



## Council Report

For the Meeting of November 22, 2018

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**To:** Council **Date:** November 8, 2018  
**From:** Andrea Hudson, Acting Director, Sustainable Planning and Community Development  
**Subject:** Update Report on Rezoning Application No. 00601 for 1541-1545 Fort Street

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### RECOMMENDATION

That Council give first and second reading to Zoning Regulation Bylaw Amendment (Bylaw No. 18-118).

### EXECUTIVE SUMMARY

The purpose of this report is to present Council with information regarding Rezoning Application No. 00601 for the property located at 1541-1545 Fort Street.

The Committee of the Whole report presented at the June 21, 2018 meeting included the provision of Statutory Right-of-Ways (SRW) of 3.44m off Fort Street and 1.41m off Verrinder Avenue; however, as per the attached letter, the property owner has now indicated he is not willing to provide the SRW at this time.

City policy for these two roadways contemplates a wider road right-of-way in order to meet future transportation-related needs, such as cycling infrastructure. When the road width is insufficient, it is common that a Statutory Right-of-Way (SRW) be provided for projects for redevelopment including rezoning applications. In this case, however, the proposal relates only to the use of the property and there are no plans for new development. Therefore, foregoing the SRW requirement may be warranted in this instance.

The necessary conditions that would authorize the approval of the Rezoning Application for the property located at 1541-1545 Fort Street have, therefore, been fulfilled. The recommendation provided for Council's consideration would be to advance this application to a Public Hearing.

Respectfully submitted,

Handwritten signature of Michael Angrove in blue ink.

Michael Angrove  
Planner  
Development Services

Handwritten signature of Andrea Hudson in blue ink.

Andrea Hudson, Acting Director  
Sustainable Planning and Community  
Development Department

Report accepted and recommended by the City Manager:



Date:

Nov 13, 2018

**List of Attachments:**

- Attachment A: Committee of the Whole Report dated October 19, 2017
- Attachment B: Minutes from the Council Meeting dated November 9, 2017
- Attachment C: Letter from the property owner dated October 5, 2018



## Committee of the Whole Report For the Meeting of November 9, 2017

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**To:** Committee of the Whole **Date:** October 19, 2017

**From:** Jonathan Tinney, Director, Sustainable Planning and Community Development

**Subject:** Rezoning Application No. 00601 for 1541-1545 Fort Street

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### RECOMMENDATION

That Council instruct staff to prepare the necessary Zoning Regulation Bylaw Amendment that would authorize the proposed development outlined in Rezoning Application No. 00601 for 1541-1545 Fort Street, that first and second reading of the Zoning Regulation Bylaw Amendment be considered by Council and a Public Hearing date be set once Staff receive proof of registration at the Land Titles Survey Authority of an executed Statutory Right-of-Way (SRW) of 3.439m on Fort Street and 1.407m on Verrinder Avenue.

### LEGISLATIVE AUTHORITY

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.

### EXECUTIVE SUMMARY

The purpose of this report is to present Council with information, analysis and recommendations for a Rezoning Application for the property located at 1541-1545 Fort Street. The proposal is to rezone from the C1-NM Zone, Neighbourhood (Modified) Shopping District, to a site-specific zone in order to permit the use of storefront cannabis retailer.

The following points were considered in assessing this application:

- the proposal is consistent with the Large Urban Village designation in the *Official Community Plan, 2012*
- the proposal is consistent with the *Rockland Neighbourhood Plan*
- the proposal is consistent with the *Storefront Cannabis Retailer Rezoning Policy*, as there are no schools within 200m or permitted storefront cannabis retailers within 400m.



## **BACKGROUND**

### **Description of Proposal**

This Rezoning Application is to allow for the retail sale of cannabis in an existing building. The property is zoned C1-NM Zone, Neighbourhood (Modified) Shopping District. The following differences from the standard zone are being proposed and would be accommodated in the new zone:

- storefront cannabis retailer would be a permitted use
- only one storefront cannabis retailer would be permitted to operate on the property at a time
- storefront cannabis retailer would be restricted to the ground floor
- storefront cannabis retailer would be restricted to a maximum floor area of 156m<sup>2</sup>, which is in keeping with the size of the existing operation.

All other requirements within the C1-NM Zone, Neighbourhood (Modified) Shopping District, would remain the same.

Staff have requested a Statutory Right-of-Way (SRW) of 3.439m on Fort Street and 1.407m on Verrinder Avenue to meet future transportation-related needs. If this Application is moved forward to Public Hearing, Staff recommend for Council's consideration that the SRW be made a condition of rezoning.

