



Committee of the Whole Report For the Meeting of June 15, 2023

To: Committee of the Whole **Date:** June 1, 2023

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

Subject: **Rezoning Application No. 00818 and Development Permit with Variances Application No. 000619 for 27 South Turner Street**

RECOMMENDATION

That Council decline Rezoning Application No. 00818 and Development Permit with Variances Application No. 000619 for the property located at 27 South Turner Street.

LEGISLATIVE AUTHORITY

This report discusses a Rezoning Application and a concurrent Development Permit with Variances Application. Relevant rezoning considerations included in the proposal are to not provide the required adaptable and three-bedroom dwelling units to be consistent with Schedule P pertaining to Missing Middle housing forms, while the relevant Development Permit considerations relate to the application's consistency with design guidelines and the impact of variances.

Enabling Legislation

In accordance with Section 479 of the *Local Government Act*, Council may regulate within a zone the use of land, buildings and other structures, the density of the use of the land, building and other structures, the siting, size and dimensions of buildings and other structures as well as the uses that are permitted on the land and the location of uses on the land and within buildings and other structures.

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 *Official Community Plan, 2012* (OCP). 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 establishment of objectives for the form and character of intensive residential development, 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 Rezoning Application and Development Permit with Variance Application for the property located at 27 South Turner Street. The proposal is to rezone from the R-2 Zone, Two Family Dwelling District to a new zone in order to permit a four dwelling unit building (including two rental dwelling units). Although a four unit building is permitted under the current zone (Schedule P: Missing Middle Regulations), a rezoning is required because the proposal does not meet the use requirements (i.e., it does not provide the required adaptable and three-bedroom dwelling units). There is a concurrent Development Permit with Variances Application pertaining to the proposed form, character, exterior design, finishes and landscaping and variances related to setbacks, open space, accessible parking, bicycle parking, and the driveway surface material.

Since the proposal fits the definition of Missing Middle Housing, it is being compared to Schedule P: Missing Middle Regulations and Development Permit Area 15F: Missing Middle. The applicant, however, has indicated that they do not wish to update the proposal in response to these regulations and guidelines.

The following points were considered in assessing the Rezoning Application:

- This property is designated as Traditional Residential in the *Official Community Plan, 2012* (OCP) which envisions residential uses, including missing middle housing, ground-oriented multi-unit, attached, duplex, and single detached dwelling buildings (with or without secondary or garden suites) up to three storeys with total floor space ratios up to approximately 1.1:1. The proposal is consistent with this use, density and height.
- The proposal does not meet the Missing Middle Regulations' (Schedule P) requirement to provide adaptable and three-bedroom housing.

The following points were considered in assessing the Development Permit with Variances:

- The proposal meets the Development Permit Area objective to integrate more intensive residential development within a Traditional Residential area with a principal building that is generally oriented to maintain the adjacent and nearby built form pattern. The following guidelines, however, are not being met:
 - The rear yard should prioritize open space, trees, storm water run off, and amenity space for residents instead of the proposal for a long driveway and parking garage.
 - For increased livability, the basement rental suites should have windows of a larger size and orientation to provide for more sunlight and outward views.
- The proposal does not meet the Missing Middle Regulations' (Schedule P) requirements related to front setback, open site space, accessible parking, and bicycle parking. Overall, staff do not support these deviations from the new regulations because they would not be consistent with City policies prioritizing open site space and bicycle infrastructure over vehicle parking and access in the *Official Community Plan, 2012* (OCP).

BACKGROUND

Description of Proposal

This proposal is to construct a four dwelling unit building, that includes two duplexes, each with a secondary suite.

As the proposal now fits the definition of Missing Middle in the in the *Official Community Plan, 2012* (OCP), it has been assessed in accordance with these new regulations and guidelines. Rezoning is required because the proposal does not meet the use requirements related to providing adaptable and three-bedroom dwelling units in the Schedule P: Missing Middle Regulations.

