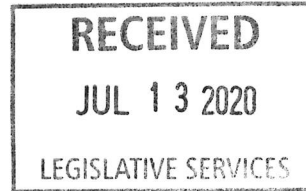


June 13, 2020

HAND-DELIVERED

City Clerk
Legislative Services
1 Centennial Square
Victoria, B.C. V8W 1P6



Re: 1132 Chapman Street "Notice to Appeal"

On June 17, 2020, I received a letter from Bylaw refusing to issue me a licence to operate a short-term rental at the above residence.

This is notice that I am appealing the decision made by the Bylaw Office which rejected the application to operate a short-term rental at my residency at 1132 Chapman Street.

Please provide me with the next steps of the appeal process.

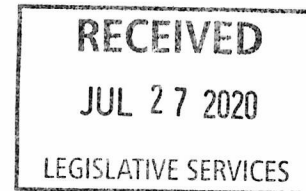
Regards,

A handwritten signature in cursive script, appearing to read "Roberta Prilusky".

Roberta Prilusky

c. Kim Ferris, Bylaw Officer/Business Licence Inspector

July 27, 2020



City Clerk, Legislative Services
1 Centennial Square
Victoria, B.C. V8W 1P6

Roberta Prilusky
1132 Chapman Street
Victoria, B.C. V8V 2T6

Written Submission for Appeal - 1132 Chapman Street
(Rejection to Issue a short-term rental licence – Applicant: R. Prilusky)

On June 1, 2020, I made application for a short-term rental business licence for my principal residence at 1132 Chapman Street, in Victoria, B.C.

On June 17, 2020, my application was rejected due to non-compliance with city bylaws, including Schedule D of the Zoning Regulation Bylaw, which provides that a short-term rental cannot occupy an entire self-contained dwelling unit, except occasionally while the operator is away.

This appeal is based on the underlying facts that:

- 1) The short-term rental at my principal residence (1132 Chapman Street) does not occupy an entire self-contained dwelling unit;
- 2) The third floor (hereinafter referred to as the ("Loft") does not qualify legally as a self-contained dwelling unit;
- 3) A short-term rental licence cannot be denied on the basis that;
 - this residence is located within the zoning district that permits short-term rentals;
 - space in the home was renovated for personal use and also for short-term rental use which was approved by regulating bodies (Addendum A);
 - the property has legal non-conforming status. Short-term rentals have been operating lawfully in the principal residence of the tenant residing at 1132 Chapman Street since 2016, before the short-term bylaws were enacted.

BACKGROUND & REASONS

1. The Loft in the rental unit complies with the BC Building Code and City of Victoria Building Bylaws. This space is part of the second floor residence and is not a self-contained dwelling unit.

In 2006, the owners of 1132 Chapman Street elected to invest in renovating the **single family dwelling** to accommodate themselves (4 owners), and their family members and associates while in residence which is approximately 6 months of every year.

The second floor with Loft was intended for a residential tenancy rental. The tenant is permitted by the owners to operate a short-term rental in the upper floor which supplements their rental amount.

Building/electrical and plumbing permits were taken out in accordance with all bylaw/building requirements. In accordance with the BC Building Code, the electrical inspector ordered that the owners remove all electrical (220 v connection to the electrical panel) The wiring was removed from the main panel, and the stove/oven unit was taken out of the space. Subsequently the family renovated the bathroom and updated the Loft for comfort.

Attached is a building permit (**Addendum A**), which confirms compliance. The upper floor kitchen was removed and the lower floor contains the only kitchen in the residence.

This was done to ensure compliance with the BC building code which does not allow a self-contained dwelling unit or secondary suite¹ in the single-family dwelling, zoned as a duplex.

¹ *Secondary suite means a self-contained dwelling unit located within a building or a portion of a building completely separated from other parts of the building by a vertical fire separation that as a fire-resistance rating of not less than 1 h and extends from the ground or lowermost assembly continuously through or adjacent to all storeys and spaces including service spaces of the separate portions, of only residential occupancy that contains only one other dwelling unit and common spaces, and – where both dwelling units constitute a single real estate entity. (See Note A-1.4 1.2 (a) of Division B.)*

There is no definition of “self-contained dwelling unit in the short-term rental bylaw. I am directed to use the definition as found in the Zoning Bylaw.

Self-contained dwelling unit is defined as “a suite of rooms in a building designed for occupancy of one family which has a separate entrance, and kitchen and bathroom facilities.

Shared Entrance

- There is no separate entrance (*picture 1 attached*) to the Loft at 1132 Chapman Street. The second floor and Loft share entry via a common front door and staircase.

An interior door was installed for privacy reasons. (*picture 2 attached*). The rental unit is comprised of the second floor and the Loft in the residence. The Loft does not have locking doors, as it is not considered to be a separate unit.

No Kitchen

- There is no kitchen (stove/oven) and inadequate abilities to prepare food. (i.e. no ventilation, etc.)
- The kitchen was removed and located on the second floor (See Addendum A).

Entertainment Area

- A wet bar was installed for entertaining.

2. **At the time of the enactment of Bylaw 18-036 and amendment to Bylaw 18-035 (Schedule D) (both documents attached), the short-term rental had already been a part of a 2016-2020 residential tenancy contract. Short term rentals were a lawfully permitted use by zoning and other bylaws in force. The unit at 1132 Chapman Street qualified for “legal non-conforming status” when the bylaws came into effect and licences were first issued.**

The owners and the tenant met all requirements for a single-family dwelling and the tenant met the requirements to operate a short-term rental during their tenure. On-line information from the City required proof to confirm that the property had legal non-conforming status.

I have attached City of Victoria on-line requirements needed to qualify for non-conforming status and also proof through VRBO that there were bookings and availability in 2016 and 2017- See Addendum B). The unit qualified at that time for non-conforming status.

Upon adoption of short-term bylaws in March, 2018, amendments were made to Schedule "D" Home Occupation Bylaw (2018) that included a requirement that a short-term rental could not occupy an entire self-contained dwelling.

It is my understanding that the bylaw department of short-term rentals started conducting inspections before approving annual licence renewals and new applications.

An inspection was done at 1132 Chapman Street, and the inspector determined that the Loft (used for a short-term rentals) was a "self-contained dwelling unit" - a definition introduced in the short-term rental bylaws adopted in 2018 (by reference to Schedule D of the Zoning Regulation Bylaw).

I negotiated my residential tenancy contract in the Spring of 2020, coming into effect April 1 of 2020, with the provision of carrying on operations of the short-term rental in my unit. However, due to changes in law, questions arose as to whether the Loft was a self-contained dwelling unit or not.

The laws are clearly conflicting. As already stated, a third self-contained dwelling unit cannot be built legally in a single residence that is zoned as a duplex.

I believe the use of the space in this residential premise at 1132 Chapman Street does conform to the new short-term bylaw and the property is a legally non-conforming unit.

Legal Non-confirming Use

"Legal non-confirming" refers to uses and structures which were begun when the law allowed for them but have since become noncompliant due to changes in law. The authority to continue as "non-confirming use" may be used lawfully pursuant to s.528 of the *Local Government Act*.

I would like to refer you to this provision in the Local Government Act RTSBC 2015, c1, s528

Division 14 — Non-conforming Use and Other Continuations

Non-conforming uses: authority to continue use

528 (1) Subject to this section, if, at the time a land use regulation bylaw is adopted,

(a)land, or a building or other structure, to which that bylaw applies is lawfully used, and

(b)the use does not conform to the bylaw,

The use may be continued as non-conforming use.

Although zoning has not been amended or changed in this situation, legally the use has changed. The use does not conform to the short-term bylaw 18-036. Caselaw "*Newton v The Corporation of the City of Victoria, 2018 BCSC 728*" (*Canlii*) speaks to a case brought forward by a building developer.

The units were sold and purchased on the basis that the owners could operate a short-term rental in their premises. Zoning Bylaws changed during the building process; however, the judge ruled in favour of the petitioners. The owners were allowed to licence and operate short-term rentals. (caselaw is attached).

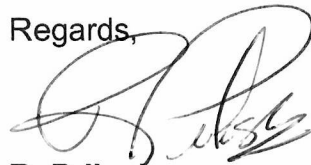
Caselaw, *Sanders v. Langley (Township), 2010 BCSC 1543*" (s.528(1)(b), states that "... "Use" is interpreted in accordance with the building permit." As the regulator, The City of Victoria Building Bylaw Department ensures that the Loft is not a "self-contained" unit.

Operating a short-term rental in the Loft at 1132 Chapman Street as part of my residential tenancy does not affect the availability of long-term housing in Victoria. The operation of this short-term rental was allowed in 2016, when the first tenant negotiated her tenancy. The owners and their associates reside in the loft for approximately 6 months of the year. The space would stay vacant if a short-term rental is not allowed to operate.

I request that Council consider issuing a short-term rental licence based on the fact that 1132 Chapman Street is a legal non-conforming unit, and the fact that the "Loft" is not a self-contained unit. Further, I request that the 1132 Chapman Street be grandfathered; thereby allowing future renters an opportunity to subsidize their rental.

Being issued a licence will allow me to continue operating a short-term rental as part of my residential tenancy contract.

Regards,



R. Prilusky
Tenant, 1132 Chapman Street

ATTACHMENTS

Addendum A

The screenshot shows a GIS application interface. At the top, there is a blue header bar with a close button and the text 'Edit Map'. Below the header, on the left, is a 'Layers' panel with an 'Add Layer' button and a search icon. The main area is a map with numerous blue dots representing data points. A popup window is open over the map, displaying the following information:

Building Permits - All Completed and Active Permits

OBJECTID	55181
SHAPE	
gislink	03228031
CATEGORY	BUILDING PERMITS
type	BP-RES-SFD/DUP
PermitNo	BP042769
SUBJECT	DUPLEX
Status	COMPLETED
Purpose	TO RAISE EXISTING DUPLEX 2'-0" - INSTALL NEW BASEMENT, EXTERIOR STAIRS AND BASEMENT LIVING SPACE. <u>RELOCATION OR REMOVAL OF EXISTING UPPER FLOOR KITCHEN TO LOWER FLOOR.</u>
IssuedDate	20051222

At the bottom right of the popup, there is a navigation arrow and the text '7 of 12'. Below the popup, the text 'Powered by' is partially visible.

Addendum B – Requirement “legal non-conforming unit”

On-line information

<https://www.victoria.ca/EN/main/business/permits-licences/term-rentals.html>

How do I know if my unit is considered legal non-conforming?

The City will only confirm whether a property has legal non-conforming status at the time a business licence application is received. The onus will be on the applicant to provide proof that they should qualify for non-conforming status.

Some forms of acceptable proof* may include:

- guest payment/receipt
- booking confirmation
- **online listing showing availability or booking on September 21, 2017**
- existing 2017 business licence

There may be other forms of acceptable evidence. Staff will assess whether evidence provided is sufficient to demonstrate legal non-conforming status on a case by case basis.

*Proof must be specific to the property

My properties

🔍 Search by property ID

Filters



Property

ID/External ID

Plan

Status



Chapman Street

1132
Chapman St,
Victoria, BC,
V8V2T6, CA

(54
)
(/p/px-reviews)

Vrbo
617910

Annual
subscription

Active

Manage



Loft in the heart of Victoria

1132
Chapman Street,
Victoria, BC,
V8V 2T6, CA

(47
)
(/p/px-reviews)

Vrbo
793089

Annual
subscription

Active

Manage

Showing 2 properties

URBO LISTINGS

January 2016

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

February 2016

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

March 2016

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				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

April 2016

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23	24	25	26	27	28	29
30						

May 2016

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15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

June 2016

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			1	2	3	4
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12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

July 2016

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24	25	26	27	28	29	30
31						

August 2016

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26	27	28	29	30	31	

September 2016

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17	18	19	20	21	22	23
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October 2016

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23	24	25	26	27	28	29
30	31					

November 2016

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23	24	25	26	27	28	29
30						

December 2016

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16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

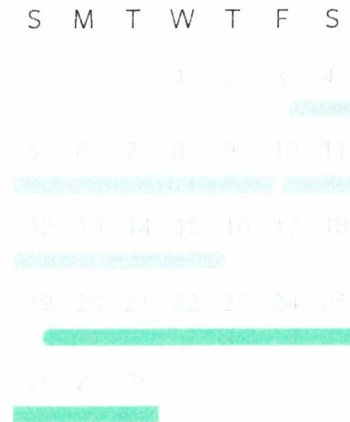
- Reserved
- Tentative/Booking request
- Conflict
- Blocked
- ▲ Unbookable

