

## **REPORTS OF COMMITTEES**

### **2. Committee of the Whole – September 21, 2017**

#### **1. Development Permit with Variance Application No. 00046, No. 00047 and No. 00048 for 1032, 1038, and 1044 Harling Lane (Fairfield)**

##### **Motion:**

It was moved by Councillor Coleman, seconded by Councillor Madoff, that Council after giving notice and allowing an opportunity for public comment at a meeting of Council, consider the following motions:

##### **1032 Harling Lane**

"That Council authorize the issuance of Development Permit with Variances Application No. 00046 for 1032 Harling Lane in accordance with:

1. Plans date stamped July 21, 2017
2. Development meeting all Zoning Regulation Bylaw requirements, except for the following variances:
  - i. reduce the front yard setback from 18m to 17.30m for an outdoor feature (arbour)
  - ii. reduce the separation distance from 2.4m to 1.58m for the arbour from the dwelling.
3. The Development Permit lapsing two years from the date of this resolution."

##### **1038 Harling Lane**

"That Council authorize the issuance of Development Permit Application with Variances No. 00047 for 1038 Harling Lane in accordance with:

1. Plans date stamped July 21, 2017
2. Development meeting all Zoning Regulation Bylaw requirements, except for the following variances:
  - i. reduce the front yard setback from 18m to 17.20m for an outdoor feature
  - ii. reduce the separation distance from 2.4m to 1.72m for the arbour from the dwelling.
3. The Development Permit lapsing two years from the date of this resolution."

##### **1044 Harling Lane**

"That Council authorize the issuance of Development Permit Application with Variances. No. 00048 for 1044 Harling Lane in accordance with:

1. Plans date stamped July 21, 2017.
2. Development meeting all Zoning Regulation Bylaw requirements, except for the following variances:
  - i. reduce the front yard setback from 18m to 17.27m
  - ii. reduce the separation distance from 2.4m to 1.68m for the arbour from the dwelling.
3. The Development Permit lapsing two years from the date of this resolution.

**Carried Unanimously**

### 3. CONSENT AGENDA

**Motion:** It was moved by Councillor Coleman, seconded by Councillor Alto, that the following items be approved without further debate:

#### 3.1 Development Permit with Variance Application No. 00046, No. 00047 and No. 00048 for 1032, 1038, and 1044 Harling Lane (Fairfield)

Committee received a report dated September 7, 2017, from the Director of Sustainable Planning and Community Development regarding an application to legalize the construction of an outdoor feature (arbour) constructed on each lot.

**Motion:** It was moved by Councillor Coleman, seconded by Councillor Alto, that Council after giving notice and allowing an opportunity for public comment at a meeting of Council, consider the following motions:

##### 1032 Harling Lane

"That Council authorize the issuance of Development Permit with Variances Application No. 00046 for 1032 Harling Lane in accordance with:

1. Plans date stamped July 21, 2017
2. Development meeting all Zoning Regulation Bylaw requirements, except for the following variances:
  - i. reduce the front yard setback from 18m to 17.30m for an outdoor feature (arbour)
  - ii. reduce the separation distance from 2.4m to 1.58m for the arbour from the dwelling.
3. The Development Permit lapsing two years from the date of this resolution."

##### 1038 Harling Lane

"That Council authorize the issuance of Development Permit Application with Variances No. 00047 for 1038 Harling Lane in accordance with:

1. Plans date stamped July 21, 2017
2. Development meeting all Zoning Regulation Bylaw requirements, except for the following variances:
  - i. reduce the front yard setback from 18m to 17.20m for an outdoor feature
  - ii. reduce the separation distance from 2.4m to 1.72m for the arbour from the dwelling.
3. The Development Permit lapsing two years from the date of this resolution."

##### 1044 Harling Lane

"That Council authorize the issuance of Development Permit Application with Variances. No. 00048 for 1044 Harling Lane in accordance with:

1. Plans date stamped July 21, 2017.
2. Development meeting all Zoning Regulation Bylaw requirements, except for the following variances:
  - i. reduce the front yard setback from 18m to 17.27m
  - ii. reduce the separation distance from 2.4m to 1.68m for the arbour from the dwelling.
3. The Development Permit lapsing two years from the date of this resolution."

