



TOWN OF SIDNEY

Report to Committee of the Whole

TO: Chair and Members of the Committee
FROM: Corey Newcomb, Municipal Planner
DATE: January 9, 2018 File No. 9844 Third Street (Land)
SUBJECT: Zoning Amendment Application No. RZ100099
Development Permit Application No. DP100735
Development Variance Application No. DV100248
9830, 9832, 9838, 9842 & 9844 Third Street

PURPOSE:

The purpose of this report is to address the **Zoning Amendment Application** and **Development Permit and Development Variance Permit Applications** for the properties located at **9830, 9832, 9838, 9842 & 9844 Third Street** (*Aerial photo attached as Appendix A*).

REPORT SUMMARY:

- The proposal is for a 6-storey mixed-use development consisting of ground floor commercial space in three units and five upper floors containing a total of 45 multi-family dwelling units.
- The development would be built with a Floor Area Ratio (FAR) of 2.98, close to the maximum permitted density of 3.0 FAR, which is in the “bonus density” range for the C1 zone. In addition to this permitted density, the applicant is proposing to build a 674 m² (7,250 ft²) movie theatre in the largest ground floor unit and is requesting additional density through a rezoning for this use.
- The additional density proposed for the theatre requires a zoning amendment to the C1 zone to add the theatre as a floor area exclusion; variances to relax the height and number of storeys of the building and the number of commercial parking spaces (primarily for the theatre) would still be required, as the C1 zoning would remain in place.
- The proposal is consistent with key objectives and policies contained within the Official Community Plan that support pedestrian-oriented commercial development, increased residential uses and additional height/storeys in certain locations in Sidney’s downtown.

DESCRIPTION OF PROPOSED DEVELOPMENT:

The applicant is proposing to construct a 6-storey mixed-use development project consisting of 1,028 m² (11,065 ft²) of ground floor commercial space and 45 residential units on the upper five floors (see *Appendix C for drawings*).

The ground floor commercial space is divided into three separate units; two smaller units of 130 m² (1395 ft²) and 229 m² (2470 ft²) at the north end of the building facing Sidney Avenue, and the third, the theatre space, facing Third Street with 674 m² (7,250 ft²) of floor area. The theatre and one of the commercial units also exit to a 3 metre (9.8 ft) wide pathway on the west side of the property. The residential lobby is accessed from Sidney Avenue. Of the 45 dwelling units, 9 are 3-bedroom, 13 are 2-bedroom, 11 are 1-bedroom and 12 are studio units, with unit sizes ranging from 44 m² (475 ft²) to 240 m² (2,585 ft²).

On-site vehicle parking for the proposed development would be provided in an underground parkade encompassing the entire lot area, accessed from Third Street. One loading space is required and is also accessed from Third Street, directly beside the parkade entrance.

LOCATION:

The subject property is located at the south-west corner of Sidney Avenue and Third Street. The property is currently occupied by the Star Cinema, a restaurant with dwelling units above and a vacant building which previously housed a laundromat. All three buildings would be demolished.

The following table outlines the Official Community Plan and Zoning designations of the surrounding properties, as well as their current uses:

Table 1: Surrounding Land Use, Zoning and OCP Designations

	OCP Designation	Zoning Designation	Current Land Use(s)
North	INS (Institutional)	I1 – Public Facilities	Town Hall, Beacon Community Services, Drivers Services, Courthouse
East	COM-1 (Downtown Commercial)	C1 – Downtown Commercial	Fire Hall, Parking Lot B, 2-4 storey commercial/residential buildings
South	COM-1 (Downtown Commercial)	C1 – Downtown Commercial	BC Ambulance Station, 5 storey commercial/residential building
West	COM-1 (Downtown Commercial)	C1 – Downtown Commercial	Parking Lot C, ANAVETS

OFFICIAL COMMUNITY PLAN BYLAW 1920:

The subject property is designated as Downtown Commercial (COM-1) in the Town of Sidney Official Community Plan (OCP). The proposal is consistent with the intent of the OCP, which supports commercial development and increased residential uses in the downtown core. The proposed height and number of storeys for the building is also consistent with Section 5.3.1 of the Downtown Local Area Plan (a schedule to the OCP) which provides policy support for a fifth and sixth storey in this location.

