



Committee of the Whole Report

For the Meeting of September 14, 2023

To: Committee of the Whole **Date:** August 23, 2023

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

Subject: Temporary Use Permit Application No. 00030 for 539-545 1/2 Fisgard Street

RECOMMENDATION

That Council waive the standard practice of holding an opportunity for public comment for this application but direct staff to continue other standard practices related to sign posting and public notification, including a request for written commentary to come back to Council for consideration prior to issuing the Temporary Use Permit

And subject to the required notification and advertising, Council consider issuing the Temporary Use Permit as follows:

1. "That Council authorize the issuance of Temporary use Permit No. 00030 for 539-545 ½ Fisgard Street, in accordance with plans submitted to the Planning department and date stamped by Planning on August 14, 2023 to permit the additional use of a limited-service hotel.
2. That limited-service hotel means "the rental of four or more dwelling units, located in the same building, to tourists where no other hotel services or amenities are provided."
3. That the Temporary use Permit, if issued, expires three years from the date of this resolution."

LEGISLATIVE AUTHORITY

In accordance with section 493 of the Local Government Act, Council may issue a Temporary Use Permit. A Temporary Use Permit may allow a use not permitted by zoning, may specify conditions under which the temporary use may be carried on, and may allow and regulate construction of buildings and structures in respect of the use of which the permit is issued.

Pursuant to Section 491 of the *Local Government Act*, where the purpose of the designation is the revitalization of an area in which a commercial use is permitted, a Temporary use 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 Temporary Use Permit (TUP) Application for the property located at 539 Fisgard Street. The proposal is to allow for the operation of four units as a limited-service hotel, defined for the purposes of this application as rental of four or more dwelling units, located in the same building, to tourists where no other hotel services or amenities are provided

The following points were considered in assessing this application:

- the proposed limited-service hotel is generally consistent with the Urban Place Designation in the *Official Community Plan, 2012* (OCP) and the *Downtown Core Area Plan* (DCAP). The use is also generally consistent with the Historic Core Economic policies and objectives in the OCP that support tourist and visitor services (accommodation).
- the subject property is zoned Old Town District-1 Zone (OTD-1), which allows hotel use, but in the manner proposed.

BACKGROUND

Description of Proposal

The proposal is to operate four dwelling units as a limited-service hotel. Two of the units are currently ready to be occupied as transient accommodation units (including issued hotel business licences from the City), with the additional two units expected to be operated similarly at some point in the future. Each of the two units ready for tourist rental use have one or two bedrooms, a full kitchen, and individual stair access from Fisgard Street. There is no additional construction proposed as part of the TUP proposal.

Sustainability

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

Mobility

No 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.

Accessibility

No accessibility improvements are proposed beyond what is required through the *British Columbia Building Code*.

Existing Site Development and Development Potential

The site is presently utilized for various commercial uses in a two-storey heritage designated {00132645:1}

building, with dwelling units above street level storefronts. Under the current Old Town District 1 Zone, the property could be developed at a density of up to 3.0:1 Floor Space Ratio (FSR) for a range of commercial and residential uses, including as a hotel.

No additional development is proposed through this application.

