



REPORT

Report Date: December 18, 2019
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Meeting Date: January 21, 2020
[Submit comments to Council](#)

TO: Vancouver City Council

FROM: General Manager, Planning, Urban Design and Sustainability in consultation with the Director of Legal Services

SUBJECT: Heritage Revitalization Agreement Amendment – 959 East 35th Avenue

RECOMMENDATIONS

- 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 Agreement By-law No. 12463 in respect of the heritage building known as the Bramble Store and Apartment (the “Heritage Building”) and the proposed infill dwelling (the “New Building”), located at 959 East 35th Avenue (PID 014-525-992, Lot 23 Block 9 District Lots 668 to 670 Plan 1620) (the “Heritage Parcel”), in order to amend the references to floor area allocation and site coverage, and address other housekeeping measures relevant to the preamble of the HRA, while at the same time retaining the benefit of by-law variances as provided for in the HRA, generally in accordance with Appendix B.
- B. THAT the amendment to the Heritage Revitalization Agreement 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 Recommendation A be adopted on the following conditions:
 - i. THAT the passage of the above resolution 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's approval for enactment of a by-law to amend the Heritage Revitalization Agreement (HRA) currently registered on title to the Heritage Parcel as described in Recommendation A, located at 959 East 35th Avenue.

On May 14, 2019, Council approved a heritage designation and HRA for 959 East 35th Avenue to require retention and rehabilitation of the Heritage Building and to permit construction of the New Building at the front of the site as part of the current development application, DP-2018-00534 ("DP Application"), with a modest increase in permitted density and site coverage.

The purpose of the proposed HRA amendment is to address a discrepancy in site coverage discovered as a result of inaccurate information provided at the time of application, and the applicant's subsequent request for a minor re-allocation of floor area between the Heritage Building and the New Building. At the same time, housekeeping measures to correct the DP application number and the Vancouver Heritage Register listing in the preamble of the HRA will be addressed.

These amendments will allow staff to complete final approval of the DP Application.

COUNCIL AUTHORITY/PREVIOUS DECISIONS

Pursuant to Section 592(4) of the *Vancouver Charter*, an HRA may only be amended by by-law and with the consent of the owner of the subject property. Notice of the HRA was filed in the Land Title Office on title to the Heritage Parcel as required by the *Vancouver Charter*, and the owner of the Heritage Parcel has consented to the proposed amendment (s.592(4), *Vancouver Charter*). Therefore Council may consider the amendment to the HRA as proposed. This amendment is not varying use or density; therefore, it does not require a Public Hearing.

The following Council policies are applicable to the project:

- *Heritage Policies and Guidelines (April, 1991, last amended September 2002)*

GENERAL MANAGER'S COMMENTS

The General Manager of Planning, Urban Design, and Sustainability RECOMMENDS approval of A, B and C.

REPORT

Site and Context

The site is located in the Kensington-Cedar Cottage neighbourhood in an area zoned RS-1 (see Figure 1). *The RS-1 District Schedule of the Zoning and Development By-law* permits single family dwellings and infill development on certain sites in exchange for character retention. The

total area of the site is 306.7 m² (3,301 sq.ft.). There is a 6-metre (20-ft.) wide lane at the rear of the site, running along the west side of the Heritage Building.

Figure 1: Site Location



Background

At the May 14, 2019 Public Hearing, Council approved the addition of the Heritage Building to the Vancouver Heritage Register as a B-listing, the heritage designation of the structure and exterior envelope of the Heritage Building and exterior building materials, and the HRA to be entered into and notice to be registered against title. The purpose of the HRA was to vary the *Zoning and Development By-law* to allow a modest increase in density to 0.93 FSR on the Heritage Parcel (10% over permitted) and a modest increase to permitted site coverage under the *RS-1 District Schedule* along with other minor variances to accommodate the Heritage Building and allow development of a new infill at the front of the site comprising a single-family dwelling with a secondary suite.

