

DATE OF MEETING FEBRUARY 15, 2024

AUTHORED BY DAVID LABERGE, DIRECTOR, PUBLIC SAFETY

SUBJECT ILLEGAL CONSTRUCTION – 395 CHESTERLEA AVENUE

OVERVIEW

Purpose of Report

To inform Council that a living space has been constructed in a detached garage at 395 Chesterlea Avenue without a building permit, and to recommend remedial action requirements be imposed pursuant to the provisions of the Community Charter requiring full deconstruction and removal of all construction completed to the detached garage structure without a permit, as well as remediating the structural modifications to the building to make it safe, through an approved building permit.

Recommendation

That Council:

1. Issue a Remedial Action Requirement at 395 Chesterlea Avenue pursuant to Sections 72 and 73 of the *Community Charter*;
2. Direct staff to advise the owner(s) that they may request Council reconsider the Remedial Action Requirement by providing written notice within 14 days of the date on which notice of the remedial action requirement was sent;
3. Direct Staff or its authorized agents to take action in accordance with Section 17 of the *Community Charter* without further notice and at the owner's expense if the said remedial action is not undertaken within 30 days of Council's resolution; and,
4. Direct the remedial action require full deconstruction and removal of all construction completed to the detached structure without permit, and to remediate the structural modifications to make the building safe, though an approved building permit.

BACKGROUND

A City of Nanaimo building inspector attended to 395 Chesterlea Avenue on **2023-OCT-05** and observed that construction of a living space in a detached garage was underway without a building permit. A Stop Work Order was issued and posted at the jobsite.

The construction is in contravention of City of Nanaimo Building Bylaw 2016. No 7224 which states;

“No person shall commence or continue any construction, alteration, reconstruction, demolition, removal or change the occupancy of any building or structure, including other work related to construction, unless a Building Official has issued a valid and subsisting permit for the work.”

The building inspector determined that the structure does not comply with the BC Building Code, and that construction deficiencies have created hazardous conditions. One hazard identified is the installation of a double swing door installed in the exterior loadbearing concrete block wall. This work would have required the design and review of a professional engineer to ensure that the loads imposed by the roof above have been adequately addressed and transferred to the sides of the opening and down to the building's foundation.

A living area has been constructed inside the garage structure which includes a three piece washroom, living space, dining space, a sink, hot plate, and barbeque. Interior walls have been built in front of the overhead garage doors. The building has a lower level accessible by a staircase which was secured by a locked door. The owner claimed to not have keys to open the door so access was not permitted to the building inspector.

The owner was directed to fully deconstruct the interior work on or before **2023-DEC-13** at which time a building inspector would re-attend the property to confirm removal. Further, if the construction was not removed by that date, Staff would refer this matter to Council recommending a Bylaw Contravention Notice be registered on the property title pursuant to Section 57 of the *Community Charter*.

The property owner contacted the Building Inspections section in writing on **2023-DEC-08** advising that;

- The building inspector did not display proper credentials when the inspection was conducted and therefore the Stop Work Order is null and void.
- The only work done to the property were necessary repairs to replace leaking skylights, and that no other changes or additions were made to existing space.
- legal action would be taken if the City of Nanaimo takes enforcement action.

The current owner came into possession of the property on **2022-DEC-22**. A real estate listing for the property dated **2022-NOV-21** depicts photos of the interior of the detached garage structure which confirms that substantial construction has occurred since that time.

DISCUSSION

Substantial construction and alteration of the detached garage structure has been undertaken without a building permit in contravention of the City's Building Bylaw, and the construction does not comply with the BC Building Code. A building inspector has determined that existing deficiencies are hazardous.

Pursuant to Section 72(1) of the *Community Charter*, Council may impose a remedial action requirement in relation to hazardous conditions. A remedial action requirement may require the owner to remove an unsafe structure, bring it up to a standard specified by bylaw, or otherwise deal with it in accordance with the direction of Council.

OPTIONS

1. That Council:

1. Issue a Remedial Action Requirement at 395 Chesterlea Avenue pursuant to Sections 72 and 73 of the *Community Charter*;
2. Direct staff to advise the owner(s) that they may request Council reconsider the Remedial Action Requirement by providing written notice within 14 days of the date on which notice of the remedial action requirement was sent;
3. Direct Staff or its authorized agents to take action in accordance with Section 17 of the *Community Charter* without further notice and at the owner's expense if the said remedial action is not undertaken within 30 days of Council's resolution; and,
4. Direct the remedial action require full deconstruction and removal of all construction completed to the detached garage structure without a permit, and remediate and make safe any structural alterations through an approved building permit.

The advantages of this option:

- Building contraventions are addressed
- Hazardous conditions are addressed

The disadvantages of this option:

- Considerable staff time is required

Financial Considerations

- Potential for future litigation

2. That Council provide alternative direction. |

SUMMARY POINTS

- Construction was undertaken at 395 Chesterlea Avenue to install a living space in a detached garage without a building permit.
- A Stop Work Order has been issued.
- The construction is in contravention of Building Bylaws and the BC Building Code and is hazardous.
- A remedial action requirement is recommended to deconstruct and remove all illegal construction and remediate any unsafe conditions to the structure of the building through an approved building permit.

Submitted by:

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Director, Public Safety

Concurrence by:

Darcy Fox
Manager, Building Inspections

Richard Harding
General Manager, Community Services

Dale Lindsay
CAO