



**Committee of the Whole Report
For the Meeting of December 12, 2024**

To: Committee of the Whole **Date:** November 28, 2024

From: Karen Hoese, Director, Planning and Development

Subject: **Rezoning Application No. 00784 and Development Permit with Variances Application No. 00174 for 1132 and 1134 Empress Avenue**

RECOMMENDATION

Rezoning Application

1. That Council instruct the Director of Planning and Development to prepare the necessary Zoning Regulation Bylaw Amendment that would authorize the proposed development outlined in the staff report dated November 28, 2024, for 1132 and 1134 Empress Street.
2. That, after publication of notification in accordance with section 467 of the *Local Government Act*, first, second, and third reading of the Zoning Regulation Bylaw amendment be considered by Council once the following conditions have been met:
 - a. Revised plans showing the long-term bicycle parking stall as being located 0.45m away from the wall.
 - b. Consider revising plans and elevations showing the design and placement of exterior lighting that aligns with the guidance provided in the *General Urban Design Guidelines (2022)*.
 - c. Preparation of a Heritage Designation Bylaw to designate the exterior of the building at 1132 and 1134 Empress Street, as described in the Statement of Significance in Attachment E, pursuant to Section 611 of the *Local Government Act*, to the satisfaction of the Director of Planning and Development, and that the introductory readings of the Heritage Designation Bylaw be considered by Council concurrently with the *Zoning Regulation Bylaw* amendment.
3. That following third reading of the Zoning Regulation Bylaw amendment, the applicant prepares and execute legal agreements, with contents satisfactory to the Director of Planning and Development and the Director of Engineering and Public Works, and form satisfactory to the City Solicitor prior to adoption of the bylaw for the following:

- a. To secure the five new residential dwelling units as rentals in perpetuity and restrict strata titling of the property.
 - b. Provision of sustainability features, including:
 - i. Building design to meet Step 4 of the BC Energy Step Code.
 - ii. Rough-in electrical conduit to roof for future solar panels.
 - c. Provisions of transportation demand measures including:
 - i. One car share membership per dwelling unit. Each membership comes with a \$100 usage credit.
 - ii. Electrical outlets for all long-term bike parking stalls.
 - d. A 3.38m wide statutory right of way (SRW) along Bay Street for highway purposes.
4. That adoption of the Zoning Regulation Bylaw amendment will not take place until:
- a. All the required legal agreements that are registrable in the Land Title Office have been so registered to the satisfaction of the City Solicitor.
 - b. After third reading of the associated Heritage Designation Bylaw noted in 2.c.
5. That the above recommendations be adopted on the condition that they create no legal rights for the applicant or any other person, or obligation on the part of the City or its officials, and any expenditure of funds is at the risk of the person making the expenditure.

DEVELOPMENT PERMIT WITH VARIANCES APPLICATION

That Council, after giving notice, consider the following motion:

1. That subject to the adoption of the necessary Zoning Regulation Bylaw amendment, Council authorizes the issuance of Development Permit with Variances No. 00174 for 1132 and 1134 Empress Street in accordance with revised plans submitted to the Planning and Development department subject to:
 - a. Proposed development meeting all City Zoning Regulation Bylaw requirements, except for the following variances:
 - i. increase the maximum eave projection into the setbacks from 0.75m to 1.00m.
 - ii. reduce the front yard setback fronting Empress Street from 4.0m to 3.0m.
 - iii. reduce the side yard (east) setback from 2.0m to 1.53m for the trellis, and 1.08m for the existing duplex stairs.
 - iv. reduce the side yard (west) setback from 5.0m to 2.7m for the existing duplex, 2.26m for the new three-storey structure, and 2.04m for the trellis.
 - v. reduce the required number of accessible parking spaces from one to zero.
 - vi. reduce the required long-term bike parking stalls from ten to six.

2. That the Development Permit with Variances, if issued, lapses two years from the date of this resolution.

LEGISLATIVE AUTHORITY

This report discusses a Rezoning Application, a concurrent Development Permit with Variance (DPV) Application and a Heritage Designation application.

Relevant rezoning considerations include allowing for multiple dwellings as a permitted use, and increasing the maximum allowable Floor Space Ratio (FSR) from 0.5:1 to 0.77:1

The relevant Development Permit considerations relate to the application's consistency with design guidelines and the impact of variances.