CARRIED UNANIMOUSLY 17/COTW



## Committee of the Whole Report

For the Meeting of September 21, 2017

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**To:** Committee of the Whole **Date:** September 7, 2017

**From:** Jonathan Tinney, Director, Sustainable Planning and Community Development

**Subject:** Development Permit with Variances Application Nos. 00046 (1032 Harling Lane), 00047 (1038 Harling Lane) and 00048 (1044 Harling Lane)

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### RECOMMENDATIONS

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

#### 1032 Harling Lane

"That Council authorize the issuance of Development Permit with Variances Application No. 00046 for 1032 Harling Lane in accordance with:

1. Plans date stamped July 21, 2017
2. Development meeting all *Zoning Regulation Bylaw* requirements, except for the following variances:
  - i. reduce the front yard setback from 18m to 17.30m for an outdoor feature (arbour)
  - ii. reduce the separation distance from 2.4m to 1.58m for the arbour from the dwelling.
3. The Development Permit lapsing two years from the date of this resolution."

#### 1038 Harling Lane

"That Council authorize the issuance of Development Permit Application with Variances No. 00047 for 1038 Harling Lane in accordance with:

1. Plans date stamped July 21, 2017
2. Development meeting all *Zoning Regulation Bylaw* requirements, except for the following variances:
  - i. reduce the front yard setback from 18m to 17.20m for an outdoor feature (arbour)
  - ii. reduce the separation distance from 2.4m to 1.72m for the arbour from the dwelling.
3. The Development Permit lapsing two years from the date of this resolution."

### **1044 Harling Lane**

"That Council authorize the issuance of Development Permit Application with Variances No. 00048 for 1044 Harling Lane in accordance with:

1. Plans date stamped July 21, 2017.
2. Development meeting all *Zoning Regulation Bylaw* requirements, except for the following variances:
  - iii. reduce the front yard setback from 18m to 17.27m
  - iv. reduce the separation distance from 2.4m to 1.68m for the arbour from the dwelling.
3. The Development Permit lapsing two years from the date of this resolution."

### **LEGISLATIVE AUTHORITY**

In accordance with Section 489 of the *Local Government Act*, Council may issue a Development Permit in accordance with the applicable guidelines specified in the *Official Community Plan 2012 (OCP)*. A Development Permit may vary or supplement the *Zoning Regulation Bylaw* but may not vary the use or density of the land from that specified in the Bylaw.

Pursuant to Section 491 of the *Local Government Act*, where the purpose of the designation is the establishment of objectives for the form and character of intensive residential development, a Development Permit may include requirements respecting the character of the development including landscaping, and the siting, form, exterior design and finish of buildings and other structures.

### **EXECUTIVE SUMMARY**

The purpose of this report is to present Council with information, analysis and recommendations for Development Permit with Variance Applications for the properties located at 1032, 1038 and 1044 Harling Lane. The proposal is to legalize the construction of an outdoor feature (arbour) constructed on each lot, which require revisions to the approved landscape plans, site plans, a variance from the setback from the front property line, and a variance from the required separation distance between the arbour and the dwelling unit.

The following points were considered in assessing this Application:

- the landscape changes are generally consistent with the *Small Lot House Design Guidelines*
- the variances to decrease the setback requirement from the front lot line and decrease the separation distance between the arbour and the dwelling on each lot are considered to have minor impacts on neighbouring properties and are recommended as being supportable.

### **BACKGROUND**

#### **Description of Proposal**

Small lot houses were constructed on each of the subject properties, and were completed in 2017. A Development Permit for each of these small lot houses was approved in June 2015, which included landscape plans. Upon final inspection of the landscaping, it was noted by Staff that there were a number of changes to the approved plans. As most of these changes were minor in nature, they have been dealt with through the Delegated Development Permit process.

However, an arbour on each small lot was also constructed and were not included on the original DP plans, which require variances from the *Zoning Regulation Bylaw*. The General Regulations of the *Zoning Regulation Bylaw* (Section 40) state that site coverage, setbacks and height requirement for accessory buildings apply to outdoor features over 0.6m in height from natural grade.

The Application would allow changes to the approved landscape plan for an arbour on each of the small lots, with the following variances:

- decrease the setback requirement for each arbour from the front lot line
- decrease the separation distance between each arbour and dwelling unit.

### **Sustainability Features**

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

### **Active Transportation Impacts**

The applicant has not identified any active transportation impacts associated with this Application.

### **Public Realm Improvements**

No public realm improvements are proposed in association with this Development Permit with Variances Application.

### **Accessibility Impact Statement**

The British Columbia Building Code regulates accessibility as it pertains to buildings. The rear yard accessibility is not affected by the placement of the arbours.

### **Existing Site Development and Development Potential**

The three small lots on Harling Lane were part of a five lot subdivision approved in 2012. The houses on Harling Lane were completed in 2017. As these lots are subject to the regulations in the R1-S2 Zone, Restricted Small Lot (Two Storey) District, no further development potential exists.

