



POLICY REPORT DEVELOPMENT AND BUILDING

Report Date: April 5, 2011
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VanRIMS No.: 08-2000-20
Meeting Date: April 21, 2011

TO: Vancouver City Council

FROM: Director of Planning in consultation with the Managing Director of Cultural Services, the Director of Facility Design and Management, and the Director of Real Estate Services

SUBJECT: CD-1 Rezoning and Heritage Revitalization Agreement at 639 Commercial Drive (York Theatre)

RECOMMENDATION

- A. THAT the application by Henriquez Partners Architects on behalf of Wall Financial Corporation to rezone 639 Commercial Drive (Lots A and B of Lot 12, Block D, District Lot 183, Plan 3137; PID: 013-108-506 and PID: 013-108-514, respectively, and Lot C, Except part in Reference Plan 1808, of Lot 12, Block D, District Lot 183, Plan 3137; PID: 013-108-531) (the "Property") from RM-4N (Multi-Family Residential District) to CD-1 (Comprehensive Development District), to permit the renovation of the historic York Theatre building (the "Building") situated on the Property, the addition to the Building of a two-storey foyer and the use of the renovated Building as a performing arts theatre, be referred to a Public Hearing, together with:
- (i) plans prepared by Henriquez Partners Architects, received on May 14, 2010, presented in Appendix F;
 - (ii) draft CD-1 By-law provisions, generally as presented in Appendix A; and
 - (iii) the recommendation of the Director of Planning to approve the rezoning, subject to conditions contained in Appendix B;

FURTHER THAT the Director of Legal Services be instructed to prepare the necessary CD-1 By-law generally in accordance with Appendix A for consideration at the Public Hearing.

- B. THAT, if the application is referred to a Public Hearing, the application to amend Schedule E of the Sign By-law to establish regulations for this CD-1 in accordance with Schedule B (C-2), as set out in Appendix C, be referred to the same Public Hearing;

FURTHER THAT the Director of Legal Services be instructed to prepare the necessary by-law to amend the Sign By-law generally in accordance with Appendix C for consideration at the Public Hearing.

- C. THAT, subject to approval of the rezoning at the Public Hearing, the Noise Control By-law be amended to include this Comprehensive District in Schedule B as set out in Appendix C;

FURTHER THAT the Director of Legal Services be instructed to bring forward the amendment to the Noise Control By-law at the time of enactment of the CD-1 By-law.

- D. THAT, if the application is referred to a Public Hearing, the Director of Legal Services be instructed to prepare, for consideration at the Public Hearing, a by-law to designate the Building under the provisions of the Vancouver Charter as a protected heritage property.

- E. THAT, if the application is referred to a Public Hearing, the Director of Legal Services be instructed to prepare, for consideration at the Public Hearing, a by-law authorizing the City to enter into with the owner of the Property a Heritage Revitalization Agreement, generally as described in this report and substantially in the form annexed hereto as Appendix D, for the following:

- (i) to secure the timely rehabilitation and long-term protection and conservation of the Building and, in consideration therefor, to assign to the Property 106,793 sq. ft. of transferable bonus density and, by way of covenant on title to the Property, restrict the transfer of this bonus density to other properties owned by the Wall Financial Corporation group of companies or persons, which transfer or transfers must be approved by the City;
- (ii) vary the Vancouver Development Cost Levy By-law No. 9755 to waive payment of the Development Cost Levy otherwise payable in connection with the project contemplated by the Heritage Revitalization Agreement; and
- (iii) to provide that once:
 - (a) the renovation and restoration of the Building is completed to the satisfaction of the Director of Planning, the Managing Director of Cultural Services and the Director of Facilities Design and Management;
 - (b) all occupancy permits for full occupancy and use of the Building have been issued; and
 - (c) completion of the purchase of the Property by the City (which purchase shall be subject to a separate report to Council);

the City will pay the following amounts to the owner of the Property as City contributions towards the cost of restoring the Building:

- (a) the amount of \$1,280,720 with such funds collected for the rezonings of 1133 West Georgia Street (\$1,130,000) and 490 Commercial Drive (\$150,720); and
- (b) the amount of \$1,000,000 as a contribution from the 2011 Capital Budget for Cultural Infrastructure.

- F. That, if the application is referred to a Public Hearing, Council approves that, as a matter of policy, the transferable heritage bonus density to be assigned to the Property under the Heritage Revitalization Agreement may be transferred to more than one receiver site, in accordance with the Heritage Revitalization Agreement and through the normal Transfer of Density processes, and that such receiver sites may be in different zoning, use, density and height districts than that of the Property.
- G. THAT Recommendations A to F be adopted on the following conditions:
- (i) THAT the passage of the above resolutions creates no legal rights for the applicant or any other person, or obligation on the part of the City; any expenditure of funds or incurring of costs is at the risk of the person making the expenditure or incurring the cost;
 - (ii) THAT any approval that may be granted following the public hearing shall not obligate the City to enact a by-law rezoning the property, and any costs incurred in fulfilling requirements imposed as a condition of rezoning are at the risk of the property owner; and
 - (iii) THAT the City and all its officials, including the Approving Officer, shall not in any way be limited or directed in the exercise of their authority or discretion, regardless of when they are called upon to exercise such authority or discretion.

NOTE: For details on the related proposal that the City take an option to purchase the Building, with the option not to be exercised before the rehabilitation of the Building is complete, and lease it to an operator, please see Administrative Report RTS 9150 from the Director of Real Estate Services, dated April 5, 2011, entitled "Option to Purchase 639 Commercial Drive (York Theatre) and Lease of 639 Commercial Drive to the Vancouver East Cultural Centre".

GENERAL MANAGER'S COMMENTS

The General Manager of Community Services RECOMMENDS approval of the foregoing.

COUNCIL POLICY

Relevant Council policies for this site include:

- Heritage Policies and Guidelines
- Transfer of Density Policy and Procedure
- 2008-2023 Cultural Facilities Priorities Plan
- 2008-2018 Culture Plan
- Rezoning Policy for Greener Buildings (February 4, 2010).

PAST COUNCIL RESOLUTIONS RE YORK THEATRE

September 18, 2008:

- A. THAT Council considers the exterior and interior of the York Theatre, at 639 Commercial Drive, to have heritage value meriting conservation.
- B. THAT pursuant to section 589 of the Vancouver Charter, Council orders that the whole of the exterior and the interior of the York Theatre be subject to temporary protection in accordance with the provision of Section 591 of the Vancouver Charter for a period of 120 days from September 18, 2008.
- C. THAT Council agrees the form of this Order shall be satisfactory to the City's Director of Legal Services and that the Order shall be executed on behalf of Council by the Director of Legal Services.

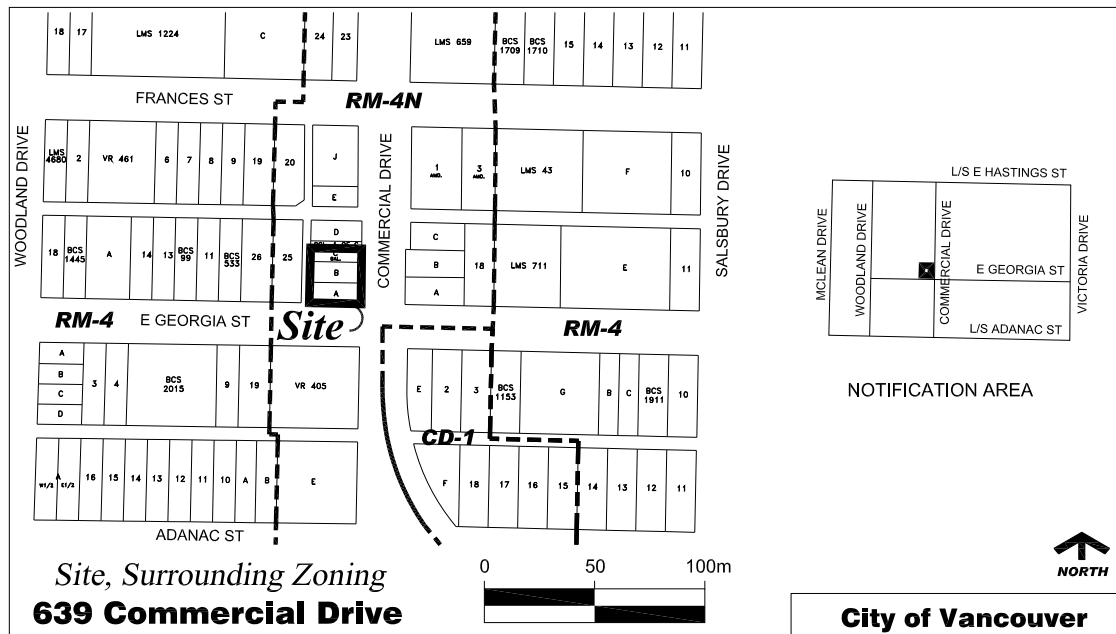
December 18, 2008:

- A. THAT Council support the ongoing efforts to retain the York Theatre; and
FURTHER THAT Council support in principle a City contribution of up to 100% of capital costs subject to:
 1. approval of total capital costs;
 2. confirmation of a funding model including, but not limited to:
 - Transfer of density (including consideration of setting the value of the density at a higher rate);
 - Capital;
 - Property tax exemption;
 - Ownership arrangements (that the City be the ultimate owner of the property and enter into a long-term lease arrangement with the Vancouver East Cultural Centre).
- B. THAT the property owners, the Vancouver East Cultural Centre, York advocacy group and their partners be thanked for their continued cooperation and support.
- C. THAT the property owners be requested to not demolish the York Theatre until they are ready to proceed with the property development.

June 16, 2009:

- A. THAT the Vancouver Heritage Register be amended to include the eight publicly nominated heritage buildings listed in Appendix A [listing the York Theatre in category "C"].

Figure 1 – York Theatre site and surrounding zoning



PURPOSE AND SUMMARY

This report assesses an application to rezone the site at 639 Commercial Drive (the “Property”) from RM-4N (Multi-Family Residential District) to CD-1 (Comprehensive Development District) to permit an increase in the overall permitted density from 1.48 FSR (Floor Space Ratio) to 2.10 FSR, to accommodate alterations to the historic York Theatre building (the “Building”) situated on the Property, including the addition of a two-storey foyer behind a new east façade, and to permit the building to be used for cultural performing arts purposes. The applicant proposes that the historic theatre be retained, restored and renovated and become a modern theatre to be operated by, and as a satellite facility of, the Vancouver East Cultural Centre (VECC). As incentive and compensation for the conservation and renovation of the Building and provision of the cultural amenity, transferable bonus density would be created for transfer by the owner-developer to other properties through normal Transfer of Density processes. The City would also waive the DCL requirement and provide cash contributions from Capital Plan and CAC funds.

BACKGROUND

The Building is located in an RM-4N District on the northwest corner of Commercial Drive and East Georgia Street, in the Grandview-Woodland neighbourhood. Theatre use is not permitted in the RM-4N District Schedule, but the Building has been in existence since 1913 and was operated as theatre or cinema on a non-conforming use basis until 2000 when it closed.

The Building, which is currently vacant, occupies all 573.4 m² (6,172 sq. ft.) of the Property and abuts a three-storey brick structure to the north. The Building is further bounded by East Georgia Street to the south, Commercial Drive to the east and a 12-foot-wide lane to the west. Zoning in the area of the site is predominantly RM-4 and RM-4N, except for CD-1 (97), which is a seniors care home situated diagonally across the intersection from the Building.

In 2007, the Property was sold to a developer who submitted an application in the summer of 2008 to demolish the Building and redevelop the Property with rowhouses. At this time, an advocacy group, lead by the Save the York Society, sought support for the retention and rehabilitation of the Building to serve performing arts communities in Vancouver. Although the Building was not on the Heritage Register, it had previously been determined that it might have heritage value. Staff undertook a heritage assessment of the Property and began discussions with the developer to explore opportunities for retention of the Building.

On September 18, 2008, Council approved a 120-day temporary protection order for the exterior and interior of the Building. The protection order was to allow for the completion of capital cost estimates and an operational feasibility study, to assess the long-term viability of renewed operation of a theatre in the Building and to determine the resources required to undertake its restoration. The Vancouver East Cultural Centre, an experienced operator of a similar-size theatre in the area, undertook an operational feasibility study with Henriquez Partners Architects who reviewed the feasibility of restoring the Building. The Property was subsequently purchased by a Wall Financial Corporation company.

On December 18, 2008, Council reaffirmed its support for the ongoing efforts to retain the Building, on recommendation of the staff review and on support of the feasibility studies noted above. Council further approved, in principle, a City contribution of up to 100% of the capital costs to retain and rehabilitate the Building, subject to approval of the total capital costs and to confirmation of various funding sources. (See the past Council resolutions on page 4 of this report.)

On June 16, 2009, Council added the Building to the Vancouver Heritage Register in the "C" evaluation category.

On May 14, 2010, an application was received from Henriquez Partners Architects on behalf of Wall Financial Corporation to rezone the Property, and to restore and alter the Building. Staff have undertaken a combined rezoning and development permit review process.