The following differences from Schedule P: Missing Middle Regulations are being proposed:

- reduce the minimum number of adaptable dwelling units from 1 to 0
- reduce the minimum number of three-bedroom dwelling units from 2 to 0
- reduce the minimum front setback from 6.10m to 5.44m
- reduce the minimum open site space from 45.00% to 33.70%
- remove the requirement for a single landscaped space
- reduce the minimum number of accessible vehicle parking spaces from 1 to 0
- reduce the minimum number of long-term bicycle parking spaces for the secondary dwelling units from 2 to 0
- reduce the minimum oversized long-term bicycle parking spaces from 15% to 0%
- reduce the minimum electric long-term bicycle parking spaces from 50% to 0%
- reduce the minimum short term bicycle parking spaces from 6 to 0
- allow 2.00m² of driveway surface material to be gravel in the south-east corner of the site.

If Council chooses to move the application forward to a public hearing, staff recommend that the new site specific zone be based on the current R-2 Zone instead of Schedule P, because these regulations are more similar to the proposal than the Missing Middle regulations. An alternate motion has been provided that accommodates this approach.

Land Use Context

The area is characterized by single-family dwellings, duplexes, and apartment buildings. The site context is shown in Figure 1.



Figure 1: Site Context

Existing Site Development and Development Potential

The site is presently a vacant lot.

The property is currently zoned R-2 Zone, Two Family Dwelling District, however, because the lot size is under minimum of 555m², the R1-B Zone, Single Family Dwelling District would apply. Under this zone, the property could be developed as a single family dwelling (with a secondary suite or garden suite). Schedule P: Missing Middle Regulations also applies in the current zone, which would permit a Houseplex in this location. If the applicant met Schedule P, by providing the required adaptable and three-bedroom dwelling units and if the variance requests were eliminated, this application could be a candidate for a delegated approval.

Data Table

The following data table compares the proposal with the existing Schedule P: Missing Middle Regulations and the existing R-2 Zone, Two Family Dwelling District. An asterisk is used to identify where the proposal does not meet the requirements of Schedule P.

Zoning Criteria	Proposal	Zone Standard (Schedule P: Missing Middle Regulations)	Existing Zone (R-2 Zone)
Site area (m ²) – minimum	523.30	N/A	555
Site area for each dwelling unit (m ²) – minimum	138.75	N/A	277.50
Lot Width (m) – minimum	15.24	12.00	15.00
Number of dwelling units per building	4	Minimum: 3 Maximum: 6	Maximum: 2
Number of buildings per lot - maximum	1	N/A	1
Adaptable dwelling units – minimum	0*	1	N/A
Secondary dwelling units - minimum	2	1	N/A
Three-bedroom dwelling units - minimum	0*	2	N/A
Dwelling unit floor area (m ²) - minimum	43.40	33.00	N/A
Driveway surface material	Permeable Pavers and Gravel*	Solid	Solid
Density (Floor Space Ratio) – maximum	0.47:1	0.5:1 (or 1:1 with amenities)	0.5:1
Total floor area (m ²) – maximum	248.00	1,410.00	N/A

Zoning Criteria	Proposal	Zone Standard (Schedule P: Missing Middle Regulations)	Existing Zone (R-2 Zone)
Combined	377.20	N/A	380.00
Floor area per storey (m ²) – maximum	146.40	235.00	N/A
1st & 2nd storey floor area (m ²) – maximum	248.00	N/A	280.00
Height (m) – maximum	7.57	9.00	7.60
Storeys – maximum	1.5	N/A	1.5
Site coverage (%) – maximum	40.00	40.00	40.00
Open site space (%) – minimum	33.70*	45.00	30.00
Rear Yard open site space (%) – minimum	40.90	N/A	33.00
Landscaping Space	Not provided*	Required	N/A
Setbacks (m) – minimum			
Front	5.44**	6.10	7.50
Projections (Front stairs)	1.06	4.00	3.50
Rear	13.46	10.00	12.02
Side (north)	1.65	1.52	1.52
Side (south)	3.06	1.52	3.00
Combined side yards	4.71	N/A	4.50
Parking spaces – minimum	2	2	2
Accessible parking included in the overall units – minimum	0*	1	N/A
Long-term bicycle parking spaces – minimum	0*	2	N/A
Short-term bicycle parking spaces – minimum	0*	6	N/A
Accessory Building			

Zoning Criteria	Proposal	Zone Standard (Schedule P: Missing Middle Regulations)	Existing Zone (R-2 Zone)
Location	Rear yard	Rear yard	
Combined floor area (m ²) – maximum	35.10	37.00	
Height (m) – maximum	3.41	3.50	
Rear setback (m) – minimum	0.98	0.60	
Side setback (m) – minimum	1.65	0.60	
Separation space from main building (m) - minimum	5.86	2.40	
Rear yard site coverage (%) – maximum	21.30	25.00	

Sustainable Mobility

The application proposes one car-share membership for each of the four dwelling units, which supports multi-modal transportation.

