



Council Report

For the Meeting of April 4, 2024

To: Council **Date:** March 21, 2024
From: Karen Hoese, Director, Sustainable Planning and Community Development
Subject: **Update on Rezoning Application No. 00849 and Development Permit with Variances Application No. 00239 for 854/858 and 880 Pandora Avenue**

RECOMMENDATION

Rezoning Application (updates in bold text)

1. That Council give first, second, and third readings to Zoning Regulation Bylaw, Amendment Bylaw (No. 1329) after publication of notification in accordance with section 467 of the *Local Government Act*.
2. **That the applicant provides clearance from the Ministry of Environment and Climate Change Strategy in accordance with section 557 (2) of the *Local Government Act* prior to final adoption of Zoning Regulation Bylaw, Amendment Bylaw (No. 1329).**

Development Permit with Variances Application (updates in bold text)

That Council, after giving notice, consider the following motion:

1. That subject to the adoption of the necessary Zoning Regulation Bylaw amendment, Council authorize the issuance of Development Permit with Variances No. 00239 for 854/858 and 880 Pandora Avenue, in accordance with plans submitted to the Planning department and date stamped by Planning on **December 4, 2023**, subject to:
 - a. Proposed development meeting all City zoning bylaw requirements, except for the following variances:
 - i. reduce vehicle parking from 113 stalls to 103 stalls
 - ii. reduce the visitor vehicle parking from 20 stalls to 10 stalls
 - iii. reduce the commercial parking from 13 stalls to 11 stalls
 - iv. **reduce rear (north) setback for portion of building between 5m and 18m in height from 8.0m to 2.20m**
 - v. **reduce rear (north) setback for portion of building greater than 18m in height from 10.0m to 5.50m**
 - vi. **reduce east side setback for portion of building greater than 18m in height from 10.0m to 6.25m**
 - vii. **reduce west side setback for portion of building less than 18m in height from 3.0m to 0.30m**
 - viii. permit long term bike parking to be located more than one level below finished grade.
2. That the Development Permit with Variances, if issued, lapses two years from the date of this resolution.

EXECUTIVE SUMMARY

The purpose of this report is to present Council with an update regarding the Rezoning and Development Permit with Variances Applications for the property located at 854/858 and 880 Pandora Avenue. The proposal is to rezone from the CA-1 Zone, Pandora Avenue Special Commercial District, to a new zone to increase the density to permit the construction of a 20-storey mixed-use residential rental building. As part of the application, the applicant must satisfy *Local Government Act* and *Environmental Management Act* requirements related to site contamination, which includes clearance from Ministry of Environment and Climate Change Strategy (MOECCS) that has not yet been obtained.

The applicant has generally fulfilled the conditions set by Council and the application is ready to be considered by Council for approval, with final adoption of the bylaw withheld until the required legal agreements have been registered and MOECCS clearance has been received.

BACKGROUND

On November 16, 2023, Council passed a motion to move this application forward to first, second and third reading, subject to certain conditions and plan revisions. The applicant has fulfilled the conditions set by Council. This Update Report includes a summary of the changes to the plans and the associated changes to the variances.

The applicant has also been working to satisfy the Ministry of Environment and Climate Change Strategy requirements for clearance. This clearance is in process but has not been achieved at time of this report. An approach to advance the application to third reading but withhold final adoption until MOECCS clearance is received is outlined below.

ANALYSIS

Revised Plans

In accordance with Council's motion of November 16, 2023, the application was to be advance when following conditions have been fulfilled:

- a. *That the applicant makes the following revisions to the plans satisfactory to the Director of Sustainable Planning and Community Development:*
 - i. *ensure minimum widths for functional over-size bike parking stalls;*
 - ii. *revise the Mason Street design to ensure the minimum 1.8m pedestrian zone width is met;*
 - iii. *incorporate a continuous sidewalk design crossing Mason Street on Quadra Street frontage; and*
 - iv. *revise the tower materials to provide a lighter material colour, as well as consider options to maintain the visual prominence of the adjacent heritage landmark buildings.*

In response to these conditions, the plans have been revised as follows:

- bike stall widths have been confirmed as meeting oversize required dimensions
- the design of tree grates has been revised to ensure an unobstructed minimum sidewalk width of 1.8m
- a continuous sidewalk design on the Mason Street crossing has been incorporated into the plans
- tower materials have been revised to include lighter coloured materials.

