

To: Victoria City Council (zoning@victoria.ca)

Re: Development Variance Permit and Request for Subdivision Approval

Introduction and Background

We would like to begin by thanking each Council member for their service to Victoria and Vancouver Island and for taking the time to review and consider this submission.

This Explanatory Letter is in support of an application for Development Variance Permits and for approval to subdivide Lot A, Section 68, Victoria District, Plan EPP5690, BCGS92B044 ("Lot A") into two fee-simple lots of approximately 9000 sq ft each.

Lot A is currently covered by Strata Plan EPS299 (the "Strata" or "Strata Plan") which is attached for ease of reference.

Of considerable interest is that prior to the development of the Strata, the land that comprises Strata Lot A was originally two fee simple lots representing the easterly 25 feet of Lot 3 and the westerly 75 feet of Lot 4 Block A Section 68 Plan 3363. We have been advised by the developer of the Strata that these two lots were combined into the current 100 foot lot and then divided into the two current 50 foot Strata lots. We have also been advised that at that time the developer could have instead applied to subdivide the original 100 foot lot by way of a lot adjustment rather than taking the approach they did which was to develop the site as a Strata in accordance with the rules in place at that time. In some respects, our request is "back to the future" (1979 lot plan attached).

The first version of this letter was submitted to City staff on March 12, 2021. Since then, the owners have responded to and fulfilled all requirements of all City departments. Further the Owners incurred engineering consulting expenses and have made a commitment to contribute financially to the City of Victoria's Pedestrian Master Plan.

The Strata Plan covers 1535 Despard Avenue ("1535") and 1537 Despard Avenue ("1537").

The home at 1535 is owned by Jordana Pine-Algar and Kevin Algar (purchased October 2020) and the home at 1537 is owned by Norman Eden (collectively referred to as the "Owners"). Both are proud residents of the Rockland community.

As shown in the attached survey, despite the classification as a Strata, the family homes are completely detached and there is no common or limited common property. 1535 is represented as Part 1 of the Strata and 1537 is Part 2. Both homes have existed as they are today since 2010.

For reasons primarily related to the complications of dealing with insurance for the Strata (explanation to follow), the Owners would like to convert the Strata into two separate fee-simple properties with the lot line between the two being the same as the line between Parts 1 and 2 as shown on the Strata Plan (attached). To do so, Development Variance Permits would be required to relax the requirements for lot width and the side yard setbacks between 1535 and 1537, which as separate properties would not comply with the R1A zoning that covers the properties. Assuming the relaxations are granted, the Owners also seek approval to subdivide Lot A into two fee simple lots with a new lot line between 1535 and 1537 being the line that currently separates Part 1 from Part 2 in the attached survey.

The Crux

Our requests will not result in any changes to the buildings, and as such we believe there is no consequential impact to the community of Rockland or the immediate neighbourhood on Despard avenue.

Further, our position is supported by our neighbours. As suggested by City staff, we canvased our immediate neighbours and other neighbours along Despard Avenue and have received great support for our application.

We have been advised that other neighbours emailed their letters of support directly to Mayor and Council

Rockland Neighbourhood Association Submission

We were recently provided with a copy of the submission prepared by the Rockland Neighbourhood Association (RNA) in response to our application. The animosity and exaggeration contained in the submission is very surprising and suggests there is a lack of good governance at the RNA.

Kevin Algar and Jordana Pine-Algar, the relatively new owners of 1535 Despard, have been very surprised to learn of the historical opposition associated with their home and find the description of their concerns as “laughable” and “disingenuous” to be hurtful and uncalled for and are frankly annoyed to be questioned whether they are proud residents of Rockland. They have made a considerable investment in their home and plan to make 1535 their home for many years to come. They were not involved in the development the property and are simply hoping for quiet enjoyment of their home, free from being publicly attacked by people they have never met. It is particularly surprising that after more than 12 years such opposition still exists, purely it seems for its own sake since our requests make no physical changes to the properties. It’s a reasonable statement that no third party will be affected by the requested changes.