Public Realm

No public realm improvements beyond City standard requirements are proposed in association with this application.

Relevant History

This Rezoning and Development Permit with Variances Application was submitted on April 21, 2022 and it was therefore initially compared to the Neighbourliness Guidelines For Duplexes Rezoning Policy, guidelines associated with Development Permit Area 15D: Intensive Residential – Duplex, and standard R-2 Zone, Two Family Dwelling District. The proposal does not meet the duplex policies, guidelines and regulations because duplexes are not permitted to have secondary suites and the minimum lot size is greater than the proposed lot size. The proposal also does not meet the guidelines related to providing adequate and functional open space. Duplexes should have backyards providing private green space for each unit at rear. Therefore, rezoning and a development permit with variances would have been required.

On January 26, 2023 the Missing Middle regulations and guidelines were adopted which became effective on March 12, 2023. Since the proposal fits the definition of Missing Middle in the *Zoning Regulation Bylaw* and *Official Community Plan, 2012 (OCP)*, this proposal is now being compared to Schedule P: Missing Middle Regulations and Development Permit Area 15F: Missing Middle. The applicant, however, has indicated that they do not want to update the proposal in response to these regulations and guidelines.

Community Consultation

Consistent with the *Community Association Land Use Committee (CALUC) Procedures for Processing Rezoning and Variance Applications*, prior to submission of the application, it was posted on the Development Tracker along with an invitation to complete a comment form on February 22, 2022. Mailed notification was sent to owners and occupiers of property within 100m of the subject property advising that a consultation process was taking place and that information could be obtained and feedback provided through the Development Tracker. A sign was also posted on site, to notify those passing by of this consultative phase. Additionally, the applicant participated in an online meeting with the CALUC on March 9, 2022. In response to the feedback, the applicant is proposing to provide one car-share membership for each dwelling unit.

The associated application proposes variances, therefore, in accordance with the City's *Land Use Procedures Bylaw*, it requires notice, sign posting and a meeting of Council to consider the variances.

ANALYSIS

Rezoning Application

Official Community Plan

This property is designated as Traditional Residential in the *Official Community Plan, 2012 (OCP)* which envisions residential uses, including missing middle housing, ground-oriented multi-unit, attached, duplex, and single detached dwelling buildings (with or without secondary or garden suites) up to three storeys with total floor space ratios up to approximately 1.1:1. The proposal is consistent with this use, density and height.

James Bay Neighbourhood Plan

The James Bay Neighbourhood Plan, in the Goals and Objectives on Housing, encourages a range of housing opportunities to accommodate a balance of family and non-family development.

Regulatory Considerations

The following differences from the Schedule P: Missing Middle Regulations are being proposed and would trigger a rezoning application because they are related to use requirements:

- reducing the minimum number of adaptable dwelling units from 1 to 0
- reducing the minimum number of three-bedroom dwelling units from 2 to 0

The applicant has indicated that they do not wish to revise the proposal to meet these requirements because they had submitted the application in advance of the Missing Middle Regulations coming into effect. These differences are not supported because they do not help attain more adaptable and three-bedroom dwelling units and result in rental units with limited access to natural light.

If Council moves this application forward, it is recommended that the new site specific zone be based on the existing R-2 Zone, Two Family Dwelling District because the proposal more closely resembles this zone than the Missing Middle Regulations. The R-2 Zone would need to be modified to reduce the minimum lot area from 555.00m² to 523.30m², to reduce the minimum site area per dwelling unit from 277.50m² to 138.75m² and to allow two secondary suites in addition

to the duplex (total of four dwelling units). An alternate motion has been provided below which accommodates these changes.

Housing

The application, if approved, would add approximately four new residential units (including two rental units) which would increase the overall supply of housing in the area and contribute to the targets set out in the *Victoria Housing Strategy*.