ZONING BYLAW 2015:

The subject property is currently zoned Downtown Commercial (C1), the intent of which is to provide for a mixture of core commercial uses with a secondary, but significant, multi-family residential component. The following table provides a comparison between the proposed development and the requirements contained in the C1 zone:

Table 2: Zoning Comparison

Section	C1 Zone Requirements	Proposed Development	Conforms
Permitted Uses	Dwelling Units; Commercial	Dwelling Units; Commercial	Conforms
Conditions of Use	Dwelling units not permitted on ground floor facing street	No dwelling units on ground floor	Conforms
Density	Base Density: 2.4 Bonus Density: 3.0	2.98 (excluding theatre space) 3.39 (including theatre space)	Zoning Amendment Required
Lot Area	Min: 250 m ² (2,691 ft ²)	1,671 m ² (17,986 ft ²)	Conforms
Lot Coverage	100%	92%	Conforms
Height	Max: 15 metres (49.2 feet)	22.6 metres (74.1 feet)	Variance required
Storeys	Max: 4 storeys	6 storeys	Variance required
Setbacks:			
Front (North)	Min: 1 metre (3.28 feet)	1 metre (3.28 feet)	Conforms
Rear (South)	No requirement	0 metres (0 feet)	Conforms
Side Exterior (East)	Min: 1 metre (3.28 feet)	1 metre (3.28 feet)	Conforms
Side Interior (West)	No requirement	3 metres (9.8 feet)	Conforms
Corner setback	4.5 metres from corner	4.5 metres from corner	Conforms
Requirement for 20% adaptable units	9 units	9 units	Conforms
Requirement for 10% 3 bedroom units	5 units, located on 1 st or 2 nd floor, minimum floor area of 100m ²	9 units, of which 5 are located on 1 st and 2 nd floor. Floor areas ok.	Conforms

As noted above, the proposal largely complies with the requirements of the C1 zone, with the exception of the proposed density (due to the requested exemption for the theatre space) and variances for height and number of storeys to accommodate the fifth and sixth storeys.

Although Section 5.3.1 of the Downtown Local Area Plan (pg. 38) does contain policy which allows for 5 and 6 storeys on buildings in this location, a variance is still required because this increase in storeys (and height) is not enshrined in the Zoning Bylaw. As a result, Council has the discretion to approve this aspect of the development through the Development Variance Permit process.

In terms of the density change, if Council moves the application forward to bylaw stage, staff propose to retain the existing C1 zone but add a site-specific floor area exemption under Section 5.1.11 to allow for the theatre use. Although Section 5.1.11.vii of the Zoning Bylaw does allow for the exclusion of certain public uses that have a social, cultural or recreational nature, staff do not believe that a movie theatre meets the test of a “public use”. Consequently, a zoning amendment is necessary to preserve what many in the community see as an important public amenity.

OFF-STREET PARKING AND LOADING BYLAW NO. 2140

The proposed development would accommodate vehicle parking with a single-level underground parkade encompassing the entire lot area. The parkade would be accessed from Third Street and a total of 48 parking spaces would be provided on the subject property.

