY (PEDESTRIAN) 100mm CONCRETE PAVING DETAIL TYP.
 SCALE: N.T.S. DATE: LD-01



POURED-IN-PLACE RUBBER SAFETY SURFACING
 SCALE: N.T.S. DATE: LD-01

msla
 MARTON SMITH LANDSCAPE ARCHITECTS
 170 The Donway W Suite 206
 Toronto, Ontario, Canada, M3C 2G3
 tel. 416.492.9966 | email. info@msla.ca

Municipality:
MARKHAM

Notes:

02 Issued for Resubmission 10/03/23
 01 Issued for Review 07/06/23

No. Revision Date

North: Stamp:

Project:
Proposed Daycare
 10 -20 Fincham Ave
 Markham, Ontario

Scale: **As Shown** Date: **August 2018**
 Drawn By: **S.P.** Checked By: **L.M.**

Drawing Title:
Landscape Details

Project No. Sheet No.
18185 L200

An information contained in these plans shall be checked by the contractor. All discrepancies shall be reported to the Landscape Architect (L.A.) before commencing work. All drawings have copyright and shall remain the property of the Landscape Architect. Copying or any reproduction in part or whole that only be permitted with written consent of L.A. Drawings shall not be used for construction unless sealed & SIGNED. NOTE FOR ANY AND ALL GRADING INFORMATION REFER TO SITE GRADING ENGINEERING DRAWINGS. NO SLOPES ARE TO EXCEED 3:1 + PROPERTY LINES AND SETBACKS MUST BE CONFORMED BY CONTRACTOR PRIOR TO CONSTRUCTION + ANY AND ALL RETAINING WALLS MUST BE APPROVED BY STRUCTURAL ENGINEER PRIOR TO CONSTRUCTION. DO NOT SCALE DRAWINGS + PRELIMINARY NOT FOR CONSTRUCTION UNTIL COUNTERSIGNED BY L.A. ARCHITECT. SIGNED DATE