



POLICY REPORT

Report Date: May 21, 2024
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VanRIMS No.: 08-2000-20
Meeting Date: June 13, 2024

TO: Vancouver City Council

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

SUBJECT: Heritage Revitalization Agreement Modification – 6161 Macdonald Street

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”) originally entered into pursuant to HRA By-law Number 8935, regarding a vacant parcel at 6161 Macdonald Street [*PID: 026-085-500; Lot 2 Block D District Lot 321 Group 1 New Westminster District Plan BCP14095 (the “site”)*], the creation of which was enabled by the HRA. The amendment to the HRA would remove the front setback requirement for new development on the site, and address other housekeeping measures, as described in this report and shown in Appendix B.
- B. THAT the modification of 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 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 bring forward an owner-requested modification to the HRA to remove a front setback requirement. In addition, amendments to the HRA are proposed to reflect the recent change in applicable zoning from RS-5 to R1-1.

COUNCIL AUTHORITY/PREVIOUS DECISIONS

On June 8, 2004, Council approved a Heritage Designation By-law and an HRA for the Anderson Residence at 6135 Macdonald Street, which is listed on the *Vancouver Heritage Register* (VHR) in the 'C' evaluation category. The HRA varied the Subdivision By-law to enable the subdivision of the original property to create a new vacant parcel (the New Building Parcel) addressed as 6161 Macdonald Street (see Appendix A), while preserving the Anderson Residence on its own parcel. To address concerns from nearby residents at the time about impacts on the streetscape, the HRA established a front setback for the newly created parcel, requiring that it be equal to the front yard of the property at 6187 Macdonald Street to the south (see Appendix A).

The report for the approval of the HRA and Designation By-law in 2004 may be found at the following link for reference: <https://council.vancouver.ca/20040624/pe5.htm>

Pursuant to Section 592(4) of the *Vancouver Charter*, an HRA may be modified by Council by by-law and with the consent of the owner. The following Council policies are applicable to the project:

- *Heritage Policies (2020)*
- *Vancouver Heritage Program (2020)*

CITY MANAGER'S COMMENTS

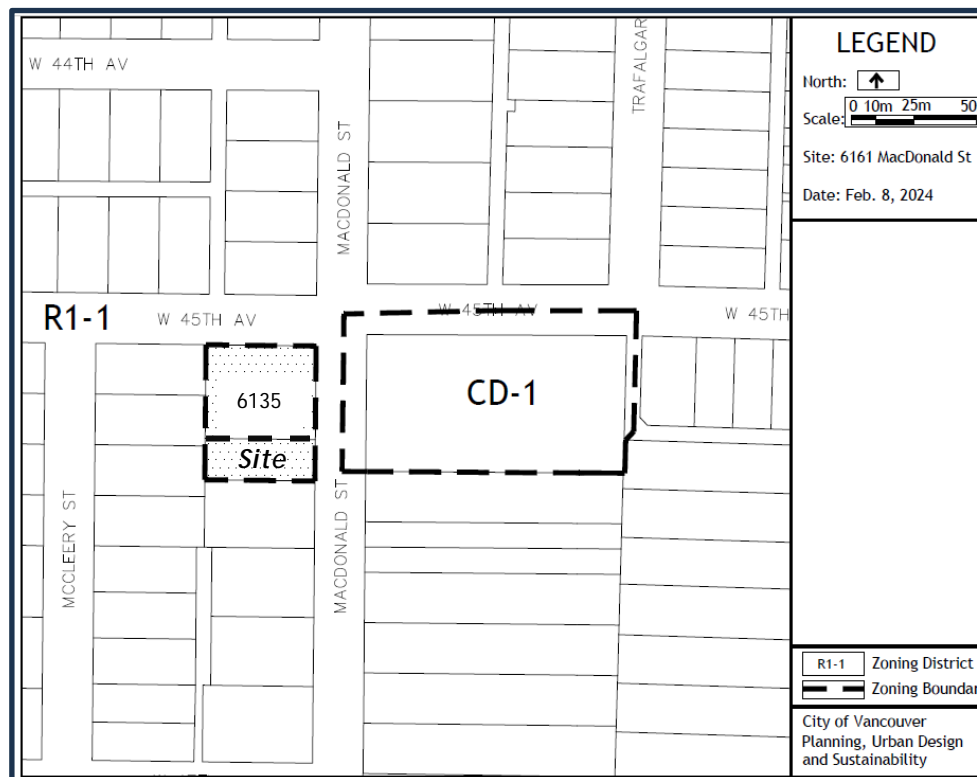
The City Manager RECOMMENDS approval of the forgoing.

