Reconsideration of

2700 Avebury Avenue Small Lot Rezoning

From:

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Date: Feb 23, 2021

Overall recommendations:

We believe there were many administrative justice issues[1] with the process of the recent rezoning application for 2700 Avebury Avenue, such that we recommend that the rezoning application decision should be reconsidered according to Reconsideration Clause 23 of the Council Bylaw[2] with a Reconsideration vote at the February 25 Council meeting, and that the development process should be sent back to Committee of the Whole (COTW). The following issues support these recommendations.

Issue #1 - Neighbouring lots:

Discussion:

The Small Lot House Rezoning Policy states: "*Recognizing the impact on this type of application, all residents and owners of neighbouring lots must be polled by the*

[1] Code of Administrative Justice 2003; BC Ombudsperson; https://bcombudsperson.ca/assets/media/Public-Report-No-42-Code-of-Administrative-Justice.pdf

[2] From City Bylaw No. 16-011
Reconsideration
23. (1) A Council member may, at the next Council meeting,
(a) move to reconsider a matter on which a vote, other than to postpone indefinitely, has been taken, and
(b) move to reconsider an adopted bylaw after an interval of at least 24 hours following its adoption.

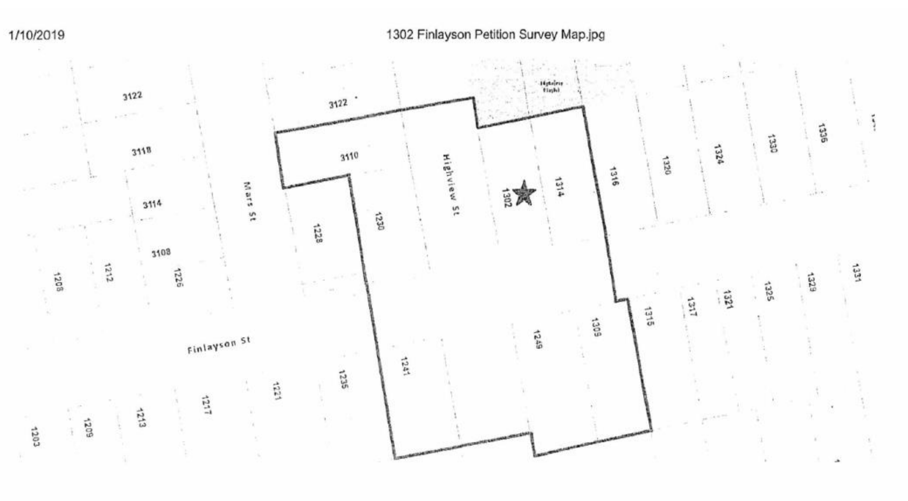
application as to the acceptability of the application with the results mapped and submitted as part of the site plan information."[3]

While other recent similar small lot applications have followed the above City of Victoria process for the neighbouring lot map, the 2700 Avebury Avenue application has not followed the same process. This means that the judgement of this application is not consistent with other similar small lot applications, is misleading, and limits understanding of the application. It creates an unfair and unjust basis for decisions about the 2700 Avebury Avenue application, and results in improper discriminatory treatment.

Recent Similar Small Lot Applications by City of Victoria:

Small Lot Address	COTW date	Council Meeting Date
1302 Finlayson Street	July 9, 2020	Nov 28, 2019
2920 Prior Street	July 9, 2020	Oct 8, 2020
202 Raynor Avenue	Aug 6, 2020	Sep 17, 2020
2700 Avebury Avenue	**Nov 26, 2020**	**Feb 11, 2021**