DISCUSSION

The development proposed for the Property requires rezoning the lands to CD-1 to allow for the restoration and modification of the Building and to allow the use proposed for it after the work is complete. It also requires a Heritage Revitalization Agreement (HRA) between the owner-developer (Wall Financial Corporation) and the City to secure the rehabilitation and conservation of the Building as a heritage property, and to provide certain incentives to the owner-developer for carrying out the rehabilitation work.

Land Use — Theatre use is not permitted in the RM-4N District Schedule, though the Building was operated for many years as theatre or cinema as a non-conforming permitted use. However, because the Building has gone out of use since it was closed in the year 2000, the

non-conforming use exemption is no longer available. Therefore, the proposed CD-1 By-law would re-establish the historical theatre use for the Building, with accessory uses as detailed in the draft by-law provisions in Appendix A. The goal of the land use provisions would be to allow the Building to be operated as a dynamic cultural space for the creation, production, rehearsal, presentation and promotion of traditional and contemporary forms of performing arts, including theatre, music, dance, media and inter-disciplinary arts, and community cultural programming. A detailed description of the history of the theatre and its importance as a cultural resource is summarized in Appendix E.

Increased density on site — The proposed CD-1 By-law would increase the permissible FSR for the Property from the existing non-conforming density of 1.48 to 2.10. The project would accomplish the increase without significant change to the form or massing of the Building. The proposal retains the floor space established in 1913 but replaces the 1939 and 1969 cement-block additions on the Commercial Drive frontage. In their place, a new two-storey foyer is proposed. The foyer's net new floor space, the expansion of the usable floor space in the Building basement and other interior renovations, all bring the total floor area to 2.10 FSR.

Height — The Building is 13.3 m (43.6 ft.) in height, which is non-conforming to the 10.7 m (35.1 ft.) height limit in RM-4N. An increase beyond the building's existing height is not sought, so the height limit proposed in the CD-1 By-law is 13.3 m.

Form of Development (Note Plans: Appendix F) — The "Britannia/Woodland RM-4 and RM-4N Guidelines" apply to development in this area. Since these guidelines only address residential developments, they have limited applicability to this non-residential proposal. The Building and the adjacent mixed residential-commercial structure to the north were constructed prior to the establishment of the RM-4N District.

All of the 1913 floor space of the Building would be retained. This includes the theatre space which occupies most of the Property and its original entry/ticket booth fronting on Commercial Drive. The remaining space at the corner of Georgia Street is occupied by a post-1913 one-storey structure that mostly contained retail uses, but is currently vacant. It is proposed that this non-heritage structure be removed and replaced with a new two-storey foyer as an addition to the Building.

The proposed foyer takes a simple form that is complementary to the Art Deco style of the Building. While this contemporary approach may not meet the recommendations of the RM-4N Guidelines which encourage a traditional style, it does meet a basic intent of providing a form of development which complements the Building.

The proposed addition to the Building would extend to the Property boundaries at Commercial Drive and Georgia Street. This differs from the yard setbacks required in the RM-4N District, but aligns with the Building's historical Commercial Drive entry and therefore provides streetscape continuity. The addition would abut the Building and is generally compatible in height, though it does propose a street-facing parapet which exceeds the existing main parapet height. The glass screen above the parapet, which screens mechanical equipment, is the same height as the existing fly tower. The proposed form of the addition would have no impact on neighbouring buildings. Despite being taller, the new foyer would essentially replace retail frontage that has occupied the corner for many years.

The renovated Building and the addition to it, as proposed, would provide a high degree of pedestrian interest. The Building entry would have glass entry doors and a ticket booth. The addition to the Building presents a near fully glazed elevation along Commercial Drive, which would allow pedestrians a full view to the lobby space. While a canopy is proposed at the Georgia Street exits, additional weather protection would improve pedestrian amenity. The Building would be refinished in period stucco and the addition's finishes would be a limited number of high quality materials, including curtain wall and tiles which reflect traditional Commercial Drive building treatments. The lane elevation would be improved with a new stucco finish and a screened alcove for garbage and recycling.

Staff support the proposal subject to design development conditions contained in Appendix B. These include adding canopies for weather protection along the Commercial Drive and Georgia Street facades, as well as design development to improve the relationship of the architectural components in the foyer addition to those of the Building.

Heritage Revitalization Agreement – To implement the project as proposed, a Heritage Revitalization Agreement (HRA) between the owner-developer and the City has been drafted (and is shown in Appendix D). The agreement would secure the rehabilitation and conservation of the Building and provide incentives to the owner-developer to carry out the restoration.

Under the terms of the proposed HRA, 106,793 sq. ft. of transferable heritage bonus density would be assigned to the site. It is also proposed that the HRA vary the Development Cost Levy By-law so as to waive the Development Cost Levy otherwise payable in relation to the project. The proposed assignment of transferable heritage bonus density and the DCL waiver are part of a proposed funding package which makes the proposal viable for the owner-developer.

For a description of the history of the theatre and its importance as a cultural resource, and of the heritage conservation approach, see Appendix E.

Transferable Bonus Density – Under Section 595 of the Vancouver Charter, the City is required to compensate owners of designated heritage property for the reduction in the land's market value caused by a heritage designation made under that section of the Charter. This is done sometimes by way of the granting to the heritage property an appropriate amount of heritage bonus density.

In addition, Council's Heritage Policy and Guidelines provide for the granting of heritage bonus density in some circumstances in respect of rehabilitation work to be carried out under heritage revitalization agreements entered into pursuant to Section 592 of the Vancouver Charter. It is noted in the Heritage Policy and Guidelines that the Director of Planning is authorized under the Zoning and Development By-law to relax the provisions of the by-law in certain circumstances, including in circumstances in which Council determines that a proposed development would make a contribution to conserving a building or site designated by Council as a protected heritage property or building or site on the Heritage Register. The Heritage Policies and Guidelines also provide that the Director of Planning may allow in an increase in floor space ratio (FSR) in order to permit a development that includes the conservation of a building listed on the City's Heritage Register, provided that in doing so he or she has regard to the cost of conservation, the value of the increased floor area, the impact on livability and environmental quality of the neighbourhood and the appropriateness

of requiring a heritage designation. The Policy also provides that where the floor space increase being considered is more than 10% of the maximum permitted under the otherwise applicable zoning, prior Council approval is required. The heritage bonus density proposed in this case is greater than 10% of the maximum FSR permitted under the otherwise applicable zoning.

Section 592 of the Vancouver Charter authorizes Council to enter into, by by-law, an HRA with the owner of heritage property and provides that an HRA may, among other things, vary or supplement a zoning by-law and on that basis authorizes the creation of bonus density by HRA.

In some instances, as in this case, a heritage site for which the granting of bonus density may be an appropriate form of compensation cannot accommodate any or all of the bonus density needed to adequately compensate the owner. But Council has established a Transfer of Density Policy and Procedure, which is applicable to all circumstances in which rezoning applications or heritage revitalization agreements involve the transfer of density from one site to another, under which in some circumstances heritage bonus density may be transferred, from the site to which it is originally granted, to other sites for use there.

This project as proposed contemplates that, as compensation to the owner-developer for the proposed heritage designation and heritage rehabilitation, 106,793 sq. ft. of transferable bonus density would be granted for transfer off site after completion of the restoration.

It is proposed that up to 3,837 sq. ft. of bonus density to be used on site would be put in place under the proposed CD-1 rezoning, as discussed in this report, and that the proposed 106,793 sq. ft. of transferable heritage bonus density would be put in place on the Property by way of the proposed HRA, also as discussed in this report.

It should be noted, however, that any transfer of the proposed transferable bonus density in this case probably would not comply with the Transfer of Density Policy and Procedure, which provides that the donor and the recipient sites are not to be separated by a "zoning boundary or use, density or height district boundary in an Official Development Plan, unless the sites involved are both within the same block; or the donor site is in the 800-1200 blocks of Granville Street and the recipient site is in the Downtown South". It is anticipated that all recipient sites to be proposed by the owner-developer in this case would be located across a zoning boundary. The only exceptions in the policy to these restrictions are circumstances involving heritage sites within and between the various zones of the Central Area. The heritage site in this case is not in the Central Area and it is anticipated that the recipient sites to be proposed by the owner-developer would be outside the Central Area.

Nevertheless, staff conclude that the conservation of the York Theatre and its rehabilitation into a new valuable cultural resource to the community and city are compelling reasons, specific to this particular case, for permitting the assignment of transferable bonus density as proposed to the site and transferable bonus density to be created and transferred outside of the Central Area.

It should also be noted that any proposals to transfer the transferable bonus density would be subject to all applicable laws, by-laws, policies and procedures and will be considered on the individual merits.

It should be further noted that the owner-developer has agreed, with a view to minimizing the impact on the Density Bank of the creation of the 106,793 sq. ft. of transferable bonus density as proposed here, that the assignment of transferable bonus density in this case would be subject to the restriction that it may be transferred only to other properties controlled by the owner-developer of the Property and approved by the City. In addition, the owner-developer is prepared to accept a setting of the value of the density at a higher rate than is currently generated by market conditions. This results in a smaller quantity of bonus density being created in this instance than would otherwise be the case, taking into consideration the anticipated costs for the project.

Development Cost Levy (DCL) – DCLs would be payable under normal circumstances for all new floor area proposed for the Building, at issuance of Building Permit. This site is subject to the Citywide DCL of \$112.16 per m² (\$10.42 per sq. ft.), effective September 30, 2010, and results in a fee of approximately \$39,980. Consistent with the DCL By-law, the DCL amount is based on new floor area being developed, and excludes existing floor area which is retained and renovated or rehabilitated. However, in this case, as part of the incentive package for the developer, it is proposed that the DCL be waived by way of the proposed HRA, as allowed for in the DCL By-law.

Pro Forma Review – Real Estate Services have conducted a review of the owner-developer's development pro forma and have concluded that the compensation proposed for the heritage designation and the heritage rehabilitation contemplated for this proposed project, all as described in this report, is fair and will not result in any undue benefit to the owner-developer.

Cost and Funding – The total cost to restore and rehabilitate the Building as proposed is projected at \$14.8 million. It is proposed that the owner-developer undertake the restoration work in consultation with the City and the Vancouver East Cultural Centre. The project as proposed would have the City contribute a maximum of \$13 million of value in the form of the proposed transferable heritage bonus density, the proposed heritage DCL waiver and proposed cash contributions, as detailed below:

Community Amenity Contribution Funds (from other rezonings)	\$1,280,720
2011 Capital Budget for Cultural Infrastructure	\$1,000,000
DCL Waiver (on 3,837 sq. ft. of new floor area in CD-1)	\$39,980
<u>Heritage Bonus Density (106,793 sq. ft.)</u>	<u>\$10,679,300</u>
Total City Contribution:	\$13,000,000

It is proposed that, with Council's authorization, the City's cash contribution to the owner-developer for the project be in the form of \$1,000,000 from the Cultural Infrastructure Capital Budget with the source of funds being the 2009-2011 Capital Plan, and \$1,280,720 in Community Amenity Contribution funds collected from the CD-1 rezoning of 1133 West Georgia Street and the rezoning of 490 Commercial Drive (from industrial to residential).

The additional \$1.8 million needed for the project is to come from a grant the Vancouver East Cultural Centre has received from Heritage Canada for this project.

The owner-developer accepts that the proposed incentive package as described in this report is fair and complete compensation, for the work necessary to complete the restoration of the Building and for the transfer of the Property to the City.

Transfer of Ownership to the City and Offer to Lease to Vancouver East Cultural Centre – It is proposed that on completion of the rehabilitation and renovation of the Building, the City, by way of an option to purchase agreement, for a nominal sum (\$10), will take ownership of the Property and then lease it to the VECC to for use as a performing arts centre.

It is further proposed that the City will make an offer to the VECC to lease the Property to it, after completion of the rehabilitation and renovation of the Building, for a nominal rent for operation of the Building as a cultural performing arts centre as described in this report. The offer to lease will make the proposed lease subject to certain conditions to be fulfilled by the VECC to demonstrate to the City, to its satisfaction, before the proposed lease will be entered into, that the VECC has appropriate plans in place and will be positioned to operate the Building satisfactorily as a cultural performing arts centre.

The VECC has been and it is envisioned will continue to be an integral part of this proposed project. The VECC has liaised with the owner-developer and its architects in the planning of the project, and it is expected that the design team will continue to consult with the VECC regarding the renovations to the Building once the work has begun. In addition, as mentioned above, funding for the proposed project is to include a contribution from the VECC by way of a grant from Heritage Canada in the amount of \$1.8 million.

NOTE: For details on the related proposal that arrangements be put in place for the City to take ownership of the Property after completion of the rehabilitation of Building and to offer lease it to the VECC, please see Administrative Report RTS 9150 from the Director of Real Estate Services, dated April 5, 2011, entitled “Option to Purchase 639 Commercial Drive (York Theatre) and Lease of 639 Commercial Drive to the Vancouver East Cultural Centre”.

