



POLICY REPORT
DEVELOPMENT AND BUILDING

Report Date: July 10, 2014
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RTS No.: 10678
VanRIMS No.: 08-2000-20
Meeting Date: July 22, 2014

TO: Vancouver City Council

FROM: General Manager of Planning and Development Services in consultation with the Director of Legal Services

SUBJECT: 1196 West 59th Avenue and 1192 West 59th Avenue - Amendments to Heritage Revitalization Agreement

RECOMMENDATION

- A. THAT Council instruct the Director of Legal Services to bring forward for enactment, pursuant to Section 592 of the *Vancouver Charter*, a by-law to amend the Heritage Revitalization Agreement (the "HRA") entered into pursuant to Heritage Revitalization By-law No. 10388 in respect of the heritage building known as the Ramsay Residence (the "Heritage Building"), located at 1196 W. 59th Ave. (PID 029-012-830; Lot 1 of Lot 5 Block 1001 District Lot 526 Group 1 New Westminster District Plan EPP28070 ("Lot 1")) so that the adjacent parcel of land, which is located at 1192 W. 59th Ave. (PID 029-012-899 Lot 2 of Lot 5 Block 1001 District Lot 526 Group 1 New Westminster District Plan EPP28070 ("Lot 2")), and a portion of which, prior to a subdivision enabled by the HRA, previously contained parts of the Heritage Building, may be relieved of the continuing heritage conservation obligations contained in the HRA and at the same time be permitted to retain the benefit of the by-law variances applicable to it as provided for in the HRA.
- B. THAT the amendments to the HRA shall be prepared, completed, registered and given priority on title to the lands described above to the satisfaction of the Director of Legal Services and the Director of Planning.
- C. THAT Recommendations A and B 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 and

any expenditure of funds or incurring of costs in relation thereto is at the risk of the person making the expenditure or incurring the cost; and

- ii. THAT the City and all its officials shall not in any way be limited or restricted in the exercise of their authority or discretion, regardless of when they are called upon to exercise such authority or discretion.

REPORT SUMMARY

The purpose of this report is to seek Council approval for enactment of a by-law to amend the Heritage Revitalization Agreement (HRA) currently registered on title to the two parcels of land located at 1196 West 59th Avenue ("Lot 1") and 1192 West 59th Avenue ("Lot 2") in respect of a heritage building called the Ramsay Residence. The HRA contains a variance to the *Subdivision By-law* which enabled a subdivision of the lands into those two parcels, with the result that the Heritage Building is situated solely on Lot 1 (see Appendix A). The heritage revitalization work required by the HRA has now been completed.

The purpose of the proposed HRA amendments is to explicitly allow Lot 2 to be relieved of the continuing obligations for the conservation of the Heritage Building while at the same time enabling Lot 2 to retain the benefit of certain *Zoning & Development By-law* variations contained in the HRA (see Appendix B for a copy of the proposed draft by-law and the Modification Agreement (amendments to the HRA). The General Manager of Planning and Development Services supports the proposed amendments to the HRA.

COUNCIL AUTHORITY

Pursuant to section 592(4) of *The Vancouver Charter*, an HRA may only be amended by by-law with the consent of the owner. The owner consents to the proposed amendments and therefore Council may consider the proposed amendments to the HRA as proposed. No public hearing is required in respect of the proposed by-law because no change in use or density will be permitted by the proposed amendments to the HRA (s.592(8), *Vancouver Charter*).

