

**TO:** Mayor and Council

**FROM:** Director of Building and Planning

**SUBJECT:** 757/767 St. Patrick Street  
Lot 1, Section 22, Victoria District, Plan 1842  
Zoning Bylaw Amendment

**ZONE:** Current Zoning: RS-5 One Family Residential Use

---

**DATE:** October 16, 2012

### **Background**

The new owners of 757/767 St. Patrick Street wish to rezone their property from RS-5 (One Family Residential Use) to a new zone (Two Family Residential Use). The existing use as a duplex is legal non-conforming built in 1948. The current Zoning Bylaw No. 3531 does not have any duplex zoning.

### **Discussion**

Histories of duplexes within the District of Oak Bay previously provided to Council are repeated here for information.

Duplexes have not been permitted in Oak Bay since the Zoning Bylaw No. 2571 was adopted in 1966. Prior to 1966 duplexes were permitted only on lots on which a single family dwelling was built prior to 1930, and which is converted to a two family dwelling. Between 1929 and 1965 duplexes were a permitted use or were given approval through a Zoning Appeal Board process.

When duplexes were permitted either by the Zoning Bylaw or through a Zoning Appeal process standard requirements such as setbacks, height, minimum dwelling size, etc. were in place. One additional requirement existed that required a certain amount of "open space" on a lot. Open Space was defined as "shall mean the portions of a lot which are unoccupied and unobstructed by any structure from the ground upward." The amount of open space varied over the years; in 1945 a minimum of 3500 square feet per dwelling unit was required. The amount of open space increased to as much as 5000 square feet per dwelling unit and reduced to 4500 square feet per dwelling unit when the Zoning Bylaw eliminated duplex zoning in 1966.

The above requirement is confirmed by the existing legal non-conforming duplexes that exist in Oak Bay are generally larger lots than the typical RS-5 zone at 6006 square feet. There are approximately 200 legal non-conforming duplexes in Oak Bay. Approximately 16 % of these duplex properties are on lots of a size less than 8000 square feet having the majority of duplex properties (84%) on lots with a lot area exceeding 8000 square feet. Sixty five percent of existing duplexes are on lots exceeding 10,000 square feet. In order to maintain the open space requirement and reduce massing, duplexes were primarily developed on large lots.

The *Oak Bay Official Community Plan* under Land Use Objectives states the following:

### ***Land Use Objectives***

8. (1) The following sections set out general principles and objectives for residential land use in the Municipality, including the designation of areas where rezoning to higher density forms of residential use could be considered.

(2) In areas not specifically addressed in the following sections, the land use vision is depicted on the Land Use Map attached as Appendix "B" to this document.

(\*Bylaw 4319, adopted Jun. 11/07)

### ***Two Family Dwellings***

10. Duplexes existing in Oak Bay are not consistent with current zoning, but many were built at a time when duplexes were a permitted use in residential areas.

The regulations that governed the construction of those two-family dwellings addressed the minimum size requirements for each dwelling unit, along with the minimum amount of open space on each lot so used.

On a property by property basis, possibly to legitimize existing duplexes where appropriate, and in other special circumstances, it would be consistent with the general residential land use objectives to consider a limited number of rezoning to allow a two family dwelling use. **It would be very important that the regulations accompanying a zone created for this purpose tightly control building density and mass.**

\*bold emphasis by writer\*

This proposal has a lot area substantially larger than the average existing non-conforming duplexes at approximately 18,000 ft<sup>2</sup>. Using the old criteria of open space (3500 or 4500 sq. ft per dwelling unit), this proposal could provide this open space.

The owner has stated that extensive renovations cannot be carried out without losing the "legal non-conforming status". If the owner was to tear down the existing duplex they would be correct in stating that a new duplex could not be built. The legislation permits existing non-conforming uses to remain and renovations can be done to these existing buildings. If renovations involve structural alterations to the building then the *Local Government Act* requires that a Board of Variance approval is obtained to carry out structural alterations.

Careful consideration of rezoning to duplex zones needs to have tight controls on density and massing of buildings. As duplex zones have not been permitted in nearly fifty years one needs to

consider precedent setting situations as other applications will follow. This application is evidence that further applications will follow.

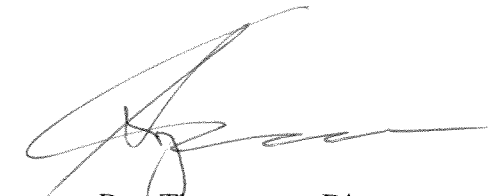
Interestingly, the method of development has clearly changed from 60 years ago when our Bylaws created zones that required minimum sizes of dwelling units. The trend today is to control massing and density and use maximum size of dwelling units permitted. This trend of building to the absolute maximum is not likely to change and has increased pressures on municipalities to increase densities.

Council has several options at this time:

1. Decline the application to rezone this property.
2. Forward this application to Committee of the Whole for further discussion and consideration.
3. Decline this application at this time and roll consideration of duplex zoning for Oak Bay into the OCP review which is proceeding over the next two years.
4. Consider moving forward and include an amendment to the Official Community Plan that would create a development permit area for all duplex zones within Oak Bay.

### **Recommendation**

This report be received for information and direction.



Roy Thomassen, Director  
Building and Planning

November 4, 2012

To: Mayor and Council

From: Municipal Clerk

Re: **Tree Protection Bylaw Application for Reconsideration of Permit Refusal – 3145 Midland Road**

Under the *Tree Protection Bylaw*, adopted in 2006, the tree, located at 3155 Midland Road, for which a permit to prune the limbs overhanging the driveway at 3145 Midland Road was denied, would be considered protected.