Parking, Loading and Bicycles – For a theatre of this size, the Parking By-law calls for a minimum of 43 vehicle spaces. The Building occupies the entire site, with no opportunity to excavate a parking garage or to provide at-grade parking on site. As such, the applicant is seeking a full parking relaxation. Parking demands would have to be met on surrounding streets as had been the case during the theatre’s operation over the years. The parking and transportation study, prepared by Bunt Associates, suggests some changes to on-street parking regulations and that various alternative transportation strategies be pursued (see Appendix G). The Vancouver East Cultural Centre is experienced in managing a theatre with limited parking supply. For example, 12 off-street spaces exist for their similar-sized theatre venue at 1885 Venables Street. They have fostered a good relationship with neighbours in over 30 years of operations at that location. The Building’s location has added advantages over 1885 Venables Street, in that it is closer to a number of transit routes and by being a short walk from the active restaurant and nightlife area of the central blocks of Commercial Drive. A City-owned surface parking lot at 800 Commercial Drive may be available for theatre patrons for some events depending on current lease agreements, as well as the Britannia School parking lot two blocks to the south.

One loading space is required for the Building. An on-street loading space is proposed adjacent the Building on Georgia Street, with direct loading access to the stage and the lobby.

Several class B bicycle parking spaces are proposed in the boulevard area adjacent the Property, subject to review, with final locations and numbers to be determined prior to development permit issuance.

Sustainability – In accordance with Council policy for rezonings that was in effect at the time of application (May 14, 2010), the restoration and addition to the Building are expected to be registered with the Canadian Green Building Council and to meet requirements for LEED® Silver equivalency. The plans, as submitted, have the Building attaining LEED® Gold equivalency. As is the case with many heritage restoration projects, certain technical issues may have to be overcome to achieve all the intended green elements. Staff would work with the applicant throughout the permit review process to achieve the greatest green building performance possible.

Public Consultation – After the rezoning submission was received, a rezoning/development information sign was posted on the site on June 3, 2010 and staff sent out notification postcards to 557 surrounding property owners on June 17, 2010. Staff hosted an open house on July 8, 2010 at the Vancouver East Cultural Centre. Thirty-nine people attended and staff received 13 comment sheets, with 12 being in support of the proposed rezoning. In total, before, during and after the open house, 17 comment sheets and emails were received with 14 in support, 1 opposed and 2 not expressing either support or opposition.

PUBLIC BENEFIT

Heritage Preservation – The owner has offered to restore, rehabilitate and renovate the Building and to accept its designation as a protected heritage property. The Building is valued for its place in the cultural fabric of the city dating from 1913 when it was a vaudeville house. It has been the long-time home of the Little Theatre Company and has had more recent incarnations as a punk rock music venue and a Bollywood cinema. It is also an important feature in the Commercial Drive, Grandview-Woodlands neighbourhood.

Community Cultural Amenity – Once the restoration of the Building is completed, the owner-developer would transfer the land to the City, which in turn would lease it to the VECC for a nominal rent under a long-term lease, and the VECC would operate it as a cultural performing arts centre as described herein and in the Administrative Report RTS 9150 from the Director of Real Estate Services, dated April 5, 2011, entitled “Option to Purchase 639 Commercial Drive (York Theatre) and Lease of 639 Commercial Drive to the Vancouver East Cultural Centre”.

The restored and renovated Building would include but would not be limited to:

- a fully fitted 365-seat theatre with appropriate ancillary support areas such as backstage, dressing rooms and green room;
- an orchestra pit;
- a heritage lobby and ticket booth and new two-storey lobby;
- ancillary office space; and
- ancillary storage.

All areas of the Building must meet the necessary regulations and by-laws and be completed to the satisfaction of the Director of Facilities Design and Development and the Managing Director of Cultural Services.

FINANCIAL IMPLICATIONS

City staffing or other City operating expenditures – Approval of the HRA and rezoning conditions contained within this report would have no financial implications with respect to City operating expenditures or staffing. For implications related to the option to purchase and offer to lease, please see the Administrative Report RTS 9150 from the Director of Real Estate Services, dated April 5, 2011, entitled “Option to Purchase 639 Commercial Drive (York Theatre) and Lease of 639 Commercial Drive to the Vancouver East Cultural Centre”.

DCL waiver – The project as proposed would include a waiver of DCLs valued at \$39,980, as described above.

City cash contributions – Council is asked also to approve a \$1,000,000 cash contribution to the owner-developer from the 2011 Capital Budget for Cultural Infrastructure, as well as \$1,280,720 to the owner-developer from Community Amenity Contribution funds collected from rezonings of 1133 West Georgia Street (\$1,130,000) and 490 Commercial Drive (\$150,720), as contributions for the cost of renovating and restoring the Building.

Community Amenity Contribution (CAC) – Real Estate Services have reviewed the owner-developer’s development pro forma to identify whether the rezoning generated a sufficient increase in land value to warrant a CAC offering and have concluded, after factoring in the costs to the owner-developer associated with the creation of the cultural amenity and revitalizing the Building, that there would be no resulting increase land value and, therefore, no CAC offering applicable.

CONCLUSION

Staff review of the application concludes that the proposed use, density, and form of development are generally supportable. Further, the public benefits of this project would contribute to the City’s heritage and cultural objectives. While it is recognized that there are community concerns that the reestablishment of theatre operations on the Property would result in an increase in parking demand and traffic on adjacent residential streets, staff are confident the Building can be managed in a neighbourly way, as is the case with the Vancouver East Cultural Centre and the Stanley Theatre (live performance venues) and the Park and Dunbar theatres (cinemas), all of which currently operate in a similar urban context.

The Director of Planning recommends that the application be referred to Public Hearing together with a draft CD-1 By-law and a draft Sign By-law amendment, as generally shown in Appendices A and C respectively, and with a recommendation of the Director of Planning that these be approved, subject to the hearing and subject to the conditions of approval listed in Appendix B, including approval in principle of the form of development as shown in plans included as Appendix G.

* * * * *

639 Commercial Drive (York Theatre)
DRAFT CD-1 BY-LAW PROVISIONS

Note: A By-law will be prepared generally in accordance with the provisions listed below, subject to change and refinement prior to posting.

Use

- Theatre;
- Production or Rehearsal Studio;
- School - Arts or Self Improvement, but limited to drama, dance, media, music, literary art or other similar forms of self improvement; and
- Restaurant - Class 1;
- Accessory Uses, customarily ancillary to the above uses, including, but not limited to cultural creation, production, rehearsal and presentation, retail (concession and gifts), instruction or training in the arts, office and any other accessory uses, which, in the opinion of the Director of Planning, are similar to the foregoing.

Density

- For the purposes of computing floor space ratio, the site is deemed to be 573.4 m², being the site size at time of application for rezoning, prior to any dedications.
- Maximum floor space ratio of 2.10;
- The following shall be included in the computation of floor space ratio:
 - All floors of all buildings, having a minimum ceiling height of 1.2 m, including earthen floors and accessory buildings, both above and below ground level, to be measured to the extreme outer limits of the building;
- The following shall be excluded in the computation of floor space ratio:
 - patios and roof gardens, provided that the Director of Planning first approves the design of sunroofs and walls;
 - where floors are used for bicycle storage, heating and mechanical equipment, or uses which in the opinion of the Director of Planning are similar to the foregoing, those floors or portions thereof so used, which are at or below the base surface;
 - where exterior walls greater than 152 mm in thickness have been recommended by a Building Envelope Professional as defined in the Building By-law, the area of the walls exceeding 152 mm, but to a maximum exclusion of 152 mm thickness, except that this clause shall not apply to walls in existence prior to March 14, 2000; and
 - with respect to exterior:
 - (i) wood frame construction walls greater than 152 mm thick that accommodate RSI 3.85 (R-22) insulation, or
 - (ii) walls other than wood frame construction greater than 152 mm thick that meet the standard RSI 2.67 (R-15), the area of such walls that exceeds 152 mm to a maximum exclusion of 51 mm of thickness for wood frame construction walls and 127 mm of thickness for other walls, except that this clause is not to apply to walls in existence before January 20, 2009.

A registered professional must verify that any exterior wall referred to in subsection (ii) of this section meets the standards set out therein.

Height

- The building height, measured above base surface, must not exceed 13.3 m.

Parking, Loading and Bicycle Parking

- Parking, loading and bicycle parking are to be provided as per the Vancouver Parking By-law including the requirements of relaxations, exemptions and mixed use reductions of off-street parking spaces, loading spaces, and bicycle spaces, all as defined under the Parking By-law.

* * * * *

639 Commercial Drive (York Theatre)
PROPOSED CONDITIONS OF APPROVAL

Note: These are draft conditions which are subject to change and refinement by staff prior to the finalization of the agenda for the public hearing to the satisfaction of the Director of Legal Services.

CONDITIONS OF APPROVAL OF THE FORM OF DEVELOPMENT

- (a) THAT the proposed form of development be approved by Council in principle, generally as prepared by Henriquez Partners Architects, and stamped "Received Planning Department, May 14, 2010", provided that the Director, may allow alterations to this form of development when approving the detailed scheme of development as outlined in (b) below.
- (b) THAT, prior to final approval by Council of the form of development, the applicant shall obtain approval of a development application by the Director of Planning, who shall consider the following conditions:

Design Development

1. Design development to the east elevation to better complement the scale and architectural components of the existing theatre;

Note to Applicant: This can be achieved by reducing the overall height of the addition to match the principle parapet height of the heritage theatre. Further the head of the curtain-wall glazing should align with the facade panelling on the existing theatre.

2. Design development to incorporate high quality weather protection along the Commercial Drive and Georgia Street elevations of the addition;

Note to Applicant: At a minimum, canopies must be a minimum of 5.0 ft. in depth and 9.0 ft. from grade, and of light, high-quality construction. They should be continuous along Commercial Drive, and on Georgia Street to Grid Line C.

3. Design development to the lane elevation take into consideration the principles of CPTED (Crime Prevention Through Environmental Design) having particular regard for reducing opportunities for nuisances such as graffiti;

Note to Applicant: Large blank walls adjacent to the lane should be treated with a paint-type graffiti treatment.

4. Notation on the Site Plan describing the treatment of the public realm, including, but not limited to, existing and proposed street trees, sidewalk paving and location of bicycle parking;

Note to Applicant: Please consult with Kevin Cavell of Engineering Services, at 604.873.7773, and Ann McLean, Development Planner, at 604.873.7387 regarding

possibilities for curb relocation and adjustments before any detailed design work is undertaken.

5. Provision of enlarged-scale sectional drawings at a scale of 1:10 or better describing significant architectural elements, including, but not limited to, the proposed canopies, and the glass screen at the roof level;

Note to Applicant: All details must be fully notated and dimensioned. Provide reference for detail sections on the elevation drawings.

6. Inclusion on the elevation of a conceptual signage proposal noting compliance with the Sign By-law, except that variances may be indicated for the proposed replication of the "Marquee" and associated projections (see Conditions of By-Law Enactment (c) on page 5 of 9);

Note to Applicant: Show proposed locations and size of proposed signage on the building for reference, including areas for playbills. Signage should be integrated with, but not detract from architectural elements. The development permit does not approve signage. Add notation to drawings: "All signage is shown for reference only and is not approved under this Development Permit. Signage is regulated by the Sign By-law and requires separate approvals. The owner[s] assumes responsibility to achieve compliance with the Sign By-law and obtain the required sign permits"; The Sign By-law Coordinator should be contacted at 604.871.6714 for further information.

7. provision of additional information on elevations illustrating the location of exterior lighting and its specification;

Note to Applicant: Specified lighting must sensitive to nearby residential areas. Lighting should be focused up or down fixtures, or those that have a limited projection of illumination.

Heritage

8. Additional notes to fully describe the materials and elements of the replicated "Art Deco" façade, consistent with the Conservation Plan approved by the City;
9. Large-scale section details showing typical construction and/or rehabilitation notes for the following areas/assemblies:
 - The replicated Art Deco façade, including the parapet condition;
 - The "marquee", including lighting (note: the signage will likely need to be approved under separate Sign Permit(s) but the details of the design of the proposed signage are to be provided for reference.); and
 - The theatre's existing concrete and block wall, including a parapet condition;
10. Notation on plans and elevations indicating all sustainable/design features consistent with the City's Rezoning Policy for Greener Buildings;

Note to Applicant: The policy requires developments of this scale to achieve a minimum equivalent of LEED® Silver, with a minimum of 3 optimize energy points, including 1 water efficiency point and 1 storm water point, or an equivalent achievement in green design, and registration in the LEED® program. The policy allows for exemptions for heritage components provided reasonable design efforts are made to improve green performance where appropriate, while respecting heritage aspirations and promoting heritage retention. In the case of the York Theatre, alterations which would adversely affect the heritage building and its maintenance should not be employed, including a green roof on the existing roof of the heritage building. The LEED® Checklist, as well as documentation confirming registration in the LEED® program, are to be submitted, and the drawings revised where applicable to reflect details or materials which are proposed as part of the response to the policy requirements.

Cultural Services

11. Design development to consider options for the relocation of the elevator on the stage;

Note to Applicant: The need for accessibility to the stage is noted but does compromise the usefulness of the stage for performances. Applicant is encouraged to explore design options to the current proposal.