Heritage Value

Built in 1921 as a single storey commercial building and enlarged with a second floor apartment in 1924, the Heritage Building is valued as an example of the inter-war development of small neighbourhood commercial buildings along local streets that served the area population with basic goods, including groceries, and various services. It is also significant for its cultural history that included various immigrant groups who lived in the apartment above and operated the store (Appendix A). It was once part of a cluster of neighbourhood commercial buildings situated along this block of East 35th Avenue. The Heritage Building continues to serve the local community in the provision of basic goods as a neighbourhood grocery store. As such, it is listed on the Vancouver Heritage Register in the 'B' evaluation category.

Development Application and Proposed Incentives

If approved, the incentives to be provided to the owner for the amendment to the HRA will be in the form of a further variance to the *RS-1 District Schedule* of the *Zoning and Development By-law*, consisting of additional site coverage, and a re-allocation of floor area between the Heritage Building and the New Building, as set forth in the DP Application and as described below (see Appendix C for a full technical summary).

Table 1: Summary

Site Area: 959 East 35th Avenue – 306.7 m² (3,301 sq.ft.)

Item	Existing HRA - Approved at Public Hearing, May 14, 2019	Permitted or Required under RS-1	Proposed HRA Amendment
Floor Area – Allocation Between Heritage Building and New Building	Article 7.2(h) (ii) Heritage Building: 113 sq.m. (1,216 sq.ft.) (iii) New Building: 172 sq.m. (1,854 sq.ft.) Total: 285 sq.m. (3,070 sq.ft.)	260.7 sq.m. (2,806 sq.ft.)	Amend the allocation of floor area between the two buildings: Heritage Building: 109 sq.m. (1,173 sq.ft.). New Building: 176 sq.m. (1,895 sq. ft.); Total: 285 sq.m. (3,070 sq.ft.) remains unchanged
Site Coverage	Article 7.2(i) 45%	40%	51%

The further variances to the *RS-1 District Schedule* for site coverage, and re-allocation of floor area, are the result of an update to the technical review. Information conveyed earlier to city staff indicated a slightly different floor area allocation between the Heritage Building and the New Building. This amendment will allow for a modest increase in floor area to the New Building and an identical decrease in floor area to the Heritage Building; overall floor area remains unchanged. The site coverage necessary to achieve density of 0.93 FSR in the proposed form of development was 45% of site area. This was presented to Council at Public Hearing on May 14, 2019. It was subsequently discovered that the site coverage necessary to accommodate the development is 51% of site area. All other aspects of the form of development, including overall density, proposed uses, siting of buildings and landscaping, and all other variances as originally proposed in the HRA remain unchanged since its presentation to Council at Public Hearing.

Staff have considered the potential impact of the proposed development, the conservation approach (see Condition of the Heritage Building and Conservation Approach section), and the compatibility of the development with the zoning, and conclude that the DP Application is supportable. The General Manager of Planning, Urban Design and Sustainability is prepared to approve the DP Application should Council approve the recommendations of this report.

Compatibility with Existing Zoning and Land Use Regulations and Community Plans

The intent of the *RS-1 District Schedule* of the *Zoning and Development By-law* is generally to maintain the single-family residential character of the RS-1 District, and also to permit one family dwellings with secondary suites. The *Kensington-Cedar Cottage Community Vision* was adopted by Council on July 21, 1998. The proposal to retain the Heritage Building and develop a one-family dwelling with a rental suite is consistent with the approved Vision direction, particularly:

20.1 Retain Character Buildings and Areas “In order to encourage retention of character (e.g., pre-1940) houses and other buildings, there should be incentives to renovate such as: additional density, more suites, relaxations to building code requirements, promoting the opportunity to be included on the VHR. Areas that have more older buildings should be studied first.”

The proposed HRA Amendment as it applies to the Heritage Building meets this intent and is consistent with the Council-adopted Community Vision.

Condition of the Heritage Building and Conservation Approach

The Heritage Building is in very good condition and the exterior rehabilitation is a condition of the DP Application. The amendment to floor area allocation and site coverage as proposed in the DP Application will achieve the same result for the Heritage Building and the New Building as presented to Council at Public Hearing on May 14, 2019.

