



## Committee of the Whole Report For the Meeting of October 7, 2021

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**To:** Committee of the Whole **Date:** September 24, 2021

**From:** Karen Hoese, Director, Sustainable Planning and Community Development

**Subject:** **Development Permit with Variances Application No. 00179 for 848 Yates Street**

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### RECOMMENDATIONS

1. That Council decline proposed modifications to the through-block walkway and terms of the statutory right-of-way to ensure continued public access along the walkway.
2. That Council forego an opportunity for public comment and approve Development Permit with Variances No. 00179 for 848 Yates Street in accordance with plans date stamped July 21, 2021, allowing taller gates that must remain open in accordance with the terms of the statutory right-of-way.

### LEGISLATIVE AUTHORITY

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

Pursuant to Section 491 of the *Local Government Act*, where the purpose of the designation is the revitalization of an area in which a commercial use is permitted, a Development Permit may include requirements respecting the character of the development, including landscaping, and the siting, form, exterior design and finish of buildings and other structures.

### EXECUTIVE SUMMARY

The purpose of this report is to present Council with information, analysis and recommendations for a Development Permit with Variances Application for the property located at 848 Yates Street, specifically the through-block walkway between Yates and Johnson Street associated with a mixed-use residential building just completing construction. The proposal is for modifications to the design of the walkway (location of the security gates, installation of fencing and modifications to planters) as well as a request to modify the terms of an existing statutory right-of-way (SRW) registered on the property's title in favour of the City. The proposal is inconsistent with policy and is not supported by staff.

The following points were considered in assessing this application:

- The property is subject to regulation under Development Permit Area 2: Core Business, and is not consistent with the applicable Design Guidelines in the *Downtown Core Area Plan*, 2011 (DCAP) which identifies the walkway as a Key Pedestrian Connection in the downtown pedestrian network
- Permanently closing the walkway would be inconsistent with the intent of the previously approved Development Permit for the building under construction (approved by Council in May 2017)
- The height of the gates is inconsistent with the *Fence Bylaw*, but given the fact that the gates are in situ, and the terms of the SRW require the gates to be in an open position during daylight hours, staff consider the proposed variance supportable.

## BACKGROUND

### Relevant History

#### Previous Development Approvals at 848 Yates Street

In May 2017, Council approved a Development Permit (DP) for a mixed-use residential building at 848 Yates Street, which included construction of a 1.22 metre walkway on the western edge of the property, secured as a statutory right-of-way (SRW). The SRW would widen the existing through-block walkway on the adjacent property at 836 Yates Street and was intended to integrate two linear sections of a shared midblock walkway connecting Yates and Johnson Streets, running between the two buildings (refer to Figure 1 below).



Figure 1: Location of Through-Block Walkway

The conditions of the SRW permit gates in specified locations at either end of walkway, provided that the gates are open between 7 a.m. and 10 p.m. The final design of the walkway was the result of a collaborative process between staff and the owner (Chard Developments), with agreement in principle from the owner of 836 Yates Street (Coronet Ventures Ltd.), and included a number of design elements to ensure the walkway was accessible, welcoming and safe for users, such as:

- the grades of the western property line matched the existing through-block walkway, with the exception of steps adjacent to the Johnson Street sidewalk
- orientation of townhouse units, a residential lobby entrance and bike storage access along the through-block walkway to ensure natural surveillance
- removal of existing concrete planters at 836 Yates Street along the majority of the walkway that currently creates a barrier between the two properties, resulting in a more usable and accessible space
- removal of the existing globe light fixtures on the adjacent property and replacement

with recessed wall lighting on the building as well as the new and remaining concrete planters

- planting within the private patios between the at-grade residential units
- decorative metal security gates at either end of the through-block walkway.

In reviewing the original Development Permit, staff expressed concern that the expansion of the walkway on the subject property was too narrow and did not meet minimum standards for accessibility; however, the commitment to match the grade of the adjacent site was considered an acceptable compromise for the 1.22m setback on private property. The overall width of the walkway was proposed to be expanded to 5.79m which is consistent with the Guidelines. The plans also showed the proposed gates as being compliant with the requirements of the Fence Bylaw, which permits gates up to 1.83m in height.

A number of staff-delegated Development Permits for minor changes to the exterior of the building and landscaping were subsequently submitted following the Council approval, which is not uncommon for a project of this scale. As part of the staff approval in November 2017, the height of the gates was increased from 1.83m to 2.59m on Yates Street and 2.8m on Johnson Street. Although this change was identified on the applicant's submission, unfortunately staff did not realize that this increase may be at odds with the City's *Fence Bylaw*. The focus of the delegated application was related to changes to the building, and in accordance with the SRW, it was expected that the gates would rarely be visible since they are intended to remain in an open position between the hours of 7 a.m. and 10 p.m.

