

The Britannia Caveat

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Contact **Britannia Caveat Sub-committee (BCSC)**: britanniacaveat@elboyabritannia.com

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The City of Calgary was the original planner and developer of the Community of Britannia¹. As residents of Britannia attest, the plan for the community was very well thought out, allowing for wide streets, underground services, back lanes, no through streets, mixed housing densities and commercial sites. The plan followed the natural curve formed by the Elbow River Escarpment and accommodated a variety of lots; some with superb views and all with an abundance of green space.

The character of Britannia has been defined and preserved by the Britannia Caveat (Caveat) registered by the City on most properties in Britannia at the time of subdivision in 1954.

Unfortunately, until the mid 1990's, some lot owners that were subject to the Caveat were able to obtain Judge's Orders that modified the Caveat's terms, without providing notice to more than their immediate neighbours, if at all. It appears that this was done to make existing nonconforming structures "Caveat compliant" for resale purposes. That modifying practice has fallen into disfavor at the Court of Queen's Bench, as we are advised by our counsel. The BCSC does not request that existing noncompliant structures be made Caveat compliant – what's up is up. We do not, however, allow an existing nonconforming structure to be replaced with another nonconforming structure. All new construction must be Caveat compliant. It is the general policy of the BCSC that when a building comes down the Caveat modification ceases to be relevant and that the original Caveat should be enforced.

The City of Calgary recognized the significance of the Caveat in its **Historic Resource Evaluation Form – Statement of Significance for Britannia Community**, completed in 2010. The Caveat contributes to the "residential streetscapes... notable for the aesthetics of their wide treed lots..." The Caveat was placed "to preserve the appearance of the front yards and appropriate scale of the homes" and is an "example of progressive planning" for our community that contributes to its status as a "City Wide Historic Resource", significant for its urban "Design Value". The integrity of the community as a historic resource is because it is identified as a "planned neighbourhood unit suburb which has all its original elements in their original layout and orientation...". The Caveat is one such original element "which specifies front and side setbacks and scale of homes, and restricts outbuildings while permitting diverse architectural styles." This document classifies the community of Britannia as a "City Wide Historic Resource."

The City of Calgary no longer has any legal status vis a vis the Caveat and will not enforce it. Indeed, the City may approve a proposed development that complies with the Land Use Bylaw even if it does not comply with the Caveat. Each property owner affected by the Caveat has both the benefit and the burden of the Caveat and each of us is responsible to ensure the Caveat is complied with.

The BCSC continues to actively, and rigorously, enforce all aspects of the Caveat. If you are planning to renovate or rebuild (any project requiring a Building Permit) we suggest you forward a copy of your preliminary site and building plans to the BCSC BEFORE your plans are submitted to the City for permits. This will speed up the City approval process and save you time and money. It is necessary to have approval from both the BCSC and the City before you can proceed with construction.

¹ Britannia's boundaries are inclusive of the north side of 50th Avenue SW, the east side of Elbow Drive SW and the Elbow River/Britannia escarpment to the west and north. Britannia operated its own community association from the time of its development in the mid 1950s to November 2017, when Britannia and Elboya Heights Community Associations merged. The Britannia Caveat Sub-Committee reports to the Planning and Development Committee of the Elboya Heights-Britannia Community Association.

The Caveat:

- ✓ specifies minimum front and side set back allowances which are larger than the current City of Calgary Land Use Bylaw requirements
- ✓ lays out minimum home sizes; the maximum being the size of the building envelope as defined by the setback requirement and the City of Calgary's Land Use Bylaw requirement for maximum percent utilization of the lot
- ✓ specifies building height restrictions on perimeter lots (for example, requiring single storey construction along the ridge)
- ✓ allows for only one private attached or detached garage per lot that conforms to the style and finishing of the home
- ✓ prevents subdivision by allowing only one single family dwelling house per lot
- ✓ prevents secondary suites by allowing only one single family dwelling house per lot
- ✓ limits use to "private residential" (no business or trade)

The Caveat does not address exterior architectural elements such as style, materials, colour, fencing, driveways, patios, landscaping and so forth.

Value of the Caveat:

If we, as a community, do not enforce the Caveat it may be unenforceable on future development applications. In short we would, in all likelihood, lose our large side yards and front yards on future developments in Britannia. These setbacks provide landscape buffers that complement the unique, architectural diversity in our community and allow residents a higher degree of privacy than offered in many other communities. Loss of the Caveat may also open the door for subdivision and higher density redevelopment of lots in Britannia within the current R-C1 land use.

