



## Committee of the Whole Report For the Meeting of July 27, 2023

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**To:** Committee of the Whole **Date:** July 13, 2023

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

**Subject:** Rezoning Application No. 00762 for 1514 and 1520 Foul Bay Road and Development Permit Application No. 000590

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### RECOMMENDATION

That Council decline Rezoning Application No. 00762 and Development Permit Application No. 000590 for the property located at 1514 and 1520 Foul Bay Road.

### 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 change the use requirements, 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 Application for the property located at 1514 and 1520 Foul Bay Road. The proposal is to rezone from the R1-B Zone, Single Family Dwelling District to a new zone in order to permit two four-unit townhouse buildings on two lots which are proposed to be consolidated.

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 the Development Permit Area 15F: Missing Middle objectives and design guidelines.

Although this use 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 rental dwelling units that make it eligible for more than two units per site. The following points were considered in assessing the Rezoning Application:

- The proposal is consistent with the Traditional Residential designation in the *Official Community Plan, 2012* (OCP), which envisions ground-oriented attached dwellings up to a maximum density of 1.1:1 floor space ratio (FSR).
- The proposal is inconsistent with the Jubilee Neighbourhood Plan goals for new residential development to respect the character of existing neighbourhoods and streets and to provide individual unit entrances at ground level facing the street.
- The proposal is inconsistent with the Missing Middle Development Permit Area objectives and guidelines that encourage building orientation towards the fronting street, instead of being oriented towards the adjacent lots on the sides, and to provide open space in the rear yard.

There is a concurrent Development Permit Application pertaining to the proposed form, character, exterior design, finishes and landscaping and differences from the zoning related to height, setbacks, and parking. The following points were considered in assessing the Development Permit:

- The proposal for townhouses oriented perpendicular to the street results in inconsistencies with the objectives and design guidelines of Development Permit Area 15F: Missing Middle Housing. In particular, there are concerns that the design guidelines are not being met related to the follow topics:
  - The proposal does not prioritize open space which has negative impacts on the urban forest, privacy, amenity space for residents, and storm water runoff.
  - The buildings' rear facades are in close proximity to, and directly facing, the adjacent property's side yards. These facades contain large amounts of windows and access to the units' outdoor spaces which would have negative overlook and privacy impacts on the adjacent properties.
  - The fronts of the buildings are not oriented towards the public street, which results in six of the units lacking direct access or visibility from the street. The small front setback also does not provide sufficient transition space between the public sidewalk and the private building.

Given that this application was instream at the time that the Missing Middle regulations and design guidelines were adopted, it is recommended that if Council moves the application forward, that the zoning be changed to the RT Zone, Traditional Residential Attached Dwelling District because the proposal more closely resembles this zone than the Missing Middle Regulations. An alternate

motion has been provided which accommodates these changes.

## BACKGROUND

### Description of Proposal

This proposal is to construct eight townhouse units within two buildings on two lots which would be consolidated. The proposal includes the following major design components:

- low-rise (three storey) building form consisting of traditional architectural features
- internal garages (one per unit) at grade accessed off the vehicle drive aisle
- private amenity space in the form of rear decks on level two as well as private patios on the ground level to the rear of the building.

### Land Use Context

The area is characterized by single-family dwellings and low-rise commercial and mixed-use buildings along Oak Bay Avenue.



### Existing Site Development and Development Potential

The site presently has two single-family dwellings situated on it.

The property is zoned R1-B Zone, Single Family Dwelling District. Under this zone, each of the two lots could be redeveloped as single-family dwellings (with a secondary or garden suite). Schedule P: Missing Middle Regulations also applies in the current zone, which would permit a Houseplex on each lot. If the proposal met Schedule P, by providing the required adaptable and rental dwelling units and if the other zoning inconsistencies were eliminated, this application could be a candidate for a delegated approval.

