



Committee of the Whole Report

For the Meeting of November 16, 2023

To: Committee of the Whole **Date:** October 10, 2023

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

Subject: Rezoning Application No. 00807 for 515 Foul Bay Road and associated Development Permit with Variances Application No. 00255

RECOMMENDATION

Rezoning Application

1. That Council instruct the Director of Sustainable Planning and Community Development to prepare the necessary Zoning Regulation Bylaw amendment that would authorize the proposed development outlined in the staff report dated October 10, 2023 for 515 Foul Bay Road.
2. That first and second reading of the zoning regulation bylaw amendment be considered by Council and a public hearing date be set once the following conditions are met:
 - a. plan revision to reduce the space dedicated to vehicle parking at the site's entrance to the satisfaction of the Director of Sustainable Planning and Community Development;
 - b. plan revision to propose an alternative permeable paving surface, to the satisfaction of the Director of Parks, Recreation and Facilities;
 - c. plan revision to label accessible parking stall, show dimensions in metric and provide a 1.5m hatched aisle, to the satisfaction of the Director of Engineering and Public Works;
 - d. plan revisions to correct the arborist report, tree management plan and landscape plans to the satisfaction of the Director of parks, Recreation and Facilities;
 - e. preparation of a heritage designation bylaw to designate the property known as 515 Foul Bay Road, as described in the Statement of Significance attached as Attachment D, pursuant to Section 611 of the Local Government Act, to the satisfaction of the Director of Sustainable Planning and Community Development, and that the introductory readings of the *Heritage Designation Bylaw* be considered by Council concurrently with the *Zoning Regulation Bylaw* amendment.
3. That subject to approval in principle at the public hearing, the applicant prepare and execute the following legal agreements, with form satisfactory to the City Solicitor prior to adoption of the bylaw:

- a. provision of a 1.6m wide statutory right-of-way for highway purposes along the Foul Bay Road, with terms to the satisfaction of the Director of Engineering and Public Works;
 - b. provision of a detailed design, supply and installation of a new Rectangular Rapid Flashing Beacon (RRFB) pedestrian crossing of Foul Bay Road at its intersection with Chandler Avenue, including a curb extension at the west side of Foul Bay Road, wheelchair ramps, tactile indicators and all associated infrastructure, to the satisfaction of the Director of Engineering and Public Works;
 - c. protection, restoration and maintenance of the existing greenspace with a site area of approximately 1,468 m² in accordance with the plans date stamped by Planning on September 14, 2023, which includes provision of a bee colony in the conservation area for a period of at least two years and ensuring that design and construction in the area follows the recommendations in the September 12, 2023 arborist report from Gye & Associates to minimize impacts to trees, to the satisfaction of the Director of Parks, Recreation and Facilities;
 - d. securing five units in the existing multiple dwelling as rental units for the life of the building, with contents satisfactory to the Director of Sustainable Planning and Community Development;
 - e. provision of no less than one adaptable unit, in accordance with the standards in the British Columbia Building Code and BC's Building Accessibility Handbook, to the satisfaction of the Director of Sustainable Planning and Community Development;
 - f. provision of no less than three four-bedroom and six three-bedroom units, to the satisfaction of the Director of Sustainable Planning and Community Development; and
 - g. provision of transportation demand management measures, to the satisfaction of the Director of Engineering and Public Works, including:
 - i. two over-sized long-term bicycle parking spaces;
 - ii. 50% of required long-term bicycle parking with access to an electrical outlet;
 - iii. bicycle wash and maintenance facility.
4. That adoption of the zoning bylaw amendment will not take place until all of the required legal agreements that are registrable in the Land Title Office have been so registered to the satisfaction of the City Solicitor.
 5. That the above Recommendations be adopted on the condition that they create no legal rights for the applicant or any other person, or obligation on the part of the City or its officials, and any expenditure of funds is at the risk of the person making the expenditure.

Development Permit with Variances Application

That Council, after giving notice and allowing an opportunity for public comment at a meeting of Council, and after the public hearing for Rezoning Application No. 00807, if it is approved, 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. 00255 for 515 Foul Bay Road, in accordance with plans submitted to the Planning department and date stamped by Planning on September 14, 2023, in accordance with the following:

- a. Subject to the proposed development meeting all City zoning bylaw requirements, except for the following variances:
 - i. reduce minimum front yard setback from 6.00m to 0.41m;
 - ii. reduce minimum side yard setback (north) from 4.00m to 3.08m;
 - iii. increase maximum eave projection from 0.75m to 0.79m;
 - iv. permit vehicle parking in the front yard;
 - v. reduce short-term bicycle storage from 18 spaces to 10 spaces;
 - vi. increase maximum driveway slope from 8.00% to 11.36%;
 - vii. reduce minimum two-way driveway width from 6.00m to 4.00m, and;
 - viii. increase maximum accessory building height from 3.50m to 4.00m.
 - b. Subject to the property being subdivided into two lots generally in accordance with plans submitted to the Planning department and date stamped by Planning on September 14, 2023.
 - c. That pursuant to section 512(2) of the *Local Government Act*, Council exempts the existing property at 515 Foul Bay Road as well as the new proposed lot to be created by subdivision, as generally shown in the plans submitted to the Planning department and date stamped by Planning on September 14, 2023, from the minimum frontage requirements of section 512(1) at the time of subdivision.
2. That the Development Permit with Variances, if issued, lapses two years from the date of this resolution.”

Heritage Designation Application

That Council:

1. Instruct staff to prepare a heritage designation bylaw to designate the property at 515 Foul Bay Road, that first and second reading of the bylaw be considered by Council and that a Public Hearing date be set, and that the heritage designation bylaw provides for the following to the satisfaction of the Director of Sustainable Planning and Community Development:
 - a. no heritage alteration permit is required for interior alterations, repair and maintenance work that would not affect the exterior of the building, or;
 - b. a heritage alteration permit to allow for demolition of the building would be issued for the building if the building is damaged significantly due to fire, flood or similar event outside of the owner's control.
2. Approve the Statement of Significance for 515 Foul Bay Road attached as Attachment D to this report recognizing the building exterior as the historic features of the property.

