COUNCIL REPORT

Executive Committee

ABBOTSFORD

Report No.: PDS 030-2015
February 12, 2015
File No.: 3320-20/S15-004

To: Mayor and Council
From: Christine Batchelor, Planner
Subject: Strata Conversion application for the property, located at 33313 George Ferguson Way.

RECOMMENDATIONS

1. THAT application 3020-20/S15-004 be approved in principle, subject to a time limit of 180 days for the conversion to be completed from the date of Council approval; and

2. THAT the Mayor and Corporate Officer be authorized to execute all documents relating to this matter.

SUMMARY OF THE ISSUE

The applicant proposes a strata conversion of nine (9) townhouse units, which represents the last phase of a four (4) phased 30-unit townhouse development. Once stratified phase four (4) will be amalgamated into the existing townhouse strata development directly to the east.

BACKGROUND

Applicant: S. Malhi
Owner: 0856349 BC Ltd.
Legal Description: Lot 1 Except Firstly: Phase One Strata Plan BCS1838 Secondly: Phase Two Strata Plan BCS1838 Thirdly: Phase Three Strata Plan BCS1838 District Lot 48 Group 2 New Westminster District Plan BCP23317

Existing OCP Designation: City Residential
Existing Zoning: Medium Density Townhouse Zone (RM45)
Site Area: 0.23 ha (0.58 acres)
Description: The property contains the existing nine unit townhouse development and associated parking lot. The rear of the property is environmentally sensitive and falls under a restrictive covenant.

Surrounding Uses: N: Single family residential zoned Suburban Residential Zone (SR);
S: George Ferguson Way and townhouses zoned Medium Density Townhouse Zone (RM45) beyond;
ANALYSIS

Official Community Plan (OCP)

1. The Official Community Plan (OCP) designates the property City Residential. The City Residential land use category is intended to show where higher-density residential neighbourhoods will be concentrated. The City Residential category allows apartment types of housing along with higher density townhouse developments at densities over 30 units per ha (12 units per acre). The existing 9 unit townhouse development has a density of 40 units per ha (16 units per acre) and therefore complies with the current City Residential designation.

Current Proposal

2. The subject property was originally part of a four phase, 30-unit strata townhouse development. The first three strata phases were started in 2007 and are located just east of the subject property. Prior to beginning construction of the final phase the developer went bankrupt and the remaining fourth phase was sold off. The current owner of phase four finished building the nine unit townhouses in the beginning of 2014 and is now proposing to amalgamate the final phase with the existing three phases to the east. As a result of delays experienced in the filing of the strata plan, the current owner rented the existing townhouses. Given the units are now occupied, in accordance with the Strata Act, approval of the strata plan by the local municipality is required (see Attachment A).

Strata Property Act Context

3. The applicant has proposed to create 9 strata units. Council's approval of this strata conversion is required by the Strata Property Act (Section 242(1)(a)) (refer to Attachment C).

4. The Strata Property Act sets out certain guidelines (in Section 242(5) and Section 242(6)) that an appropriate authority (Council of a Municipality) must consider in this regard. In the case of the residential townhouse development, the following must be considered:

   a) The buildings must substantially comply with the applicable bylaws of the municipality.
   b) The buildings must substantially comply with the B.C. Building Code.
   c) The priority of rental accommodation over privately owned housing in the area.
   d) Any proposals for the relocation of persons occupying a residential building.
   e) The life expectancy of the buildings and projected major increases in maintenance costs must be considered.
   f) Any other matters that in the opinion of the local municipality, are relevant.

Council's Strata Conversion Policy

5. In 2008, Council adopted a policy (see Attachment B) with respect to strata applications involving existing structures under occupation. The intent of this Council Policy is to provide guidance/direction to owners or investors of existing multi-family rental buildings prior to renovating older housing stock, should they wish to pursue stratification of units.
The applicant has indicated that they had always intended for the townhouse units to be stratified for individual sale. However as the stratifying process was lengthy the applicant faced financial pressures which led to the units being temporarily rented out. Due to this situation, staff believe that this application falls outside of the intent of the strata conversion policy and have therefore not required the applicant to provide the application information requirements outlined within Section 3 of the Strata Conversion Council Policy (i.e. a list of all present tenants, a written relocation plan, and a copy of the letter notifying tenants of the strata conversion proposal).

6. The owners have indicated that once the nine (9) units have been stratified they will either sell the nine units as a whole to one purchaser who will continue in the short term to rent out the nine units or sell the units to the shareholders of the company with the individual shareholders continuing to rent their individual suites to the existing tenants (see Attachment A).