REPORT

Site and Context

The site is located in the Dunbar neighbourhood in an area formerly zoned RS-5 (see Figure 1). On October 17, 2023, Council approved the *R1-1 District Schedule*, which is now applicable to the site, and rescinded the *RS-5 District Schedule* and related guidelines. The *R1-1 District Schedule* permits additional housing options for applicable sites including detached houses, laneway houses, duplexes, infill development on certain sites, and multiple dwelling buildings with up to 6 to 8 dwelling units.

Figure 1 shows the original parent tract outlined and the two parcels associated with it and the HRA. The north parcel at 6135 Macdonald Street contains the Anderson Residence (see Appendix A). The smaller south parcel labelled 'Site' is 6161 Macdonald Street. Several heritage properties exist in the immediate context as shown in Appendix A, including the site noted as "CD-1" in Figure 1.

Figure 1: Site Location (Showing Parent Tract and 6135 Macdonald St.)

Owner/Applicant's Request for HRA Modification

The vacant site at 6161 Macdonald Street has remained under the same ownership as the original parent tract since subdivision in 2004, while the heritage parcel at 6135 Macdonald Street is now under separate ownership. City records show a history of enquiries and dialogue with the owner on redevelopment of the site dating back to 2015. To facilitate improved redevelopment options and sale of the parcel, the Owner has requested modification of the HRA to remove the front setback restriction (see diagrams in Appendix A). An HRA cannot be modified by the Director of Planning, but instead requires approval of Council (see Council Authority / Previous Decisions and Legal).

Development Application

In August 2021, Development Permit application DP-2021-00766 (the "DP Application") was submitted outlining the request for a modification to remove the front setback requirement from the HRA (see Appendix A and C). The rationale provided in the application was that at the time of the original HRA, the allowable form of development on the site with the setback was not fully understood. Staff have worked with the owner and the applicant to assess the request. Staff also considered responses from the notification of residents (see Neighbourhood Notification and Appendix D) and review by the Vancouver Heritage Commission (see Appendix E). The DP Application became inactive as of May 2022, but at the applicant's request the application remained open. In the summer of 2023 the owner indicated a desire to proceed.

In October 2023, Council changed the zoning applicable to the site, as well as most RS zoned sites in the City, from RS-5 to R1-1 (see Site and Context). Under the new *R1-1 District Schedule*, the minimum required front yard is 4.9 m (16 ft.) for all uses, and the maximum permitted density increased for certain uses beyond what was allowed in RS-5. Unlike the RS-5 zoning, the R1-1 zoning does not include preservation of streetscapes nor prescribe design considerations or style guidelines. Staff concluded that the HRA setback would preclude reasonable development under the *R1-1 District Schedule* and therefore support the proposed removal of the front setback, noting that the HRA in 2004 was not intended to limit development on the vacant site other than to address streetscape compatibility, which was an objective under the *RS-5 Guidelines* at the time.

As a result staff have coordinated bringing the HRA modifications forward in order to reflect the zoning change along with the requested removal of the front setback. The modifications proposed are listed in Appendix B and include removal of the front setback as sought by the owner, and modifications to reflect the zoning change from RS-5 to R1-1. The owner has reviewed the modified HRA and signed it, and confirms it permits a reasonable form of development consistent with redevelopment expectations on the site.

Neighbourhood Notification - A total of 21 surrounding properties were notified of the DP Application and a site sign was installed. Five responses were received, all in opposition. The primary concern was regarding the impact on streetscape (see Appendix D for a discussion on the responses with staff comments).