LEGISLATIVE AUTHORITY

This report discusses a Rezoning Application, a concurrent Development Permit with Variances Application and a concurrent Heritage Designation Application.

Relevant Rezoning considerations relate to:

- change of use to allow ground-oriented multiple dwellings
- new regulations pertaining to the number of buildings on a lot and maximum floor area.

The relevant Development Permit with Variances considerations relate to:

- the application's consistency with design guidelines
- impact of variances pertaining to setbacks, bike parking, as well as parking and driveway specifications.

Enabling Legislation

In accordance with Section 479 of the *Local Government Act*, Council may regulate within a zone the use of land, buildings and other structures, the density of the use of the land, building and other structures, the siting, size and dimensions of buildings and other structures as well as the uses that are permitted on the land and the location of uses on the land and within buildings and other structures.

In accordance with Section 483 of the *Local Government Act*, Council may enter into a Housing Agreement which may include terms agreed to by the owner regarding the occupancy of the housing units and provided such agreement does not vary the use of the density of the land from that permitted under the zoning bylaw.

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.

In accordance with section 512 of the *Local Government Act*, if a parcel being created by a subdivision fronts on a highway, the minimum frontage on the highway must be the greater of ten percent of the perimeter of the lot, and the minimum frontage that the local government requires by bylaw. However, Council may exempt a parcel from this minimum.

In accordance with Section 611 of the *Local Government Act*, Council may designate real property, in whole or in part, as protected property. In accordance with section 611 (2)(c), a heritage designation bylaw may apply to fixtures identified in the bylaw.

EXECUTIVE SUMMARY

The purpose of this report is to present Council with information, analysis and recommendations for a Rezoning and Development Permit with Variances application for the property located at 515 Foul Bay Road. The proposal is to rezone from the R1-G Zone, Gonzales Single Family Dwelling District to a new site-specific zone and subdivide the lot to allow for ground-oriented multiple dwellings at this location.

There is a concurrent Development Permit with Variances application pertaining to the proposed form, character, exterior design, finishes and landscaping, as well as variances related to setbacks and parking specifications for three new three-storey buildings containing a total of 12 dwelling units in addition to the existing five-unit house conversion, which is to remain as a rental building for the life of the building.

The following points were considered in assessing the Rezoning Application:

- The proposal is generally consistent with the *Official Community Plan* (OCP) Traditional Residential Urban Place Designation, which envisions Missing Middle Housing and other

ground-oriented residential uses, with density up to approximately 1.1:1 floor space ratio (FSR).

- The creation of 12 new dwelling units, including three four-bedroom, six three-bedroom units, and three one-bedroom units would further the OCP goal of providing a diversity of housing, including family-oriented housing that is suitable for larger households.
- Five existing rental units secured for the life of the heritage building does not guarantee rental units in perpetuity, but when combined with the proposed heritage designation to secure the building, would further the OCP's rental housing objectives.
- Concerns were raised by the applicant with offering heritage designation unless provisions could be added to the designation bylaw to permit demolition of the building in specific circumstances outside of the owner's control; in consideration of this, the recommendation includes direction to add new provisions to standard designation bylaw.
- The proposal is inconsistent with specific policies in the *Gonzales Neighbourhood Community Plan* (2002) to retain the predominance of detached dwellings and discourage further subdivision in the Queen Anne Heights area. However, the proposal does demonstrate notable effort in preserving landscape features of heritage value, and a significant contiguous open space in the southern portion of the property would be protected in perpetuity.
- The proposed 1.6m statutory right-of-way (SRW) along Foul Bay Road would provide space to inbound a future sidewalk, provide boulevard, and street trees, which supports the OCP's transportation and placemaking policies. In addition, a new crosswalk that is recommended to be paid for by the developer would improve pedestrian safety for new families that are anticipated to walk to Margaret Jenkins School.

The following points were considered in assessing the Development Permit with Variances:

- The proposed form and character of the development is generally consistent with the design guidelines for Development Permit Area (DPA) 15F, Missing Middle Housing and DPA 15B Intensive Residential- Panhandle Lot; however, the proposed front yard parking is not consistent with guidance for sensitively integrating and buffering vehicle parking.
- The proposed site planning is consistent with the *Missing Middle Design Guidelines* (2022), which allow for alternative siting and clustering of buildings to protect significant and heritage features and emphasize maintaining the prominence of the heritage building, providing adequate setbacks and avoiding impacts to existing site lines to the heritage building.
- The proposed site planning is consistent with the design guidelines applicable to DPA 15B, Intensive Residential – Panhandle Lot, which encourage mitigating privacy impacts through larger setbacks and avoiding windows overlooking abutting rear yards, although the guidelines do not anticipate three storey building heights for intensive residential development.
- The proposed front yard parking is not considered consistent with the guidelines to ensure landscaping within driveway areas where front yard parking is provided.
- The proposed front yard setback is supportable because the impact on neighbouring properties is considered minimal, with 26.50m to the nearest dwelling.
- The less than one metre side yard reduction, 0.50m increased accessory building height and eave projection variances are all relatively minor variances compared to the standard zone.
- The proposed variances to increase driveway slope and reduce driveway width are considered supportable because they allow for the reuse of the existing driveway, which minimizes construction impacts on site features, such as trees, rock outcroppings and the

existing building foundation.

- The variances requested to permit vehicle parking in the front yard panhandle driveway is not considered supportable due to the lack of a landscape buffer between parallel parking and adjacent properties or screening from the public realm as well as the potential to reduce parking while still meeting *Zoning Regulation Bylaw* requirements.
- The proposed variance to short-term bicycle storage from 18 spaces to 10 spaces is considered supportable based on the adequacy of the overall proposed Transportation Demand Management (TDM) measures.

BACKGROUND

Description of Proposal

This proposal is to rezone from the R1-G Zone, Gonzales Single Family Dwelling District to a new site-specific zone and to subdivide the lot into two lots in order to allow for ground-oriented multiple dwellings on one panhandle lot and to retain an existing five-unit house conversion on the other lot.

The following differences from the standard RTM Zone, Traditional Residential Multiple Dwelling District, are being proposed and would be accommodated in the new zone:

- replace “multiple dwelling” with “ground-oriented multiple dwelling” and add house conversion and secondary suites as permitted uses
- reduce maximum FSR from 1:1 to 0.5:1.

