

E.1.a.e 1475 Fort Street

Moved By Councillor Loveday
Seconded By Councillor Alto

That Council, after giving notice and allowing an opportunity for public comment at a meeting of Council, consider the following motion:

“That Council authorize the issuance of Development Permit with Variance Application No. 00120 for 1475 Fort Street in accordance with:

1. Plans date stamped August 5, 2021
2. Development meeting all Zoning Regulation Bylaw requirements, except for the following variances:
 - i. reduce the vehicle parking from 45 stalls to 22 stalls;
 - ii. reduce the visitor parking from 3 stalls to 2 stalls;
 - iii. increase the building height from 12 metres to 12.92 metres;
 - iv. reduce the front setback from 10.5 metres to 1.80 metres (entrance canopy) and 3.53 metres (building);
 - v. reduce the rear setback from 6.46 metres to 3.96 metres;
 - vi. reduce the east side yard setback from 6.46 metres to 3.29 metres (balconies and entrance canopy) and 4.93 metres (building);
 - vii. reduce the west side yard setback from 6.46 metres to 3.86 metres (balconies) and 5.75 metres (building);
 - viii. increase the site coverage from 40 percent to 47.60 percent;
 - ix. allow for an accessory structure to be located in the front yard rather than the rear yard.
3. Final plans generally in accordance with the plans date stamped August 5, 2021 with the following revision:
 - i. changes to the panhandle driveway to comply with the *Highway Access Bylaw* and *BC Building Code* requirements, to the satisfaction of the Director of Engineering and Public Works.
4. Execution of a housing agreement securing in perpetuity a minimum of four one-bedroom dwelling units within the building as affordable rental housing units for people with low to median incomes with a monthly starting rent level of no more than \$875, to the satisfaction of the Director of Sustainable Planning and Community Development.

5. The Development Permit lapsing two years from the date of this resolution.”

FOR (6): Mayor Helps, Councillor Alto, Councillor Andrew, Councillor Dubow, Councillor Loveday, Councillor Potts

OPPOSED (3): Councillor Isitt, Councillor Thornton-Joe, Councillor Young

CARRIED (6 TO 3)



Council Report

For the Meeting of December 2, 2021

To: Council **Date:** November 25, 2021
From: Karen Hoese, Director, Sustainable Planning and Community Development
Subject: Update on Development Permit with Variances Application No. 00120 for 1475 Fort Street

RECOMMENDATION

That Council receive this report for information.

EXECUTIVE SUMMARY

At the Council meeting of November 18, 2021, Council directed staff to provide clarification on the tenancy of the existing eleven-unit building located at 1475 Fort Street, with the following motion:

That Council direct staff to provide clarification at the December 2 daytime Council meeting on the current tenancy of the building proposed for replacement.

According to the applicant, Island Health has recently renewed their commercial lease of the building and plans to continue to use the building as housing for Island Health clients.

COMMENTS

Current Tenancy

As indicated in the previous Committee of the Whole reports for Development Permit with Variances Application No. 00120, the existing building is occupied by Island Health clients. According to the applicant, Island Health has recently renewed the commercial lease of the building at 1475 Fort Street (Island Health also leases the adjacent building at 1471 Fort Street). The terms of the lease agreement allow Island Health to use the building for "VIHA programs or related services". According to the letters provided by Island Health, which were attached to the COTW reports for the meetings of May 28, 2020 and January 28, 2021, the building has been used to provide short-term housing (1-6 months) for Island Health clients. Staff have reached out to Island Health for clarification on the current tenancy of the building; however, at the time of writing this report, a response from Island Health had not been received.

Tenant Assistance Policy

Given that the current occupancy of the building is not subject to the *Residential Tenancy Act*, and the proposed development requires a Development Permit with Variances rather than a Rezoning, the *Tenant Assistance Policy* does not apply to this proposal. However, Island Health has indicated that arrangements will be made to rehouse the occupants of the building should the development proposal be approved. In addition, both the applicant and Island Health have noted in their letters to Council an interest in Island Health potentially occupying all or a portion of the new building. To accommodate this potential arrangement, the housing agreement securing the rental tenure of the proposed building includes provisions to allow for a third-party housing provider (i.e., Island Health) to lease a portion or all of the building to provide non-market housing.

