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Reply to: Spencer C. J. Evans
Email: SEvans@crease.com
File No: 2240199001

March 18, 2024

By Electronic Mail: legislativeservices@victoria.ca

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

Attention: Mayor & Council

Dear Sirs & Madams:

**RE: Transient Accommodation Business Licence Renewal Application
CFS# 250057 – 867 Humboldt Street, Victoria, BC**

I act as counsel for Matthew Linnitt and Ashley Ceraldi (the “**Appellants**”), the owners of the property identified above (the “**Property**”), with respect to their appeal from the January 18, 2024 rejection of their application to renew the Transient Accommodation Business Licence for the Property (the “**Decision**”). Please accept this letter, and the supporting documents listed in **Schedule “A”** and **Schedule “B”**, as the complete submission of the Appellants for this appeal.

Background

At all material times, the Property was zoned RK-8 ZONE HUMBOLDT BED & BREAKFAST DISTRICT (the “**Zone**”). The permitted uses for the Zone are:

- (a) all of the uses permitted in the R-K Zone, Medium Density Attached Dwelling District;
and
- (b) transient accommodation.¹

¹ See Document 7 of **Schedule “B”**: Zoning Regulation Bylaw (No. 80-159), Schedule Part 2.69, RK-8 ZONE HUMBOLDT BED & BREAKFAST DISTRICT at p. 86.

The Appellants purchased the Property in June of 2022 (the “**Purchase**”). The Property had historically been used as a bed and breakfast (“**B&B**”) under the name ‘Humboldt House’. Prior to the Purchase, the previous owners had completed substantial renovations of the bedroom units which included the installation of kitchen facilities (the “**Renovations**”).

The Property consists of six suites with common hallways. The only suite with its own exterior entrance is the one on the main floor occupied by the Appellants.²

The Appellants based their decision to purchase the Property on the Zone’s site-specific transient accommodation permitted use and the Property’s history of use as a B&B. Unbeknownst to the Appellants, the Renovations had been completed by the previous owners without the necessary permits or inspections.

After the Purchase the Appellants moved into the Property and spent most of the first year doing minor repairs and cosmetic changes.

Beginning in March of 2023, the Appellants began the process of applying for a business licence. For a number of weeks, the City staff tried to convince the Appellants to apply for a short-term rental licence instead of a transient accommodation licence. On April 4, 2023 the Appellants submitted an application for a transient accommodation business licence to run a B&B at the Property.³

On May 4, 2023 the City issued a transient accommodation licence to the Appellants (the “**2023 Business Licence**”).⁴

On July 7, 2023 bylaw officer Barry McLean and business licence inspector John Kitson attended to inspect the Property (the “**Inspection**”). They noted that the current layout of the structure was different from the records kept at City Hall, and that some of the Renovations had been unpermitted. However, they told the Appellants this was not unusual, nothing needed to be done immediately, and no further enforcement action would be taken. Mr. McLean and Mr. Kitson said that they could not see anything wrong with how the Appellants were operating as a B&B and there was no reason to revoke the 2023 Business Licence.

² See Document 1 of **Schedule “A”**: Photos of units at 867 Humboldt Street at pp. 16 – 19.

³ See Document 5 of **Schedule “A”**: Transient – Business Licence Application at p. 44.

⁴ See Document 2 of **Schedule “A”**: 2023 Business Licence at p. 20.

On July 26, 2023 Mr. McLean sent an email to Mr. Linnitt, confirming that the Inspection had revealed there was unpermitted work on the Property and that this would be dealt with in a new file. Mr. McLean also believed the Appellants were “operating short-term rentals in self-contained suites”; he warned that they were operating outside of the parameters for the 2023 Business Licence and said that they should apply for a short-term rental licence.⁵

Not long after sending the July 26, 2023 email, Mr. McLean called Mr. Linnitt and asked him if the Appellants planned to apply for a short-term rental licence. Mr. Linnitt told him “no”, as they already had a licence to operate a transient accommodation business. Mr. McLean said that was “fine”, but asked Mr. Linnitt to request that Airbnb change the Property’s classification on their website to a B&B so it would stop appearing on the City’s short-term rental list.

Mr. McLean explained that his department’s focus was on short-term rentals and that if the Appellants made it explicit that they were operating a B&B on Airbnb it would result in less attention being paid to the Property by enforcement staff.

Given what Mr. McLean had said during the Inspection and in his phone call, the Appellants’ understanding was that it was the long-term rental enforcement staff who believed they were operating a short-term rental without a licence, not him.

Following the phone call with Mr. McLean, for the remainder of 2023 the Appellants received no further communication from the City relating to concerns about how they were operating their B&B.

The Decision

In early January of 2024, the Appellants applied to renew the 2023 Business Licence.⁶

On January 10, 2024 Bylaw Officer Nelson Duarte conducted an inspection of the Property. Mr. Duarte reported that the structure at the Property was “comprised of 6 separate self-contained dwelling units with kitchens and bathrooms; 2 suites on the lower level/basement occupied by [the Appellants] and [their] family, 2 suites on the main floor – 1 rented to a long-term tenant, and 1 used for transient accommodation/short term rentals, and 2 suites on the upper floor – both used for transient accommodation/short term rentals.” Mr. Duarte also found that “Each of the rental

⁵ See Document 6 of **Schedule “A”**: Email from Barry McLean at p. 46.

⁶ See Document 8 of **Schedule “A”**: Transient – Business Licence Application at p. 50.

units has a private entrance and the only shared spaces appears to be the hallways and laundry facilities in the basement.”⁷

On January 18, 2014 Supervisor – Bylaw and Licensing Services Andrew Dolan sent a letter to the Appellants rejecting their application to renew the 2023 Business Licence. Mr. Dolan cited Mr. Duarte’s findings in his conclusion that the Appellants were not operating a “traditional” B&B and that the use and configuration of the structure located at the Property had “changed significantly from what was approved.”⁸

Mr. Dolan’s reasoning was based on his opinion that, under the Zoning Regulation Bylaw (No. 80-159) (the “**Bylaw**”), the Zone allowed the Appellants to operate a B&B and use up to six bedrooms for transient accommodation within a single family dwelling (“**SFD**”), and that “transient accommodation cannot occupy an entire self-contained dwelling unit.”⁹

Mr. Dolan directed the Appellants to “cease operating transient accommodation/short term rentals immediately.”¹⁰

On February 1, 2024 Mr. Linnitt met with Mr. Dolan to discuss the Decision.

Mr. Dolan told Mr. Linnitt that the Property was “significantly different than what it’s supposed to be.” Mr. Linnitt asked him to clarify what was different from the previous year when the 2023 Business Licence was granted. Mr. Dolan explained that in 2023 they “weren’t inspecting for B&B licences.” Mr. Linnitt asked what licence he received, and Mr. Dolan answered that he thought “it was an investigation for short-term rentals”, indicating that he did not consider the Appellants to be operating a B&B.¹¹

Mr. Dolan explained that the Property had a “very site specific zoning for bed and breakfast”, but that the approved use of the structure was “single family dwelling with six bedrooms, B&B.” In Mr. Dolan’s opinion, the approved building plans “show bedrooms because that’s what the zoning would permit.” He made it clear he believed the zoning only permitted the operation of a “traditional bed and breakfast”.¹²

⁷ See Document 3 of **Schedule “A”**: Letter from Andrew Dolan at p. 21.

⁸ See Document 3 of **Schedule “A”**: Letter from Andrew Dolan at p. 21.

⁹ See Document 3 of **Schedule “A”**: Letter from Andrew Dolan at p. 21.

¹⁰ See Document 3 of **Schedule “A”**: Letter from Andrew Dolan at p. 21.

¹¹ See Document 4 of **Schedule “A”**: Transcript of audio recording at pp. 23 – 24.

¹² See Document 4 of **Schedule “A”**: Transcript of audio recording at pp. 24 – 25.

By this, Mr. Dolan meant a “shared space”, “very traditional”, articulating his reasoning to Mr. Linnitt as “You’re inviting people into your home, whether you offer them breakfast or not, they’re in your dwelling unit basically. It’s not separate. It’s not self-contained. It’s what you would imagine a B&B was back in the day.”¹³

The problem with the Property, Mr. Dolan continued, was that “what you bought isn’t a single family dwelling. You’ve bought six self-contained suites.” He reasoned that the Appellants could not operate a B&B or a short-term rental in a self-contained suite, citing the new provincial legislation concerning short-term rentals,¹⁴ expected to come into effect in May of 2024.¹⁵

Mr. Linnitt reiterated that the Property had been approved for transient accommodation in 2023, and that he did not see anything in the Bylaw which said that transient accommodation could not be provided in a self-contained dwelling unit. In answer to this, Mr. Dolan referred Mr. Linnitt to Schedule “D” of the Bylaw, Home Occupations.¹⁶

Mr. Dolan then indicated that the real problem with the Property might be that the Renovations had been done without the required inspections, implying that the Appellants’ application was rejected due to public safety concerns.¹⁷

Mr. Dolan suggested that because the Property has “very specific zoning for bed and breakfast”, the Appellants “might benefit from reverting it back to what it was.” This suggestion was based on Mr. Dolan’s impression that the Province might limit B&Bs to only two rooms.¹⁸

Mr. Linnitt argued that the vagueness and ambiguity in the Bylaw was leading to selective enforcement, citing the example of other transient accommodation businesses which provided suites with kitchens. Mr. Dolan denied that the Bylaw was being enforced selectively, explaining that the City “started investigating and conducting inspections for bed and breakfasts just this year because we found that many of them are in fact not operating and they’ve moved from the bed and breakfast model to the short-term rental model where they’re renting self-contained suites.”¹⁹

¹³ See Document 4 of **Schedule “A”**: Transcript of audio recording at p. 25.

¹⁴ See Document 1 of **Schedule “B”**: Bill 35, *Short-Term Rental Accommodations Act* (“**Bill 35**”) at pp. 53 – 56.

¹⁵ See Document 4 of **Schedule “A”**: Transcript of audio recording at p. 25.

¹⁶ See Document 4 of **Schedule “A”**: Transcript of audio recording at pp. 25 – 26.

¹⁷ See Document 4 of **Schedule “A”**: Transcript of audio recording at p. 26.

¹⁸ See Document 4 of **Schedule “A”**: Transcript of audio recording at p. 27.

¹⁹ See Document 4 of **Schedule “A”**: Transcript of audio recording at p. 29.

Mr. Dolan indicated that permits and inspections may be able to give the Appellants options to bring the Property into compliance, but suggested that this would not resolve the licencing issue.²⁰ Later, Mr. Dolan indicated that if the Appellants “go down the path of returning [the Property] to a single family dwelling with six bedrooms” and get an occupancy permit, he would be happy to issue a business licence.²¹ By this, Mr. Dolan presumably meant that the kitchen appliances would need to be removed.

The Applicable Law

Subsection 15(1) of the *Community Charter*, S.B.C. 2003, c. 26 (the “*Community Charter*”) provides that a council may provide for a system of licences, *inter alia*, and paragraph 15(1)(f) provides for the reconsideration or appeal of decisions made with respect to the granting, refusal, suspension or cancellation of such licences.²²

Section 60 of the *Community Charter* states:

Business licence authority

60 (1) An application for a business licence may be refused in any specific case, but

- (a) the application must not be unreasonably refused, and
- (b) on request, the person or body making the decision must give written reasons for the refusal.

(2) In addition to the authority under section 15 (1) (e) [licences, permits and approvals — suspension and cancellation], a business licence may be suspended or cancelled for reasonable cause.

(3) Before suspending or cancelling a business licence, the council must give the licence holder notice of the proposed action and an opportunity to be heard.

(4) Despite section 155 (2) (b) [restriction on delegation of hearings], a council may, by bylaw under section 154 [delegation of council authority], authorize a municipal officer or employee to suspend or cancel a business licence.

(5) If a municipal officer or employee exercises authority to grant, refuse, suspend or cancel a business licence, the applicant or licence holder who is subject to the decision is entitled to have the council reconsider the matter.²³

[Emphasis added]

As stated above, one of the permitted uses of the Property is “transient accommodation”. This term is defined in Schedule A of the Bylaw as:

²⁰ See Document 4 of **Schedule “A”**: Transcript of audio recording at p. 31.

²¹ See Document 4 of **Schedule “A”**: Transcript of audio recording at p. 39.

²² See Document 2 of **Schedule “B”**: *Community Charter* at p. 57.

²³ See Document 2 of **Schedule “B”**: *Community Charter* at p. 58.

- a) the use of land or a building for the temporary accommodation of visitors, and without limitation includes hotels, motels and bed and breakfast accommodation; but
- b) does not include the accommodation of visitors without receipt of payment or other consideration, where that accommodation is incidental to and normally associated with the permitted residential use of a dwelling unit.²⁴
[Defined terms emphasized in original]

None of the terms “hotel”, “motel”, or “bed and breakfast” are defined in Schedule A or elsewhere in the Bylaw, nor does the Bylaw make any significant distinctions between these types of businesses.

A “dwelling unit” is defined as “any suite of rooms used or intended to be used by one family exclusively for the purpose of providing space for a residence.”²⁵

A “self-contained dwelling unit” is defined as “a suite of rooms in a building designed for occupancy of one family which has a separate entrance, and kitchen and bathroom facilities.”²⁶

A “single family dwelling” is defined as “a detached building having exterior walls and containing only one self-contained dwelling unit.”²⁷

Schedule D of the Bylaw, referred to by Mr. Dolan, applies in cases where “home occupations” are permitted pursuant to the provisions of the Bylaw. Schedule D states that where a building is used as a single family dwelling, up to two bedrooms can be used for transient accommodation as a home occupation, but this use “cannot occupy an entire self-contained dwelling unit”.²⁸

Home occupation may be permitted in the first use listed in the Zone, i.e., all of the uses permitted in the R-K Zone, Medium Density Attached Dwelling District. But the second permitted use is transient accommodation, so the Appellants do not need to rely on the home occupation use to operate their B&B.

²⁴ See Document 4 of **Schedule “B”**: Zoning Regulation Bylaw (No. 80-159), Schedule A – DEFINITIONS at p. 78.

²⁵ See Document 4 of **Schedule “B”**: Zoning Regulation Bylaw (No. 80-159), Schedule A – DEFINITIONS at p. 64.

²⁶ See Document 4 of **Schedule “B”**: Zoning Regulation Bylaw (No. 80-159), Schedule A – DEFINITIONS at p. 75.

²⁷ See Document 4 of **Schedule “B”**: Zoning Regulation Bylaw (No. 80-159), Schedule A – DEFINITIONS at p. 76.

²⁸ See Document 5 of **Schedule “B”**: Zoning Regulation Bylaw (No. 80-159), Schedule D – HOME OCCUPATIONS at pp. 81 – 83.

In the decision *0757107 BC Ltd. v. Lake Cowichan (Town)*, 2008 BCSC 961 (“*Lake Cowichan*”), the Supreme Court of British Columbia affirmed the principle that “Local authorities have no inherent power to interfere arbitrarily with the common law right of land owners in the use and improvement of property.”²⁹

The authority to regulate the use of land, buildings and other structures is derived from section 479 of the *Local Government Act*, R.S.B.C. 2015, c. 1.³⁰

In interpreting a zoning bylaw, the British Columbia Court of Appeal has held that “it is necessary to interpret the provisions of the zoning by-law not on a restrictive nor on a liberal approach but rather with a view to giving effect to the intention of the municipal council as expressed in the by-law upon a reasonable basis that will accomplish that purpose.”³¹

However, our Court of Appeal concluded that since the effect of defining terms in the schedule to a zoning bylaw is “to restrict the meaning that might otherwise be attributed to such terms”, where no such restriction has been imposed upon the meaning of an undefined term it can be inferred that the intention was for it to have a broad meaning. In *Neilson* it was held that where a golf course was a permitted use, anything that could be regarded as reasonably coming within the operation of a golf course was permitted.³²

In *Lake Cowichan* this principle was applied to the interpretation of the undefined term “bed and breakfast”.³³

Argument

The Appellants bring this appeal under subsection 60(5) of the *Community Charter*, and submit that the renewal of the 2023 Business Licence was unreasonably refused contrary to paragraph 60(1)(a).

The term “bed and breakfast” is not defined in the Bylaw nor in any applicable legislation. It is therefore to be given a broad interpretation in line with the *Neilson* and *Lake Cowichan* decisions.

²⁹ See Document 9 of **Schedule “B”**: *Lake Cowichan* at p. 92, para. 20.

³⁰ See Document 9 of **Schedule “B”**: *Lake Cowichan* at p. 92, para. 20. [The decision cites section 903 of the legislation then in effect, now section 479.]

³¹ See Document 10 of **Schedule “B”**: *Neilson v. Langley (Township)*, [1982] B.C.J. No. 2313 (“*Neilson*”) at p. 99, para. 18.

³² See Document 10 of **Schedule “B”**: *Neilson* at p. 99, para. 19.

³³ See Document 9 of **Schedule “B”**: *Lake Cowichan* at p. 92, para. 22.

Anything reasonably coming within the operation of a bed and breakfast should be permitted under a bed and breakfast transient accommodation licence.

The word “hotel” is also not defined in the Bylaw. These businesses operate under the same transient accommodation licencing scheme as bed and breakfasts, and it is not uncommon to find cooking facilities in hotel rooms.³⁴ There is no clear policy rationale for permitting hotels to operate with cooking facilities in their rooms but not bed and breakfasts.

In this case, Mr. Duarte and Mr. Dolan have applied a narrow definition which requires a bed and breakfast to operate along a “traditional” model, that is, where guests occupy bedrooms within the owner’s home and share cooking and eating areas.³⁵ There is nothing in the Bylaw which mandates or even supports this reading, and this interpretation is contrary to rulings of the BC Supreme Court and Court of Appeal.

Mr. Dolan’s statement that the Property has a “very site specific zoning for bed and breakfast” is correct in that the Zone is referred to as RK-8 ZONE HUMBOLDT BED & BREAKFAST DISTRICT, but the words “BED & BREAKFAST” do not have any substantive effect. The second use permitted in the Zone is transient accommodation; this would include use as a hotel, which presumably would permit renting suites with cooking facilities.

The Zone’s permitted use for transient accommodation is actually much broader than other similarly zoned properties. For example, the second use permitted in both R1-A6 ZONE, ROCKLAND BED & BRAKFAST DISTRICT³⁶ and R2-28 ZONE, SUPERIOR BED & BREAKFAST DISTRICT³⁷ is “transient accommodation that is located in a building that is used as the principal residence of the operator of the transient accommodation.”

There is still the issue that the Renovations were conducted without permits or approvals, but the Appellants submit that this can and should be dealt with outside of the business licence context. The Appellants did not know about this issue until the inspection in July of 2023 – when they were told that no enforcement action would be taken.

³⁴ See Document 7 of **Schedule “A”**: Photos of Parkside Hotel rooms at pp. 47 – 49.

³⁵ See Document 3 of **Schedule “A”**: Letter from Andrew Dolan at p. 21 and Document 4 of **Schedule “A”**: Transcript of audio recording at p. 25.

³⁶ See Document 6 of **Schedule “B”**: Zoning Regulation Bylaw (No. 80-159), Schedule Part 1.71, R1-A6 ZONE, ROCKLAND BED & BREAKFAST DISTRICT at p. 85.

³⁷ See Document 8 of **Schedule “B”**: Zoning Regulation Bylaw (No. 80-159), Schedule Part 2.85 - R2-28 ZONE, SUPERIOR BED & BREAKFAST DISTRICT at p. 87.

On February 1, 2024, Mr. Dolan suggested there was a public safety risk in allowing guests to rent rooms that had not received the necessary permits.³⁸ But this was not brought up in his January 18, 2024 letter.³⁹ In any case, the Appellants are willing to work with the City to address any permit or safety issues if this will enable them to renew the 2023 Business Licence.

Mr. Dolan’s reference to Schedule “D” of the Bylaw was incorrect. Schedule “D” applies only to homes occupations, defined as:

... making, servicing, or repairing goods, or providing services for hire or gain by any person, wholly within a dwelling unit occupied by that person, but does not include the following except as provided in Schedule D:

- a) the sale of goods on or from the dwelling unit or its premises;
- b) the provision of escort services within a multiple dwelling;
- c) small-scale commercial urban food production.⁴⁰

The first sentence of Schedule “D” states that “Where home occupations are permitted pursuant to provisions of this bylaw, the following conditions shall apply to their use...”⁴¹ The Appellants are not relying on home occupations being permitted by the Bylaw to operate their B&B; they are relying on the transient accommodation use provided in the Zone.

There is no basis for Mr. Dolan’s conclusion that transient accommodation units cannot occupy an entire self-contained dwelling unit at the Property. It was an error for Mr. Dolan to reject the renewal of the 2023 Business Licence on this basis.

Conclusion

Finally, the issue of Bill 35 should not be left unaddressed – Mr. Dolan made much of this legislation in his explanation for the Decision. Beginning on May 1, 2024, short-term rentals will be limited to hosts’ principal residence and will limit each host to not more than one “secondary suite” or other “accessory dwelling unit”.⁴²

³⁸ See Document 4 of **Schedule “A”**: Transcript of audio recording at p. 26.

³⁹ See Document 3 of **Schedule “A”**: Letter from Andrew Dolan at p. 21.

⁴⁰ See Document 4 of **Schedule “B”**: Zoning Regulation Bylaw (No. 80-159), Schedule A – DEFINITIONS at p. 68.

⁴¹ See Document 5 of **Schedule “B”**: Zoning Regulation Bylaw (No. 80-159), Schedule D – HOME OCCUPATIONS at p. 81.

⁴² See Document 1 of **Schedule “B”**: Bill 35, *Short-Term Rental Accommodations Act*, s. 14 at p. 56.

A secondary suite is defined as “an accessory dwelling unit that is located in and forms part of a primary dwelling unit”.⁴³

An accessory dwelling unit is defined as ...

a building, or part of a building, that

(a) is a self-contained residential accommodation unit,

(b) has cooking, sleeping and bathroom facilities, and

(c) is secondary to a primary dwelling unit located on the same property;⁴⁴

This language would, admittedly, capture many transient accommodation providers. But section 3 provides an exemption for hotels, motels and any prescribed accommodation service providers.⁴⁵

It is not clear whether any regulations will be enacted to prescribe B&Bs as exempt service providers. The current provincial policy guidance treats B&Bs the same as other short-term rentals.

Regardless of what effect Bill 35 will have, it has not yet come into effect. If the renewal of the 2023 Business Licence was denied because the new legislation might prohibit the Appellants from operating their B&B, then this was incorrect and unreasonable.

Humboldt House has been a popular B&B in Victoria for many years, contributing significantly to the local economy. The Appellants run a small family business, mistakenly caught up in the City’s efforts to crack down on short-term rentals. Shutting them down without notice would be unreasonable and unfair, and would have a catastrophic financial impact on their family.

Bylaw officers have misapplied the R-K zoning restrictions on transient accommodation as a ‘home occupation’ to the Appellants’ business, despite the fact that they have been operating under the Zone’s second, unrestricted transient accommodation use.

There is no bylaw prohibiting transient accommodation units from having kitchenettes. This is commonplace among other transient accommodation businesses, like the Parkside Hotel across the street from the Property.

Municipal governments have no inherent right to restrict the use of private property. The Court has directed that undefined terms in zoning bylaws are therefore to be given a liberal interpretation. Anything reasonably coming within the operation of a B&B should be considered a B&B.

⁴³ See Document 1 of **Schedule “B”**: Bill 35, *Short-Term Rental Accommodations Act*, s. 1 at p. 54.

⁴⁴ See Document 1 of **Schedule “B”**: Bill 35, *Short-Term Rental Accommodations Act*, s. 1 at p. 53.

⁴⁵ See Document 1 of **Schedule “B”**: Bill 35, *Short-Term Rental Accommodations Act*, s. 3 at p. 55.

The City should reverse the Decision and renew the 2023 Business Licence.

If the operation of B&Bs becomes limited to two suites in an owner's principal residence, whether by way of a bylaw or provincial legislation, then the Appellants submit that the City should work with small businesses to bring them into compliance or transition them to operating under hotel licences – not shut them down without notice.