In July 2020, the applicant requested Council authorization to modify the physical condition of the walkway which included the addition of a third security gate at the south end towards Yates Street and the addition of a north south linear fence along the property line adjoining the neighbour (836 Yates Street). A secondary request was to amend the terms of the SRW to remove public access from the property until such a time that the City secures an SRW on the adjacent parcel. This application was declined by Council on October 1, 2020 (minutes attached).

### Installation of Gates at 836 Yates Street

In March 2019, shortly after construction of 848 Yates Street began, the adjacent owner (Coronet Ventures Ltd.) installed unauthorized gates and fencing at the front and rear of the former Atlas Theatre located at 836 Yates Street, blocking a pedestrian breezeway between Johnson Street and Yates Street. This is the breezeway that was intended to be combined with the parallel walkway on 848 Yates Street in order to create a shared midblock walkway. In conversations with City staff, Coronet Ventures Ltd. stated that they felt the gates became necessary for security and crime prevention and to ensure the safety of existing commercial tenants. The owner of 836 Yates (Coronet Venture Ltd.) has recently submitted an application seeking Council authorisation for these gates and modifications to landscaping on the property. The alternate recommendation includes relevant wording that would involve the owner of 836 Yates entering into discussions with the applicant for 848 Yates Street (Chard Developments) with the City seeking a voluntary contribution from the owner of 836 Yates Street for a SRW to ensure the gates remain unlocked and in an open position from 7am to 10pm.

### **Description of Proposal**

Although the location of the SRW area and expanded through-block walkway is currently surrounded by construction fencing, the intent of the original Development Permit is to open this to the public once construction is complete. However, in response to the gated condition of the

adjacent property at 836 Yates Street, Chard Developments is requesting the following with respect to 848 Yates Street:

- physical modifications to the walkway, which includes increasing the height of the gates on Johnson Street and Yates Street from 1.83m to 2.59m and omitting all originally proposed work on the adjacent property (removal of the concrete planters and globe light fixtures), thereby eliminating the opportunity for the expansion of the walkway
- modifications to the SRW to remove public access from the walkway, until such a time that the City secures an SRW on the adjacent parcel.

The applicant cites safety and security as the reason for their current request, and the lack of cooperation from the neighbour to construct a shared walkway at 836 Yates Street was also noted as a justification for the previous Development Permit (declined by Council in October 2019). As part of a separate application at 836 Yates Street, a north-south perimeter fence is being proposed between the subject property and the neighbour at 836 Yates Street, which will address the gaps between the misaligned gates on the two properties.

### **Accessibility**

Although not applicable to the actual mid-block walkway on 848 Yates, the *British Columbia Building Code* (BCBC) provides the standards for accessibility within buildings and requires a minimum egress (fire exiting) width of 1.1m, which the pathway and SRW on 848 Yates meets. However, this area would be classed as landscaping, so the *BCBC* would not govern the walkway. For public pathways and sidewalks, the City minimum standard width is 1.5m, and although not ideal, it is acknowledged that obstructions like signage poles may be located within the walkway where space is constrained, so long as a minimum clearance width of 1.2m is provided. Although a wider walkway would be preferable, the proposal does meet these standards through the provision of a walkway of 1.22m width. In addition, provision of an exit door located approximately 10m east of the Johnson Street gate would provide a passing area to ensure that a person using a wheelchair or other mobility assistance device could safely use the walkway.

## **ISSUES AND ANALYSIS**

### **Official Community Plan**

The *Official Community Plan* (OCP, 2012) includes policies that direct staff to enhance and expand through-block pedestrian passageways throughout the Downtown Core Area in order to break up long blocks. Both Johnson Street and Yates Street include mid-block traffic crossings aligned with the through-block walkway. The proposed closure of the walkway would disrupt the continuity created through the alignment of the traffic crossings with the walkway.

### **Downtown Core Area Plan**

The property is subject to guidelines under Development Permit Area 2: Core Business and with respect to local area plans, the *Downtown Core Area Plan*, 2011 (DCAP) is applicable. The adjacent through-block walkway at 836 Yates Street is identified as a Key Pedestrian Connection within a Priority Through-Block Walkway Area within the DCAP with policies recognizing the opportunities to redesign and replace key pedestrian connections with new through-block walkways in these areas. The DCAP also includes policies related to Crime Prevention Through Environmental Design (CPTED) and suggests incorporating design

elements that animate and improve the attractiveness, safety and usability of through-block walkways.