GENERAL MANAGER'S COMMENTS

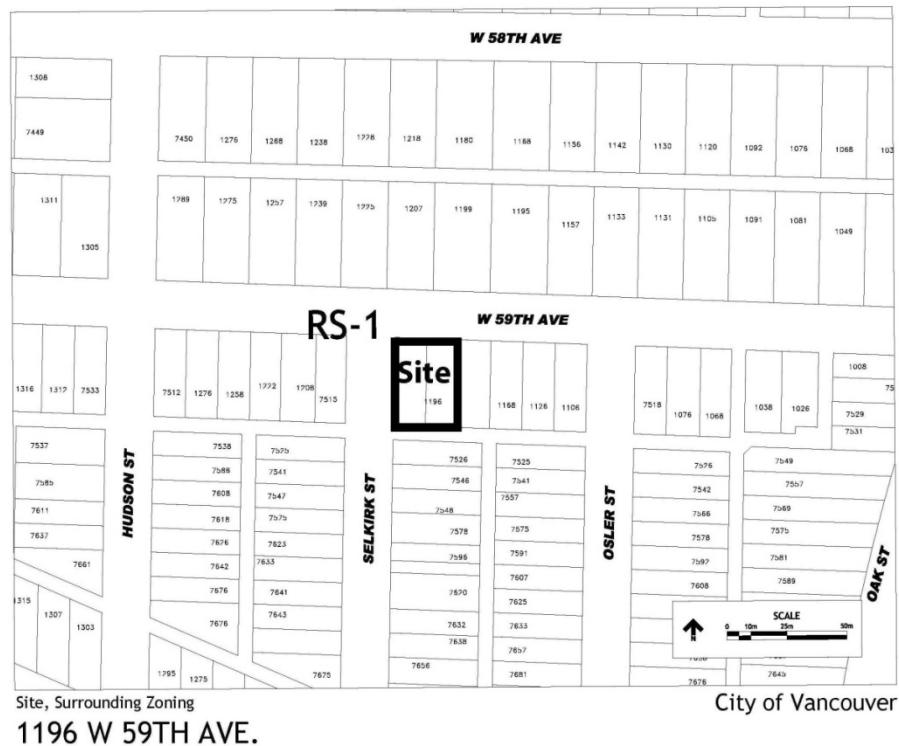
The General Manager of Planning and Development Services RECOMMENDS approval of A, B, and C.

STRATEGIC ANALYSIS

Site and Context

The site which is the subject of the proposed project is located in the Marpole neighbourhood in an area zoned RS-1 (see Figure 1).

Figure 1: Site and surrounding zoning



Proposed Amendments

The rehabilitation work required under the HRA has been completed and documented, and the owner is in a position to seek the discharge of the HRA from Lot 2, as provided for in the agreement. However, the new building which was originally proposed for Lot 2 has not been constructed yet, and the owner wishes to retain the variances the HRA provides for it so as to continue to allow for the construction of the new building in future and for its replication thereafter should it ever in future be destroyed or demolished. In its current form, the HRA does not allow for this. The variances granted for Lot 2 were part of the compensation and incentive package provided to the owner in return for the heritage designation and the heritage rehabilitation and protection of the Heritage Building. Therefore, staff support the proposed amendments to the HRA.

Legal

The HRA and the obligations contained therein to maintain and conserve the heritage building will remain fully registered on title to Lot 1 (the parcel which contains the heritage building), and therefore Lot 1 and all Lot 1 owners will remain fully responsible and liable for the heritage conservation obligations contained in the HRA.

CONCLUSION

The proposed amendments to the HRA will explicitly relieve Lot 2 (1192 West 59th Avenue), which does not contain any part of the heritage building, from the obligations to conserve the heritage building, but at the same time allow for the variances granted to that parcel to be retained for future use. The owner consents to the proposed amendments. Therefore, it is recommended Council approve the recommendations of this report.