The associated Development Permit with Variances Application is for three new three-storey buildings containing a total of 12 dwelling units, in addition to an existing five-unit heritage registered house conversion. Additional accessory structures include a “children’s forest house” and a bicycle parking structure located near the existing heritage home.

Specific details include:

- three ground-oriented multiple dwellings, each building containing four dwelling units, sited in the rear and side yard of a 4896m² panhandle lot
- overall new dwelling unit mix consisting of three one-bedroom, six three-bedroom and three four-bedroom units
- one adaptable unit and potential for secondary suites in each four-bedroom unit
- surface parking (20 spaces including modo and visitor spaces).

Exterior materials include:

- Composite shingles and fiber-cement panel
- Stone effect and wood columns
- metal roof, metal siding, and aluminium railings.

Landscape elements include:

- 1,468m² established greenspace with Garry Oak meadow, rock outcroppings, bee colony on site (maintained at least two years), pathway in southern portion
- children’s playhouse constructed with materials from existing on-site sheds
- permeable parking and driveway surfaces

- 105 trees identified – 85 protected trees (63 on-site), 31 off-site, 9 under-sized
- 25 protected trees removed, 29 replacement trees.

The proposed variances from the standard RTM Zone are related to:

- reducing the minimum front yard setback from 6.00m to 0.41m;
- reducing the minimum side yard setback (north) from 4.00m to 3.08m;
- increasing the maximum eave projection from 0.75m to 0.79m;
- permitting vehicle parking in the front yard;
- reducing short-term bicycle storage from 18 spaces to 10 spaces;
- increasing driveway slope from 8.00% to 11.36%;
- reducing two-way driveway width from 6.00m to 4.00m; and
- increasing maximum accessory building height from 3.50m to 4.00m.

Land Use Context

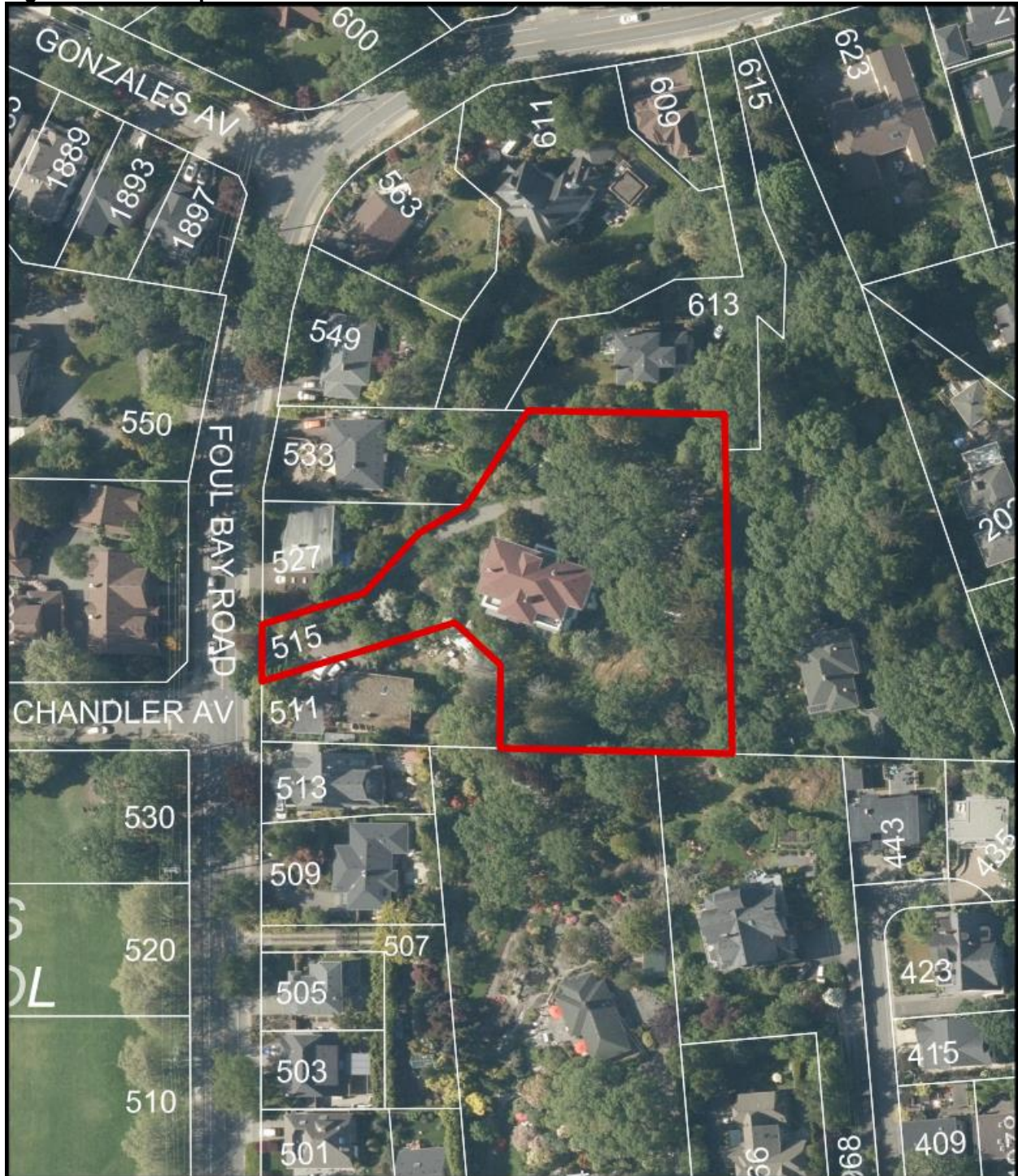
The area is characterized by single-family dwellings some of which are located on similarly large panhandle lots. In addition, there is a ten-unit attached dwelling development, a nursing home and Margaret Jenkins Elementary located to the west of the subject property. Heritage registered and heritage designated properties exist in the surrounding upper Foul Bay Road area, including Abkhazi Garden, which abuts the subject property to the south.