The application to heritage designate considers bylaw protection to the exterior of the historic Arts and Craft Bungalow, at 1132 Empress Avenue.

Enabling Legislation

In accordance with Section 479 of the *Local Government Act*, Council may regulate within a zone the use of land, buildings and other structures, the density of the use of the land, building and other structures, the siting, size and dimensions of buildings and other structures as well as the uses that are permitted on the land and the location of uses on the land and within buildings and other structures.

In accordance with Section 483 of the *Local Government Act*, Council may enter into a Housing Agreement which may include terms agreed to by the owner regarding the occupancy of the housing units and provided such agreement does not vary the use of the density of the land from that permitted under the zoning bylaw.

In accordance with Section 489 of the *Local Government Act*, Council may issue a Development Permit in accordance with the applicable guidelines specified in the *Community Plan*. A Development Permit may vary or supplement the Zoning Regulation Bylaw but may not vary the use or density of the land from that specified in the Bylaw.

Pursuant to Section 491 of the *Local Government Act*, where the purpose of the designation is the establishment of objectives for the form and character of intensive residential development, a Development Permit may include requirements respecting the character of the development including landscaping, and the siting, form, exterior design and finish of buildings and other structures.

In accordance with Section 611 of the *Local Government Act*, Council may designate real property, in whole or in part, as protected property.

EXECUTIVE SUMMARY

The purpose of this report is to present Council with information, analysis and recommendations for a Rezoning Application, Development Permit with Variance Application and Heritage Designation Application for the property located at 1132 and 1134 Empress Avenue. The proposal is to rezone

from the R-2 Zone, Two Family Dwelling District, to a new zone to change the use to multiple dwellings and increase the density to 0.77:1 floor space ratio (FSR) to allow for a new three-unit rental building, connected to the existing duplex by a deck, while retaining and designating the existing heritage residence. The concurrent Development Permit with Variance Application pertains to the proposed form, character, exterior design, finishes and landscaping and variances related to projections, setbacks, parking and roof decks. The Heritage Designation would protect the exterior of the existing heritage home located at 1132 and 1134 Empress Avenue.

The following points were considered in assessing the Rezoning Application:

- This property is designated as Urban Residential in the *Official Community Plan, 2012* (OCP), which envisions residential uses, including low- and mid-rise multi-unit buildings with heights ranging from three to six-storeys, and a base density of up to approximately 1.2:1 FSR. The proposed density (0.77:1 FSR) and height (three storeys) are at the lower end of the density and height described in the Urban Residential Urban Place Designation.
- In addition to increasing the City's rental stock, the proposal is consistent with the *Fernwood Neighborhood Plan* housing policies for the Bay Street corridor, which support new multi-family housing on Bay Street. The proposal also upholds the plan's "Heritage Retention and Reuse" policy which encourages the reuse and retention of heritage registered buildings as part of rezonings that add density.
- A statutory right of way (SRW) of 3.38m along Bay Street is proposed with this application. It is recommended that this SRW be secured by a legal agreement as a condition of rezoning to help achieve Official Community Plan objectives such as enhanced facilities for walking, cycling, public transit and boulevards which support the long-term viability of large canopy trees.

The following points were considered in assessing the Development Permit with Variance:

- The site lies within the Development Permit Area (DPA) 16A – General Urban Design. The proposal aligns with the objectives of DPA 16A by creating a multi-unit residential development that transitions sensitively to adjacent low-density areas. Preserving the existing duplex through a heritage designation enhances the area's heritage character while supporting the DPA's sustainability goals to reduce greenhouse gas emissions associated with construction of new buildings.
- Since the site has dual frontage on both Empress Street and Bay Street, the design incorporates an outdoor deck between the buildings to provide a shared open space to the residents while also maintaining appropriate street frontages on both roads.

The following points were considered in assessing the application to heritage designate the existing residence:

- The entirety of the existing house is being retained and will remain unaltered.
- The Heritage Advisory Panel reviewed and recommended approval of the designation.
- The proposal meets many heritage retention and sensitive infill development goals and objectives.

BACKGROUND

Description of Proposal

This proposal is to rezone the property to increase the density and allow for a new three-unit rental building facing Bay Street, connected to the existing duplex by a deck, resulting in a total of five rental units on the site.