Respectfully submitted,

Alec Johnston
Senior Planner
Development Services Division

Karen Hoese, Director
Sustainable Planning and Community
Development Department

Report accepted and recommended by the City Manager.

List of Attachments

- Attachment A: Letters from Island Health previously attached to the COTW reports for the meetings of May 28, 2020 and January 28, 2021
- Attachment B: Housing Agreement (1475 Fort Street) Bylaw No. 21-057.



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everywhere, every time.

June 12, 2020

Attn: City of Victoria Council / Committee of the Whole

The following points summarize Island Health's dealings with Lantern Properties, in relation to 1471 and 1475 Fort Street:

1. Since buying the property during Island Health's tenancy, Lantern has given excellent levels of service and has improved the grounds of the property considerably. This included paving, landscaping and fencing and replacement of appliances;
2. Island Health's lease terms for each building ends on June 30, 2020. It has no option to renew so in the absence of new agreements, Island Health would have to find places for each of the residents of both buildings. Island Health and Lantern Properties are in the final stages of negotiating new agreements and the parties have every expectation that fresh arrangements will be made;
3. Island Health has asked for a five (5) year term on 1471 Fort Street and Lantern Properties has agreed to that length of term;
4. Lantern Properties has continually communicated to Island Health about its planning to redevelop the 1475 Fort Street site including but not limited to the progress and status of its progress with the City of Victoria. Island Health has accordingly had a considerable amount of notice that it will eventually have to relocate the (nine) 9 residents currently living at 1475 Fort Street. Island Health operates a number of other apartment buildings in greater Victoria and will make every reasonable effort to do so with the least amount of disruption possible;
5. The timing and costs of the development are unknown. Lantern Properties has accordingly agreed to a one (1) year lease term on 1475 Fort Street and the option to remain on a month-to-month basis afterward. They has committed to continue to communicate progress on the redevelopment to Island Health so that Island Health has as much notice as possible to "wind down" its occupancy and relocate whomever lives there at the time the tenancy ends;
6. Island Health has asked for, and Lantern Properties has agreed, to give Island Health a right of first refusal to lease the newly constructed building at 1475 Fort Street.

We look forward to continuing to work with Lantern Properties in the future, in support of the clients we serve.

Regards



Kelly Reid
Director,
Mental Health and Substance Use

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September 25, 2020

Attn: City of Victoria Committee of the Whole

Re: 1475 Fort St. redevelopment application

Since May 2017, Lantern Properties has been in communication with Island Health regarding the proposed redevelopment of 1475 Fort St. Island Health's current lease covers both 1471 and 1475 Fort St., and expires on June 30, 2020. The parties are in the midst of negotiating separate renewals for each building. The lease for the building at 1475 is currently being negotiated for a one-year term, which would end June 30 2021, and continue as a month-to-month thereafter, until the redevelopment begins. It is Island Health's understanding that Lantern Properties requires the units and building to be vacant in order for the redevelopment to proceed.

1475 Fort St. is currently occupied by nine residents under program agreements. Anticipated length of stay varies for each client, and typically ranges from 30 days to 6 months. However, actual length of stay may be longer based on individualized assessments of client needs. This could impact the ability to relocate clients to appropriate settings. Plans to relocate these individuals to other appropriate settings are individualized and ongoing, regardless of the timing of the redevelopment. Once Lantern is able to be more specific about timing of the redevelopment, Island Health staff will work with existing clients to relocate them, and will limit new client intakes as appropriate.

I understand that the intention of the redevelopment is to increase the number of available units at the site. With that in mind, the parties have discussed a right of refusal for the newly constructed space, to allow Island Health the opportunity to negotiate a rental agreement upon completion.