The following table outlines the parking requirements for the development based upon the proposed uses:

Table 3: Parking and Loading Requirements

	Use	Parking Requirement
Vehicle Parking	Dwelling units	45 units @1 per unit = 45
	Office/Retail	1 per 40 m ² at 80% of gross floor area 354 m ² * 80% = 283 m ² / 40 = 7
	Assembly Hall (Cinema)	1 per 15 m ² at 80% of gross floor area 674 m ² * 80% = 539 m ² / 15 = 36
	Vehicle Parking Required	88 parking spaces
	Total No. of Vehicle Spaces Proposed	48 parking spaces + payment in lieu for 11 spaces (variance proposed for 29)
Bicycle Parking	Class I: Apartment Dwelling	45 units @1 per unit = 45
	Class I: Commercial uses	2 plus 1 per each 125m ² GFA = 10
	Total Class I Bicycle spaces required:	55 bicycle spaces
	Total Class I Bicycle spaces proposed:	Bike room can accommodate up to 56 spaces
	Class II: Apartment Dwelling	6 per building
	Class II: Commercial uses	6 per building
	Total Class II Bicycle spaces required:	6 bicycle spaces
	Total Class II Bicycle spaces proposed:	18 spaces
Loading Spaces	Commercial	1 per 300 m² to 2,000 m² of floor area 1 provided (1,033 m ² of floor area)

The Off-Street Parking and Loading Bylaw requires 88 vehicle parking spaces. 48 spaces are being proposed on-site in the underground parkade and the applicant has indicated that payment in lieu will be made for the other four commercial spaces not provided, at an amount of \$10,000 per space. The requirement for 1 off-street loading space is also being met.

The applicant is requesting a variance for the remainder of 29 required parking spaces for the theatre (*see Appendix B for letter of rationale and Discussion section below for further analysis*).

The proposed development meets the requirement for Class I bicycle parking through the provision of an adequately sized bike room on the ground floor. 12 Class II bicycle parking spaces are being provided, where 6 are required.

DOWNTOWN COMMERCIAL DEVELOPMENT PERMIT GUIDELINES:

As the property is located within an area designated under the OCP as Downtown Commercial, the site is subject to the Downtown Commercial Development Permit Area Guidelines. The purpose of these guidelines is to address the form and character of the proposed development, including landscaping and the siting, exterior design and finish of the building.

Staff will undertake a comprehensive review of the Development Permit Guidelines in relation to the proposed development provided the application proceeds to the Advisory Planning Commission for review and comment.

DEVELOPMENT REVIEW COMMITTEE:

At the inter-department development review committee meeting held on November 28, 2017, staff had the following comments regarding the proposed development:

- Staff do not anticipate any issues with providing water, sewer and drainage services to the proposed development. Due to the level of the underground parking, pumping is likely required.
- Required off-site improvements will include the construction of new sidewalk, curb, and gutter to match recently completed work on Third Street, as well as new street lighting and benches.
- The existing street trees in front of the property will likely need to be removed and replaced with new trees.
- A transformer to provide electrical power to the building is not shown on the plans, nor are gas meters. Further detail on this should be provided by the applicant.

DISCUSSION:

- Staff are supportive of the proposal to increase the allowable FAR to include the theatre use for a number of reasons:
 - Staff see a new, local theatre is a desirable community asset and would support Council's overarching goals for a resilient economy and a balanced demographic in the Town.
 - The economic viability of theatres in smaller towns can be challenging, with many struggling or shutting down altogether. Staff see the FAR increase to accommodate the theatre as a form of incentive to keep the current theatre with little direct cost to the Town.
 - Theatres are, by their nature, space-intensive uses, which would otherwise use up a considerable amount of the available FAR for the site (including the 7,250 ft² theatre floor area in the permitted FAR would reduce the number of residential units significantly). The density regulations in the zoning bylaw were written assuming that a new theatre would not be a commonly proposed use.

In addition, if Council is supportive of a density increase to accommodate the theatre, it would be beneficial to ensure that the space be used as a theatre for the foreseeable future. To this end, staff propose that a restrictive covenant be registered, with the Town as a signatory, restricting

the use of the space to a movie theatre only. The Town could release the covenant if or when conditions warrant.