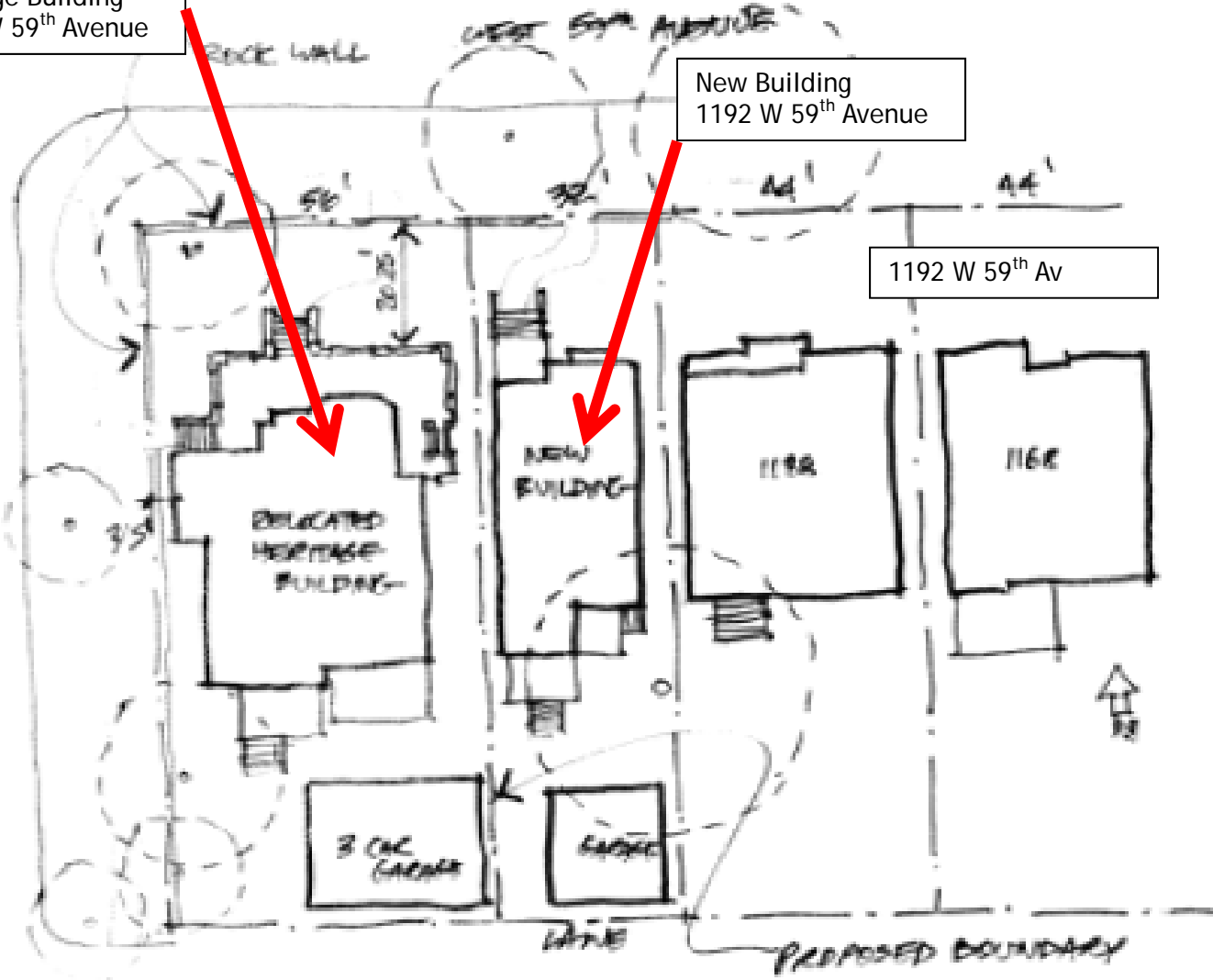
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1196 West 59th Avenue
SITE PLAN AND PHOTOGRAPHS

Heritage Building
1196 W 59th Avenue

New Building
1192 W 59th Avenue

1192 W 59th Av



Site Plan - Proposed and As Constructed



The Ramsay Residence circa 1925



The Ramsay Residence circa 2014 (Rehabilitation Completed)

1196 West 59th Avenue
PROPOSED HERITAGE BY-LAW AND HRA AMENDMENTS (MODIFICATION AGREEMENT)

1192 and 1196 West 59th Avenue
The Ramsay Residence

BY-LAW NO. _____

A By-law to authorize the amendment of a
Heritage Revitalization Agreement
Authorized by By-law No. 10388

PREAMBLE

WHEREAS

Council has authority under the *Vancouver Charter* to amend an existing Heritage Revitalization Agreement with the consent of the owner of heritage property.

AND WHEREAS

Pursuant to By-law No. 10388 enacted November 1, 2011, the City has entered into a Heritage Revitalization Agreement with the owner of certain properties bearing the civic addresses 1192 and 1196 West 59th Avenue (the "Heritage Revitalization Agreement").

AND WHEREAS

The owner now wishes to amend the Heritage Revitalization Agreement and the owner's proposed amendments are acceptable to the City.