The RNA claims that the homes have caused a “decade of disruption” to the neighbourhood yet the homes both won the highest awards given to new homes on Vancouver Island. In 2011, the Canadian Home Builders’ Association- Victoria and CARE Awards of Vancouver awarded 1537 Despard the Gold Award for Best Single Family Detached Home on Vancouver Island as well as 6 Gold Awards for architectural design, entrance foyer, kitchen design, family media room, outdoor patio space and landscape design. In 2012, 1535 Despard won the same awards. And the accolades continue almost daily as visitors to our homes and pedestrians along Despard regularly applaud the design of the buildings and the landscape. Apart from a vocal minority at the RNA, the vast majority of opinion is highly positive and makes it clear that the development has been very positive for the community of Rockland.

The RNA seems to be challenging the City of Victoria’s right to have initially approved the development, but the development was done completely in accordance with rules in place at the time. RNA is of course within its right to not like what happened and to have a subjective bias against West Coast Contemporary design (despite that there are now several other homes with contemporary designs in Rockland and elsewhere throughout Victoria and Oak Bay), but they should not presume to usurp the authority of the Victoria City Council.

The RNA is in error to describe our lots as undersized as they are in fact approximately 836 square metres each. This exceeds the minimum required lot size of 740 square metres. Exaggeration for effect does not change the facts. It's in the same category as stating the "relaxations...would result in a windfall of million-dollar endowments for each unencumbered property". This of course is pure unsupported fantasy intended to create emotional opposition to our proposal. We see no evidence that our BC Assessments are reduced due to our Strata status and therefore that eliminating the Strata status would increase the value of our properties. In fact, by comparison to a newer (2018) very high-quality fee simple home of on the same side of Despard (arguably comparable), our assessed building cost is 14% higher and our per square foot lot value is 50% higher.

The suggestion in their submission that approving our requests would "create independent lots, which would be open to further development" can only refer to their opposition to garden suites, which clearly suggests their ongoing presumption to usurp the Council's authority.

Detail

According to the Strata Plan, the lot width for each of 1535 and 1537 is 15.24 metres, whereas the required minimum lot width for single family dwellings in the R1-A Zone in the Rockland District is 24 metres. Further, the side yard setbacks of 1535 and 1537 to the line separating Part 1 from Part 2, is 1.52 metres and 1.83 metres, respectively, whereas the required setback is 3.0 meters. Both Owners are prepared to waive the minimum side-yard setback requirement.

As stated earlier, the homes have been in place for over 10 years. The Owners are not proposing to change or add to the current homes. Accordingly, the Development Variance Permits the Owners are seeking are not prospective in nature, as would usually be the case for such permits. If the requested relaxations are granted, nothing will change except the legal status of the properties. Thus, there will be no impact whatsoever to the existing homes or any of the neighbouring properties.

While the subdivision requested does not meet two zoning requirements, it is noted that the Rockland Neighbourhood Plan dated October 1, 1987, stated "The objectives, policies and recommendations of the plan do not represent hard and fast regulations". Clearly, some of the concepts contained in the Plan have been formalized since then, but we suggest the spirit should remain the same despite the RNA's evident desire to apply hard and fast rules.

Council may wish to consider that, as we understand it, under Victoria's zoning rules, a Strata cannot have garden suites. Thus, the Strata status of our property prevents the addition of rental accommodation which would be allowed if the Strata were separated into two separate fee simple lots. While the Owners have no plans to add such rental accommodation, creating and preserving the opportunity to do so seems consistent with the interests of the broader Victoria community especially given our inner-city location which may help to reduce traffic congestion and carbon footprints. That said, should Council consider it advisable to allay any concerns our neighbours and the RNA may have, we would be pleased to add covenants to our newly minted fee simple lots preventing the construction of garden suites.

Given the absence of common or limited common property, the Strata classification in this case seems entirely inappropriate. No one looking at the survey or, indeed, looking at the homes in person would imagine that they form part of a Strata. A picture of the homes is attached for ease of reference.

In fact, after viewing the property several times and deciding to proceed with a purchase, it came as a complete surprise to the new owners of 1535 Despard that it is a Strata. It was not brought to their attention by the realtors until well into the decision-making process and even then, it was thought to be a Bare Land Strata. It was only before the matter was put before a lawyer that the true status was

understood. Up to that point bylaws and other Strata documents had not been provided to the new owners. The realtors involved did not have a good understanding of the situation. Nevertheless, having fallen in love with the home (beautiful street, multiple award-winning home, proximity to daughter's school and friends and family), the new owners decided to proceed in the hope that the other Strata owner would agree to take steps to alter the Strata classification. That is how we got to this point. In other words, this is primarily an initiative of the new owners of 1535 Despard with the appreciated participation of the other Strata owner, Norm Eden. As such, Norm Eden does not deserve the vitriol directed at him by the RNA.