## Data Table

The following data table compares the proposal with the Schedule P: Missing Middle Regulations under the existing R1-B Zone, Single Family Dwelling District. An asterisk is used to identify where the proposal does not meet these regulations. The data table also compares the proposal with the RT Zone, Traditional Residential Attached Dwelling District, which permits townhouse developments.

| Zoning Criteria                                      | Proposal             | Schedule P                                  | RT Zone      |
|--|----------------------|---|--------------|
| Site area (m <sup>2</sup> ) – minimum                | 1070.57              | N/A   | 920          |
| Lot Width (m) – minimum                              | 31.38                | 12.00                                       | 20.00        |
| Number of dwelling units per building                | 4                    | Minimum: 3<br>Maximum: 6                    | 4            |
| Number of buildings per lot – maximum                | 2                    | N/A   | N/A          |
| Adaptable dwelling units – minimum                   | <b>0*</b>            | <b>1</b>                                    | N/A          |
| Secondary dwelling units – minimum                   | <b>0*</b>            | <b>1</b>                                    | N/A          |
| Three-bedroom dwelling units – minimum               | 2                    | 2   | N/A          |
| Dwelling unit floor area (m <sup>2</sup> ) – minimum | 114.55               | 33.00                                       | 100.00       |
| Density (Floor Space Ratio) – maximum                | 0.95:1               | 0.5:1 (or 1:1 with amenities <sup>1</sup> ) | 1.0:1        |
| Total floor area (m <sup>2</sup> ) – maximum         | 1016.40              | 1,410.00                                    | N/A          |
| Floor area per storey (m <sup>2</sup> ) – maximum    | 214.64               | 235.00                                      | N/A          |
| Height (m) – maximum                                 | <b>11.48*</b>        | <b>9.00</b>                                 | <b>10.50</b> |
| Number of Storeys – maximum                          | <b>3</b>             | N/A   | 3            |
| Site coverage (%) – maximum                          | <b>45.81*</b>        | <b>40.00</b>                                | 50.00        |
| Open site space (%) – minimum                        | <b>35.26*</b>        | <b>45.00</b>                                | 30.00        |
| Landscaping Space                                    | <b>Not provided*</b> | <b>Required</b>                             | N/A          |
| <b>Setbacks (m) – minimum</b>                        |                      |   |              |
| Front  | <b>4.48*</b>         | <b>6.10</b>                                 | <b>6.00</b>  |

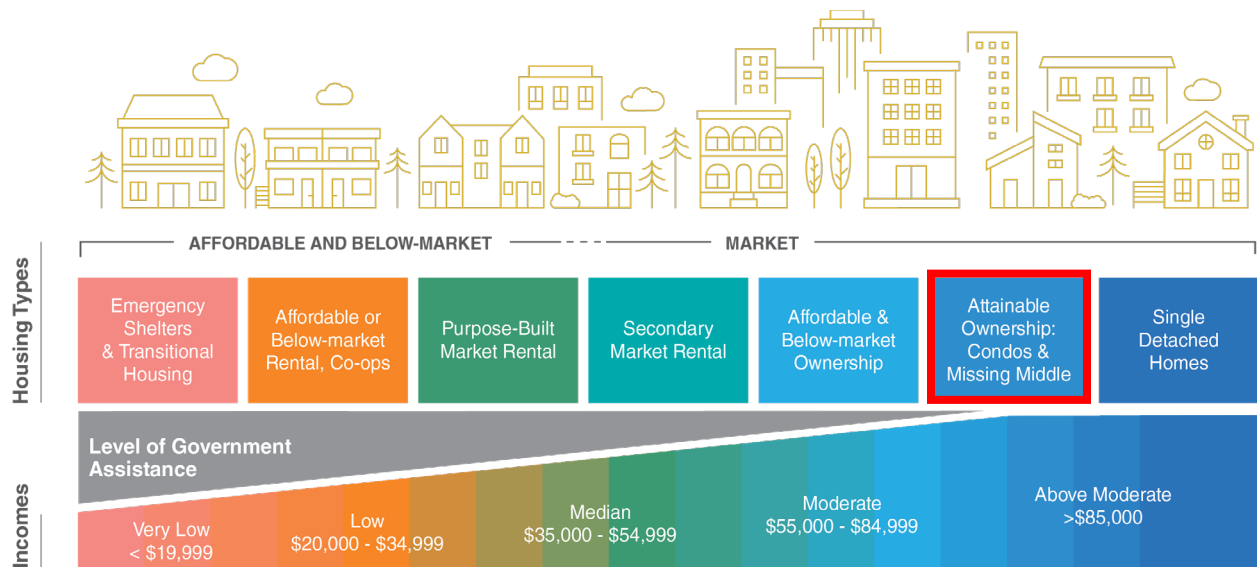
| Zoning Criteria  | Proposal             | Schedule P        | RT Zone                                |
|--|----------------------|-------------------|--|
| Projections  | 0.45                 | 2.00              | 0.75                                   |
| Rear   | <b>2.04*</b>         | <b>10.00</b>      | <b>4.00</b>                            |
| Side (north)   | <b>2.64*</b>         | <b>3.14</b>       | <b>4.00</b>                            |
| Side (south)   | <b>2.64*</b>         | <b>3.14</b>       | <b>4.00</b>                            |
| Building separation (m) - minimum                              | 7.00                 | 5.00              | 5.00                                   |
| Parking spaces – minimum                                       | <b>8</b>             | 6                 | <b>9 (including one visitor space)</b> |
| Van Accessible parking included in the overall units – minimum | <b>0*</b>            | <b>1</b>          | N/A                                    |
| Long-term bicycle parking spaces – minimum                     | 0                    | N/A               | N/A                                    |
| Short-term bicycle parking spaces – minimum                    | <b>1 x 6-rack*</b>   | <b>2 x 6-rack</b> | <b>2 x 6-rack</b>                      |
| Bike facility  | <b>Not provided*</b> | <b>Required</b>   | N/A                                    |