Pursuant to the Bylaw, the Manager of Parks Services would issue a permit for the removal or damage of a protected tree where such removal or damage was required as per the various criteria laid out in the bylaw, which are as follows:

6. (1) to eliminate a hazard caused by a tree or part thereof which is dead, dying, severely damaged, unstable or severely leaning and in danger of falling;
- (2) to eliminate a hazard caused by interference with utility wires;
- (3) to eliminate a situation where a water line, sewer pipe or drain pipe is being chronically blocked or damaged by roots, or where pressure or penetration from tree growths above or below ground is causing damage to a building or part thereof, or to a significant structure, and there is no other reasonable solution that would not impose an undue hardship;
- (4) subject to Section 9, to allow the construction of a principal building in the location shown on a building permit application which complies with all applicable enactments and bylaws, and where the plans for the same have been approved by the building permit issuing authority for the Municipality;
- (5) to allow the construction of an accessory building or structure in a location complying with all applicable bylaws and regulations where a requirement to construct the building or structure in an alternate location would impose an undue hardship;
- (6) to prevent a foreseeable hazard that would be created by damage to the root system of a tree attributable to the construction of a building or structure in a location approved by the building permit issuing authority for the Municipality;
- (7) to allow the installation of underground or overhead services where a requirement to install the same in an alternate location would impose an undue hardship;
- (8) to allow the installation of a driveway or required off-street parking area where a requirement to install the same in an alternate location would impose an undue hardship;

- (9) or warranted because the tree, due to disease, decay, dieback or other pathological condition, mishap or pest attack is in an advanced and irreversible state of decline:
- (a) that will on balance of probability cause the death of the tree within 5 years or less; or
  - (b) which has already caused the tree to deteriorate to the point that its continued retention can no longer reasonably be considered to serve the tree protection objectives of this Bylaw;
- (10) , in accordance with sound arboricultural principles and practices, and pursuant to the goal of maintaining the native urban forest in a state of ongoing renewal, to promote and protect the health and vigour of any one tree of the species Garry Oak (*Quercus garryana*), Arbutus (*Arbutus menziesii*), Pacific (Western) Yew (*Taxus brevifolia*), Black Hawthorn (*Crataegus douglasii*) or Pacific (Western Flowering) Dogwood (*Cornus nuttallii*), which has either a basal diameter greater than 10 centimetres or a height above the point of germination in excess of 2 metres.
- (11) to prevent foreseeable damage to a building, or to a significant structure, from:
- (a) a limb, trunk or stem failure; or
  - (b) pressure or penetration from tree growths above or below ground,
- which the Manager of Parks Services has identified as a substantial risk based on his examination of the tree in the context of its location, characteristics and general environment, notwithstanding that the tree may not at the time of application exhibit any of the hazardous conditions set out in Section 6(1) or actually be causing damage as described in Section 6(3); or
- (12) to remedy an undue hardship attributable to the material and deleterious effect of the tree on an improvement of significant value located on the subject parcel, or on land adjoining the subject parcel.

In the case at hand, the Manager of Parks Services has determined that none of the criteria under which he has the authority to issue a permit apply (see additional information attached). Therefore, the owner of 3145 Midland Road is seeking Council reconsideration of the decision to refuse to issue a permit. The owner of 3155 Midland Road, the lot on which the tree is located, has also been informed of the request for reconsideration.

In this regard, Section 21.1 of the Tree Protection Bylaw provides that in the case of a request for reconsideration of a decision of the Manager of Parks Services, Council would review the Manager's interpretation and application of the permit-issuing criteria set out in Section 6 and, if supported by the facts and in harmony with the scheme of this Bylaw generally and the language of that section in particular, may substitute its own interpretation or application and order the issuance of a permit where it is satisfied that the issuance of the permit having regard to:

- (1) the species of the tree;
  - (2) the form of the tree;
  - (3) the condition of the tree; or
  - (4) the general density of protected trees on the subject parcel,
- would not defeat the intent of this Bylaw.



Loranne Hilton  
Municipal Clerk

2012- 322-1

October 30, 2012

TO: Mayor and Council  
FROM: Municipal Clerk  
RE: **Sea of Lights Event**

---

The activities on Willows Beach in connection with the annual Sea of Lights Event has been taken on as a municipal event and coordinated by the Oak Bay Parks and Recreation Department since 2006.

The Yacht Club's portion of the event involves a parade of dozens of lighted boats along the shore. The organized viewing area is to be from Willows Beach and a beach bonfire is planned. There is no admission fee, but non-perishable food items will be collected for donation to the Salvation Army and the Kiwanis Club will be supplying hot chocolate.

The Fire Regulation Bylaw states that a fire may be ignited and maintained in the open air or in a container in connection with a not-for-profit community event which Council has determined to be for the benefit of the Municipality at large, provided that Council approval has been obtained, and that, in the assessment of Council, the fire would create no nuisance or hazard to persons or property, and that a plan for the management of the fire has been submitted to and approved by the Fire Chief as to the safety of persons and property. I understand the Fire Chief is aware of the plans for the bonfire and a member of the Fire Department will be on-hand on the night of the event.

If Council wishes to approve, as a municipal event, the activities on Willows Beach in relation to the Sea of Lights event, the following resolution would be appropriate:

*"That, in relation to the Sea of Lights Event, the activities planned for Willows Beach, on December 7, 2012 be approved as a Municipal Event, including the lighting of a bonfire pursuant to Section 46 of the Fire Regulation Bylaw."*



Lorraine Hilton  
Municipal Clerk