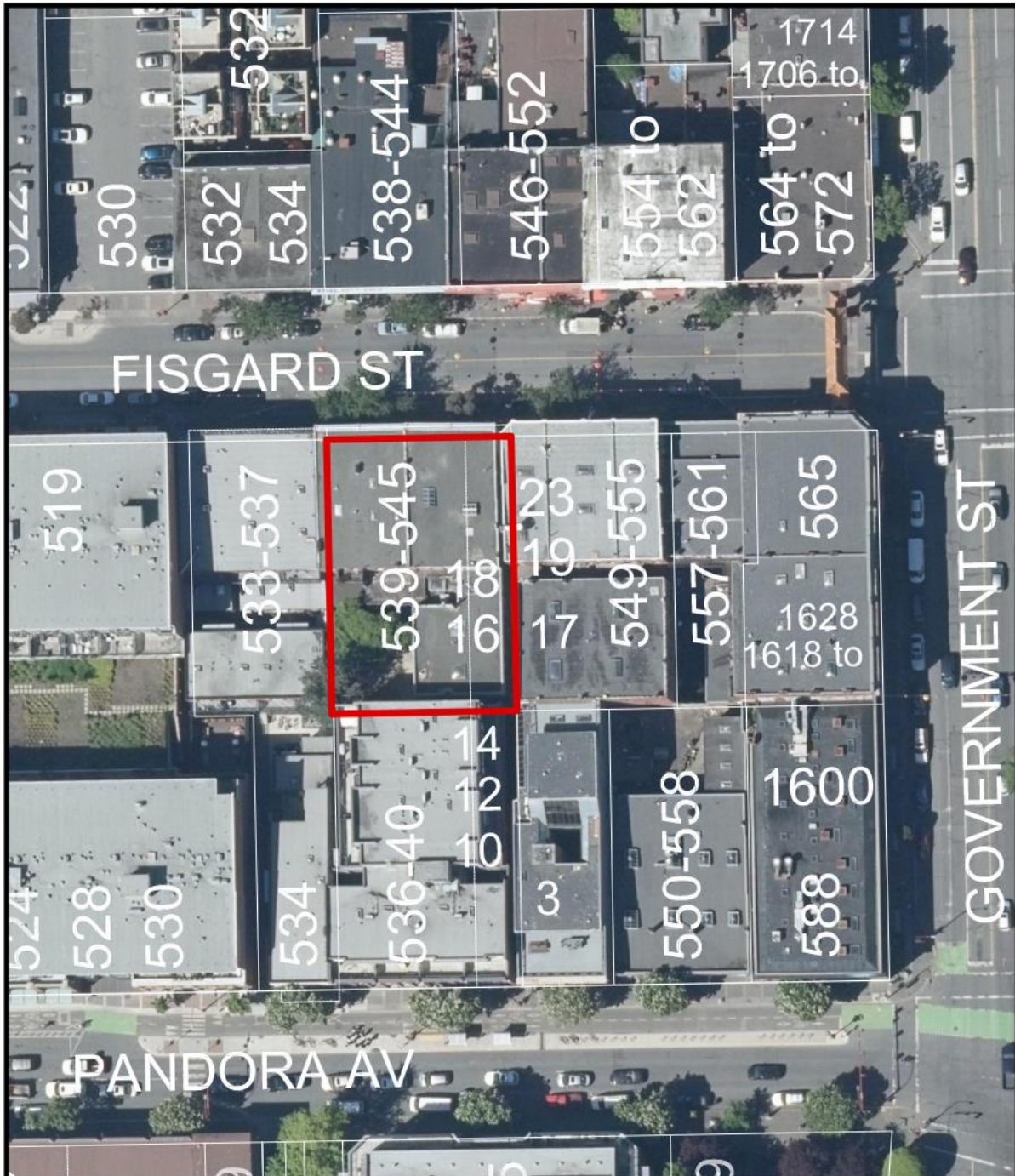


Figure 1. Site Area

Data Table

The following data table compares the proposal with the existing OTD-1 Zone.

Zoning Criteria	Proposal	OTD-1
Site area (m ²) – minimum	899.07	n/a
Density (Floor Space Ratio) – maximum	Existing	3.0:1
Total floor area (m ²) – maximum	Existing	2,697.21
Height (m) – maximum	Existing	15
Storeys – maximum	Existing	n/a
Site coverage (%) – maximum	Existing	n/a
Setbacks (m) – minimum		
Front	Existing	n/a
Rear	Existing	n/a
Side (east)	Existing	n/a
Side (west)	Existing	n/a
Parking – minimum	Existing	0.25 Spaces/Room (Hotel)
Bicycle parking stalls – minimum	Existing	1 space/25 Rooms (Hotel)

Relevant History

The two-story buildings at 539-545 ½ Figgard Street were constructed between 1888 and 1912. Known as the Sham & Low Building (543 ½ -545 ½ Figgard Street) and the Lee Mong Know Building (539-541 ½ Figgard Street), the structures mark the north-western entry to Fan Tan Alley. The interiors of the buildings have accommodated various uses over the years, with the current arrangement being four units on the second storey with commercial uses at ground level. The building was heritage designated in 2016.