- Based on a density increase from 2.4 to 2.98 FAR proposed for the project, the applicant will be required to contribute an amenity payment of approximately \$145,000 to the Town, as per Bonus Density and Community Amenity Contribution Policy No. DV-013. The additional density being requested for the theatre (from 2.98 up to 3.39 FAR) represents the additional 7,250 ft² for the theatre floor area. If an amenity fee were to be assessed on this portion of the floor space as well, there would be an additional payment of approximately \$100,000. Staff are not recommending that the floor space for the theatre be assessed this additional amenity fee.
- As this project fronts on to the last significant section of overhead hydro wires on Third Street (the rest of the block was put underground in 2015) staff are currently investigating the feasibility of utilizing the amenity contribution toward this purpose. Staff will report back to Council following more in-depth discussions with the applicant on this possibility.
- Additional height and storeys over the 15 metres/4 storeys permitted by the C1 zone are supported by Policy 5.3.1 in the Downtown Local Area Plan (page 38), which is a schedule to OCP Bylaw No. 1920. The subject properties fall directly in the area identified for potential increased height/storeys, and are therefore compliant with the stated policies of the Town. The building also incorporates upper storey setbacks as per Policy 5.3.1 at the second storey and then again at the fourth storey as it increases in height. The building also has additional significant setbacks at the fifth and sixth storey levels, particularly on the north side.
- The applicant is requesting a large parking variance, largely for the theatre (29 spaces), with the rationale that the current theatre typically operates during times of non-peak parking demand and surrounding street parking and Parking Lots B (9821 Third Street) and C (9843 Fourth Street) is sufficient to meet this demand. Staff concur that there do not seem to be any significant parking problems caused by the current situation. However, staff also note that the proposed theatre is increasing in size by approximately 25%, potentially increasing parking demand, and Parking Lot B may be redeveloped at some point as a result of the Request for Expressions of Interest – Sale of Fire Hall / Parking Lot Site currently being advertised. In order to help avoid any future parking issues, staff recommend that the applicant pay in lieu for the marginal increase in required spaces, which calculates out to 7 (based on an additional 124 m² (1,335 ft²) of floor space over the size of the current theatre). Combined with the 4 pay-in-lieu spaces already proposed, the total pay-in-lieu requirement for 11 vehicle parking spaces would be \$110,000. These funds could be put toward providing additional public parking spaces elsewhere in Sidney to help offset increased demand; or towards facilities that support walking, cycling, and transit or other transportation options.
- As a condition of approval of the Development Variance Permit, staff recommend that a statutory right-of-way be registered over the 3 m (9.8 ft) pathway on the west side of the property. Although this space would act as an exit route to Sidney Avenue from the residential lobby, theatre and commercial spaces, it could also contribute to a north-south mid-block connection as per Sections 4.4.5 – 4.4.8 of the Downtown Local Area Plan. This statutory right-of-way would have the potential to connect up to another similar right of way at the rear of 9818 Third Street (the Meridian building, completed in 2015).
- Staff also suggest that as a condition of the Development Variance Permit, a Section 219 restrictive covenant be registered on title to prevent the restriction of occupancy based on age in the future strata corporation. Staff will be recommending this to the Advisory Planning Commission if the application is forwarded for further review and comment.

RECOMMENDATIONS:

That Zoning Amendment Application No. RZ100099, Development Variance Permit Application No. DV100248 and Development Permit Application No. DP100735 (9830, 9832, 9838, 9842 & 9844 Third Street) be forwarded to the Advisory Planning Commission for further review and comment, subject to the condition that prior to proceeding to the Advisory Planning Commission, the applicant provide a report from a qualified Professional Engineer regarding flood construction level as per Interim Flood Construction Level Policy No. DV-014.

Respectfully submitted,

I concur,

I concur,

Corey Newcomb MCIP, RPP
Municipal Planner

Tim Tanton, MPA, P.Eng.
Director of Development Services,
Engineering, Parks & Works

Randy Humble MCIP, RPP
Chief Administrative Officer

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Attachments: Appendix A: Aerial photo of subject property
Appendix B: Letter of Rationale
Appendix C: Architectural drawings

Presenter: Kyle Shick, Finlayson Bonet Architecture (Applicant)

Appendix A: 2017 aerial photo of the subject property (9830, 9832, 9838, 9842 & 9844 Third Street) outlined in blue, showing OCP (black) and Zoning (red) designations.



