

Report

Date

November 15, 2023

File: TUP00032

Subject

Temporary Use Permit Application – 1428 Adelaide Street

PURPOSE

To consider a request for a temporary use at 1428 Adelaide Street for a second residential dwelling unit for a three-year period.

BACKGROUND

In 2016 the owner of the subject property applied for a building permit to place a new home on the property. To obtain the permit, the old existing dwelling unit on the property had to be “decommissioned” or converted from a dwelling unit to an accessory structure.

In 2023 the Municipality received a complaint about the original building being used as a dwelling unit. A site inspection confirmed an elderly lady occupied the structure. Meanwhile, an active subdivision application involving the subject property cannot be approved until the issue with the unauthorized second dwelling unit is resolved. The TUP application, if approved, would allow the resident to remain living in the accessory dwelling unit temporarily until other accommodation can be found and allow the subdivision of the property to proceed.

DISCUSSION

Property Context:

The subject property is located on the north side of Adelaide Street in Crofton (Attachments 1 and 2). The surrounding area is in the process of transformation from large acreage lots to a more contemporary urban development. Lands immediately to the east have been rezoned to R3 and subdivided. Lands to the west are mostly larger parcels that are expected to be rezoned and developed for housing in the future. Single-family and two-family residential developments are located to the north on the opposite side of Adelaide Street. Municipally owned land and a development parcel beyond is to the north.

In addition to the primary residence, the subject property has a large garage to the rear (containing lawn mower, garden tools and mechanical equipment), plus the original home in the front (see Attachment 4). It is approximately 500 sq. ft. in size and was used during the construction of the new home for storage and as a construction office with a washroom. The decommissioning of the original house involved the removal of the stove and its power circuit along with the kitchen cabinets.

The building was made available to an elderly lady on compassionate grounds after her husband passed away (Attachment 5). She has been there for two years. She is not charged or able to pay rent and is wait-listed for space in subsidized public housing. She manages without a stove and 240 voltage electrical service. The owners of the parcel are also struggling with health issues and are anxious to resolve the sale of the rear of their property to secure income for their future needs.

The sale of the rear of the property also involves other adjacent landowners to create a single large parcel for future development (Attachment 6). Consequently, the entire process is hindered by the municipal obligation to not approve further land development while there is a non-compliant use on this site.

Proposal:

The issuance of a TUP is intended to legalize the old structure as an accessory dwelling unit for a three-year period thereby also permitting the land consolidation and subdivision to proceed.

Policy Context:

The subject property is in the Crofton growth area and is designated "Residential Neighbourhood." Policies in various parts of the plan help in considering this application for a TUP.

- Section 4 states: *"We must also be able to support those who are vulnerable and need help in certain stages of their life". p.67*
- Section 4.1.2 d. states *"Encourage a healthy and safe environment for older adults, promoting active aging, aging in place, and a continuum of care to ensure they remain socially connected, active, and supported in their home and community."*
- Section 5.2.2 Statements on rental and non-market housing, including the following: *"Support subsidized housing, supportive housing, homeless shelters and non-market housing for vulnerable populations such as seniors, low-income families and people with disabilities."*
- Section 8.5.2 includes the following *"d. Consider the use of Temporary Use Permits to facilitate a range of uses not permitted under existing zoning to capitalize on unique and/or short-term development opportunities." p.149*

Section 11.2 of the OCP sets out conditions to be satisfied before issuance of a TUP. Broad latitude is given in the Plan for the types of circumstances in which a TUP can be used including provisions for residential uses. The following excerpt describes the way TUP's approvals must be evaluated:

- *"Potential adverse impacts on adjacent and surrounding properties will be appropriately managed.*
- *Will not give the permit holder a competitive advantage over similar businesses operating in locations zoned for the use.*
- *Will not result in permanent facilities and land alterations that will encourage noncompliance with the Zoning Bylaw once the temporary use permit has expired.*
- *Will return the land to a condition conducive to the uses it is zoned for."*

Crofton Local Area Plan:

Figure 9 of the Crofton Local Area Plan designates the subject property as a "Potential Comprehensive Development Area." The Plan focus on this part of Adelaide Street is on ensuring the orderly long-term development of land. In that regard, the proposal for land consolidation and subsequent development is consistent with the general intent of this application.

Legislation:

TUPs are enabled through Division 8 of the *Local Government Act* (the "Act"). Where a local government has designated areas for temporary uses in its Official Community Plan, the Act allows it to issue TUPs for uses not permitted by the zoning bylaw and to specify conditions under which temporary uses may

be conducted. Prior to issuing a TUP, notice must be given in accordance with Section 94 of the *Community Charter* and the Public Notice Bylaw. Notice (Attachment 8) was published on the North Cowichan's social media on October 31, 2023 (first public notice) and in the November 9, 2023 editions of the Cowichan Valley Citizen and Chemainus Valley Courier (second public notice). Notice was also issued to owners and occupiers of properties within 60 metres of the subject property.