The notification was conducted before the change of the zoning from RS-5 to R1-1. Because the new zoning does not require a streetscape response for development, nor does it have associated design guidelines, staff concluded that maintaining the front setback was no longer an objective of the zoning and decided not to renotify neighbours of the status of the application after the zoning change. However, the residents who responded to notification under the DP Application are to be notified by letter of the public hearing for the HRA modifications.

Advisory Committee Response

The DP Application was reviewed by the Vancouver Heritage Commission on October 18, 2021. The Commission did not support the proposal due to the impacts on the streetscape and perceived non-compliance with the *RS-5 Guidelines*, and recommended that relaxations including a rear yard relaxation, be considered to move any new building back on the site (see Appendix E). However, with the new R1-1 zoning change, Staff concluded the front setback could not be maintained to allow for development as anticipated under the R1-1 zoning, and therefore support the removal of the setback from the HRA.

Legal

Pursuant to Section 592(8) of the Vancouver Charter, a public hearing is required to approve or modify an HRA if there is a change in use or density not otherwise authorized by the applicable zoning. In this case, the modification is not for a change of use or density and therefore a public hearing is not required. However, in order to give the owner and other members of the community the opportunity to address Council, staff have scheduled the review of this report to be heard at a public hearing.

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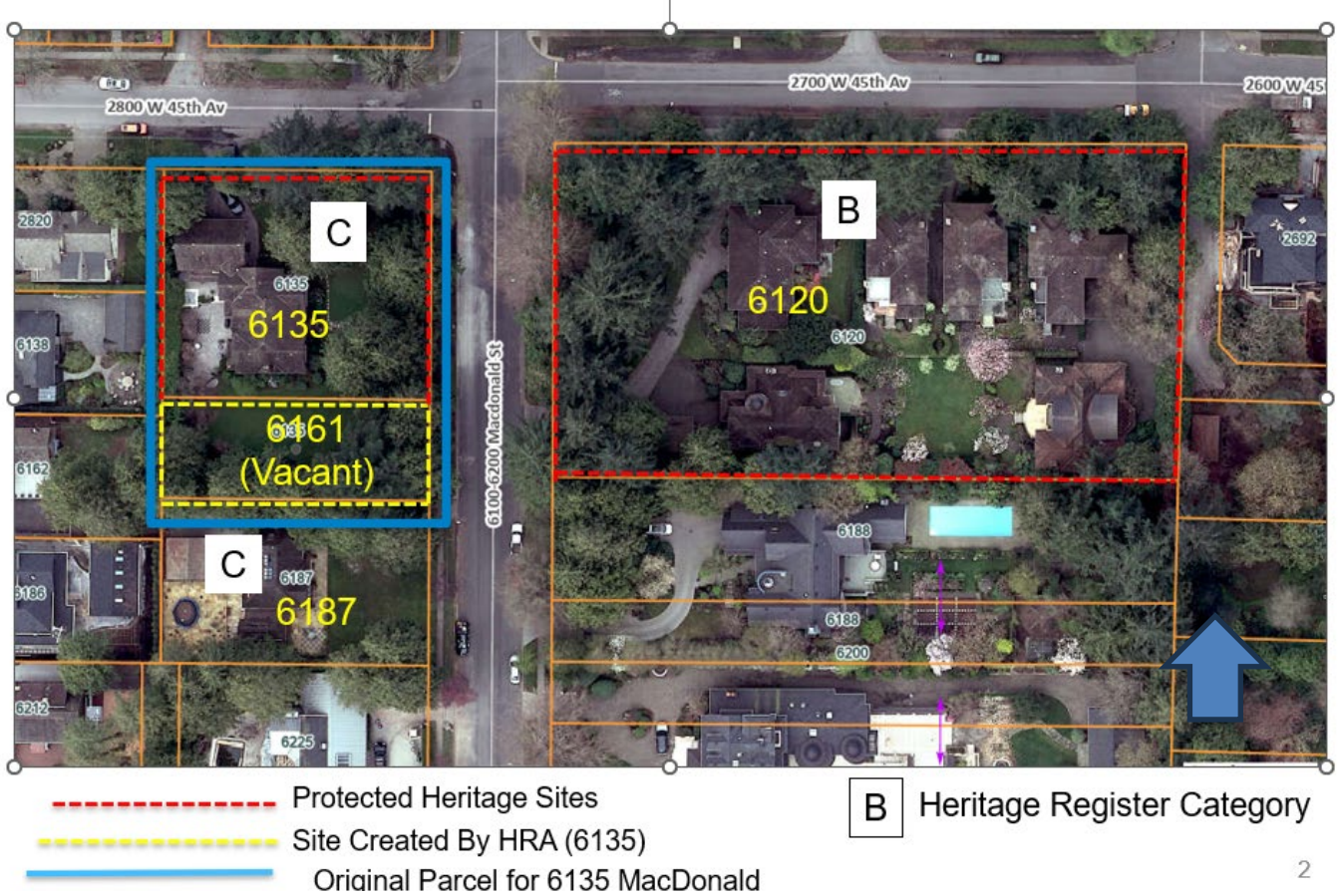
6135 - 6161 Macdonald Street
PHOTOGRAPHS AND MAPS