Wednesday, November 29, 2017



Corey Newcomb, Planner
Development Services
Town of Sidney
2440 Sidney Avenue
Sidney, BC V8L 1Y7

RE: Cameo Development Variance Permit Application - Proposed Height Variance and Parking Variance

Hi Corey,

Please accept our application for Development Permit and Development Variance permit for a proposed 6 storey mixed use development at 9830 and 9842 Third Street currently housing the Star Cinema, Good Fortune Restaurant and a closed laundromat. The variances we request are for the overall building height and a variance for off street parking for the proposed theatre.

Description of Proposal

The proposed development is a 6 storey concrete and wood framed structure located in the downtown commercial core in Sidney on a 17,991 sq.ft. consolidated lot. The proposed mixed use development has 3 commercial retail units on the main floor, one of which will be home to the Star Cinema, and 45 condominium units on the floors above. The unit typologies range from studio sized units up to 3 bedroom penthouses. The site zoning is C1 core commercial which we are requesting variances to develop the site as indicated in our documentation, to its full potential.

Site Context

The property is located in the downtown commercial core in Sidney located on a secondary arterial street. The immediate context to the site are parking lots, city hall, the existing fire hall, and one storey commercial buildings. The future redevelopment of the adjacent commercial sites could see buildings as tall as 5 and 6 storeys along with the Meridian Residences, an existing 5 storey building, further to the south on 3rd Street. The central location of the site affords easy access to goods and services, public transportation, and recreation opportunities within walking distance of the site.

Planning Context

The proposed development site is within the 'major centre' designation in the official community plan. This proposal offers several unit typologies which will appeal to all sectors of the condominium real estate market in Sidney. The proposed development is to revitalize the only theatre existing in Sidney to offer residents a modern facility that can be used as a theatre but also for community events as the proposed design will expand and improve upon the existing Star Cinema facility.

Parking Variance

The development provides 48 stalls of underground parking for residents and the 2 commercial units on the main floor. Additional street parking will be located along the street frontage for public use along 3rd street. We request a variance to exclude the theatre from any off street parking requirements. The theatre presently has no off street parking and due to the operating times of the theatre, which is generally outside of normal office hours, street parking currently addresses the need for theatre parking. To provide parking for the theatre an additional level of underground parking would be required and this additional excavation and resulting floor elevation present issues in attempting to conform to the flood control level (FCL) interim policy.

Height Variance

The proposed development is 6 stories high, which is consistent with proposed heights in the official community plan (OCP) for the mid block between Beacon Avenue and Sidney Avenue. The proposed height is 22.59m which is 7.59m above the current height maximum of 15m and four stories. The height of the proposed development is due to the presence of the theatre on the main floor. The theatre space is proposed to be exempt from the floor area ratio calculations for the project via security in the public realm as described in the zoning bylaw and by doing so there is a resulting need to add the gross floor area of the theatre elsewhere in the building which only the 5th and 6th floors can accommodate. The design of the theatre space requires higher than usual ceiling heights. While there is no industry standard for theatre ceiling the suggested minimum ceiling height for theatres this size is at or as close to 16' / 4.88m as possible to ensure proper functionality of the theatre. The proposed ceiling height for this development is at or near 14' / 4.27m which combined with a 16' / 4.88m floor to floor distance between the main and second floors will provide us with enough depth for the 2nd floor assembly to properly soundproof the theatre to avoid any unwanted noise to the residential units above.

We trust that this will help in your review of the proposed development and we hope that you can support the proposed variance requests as part of this marquee development in Sidney.

Kind Regards,



Kyle Shick, Project Manger



Silvia Bonet, Architect AIBC