Although the density, use and building typologies resemble a Heritage Conserving Infill application, Missing Middle zoning is not applicable on this site because the Urban Place Designation is not Traditional Residential. As a result, a Rezoning along with a Development Permit with Variances (DPV) is required.

It is recommended that a site-specific zone, based on the relevant sections of Schedule P – Missing Middle Regulations, be drafted. However, in several instances, variances are recommended (instead of inclusion in the new zone), to ensure that if this proposal is not built, that review and consideration would be required again should a different proposal be advanced in the future.

The following differences from Schedule P – Missing Middle Regulations are being proposed and would be accommodated in the new zone:

- increase the maximum floor space ratio from 0.5:1 to 0.77:1
- increase the maximum allowable height from 7.6m to 8.95m
- remove the maximum combined floor space area requirement.

The associated Development Permit has the following variances:

- increase the maximum eave projection into the setbacks from 0.75m to 1.00m.
- reduce the front yard setback fronting Empress Street from 4.0m to 3.0m.
- reduce the side yard (east) setback from 2.0m to 1.53m for the trellis, and 1.08m for the existing duplex stairs.
- reduce the side yard (west) setback from 5.0m to 2.7m for the existing duplex, 2.26m for the new three-storey structure, and 2.04m for the trellis.
- reduce the required number of accessible parking spaces from one to zero.
- reduce the required long-term bike parking stalls from ten to six.

Land Use Context and Existing Site Development Potential

The area is characterized by single-family dwellings, duplexes, and apartment buildings. The site context is shown in Figure 1. The site is bookended by Bay Street to the north and Empress Avenue to the south. It has single-family houses with basement suites to the east and west.

There is currently a duplex on site with two rental units that is proposed to be retained and designated as a heritage building.

Under the current R-2 Zone – Two Family Dwelling District, the property could be developed as a two-family dwelling or as a single-family dwelling with accessory uses.



Figure 1. Site Area

Description of the Historic Place

The existing property located at 1132 and 1134 Empress Avenue is a modest 1.5-storey plus basement American Craftsman Style Bangalow built in 1913. The exterior façade of 1132 Empress has maintained much of its original appearance. The full-width verandah, gabled, low-pitched roof and exposed structural elements, such as eaves, brackets and porch roof beams are classic features of the style, while the remaining original wood frame and wood cladding add to the building character. See the Statement of Significance (Attachment E) for more details and a full list of character-defining elements.

Community Consultation

Consistent with the *Community Association Land Use Committee (CALUC) Procedures for Processing Rezoning and Variance Applications*, on Feb 19, 2021, prior to submission of the application, it was posted on the Development Tracker along with an invitation to complete a comment form. Mailed notification was sent to owners and occupiers of property within 100m of the subject property advising that a consultation process was taking place, and that information could be obtained and feedback provided through the Development Tracker.

A sign was also posted on site to notify those passing by of this consultative phase. As per the City guidelines at the time, instead of a Land Use Committee meeting, feedback was gathered through

an online form. As part of the “Preliminary Consultation Phase”, the applicant also attended a CALUC meeting on December 3, 2020. A letter dated March 23, 2021, from the Fernwood Neighbourhood association along with the comment forms are attached to this report.

In response to the consultation the applicant has made the following changes:

- Centered the new three-unit building on the lot and decreased its height to 8.95m from 9.37m to address the privacy concerns and improve alignment with the neighborhood’s architectural character.
- The design of the sun deck was improved to provide a wooden screen with planters to allow more privacy to the neighbors.
- Windows on the western façade were offset from the windows of the property to the west to increase privacy and reduce overlook.

Section 464(3) of the *Local Government Act* prohibits a local government from holding a public hearing for a rezoning application that is consistent with the OCP and is intended to permit residential development. However, notice must still be sent to all owners and occupiers of adjacent properties prior to introductory readings of the zoning regulation bylaws.

The associated application proposes variances, therefore, in accordance with the City’s *Land Use Procedures Bylaw*, it requires notice, sign posting and a meeting of Council to consider the variances.