### **Data Table**

As these Applications are for the outdoor features only (arbour), the data table references the requirements for the outdoor feature. The other requirements for the dwelling unit have been reviewed through the original Development Permit.

The following data table compares the proposal with the applicable regulations for outdoor features within the R1-S2 Zone. An asterisk is used to identify where the proposal is less stringent than the regulations.

Zoning Criteria for Outdoor Features	1032 Harling Lane	1038 Harling Lane	1044 Harling Lane	Zone Standard R1-S2
Location	Rear yard	Rear yard	Rear yard	Rear yard
Rear yard site coverage - maximum (%)	19.90	23.27	18.87	30
Separation distance between an accessory building and dwelling unit - minimum (m)	1.58*	1.72*	1.68*	2.40
Height – maximum (m)	2.90	2.90	2.90	3.50
<b>Setbacks</b>				
front (m)	17.30*	17.2*	17.27*	18
rear (m)	2.10	1.52	2.03	-
side (east) (m)	1.32	1.37	4.57	-
side (west) (m)	4.96	4.57	1.37	-

### Community Consultation

Consistent with the *Community Association Land Use Committee (CALUC) Procedures for Processing Rezoning and Variances Applications*, on August 3, 2017, the Application was referred for a 30-day comment period to the Fairfield & Gonzales CALUC. At the time of writing this report, a letter from the CALUC had not been received.

The Applications propose variances; therefore, in accordance with the City's *Land Use Procedures Bylaw*, they require notice, sign posting and a meeting of Council to consider the variances.

### ANALYSIS

#### Development Permit Area and Design Guidelines

As the subject lots have been developed as small lots, the properties are subject to Development Permit Area 15A: Intensive Residential – Small Lot. The primary design guidelines applicable to the subject properties are the *Small Lot House Design Guidelines*.

These *Guidelines* provide guidance on landscape structures in the rear yard, with particular emphasis on privacy and overshadowing. The inclusion of the arbours provide the future occupants of the three small lot houses with an additional privacy screen, both between the units, and from the adjacent apartment buildings (1005 and 1025 Pakington Street) which have some windows with potential overlook into the rear yards. Due to a grade change from Pakington Street to Harling Lane (sloping down to Harling Lane), the arbours create no overshadowing or visual impact on the neighbouring properties to the north. The arbours are not visible from Harling Lane, and, as such, do not contribute to any visual impact to the views from the street.

The *Guidelines* also suggest neighbours be consulted in working out the details of rear yard landscaping, with the discussion focussing on disruption of views and sunlight while balancing the social interaction with neighbours. As these Applications will proceed to an opportunity for public comment, the neighbours will be afforded input.

The arbours are constructed of cedar and compliment the fencing. While the arbours are a dominant landscape feature in the rear yards, there are no solid elements (open rafters) and hence do not constitute floor area. There are slats of wood on the sides to provide a small amount of privacy between the small lot rear yards. Over time, vegetation growing on the slats will make the arbours less prominent and will provide additional privacy for the users.

### **Regulatory Considerations**

The placement of the arbours requires two variances for each property. First, the placement of accessory buildings and outdoor features are required to be 18m from the front lot. The intent of this regulation is to minimize the visual impact of any accessory buildings or structures (including outdoor features) from the streetscape. As the arbours are only marginally visible from the street and do not exceed the height regulations for these structures, this is not a foreseeable issue.

The second variance is for the separation distance between the arbours and the dwelling. The requirement is for a separation distance of 2.4m. The arbours average 1.6m between the dwellings and the arbours. This separation distance regulation is based on Building Code requirements for minimum distances between two buildings for fire safety. As the arbours are not structures with enclosed floor area, and therefore, do not require a Building Permit, the variances requested could be considered supportable.

### **Tree Preservation Bylaw and Urban Forest Master Plan**

There are no Tree Preservation Bylaw impacts with these Applications.

### **CONCLUSIONS**

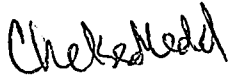
The arbors constructed in the rear yard of each of the small lot houses on Harling Lane are in keeping with the spirit of the landscaping provisions of the *Small Lot House Design Guidelines*.

Generally, the visual and privacy impacts on the adjacent neighbours are limited, and the arbors will foster the use of the rear yards as they increase the privacy for the occupants. The variance relaxation from the front lot line and the variance relaxation for the separation distance between the arbors and the dwellings units, and Staff recommend that Council consider supporting this application.

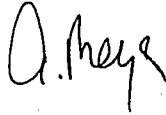
## ALTERNATE MOTION

That Council decline Development Permit Application No. 00046, 00047 and 00048 for the properties located at 1032, 1038 and 1044 Harling Lane.