Interpretation:

Unless otherwise specified in the Caveat, the BCSC relies on the wording of the City of Calgary Land Use Bylaw (LUB) that applies to R-C1 low density residential districts when reviewing plans for Caveat compliance. The BCSC takes the position that a defining characteristic of our neighbourhood is the abundant green space around and between our homes. The Caveat is the document that allows us to maintain these abundant green spaces. The BCSC also takes the position that by purchasing a property in our community the landowner is agreeing to abide by the terms of the Caveat.

LUB definitions, methods of calculation (e.g. parcel/lot width) and rules (e.g. relating to projections into set back areas) that are in effect at the time that the BCSC conducts its review and approves the project will generally apply. These City definitions, methods and calculations are subject to change. We apply LUB projection restrictions on our setbacks – this includes (but is not limited to) – window wells, overhangs (eaves) and one side setback area clear of all encumbrances. The BCSC considers the front yard and side yard setback requirements paramount to maintaining the character of our community. The Caveat clearly applies greater restrictions in these areas, than those found in the LUB. These restrictions are fundamental to retaining the character of our community and are non-negotiable.

Regarding the measurements specified in the Caveat document, the BCSC requires rounding to 2 decimal places when converting from Imperial to Metric (e.g. 25 feet becomes 7.62 meters, 18 feet becomes 5.49 meters, 5 feet becomes 1.52 meters, etc.).

Enforcement:

Because the City of Calgary has long since concluded its role as developer of the community, it will not enforce the Britannia Caveat. Each property owner in Britannia is subject to the Caveat and also responsible for its enforcement. Volunteer members who sit on the BCSC attempt to ensure that all development within Britannia continues to be in accordance with the Caveat. However, each property owner affected by a proposed development should satisfy themselves that the proposed development complies with the Caveat. Neither the BCSC nor the Elboya Heights-Britannia Community Association nor its officers, directors, volunteers or members accepts any legal responsibility for enforcing the Caveat and their role is advisory only.

In 1995, a home owner in Britannia was granted a development permit from the City of Calgary that allowed an extension of his home which did not comply with the side yard requirements set out in the Caveat. An application was made to the Alberta Court of Queen's Bench by community residents to prevent the development from proceeding. The plaintiffs were successful in obtaining a permanent injunction prohibiting the development from proceeding. When deciding in favour of the community, Madam Justice Rawlins of the Court of Queen's Bench clearly indicated that the Caveat constituted a valid restrictive covenant which was enforceable by other community members. She further found that there was no conflict between the City's land use bylaws and the Caveat given that the City bylaws only set permissible, not obligatory, development standards. Thus, even though the City bylaws may permit certain building schemes, the Caveat may not, and it is this Caveat that must be complied with when building in Britannia. Justice Rawlins also indicated that if the Caveat was to be maintained it would have to be diligently enforced to ensure compliance, which the BCSC takes great effort to do.

To that end, the BCSC has established a Caveat Preservation Fund through the collection of money from community residents. The fund is considered sufficient to defend a breach of the Caveat in a court of law if necessary.

Volunteer members of the BCSC:

- ✓ Provide information about the Caveat and advice at the early stages of planning as to what is required to comply with the Caveat. A preliminary review of the plans may be performed if requested by the home owner or designer/architect
- ✓ Review plans when the BCSC is notified of the application by the City, and ideally before the development permit is approved
- ✓ Communicate with the homeowner or designers/architects if the plans as reviewed do not comply
- ✓ File appeals with the City of Calgary's Subdivision and Development Appeal Board
- ✓ Coordinate individual homeowners within Britannia to act as plaintiffs to defend the Caveat, should a breach occur or be imminent.

It must be emphasized that in the vast majority of cases, any plans in breach of the Caveat have been adjusted to comply with the Caveat without the requirement of legal action.

Britannia Caveat Approval Process

If you are planning to build a new home, or are renovating such that the exterior would be altered beyond new cladding, roofing or window/door installation, you should first research the Caveat as it is registered on your own property title and then submit your preliminary plans to the BCSC before proceeding with any permit applications to the City of Calgary. This includes Discretionary Development Permits for a Single Detached Dwellings, Permitted Use Development Permits for a Contextual Single Detached Dwellings, or any Building Permits, including those for garages and storage buildings.