12. Provision of wardrobe maintenance room with washer/dryer hookups associated with the dressing rooms;
13. Clarification of specification for HVAC, electrical and sound system conduit;

Note to Applicant: These items are expected to form part of the building permit application however the applicant is encouraged to provide information regarding these infrastructure items and their impact on theatre design with particular attention to potential loss of seating capacity.

14. Submission of an outline written specification on the design features of the theatre, to the satisfaction of the Managing Director of Cultural Services.

Note to Applicant: The applicant is to consult with the Director of Civic Theatres and collaborate with the Vancouver East Cultural Centre regarding the building program, installed equipment and performance requirements necessary to ensure agreement within the financial framework of the project on aspects of the fit and finished theatre.

Engineering

15. Consideration to provide additional on site Class A bicycle parking;
16. Provision of additional Class B bike parking at or near the main entry to the building, including consideration of on-street space;
17. Consideration to secure off-site parking for use during event times;

Note to Applicant: The nearby City owned lot, at 800 Commercial Drive, currently supplies parking for a nearby building. Should that parking not be required in off-business hours, the York Theatre is requested to explore the possibilities of securing the parking for their use.

18. Clarification of garbage pick up operations;
19. Clarification of loading operations and a review of measures to reduce impacts of truck routing through the neighborhood;

Note to Applicant: Measures to include reduced truck sizes and/or loading from the lane north of Georgia Street, west of Commercial Drive.

20. Revision to the transportation study to reflect the traffic management measures anticipated to reduce impacts of the theatres operations;

Note to Applicant: The measures are as noted in the transportation study supplied for the project prepared by Bunt & Associates dated May 6, 2010.

21. Confirmation that the existing fire escape assembly is to be removed as part of the project;

Note to Applicant: Engineering Services does not support retention of the fire escape.

CONDITIONS OF BY-LAW ENACTMENT

- (c) THAT, prior to enactment of the CD-1 By-law, at no cost to the City, the registered owners shall make arrangements for the following, on terms and conditions satisfactory to the Director of Legal Services:

Engineering

Arrangements are to be made to the satisfaction of the General Manager of Engineering Services and the Director of Legal Services for:

1. All existing and proposed encroachments, including the restoration of the original encroaching York Theatre canopy/sign (referred to as the "Marquee"), to be reviewed and encroachment agreements put in place for them;

Note to Applicant: A BCLS location certificate will be required after the exterior improvements have been completed. Subsequent to confirmation of the extent of the encroachments, a new encroachment agreement with the City will be necessary.

2. Consolidation of the lots into a single site;
3. Relocation of existing overhead utility lines in the lane to avoid conflict with the Building's redevelopment including undergrounding of any portion of the overhead network where possible. Any alterations to the existing underground /overhead

utility network to accommodate the development will require review and approval by the Utilities Management Branch. Early contact with the Utilities Management Branch is encouraged;

4. Provision of adequate water service to meet the fire flow demands of the project;

Note to Applicant: The current application lacks the details to determine if water main upgrading is required, please supply project details including projected fire flow demands to determine if water system upgrading is required. Should upgrading be necessary, then arrangements to the satisfaction of the of the General Manager of Engineering Services and the Director of Legal Services will be required;

Heritage

5. Council approves the designation of the Building as a protected heritage property;
6. Council approves and the owner enters into a Heritage Revitalization Agreement (HRA), substantially in the form attached in Appendix D, which, among other things, authorizes the amount of transferable bonus density agreed to by the City and which ensures the rehabilitation and long-term protection of the Building, to the satisfaction of the Director of Planning and the Director of Legal Services, including the following:

- (i) That all heritage rehabilitation work is to be carried out in compliance with, among other things, a heritage Conservation Plan approved by the City;
- (ii) That the transferable bonus density may not be used on the Property and may be transferred only to a site or sites owned by the owner-developer of the Property and as approved by the City, except with the provision of adequate security for the rehabilitation as provided for in the agreement;
- (iii) That the Building not be occupied until the rehabilitation work associated with the HRA is completed;
- (iv) That the Building be secured from vandalism during construction and that the appropriate professional or professionals experienced in rehabilitation and restoration work be retained to provide services to all aspects of the rehabilitation work;
- (v) That the rehabilitation of the Building be completed in a timely manner to the satisfaction of the Director of Planning and the Director of Legal Services;

Note to Applicant: The HRA will be required to be signed by the owner in advance of Council's consideration of the approval of any heritage or CD-1 by-laws at a public hearing, or as otherwise agreed to by the City.

7. The Designation and Heritage Revitalization Agreement By-laws are enacted by Council and the Heritage Revitalization Agreement is completed, given priority to, and registered in the Land Titles Office to the Satisfaction of the Director of Legal Services and the Director of Planning;
8. An "Assurance of Retention of Existing Portions of Buildings" letter and colour-coded detailed elevation drawings from a Registered Architect or Engineer are to be

submitted, in triplicate, verifying that the portions of the Building shown as being retained can in fact be retained, and that he/she will supervise the construction to ensure the retention occurs;

(Notes are to appear on the retention drawings indicating the following:

- i) that all parts of the Building shown as being retained will be retained in place, and not removed from their original location within the Building at any time;
- ii) that "retained wall" means the retention of the existing studs and sheathing, and/or block/concrete walls as applicable;
- iii) that "retained floor" means the retention of the existing floor joists and sub-floor; and
- iv) that "retained roof" means the retention of the existing roof rafters, beams, and trusses.

In review of the submission, if the Director of Planning is of the opinion that further information is required, the submission of a letter, in triplicate, signed by the Registered Architect or Engineer, indicating the sequence of construction, is to be submitted in order to ensure that the construction is carried out in a manner that retains the Building on the site at all times. All work is to be in compliance with the Conservation Plan approved by the City and forming a part of the permit.)

Note to Applicant: Retention of the Building is required. The above information is to be submitted to ensure that the Building will be retained. If significant structural change is proposed, then a full set of drawings, including plans and sections, will be required. A copy of the approved retention drawings will form part of any approved Building Permit drawings.

9. The City is in receipt of a final colour scheme, to the satisfaction of the Director of Planning;

And further, confirmation, to the Satisfaction of the Director of Planning and the Director of Legal Services, that the Heritage Revitalization Agreement is completed and registered on title in the Land Titles Office;

Cultural Services

[Per Administrative Report RTS 9150 from the Director of Real Estate Services, dated April 5, 2011, entitled "Option to Purchase 639 Commercial Drive (York Theatre) and Lease of 639 Commercial Drive to the Vancouver East Cultural Centre"]

10. To the satisfaction of the Director of Legal Services and the Director of Planning, the owner enter into an agreement with the City by which the City may purchase the Property from the Owner for the nominal sum of ten dollars (\$10), with the transfer of ownership not to take place before the renovation and restoration is complete to the satisfaction of the City;

Soils

11. The property owner shall, as required by the Manager of Environmental Protection and the Director of Legal Services in their discretion, do all things and/or enter into such agreements deemed necessary to fulfill the requirements of Section 571(B) of the Vancouver Charter.

Where the Director of Legal Services deems appropriate, the preceding agreements are to be drawn, not only as personal covenants of the property owner, but also as Covenants pursuant to Section 219 of the Land Title Act.

Such agreements are to be registered in the appropriate Land Title Office, with priority over such other liens, charges and encumbrances effecting the subject site, as is considered advisable by the Director of Legal Services, and otherwise to the satisfaction of the Director of Legal Services prior to enactment of the by-law.

The preceding agreements shall provide security to the City including indemnities, warranties, equitable charges, letters of credit and withholding of permits, as deemed necessary by and in a form satisfactory to the Director of Legal Services.

The timing of all required payments shall be determined by the appropriate City official having responsibility for each particular agreement, who may consult other City officials and City Council.

* * * * *

639 Commercial Drive (York Theatre)
DRAFT CONSEQUENTIAL AMENDMENTS

Note: Amending by-laws will be prepared generally in accordance with the provisions listed below, subject to change and refinement prior to posting.

DRAFT AMENDMENT

TO THE SIGN BY-LAW
(BY-LAW NO. 6510)

- Amend Schedule E (Comprehensive Development Areas) by adding the following:

"639 Commercial Drive [CD-1 #] [By-law #] B (C-2)"

DRAFT AMENDMENT TO THE NOISE BY-LAW NO. 6555

- Amend Schedule B (Intermediate Zone) by adding the following:

"[CD-1 #] [by-law #] 639 Commercial Drive (York Theatre)"

* * * * *

639 Commercial Drive (York Theatre)
DRAFT HERITAGE REVITALIZATION AGREEMENT

LAND TITLE ACT
FORM C

(Section 233)

Province of British Columbia

GENERAL INSTRUMENT - PART 1 (This area for Land Title Office Use)

Page 1 of 15 pages

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

Signature of Agent

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:*

(PID)	(LEGAL DESCRIPTION)
-------	---------------------

3. NATURE OF INTEREST:*

DESCRIPTION	DOCUMENT REFERENCE (page and paragraph)	PERSON ENTITLED TO INTEREST
SEE SCHEDULE		

4. TERMS: Part 2 of this instrument consists of (select one only)

- (a) Filed Standard Charge Terms D.F. No.
(b) Express Charge Terms Annexed as Part 2
(c) Release There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharge as a charge on the land described in Item 2.

5. TRANSFEROR(S):*

0843836 B.C. LTD., INC. NO. BC0843836

6. TRANSFEREE(S):* (including postal address(es) and postal code(s))*

CITY OF VANCOUVER, 453 West 12th Avenue, Vancouver, British Columbia, V5Y 1V4

7. ADDITIONAL OR MODIFIED TERMS:*

N/A

8. EXECUTION(S):** This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)	Execution Date			Party(ies) Signature(s)
	Y	M	D	
				0843836 B.C. LTD. , by its authorized signatory(ies): <hr/> Print Name:
<hr/> Solicitor/Notary				<hr/> Print Name: CITY OF VANCOUVER by its authorized signatory: <hr/>
<hr/> Bruce T. Quayle Barrister and Solicitor 453 West 12 th Avenue Vancouver, BC V5Y 1V4 Phone: 604-871-6545				<hr/>

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.
** If space insufficient, continue executions on additional page(s) in Form D.

LAND TITLE ACT
FORM E
SCHEDULE

Enter the Required Information in the Same Order as the Information Must Appear on the Freehold Transfer Form, Mortgage Form or General Document Form.

3. NATURE OF INTEREST:*

DESCRIPTION	DOCUMENT REFERENCE (page and paragraph)	PERSON ENTITLED TO INTEREST
Section 219 Covenant	Article 2, pages	Transferee
Statutory Right of Way	Article 6, page 12	Transferee
Equitable Charge	Article 8, page 13	Transferee

TERMS OF INSTRUMENT - PART 2

Heritage Revitalization Agreement

WHEREAS:

A. The Owner (as defined below herein) is the registered owner of the lands and premises located at 639 Commercial Drive in the City of Vancouver, which have the legal description shown in item 2 of the Form C - General Instrument - Part 1 portion of this document (the "Lands").

B. The Owner proposes to restore, modify and conserve the historical theatre building, known as the "York Theatre", situated on the Lands (the "Heritage Building") so as to turn it into a performing arts and cultural centre and, for that purpose, to enter into with the City a heritage revitalization agreement for the rehabilitation and conservation of the Heritage Building and to accept the designation of the Heritage Building as protected heritage property under the provisions of the *Vancouver Charter* SBC 1953 c.55., and, under application no. DE413915, the Owner has applied to the City for a development permit for that purpose (the "DP Application").