Sincerely,



Kelly Reid
Director,
Island Health
Mental Health & Substance Use

Schedule A

HOUSING AGREEMENT

(Pursuant to section 483 of the *Local Government Act*)

BETWEEN:

THE CORPORATION OF THE CITY OF VICTORIA

#1 Centennial Square
Victoria, B.C. V8W 1P6

(the "City")

AND:

LANTERN PROPERTIES LTD. (INC. NO. C0816000)

101 – 1176 Burnaby Street
Vancouver, BC V6E 1P1

(the "Owner")

WHEREAS:

- A. Capitalized terms used herein will have the respective meanings ascribed to them in section 1.1 of this Agreement, unless the context otherwise clearly requires or they are elsewhere defined herein.
- B. Under section 483 of the *Local Government Act* the City may, by bylaw, enter into a housing agreement with an owner regarding the occupancy of the housing units identified in the agreement, including but not limited to terms and conditions referred to in section 483(2) of the *Local Government Act*.
- C. The Owner is the registered owner in fee simple of lands in the City of Victoria, British Columbia, with a civic address of 1475 Fort Street, Victoria, B.C. and legally described as:

PID: 005-397-863
Lot 2, Section 74, Victoria District, Plan 9796

(collectively, the "Lands").
- D. The Owner has applied to the City to develop the Lands to permit 32 housing units within the Development in accordance with this Agreement.
- E. The City and the Owner wish to enter into this Agreement, as a housing agreement pursuant to section 483 of the *Local Government Act*, to secure the agreement of the Owner that all Dwelling Units within the Development on the Lands will be used and held only as rental housing.

NOW THIS AGREEMENT WITNESSES that pursuant to section 483 of the *Local Government Act*, and in consideration of the premises and covenants contained in this agreement (the "**Agreement**"), the parties agree each with the other as follows:

1.0 DEFINITIONS

1.1 In this Agreement:

"**Business Day**" means Monday to Friday, other than any such day which is a statutory holiday in Victoria, British Columbia;

"**Development**" means the new 32 unit building consisting of residential housing and related facilities on the Lands;

"**Dwelling Units**" means any or all, as the context may require, of the 32 self-contained residential dwelling units within the Development and includes any dwelling unit that is developed on the Lands in future, whether as part of the Development or otherwise, and "**Dwelling Unit**" means any of such residential dwelling units located on the Lands;

"**Immediate Family**" includes a person's spouse, child, grandchild, parent, grandparent, sibling, niece and nephew, and includes the Immediate Family of the person's spouse;

"**Non-owner**" means a person other than a Related Person or the Owner;

"**Owner**" includes a person who acquires an interest in the Lands or any part of the Lands or the Development and is thereby bound by this Agreement, as referred to in section 7.3;

"**Related Person**" includes, where the registered or beneficial owner of the Lands or Dwelling Unit, as applicable, is:

- (a) a corporation or society:
 - (i) an officer, director, shareholder, or member of such corporation or society, or of another entity which is a shareholder or member of such corporation or society; or
 - (ii) an Immediate Family of a person to whom paragraph (i) applies, or
- (b) an individual, an Immediate Family of the registered or beneficial owner;

"**Strata Corporation**" means, for the portions of the Lands or any building on the Lands that is subdivided under the *Strata Property Act*, a strata corporation as defined in that Act, including the Owner while in control of the strata corporation and subsequently the individual strata lot owners collectively acting as the strata corporation.

"**Tenancy Agreement**" means a tenancy agreement pursuant to the *Residential Tenancy Act* that is regulated by that Act.

2.0 DWELLING UNITS TO BE USED AND OCCUPIED ONLY AS RENTAL UNITS

- 2.1 The Owner covenants and agrees that the Dwelling Units shall only be used as rental housing in perpetuity, and for that purpose shall only be occupied by a Non-owner under the terms of a Tenancy Agreement between the Owner and the Non-owner who occupies the Dwelling Unit provided that so long as the Vancouver Island Health

Authority rents Dwelling Units for non-market housing, these units do not require a Tenancy Agreement between the Owner and the Non-owner who occupies the Dwelling Unit and the Owner leasing the Dwelling Units to Vancouver Island Health Authority shall be deemed to be in compliance with the terms of this Agreement.