In addition to the City of Calgary permit application requirements, the BCSC requires a copy of the plans with the Caveat setbacks properly drawn in to define the allowable building footprint. If you are unsure where to place these lines, please contact the BCSC. This site plan should include all proposed projections into the setback areas, including decks, as well as height if it is a perimeter lot. The BCSC requires notification of any amendments or modifications to the site plan and that a copy of the final plans, as approved by the City of Calgary, be submitted to the BCSC or that a statement be provided in writing attesting that the plans as submitted for review are the final plans. Plans are accepted in electronic or paper form. Plans submitted to the BCSC may be shared with other members of the community, if requested.

Note that if pre-existing, non-compliant houses, garages or accessory buildings are demolished to permit new construction, the newly constructed building(s) must satisfy the provisions of the Caveat or the BCSC will not support the proposed redevelopment and will be taking steps to enforce the Caveat. This means that non-compliant, existing foundation cannot be reused. This policy is consistent with non-conforming use provisions in the Municipal Government Act, Section 643.

If the plans comply with the Caveat, a compliance letter stating that the BCSC has no objections to the specified development plans will be issued. The compliance letter will be deemed to be withdrawn if the plans are subsequently modified or the building does not conform to the approved plans. The compliance letter is not a legal document. The final responsibility for compliance falls to the property owner: all residents of Britannia share responsibility for enforcement.

The BCSC also strongly advises that residents planning to build or renovate discuss their plans with their immediate neighbours and obtain signatures of support. If the BCSC receives an enquiry from a neighbor about a proposed development that does not relate to Caveat enforcement, that enquiry will be referred to the applicant. Neighbours may argue that the proposed development is out of context for their street on a variety of grounds. They have the right to object to the development and file an appeal with the Calgary Subdivision and Development Appeal Board.

It is the individual responsibility of residents to protect their specific property from adjacent encroaching redevelopment or tree removal that could result in loss of privacy and shading. The BCSC does not address these concerns. We encourage neighborly dialogue and compromise to resolve these issues. A call to the City at 311 can help you determine the City's Infill Guidelines that apply and what approvals may be necessary for the neighbouring project. The BCSC encourages the retention and protection of trees on private land. This includes minimizing the use of hard surfaces such as wide driveways, retaining walls, patios and other forms of hard landscaping. Note that only trees located on the City boulevard allowance are protected from damage or removal by City bylaw. Britannia is a desirable neighbourhood because the Caveat has been maintained; new residents should be aware that the Caveat exists because it is registered on their title. Designers and architects have a responsibility to prepare plans that comply with the Caveat as well as the City of Calgary Land Use By-law. Realtors, real estate lawyers, property management firms, rental management firms and indeed any real estate property professionals have a professional duty to inform potential residents of Britannia of the existence of the Caveat before their clients make legal and binding documents with respect to this community. Homeowners have a responsibility to ensure that Caveat restrictions are adhered to should they enter into lease agreements for their properties.

Links:

Go to www.calgary.ca and follow the links through "Building, Planning and Business" for information on the permit process, infills and the Land Use Bylaw.

To view the ***Calgary Historic Resource Evaluation Form*** for Britannia, see the "Britannia Statement of Historical Significance" on our web site, www.elboybritannia.com.

See the Parks department brochure: [Tree Protection Plan During Development](#).

The following four pages represent a scanned image of an example of the Britannia Caveat. This document is provided for information purposes only. This document is not warranted by the Britannia Caveat Sub-committee of the Elboya Heights-Britannia Community Association, or its directors, to be a true copy. The Britannia Caveat Sub-committee advises that homeowners search their individual property titles and request any documents related to items registered on their title if required for legal matters.

January 7, 2018

97 S 158
97 Y 167
97 Y 166
97 A 83

CAVEAT

FORBIDDING REGISTRATION

To the Registrar of the SOUTH ALBERTA Land Registration District

Take Notice that ~~X~~ THE CITY OF CALGARY

~~XXXXXX~~

in the Province of Alberta

claims an interest by virtue of a building scheme in the lands set forth in the said building scheme attached hereto.