NOW THEREFORE THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. Council authorizes amendment of the Heritage Revitalization Agreement by amendment agreement in substantially the form and substance of the Heritage Revitalization Amendment Agreement attached to this By-law and authorizes the Director of Legal Services to execute the agreement on behalf of the City and to deliver it to the owner on such terms and conditions as the Director of Legal Services deems fit.
2. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this _____ day of _____, 2014

Mayor

TERMS OF INSTRUMENT - PART 2

MODIFICATION AGREEMENT
(the "Modification")

WHEREAS:

- A. The Transferors, John Benedykt Gaylie and Gail Lynn Arrison (together, the "Owner") own the parcels or tract of land situate, lying and being in the City of Vancouver, Province of British Columbia, more particularly known and described as:

Parcel Identifier: 029-012-830
Legal Description: Lot 1 of Lot 5, Block 1001, District Lot 526, Group 1,
New Westminster District, Plan EPP28070

("Lot 1")

Parcel Identifier: 029-012-899
Legal Description: Lot 2 of Lot 5, Block 1001, District Lot 526, Group 1,
New Westminster District, Plan EPP28070

("Lot 2")

(collectively, the "Lands")

- B. The Owner and the City of Vancouver (the "City") have entered into a Heritage Revitalization Agreement under the provisions of the *Vancouver Charter* SBC 1953 c.55 (the "Agreement") which is registered on title to the Lands under numbers CA2284982 - CA2284993 and by which, among other things, the Owner promised to rehabilitate a heritage building situated on the Lands (the "Heritage Building") pursuant to City development permit No. DE414312.
- C. The Agreement provided, among other things, for a certain variation to the City's *Subdivision By-law No. 5208* in respect of the Lands which allowed for their subdivision into the two parcels of which they now consist as described above.
- D. Lot 1 contains the Heritage Building and is described in the Agreement as the Heritage Parcel.
- E. Lot 2 does not contain any part of the Heritage Building or any access to it and is described in the Agreement as the Non-Heritage Parcel.
- F. The Owners wish to modify the Agreement to relieve the Non-Heritage Parcel from the ongoing obligations in the Agreement relating to the conservation of the Heritage Building post-completion of the Rehabilitation Work required thereunder.
- G. The City has agreed to modify the Agreement for that purpose on the terms and conditions of this Modification Agreement.

THEREFORE in consideration of each party agreeing to modify the Agreement as set out hereinafter and for other good and valuable consideration (the receipt and sufficiency of which the parties hereto acknowledge and agree to), the parties agree as follows:

Modification of the Agreement

1. The Agreement is hereby modified as follows:

a) The following is added to the Agreement as sub-paragraph 1.1(w):

“Non-Heritage Parcel Owner” means the registered owner(s) of the Non-Heritage Parcel.”

b) The contents of paragraph 2.7 of the Agreement are hereby deleted and replaced with the following:

“2.7 The City, at the Non-Heritage Parcel Owner’s expense, within a reasonable time of the Non-Heritage Parcel Owner’s request, after the Rehabilitation Work has been completed in accordance herewith, the conditions of paragraph 8.1 all are otherwise met and the Subdivision has been completed, will discharge from the Non-Heritage Parcel the Section 219 Covenant contained in Article 2 hereof.

c) The following is added to the Agreement as paragraph 2.8:

“2.8 Notwithstanding anything to the contrary contained in this agreement, once the Rehabilitation Work has been completed in accordance herewith and the conditions of paragraph 8.1 all are otherwise met and the Subdivision has been completed, the Non-Heritage Parcel Owner, but only insofar as he, she or it is a Non-Heritage Parcel Owner and not also the Owner of the Heritage Parcel, is no longer bound by or required to perform the Owner’s obligations under or liable to the City in respect of the provisions of Article 2.”

d) The following is added to the Agreement as Paragraph 4.4:

“4.4 The City, at the Non-Heritage Parcel Owner’s expense, within a reasonable time of the Non-Heritage Parcel Owner’s request, after the Rehabilitation Work has been completed in accordance herewith, the conditions of paragraph 8.1 all are otherwise met and the Subdivision has been completed, will discharge from the Non-Heritage Parcel the statutory right of way contained in Article 4 hereof.”

e) The following is added to the Agreement as Paragraph 6.3:

“6.3 The City, at the Non-Heritage Parcel Owner’s expense, within a reasonable time of the Non-Heritage Parcel Owner’s request, after the Rehabilitation Work has been completed in accordance herewith, the conditions of paragraph 8.1 all are otherwise met and the Subdivision has been completed, will discharge from the Non-Heritage Parcel the equitable charge contained in Article 6 hereof.”