As per heritage designation procedure, section 968 (1) states that, *before a heritage designation bylaw is adopted, the local government must hold a public hearing on the proposed bylaw for the purpose of allowing affect parties and the general public to make representation respecting matters contained in the proposed bylaw.*

ANALYSIS

Rezoning Application

Official Community Plan

The Urban Residential designation in the OCP envisions multi-unit residential in a wide range of attached and detached building forms, with heights ranging from three to six-storey buildings and a base FSR of up to approximately 1.2:1. The public realm of this Urban Place Designation is characterized by landscaping and street tree planting.

The proposed three-unit rental building, along with the existing duplex, is consistent with the envisioned use and density and appropriately addresses both street frontages: the lower density heritage designated building and vehicular access (driveway) facing Empress Avenue, and the slightly higher density, three-storey building with transitional landscaping facing Bay Street.

Fernwood Neighborhood Plan

The *Fernwood Neighbourhood Plan* (2022) designates the subject properties as Urban Residential, which supports a mix of low-to mid-rise apartment residential forms at densities of approximately

1.2:1 to 2.0:1 FSR. The proposal is consistent with the land use policies pertaining to use and density within the Plan.

Housing

The application, if approved, would add three new market residential rental dwelling units, which would increase the overall supply of housing in the area and contribute to the targets set out in the *Victoria Housing Strategy*.

Housing Mix

As submitted, this application proposes a one-bedroom and a three-bedroom unit in the existing duplex and three new two-bedroom units in the new building. The applicant has agreed to secure these units as rental in perpetuity through a housing agreement.

Existing Tenants

The duplex currently has existing tenants. The proposal is to retain the duplex building through a heritage designation. Tenants will not be impacted as a result of this development.

Sustainable Mobility

The application proposes five MODO car share memberships – one membership per new residential unit to support multi-modal transportation.

Development Permit with Variance

Official Community Plan: Design Guidelines

The *Official Community Plan (OCP)* identifies this property within Development Permit Area: 16A – General Urban Design. The design guidelines state that open space should be useable, attractive and well integrated with the design for a multi-family residential development.

In the new construction, the ground-floor unit has a private patio facing the east property line, and the second-floor units share a terrace/ sundeck that connects to the duplex and serves as an outdoor amenity space for all the inhabitants. This arrangement of outdoor spaces is in alignment with the site and open space design guidelines.

The design guidelines also specify that new buildings should be designed and oriented to sensitively transition in scale and provide privacy and sun access to adjacent properties. The project meets this guidance by centering the new construction on the lot in addition to implementing other measures to mitigate privacy impacts, such as screening the views from the sundeck with planters. The building has been sited to provide a human-scale street wall, areas for landscaping and stormwater mitigation, and sun and air access for neighboring buildings.

The application does not meet the guidelines around the location and treatment of short-term bike parking, which recommend the parking be provided in a well-lit location and clearly visible from a main building entrance or public road. In the current site design, the short-term bike parking is

tucked into the east side-yard setback and might not be visible to visitors. To improve visibility, the applicant should consider lighting that highlights the short-term bike parking areas. The recommendation includes the appropriate language to have this addressed prior to introductory readings of the bylaws.

Overall, the proposed development aligns with the guidelines for multi-unit residential design for its streetscape, massing, height, architectural features, and outdoor landscaped features.

VariANCES

VariANCES are recommended for areas where the proposal is not consistent with the new proposed zone. This ensures that if this proposal is not built, any future redevelopment would require consideration and approval by the City.

Setbacks and Siting

The applicant is requesting a reduction to the side yard setbacks to position the new construction 2.26m from the west property line and 1.53m (trellis) from the east property line. VariANCES are also proposed for the existing duplex. If the property is demolished due to fire or other damage, the new building constructed in its place would need to either conform to the new zone or seek additional variANCES. The siting and setback variANCES are considered supportable, as the buildings do not cause significant privacy impacts to adjacent properties.

Parking and Bicycle Stall Width

The applicant is requesting a reduction to the required number of accessible parking spaces from one to zero and a decrease in the required number of long-term bike parking stalls from ten to six which are considered supportable variANCES. However, a further variance to decrease the required distance of a long-term bike stall's width from 0.45m to 0.42m is not considered supportable. The minimum requirement and width needed for ease of access to a bike stall is 0.45m; therefore, it is recommended that the applicant update the drawings to show the correct bike parking stall width as per Schedule C, of the *Zoning Regulation Bylaw*.