The current owner has been renovating the upper storey of the buildings with the intent to operate the four units as a small-scale limited-service hotel. Although initially granted permission (in the form of a transient accommodation hotel business licence) to operate as such, the City has recently informed the applicant that the use is actually consistent with the short-term rental of a dwelling unit, which is not permitted under the OTD-1 Zone and a rezoning or TUP application is required in order to operate the units in the manner proposed.

{00132645:1}

Community Consultation

Consistent with the *Community Association Land Use Committee (CALUC) Procedures for Processing Rezoning and Variances Applications*, on August 28, 2023 the application was referred for a 30-day comment period to the CALUC. At the time of this report, no response letter has been received.

An Opportunity for Public Comment is not a legislative requirement for TUPs under the *Local Government Act*. Each municipality in British Columbia has the authority to determine if there should be a public forum associated with the approval of Temporary Use Permits. The City's *Land Use Procedures Bylaw* states the following with respect to the City's requirements for an Opportunity for Public Comment:

31. Council may provide an opportunity for public comment before passing a resolution to issue:

- a. a development variance permit, other than a permit that varies a bylaw under Section 528 of the Local Government Act;*
- b. a development permit with variances;*
- c. a heritage alteration permit with variances;*
- d. a temporary use permit.*

Council may wish to consider waiving the Opportunity for Public Comment for this TUP application to allow this project to advance to the point of final Council consideration. This would facilitate necessary approvals being in place to allow the units that are ready to be occupied to begin receiving guests.

While the staff recommendation includes the necessary language to waive the Opportunity for Public Comment, all other aspects of the process that ensure transparency and notification of the public would be maintained. The *Local Government Act* requires that a notice be placed in a newspaper and that mailed notice be provided within the distance specified in the City's bylaws for TUPs. In this instance, notification requirements involve adjacent properties, therefore, consistent with the City's *Land Use Procedures Bylaw*, mailed notice would be sent to owners and occupiers of the subject site and adjacent properties. This notice would still invite recipients to provide written comments on the proposal if they felt inclined. Also, in accordance with the City's *Land Use Procedures Bylaw*, a sign would be posted on the property notifying the public of Council's upcoming consideration of the matter along with an invitation to provide written feedback.

If Council would prefer to hold an Opportunity for Public Comment on this application, then the alternate motion is structured accordingly for Council's consideration.

ANALYSIS

Official Community Plan

The *Official Community Plan, 2012* (OCP) identifies the properties within the Core Historic urban place designation, which envisions buildings up to five storeys, set close to the sidewalk with high site coverage. Place characteristics call for continuous commercial uses at grade, with a range of commercial and residential uses supported. The existing two storey building is consistent with the OCP designation.

Economic Guidelines in the OCP for the Core Historic Urban Place Designation include tourism and visitor services, which envisions retaining and expanding the mix of visitor accommodation.

The OCP also identifies this property within Development Permit Area DPA 1 (HC) – Core Historic. As the building is existing and no alterations are proposed through this application, a Heritage Alteration Permit is not required, and therefore a review of the design guidelines is not applicable.

The OCP contains heritage policies that are intended to inform the redevelopment of heritage sites. Heritage objectives include the retention and enhancement of property with historic character as a benefit to the public. The units under consideration have historical significance to the Chinatown area; they have been used at various periods as tenements, opium dens, and gambling houses. One of the units in particular – at 541½ Fisgard Street, maintains some elements of its previous use as a gambling house, with a controller’s window above the entry staircase, as well as a money slot where house deposits could be made, and a coatroom area upon entry. Some of these interior elements may be considered for heritage designation in the future, through a different application. The applicant has indicated that it is their desire to share elements of this history with visitors to Victoria by utilizing the units for visitor accommodation.

The OCP also contains heritage policies that provide somewhat contradictory guidance on the use of upper storeys of heritage buildings: there are policies that encourage the transition of upper storeys from non-residential to residential uses in strategic locations, while other policy direction supports the rehabilitation of property that is non-residential, such as office and hotel, in strategic locations.

Given the location and surrounding use of the subject property, the policy support for rehabilitation of non-residential use is likely more applicable. The proposal is therefore in keeping with this policy direction.