6135 Macdonald Looking West From Macdonald Street (Current Photo)

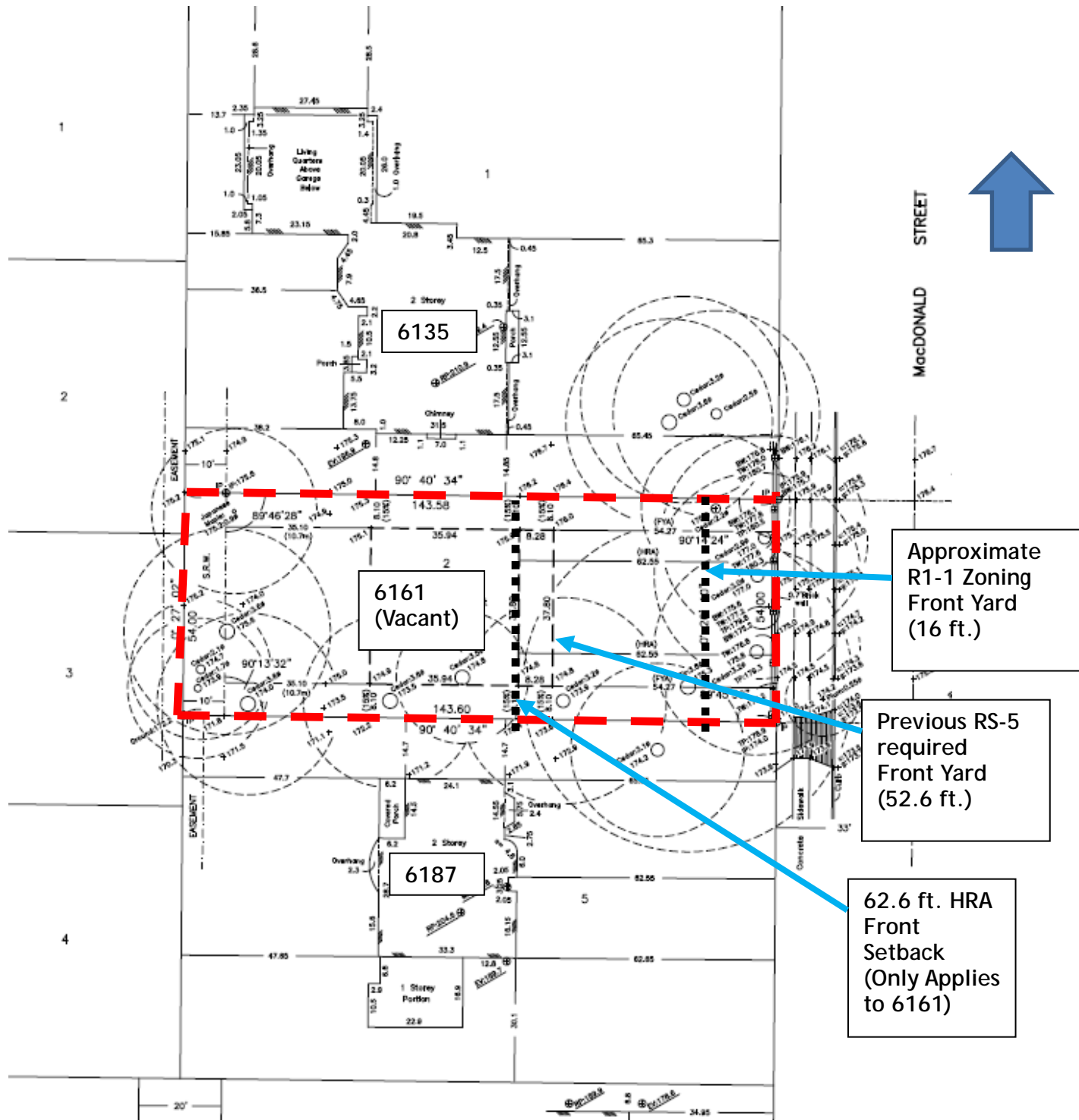


View of New Building Parcel (6161 Macdonald Street) Looking West from Macdonald



Site Diagram

To the immediate south is a heritage house built in 1932 at 6187 Macdonald. Across the street to the east is a designated heritage house at 6120 Macdonald, rezoned to CD-1 (333) in 1994 to include infill development. Both sides of this block of Macdonald Street, between West 45th and West 47th Avenues, are characterized by homes on large, wide lots with deep front yards, and large mature trees.



Survey Diagram of New Building Parcel (6161 MacDonal) Showing HRA Front Setback

6161 Macdonald Street
MODIFICATION OF HERITAGE REVITALIZATION AGREEMENT

WHEREAS:

- A. The Owner is the legal and beneficial owner of the lands and premises in the City of Vancouver having a civic addresses of 6161 Macdonald Street, Vancouver, British Columbia, legally described as follows:

PID: 026-085-500

Lot 2 Block D District Lot 321 Group 1 New Westminster District Plan BCP14095

(the "Lands");

- B. As part of a proposed development of the Lands, the previous owners of the Lands and the City entered into a heritage revitalization agreement in respect of the Lands, notice of which was registered on title to the Lands in the Land Title Office on October 6, 2004 under No. BW461249 (the "HRA"), which agreement is binding on the current Owner; and
- C. 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 notice of this Agreement is registered in the Land Title Office, by:
 - (a) deleting Recital B and replacing it with:

"B. The Lands are within the R1-1 District of the City's *Zoning and Development By-law*.";
 - (b) deleting Recital E and replacing it with:

"E. The South Parcel will be a vacant building site on which, at the time of the Owners' choosing, the Owners will construct a new development, which development and replacements thereof from time to time are herein called the "New House".";
 - (c) deleting Section 5(a) and replacing it with the following:

“(a) [Intentionally deleted];”;