Existing Site Development and Development Potential

The site currently contains a residential house conversion containing five rental units, including three one-bedroom, one two-bedroom and one two-bedroom with a den. The property, shown in Figure 1, contains a heritage registered building, which was designed by architect Samuel Maclure in 1910. The applicant has committed to securing the building as a rental for the life of the building in support of the proposal under consideration and existing tenants will not be displaced.

Under the current R1-G Zone, the property could be subdivided to create additional panhandle lots, which would require 600m² per lot in this zone when on a panhandle lot and a shared panhandle access. Panhandle lots are subject to the *Zoning Regulation Bylaw* Schedule H: Panhandle Lot Regulations, which require larger lot area, lot width and setbacks as well as reduced building height, maximum floor area and site coverage than the standard R1-G Zone regulations. In addition, as a panhandle lot, the property is not eligible for development under recently adopted *Missing Middle Regulations*.

Figure 1: Aerial Map



Data Table

The following data table compares the proposed new buildings with the R1-G Zone, Gonzales Single Family District and the standard RTM Zone, Traditional Residential Multiple Dwelling District. An asterisk is used to identify where the proposal does not meet the requirements of the existing Zone.

Zoning Criteria	Proposal	Existing R1-G Zone	Zone Standard RTM Zone
Site area (m ²) – minimum	4896.55	460	920
Density (Floor Space Ratio) – maximum	0.48:1	0.50:1	1:1
Number of buildings (max)	3*	1	1
Combined floor area (m ²) – maximum	2341.37	300	-
Lot width (m) – minimum	75.95	15	20 (avg.)
Height (m) – maximum	10.14*	7.60	10.50
Storeys – maximum	3*	2	3
Site coverage (%) – maximum	20.12	30	50
Open site space (%) – minimum	60.81	50	45
Separation space between buildings (within the site) (m) – minimum	4.74	-	-
Setbacks (m) – minimum	-	-	-
Front	0.41*	7.50	6
Rear	5.13 (non-habitable) 7.56* (habitable)	9.10 or 30% lot depth	4
Side (north)	3.08 (non-habitable) 7.52 (habitable)	1.50 or 15% lot width	4
Side (south)	22.29	1.50 or 15% lot width	4
Combined side yards	25.37	5.40	-
Eaves	0.79*	0.75	0.75

Zoning Criteria	Proposal	Existing R1-G Zone	Zone Standard RTM Zone
Accessory building location	Side yard*	Rear yard	Rear yard
Accessory building height (m) – maximum	4	3.5	3.5
Parking – minimum	20 including 1 modo	16	16
Visitor parking included in the overall units – minimum	2	1	1
Long term bicycle parking – minimum	15	15	15
Short term bicycle parking – minimum	10*	18	18
Parking location	Front yard* , side yards, internal	Not in front	Not in front
Driveway/parking slope (%) – maximum	11.36*	8	8
Driveway width	4*	6 (two-way)	6 (two-way)

Sustainable Mobility

The application proposes the following Transportation Demand Management (TDM) measures, which support multi-modal transportation:

- two over-sized long-term bicycle parking spaces
- 50% of required long-term bicycle parking with access to an electrical outlet
- bicycle wash and maintenance facility.

Public Realm

Pedestrian Crossing

The proposal will add 12 new units, in addition to the five existing rental units in a location that will create a desire line across Foul Bay Road at Chandler Avenue, between Margaret Jenkins School and the development. The majority of anticipated pedestrians to cross in this location would come from the subject site. Therefore, a new crosswalk is recommended, with the full cost paid by the developer to improve pedestrian safety and accessibility. The warranted crossing in this location should include a pedestrian activated Rectangular Rapid Flashing Beacon and a curb bulb on the west side of Foul Bay Road. The applicant agreed to this public realm improvement, which will be secured with a legal agreement and registered on the property's title prior to adoption of the *Zoning Regulation Bylaw* amendment.

Community Consultation

Consistent with the *Community Association Land Use Committee (CALUC) Procedures for Processing Rezoning and Variance Applications*, prior to submission of the application, it was posted on the Development Tracker along with an invitation to complete a comment form on September 29, 2021. Mailed notification was sent to owners and occupiers of property within 100m of the subject property advising that a consultation process was taking place and that information could be obtained and feedback provided through the Development Tracker. A sign was also posted on site, to notify those passing by of this consultative phase. Additionally, the applicant participated in a meeting with the CALUC on October 25, 2021. A report dated October 25, 2021 along with the comment forms are attached to this report.

In response to the consultation the applicant revised the original proposal for total of 23 units and 26 parking spaces to 17 units and 20 parking spaces in the current proposal, as well as other more minor revisions.

Pursuant to section 464(2) of the *Local Government Act*, Council may choose to not hold a public hearing where a rezoning application is consistent with the OCP. While the proposal is generally consistent with the OCP, the *Local Government Act* does not enable Council to choose to not hold a public hearing for Heritage Designation applications; therefore, to allow consideration of the project as a whole, a public hearing is recommended.

The associated application proposes variances, therefore, in accordance with the City's *Land Use Procedures Bylaw*, it requires notice, sign posting and a meeting of Council to consider the variances.

ANALYSIS

Rezoning Application

Official Community Plan

The *Official Community Plan, 2012* (OCP) Urban Place Designation for the subject property is Traditional Residential, which supports Missing Middle Housing and other ground-oriented residential uses. The OCP envisions densities of approximately 1.1:1 FSR for properties designated as Traditional Residential and approximately three-storeys in height. The OCP also notes that decisions about the appropriate scale for a particular site will be based on an evaluation of the context in addition to applicable policies. The strategic direction specific to Gonzales is to maintain and enhance neighbourhood character including the heritage character of buildings, landscapes, and streetscapes.

The proposal is consistent with envisioned uses, density and height for Traditional Residential properties as the proposal is for three-storey, ground-oriented multiple dwellings. The proposed density of 0.48:1 FSR is well short of the upper range envisioned in the OCP; however, this is considered appropriate given the site and surrounding context, most notably the established landscape features, panhandle lot configuration and the secured protection of approximately half the site as open site space. The proposal is not fully consistent with the strategic direction for the Gonzales neighbourhood as the plan prioritizes lower density detached dwellings and duplexes and generally discourages further subdivision in the Queen Anne Heights area.