<u>1302 Finlayson Street</u>

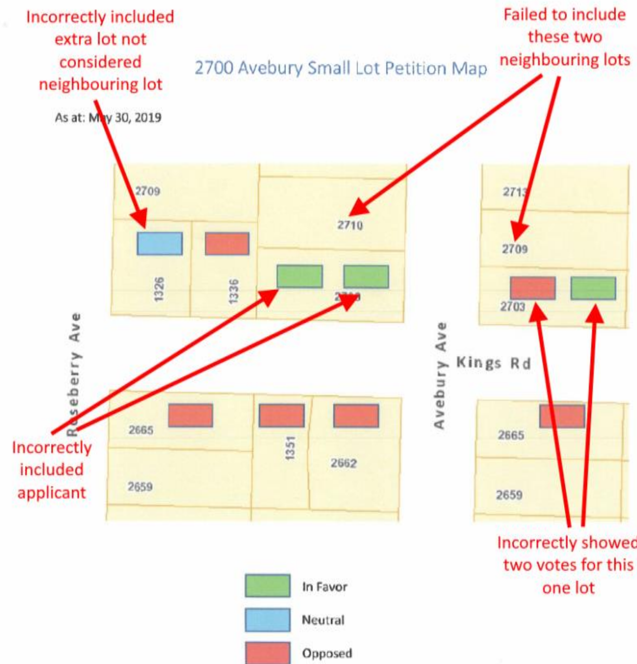


[3] Small Lot House Rezoning Policy, Policy 4.4
"*Neighbouring lots" means all properties with at least one point in common with the property for which an amendment application is sought, with property lines deemed to be the centre line of streets and lanes plus lots less than 10 m away.*" [Section 5.1]

2920 Prior Street

202 Raynor Avenue

2700 Avebury Avenue



Issues of 2700 Avebury neighbouring lot map:

- Incorrectly included the applicant; the Summary Small Lot Rezoning Petition Form says: "*Do not include petitions from the applicant or persons occupying the property subject to rezoning.*"[4]
- Incorrectly included extra lot not considered a neighbouring lot (1326 Kings)
- Failed to include two neighbouring lots (2710 and 2709 Avebury Avenue)
- Incorrectly showed two votes for one of the lots
- As shown in the comparison table below, 2700 Avebury Avenue is the only application that fails in all categories.

Summary comparison of maps:

	Highlight All Neighbouring Lots	Do Not Include Applicant	Do Not Include Lots beyond Neighbouring Lots	Show only 1 Vote Per Lot
1302 Finlayson Street	Yes	Yes	Yes	Yes
2920 Prior Street	Yes	Yes	Yes	Yes
202 Raynor Avenue	Yes	Yes	Yes	Yes
2700 Avebury Avenue	**No**	**No**	**No**	**No**

[4] Small Lot House Rezoning Policy, Page 15, Summary Small Lot House Rezoning Petition

Petition date:

The petition summary form clearly states: "*Note that petitions that are more than six months old will not be accepted by the City*". The petitions for 2700 Avebury Avenue are dated August 8, 2019 while the City of Victoria Executive Summary is signed November 19, 2020, which is more than one year later.

The Executive Summary states: "*In accordance with the City's Small Lot House Rezoning Policy, the applicant has polled the immediate neighbours . . .*" [5]

We suggest that this statement claiming to be in "*accordance*" with the policy is a mistake of fact as the polling of neighbours was done more than one year earlier, well beyond the limit set by the policy.

Irrelevant support from person occupying property:

The Executive Summary states: "*In accordance with the City's Small Lot House Rezoning Policy, the applicant has polled the immediate neighbours and reports that 14% support the application.*" [6]

The Executive Summary clarifies: "*The applicant has not included these petitions [residents of the subject parcel] in the calculation.*" At the February 11 hearing, the developer was given an opportunity for further clarification, but contradicted this observation by stating: "*The property that supports is the existing home, they are the people that rent the home.*"

We suggest this number should actually be 0%. The importance of this number cannot be understated. This number, 0%, represents the key requirement of the Small Lot Rezoning Policy at 75% that this application fails to meet. The wide dispersal of "14%" throughout the hearing and process underscores its importance, but also re-enforces the importance that this number be supportable and defendable. Otherwise, all decisions made are in question. If the public and councillors knew the number was actually "0%" and not "14%", the positions presented by the public might have been different, and the voting from the councillors might have changed.

We suggest that these statements (written and oral) suggesting the "*14% support*" are besides being contradictory, are also mistakes of fact. We suggest decisions made subsequently are not fair as they are based upon irrelevant grounds (as the position the person occupying the property is irrelevant).