See City Corp. 13 Oct 1954

Such lands are standing in the register in the names of JAMES C. MILLARD as to Lot 5 in Block 13, Plan 2023 G.T.; ROSETTA MARSHALL as to Lot 13 in Block 13, Plan 2023 G.T.; EDWARD THOMAS MARSHALL as to Lot 1 in Block 17, Plan 2023 G.T.; JAMES A. SCOTT and ANITA JANE SCOTT as to Lot 18 in Block 17, Plan 2023 G.T.; RUDOLF MASOTS as to Lot 13 in Block 19, Plan 2023 G.T.; JAMES L. TAIT as to Lot 2 in Block 20, Plan 2023 G.T.; JOHN ARCHIBALD ARMSTRONG and JUNE ARMSTRONG as to Lot 9 in Block 7, Plan 3700 G.O.; and in the name of THE CITY OF CALGARY as to the remaining Lots set out in the said Scheme, EXCEPTING thereout from all such lands all mines and minerals,

It forbids the registration of any person as transferee or owner of, or of any instrument affecting the said estate or interest unless such instrument be expressed to be subject to ~~my~~ ^{its} claim.

It appoints the Office of the City Solicitor, City Hall, Calgary, Alberta, as the place at

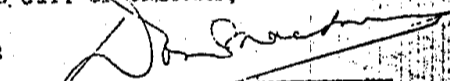
which notice and proceedings relating hereto may be served.

DATED this 12th day of October, A.D. 1954

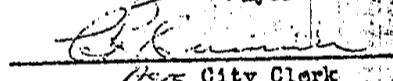
Witness

THE CITY OF CALGARY,

By:



Mayor



City Clerk

I make oath and say as follows:

- (1) I am the within named
- (2) I believe

ha a good and valid claim upon the said land and I say that this Caveat is not being filed for the purpose of delaying or embarrassing any person interested in or proposing to deal therewith

SWORN at

in the Province of Alberta

this day of A.D. 19

Before me,

A Commissioner for Oaths in and for the Province of Alberta.

BUILDING SCHEME FOR BRITANNIA SUBDIVISION

(PERIMETER LOTS)

The CITY OF CALGARY claims an interest in the hereinafter mentioned land by virtue of a building scheme which shall apply to all building lots for which a building permit is issued after August 21st, 1954, for construction of a dwelling or auxiliary buildings on the building lots in the hereinafter mentioned Plans, as follows:

1. The lots hereinafter set out in the Schedule shall be deemed to be a building scheme and the land use and building restrictions and conditions herein shall be deemed to be covenants running with the land and shall be binding on and enure to the benefit of all lots and owners of lots in the said Plans of subdivision or in such subsequent plans of subdivision of the same area as may be hereafter filed, and such land use and building restrictions and conditions may be enforced by the owner of any such lot.
2. Only one single family dwelling house and private garage attached or unattached to such dwelling house, may be erected on each lot as listed in the attached Schedule. Such private garage shall in either case conform in style and exterior finish to the dwelling house on the same lot. This regulation shall however not be so interpreted as to prohibit a single family dwelling house from being erected on any two lots listed in the attached schedule or upon any re-subdivided lots but in no case shall any re-subdivision be permitted which would reduce the frontage or area of any lot.
3. On the following lots each single family dwelling house shall occupy a ground area of at least 1,400 sq. ft. and shall be of single storey construction only and shall not exceed a height of 18 ft. measured above the average elevation of the four corners of the lot as they exist at the time of original sale by the City. The dimensions of any attached or unattached garage, porch, verandah, sun room or other appurtenant structure shall be excluded in computing such ground area.
4. Each building on any of the listed lots shall be set back from the front property line a distance of not less than 25 ft. and side yards shall be at least 10% of the width of the lot. (In extraordinary circumstances a minimum sideyard of 5' may be allowed.) Measurements shall be made in the same manner as similar measurements are made pursuant to the Building By-law of the City of Calgary.
5. No lot in the Scheme or any building erected thereon shall be used for any trade or business or otherwise than for private residential purposes.
6. If any dispute or difference arises over the interpretation of the restrictions and conditions numbered 3 and 4 herein, such dispute or difference shall be referred to the City Engineer of the City of Calgary whose decision shall be final.
7. Failure to enforce any land use or building restriction or condition herein shall not constitute a waiver of such restriction or condition and any restriction or condition herein may be enforced as soon as a breach of such restriction or condition occurs.
8. SCHEDULE
The lands in the said scheme being:-

<u>LOTS</u>	<u>BLOCK</u>	<u>PLAN</u>
5	2	3700-G.O.
8 and 9	3	3700-G.O.
1 to 8 inclusive	7	3700-G.O.
1 to 11 inclusive	8	3700-G.O.
1 to 9 inclusive	11	3700-G.O.
1 to 9 inclusive	12	2023-G.T.