NRRO LISTINGS

January 2017



February 2017



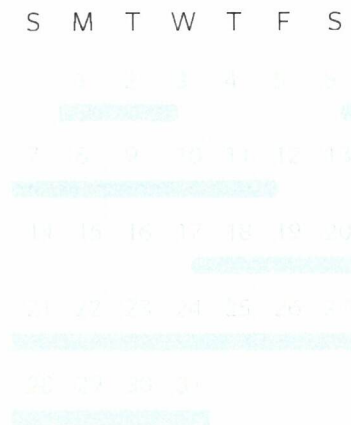
March 2017



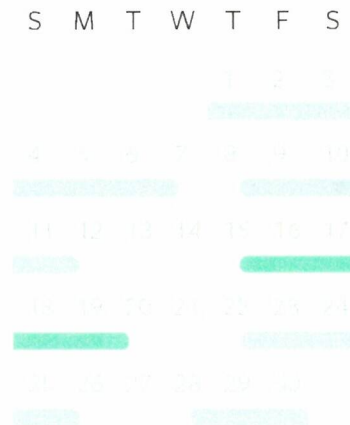
April 2017



May 2017



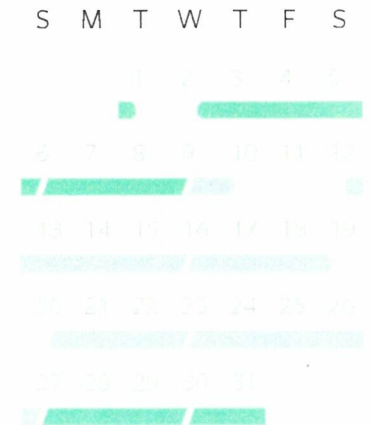
June 2017



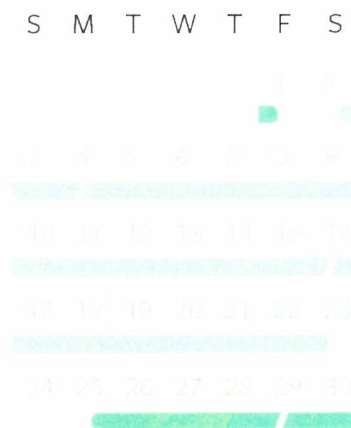
July 2017



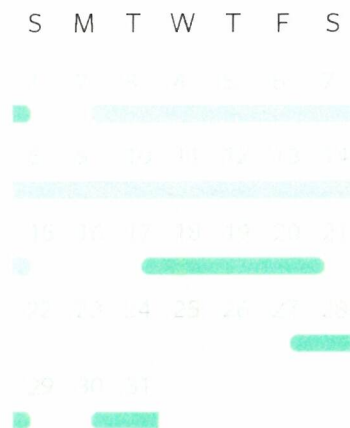
August 2017



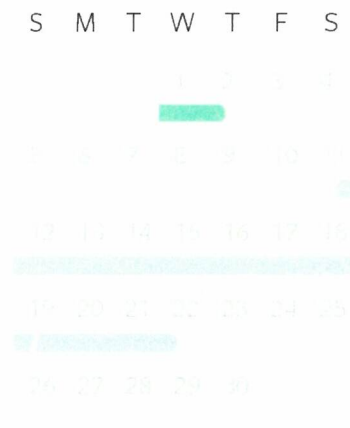
September 2017



October 2017



November 2017

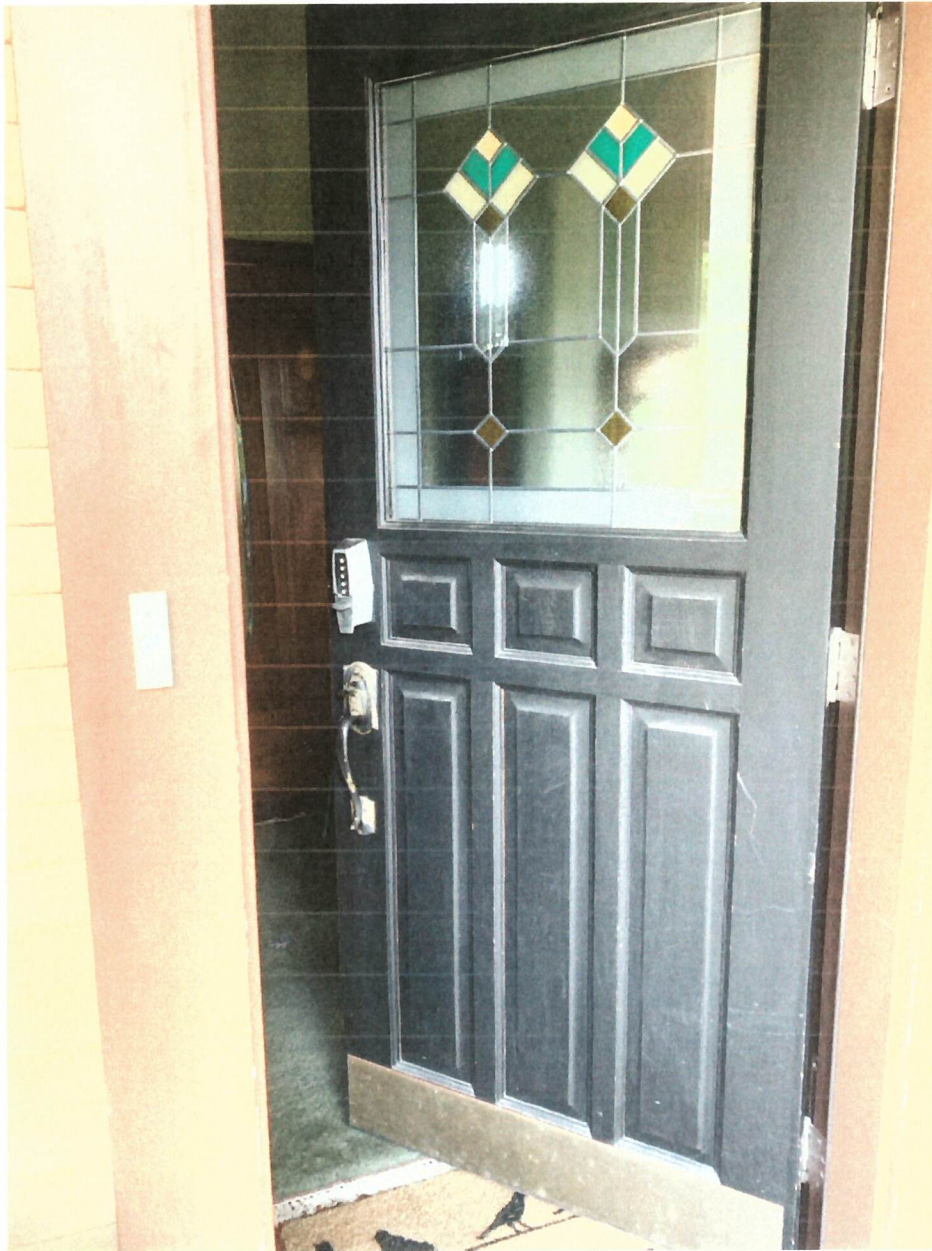


December 2017



- Reserved
- Tentative/Booking request
- Conflict
- ⊖ Blocked
- ⚠ Unbookable

Picture - Shared Entrance



Picture - Privacy Door



Entertainment Area



Schedule A – DEFINITIONS

Zoning Bylaws.

"Accessory Building" means a building that is subordinate to the principal use on a lot.

"Accessory Use" means a use that is normally incidental or normally associated with the principal use.

"Accessory Garden Structure" means swimming pools, fences, walls, terraces and trellises, walks, patios, tennis courts, playgrounds and surface improvements ordinarily erected, maintained or used for ornament or for the private recreation and enjoyment of persons residing in the building to which the same relates.

"Affordable" means housing that falls within the financial means of a household in either market or non-market dwellings. Total costs for rent or mortgage plus taxes (including a 10% down payment), insurance and utilities must equal 30% or less of a household's annual income.

Amended July 26, 2018
Bylaw 18-017

"All-Night Dance Club" means a dance club that operates at any time between 2:00a.m. and 6:00a.m. of the same day.

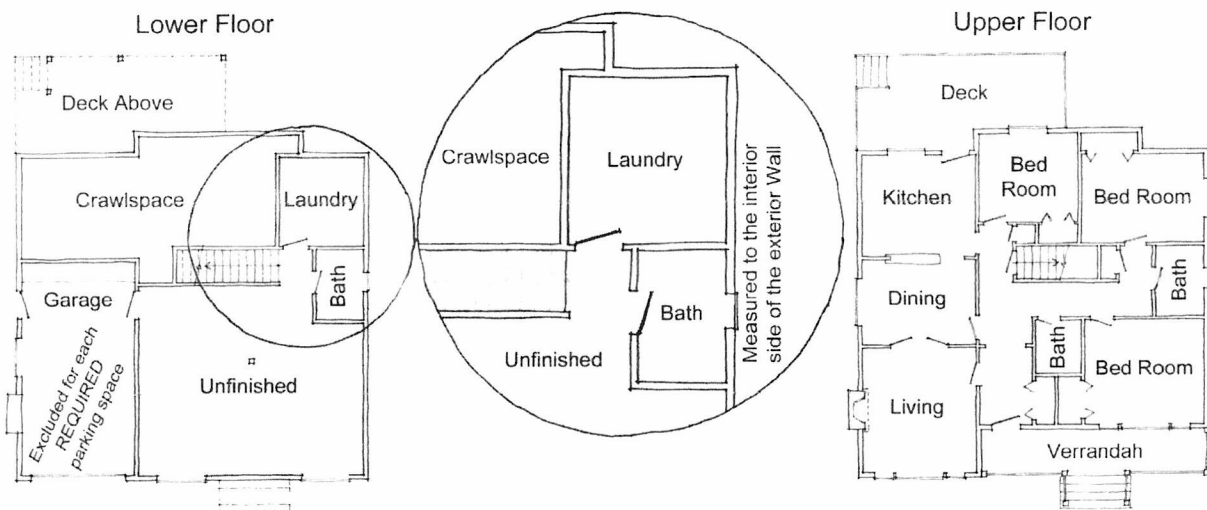
"Amusement Centre" means a building or lot in which not more than 150 amusement vending, slot machines, video machines or pinball machines are kept for use by the public, but does not include an amusement establishment as defined in the *Amusement Establishments Control Bylaw*.

"Area" of a lot means its surface area in plan, but does not include any portion of land below a natural high water mark.

"Area" when used in reference to a floor of a storey of a building means the entire area which in plan is enclosed by the interior face of the exterior walls of the storey at floor level plus the area enclosed by any cantilevered element that is within that storey and that is above floor level, but does not include of the following areas:

- a) the area used or intended to be used for required parking or movement of motor vehicles, as set out in this bylaw, which is calculated starting from the lowest level of the building;
- b) the area used or intended to be used for required Bicycle Parking, Long-Term, as set out in this bylaw, which is calculated starting from the lowest level of the building;
- c) the area or areas of balconies, exposed decks, patios or roofs; and
- d) the area of elevator shafts."

Amended July 26, 2018
Bylaw 18-017

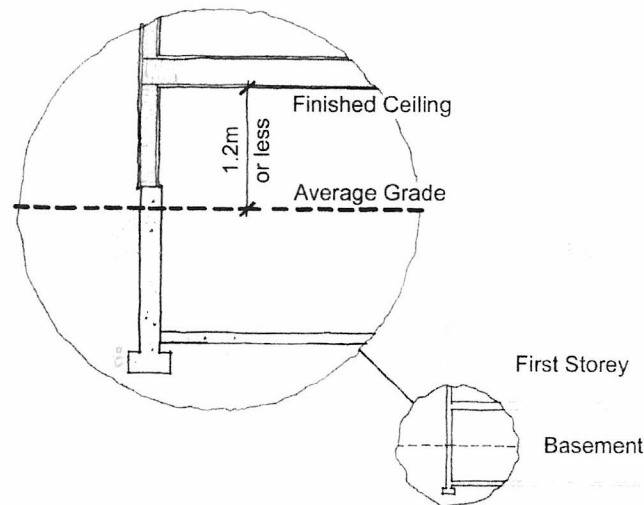


Schedule A – DEFINITIONS

"Attached Dwelling" means a building used or designed as three or more self-contained dwelling units, each having direct access to the outside at grade level, where no dwelling unit is wholly or partly above another dwelling unit.

"Balcony" means a platform which projects from the wall of a building above ground level and that is partially enclosed by a low parapet or railing in such a manner as to remain permanently exposed to outside weather.

"Basement" means any part of a building between two floor levels that is partially or completely below grade and has a finished ceiling that is no more than 1.2m above grade.



"Bicycle Parking, Long-Term" is intended for long-term users of a building, such as employees or residents, and will consist of a secure space dedicated for bicycle parking within a structure or building on the same lot and has the same meaning as "Class 1" bicycle parking.

Amended July 26, 2018
Bylaw 18-017

"Bicycle Parking, Short-Term" is intended for short-term use by visitors and customers and will consist of bicycle racks located in a publicly accessible space at or near a building entrance and has the same meaning as "Class 2" bicycle parking.

Amended July 26, 2018
Bylaw 18-017

"Boarder" means a person who lives in a boarding house or with a family and who pays for board and lodging.

"Boarding House" means a dwelling in which rooms are rented and meals are provided to more than four but not more than fifteen persons other than members of the family of the occupier, but does not include a dwelling in which meals are prepared within rented rooms or a community care facility within the meaning of the *Community Care and Assisted Living Act*.

"Boundary" in reference to a lot, extends throughout its length both upwards and downwards ad infinitum from the surface of the lot.

"Building" means anything constructed or placed on a lot used or intended for supporting or sheltering any use, excluding landscaping, docks, wharfs and piers.

"Building By-law" means any by-laws of the City regulating or controlling the construction of buildings, and includes any codes and regulations of the same nature made applicable to the City by Provincial Statute.

Schedule A – DEFINITIONS

"**Building Line**" means a line at a prescribed distance from any boundary line of a lot.

"**Bulk of building**" means the cubic volume of a building above grade.

"**Call Centre**" means a place where orders are taken, by means of telephone or electronic communications, for goods or services produced at another location.

"**Cannabis**" means cannabis as defined in the Controlled Drugs and Substances Act and includes any products containing cannabis.

"**Casino – Class 1**" means a building that is used for the purpose of playing or operating games of chance or mixed chance and skill:

- a) on which money may be wagered;
- b) for which a licence has been issued by the *British Columbia Gaming Commission*, to a charitable or religious organization as a licence holder; and
- c) does not include player-operated video lottery terminals, slot machines, bingo, electronic bingo, pari-mutual betting, non-player-operated video lottery terminals, or Casino – Class 2.

"**Casino – Class 2**" means a building that is used for the purpose of playing or operating games of chance or mixed chance and skill:

- a) on which money may be wagered;
- b) for which a licence has been issued, by the *British Columbia Gaming Commission*; and
- c) may include player-operated, video lottery terminals or slot machines, and that does not include bingo, electronic bingo, pari-mutual betting, non-player-operated video lottery terminals.

"**Car Shelter**" means a structure designed for the storage of one or more motor vehicles, which may be a building or part of a building, or may be roof supported entirely by posts, or by posts and part of the building.

"**Centre Line**" when used in reference to a street means a line drawn between the boundaries of the street which is equidistant from the street boundary on either side.

"**Church**" means a building set apart and used exclusively for religious worship.