Respectfully submitted,



Chelsea Medd, Planner  
Sustainable Planning and Community  
Development Department



Jonathan Tinney, Director  
Sustainable Planning and Community  
Development Department

Report accepted and recommended by the City Manager.

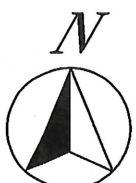


Date: Sept. 14, 2017

### List of Attachments

- Attachment A: Subject Map
- Attachment B: Aerial Map
- Attachment C: Plans dated/date stamped July 21, 2017
- Attachment D: Letter from applicant to Mayor and Council date stamped July 21, 2017

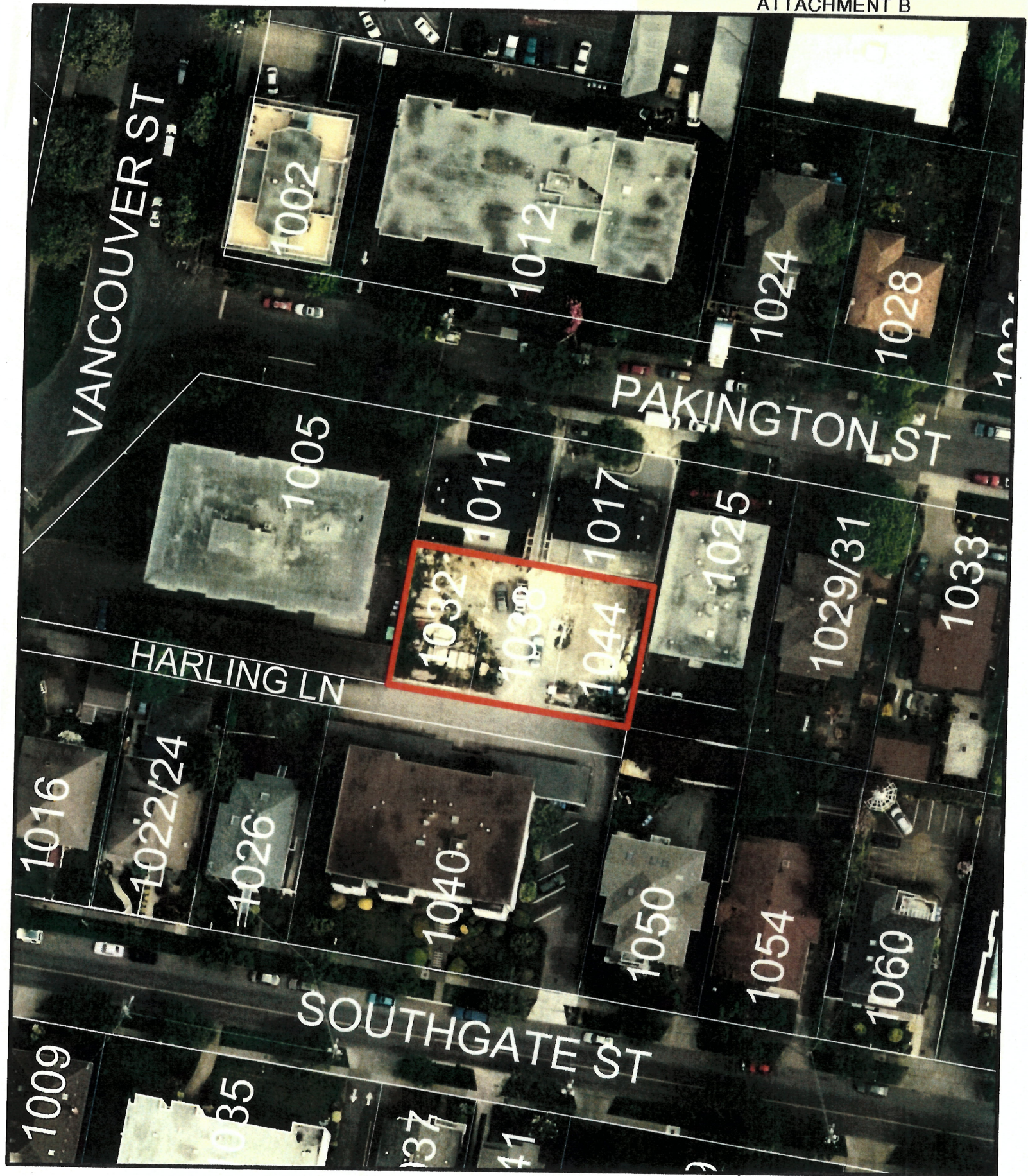




1032, 1038 & 1044 Harling Lane  
 Development Permit with Variance  
 DPV #00046, #00047 & #00048