The proportions, shape and grade of the proposed through-block walkway remain unchanged from the approved DP. However, the inability to create a wider, through-block walkway has resulted in the applicant proposing physical modifications to the walkway through gates and fencing and modifications to the terms of the SRW. These changes would ultimately remove public access through the property and would create a linear division along the walkway that was intended to be a shared public walkway. The proposed redesign of the walkway does not comply with relevant City guidelines as it is identified as a Key Pedestrian Connection in the DCAP, and permanent closure of the walkway would be contrary to CPTED principles of creating attractive, safe and usable walkways.

### **Advisory Design Guidelines for Buildings Signs and Awnings (1981)**

The *Advisory Design Guidelines for Buildings Signs and Awnings* (1981) state that an acceptable application will include consideration of an attractive streetscape and that the architecture and landscaping of the immediate area be identified and acknowledged. In evaluating a design, particular emphasis will be placed on the solution to these general aspects: comprehensive design approach, relevancy of expression, context, pedestrian access, massing, scale, roofline, detailing, street relationship, vistas, landscaping plan, colours and textures. The application is not consistent with these Guidelines as it relates to pedestrian access.

### **Guidelines for Fences, Gates and Shutters (2010)**

The objective of these Guidelines is to ensure that where fences, gates and shutters are required, they are designed well and complement their surroundings. The application does include high-quality custom security fencing, details of which are included in the application package, consistent with the original Development Permit. However, the guidelines also note the cumulative impact of many fences and gates, which can damage the public's perception of whether a street or area is safe and alter the character of the street when gates are closed after hours. The permanent closure of the security gates would create a perceived fortress-like appearance to pedestrians along Yates Street and Johnson Street during daylight hours and would have a negative impact on the streetscape appearance.

### **Fence Height Variance**

The *Fence Bylaw* requires fences to be no greater than 1.83m if the fence is located between that parcel's front building line and the rear boundary. Since both gates are taller than the permitted height, the proposal may require a variance, which would be consistent with past practice for similar applications. A future review of the *Fence Bylaw* is planned, with the aim of improving clarity on these regulations.

The proposal before Council today is requesting the gates be permanently closed for an undetermined length of time, which will exacerbate the negative impacts on the public realm through the creation of a fortress-like appearance. Given that the gates are required to be open under the terms of the SRW, the perceived impact of the extra height is lessened so that it will only be experienced in the nighttime hours when it is less visible.

As the taller gates are already in situ and the design of the gates is generally in accordance with the original Development Permit approval, staff recommend the variance for the additional height is supportable and that Council forego an opportunity for public comment for the

variance. Additionally, the principal issue under consideration is the potential modification to the terms of the SRW which if changed would close the walkway to the public and holding an Opportunity for Public Comment on the height of the fence would not facilitate input on that topic. The appropriate wording has been added to both the staff and alternate motion.

### **Statutory Right-of-Way**

The applicant granted a statutory right-of-way (SRW) as part of the original Development Permit approval in 2017. Under the terms of the SRW, a public walkway of at least 1.22m currently allows all members of the public full, free and uninterrupted right to use the walkway between the hours of 7 a.m. and 10 p.m. The provisions of the SRW also gives the owner the right to prevent or remove any person who acts in a disorderly, threatening or offensive manner, poses a threat to the security of the land or takes shelter in the walkway.

The proposed modification to the terms of the SRW would only allow access to the walkway by key fob and public access would be prevented until such a time that the City obtained an SRW on the adjacent property. However, closure of the walkway to the public for an undetermined length of time would be contrary to the design guidelines, which identify this as a key pedestrian connection, and would not be in accordance with what Council was promised as part of the original Development Permit application for this property. The walkway is valued by local residents and there is an expectation to utilize the walkway to access public transit along Yates Street. A letter from the residents at 834 Johnson Street was submitted as part of the previous (declined) Development Permit applicant and is attached again for Council's consideration. The City has also received recent complaints about the closure of the connecting through block walkway.

Although having a 1.22m wide walkway is less than desirable (the guidelines state that existing walkways should be 2.5m wide and all new walkways should be a minimum of 5m wide), the design of the walkway with ground level entrances and hard and soft landscaping would help to mitigate the feeling of a "gauntlet" for pedestrians. In addition, the SRW already includes provisions to manage potentially unsociable behaviour, cited as a primary concern for the applicant. Moreover, if the terms of the SRW were changed now, any future renegotiations would need to occur with the building strata which would make any future opening of the pathway extremely difficult. For these reasons staff recommend Council decline the proposed modifications to the terms of the SRW.

The applicant has offered to contribute \$30,000 to fund a future expansion of the pathway. This is not considered feasible because:

- the City cannot compel the neighbour to allow the pathway expansion onto their property without expropriating
- \$30,000 would affect only minimal change and is not adequate to fully integrate the two pathways
- earmarking and tracking these monies until an indefinite future date is problematic from an administrative perspective.