THEREFORE, pursuant to Section 592 of the *Vancouver Charter* SBC 1953 c.55, the parties agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Definitions. In this agreement, unless explicitly used differently elsewhere herein, the terms defined in this section have the meanings given to them here:

- (a) "City" means the municipality of the City of Vancouver continued under the *Vancouver Charter* and "City of Vancouver" means its geographic location and area;
- (b) "City's bank of record" means the main bank or other financial institution the City uses for its banking activities;
- (c) "Conservation Plan" means a written plan and guidelines prepared by and/or under the supervision of a Heritage Consultant and explicitly accepted by the City for the rehabilitation of the Heritage Building as provided for hereunder;
- (d) "date of this agreement" means the date it is registered and noted on title to the Lands;

- (e) **“Director of Planning”** means the chief administrator from time to time of the City’s Planning Department and his or her successors in function and their respective nominees;
- (f) **“Development”** means the land development project described above in the recitals hereto;
- (g) **“Development Permit”** means any development permit(s) issued by the City in respect of the Development, as such permit(s) may be modified or amended from time to time, including, without limitation, all final reports, plans, drawings and specifications relating thereto;
- (h) **“DP Application”** has the meaning given in the introductory paragraphs above herein;
- (i) **“Heritage Building”** has the meaning given above in the introductory paragraphs hereto;
- (j) **“Heritage Consultant”** means an independent, Heritage Building rehabilitation and conservation expert, knowledgeable and experienced in and duly qualified for planning and supervising rehabilitation and conservation work for Heritage Building;
- (k) **“Heritage Designation”** means the City’s designation of the Heritage Building as protected heritage properties pursuant to section 593 of the *Vancouver Charter*;
- (l) **“Lands”** means the Lands as defined above in the introductory paragraphs hereto and any other parcels of land into which the Lands may at any time in any way be consolidated or subdivided;
- (m) **“Land Title Act”** means the *Land Title Act*, R.S.B.C. 1996, c.250;
- (n) **“Owner”** means the registered owner or owners of the Lands or either of the Lands, as the context may require;
- (o) **“rehabilitate” “rehabilitation”** means the planning and carrying out of building restoration, rehabilitation, construction and conservation work to restore, upgrade, improve and conserve the structure, support and heritage characteristics and features of a heritage building or other heritage resource so as to revitalize it, extend its life and conserve it as such;
- (p) **“Rehabilitation Work”** has the meaning given below herein and, includes, without limitation, all modifications contemplated for the Heritage Building under the Development Permit;
- (a) **“Transferable Density”** means real property development rights of 106,793 square feet of floor space as the Option Term floor space is used the *Zoning and Development By-law*;
- (b) **“Transfer of Density Letter of Credit”** has the meaning given below herein;
- (q) **“Vancouver Charter”** means the *Vancouver Charter*, S.B.C. 1953, c.55, as amended from time to time, and any and all replacements thereof or any statute enacted in substitution thereof and all regulations applicable thereto and any amendments, replacements and substitutions thereof;
- (r) **“Wall Financial Corporation Group”** means the Owner, 0843836 B.C. LTD., the Wall Financial Corporation, the Mr. Peter Wall and the Mr. Bruno Wall who are associated with the Wall Financial Corporation, and/or any legal entity controlled by or affiliated with them or any of them.

ARTICLE 2
SECTION 219 COVENANT
HERITAGE REHABILITATION & CONSERVATION

2.1 Pursuant to Section 219 of the *Land Title Act*, the Owner covenants and agrees, as a covenant and agreement running with, charging and binding the Lands, that, to the satisfaction of the City, including, without limitation, its Director of Planning, its Managing Director of Cultural Services and its Director of Facilities Design and Management (or their successors in function):

Rehabilitation

- (a) the Owner, at its expense, within 24 months after the date this agreement gets registered on title to the Lands, will rehabilitate or cause the rehabilitation of the Heritage Building and will do so in accordance with this agreement, the Development Permit and the Conservation Plan (the "Rehabilitation Work");
- (b) the Owner, at its expense, will ensure that a Heritage Consultant supervises the Rehabilitation Work;
- (c) the Owner, at its expense, will ensure that, at all times during the carrying out of the Rehabilitation Work, the Heritage Building is secure from vandalism and occupation by squatters;
- (d) at all times after and while this agreement is registered on title to the Lands, the Owner, at its expense, will keep the Heritage Building insured to its full replacement value against all perils, including, without limitation, damage or destruction by earthquake;
- (e) on completion of the Rehabilitation Work as required by this agreement, the Owner, at its expense, will cause a Heritage Consultant to submit to the Director of Planning, a signed statement stating explicitly that the Rehabilitation Work has been completed in accordance with the Conservation Plan;

Occupancy Restriction

- (f) the Owner will not and will not suffer or permit any other person to in any way use or occupy the Heritage Building or any part of it at any time after this agreement is registered and/or noted on title to the Lands, unless and until:
 - (i) the City has issued a new occupancy permit(s) therefor; and
 - (ii) the Rehabilitation Work has been completed; and
 - (iii) the City has given the Owner an written notice or confirmation by which the City explicitly accepts or confirms its acceptance that the Rehabilitation Work has been completed;
- (g) the Owner will not and will not cause, suffer or permit anyone to apply for or take any other action to compel the City, and, notwithstanding that the Heritage Building may be ready for occupancy, the City will be under no obligation to issue any occupancy permit for the Heritage Building or any part of it at any time after this agreement is registered on title to the Lands, until:
 - (i) the Rehabilitation Work has been completed;
 - (ii) the Owner, as required above herein, has submitted or caused to be submitted to the Director of Planning a signed written statement prepared by a Heritage Consultant stating explicitly that the Rehabilitation Work has been completed in accordance with the Heritage Building Conservation Plan; and

- (iii) the City has given the Owner a written notice or confirmation by which the City explicitly accepts or confirms its acceptance that the Rehabilitation Work has been completed;

Conservation

- (h) the Owner, at its expense, will do all things reasonably necessary at all times to conserve the heritage characteristics of the Heritage Building and, in any event, to keep it in good condition in all respects as would a reasonable and prudent owner thereof;
- (i) except for maintenance and repair work, the Owner will not and will not suffer or permit anyone else to do anything at anytime to renovate, alter, modify or reconfigure or that will result in any alteration, modification or reconfiguration of the Heritage Building in any way except as may be permitted by this agreement, the Heritage Building Conservation Plan and/or any development and/or heritage alteration permits issued by the City;
- (j) the Owner will not at any time and will not suffer or permit anyone else to at anytime do anything that will obscure, deface or remove in any way any heritage related commemorative plaque the City, at its expense, may attach to the Heritage Building pursuant to the statutory right of way granted to it herein;

Damage or Destruction

- (k) if at any time for any reason the Heritage Building is damaged in any way or destroyed, the Owner, at its expense, and to the City's satisfaction, will repair it or replace it with a replica building, except that if the Owner *bona fide* believes that to do so would be uneconomical, in which case, and if for that reason the Owner wishes to demolish it as damaged or wishes not to replicate it, as the case may be, the Owner, at its expense, and in consultation with and to the satisfaction of the City, will prepare an economic analysis therefor, but taking into consideration only land related economic factors, such as, for example, but without limitation, the estimated cost to repair or replicate the Heritage Building, as the case may be, the anticipated market value of the repaired or replicated building, the incentives given by the City for this agreement and the Heritage Building Heritage Designation, the estimated value of the Lands or New 430 Princess Avenue Parcel, as the case may be, under the zoning otherwise applicable thereto, after which the City and the Owner, together, on the basis of that analysis, will determine whether in the circumstances it would be uneconomical to repair or replicate the Heritage Building, failing which the matter in all respects will be determined by arbitration in accordance with the provisions of the *Commercial Arbitration Act* RSBC 1996 c. 55, except that regardless of the outcome of any such arbitration the Owner will pay the City its actual costs of such arbitration, and if the Owner and the City agree or if in arbitration it is determined that it would be uneconomical for the Owner to be required to repair or replicate the Heritage Building, then, by explicit written notification, the City will consent to the Owner's wish to not repair or replicate the Heritage Building and will discharge this agreement from title to the New 430 Princess Avenue Parcel and the Owner may request of the City's Mayor and Council that the Heritage Building Heritage Designation be cancelled; and

Compensation - Release - Indemnity

- (l) the Owner acknowledges and agrees that, notwithstanding that this agreement and the Heritage Building Heritage Designation will result in restrictions with respect to the future use and development of and therefore may affect the value of the Heritage Lands, the Owner has received full and fair compensation for this agreement and the Heritage Designation and the Owner hereby waives and renounces any and all claims for any further or other compensation by reason of this agreement and/or the Heritage Building, the Heritage Designation and acknowledges and agrees that the requirements of Section 595(1) of the *Vancouver Charter* SBC 1953 c.55 have been fully satisfied, and the Owner hereby releases the City and its officials, officers, employees and agents from any liability for any loss, injury, damage or expense of any kind the Owner may suffer, incur or experience and the Owner will

indemnify the City for any loss, injury, damage or expense the City may incur, suffer or experience and for any complaint, demand, claim, action, suit or judgment for any loss, injury, damage or expense anyone else may suffer, incur or experience arising out of or in any way connected this agreement and/or the Heritage Designation, and the release and promise of indemnification contained in this paragraph, insofar as permissible by law, form part of the Section 219 *Land Title Act* covenant contained herein and will survive discharge and termination of this agreement; and

No Use on Site of Transferable Density

- (m) notwithstanding anything else in this agreement, none of the Transferable Density may be used at any time in any way for development purposes on the Lands, but may be used only for development purposes elsewhere by transfer thereof from the Lands in accordance with this agreement.

Further Occupancy Considerations

2.2 The City may revoke at anytime any occupancy permit(s) issued for the Heritage Building prior to completion of the Rehabilitation Work, unless such occupancy permit(s) was obtained in accordance with this agreement, and in such circumstances the Owner, on reasonable notice from the City, will ensure that anyone occupying any part of the Heritage Building vacates it immediately on such revocation of occupancy permit(s), and if anyone continues to occupy any portion of any part of the Heritage Building in contravention of such revocation, this agreement and any applicable City by-laws, the City may pursue all remedies available to it, including, without limitation, injunctive relief, to ensure that the Heritage Building is vacated and unoccupied in accordance with this agreement.

City May Carry Out Rehabilitation Work

2.3 If at anytime, in default under this agreement, the Owner fails to carry out the Rehabilitation Work as required hereby, and if the Owner fails to rectify any such default after 30 days notice from the City to do so, the City, on the Owner's behalf and at the Owner's expense, may, but will be under not be obligated to, rectify the Owner's default

ARTICLE 3 TRANSFERABLE DENSITY

3.1 Pursuant to Section 592 of the *Vancouver Charter*, subject to the terms and conditions of this agreement, the *Zoning and Development By-law* is hereby varied and supplemented in respect of the Lands by assignment thereto of the Transferable Density, subject to the following conditions:

- (a) the Transferable Density may not be used at any time in any way for development purposes on the Lands, but may only used for development purposes elsewhere by transfer from the Lands in accordance with this agreement;
- (b) the Transferable Density may be transferred from the Lands for development use elsewhere only:
 - (i) to another property or, by apportionment, to other properties of which a member or members of the Wall Financial Corporation Group is or are registered owner;
 - (ii) to such site or sites as the City explicitly authorizes in accordance with the *Vancouver Charter* and all applicable City by-laws, practices and procedures and only to such site or sties where the Transferable Density can be used lawfully for development purposes;
 - (iii) as the City's Director of Planning, Development Permit Board or mayor and council, as the case may be, may duly approve; and
 - (iv) except as the City may otherwise lawfully permit, entirely in accordance with the City's transfer of density policies, practices and procedures;

- (c) notwithstanding anything else herein, none of the Transferable Density may be transferred for use anywhere at any time before the Rehabilitation Work has been completed in accordance with this agreement and the City, in accordance with this agreement, has accepted it as such and, after such completion of the Rehabilitation Work, the City has issued an occupancy permit(s) for occupancy of the entire Building, provided the Owner, in the City's opinion, is not in any way in breach of this agreement or any other agreement between it and the City relating to the Development;
- (d) notwithstanding the preceding provision, if the City is satisfied that the Owner is diligently carrying out the Rehabilitation Work in accordance herewith, and if the Owner is not in breach of this agreement or any other agreement between the City and it, the City may permit the Owner to transfer some or all of the Transferable Density for use elsewhere prior to completion of the Rehabilitation Work in accordance herewith, if the Owner delivers to the City, in form and substance satisfactory to the City, a letter of credit in favour of the City in an amount equal to 120% of the then estimated, as accepted by the City, cost to complete the Rehabilitation Work (the "Transfer of Density Letter of Credit"), to secure the completion of the Rehabilitation Work in accordance herewith, except that in doing so the City, in its discretion, may require that some of the Transferable Density be held back notwithstanding delivery of the Transfer of Density Letter of Credit;
- (e) the City may call upon the Transfer of Density Letter of Credit whenever and hold the proceeds therefrom as security under this agreement in substitution for the Transfer of Density Letter of Credit and/or use the proceeds therefrom as permitted under this agreement to pay any City costs incurred under this agreement, if:
- (i) the bank issuing the letter of credit refuses to extend or renew the expiry date of the letter of credit;
 - (ii) the Owner becomes insolvent or commits any act of bankruptcy or becomes bankrupt or takes the benefit of any act or legislation that may be enforced for bankrupts or insolvent debtors;
 - (iii) the Owner, in the City's opinion, has not been diligently carrying out the Rehabilitation Work;
 - (iv) the City, pursuant to this agreement, undertakes all or any part of the Rehabilitation Work; or
 - (v) the Owner is required to pay any monies or provide security to the City in connection with this agreement, any other agreement between the City and the Owner relating to the Development and/or any transfer(s) of the Transferable Density and fails to pay such monies or provide such security as required;
- (f) if the City becomes owner of the Lands before the Transferable Density or any of it is transferred to another site as provided for herein, the Transferable Density will remain assigned to the Lands for the benefit of the Wall Financial Corporation Group, and thereafter the City will do nothing with any of the Transferable Density until the transfer thereof or any portion(s) thereof has or have been duly authorized in accordance with this agreement, all applicable City by-laws and other applicable laws and all City policies and practices applicable thereto or as may otherwise be permitted by the City, at which time the City, as registered owner of the Lands, will do all things necessary, when and as required, at the Owner's expense, to assist in the transfer(s) thereof as authorized and permitted hereunder, and the Owner will pay the City in full within 10 days of demand for any costs to the City, as registered owner of the Lands, in dealing with the Transferable Density as required to accomplish the transfer(s); and
- (g) as the Transferable Density is transferred from the Lands for use elsewhere in accordance herewith, this agreement shall be deemed to be modified and the Transferable Density as assigned to and held on the Lands hereunder to be reduced accordingly.