The OCP includes other strategic objectives that are advanced by the proposal, including:

- housing that is suitable for larger families (i.e., three- and four-bedroom units)
- retention of a contiguous area of established trees and landscape features
- retention of existing rental units and commitment to secure these through a legal agreement.

Gonzales Neighbourhood Community Plan

The proposal is inconsistent with specific policies in the *Gonzales Neighbourhood Community Plan (2002)*, which generally encourages the retention of zoning that maintains the detached dwelling character of the neighbourhood. The plan prioritizes preserving large lot character and discourages further panhandle lot subdivision in the Queen Anne Heights area, which includes the subject property.

The neighbourhood plan prioritizes preserving the heritage character of buildings, landscape features and streetscapes generally, and specifically encourages incentivizing heritage designation of historic buildings, with priority on those along Foul Bay Road. The proposal is offering designation of the historic building, and further demonstrates an effort to preserve landscape features by concentrating the proposed housing to retain a large portion of the property as open space, which is reflected in the 20.12% site coverage and 60.81% open space. In addition, the unit mix includes nine of twelve homes being at least three bedrooms, which advances the housing objective of maintaining housing choice by providing units suitable for larger households.

Housing

The application, if approved, would add 12 new residential strata units, which would increase the overall supply of housing in the area and contribute to the targets set out in the *Victoria Housing Strategy*.

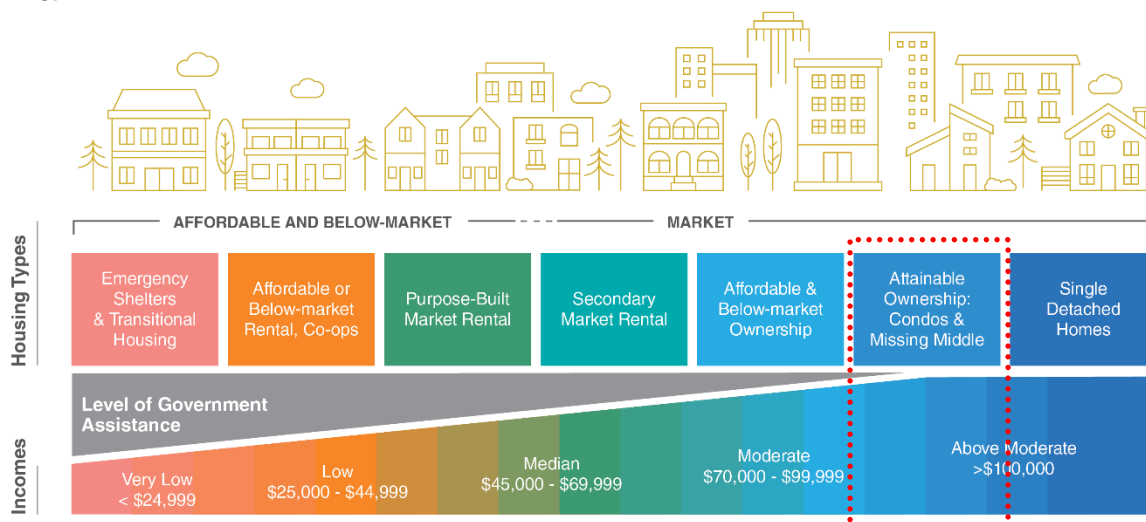


Figure 1. Housing Continuum

Housing Mix

At present there is no policy that provides targets regarding housing mix and unit type is not regulated or secured. However, the OCP identifies a mix of units as an objective and identifies the need for a diverse range of housing units including family housing. As submitted, this application proposes three four-bedroom, six three-bedroom, three one-bedroom, as well as three one-bedroom, one two-bedroom and one two-bedroom with a den in the existing house conversion. The applicant has agreed to secure the three- and four-bedroom units through a housing agreement.

Security of Tenure

The applicant is offering to secure the five existing rental units in the house conversion for the life of the building through a Housing Agreement with the City. Although City policy encourages securing rental in perpetuity, the provision of heritage designation addresses most scenarios where the building could be demolished, and rental units lost.

Statutory Right of Way

The applicant is amenable to providing a 1.6m wide statutory right-of-way (SRW) along Foul Bay Road to help achieve a more standard collector roadway width. This space will be used for the planting of future street trees and boulevard and inbounding the sidewalk to improve pedestrian experience and comfort. In the interim, the existing rock wall will remain in the SRW with portions removed to provide fire access and improve sightlines and safety for pedestrians and motorists.

Development Permit with Variance Application

Official Community Plan: Design Guidelines

As noted, the *Missing Middle Regulations*, which would permit heritage conserving infill without requiring rezoning, do not apply to a panhandle lot. However, The OCP does identify this property as within Development Permit Area (DPA) 15F, Missing Middle Housing as well as DPA 15B Intensive Residential- Panhandle Lot; therefore, applicable guidelines include the *Missing Middle Design Guidelines* (2022), *Design Guidelines for Small Lot House* (2002), and the *Advisory Design Guidelines for Buildings, Signs and Awnings* (1981).

Site Design

Recognizing the unique challenge with heritage infill, the guidelines provide specific direction for proposals that contain heritage buildings. This includes allowing for the siting and clustering of buildings to facilitate heritage conservation and preserve natural features as well as significant trees. Additionally, the incorporation of retained and new landscaping within setback areas is emphasized to mitigate impacts on neighbouring properties.

The guidelines encourage maintaining site lines from the sidewalk to the front entryway for heritage conserving infill and ensuring new buildings do not detract from the visual prominence of the heritage building. Although the heritage building is visible from Foul Bay Road and portions of Chandler Avenue, site lines from the street to the building are limited due to the panhandle configuration. Similarly, the new buildings would be located more than 40m from the street, with the heritage building remaining the most prominent.

Unless in conjunction with the designation of a heritage building, panhandle lot subdivision is strongly discouraged. Subdivision is proposed to create a separate lot to contain the new buildings, and a remnant lot to contain the heritage building. Heritage designation is proposed with additional provisions requested by the applicant, which is discussed in more detail in the heritage section below.

A primary objective for site design for Missing Middle Housing and intensive residential development is to sensitively integrate vehicle parking and circulation to minimize impacts on neighbours and on the public realm. This includes providing landscaping within driveway areas to soften impacts of front yard parking. This objective is achieved for parking located near the proposed dwellings; however, the proposed front yard parking is not sensitively integrated as it will be visible from the public realm and is not buffered from abutting properties. A plan revision to address this issue is included in the recommendation for Council's consideration.

