

TO: CHAIR AND MEMBERS
PLANNING AND DEVELOPMENT COMMITTEE

DATE: 2015 May 21

FROM: DIRECTOR PLANNING AND BUILDING

FILE: 86000 01
X.Reference: REZ #06-59

SUBJECT: 6738 MARLBOROUGH AVENUE
STRATA TITLE CONVERSION APPLICATION
REZONING REFERENCE #06-59

PURPOSE: To recommend the acceptance and processing of an application for the strata title conversion of a multi-family building at 6738 Marlborough Avenue.

RECOMMENDATIONS:

1. **THAT** the Committee recommend to Council that the Planning and Building Department accept and process an application to stratify the multiple family dwelling at 6738 Marlborough Avenue under Section 242 of the Strata Property Act, as outlined in this report.
2. **THAT** a copy of this report be sent to Mr. Avtar Kang, at 3626 East 47th Avenue, Vancouver, BC, V5S 1E4.

REPORT

1.0 INTRODUCTION

At the Planning and Development Committee meeting of 2015 April 28, the Committee requested that staff provide a report concerning the City's Rental Conversion Control Policy as it relates to the property located at 6738 Marlborough Avenue (see Sketch #1 *attached*). The development of this property was authorized by Council through a rezoning process (Rezoning Reference #06-59), with the intent to create a four unit, townhouse development.

For new, unoccupied multiple family developments, registration of strata ownership plans are accepted by the Land Title and Survey Authority of BC directly. However, previously occupied units of multiple family developments, typically purpose built rental apartments, require Council approval for stratification, prior to registration at the Land Title and Survey Authority of BC.

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Under the City's Rental Conversion Control Policy, in order to prevent the conversion of purpose built rental units to strata ownership, in 1974, Council declared a moratorium on all condominium conversions – except for duplex or semi-detached dwelling units.

This report reviews the circumstances of the request for stratification of the subject property in relation to established City policies and practices, and based on the intent and circumstances of this case, recommends acceptance and processing an application for stratification.

2.0 SUBJECT PROPERTY – 6738 MARLBOROUGH AVENUE

In 2006, the property owner of 6738 Marlborough Avenue submitted an application to rezone the subject property from RM3 Multiple-Family Residential District to the CD Comprehensive Development District based on the RM2 Multiple Family Residential District, and the Metrotown Development Plan guidelines (Rezoning Reference #06-59). The applicant was issued a Building Permit to construct the project in 2011 July and occupancy was approved for the building in 2013 June.

The purpose of the application was to facilitate the construction of a development consisting of a four unit multi-family building with underground parking. There were no conditions associated with the rezoning application process that would have restricted the property owner from stratifying the residential units for private sale. The owner was advised of the process and procedures required for concurrent stratification of the project's four units. The applicant, however, failed to register the final strata plans to stratify the residential units prior to occupancy by tenants. This procedural error was identified when the applicant attempted to gain approval for a Strata Plan in 2014 June.

As the occupancy of the units proceeded before a strata title application for the building was approved, the strata conversion of the property is now subject to Council's approval, as required by the Strata Property Act, and in relation to the City's Rental Conversion Control Policy.

The property owner has formally requested that the City consider the application to be exempt from the City's Rental Conversion Control Policy given the above circumstances and the intent of the development to be a fully compliant multiple-family strata property.

3.0 RENTAL CONVERSION CONTROL POLICY

As noted, in 1974, Council approved a comprehensive policy to protect existing rental housing stock. The Policy was adopted with the following provision:

"That Council declare a moratorium on all condominium conversions – except for duplex or semi-detached dwelling units..."

Exceptions to the policy have been granted previously, in similar circumstances, where a procedural error was made by applicants. Staff are aware of two specific applications at 2004-

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2090 Springer Avenue (1976 – 27 unit development), and 4315-4323 East Hastings Street (1996 – 12 unit development), where Council granted approval for strata conversion recognizing the applicants' oversight in each of these cases of tenanting the buildings prior to registration of the strata title plan.

At this time, staff are not aware of any other development in Burnaby that would present a similar case for approval of stratification.