**ARTICLE 4
DEVELOPMENT COST LEVY**

4.1 Pursuant to section 592 of the *Vancouver Charter*, the *Vancouver Development Cost Levy By-law No. 9755* is hereby varied so that the levy payable in respect of any and all building permits issued in connection with the Development is nil.

**ARTICLE 5
CITY CASH CONTRIBUTION**

5.1 With a reasonable time after:

- (a) the Rehabilitation Work has been completed to the City's satisfaction in accordance herewith;
- (b) occupancy permits for full occupancy and use of the Heritage Building have been duly issued; and
- (c) the City has duly become the sole registered and beneficial owner of the Lands,

the City will pay to the Wall Financial Corporation Group, as directed by it, an all-inclusive total sum of \$2,280,000, as the City's cash contribution to payment of the cost of the Rehabilitation Work.

**ARTICLE 6
STATUTORY RIGHT OF WAY**

6.1 Pursuant to Section 218 of the *Land Title Act*, the Owner hereby grants to the City, effective at all times from and after the DP Date, a statutory right of way to enter, be and move about on the Lands:

- (a) to install, maintain, repair and replace on the exterior of each of the Heritage Building, at the City's expense, and in consultation with the Owner as to location, one commemorative plaque regarding the Heritage Building; and
- (b) in the event the Owner is in default of any of its obligations under this agreement, to carry out any such obligations of the Owner hereunder as the City may choose.

6.2 The statutory right of way granted in the preceding paragraph is necessary for the operation and maintenance of the City's undertaking.

6.3 Notwithstanding any other provision of this agreement, nothing herein obligates the City to exercise any of the rights granted to it by way of the statutory right of way contained herein to rehabilitate, conserve or replace the Heritage Building or either of them.

**ARTICLE 7
DEBTS OWED TO CITY**

7.1 If the City, pursuant to this agreement, enters upon the Lands or any of them to perform any of the Owner's obligation hereunder to carry out any of the Rehabilitation Work or to conserve, repair or replace the Heritage Building or either of them:

- (a) there will be no express or implied warranties as to the quality of any work the City may so carry out or the suitability of the materials for the purposes for which they are put; and

- (b) the Owner will pay to the City, forthwith on demand, the full amount of all costs the City incurs to carry out work to rehabilitate, conserve, repair or replace the Heritage Building or either of them, plus 20% of such costs as fair compensation for the City's overhead, and any such amounts the Owner does not pay or fails to pay to the City forthwith on demand will bear interest, until paid in full, at the prime lending rate of the City's bank of record, plus 2%, calculated monthly and not in advance.

ARTICLE 8 EQUITABLE CHARGE

8.1 The Owner hereby grants to the City an equitable charge over the Lands, which charge will run with, charge and bind the Lands, for the payment of all sums (including all interest thereon) which may at any time be payable by the Owner to the City under the terms of this agreement or otherwise at law.

8.2 The equitable charge the Owner has granted to the City herein may be enforced by the appointment of a receiver for the sale of the Lands.

ARTICLE 9 NOTICES

9.1 Any notice, request or communication required or permitted to be given hereunder will be in writing and will be deemed to have been duly given if delivered to the party or mailed in Canada by prepaid registered post addressed to the party as follows:

- (a) if to the Owner, to its address as shown in the Land Title Office records; and
- (b) if to the City:
City of Vancouver
453 West 12th Avenue
Vancouver, British Columbia
V5Y 1V4

Attention: City Clerk and Director of Legal Services;

or to such other address in Canada as any party may specify in writing to the other parties, provided that if and when the owner of the Lands or any part thereof should change, then to the address as set out in the State of Title Certificate for the Lands or such part thereof, and such notice will be deemed to have been received, if delivered, on the date of delivery, and if mailed as aforesaid within Canada then on the third business day following its mailing, provided that if mailed, should there be between the time of the mailing and the actual receipt of the notice, a mail strike, slowdown or other labour dispute which might affect delivery of such notice, then such notice will only be effective if and when actually delivered.

ARTICLE 10 GENERAL

10.1 *Joint and Several Liability.* If the Owner is more than one party, such parties shall be jointly and severally liable to the City for the performance and observance of the Owner's obligations in this agreement.

10.2 *Priority of Registration.* The Owner, at its expense, after execution of this agreement, shall do or cause to be done all things and acts necessary to ensure that this agreement is registered against title to the Lands with priority over all other encumbrances on title to the Lands as the City may require.

10.3 *Perfection of Intention.* The parties hereto will do such things and execute such further and other documents and instruments and do such further and other acts as may be reasonably necessary to implement and carry out the provisions and intent of this agreement and to ensure timely and effective registration in the Land Title Office.

10.4 *Waiver.* No failure on the part of the City to exercise and no delay in exercising any right under this agreement will operate as a waiver thereof nor will any single or partial exercise by the City of any right under this agreement preclude any other or future exercise thereof or the exercise of any other right. The remedies herein provided will be cumulative and not exclusive of any other remedies provided by law and all remedies stipulated for the City herein will be deemed to be in the Addition to and not, except as herein expressly stated, restrictive of the remedies of the City at law or in equity.

10.5 *Time of Essence.* Time will be of the essence in respect of this agreement.

10.6 *Enurement.* This agreement shall enure to the benefit of and be binding upon the Owner and its successors and trustees, and this agreement shall charge and run with the Lands and with any parcel, lot or part into which the Lands may be subdivided or consolidated and shall enure to the benefit of and be binding upon the Owner's successors in title and trustees and successors and all parties claiming through such owners.

10.7 *City's Other Rights and Obligations.* Nothing contained or implied in this agreement will derogate from the obligations of the Owner under any other agreement with the City or prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Vancouver Charter* and the rights, powers, duties and obligations of the City under all other laws, which may be, if the City so elects, as fully and effectively exercised in relation to the Lands as if this agreement had not been executed and delivered by the Owner and the City.

10.8 *Headings.* The division of this agreement into articles, sections and paragraphs and the insertion of headings are for the convenience of reference only and will not affect the construction or interpretation of this agreement.

10.9 *Number.* Words contained herein importing the singular number only will include the plural and vice versa, words importing the masculine gender will include the feminine and neuter genders and vice versa and words importing persons will include individuals, partnerships, associations, trusts, unincorporated organizations and corporations and vice versa.

10.10 *Governing Law.* This agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.

10.11 *Severability.* All provisions of this agreement are severable in that if any court or other lawful authority having jurisdiction to decide the matter finds for any reason that one or more of them is void or unenforceable, then such void or unenforceable provisions will be severed from this agreement and all other provisions herein will continue to be binding and enforceable.

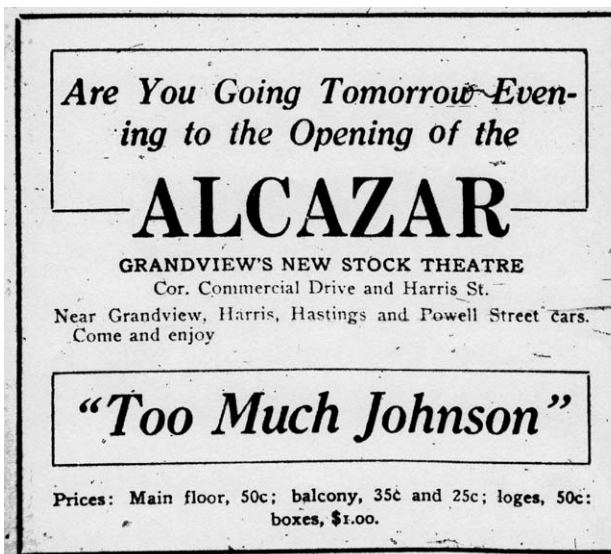
10.12 *City Approvals.* In this agreement, where City "approval", "acceptance", "consent" or similar authorization or agreement is required, unless provided for otherwise in this agreement, such "approval", "acceptance", "consent" or similar City agreement or authority must be provided in writing, by the City departments, employees, officers or designates, as the case may be, that are authorized to provide such "approval", "acceptance", "consent" or similar authorization or agreement. Any purported "approval", "acceptance" "consent" or similar authorization or agreement provided by a City department, employee, officer or designate, as the case may be, that is not authorized to provide the same, shall be of no force or effect.

IN WITNESS WHEREOF the parties have executed this Agreement on Form C which is a part hereof.

END OF DOCUMENT

639 Commercial Drive (York Theatre)
HERITAGE AND CULTURAL SIGNIFICANCE

Heritage Value and History – The theatre was built in 1913 and is listed in the “C” evaluation category on the Vancouver Heritage Register. It was designed by J.Y. McCarter (who is associated with the Vancouver architectural firm McCarter Nairne, most widely know for the design of the Marine Building) and was built by entrepreneur Robert MacLaren. Originally knows as “The Alcatraz Theatre”, it became a movie house called “The Palace Theatre” in 1915. It was purchased, in 1923, by the Vancouver Little Theatre Association who named it “The Little Theatre” until 1939 when it was renamed “The York Theatre”.



The Alcazar Theatre – 1913

The Vancouver Little Theatre Association owned the theatre for fifty-four years until 1977, after which the theatre became a movie house showing South Asian films. After a few years the owner considered demolition of the building, which triggered the formation of the Save the York Society (which is still active). The demolition of the theatre was put on hold and in 1983 it became a music venue called ‘The New York Theatre’ which featured many concerts during Vancouver’s prominent punk music period, before closing again in 1993. In 1996 the Rajani brothers purchased the theatre and operated a South Asian (“Bollywood”) film theatre called ‘The Raja’, for several years. In 2007 the theatre was again threatened with demolition when the site was purchased for redevelopment.



◀ 1940s

Vancouver Little Theatre uses building which was put up by drama-loving Vancouverite in 1913.—George Diack photo.



York Theatre and neighbouring building – 1990s

An advocacy group came forward, which included the Save the York Society, and, working with City staff, a feasibility study by Henriquez Partners to retain the theatre was completed which resulted in the purchase of the site by Wall Financial Corporation.

The theatre originally had an Edwardian façade with a large, classical arch motif at the entrance area and a recessed ticket-box vestibule. In 1939, the façade was completely redesigned by H.H. Simmonds in an Art Deco style, which was a popular expression for many Vancouver theatres built or renovated at this time (including 'The Stanley Theatre' which Mr. Simmonds designed). The new façade also featured a projecting triangular marquee. In 1969 the façade was again renovated and much of the Art Deco features were lost. On the interior, the only remaining original features are heavy timber structure, notably the large roof trusses, and the layout and volume of the theatre. The stage itself and what is believed to be the original hemp system fly tower are still intact. The lobby and other interior areas retain their basic original structure. Interior features and finishes have all been removed over the years, and the seats replaced several times.



"The York Theatre" is valued for being one of the earliest surviving theatres in the city and for its diverse cultural service to the community since 1913. In particular, it is valued for its association with the Vancouver Little Theatre Association which occupied the theatre for over five decades. The theatre is also associated with the careers of many well known Vancouver directors, actors and theatre educators. The theatre is also valued for its surviving form, structure and layout, which are original.

◀ 1969

Although the theatre has had many names over the years, 'The York Theatre' is proposed because of the name's long association with the Vancouver Little Theatre Association and the Art Deco façade of 1939, which will to be replicated, as discussed below. Staff and the Vancouver Heritage Commission support the proposal including the designation of the building and the proposed rezoning and HRA.

Condition of the Theatre and Conservation Approach — The theatre is generally in good to fair condition. The heavy timber structure is intact and will be maintained, including the heavy timber trusses and the fly tower. The foundations will be upgraded and strengthened as required. The existing crawlspace and basement areas are not considered to have heritage value and will be altered. The pitched roof itself is in fair condition, although there has been some water penetration which will be rectified. The roof trusses are currently proposed to be exposed on the interior. Flat roof areas, which were upgraded in 1969, show some signs of water damage at the parapets. These areas will be repaired.

The exterior walls of the auditorium and fly tower are composed of concrete frames and masonry infill sections. The existing stucco, which is in poor shape, is to be removed and the brick or block substrate repaired as required. New stucco matching the historic stucco texture will be installed. The existing walls will be environmentally upgraded from the interior. The existing auditorium functions very well spatially, but the interior will be fully upgraded to meet modern theatre requirements including lighting, sound, seating and climate control (ventilation seems to have always been a problem for the theatre since its construction, based on the evidence of modifications over the years). The hemp fly system will have to be replaced due to structural/seismic upgrade requirements and to accommodate modern equipment. Sound-and-light locks will be required to minimize interference during performances. In general, however, the historic layout, structure and form of the interior will be maintained.

The 1939 Art Deco entrance façade is proposed to be fully replicated, including the marquee and "York" signage. This façade was chosen because remnants of this Deco façade still exist (as opposed to the original façade) and can be incorporated into the replication scheme. As well, the theatre is remembered most for this façade, in one form or another, over the course of its life.