Public Benefits

Development Cost Levies (DCLs): DCLs collected from development help pay for facilities made necessary by growth, including parks, childcare facilities, replacement housing (social/non-profit housing) and engineering infrastructure. Since DCLs are based on additional floor area, no change is proposed beyond what was already reported to Council at Public Hearing on May 14, 2019. As per that Council report, the total DCLs that would be anticipated from this development are \$12,308. Furthermore, the anticipated value of the on-site heritage conservation is estimated to be approximately \$129,750.

Legal

The owner of the Heritage Parcel has agreed to the above described amendment to the HRA which has been prepared by Legal Services in consultation with Planning, Urban Design and Sustainability.

CONCLUSION

The proposed amendment to the HRA addresses an adjustment to floor area allocation and site coverage, and upon approval of the amendment, will allow the DP Application to be completed based on the proposal as presented to Council at Public Hearing on May 14, 2019. No changes to overall density, or any other variances, are proposed for 959 East 35th Avenue. Staff recommend that Council instruct the Director of Legal Services to bring forward for enactment a by-law to enter into an agreement to amend the HRA as set out in this report.

* * * * *

959 East 35th Avenue – Bramble Store and Apartment



South side and east side



South and west side (lane)

**TERMS OF INSTRUMENT – PART 2
MODIFICATION OF HERITAGE REVITALIZATION AGREEMENT**

WHEREAS:

- A. It is understood and agreed that this instrument shall be read as follows:
- (a) the Transferor, **FIONA HANSON**, is hereinafter called the “**Owner**”;
 - (b) the Transferee, **CITY OF VANCOUVER**, is called the “**City**” when referring to the corporate entity and the “**City of Vancouver**” when referring to the geographic area;
- B. The Owner is the registered owner of the parcel of land in the City of Vancouver, Province of British Columbia, having a civic address of 959 East 35th Avenue and legally described as:
- Parcel Identifier: 014-525-992
Legal Description: Lot 23 Block 9 District Lots 668 to 670 Plan 1620
- C. There is situated on the Heritage Parcel a building, known as the “**Bramble Store and Apartment**” (the “**Heritage Building**”), which is designated as a protected heritage building and listed in Category ‘B’ on the Vancouver Heritage Register.
- D. As part of a proposed development of the Lands under Development Permit Application No. DP-2018-00534, the Owner and the City entered into a heritage revitalization agreement in respect of the Lands, which was registered in the Land Title Office on June 26, 2019 under Nos. CA7583796 to CA7583798 (the “**HRA**”), which agreement is binding on the Owner.
- E. The Owner has now applied for an amendment to the HRA with respect to the maximum permitted site coverage for the Heritage Building.
- F. The City and the Owner have agreed to modify the HRA on the terms and conditions set out herein, subject to enactment of a by-law authorizing this Agreement pursuant to Section 592(4) of the *Vancouver Charter*.

NOW THEREFORE in consideration of the matters referred to in the foregoing recitals, covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed to by the Owner and the City), the Owner and the City hereby covenant and agree as follows:

1. Interpretation

All capitalized terms in this Agreement, unless otherwise defined in this Agreement, have the meanings ascribed thereto in the HRA.

2. Modification of HRA

The HRA is hereby modified as of the date that this Agreement is registered in the Land Title Office as follows:

- (a) in Recital C, the words "development permit application No. DP-2018-00039" are deleted and replaced with the words "development permit application No. DP-2018-00534";
- (b) in Recital D, the words "in the 'C' evaluation category therein" are deleted and replaced with the words "in the 'B' evaluation category therein"; and
- (c) in Section 7.2(h)(ii) the words "shall not exceed 113 m² (1,216 sq. ft.)" are deleted and replaced by the words "shall not exceed 109 m² (1,173 sq. ft.)";
- (d) in Section 7.2(h)(iii) the words "shall not exceed 172 m² (1,854 sq. ft.)" are deleted and replaced by the words "shall not exceed 176 m² (1,895 sq. ft.)"; and
- (e) in Section 7.2(i), the words "shall not exceed 45% of the site area" are deleted and replaced with the words "shall not exceed 51% of the site area".

3. HRA Ratified and Confirmed

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

4. Conflict

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

5. Further Assurances

The City and the Owner will do and cause to be done all things and execute and cause to be executed all documents which may be necessary to give proper effect to the intention of this Agreement.