Downtown Core Area Plan

The subject site is identified in the *Downtown Core Area Plan* (DCAP) as being within the Historic Commercial District (HCD) - envisioned as the primary hub for retail, entertainment, and tourism within the Downtown Core Area. The subject property is also within the Chinatown National Historic Site. Ongoing revitalization of the HCD has resulted in an increase in the number of boutique hotels, among other commercial uses, over the past two to three decades. Policy objectives of the HCD include the ongoing ability to attract and accommodate growth in tourism, retail, and entertainment sectors, while maintaining compact, diverse, low-scale, and small-lot characteristics.

Land use policies in DCAP encourage a diverse range of active commercial uses on the ground level (retail, cafes, and restaurants), and complimentary uses such as hotels, multi-residential, and public institutions.

The proposed use as limited-service hotel is consistent with DCAP policies that encourage commercial uses at grade with complimentary uses (in this case, visitor accommodation) on upper storeys.

Regulatory Considerations

The Zoning Bylaw 2018 contains a definition of a Short-Term Rental (STR):

means the renting of a Dwelling Unit, or any portion of it, for a period of less than 30 days and includes vacation rentals.

As constructed, the units intended for hotel use at 539 Fiskard fall under the Zoning Bylaw definition of a Dwelling Unit:

means a self-contained unit comprised of one or more rooms designed as a residence for a single household with a sleeping area, a principal kitchen for food cooking and a separate bathroom facility.

A Hotel in the Zoning Bylaw:

means facilities offering transient lodging accommodation to the general public and may provide accessory uses such as restaurant, meeting rooms and recreational facilities, and includes motels and hostels.

Typically, hotels do not include dwelling units and therefore, STRs are excluded from the definition of hotel. However, as the COVID pandemic has shown, hotel buildings can also be quickly transformed into ad-hoc dwelling units. Visitor accommodation units therefore exist on a continuum. As this application demonstrates, there is a new trend for non-traditional hotels where there are no accessory uses offered by a traditional hotel, such as a lobby, on-site visitor amenities such as a swimming pool, restaurant/bar, and other services (e.g., concierge, etc.). The applicant intends to operate the units as a limited-service hotel, which forgoes these traditional accessory uses.

Short term rental of dwelling units is only permitted as a home occupation subject to certain restrictions, such as not occupying the entire dwelling unit. The proposed use of the subject site does not comply with the Home Occupation requirements.

A limited-service hotel is a new type of transient accommodation that falls somewhere between a traditional hotel and a short-term rental. It offers no services or amenities associated with traditional hotels and may involve rental of entire dwelling units to tourists. For the purpose of this application it can be defined as rental of four or more dwelling units, located in the same building, to tourists where no other hotel services or amenities are provided.

Authorization of dwelling units for transient use during a housing crisis is only recommended given the clear OCP and DCAP policies that are intended to support economic growth of the HCD. This application provides tourist accommodation in an area of town for which the use is clearly intended, and is consistent with a limited-service hotel use.

Council has recently directed preparation of amendments to the City's short-term rental regulations and it is anticipated that these changes will also include new definitions for hotel use that can accommodate limited-service hotels in appropriate circumstances. Therefore, a TUP is an appropriate tool for authorizing this proposal before new regulations are presented for Council's consideration.

CONCLUSIONS

While the proposed use of the subject properties most closely resembles the short-term rental of a dwelling unit, there is clear policy direction in both DCAP and the OCP to utilize the units for visitor accommodation, based primarily on the strategic Chinatown location of the units. Granting a TUP to allow the units to operate as a limited-service hotel use is recommended.

ALTERNATE MOTIONS

Option One – Hold an Opportunity for Public Comment

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

And subject to the required notification and advertising, Council consider issuing the Temporary Use Permit as follows:

- “1. That Council authorize the issuance of Temporary use Permit No. 00030 for 539 Fisgard Street, in accordance with plans submitted to the Planning department and date stamped by Planning on August 14, 2023 to permit the additional use of a Short Term Rental.
2. That the Temporary use Permit, if issued, expires three years from the date of this resolution.”

Option Two – Decline

That Council decline Temporary Use Permit Application No. 00030 for the property located at 539 Fisgard Street.

Respectfully submitted,

Geordie Gordon
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: Plans date Stamped August 14, 2023
- Attachment B: Applicant's letter to Mayor and Council