A small open area on the southeast corner of the site has seen the construction of a series of modest, one-storey additions over the years. These portions of the building are not considered to contribute to the heritage values of the building and are proposed to be removed. In their place, a new two-storey addition (including a basement) is proposed which will house a lobby area, washrooms, a concession stand, a small office and an elevator.

Staff and the Vancouver Heritage Commission have reviewed the Conservation Plan and the proposed addition to the theatre and conclude that the proposal is supportable, including replication of the Art Deco façade, and consistent with the Standards and Guidelines for the Conservation of Historic Places in Canada (see comments of the Vancouver Heritage Commission in Appendix H).

Community Cultural Amenity — The York Theatre is seen as a valuable cultural resource both for its historic significance to the arts community and its anticipated future role in the city's cultural landscape. The restored theatre is planned to have 365 seats, filling an important gap in existing performance spaces in the City. Theatres in the 400-to-600-seat range,

demand for smaller incubator spaces, improvements to existing under-capitalized performance spaces and opportunities for multi-tenant, multi-use spaces were all key gaps identified in the 2008-2023 Cultural Facilities Priorities Plan. Although the York Theatre is slightly smaller than the desired 400 to 600 seats, the quality of its spaces and the proposed restoration and renovation will result in the creation of one of the premier spaces in the city and fill a void in the City's cultural space ecology.

Restoration and redevelopment of this existing theatre is environmentally sustainable. Likewise, operation of the theatre under the auspices of the Vancouver East Cultural Centre programs and services is operationally sustainable. The Vancouver East Cultural Centre, located at the corner of Venables Street and Victoria Drive, is a long established cultural institution in the neighborhood with a well-developed vision and strong community support. It is run by a team of professional staff and an active board of directors. They have operated a 275-seat theatre for over 35 years in the midst of a residential neighborhood. In the fall of 2009, the Culture Lab performance space was added to the site at Venables Street and Victoria Drive. The Culture Lab has an adaptable seating plan, with a capacity of between 50 and 100, making it an ideal incubator space for emerging and innovative performers. The addition of the York Theatre to this group of performance spaces managed under the umbrella of the VECC makes for a complete range of 'small' theatres to accommodate planned cultural programming and independent rentals.

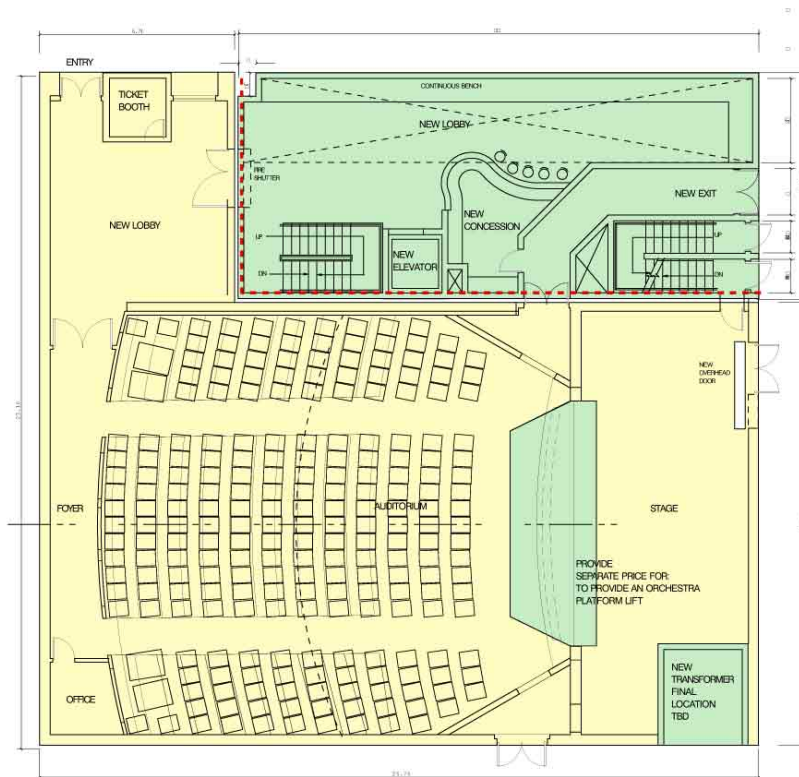
Also valued is the theatre's location in the Commercial Drive neighborhood – a local neighborhood cultural district within the larger Grandview-Woodlands cultural area. The York Theatre is anticipated to strengthen the already solid reputation of Commercial Drive and benefit the local economy by further anchoring the cultural identity of the neighborhood and drawing visitors to the area.

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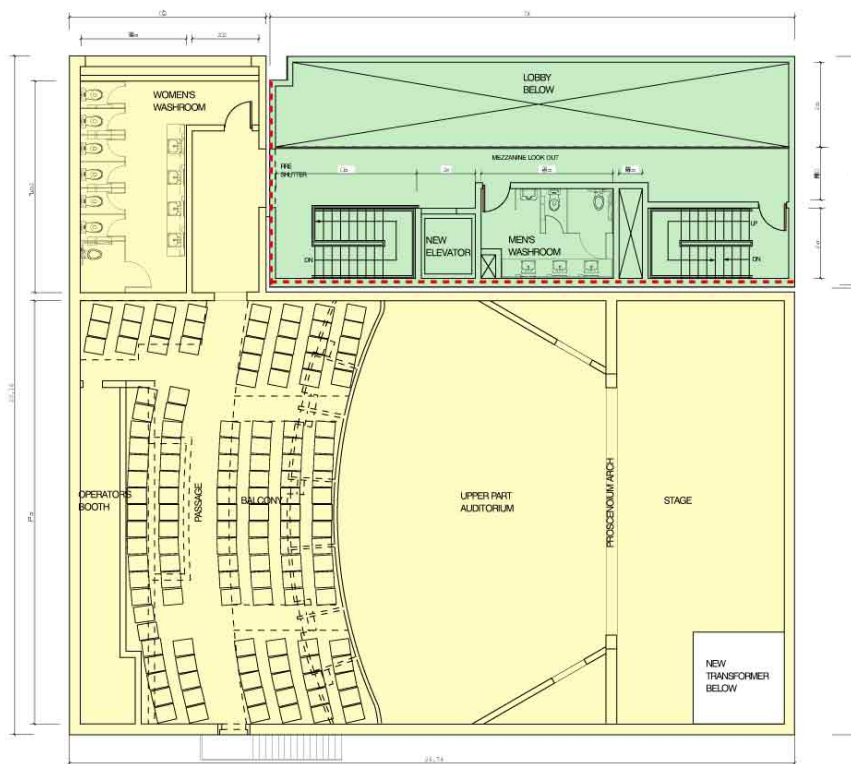
639 Commercial Drive (York Theatre)
FORM OF DEVELOPMENT





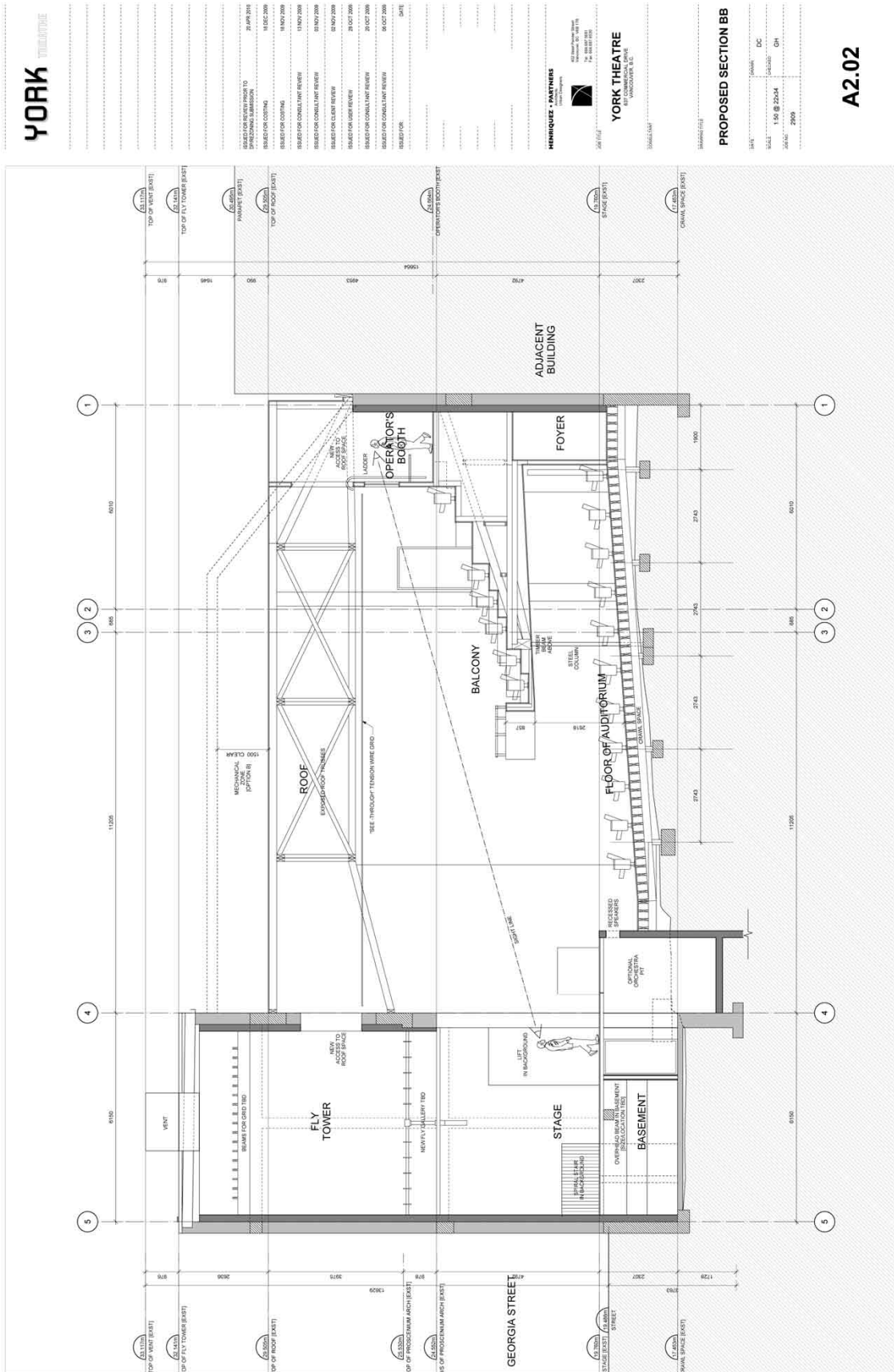


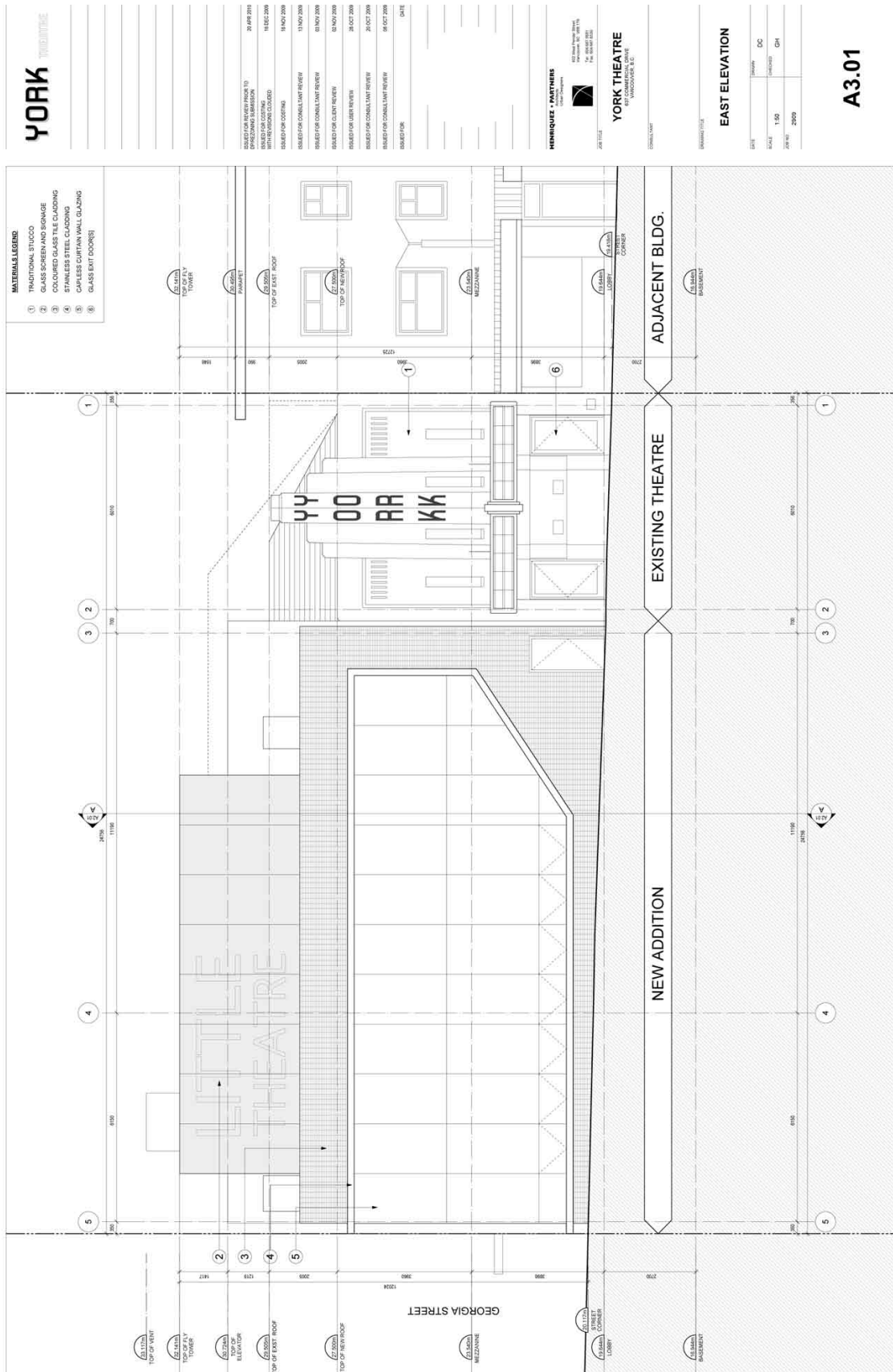
Ground Floor



Upper Floor

- EXISTING BUILDING
- NEW BUILDING





York Theatre Revitalization, Vancouver, BC
Transportation Assessment - DRAFT
May 6, 2010