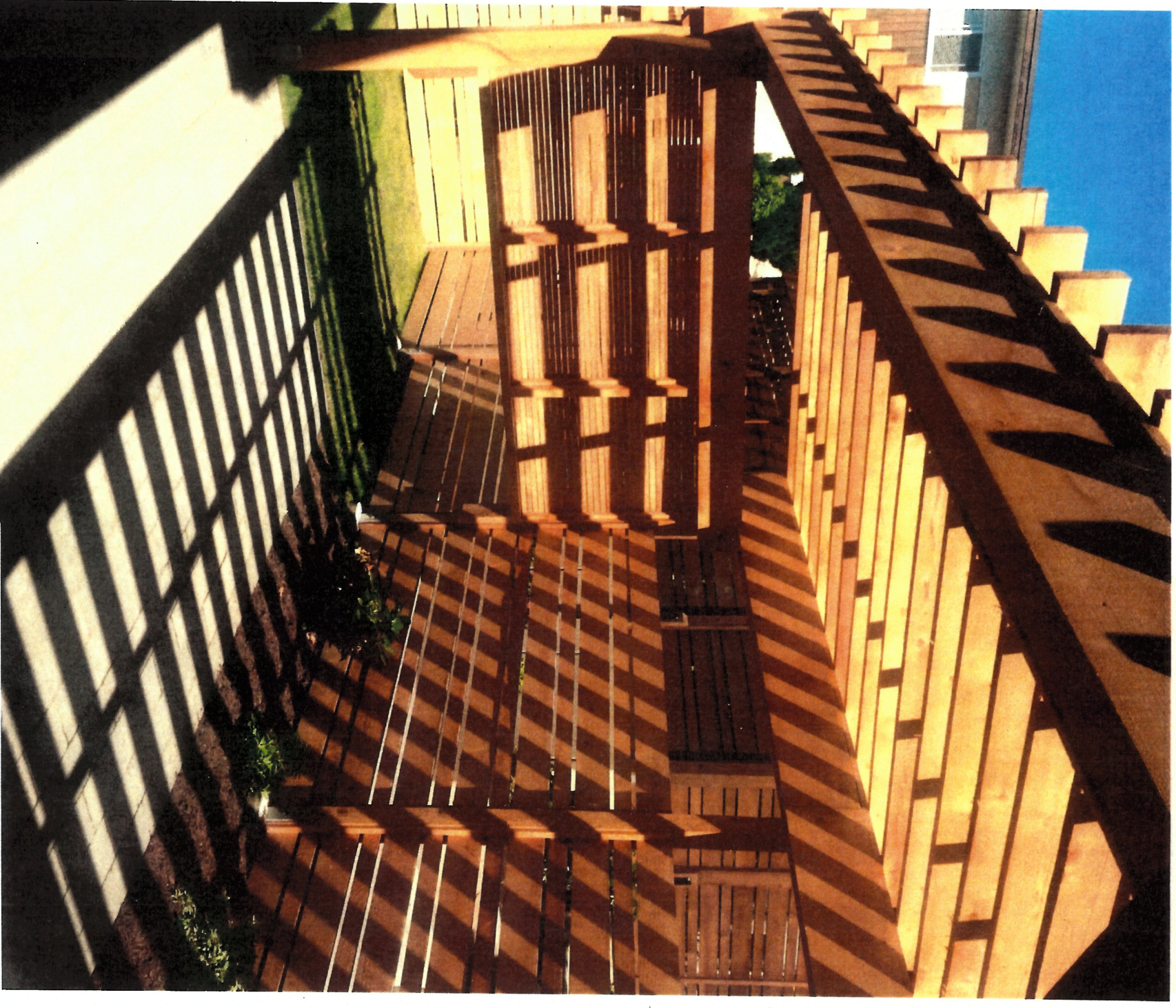




1032, 1038 & 1044 Harling Lane  
 Development Permit with Variance  
 DPV #00046, #00047 & #00048