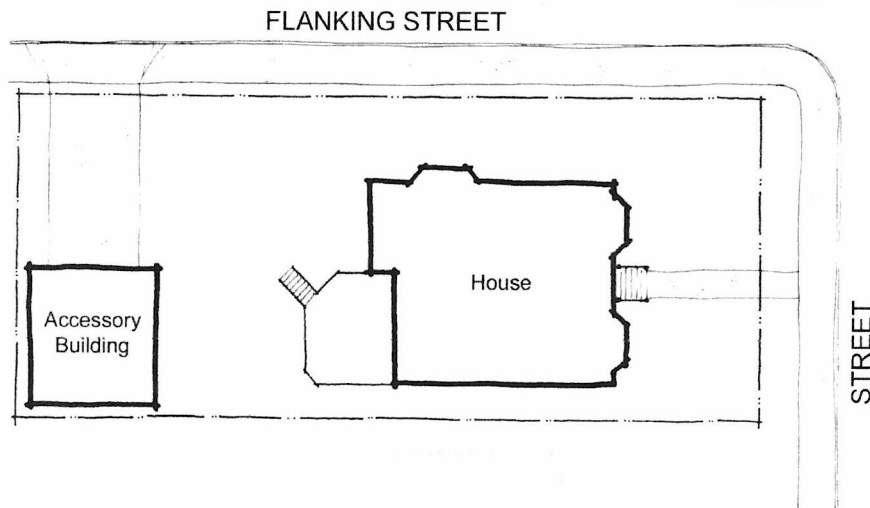
"**Cistern**" means a rainwater storage tank that is at least 1200 litres in capacity, the top surface of which is no more than 15m² in area, and that forms part of a stormwater retention and water quality facility.

"**Club**" means the premises of a social or recreational club.

"**Commercial Exhibit**" means a site, including a site on which there is exhibited or displayed a building or its contents, if the site, or the building or its contents is of cultural, aesthetic or artistic significance or is a curiosity, and if an admission fee is demanded or accepted.

Schedule A – DEFINITIONS

"Corner Lot" means a lot having a continuous street frontage on two or more streets.



"Crawlspace" means a non-habitable floor area used for storage and/or utilities and is 1.5m or less in clearance from floor to ceiling.

"Cultural facility" means the use of land, building or portion thereof for an art gallery or museum, or the use of a building or portion thereof for the performing arts or the showing of dramatic, musical or other live performances and includes cinemas.

"Dance Club" means a business, including an All-Night Dance Club and a Youth Dance Club,

- that directly or indirectly charges or assesses an admission or entrance fee;
- that includes the holding or permitting of public or private dances in a building, room, or other place; and
- for which there is no licence to sell liquor under the *Liquor Control and Licensing Act*.

"Director" for the purposes of this Bylaw means the Director of the City's Planning and Development Department or a representative designated by that person.

"Dock" means a floating structure with a level surface, to which a boat, ship or other vessel may be moored or tied, but does not include any buildings or structures placed or erected on it.

"Drive Aisle" means a vehicle passageway or maneuvering space by which vehicles enter and depart parking stalls.

Amended July 26, 2018
Bylaw 18-017

"Driveway" means that portion of the lot that provides access to parking stalls, loading spaces or the drive aisle within the lot and is considered to be the extension of the lot's driveway crossing. For certainty, a ramp provided to access parking stalls is considered a driveway.

Amended July 26, 2018
Bylaw 18-017

"Duplex" means a two family dwelling.

" Dwelling Unit " means any room or suite of rooms used or intended to be used by one family exclusively for the purpose of providing a place of residence.

"Electronic" means electrical, analog, digital, magnetic, optical, or electromagnetic, and any other similar technology.

Schedule A – DEFINITIONS

"**Enclosed Parking Space**" means any space or area that is used or intended to be used for the parking or movement of motor vehicles and that is contained entirely within a structure lying below the grade of the building or contained entirely within the building.

"**Escort Services**" means a business that is required to be licensed under the *Escort and Dating Service Bylaw*.

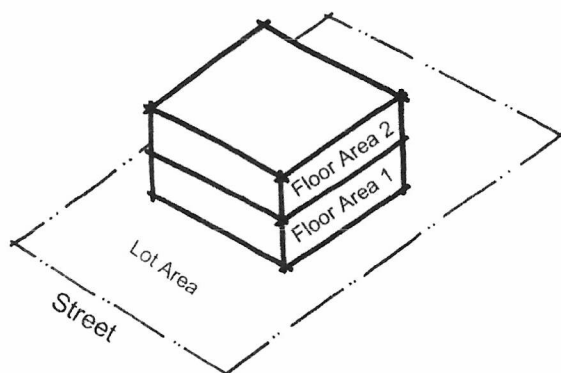
"**Family**" means one person or a group of persons who through marriage, blood relationship or other circumstances normally live together.

"**Financial service**" means any uses related to all forms of financial services such as chartered banks, credit unions, trust companies, insurance and mortgage companies.

"**Finished Grade**" means the finished elevation of the ground surface of land following construction or land altering activities.

"**First Storey**" means the storey above the basement of a building, and in the case of a building without a basement, means the lowest storey.

"**Floor Space Ratio**" means the ratio of the total floor area of a building to the area of the lot on which it is situated.



Floor Space Ratio Calculation (Example)

Floor Area 1:	100m ² +
Floor Area 2:	100m ² +
Total (Structure):	200m ² =
Lot Area:	480m ²
Total (Structure)	200m ² ÷
Lot Area	480m ²
	0.416 =

0.42:1

"**Foodstand**" means a container which holds, shelves or otherwise displays products of small-scale commercial urban food production for retail purposes outdoors.

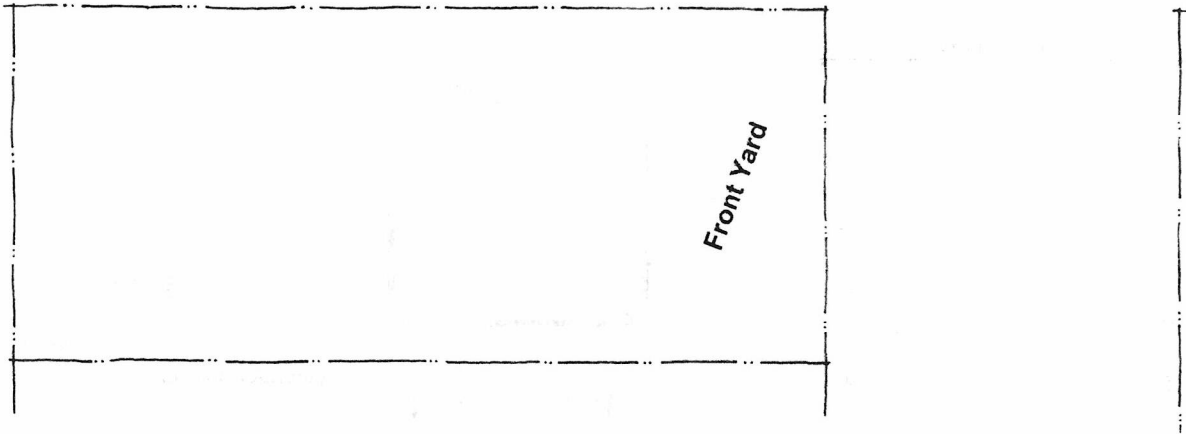
"**Free Standing Food Sales Outlet**" means a building in or from which the principal business is the retail sale of food, ready for consumption, which may be consumed on or off the premises, if such a building is the only or principal building on the lot from which a retail sales business is conducted.

Schedule A – DEFINITIONS

"Front Lot Line" means the street frontage.



"Front Yard" means a yard located between the principal building and the front lot line, extending the full width of the lot.



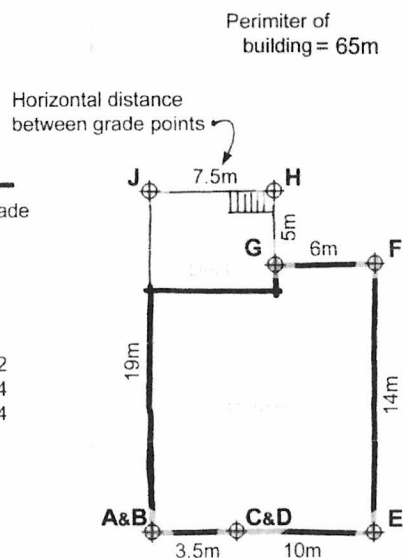
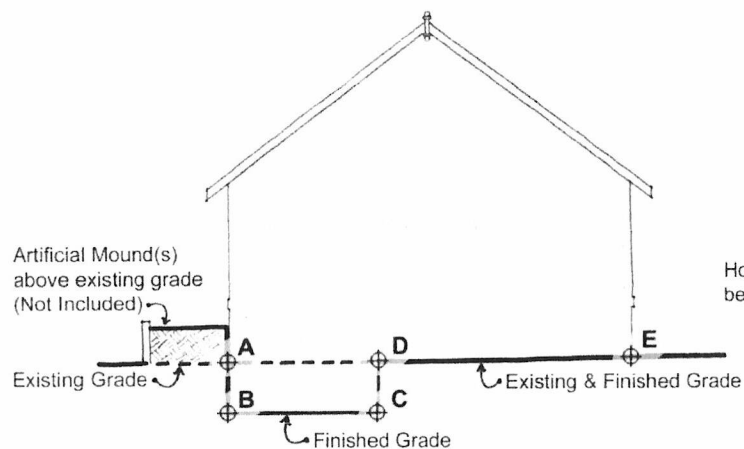
"Garage" other than a private garage or car shelter means a building or part thereof which is used or intended to be used for the shelter or storage of, or for mechanical or body repairs, of motor vehicles for gain.

"Garage Sale" means any sale of household goods, effects, or articles by the owner or tenant of the dwelling, but does not include the sale of any article owned by any person other than the owner or tenant.

"Garden Suite" means a building attached to a foundation, used or designed as a self-contained dwelling unit located on a lot with a single family dwelling and does not include a strata lot. (Bylaw 17-001 Adopted April 13, 2017)

Schedule A – DEFINITIONS

"Grade" means the elevation calculated by averaging the elevation of natural grade or finished grade, whichever is lower at any points at which any part of a building comes into contact with the surface of a lot, excluding any artificial mounds of earth or rocks placed at or near the wall of a building, and excluding the minimum window well width and depth required by the *British Columbia Building Code*."



Grade Points

Grade Point A: 19.0	Grade Point D: 19.2	Grade Point G: 20.2
Grade Point B: 17.5	Grade Point E: 19.3	Grade Point H: 20.4
Grade Point C: 17.5	Grade Point F: 20.0	Grade Point J: 20.4

Calculation Example

Grade Points	Average of Points	Distance Between Grade Points	Totals
Points B & C:	$((17.5 + 17.5) \div 2)$	x 3.5m	= 61.25
Points D & E:	$((19.2 + 19.3) \div 2)$	x 10m	= 192.5
Points E & F:	$((19.3 + 20.0) \div 2)$	x 14m	= 275.1
Points F & G:	$((20.0 + 20.2) \div 2)$	x 6m	= 120.6
Points G & H:	$((20.2 + 20.4) \div 2)$	x 5m	= 101.5
Points H & J:	$((20.4 + 20.4) \div 2)$	x 7.5m	= 153.0
Points J & A:	$((20.4 + 19.0) \div 2)$	x 19m	= 374.3
			<hr/>
			= 1278.25

Grade Calculation

$$1278.25 \div 65\text{m (perimeter of building)} = \mathbf{19.67}$$

"Greenhouse" means a structure, or that portion of a structure, made primarily of glass or other translucent material for the purpose of cultivation or protection of plants

"Habitable Room" means a room in a dwelling unit other than a kitchen, storage room, toilet, bathroom, sauna room, hallway, or stairway.

"Half Storey" means that part of any building wholly or partly within the framing of the roof, where the habitable floor area is not more than 70% of the first storey area of the building.

Amended March 14, 2019
Bylaw 19-001

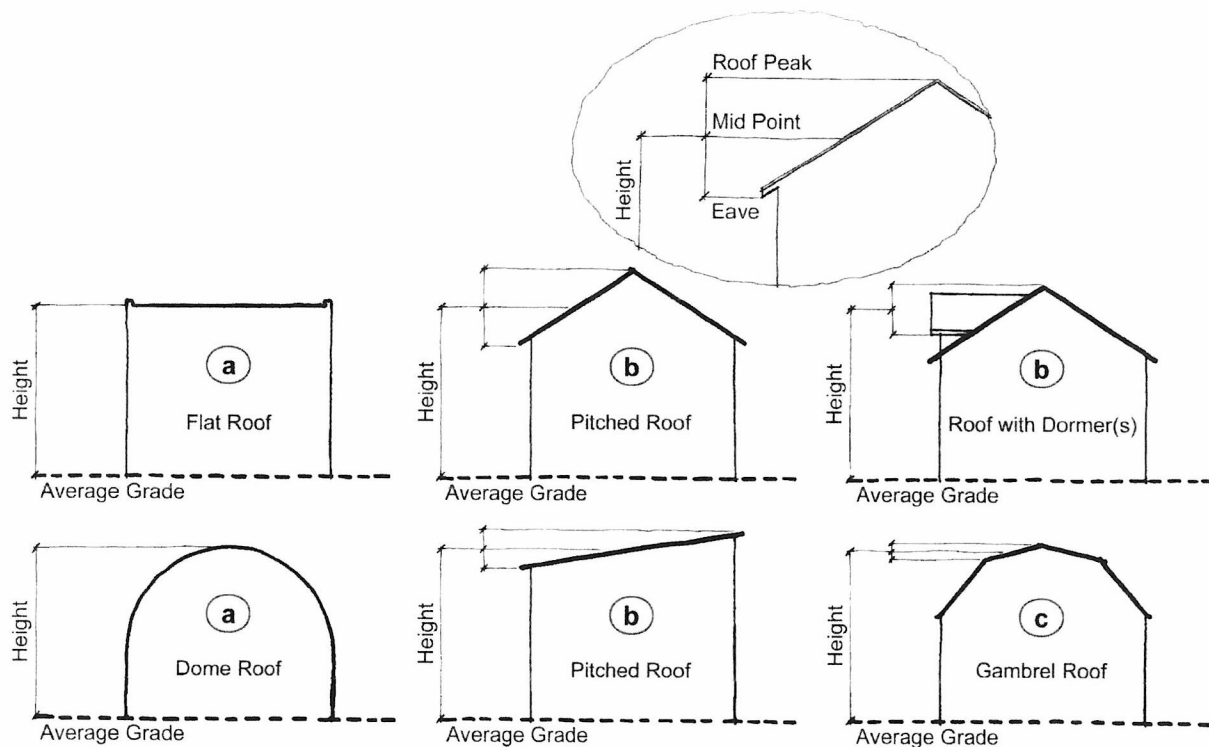
Schedule A – DEFINITIONS

"Height" when used in reference to a building, means the distance measured in a vertical straight line between the highest point of the building and any point that is at grade directly below that highest point; and is determined as follows:

- for buildings with flat or dome roofs, the highest point is the highest part of the building;
- for buildings with pitched roofs, the highest point is the mid-point between the highest ridge of the building and the highest eave and
- for buildings with gambrel roofs, the highest point is deemed to be the mid-point between the ridge and the point immediately below the ridge where the pitch changes.