Kind regards,

CREASE HARMAN LLP

Per:

Spencer Evans

Spencer C. J. Evans

SCJE/

Schedule “A”: List of Supporting Documents

Document	Date	Description	Page
1	June 2023	Photos of units at 867 Humboldt Street	16
2	January 2023	2023 Business Licence	20
3	January 18, 2024	Letter from Andrew Dolan	21
4	February 1, 2024	Transcript of audio recording	22
5	April 4, 2023	Transient – Business Licence Application	44
6	July 26, 2023	Email from Barry McLean	46
7	March 17, 2024	Photos of Parkside Hotel rooms	47
8	December 18, 2023	Transient – Business Licence Application	50

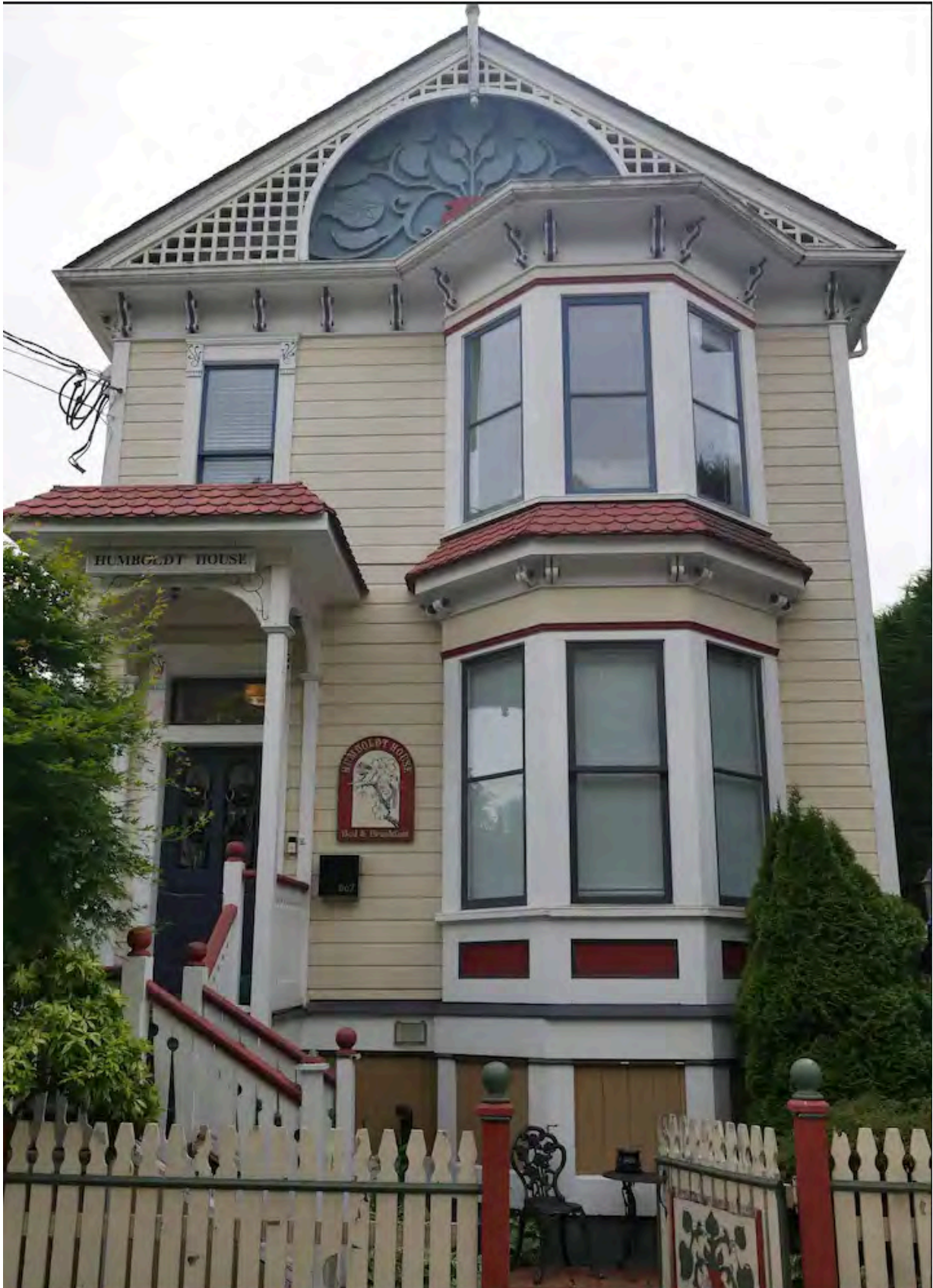
Schedule “B”: List of Authorities

Document	Legislation, Bylaws	Page
1	Bill 35, <i>Short-Term Rental Accommodations Act</i>	53
2	<i>Community Charter</i> , S.B.C. 2003, c. 26	57
3	<i>Local Government Act</i> , R.S.B.C. 2015, c. 1	59
4	Zoning Regulation Bylaw (No. 80-159), Schedule A – DEFINITIONS	60
5	Zoning Regulation Bylaw (No. 80-159), Schedule D – HOME OCCUPATIONS	81
6	Zoning Regulation Bylaw (No. 80-159), Schedule Part 1.71, R1-A6 ZONE, ROCKLAND BED & BREAKFAST DISTRICT	85
7	Zoning Regulation Bylaw (No. 80-159), Schedule Part 2.69, RK-8 ZONE HUMBOLDT BED & BREAKFAST DISTRICT	86
8	Zoning Regulation Bylaw (No. 80-159), Schedule Part 2.85 - R2-28 ZONE, SUPERIOR BED & BREAKFAST DISTRICT	87
	Decisions	
9	<i>0757107 BC Ltd. v. Lake Cowichan (Town)</i> , 2008 BCSC 961	88
10	<i>Neilson v. Langley (Township)</i> , [1982] B.C.J. No. 2313	96

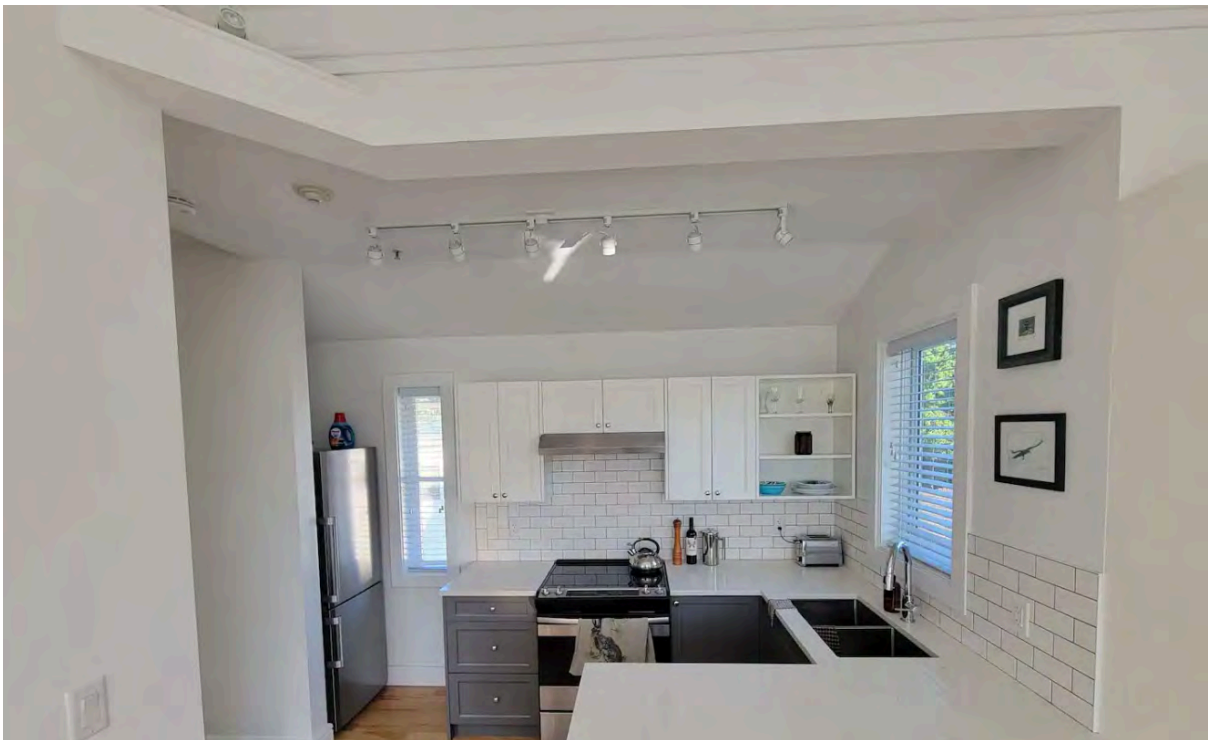
SCHEDULE “A”

867 Humboldt St.

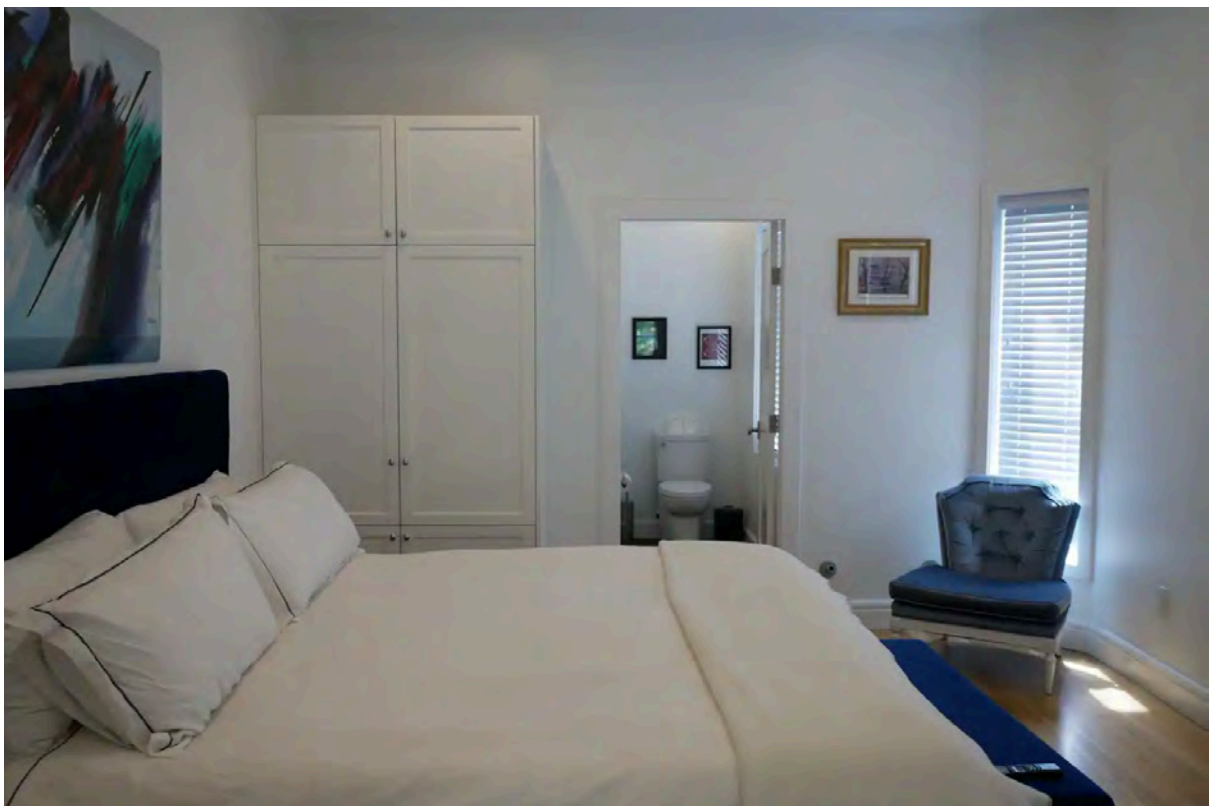
Exterior



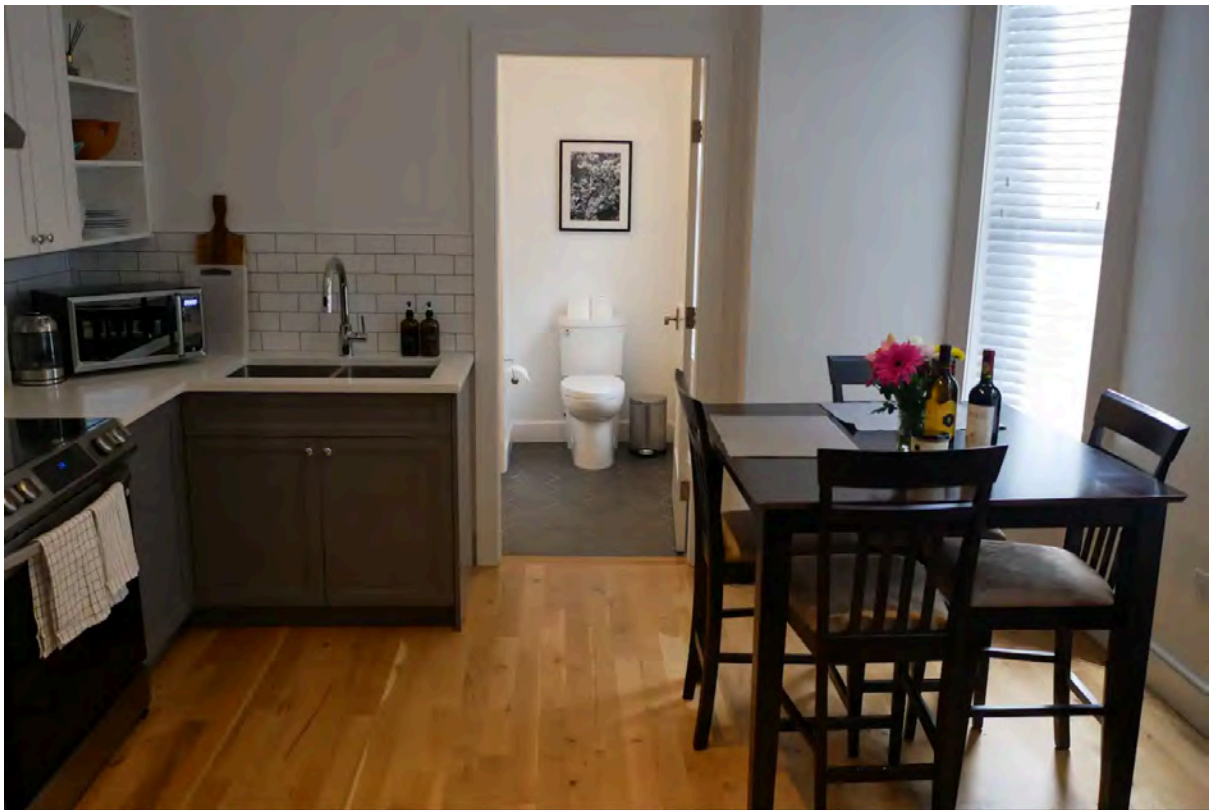
Gazebo



Edwards



Mikado





BUSINESS LICENCE

THIS LICENCE MUST BE POSTED IN A CONSPICUOUS PLACE ON THE BUSINESS PREMISES, IS NON-TRANSFERABLE, AND IS VOID ON CHANGE OF OWNERSHIP OR CHANGE OF LOCATION.

BUSINESS & MAILING ADDRESS:

**HUMBOLDT HOUSE
867 HUMBOLDT ST
VICTORIA BC V8V 2Z6**

LICENCE NO: 00044580

LICENCE FEE: \$130.00

BUSINESS LOCATION:

867 HUMBOLDT ST

EXPIRES ON: Jan 15, 2024

LICENCEE:

**LINNITT, MATTHEW
867 HUMBOLDT ST
VICTORIA BC V8V 2Z6**

HAS PAID THEIR REQUIRED LICENCE FEE AND IS ENTITLED TO CARRY ON THE BUSINESS DESCRIBED AS:

TRANSIENT ACCOMMODATION - BED & BREAKFAST

IN A LAWFUL MANNER AND THIS LICENCE IS ISSUED SUBJECT TO THE PROVISIONS OF ALL BY-LAWS OF THE CITY OF VICTORIA, NOW OR HEREAFTER IN FORCE, AND TO ALL AMENDMENTS THAT MAY HEREAFTER, DURING THE CURRENCY OF THIS LICENCE BE MADE TO SAID BY-LAWS. IN THE EVENT THE NAME OR NATURE OF THE BUSINESS IS CHANGED, OR THE ADDRESS FROM WHICH THE BUSINESS IS CARRIED ON IS CHANGED, THE CITY OF VICTORIA MUST BE NOTIFIED AT 250.361.0572 OR VIA E-MAIL AT BUSINESSLICENCE@VICTORIA.CA



1 CENTENNIAL SQUARE, VICTORIA, BC V8W 1P6 | victoria.ca

Bylaw Services

#12 Centennial Square, Victoria, BC V8W 1P7
E bylawservices@victoria.ca T 250.361.0215 F 250.361.0205

January 18, 2024

Matthew Linnitt / Ashley Ceraldi
867 Humboldt St.
Victoria, BC
V8V 2Z6

Re: Application for a 2024 B&B license – 867 Humboldt St. / Bylaw File#250057

Dear Matthew and Ashley,

You made application for a Transient Business License (see attached) to operate a Bed & Breakfast on your property at 867 Humboldt Street. Bylaw Officer Nelson Duarte attended and conducted an inspection of your property on January 10, 2024 to determine your eligibility to be issued a business license for 2024. The property at 867 Humboldt Street is zoned RK-8, Humboldt Bed & Breakfast District, and the approved use of the structure according to building permit records is single-family dwelling (SFD) with 6 room bed & breakfast.

The Zoning Regulation Bylaw defines "transient accommodation" as the use of land or a building for the temporary accommodation of visitors, and without limitation includes hotels, motels and bed and breakfast accommodation. The RK-8 zoning allows you to operate a bed and breakfast and use up to 6 bedrooms for transient accommodation within your SFD, however, transient accommodation cannot occupy an entire self-contained dwelling unit. *where is this in the bylaws?*

The inspection conducted by Bylaw Officer Duarte revealed that the structure is comprised of 6 separate self-contained dwelling units with kitchens and bathrooms; 2 suites on the lower level/basement occupied by yourselves and your family, 2 suites on the main floor – 1 rented to a long-term tenant, and 1 used for transient accommodation/short term rentals, and 2 suites on the upper floor – both used for transient accommodation/short term rentals. Each of the rental suites has a private entrance and the only shared spaces appears to be the hallways and laundry facilities in the basement.

*ince
hen?* As a result, I have concluded that you are not operating a traditional Bed & Breakfast, and that the use and configuration of the structure has changed significantly from what was approved. As a result, you do not qualify for a Transient Business License, therefore your business license application is rejected and you are directed to cease operating transient accommodation/short term rentals immediately. Please note that you will receive a second letter concerning other bylaw violations observed during the inspection relating to work without permit to convert the structure and install additional dwelling units.

Please contact me by email at adolan@victoria.ca or telephone at 250-361-0578 if you have any further questions or concerns. Thank you.

Regards,

Andrew Dolan
Supervisor – Bylaw and Licensing Services
City of Victoria

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0:00:01.4 Speaker 1: This probably came as a bit of a surprise, or not? Because I know you've been inspected a couple of times.

0:00:07.8 Speaker 2: Yeah, and my experience with the city has been, for the most part, really good. I've... Anybody that's wanted to come in, just come in. And...

0:00:17.4 Speaker 1: Yeah.

0:00:18.5 Speaker 2: I had this inspection last year, and the licensing officer said, I don't see anything untoward about what you're doing here. And I said that, my communications with them and both the building inspector at that time was, I'm just trying to operate a business. I want to do everything I can do to come into compliance with any laws that you have. If you can provide me with them if there's anything I'm doing that's outside of the boundaries, provide me with them and I'll come into compliance. And they said there's nothing unusual or untoward about what you're doing, and they gave me a business license, right. And as a result of that, they just... What... The downstream effects of what's happening now... The downstream effects of what's happening now...

0:00:58.5 S1: Yeah.

0:00:58.7 S2: Is that I bought a business that I expected to be operational. And what's being told to me now is that it's not. Because it was told to me last year that it was, my... From what I understand, the statute of limitations for pursuing action against the seller at that point is no longer viable. And so I'm out of, potentially, any money that they would be due to me for selling me something that wasn't actually what they were telling me they were selling me.

0:01:32.9 S1: Well, I don't know about that because there is provincial legislation around disclosure and making a proper disclosure.

0:01:39.5 S2: Yeah.

0:01:39.8 S1: But there's also honors on you to do your own due diligence to make sure that what you're buying is what you're supposed to be buying. Because in this case, it's significantly different than what it's supposed to be.

0:01:56.6 S2: Different from what it was last year when I got a business license?

0:02:00.9 S1: Last year, we weren't inspecting for B&B licenses. There was...

0:02:04.4 S2: What was the license that I got?

0:02:05.9 S1: I think it was an investigation for short-term rentals, but you had already been sent an invoice for bed and breakfast. So we haven't actually...

0:02:15.7 S2: I have a business license approval.

0:02:17.3 S1: For bed and breakfast.

0:02:18.1 S2: For bed and breakfast.

0:02:19.0 S1: But you're not operating a bed and breakfast.

0:02:22.6 S2: Okay. These are the rules...

0:02:23.4 S1: Yeah.

0:02:23.4 S2: That I need to know.

0:02:24.4 S1: And here's the thing.

0:02:25.7 S2: Yeah.

0:02:25.8 S1: So let's just go through this one step at a time, okay?

0:02:28.9 S2: Sure.

0:02:30.9 S1: So there's a letter I sent you. So first of all, there's two different things. There's what the property is zoned.

0:02:36.5 S2: Yeah.

0:02:36.9 S1: So that's what the property will allow you to have on it. And then there's what is the approved use of the structure.

0:02:43.6 S2: Okay.

0:02:44.6 S1: And they're totally different. So for example, if you might have a lot that is zoned duplex and people will assume, well, then I have a duplex. Well, you can have a duplex, but if the structure on it is a single family dwelling, you need to go through the process to convert it to a duplex.

0:03:01.1 S2: Okay.

0:03:01.9 S1: Okay. Because that's permissible under the zoning. You couldn't go through the process to convert it to a triplex because the R2 zoning only allows for two. A lot of people make that mistake. And realtors are forever making that mistake. Oh, it's duplex zone. There can be a duplex there and they see a duplex and they assume it's a duplex. Well, it may not be a duplex. It could be a duplex, but right now it's a single family dwelling. In this case, for your property, it has a very site specific zoning for bed and breakfast. Back between 1980 and 2000, a number of very site specific zonings were issued for certain properties to operate bed and breakfasts. This was before the introduction of short term rentals and the new blown up thing that we're dealing with today. So it was a transient accommodation and there were some parking requirements. The approved use of the structure was single family dwelling. Okay, single family dwelling with six bedrooms, B&B.

0:04:08.2 S2: Where does it say that?

0:04:11.7 S1: All of these permits.

0:04:17.0 S2: I see six room.

0:04:21.6 S1: Six room bed and breakfasts. Six bed and breakfast units.

0:04:26.6 S2: Okay.

0:04:27.6 S1: And then when you look at the approved building plans, they show bedrooms because that's what the zoning would permit. Single family dwelling with bedrooms being operated as a bed and breakfast, a traditional bed and breakfast. In most cases, if it were just a residential zoning like R1, you would be only permitted to have a single family dwelling with two bedrooms. Because you had the very site specific zoning, which I'll give you as well, the zoning permitted the owner at the time to have six bedrooms so four more than what normal zoning would allow. But those are bedrooms. So that's shared space. It's very traditional. You're inviting people into your home, whether or not you offer them a breakfast or not, they're in your dwelling unit basically. It's not separate. It's not self-contained. It's what you would imagine a B&B was back in the day. Okay. What you have, what you bought isn't a single family dwelling. You've bought six self-contained suites. Now, granted, you're occupying two in the basement for yourself and your family that leaves four, one of which I understand is rented long-term and the other three are rented short-term.

0:05:44.4 S2: The other three we got licenses, the bed and breakfast license [0:05:49.2] ____.

0:05:49.2 S1: So you cannot operate a bed and breakfast in a self-contained suite. You cannot operate a short-term rental in a self-contained suite. And with the new provincial government legislation that's coming out in May, they're going to really clamp down on that really really hard. And we're all kind of waiting for the shoe to drop on what that's going to look like because we don't have much more information on what the public has been given.

0:06:16.6 S2: I've read through it all and it seems like what they're going for is illegal non-conforming stuff. And that's not us. We have...

0:06:24.2 S1: No, you're illegal.

0:06:25.8 S2: Well, we are approved for transient. And when I look at the bylaws for transient accommodations, it doesn't say anything about whether or not it's a self-contained dwelling unit or it's a bedroom...

0:06:39.2 S1: Oh it absolutely does.

0:06:40.0 S2: Where is the transient?

0:06:41.6 S1: Let me get it.

0:06:41.9 S2: Yeah, I'd like to see that.

[pause]

0:10:01.6 S1: Okay, so this is schedule D of the zoning regulation by lawsuits. If you turn to page two, I'm sorry, page three, and I've highlighted it for you. And I've also given you the definition of a self-contained dwelling units.

0:10:33.0 S2: Okay.

0:10:37.6 S1: Okay. So let's take the B&B of the short term rentals thing out of the equation for the minute. Let's say you weren't doing that. Let's just say you bought this structure. We would be enforcing upon you for work without permit. So regardless of whether it is being used for short-term rentals or long-term rentals, you could convert all six of those units to long-term rentals. You're still gonna have bylaw violations with regard to building, plumbing and electrical work that's been done without permit to convert them. Because there's been kitchens installed, there's been some things that have been moved around. The floor plan isn't what's shown on the approved floor plans. So that's an issue. That's an issue though, that we would grant you time to resolve over time. 'Cause it takes time, it takes money. It's not something that can be done overnight.

0:11:31.9 S1: The way that we approach work without permit is that we do inspections to make sure that there's no imminent health hazards. Now we're bylaw officers, we're not building, plumbing, or electric experts, but we can use our common sense and we can look to see if there's... Can you smell sewer gas, can you... Are there wires hanging on the walls, that sort of thing. Are there bedrooms without windows. Assuming that we don't see any of those things, then we can take a position that is okay, there are some bylaw violations, but they're not like imminent, they're not an imminent hazard. We can give the property owner time to investigate their options and resolve them. And time could be several years before we decided to take the next step in enforcement.

0:12:17.2 S1: You add to that though that guests are staying here, guests that are coming from other places that are staying in units that contain work without permit and work without permit, even if it's done by the most qualified person if it's not inspected and signed off, it's potentially unsafe. So we have to kind of look at the interest of public safety. So when you're bringing guests in from other places, they're assuming that they're gonna rent a place that's legal and safe. So it kind of bumps it up a little bit in priority for us to enforce upon. I don't envy you finding yourself in a situation. I really don't. Unfortunately it happens a lot. It happens a lot because realtors don't make full disclosure, property owners don't make full disclosure, the lawyers that represent people in the sales don't do any research and do their due diligence. And the owners more often than not, don't know or just don't take the time to look into it. Okay.

0:13:30.0 S2: The schedule D for home occupations.

0:13:31.7 S1: Yeah.

0:13:38.2 S2: What is my home listed as again?

0:13:38.3 S1: It is a single family dwelling with six...

0:13:40.8 S2: Bedrooms.

0:13:41.8 S1: Transient bedrooms. Yes.

0:13:43.1 S2: Right. And so, I mean.

0:13:44.3 S1: And I've got some photographs of the approved plans here. Unfortunately, they're not easy to see, but I'll give you these to take. You can ask to get a copy of the full approved plans from the permits and inspections department. And you can look at those yourself. 'Cause you're gonna want to look at what options that you have.

0:14:07.5 S2: Yeah, this looks exactly like... I know exactly what these are talking about.

0:14:14.3 S1: Yeah. So when Nelson did the last inspection, he's drawn a rough sketch. Now it's not the scale but this is basically what we're seeing is that we're seeing that this differs from that in that the bedrooms are now suites and they're self-contained with kitchens and bathrooms. There isn't any shared space. There isn't the one kitchen or a room where the guests eat breakfast, that kind of thing. It's all been changed.

0:14:41.1 S2: And I mean, the room where the... There was never a room in this house with where the...

0:14:48.6 S1: Yeah, I think there was some...

0:14:49.5 S2: The guests have breakfast.

0:14:49.6 S1: Yeah. There was some sort of...

0:14:49.7 S2: There was never a thing... I've been in lots of conversations with the previous owners and how they operated it.

0:14:53.9 S1: But there was one kitchen at the end of the day. There wasn't multiple kitchens.

0:14:58.2 S2: That's fair. So, in order... Basically what you're telling me is in order to run this as like to maintain a transient permit the kitchens have to come up.

0:15:11.8 S1: It has to be... Now I can't give you advice, but what I can say is in cases like this where the property has been changed to a use that's other than what's approved, you're going to have to either legalize it how it is or revert it back to what it should be. Because this has very specific zoning for bed and breakfast, you might benefit from reverting it back to what it was.

0:15:42.6 S2: Yeah. I have no intent...

0:15:44.7 S1: The only problem is we don't know about the province because we didn't think their legislation was going to affect bed and breakfast, just bedrooms. But we just heard at an information session yesterday that they may consider bed and breakfasts up to a maximum of two rooms. They may quash the whole over two rooms deal.

0:16:11.6 S2: Are they allowed to just fundamentally change zoning?

0:16:16.3 S1: Their provincial legislation trumps all local government bylaws.

0:16:19.9 S2: So there's no protection with regard to the zoning that's been there for 20 years?

0:16:27.9 S1: Not to my knowledge, no. They can come in and cancel the whole legal nonconforming thing. It is an issue and it's got lots of local governments scratching their heads and running around. Our city solicitors are running around. We are running around going, how are we going to manage this? Because let's just say that you were operating this business as it should be run, as it is zoned, a single family dwelling with six rooms for them, for the province to then come in and say, Nope, you can only have two rooms. To me personally, as Andrew, not officer of... As Andrew, that's highly unfair. That's a hardship. So what do we have to do then to protect those owners so that they can continue to operate? We don't know. We really don't know. So...

0:17:20.8 S2: Okay. I guess my question is what qualifies as a kitchen, because there's a lot of infrastructure in here. What do I... Because I mean the difficulty is Parkside Transient Accommodations...

0:17:38.4 S1: I know. I know. I know.

0:17:41.5 S2: And I was just there. They got two self-contained full units. They even have laundry in those units.

0:17:45.2 S1: There is not a definition of kitchen which is challenging, but...

0:17:49.4 S2: So if there's no definition of kitchen, then it's very hard for a self-contained dwelling unit to carry any weight as a term, a legal term because it's not defined.

0:18:01.9 S1: Well, no self-contained dwelling unit is.

0:18:05.2 S2: But it says kitchen in it, and if kitchen doesn't mean anything, then self-contained dwelling unit doesn't mean anything.

0:18:10.4 S1: Welcome to my world.

0:18:11.8 S2: So here's my... And this is Matthew as just an owner. This is totally impersonal.

0:18:16.6 S1: Yeah, no, absolutely.