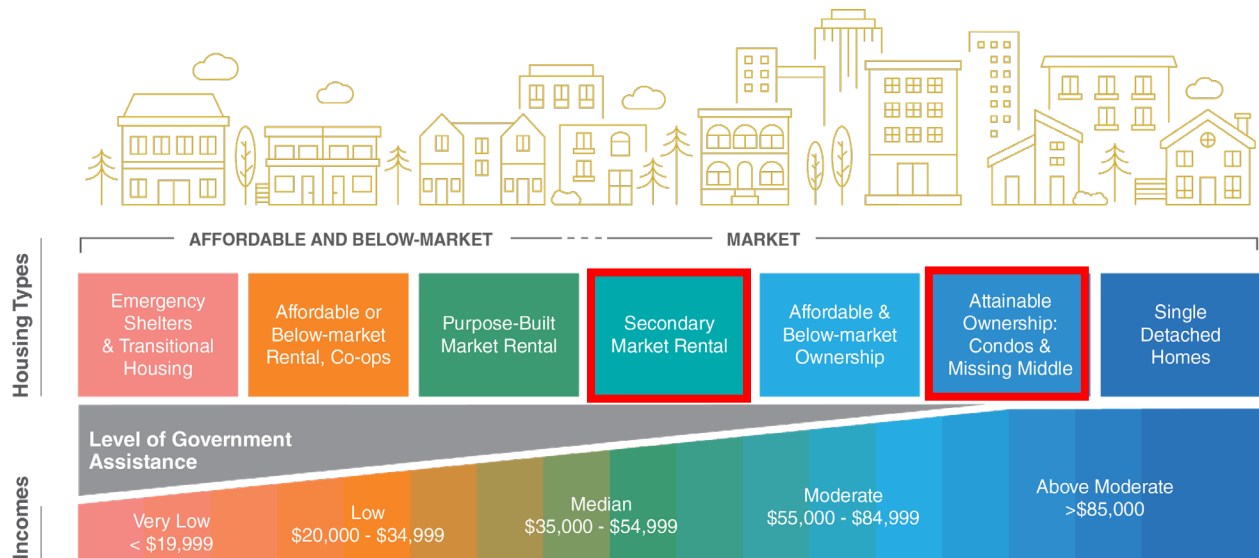


Figure 2. Housing Continuum

Affordability Targets

The proposal does not include a commitment to provide affordable housing. Since the density proposed is below 0.5:1 floor space ratio, the Missing Middle Regulations would not require community amenities, such as affordable housing, to be provided.

Housing Mix

The Missing Middle Regulations require at least two three-bedroom dwelling units to be provided. As submitted, this application proposes two two-bedroom dwelling units each with a one-bedroom secondary suite.

Security of Tenure

Two of the four dwelling units would be rental units because they would be secondary suites in the new site specific zone.

Existing Tenants

The site is presently a vacant lot and therefore has no tenants on it.

Development Permit with Variances Application

Official Community Plan: Design Guidelines

The *Official Community Plan, 2012* (OCP) identifies this property within Development Permit Area 15F: Missing Middle Housing. The proposal integrates more intensive residential development within a Traditional Residential area with a principal building that is oriented to maintain the building pattern with a front yard and entrances facing the street in a form that generally fits in with the predominantly single family neighbourhood. There are concerns, however, that the following guidelines are not being met:

- The guidelines prioritize open space, trees, storm water runoff, and amenity space for residents over vehicle parking and access. The proposal would not be consistent with these objectives because it would result in a long driveway leading to a two car garage in the rear yard. To help mitigate this, the applicant is proposing a green roof on the garage and a permeable paving stone driveway. Removing the garage, providing a bike shed and locating one accessible vehicle parking stall in the front yard could result in a design that is more in keeping with the guidelines.
- To provide better livability for tenants, the rental suites should have windows of a larger size and orientation to provide more sunlight and outward views, and smaller windows or light wells with obstructed views should not be the primary window orientation. Since the suites are located mostly underground (the average distance from the exterior ground to the ceiling of the suites is only 0.36m), only one clerestory window and one window well is provided on each side elevation. The applicant is also proposing a window on each front door, but these windows will receive limited natural light because they are located mostly below grade. The rear of the suites are entirely below grade and therefore the east side of the units have no natural light exposure or outward views. Lifting the suites up further out of the ground would help facilitate more and larger windows which would provide more sunlight and outward views for the suites.