### **Sustainability Features**

The applicant has not identified any sustainability features associated with this proposal.

### **Active Transportation Impacts**

The applicant has not identified any active transportation impacts associated with this Application.

### **Public Realm Improvements**

No public realm improvements are proposed in association with this Rezoning Application.

### **Accessibility Impact Statement**

The British Columbia Building Code regulates accessibility as it pertains to buildings.

### **Land Use Context**

The immediate area is characterized mainly by mixed-use buildings, with commercial on the ground floor with residential on the upper storeys. The broader area is characterized by single-family residential and multi-family residential in the form of apartments and house conversions.

### **Existing Site Development and Development Potential**

The site is presently a two-storey commercial building occupied by three retail units. Under the current C1-NM Zone, Neighbourhood (Modified) Shopping District, the property could be developed for a variety of commercial and commercial-residential uses to a maximum height of 10.7m and a maximum density of 1.0 to 1 floor space ratio.

## Community Consultation

Consistent with the *Storefront Cannabis Retailer Rezoning Policy*, the requirement to arrange and participate in a Community Association Land Use Committee (CALUC) meeting is waived unless the Application involves construction of a new building; however, the Application was referred to the Rockland Neighbourhood Association CALUC. Also consistent with the Policy, the Application has been referred to School District No. 61 and the Victoria Police Department (VicPD). The following table displays the number of VicPD service calls:

Calls for Service	2015	2016	2017 (July 24)
Calls to the immediate area	0	2	0
Calls to the block	424	432	191

## ANALYSIS

### Official Community Plan

The *Official Community Plan 2012* (OCP) identifies this property within the Large Urban Village urban place designation, within which commercial uses are envisioned.

### Local Area Plans

The *Rockland Neighbourhood Plan* envisions no expansion of commercial zoning and to reduce the permitted building height. This property is already zoned for commercial uses, so there is no expansion of commercial zoning occurring through this Rezoning Application.

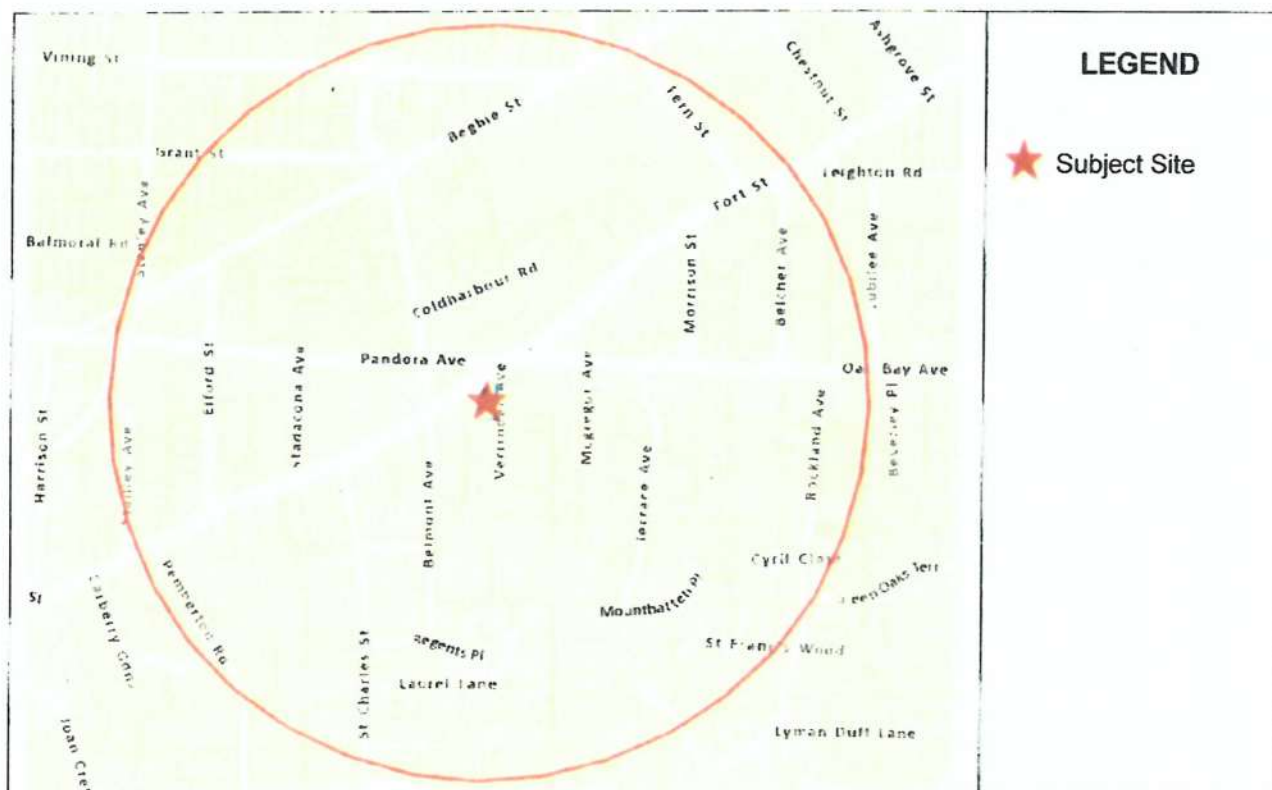
### Tree Preservation Bylaw and Urban Forest Master Plan