7. The attached Council Policy regarding strata conversions indicates that Council will not normally give favourable consideration to applications for conversion of existing residential premises containing five or more dwelling units at any time when the apartment vacancy rate in the City of Abbotsford is 2.0% or lower for two successive rental surveys as determined by Canada Mortgage and Housing (CMHC). Staff note the vacancy rates for a three bedroom apartment and a three bedroom townhouse was 3.5% (Spring 2014) and 3.0% (Fall 2014) respectively.

8. The applicant has supplied a letter from the architect confirming the development was built in accordance with the BC Building Code 2006, the current Code at that time with their assurance of professional field reviews completed in 2014. The applicant’s letter of intent and a professional architect’s response to the above mentioned section of the Strata Property Act are attached to this report as Attachments A and D.

9. Given that this development was completed in 2014 in accordance with the 2006 B.C. Building Code (refer to Attachment D), that the existing tenants are not proposed to be displaced following the strata conversion, and that the existing nine unit townhouse development was always intended to be stratified staff has no objections to the proposed strata conversion.

Site Development Issues

10. Under the Strata Conversion Policy road dedication and upgrades to services on highways abutting the lands can be required. However city infrastructure upgrades were completed under the previously issued Development Permit (DP 1394) and rezoning (R05-030) applications.

FINANCIAL PLAN IMPLICATION

No financial plan implications are anticipated.
IMPACTS ON COUNCIL POLICIES, STRATEGIC PLAN AND/OR COUNCIL DIRECTION

In 2008, Council adopted a policy (see Attachment B) with respect to strata applications involving existing structures under occupation. The proposed strata conversion of the existing nine unit townhouse development is consistent with the policy section of the strata conversion policy.

COMMUNICATION PLAN

Public consultation is not required with this residential strata conversion application.

SUBSTANTIATION OF RECOMMENDATION

Staff have no objections to this application to stratify the existing nine unit townhouse development given that this development was completed in 2014 in accordance with the 2006 B.C. Building Code, that the existing tenants will not be displaced immediately following the strata conversion and that the proposal is consistent with the policies section of the Strata Conversion Council Policy.

Prepared by: Christine Batchelor
Planner

Reviewed by:
Darren Braun
Director of Development Planning

Department Head Approval:
Siri Bertelsen
General Manager of Planning and Development Services

Attachments:
Figure 1 – Location
Attachment A – Applicant’s Stratification Letter of Intent (dated: February 10, 2015)
Attachment C – Section 242 of the Strata Property Act
Attachment B – Council Policy 400-2-09, dated January 14, 2008
Attachment D – Letter of Existing Condition of Building, provided by Points West Architecture
(dated: February 11, 2015)
FIGURE 1 LOCATION

ADDRESS: 33313 George Ferguson Way
APPLICANT: Sukhdev Malhi

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FIGURE 1 LOCATION

ADDRESS: 33313 George Ferguson Way
APPLICANT: Sukhdev Malhi

FILE NO.
3320-20 / S15-004

February 11, 2015
February 10, 2015

City of Abbotsford
32315 South Fraser Way
Abbotsford, B.C.
V2T 1W7

Attention: Mr. Darren Braun

Dear Sir:

Re: 0856349 B.C. Ltd. - Strata Development at 33313 George Ferguson Way, Abbotsford, British Columbia
Parcel Identifier: 026-657-619 Lot 1 Except Firstly: Phase One Strata Plan BCS1838
Secondly: Phase Two Strata Plan BCS1838
Thirdly: Phase Three Strata Plan BCS1838
District Lot 48 Group 2 New Westminster District Plan BCP23317
0856349 B.C. Ltd. v. City of Abbotsford and Strata Corporation BCS1838 - Supreme Court of British Columbia Action No. 160712, New Westminster Registry

Further to our client’s application for the strata conversion, please be advised of the following:

1. This building, which was completed just over a year ago, was built as a strata building to be sold to new owner-occupiers;
2. As a result of delays in being able to complete the filing of the strata plan, which delays arose from the long ago expiry of the period to elect the next strata phase, our clients have put temporary rentals in the 9 units;
3. Our clients have experienced significant pressure from their financial institution that had provided a commercial mortgage for the building of this project, which mortgage was to be paid out upon the sale of the units. Because of the delay in being able to bring the units to sale, our clients were forced, by economic necessity, to rent out the 9 units.
4. Our client’s necessity is to pay off the commercial mortgage. They will do that by either a sale of the entire 9 units to one purchaser who will continue, at least in the short term, to rent out the units to the existing tenants, or by having the development company sell the units to the shareholders of the company, who will then qualify for residential mortgages, thereby allowing the payout of the present commercial mortgage. In that case the individual owners would continue to rent their individual suites to the tenants. There is no expectation that either of these courses would result in the immediate vacating of the unites and, in fact, both courses will likely result in the unites remaining as rental suites for some period of time.