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[5] Nov 26, COTW Report for 2700 Avebury Avenue, Page 9, Community Consultation

[6] Nov 26, COTW Report for 2700 Avebury Avenue, Page 9, Community Consultation

Expectations:

We would have expected, and neighbourhood residents would have expected, if the application had progressed to this point, that the map would have clearly highlighted which lots were considered contiguous (and only those lots - for clarity, not included the applicant's lot at 2700 Avebury), and shown all contiguous lots as opposed.

A further expectation is that the summary petition table would contain exactly the same lots with the same positions, that the calculations would be accurate and that the date would have been in the last six months.

If for some reason, the map and petitions could not meet these expectations, then a further expectation is that the Committee of the Whole Report would clearly indicate where the report failed to meet these expectations, and not state or imply that the polling was done in accordance with the City's Small Lot House Rezoning Policy.

Further recommendations:

We recommend that new up-to-date petitions be filled in for the neighbouring lots, and a new and accurate neighbouring lot map be generated following the Small Lot House Rezoning policy.

Issue #2 - Neighbourhood-shared decision making process

Discussion:

The Small Lot House Rezoning Policy states: "*Where an unsatisfactory level of support is evident, a neighbourhood-shared decision making process will be required indicating a substantial consensus as a precondition of advancing to a public hearing. Note: The neighbourhood-shared decision making process would be developed in consultation with the Community Association Network and Urban Development Institute; costs would be born(e) by the applicant.*"[7]

The 2700 Avebury Avenue application did not meet the level of contiguous neighbour support, which meant that a "*neighbourhood-shared decision making process*" would have been required to move the application forward. That process should have involved the Community Association Network and Urban Development Institute, but instead for the 2700 Avebury Avenue application it was conducted by the proponent herself resulting in an unfair procedure that is inherently biased and not impartial.

On December 10, the 2700 Avebury Avenue application was voted by City of Victoria Council to move the application to a public hearing.

The only information provided regarding the neighbourhood process is contained in Appendix I of the Nov 26 COTW package. This process was conducted by the proponent with no indication that any other party was involved – no mention of the

[7] Section 4.4, Small Lot House Rezoning Policy

Community Association Network or Urban Development Institute. Besides violating the city's own Small Lot Rezoning policy, the proponent is inherently biased and this results in an arbitrary and unfair procedure.

In addition, the "*Alternate Motion*" expressed in the COTW package suggested to move forward to a Public Hearing, which is contrary to the written policy, as noted above, where a "*neighbourhood-shared decision making process*" is required. We suggest this approach results in an arbitrary and unreasonable procedure that might be convenient but is not a reasonable approach and is not based upon the written policy. We suggest it is also an unfair procedure to not provide adequate and appropriate reasons for deviating from the written policy.

It is further noted that the "*neighbourhood-shared decision making process*" was not mentioned anywhere in the COTW package.

At the February 11 public hearing, several speakers questioned how the development process allowed this application to progress to the public, including stating: "*A neighbourhood-shared decision making process is required indicating a substantial consensus as a precondition to advancing to a public hearing.*" Again, we don't believe any reasons were provided for neither the deviation at this point nor any recognition of the deviation.

Expectations:

We would have expected, and the neighbourhood residents would have expected, if the applicant could not pass the contiguous neighbour threshold from the Policy, that the "*Alternative Motion*" would have been the "*neighbourhood-shared decision making process*" as a precondition to advancing to a public hearing through an unbiased process. This is particularly important where the applicant may have done its own polling, so as to clarify the Small Lot House Rezoning process versus other processes by the applicant.

It is further expected that if for some reason there was a requirement to deviate from the "*neighbourhood-shared decision making process*" as the Alternate Motion, that this process should have still been highlighted in the COTW report, and adequate and appropriate reasons provided for deviating from the written policy.

Further recommendations:

We recommend that the application not go forward to a public hearing until an unbiased neighbourhood process as described in the policy is followed, in which the Community Association Network and Urban Development Institute (UDI) be tasked to conduct and that such results be included in the COTW package being voted on by Council.