Regulatory Considerations

Variances

Minor updates to the setback variances have been made to reflect the latest version of the plans. The previous Council motion has been modified to accommodate changes to the plans (see the bold text in the recommendation section above) as follows.

- i. reduce rear (north) setback for portion of building between 5m and 18m in height from 8.0m to **2.20m** (previously 2.23m)
- ii. reduce rear (north) setback for portion of building greater than 18m in height from 10.0m to **5.50m** (previously 5.65 m)
- iii. reduce east side setback for portion of building greater than 18m in height from 10.0m to **6.25m** (previously 6.27 m)
- iv. reduce west side setback for portion of building less than 18m in height from 3.0m to **0.30m** (previously 0.35 m).

These variances are considered supportable given the minor nature of the changes.

Contaminated Site Regulation

The subject property has hosted a Contaminated Site Regulation (CSR) Schedule 2 use (petroleum product storage and dispensing, automotive vehicle repair), which required the applicant to complete the site disclosure statement (SDS) process in accordance with the *Environmental Management Act*. The site is contaminated.

Under the *Local Government Act*, local governments are prohibited from approving a rezoning or development permit application on a site where a CSR Schedule 2 use has occurred until some form of clearance is received from the MOECCS. Typically, this takes the form of an approval in principle, in which MOECCS confirms that it has reviewed and approved a remediation plan for the site, though other clearances are possible and specified in the *Local Government Act* Section 557(2).

However, an exception in the *Local Government Act* does allow rezoning applications to proceed to approval where certain conditions are met: that a concurrent development permit has been submitted for the lands, and the local government has received an SDS, assessed it, and forwarded it to the registrar (a person employed by the provincial government and appointed by the Director of Waste Management to receive site disclosure statements). All the criteria required to exercise the exemption has been met for this application.

Although the exception in the Local Government Act is applicable in this instance, there are risks to the City proceeding with zoning amendment bylaw readings prior to MOECCS clearance. For example, if the rezoning is approved, but a DP (and BP) do not proceed, the internal trigger for ensuring an SDS is submitted would be lost, and a future owner may not submit an SDS and go through MOECCS clearance. This risk is mitigated by requiring the clearance prior to final adoption of the zoning bylaw amendment, which gives certainty that any new use will not be permitted until the appropriate environmental clearance is received.

Further, allowing the rezoning to proceed to introductory readings may create a precedent for other applicants to expect the same. This risk can be mitigated by ensuring that each application both meets the requirements for the exception under the *Local Government Act*, as well as ensuring that there are clear and logical reasons for using the exception (or not) for each instance.

In addition, the applicant has filed with the Ministry of Environment and Climate Change Strategy (MOECCS) and provided to the City a notice of migration, meaning that some of the contamination on site has migrated off site into the City right of way.

Due to the migration of contamination onto City property, the applicant has been required to enter into an indemnity agreement to cover future remediation work as may be required for the City land. This agreement has been executed and registered in the Land Title Office

In summary, the proposed rezoning is a priority application to provide purpose-built rental (with some affordable housing units) and exercising the exemption allows the application to continue moving forward in the approvals process while concurrently fulfilling outstanding requirements. The recommendation is to utilize the exception in this case and allow introductory bylaw readings to occur simultaneously while MOECCS clearance is obtained.

CONCLUSIONS

The applicant has generally fulfilled the conditions set by Council to consider first, second, and third reading of the proposed Bylaw. The recommendation provided for Council's consideration contains the appropriate language for Council to consider approval of the application, with final adoption to occur once the required legal agreements have been registered and environmental clearance is received.

Respectfully submitted,

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Report accepted and recommended by the City Manager.

List of Attachments

- Attachment A: Aerial Map
- Attachment B: Revised Plans date stamped December 4, 2023
- Attachment C: Daytime Council minutes dated November 16, 2023
- Attachment D: November 2, 2023, Committee of the Whole meeting staff report