0:18:18.6 S2: But I have to seek damages. Like this is... I was given a license based on what it was last year to operate.

0:18:30.0 S1: Well, you were given a license based upon what you applied for.

0:18:32.6 S2: But it was a four bed and breakfast I have it. And it gave me a license, four bed and breakfast. They said there were no issues here. And I said, if there are issues here, I will come into compliance with them. And then they said, no issues. I spent a ton of money furnishing...

0:18:46.0 S1: No. You were sent a letter.

0:18:47.1 S2: Not just a letter. I have the license approved saying we...

0:18:51.6 S1: Yeah. It doesn't mean anything.

0:18:53.5 S2: That's a business license...

0:18:55.0 S1: Because you applied for four rooms. You don't have rooms. You have suites.

0:18:58.9 S2: Then why did they approve the license?

0:19:02.5 S1: Because we were not...

0:19:06.0 S2: They came in there, they took pictures. The building inspector and the business license inspector were both inside there. I'm just saying...

0:19:12.1 S1: I can't comment on that.

0:19:14.5 S2: I'm just saying with ambiguous phrases like this around what even a kitchen is, and with the transient term applying, like the way Parkside's using it and then selectively enforcing it on a small business owner, they have the kitchen. I mean, this is the same thing.

0:19:33.3 S1: No, we're not selectively enforcing it. Matt, we're not selectively enforcing it.

0:19:36.2 S2: How is...

0:19:36.3 S1: We're enforcing it based upon our capacity. We haven't... For years and years the city has assumed, rightly or wrongly that the bed and breakfast operators were operating the way they should be. We started investigating and conducting inspections for bed and breakfasts just this year because we found that many of them are in fact not operating and they've moved from the bed and breakfast model to the short-term rental model where they're renting self-contained suites. So I've looked at six or seven now, and I've only found two that are operating the way that they're supposed to be operating, and there's 35 out there.

0:20:18.7 S2: So they're all getting shut down.

0:20:20.3 S1: I wouldn't say they're all getting shut down. We have to inspect them all to see what they're doing, but we have to enforce our own bylaws and we have to wait and see what the provincial...

[overlapping conversation]

0:20:31.3 S2: So I'm expecting that it's like self-contained dwelling unit is not acceptable. And under the transient definition that Parkside is also going to see the same enforcement.

0:20:45.2 S1: Yeah. You should see that we've got 800 odd short-term rental problems, including Parkside, and we're all in this, the operators ourselves, we're all in this waiting game to see what shoe drops from the province which is not a great...

0:21:00.5 S2: Yeah, it's not a place where any sort of business owner can do business because it's

ambiguous. It's nonsense. If the word kitchen doesn't mean anything, we're in the land of...

0:21:14.4 S1: Well, that's your...

0:21:15.1 S2: Well, you said, it doesn't have a definition? If it doesn't have a definition, then it doesn't mean anything. If I take the stoves out, is it not a kitchen? What I want to know is converting these things back into bedrooms so they don't have... And the only thing that I have to do, apparently... I mean, separate entrance. Every bedroom has its own entrance.

0:21:34.5 S1: Not an exterior entrance.

0:21:35.0 S2: None of these have their own separate entrances. None of them have an exterior entrance.

0:21:39.5 S1: But there are entrances into an area that's not your accommodation. It's not shared. It's the shared hallway.

0:21:44.5 S2: I mean, the interior building is shared.

0:21:50.7 S1: Okay.

0:21:50.8 S2: And then you go into your bedrooms. That's the way all houses are. Each person...

0:21:55.6 S1: But it's separate from your dwelling unit.

0:21:58.8 S2: Insofar I also...

0:22:00.5 S1: Is always not in your space. It is in your space in that you own it, but it's not in your inner sanctum. It's not in your dwelling units.

0:22:07.1 S2: My children's shoes are on the floor. I mean...

0:22:08.9 S1: Yeah. At the end of the day, here's what it comes down to. At the end of the day, permits and inspections are the folks that you're going to have to speak to. Think about...

0:22:19.0 S2: Well, permits and inspections has nothing to do with the letter you sent me saying I don't have a business license. The reason that I'm not being allowed to conduct business according to this has nothing to do with permits and inspections. But what it says...

0:22:31.9 S1: It absolutely does because you are renting self-contained suites, which is what you're not allowed to rent. You're allowed to rent bedrooms, not self-contained suites.

0:22:40.3 S2: Right. But you're saying that the word self-contained...

0:22:43.5 S1: So I rejecting your license because you're not operating a bed and breakfast.

0:22:46.6 S2: Self-contained dwelling unit, a self-contained suite cannot have a kitchen.

0:22:53.1 S1: Self-contained suite cannot be rented out short-term...

0:22:56.7 S2: I'm just trying to figure out...

0:22:58.5 S1: And that's what you're doing.

0:22:58.7 S2: I'm just trying to figure out what the word self-contained dwelling unit mean. And it says, okay, family which has a separate entrance doesn't have that. Bathroom facilities, I don't know if you guys have a definition for that. Each one has a bathroom. That's fine. Kitchen is the thing here. I can change those.

0:23:19.0 S1: That's the discussion you need to have with permits and inspections folks.

0:23:23.3 S2: So permits and inspections will say that these are now bedrooms and not self-contained suites.

0:23:27.4 S1: Permits and inspections may be able to give you some options as to what you can do to bring this into compliance. But as far as the licensing is concerned.

0:23:37.2 S2: This is insane. Bring me the compliance with a word that doesn't mean anything.

0:23:42.2 S1: We can talk this round and round for hours, but at the end of the day...

0:23:44.7 S2: I know we can but I didn't do this...

0:23:45.6 S1: I can only make a decision based upon the investigation that was conducted. The investigation that was conducted shows that the layout of your structure is vastly different than what was approved. The zoning and the approved use of the structure is for single family dwelling and bedrooms rented overnight as B&Bs. You're not renting bedrooms, you're renting suites. It's not what was intended. Therefore, we're not going to issue a business license for it. You've got the added thing about the new provincial legislation coming in. We not know how that's going to impact, like I said, take the licensing out of it. Take the business end out of it. As far as the structure is concerned, you're still going to have an issue. So it's a matter of whether you want to rezone it perhaps and go to self-contained suites that are long-term rentals, or you want to revert it back to a single family dwelling with bedrooms.

0:24:52.1 S1: And you know what, if across the street there, they grant you an occupancy permit that says single family dwelling with bedrooms all good. But when the provincial legislation comes out, if the provincial legislation says what we think it's going to say, B&Bs can be to a maximum of two rooms, then you're going to have an extra two rooms that have nothing to do with.

0:25:18.4 S2: And that happens in May?

0:25:20.6 S1: Yeah, apparently.

0:25:24.2 S2: Yeah. Well, I mean, the truth is at this point, I have my own...

0:25:30.2 S1: Well, you have options.

0:25:33.4 S2: I have my own options and I have my own concerns about what this is. I also have my own concerns about what in the past has been told to me and what's changing. And essentially at this point, what I'm pretty much bound to do is to seek legal representation and I will probably be seeking damages.

0:26:01.7 S1: Damages from?

0:26:04.7 S2: What this is costing me is anywhere from \$20,000 to \$40,000 a month. Last year I bought this place...

0:26:14.0 S1: But why didn't you come down to city hall and check.

0:26:17.5 S2: Did you see the market last year?

0:26:19.0 S1: Don't care about the market. It doesn't matter, if you're making that big of an investment in something, you better be damn sure you're buying something...

0:26:26.9 S2: So what I did do, is I went to city hall and I said, I would like to apply for a license to run a bed and breakfast. And then they sent two inspectors, a building inspector and a business license inspector to my home...

0:26:40.5 S1: [inaudible]

0:26:41.7 S2: They walked through and then they gave me that. And now based on no change at all, it's being rejected with ambiguous terminology. And that to me, it feels, and I know you're not doing this, it's the uniform. So there's difference, but it feels malicious because a year ago I had both those inspectors there and I said, if there is something that I need to change, tell me now and I will change it. And then they said...

0:27:15.1 S1: You were sent a letter with regard to the bylaw violations.

0:27:17.5 S2: And it said specifically, no more enforcement action is going to be taken. That's exactly what it said.

0:27:24.2 S2: With regard... But it did point out that there were things that needed to be fixed.

0:27:29.0 S2: Yeah. Well, yeah. And that's permitting. That's not licensing. They said there was zero issues. There's two inspectors there. The building inspector said, yeah, there's some permitting issues. This is rampant across the city. Not a big deal. We'll deal with that when it comes to it. I also said to him, please send me any information that you have about what I need to do to come into compliance about that. The business license inspector said to me specifically, there is nothing I can see here that I can take issue with, and so I'm going to grant you a license to conduct business. And so under that approval from the city, I went and invested a ton of money into furnishing all of these suites. I mean, the business has a reputation. It has significant...

0:28:21.0 S1: It has been around a long time. It's been a bed & breakfast for as long as I can remember.

0:28:23.8 S2: And now I just had to cancel on everyone with no real explanation as to why. And then I got to rebuild that whole reputation on all those people. And like...

0:28:34.9 S1: The only thing I'd say is, you're not the only one that's going to be in this boat.

0:28:37.0 S2: Yeah, and so I mean...

0:28:39.3 S1: That doesn't make it easier. But it is what it is.

0:28:46.8 S2: It's just I don't feel I've done anything wrong here. I think at every turn, I've come to the city and asked what it is I need to do. I haven't got a straight answer out of anyone with regard to the permitting thing, and then with regard to the licensing thing, I was, there's nothing you have to change. And so I didn't... And now...

0:29:10.2 S1: To my knowledge, the license inspector didn't inspect the property.

0:29:13.2 S2: He was in there with me. And the other...

0:29:15.1 S1: It was a bylaw officer?

0:29:15.9 S2: A bylaw officer and a business license inspector.

0:29:18.1 S1: Business license inspector?

0:29:18.7 S2: No, a business license inspector.

0:29:21.1 S1: I'd look into that.

0:29:21.6 S2: The business license inspector was there with me, and I spoke with him specifically about it and nothing was raised.

0:29:28.8 S1: Okay.

0:29:29.7 S2: And till now, I mean, the truth is, those two individuals had full access and understanding of what was going on in that building and they didn't raise any concerns.

0:29:43.1 S1: Well, they did raise concerns.

0:29:46.1 S2: But they didn't...

0:29:46.2 S1: They sent a letter with regard to the bylaw violations.

0:29:49.4 S2: Yeah.

0:29:49.7 S1: I'll be happy to send you another letter that more painstakingly points out what the issues are with permits.

0:29:56.5 S2: If the permits need to get done, I don't feel that's a huge hurdle. I feel the inspections can come in, they can look at what I have and they can.

0:30:04.4 S1: The problem is right now and the problem that you're going to have is we don't have enough information for you to decide whether it's in your interest to revert it back to a single-family dwelling with six-room bed & breakfast, if in fact the provincial legislation is going to trump our bylaw.

0:30:24.8 S2: Well, if the province comes in and does it, that's the province doing something. This is the city doing something.

0:30:30.8 S1: Yeah we don't have any option. We can't. If they say this is how it shall be done, this is how it shall be done.

0:30:37.8 S2: Yeah, and then in May you can say we can't do this but you're doing this a week after it was due in January, right? That's a very different thing, right? You're really taking the initiative here to kneecap a business that's been around for 20-plus years based on...

0:30:55.8 S1: No, you did that to yourself.

0:30:56.7 S2: This is based on vibes.

0:30:57.9 S1: You did that to yourself when you bought a property that was not configured the way that it's supposed to be configured and assuming that you could just go ahead and operate it.

0:31:09.3 S2: I didn't assume that. I applied for a business license and got it. That's not an assumption.

0:31:15.0 S1: One has nothing to do with the other, unfortunately.

0:31:17.1 S2: That's consulting the city.

0:31:19.4 S1: Because for many years these B&B licenses have been, they'll get a review and they'll be approved. If you submit a business license application for bed and breakfast and you apply for six bedrooms or six rooms and the staff member looks at the approved use and sees single-family dwelling with six rooms, you're submitting something saying, well, this is true to my best of my knowledge.

0:31:50.1 S2: He walked through every room with me. Every single one.

0:31:53.1 S1: That I can't comment 'cause I don't know.

0:31:54.9 S2: Yeah, and he was in there with me looking at every room and said, no, this is fine. And so now it's not. It does not seem it's based on any clear definition of anything. And it's, you know what, we don't like it. And nothing changed. And the difficulty is now, yeah, maybe potentially I was sold something that wasn't what it was supposed to be sold as. You have a certain amount of time to pursue damages for something like that. That time has now expired.

0:32:31.2 S1: I don't know if that's in fact true 'cause it's a civil court process. If you are in fact getting a solicitor, I would get them to look into that real estate act requirements for disclosure. Because the previous owner has done all of this work.

0:32:52.4 S2: Yeah, I know. I mean, it is what it is.

0:32:58.0 S1: You are a smart guy, you don't get to be a pilot without...

0:33:00.1 S2: Yeah, and I do understand that he did. And it only came to my attention afterwards that all that work was done without permits. Every house I looked at had work done without permits.

0:33:15.3 S1: He had to throw a stone in the city and not hit a legal suite or something.

0:33:18.8 S2: Yeah, that's just normal. And so when you're doing your due diligence on a house, un-permitted work, it's yeah, that's something I can deal with. That's very different than this isn't at all allowed to operate as a bed and breakfast, which is exactly what it was. And had the...

0:33:37.7 S1: Well, it is allowed to operate as a bed and breakfast under the conditions that were initially granted us, which were bedrooms, not suites. Now, let's just say the provincial legislation wasn't coming out and we didn't have to worry about that, then your best course of action would be to revert it back to single family dwelling and talking to the permits people to say, what does that mean? Do I need to just take out the stove? Do I need to take out the counters? What will enable me to say that it's not a kitchen? That's their call.

0:34:12.9 S2: Right.

0:34:12.9 S1: And then you're back to being a single family dwelling with six bedrooms and no problem. You continue on. We do have this added complication. We just don't know what's going to happen.

0:34:22.6 S2: And that's May when that comes up?

0:34:25.1 S1: Well, the provincial act comes into effect in May.

0:34:31.2 S2: And we don't have the terms?

0:34:33.6 S1: Well, very generally, I think. We don't really have a lot of the specifics. We know that they are increasing the fines for violations. We know that they are looking at having their own enforcement branch. What that looks like, we have no idea. The province has pretty big boots and they can go areas that we can't as far as penalties and access to information and that sort of stuff. You can look at it a couple of ways. You've benefited from having been able to operate the amount of time that you've operated. And you've benefited by getting a bit of a heads up that the provincial act could potentially impact your business even further. But again, we just don't know. The whole thing could get vetoed. Politics is politics.

0:35:31.6 S2: Yeah.

0:35:33.7 S1: My advice to you is to look at your options.

0:35:40.1 S2: Yeah.

0:35:40.5 S1: Give it some thought and see what happens.

0:35:44.3 S2: Right.

0:35:46.0 S1: I mean...

0:35:46.1 S2: So if the permitting office says these are bedrooms and not self-contained suites.

0:35:50.6 S1: Well, they're not gonna tell you that they're bedrooms and self not...

0:35:53.6 S2: No, if I make whatever changes they require...

0:35:57.5 S1: Sure.

0:35:57.5 S2: Get to the point where they say, these are bedrooms not self-contained suites.

0:36:03.8 S1: Yeah.

0:36:04.0 S2: At that point, according to business license, aside from what's coming down from...

0:36:10.1 S1: Sure. Demolishing your business.

0:36:11.3 S2: And I'm good for six. Right?

0:36:13.4 S1: Yeah. But it has to be single family dwelling, and it has to be six rooms. It has to be what that approved use is supposed to be.

0:36:19.4 S2: Right. And...

0:36:19.7 S1: So whatever process you need to do...

0:36:22.1 S2: What's the definition of single family dwelling on top of the six bedrooms? Like what does that mean?

0:36:27.9 S1: Well, it's like, it'll be a self-contained dwelling unit. But even this, but there again, even the definition of single family dwelling is somewhat ambiguous because it has changed over the years. Because there's no definition of family. Right? We run across it when you get groups of kids that are going to university and they get together and they rent a big house, and they say, well, we are a family. Right? These days...

0:36:57.6 S2: Yeah. I see what you're saying.

0:36:58.7 S1: Right?

0:37:00.0 S2: Yeah, yeah.

0:37:00.4 S1: You know, it's not the old, a lot of these definitions go way back, and they're just not modernized. So we have to kind of be more than reasonable when you kind of what you allow and what don't you allow. But single family dwelling basically means it's intended for one group of persons. So one kitchen, right?

0:37:24.8 S2: Yeah.

0:37:25.8 S1: The kitchen is kind of the be all end all. You may end up with six rooms that have a wet bar.

0:37:34.1 S2: Yeah. Well, and that's just it. Like, 'cause that's traditionally what's in most places, not Parkside, is wet bars. Right? Small fridge, microwave, and then...

0:37:45.5 S1: But what were you doing through short term rental enforcement? Is there may not have to be a kitchen if there's an element of cooking.

0:37:54.3 S2: Yeah. A place to prepare food is another place where I've...

0:37:56.9 S1: Yeah, that's another...

0:37:57.5 S2: Word that I've heard, right?

0:38:00.4 S1: That's another issue. Right? Because, it doesn't have to be a full blown kitchen. Back in the day, a kitchen was a kitchen, everybody knew what a kitchen was. Today with microwaves and air fryers, you don't need a stove, you don't need an oven, you don't need any of those things. And many times we'll go do, our officers will go do an inspection of a place and yeah, there's a wet bar, there's no means of cooking. And then they get granted the license, and then our online investigators will start looking at the photos and start looking at the reviews. And then they go, Oh, it's great. We prepared our own breakfast and we did all this. And there's photos showing air fryers and toaster ovens and all of that stuff.

0:38:38.3 S2: 'Cause they put everything on the counter afterwards.

0:38:39.7 S1: But they put everything back, right? They do the, what we used to call the stove dance, you yank the stove out before the inspector comes and you yank it back in once they leave. So yeah, there's no black and white. It's a whole ton of gray areas. And that is the challenge both for the public like yourself and for enforcement as well.

0:38:57.2 S2: And from my perspective, all I'm trying to do is run a business.

0:39:01.8 S1: Absolutely.

0:39:02.1 S2: And I've been like, trying to find out, like, I kind of feel like I'm in, have you ever read Kafka's Trial? You know, there's like, okay, you're breaking these rules and then there's no rhyme or reason to the rules. Like, it's like I don't have a clear picture of what's required. And so coming into compliance is a nonsensical endeavor.

0:39:23.2 S1: Well, it is always the discussion because we...

0:39:24.9 S2: And it'll be the change... Right?

0:39:26.6 S1: The rules tell you what you can't do. More often than not, we don't tell you how you can get into compliance or tell you what you can do.

0:39:34.4 S2: Yeah.

0:39:34.9 S1: Yeah. It's challenging and I don't envy you in your position. And believe me, on a personal standpoint I have tremendous empathy for you. Right? I wouldn't wanna find out years after I bought my place that there was all sorts of problems in it. Right? Thankfully that's not the case, but yeah. I couldn't imagine being in that.

0:39:56.5 S2: Yeah. This is insane.

0:39:57.7 S1: Right. It's horrible.

0:40:00.2 S2: Yeah.

0:40:01.3 S1: But my job isn't to try and make your life miserable, my job is to try and help, my job is to educate and inform and then try and help you negotiate whatever pathway you need to negotiate to get to where you need to be.

0:40:18.0 S2: It's just difficult 'cause like there's a sentence here, it says, transient accommodation cannot occupy an entire self-contained dwelling unit.

0:40:24.3 S1: Yeah, that's from Schedule D.

0:40:26.4 S2: That, unless, unless Parkside is being shut down, I don't understand why we're having that enforced on us and then Parkside is not.

0:40:38.1 S1: But you're assuming it's not being enforced upon yours.

0:40:40.0 S2: I know it's not. I just want, I was just there the other weekend, people were staying in there. If they have a business license to operate that.

0:40:45.3 S1: That doesn't mean there's not legal action, injunctions, ticketing. It doesn't mean any of that's not going on. The fact that they're still operating doesn't mean that there's no enforcement.

0:40:55.0 S2: Okay.

0:40:55.7 S1: It could be just a matter of these people have decided, they've put so much money into it, they're just gonna go.

0:41:01.6 S2: Just gonna pay the fines?

0:41:02.3 S1: And deal with it, right? Because our fines of \$350 or whatever pale in comparison from the money you're making.

0:41:09.4 S2: Yeah. That's what they're doing.

0:41:10.3 S1: That's why the province is coming in and they're jacking the fines up substantially so that these operators can't just treat it as cost of doing business. It's more than the cost of doing business and it's gonna hurt them, right?

0:41:24.5 S2: Yeah.

0:41:24.7 S1: That's why they're doing what they're intending to do, so.

0:41:27.9 S2: Okay.

0:41:29.9 S1: But for you, it's supposed to be a single family dwelling with six bedrooms, it's not. If you wanna go down the path of returning it to a single family dwelling with six bedrooms, then that's your choice.

0:41:43.2 S2: Yeah.

0:41:45.1 S1: If we get an occupancy permit from permits and inspections, it says that you've done that under the current rules, I'll be happy to issue a business license.

0:41:54.4 S2: Okay.

0:41:55.2 S1: But those rules may change.

0:41:57.1 S2: Yeah. And so I don't wanna just dump a ton of money before anything.

0:42:00.4 S1: And if they change then we have nothing to do with it.

0:42:01.5 S2: Yeah.

0:42:01.8 S1: Right?

0:42:03.1 S2: Yeah.

0:42:03.4 S1: Again, we don't know what we're waiting for.

0:42:08.5 S2: Right. Where would I request these in full?

0:42:10.5 S1: So if you go over to city hall.

0:42:11.9 S2: Yeah.

0:42:12.2 S1: Go up the spiral staircase.

0:42:13.9 S2: Yeah.

0:42:14.0 S1: When you get to the top, turn left...

0:42:15.8 S2: Yeah.

0:42:16.3 S1: You'll walk under an archway, you'll go up a couple stairs into the planning department.

0:42:21.6 S2: Yeah.

0:42:21.9 S1: And you'll walk right into a counter that says permits and inspections.

0:42:25.4 S2: Okay.

0:42:25.5 S1: You go in there, request the plans, talk to the staff about the process. The city's website is really, really helpful for the permit process.

0:42:36.8 S2: Yeah.

0:42:37.6 S1: And the staff out there are very helpful as well.

0:42:39.6 S2: Yeah. And they've been helpful and like I've been talking to them about getting the un-permitted work done.

0:42:45.7 S1: Yeah.

0:42:46.3 S2: But they've been very much of a mind to be like, this isn't an emergency, you don't have to push this. Right? Like that's...

0:42:52.5 S1: It's not.

0:42:53.5 S2: But now it is.

0:42:54.5 S1: It's the exception of the licensing issue.

0:42:56.4 S2: Yeah.

0:42:56.8 S1: Right? If, like I said, if you weren't operating this business and you weren't renting short-term rentals, that letter that you got from Barry...

0:43:07.1 S2: Yeah.

0:43:07.2 S1: Was how we handled work with without permit.

0:43:09.2 S2: Yeah.

0:43:09.6 S1: But you throw the licensing thing on top of that and it creates another urgency, right?

But it may take you, I mean, it may take you several months at minimum, and by that time we could be dealing with a completely different ballgame with the provincial legislation, so.

0:43:34.4 S2: Yeah. It's interesting. Yeah. If they go down to two, I mean, it's just like, and then I'll just have to rezone what allows long term, or, I mean, I just don't know. Right? The...

0:43:50.9 S1: It's really hard right now to make, to make a call, to make a decision because of this impacting legislation.

0:43:58.7 S2: Yeah.

0:43:58.9 S1: We kind have an idea, but we don't.

0:44:04.3 S2: Yeah.

0:44:04.5 S1: But listen, you have my card.

0:44:07.2 S2: Yeah.

0:44:07.3 S1: I've given you the information that I have available.

0:44:13.3 S2: Yeah.

0:44:14.0 S1: Happy to put you in touch with the right people.

0:44:16.8 S2: Yeah. Yeah.

0:44:18.1 S1: But unfortunately, whatever has happened in the past, the situation today is as it stands, that you've got some issues that need to be resolved.

0:44:30.9 S2: Yeah. Clearly. And yeah, I'm gonna talk to the, some counsel here and just see what the best of course action is with regard to either. Yeah. Like who... There's liability here somewhere and I just gotta figure out where it is.

0:44:49.1 S1: Fair enough.

0:44:52.7 S2: Yeah.

0:44:55.2 S1: Good. Thank you. This is Matthew Linnitt, Matthew Owens, 867 Humboldt. This is Mark. He is the manager of operations for the city bylaw.

0:45:02.4 S2: It's nice to meet you.

0:45:03.5 S1: He oversees the short term rentals section...

0:45:06.5 S2: Cool.

0:45:06.9 S1: Section.

0:45:07.3 S2: That's sounds fun.

0:45:09.9 Speaker 3: Yeah. What's going on?

0:45:11.1 S1: Yeah. So this is one of the B&B operations that we've done the inspection on, and we've found that it's not operating in compliance with the zoning or with the approved use of the structure. So now it's a matter of trying to figure out where we go and what we do and talking about the challenges that that building poses.

0:45:30.2 S3: All good? Good.

0:45:31.6 S2: Yeah.

0:45:35.0 S1: Alright. You are very welcome.

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TRANSIENT – BUSINESS LICENCE APPLICATION

FINANCE DEPARTMENT
Business Licensing
1 Centennial Square
Victoria, B.C. V8W 1P6

For information, or assistance completing this form, please contact the Business Licence Office at 250.361.0572 or by email at businesslicence@victoria.ca. Or fax 250.361.0560. You can mail your completed application to the above address.

IMPORTANT: The information required by this application is necessary to fully evaluate your request for a Business Licence. Incomplete forms will **not** be processed. Completion of this application does **not** guarantee approval of a Business Licence. Approved licences will be issued **only** upon receipt of payment of Business Licence fee.

Conducting business without a Business Licence is an **offence** for which penalties are prescribed. The minimum penalty in this case is a fine of \$250 per day, for each day that the offence continues, pursuant to Section 4 of the Business Bylaw. Please be advised this document is subject to the Freedom of Information and Protection of Privacy Act and access can be requested.

PART A: BUSINESS LICENSE APPLICATION

TYPE OF ACCOMODATION (check one)

- HOTEL
- MOTEL
- CONDOMINIUM # OF BEDROOMS
- HOSTEL
- OTHER: Bed and Breakfast

Business Location / Address: 867 Humboldt St

Business Name / Operating Name: Humboldt House

Partnership / Sole Proprietor(s): Partnership

Limited / Incorporated Company Name: Humboldt House

Please attach documents of Incorporation and Notice of Articles. (Photo copies accepted)

Mailing Address (if different from above): _____

Phone: 6045373541 Fax: _____ Cellular: _____

Emergency Contact Name / Phone: Ashley Arden 778-316-7233

Email Address: Matthew.Linnitt@gmail.com

Web Address: _____

Proposed Business Start Date: May 1st, 2023

Detailed Business Description:

The Humboldt House Bed and Breakfast has operated for years in Victoria. The previous owners purchased the business with the intent of renovating the rooms and re-opening the business. The Covid epidemic prevented them from re-opening. After the restrictions were lifted they chose to sell the property rather than re-open. We purchased the property about 7 months ago and are now seeking a license to operate.