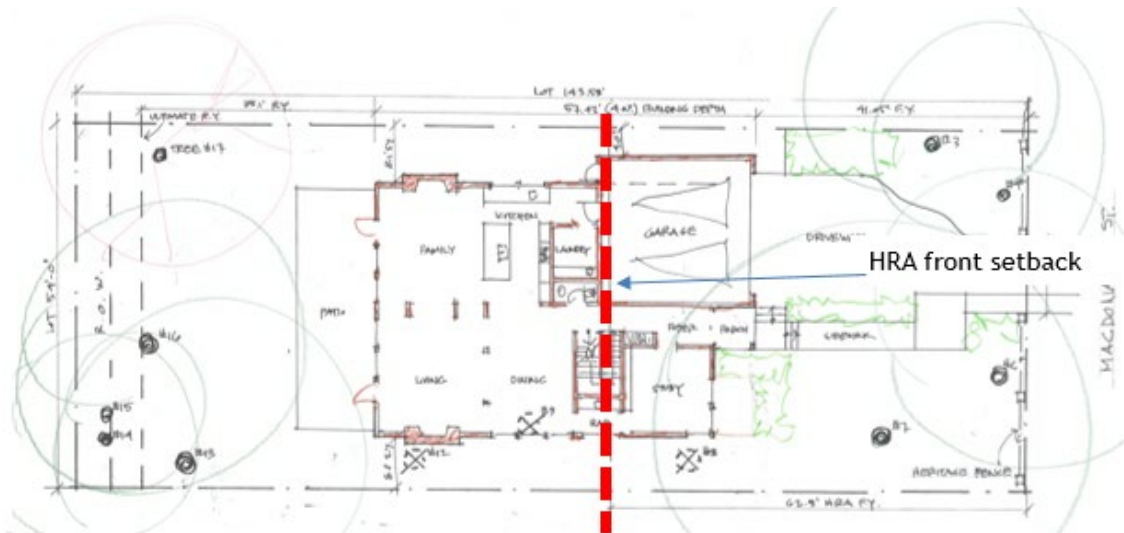
(d) deleting Section 5(b) and replacing it with the following:

“(b) [Intentionally deleted]; and”.

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 Owner 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 Owner and the City.