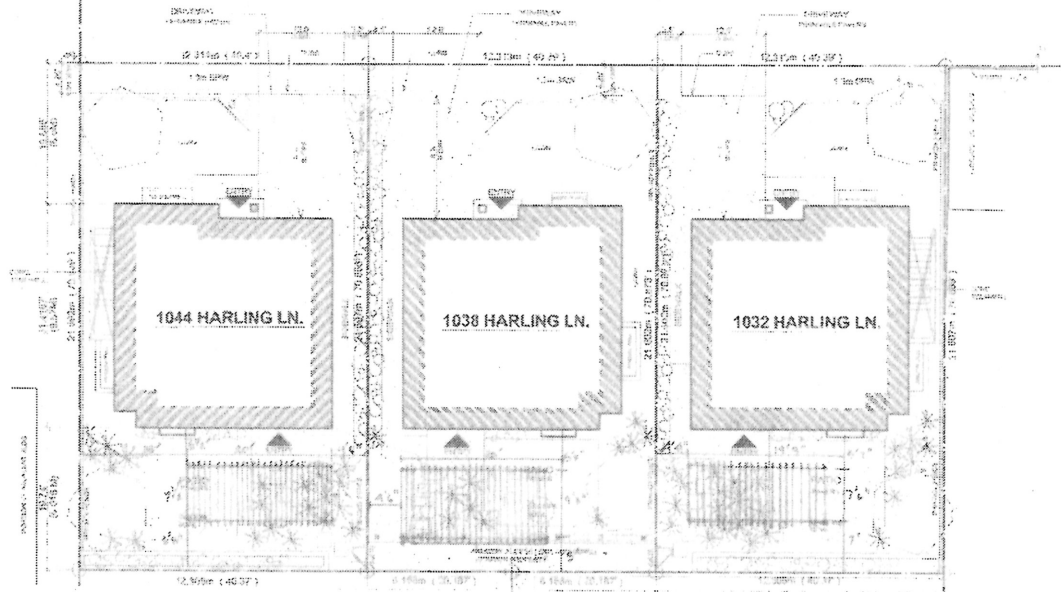




Typical arbour



# HARLING LANE



NO.	DESCRIPTION	QTY	UNIT	PRICE	TOTAL
1	Grass seed	100	kg	1.50	150.00
2	Grass seed	100	kg	1.50	150.00
3	Grass seed	100	kg	1.50	150.00
4	Grass seed	100	kg	1.50	150.00
5	Grass seed	100	kg	1.50	150.00
6	Grass seed	100	kg	1.50	150.00
7	Grass seed	100	kg	1.50	150.00
8	Grass seed	100	kg	1.50	150.00
9	Grass seed	100	kg	1.50	150.00
10	Grass seed	100	kg	1.50	150.00

NO.	DESCRIPTION	QTY	UNIT	PRICE	TOTAL
1	Grass seed	100	kg	1.50	150.00
2	Grass seed	100	kg	1.50	150.00
3	Grass seed	100	kg	1.50	150.00
4	Grass seed	100	kg	1.50	150.00
5	Grass seed	100	kg	1.50	150.00
6	Grass seed	100	kg	1.50	150.00
7	Grass seed	100	kg	1.50	150.00
8	Grass seed	100	kg	1.50	150.00
9	Grass seed	100	kg	1.50	150.00
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5	Grass seed	100	kg	1.50	150.00
6	Grass seed	100	kg	1.50	150.00
7	Grass seed	100	kg	1.50	150.00
8	Grass seed	100	kg	1.50	150.00
9	Grass seed	100	kg	1.50	150.00
10	Grass seed	100	kg	1.50	150.00

## LANDSCAPE LEDGEND

- MEDIUM TO LARGE SIZE SHRUBS  
(SPECIES TO BE DETERMINED)
- MIXED FLOWERING PLANTING  
(SPECIES TO BE DETERMINED)
- LOW LYING GROUND COVER  
(SPECIES TO BE DETERMINED)
- LARGE (MEDIUM SIZE) DECIDUOUS TREE  
(SPECIES TO BE DETERMINED)

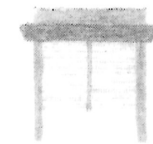
ALL SPECIFIED SPACING, SIZES AND QUANTITIES ARE TO BE DETERMINED BY LANDSCAPER (LANDSCAPE DESIGNER AND CHAIRMAN AT TIME OF LANDSCAPE)

Screening Elevation



1/4" = 1' - 0"

Screening Elevation



1/4" = 1' - 0"

**PROPOSED SINGLE FAMILY DWELLING**  
1032, 1038 AND 1044 HARLING LANE, VICTORIA B.C.



PROJECT: PROPOSED SINGLE FAMILY DWELLING, 1032, 1038 AND 1044 HARLING LANE, VICTORIA B.C.  
DATE: 10/10/2010  
DRAWN BY: J. BROWN  
CHECKED BY: J. BROWN  
SCALE: AS SHOWN

**BLACKLINE**  
HOME DESIGN PH. FAX: 250-480-7301

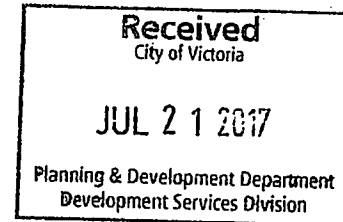
A5

July 7, 2014

City of Victoria  
1 Centennial Square  
Victoria, BC

Attention: Mayor and Council

Re: Development Permit for Landscape Screen



In July 2012, Victoria city council formally adopted an Official Community Plan ("OCP").