Projections

The applicant is requesting a variance to increase the maximum allowable eave projection into the setback from 0.75m to 1.00m for the roof facing Bay Street. The eave projection into the setback variance is supportable because it is not close to a property line and hence does not pose a fire safety risk.

Sustainability

As indicated in the applicant's letter dated September 26, 2024, the following sustainability features are associated with this proposal:

- Meeting Step 4 of the BC Energy Step Code.
- Permeable 'grass paver' driveway surfacing.
- Heat pump as primary heating system.

- Rough-in electrical conduit to roof for future solar panels.
- Electrical outlet for electric bike charging encourages a car lite lifestyle.

Tree Preservation Bylaw and Urban Forest Master Plan

The goals of the *Urban Forest Master Plan* include protecting, enhancing, and expanding Victoria’s urban forest and optimizing community benefits from the urban forest in all neighbourhoods. This application was received between October 24, 2019, and July 1, 2021, therefore *Tree Preservation Bylaw No. 05-106* (consolidated on November 22, 2019) applies.

A total of 15 trees have been inventoried. Of these, 12 trees are located on the subject lot, three of which are bylaw protected. There are three existing municipal trees, one along the Empress Avenue frontage and two along the Bay Street frontage.

Three bylaw protected trees on the subject lot will require removal as they are in the building area or immediately adjacent to an area where excavation will occur. Both municipal trees on the Bay Street frontage will require removal to facilitate frontage upgrades. The small municipal tree on the Empress Avenue frontage will be retained following the mitigation measures outlined in the attached arborist report. The applicant is proposing to plant six new trees on the subject lot to meet the requirements of the *Tree Protection Bylaw*. Two new municipal trees are proposed on the Bay Street frontage.

Heritage Designation Application

The original Craftsman style house contributes to the historic character of the Fernwood neighbourhood, an area characterized by its diverse and vibrant community, reflected in the heritage buildings and streetscapes.

The designation of this building is generally consistent with Section 8: “Placemaking (Urban Design and Heritage)” and Section 21: “Neighbourhood Directions” of the *Official Community Plan (2012)*, with the *Fernwood Neighbourhood Plan (2022)* and with the *Victoria Heritage Thematic Framework*. The Statement of Significance supports its designation.

Victoria Heritage Thematic Framework

A key policy of the OCP includes the determination of heritage value using a values-based approach. In this regard, a City-wide thematic framework (OCP Fig. 12) was developed and incorporated into the OCP to identify the key civic historic themes. The *Victoria Heritage Thematic Framework* functions as a means to organize and define historical events, to identify representative historic places, and to place sites, persons and events in an overall context. The thematic framework recognizes a broad range of values under which City-wide themes can be articulated. A Heritage Value assessment with consideration of the *Victoria Heritage Thematic Framework* is incorporated into the Statement of Significance.

Heritage Advisory Panel Review

The application was reviewed by the Heritage Advisory Panel on April 9, 2024. At the meeting, the following motion was passed:

That the Heritage Advisory Panel recommend that Council approve the heritage designation of Application No. 000208 for 1132 Empress Avenue.

CONCLUSIONS

The proposed five-unit rental development aligns with the multi-family residential development and corridor revitalization guidelines, and the requested increase in density aligns with the OCP policies for the Fernwood area and the policies in the *Fernwood Neighbourhood Plan*.

The variances related to setbacks, eave projection, roof deck, accessible parking space and long-term bike parking spaces are supportable. The heritage retention and designation meets many OCP and community objectives. Therefore, it is recommended that Council advance this application.

ALTERNATE MOTION

That Council decline Zoning Regulation Bylaw Amendment Application No. 00784 and Development Permit with Variances Application No. 00174 for 1132/1134 Empress Avenue.

Respectfully submitted,

Aishwarya Pathania
Planner
Development Services Division

Karen Hoese, Director
Planning and Development Department

Report accepted and recommended by the City Manager.

List of Attachments

- Attachment A: Subject Map
- Attachment B: Aerial Map
- Attachment C: Plans date stamped October 24, 2024
- Attachment D: Letter from applicant to Mayor and Council dated September 26, 2024
- Attachment E: 1132 Empress Ave Statement of Significance
- Attachment F: Zoning Data Table
- Attachment G: Community Association Land Use Committee Comments dated March 23, 2021
- Attachment H: Pre-Application Consultation Comments from Online Feedback Form