The highest point excludes a mast, antenna, vent, chimney, elevator shaft, solar heating panel or similar structure that projects above the roof.

The highest point also excludes a rooftop cistern and other stormwater retention and water quality facilities together with their supporting structures.



"High Density Multiple Dwelling" means a multiple dwelling that is not less than 21m in height.

"High Tech" means the design, research, manufacture, testing, and servicing of commercial products, including computer software and hardware, in the fields of electronics, telecommunications, engineering, robotics, bio-technology, health care, and related industries.

"Home Occupation" means making, servicing, or repairing goods, or providing services for hire or gain by any person, wholly within a dwelling unit occupied by that person, but does not include the following except as provided in Schedule D:

- the sale of goods on or from the dwelling unit or its premises;
- the provision of escort services within a multiple dwelling;
- small-scale commercial urban food production.

Schedule A – DEFINITIONS

"**Hospital**" has the meaning assigned to it in the *Hospitals Act*.

"**House Conversion**" means the change of use of a building constructed as a single family dwelling or duplex, to create a duplex, multiple dwelling, boarding house, rooming house, housekeeping apartment building, rest home – class "B" or a kindergarten.

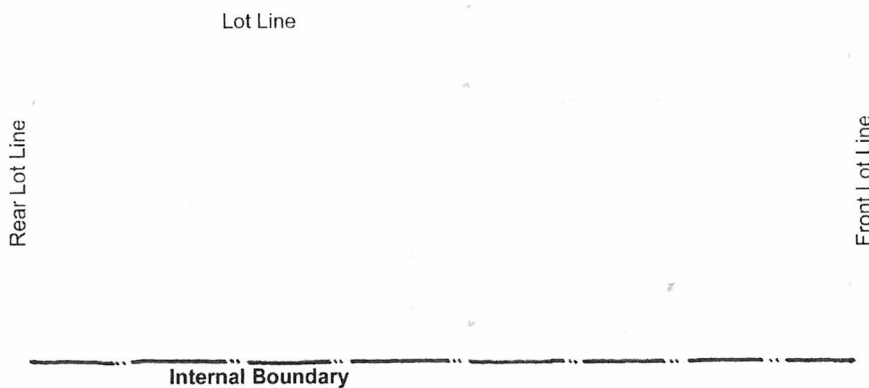
"**Housekeeping Apartment Building**" means a building composed of two or more housekeeping units.

"**Housekeeping Unit**" means a room or rooms used or intended to be used for normal living purposes including cooking, eating and sleeping but without separate bathroom or toilet facilities.

"**Integrated Parking Space**" means any enclosed space that is an integral part of and contained entirely within the principal building on the lot and used or intended to be used only for the parking or movement of motor vehicles.

"**Integrated Parking Unit**" means a parking unit in an integrated parking space.

"**Internal Boundary**" means any boundary of a lot other than a street boundary.



"**Irregular Lot**" means a lot which is neither in the shape of a rectangle or a square.

"**Kindergarten**" means a building licensed as a community care facility under the *Community Care and Assisted Living Act* and in which care, supervision or any form of educational or social training not provided under the *Schools Act* is provided to children under six years of age, for any portion of the day.

"**Landscape Screen**" means an opaque visual barrier formed by shrubs, trees, wooden fences, masonry walls or any combination of these or like materials.

"**Launderette**" means an establishment where individual automatic washing machines, dry cleaning machines and clothes dryers are operated by the customer or by an attendant, but does not include a pressure steam boiler, flat work ironing equipment, garment pressing or shirt finishing equipment or dry cleaning equipment of any kind.

Schedule A – DEFINITIONS

"Length" when used to describe a dimension of a multiple dwelling means the measurement of the longest side of the least rectangle within which the plan perimeter of the multiple dwelling or portion can fit. Where the least rectangle is a square, length means any one of the external dimensions.

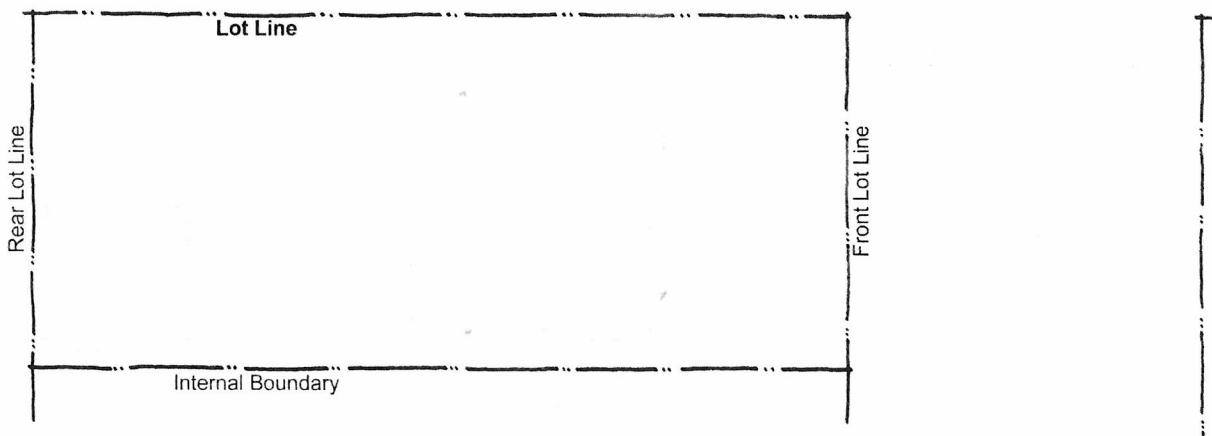
"Liquor Retail Store" means an establishment that engages in the retail sale of wine, beer, or any other liquor, as defined in the *Liquor Control and Licensing Act*, for consumption elsewhere than in that establishment.

"Lot" means a single area of land, designated and registered at the Victoria Land Title Office as not more than one parcel of land, and if a parcel of land is divided by a lane or otherwise, each division thereof constituting a single area of land shall be deemed to be a separate lot, and includes a strata lot in a bare land strata plan but does not include any other strata lot or an air space parcel.

Amended Mar 12, 2020
Bylaw 20-029

"Lot Depth" means the average distance between the rear lot line and the front lot line of a lot.

"Lot Line" means the boundary of a lot.



"Lowest Storey" means the lowest floor of a building that is both wholly enclosed and wholly above the grade of the building.

"Mezzanine" means an intermediate floor assembly within a storey, which does not exceed 28.5% of the storey's floor area. (*Bylaw 12-052 Adopted November 22, 2012*)

"Multiple Dwelling" means a building containing three or more self-contained dwelling units.

"Multiple Dwelling Accessory Use" includes the following uses and any structures which contain these uses on the same lot as the multiple dwelling:

- a) Parking facilities;
- b) Recreational and pleasure uses ancillary to a multiple dwelling undertaken or carried on exclusively by or for the benefit of the persons or the guests of persons living in the multiple dwelling, where no fee, special charge or consideration is paid or demanded for its use and enjoyment over and above the ordinary rental for accommodation in the multiple dwelling;
- c) Accessory garden structures; and

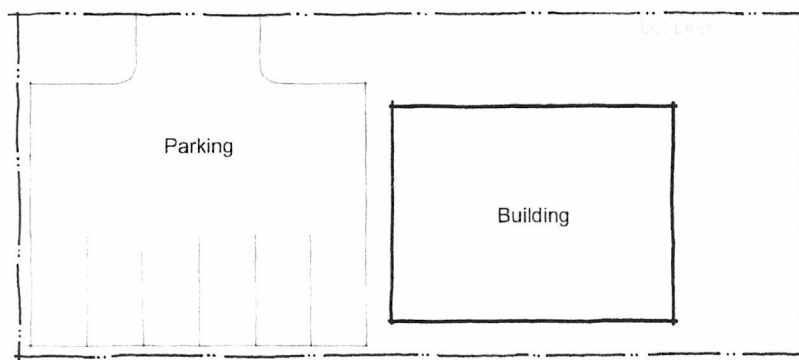
Schedule A – DEFINITIONS

- d) Uses essential to the proper, lawful and efficient use, management and maintenance of multiple dwellings.

"Natural Grade" means the elevation of the ground surface of land prior to any land alteration, including, but not limited to, disturbance, excavation, filling, or construction. Where land alteration has occurred, the natural grade is determined by historical records or interpolation based on surrounding natural grades.

"Nursing Home" means a facility where regular care or supervision is given by a health care professional as well as assistance with the performance of the personal functions and activities necessary for daily living for persons such as the aged or chronically ill who are unable to perform them efficiently for themselves.

"Open Site Space" means that portion of a lot which is landscaped and not occupied or obstructed by any building or portion of building, driveway or parking lot; excluding accessory garden structures, balconies and roof projections.



Open Site Space Calculation (Example)

Building:	130m ² +
Parking:	200m ² +
Total:	330m ² =

Lot Area:	680m ² -
Building & Parking	330m ²
Open Site Space	350m ² =

Open Site Space	350m ² ÷
Lot Area	680m ²
	0.485 =

48.5%

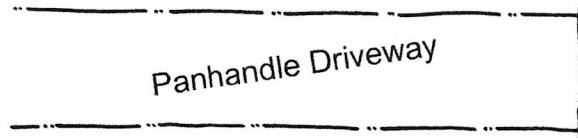
"Outdoor Feature" means any structure constructed or placed on a lot, whether attached or detached from a building, including but not limited to swimming pools, patio, decks and stairs, and excluding:

- buildings;
- raised gardens bed;
- docks;
- wharfs;
- piers;
- cistern;
- stormwater retention and water quality facility;
- retaining walls;
- fences.

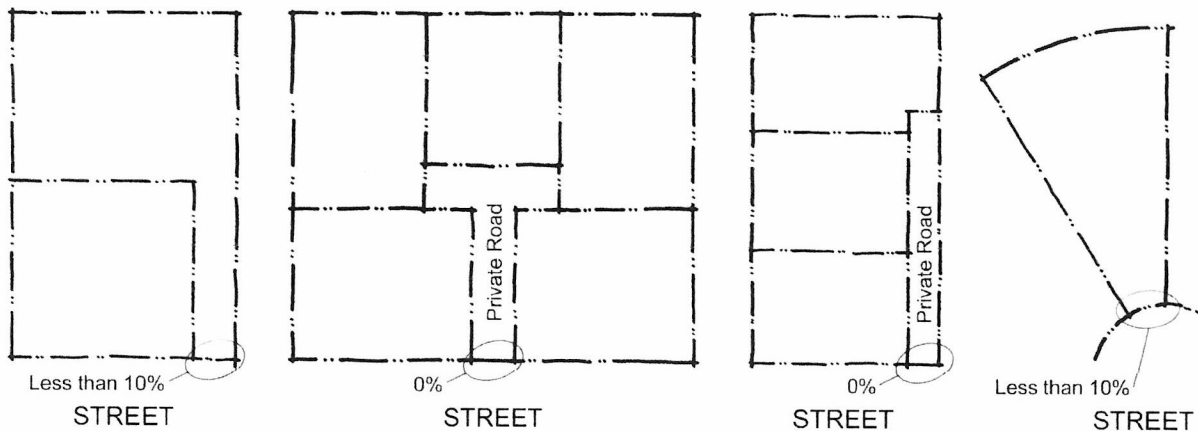
Schedule A – DEFINITIONS

"Panhandle Driveway" means a strip of land that is used principally as a driveway, the end of which forms the boundary between the lot of which that strip of land is a part of and:

- a) a street;
- b) a right-of-way easement giving access to the lot if there is no street abutting that boundary;
or
- c) the nearest public highway if there is no street or right-of-way easement abutting that boundary.



"Panhandle Lot" means a lot that has less than 10% of its perimeter adjoining a street and/or in part consists of a panhandle driveway.



"Parcel" means a lot.

"Parking Area" means all parking spaces, driveways and drive aisles on a lot.

Amended July 26, 2018
Bylaw 18-017

"Parking Lot" means an open area of land other than a street, used for the parking of vehicles but does not include any area where vehicles for sale or repair are kept or stored.

Schedule A – DEFINITIONS

"Parking Screen Wall" means a wall which is:

- a) rigidly constructed of durable material wherein no opening has an area measured on either surface of the wall in excess of 0.01m² and the total of the areas of all such openings measured as aforesaid does not exceed 25% of the entire area of either such surface;
- b) is of a height throughout its length of not less than 1.2m nor more than 1.9m;
- c) is not closer to the building on the lot on which the wall is situate or any part thereof than a horizontal distance of 2.5m at any point; and
- d) in the case of a lot containing a multiple dwelling, is of such length and is otherwise so constructed and maintained as effectively to prevent the whole or any part of any motor vehicle parked on any surface parking space on the lot at any point within a horizontal distance of 6.0m of the multiple dwelling from being seen by any person within a dwelling unit in that storey of a multiple dwelling which is the lowest storey wholly above the grade of the multiple dwellings.

"Permeable" means hard surfacing specifically designed to allow the movement of water to flow through the surface, but does not include unconsolidated materials such as crushed rock, gravel, grass, earth or other loose materials.

Amended July 26, 2018
Bylaw 18-017

"Pier" means a structure with a level surface that is raised above the surface of the water and is supported by pilings or similar support structures, and that is used for marine or navigational purposes, or as a walkway or viewing platform, but does not include any buildings or structures placed or erected upon it.

"Porch" means an open area covered by a roof which forms part of the access/egress to a building.

"Preschool" means a licensed community care facility in which any form of educational or social training not provided under the *School Act* is provided.

"Principal Residence" means the usual place where an individual makes their home.