The first stated criteria for the development of the OCP by Victoria was to meet the provincially legislated requirements for an OCP. In that, both the Victoria council and city bureaucracy failed miserably.

The creation of city-wide Development Permit Areas ("DPA"s) and the associated zoning regulations were never disclosed to property owners or residents during the so-called "public consultation period" of the OCP. While approximately 40% of the entire content of the OCP relates to DPA's and their zoning implications, there was no mention of their existence in the OCP until a few weeks before the adoption of the OCP.

To meet the legislated requirements of an OCP, the city then conducted a perfunctory and harried "consultation process" over a few days with select chosen parties with the only public notice being a mention on the cities website and perhaps a notice in the local paper. It should be noted that no less an authority than the Supreme Court of Canada has adjudicated that this type of notice as being insufficient.

Certainly the legitimacy and perhaps legality of the OCP is thus suspect.

The exclusion of the residents of Victoria from the legislated requirement for consultation should be contrasted to neighboring jurisdictions that provided their residents with open and honest disclosure during their OCP processes. Other municipal jurisdictions showcased the DPA component of their OCP while Victoria council and staff chose to hide it. The implications of this ill-advised approach are now beginning to filter to Victoria's residents and property owners whose properties were captured under the OCP.

At July 22, 2017 the city will charge a \$7500 fee to initiate, in this instance, a six-month process to consider the suitability of 3 landscape screens that cost a total of \$12,000 in both third party labor and materials to build. As the property owner I am also required to spend 40-60 hours to meet the submission requirements that run 6 pages and include nine separate plans plus a digital submission.

The rates charged for a DPA are punitive. The reason their inclusion in the OCP was hidden from the public becomes apparent. This is in addition to Victoria already having the highest per capita property taxes of any city in BC (25% higher than Vancouver).

Further to both emails and meetings with Alison Meyer and Chelsea Medd of the planning department, I have been requested/required to submit a Development Permit application for 1032, 1038 and 1044 Harling Lane.

City staff are currently withholding a \$36,000 landscape bond refund due me until such time as council deals with the issue and suitability of this application for Landscape Screens (a defined term in city bylaws) as they are extra items to the previously approved, cash bonded and now completed landscaping development permit.

The above-mentioned individuals have advised me in writing, the city is not obligated to refund my landscape bond for cash bonded work already performed unless and until this application is dealt with by city council.

The Landscape Screens in question could be classified as either a "Pergola" or an "Arbour". The classification seems to favour Arbour as Pergolas can have solid roofs and are permanently fixed while the Arbours in question have open roofs (cross supports only for rigidity and for plant growth) and are primarily secured by bolts to surface saddles (see photo). Anchored in this way, they may not be classified as permanent fixtures or structures. It should also be noted that neither pergola nor arbour are defined terms in city bylaws.

The arbours are designed with open roof beams and with end screens at least 2 feet above grade that will allow climbing plants to eventually cover either one or both ends and top while leaving the long sections open.

The arbours individually measure between 7 ½ - 9 feet wide, approximately 20 feet long and are 9-9 ½ feet high. Of the 5 sides approximately 90% is open space. They are built entirely of locally milled red cedar and are located over top of paver stone patios beneath. Honest trades built them.

The Harling lots have non-standard dimensions with 25% more frontage and 20% less depth than a typical "small lot". Accordingly, the landscape screens require variances due to the less than normal depth of the lots. The screens are only 7-1/2-9 feet wide.

The purpose of the arbours is to provide privacy in the rear yard patio/sitting area from the 3 and 4 story immediately adjacent apartment buildings that overlook the rear yards of the 3 houses. Over time, as plants/vines mature, the patio sitting areas will have privacy from the rental buildings that overlook the rear yards of the single-family homes.

The three arbours were built in addition to the approved landscape design at a cost of approximately \$12,000 for all three.

This concludes the city legislated requirement that I submit a letter to council as a condition of the DPA process.