3.0 NO RESTRICTIONS ON RENTALS

- 3.1** The Owner covenants and agrees that the Owner shall not take any steps, or enter into any agreements, or impose any rules or regulations whatsoever, the effect of which would be to prevent or restrict the Owner of a Dwelling Unit from renting that Dwelling Unit to a Non-owner under the terms of a Tenancy Agreement.
- 3.2** Without limiting the generality of section 3.1, the Owner covenants and agrees that it will not make application to deposit a strata plan for or in respect of the Lands or a building on the Lands unless the strata bylaws in no way restrict rental of any Dwelling Unit to a Non-owner under the terms of a Tenancy Agreement.

4.0 REPORTING

- 4.1** The Owner covenants and agrees to provide to the City's Director of Sustainable Planning and Community Development, within thirty (30) days of the Director's written request, a report in writing confirming that:

- (a) all Dwelling Units are being rented to Non-owners or are vacant, and
- (b) all other requirements of this Agreement are being complied with by the Owner and the Development,

along with such other information as may be requested by the Director from time to time.

- 4.2** The Owner hereby authorizes the City to make such inquiries as it considers necessary in order to confirm that the Owner is complying with this Agreement.
- 4.3** The Owner acknowledges that it is within the City's sole discretion to consent or not to consent to modifications of this Agreement and that such consent may be withheld for any reason.

5.0 NOTICE TO BE REGISTERED IN LAND TITLE OFFICE

- 5.1** Notice of this Agreement (the "**Notice**") will be registered in the Land Title Office by the City at the cost of the Owner in accordance with section 483 of the *Local Government Act*, and this Agreement is binding on the parties to this Agreement as well as all persons who acquire an interest in the Lands after registration of the Notice.

6.0 LIABILITY

- 6.1** The Owner agrees to indemnify and saves harmless the City and each of its elected and appointed officials, employees and agents and their respective administrators, successors and permitted assigns, of and from all claims, demands, actions, damages, costs and liabilities, which all or any of them shall or may be liable for or suffer or incur or be put to by reason of or arising out of failure of the Owner to comply with the terms and conditions of this Agreement, or otherwise that would not have arisen "but for" this Agreement.

6.2 The Owner hereby releases and forever discharges the City and each of its elected and appointed officials, employees and agents and their respective administrators, successors and permitted assigns, of and from any and all claims, demands, actions, damages, economic loss, costs and liabilities which the Owner now has or hereafter may have with respect to or by reason of or arising out of the fact that the Lands are encumbered by and affected by this Agreement, or otherwise that would not have arisen "but for" this Agreement.

7.0 GENERAL PROVISIONS

7.1 NOTICE. If sent as follows, notice under this Agreement is considered to be received:

- (a) upon confirmation of delivery by Canada Post if sent by registered mail,
- (b) on the next Business Day if sent by facsimile or email with no notice of failure to deliver being received back by the sender, and
- (c) on the date of delivery if hand-delivered, and

in the case of the City, addressed to:

City of Victoria
#1 Centennial Square
Victoria, BC V8W 1P6

Attention: Director of Sustainable Planning and
Community Development
Fax: 250-361-0386
Email: khoese@victoria.ca

and in the case of the Owner, addressed to:

Lantern Properties Ltd.
101 – 1176 Burnaby Street
Vancouver, BC V6E 1P1

Attention: Jeff Hayes
Fax: 866-288-1991
Email: jeff.hayes@lanprop.com

or upon registration of a strata plan for the Lands, to the Strata Corporation, and to the Owner of any Dwelling Unit that is subject to the restrictions under section 2.1.

If a party identifies alternate contact information in writing to another party, notice is to be given to that alternate address.