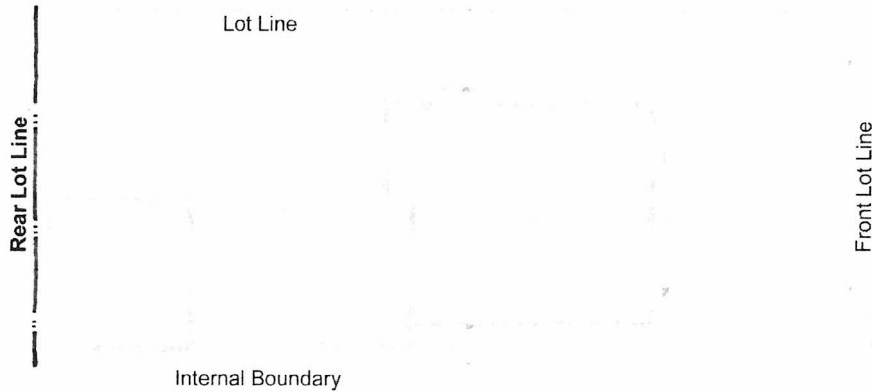
"Private Garage" means a single building used for the parking of personal motor vehicles or storage.

"Private Park" means any park or playground which is not a public park and which is used or intended to be used for the recreation and enjoyment of the public and for admission to which or for the use of any of the facilities whereof no fee or other charge is paid or demanded.

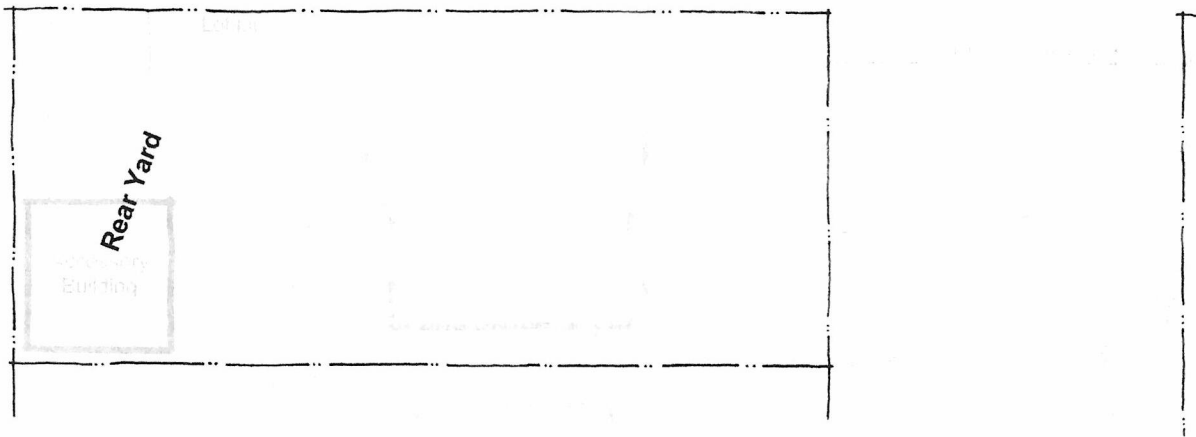
"Public Building" means the non-commercial use of land, building and structures for art or cultural exhibits, cemetery, church, community centre, court of law, fire station, hospital, legislative chambers, library, outdoor recreation use, police station, recreation facility, or school.

Schedule A – DEFINITIONS

"Rear Lot Line" means the lot line opposite to and most distant from the front lot line, provided that where the rear portion of a lot is bounded by two intersecting side lot lines the rear lot line is the point of their intersection.



"Rear Yard" means a yard located between the principal building and the rear lot line extending the full width of the lot.



"Residential Floor Area" means the sum of the floor areas of a dwelling unit or units including internal walls and partitions excluding balconies, basements, common stairwells, common corridors, common recreation areas, service areas and enclosed parking.

"Residential Rental Tenure" means occupancy of a dwelling unit under a rental agreement that is subject to the *Residential Tenancy Act*.

Amended March 28, 2019
Bylaw 19-029

"Restaurant" means a place where food and beverages are sold for consumption on the premises, but does not include a free standing food sales outlet.

"Rest home - Class A" means a facility in which food, lodging and care are provided with or without charge to more than two persons who, on account of age, infirmity or their physical, mental or psychiatric condition, are given personal care, or who are lawfully detained as prisoners for a period not exceeding three months, pursuant to judicial process.

Schedule A – DEFINITIONS

"Rest home - Class B" means a facility in which food, lodging and care are provided with or without charge to more than two but not more than twenty persons, other than members of the operator's family, who, on account of age, infirmity or their physical, mental or psychiatric condition, are given personal care, but does not include a facility in which persons are detained as prisoners pursuant to judicial process, or a facility in which persons are treated for alcohol or drug addiction.

"Rest home - Class C" means a facility in which food, lodging and support are provided with or without charge to more than twenty persons, other than members of the operator's family, who, on account of age, infirmity or their physical, mental or psychiatric condition, are given personal care or life skills support, but does not include a facility in which persons are detained as prisoners pursuant to judicial process.

"Roof deck" means:

- a) an open deck area located above the second storey finished floor level of the principal building; and
- b) an open deck area located above the first storey an accessory building.

"Roomer" means a person who resides in any portion of a building who pays for accommodation without board or the use of on-site cooking facilities.

"Rooming House" means a building in which rooms are rented to more than 4 but not more than 15 roomers, and does not include a community care facility within the meaning of the *Community Care Facilities Licensing Act*.

"Secondary Suite" has the same meaning as under *the British Columbia Building Code*, and does not include a strata lot.

"Self-contained Dwelling Unit" means a suite of rooms in a building designed for occupancy of one family which has a separate entrance, and kitchen and bathroom facilities.

"Semi-attached Dwelling" means a building used or designed for use as two self-contained dwelling units, each having direct access to the outside at grade level, and where neither unit is wholly or partly above the other.

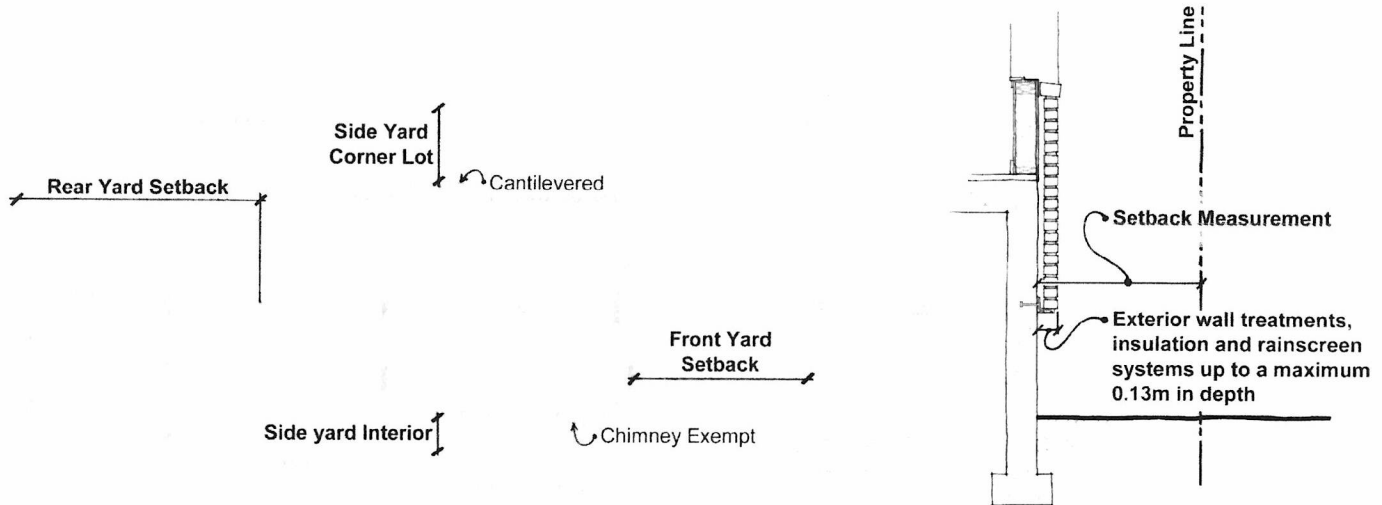
"Senior Citizens' Residence" means a building containing in any combination, two or more dwelling units, housekeeping units, or sleeping units for the accommodation, on a non-profit basis of elderly persons, which is wholly owned or operated by a government agency, or by a non-profit corporation.

"Service Station" means a place where the primary business carried on is the retail sales of petroleum products and the accessory sales of automotive parts as part of the primary business; but does not include a garage or a body shop.

Schedule A – DEFINITIONS

"Setback" or "Line of Setback" means the shortest horizontal distance from a boundary of a lot to the face of the building, excluding:

- cornice or retaining wall or fence; and
- exterior wall treatments, insulation and rainscreen systems up to a maximum of 0.13m in depth.



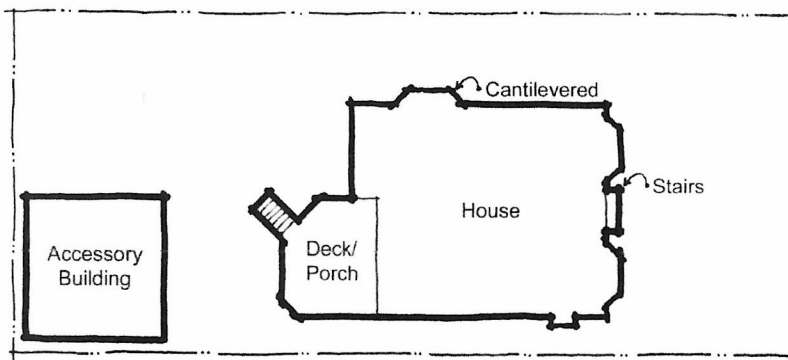
"Short-Term Rental" means the renting of a dwelling, or any portion of it, for a period of less than 30 days and includes vacation rentals.

"Side Yard" means a yard located on the side of a building and extending from the front wall to the rear wall of the building.

"Single Family Dwelling" means a detached building having independent exterior walls and containing only one self-contained dwelling unit.

"Site" means a lot having its principal frontage upon a street, occupied or to be occupied by one or more buildings.

"Site Coverage" means the percentage of the area of a lot which is occupied by any structure.



Site Coverage Calculation (Example)

Main Structure:	122m ²	+
Deck and Stairs:	24m ²	+
Accessory Building:	37m ²	
Total (Structures):	183m ²	=
Lot Area:	580m ²	
Total (Structures)	183m ²	÷
Lot Area	580m ²	=
	0.316	=

31.6%

Schedule A – DEFINITIONS

"Sleeping Unit" means one or more habitable rooms which are used or intended to be used for sleeping or sleeping and living purposes, but in which there is not a bathroom, water closet, sink, or cooking facility.

"Small-scale commercial urban food production" means:

- (a) cultivating and harvesting plants or fungi;
- (b) beekeeping and harvesting honey;
- (c) keeping poultry to collect eggs; and
- (d) sorting, cleaning and packaging the items noted above

for retail purposes, as well as selling and storing harvested products on the premises.

"Split Level Dwelling" means a dwelling constructed in such a manner that habitable accommodation is provided in adjacent areas on different floor levels.

"Storefront Cannabis Retailer" means premises where cannabis is sold or otherwise provided to a person who attends at the premises.

"Storey" means the space between two floors or between any floor and the roof next above, but does not include a basement or a crawlspace.

"Stormwater Retention and Water Quality Facility" has the same meaning as under the Sanitary Sewer and Stormwater Utilities Bylaw, as amended or replaced from time to time.

"Street" includes a lane, road, sidewalk, and other public highway.

Amended July 26, 2018
Bylaw 18-017

"Street Boundary", **"Street Frontage"** or **"Street Line"** means the boundary between a lot and a street provided that:

- a) where a lot is bounded either in whole or in part by more than one street, the street boundary shall be deemed to be the boundary the lot has in common with the wider or widest of the abutting streets or when both streets are the same width, the narrowest boundary of a lot abutting a street.
- b) where a lot does not have a boundary with a street, lane, road or other public highway, it means the boundary between such lot and the area of any right-of-way easement giving access to the lot; and
- c) where a lot which is not connected with a public highway by means of an easement, it means the boundary nearest to the nearest public highway.

"Street Wall" means the wall of a building which fronts upon the nearest street whether such a wall is at or above the level of the ground.

"Surface Parking Space" means any space or area that is used or intended to be used for the parking or movement of motor vehicles and that is not contained in or covered by a structure.

"Total Floor Area" means the sum of the areas of all floors of a building or buildings, excluding floor space under a ceiling which is less than 1.8m above grade.

"Townhouse" means an attached dwelling.

Schedule A – DEFINITIONS

“Transient Accommodation” means:

- a) the use of land or a building for the temporary accommodation of visitors, and without limitation includes hotels, motels and bed and breakfast accommodation; but
- b) does not include the accommodation of visitors without receipt of payment or other consideration, where that accommodation is incidental to and normally associated with the permitted residential use of a dwelling unit.

“Two Family Dwelling” means a building consisting of two self-contained dwelling units which share a common wall or an area that forms the floor of one unit and the ceiling of the other and are not linked by a trellis, deck, breezeway or similar connection.

“Underground Parking Space” means any enclosed space used or intended to be used for the parking or movement of motor vehicles and contained entirely within a structure or part of a building the whole of which structure or part lies entirely below the grade of the structure or building, containing one or more parking units.

“Unobstructed Access” means the ability of the intended user of the parking space to access and egress to the street at the time that the parking space is required.