Yours truly,

Terry Bradshaw

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Development Permit with  
Variances Application  
for  
1032, 1038 & 1044 Harling Lane



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1032, 1038 & 1044 Harling Lane



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1040 Southgate (South)





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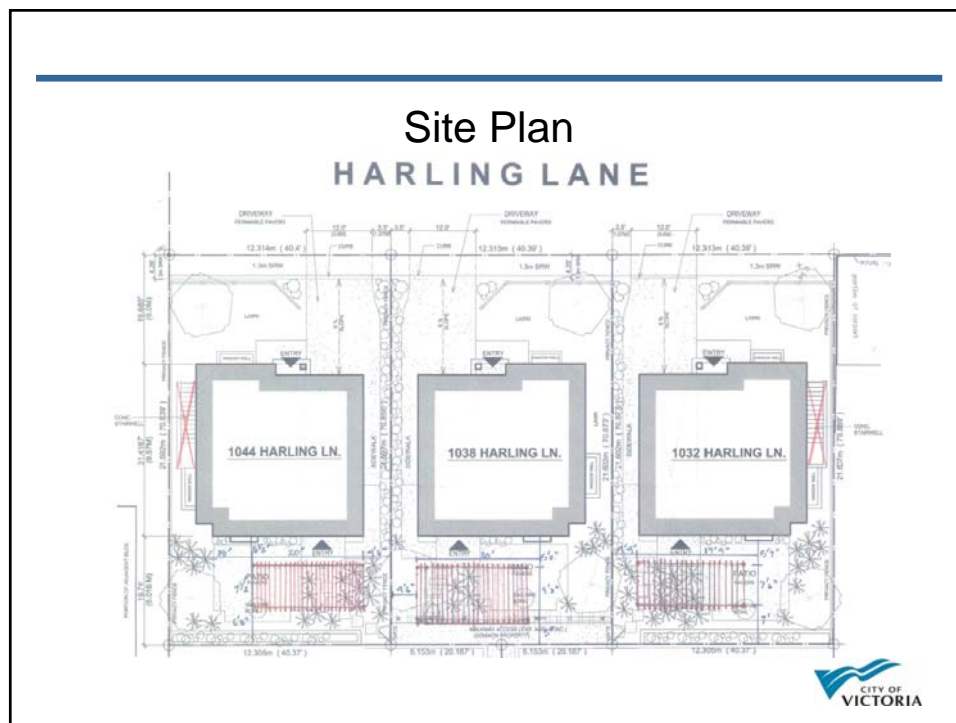
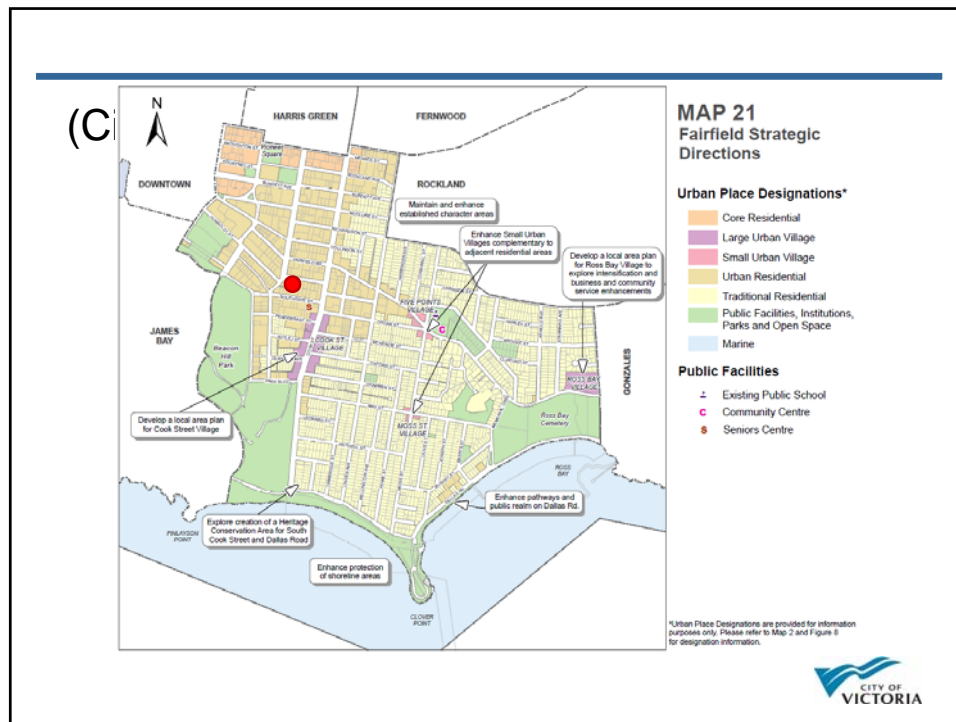
## 1005 Vancouver (West)



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## 1011 & 1017 Pakington Street





## Typical Arbours