4.0 STRATA PROPERTY ACT

The following information presents the requirements and procedures for stratification of previously occupied multiple-family dwellings.

Section 242 of the *Strata Property Act* provides municipal councils with the power to approve or deny applications to stratify previously occupied multiple-family dwellings. Burnaby City Council may approve an application that is consistent with the City's bylaws and the BC Building Code.

4.1 Strata Property Act Review Criteria

Section 242 of the Strata Property Act provides criteria for Council to consider when reviewing an application to stratify a previously occupied building.

In making its' decision, Council must consider the following issues as defined by the Act:

- the priority of rental accommodation over privately owned housing in the area;
- any proposals for the relocation of the persons in the building;
- life expectancy of the building;
- projected increases in maintenance costs due to the condition of the building; and,
- any other matters that, in its opinion, are relevant.

These criteria, as discussed below, are considered for the application to stratify the building at 6738 Marlborough Street.

- ***The priority of rental accommodation over privately owned housing in the area***

The Metrotown area has a wide range of housing types and tenures including a significant number of rental housing units. The conversion of the subject property's four units to strata titled units is not considered to cause any perceived impact on the availability of rental housing within Metrotown and the City.

- ***Any proposal for the relocation of persons in the building***

The four unit multi-family property is currently occupied with tenants. The applicant has confirmed that he does not intend to sell the units after stratification and that the tenants may continue to stay in the units at their option. If the units were sold in the future, the owner would be required to meet the provisions of the Provincial Residential Tenancy Act.

- ***Life expectancy of the building***

The subject property is a new building constructed to the standards of the BC Building Code in place in 2013 for strata units. Therefore, this provision is not applicable to the subject property.

- ***Projected increases in maintenance costs due to the condition of the building***

As stated, the subject property is a new building constructed to the standards of the BC Building Code in place in 2013 for strata units. Therefore, this provision is not applicable to the subject property.

- ***Other matters considered relevant***

The subject property was approved and developed with the anticipation that it would be a strata titled property, with the applicant making the noted procedural error of tenanting the building prior to the approval of the strata title application with the Land Title and Survey Authority of BC.

4.2 Planning and Building Department Strata Application Process

For Strata Applications, the Planning and Building Department has a formalized procedure that includes referral of the application to the City's Engineering Department, Building Department, Fire Department, and City Solicitor.

This referral and review is intended to ensure that all applicable issues are resolved prior to acceptance and approval by Council of a strata application, including:

- owner's intentions for the building upon strata titling; and,
- review of any Zoning Bylaw, BC Building Code or Fire Code deficiencies.

On completion of the review process, the Planning and Building Department would prepare a further report to Council to seek final approval of the strata title application, once all the conditions of the application are met. If Council provides final approval, the Strata Plans may be deposited with the Land Title and Survey Authority of BC by the applicant.

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5.0 NEXT STEPS

At the Planning and Development Committee meeting of 2015 April 28, it was requested that staff review the application of the City's Rental Conversion Control Policy to the building constructed at 6738 Marlborough Street. The subject property was developed to be a fully-compliant strata building, but the strata plans were not duly processed by the property owner, and the property was subsequently tenanted. As such, the property is subject to the *Strata Property Act* and the City's Rental Conversion Control Policy in consideration of the application to stratify the existing occupied building.

Based on the circumstances of this case, and recognizing the desired intent of the applicant to strata title the development on completion, it is recommended that, in line with Council's policy and practice, the subject property be exempted from the Rental Conversion Control Policy. The property remains subject to all the laws and procedures related to the *Strata Property Act*. On this basis, it is also recommended that staff accept and process the requested application for stratification.

As part of the application, the owner would be required to complete all conditions resulting from the Planning and Building Department's review. Thereafter, a report would be submitted to Council recommending final approval of the strata conversion application. Once Council provides the final approval of the application, the applicant may deposit the Strata Plan with the Land Title and Survey Authority of BC.


Lou Pelletier, Director
PLANNING AND BUILDING

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Attachment

cc: City Manager
Director Engineering
Chief Building Inspector
Fire Chief
City Solicitor