If normal mail, email or facsimile service is interrupted by strike, work slowdown, force majeure, or other cause,

- (d) notice sent by the impaired service is considered to be received on the date of delivery, and

- (e) the sending party must use its best efforts to ensure prompt receipt of a notice by using other uninterrupted services, or by hand-delivering the notice.

- 7.2 TIME.** Time is of the essence of this Agreement.
- 7.3 BINDING EFFECT.** This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors, and permitted assignees. In accordance with section 483(6) of the *Local Government Act*, this Agreement and all obligations hereunder is binding on all who acquire an interest in the Lands, and the Owner only during the Owner's ownership of any interest in the Lands, and with respect only to that portion of the Lands of which the Owner has an interest.
- 7.4 WAIVER.** The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar.
- 7.5 HEADINGS.** The division of this Agreement into articles and sections and the insertion of headings are for the convenience of reference only and will not affect the construction or interpretation of this Agreement.
- 7.6 LANGUAGE.** Words importing the singular number only will include the plural and vice versa, words importing the masculine gender will include the feminine and neuter genders and vice versa, and words importing persons will include individuals, partnerships, associations, trusts, unincorporated organizations and corporations and vice versa.
- 7.7 LEGISLATION.** Reference to any enactment includes any regulations, orders or directives made under the authority of that enactment, and is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided.
- 7.8 EQUITABLE REMEDIES.** The Owner acknowledges and agrees that damages would be an inadequate remedy for the City for breach of this Agreement and that the public interest strongly favours specific performance, injunctive relief (mandatory or otherwise), or other equitable relief, as the only adequate remedy for a default under this Agreement
- 7.9 CUMULATIVE REMEDIES.** No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity.
- 7.10 ENTIRE AGREEMENT.** This Agreement when executed will set forth the entire agreement and understanding of the parties as at the date it is made.
- 7.11 FURTHER ASSURANCES.** Each of the parties will do, execute, and deliver, or cause to be done, executed, and delivered all such further acts, documents and things as may be reasonably required from time to time to give effect to this Agreement.
- 7.12 AMENDMENT.** This Agreement may be amended from time to time, by consent of the Owner and a bylaw duly passed by the Council of the City and thereafter if it is signed by the City and the Owner.
- 7.13 LAW APPLICABLE.** This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

7.14 NO DEROGATION FROM STATUTORY AUTHORITY. Nothing in this Agreement shall:

- (a) limit, impair, fetter or derogate from the statutory powers of the City all of which powers may be exercised by the City from time to time and at any time to the fullest extent that the City is enabled and no permissive bylaw enacted by the City, or permit, licence or approval, granted, made or issued thereunder, or pursuant to statute, by the City shall estop, limit or impair the City from relying upon and enforcing this Agreement; or
- (b) relieve the Owner from complying with any enactment, including the City's bylaws, or any obligation of the Owner under any other agreement with the City.

7.15 SEVERABILITY. If any section, term or provision of this Agreement is found to be partially or wholly illegal or unenforceable, then such sections or parts will be considered to be separate and severable from this Agreement and the remaining sections or parts of this Agreement, as the case may be, will be unaffected thereby and will remain and be enforceable to the fullest extent permitted by law as though the illegal or unenforceable parts or sections had never been included in this Agreement.

7.16 JOINT AND SEVERAL. The Owner, if more than one, are jointly and severally obligated to perform and observe each and every of the covenants, warranties and agreements herein contained by the Owner to be observed and performed.

7.17 COUNTERPARTS. This Agreement may be executed in counterparts and delivered by emailed PDF file, each of which will have the same effect as if all parties had signed the same document. Each counterpart shall be deemed to be an original. All counterparts shall be construed together and shall constitute one and the same Agreement.

7.18 EFFECTIVE DATE. This Agreement is effective as of the date of the signature of the last party to sign.

IN WITNESS WHEREOF the parties hereto have set their hands and seals as of the day and year last below written.

THE CORPORATION OF THE CITY OF)
VICTORIA by its authorized signatory:)
))
))
_____))
Karen Hoese, Director of Sustainable)
Planning and Community Development)
))
Date signed: _____)