IMPORTANT: Home Occupation means making, servicing, or repairing goods, or providing services for hire or gain by any person, wholly within a dwelling unit **occupied** by the applicant. In addition, **Schedule D – Zoning Regulation Bylaw** states, in part ‘...where any building is used as a single family dwelling, up to two (2) bedrooms may be used for transient accommodation as a home- occupation.’ <http://www.victoria.ca/EN/main/business/permits-licences/business-licences.html>

PART B: APPLICANT’S INFORMATION

Applicant’s Name (Individual completing form): Matthew Linnitt

Applicant’s Signature: _____ Date signed: April 4th, 20 23

IMPORTANT: Applicant has read and agrees to comply with the requirements of the Zoning Regulation Bylaw and the ‘Business License Bylaw of the City of Victoria. This information is being collected for the purpose of determining the applicant’s eligibility for a Business License in the City of Victoria pursuant to Bylaw(s). In providing this information you are consenting to its use for the above-mentioned purpose and declare that all information provided herein is correct. This information may be shared with applicable departments and related agencies during the approval process.

PART C: APPROVAL PROCESS (FOR OFFICE USE ONLY)

<u>DEPARTMENT</u>	<u>DATE</u>	<u>APPROVAL</u>	<u>DATE</u>	<u>COMMENTS</u>
<input type="checkbox"/> Planning	_____	_____	_____	_____
<input type="checkbox"/> Building	_____	_____	_____	_____
<input type="checkbox"/> Health	_____	_____	_____	_____
<input type="checkbox"/> Fire	_____	_____	_____	_____
<input type="checkbox"/> Police	_____	_____	_____	_____
<input type="checkbox"/> Engineering	_____	_____	_____	_____
<input type="checkbox"/> Bylaw	_____	_____	_____	_____

FINAL APPROVAL by Business Licence Inspector _____

DATE APPROVED _____, 20 _____ BUSINESS LICENCE NUMBER _____

COMMENTS

TBL-3 (2003)

3/6/24, 7:07 PM

Mail - Ash Arden - Outlook

Fw: 867 Humboldt

Ash Arden <asharden@hotmail.com>

Wed 2024-03-06 7:06 PM

To: Ash Arden <asharden@hotmail.com>

1 attachments (10 KB)

image001.png

----- Forwarded message -----

From: **Barry McLean** <bnmclean@victoria.ca>

Date: Wed, Jul 26, 2023, 15:23

Subject: 867 Humboldt

To: Matthew Linnitt <matthewlinnitt@gmail.com>

Hello Matthew,

This is a follow up message regarding the inspection that Business Licence Inspector Kitson and I made on July 7, 2023. I apologize for not responding to you sooner.

The inspection revealed that there was work without permit on the property and that will be dealt with in a new file.

The other aspect of the inspection was that it was identified that you are operating short-term rentals in self contained suites. The business licence that you have is for a Bed & Breakfast and currently you are operating outside of those parameters. If you wish to continue to operate short-term rentals, you need to [apply for a short-term rental licence](#). Please do so online.

If you have any questions, please reach out to str@victoria.ca

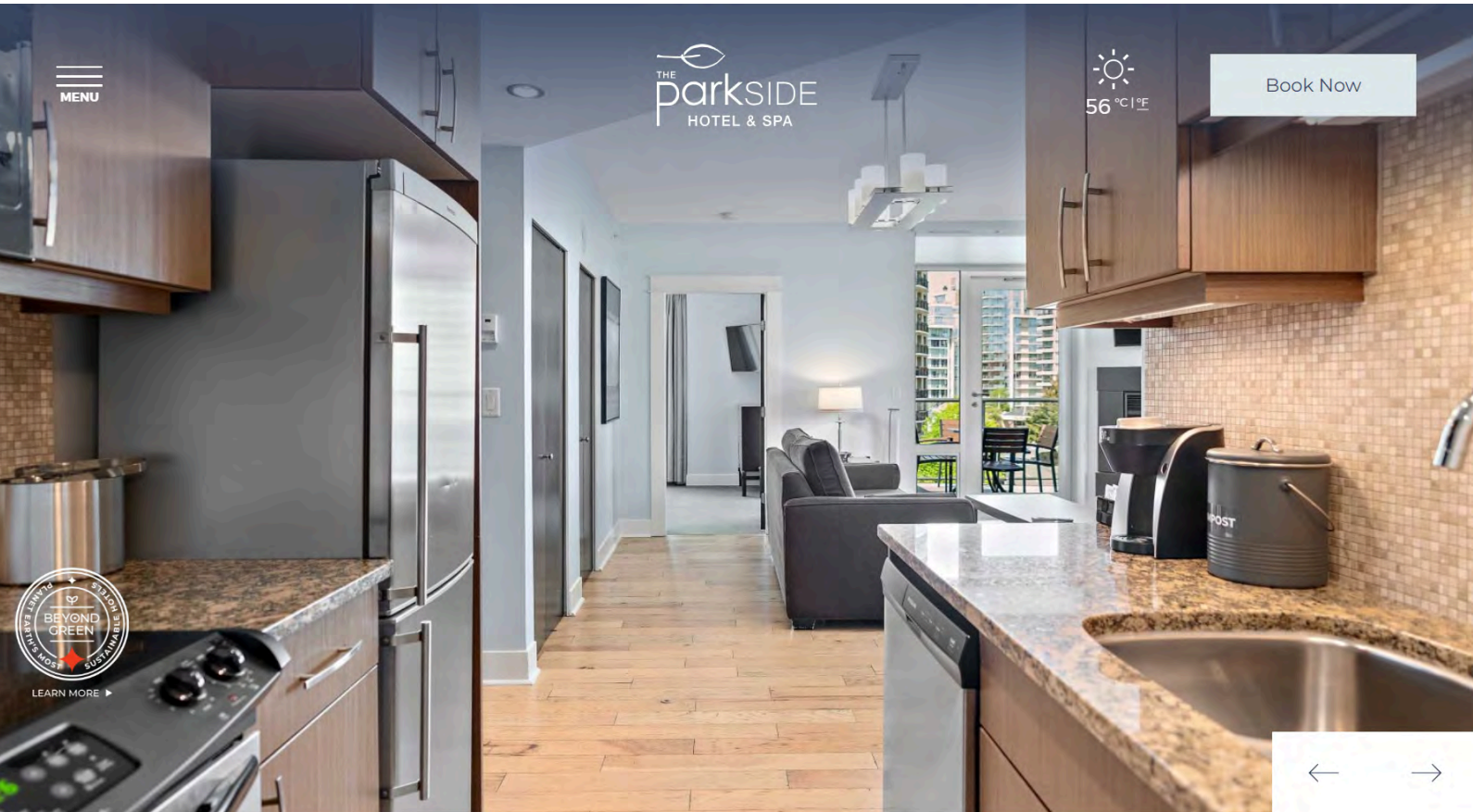
Thank you,
Barry
Barry McLean

Bylaw Officer #946, Bylaw & Licensing Services
Legislative and Regulatory Services Department
City of Victoria
#12 Centennial Square
Victoria, BC V8W 1P7

T 250.361.0215 C 250.532.1494

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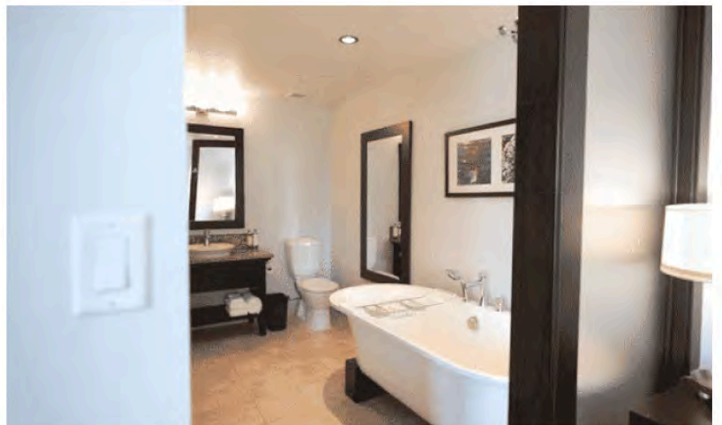


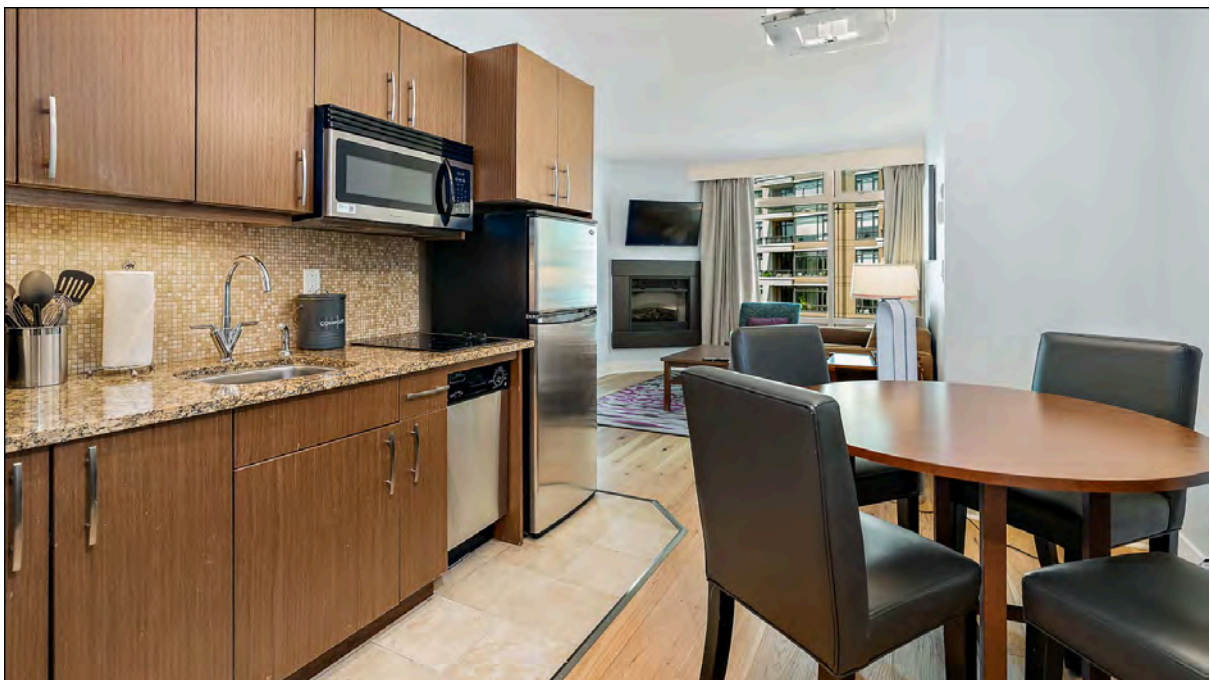
TWO BEDROOM SUITE

The two-bedroom suite features 1,000 square feet of luxury including, two separate bedrooms, two bathrooms, large kitchen and dining area, sitting area with fireplace and private balcony. Also includes a European-style washer/dryer.

Amenities

- Two bedrooms
- One king and one queen or two king size pillow-top beds
- Accommodates up to six guests
- Pull-out queen sofa bed
- Private balcony
- Two bathrooms (en-suite primary bathroom with soaker tub)
- Fully equipped kitchen
- Coffee maker (+ selection of coffee & teas)
- Stainless-steel appliances
- Granite countertops
- Refrigerator
- Full stove and oven
- Small dishwasher
- Microwave
- Bar seating
- European-style washer/dryer unit
- Dyson/tower fans & operable windows
- Iron & Ironing board
- Safe
- Flat screen TVs with Chromecast ability
- Open-concept living & dining room
- Electric fireplaces
- Complimentary Wi-Fi
- Device charging station
- Bluetooth speaker
- Tyneham luxury bath products
- Bathrobes
- Northwest or northeast views of downtown Victoria and surroundings









1 Centennial Square
Victoria, BC V8W 1P6

250.361.0572
businesslicence@victoria.ca
victoria.ca

Transient Accommodation Business Licence Application

For information, or assistance completing this form, please contact Business Licensing at 250.361.0572 or by email at businesslicence@victoria.ca. You can mail your completed application to the above address, fax it to 250.361.0214 or email it to the email address noted above.

IMPORTANT: Applications must be completed in full and accompanied by appropriate documentation. Incomplete forms will not be processed. Completion of this application does not guarantee approval of the application. Approved licences will be issued only upon receipt of payment of the business licence fee. Conducting business without a valid licence is an offence for which penalties are prescribed. The minimum penalty is a fine of \$250 per day for each day that the offence continues, pursuant to Sec. 4(a) of the Business Licence Bylaw.

Part A: Property Information

Property Address: 867 Humboldt St Victoria, BC Postal Code: V8V 2Z6

Type of Accomodation (CHECK ONE)

- Hotel Hostel
 Motel Bed & Breakfast

Number of Rooms Being Used For Transient Accomodation: 3

Coin Operated Machines

# of washers and dryers	<u>0</u>	units X \$11.00 per unit =	<u> </u>
# of other machines	<u>0</u>	units X \$15.00 per unit =	<u> </u>
Total number of machines	<u>0</u>	Total fees: \$	<u> </u>

Part B: Applicant(s) Information

Registered Owner of the Property: Yes No

Sole Proprietor's name: (If you plan to operate the business on your own, either under your own name or a business name):

Partnership name(s): (If you plan to operate the business with one or more partners):

Matthew Linnitt Ashley Ceraldi

Limited/Incorporated company name: (If you plan to operate the business as a separate legal entity, separate from yourself and your personal assets):

Mailing address: 867 Humboldt St Victoria BC, V8V 2Z6
(APARTMENT / UNIT # / STREET ADDRESS)

Phone number: 604 537-3541

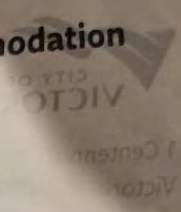
Email: Matthew.Linnitt@gmail.com



1 Centennial Square
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Transient Accommodation Business Licence Application



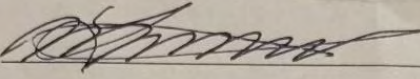
Incorporation Information: (if applicable)

Incorporation number: _____

If applying as a Limited/Incorporated Company, have you included documents of Incorporation and Notice of Articles?

Yes

I authorize the City of Victoria to obtain the documents of Incorporation and Notice of Articles and acknowledge that a \$30 fee plus applicable taxes will be charged by the City of Victoria for this service [Administrative Fees Bylaw No. 04-40].

Applicant / Representative Signature: 

Date Signed: 18 Dec 2023
(DAY / MONTH / YEAR)

IMPORTANT: In providing this information, you have consented to its use for the above-mentioned purpose and declare that all the information provided herein is correct. Applicant has read and agrees to comply with the stated regulations and requirements of the Business Licence Bylaw and all other applicable City Bylaws. Licences are valid from January 16 to January 15 of the following year.

Part C: Approval Process (For Office Use Only)

Processed By: _____

Date Signed: _____
(DAY / MONTH / YEAR)

[Faint handwritten notes and signatures, including "Matthew Smith" and "City of Victoria"]

SCHEDULE “B”

PART 6 – CONSEQUENTIAL AND RELATED AMENDMENTS

40-44 Consequential and related amendments

45 Commencement

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

PART 1 – INTERPRETATION AND APPLICATION

Definitions

1 In this Act:

"accessory dwelling unit" means a building, or part of a building, that

- (a) is a self-contained residential accommodation unit,
- (b) has cooking, sleeping and bathroom facilities, and
- (c) is secondary to a primary dwelling unit located on the same property;

"applicant" means

- (a) a supplier host who applies for the registration of a short-term rental offer under section 6 [*short-term rental offers must be registered*], or
- (b) a platform service provider that applies for registration under section 7 [*platform service providers must be registered*];

"business licence number" means the number associated with a business licence;

"business licence requirement" means a requirement in an applicable short-term rental bylaw that a person have a business licence;

"coordination agreement" means an agreement described in section 4 (2) [*application of Act to participating First Nations*];

"dwelling unit" means a building, or a part of a building, that

- (a) is a self-contained residential accommodation unit, and
- (b) usually has cooking, eating, living, sleeping and bathroom facilities;

"exempt land" means prescribed land where the principal residence requirement does not apply;

"First Nation law" means a law of a participating First Nation in relation to one or both of the following:

- (a) short-term rental accommodation services or similar services;
- (b) platform services;

"participating First Nation" means the Nisga'a Nation or a treaty first nation, if the Nisga'a Nation or the treaty first nation has entered into a coordination agreement under section 4 [*application of Act to participating First Nations*];

"platform" means an online marketplace on which platform services are provided;

"platform offer" means a short-term rental offer made on a platform that uses the services of a platform service provider;

"platform representative" means a person responsible for representing a platform service provider in British Columbia;

"platform service" means the facilitation, provided by a platform service provider on a platform, of promotion and of transactions for reservations and payments in relation to short-term rental accommodation services located in British Columbia;

"platform service provider" means a person operating a platform and providing platform services;

"platform service provider information" means

- (a) the name, telephone number, address, email address and, if applicable, fax number of the platform service provider and the platform representative, and
- (b) any prescribed information;

"principal residence" means the residence in which an individual resides for a longer period of time in a calendar year than any other place;

"principal residence requirement" means the requirement imposed under section 14 (1) [*principal residence requirement*];

"property host" means a person

- (a) who is legally entitled to possession of a property where short-term rental accommodation services are **53**

(a) who is regularly entitled to possession of a property where short-term rental accommodation services are provided, and

(b) who has responsibility for arranging for the short-term rental offer;

"registrant" means,

(a) in relation to a short-term rental offer that is registered under Part 2 [*Registration*], the supplier host who is responsible for the short-term rental offer, or

(b) a platform service provider that is registered under Part 2;

"registrar" means the registrar appointed under section 5 (1) [*appointment of registrar, delegation and authentication*];

"registration number" means the number assigned to a short-term rental offer or platform service provider by the registrar at the time of registration;

"registration requirement" means,

(a) in the case of a short-term rental offer, the requirement to register that is imposed under section 6 (1) [*short-term rental offers must be registered*], and

(b) in the case of a platform service provider, the requirement to register that is imposed under section 7 (1) [*platform service providers must be registered*];

"related bylaw" means a local government bylaw made under the *Community Charter*, the *Local Government Act* or the *Vancouver Charter*, other than a short-term rental bylaw, that restricts or otherwise impacts short-term rental accommodation services or similar services;

"residence" means any of the following:

(a) a dwelling unit;

(b) a secondary suite or other accessory dwelling unit;

(c) a prescribed dwelling;

"responsible official" means a person appointed or delegated to carry out a power or duty for the purposes of a review under either of the following:

(a) section 11 [*review of decision of registrar*];

(b) section 29 [*review of administrative penalty*];

"secondary suite" means an accessory dwelling unit that is located in and forms part of a primary dwelling unit;

"short-term rental accommodation service" means the service of accommodation in the property of a property host, in exchange for a fee, that is provided to members of the public for a period of time of less than 90 consecutive days or another prescribed period, if any, but does not include a prescribed accommodation service;

"short-term rental bylaw" means a local government bylaw made under the *Community Charter*, the *Local Government Act* or the *Vancouver Charter* in relation to one or both of the following:

(a) short-term rental accommodation services or similar services;

(b) platform services;

"short-term rental information", in relation to a short-term rental offer, means

(a) the name of the property host and the address of the relevant property where the short-term rental accommodation services are to be provided,

(b) the name, telephone number, address, email address and, if applicable, fax number of each supplier host, including the property host,

(c) if applicable, the registration number,

(d) if required under an applicable short-term rental bylaw, the applicable business licence number, and

(e) any prescribed information, including in relation to an owner of the relevant property;

"short-term rental offer", in respect of a property of a property host, means an offer by a supplier host to provide short-term rental accommodation services at the property;

"similar services" means prescribed services in relation to short-term accommodation;

"supplier host", in respect of a short-term rental offer, means

(a) the property host, and

(b) the following persons, if applicable:

(i) a person who, acting on behalf of, under the direction of or as agent of the property host, has responsibility for arranging for the short-term rental offer, which may include managing the short-term rental accommodation services;

(ii) a prescribed person.

Interpretation

- 2 For the purposes of this Act, a short-term rental bylaw, related bylaw or First Nation law is a short-term rental bylaw, related bylaw or First Nation law, as applicable, even if the short-term rental bylaw, related bylaw or First Nation law relates to a period of accommodation that differs from the period of time described in the definition of "short-term rental accommodation service".

What this Act does not apply to

- 3 This Act does not apply to hotels, motels and any other accommodation service providers that may be prescribed for the purposes of this section.

Application of Act to participating First Nations

- 4 (1) This Act does not apply within the Nisga'a Lands or the treaty lands of a treaty first nation unless the Nisga'a Nation or the treaty first nation has entered into a coordination agreement under this section.
- (2) The minister may, on behalf of the government, enter into a coordination agreement with the Nisga'a Nation or a treaty first nation if the Nisga'a Nation or the treaty first nation
- (a) wishes that this Act or the regulations, or a part of this Act or the regulations, apply within the Nisga'a Lands or the treaty lands of the treaty first nation, and
 - (b) wishes, in order to enforce a First Nation law as a participating First Nation, to coordinate with the minister in respect of the performance of duties, or exercise of powers, under this Act.
- (3) The minister may not delegate to any person any of the minister's powers to enter into a coordination agreement under this section.

PART 2 – REGISTRATION

Appointment of registrar, delegation and authentication

- 5 (1) The minister may appoint a registrar under the *Public Service Act*.
- (2) Employees may be appointed under the *Public Service Act*, and the registrar may retain other persons, whom the registrar considers necessary to exercise the registrar's powers and perform the registrar's duties under this Act.
- (3) The registrar may delegate to a person or class of persons any of the registrar's powers or duties under this Act.
- (4) The delegation by the registrar must be in writing and may include any terms or conditions the registrar considers advisable.
- (5) The registrar may require that, at the time an individual attempts to access services or functions of the registrar, the individual be authenticated in the prescribed manner.

Short-term rental offers must be registered

- 6 (1) Subject to the regulations, a short-term rental offer must be registered under this Part by the supplier host who is responsible for the short-term rental offer.
- (2) Subject to the regulations, an application for registration or renewal of registration in respect of a short-term rental offer must
- (a) include the short-term rental information,
 - (b) be made in the form and manner required by the registrar, and
 - (c) be accompanied by the prescribed fee, if any.
- (3) If the principal residence requirement applies to a short-term rental offer, the application for registration or renewal of registration in respect of the short-term rental offer must include a declaration described in section 14 (2) [*principal residence requirement*].
- (4) A supplier host who applies for registration or renewal of registration of a short-term rental offer must meet all the terms, conditions and requirements imposed on the supplier host under this Act.

Platform service providers must be registered

- 7 (1) Subject to the regulations, a platform service provider must be registered under this Part.
- (2) Subject to the regulations, an application by a platform service provider for registration or renewal of registration must
- (a) include the platform service provider information,
 - (b) be made in the form and manner required by the registrar, and
 - (c) be accompanied by the prescribed fee, if any.
- (3) A platform service provider that applies for registration or renewal of registration must meet all the terms, conditions and requirements imposed on the platform service provider under this Act.

- (a) if a business licence requirement applies, the valid business licence number;
- (b) the valid registration number;
- (c) any prescribed information.

Division 2 – Principal Residence Requirement

Principal residence requirement

- 14** (1) Subject to the regulations, if short-term rental accommodation services are provided outside the exempt land in respect of a short-term rental offer, the short-term rental accommodation services must not be provided except in one or both of the following:
- (a) in the property host's principal residence;
 - (b) in not more than one secondary suite or other accessory dwelling unit that is in a prescribed location in relation to the property host's principal residence.
- (2) If the principal residence requirement applies, the application for registration or renewal of registration for a short-term rental offer under Part 2 [*Registration*] must include, in relation to the property host's principal residence, a declaration that
- (a) is made in the form and manner required by the registrar, and
 - (b) includes any prescribed information or documents.

Requests for changes to exempt land

- 15** (1) Subject to the regulations, a local government that meets the applicable prescribed criteria may, by resolution, request that the Lieutenant Governor in Council change the exempt land to remove or add the geographic area of the local government if the local government wishes, as applicable,
- (a) that the principal residence requirement apply to the geographic area and that the geographic area be removed from the exempt land, or
 - (b) that the principal residence requirement not apply to the geographic area and that the geographic area be added to the exempt land.
- (2) The local government must convey a resolution adopted under subsection (1) to the minister, on behalf of the Lieutenant Governor in Council, on or before the prescribed date in respect of a prescribed period of time.
- (3) The Lieutenant Governor in Council may, by regulation,
- (a) prescribe criteria for the purposes of subsection (1),
 - (b) prescribe dates and periods of time for the purposes of subsection (2),
 - (c) establish procedures for a local government that meets any prescribed criteria to request a change to the exempt land,
 - (d) establish procedures for a prescribed person or entity to request a change to the exempt land,
 - (e) provide for the factors that the Lieutenant Governor in Council is to consider before making a regulation under paragraph (f) of this subsection, and
 - (f) change the exempt land.
- (4) This section does not limit the authority to make regulations under section 38 [*regulations of the Lieutenant Governor in Council*].

Relationship between principal residence requirement and certain short-term rental bylaws made under *Vancouver Charter*

- 16** (1) A provision of a short-term rental bylaw made under the *Vancouver Charter* has no effect if it is inconsistent with the principal residence requirement under this Act.
- (2) For the purposes of subsection (1), unless otherwise provided, a short-term rental bylaw made under the *Vancouver Charter* is not inconsistent with the principal residence requirement under this Act if a person who complies with the short-term rental bylaw does not, by this, contravene the principal residence requirement.

Division 3 – Requirements Respecting Platform Service Providers and Platform Offers

Platform service provider requirements

- 17** (1) Subject to the regulations, a platform service provider must do the following:
- (a) have a platform representative;
 - (b) in respect of each platform offer,
 - (i) enable the posting on the platform of the following:
 - (A) a business licence number;

- (2) A bylaw under subsection (1) may do one or more of the following:
- (a) provide that the bylaws of one or more of the participating municipalities in relation to the matters dealt with by the scheme apply in other participating municipalities;
 - (b) provide that the municipal powers, duties and functions of one or more of the participating municipalities may be exercised in relation to the scheme in another participating municipality;
 - (c) provide that the council of one or more of the participating municipalities may delegate under Division 6 [Delegation] of Part 5 [Municipal Government and Procedures] to council members, council committees, officers, employees and other bodies referred to in section 154 (1) [delegation of council authority] of another participating municipality;
 - (d) restrict a participating municipality from separately exercising its authority in relation to the matters dealt with by the scheme;
 - (e) establish the process by which a participating municipality may withdraw from the scheme.

(2.1) A regional district and one or more municipalities may, by bylaw adopted by the board of the regional district and by bylaw adopted by the council of each participating municipality, establish an intermunicipal scheme in relation to the regulation of business.

(2.2) Subject to the regulations, a bylaw under subsection (2.1) may provide for matters in respect of which regulations may be made under section 282 (2).(b.1) [general regulation authority].

(3) If an intermunicipal service scheme is established under subsection (1), this section applies rather than section 13.

(4) If an intermunicipal scheme is established under subsection (2.1), this section applies rather than section 13 of this Act and section 333 [consent required for services outside regional district] of the Local Government Act.