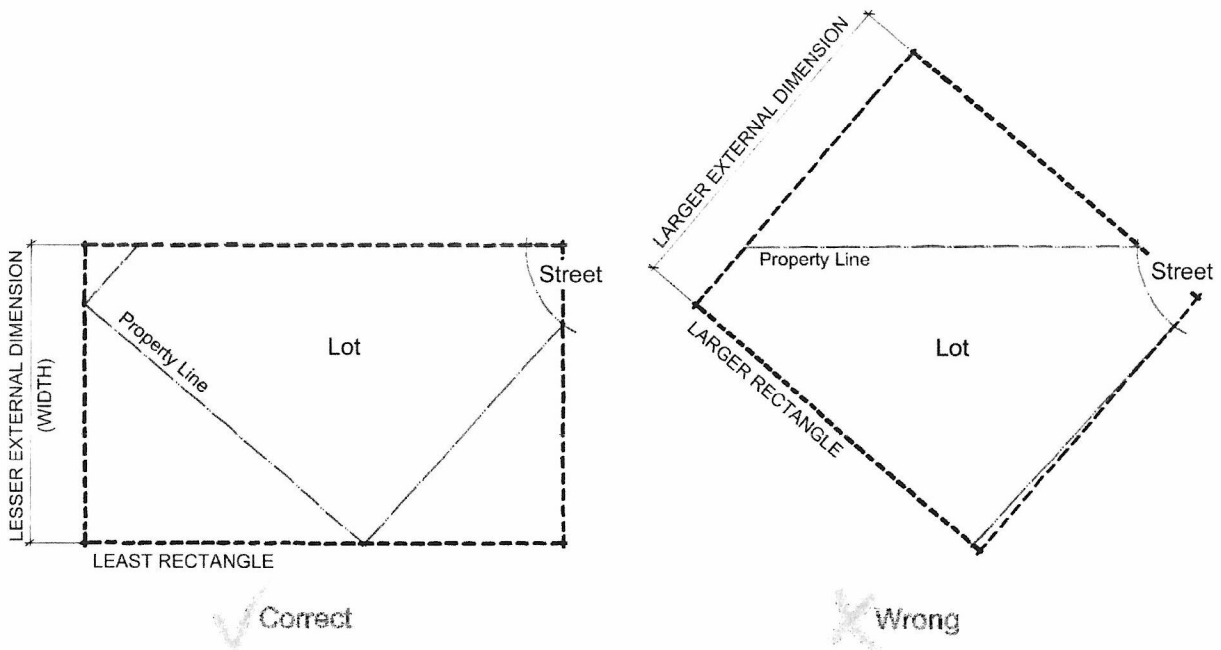
Amended July 26, 2018
Bvlaw 18-017

“Waterfront Lot” means a lot that abuts a tidal water body along any portion of the lot’s boundary.

Amended Feb 27, 2020
Bvlaw 20-002

“Wharf” means a fixed structure built alongside or projecting into a body of water, to which a boat, ship or other vessel may be moored or tied for the purpose of loading or unloading cargo or passengers, but does not include any buildings or structures placed or erected upon it.

“Width” when used in reference to a lot, means the length of the lesser external dimension of the least rectangle within which the lot may be contained in plan view.



“Yard” means a part of a site which is unoccupied and unobstructed by building from the ground upward, except for chimneys, fire escapes and the ordinary projections of sills, belt courses, cornices and eaves.

Schedule A – DEFINITIONS

Garden Suite	Bylaw No. 10-079	Adopted: January 20, 2011
Zoning Regulation Bylaw	Bylaw No. 11-015	Adopted: March 24, 2011
Setback or Line of Setback	Bylaw No. 13-021	Adopted: April 11, 2013
Cultural facility & Financial service	Bylaw No. 14-017	Adopted: April 10, 2014
Multiple dwelling & House conversion	Bylaw No. 14-041	Adopted: July 10, 2014
Section 7.1 and 7.4 amendments	Bylaw No. 14-068	Adopted: September 25, 2014
Garden suite/accessory building amds.	Bylaw No. 14-073	Adopted: October 3, 2014
Minimum lot size	Bylaw No. 15-001	Adopted: March 26, 2015
Cistern regulations	Bylaw No. 15-018	Adopted: April 14, 2015
Finished Grade, Grade, Natural Grade, Outdoor Feature	Bylaw No. 16-004	Adopted January 28, 2016
Small-scale commercial urban food production, Foodstand, greenhouse	Bylaw No. 16-064	Adopted September 8, 2016
Add Short-Term Rental & change to Transient Accommodation	Bylaw No. 17-084	Adopted September 21, 2017
Add definition of Rest home Class C	Bylaw No. 17-092	Adopted October 12, 2017
Add definition of Principal Residence	Bylaw No. 18-035	Adopted March 8, 2018
Add definitions as identified	Bylaw No. 18-017	Adopted July 26, 2018
Revise half storey definition as identified	Bylaw No. 19-001	Adopted March 14, 2019
Add definition of Residential Rental Tenure	Bylaw No. 19-029	
Add definition of Waterfront Lot	Bylaw No. 20-002	Adopted February 27, 2020

Schedule "D"
HOME OCCUPATIONS

- 1 Where home occupations are permitted pursuant to the provisions of this bylaw, the following conditions shall apply to the use:
- Location 2 For the purposes of a home occupation, the location of a business is the address at which the operations of the business are managed.
- Exception 3 A home occupation is not required to be operated wholly within a dwelling unit where the work is undertaken entirely off the lot on which the dwelling unit is located.
- Prohibition 4 The sale of goods to customers attending on the lot on which the dwelling unit is located is prohibited.
- Permitted Uses 5 The following uses are permitted as home occupations:
- (a) artist studio;
 - (b) mail order, provided that no merchandise is sold to customers attending on the lot on which the dwelling unit is located;
 - (c) making, processing and assembly of products on a small scale;
 - (d) manufacturing agent;
 - (e) personal and professional services, including barber, hairdresser, bookkeeper, medical therapy;
 - (f) teaching, provided that attendance is limited to 5 persons in a detached dwelling and to 1 person in a duplex or multiple dwelling;
 - (g) testing, servicing and repairing of goods.

Schedule "D"

- Prohibited Uses 6 (1) All uses that are noxious or offensive to any other dwelling units or the general public by reason of emitting odour, dust, smoke, gas, noise, effluent, radiation, broadcast interference, glare, humidity, heat, vibration, or hazard or any other emission are prohibited.
- (2) The following uses are prohibited:
- (a) except as provided in Section 11, Bed and Breakfast;
 - (b) car repairs and garages;
 - (c) clubs;
 - (d) kennels;
 - (e) radio dispatch services;
 - (f) restaurants;
 - (g) retail stores;
 - (h) salvage lots;
 - (i) storage lots;
 - (j) except as provided in Section 11, transient accommodation;
 - (k) in any building which has been converted from single family dwelling to duplex, multiple dwelling, boarding house, rooming house, or housekeeping apartment, pursuant to the applicable provisions of this bylaw, music teaching or any business which results in the transmission of sound;
 - (l) cannabis-related business; and;
 - (m) except as provided in Section 12, short-term rental.
- Stock in Trade 7 Except for one licensed vehicle, which shall be a car, van, or pickup truck, no business-related materials, including machinery or vehicles, shall be visible at any time on any lot on which a home occupation is carried out nor shall any machinery or vehicles be parked or stored on the lot unless completely enclosed within a building.
- Limitation 8 (1) Subject to this section, not more than one person shall be engaged in a home occupation, with the exception of urban agriculture, where up to two people are permitted to be engaged in the home occupation, and the person(s) shall reside on the lot on which the home occupation is carried on.
- (2) Where any lot upon which a home occupation is carried on has a boundary or portion of a boundary in common with any lot which is located in a zone which permits retail use, then no more than two persons may be engaged the home occupation where one of the persons resides on the lot on which the home occupation is carried on.

Amended Jan 11, 2018
Bylaw 17-110

Amended March 8, 2018
Bylaw 18-035

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Schedule "D"
HOME OCCUPATIONS

(3) This section does not apply to any employees of a home occupation who at no time attend on the lot on which the home occupation is carried on, nor park in the immediate vicinity of the lot.

(4) More than one person may operate a short-term rental in their principal residence.

Amended March 8, 2018
Bylaw 18-035

9 No more than three home occupations shall be carried on in any one dwelling unit, provided that only one of the home occupations has customers that attend the dwelling unit.

Amended Jan 11, 2018
Bylaw 17-110

Advertising

10 Except as expressly permitted in this bylaw, or in the Sign By-law, no sign or other advertising device or advertising matter may be exhibited or displayed on any lot on which a home occupation is being carried on.

11 Subject to the following requirements, where any building is used as a single family dwelling, up to two bedrooms may be used for transient accommodation as a home occupation.

(1) Notwithstanding Section 4, meals or food services may be provided to any customers but not after 12:00 noon.

(2) No liquor shall be provided to any customers.

(3) One parking space for each room available for transient accommodation shall be provided on the lot and a parking space may be located behind another parking space.

(4) No sign may be erected, used, or maintained for the purpose of advertising transient accommodation use within a single family dwelling.

(5) A single family dwelling may be used for transient accommodation whether or not the property contains a secondary suite or garden suite provided however that only one transient accommodation use is permitted on the property

Amended March 8, 2018
Bylaw 18-035

(6) Transient accommodation is restricted to no more than two bedrooms and cannot occupy an entire self-contained dwelling unit.

Amended March 8, 2018
Bylaw 18-035

12 Subject to the following requirements, a short-term rental is permitted as a home occupation in a principal residence.

Amended March 8, 2018
Bylaw 18-035

(1) subject to subsection (2), no more than two bedrooms may be used for short-term rental and the short-term rental cannot occupy an entire self-contained dwelling unit;

Schedule "D"

- (2) the entire principal residence may be used for a short-term rental only occasionally while the operator is temporarily away;
- (3) no liquor may be provided to short-term rental guest; and
- (4) No sign may be erected, used, or maintained for the purpose of advertising short-term rental.

Amending Bylaw 09-01 adopted Jan 19, 2009
Amending Bylaw 17-110 adopted Jan 11, 2018
Amending Bylaw 18-035 adopted March 8, 2018

SHORT-TERM RENTAL REGULATION BYLAW
A BYLAW OF THE CITY OF VICTORIA

The purposes of this Bylaw are to provide for the regulation of short-term rentals including vacation rentals in operators' principal residences where permitted under the Zoning Regulation Bylaw No. 80-159 and where permitted pursuant to section 528 of the *Local Government Act*.

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1	Title
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9	Severability
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11	Commencement

Pursuant to its statutory powers, including section 8(6) of the *Community Charter*, the Council of The Corporation of the City of Victoria, in an open meeting assembled, enacts the following provisions:

Title

- 1 This Bylaw may be cited as the "Short-Term Rental Regulation Bylaw".

Definitions

- 2 In this Bylaw

"operator" means a person who rents out, or offers for rent, any premises for short-term rental but does not include a person who acts as an intermediary between the short-term rental tenant and the person who receives the rent;

"principal residence" means the usual place where an individual makes their home;

"responsible person" means a person designated by the operator as the primary contact under section 6.

"short-term rental" means the renting of a dwelling, or any part of it, for a period of less than 30 days and includes vacation rentals;

"strata corporation", "strata council", and "strata lot" have the same meaning as in the *Strata Property Act*.

Licence Required

- 3
- (1) A person must not carry on business as a short-term rental operator unless the person holds a valid licence issued under the provisions of this Bylaw and the Business Licence Bylaw.
 - (2) A person applying for the issuance or renewal of a licence to operate a short-term rental must, in addition to meeting the requirements of the Business Licence Bylaw:
 - (a) make an application to the Licence Inspector on the form provided for that purpose;
 - (b) pay to the City the applicable licence fee prescribed under subsection (3);
 - (c) provide, in the form satisfactory to the Licence Inspector, evidence that:
 - (i) the person owns the premises where the short-term rental will be offered, or
 - (ii) the owner of the premises where the short-term rental will be offered has consented to their use as a short-term rental;
 - (d) if the premises where the short-term rental will be offered are located within a strata lot, provide a letter from the strata council confirming that provision of short-term rental does not contradict any bylaws of the strata corporation or applicable provisions of the Strata Property Act; and
 - (e) provide, in the form satisfactory to the Licence Inspector,
 - (i) evidence that the premises where the short-term rental will be offered are occupied by the operator as their principal residence; or
 - (ii) provide the name and contact information for the responsible person in relation to the short-term rental premises.
 - (3) The licence fee for purposes of subsection (2)(b) is:
 - (a) \$150 where the short-term rental is offered in the operator's principal residence; or
 - (b) \$1,500 for all short-term rentals that do not qualify under paragraph (a).

Power to Refuse a Licence

- 4
- The Licence Inspector may refuse to issue a licence for a short-term rental if, in the opinion of the Licence Inspector,
- (a) the applicant has failed to comply with section 3; or
 - (b) the short-term rental operation would contravene a City bylaw or another enactment.

Licence Number to be Included in Advertising

- 5 A person may offer to rent premises for rent as a short-term rental only if a valid business licence number is included in any advertising, listing, or promotion material that is intended to communicate availability of the premises for short-term rental.

Responsible Person

- 6 (1) A person may only operate a short-term rental in premises other than their principal residence if they designated a responsible person who, at all times that the short-term rental is operated, has access to the premises and authority to make decisions in relation to the premises and the rental agreement.
- (2) A person may only operate a short-term rental if they ensures that the name and contact information of the responsible person is prominently displayed in the short-term rental premises at all times when the short-term rental is operated.
- (3) The operator may be the responsible person except when subsection (5) applies.
- (4) The responsible person must be able to attend at the short-term rental premises within two hours of being requested to do so.
- (5) If a person who operates a short-term rental in their principal residence is going to be away during the term of the short-term rental, they must designate a responsible person and comply with this section.

Offences

- 7 (1) A person commits an offence and is subject to the penalties imposed by this Bylaw, the Ticket Bylaw and the Offence Act if that person
- (a) contravenes a provision of this Bylaw;
 - (b) consents to, allows, or permits an act or thing to be done contrary to this Bylaw; or
 - (c) neglects or refrains from doing anything required be a provision of this Bylaw.
- (2) Each instance that a contravention of a provision of this Bylaw occurs and each day that a contravention continues shall constitute a separate offence.

Penalties

- 8 A person found guilty of an offence under this Bylaw is subject to a fine of not less than \$100.00 and not more than \$10,000.00 for every instance that an offence occurs or each day that it continues.

Severability

- 9 If any provision or part of this Bylaw is declared by any court or tribunal of competent jurisdiction to be illegal or inoperative, in whole or in part, or inoperative in particular circumstances, it shall be severed from the Bylaw and the balance of the Bylaw, or its application in any circumstances, shall not be affected and shall continue to be in full force and effect.

Transition Provisions

- 10 (1) In the calendar year that this bylaw is adopted only, the fee payable under section 3 shall be prorated by 1/12 for each month in that year prior to the adoption of this bylaw, including the month the bylaw is adopted.
- (2) Any operator who, at the time of adoption of this bylaw, holds a valid licence for a short-term rental under the Business Licence Bylaw shall be credited with amount paid for that licence towards the fee payable under section 3.