There are no Tree Preservation Bylaw impacts with this application and there are no impacts to public trees with this application.

### Storefront Cannabis Retailer Rezoning Policy

The Application is consistent with the *Storefront Cannabis Retailer Rezoning Policy* and was one of the sites identified as operating as a storefront cannabis retailer at the time of Council adopting the regulations and policy framework related to cannabis. No schools are within 200m and no permitted storefront cannabis retailers are within 400m of the property.





## Regulatory Considerations

The plans show no parking stalls on-site. Previous approvals confirm that the site has non-conforming rights to zero parking stalls.

## CONCLUSIONS

This proposal to permit the storefront cannabis retailer use is consistent with the *Official Community Plan* in accommodating commercial uses. The proposal is consistent with the *Rockland Neighbourhood Plan*. The proposal does not have any schools within 200m or permitted storefront cannabis retailers within 400m of the property. Staff recommend Council consider supporting this application.

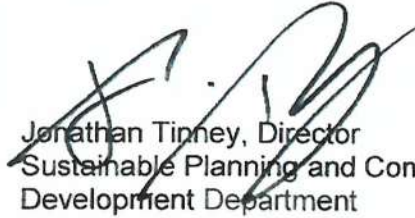
## ALTERNATE MOTION

That Council decline Rezoning Application No. 00601 for the property located at 1541-1545 Fort Street.

Respectfully submitted,



Michael Angrove  
Planner  
Development Services



Jonathan Tinney, Director  
Sustainable Planning and Community  
Development Department

Report accepted and recommended by the City Manager:



Date:

Nov. 1, 2017

**List of Attachments:**

- Appendix A – Subject Map
- Appendix B – Aerial Map
- Appendix C – Plans date stamped September 21, 2017
- Appendix D – Letter from applicant to Mayor and Council dated July 7, 2017

"That Council authorize the issuance of Development Permit with Variances Application No. 000462 for 1120, 1124 and 1128 Burdett Avenue, in accordance with:

1. Plans date stamped August 11, 2017.
2. Development meeting all *Zoning Regulation Bylaw* requirements, except for the following variances:
  - i. increase the height from 12m to 13.53m (previously 13.55m)
  - ii. increase the site coverage from 40% to 51.42% (previously 57.06%)
  - iii. reduce the open site space from 50% to 46.58% (previously 42.16%)
  - iv. reduce the minimum required front yard setback from 10.5m to 5.11m for the building (previously 4.51m)
  - v. reduce the east side yard setback from 6.77m to 3.75m for the building, and 2.82m for the parkade stairs
  - vi. reduce the west side yard setback from 6.77m to 4.22m for the building face, 2.22m for the balconies, and nil for the parkade
  - vii. reduce the required residential parking from 1.2 spaces per dwelling unit to 0.8 spaces per dwelling unit (previously 1.02 spaces per dwelling unit).
3. Final plans to be generally in accordance with the plans identified above to the satisfaction of City staff.
4. That Council authorize the City Solicitor to execute an Encroachment Agreement for a fee of \$750, plus \$25 per m<sup>2</sup> of exposed shored face during construction in a form satisfactory to staff. This is to accommodate shoring for construction of the underground parking structure if the method of construction involves anchor pinning into the public Right-of-Way.
5. The Development Permit lapsing two years from the date of this resolution."

That Council write a letter of thanks to the CMHC for the rental construction financing program.