Licensing and standards authority

15 (1) A council may, in regulating under this Act or the *Local Government Act*, provide for a system of licences, permits or approvals, including by doing one or more of the following:

- (a) prohibiting any activity or thing until a licence, permit or approval has been granted;
- (b) providing for the granting and refusal of licences, permits and approvals;
- (c) providing for the effective periods of licences, permits and approvals;
- (d) establishing
 - (i) terms and conditions of, or
 - (ii) terms and conditions that must be met for obtaining, continuing to hold or renewing
 a licence, permit or approval, or providing that such terms and conditions may be imposed, the nature of the terms and conditions and who may impose them;
- (e) providing for the suspension or cancellation of licences, permits and approvals for
 - (i) failure to comply with a term or condition of a licence, permit or approval, or
 - (ii) failure to comply with the bylaw;
- (f) providing for reconsideration or appeals of decisions made with respect to the granting, refusal, suspension or cancellation of licences, permits and approvals.

(2) A council may, in regulating in relation to a matter under this Act or the *Local Government Act*,

- (a) establish a standard, code or rule by adopting a standard, code or rule
 - (i) published by a provincial, national or international body or standards association, or
 - (ii) enacted as or under a law of this or another jurisdiction, including a foreign jurisdiction, and
- (b) adopt the standard, code or rule under paragraph (a)
 - (i) in whole, in part or with any changes considered appropriate, and
 - (ii) as it stands at a specific date, as it stands at the time of adoption or as amended from time to time.

Authority to enter on or into property

16 (1) This section applies in relation to an authority under this or another Act for a municipality to enter on property.

- (2) The authority may be exercised by officers or employees of the municipality or by other persons authorized by the council.
- (3) Subject to this section, the authority includes authority to enter on property, and to enter into property, without the consent of the owner or occupier.
- (4) Except in the case of an emergency, a person
 - (a) may only exercise the authority at reasonable times and in a reasonable manner, and
 - (b) must take reasonable steps to advise the owner or occupier before entering the property.
- (5) The authority may only be used to enter into a place that is occupied as a private dwelling if any of the following applies:

- (i) require such persons, after purchasing, taking in or receiving used or second hand goods, to notify the chief constable who has jurisdiction in the municipality within the time period established by the bylaw, and
 - (ii) prohibit such persons from altering the form of, selling, exchanging or otherwise disposing of those goods during the time period established by the bylaw;
 - (c) require manufacturers and processors to dispose of the waste from their plants in the manner directed by the bylaw;
 - (d) prohibit the operation of a public show, exhibition, carnival or performance of any kind or in any particular location;
 - (e) prohibit the operation of places of amusement to which the public has access, including halls and other buildings where public events are held;
 - (f) prohibit professional boxing, professional wrestling and other professional athletic contests.
- (2) Before adopting a bylaw under subsection (1) or section 8 (6) [*business regulation*], a council must
- (a) give notice of its intention in accordance with subsection (3), and
 - (b) provide an opportunity for persons who consider they are affected by the bylaw to make representations to council.
- (3) Notice required under subsection (2) (a) may be provided in the form and manner, at the times and as often as the council considers reasonable.

Business licence authority

- 60 (1) An application for a business licence may be refused in any specific case, but
- (a) the application must not be unreasonably refused, and
 - (b) on request, the person or body making the decision must give written reasons for the refusal.
- (2) In addition to the authority under section 15 (1) (e) [*licences, permits and approvals — suspension and cancellation*], a business licence may be suspended or cancelled for reasonable cause.
- (3) Before suspending or cancelling a business licence, the council must give the licence holder notice of the proposed action and an opportunity to be heard.
- (4) Despite section 155 (2) (b) [*restriction on delegation of hearings*], a council may, by bylaw under section 154 [*delegation of council authority*], authorize a municipal officer or employee to suspend or cancel a business licence.
- (5) If a municipal officer or employee exercises authority to grant, refuse, suspend or cancel a business licence, the applicant or licence holder who is subject to the decision is entitled to have the council reconsider the matter.

Restriction on authority to require examination or certification

- 61 A provision in a bylaw under section 8 (6) [*spheres of authority — business*] that requires an examination or certification of a person engaged in a trade or occupation does not apply to a person who has been granted a certificate or other evidence of competence for that trade or occupation under a Provincial or federal Act.

Division 10 — Other Spheres

Public place powers

- 62 The authority under section 8 (3) (b) [*spheres of authority — public places*] includes the authority in relation to persons, property, things and activities that are in, on or near public places.

Protection of persons and property

- 63 The authority of a council under section 8 (3) (g) [*spheres of authority — protection of persons and property*] may be exercised in relation to the following:
- (a) emergency exits in places to which the public is invited;
 - (b) smoke alarms;
 - (c) any matter within the scope of the *Fire Services Act*;
 - (d) the enclosure of swimming pools and other pools;
 - (e) trailer courts, manufactured home parks and camping grounds;
 - (f) rental units and residential property, as those are defined in the *Residential Tenancy Act*, that are subject to a tenancy agreement, as defined in that Act.

Nuisances, disturbances and other objectionable situations

- 64 The authority of a council under section 8 (3) (h) [*spheres of authority — nuisances disturbances and other objectionable situations*] may be exercised in relation to the following:
- (a) nuisances;
 - (b) noise, vibration, odour, dust, illumination or any other matter that is liable to disturb the quiet, peace, rest, enjoyment, comfort or convenience of individuals or the public;

(b) an official community plan under section 711 of the *Municipal Act*, R.S.B.C. 1979, c. 290, or an official settlement plan under section 809 of that Act, before the repeal of those sections became effective, must be consistent with the relevant plan.

Division 5 — Zoning Bylaws

Zoning bylaws

- 479** (1) A local government may, by bylaw, do one or more of the following:
- (a) divide the whole or part of the municipality or regional district into zones, name each zone and establish the boundaries of the zones;
 - (b) limit the vertical extent of a zone and provide other zones above or below it;
 - (c) regulate the following within a zone:
 - (i) the use of land, buildings and other structures;
 - (ii) the density of the use of land, buildings and other structures;
 - (iii) the siting, size and dimensions of
 - (A) buildings and other structures, and
 - (B) uses that are permitted on the land;
 - (iv) the location of uses on the land and within buildings and other structures;
 - (c.1) limit the form of tenure in accordance with section 481.1;
 - (d) regulate the shape, dimensions and area, including the establishment of minimum and maximum sizes, of all parcels of land that may be created by subdivision.
- (2) The authority under subsection (1) may be exercised by incorporating in the bylaw maps, plans, tables or other graphic material.
- (3) The power to regulate under subsection (1) includes the power to prohibit any use or uses in a zone.
- (4) A bylaw under this section may make different provisions for one or more of the following:
- (a) different zones;
 - (b) different uses within a zone;
 - (c) different locations within a zone;
 - (d) different standards of works and services provided;
 - (e) different siting circumstances;
 - (f) different protected heritage properties;
 - (g) different matters prescribed for the purposes of section 481.01 [restrictions on zoning authority in relation to transit-oriented areas].
- (5) In addition to the authority under subsection (4),
- (a) provisions under subsection (1) (d) may be different for different areas, and
 - (b) the boundaries of those areas need not be the same as the boundaries of zones created under subsection (1) (a).
- (6) In developing or adopting a bylaw under this section, a local government must consider applicable guidelines, if any, under section 585.5 [provincial policy guidelines related to transit-oriented areas].

Adoption of municipal zoning bylaw

480 Despite section 135 (3) [at least one day between third reading and adoption] of the *Community Charter*, a council may adopt a zoning bylaw at the same meeting at which the bylaw passed third reading.

Restrictions on zoning authority in relation to farming

- 481** (1) This section does not apply unless a regulation under section 553 [authority and restrictions apply as declared by regulation] declares that it applies.
- (2) Despite section 479 [zoning bylaws] but subject to this section, a local government must not exercise the powers under that section to prohibit or restrict the use of land for a farm business in a farming area unless the local government receives the approval of the minister responsible for the administration of the *Farm Practices Protection (Right to Farm) Act*.
- (3) The minister referred to in subsection (2) may make regulations
- (a) defining areas for which and describing circumstances in which approval under that subsection is not required, and
 - (b) providing that an exception under paragraph (a) is subject to the terms and conditions specified by that minister.
- (4) Regulations under subsection (3) may be different for different regional districts, different municipalities, different areas and different circumstances.

"Accessory Building" means a building that is subordinate to the principal use on a lot.

"Accessible Parking Space" means a parking space designed and installed in accordance with the specifications and dimensions in section 4.2 and Figure 4 of Schedule C – Off-Street Parking Regulations.

Amended Sept. 19, 2022
Bylaw 22-024

"Accessory Use" means a use that is normally incidental or normally associated with the principal use.

"Accessory Garden Structure" means swimming pools, fences, walls, terraces and trellises, walks, patios, tennis courts, playgrounds and surface improvements ordinarily erected, maintained or used for ornament or for the private recreation and enjoyment of persons residing in the building to which the same relates.

"Affordable" means housing that falls within the financial means of a household in either market or non-market dwellings. Total costs for rent or mortgage plus taxes (including a 10% down payment), insurance and utilities must equal 30% or less of a household's annual income.

Amended July 26, 2018
Bylaw 18-017

"Affordable Housing Development" means a housing development that is:

- a) subject to a legal agreement securing affordability and rental tenure for a minimum period of 60 years, and is either:
 - i) wholly owned and operated by a public housing body as prescribed in the *Residential Tenancy Act*, or
 - ii) operated by a public housing body as prescribed in the Residential Tenancy Act pursuant to a legally binding arrangement with the property owner; or
- b) subject to a legal agreement securing affordability for a minimum period of 60 years and is either wholly owned and operated by a housing cooperative meeting the below requirements, or operated by a housing cooperative that meets the below requirements and operates the development pursuant to a legally binding arrangement with the property owner:
 - i) the housing cooperative must:
 - A) be a housing cooperative pursuant to the *Cooperative Association Act*,
 - B) have purposes including the provision of affordable housing to low- or moderate-income households, and
 - C) have constating documents preventing the remuneration of directors and providing for the disposition of assets on dissolution or wind-up to an organization with similar purposes and restrictions.

Amended April 14, 2022
Bylaw 22-019

"All-Night Dance Club" means a dance club that operates at any time between 2:00a.m. and 6:00a.m. of the same day.

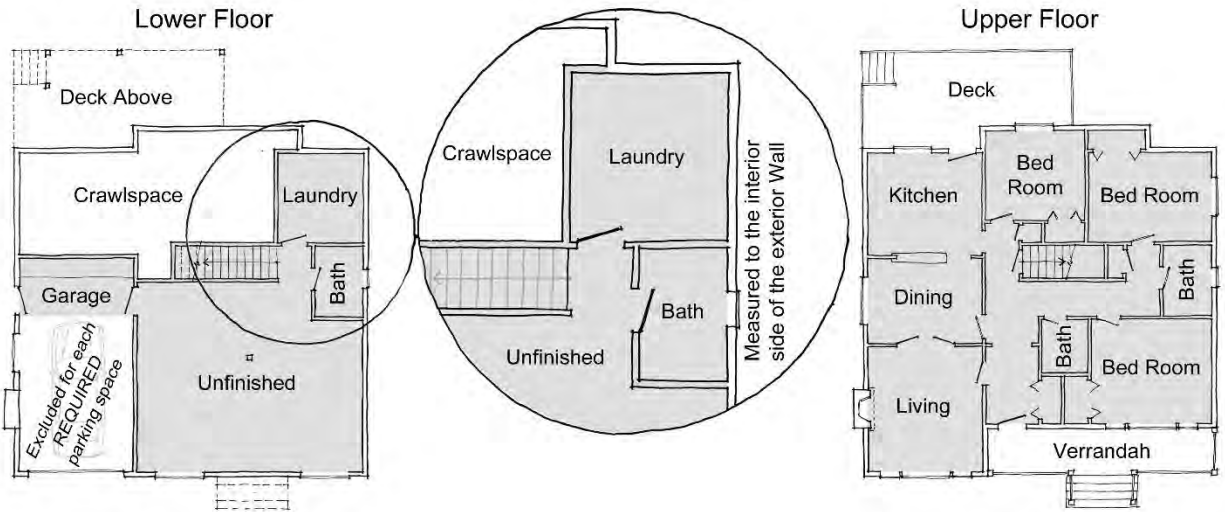
"Amusement Centre" means a building or lot in which not more than 150 amusement vending, slot machines, video machines or pinball machines are kept for use by the public, but does not include an amusement establishment as defined in the *Amusement Establishments Control Bylaw*.

"Area" of a lot means its surface area in plan, but does not include any portion of land below a natural high water mark.

"Area" when used in reference to a floor of a storey of a building means the entire area which in plan is enclosed by the interior face of the exterior walls of the storey at floor level plus the area enclosed by any cantilevered element that is within that storey and that is above floor level, but does not include of the following areas:

- a) the area used or intended to be used for required parking or movement of motor vehicles, as set out in this bylaw, which is calculated starting from the lowest level of the building;
- b) the area used or intended to be used for required Bicycle Parking, Long-Term, as set out in this bylaw, which is calculated starting from the lowest level of the building;
- c) the area or areas of balconies, exposed decks, patios or roofs; and
- d) the area of elevator shafts.

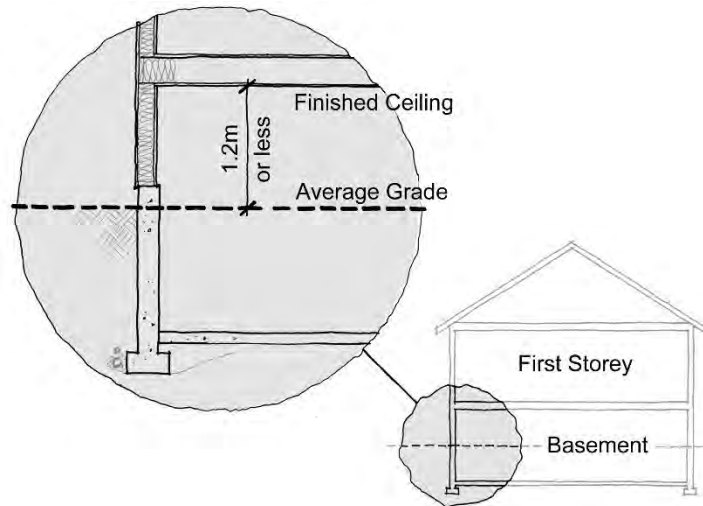
Amended July 26, 2018
Bylaw 18-017



"Attached Dwelling" means a building used or designed as three or more self-contained dwelling units, each having direct access to the outside at grade level, where no dwelling unit is wholly or partly above another dwelling unit.

"Balcony" means a platform which projects from the wall of a building above ground level and that is partially enclosed by a low parapet or railing in such a manner as to remain permanently exposed to outside weather.

"Basement" means any part of a building between two floor levels that is partially or completely below grade and has a finished ceiling that is no more than 1.2m above grade.



"Bicycle Parking, Long-Term" is intended for long-term users of a building, such as employees or residents, and will consist of a secure space dedicated for bicycle parking within a structure or building on the same lot and has the same meaning as "Class 1" bicycle parking.

Amended July 26, 2018
Bylaw 18-017

"Bicycle Parking, Short-Term" is intended for short-term use by visitors and customers and will consist of bicycle racks located in a publicly accessible space at or near a building entrance and has the same meaning as "Class 2" bicycle parking.

Amended July 26, 2018
Bylaw 18-017

"Boarder" means a person who lives in a boarding house or with a family and who pays for board and lodging.

"Boarding House" means a dwelling in which rooms are rented and meals are provided to more than four but not more than fifteen persons other than members of the family of the occupier, but does not include a dwelling in which meals are prepared within rented rooms or a community care facility within the meaning of the *Community Care and Assisted Living Act*.

"Boundary" in reference to a lot, extends throughout its length both upwards and downwards ad infinitum from the surface of the lot.

"Building" means anything constructed or placed on a lot used or intended for supporting or sheltering any use, excluding landscaping, docks, wharfs and piers.

"Building By-law" means any by-laws of the City regulating or controlling the construction of buildings, and includes any codes and regulations of the same nature made applicable to the City by Provincial Statute.

"Building Line" means a line at a prescribed distance from any boundary line of a lot.

"Bulk of building" means the cubic volume of a building above grade.

"Call Centre" means a place where orders are taken, by means of telephone or electronic communications, for goods or services produced at another location.

"Cannabis" means cannabis as defined in the Controlled Drugs and Substances Act and includes any products containing cannabis.

"Casino – Class 1" means a building that is used for the purpose of playing or operating games of chance or mixed chance and skill:

- a) on which money may be wagered;
- b) for which a licence has been issued by the *British Columbia Gaming Commission*, to a charitable or religious organization as a licence holder; and
- c) does not include player-operated video lottery terminals, slot machines, bingo, electronic bingo, pari-mutual betting, non-player-operated video lottery terminals, or Casino – Class 2.

"Casino – Class 2" means a building that is used for the purpose of playing or operating games of chance or mixed chance and skill:

- a) on which money may be wagered;
- b) for which a licence has been issued, by the *British Columbia Gaming Commission*; and
- c) may include player-operated, video lottery terminals or slot machines, and that does not include bingo, electronic bingo, pari-mutual betting, non-player-operated video lottery terminals.

"Car Shelter" means a structure designed for the storage of one or more motor vehicles, which may be a building or part of a building, or may be roof supported entirely by posts, or by posts and part of the building.

"Centre Line" when used in reference to a street means a line drawn between the boundaries of the street which is equidistant from the street boundary on either side.

"Child Care Facility" means a facility licensed under the Community Care and Assisted Living Act to provide day care to children under 13 years of age.

Amended Sept 14, 2023
Bylaw 23-065

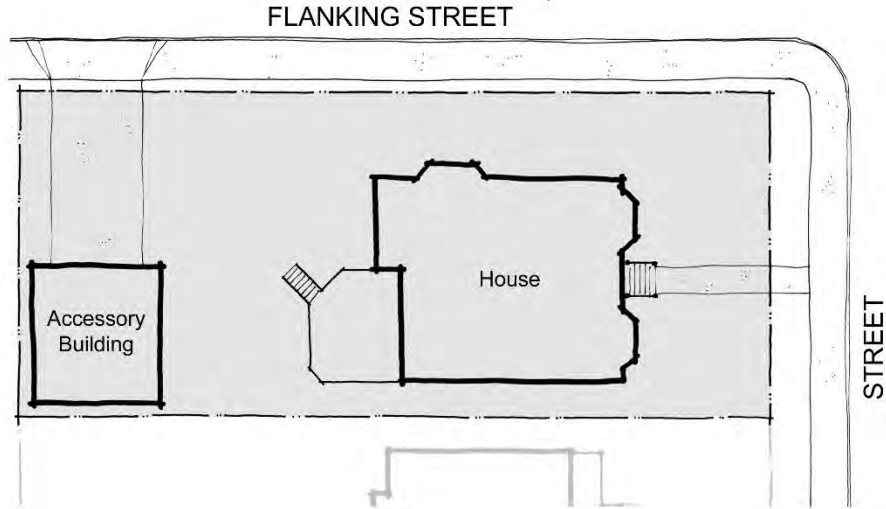
"Church" means a building set apart and used exclusively for religious worship.

"Cistern" means a rainwater storage tank that is at least 1200 litres in capacity, the top surface of which is no more than 15m² in area, and that forms part of a stormwater retention and water quality facility.

"Club" means the premises of a social or recreational club.

"Commercial Exhibit" means a site, including a site on which there is exhibited or displayed a building or its contents, if the site, or the building or its contents is of cultural, aesthetic or artistic significance or is a curiosity, and if an admission fee is demanded or accepted.

"Corner Lot" means a lot having a continuous street frontage on two or more streets.



"Crawlspace" means a non-habitable floor area used for storage and/or utilities and is 1.5m or less in clearance from floor to ceiling.

"Cultural facility" means the use of land, building or portion thereof for an art gallery or museum, or the use of a building or portion thereof for the performing arts or the showing of dramatic, musical or other live performances and includes cinemas.

"Dance Club" means a business, including an All-Night Dance Club and a Youth Dance Club,

- a) that directly or indirectly charges or assesses an admission or entrance fee;
- b) that includes the holding or permitting of public or private dances in a building, room, or other place; and
- c) for which there is no licence to sell liquor under the *Liquor Control and Licensing Act*.

"Director" for the purposes of this Bylaw means the Director of the City's Planning and Development Department or a representative designated by that person.

"Dock" means a floating structure with a level surface, to which a boat, ship or other vessel may be moored or tied, but does not include any buildings or structures placed or erected on it.

"Drive Aisle" means a vehicle passageway or maneuvering space by which vehicles enter and depart parking stalls.

Amended July 26, 2018
Bylaw 18-017

"Driveway" means that portion of the lot that provides access to parking stalls, loading spaces or the drive aisle within the lot and is considered to be the extension of the lot's driveway crossing. For certainty, a ramp provided to access parking stalls is considered a driveway.

Amended July 26, 2018
Bylaw 18-017

"Duplex" means a two family dwelling.

"Dwelling Unit" means any room or suite of rooms used or intended to be used by one family exclusively for the purpose of providing a place of residence.

"Electric Vehicle Energy Management System" means a system consisting of monitors, communications equipment, controllers, timers, and other applicable devices used to control electric vehicle supply equipment loads through the process of connecting, disconnecting, increasing, or reducing electric power to the loads.

Amended Oct 1, 2020
Bylaw 20-001

"Electronic" means electrical, analog, digital, magnetic, optical, or electromagnetic, and any other similar technology.

"Enclosed Parking Space" means any space or area that is used or intended to be used for the parking or movement of motor vehicles and that is contained entirely within a structure lying below the grade of the building or contained entirely within the building.

"Energized Electric Vehicle Outlet" means a connected point in an electrical wiring installation at which current is taken and a source of voltage is connected to supply utilization equipment for the specific purpose of charging an electric vehicle.

Amended Oct 1, 2020
Bylaw 20-001

"Escort Services" means a business that is required to be licensed under the *Escort and Dating Service Bylaw*.

"Family" means one person or a group of persons who through marriage, blood relationship or other circumstances normally live together.

"Fence" means a constructed vertical barrier which marks the boundary of, prevents access to, or provides enclosure of all or part of a lot.

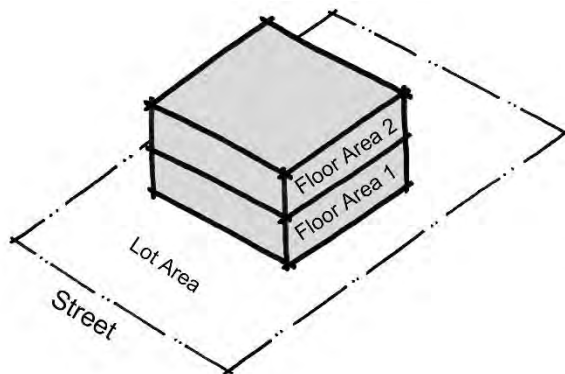
Amended July 27, 2023
Bylaw 23-025

"Financial service" means any uses related to all forms of financial services such as chartered banks, credit unions, trust companies, insurance and mortgage companies.

"Finished Grade" means the finished elevation of the ground surface of land following construction or land altering activities.

"First Storey" means the storey above the basement of a building, and in the case of a building without a basement, means the lowest storey.

"Floor Space Ratio" means the ratio of the total floor area of a building to the area of the lot on which it is situated.



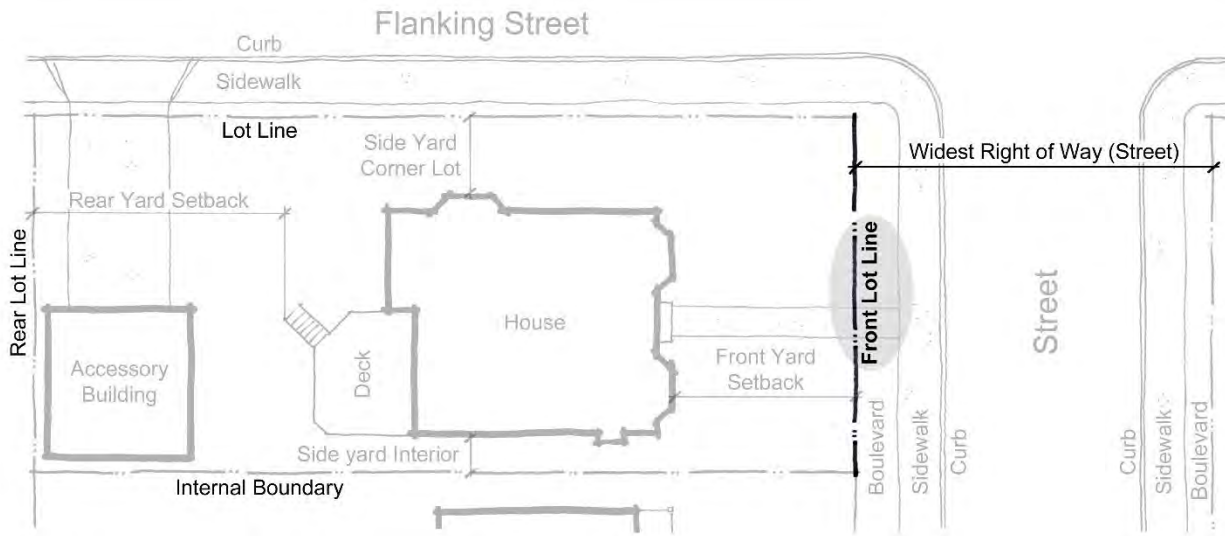
Floor Space Ratio Calculation
(Example)

Floor Area 1:	100m ² +
Floor Area 2:	100m ² +
Total (Structure):	200m ² =
Lot Area:	480m ²
<hr/>	
Total (Structure)	200m ² ÷
Lot Area	480m ²
	0.416 =
	0.42:1

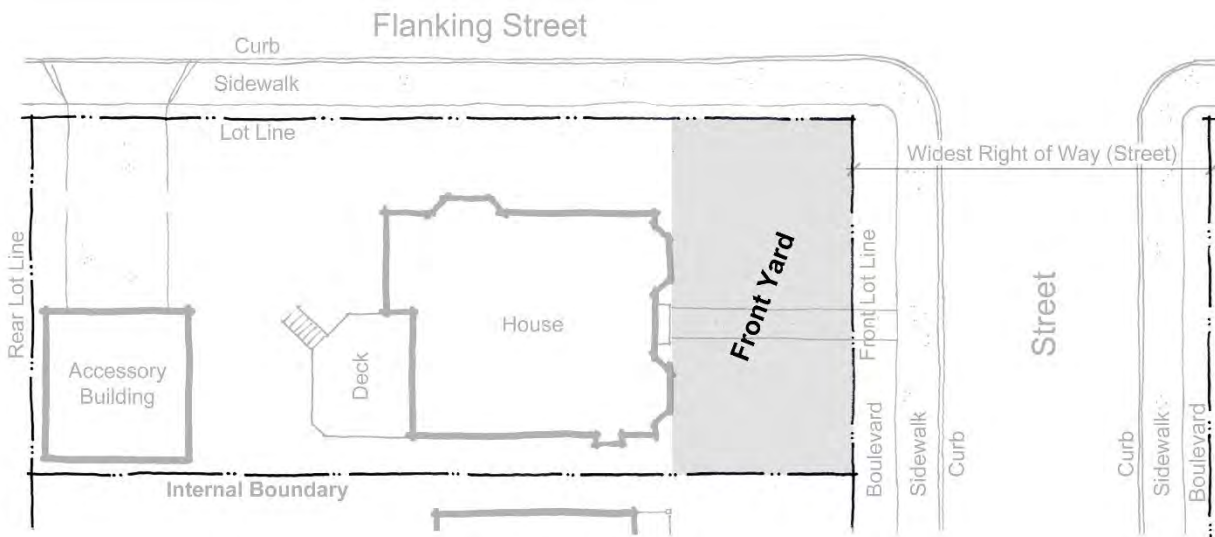
"Foodstand" means a container which holds, shelves or otherwise displays products of small-scale commercial urban food production for retail purposes outdoors.