The *Small Lot House Design Guidelines* (2002) encourage mitigating privacy impacts through larger setbacks, which is adequately achieved in the proposal by large setbacks consistent with panhandle lot regulations.

Building Design

In terms of architectural expression, new building design should be complimentary yet subordinate to, contrasting with and clearly distinguishable from that of the heritage building. This is achieved through the proposed massing, height, materials, and colour palette of the proposed buildings. Also, balconies are located and oriented towards front and rear yards, except for one balcony that overlooks the proposed protected open space area, which contributes to livability and adds articulation for visual interest.

The guidelines prioritize building design that minimizes overlook into adjacent private yards by employing increased building setbacks (at least 5m) and minimized or staggered windows when facing adjacent properties. The site layout does provide generous setbacks and demonstrates effort to retain established landscaping to minimize possible overlook.

Neighbourhood Plan

The *Gonzales Neighbourhood Community Plan* provides limited guidance on design, specifically that new buildings are sensitive to nearby heritage buildings, landscapes, and streetscapes, and allow for traditional or contemporary approaches to design if building massing and height are in keeping with neighbouring buildings.

In summary, the proposal complies with the following key OCP and neighbourhood plan guidelines:

- Site design concentrates density in one portion of the property, which avoids development in the southern portion and retains rock outcroppings and significant trees.
- Significant trees are proposed for removal; however, retention is possible for 60 out of 85 on- and off-site bylaw protected trees, including most of the existing landscape features in the southern portion of the site that abuts Abkhazi Gardens.
- Side and rear yard setbacks are at least 7.5m to habitable rooms, which is consistent with requirements for panhandle lots and exceeds that recommended in the guidelines.

- Building design is complimentary to the heritage building, with contemporary materials combined with elements that acknowledge the character defining elements while avoiding replication.
- Proposed new buildings are subordinate in height and sited in the side and rear yards to maintain prominence of the heritage building from the street.

Variances

Although a site-specific zone is sought, variances are recommended (instead of inclusion in the new zone) for areas where the proposal is not consistent with the standard RTM Zone, Traditional Residential Multiple Dwelling District, and the Off-Street Parking Regulations (Schedule C) of the *Zoning Regulation Bylaw*. This ensures that if this proposal is not built, any potential future redevelopment would require Council's consideration and approval for these specific aspects.

Setbacks

The property is considered an irregular, panhandle lot; therefore, the front property line is determined based on the largest inscribed rectangle (refer to page A106 in the attached plans). The existing house conversion has a zero setback from the front property line. A variance is required to reduce the minimum front yard setback from 6m to 0.41m for the Block 2 building. The variance is considered supportable given that Block 2 is sited in the north side yard and is further from the street than the heritage building.

A variance to reduce the minimum side yard setback (north) from 4.00m to 3.08m (Block 2) is considered supportable because the nearest habitable portion of Block 2 is setback 7.52m, which complies with the requirements of a panhandle lot. There is also a minor variance to increase the maximum eave projection from 0.75m to 0.79m, which is supportable due to the minor discrepancy between the proposal and bylaw requirement.

Parking and Driveway Specifications

A variance is required to permit parking in the front yard. This relates to the parallel and 90-degree parking located along the panhandle driveway. The proposed parking will occupy much of the land between the two properties abutting the panhandle portion and will not include a landscaped buffer. The variance is not supportable as proposed given that a reduction of vehicle parking is possible without requiring a parking variance to allow for permit parking in the front yard. The recommendation includes a condition that parking be reduced in the front yard.

A variance is also required to reduce short-term bicycle storage from 18 spaces to 10 spaces, which is considered supportable as the proposal is providing adequate long term bicycle parking as well as enhanced bike parking facilities.

The proposed development requires variances to driveway specifications, including to increase the maximum driveway slope from 8% to 11.36% and to reduce the minimum driveway width from 6m to 4m. Each of the required variances are considered supportable as they assist in the preservation of the existing site features, most notably rock-outcroppings and trees in front of the existing heritage building.

Height

The final variance proposed is to increase the maximum accessory building height from 3.50m to 4m for the accessory building that would be used as a “children’s playhouse” proposed in the large open space in the southern portion of the lot. This is supportable and the location is not likely to impact neighbouring properties.

Accessibility

The proposal includes one adaptable unit, which will be a one-bedroom unit in Block 3.

Sustainability

The following sustainability features are associated with this proposal:

- open space area with a garry oak meadow, rock outcroppings and nature trail (to be protected by a covenant)
- low impact design for building foundations, with no basements, to minimize tree impacts
- permeable parking and driveway surfaces
- removal of invasive plant species
- electric vehicle charging infrastructure available for all parking
- wildlife corridor to allow the continued safe movement of deer
- bee colony on site in the conservation area for a period of at least two years
- use of materials from onsite accessory buildings to construct a children’s playhouse.

Heritage Designation

History

The property located at 515 Foul Bay Road, also referred to as the Tracksell home, is a large 3.5-storey British Arts and Crafts style mansion built in 1910. The exterior façade of 515 Foul Bay Road has maintained much of its original appearance. Its character-defining elements include its half-timbered upper storey and stone-clad lower storey with rubble fieldstone cladding and granite quoins. The building contains wooden windows, other decorative woodwork, and corbelled brick chimney stacks. The ornamental woodwork and stonework is typical of the British Arts and Crafts architectural style, as well as the design work of noted Victorian architect Samuel Maclure. The building is also valued for its historical association with several prominent persons from Victoria’s past, including the Honourable John Wallace de Beque Farris and his wife Evelyn Farris.

Designation

It is reasonable and standard practice to request heritage designation in support of a development applications requiring rezoning. The applicant has been encouraged to heritage designate the existing building as it is a valued historic home designed by a renowned Victoria-based architect. Designation would provide the property with bylaw protection of character-defining elements (exterior elements only) and would enable the applicant to apply for grants through the Victoria Heritage Foundation for maintenance, repair and seismic upgrade work. The application was reviewed by the Heritage Advisory Panel at a meeting on May 9, 2017, and was recommended for approval.