9. **Time.** Time shall be of the essence of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first written above.

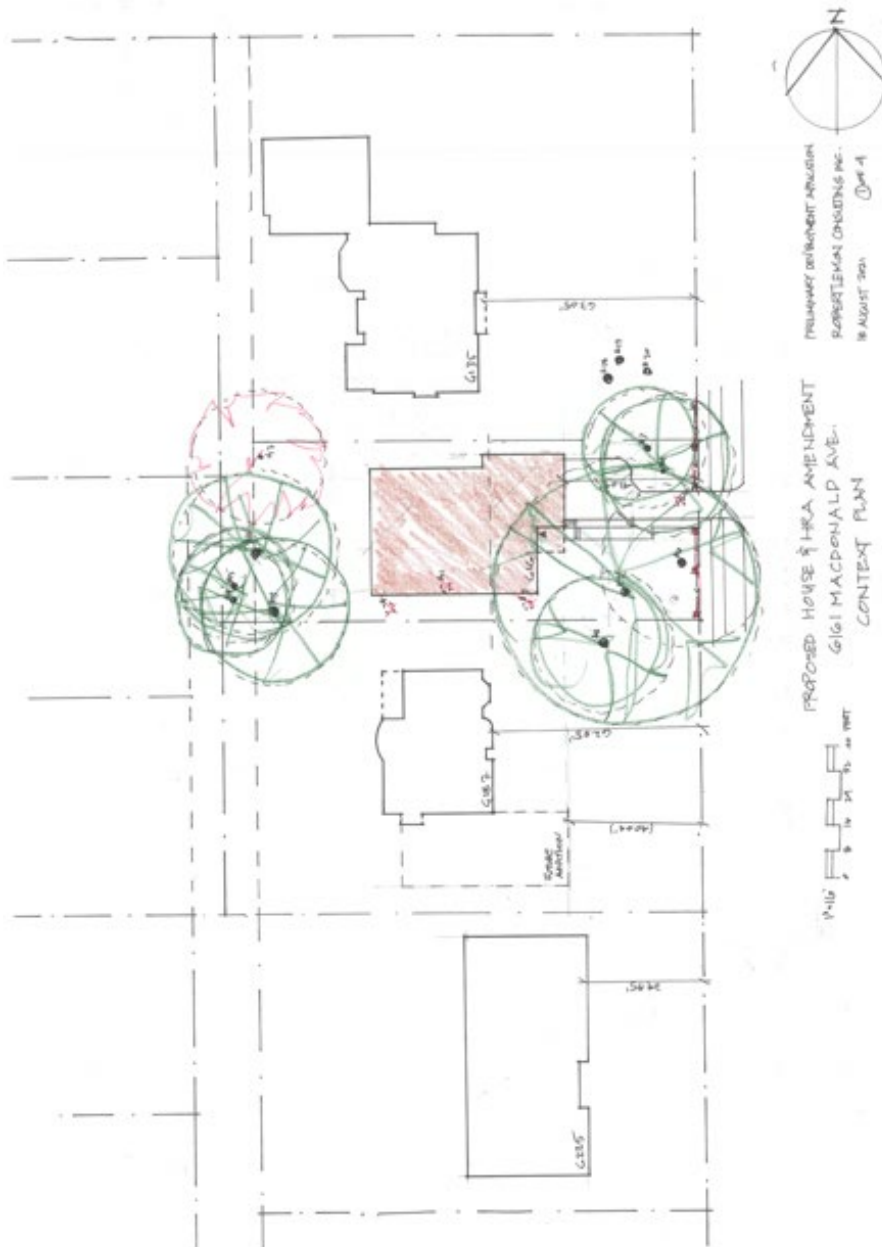
6161 Macdonald Street
DRAWINGS FROM THE DP APPLICATION (RS-5 ZONING)