7. Conclusions & Recommendations

1. The York Theatre site will not have any on-site parking provided; while the site enjoys excellent access to transit services and bicycle routes and is located in an area with a complete and extensive sidewalk system, the majority of people are expected to access the site by automobile. As per a recent patron survey at the nearby Vancouver East Cultural Centre, approximately 75% of patrons are expected to travel to the York Theatre by automobile.
2. In an approximate 3 block (300 m) radius of the proposed site there are about 669 parking spaces in total; about 536 of these are available to the general public and 93 are reserved for residents on East Georgia Street and Frances Street. The vast majority of the public stalls are free, on-street unrestricted stalls (533). York Theatre patrons, employees and performers are expected to make use of these free, on-street unrestricted stalls within convenient walking distance of the site.
3. Parking demand surveys undertaken by Bunt & Associates confirmed that weekday evening peak parking occupancy in the study area for on-street, unrestricted parking stalls occurred at 9:00 PM when 270 parking stalls out of 533 (52%) were occupied. Weekend evening peak parking occupancy in the study area for on-street, unrestricted parking occurred at 10:00 PM when 303 parking stalls out of 533 (57%) were occupied. The parking demand surveys confirmed that there are available on-street stalls which could be utilized by York Theatre patrons, employees and performers
4. During typical weekday evenings and typical weekend evenings, the peak parking demand associated with performances at York Theatre are expected to be 41 and 87 vehicles, respectively. During sold out performances, this could increase to 123 vehicles.
5. During typical weekday evenings and weekend evenings, the parking demand from York Theatre could be absorbed within the supply available within 1-2 blocks of the site. Only during busier weekend evenings or sold out weekend evenings would parking demand extend to within 2-3 blocks of the site.
6. During the busiest mid-performance periods at 9:00 PM, on-street parking within 2 blocks from the theatre could be difficult to find, with occupancies ranging from 90-100%. Therefore, residents or visitors to residents located within two blocks of the

York Theatre Revitalization, Vancouver, BC
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site may have to park a block or two away from their preferred location if they arrive to the study area during a performance.

7. This is more than likely the parking situation previously experienced in the neighbourhood when the York Theatre was in operation and why the resident-only restrictions were put in place on East Georgia and Frances Street in the first place. Therefore, it can be inferred that the current restrictions were previously proven to be effective and that further resident-only restrictions will not be necessary to manage the impact of the York Theatre re-opening. If this proves not the be the case once the Theatre is open and in regular operation, then it is recommended that an "after study" be conducted to ascertain the physical and temporal extent of York Theatre parking on adjacent blocks and to develop mitigation strategies acceptable to local residents.
8. The York Theatre is expected to generate approximately 60-65 vehicles per hour (vph) and 125-150 vph in the hours before and after performances on typical weekdays and weekend evenings. On sold-out weekend evenings, traffic volumes in these hours could range in the order of 180 to 210 vph. A good portion of this traffic (about 25%) will be pick-up/drop-off traffic. At present, there is 1 hour parking restrictions on Commercial Drive along the York Theatre frontage; it is recommended, therefore, that the restrictions be changed on this frontage to be a passenger pick-up/drop-off zone. Also, if the proposed loading zone on the East Georgia Street frontage is not in use immediately before and after performances, passenger pick-up/drop-off could also occur in this area.
9. One secondary parking impact that could occur relates to the private parking lot next to the York Theatre, which belongs to the Nick's Spaghetti House restaurant. This restaurant could potentially suffer from illegal parking activity by York Theatre employees or patrons who choose this lot due to its close proximity to the Theatre. Also, restaurant patrons who also attend a York Theatre performance could choose to leave their vehicles in the restaurant parking lot after exiting the restaurant, creating problems for incoming restaurant patrons. If such problems do arise, several mitigation measures could be undertaken either in isolation or in combination as follows:
 - Signage could be placed near the entry of the York Theatre advising patrons not to parking illegally in the adjacent restaurant lot; and/or
 - Restaurant guests could register their license plates with the restaurant host as they enter the restaurant and regular patrols of the restaurant parking lot would identify unregistered parked vehicles.

It is recommended that if such problems do arise, that the York Theatre operator works collaboratively with the restaurant owner/operator to address them.

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10. The largest truck that can be accommodated within the proposed loading zone on East Georgia Street is a small tractor trailer (WB-12). If trucks leaving the site and using residential streets to return to Commercial Drive is unacceptable to the City, then the loading zone should be moved to the Commercial Drive frontage.

11. Garbage trucks will not be able to access the garbage bins from the northern part of the narrow rear laneway, only the southern part. Garbage trucks will have to turn from Commercial Drive, then back up onto the laneway; this movement, as well as the exiting movement from the laneway will require the driveway apron of the laneway at East Georgia Street to be widened to avoid mounting curbs. Even if the garbage truck uses the loading zone on East Georgia Street, this modification to the driveway apron will be necessary to allow trucks to turn around to avoid driving through residential streets.

12. In addition to provision of information to patrons, performers and staff about how to access the site via alternative modes, there are several additional TDM measures which have the potential to reduce traffic and parking demand generated by the site, as follows:
 - Limit parking supply (already proposed by developer)
 - Subsidize transit through discount on theatre tickets; and
 - Rideshare program.

It is recommended that the developer and Theatre operator consider implementing or supporting implementation of these TDM measures.

[To see the complete version of the Transportation Assessment go to vancouver.ca/rezapps and click on the application for 639 Commercial Drive and then on the link titled "Traffic Study".]

**639 Commercial Drive (York Theatre)
ADDITIONAL INFORMATION**

Site, Surrounding Zoning and Development: This 573.4 m² (6,172 sq. ft.) site is comprised of three parcels on the west side of Commercial Drive at Georgia Street. The site has a frontage of 24.8 m (81.33 ft.) and a depth of 23.17 m (76 ft.). Abutting the building to the north is a mixed use commercial building with retail at grade and two storeys of residential above. To the west is a duplex and across Georgia Street, to the south, is a four storey residential building. On the east side of Commercial Drive are two single family homes and a mixed use commercial building with retail at grade and one storey of residential above.

Comments of the General Manager of Engineering Services: The General Manager of Engineering Services has no objection to the proposed rezoning, provided that the applicant complies with conditions as shown in Appendix B.

Processing Centre - Building: Staff have reviewed the architectural drawings prepared by Henriquez Partners Architects, submitted on May 14, 2010 and provide the following comments to be addressed at Building Permit review:

- A Green Roof will need an Alternative Solution for the requirement of a Class A, B or C rating;
- Full structural upgrading is required, which may be relaxed to 75% of the seismic design criteria where the conditions of Article 10.2.4.4 are addressed (i.e., an S4 upgrade);
- On the main floor, the north side foyer/aisle is to meet the min. width requirements of Sentence 3.3.2.5.(4) or would need to achieve acceptance of a Green Form (Acceptance of Existing Conditions with Mitigating Features);
- A disabled persons counter is required at the concession stand;
- Fire Dept access to be provided to the top of the existing building;
- In the basement, the ramp is required to have 1500 mm long landings on both ends;
- The main entrance needs to be H/C accessible (refer to power door operation requirements of Clause 3.8.3.5.(4)(c)); and
- Fire rated door(s) or fire shutter for the opening between the stage fly tower and the auditorium ceiling space.

Urban Design Panel Comment: The Urban Design Panel did not review this proposal.

Vancouver Heritage Commission: On May 31, 2010, the Vancouver Heritage Commission reviewed the application and resolved the following:

THAT the Vancouver Heritage Commission supports the Rezoning and Development Permit Application, Statement of Significance and Conservation Plan at 639 Commercial Drive as presented at its May 31, 2010.

CARRIED UNANIMOUSLY

FURTHER THAT the VHC supports the architectural concept addition to the York Theatre as presented at the May 31, 2010 meeting.

CARRIED

Environmental Implications: The proposed rezoning neither contributes to nor detracts from the objective of reducing atmospheric pollution.

Social Implications: There are no major positive or negative social implications to this proposal. There are no implications with respect to the Vancouver Children's Policy or Statement of Children's Entitlements.

Comments of the Applicant: The applicant has been provided with a copy of this report and has provided no comments.

* * * * *

639 Commercial Drive (York Theatre)
PUBLIC BENEFITS SUMMARY

Project Summary:

Increase the allowable density from 1.48 (existing building) to 2.10 FSR to allow rehabilitation of existing heritage theatre building and addition of a new street-fronting foyer.

Public Benefit Summary:

This rezoning has no CAC and the DCL is waived, but it offers a significant cultural benefit to the City.

	Current Zoning	Proposed Zoning
Zoning District	RM-4N	CD-1
FSR (site area = 573.4 m ² / 6,172 sq. ft.)	1.45	2.10 (cultural/ performance arts centre)
Max. Allowable Buildable Floor Space (sq. ft.)	8,949 sq. ft.	12,961 sq. ft.
Land Use	residential	cultural (theatre)

Public Benefit Statistics		Value if built under Current Zoning (\$)	Value if built under Proposed Zoning (\$)
Required*	DCL (City-wide)	\$93,250	0
	DCL (Area Specific)	0	0
	Public Art	0	0
	20% Social Housing	0	0
Offered (Community Contribution)	Childcare Facilities	N/A	
	Cultural Facilities		
	Green Transportation/Public Realm		
	Heritage (transfer of density receiver site)		
	Housing (e.g. supportive, seniors)		
	Parks and Public Spaces		
	Social/Community Facilities		
	Unallocated		
	Other		
TOTAL VALUE OF PUBLIC BENEFITS		\$93,250	

Other Benefits:

Provision of a completely renovated 365-seat cultural performing arts theatre in a designated C-listed heritage building.

* DCLs, Public Art and Social Housing may have exemptions and/or minimum thresholds for qualification. For the City-wide DCL, revenues are allocated into the following public benefit categories: Parks (41%); Replacement Housing (32%); Transportation (22%); and Childcare (5%). Revenue allocations differ for each of the Area Specific DCL Districts.

639 Commercial Drive (York Theatre)
APPLICANT, PROPERTY, AND DEVELOPMENT PROPOSAL INFORMATION

APPLICANT AND PROPERTY INFORMATION

Street Address	639 Commercial Drive
Legal Description	Lots A and B of Lot 12, Block D, District Lot 183, Plan 3137; PID: 013-108-506 and PID: 013-108-514, respectively, and Lot C, Except part in Reference Plan 1808, of Lot 12, Block D, District Lot 183, Plan 3137; PID: 013-108-531
Applicant	Henriquez Partners Architects
Architect	Henriquez Partners Architects
Property Owner	0843836 B.C. Ltd.
Developer	Wall Financial Corporation

SITE STATISTICS

	GROSS	DEDICATIONS	NET
SITE AREA	573.4 m ² (6,172 sq. ft.)	n/a	573.4 m ² (6,172 sq. ft.)

DEVELOPMENT STATISTICS

	DEVELOPMENT PERMITTED UNDER EXISTING ZONING	PROPOSED DEVELOPMENT	RECOMMENDED DEVELOPMENT (if different than proposed)
ZONING	RM-4N	CD-1	
USES	multiple dwelling	cultural (theatre)	
DWELLING UNITS	-	0	
MAX. FLOOR SPACE RATIO	1.45 residential 0.75 non-residential (1.48 existing)	2.10	
MAXIMUM HEIGHT	10.7 m	13.3 m	
MAX. NO. OF STOREYS	3	2	
PARKING SPACES		0	
FRONT YARD SETBACK	6.1 m minimum	0	
SIDE YARD SETBACK	2.1 m minimum	0	
REAR YARD SETBACK	10.7 m minimum	0	