**Carried**

**For:** Mayor Helps, Councillors Coleman, Isitt, Loveday, Lucas, and Thornton-Joe  
**Opposed:** Councillor Young

*Councillor Young withdrew from the meeting at 11:36 p.m. due to a non-pecuniary conflict of interest with the following item, as a family member lives within 200 meters of the subject property.*

**6. Development Variance Permit Application No. 00197 for 501-503 Government Street (James Bay)**

**Motion:**

It was moved by Councillor Thornton-Joe, seconded by Councillor Coleman, that Council after giving notice and allowing an opportunity for public comment at a meeting of Council, consider the following motion:

"That Council authorize the issuance of Development Permit Application No. 00197 for 501-503 Government Street, in accordance with:

1. Plans date stamped August 25, 2017.
2. Development meeting all *Zoning Regulation Bylaw* requirements, except for the following variances:
  - i. increase the maximum commercial floor area from 45m<sup>2</sup> to 95m<sup>2</sup>.
3. The Development Permit lapsing two years from the date of this resolution."

**Carried Unanimously**

*Councillor Young returned to the meeting at 11:37 p.m.*

**7. Temporary Use Permit Application No. 0005 for 2610 Rock Bay Avenue**

**Motion:**

It was moved by Councillor Coleman, seconded by Councillor Lucas, that Council defer the proposal outlined in Temporary Use Permit with Variance Application No. 00005 for 2610 Rock Bay Avenue until the Public Hearing for Rezoning Application No. 00533 for 603 Gorge Road East.

**Carried**

**For:** Mayor Helps, Councillors Coleman, Lucas, Thornton-Joe, and Young  
**Opposed:** Councillors Loveday and Isitt

**8. Rezoning Application No. 00601 for 1541-1545 Fort Street (Rockland)**

**Motion:**

It was moved by Councillor Loveday, seconded by Councillor Lucas, that Council instruct staff to prepare the necessary Zoning Regulation Bylaw Amendment that would authorize the proposed development outlined in Rezoning Application No. 00601 for 1541-1545 Fort Street, that first and second reading of the Zoning Regulation Bylaw Amendment be considered by Council and a Public Hearing date be set once Staff receive proof of registration at the Land Titles Survey Authority of an executed Statutory Right-of-Way (SRW) of 3.439m on Fort Street and 1.407m on Verrinder Avenue.

**Carried**

**For:** Mayor Helps, Councillors Coleman, Isitt, Loveday, Lucas, and Thornton-Joe  
**Opposed:** Councillor Young



# JONES EMERY HARGREAVES SWAN LLP

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\* TERRANCE D. SWAN (RETIRED)

OUR FILE: 17-1508

October 5, 2018

**DELIVERED VIA E-MAIL**

Wilson Marshall  
200 – 911 Yates Street  
Victoria, BC V8V 4X3  
*Attention: Paul G. Morgan*

Dear Sir:

**Re: Lease - 1545 Fort Street, Victoria, BC  
From Dr. Cecil Sigal and The Estate of Dr. John Sigal to Victoria's Natural Way Ltd.  
Rezoning Application / Statutory Right of Way in favour of the City of Victoria**

I have had an opportunity to review your correspondence of September 18, 2018 with our clients Dr Cecil Sigal and the Estate of Dr. John Sigal.

Since that review, we have received your email of today's date with background communications between your client and the City of Victoria. I have not had an opportunity to review this with our client.

Regardless, I do not believe our client's position will change. The City is making an extremely significant demand in insisting on the Statutory Right of Way. This document:

- gives the City the right to construct a roadway or sidewalk (or maintain an existing road or sidewalk encroachment) on the statutory right of way area, which constitutes a substantial portion of our client's property;
- gives members of the public the unrestricted right to access and travel over that statutory right of way area;
- does not contain any provisions to either indemnify, reduce or limit the liability of our client if a member of the public was injured on the right of way area;
- prevents our client or its tenants in future from utilizing the statutory right of way area in any meaningful way;
- prohibits our client from reconstructing the building on the right of way area in the event that it is damaged or destroyed;
- provides absolutely no benefit or consideration to our client as the registered owner of the property.

From a certain perspective, the City's proposed terms are tantamount to an expropriation of land without compensation to our client. We do not believe this is reasonable or can be justified in the circumstances. The City administration should be well aware that Victoria's Natural Way Ltd. is only a tenant at the property and has no legal control over these matters nor the legal right to provide to the City that which it has requested.

While our client's sympathize with the predicament faced by Victoria's Natural Way Ltd., they are not willing to grant to the City of Victoria these rights. We have advised our client that, contrary to the suggestion made in your September 18<sup>th</sup> letter, they do not have no a legal obligation to agree to grant such rights pursuant to the terms of the lease agreement.

In the circumstances, we believe that your client should approach the City to discuss more reasonable measures and terms relevant to land use. Please contact me if you have concerns with respect to the above.

Yours truly,

Per:



PATRICK C. TRELAUNY

PCT:am

c: Client (via e-mail)