Property Insurance

The main issue for the Owners is that under the Strata Property Act, the Strata is required to purchase insurance for the Strata as a whole. And because of the Strata classification, insurers will only issue a Blanket, Commercial Insurance Policy. Such a policy is appropriate for a multi-unit building with common and limited common property. But it is not appropriate in the current case where there are two stand-alone homes with no common or limited common property, and with significant differences between the homes. To use an analogy, it's like trying to fit a square peg in a round hole.

The most glaring insurance issues are:

1. Under the blanket, commercial policy we are required to coinsure 10%. The result is that we are unable to acquire insurance that will fully restore our homes in the event of a significant damaging event. Further, given the differences in the two homes, it is hard to imagine how, in the event of significant damage requiring an insurance claim, the insurance payout and the resulting effect on premiums would be equitably allocated.
2. Unlike a common residential policy, we cannot obtain a policy that guarantees replacement, only a fixed dollar amount.
3. Despite the legislative requirement, it is conceivable that a future Strata owner would refuse to participate in the insurance process, including coverage discussion and payment. This would necessitate costly, unnecessary and wasteful resort to the formal dispute resolution remedies under the Strata Property Act.
4. The cost is substantially more than a standard policy and must be acquired in two separate parts, one part for the building and the other for contents. To illustrate, the cost for the share of the policy for 1535 Despard avenue is \$5,391 and contents coverage is \$4,281 for a total of \$9,672. If 1535 were insured as a fee simple property, the cost covering building and contents would be \$3,967 resulting in an annual savings of \$5705. And the fee simple policy would provide better/proper coverage for the two separate buildings and higher and better contents coverage.

The excess insurance cost is wasteful and unnecessary. The excess funds could be redirected to expenses that would make a difference to our community such as installing automobile charging ports or purchasing an electric bike or contributing to the City of Victoria's initiative to reconcile with indigenous communities.

The RNA suggests that the owners deserve these negative insurance consequences, essentially a form of punishment that appears to make them feel better about the situation. Strange indeed. The fact is the evolution of Strata insurance was not foreseen at the time of development and is absolutely a hardship from a quantitative and qualitative perspective.

Another example of why the Strata classification is inappropriate in this case concerns the possibility (as mentioned earlier) of a dispute between future property owners. Thankfully, the current Owners have an agreeable and aligned relationship, but one can imagine a situation where a future owner of one of the properties refuses to obtain insurance or disputes the amount and type (e.g., earthquake) of coverage. In such cases, a remedy may be sought from the Civil Resolution Tribunal (CRT), but to involve the CRT in a

dispute between two essentially independent homeowners would be the height of absurdity, not to mention an egregious waste of valuable government resources. Approving the subdivision we are requesting eliminates any possibility of disputes within the context of the province's Strata legislation.

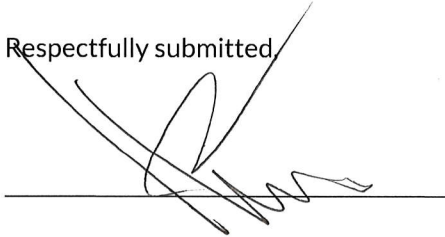
Conclusion

We respectfully appeal to the Victoria City Council to help us eliminate this hardship and allow each of us to deal with our properties independently in future by approving the relaxations requested and approving the subdivision of Lot A so the Owners may independently seek proper residential (not commercial) insurance coverage. The physical reality is that we have two separate buildings with no common or limited common property that are on 15.24 metre "parcels". All we are asking to allow the legal reality to match the physical reality.