Variances

The following differences from the Schedule P: Missing Middle Regulations and Schedule C: Parking Regulations are being proposed:

- Setbacks and Open Site Space:
 - reducing the minimum front setback from 6.10m to 5.44m
 - reducing the minimum open site space from 45.00% to 33.70%
 - removing the requirement for a single landscaped space
- Parking:
 - reducing the minimum number of accessible vehicle parking spaces from 1 to 0
 - reducing the minimum number of long-term bicycle parking spaces for the secondary dwelling units from 2 to 0
 - reducing the minimum oversized long-term bicycle parking spaces from 15% to 0%
 - reducing the minimum electric long-term bicycle parking spaces from 50% to 0%
 - reducing the minimum short term bicycle parking spaces from 6 to 0
 - allowing 2.00m² of driveway surface material to be gravel in the south-east corner of the site

The applicant has indicated that they do not wish to revise the proposal to meet these requirements because they had submitted the application in advance of the Missing Middle

Regulations coming into effect. To help mitigate the impact of the bicycle parking differences, the applicant is proposing to provide one car-share membership for each dwelling unit.

The differences related to open space and parking are not supported because they prioritize vehicle parking and access over providing open site space and bicycle infrastructure which is contrary to the priorities set out in the *Official Community Plan, 2012* (OCP). Removing the garage, providing a bike shed and locating one accessible vehicle parking stall in the front yard could result in a design that is more in keeping with Schedule P. The front setback could be supported because it would have a small impact on the street. The change in driveway surface material could also be supported because it would be beneficial to the adjacent existing tree and the specific size and location of the gravel would likely not be carried onto the street.

If Council moves this application forward, it is recommended that the new site specific zone be based on the existing R-2 Zone, Two Family Dwelling District because the proposal more closely resembles this zone than the Missing Middle regulations. Variances would be required to the new site specific zone to reduce the minimum front setback from 7.50m to 5.44m, reduce the minimum number of vehicle parking spaces from 3 to 2, reduce the minimum number of long-term bicycle parking spaces from 2 to 0, and to allow 2.00m² of driveway surface material to be gravel in the south-east corner of the site. An alternate motion has been provided below which accommodates these changes.

Accessibility

No accessibility improvements are proposed beyond what is required through the *British Columbia Building Code*. The Missing Middle Regulations require one adaptable dwelling unit to be provided. As submitted, this application does not meet this requirement.

Sustainability

The applicant has not identified any sustainability features associated with this proposal.

Tree Preservation Bylaw and Urban Forest Master Plan

The goals of the Urban Forest Master Plan include protecting, enhancing, and expanding Victoria's urban forest and optimizing community benefits from the urban forest in all neighborhoods. This application was received after July 21, 2021; therefore, the Tree Preservation Bylaw No. 21-035 applies.

A total of sixteen [16] trees have been inventoried, of which, five [5] are bylaw-protected, including four [4] on the subject lot and one [1] on the neighbouring property at 23 South Turner Street. The inventory also includes one [1] municipal tree and 10 undersized trees, not protected under the bylaw.

One of the four protected trees (ID#255) was removed to accommodate the demolition of the previous building. All three of the remaining protected trees are proposed to be removed to facilitate the construction of the garage and driveway. The one off-site bylaw-protected tree, and one municipal tree are proposed for retention, but the off-site tree is expected to be moderately impacted by the development.

Four replacement trees are required but only two are proposed on the tree replacement plan. The current proposal does not provide adequate planting areas to accommodate the additional trees required. Under the current proposal, the applicant would be required pay \$4,000 cash-in-lieu for

two replacement trees not planted.

Parks does not support the new boulevard tree proposed as it is not feasible with the current design.

If Council chooses to move the application forward to a public hearing, staff recommend that Council require revisions to the plans to remove the municipal tree from the right-of-way and include one additional tree on site to meet the tree minimum requirement in the Tree Preservation Bylaw No. 21-035. An alternate motion has been provided below which accommodates these changes.