The applicant is proposing heritage designation; however, they have expressed concern for potential uninsured liability in the event of damages to the building from a fire, flood or similar occurrence. The City's policy regarding designated properties is that if a heritage structure is damaged to the point of total or near total loss, upgrades in conformance with modern building code requirements may be triggered. The applicant's concern is that these upgrades may not be covered by insurance. In order to accommodate the applicant's concerns, the recommendation includes additional provisions to the heritage designation bylaw to accommodate the ability to demolish in cases of near or total loss in order to provide assurance in such rare cases.

Should Council not support the addition of provisions to the heritage designation bylaw, an alternate recommendation has been provided to require a heritage conservation covenant as an alternative that provides a level of protection. It should be noted that the alternate recommendation also recommends waiving a public hearing as heritage designation would no longer trigger this requirement.

Tree Preservation Bylaw and Urban Forest Master Plan

The goals of the *Urban Forest Master Plan* include protecting, enhancing, and expanding Victoria's urban forest and optimizing community benefits from the urban forest in all neighbourhoods. This application was received after July 1, 2021; therefore, *Tree Protection Bylaw No. 21-035* applies.

One hundred and five trees have been inventoried. There are 74 trees located on the subject lot, 31 trees on neighbouring properties and no trees on municipal property. Of the trees inventoried, there are a total of 85 bylaw protected trees: sixty-three on the subject lot and 22 neighbouring trees.

Proposed Tree Removals

Twenty-five bylaw protected trees on the subject lot are proposed for removal. There are 15 trees that would be removed as they are in the building area or immediately adjacent to an area where excavation will occur. There are eight trees that would be removed for service installation and/or parking construction. In addition, two trees have been assessed to be in poor condition and are unsuitable for retention. No trees on neighbouring properties are proposed for removal.

The table below outlines details on bylaw protected proposed for removal:

Tree #	Species	Diameter (DBH)	Health Condition	Structural Condition	Reason for Removal
1	Big Leaf Maple	38	Fair	Fair	Servicing and/or parking
1A	Plum	33	Poor	Fair	Servicing and/or parking
2	Plum	74	Good	Good	Servicing and/or parking
5	Plum	52	Fair	Poor	Servicing and/or parking

Tree #	Species	Diameter (DBH)	Health Condition	Structural Condition	Reason for Removal
6	Plum	40	Poor	Poor	Servicing and/or parking
7	Garry oak	16	Fair	Fair	Servicing and/or parking
15	Arbutus	38	Poor	Poor	Building Construction/Excavation
16	Garry oak	87	Fair	Fair	Building Construction/Excavation
23	Garry oak	43	Good	Good	Building Construction/Excavation
24	Garry oak	71	Good	Good	Building Construction/Excavation
25	Garry oak	75	Good	Good	Building Construction/Excavation
27	Garry oak	47	Good	Good	Building Construction/Excavation
30	Garry oak	84	Fair	Good	Building Construction/Excavation
38	Garry oak	69	Fair	Fair	Building Construction/Excavation
39	Mountain Ash	30	Fair	Poor	Building Construction/Excavation
49	Holly	35	Good	Good	Building Construction/Excavation
64	English Hawthorn	38	Fair	Fair	Servicing and/or parking
71	Portuguese Laurel	55	Poor	Poor	Servicing and/or parking
81	Laburnum	34	Poor	Poor	Building Construction/Excavation
85	Western Red Cedar	30			Tree is dead
86	Western Red Cedar	31			Tree is dead
87	English Hawthorn	42	Poor	Poor	Building Construction/Excavation
89	English Laurel	Multi	Fair	Good	Building Construction/Excavation
90	Plum	40	Poor	Poor	Unsuitable for retention
92	Plum	88	Poor	Poor	Unsuitable for retention

Trees Proposed for Retention

A total of 49 trees would be retained on the subject lot with this development project including 38 bylaw protected trees. Of the trees retained, 17 are Garry oaks ranging in size, the largest measuring 105 cm diameter. The project arborist has recommended several mitigation measures at various stages of the project to ensure these trees are retained. The feature tree on the lot is a 122 cm diameter arbutus that has been identified as a specimen tree under the tree bylaw. Modifications to the parking layout have been made to reduce impacts to tree roots and ensure retention of the tree.

Protective Covenant

A no-build covenant is proposed to protect an area of approximately 1,468m² in the southern portion of the lot. Parts of the area are comprised of undisturbed rock outcroppings and naturalized areas. Invasive plants will be removed from the area, and it will be maintained as a naturalized area in perpetuity under the covenant.

Proposed Planting

The landscape plan shows 29 new trees on the subject lot which meets the replanting requirements outlined in the *Tree Protection Bylaw*. The trees proposed are a variety of species including 14 native species (12 Garry oaks and two big leaf maple). Planting areas will be enhanced to meet the soil volume requirements in the tree bylaw.

Tree Impact Summary Table

Tree Status	Total # of Trees	To be REMOVED	To be PLANTED	NET CHANGE
On-site trees, bylaw protected	63	25	29	+4
On-site trees, not bylaw protected	11	0	0	0
Municipal trees	0	0	0	0
Neighbouring trees, bylaw protected	22	0	0	0
Neighbouring trees, not bylaw protected	9	0	0	0
Total	105	25	29	+4

EXEMPTION FROM SUBDIVISION/SERVICING BYLAW

Section 512 of the *Local Government Act* requires that a parcel being created through subdivision, which fronts on a highway, must have a minimum frontage of at least ten percent of the perimeter of the lot, even if the local government permits less than this minimum through a Development Variance Permit to or a site-specific Rezoning of the *Zoning Regulation Bylaw*. However, the provincial legislation enables Council to exempt a parcel from this minimum requirement as part of consideration of a land use application. The recommended and alternate motion includes consideration of this required exemption.

CONCLUSIONS

The proposal is generally consistent with the *Official Community Plan* Traditional Residential Urban Place Designation and the 17 proposed and existing dwelling units will provide a diversity of homes, including family-oriented housing and retained rental units. The proposed heritage designation, and protection of a large portion of the landscape furthers the OCP and neighbourhood plan objectives to retain the historic building and significant existing site features. The proposed form and character is generally consistent with applicable design guidelines for Missing Middle Housing on a heritage property, with the exception of proposed front yard parking,

which would unnecessarily impact neighbouring properties as well the view of the heritage building from the public realm. Therefore, it is recommended that Council consider proceeding as outlined in the recommendation.