**Notes:**

1. As a condition of additional density pursuant to section 2.4 of Schedule P, community amenities are required to be provided in accordance with section 2.3, including highway dedication and either a monetary contribution or one or more of below-market homeownership units, rental units, or affordable housing cooperatives.

## Housing

The application, if approved, would add approximately six new strata residential units (two dwelling units will be replaced by eight new dwelling 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 1. Housing Continuum**

### Affordability Targets

The proposal does not include a commitment to provide affordable housing. The property subject to this rezoning application is designated Traditional Residential and therefore, in accordance with the *Inclusionary Housing and Community Amenity Policy*, the applicant was not requested to make amenity contributions, such as affordable housing.

### Housing Mix

The proposal meets the Missing Middle Regulations requirement of providing at least two three-bedroom dwelling units.

### Security of Tenure

A Housing Agreement is not needed to ensure that future Strata Bylaws cannot prohibit the rental of units. Such Strata Bylaws are prohibited by provincial legislation.

### Existing Tenants

The proposal is to demolish two existing buildings which would result in a loss of two existing residential rental units. Consistent with the Tenant Assistance Policy, the applicant has provided a Tenant Assistance Plan which is attached to this report.

### **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**

As noted in the applicant's letter dated September 10, 2022, the proposal will be built to Step Code 4 under the *BC Building Code* and will include rooftop solar panels and electric bike chargers. The applicant has not yet confirmed commitment to securing the level of Step Code through a legal agreement.

## **Sustainable Mobility**

No sustainable mobility improvements beyond minimum City standards are proposed in association with this application.

## **Public Realm**

No public realm improvements beyond City standard requirements are proposed in association with this application. However, the applicant has offered to provide a 2.38m wide statutory right-of-way adjacent to Foul Bay Road for the purpose of pedestrian access, plantings, irrigation and maintenance by the City.

## **Relevant History**

This Rezoning and Development Permit Application was submitted on January 27, 2021 and it was therefore initially compared to the guidelines associated with Development Permit Area 16: General Form and Character. The proposal does not meet objectives of these guidelines because the perpendicular townhouses do not have a positive relationship with the street, negatively impact adjacent properties, and does not provide open space.

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.

## **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 December 8, 2020. 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. At the time of writing this report, a letter from the CALUC had not been received.

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 low-rise multi-unit residential, mixed-use, 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 proposed rezoning is consistent with this use, density and height. It is not, however, consistent with the Missing Middle Development Permit Area objectives

and design guidelines that encourage building orientation towards the fronting street (instead of being perpendicular to it) with open space in the rear yard.

### Jubilee Neighbourhood Plan

The Jubilee Neighbourhood Plan, in the Goals and Objectives on Housing, encourages new residential development to respect the character of existing neighbourhood and street variety through the scale and form of housing, and to provide individual unit entrances at the ground level facing the street.

### Regulatory Considerations

The following differences from the Schedule P: Missing Middle Regulations are being proposed which trigger a rezoning application:

- reducing the minimum number of adaptable dwelling units from 1 to 0
- reducing the minimum number of rental dwelling units from 1 to 0.

The applicant has indicated that they do not wish to revise the proposal to meet these requirements and instead want to proceed with their rezoning application.