Tree Impact Summary:

Tree Status	Total # of Trees	Trees to be REMOVED	NEW Trees	NET CHANGE (new trees minus total to be removed)
Subject property trees, protected	4	4	2	-2
Subject property trees, unprotected	10	10	0	-10
City trees	1	0	0	0
Neighbouring trees, protected	1	0	0	0
Neighbouring trees, unprotected	0	0	0	0
Total	16	14	2	-12

Bylaw Protected Trees Proposed to be Removed from Subject Property:

ID#	Species	DBH	Health	Structural condition	Reason for Removal/ Comments
255	Cherry Plum	62	Fair	Fair	Removed to facilitate demolition
265	Little leaf linden	49	Fair	Fair	Garage and Driveway
266	European hawthorn	47	Fair	Fair	Garage and Driveway
NT2	Plum	45	Fair	Fair	Garage and Driveway

Neighbouring Trees which would be Impacted by the Proposed Development:

ID#	Species	DBH	Health	Structural condition	Comments
NT1	American Elm	82	Fair	Fair	Arborist report provides mitigation prescriptions to retain

CONCLUSIONS

Although this proposal would meet the Missing Middle objective of integrating more intensive residential development within a Traditional Residential Urban Place Designation, it would not meet many of the applicable regulations and guidelines. These differences are not supported because they do not help attain more adaptable and three-bedroom dwelling units and vehicle parking is prioritized over providing open site space and bicycle infrastructure which is contrary to the priorities set out in the *Official Community Plan, 2012 (OCP)*.

ALTERNATE MOTION

Rezoning Application

1. That Council instruct the Director of Sustainable Planning and Community Development to prepare the necessary Zoning Regulation Bylaw amendment that would authorize the proposed development outlined in the staff report dated June 1, 2023 for 27 South Turner Street.
2. That first and second reading of the zoning bylaw amendment be considered by Council and a public hearing date be set once the following condition is met:
 - a. Revise the plans to remove the municipal tree from the right-of-way and include one additional tree on site to meet the tree minimum requirement in the Tree Preservation Bylaw No. 21-035 to the satisfaction of the Director of Parks, Recreation and Facilities.
3. That subject to approval in principle at the public hearing, the applicant prepare and execute a legal agreement for the provision of four car-share memberships, with contents satisfactory to the Director of Engineering and Public Works and form satisfactory to the City Solicitor prior to adoption of the bylaw.
4. That adoption of the zoning bylaw amendment will not take place until all of the required legal agreements that are registrable in the Land Title Office have been so registered to the satisfaction of the City Solicitor.
5. That the above Recommendations be adopted on the condition that they create no legal rights for the applicant or any other person, or obligation on the part of the City or its officials, and any expenditure of funds is at the risk of the person making the expenditure.

Development Permit with Variances Application

That Council, after giving notice and allowing an opportunity for public comment at a meeting of Council, and after the public hearing for Rezoning Application No. 00818, if it is approved, consider the following motion:

- “1. That subject to the adoption of the necessary Zoning Regulation Bylaw amendment, Council authorize the issuance of Development Permit with Variances No. 000619 for 27 South Turner Street, in accordance with plans submitted to the Planning department and date stamped by Planning on December 12, 2022, subject to:
- a. Proposed development meeting all City zoning bylaw requirements, except for the following variances:
 - i. reduce reducing the minimum front setback from 7.50m to 5.44m;
 - ii. reduce the minimum number of vehicle parking spaces from 3 to 2;
 - iii. reduce the minimum number of long-term bicycle parking spaces from 2 to 0; and
 - iv. allow 2.00m² of driveway surface material to be gravel in the south-east corner of the site.
2. That the Development Permit with Variances, if issued, lapses two years from the date of this resolution.”

Respectfully submitted,

Rob Bateman
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: Subject Map
- Attachment B: Plans date stamped December 12, 2022
- Attachment C: Letter from applicant to Mayor and Council dated December 12, 2022
- Attachment D: Arborist Report dated December 7, 2022
- Attachment E: Tree Management Plan
- Attachment F: Community Association Land Use Committee Comments dated March 26, 2022
- Attachment G: Pre-Application Consultation Comments from Online Feedback Form
- Attachment H: Correspondence (Letters received from residents).