Commencement

- 11 This bylaw comes into force on adoption.

READ A FIRST TIME the	22nd	day of	February	2018
READ A SECOND TIME the	22nd	day of	February	2018
READ A THIRD TIME the	22nd	day of	February	2018
ADOPTED on the	8th	day of	March	2018

“CHRIS COATES”
CITY CLERK

“LISA HELPS”
MAYOR

Newton v The Corporation of the City of Victoria, 2018 BCSC 728 (CanLII)

Date: 2018-02-13
File number: S174644
Citation: Newton v The Corporation of the City of Victoria, 2018 BCSC 728 (CanLII),
<<http://canlii.ca/t/hrvh1>>, retrieved on 2020-07-20

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Newton v. The Corporation of the City of Victoria*,
2018 BCSC 728

Date: 20180213
Docket: S174644
Registry: Victoria

Between:

**John Newton, Steven Nguyen, Jacqueline King,
Lea Cathcart, Jocelyn Cathcart and 613 Herald Street Ltd.**

Petitioners

And

The Corporation of the City of Victoria

Respondent

Before: The Honourable Madam Justice Winteringham
(appearing by teleconference)

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioners:	A. Faulkner-Killam
Counsel for the Respondent:	T. Zworski
Place and Date of Trial/Hearing:	Victoria, B.C. January 15 and 16, 2018
Place and Date of Judgment:	Victoria, B.C. February 13, 2018

[1] **THE COURT:** Counsel indicated at the outset of this hearing that there was some urgency in determining the issue raised in the petition. I am thus delivering these reasons orally.

Introduction

[2] The petitioner seeks various declarations with respect to a building under construction at 613 Herald Street in the City of Victoria (the "Building"). The central issue raised in the petition and request for declaratory relief arises out of an amendment to the City of Victoria's zoning regulation bylaw that restricts the usage of individual units for vacation rentals. The petitioners contend the units in the Building were purchased and sold on the basis that the Building was located within a zoning district that permitted short-term rentals.

[3] The petitioners seek declaratory relief that:

- 1) the Building was lawfully under construction at the time of the adoption of the bylaw;
- 2) the residential units are deemed to be in use for their intended purpose in accordance with s. 528 of the *Local Government Act*, RSBC 2015, c. 1; and
- 3) the intended purpose of the residential units includes vacation rentals and may be lawfully used as vacation rentals pursuant to s. 528 of the *Local Government Act*.

[4] The respondent says the Building does not qualify for lawful non-conforming status under s. 528(4)(b) of the *Local Government Act*, such that it can be used for short-term rentals.

[5] The petitioners made preliminary submissions regarding the jurisdiction of the court to deal with the issues raised and submitted that it did, either pursuant to the *Judicial Review Procedure Act*, RSBC 1996, c. 241, or the inherent jurisdiction of the court. With respect to the latter, the petitioners submit that the declaratory relief sought in this case is sustainable, even without reliance on the *Judicial Review Procedure Act*, citing *Whitechapel Estates v. Canada (Ministry of Transportation and Highways)*, 57 BLLR (3d) 130 (C.A.), where Justice Prowse addressed the nature of the declaratory relief and stated:

[44] The nature of declaratory relief was also discussed in an earlier decision of the Supreme Court of Canada, in a different context, in *Solosky v. The Queen*, 1979 CanLII 9 (SCC), [1980] 1 S.C.R. 821, 105 D.L.R. (3d) 745. There, a penitentiary inmate sought a declaration that mail to and from his solicitor was privileged and must be delivered unopened. His action was dismissed at trial and the dismissal was upheld in the Federal Court of Appeal. The Supreme Court of Canada allowed the appeal. Dickson J., speaking for the majority (Estey J. concurring in separate reasons), stated at p. 753:

Declaratory relief is a remedy neither constrained by form nor bounded by substantive content, which avails persons sharing a legal relationship, in respect of which a "real issue" concerning the relative interests of each has been raised and falls to be determined.

The principles which guide the Court in exercising jurisdiction to grant declarations have been stated time and again. In the early case of *Russian Commercial and Industrial Bank v. British Bank for Foreign Trade Ltd.*, [1921] 2 A.C. 438, in which parties to a contract sought assistance in construing it, the Court affirmed that declarations can be granted where real, rather than fictitious or academic, issues are raised. Lord Dunedin set out this test (at p. 448):

The question must be a real and not a theoretical question; the person raising it must have a real interest to raise it; he must be able to secure a proper contradicter, that is to say, some one presently existing who has a true interest to oppose the declaration sought.

In *Pyx Granite Co. Ltd. v. Ministry of Housing and Local Government*, [1958] 1 Q.B. 554 (reversed [1960] A.C. 260, on other grounds), Lord Denning described the declaration in these general terms (p. 571):

... if a substantial question exists which one person has a real interest to raise, and the other to oppose, then the court has a discretion to resolve it by a declaration, which it will exercise if there is a good reason for so doing.

[45] These are but two of countless decisions which illustrate the broad nature of declaratory relief and the varied circumstances in which a court may exercise its discretion to grant, or refuse, such relief.

[6] The respondent agrees that there is a real issue between the parties and that the court has jurisdiction to resolve the issues raised in the petition. Based on the position of the parties and the authorities cited above, I am satisfied that this court has jurisdiction to grant the declaratory relief sought. In the words of Justice Prowse, whether the court exercises its jurisdiction to grant the declaration sought is another matter and it is to that issue that I turn now.

The Background to the Dispute

[7] The petitioner, 613 Herald Street Ltd., is the registered owner of the Building. The petitioner John Newton is an officer and director of 613 Herald Street Ltd., and one of the owners of a unit in the Building. The other named petitioners are owners of units in the Building.

[8] The respondent, the Corporation of the City of Victoria, is a local government with jurisdiction over zoning and land use in Victoria. The parties do not disagree about the circumstances giving rise to the dispute, and I summarize those briefly here.

[9] The City adopted the zoning regulation bylaw for the purpose of dividing the city into zones and regulating land uses in each zone. The Building is within the CA-3 zone.

[10] The uses permitted under this zone include residences, as well as transient accommodation. Transient accommodation

use includes a wide range of uses for temporary accommodation of visitors, and includes hotels, motels, and bed and breakfast accommodation. Before September 21, 2017, transient accommodation expressly included vacation rentals. "Vacation rentals" is not a defined term in the zoning regulation bylaw.

[11] Before September 21, 2017, short-term rentals or vacation rentals were permitted in all zones where transient accommodation was a permitted use. The city undertook a review and examination of the impact of short-term rentals on its housing supply. On September 21, 2017, the city amended the zoning regulation bylaw. The amendment defined short-term rentals as a distinct use under the bylaw and the amendment prohibited it in most circumstances in most zones. The definition of "transient accommodation" was amended to delete "vacation rentals" and a new separate definition of "short-term rental" was added to the bylaw:

Short-term rental means the renting of a dwelling or any portion of it for a period of less than 30 days and includes vacation rentals.

[12] The parties agree that, for the purpose of the petition, "transient accommodation", "vacation rental", and "short-term rental" have been used somewhat interchangeably. For consistency, I will try to use the term "short-term rental" as it applies here.

[13] Because of the September 21, 2017, amendment, short-term rentals of less than 30 days became unlawful and was no longer a permitted use. For those buildings where the use was in place on September 21, the city granted a designation of lawful non-conforming use within the CA-3 zone. In other words, and as stated by the city, although transient accommodation continues to be a permitted use within the CA-3 zone, as a result of the September 21, 2017, amendment, short-term rental is no longer a permitted use of the Building under the bylaw unless it is a lawful non-conforming use.

[14] At the time of the amendment, the Building was lawfully under construction. The construction of the Building was authorized by the city through a building permit issued on November 28, 2016. Approved by council of the city on February 11, 2016, development on the property was authorized by a development permit. The building and development permit authorized construction of a new, six-storey, multiple-dwelling building with 32 units and two commercial units on the ground floor. The city does not dispute that the Building was lawfully under construction on September 21, 2017, when the bylaw was amended to prohibit short-term rentals. In addition, the city does not dispute that before the bylaw was amended, short-term rentals would have been a permitted use of the units in the Building.

[15] By correspondence dated November 30 and December 4, 2017, the city informed the petitioners that the Building would not be permitted to be used for vacation rental or short-term rental of less than 30 days. Put another way, the city did not grant lawful non-conforming use status for the Building.

Bylaw and Amendments

[16] Here I set out the statutory framework which governs the resolution of this dispute. Section 528 states:

Non-conforming uses: authority to continue use

528 (1) Subject to this section, if, at the time a land use regulation bylaw is adopted,

(a) land, or a building or other structure, to which that bylaw applies is lawfully used, and

(b) the use does not conform to the bylaw,

the use may be continued as a non-conforming use.

(2) If a non-conforming use authorized under subsection (1) is discontinued for a continuous period of 6 months, any subsequent use of the land, building or other structure becomes subject to the land use regulation bylaw.

(3) The use of land, a building or other structure, for seasonal uses or for agricultural purposes, is not discontinued as a result of normal seasonal or agricultural practices, including

(a) seasonal, market or production cycles,

(b) the control of disease or pests, or

(c) the repair, replacement or installation of equipment to meet standards for the health or safety of people or animals.

(4) A building or other structure that is lawfully under construction at the time of the adoption of a land use regulation bylaw is deemed, for the purpose of this section,

(a) to be a building or other structure existing at that time, and

(b) to be then in use for its intended purpose as determined from the building permit authorizing its construction.

(5) If subsection (1) authorizes a non-conforming use of part of a building or other structure to continue, the whole of that building or other structure may be used for that non-conforming use.

[17] The Building exists in Zone CA-3, referred to as "Central Area General Commercial District". The petitioners and the respondent refer to the following extract from the Victoria Zoning Bylaw showing permitted uses:

All uses permitted in the CA-4 Zone . . . are permitted in this Zone, subject to the regulations applicable in that Zone, provided that notwithstanding anything contained in Part 6.8 no building shall be constructed, extended, altered or maintained so that any point on the exterior of any integral part thereof is at a greater elevation above the grade of the building than 15m.

[18] Relevant to the petition, CA-4 zoning bylaw includes these permitted uses:

(f) transient accommodation and transient accommodation accessory uses;

[19] The stated purpose of the Zoning Regulation Bylaw is to "define the zones into which the City of Victoria is divided and to regulate and control the uses of land and buildings therein". On September 21, 2017, the city passed a bylaw which express purpose was to amend the definition of transient accommodation:

The purpose of this [Bylaw amendment] is to amend the [Bylaw] by amending the definition of transient accommodation, adding a definition for short-term rental and prohibiting short-term rentals in the entire city unless where expressly allowed.

The Positions of the Petitioners and the Respondent

[20] The petitioners and the respondent disagree about whether the Building, as a building under construction, qualifies for non-conforming use status. The petitioners frame the issue this way:

The narrow point in dispute in this proceeding is whether the use of residential units for vacation rental is within an intended purpose as determined from the building permit.

[21] The respondent frames the issue to be:

. . . whether or not short-term rental is the intended purpose of the Building as determined from the building permit.

[22] The petitioners contend that the use or purpose intended, as determined from the Building Permit properly interpreted "intends" all of the available lawful uses that would be permissible and possible in a given unit whose construction is authorized by the Permit.

[23] Presented as an alternative, the petitioners rely on the doctrine of commitment to use.

[24] The respondent takes the position that the Building under construction does not qualify for lawful non-conforming status under s. 528(4)(b) of the *Local Government Act*, such that it can be used for short-term rentals. The respondent says the determination of this issue is driven by the building permit and whether short-term rentals is the Building's intended purpose as determined from the building permit. The city says it is not.

[25] With respect to the petitioners' reliance on the doctrine of commitment to use, the respondent submits that s. 528(4) was intended by the legislature to govern the resolution of disputes such as these. As such, the respondents say the doctrine of commitment to use does not apply to buildings under construction and hence the court cannot rely on the doctrine here.

[26] Clearly the Building permit and the interpretation of it is central to the determination of this dispute. I reproduce those portions of the building permit referenced by the parties. Attached as Exhibit E to the John Newton affidavit provides:

Permit Type: BP-RES-MULTI - MF NEW STR

Permit Scope: CONSTRUCT RESIDENTIAL COMPLEX (STRATA) - The Residences

PART 3 BLDG GROUP C/F3 3.2.2.50./80 6 STOREY 533.0 SQ M COMBUSTIBLE / NONCOMBUSTIBLE (BASEMENT) SPRINKLER / FIRE ALARM / STANDPIPE

Address:	613 HERALD ST	Zone:	CA-3
Legal:	LOT 617, VICTORIA	P.I.D.	009-375-5686
Owner:	613 HERALD STREET LTD	Phone:	250-475-1130

Address: 160-4396 WEST SAANICH RD
VICTORIA B.C. V8Z 3E9

Applicant:	613 HERALD STREET LTD	Phone:	250-475-1130
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Address: 160 4396 WEST SAANICH RD
VICTORIA B.C. V8Z 3E9

<u>Description</u>	<u>Quantity</u>	<u>Amount</u>	<u>Description</u>	<u>Quantity</u>	<u>Amount</u>
Bp App Fee	3,684,000.00	11,520.00	Bp Fee	3,684,000.00	34,560.00
Bp Fee Reduce	3,684,000.00	-500.00	En Art Fee Sssd	1.00	1,230.00
En Art Fee Ww	1.00	1,230.00	En Ww Cutcap 25	1.00	1,000.00
En City Works	1.00	2,500.00	En New Works	1.00	23,500.00
En Ss/sd 2-150	1.00	19,500.00	En Ww 50mm	1.00	17,500.00
En Ww Fire 150	1.00	14,000.00	Pl Ldscp Dep	1.00	18,190.62
Bp Multiple	1.00	70,806.06			
			Total		\$215,036.68

[27] The respondents state that short-term rental was a permitted use at the time the development permit and building permit were issued. However, the respondent states the documents submitted as part of the application for the development permit and the building permit made no reference to vacation rentals or transient accommodation. The respondent says that the building permit is clear that it authorizes construction of a residential complex with two retail spaces on the ground floor. The building permit makes no reference to transient accommodation, vacation rental, or short-term rentals.