"Free Standing Food Sales Outlet" means a building in or from which the principal business is the retail sale of food, ready for consumption, which may be consumed on or off the premises, if such a building is the only or principal building on the lot from which a retail sales business is conducted.

"Front Lot Line" means the street frontage.



"Front Yard" means a yard located between the principal building and the front lot line, extending the full width of the lot.



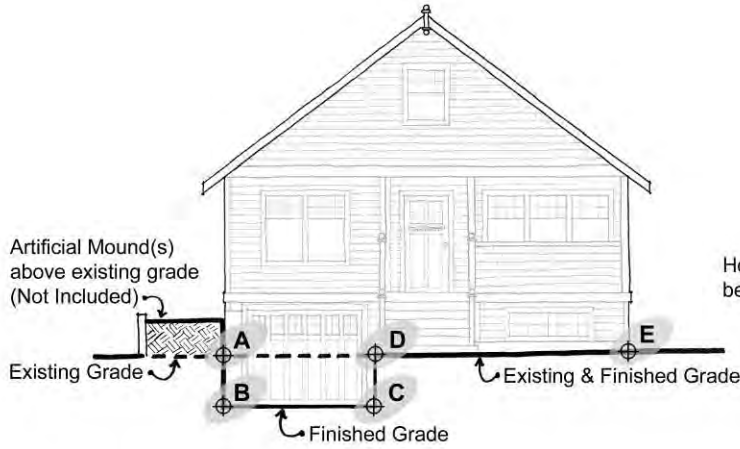
"Garage" means a building or part thereof which is used for mechanical or body repairs of motor vehicles, recreational vehicles, or trailers.

Amended Sept. 14, 2023
Bylaw 23-074

"Garage Sale" means any sale of household goods, effects, or articles by the owner or tenant of the dwelling, but does not include the sale of any article owned by any person other than the owner or tenant.

"Garden Suite" means a building attached to a foundation, used or designed as a self-contained dwelling unit located on a lot with a single family dwelling and does not include a strata lot. (Bylaw 17-001 Adopted April 13, 2017)

"Grade" means the elevation calculated by averaging the elevation of natural grade or finished grade, whichever is lower at any points at which any part of a building comes into contact with the surface of a lot, excluding any artificial mounds of earth or rocks placed at or near the wall of a building, and excluding the minimum window well width and depth required by the *British Columbia Building Code*."



Grade Points

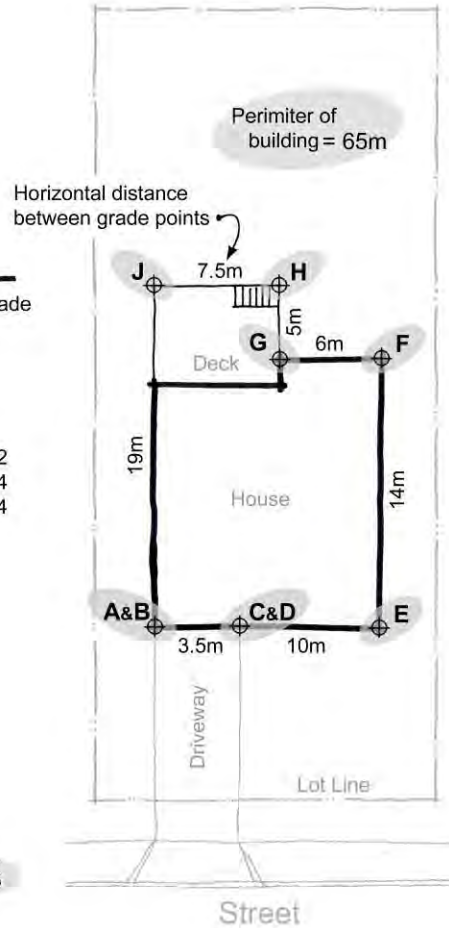
Grade Point A: 19.0	Grade Point D: 19.2	Grade Point G: 20.2
Grade Point B: 17.5	Grade Point E: 19.3	Grade Point H: 20.4
Grade Point C: 17.5	Grade Point F: 20.0	Grade Point J: 20.4

Calculation Example

Grade Points	Average of Points	Distance Between Grade Points	Totals
Points B & C:	$((17.5 + 17.5) \div 2)$	x 3.5m	= 61.25
Points D & E:	$((19.2 + 19.3) \div 2)$	x 10m	= 192.5
Points E & F:	$((19.3 + 20.0) \div 2)$	x 14m	= 275.1
Points F & G:	$((20.0 + 20.2) \div 2)$	x 6m	= 120.6
Points G & H:	$((20.2 + 20.4) \div 2)$	x 5m	= 101.5
Points H & J:	$((20.4 + 20.4) \div 2)$	x 7.5m	= 153.0
Points J & A:	$((20.4 + 19.0) \div 2)$	x 19m	= 374.3
			= 1278.25

Grade Calculation

$1278.25 \div 65m$ (perimeter of building) = **19.67**



"Greenhouse" means a structure, or that portion of a structure, made primarily of glass or other translucent material for the purpose of cultivation or protection of plants

"Habitable Room" means a room in a dwelling unit other than a kitchen, storage room, toilet, bathroom, sauna room, hallway, or stairway.

"Half Storey" means that part of any building wholly or partly within the framing of the roof, where the habitable floor area is not more than 70% of the first storey area of the building.

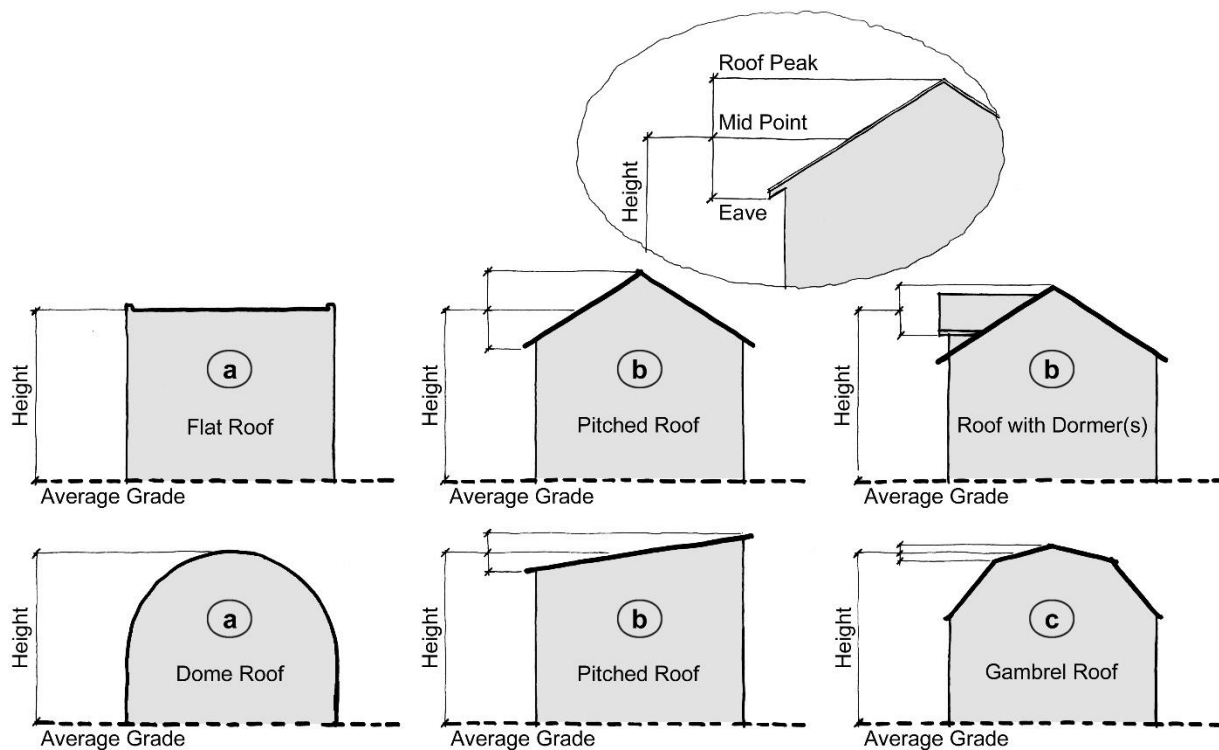
Amended March 14, 2019

"Height" when used in reference to a building, means the distance measured in a vertical straight line between the highest point of the building and any point that is at grade directly below that highest point; and is determined as follows:

- for buildings with flat or dome roofs, the highest point is the highest part of the building;
- for buildings with pitched roofs, the highest point is the mid-point between the highest ridge of the building and the highest eave and
- for buildings with gambrel roofs, the highest point is deemed to be the mid-point between the ridge and the point immediately below the ridge where the pitch changes.

The highest point excludes a mast, antenna, vent, chimney, elevator shaft, solar heating panel or similar structure that projects above the roof.

The highest point also excludes a rooftop cistern and other stormwater retention and water quality facilities together with their supporting structures.



"High Density Multiple Dwelling" means a multiple dwelling that is not less than 21m in height.

"High Tech" means the design, research, manufacture, testing, and servicing of commercial products, including computer software and hardware, in the fields of electronics, telecommunications, engineering, robotics, bio-technology, health care, and related industries.

"Home Occupation" means making, servicing, or repairing goods, or providing services for hire or gain by any person, wholly within a dwelling unit occupied by that person, but does not include the following except as provided in Schedule D:

- the sale of goods on or from the dwelling unit or its premises;
- the provision of escort services within a multiple dwelling;
- small-scale commercial urban food production.

"Hospital" has the meaning assigned to it in the *Hospitals Act*.

"House Conversion" means the change of use of a building constructed as a single family dwelling or duplex, to create a duplex, multiple dwelling, boarding house, rooming house, housekeeping apartment building, rest home – class "B" or a child care facility.

Amended Sept 14, 2023
Bylaw 23-065

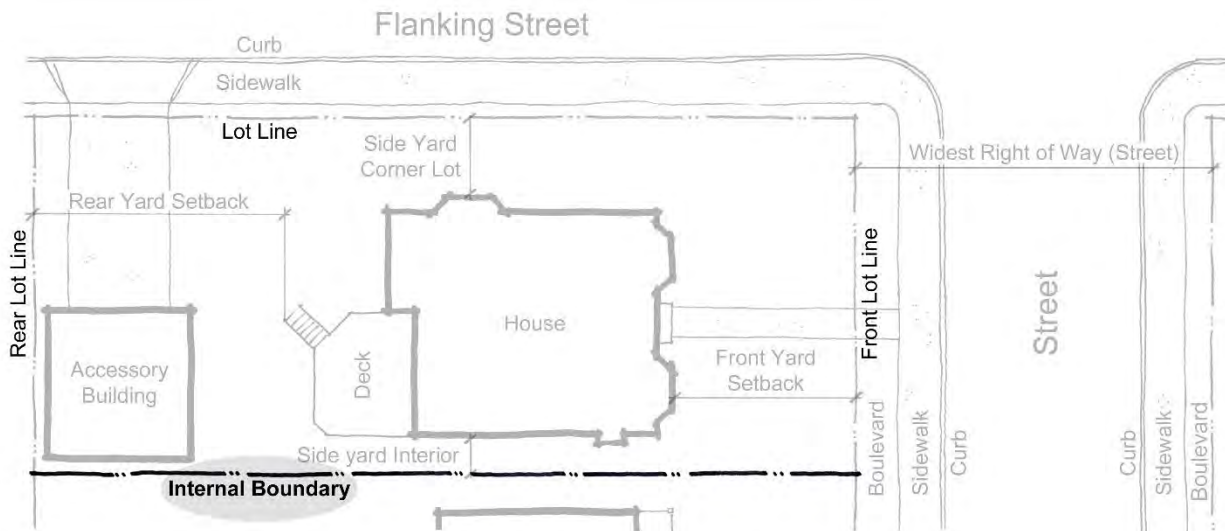
"Housekeeping Apartment Building" means a building composed of two or more housekeeping units.

"Housekeeping Unit" means a room or rooms used or intended to be used for normal living purposes including cooking, eating and sleeping but without separate bathroom or toilet facilities.

"Integrated Parking Space" means any enclosed space that is an integral part of and contained entirely within the principal building on the lot and used or intended to be used only for the parking or movement of motor vehicles.

"Integrated Parking Unit" means a parking unit in an integrated parking space.

"Internal Boundary" means any boundary of a lot other than a street boundary.



"Irregular Lot" means a lot which is neither in the shape of a rectangle or a square.

"Kindergarten" means a building licensed as a community care facility under the *Community Care and Assisted Living Act* and in which care, supervision or any form of educational or social training not provided under the *Schools Act* is provided to children under six years of age, for any portion of the day.

"Landscape Screen" means an opaque visual barrier formed by shrubs, trees, wooden fences, masonry walls or any combination of these or like materials.

"Launderette" means an establishment where individual automatic washing machines, dry cleaning machines and clothes dryers are operated by the customer or by an attendant, but does not include a pressure steam boiler, flat work ironing equipment, garment pressing or shirt finishing equipment or dry cleaning equipment of any kind.

"Length" when used to describe a dimension of a multiple dwelling means the measurement of the longest side of the least rectangle within which the plan perimeter of the multiple dwelling or portion can fit. Where the least rectangle is a square, length means any one of the external dimensions.

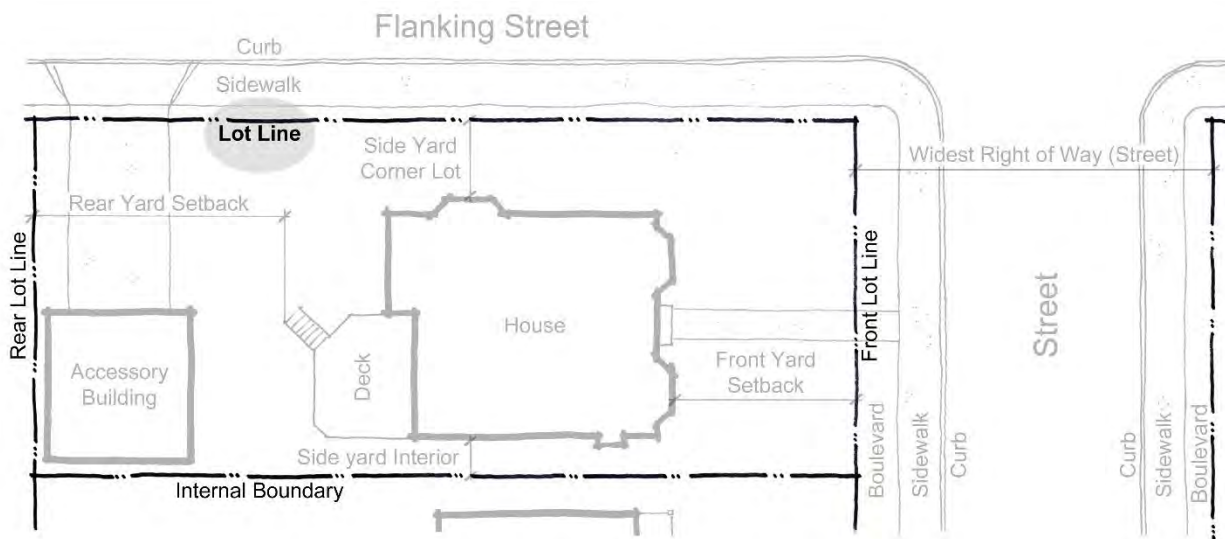
"Liquor Retail Store" means an establishment that engages in the retail sale of wine, beer, or any other liquor, as defined in the *Liquor Control and Licensing Act*, for consumption elsewhere than in that establishment.

"Lot" means a single area of land, designated and registered at the Victoria Land Title Office as not more than one parcel of land, and if a parcel of land is divided by a lane or otherwise, each division thereof constituting a single area of land shall be deemed to be a separate lot, and includes a strata lot in a bare land strata plan but does not include any other strata lot or an air space parcel.

Amended Mar 12, 2020
Bylaw 20-029

"Lot Depth" means the average distance between the rear lot line and the front lot line of a lot.

"Lot Line" means the boundary of a lot.



"Lowest Storey" means the lowest floor of a building that is both wholly enclosed and wholly above the grade of the building.

"Mezzanine" means an intermediate floor assembly within a storey, which does not exceed 28.5% of the storey's floor area. (Bylaw 12-052 Adopted November 22, 2012)

"Multiple Dwelling" means a building containing three or more self-contained dwelling units.

"Multiple Dwelling Accessory Use" includes the following uses and any structures which contain these uses on the same lot as the multiple dwelling:

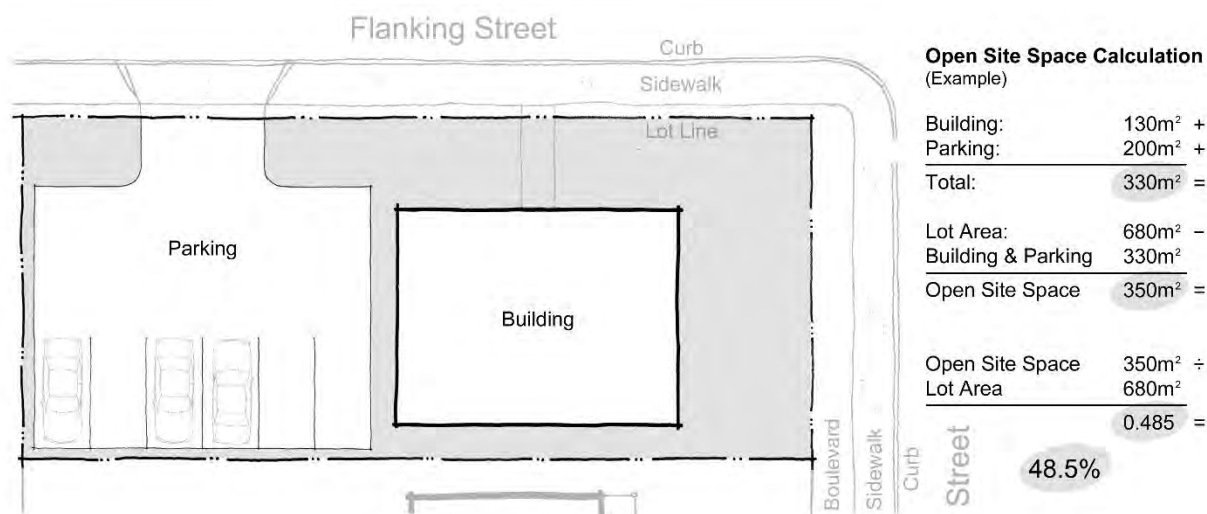
- a) Parking facilities;
- b) Recreational and pleasure uses ancillary to a multiple dwelling undertaken or carried on exclusively by or for the benefit of the persons or the guests of persons living in the multiple dwelling, where no fee, special charge or consideration is paid or demanded for its use and enjoyment over and above the ordinary rental for accommodation in the multiple dwelling;
- c) Accessory garden structures; and

- d) Uses essential to the proper, lawful and efficient use, management and maintenance of multiple dwellings.

"Natural Grade" means the elevation of the ground surface of land prior to any land alteration, including, but not limited to, disturbance, excavation, filling, or construction. Where land alteration has occurred, the natural grade is determined by historical records or interpolation based on surrounding natural grades.

"Nursing Home" means a facility where regular care or supervision is given by a health care professional as well as assistance with the performance of the personal functions and activities necessary for daily living for persons such as the aged or chronically ill who are unable to perform them efficiently for themselves.

"Open Site Space" means that portion of a lot which is landscaped and not occupied or obstructed by any building or portion of building, driveway or parking lot; excluding accessory garden structures, balconies and roof projections.

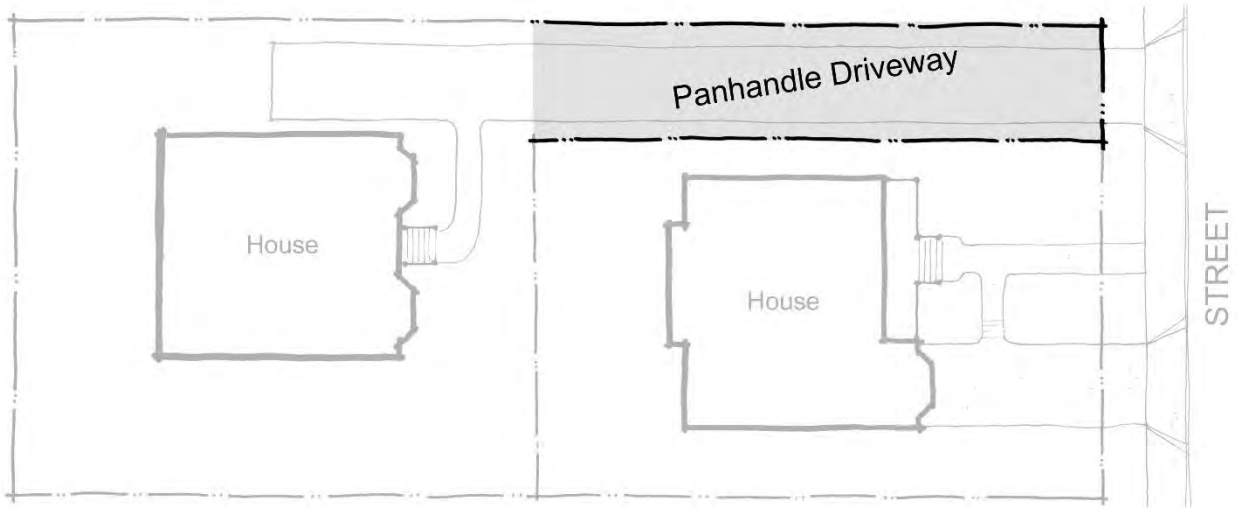


"Outdoor Feature" means any structure constructed or placed on a lot, whether attached or detached from a building, including but not limited to swimming pools, patio, decks and stairs, and excluding:

- a) buildings;
- b) raised gardens bed;
- c) docks;
- d) wharfs;
- e) piers;
- f) cistern;
- g) stormwater retention and water quality facility;
- h) retaining walls;
- i) fences.

"Panhandle Driveway" means a strip of land that is used principally as a driveway, the end of which forms the boundary between the lot of which that strip of land is a part of and:

- a) a street;
- b) a right-of-way easement giving access to the lot if there is no street abutting that boundary;
or
- c) the nearest public highway if there is no street or right-of-way easement abutting that boundary.



"Panhandle Lot" means a lot that has less than 10% of its perimeter adjoining a street and/or in part consists of a panhandle driveway.



"Parcel" means a lot.

"Parking Area" means all parking spaces, driveways and drive aisles on a lot.

Amended July 26, 2018
Bylaw 18-017

"Parking Lot" means an open area of land other than a street, used for the parking of vehicles but does not include any area where vehicles for sale or repair are kept or stored.

"Parking Screen Wall" means a wall which is:

- a) rigidly constructed of durable material wherein no opening has an area measured on either surface of the wall in excess of 0.01m² and the total of the areas of all such openings measured as aforesaid does not exceed 25% of the entire area of either such surface;
- b) is of a height throughout its length of not less than 1.2m nor more than 1.9m;
- c) is not closer to the building on the lot on which the wall is situated or any part thereof than a horizontal distance of 2.5m at any point; and
- d) in the case of a lot containing a multiple dwelling, is of such length and is otherwise so constructed and maintained as effectively to prevent the whole or any part of any motor vehicle parked on any surface parking space on the lot at any point within a horizontal distance of 6.0m of the multiple dwelling from being seen by any person within a dwelling unit in that storey of a multiple dwelling which is the lowest storey wholly above the grade of the multiple dwellings.

"Permeable" means hard surfacing specifically designed to allow the movement of water to flow through the surface, but does not include unconsolidated materials such as crushed rock, gravel, grass, earth or other loose materials.

Amended July 26, 2018
Bylaw 18-017

"Pier" means a structure with a level surface that is raised above the surface of the water and is supported by pilings or similar support structures, and that is used for marine or navigational purposes, or as a walkway or viewing platform, but does not include any buildings or structures placed or erected upon it.

"Porch" means an open area covered by a roof which forms part of the access/egress to a building.

"Preschool" means a licensed community care facility in which any form of educational or social training not provided under the *School Act* is provided.

"Principal Residence" means the usual place where an individual makes their home.

"Private Garage" means a single building used for the parking of personal motor vehicles or storage.

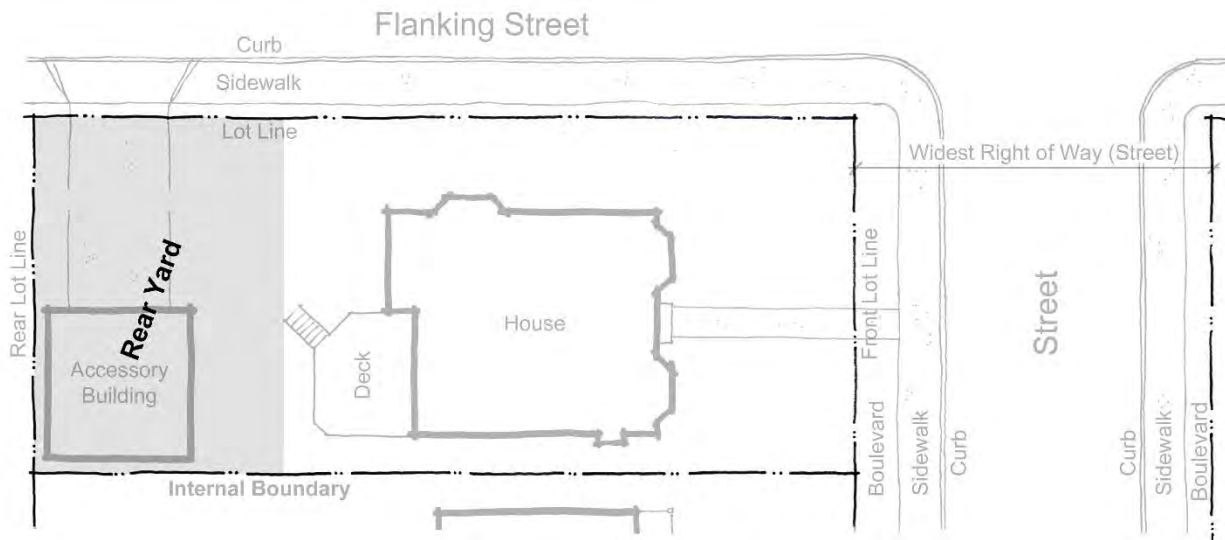
"Private Park" means any park or playground which is not a public park and which is used or intended to be used for the recreation and enjoyment of the public and for admission to which or for the use of any of the facilities whereof no fee or other charge is paid or demanded.

"Public Building" means the non-commercial use of land, building and structures for art or cultural exhibits, cemetery, church, community centre, court of law, fire station, hospital, legislative chambers, library, outdoor recreation use, police station, recreation facility, or school.

"Rear Lot Line" means the lot line opposite to and most distant from the front lot line, provided that where the rear portion of a lot is bounded by two intersecting side lot lines the rear lot line is the point of their intersection.



"Rear Yard" means a yard located between the principal building and the rear lot line extending the full width of the lot.



"Residential Floor Area" means the sum of the floor areas of a dwelling unit or units including internal walls and partitions excluding balconies, basements, common stairwells, common corridors, common recreation areas, service areas and enclosed parking.

"Residential Rental Tenure" means occupancy of a dwelling unit under a rental agreement that is subject to the *Residential Tenancy Act*.

Amended March 28, 2019

"Restaurant" means a place where food and beverages are sold for consumption on the premises, but does not include a free standing food sales outlet.

"Rest home - Class A" means a facility in which food, lodging and care are provided with or without charge to more than two persons who, on account of age, infirmity or their physical, mental or psychiatric condition, are given personal care, or who are lawfully detained as prisoners for a period not exceeding three months, pursuant to judicial process.