Issue #3 - Notice and process for December 10 public meeting

Discussion:

On December 3, 2020, at the daytime Council meeting, it was announced by Mayor Helps: "*We have received a letter from the applicant asking if we can postpone consideration of this matter until she can address us at a public meeting on December 10. So I feel that is a courtesy we would extend sometimes when are making decisions during the day. We wait until the evening in order to hear from people who have a matter of concern.*"

A motion was carried by Council to postpone the decision to the evening of December 10, 2020.

While the applicant could line up her position and supporters for the December 10, 2020 Council meeting, the most affected people, those immediately neighbouring the lot under consideration, were not given the same "*courtesy*" of being informed that such a public opportunity was going to be presented. In addition, it is normal practice to provide a minimum 10 days notice for public opportunities (i.e. the same time frame for posting the rezoning sign prior to a Small Lot Public Hearing) for participants to prepare their position. That preparation time was not given.

No notice was provided to the contiguous neighbours of the Dec 10 meeting. At the February 11 meeting they expressed their desire to attend: "*If we had known that this original decision could be reversed in a few weeks, then we would have attended that December 10 meeting to present our opposition. We should have been notified and given the right to be heard when Kim Colpman petitioned you to re-present her development agenda for the owner.*"

The December 10 meeting used the agenda item of "*Requests to Address Council*" to allow the applicant and supporters to present their case. As we understand, this agenda item is intended to provide the public the opportunity to present any topic they wish, but is not intended to further an application in progress. If that agenda item was being for such purposes, then it would seem reasonable and fair to give all sides of the ongoing application the opportunity and notice to speak.

This is especially relevant as the following item on the December 10 agenda (within "*Unfinished Business*") was a discussion and vote from Council regarding the application, called: "*2700 Avebury Avenue: Rezoning Application No. 0700 Development Permit Application No. 000583, Development Variance Permit Application No. 00230, Development Variance Permit No. 000229*".

Several of the councillors in weighing their decision on which way to vote, referenced the public participation of the applicant and supporters earlier in the December 10 meeting.

We suggest that this amounts effectively to a Public Hearing. To allow the applicant and

her public supporters to speak on the matter before a Council vote that same evening is essentially a public hearing, especially in regards for the need for public notice.

This action of essentially giving a public opportunity for one side of the debate and not the other is clearly an unfair procedure in not informing those opposing the application, and in not providing sufficient time to prepare (Dec 3 to Dec 10 is only 7 days). It is unfair to allow the use of the "*Requests to Address Council*" agenda item to be used to advance the on-going application without all parties being informed. We suggest this action improperly discriminates against those opposing the application.

Expectations:

We would have expected, and the neighbourhood residents would have expected that the December 10 meeting not to occur at all and remain as a COTW process following the Small Lot House Rezoning Policy.

It is further expected that if the December 10 meeting was deemed to be appropriate, that it would have been considered a public meeting, that a public notice would have been provided, that all affected parties, including the immediate neighbours would have been notified by a minimum of 10 days and that a clear explanation be provided as to the process and how participants could engage.

Further recommendations:

We recommend that the City of Victoria provide sufficient notice and explanation of process for all participants when the public is invited (including allowing for mail time), whether officially called a public hearing or not.

Issue #4 - 10 day notice for Public Hearings:

Discussion:

Many people of the neighbouring lots did not receive their mailed notices for the February 11 meeting within the 10 day window - some receiving them as late as February 8 (only 3 days). As noted above, this is not sufficient time to prepare. All participants should be given the full 10 days. It is noted that the final Council meeting regarding this application was on January 28 to approve the bylaws, at which time notices could be sent out.

We suggest that setting February 11 as the meeting date ensured that there would have been insufficient notice for the key parties, such as the contiguous neighbours, resulting in unfair procedures.

Expectations:

We would have expected, and the neighbourhood residents would have expected that to

ensure that proper notice is provided to all parties that the date for the Public Hearing would not have been February 11, but instead would have been February 25.

Further recommendations:

We recommend the City of Victoria clarify its public notice procedure for Public Hearings to ensure that all participants receive their notices within the 10 day period, including allowing for mailing delivery delays.