[28] In support of its interpretation, the respondent refers to material relating to a parking variance sought by the petitioners. The respondent states that the development permit allows for variances from the bylaw, including a reduction in the mandated minimum number of parking spaces for the Building. As part of the application for the development permit and parking variance, the petitioner 613 Herald Street Ltd. submitted to the city a parking study and access review. Included in this review, the respondent highlights the following excerpt that was used by 613 Herald Street Ltd. to justify the parking variance:

... It should be noted developments with reduced parking supply result in residents "self selecting". That is, the future residents of the subject development are less likely to purchase (or rent) a unit if parking was desired but not available to them. Marketing of the units will be directed towards first time buyers and residents working and living within the Downtown core.

[29] The respondent says the documents submitted in support of the development and building permits made no reference to vacation rentals or transient accommodation.

Analysis

General Legal Framework

[30] Counsel did not refer to any authorities addressing the interpretation of s. 528(4) in the context where, as here, a bylaw is amended such that it impacts the future use of a building under construction. However, the existing case law does assist with the interpretation of s. 528 in the context presented here. As a starting point, it is useful to refer to a number of basic legal principles applicable to the construction of municipal legislation. In so doing, I have considered Chief Justice Bauman's review of those principles in *Society of Fort Langley Residents for Sustainable Development v. Langley (Township)*, 2014 BCCA 271 at paragraphs 11-18 where he states:

[11] Second, it is always salutary to remind oneself of the basic principles of statutory interpretation applicable in construing this species of delegated legislative authority.

[12] Counsel, of course, cited the Supreme Court of Canada's decision in *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, and then noted Tysoe J.A.'s reformulation of the direction in the context of a municipal law case in *North Pender Island Local Trust Committee v. Conconi*, 2010 BCCA 494 at para. 13:

... the words of an [enactment] are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the [enactment], the object of the [enactment], and the intention of [the legislative body that passed the enactment].

[13] Again, in the context of municipal empowering legislation and bylaws enacted pursuant thereto, this Court said in *Neilson v. Langley (Township)* (1982), 1982 CanLII 245 (BC CA), 134 D.L.R. (3d) 550 (at 554 per Hinkson

J.A.):

In the present case, in my opinion, it is necessary to interpret the provisions of the zoning by-law not on a restrictive nor on a liberal approach but rather with a view to giving effect to the intention of the Municipal Council as expressed in the by-law upon a reasonable basis that will accomplish that purpose.

[14] In *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 19, Mr. Justice Bastarache stated for the Court (at paras. 6 and 8):

6 The evolution of the modern municipality has produced a shift in the proper approach to the interpretation of statutes empowering municipalities. . . . The “benevolent” and “strict” construction dichotomy has been set aside, and a broad and purposive approach to the interpretation of municipal powers has been embraced . . .

. . .

8 A broad and purposive approach to the interpretation of municipal legislation is also consistent with this Court's approach to statutory interpretation generally. . . .

[15] These common law rules must be married with the expressions of intent by the Legislative Assembly.

[16] Generally, in s. 8 of the *Interpretation Act*, R.S.B.C. 1996, c. 238 we are told that:

8 Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

[17] Specifically, under s. 4(1) of the *Community Charter*, S.B.C. 2003, c. 26, we are directed so:

4(1) The powers conferred on municipalities and their councils under this Act or the *Local Government Act* must be interpreted broadly in accordance with the purposes of those Acts and in accordance with municipal purposes.

[18] Frankly, the Court can take the hint – municipal legislation should be approached in the spirit of searching for the purpose broadly targeted by the enabling legislation and the elected council, and in the words of the Court in Neilson, “with a view to giving effect to the intention of the Municipal Council as expressed in the bylaw upon a reasonable basis that will accomplish that purpose”.

[31] I am also reminded that the burden of proving entitlement to a lawful non-conforming use rests on the petitioners: see *Sanders v. Langley (Township)*, 2010 BCSC 1543 where Justice Wedge stated:

[33] One significant difference between the two provisions is that “use” is not a defined term under the *Local Government Act*. The judicial interpretation of “use” under that enactment is as follows: where a property owner can demonstrate that at the time of a new zoning bylaw his or her property was actually used in a manner that was a lawfully permitted use but for the new bylaw, the property owner is entitled to continue that formerly lawful, but now non-conforming use. The property owner must establish the actual use of the property on the exact date of the adoption of the new bylaw (*City of North Vancouver v. Vanneck* (1997), 39 M.P.L.R. (2d) 249 (B.C.S.C.) and cases cited therein).

[32] In support of the city's position that use is to be interpreted in accordance with the building permit, the city refers to authorities which are said to support the proposition that transient accommodation, including short-term rentals, is not a residential use but a commercial one and is more akin to a motel or hotel than to a residence: see *Kamloops (City) v. Northland Properties Ltd.*, 2000 BCCA 344, *Whistler v. Miller*, 2009 BCSC 419, and *Winchester Resorts Inc. v. Strata Plan KAS2188*, 2002 BCSC 1165.

[33] The petitioners submit that I must adopt a purposive approach to the interpretation of s. 528(4) and not the narrow interpretation advanced by the respondent. To that end, the petitioners assert the building permit provides for much more than the interpretation proffered by the city. That is because, the petitioners submit, Zone CA-3 is expressly included on the building permit.

[34] The B.C. Court of Appeal considered the objective of s. 528(4), then s. 970(3), of the *Municipal Act*, RSBC, c. 290 in *Whistler (Resort Municipality) v. Whistler Service Park Ltd.* (1990), 1990 CanLII 184 (BC CA), 71 D.L.R. (4th) 168. Here, Whistler Service Park obtained a building permit to construct a building for the public storage and work it was obligated to perform pursuant to its contract with Whistler Municipality. The building permit indicated that the use was industrial, even though industrial and commercial use of the land in question had been prohibited since 1976. After the building permit was issued, Whistler passed a bylaw which made that use a lawful non-conforming use. Once the building was complete, Whistler Service Park sought to extend the use by renting out parts of the building for other industrial purposes. Whistler Service Park argued the purpose of s. 528(3) is to allow a building under construction to be used as stated in the building permit.

[35] The B.C. Court of Appeal disagreed. Justice Macdonald stated (at page 175) that subsection (1) and (3) must be read together:

The legislative objective is apparent. Subsection (3) deals with the situation of a building in the course of construction when the by-law is adopted. Its purpose, for the sake of fairness, is to place that building under construction in a situation similar to the one enjoyed, under s-s. (1), by buildings completed before adoption of the by-law. That purpose appears from use of the words: "shall, for the purpose of this section...".

The subsection is predicated upon the building permit having been issued for a purpose which was lawful just before adoption of the by-law. It does not make an unlawful use lawful. It permits a non-conforming use. Therefore, "industrial use" is not permitted under s. 970 if it was not permitted before the new by-law.

[36] In *Nanaimo (Regional District of) v. Salapura* (1994), 94 B.C.L.R. (2d) 213, Justice Owen-Flood also considered the purpose of s. 528, then s. 970, of the *Municipal Act* and stated at page 28:

The purpose of s. 970 of the *Municipal Act* is to allow lawfully established uses to continue when zoning amendments are made which would otherwise prohibit those uses. If the defendants' use of the land and building on November 10, 1981, the date the plaintiff's zoning bylaw came into effect, was a lawful use under the *Land Commission Act*, which until that point had governed the use of the lands in question, then the defendants use became a lawful non-conforming use protected by s. 722 of the *Municipal Act* . . . The defendants right to continue such protected use would have vested by the time the bylaw came into effect. As a result, unless and until the protection of the Act was lost, the defendants use would remain a lawful non-conforming use unaffected by the plaintiff's bylaws.

[37] With respect to the term "use", I refer to Justice Wedge's review of the term as it was defined in the bylaw at issue before her in *Sanders*. She found that the wording of the applicable sections of the zoning bylaw was unambiguous and the definition of "use" broad at page 1544.

[38] Finally, I examine the term "residence" as it has been considered elsewhere in the authorities provided to me, for example in *Okanagan-Similkameen (Regional District) v. Leach*, 2012 BCSC 63, Justice Dardi dealt with the impact of a bylaw amendment in circumstances where the defendants owned a vacation home that was zoned as residential single-family one zone. The defendants stayed at the vacation home approximately three months during each year and advertised the property on a vacation rental site and rented it out for about five weeks each year, except for one year when they were renovating the property. The Regional District sought a declaration that the defendants were using the property as a commercial tourist accommodation contrary to the bylaw.

[39] In considering lawful non-conforming use at paragraph 117, Justice Dardi refers to *Sunshine Coast (District of) v. Bailey* (1995), 1995 CanLII 570 (BC SC), 15 B.C.L.R. (3d) 16 (S.C.), which was affirmed on appeal, and she stated:

[117] In *Sunshine Coast (Regional District) v. Bailey*, (1995), 1995 CanLII 570 (BC SC), 15 B.C.L.R. (3d) 16 (S.C.) at para. 31, the Court described the purpose of the law of non-conforming use and observed that the courts have adopted a liberal approach to interpreting the statutory lawful non-conforming use exemption in favour of the user:

Presumably, it is the concept of fairness that supplies the underlying rationale for the statutory non-conforming use exemption, for its liberal interpretation by the courts through development of the "commitment to use" doctrine, and for the accompanying proposition that any doubt as to prior use ought to be resolved in favour of the owner. To prohibit completion of a land development project to which there has been an unequivocal commitment, including significant physical alteration to the site, savours of unfairness because it is tantamount to giving the zoning bylaw retroactive effect, to the prejudice of the owner.

Application to the Facts

[40] I turn then to a consideration of "use for its intended purpose as determined from the building permit" in the context of subsections 528(1) and (4). In so doing, I have adopted a purposive approach. The central interpretative question is whether the building permit authorized short-term rentals.

[41] As stated above, the city admits that the Building was lawfully under construction at the time of the amendment, and that prior to the amendment, short-term rental use was a permitted use. In other words, but for the amendment, the petitioners would have been permitted to use their units for short-term rentals. Further, had the Building been operational at the time of the amendment, the petitioners would have been granted lawful non-conforming use status.

[42] Having reviewed the building permit and the zoning bylaws applicable to the Building, it is my view that the city's interpretation is too narrow. The city's suggestion here would require me to ignore express terms of the building permit, including the zone designation. In addition, the city's submission would require me to adopt an interpretation that would require me to ignore the purposive and liberal approach mandated in the municipal law jurisprudence.

[43] The permit scope of the building permit states "residential complex". However, that does not end the interpretive exercise. Importantly, the building permit states the Building exists in Zone CA-3, Central Area General Commercial District, which by definition incorporates CA-4, Central Area Commercial Office District.

[44] In my view, and much like the analysis undertaken by Justice Dardi in *Okanagan–Similkameen*, I am required to consider that residential designation within the context of the zoning provisions expressly identified in the building permit. Prior to the amendment, the bylaw and the definitions then applicable permitted residential use and the bylaw allowed for short-term rentals.

[45] Section 528(4) specifically deemed the Building lawfully under construction at the time of the amendment to be (a) existing and (b) then in use for its intended purpose as determined from the building permit authorizing its construction.

[46] The building permit allows for a residential complex within Zone 3–CA. In my view, a plain reading of s. 528(4), the issue to be determined is not whether short-term rental is the Building's intended purpose as determined from the building permit. Rather, the issue to be determined is whether residential complex in Zone CA–3 is the building's intended purpose as determined from the building permit. That is what the building permit authorized and that is what should be considered, not whether the building permit expressly stated that some units may be used for short-term rentals. In my view, when I consider that these are residential units in a zoning district that permitted short-term rentals at the time of the amendment is sufficient for the petitioners to meet their burden. The respondent does not dispute that short-term rentals were a permitted use in Zone CA–3 prior to the amendment and the Building would have been granted lawful non-conforming use status but for the fact it was a building under construction.

[47] In my view, the petitioners have established, for the purpose of s. 528, that the residential units of the Building maybe lawfully used as vacation rentals. The city relied on evidence related to the application for a parking variance. It is my view that the parking variance application does not detract from the interpretation set out here. In other words, the parking variance application does not change the interpretation of what was authorized by the building permit as I have found here.

[48] Again, I am mindful that municipal legislation must be interpreted in a purposeful fashion. In this regard, I acknowledge that the result of the interpretation of s. 528(4), as advanced by the petitioners, is that other buildings lawfully under construction before September 21, 2017, could seek the same declaration. However, as the petitioners submitted, if the city wanted to curtail vacation rentals of residential units in this zone, it could have inserted the available restrictions accordingly. In other words, the building permit could have included a provision to the effect that the residential units cannot be used as short-term rentals.

[49] I address briefly here the testimony of Ryan Morhart. During the hearing, the petitioners applied to strike specific paragraphs of affidavits filed by the city and that application was granted in part. At the same time, the petitioners sought leave to cross-examine Ryan Morhart, the chief building official and manager of permits and inspections for the city. I granted leave to cross-examine Mr. Morhart on a limited basis. I have found that Mr. Morhart's testimony does not impact these reasons in any way. I have also not found it necessary to refer to the reply affidavit filed by the petitioners. In other words, I have found the reply affidavit and Mr. Morhart's testimony do not assist in the interpretation of the relevant provisions before me.

[50] In the present case and in consideration of the whole of the building permit and the bylaw, a plain reading of s. 528 favours the interpretation advanced by the petitioners.

[51] The petitioners advance an alternative argument invoking the doctrine of commitment to use. In light of the interpretation set out above and having resolved the dispute in the petitioners' favour, I will not deal with this alternative argument.

Conclusion

[52] In conclusion, I accept the interpretation of the Building Permit Bylaw and s. 528(4) as advanced by the petitioners in the context here. Accordingly, and in light of the parties' positions regarding jurisdiction, the petitioners are entitled to the following declaratory relief:

- a) a declaration that the Building is lawfully under construction and was at the time of the adoption of City of Victoria Bylaw No. 17–084;
- b) a declaration that the residential units disclosed in the drawings attached to the building permit are deemed to exist for the purpose of s. 528 of the *Local Government Act*; and
- c) a declaration that the residential units disclosed in the drawings attached to the building permit are lawfully used as vacation rentals pursuant to s. 528 of the *Local Government Act*.

[53] Unless either party wishes to make submissions on the issue of costs, the petitioners are entitled to their costs.