"Rest home - Class B" means a facility in which food, lodging and care are provided with or without charge to more than two but not more than twenty persons, other than members of the operator's family, who, on account of age, infirmity or their physical, mental or psychiatric condition, are given personal care, but does not include a facility in which persons are detained as prisoners pursuant to judicial process, or a facility in which persons are treated for alcohol or drug addiction.

"Rest home - Class C" means a facility in which food, lodging and support are provided with or without charge to more than twenty persons, other than members of the operator's family, who, on account of age, infirmity or their physical, mental or psychiatric condition, are given personal care or life skills support, but does not include a facility in which persons are detained as prisoners pursuant to judicial process.

"Roof deck" means:

- a) an open deck area located above the second storey finished floor level of the principal building; and
- b) an open deck area located above the first storey an accessory building.

"Roomer" means a person who resides in any portion of a building who pays for accommodation without board or the use of on-site cooking facilities.

"Rooming House" means a building in which rooms are rented to more than 4 but not more than 15 roomers, and does not include a community care facility within the meaning of the *Community Care Facilities Licensing Act*.

"Secondary Suite" has the same meaning as under *the British Columbia Building Code*, and does not include a strata lot.

"Self-contained Dwelling Unit" means a suite of rooms in a building designed for occupancy of one family which has a separate entrance, and kitchen and bathroom facilities.

"Semi-attached Dwelling" means a building used or designed for use as two self-contained dwelling units, each having direct access to the outside at grade level, and where neither unit is wholly or partly above the other.

"Self-Storage" means the use of buildings or structures for the storage of goods, materials or equipment in self-contained storage units that are rented to the public.

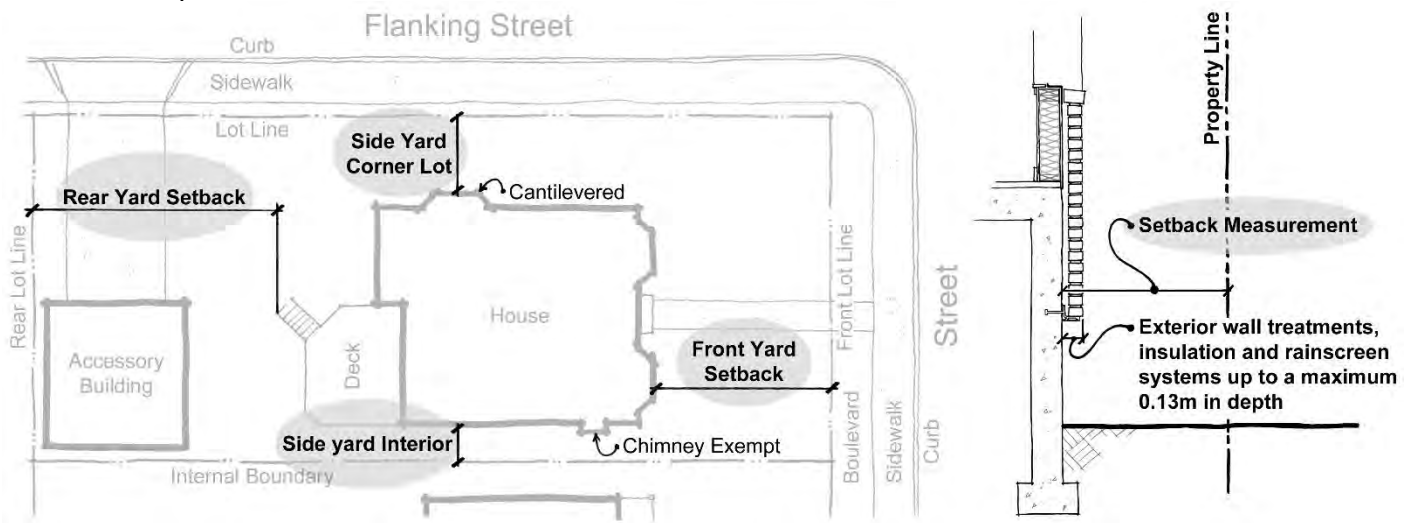
Amended Sept. 14, 2023
Bylaw 23-073

"Senior Citizens' Residence" means a building containing in any combination, two or more dwelling units, housekeeping units, or sleeping units for the accommodation, on a non-profit basis of elderly persons, which is wholly owned or operated by a government agency, or by a non-profit corporation.

"Service Station" means a place where the primary business carried on is the retail sales of petroleum products and the accessory sales of automotive parts as part of the primary business; but does not include a garage or a body shop.

"Setback" or "Line of Setback" means the shortest horizontal distance from a boundary of a lot to the face of the building, excluding:

- a) cornice or retaining wall or fence; and
- b) exterior wall treatments, insulation and rainscreen systems up to a maximum of 0.13m in depth.



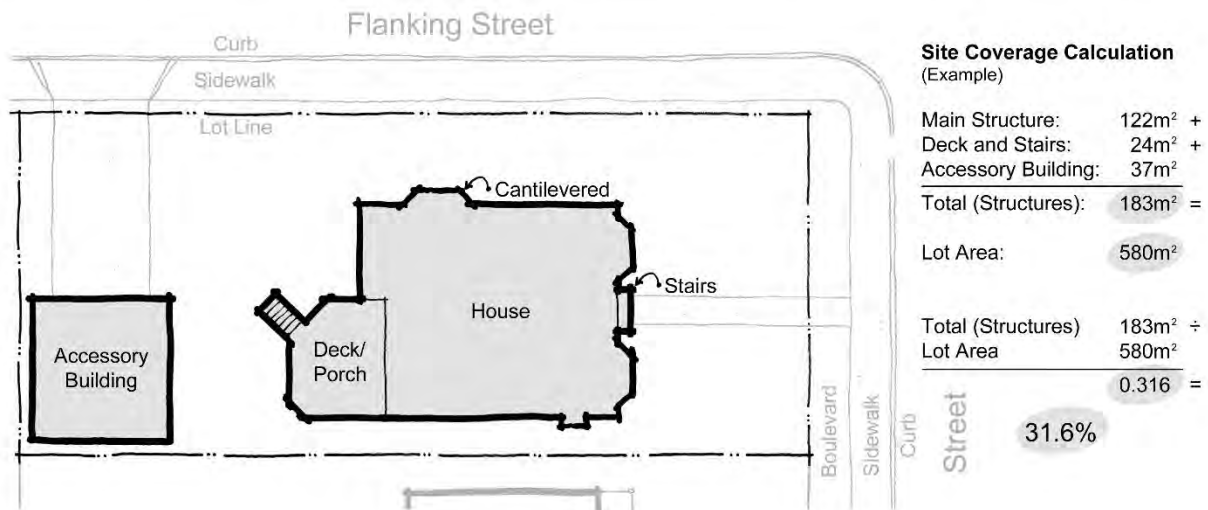
"Short-Term Rental" means the renting of a dwelling, or any portion of it, for a period of less than 30 days and includes vacation rentals.

"Side Yard" means a yard located on the side of a building and extending from the front wall to the rear wall of the building.

"Single Family Dwelling" means a detached building having independent exterior walls and containing only one self-contained dwelling unit.

"Site" means a lot having its principal frontage upon a street, occupied or to be occupied by one or more buildings.

"Site Coverage" means the percentage of the area of a lot which is occupied by any structure.



"Sleeping Unit" means one or more habitable rooms which are used or intended to be used for sleeping or sleeping and living purposes, but in which there is not a bathroom, water closet, sink, or cooking facility.

"Small-scale commercial urban food production" means:

- (a) cultivating and harvesting plants or fungi;
- (b) beekeeping and harvesting honey;
- (c) keeping poultry to collect eggs; and
- (d) sorting, cleaning and packaging the items noted above

for retail purposes, as well as selling and storing harvested products on the premises.

"Split Level Dwelling" means a dwelling unit constructed in such a manner that habitable accommodation is provided in adjacent areas on different floor levels.

"Storefront Cannabis Retailer" means premises where cannabis is sold or otherwise provided to a person who attends at the premises.

"Storey" means the space between two floors or between any floor and the roof next above, but does not include a basement or a crawlspace.

"Stormwater Retention and Water Quality Facility" has the same meaning as under the Sanitary Sewer and Stormwater Utilities Bylaw, as amended or replaced from time to time.

"Street" includes a lane, road, sidewalk, and other public highway.

Amended July 26, 2018
Bylaw 18-017

"Street Boundary" , **"Street Frontage"** or **"Street Line"** means the boundary between a lot and a street provided that:

- a) where a lot is bounded either in whole or in part by more than one street, the street boundary shall be deemed to be the boundary the lot has in common with the wider or widest of the abutting streets or when both streets are the same width, the narrowest boundary of a lot abutting a street.
- b) where a lot does not have a boundary with a street, lane, road or other public highway, it means the boundary between such lot and the area of any right-of-way easement giving access to the lot; and
- c) where a lot which is not connected with a public highway by means of an easement, it means the boundary nearest to the nearest public highway.

"Street Wall" means the wall of a building which fronts upon the nearest street whether such a wall is at or above the level of the ground.

"Surface Parking Space" means any space or area that is used or intended to be used for the parking or movement of motor vehicles and that is not contained in or covered by a structure.

"Total Floor Area" means the sum of the areas of all floors of a building or buildings, excluding floor space under a ceiling which is less than 1.8m above grade.

"Townhouse" means an attached dwelling.

"Transient Accommodation" means:

- a) the use of land or a building for the temporary accommodation of visitors, and without limitation includes hotels, motels and bed and breakfast accommodation; but
- b) does not include the accommodation of visitors without receipt of payment or other consideration, where that accommodation is incidental to and normally associated with the permitted residential use of a dwelling unit.

"Two Family Dwelling" means a building consisting of two self-contained dwelling units which share a common wall or an area that forms the floor of one unit and the ceiling of the other and are not linked by a trellis, deck, breezeway or similar connection.

"Underground Parking Space" means any enclosed space used or intended to be used for the parking or movement of motor vehicles and contained entirely within a structure or part of a building the whole of which structure or part lies entirely below the grade of the structure or building, containing one or more parking units.

"Unobstructed Access" means the ability of the intended user of the parking space to access and egress to the street at the time that the parking space is required.

Amended July 26, 2018
Bylaw 18-017

"Van Accessible Parking Space" means a parking space designed and installed in accordance with the specifications and dimensions in section 4.2 and Figure 5 of Schedule C – Off-Street Parking Regulations."

Amended Sept. 19, 2022
Bylaw 22-024

"Vehicle Sales and Rental" means the use of a lot to sell, rent, or lease motor vehicles, recreational vehicles, boats or trailers, and that contains a related office.

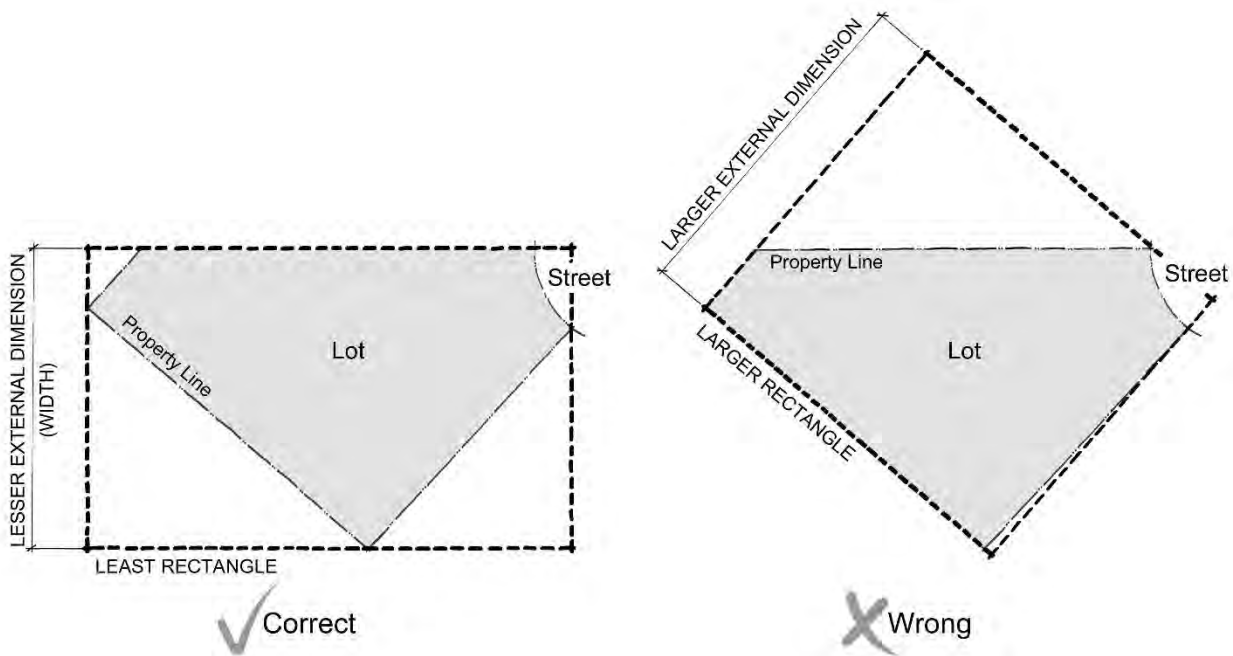
Amended Sept. 14, 2023
Bylaw 23-074

"Waterfront Lot" means a lot that abuts a tidal water body along any portion of the lot's boundary.

Amended Feb 27, 2020
Bylaw 20-002

"Wharf" means a fixed structure built alongside or projecting into a body of water, to which a boat, ship or other vessel may be moored or tied for the purpose of loading or unloading cargo or passengers, but does not include any buildings or structures placed or erected upon it.

"Width" when used in reference to a lot, means the length of the lesser external dimension of the least rectangle within which the lot may be contained in plan view.



"Yard" means a part of a site which is unoccupied and unobstructed by building from the ground upward, except for chimneys, fire escapes and the ordinary projections of sills, belt courses, cornices and eaves.

Garden Suite	Bylaw No. 10-079	Adopted: January 20, 2011
Zoning Regulation Bylaw	Bylaw No. 11-015	Adopted: March 24, 2011
Setback or Line of Setback	Bylaw No. 13-021	Adopted: April 11, 2013
Cultural facility & Financial service	Bylaw No. 14-017	Adopted: April 10, 2014
Multiple dwelling & House conversion	Bylaw No. 14-041	Adopted: July 10, 2014
Section 7.1 and 7.4 amendments	Bylaw No. 14-068	Adopted: September 25, 2014
Garden suite/accessory building amds.	Bylaw No. 14-073	Adopted: October 3, 2014
Minimum lot size	Bylaw No. 15-001	Adopted: March 26, 2015
Cistern regulations	Bylaw No. 15-018	Adopted: April 14, 2015
Finished Grade, Grade, Natural Grade, Outdoor Feature	Bylaw No. 16-004	Adopted January 28, 2016
Small-scale commercial urban food production, Foodstand, greenhouse	Bylaw No. 16-064	Adopted September 8, 2016
Add Short-Term Rental & change to Transient Accommodation	Bylaw No. 17-084	Adopted September 21, 2017
Add definition of Rest home Class C	Bylaw No. 17-092	Adopted October 12, 2017
Add definition of Principal Residence	Bylaw No. 18-035	Adopted March 8, 2018
Add definitions as identified	Bylaw No. 18-017	Adopted July 26, 2018
Revise half storey definition as identified	Bylaw No. 19-001	Adopted March 14, 2019
Add definition of Residential Rental Tenure	Bylaw No. 19-029	
Add definition of Waterfront Lot	Bylaw No. 20-002	Adopted February 27, 2020
Add definition of Energized Electric Vehicle Outlet	Bylaw No. 20-001	Adopted October 1, 2020
Add definition of Electric Vehicle Energy Management System	Bylaw No. 20-001	Adopted October 1, 2020
Add definition of Affordable Housing	Bylaw No. 22-019	Adopted April 4, 2022

Add definition of Accessible Parking Spaces, and Van Accessible Parking Space	Bylaw No. 22-024	Adopted June 23, 2022
Add definition of Fence	Bylaw No. 23-025	Adopted July 27, 2023
Add definition of Child Care Facilities and remove kindergarten from House Conversion definition and replace with Child Care Facilities	Bylaw No. 23-065	Adopted September 14, 2023
Add definition of Self-storage	Bylaw No. 23-073	Adopted September 14, 2023
Amend definition of Garage	Bylaw No. 23-074	Adopted September 14, 2023
Add definition of Vehicle sales and rental	Bylaw No. 23-074	Adopted September 14, 2023

Schedule “D”
HOME OCCUPATIONS

- 1 Where home occupations are permitted pursuant to the provisions of this bylaw, the following conditions shall apply to the use:
- Location 2 For the purposes of a home occupation, the location of a business is the address at which the operations of the business are managed.
- Exception 3 A home occupation is not required to be operated wholly within a dwelling unit where the work is undertaken entirely off the lot on which the dwelling unit is located.
- Prohibition 4 The sale of goods to customers attending on the lot on which the dwelling unit is located is prohibited.
- Permitted Uses 5 The following uses are permitted as home occupations:
- (a) artist studio;
 - (b) mail order, provided that no merchandise is sold to customers attending on the lot on which the dwelling unit is located;
 - (c) making, processing and assembly of products on a small scale;
 - (d) manufacturing agent;
 - (e) personal and professional services, including barber, hairdresser, bookkeeper, medical therapy;
 - (f) teaching, provided that attendance is limited to 5 persons in a detached dwelling and to 1 person in a duplex or multiple dwelling;
 - (g) testing, servicing and repairing of goods.

Schedule “D”

- | | | |
|-----------------|---|---|
| Prohibited Uses | 6 | <p>(1) All uses that are noxious or offensive to any other dwelling units or the general public by reason of emitting odour, dust, smoke, gas, noise, effluent, radiation, broadcast interference, glare, humidity, heat, vibration, or hazard or any other emission are prohibited.</p> <p>(2) The following uses are prohibited:</p> <ul style="list-style-type: none"> (a) except as provided in Section 11, Bed and Breakfast; (b) car repairs and <u>garages</u>; (c) <u>clubs</u>; (d) kennels; (e) radio dispatch services; (f) <u>restaurants</u>; (g) retail stores; (h) salvage lots; (i) storage lots; (j) except as provided in Section 11, <u>transient accommodation</u>; (k) in any <u>building</u> which has been converted from <u>single family dwelling to duplex, multiple dwelling, boarding house, rooming house, or housekeeping apartment</u>, pursuant to the applicable provisions of this bylaw, music teaching or any business which results in the transmission of sound; (l) cannabis-related business; and; (m) except as provided in Section 12, <u>short-term rental</u>. |
| Stock in Trade | 7 | <p>Except for one licensed vehicle, which shall be a car, van, or pickup truck, no business-related materials, including machinery or vehicles, shall be visible at any time on any <u>lot</u> on which a <u>home occupation</u> is carried out nor shall any machinery or vehicles be parked or stored on the <u>lot</u> unless completely enclosed within a <u>building</u>.</p> |
| Limitation | 8 | <p>(1) Subject to this section, not more than one person shall be engaged in a <u>home occupation</u>, with the exception of urban agriculture, where up to two people are permitted to be engaged in the <u>home occupation</u>, and the person(s) shall reside on the <u>lot</u> on which the <u>home occupation</u> is carried on.</p> <p>(2) Where any <u>lot</u> upon which a <u>home occupation</u> is carried on has a boundary or portion of a boundary in common with any <u>lot</u> which is located in a zone which permits retail use, then no more than two persons may be engaged the <u>home occupation</u> where one of the persons resides on the <u>lot</u> on which the <u>home occupation</u> is carried on.</p> |

Amended Jan 11, 2018
Bylaw 17-110

Amended March 8, 2018
Bylaw 18-035

Schedule “D”
HOME OCCUPATIONS

(3) This section does not apply to any employees of a home occupation who at no time attend on the lot on which the home occupation is carried on, nor park in the immediate vicinity of the lot.

(4) More than one person may operate a short-term rental in their principal residence.

Amended March 8, 2018
Bylaw 18-035

9 No more than three home occupations shall be carried on in any one dwelling unit, provided that only one of the home occupations has customers that attend the dwelling unit.

Amended Jan 11, 2018
Bylaw 17-110

Advertising

10 Except as expressly permitted in this bylaw, or in the Sign By-law, no sign or other advertising device or advertising matter may be exhibited or displayed on any lot on which a home occupation is being carried on.

11 Subject to the following requirements, where any building is used as a single family dwelling, up to two bedrooms may be used for transient accommodation as a home occupation.

(1) Notwithstanding Section 4, meals or food services may be provided to any customers but not after 12:00 noon.

(2) No liquor shall be provided to any customers.

(3) One parking space for each room available for transient accommodation shall be provided on the lot and a parking space may be located behind another parking space.

(4) No sign may be erected, used, or maintained for the purpose of advertising transient accommodation use within a single family dwelling.

(5) A single family dwelling may be used for transient accommodation whether or not the property contains a secondary suite or garden suite provided however that only one transient accommodation use is permitted on the property

Amended March 8, 2018
Bylaw 18-035

(6) Transient accommodation is restricted to no more than two bedrooms and cannot occupy an entire self-contained dwelling unit.

Amended March 8, 2018
Bylaw 18-035

12 Subject to the following requirements, a short-term rental is permitted as a home occupation in a principal residence.

Amended March 8, 2018
Bylaw 18-035

(1) subject to subsection (2), no more than two bedrooms may be used for short-term rental and the short-term rental cannot occupy an entire self-contained dwelling unit;

Schedule "D"

- (2) the entire principal residence may be used for a short-term rental only occasionally while the operator is temporarily away;
- (3) no liquor may be provided to short-term rental guest; and
- (4) No sign may be erected, used, or maintained for the purpose of advertising short-term rental.

Amending Bylaw 09-01 adopted Jan 19, 2009
Amending Bylaw 17-110 adopted Jan 11, 2018
Amending Bylaw 18-035 adopted March 8, 2018

PART 1.71 - R1-A6 ZONE, ROCKLAND BED & BREAKFAST DISTRICT

Uses	1	<p>The following uses are the only uses permitted in this zone:</p> <ul style="list-style-type: none"> (a) all of the uses permitted in the R1-A Zone, Rockland Single Family Dwelling District; (b) <u>transient accommodation</u> that is located in a <u>building</u> that is used as the principal residence of the operator of the <u>transient accommodation</u>.
Number of Rooms	2	<ul style="list-style-type: none"> (1) Not more than 3 bedrooms may be used for <u>transient accommodation</u> in a suite occupied by the operator of that <u>transient accommodation</u>. (2) Not more than 4 bedrooms may be used for <u>transient accommodation</u> in suites not occupied by the operator of that <u>transient accommodation</u>.
Parking	3	<p>A <u>lot</u> must contain</p> <ul style="list-style-type: none"> (a) 0.5 parking spaces for every <u>transient accommodation</u> bedroom; and (b) one parking space for the operator of <u>transient accommodation</u>.
General		<p>Except as provided in this Part, the regulations applicable in the R1-A Zone, Rockland Single Family Dwelling District, apply in this Zone.</p>

SCHEDULE
PART 2.69

RK-8 ZONE, HUMBOLDT BED & BREAKFAST DISTRICT

- | | | |
|-------------------|---|--|
| Uses | 1 | The uses permitted in this Zone are:

(a) all of the uses permitted in the R-K Zone, Medium Density Attached Dwelling District; and

(b) <u>transient accommodation</u> . |
| Parking | 2 | (1) One parking space must be provided for the

(a) each single family dwelling unit; and

(b) each unit of <u>transient accommodation</u> . |
| Siting of Parking | | (2) Off-street parking spaces must be located in a <u>rear yard</u> or a <u>side yard</u> .

(3) An off-street parking space may be located behind another off-street parking space. |

Adapted May 25/96

PART 2.85 - R2-28 ZONE, SUPERIOR BED & BREAKFAST DISTRICT

- | | | |
|---------|---|--|
| Uses | 1 | <p>The following uses are the only uses permitted in this Zone:</p> <ul style="list-style-type: none"> (a) all of the uses permitted in the R-2 Zone, Two Family Dwelling District; (b) <u>transient accommodation</u> that is located in a <u>building</u> that is used as the principal residence of the operator of the <u>transient accommodation</u>. |
| Parking | 2 | <ul style="list-style-type: none"> (1) A <u>lot</u> must contain <ul style="list-style-type: none"> (a) 0.5 parking spaces for each <u>transient accommodation</u> bedroom; and (b) one parking space for each <u>self contained dwelling unit</u>. (2) All parking spaces must be independently accessible to a <u>street</u>. (3) The landscaped area and screen required under section 7(h) of Schedule C does not apply to parking in this Zone. |
| General | 3 | <p>Except as provided in this Part, the regulations applicable in the R-2 Zone, Two Family Dwelling District, apply in this Zone.</p> |

 **0757107 BC Ltd. v. Lake Cowichan (Town)**

British Columbia Judgments

British Columbia Supreme Court

Nanaimo, British Columbia

A.F. Wilson J. (In Chambers)

Heard: July 3, 2008.

Judgment: July 21, 2008.

Docket: S52836

Registry: Nanaimo

[2008] B.C.J. No. 1444 | 2008 BCSC 961 | 170 A.C.W.S. (3d) 202

Between 0757107 BC Ltd., Petitioner, and Town of Lake Cowichan, Respondent

(38 paras.)

Case Summary

Municipal law — Bylaws and resolutions — Interpretation — Enforcement of bylaws — Injunctions — Petition by landowner for declaration its building met zoning requirements dismissed — Zoning permitted single family dwellings and bed and breakfasts — Two kitchens planned for building meant it was two-family dwelling — Town's expressed interesting increasing tourism did not assist court in interpreting bylaw — Town not entitled to declaration building not in compliance or injunction requiring landowner to bring building into compliance because second kitchen not yet installed, so bylaw not yet breached — Town of Lake Cowichan Bylaw No. 722-2001, s. 5.1.

Municipal law — Planning and development — Building regulations — Building permits — Occupancy permits — Zoning regulations — Bylaws — Interpretation — Enforcement — Injunction — Land use — Types — Residential — Petition by landowner for declaration its building met zoning requirements dismissed — Zoning permitted single family dwellings and bed and breakfasts — Two kitchens planned for building meant it was two-family dwelling — Town's expressed interesting increasing tourism did not assist court in interpreting bylaw — Town not entitled to declaration building not in compliance or injunction requiring landowner to bring building into compliance because second kitchen not yet installed, so bylaw not yet breached.

Petition by 1757107 for a declaration a building it owned qualified as a bed and breakfast under the single family residential zoning provided in the Town of Lake Cowichan's zoning bylaw. The Town sought declarations that 175 breached the zoning bylaw by constructing a two-family dwelling in a single family residential zone and that 175 breached the building bylaw by varying the building from drawings submitted to obtain a permit, and orders requiring 175 to remove an electrical outlet and prohibiting the occupation of the building until an occupancy permit was issued. The Town had expressed a desire to develop tourism. The original development plans submitted by 175 to the Town were rejected because the proposed building was to have kitchens on two floors. 175 re-submitted its plans, changing one kitchen to a mud room. It proceeded to install electrical outlets and plumbing in that room to allow a kitchen to be installed. Its subsequent occupancy application stated the mud room would be used as a kitchen and that kitchen fittings would soon be installed. The building was located in an area that was zoned for use as either single family residence or bed and breakfast. The Town took the position the building was in fact a two-family residence.

HELD: Petition by 175 dismissed.

