

Planning and Land Use Standing Committee Report

Date: Nov 12, 2013 **From:** Robert Woodland, Director
Subject: Illegal use / work without permit – 737 Princess Ave. / Bylaw File #33487

Executive Summary

The purpose of this report is to recommend the filing of a notice on title in respect to work that has been done without permit to convert the building from its approved use as a single family dwelling to its current use as 3 separate self-contained dwelling units. The property owner was directed to vacate the unpermitted residential occupancy of both, the top floor and basement suites, and make application for the building, plumbing, and/or electrical permit(s) required to return the property to a permitted use. The owner has thus far failed to comply and has instead continued to operate monthly room rentals.

Recommendation

The Building Inspector recommends:

1. That the Committee direct the Corporate Administrator to file a notice in the Land Title Office in relation to the property located at 737 Princess Avenue, legally described as **Lot D Section 3 Victoria Plan 3958**, indicating that a resolution relating to this property has been made under the authority delegated pursuant to Section 57(3) of the *Community Charter* and the provisions of the *Property Maintenance Delegation Bylaw*, and advise that further information regarding this resolution may be inspected at the Legislative & Regulatory Services Department in Victoria City Hall.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Andrew Dolan", followed by a long horizontal line.

Andrew Dolan
Senior Bylaw Officer
Bylaw & Licensing Services

A handwritten signature in black ink, appearing to read "Robert Woodland", followed by a long horizontal line.

Robert Woodland
Director
Legislative & Regulatory Services

List of Attachments

Appendix A – Bylaw enforcement letter to property owner dated August 15, 2013

Appendix B – One (1) exterior photograph of the subject property taken July 24, 2013

Purpose

The purpose of this report is to advise the Planning and Land Use Standing Committee about the conditions and illegal use of the property at 737 Princess Avenue, the enforcement action that has been taken in order to secure voluntary compliance with the *Zoning Regulation Bylaw* and Section 2.2(1) of the *Building Bylaw*, and to recommend to the Committee that under Section 57(3) of the *Community Charter* and the provisions of the *Property Maintenance Delegation Bylaw*, that a notice be filed in the Land Title Office in respect to this property to warn prospective purchasers and lenders of bylaw violations in respect to the work that has been done without permit to convert the building from its approved use as a single family dwelling to its current use as 3 separate self-contained dwelling units.

Background

Section 57 of the *Community Charter* allows the City to file notice on title of any property where the Building Inspector:

- a) observes a contravention of a municipal bylaw, provincial building regulation, or another enactment that relates to the construction or safety of buildings or other structures; or
- b) discovers that something was done without a permit or inspection.

Before notice may be filed on title under Sec. 57 of the *Community Charter*, Council must give the Building Inspector and the property owner an opportunity to be heard.

For the purpose of filing notices under Sec. 57(1)(b) of the *Community Charter*, the Manager of Bylaw & Licensing Services is a Building Inspector under the *Building Bylaw*.

Under the provisions of the *Property Maintenance Delegation Bylaw*, Council has delegated the authority to hold hearings and make decisions under Sec. 57 of the *Community Charter* to the Planning & Land Use Standing Committee.

Section 2.2(1) of the *Building Bylaw* states that a person must not:

- a) construct; or
- b) change the occupancy of a building unless the building's owner has obtained a building permit from the Building Inspector.

The *Building Bylaw* defines "occupancy" as the use or intended use of a building or part of a building for the shelter or support of persons, animals or property, according to the occupancy classifications for buildings set out in the *Building Code*.

Issues and Analysis

The property at 737 Princess Ave. is located in the Rock Bay neighbourhood in the M-1, Limited Light Industrial District. The approved use of the property per the approved building plans is single family dwelling (SFD). The property was inspected by a multi-agency team on July 23, 2013 after concerns were raised regarding the number of occupants residing at this location. Upon inspection it was discovered that the building contained 3 separate self-contained dwelling units; a 5 bedroom suite in the basement, a 5 bedroom suite on the main floor, and a 2 bedroom suite in the attic. Due to the low ceiling height in the basement and lack of access to the attic it has been determined that neither area was originally intended to be habitable.

The property owner was directed to vacate the unpermitted residential occupancy of both, the top floor and basement suites, and make application for the building, plumbing, and/or electrical permit(s) required to return the property to a permitted use. The owner has thus far failed to comply and continues to operate monthly room rentals, although it appears that he has now removed all online advertising related to this property.

Options and Impacts

The filing of a notice on land title is part of a graduated enforcement strategy intended to bring a property into compliance with the applicable bylaws and regulations. A notice on title provides incentive to the property owner to resolve the outstanding issues as it serves to warn lenders or prospective purchasers that work has been done without a permit. Filing a notice on title under Sec. 57 of the *Community Charter* is therefore intended to ensure that a potential purchaser is aware of bylaw violations in respect to the work that has been done without permit to convert the building from its approved use as a single family dwelling to its current use as 3 separate self-contained dwelling units. The notice can be easily removed once the property has been brought into compliance.