PROPOSED MAIN FLOOR SHOWING 62.6 FT. HRA FRONT SETBACK



SCHEMATIC SREETSCAPE SHOWING NEW HOUSE (LOOKING WEST FROM
MACDONALD STREET)



SCHEMATIC SITE DIAGRAM

An arborist report was submitted with the DP Application. Thirteen mature trees (subject to the Tree By-law) exist on the New Building Parcel (see Appendix A). Tree retention assessment has

not been conducted as there is no application yet under the R1-1 zoning to review. However, the HRA requires that the Director of Planning is to review any application with regard to additional requirements. In this respect an arborist report and tree maintenance plan would be required to assess the impacts of a future proposal with regard to tree loss and replacement, taking into account the development provisions of the R1-1 zoning.

6135 – 6161 Macdonald Street
RESULTS OF NEIGHBOURHOOD NOTIFICATION AND STAFF COMMENTS

A total of 21 surrounding properties were notified of the DP Application and a site sign was installed. Five responses were received, all in opposition. This notification was conducted before the zoning change from RS-5 to R1-1. The main concerns included:

1. A reduced front yard would create an incompatibility with surrounding properties and impact the heritage character of the street.
2. Renegotiating an HRA could lead to a negative precedent.
3. The approval of the owner of the Anderson House Parcel would be required to modify the HRA.

Staff acknowledge that the visual appearance of an inconsistent front yard setback would be created if the modification is granted. However, the R1-1 zoning does not require front yard or streetscape compatibility and is instead focused on providing additional on-site housing units. Modifying the HRA would not set a negative precedent – the creation a vacant parcel under an HRA for future development under prevailing zoning is a common conservation incentive. An HRA does not create zoning, but rather modifies existing zoning. If the zoning applicable to a site changes, then changing the zoning referred to in an HRA would be required.

Staff have determined that a modification to the HRA as contemplated in the DP Application for the New Building Parcel would not require the approval of the owner of the Anderson House at 6135 Macdonald as the HRA provides for separate modification or termination of the HRA in respect of each site following subdivision.

6135 – 6161 Macdonald Street
RESOLUTIONS OF THE VANCOUVER HERITAGE COMMISSION

On October 18, 2021, the Vancouver Heritage Commission reviewed the DP Application and the proposed HRA modification to remove the front yard setback requirement and resolved the following:

WHEREAS the Vancouver Heritage Commission is concerned with the proposed relaxation of the front setback provision in the HRA for 6135 MacDonald Street, and the impact that a smaller setback and house design with double garage doors visible from MacDonald Street will have on the adjacent heritage buildings;

THEREFORE BE IT RESOLVED THAT the Vancouver Heritage Commission does not support the proposed relaxation and requests the staff investigate other relaxations, such as one at the rear, to allow for a new house to be built that will be truly complimentary with the heritage buildings on either side.

CARRIED UNANIMOUSLY

Staff Comments: Staff have explored the option of yard relaxations, including a rear-yard relaxation.