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City of Abbotsford
February 10, 2015

5. The units are in an area of Abbotsford on George Ferguson Way, where there are already many rental units.

Yours truly,
DHINDSA LAW CORPORATION

Per:

Gerald D. Palmer
GEP/are
Approval for conversion of previously occupied buildings

242 (1) For the purposes of this section, "approving authority" means

(a) the municipal council of the municipality if the land is located in a municipality,
(b) the regional board of the regional district if the land is located in a regional district but not in a municipality and is neither Nisga'a Lands nor treaty lands of a treaty first nation,
(c) the Nisga'a Village Government if the land is located within Nisga'a Village Lands,
(d) the Nisga'a Lisims Government if the land is Nisga'a Lands other than Nisga'a Village Lands, or
(e) the governing body of the treaty first nation if the land is located within the treaty lands of that treaty first nation.

(2) If a person applying to deposit a strata plan wishes to include in the strata plan a previously occupied building, the person must submit the proposed strata plan to the approving authority.

(3) The approving authority may

(a) approve the strata plan, or approve the strata plan subject to terms and conditions, or
(b) refuse to approve the strata plan, or refuse to approve the strata plan until terms and conditions imposed by the approving authority are met.

(4) The decision of the approving authority under subsection (3) is final and may not be appealed.

(5) The approving authority must not approve the strata plan unless the building substantially complies with the following:

(a) the applicable bylaws of the municipality or regional district;
(b) applicable Nisga'a Government laws;
(b.1) the applicable laws of the treaty first nation;
(c) the British Columbia Building Code referred to in the Building Regulations of British Columbia, except in relation to a treaty first nation that has entered into an agreement described in section 692 (5) of the Local Government Act and only to the extent that the agreement authorizes different standards from the British Columbia Building Code.

(6) In making its decision, the approving authority must consider

(a) the priority of rental accommodation over privately owned housing in the area,

(b) any proposals for the relocation of persons occupying a residential building,

(c) the life expectancy of the building,

(d) projected major increases in maintenance costs due to the condition of the building, and

(e) any other matters that, in its opinion, are relevant.

(7) If the approving authority approves the strata plan without terms and conditions, an authorized signatory of the approving authority must endorse the plan in accordance with the regulations.

(8) If the approving authority approves the strata plan subject to terms and conditions, an authorized signatory of the approving authority must endorse the plan in accordance with the regulations once the terms and conditions have been met.

(9) The endorsement must be dated not more than 180 days before the date the strata plan is tendered for deposit.

(10) The approving authority may, by resolution, with respect to a specified type of previously occupied building,

(a) delegate to an approving officer or other person designated in the resolution the exercise of the powers and performance of the duties of the approving authority under this section, and

(b) impose limits or conditions on the exercise of the powers and performance of the duties delegated by the resolution.

(11) This section does not apply to a strata plan that includes a previously occupied building if the person applying to deposit the strata plan is the government or the Crown in right of Canada.
PURPOSE:

To provide guidelines to applicants for the conversion to strata title of existing multi-family buildings. The guidelines are without prejudice to Council's power as approving authority to approve, or not approve, or to approve subject to terms and conditions as set out in Section 242 of the Strata Property Act.

AUTHORITY:

Council.

POLICY:

Under Section 242 of the Strata Property Act, Council may impose terms and conditions when considering a strata conversion proposal. Under the Act, Council must consider:

1. the priority of rental accommodation over privately owned housing in the area,
2. any proposals for the relocation of persons occupying a residential building,
3. the life expectancy of the building,
4. projected major increases in maintenance costs due to the condition of the building, and
5. any other matters that, in its opinion, are relevant.

It is strongly recommended that landlords not undertake major renovations before receiving an approval-in-principle for the conversion.