- f) The contents of Paragraph 8.2 of the Agreement are hereby deleted and replaced with the following:

"8.2 Notwithstanding the foregoing, so that the Non-Heritage Parcel may retain the benefit of the applicable *Zoning and Development By-law* variances contained herein, insofar as that is possible under operation of applicable laws, the City will not seek to release from title to the Non-Heritage Parcel the notice of this Heritage Revitalization Agreement, as noted on the title to the Non-Heritage Parcel pursuant to the provisions of the *Vancouver Charter*, unless the owner of the Non-Heritage Parcel explicitly in writing requests that the City do so or the City is required by law to do so."

- g) The contents of Paragraph 10.1 of the Agreement are hereby deleted and replaced with the following:

"10.1 Joint and Several Liability Prior to Subdivision. If and whenever, prior to completion of the Subdivision, the Owner is more the one party, then all such parties shall at and in respect of such times be jointly and severally liable to the City for the performance and observation of the Owner's obligations in this agreement."

- h) The following is added to the Agreement as Paragraph 10.1A:

"10.1A Joint and Several Liability - Heritage Parcel. If and whenever, after completion of the Subdivision, there are multiple parties who together or collectively are registered owners of the Heritage Parcel, then all such parties shall at and in respect of such times be jointly and severally liable to the City for the performance and observation of the Owner's obligations in this agreement."

- i) The following is added to the Agreement as Paragraph 10.1B:

"10.1B Joint and Several Liability - Non-Heritage Parcel Owner. Any Non-Heritage Parcel Owner who, after completion of the Subdivision and of the Rehabilitation Work in accordance herewith, is not also a registered owner of the Heritage Parcel shall not thereafter be jointly and severally liable to the City for the performance and observation of the Owner's obligations in this agreement."

Agreement Ratified and Confirmed

2. Except as hereby expressly modified, the Agreement is hereby ratified and confirmed by the Owner and the City to the effect and with the intent that the Agreement and this Modification Agreement shall be read and construed as one document.

Amendment

3. No alteration or amendment of the Agreement or this Modification Agreement shall have effect unless the same is in writing and duly executed by all the parties.

Binding Effect

4. This Modification Agreement shall enure to the benefit of and be binding upon the parties

and their respective successors and permitted assigns.

Time

5. Time shall be of the essence of this Modification Agreement.

Interpretation

6. All terms used in this Modification Agreement which are defined in the Agreement will have the meaning ascribed to such terms in the Agreement unless otherwise defined in this Modification Agreement or the context otherwise requires.

Conflict

7. In the event of any conflict between the terms and conditions of the Agreement and the terms and conditions of this Modification Agreement, the terms and conditions of this Modification Agreement will prevail.

IN WITNESS WHEREOF the parties hereto have executed this Modification by signing the General Instrument Part I attached hereto as of the date first above written on the said instrument.

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) "Existing Charge" means the Mortgage registered under number CA2921940;
- (b) "Existing Chargeholder" means VANCOUVER CITY SAVINGS CREDIT UNION;
- (c) "New Charge" means the modification of Section 219 Covenant, Statutory Right of Way and Equitable Charge contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the meaning ascribed to them in the attached Terms of Instrument - Part 2.

For \$10.00 and other good and valuable consideration, the receipt and sufficiency of which the Existing Chargeholder acknowledges, the Existing Chargeholder:

- (i) consents to the Owner granting the New Charge to the City; and
- (ii) agrees with the City that the New Charge charges the Lands in priority to the Existing Charge in the same manner and to the same effect as if the Owner had granted the New Charge, and it has been registered against title to the Lands, prior to the grant or registration of the Existing Charge or the advance of any money under the Existing Charge.

To witness this consent and priority instrument, the Existing Chargeholder has caused its duly authorized signatories to sign the attached General Instrument - Part 1.

END OF DOCUMENT

EXPLANATION

**Authorization to amend a
Heritage Revitalization Agreement
with the owner of 1196 West 59th Avenue**

After the public hearing on October 18, 2011, Council resolved on October 18, 2011 to enter into a By-law to authorize an agreement with the owner of the property at 1196 West 59th Avenue, pursuant to Section 592 of the Vancouver Charter (the "Heritage Revitalization Agreement"). The Heritage Revitalization Agreement was authorized by Council by By-law No. 10388 on November 1, 2011.

On July 22, 2014, Council resolved to authorize an amendment to the Heritage Revitalization Agreement, pursuant to Section 592 of the Vancouver Charter. Enactment of the attached By-law will accomplish Council's resolution