Section 494 of the Act establishes the right to be heard for individuals who will be affected by the proposed permit by submitting their comments in writing or verbally before a resolution is adopted. The Notice (Attachment 8) advised that the deadline to submit comments in writing was 1:00 p.m. on November 14, 2023, or verbally during the Public Input portion of the agenda. The three-minute limit for public input should not be applied to individuals speaking to this permit.

Analysis:

There are several issues to consider with this application:

1. Does the requested TUP further the land use objectives of the OCP?

The purpose of the application is a precondition to enable subdivision to proceed in accordance with the OCP and so complies with the municipal policy.

2. Given its age and condition, Is the illegal residence safe to occupy?

The applicant has provided a letter from Stellar Home Inspections (Attachment 7). The Building Department also conducted two inspections on October 20 and October 30, 2023. Several items were identified with the condition and life safety issues found in the structure as set out in the Chief Building Inspector's report (Attachment 8.)

3. What level of security is appropriate in this circumstance?

Security is typically required when a new building is erected while the current home is still in use. A \$10,000 bond is usually returned once the new house is occupied. The applicants are concerned that the bond will create an unnecessary burden on their circumstances, especially as they are providing the residence on compassionate grounds. Council may waive the requirement, reduce the amount for bonding or require some alternate arrangement (i.e., a letter of undertaking or removal of the temporary dwelling prior to completion of the subdivision).

Summary and Conclusion:

Overall, the application intends to enable a subdivision and land exchange to proceed. Due to the circumstances that the owners find themselves in through their act of kindness and compassion to an old friend, the obligation to essentially remove the old building before the subdivision can be concluded places them and their friend in a difficult situation.

The issuance of the TUP for a maximum three-year period is not expected to create negative consequences for the surrounding neighbourhood while enabling the normal subdivision and lot consolidation process to continue. Issuance of the permit is recommended.

OPTIONS

1. **(Recommended Option)** THAT Council authorize issuance of a Temporary Use Permit, included as Attachment 3 to the Contract Planner's November 15, 2023 report, to allow the owners of 428 Adelaide Street (PID: 005-930-936) a second residence in an existing structure on the lot, for a maximum of three years or until the current occupant relocates, whichever comes first, subject to:
 - (1) the provisions of a \$10,000 bond as security to decommission or remove the structure upon the expiration of the permit; and,
 - (2) confirmation that the landowner has completed the safety works required as set out in the Chief Building Inspector's October 31, 2023 memo.
2. THAT Council authorize issuance of a Temporary Use Permit, included as Attachment 3 to the Contract Planner's November 15, 2023 report, to allow the owners of 1428 Adelaide Street (PID: 005-930-936) a second residence on the lot in an existing structure for a maximum of three years or until the current occupant relocates, whichever comes first, subject to confirmation that the landowner has completed the safety works required as set out in the Chief Building Inspector's October 31, 2023 memo.
3. THAT Council deny issuance of a Temporary Use Permit for 1428 Adelaide Street to allow the owners a second residence in an existing structure on the lot.

IMPLICATIONS

Option 1 enables the orderly redevelopment of the large lots in the area while allowing an elderly resident to live temporarily on the property for up to three years. The \$10,000 security provides an assurance the property owner will remove the temporary dwelling when the TUP expires and a mechanism for achieving compliance if the property owner does not voluntarily comply.

Option 2 achieves the same as Option 1 but does not require security. If the property owner does not voluntarily remove the temporary dwelling unit, the Municipality would be required to pursue bylaw compliance through available legal options.

Option 3 would require the property owner to delay the subdivision and land assembly process until the subject building is no longer occupied and is reverted to an accessory use.

RECOMMENDATION

THAT Council authorize issuance of a Temporary Use Permit, included as Attachment 3 to the Contract Planner's November 15, 2023, report, to allow the owners of 1428 Adelaide Street (PID: 005-930-936) a second residence in an existing structure on the lot, for a maximum of three years or until the current occupant relocates, whichever comes first, subject to:

- (1) the provisions of a \$10,000.00 bond as security to decommission or remove the structure upon the expiration of the permit; and,
- (2) confirmation that the landowner has completed the safety works required as set out in the Chief Building Inspector's October 31, 2023, memo.

Report prepared by:

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Report reviewed by:



Rob Conway, MCIP, RPP
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Approved to be forwarded to Council:



Ted Swabey
Chief Administrative Officer

Attachments:

- (1) Location Plan
- (2) Orthophoto
- (3) Draft Permit
- (4) Site Plan
- (5) Applicant's Letter
- (6) Subdivision Plan
- (7) Letter from Stellar Home Inspections
- (8) Memo from Chief Building Inspector
- (9) TUP Notice
- (10) Zoning Map