6. Binding Effect

This Agreement will enure to the benefit of and be binding upon the City and the Owner and their respective successors and permitted assigns.

7. Amendment

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

8. City's Other Rights

Nothing contained or implied in this Agreement will derogate from the obligations of the Owners under any other agreement with the City or, if the City so elects, 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 public and private statutes, by-laws, orders and regulations, 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 owners and the City.

9. Time

Time shall be of the essence of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this modification agreement on the General Instrument - Part 1 which is attached hereto and forms part hereof.

END OF DOCUMENT

959 EAST 35TH AVENUE
TECHNICAL ZONING SUMMARY

Table 1: Summary of RS-1 District Schedule of Zoning and Development By-law
Site Area: 959 East 35th Avenue – 306.7 m² (3,301 sq.ft.)

RS-1 District Schedule	Existing (Approved Under HRA)	Required or Permitted	Proposed HRA Amendment
Section 3.2.1.DW Uses [Dwelling]	Supplement such that a Dwelling Unit in conjunction with another use in the Heritage Building is permitted, and further: Infill One-Family Dwelling or Infill One Family Dwelling with a Secondary Suite is permitted for the New Building.	Dwelling unit in conjunction with a neighbourhood grocery store; Infill One-Family Dwelling; One-Family Dwelling with Secondary Suite	No change to existing
Section 3.2.1.O Uses [Office]	The Director of Planning may consider a temporary sales office in the Heritage Building provided that consideration is given to impact on surrounding properties.	Temporary Sales Office	
Section 3.2.1.R Uses [Retail]	Neighbourhood Grocery Store is permitted without specifying the date upon which the retail use began, and the Director of Planning may consider retail uses in the Heritage Building provided that consideration is given to impact of such uses on surrounding properties.	Farmers' Market; Neighbourhood Grocery Store; Public Bike Share	
Section 4.1.1 Site Area	Minimum area shall not apply.	Minimum 334m ² (3,595 sq.ft.)	

RS-1 District Schedule	Existing (Approved Under HRA)	Required or Permitted	Proposed HRA Amendment
Section 4.3 Height	Heritage Building: Limited to the current maximum height, 6.9 m (22.5 ft.), New Building: required height limit shall apply	10.7 m (35 ft.) and 2½ storeys	No change to existing
Section 4.4 Front Yard	Heritage Building: Shall not apply New Building: Shall apply, except that the Director of Planning may vary the required yards or building depth required for the New Building to improve the relationship of the New Building to the Heritage Building and/or the adjoining property.	Minimum depth of 20% of the depth of the site	
Section 4.5 Side Yard		Interior - Minimum 1.0 m (3.3 ft.) Exterior – governed by Section 11.1	
Section 4.6 Rear Yard		Minimum 45% of depth of site	
Section 4.16 Building Depth		Distance between front yard and rear yard not to exceed 35% of the depth of the site	
Section 4.17 External Design		Specifies placement of entrances, porches, windows, and roof design.	
Section 4.7.1 FSR	Area for all buildings shall be 285 m ² (3,070 square feet), approximately 0.93 FSR, and the New Building shall not exceed 172 m ² (1,854 sq.ft.); the Heritage Building shall not exceed 113 m ² (1,216 sq.ft.).	0.85 FSR conditional 260.7 m ² (2,806 sq.ft.)	No change to overall approved FSR or floor area. Re-allocation of floor area between the New Building and Heritage Building. New building shall not exceed 176 m ² (1,895 sq. ft.); Heritage Building shall not exceed 109 m ² (1,173 square feet).
Section 4.8.1 Site Coverage	Shall not exceed 45%.	40%	Shall not exceed 51%.

RS-1 District Schedule	Existing (Approved Under HRA)	Required or Permitted	Proposed HRA Amendment
Section 5.3 Relaxation of Regulations	For corner site, with a lane at rear, the Director of Planning may relax the provisions of section 4.7 of this Schedule to permit the exclusion of floor space used for offstreet parking in the principal building up to a maximum of 42 m ² .	For corner site, without a lane at rear, the Director of Planning may relax the provisions of section 4.7 of this Schedule to permit the exclusion of floor space used for off-street parking in the principal building up to a maximum of 42 m ²	No change to existing