The current proposal involves other inconsistencies with the Schedule P: Missing Middle Regulations:

- Open Space:
  - increasing the maximum site coverage from 40.00% to 45.81%
  - reducing the minimum open site space from 45.00% to 35.26%
  - removing the requirement for a single landscaped space suitable for tree planting
- Height and Setbacks
  - increasing the maximum height from 9.00m to 11.48m
  - reducing the minimum front setback from 6.10m to 4.48m
  - reducing the minimum rear setback from 10.00m to 2.04m
  - reducing the minimum side (north) setback from 3.14m to 2.64m
  - reducing the minimum side (south) setback from 3.14m to 2.64m
- Parking:
  - reducing the minimum number of accessible vehicle parking spaces for vans from 1 to 0
  - reducing the minimum short term bicycle parking spaces from 2 six-racks to 1 six-rack
  - removing the requirement for a bike facility.

The proposed rezoning is not considered supportable because it would enable building siting that would conflict with the applicable design guidelines related to a positive street interface, prioritizing open space for trees and resident use over vehicle circulation, and privacy and overlook impacts on neighbouring properties.

### **Development Permit Application**

#### Official Community Plan: Design Guidelines

The *Official Community Plan, 2012* (OCP) identifies this property within Development Permit Area 15F: Missing Middle Housing and the associated design guidelines apply to all missing middle



housing forms. As noted above, the proposal for townhouses oriented perpendicular to the street results in inconsistencies with the objectives and guidelines of this DPA and is therefore not supported. The proposal would also not have met the goals of the design guidelines that applied before the Missing Middle design guidelines were adopted.

An alternative approach, which could result in a development that is more aligned with City policies and regulations, would be two side-by-side Houseplexes (i.e., multiple dwelling units in buildings appearing similar in form to large houses). In particular, there are concerns that the guidelines are not being met related to the topics discussed below.

### *Open space*

The design guidelines prioritize provision of open space to support the urban forest, provide privacy, provide amenity space for residents, reduce storm water runoff, and to ensure that sites are not dominated by parking. The design of the development should sensitively integrate parking, circulation and access to minimize impacts on public and private open spaces. This proposal prioritizes vehicles over open space, with a long driveway and multiple garages. To help mitigate impacts on stormwater infiltration, the applicant is proposing rain gardens at the rear of the site.

### *Impact on adjacent properties*

The design guidelines aim to ensure a good fit with existing adjacent buildings and to minimize impacts on neighbours. The buildings' perpendicular orientation to the street results in the rear facades of the dwelling units being in close proximity to, and directly facing, the adjacent property's side yards (2.64m side setbacks). These facades contain large amounts of windows and access to the units' outdoor spaces which would have overlook and privacy impacts on the adjacent properties. The applicant is proposing to step the building down to two-storeys at the rear to help transition to the smaller scale buildings behind it; however, there is still minimal rear yard space provided.

### *Street orientation and interface*

The design guidelines aim to site and orient buildings to maintain the pattern of landscaped front yards to facilitate a positive contribution to the streetscape. The development should be designed to present a friendly face to the street, enhancing public streets, street vitality, pedestrian activity, safety, and 'eyes on the street'. The proposed buildings are not oriented towards the public street, which results in six of the units lacking direct access or visibility from the street. Furthermore, the 2.55m front setback to the SRW results in a small transition space between the public sidewalk and the private building. The applicant is proposing to provide a covered entry, windows, a Juliet balcony, and landscaping to help mitigate the negative impact on the street.

### VariANCES

Given that this application was instream at the time that the Missing Middle regulations and design guidelines were adopted, it is recommended that if Council moves the application forward, it is recommended that the property be rezoned to the RT Zone, Traditional Residential Attached District because the proposal more closely resembles this zone than the Missing Middle regulations. VariANCES would be required as follows (an alternate motion has been provided which includes these variANCES):

- Height and Setbacks
  - increasing the maximum height from 10.50m to 11.50m

- reducing the minimum front setback from 6.00m to 4.48m
- reducing the minimum rear setback from 4.00m to 2.04m
- reducing the minimum side (north) setback from 4.00m to 2.64m
- reducing the minimum side (south) setback from 4.00m to 2.64m
- Parking
  - reducing the minimum number of visitor vehicle parking spaces from 1 to 0
  - reducing the minimum short term bicycle parking spaces from 2 six-racks to 1 six-rack

The proposed variances are not supported as they would enable building siting that would conflict with the Missing Middle Design Guidelines related to street interface, open space, privacy and overlook.