In order to comply with the zoning bylaw, 175's building could not have more than one dwelling. With two kitchens, the building had two dwellings and therefore breached the zoning bylaw. The expressed desire of the Town to develop tourism was not helpful in interpreting the permitted uses in the bylaw. The Town's requests were premature. 175 was not yet in breach of the zoning bylaw because the second kitchen had not yet been installed.

Statutes, Regulations and Rules Cited:

British Columbia Rules of Court, Rule 10

Law and Equity Act, [RSBC 1996, CHAPTER 253, s. 10](#)

Local Government Act, RSBC 1996, CHAPTER 323, s. 903

Town of Lake Cowichan Bylaw No. 479-1987, "dwelling, "family, "home occupation, "residence, "two family residence

Town of Lake Cowichan Bylaw No. 722-2001, s. 5.1, s. 5.1.A

Counsel

Counsel for Petitioner: J. Millbank.

Counsel for Respondent: D. Howieson.

[Editor's note: A corrigendum was released by the Court July 22, 2008; the correction has been made to the text and the corrigendum is appended to this document.]

Reasons for Judgment

A.F. WILSON J.

I. Introduction

1 The petitioner in this matter, 0757107 BC Ltd., seeks a declaration that a building owned by it and located in the Town of Lake Cowichan ("the Town") qualifies as a "bed and breakfast" under the single family residential zoning provided in the zoning bylaw of the Town as amended.

2 In response, as well as seeking dismissal of the petition, the Town seeks a declaration that the petitioner has breached that zoning bylaw by constructing a two-family dwelling in the single family residential zone; declaring that the respondent has breached the building bylaw by varying the building from the drawings submitted in order to obtain a building permit, without the permission of the building inspector; ordering the removal of an electrical outlet in the area shown on the plans as the "mud room"; and prohibiting the occupation of the dwelling until an occupancy permit has been issued.

II. Background

3 The facts upon which the petition is based are not in dispute.

4 The petitioner is the owner of Lot 20, District Lot 13, Cowichan Lake District, Plan VIP 66922 with civic address of 430 Point Ideal Road, Lake Cowichan, British Columbia. The property is within the Town of Lake Cowichan, and subject to the Town zoning and building bylaws.

5 In accordance with the Town's expressed desire to encourage tourism in the area, the petitioner planned to build a house of approximately 3,000 square feet to be used as an "executive bed and breakfast". By application dated April 24, 2006 Mr. Haberman, a director of the petitioner, submitted a building permit application and plans for the house to the Town. The house was designed to accommodate a private living area for residents on the upper floor, including a kitchen, bathroom and living room. The plans also showed a kitchen on the main floor, the area intended to be used as a bed and breakfast. At the time, the Chief Administrative Officer of the Town, Mr. Fernandez, expressed concerns that the plans showed two self-contained dwellings in the proposed house, and were thus contrary to the single family residential zoning where the property was located. However, the building permit was not formally denied at that time.

6 By letter dated May 29, 2006, the solicitor for the petitioner wrote to Mr. Fernandez, advising that the planned use of the building as a bed and breakfast operation fell within the use for single family residential zoning (Zone R-1-A). She thus requested that the building permits be sent to her, and requested that, if they were not to be issued, she be provided with written reasons for the denial. Those reasons were provided by letter dated May 31, 2006. In that letter Mr. Fernandez stated:

The R-1-A zoning for the properties allows for single family residential use, and bed and breakfast use. In neither case does the zoning permit more than one dwelling, as defined in our Zoning Bylaw no. 479, 1987, on a property. The drawings attached to the applications do not properly reflect that requirement. If both the applications are amended to meet this requirement, the applications may be approved.

7 By letter of June 13, 2006, counsel for the petitioner responded to Mr. Fernandez, noting that the bylaw permitted bed and breakfast use, in addition to other uses, including single family residential use. She noted that the bylaw does not state that the building must be both a single dwelling and a bed and breakfast. By letter of June 26, 2006, the solicitors for the Town responded to counsel for the petitioner. They stated that, in their opinion, the structure the petitioner was proposing was a two family residence, a use not permitted in the R-1-A zone.

8 After a further exchange of correspondence between counsel, and between Mr. Haberman and Mr. Fernandez, the petitioner revised the plans and designated the second kitchen in the residence area as a "mudroom". A building permit was granted, based on the revised plans, on October 24, 2006.

9 Construction of the house began in January, 2007, and was substantially completed on October 1, 2007. During the course of construction, Mr. Croteau, the building inspector for the Town, conducted inspections. On June 22, and June 24, he issued inspection reports stating "Kitchen not to be installed in mudroom". He observed that the petitioner planned to install a second kitchen despite the fact that it was not shown on the approved plans. He found an electrical outlet installed for a stove, and also observed plumbing fixtures, kitchen cabinets and appliances ready to be installed. Those appliances have not yet been installed. The petitioner did, however, request an occupancy permit, on the basis that the second kitchen would be installed.

10 When the occupancy permit was not granted, counsel for the petitioner wrote by letter of February 7, 2008, requesting the issuance of it. She noted, "The Property is roughed in for a kitchen on the third floor and this application is made on the basis that the kitchen will be installed in the near future." In his affidavit, Mr. Fernandez states that the occupancy permit could not be issued as the building substantially varied in that regard from the building shown on the drawings approved for the building permit, and no further drawings had been submitted.

11 As a result, the house is presently unoccupied. The petitioner has brought this application to clarify whether, if it proceeds with the installation of the kitchen, the building will be in compliance with the R-1-A zoning as a "bed and breakfast".

III. The Issue

12 The issue is thus a narrow one: whether a house with separate parts, one intended for a resident, and the other for use as a bed and breakfast, each with kitchen facilities, falls within the definition of "bed and breakfast", a

permitted use in R-1-A zoning, or whether it is then a "two family residence" which is not permissible in R-1-A zoning.

IV. Bylaws

13 The current single family residential zoning was created by Bylaw No. 722-2001, amending Bylaw No. 479-1987. The title and permitted uses are as follows:

5.1.A SINGLE FAMILY RESIDENTIAL (R-1-A) ZONE

.1 PERMITTED USES

The following uses and no others are permitted in the R-1-A Zone:

- (a) single family residential;
- (b) home occupation;
- (c) bed and breakfast;
- (d) park and playground.

14 By way of comparison, the permitted uses in R-1 zoning, urban residential, are as follows:

5.1 R-1 ZONE -- URBAN RESIDENTIAL

.1 Permitted Uses

The following uses and no others are permitted in an R-1 Zone:

- (a) single family residential dwelling
- (b) two family residential dwellings;
- (c) lodging and boarding houses;
- (d) horticulture;
- (e) home occupation;
- (f) daycare auxiliary to a dwelling;
- (g) park and playground.

15 Thus "two family residential dwellings", unless they fall within one of the permitted uses for R-1-A zoning, such as "bed and breakfast" are not permitted in areas subject to R-1-A zoning.

16 The original zoning bylaw, No. 479-1987, does provide definitions for a number of terms, including "dwelling", "family", "home occupation", "residence", and "two family residence". Those definitions are as follows:

"dwelling" means a self-contained set of habitable rooms located in a principal building containing a set of cooking facilities and which may contain sleeping, sanitary and recreation facilities;

"family" means

- (a) two or more persons related by blood, marriage, adoption or foster parenthood sharing one dwelling; or
- (b) not more than five unrelated persons sharing one dwelling;

"home occupation" means any occupation or profession where such occupation or profession is accessory to the use of the dwelling for residential purposes and does not include outdoor storage;

"residence" means:

- (a) occupancy or use of a building or part thereof as a dwelling; and
- (b) the dwelling occupied or used;

"two family residence" means consisting of two dwellings placed one above the other or side by side in a principal building or a single parcel

17 However, the bylaw does not contain definitions of either "single family residential" or "bed and breakfast".

IV. Submissions

18 The position of the Town is that, once a second kitchen is put in, there will be on an objective basis, two separate dwellings. The Town thus submits that the property falls within the class of "two family residential dwellings", which is allowed in zone R-1, but not in zone R-1-A. The Town submits that the subjective intention of the petitioner to use the property as a bed and breakfast does not convert it from a "two family residential dwelling".

19 The petitioner submits the property does not fall within the definition of "two family residence" in the bylaw. In any event, it submits that even if it does fall within that definition, it also is a "bed and breakfast", and is thus a permitted use in zone R-1-A.

V. Law

20 A municipal council, as a creation of statute, only has the powers as granted to it by that statute. As expressed by I.M. Rogers in *The Law of Canadian Municipal Corporations*, 2nd edition, 1999 release No. 2, Carswell, page 769:

Local authorities have no inherent power to interfere arbitrarily with the common law right of land owners in the use and improvement of property.

However, a local government does have the power to regulate the use of land, buildings and other structures within zones pursuant to s. 903 of the *Local Government Act, R.S.B.C. 1996, chapter 323*.

21 In interpreting a zoning bylaw, Hinkson J.A. of the British Columbia Court of Appeal in *Re Neilson et al. and District of Langley et al.* (1982), 134 D.L.R. (3d) 550 at paragraph 18 stated:

In the present case, in my opinion, it is necessary to interpret the provisions of the zoning bylaw not on a restrictive nor on a liberal approach but rather with a view to giving effect to the intention of municipal council as expressed in the by-law upon a reasonable basis that will accomplish that purpose.

22 However, where a term in a bylaw is not defined, as is the case here with respect to "bed and breakfast" a broad interpretation is to be used. In *Neilson*, at paragraph 19, Hinkson J.A. said:

Approaching the matter in that way, I return to a consideration of the provisions of the bylaw. While many of the terms contained in section 9(c) of the by-law dealing with the uses permitted in the zones established by the by-law are defined in Schedule "A" to the by-law, no definition of the designation "golf course" is contained in that Schedule. The effect of defining those terms in that Schedule is to restrict the meaning that might otherwise be attributed to such terms. No such restriction has been imposed upon the meaning of "golf course". Therefore I conclude that "golf course" was intended to have a broad meaning and that anything that can be regarded as reasonably coming within the operation of a golf course is a permitted use.

23 However, a zoning bylaw must be interpreted as a whole, coherently and with its purpose in mind: *Sechelt (District) v. Cutlan* (2007), 38 M.P.L.R. (4th) 83 at paragraph 47.

24 In *North Cowichan (District) v. Ring*, [1998] B.C.J. No. 1458, June 11, 1998, Duncan Registry No. 0000617, (B.C.S.C.), Hutchinson J. said:

... the words "used or intended to be used" must be determined objectively by reference to the design of the unit and the facilities in the unit, not the intentions of the owner. If the intention of the owner was the deciding factor, the intended use of the premises could change according to the owners' whim; a result that defies sensible interpretation.

25 That statement was adopted by Drost J. in *New Westminster (City) v. Cunny* (2002), 30 M.P.L. R. (3d) 306 (B.C.S.C.) at paragraph 31.

VI. Discussion

26 In determining this issue, it is necessary to look at the specific words of the bylaw, including the definitions. However, it is also necessary to look at those words in the broader context of the bylaw as amended, as a whole, to determine, in particular, what council intended in passing bylaw No. 722-2001, establishing more restrictive R-1-A zoning.

27 Dealing, first, with the definitions: as noted, there is no definition of "bed and breakfast". However, like "home occupation" and "park and playground", "bed and breakfast" is a distinct permitted use, along with "single family residential", in the single family residential zoning. It thus appears that the uses intended were broader than merely single family residential use.

28 The next question is whether the proposed bed and breakfast falls within the definition of "two family residence" the term defined in the definition section, or "two family residential dwelling", the term used in the permitted uses, for example, in the R-1 zoning.

29 The definition of "two family residence" refers to two "dwellings" in a principal building. "Dwelling" is defined as a self contained set of habitable rooms in a principal building, containing a set of cooking facilities (which makes relevant the proposed second kitchen in the house). The term focuses on the physical structure, unlike the term "residence", which refers to the use of a building as a dwelling, as well as the dwelling itself. I accept the submission on behalf of the Town that the proposed bed and breakfast, with the second set of kitchen facilities, does fall within the definition "two family residence". It would have two self contained sets of habitable rooms in the same building, each with cooking facilities, sleeping facilities and sanitary facilities. With respect to it being a "family" residence, it would fall within the extended definition of "family", which includes "not more than five unrelated persons sharing one dwelling".

30 I also do not accept the submission that the term "residence" relates only to the use of the structure as a residence on a permanent or a semi-permanent basis. That is because the definition of "residence" in the bylaw refers not only to the use of the building, but also to the dwelling occupied or used. The definition of "dwelling", in turn, refers to the physical structure of "a self contained set of habitable rooms ..."

31 The more difficult issue is whether, notwithstanding the fact that it would be a "two family residence", it is nevertheless a permitted use as a "bed and breakfast" in the R-1-A zoning. In that regard, I accept the submission of counsel for the petitioner that the four permitted uses set out in zoning bylaw No. 722-2001, s. 5.1.A.1, must be regarded as separate and distinct uses. Clearly that is the case with "park and playground", which involves a use distinct from that of "single family residential". However, I find that there can be some overlap in uses. For example, "home occupation" allows use of the property for an occupation where that occupation is accessory to the use of the dwelling for residential purposes. Use as both "single family residential" and "home occupation" is not inconsistent. Similarly, a bed and breakfast which did not contain a second set of cooking facilities would not fall within the definition "two family residence", and would not be inconsistent with use of the property as "single family residential". The difficulty arises when the building containing the bed and breakfast contains more than one "dwelling", as defined in the bylaw. It would not matter, in that regard, if there were two "dwellings", as in the building proposed here, or 20. If I accept the submission on behalf of the petitioner, both would qualify as a "bed and breakfast", and thus would be permitted uses in R-1-A zoning. I consider that to be contrary to the intention of Council as expressed in the bylaw. The bylaw created a new zone: "Single Family Residential (R-1-A) Zone", which

was intended to be more restricted in its permitted uses than the urban residential zone. It did not allow, for example, "lodging and boarding houses". I consider that a bed and breakfast, which could contain 20 units, to be inconsistent with that intention. I thus conclude that, in order to qualify as a "bed and breakfast" in R-1-A zoning, the building must not have more than one "dwelling". If the petitioner installs the additional kitchen facilities, there will be two "dwellings", as defined in the bylaw, contained within the building. I thus find such a use would be in breach of the zoning bylaw.

32 This situation is different from the situation in *Neilson v. Langley, supra*, in that that case involved the operation of a restaurant within a golf club. There was nothing inconsistent in the operation of a restaurant within the permitted use as a golf club. In this case, with use as a bed and breakfast, if the building contained more than one dwelling, that would be inconsistent with the restricted permitted uses in the single family residential zone.

33 I do not consider the "expressed desire of the Town to develop tourism" to be helpful in interpreting the permitted uses in bylaw No. 722-2001. Apart from the fact that the revitalization strategy referred to by Mr. Haberman was issued in 2005, and this bylaw was passed in 2001, the bylaw appears intended to create a zone with more restrictive uses, rather than to expand tourist-related facilities.

VII. Relief Sought by Respondent

34 This proceeding was brought by way of petition. In its Response, the Town not only opposes the granting of the relief set out in the petition, but also seeks relief of its own. I appreciate that the reason for doing so is to avoid a multiplicity of proceedings as a result of the Town issuing its own petition. However, there is no provision either in Rule 10 or in the form of Response, Form 124, enabling a respondent to file what is, in effect, a counter-petition. There is thus an issue regarding the jurisdiction of this court to grant the orders sought. It may be, without deciding the issue, that there is jurisdiction to grant the relief sought by the respondent pursuant to s. 10 of the *Law and Equity Act, R.S.B.C. 1996, chapter 253*.

35 Apart from that, I consider the application for the relief sought by the Town to be premature. I accept the submission of counsel for the petitioner that it brought the petition in order to obtain clarification of the issue, so that it was not in a situation of being in breach of the bylaw. In that regard, while the evidence establishes that the petitioner has installed an electrical outlet in the "mud room", and has kitchen fittings ready to be installed, those fittings have not yet been installed. Further, an occupancy permit has not yet been issued, and the house is not occupied. I thus find that, at present, the petitioner is not in breach of the zoning bylaw. The application for a declaration that it is in breach of that bylaw is thus dismissed. Similarly, an order prohibiting occupation of the dwelling on the land until the occupancy permit has been issued is premature, as there is no evidence of the intention of the petitioner to do so. In fact, the evidence is to the contrary, that the property has remained vacant since its substantial completion in October, 2007, because the occupancy permit has not been issued.

36 With respect to the alleged breach of the building bylaw, I accept that the petitioner did submit revised plans showing a "mud room" when it, in fact, intended to install kitchen facilities. However, in applying for the occupancy permit, by the letter from its counsel dated February 7, 2008, the petitioner was forthright that the application was made on the basis that the kitchen would be installed in the near future. Thus, while there may be a technical breach of the building bylaw, I am not convinced that the order sought should be granted at this time. If the petitioner continues with the installation of the kitchen facilities, or occupies the premises before issuance of the occupancy permit, then the Town will have liberty to apply for the appropriate orders.

VIII. Conclusion

37 As I find that a building with a bed and breakfast which contains more than one dwelling, if located within the single family residential zone, would be in breach of that zoning, the petition will be dismissed.

38 Notwithstanding that the Town did not obtain the relief sought in its Response, it was successful in the primary issue, and thus will be entitled to its costs.

A.F. WILSON J.

* * * * *

Corrigendum

Released: July 22, 2008

Revised Judgment

Please be advised that the attached Reasons for Judgment of Mr. Justice A.F. Wilson dated July 21, 2008 have been edited.

* On the front page, the title of the presiding judge should read:

The Honourable ***Mr. Justice*** A.F. Wilson

End of Document

 **Neilson v. Langley (Township)**

British Columbia Judgments

British Columbia Court of Appeal

Vancouver, British Columbia

McFarlane, Hinkson and Craig JJ.A.

Judgment: April 8, 1982.

Vancouver Registry No. CA800956

[1982] B.C.J. No. 2313 | 134 D.L.R. (3d) 550 | 14 A.C.W.S. (2d) 24

Between Dr. James Mitchell Neilson, Margaret Wendy Neilson and Constance Ballentine, petitioners (respondents), and The Corporation of the Township of Langley, and Peter Jarvis, Chief Building Inspector, respondents (appellants)

(25 paras.)

Counsel

D.G.S. Rae and W.S. Martin, for the appellants. J.B. Baker, for the respondents.

The judgment of the Court was delivered by

HINKSON J.A.

1 This is an appeal from the decision of a judge in Chambers declaring that a certain permit issued by the building inspector of the Corporation of the Township of Langley be declared null and void as contravening the provisions of the Township's "zoning by-law, 1970" No. 1302 as amended.

2 The Fort Golf and Country Club (the "Club") operates the Fort Langley Golf Course within the Township of Langley. The golf course has approximately 600 members and is open to non members.

3 In January 1979 Tavistock Holdings Ltd. joined with the Club to purchase property adjacent to the golf course. The Club is the majority shareholder in Tavistock Holdings Ltd. Situate on the property was an 11,000 square foot house. The Club and Tavistock Holdings Ltd. intended, in acquiring the property, to convert it into a recreational club for the club members and the public including such facilities as a heated swimming pool, a sauna room, a snooker room, racquetball court, squash court, tennis courts, a lounge and a restaurant. Tavistock and the Club intended to contract out the operation of the restaurant to a private individual.

4 The Club already operates a restaurant on the present Club premises which provides restaurant services to golfers, whether they be members of the Club or members of the public.

5 The petitioners are residents of the neighbourhood adjacent to the property described in these proceedings. They do not, apparently, object to the operation of the present restaurant on the Club premises, but they object particularly to the proposed restaurant contending that it amounts to a commercial use of the property which contravenes the provisions of the zoning by-law.

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6 In order to resolve the issue raised on this appeal it is necessary to consider the provisions of the zoning by-law in question. Section 7 provides:

7. The whole of the area within the boundaries of The Township of Langley with the exception of the areas defined by the "Fort Langley Zoning By-Law, 1948" No. 677, the "Aldergrove Zoning By-Law, 1962" No. 1065, The "Murrayville Zoning By-Law, 1950" No. 720, and the "Brookwood-Belmont Zoning By-Law, 1970" No. 1304, and all that portion of the North-East Quarter (N.E. 1/4) of Section Ten (10) of Township Eight (b) as presently zoned by By-Law No. 658, is hereby divided into zones in accordance with the "Langley Subdivision Control By-Law, 1957" No. 907 and amendments thereto, with the following zone designations and short form equivalents:

Short Form	Zoning Designations
UR - 1	Urban District 1 being the half acre lot minimum area.
UR - 2	Urban District 2 being the one acre lot to two and one-half acre lot minimum area.
RR - 1	Rural District 1 being the five acre lot minimum area.
RR - 2	Rural District 2 being the ten acre lot minimum area.
RR - 3	Rural District 3 being the twenty acre lot minimum area.
AP - 1	Airport Zone 1 being the areas marked on the plan hereto annexed marked "C".

7 Section 9 of the by-law provides:

- (a) No residential use other than the following shall be permitted in the zones indicated opposite thereto hereunder, subject to all other pertinent By-Laws, and regulations:...

Thereafter various types of residential use are permitted within the designated zones.

8 Section 9(c) of the by-law provides:

- (c) No use other than the following shall be permitted in the whole of the area within the boundaries of the Township of Langley,...in the zones indicated opposite thereto hereunder appearing:...

9 Thereafter appears a list of uses permitted within the designated zones. No commercial use is permitted in any of the zones designated by section 7 of the by-law.

10 The land in question is zoned RR-1 which is described as "Rural District 1 being the five acre lot minimum area". A golf course is a permitted use within that zoning designation.

11 Section 13 of the by-law provides:

13. Off street parking spaces and off-street loading spaces shall be provided by the owners/and occupiers of any building or structure within any zone affected by this By-law in accordance with

Neilson v. Langley (Township)

the requirements indicated in the following table as applicable to the respective zone in which such building or structure is situate.

Included in the table that follows is a description as follows:

Restaurant and Cafes --	1 space per employee plus 1 space for each four seats plus 1 space for each 100 square feet of dining area.
-------------------------	--

12 I conclude that some of the uses appearing in that table have reference to the exceptions contained in section 7 of the by-law.

13 Schedule "A" to the by-law contains the interpretation of certain terms appearing in the by-law. The term "commercial use" is given the following meaning:

COMMERCIAL USE --

means a use providing for the selling of goods and services, for the servicing and repair of goods, or for commercial office functions: includes retail sales, wholesaling incidental to retail sales, commercial education and instruction, and medical services, indoor commercial recreation and entertainment services, household services and all associated repairs, other personal and non-personal services, and administrative, commercial and professional offices; a Service Station use, and a Tourist Accommodation Use, (excludes manufacturing, salvaging, warehousing, the selling, servicing, and repair of industrial and agricultural machinery).

14 The Chambers judge made reference to the zoning by-law and concluded:

Clause 9(c) forbids or allows the uses of land down the left hand column: a golf course is permitted in all the residential areas; a commercial use in none of them. The restaurant would be a commercial use if it caters to the public at large, in my opinion.

15 Earlier in his reasons for judgment the Chambers judge had made reference to the definition of "commercial use". Counsel for the respondents contended that the restaurant being considered was to be used for the selling of goods and services within the foregoing definition and was therefore a commercial use. With great respect, I am not persuaded that the public restaurant in question falls within the definition of commercial use as contained in the by-law.

16 The question still remains as to whether or not a restaurant owned by a golf club and operated in conjunction with the golf course can be regarded as part of a golf course when the latter is a permitted use within the zone in which it is situate.

17 The Legislature has delegated to the Municipality the power to create zones and to control the use to which land and buildings within those zones may be put. Pursuant to the power delegated to it the appellant Municipality has passed the zoning by-law which requires interpretation in these proceedings. The Chambers judge made reference to two lines of authority concerning the interpretation of zoning by-laws: the restrictive interpretation and the liberal or remedial interpretation. In this connection reference was made to the decision of the Supreme Court of Canada in *Bayshore Shopping Centre Ltd. v. Township of Nepean* (1972) 25 D.L.R. (3d) 443. Spence J., delivering the judgment of the court, made reference to these different approaches to the interpretation of zoning by-laws and said at p.449:

I find little assistance from decisions which purport to indicate the philosophic attitude which the Court should adopt in construing zoning by-laws.

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18 In the present case, in my opinion, it is necessary to interpret the provisions of the zoning by-law not on a restrictive nor on a liberal approach but rather with a view to giving effect to the intention of the municipal council as expressed in the by-law upon a reasonable basis that will accomplish that purpose.

19 Approaching the matter in that way I return to a consideration of the provisions of the by-law. While many of the terms contained in section 9(c) of the by-law dealing with the uses permitted in the zones established by the by-law are defined in Schedule "A" to the by-law, no definition of the designation "golf course" is contained in that Schedule. The effect of defining those terms in that Schedule is to restrict the meaning that might otherwise be attributed to such terms. No such restriction has been imposed upon the meaning of "golf course". Therefore I conclude that "golf course" was intended to have a broad meaning and that anything that can be regarded as reasonably coming within the operation of a golf course is a permitted use. Thus no objection was taken by the petitioners to the recreational facilities to be provided on the property which is the subject of these proceedings.

20 In my opinion, a golf club which operates a golf course open to members of the club and to the general public and which in conjunction with the operation of the golf club provides a restaurant may reasonably and naturally be said to operate the restaurant in question as a part of the operation of the golf course. Therefore I am unable to accept the conclusion of the Chambers judge that "...this case is one of a commercial incursion into a residential area, and can only be justified by a finding that a restaurant frequented by the public in addition to club members is 'accessory' to a golf course".

21 The reason for the reference to the term "accessory" is because certain permitted uses of land and buildings under the zoning by-law include "accessory" uses of those designated uses. Such accessory uses are defined in Schedule "A". Reference was also made to an amendment to the by-law which permitted an "ancillary" use. I can find no justification for applying the reference in the by-law to the terms "accessory" and "ancillary" so as to restrict the natural meaning of the unqualified designation "golf course".

22 On or about June 23, 1980 the Municipal Building Inspector issued a building permit to Tavistock Holdings Ltd. to proceed with the necessary alterations to complete the proposed restaurant facility. In order to obtain that building permit Tavistock Holdings Ltd. agreed to grant a restrictive covenant with the Corporation of the Township of Langley whereby Tavistock covenanted that the building in which the restaurant was to be located would not be used for any purpose other than single family residential until such time as Tavistock had consolidated the land with the golf course. The restrictive covenant which was dated the 24th day of June 1980 contained the following recital:

AND WHEREAS it wishes to build and operate a recreational facility including a restaurant on the land;

AND WHEREAS the zoning of the land does not permit such uses;

AND WHEREAS the adjoining lands are operated as a golf course which is permitted use;

AND WHEREAS the Municipality has agreed to grant a building permit to allow construction to proceed on the building on the term that the Grantor consolidate its land with the golf course:...

In my opinion the Municipality was in error in accepting the recital in the restrictive covenant that the zoning of the land did not permit the operation of a restaurant on the land. In any event no issue was raised in the present proceedings that in some way the Municipality was estopped by virtue of that declaration. Nor could the present petitioners raise such an objection.

23 In the result I conclude that the proposed use was a permitted use under the zoning by-law. Thus the building permit was properly granted and ought not to have been quashed by the Chambers judge.

24 A second argument was addressed to the court on the issue as to whether or not the Chambers judge had jurisdiction to quash the building permit in the event he concluded that the proposed use offended the terms of the zoning by-law. The Chambers judge concluded that he had power to do so. While it is not necessary to deal with this submission in detail because of the conclusion I have reached on the first ground I would add that on the second ground I am of the view that the Chambers judge reached the correct conclusion.

25 In the result I would allow the appeal.

HINKSON J.A.

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