Official Community Plan Consistency Statement

The enforcement action recommended in this report is being sought in order to ensure that improvements made on the property and the use of the property are in compliance with the provisions of the *Zoning Regulation Bylaw* and the *Building Bylaw* as appropriate. This in turn helps ensure congruency with the OCP.

Financial and Staff Capacity Assessment

Staff have spent approximately 11 hours working on this file in order to obtain compliance. Filing of a Notice on Title (as recommended) will cost the City \$47.30.

Public Engagement and Consultation

Committee consideration of this matter requires a public hearing at which time the affected property owner may make a presentation directly to the Committee in respect to the recommendation or a related issue. Other members of the public who have a direct interest in this matter may also provide input to the Committee, at the discretion of the Committee.

Conclusion

Given the owner's failure to comply and the continuing unpermitted residential use this Officer has determined that the appropriate course of action at this time is to proceed with filing a notice on title. Doing so will ensure that full disclosure is made to a prospective purchaser and/or lender should this property be listed for sale.

Recommendation

The Building Inspector recommends:

1. That the Committee direct the Corporate Administrator to file a notice in the Land Title Office in relation to the property located at 737 Princess Avenue, legally described as **Lot D Section 3 Victoria Plan 3958**, indicating that a resolution relating to this property has been made under the authority delegated pursuant to Section 57(3) of the *Community Charter* and the provisions of the *Property Maintenance Delegation Bylaw*, and advise that further information regarding this resolution may be inspected at the Legislative & Regulatory Services Department in Victoria City Hall.



August 15, 2013

Legislative and
Regulatory Services
Department

Mr. John Asfar

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Bylaw and Licensing
Services Division

Re: 737 Princess Ave. / Bylaw File #33487

1 Centennial Square
Victoria BC V8W 1P6

Dear Sir,

This letter is a follow-up to the safety and compliance inspection that was conducted at 737 Princess Avenue on July 23, 2013. This inspection and my subsequent search of city records have confirmed that this property is in violation of a number of city bylaws, including but not limited to, the *Zoning Regulation Bylaw*, *Building Bylaw*, *Plumbing Bylaw*, *Electrical Safety Regulation Bylaw*, and the *Business License Bylaw*. These bylaw violations are significant and so they will be explained in detail below:

Zoning Regulation Bylaw

This property is located in the M-1, Limited Light Industrial District and the legal use of the structure located upon this property according to our records is single-family dwelling (SFD). The inspection revealed that the structure has been altered substantially and now contains 3 separate self-contained dwelling units. All of this work has evidently been completed without building, plumbing, or electrical permits and/or the required inspections.

As a result, it has been determined that the current use and/or occupancy of this property is in contravention of the approved use. A person must not use or occupy, or allow or permit another person to use or occupy land or a building in contravention of the approved use as per Sch. B Part 7.1 Sec. 1 of the *Zoning Regulation Bylaw*. This is an offence for which the penalty is a fine of \$200 per day for each day that the offence continues.

Building Bylaw

The inspection revealed a number of safety issues and violations related to work that have been done without permit. The Building Inspector's report of his findings and various options available to you to bring the property into compliance is very detailed so it has been included on the following page for your review.

To Contact

Telephone: 250.361.0215
E-Mail: bylawenforcement@victoria.ca

Fax: 250.361.0205
Web: www.victoria.ca

ITEM 1 - SFD CONVERSION TO A 3-SUITE RESIDENTIAL BUILDING

The last approved and known use of this building was as a single-family dwelling. The building has been substantially altered and is currently being used as a 3-suite building. There is a common laundry room area accessible from the exterior at the rear of the building. The first floor level has one private entry/exit, the second floor level has one private entry/exit and one shared entry/exit, and third floor level has one shared entry/exit. There are a number of BC Building Code items that are non-conforming, and the finished state of the building is not conducive to confirming compliance visually. These items include many building systems such as, but not limited to;

- Fire & sound separations
- Ventilation systems
- Structural & non-structural framing assemblies
- Smoke alarms
- Exit exposure protection
- Shared egress requirements
- Vertical travel limits to exits
- Building envelope assemblies around wall penetrations
- Spatial separation requirements

These items are just a sample of items requiring attention. Options for the use of this building are as follows:

1. Obtain a building permit to return this building into its last approved state as a single-family dwelling (SFD).
2. Obtain a building permit to legalize a 2-suite residential use. Note that all work will be considered new work and must conform to the 2012 BC Building Code. Further, this option may involve a re-Zoning and some sort of variance for this use.
3. Obtain a building permit to legalize a single family dwelling with a secondary suite. Note that all work will be considered new work and must conform to the 2012 BC Building Code. Further, this option may involve a re-Zoning and some sort of variance for this use.
4. Obtain a building permit to lift the building and legalize a 3-suite residential use. (See second finding below.) Note that all work will be considered new work and must conform to the 2012 BC Building Code. Further, this option may involve a re-Zoning and some sort of variance for this use.