Attachments to this Application (* indicates provided by the City of Victoria)

1. State of Title Certificate for 1535 Despard Avenue
2. State of Title Certificate for 1537 Despard Avenue
3. Survey Plan Certificate of Alan Powell for Strata Plan EPS 299 for 1535 and 1537 Despard Avenue (Including Floor Plans) *
4. Easement Areas Over Parts of Strata Lots 1 & 2*
5. Offsite Servicing Plan*
6. 1535 Front and Right Elevations*
7. 1535 Rear and Left Elevations*
8. 1537 Front, Rear, Left and Right Elevations*
9. Picture of the homes located at 1535 and 1537 Despard Avenue.
10. Lot plan form 1979 showing previous 1535 Despard Avenue being comprised of a 75' lot and a 25' foot lot.
11. Letters of Support from Neighbours

Respectfully submitted,



Norman Eden



Jordana Pine-Algar



Kevin Algar

SUBSTITUTE FORM "C" - PARTICULARS

H 81913

Date Oct 1 1979 Nature of Interest EasementDeclared Value Normal 1000000Please Merge Full

Telephone 477-0121

Johnson and Co. and Co., 212-1595
212-1595 (Victoria Ave., Victoria, B.C. V8N 1A4)

SERVICE EASEMENT

81007-W
OK F22076THIS INDENTURE made the 15 day of Sept, in the year of our
Lord, One Thousand, Nine Hundred and SEVENTY-NINE,

BETWEEN:

KAREN JOY YOUNG, Teller, presently of 1630 Warren
Gardens, Victoria, British Columbia,

(hereinafter called the "Grantor")

OF THE FIRST PART,

AND:

STEWART KOLBINSON, Executive, presently of 1535
Despard Avenue, Victoria, British Columbia,

(hereinafter called the "Grantee")

OF THE SECOND PART,

AND:

WEST COAST SAVINGS CREDIT UNION, of Victoria,
British Columbia,

(hereinafter called the "First Mortgagee")

OF THE THIRD PART.

A. WHEREAS the Grantor is seized in fee simple of that certain parcel
or tract of land and premises situate, lying and being in the City of Victoria
and Capital Assessment Area in the Province of British Columbia, and more partic-
ularly known and described as:-Lot 14
Section 68
Victoria District
Plan 10250

Land herein within building scheme, see DD 246752-I and 267055-I.

Form "C" Land Registry Act (Sec. 50)
THIS INSTRUMENT IS A DEED OF EASEMENT
H. 81913 on the 10 day of 10 1979
on application received at the time
of registration on the application
mediation stamped on the application
RE: Hooper

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B. AND WHEREAS the Grantee is seized in fee simple of that certain parcel or tract of land and premises situate, lying and being in the City of Victoria, in the Province of British Columbia, and more particularly known and described as:-

The easterly 25' of Lot 3 and the westerly 75' of Lot 4,
Block 'A'
of Section 68,
Victoria District
Plan 3363,

C. AND WHEREAS the First Mortgagee is the Mortgagee under a certain Indenture of Mortgage filed in the Victoria Land Registry under Number F22077 covering all and singular that certain parcel or tract of land and premises situate, lying and being in the City of Victoria and Capital Assessment District in the Province of British Columbia and more particularly known and described as:-

Lot 14
Section 68
Victoria District
Plan 10250,

D. AND WHEREAS the Grantee is desirous of obtaining a right of way upon and over part of the said Lot 14, Section 68, Victoria District, Plan 10250 for the purposes of constructing and maintaining a storm drain from the easterly 25' of Lot 3 and the westerly 75' of Lot 4, Block 'A', Victoria District, Plan 3363,

E. AND WHEREAS the Grantee has applied to the Grantors for, and the Grantors have agreed to grant to the Grantee a right of way for the benefit of the Grantee, his successors and assigns, together with such rights in respect thereof as are hereinafter expressed.

1. NOW THEREFORE THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of ONE DOLLAR (\$1.00) of lawful money of Canada, now paid by the Grantee to the Grantor (the receipt whereof is hereby acknowledged), the said Grantor HEREBY GRANTS, CONVEYS AND CONFIRMS unto the Grantee, his successors and assigns as appurtenant to the said easterly 25' of Lot 3 and the westerly 75' of Lot 4, Block 'A', Section 68, Victoria District, Plan 3363, a right of way over and upon the land and premises described as follows:-

HALF OF FORMER 3363 AND LOT "A" PLAN 81