### **OPTIONS**

Since the proposal to remove public access to the SRW is contrary to City policy and staff are recommending Council decline the applicant's request, an alternate recommendation (Option 2) has been included for Council's consideration. This would direct staff to work with both the applicant of 848 Yates Street (Chard Developments) and the owner of 836 Yates Street

(Coronet Ventures Ltd.) to reach an agreement that meets the aspirations of both parties whilst maintaining access to the through-block walkway. Coordination between the alignment of both sets of gates would be required and staff would be seeking a voluntary contribution from the adjacent owner of 836 Yates Street (Coronet Ventures Ltd.) for a SRW to ensure the gates remain unlocked and in an open position from 7am to 10pm. Chard Developments has indicated a willingness to enter into these discussions. A third option (Option 3) is included which would approve the proposed modifications to the terms of the walkway. However, staff are not recommending this option since it would remove public access for an indefinite length of time.

### **OPTION 1 (Decline) – Recommended**

1. That Council decline proposed modifications to the through-block walkway and terms of the statutory right-of-way to ensure continued public access along the walkway.
2. That Council forego an opportunity for public comment and approve Development Permit with Variances No. 00179 for 848 Yates Street in accordance with plans date stamped July 21, 2021, allowing taller gates that must remain open in accordance with the terms of the statutory right-of-way.

#### Benefits:

- maintains public access during the daytime for a connection valued by the community
- visual appearance of the gates is reduced with them being in an open position during daylight hours
- addresses security concerns during nighttime hours

#### Challenges:

- the proposed walkway of 1.22m width is less than ideal but still functional
- does not meet the intentions of the original Development Permit with a wider mid-block walkway.

### **OPTION 2 (Continued Negotiations)**

1. That Council direct staff to work with the applicant and the adjacent owner of 836 Yates Street to reach a solution for a shared through-block walkway that meets the intent of the original Development Permit approved by Council in 2017 and the terms of the existing SRW but allows a similar night-time closure at the adjacent property, to the satisfaction of the Director of Sustainable Planning and Community Development.
2. That Council forego an opportunity for public comment and authorize the issuance of Development Permit with Variance Application No. 00179 for 848 Yates Street, in accordance with:
  - a. Plans date stamped July 21, 2021 (updated as necessary).
  - b. The Development Permit lapsing two years from the date of this resolution.
3. That Council decline proposed modifications to the terms of the statutory right-of-way to ensure continued public access along the walkway.

Benefits:

- maintains public access during the daytime
- fulfils the intentions of the original Development Permit with a wider mid-block walkway
- visual appearance of the gates is reduced with them being in an open position during daylight hours
- addresses security concerns during nighttime hours.

Challenges:

- reaching a solution satisfactory to both owners may be difficult.

**OPTION 3 (Approve as Proposed)**

1. That Council forego an opportunity for public comment and authorize the issuance of Development Permit with Variance Application No. 00179 for 848 Yates Street, in accordance with:
  - a. Plans date stamped July 21, 2021.
  - b. The Development Permit lapsing two years from the date of this resolution.
2. That Council authorize modifications to SRW to remove public access from the walkway until such a time that a SRW is granted for the adjacent property at 836 Yates Street.

Benefits:

- addresses security concerns.

Challenges:

- the loss of public access to the walkway could be indefinite
- visual appearance of the taller gates being closed during daylight hours would have a negative impact on the public realm and be contrary to the guidelines.

**CONCLUSIONS**

The walkway forms part of a key pedestrian connection in the *Downtown Core Area Plan* that is aligned with two mid-block traffic crossings on both Yates Street and Johnson Street, and access is valued by local residents. The permanent closure of the walkway to the public is inconsistent with policy and would have negative implications to the City pedestrian network. The additional height of the gates is considered supportable if the terms of the SRW are upheld and the gates remain in an open position during daylight hours. Allowing the gates to be closed during daylight hours would create a fortress-like appearance and have a negative experience on the streetscape for pedestrians. Staff therefore recommend Council decline the modifications to the terms of the SRW.

Respectfully submitted,

Charlotte Wain  
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**Report accepted and recommended by the City Manager.**

**List of Attachments**

- Attachment A: Subject Map
- Attachment B: Aerial Map
- Attachment C: Applicant letter dated June 22, 2021
- Attachment D: Approved Site Plan from May 2017 (DPV No. 00025)
- Attachment E: Proposed Plans dated July 21, 2021
- Attachment F: Registered Statutory Right-of-Way (SRW)
- Attachment G: Minutes from Committee of the Whole meeting of September 17, 2020
- Attachment H: Minutes from Council meeting of October 1, 2020
- Attachment I: Correspondence from 834 Johnson Street Residents.