ALTERNATE MOTIONS

Option 1 – Waive the Public Hearing

Rezoning Application

1. That Council instruct the Director of Sustainable Planning and Community Development to prepare the necessary Zoning Regulation Bylaw amendment that would authorize the proposed development outlined in the staff report dated October 10, 2023 for 515 Foul Bay Road.
2. That, pursuant to section 30 of the *Land Use Procedures Bylaw*, Council waives the requirement for the holding of a public hearing.
3. That, after publication of notification in accordance with section 467 of the Local Government Act, first, second, and third reading of the zoning bylaw amendment be considered by Council once the following conditions are met:
 - a. plan revision to reduce the space dedicated to vehicle parking at the site's entrance to the satisfaction of the Director of Sustainable Planning and Community Development;
 - b. plan revision to propose an alternative permeable paving surface, to the satisfaction of the Director of Parks, Recreation and Facilities;
 - c. plan revision to label accessible parking stall, show dimensions in metric and provide a 1.5m hatched aisle, to the satisfaction of the Director of Engineering and Public Works;
 - d. plan revisions to correct the arborist report, tree management plan and landscape plans to the satisfaction of the Director of parks, Recreation and Facilities;
4. That following the third reading of the zoning amendment bylaw, the applicant prepare and execute the following legal agreements, with form satisfactory to the City Solicitor prior to adoption of the bylaw:
 - a. provision of a 1.6m wide statutory right-of-way for highway purposes along the Foul Bay Road frontage, with terms to the satisfaction of the Director of Engineering and Public Works;
 - b. provision of a detailed design, supply and installation of a new Rectangular Rapid Flashing Beacon (RRFB) pedestrian crossing of Foul Bay Road at its intersection with Chandler Avenue, including a curb extension at the west side of Foul Bay Road, wheelchair ramps, tactile indicators and all associated infrastructure, to the satisfaction of the Director of Engineering and Public Works;
 - c. protection, restoration and maintenance of the existing greenspace with a site area of approximately 1,468 m² in accordance the plans date stamped by Planning on September 14, 2023, which includes provision of a bee colony in the conservation area for a period of at least two years and ensuring that design and construction in the area follows the recommendations in the September 12, 2023 arborist report from Gye & Associates to minimize impacts to trees, to the satisfaction of the Director of Parks, Recreation and Facilities;

- d. securing five units in the existing multiple dwelling as rental units for the life of the building, with contents satisfactory to the Director of Sustainable Planning and Community Development;
- e. protection of the heritage registered building through a heritage conservation covenant, to the satisfaction of the Director of Sustainable Planning and Community Development;
- f. provision of no less than one adaptable unit, in accordance with the standards in the British Columbia Building Code and BC's Building Accessibility Handbook, to the satisfaction of the Director of Sustainable Planning and Community Development;
- g. provision of no less than three four-bedroom and six three-bedroom units, to the satisfaction of the Director of Sustainable Planning and Community Development;
- h. provision of transportation demand management measures, to the satisfaction of the Director of Engineering and Public Works, including:
 - i. two over-sized long-term bicycle parking spaces;
 - ii. 50% of required long-term bicycle parking with access to an electrical outlet;
 - iii. bicycle wash and maintenance facility.
- 5. That adoption of the zoning bylaw amendment will not take place until all of the required legal agreements that are registrable in the Land Title Office have been so registered to the satisfaction of the City Solicitor.
- 6. That the above Recommendations be adopted on the condition that they create no legal rights for the applicant or any other person, or obligation on the part of the City or its officials, and any expenditure of funds is at the risk of the person making the expenditure.

Development Permit with Variances Application

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. 00255 for 515 Foul Bay Road, in accordance with plans submitted to the Planning department and date stamped by Planning on September 14, 2023, in accordance with the following:
 - a. Subject to the proposed development meeting all City zoning bylaw requirements, except for the following variances:
 - i. reduce minimum front yard setback from 6.00m to 0.41m;
 - ii. reduce minimum side yard setback (north) from 4.00m to 3.08m;
 - iii. increase maximum eave projection from 0.75m to 0.79m;
 - iv. permit vehicle parking in the front yard;
 - v. reduce short-term bicycle storage from 18 spaces to 10 spaces;
 - vi. increase maximum driveway slope from 8.00% to 11.36%;
 - vii. reduce minimum two-way driveway width from 6.00m to 4.00m, and;
 - viii. increase maximum accessory building height from 3.50m to 4.00m.
 - b. Subject to registration of the following legal agreements on the property's title, with contents satisfactory to the Director of Sustainable Planning and Community Development and form satisfactory to the City Solicitor:
 - c. The property being subdivided into two lots.

- d. That pursuant to section 512(2) of the *Local Government Act*, Council exempts the existing property at 515 Foul Bay Road as well as the new proposed lot to be created by subdivision, as generally shown in the plans submitted to the Planning department and date stamped by Planning on September 14, 2023, from the minimum frontage requirements of section 512(1) at the time of subdivision.
2. That the Development Permit with Variances, if issued, lapses two years from the date of this resolution.

Option Two - Decline

That Council decline Rezoning Application No. 00807 for the property located at 515 Foul Bay Road.

Respectfully submitted,

Patrick Carroll
Senior Planner
Development Services Division

Karen Hoes, Director
Sustainable Planning and Community
Development Department

Report accepted and recommended by the City Manager.

List of Attachments

- Attachment A: Subject Map
- Attachment B: Plans date stamped September 14, 2023
- Attachment C: Letter from applicant to Mayor and Council dated November 7, 2023
- Attachment D: Statement of Significance
- Attachment E: Community Association Land Use Committee Report dated October 25, 2021
- Attachment F: Pre-Application Consultation Comments from Online Feedback Form
- Attachment G: Heritage Advisory Panel minutes dated May 9, 2017
- Attachment H: Correspondence (Letters received from residents)
- Attachment I: Arborist Report dated September 12, 2023.