1. TERMS AND CONDITIONS

   a. Council will not normally give favourable consideration to applications for conversion of existing rental residential premises containing five or more dwelling units at any time when the apartment vacancy rate in the City of Abbotsford, as determined by Canada Mortgage and Housing (CMHC), is 2.0% or lower for a period of two successive CMHC rental surveys (one year), unless 75% of the building tenants desire and qualify to purchase a unit in the proposed strata titled building.

   b. Applicants shall develop a relocation plan that will, at a minimum, outline options available to tenants with respect to purchase options and relocation assistance. The applicant shall identify available market and non-market rental units within the Abbotsford market and provide that information to dislocated tenants.
c. Applicants shall provide existing tenants with a right of first refusal to purchase prior to the applicant giving notice to tenants that they must vacate their unit. A right of first refusal means that tenants would have the first opportunity to purchase new units at fair market value based on an independent third party appraisal, less the customary commission payable by the developer at that time.

d. Recognizing the impact strata conversions may have on the supply of affordable and/or rental housing in the City, applicants are encouraged to make a voluntary per-unit contribution to the City's Affordable Housing Fund at a rate based on a percentage (3%) of the average apartment value for sales in Abbotsford as established by Fraser Valley Real Estate Board monthly sales statistics.

2. PROCEDURE

a. Within two weeks of the submission, the applicant will notify all affected tenants that an application for strata conversion has been submitted to the City. This notification is separate from any statutory notifications as per the Residential Tenancy Act.

b. Such applications may be subject to a public hearing.

3. APPLICATION INFORMATION REQUIREMENTS

a. All preliminary applications for strata conversion must be accompanied by:

   i. site plan showing access and parking;

   ii. landscaping plan -proposed/existing;

   iii. floor plans;

   iv. elevation drawings;

   v. structural and construction drawings, or as-built drawing;

   vi. list of all present tenants;

   vii. a written relocation plan identifying the provisions established, if any, for existing tenants to purchase, to relocate or to extend their tenancies;

   viii. a copy of the letter notifying tenants of the strata conversion proposal, within two weeks of submitting the conversion application to the City;

   ix. a report summarizing the physical condition of the building identifying components in need of immediate or imminent repair, prepared by a professional engineer; and

   x. a zoning compliance report prepared by a qualified professional.

b. Strata plans prepared by a BC Land Surveyor may be submitted for final approval when all conditions imposed by City Council are resolved to the satisfaction of the City's Approving Officer.
4. COMPLIANCE WITH CITY BYLAWS
   
a. Application for strata conversion of existing buildings must comply with Building, Fire and Zoning Bylaw requirements at the time of application.

b. Applications for strata conversion will be reviewed by the Development Services Department, Engineering Department and Fire Department.

c. Any upgrading required by the Council to comply with Building Bylaw standards must be completed prior to final strata conversion approval.

d. Applications for strata conversion shall include appropriate provision for landscaping and, in the case of multi-family residential conversions, adequate open space and common facilities, all of which shall be of such design, materials and construction as are not likely to result in undue maintenance costs. Where improvements are required by Council, they shall be completed prior to final strata conversion approval.

5. COMPLIANCE WITH SERVICING STANDARDS AND REQUIREMENTS
   
a. Except where such upgrading has previously been provided for, services on highways abutting the lands shall be upgraded to comply with the provisions of the City of Abbotsford Development Bylaw. (Such upgrading shall be completed or bonding therefore provided, according to normal procedures. prior to final strata conversion approval).

b. Where the City Engineer identifies the need for additional road right-of-way to facilitate future widening, a road dedication plan prepared by a BC Land Surveyor shall be provided prior to final strata conversion approval.

c. On-site roads and utilities which are to be constructed on common property of the strata corporation shall be constructed to standards as determined by the City Engineer.
Christine Batchelar, Planner  
City of Abbotsford  
32315 South Fraser Way  
Abbotsford, BC  
V2T 1W7  

February 11, 2015  

Re: 33313 George Ferguson Way  

Dear Christine,  

This is to confirm the following:  

1. The buildings were designed and constructed to meet the requirements of the 2006 BC Building Code.  
2. All permitting was done by the City of Abbotsford. Inspections were done by both the City and the related consultants including building design, structural, mechanical, electrical, civil and geotechnical engineering.  
3. Assurance of professional field review (Schedule C-A) was issued for building 6 by our office on March 31, 2014.  
4. Assurance of professional field review (Schedule C-A) was issued for building 7 by our office on April 7, 2014.  

Please call if you have any questions or need additional information.  

Sincerely  

Wes Friesen, ARCHITECT AIBC, LEED AP.