ITEM 2 - BASEMENT CONVERTED INTO HABITABLE SPACE, AND A SEPARATE SUITE

The unfinished basement of the property has been converted into livable space in the form of a private residential suite with 5 bedrooms, a bathroom and a kitchen. As the ceiling height is approximately 5'9", this space is not permitted to be used as habitable space. Options for this space are as follows:

1. Obtain a demolition permit and remove all finishing work and restore the space to an unfinished state.
2. Obtain a building permit to raise the building to accommodate a 2.1 m finished ceiling height and convert this space into habitable space.
3. Obtain a building permit to raise the building to accommodate a 2.0 m finished ceiling height and convert this space into secondary suite.

ITEM 3 - ATTIC APPEARS TO HAVE BEEN FINISHED INTO HABITABLE SPACE

Records for this building are not thorough enough to determine that the third floor level was ever permitted. Based on ceiling heights, access to the storey and the era of this buildings construction, it is the belief of the building inspector that this space was never designed as a finished space. As such, it is the owner's responsibility to prove to the City that this floor level was created legally with a building permit in order for it to be allowed to be used in the future as it is currently when considering any of the above items. This will involve providing old building records, opening up construction assemblies for inspections, and/or providing thorough reports from registered professionals that can confirm use and assemblies. Failing this, the third floor level must be converted back into an unfinished attic.

ITEM 4 - FRONT AND REAR DECK & STAIR ASSEMBLIES ARE NOT CODE-COMPLIANT

The front and rear decks have been installed in such a way that the structures and dimensions are mostly non-conforming to the BC Building Code. The only options for these assemblies are to obtain building permits to re-construct the deck and stair assemblies, creating Code conforming structures. These permits must align with all other directions outlined in the above items.

Completing work and/or changing the occupancy of a building without a building permit are an offence for which the penalty is a fine of \$400 per day as per Sec. 2.2(1) of the *Building Bylaw*. Occupying or permitting the occupancy of a building without an approved occupancy permit is an offence with an additional fine of \$400 per day as per Sec. 2.2(2) of the *Building Bylaw*.

Plumbing Bylaw

The inspection revealed violations related to work that have been done without permit to install additional plumbing fixtures in the lower and upper floor suites as well as the common laundry room. Completing plumbing work without a valid plumbing permit is an offence for which the penalty is a fine of \$400 per day as per Sec. 6(1) of the *Plumbing Bylaw*.

Electrical Safety Regulation Bylaw

The inspection revealed violations related to work that have been done without permit to convert the structure from an SFD to a triplex. Completing electrical work without a valid electrical permit is an offence for which the penalty is a fine of \$400 per day as per Sec. 5(1) of the *Electrical Safety Regulation Bylaw*.

Business License Bylaw

The inspection revealed that you are currently renting 3 separate self-contained suites and/or individual rooms. Providing rental accommodation is an activity for which a business license is required. Conducting business without a valid business license is an offence for which the penalty is a fine of \$250 per day as per Sec. 4 (a) of the *Business License Bylaw*.

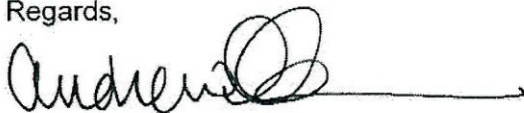
Notwithstanding any orders that may be given to you separately by the Electrical Inspector, and/or the Fire Inspector, you are hereby directed to take the following action:

1. Vacate the unpermitted residential occupancy of both; the top floor suite and the basement suite on or before September 30, 2013.
2. Make application for the building, plumbing, and/or electrical permit(s) required to return this property to a permitted use (as outlined in the Building Inspector's report) by September 30, 2013.
3. Make application for a business license by September 30, 2013. Note that the license(s) will not be issued until such time as occupancy has been re-issued.
4. Complete all the work required to return the property to a legal use, pass all follow-up inspections, and obtain a new occupancy permit by October 31, 2013.

Failure to comply with the above will result in the issuance of fines, the placing of a notice on land title, and/or further legal action.

Should you have any questions regarding the direction you have been given please do not hesitate to contact me directly by telephone at 250.361.0578 or by email at adolan@victoria.ca

Regards,

A handwritten signature in black ink, appearing to read 'Andrew Dolan', followed by a long horizontal line.

Andrew Dolan
Senior Bylaw Officer
Bylaw & Licensing Services
City of Victoria

Cc: Reed Cassidy, Building Inspector
Mike Shea, Chief Electrical Inspector
Roy Kellington, Plumbing Inspector
Chris Kelly, Fire Prevention Officer
Thom Pebernat, Zoning Administrator
Kim Ferris, Business License Inspector
Bylaw File #33487

Appendix B



737 PRINCESS AVE.

Dolan