BUILDING SCHEME FOR BRITANNIA SUBDIVISION

(INSIDE PLAN)

The CITY OF CALGARY claims an interest in the hereinafter mentioned land by virtue of a building scheme which shall apply to all building lots for which a building permit is issued after August 21st, 1954, for construction of a dwelling or auxiliary buildings on the building lots in the hereinafter mentioned Plans, as follows:

1. The lots hereinafter set out in the Schedule shall be deemed to be a building scheme and the land use and building restrictions and conditions herein shall be deemed to be covenants running with the land and shall be binding on and enure to the benefit of all lots and owners of lots in the said Plans of Subdivision or in such subsequent plans of subdivision of the same area as may be hereafter filed, and such land use and building restrictions and conditions may be enforced by the owner of any such lot.
2. Only one single family dwelling house and a private garage attached or unattached to such dwelling house may be erected on each lot as listed in the attached Schedule. Such private garage shall in either case conform in style and exterior finish to the dwelling house on the same lot. This regulation shall however not be so interpreted as to prohibit a single family dwelling house from being erected on any two lots listed in the attached schedule or upon any re-subdivided lots but in no case shall any re-subdivision be permitted which would reduce the frontage or area of any lot.
3. Each such dwelling house shall occupy a ground area of at least:
 - (a) 1,200 square feet when of single storey construction.
 - (b) 1,000 square feet when of one and one-half storey construction.
 - (c) 850 square feet when of two-storey construction.The dimensions of any attached or unattached garage, porch, verandah, sun-room or other appurtenant structure shall be excluded in computing such ground area.
4. Each building on any of the listed lots shall be set back from the front property line a distance of not less than 25 ft. and side yards shall be at least 10% of the width of the lot. (In extraordinary circumstances a minimum sideyard of 5' may be allowed.) Measurements shall be made in the same manner as similar measurements are made pursuant to the Building By-law of the City of Calgary.
5. No lot in the Scheme or any building erected thereon shall be used for any trade or business or otherwise than for private residential purposes.
6. If any dispute or difference arises over the interpretation of the restrictions and conditions numbered 3 and 4 herein, such dispute or difference shall be referred to the City Engineer of the City of Calgary whose decision shall be final.
7. Failure to enforce any land use or building restriction or condition herein shall not constitute a waiver of such restriction or condition and any restriction or condition herein may be enforced as soon as a breach of such restriction or condition occurs.
8. SCHEDULE
The lands in the said scheme being:-

<u>LOTS</u>	<u>BLOCK</u>	<u>PLAN</u>
2, 3, and 4	2	3700-G.O.
5, 6, and 7 & 10 to 13 inclusive	3	3700-G.O.
9 to 16 inclusive	7	3700-G.O.
12 to 24 inclusive	8	3700-G.O.
1 to 24 inclusive	9	3700-G.O.
1 to 11 inclusive & 13 to 25 inclusive	13	2023-G.T.
1 to 21 inclusive	14	2023-G.T.
1 to 14 inclusive	15	2023-G.T.
1 to 20 inclusive	16	2023-G.T.
1 to 15 inclusive	17	2023-G.T.
1 to 14 inclusive	18	2023-G.T.
5 to 23 inclusive	19	2023-G.T.
1 to 8 inclusive	20	2023-G.T.

CANADA:
PROVINCE OF ALBERTA

J. (John D. ...)
of the City of Calgary
in the Province of Alberta,

TO WIT: Here City Clerk make oath and say:

- (1) That I am the agent for the above named Caveator.
- (2) That I believe that the said Caveator has a good and valid claim upon the said lands and I say that this Caveat is not being filed for the purpose of delaying or embarrassing any person interested in or proposing to deal therewith.

SWORN at the City of Calgary
in the Province of Alberta
this 12th day of October, A.D. 1914

[Signature]

Before me,

[Signature: Royal ...]

A Commissioner for Oaths in and for the Province of Alberta.

4243 G.S.

A.D. 1914

Dated

RE

BRITANNIA SUBDIVISION

KEEP ON FILE
ORIGINAL DOCUMENT
DAMAGED.

[Handwritten: 74 S. 1st Yorks]

Caveat

FORBIDDING REGISTRATION

F. E. Osborne Limited, Law and Office Stationer, Calgary, Alta. NO-2-53.

I certify that the within instrument is duly entered and registered in the Land Titles Office for the Province of Alberta Land Titles District of Calgary in the Province of Alberta, at *3:42* o'clock *PM* on the *12* day of *Oct* A.D. 1914 as number *4243 G.S.* held *125*

[Handwritten: 10 ...]

E. H. BRIDGEMAN
CITY SO
CITY