Advisory Design Panel Review

The application was reviewed by the Advisory Design Panel on May 24, 2023. At that meeting, the following motion was passed (see attached minutes):

*That the Advisory Design Panel recommend to Council that Development Permit Application No. 000590 for 1514 Foul Bay Road be approved as presented.*

The applicant has not made any changes to the proposal in response to the Advisory Design Panel meeting.

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 neighbourhoods. This application was received between October 24, 2019 and July 1, 2021, therefore Tree Preservation Bylaw No. 05-106 (Consolidated on November 22, 2019) applies.

A total of 12 trees have been inventoried. Of these, nine are located on the subject lot, five of which are bylaw protected. Two bylaw protected trees and one non-bylaw protected tree are located off-site. There are currently no boulevard trees on the frontage.

Five bylaw protected trees No.431 (95 cm diameter multiple-stemmed maple), No.432 (50 cm diameter multiple-stemmed maple), No. 433 (60cm multiple-stemmed apple), No. 434 (85 cm diameter multiple-stemmed plum), No.435 (53 cm diameter multiple-stemmed apple) require removal. Removal of the trees is required for construction of the building.

All off-site trees will be retained following the mitigation measures outlined in the arborist report.

The applicant is proposing to plant 19 new trees on the subject lot. This includes ten trees to replace bylaw trees removed. Three new municipal trees are proposed on the Foul Bay Road frontage.

Tree Impact Summary Table

| Tree Status                    | Total # of Trees | To be REMOVED | To be PLANTED | NET CHANGE |
|--------------------------------|------------------|---------------|---------------|------------|
| On-site trees, bylaw protected | 5                | 5             | 10            | +5         |

|   |    |   |    |            |
|---|----|---|----|------------|
| On-site trees, not bylaw protected      | 4  | 4 | 9  | +5         |
| Municipal trees                         | 0  | 0 | 3  | +3         |
| Neighbouring trees, bylaw protected     | 2  | 0 | 0  | 0          |
| Neighbouring trees, not bylaw protected | 1  | 0 | 0  | 0          |
| <b>Total</b>                            | 12 | 9 | 22 | <b>+13</b> |

## CONCLUSIONS

The proposal is inconsistent with the Missing Middle Development Permit objectives and guidelines that encourage building orientation towards the fronting street, instead of being oriented towards the adjacent lots on the sides, and to provide open space in the rear yard. The site design and layout prioritizes vehicles and would result in negative impacts related to building orientation and street presence, usable outdoor space, landscaping and trees, privacy, and sensitive transition to adjacent properties. The site is better suited to a different form of ground-oriented multiple dwelling development, such as a houseplex.

## ALTERNATE MOTIONS

### 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 July 13, 2023 for 1514 and 1520 Foul Bay Road.
2. That subject to approval in principle at the public hearing, the applicant prepare and execute legal agreements, with contents satisfactory to the Director of Engineering and Public Works and form satisfactory to the City Solicitor prior to adoption of the bylaw, to secure:
  1. 2.38m wide right of way along Foul Bay Road for highway purposes, in accordance with the following requirements:
    - a. the owner is to construct and maintain the right of way area in accordance with plans submitted to the Planning department and date stamped by Planning on May 11, 2023.
    - b. installation of underground Hydro/Tel service and relocate the existing overhead poles/lines as necessary to accommodate the removal of the fronting utility pole.
3. 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.
4. 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. 00762, 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 No. 000590 for 1514 and 1520 Foul Bay Road, in accordance with plans submitted to the Planning department and date stamped by Planning on May 11, 2023, subject to:
  - a. Proposed development meeting all City zoning bylaw requirements, except for the following variances:
    - a. increase the maximum height from 10.50m to 11.50m
    - b. reduce the minimum front setback from 6.00m to 4.48m
    - c. reduce the minimum rear setback from 4.00m to 2.04m
    - d. reduce the minimum side (north) setback from 4.00m to 2.64m
    - e. reduce the minimum side (south) setback from 4.00m to 2.64m
    - f. reduce the minimum number of visitor vehicle parking spaces from 1 to 0
    - g. reduce the minimum short term bicycle parking spaces from 2 six-racks to 1 six-rack
  - b. The property being consolidated into one lot.
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 May 11, 2023
- Attachment C: Letter from applicant to Mayor and Council dated November 18, 2022
- Attachment D: Arborist Report dated November 18, 2022
- Attachment E: Pre-Application Consultation Comments from Online Feedback Form
- Attachment F: Correspondence (Letters received from residents).
- Attachment G: ADP Minutes dated May 24, 2023