

**CITY OF ENDERBY
TEMPORARY USE PERMIT APPLICATION**



File No.: 0006-21-TUP-END

June 28, 2021

APPLICANT/OWNER: Splatsin Development Corporation Ltd.

LEGAL DESCRIPTION: Lot 3, Block 11, District Lot 150, Kamloops (formerly Osoyoos) Division Yale District, Plan 211A

P.I.D #: 003-486-401

CIVIC ADDRESS: 803 Vernon Street, Enderby BC

PROPERTY SIZE: 0.068 hectare (0.168 acre)

PRESENT ZONING: General Commercial (C.1)

PRESENT OCP DESIGNATION: General Commercial

PROPOSED TEMPORARY USE: Retail sales/food service business to operate out of a temporary building; use shipping container for storage purposes

PROPOSED TERM OF PERMIT: 3 Years

RECOMMENDATION:

THAT Council authorizes the issuance of a Temporary Use Permit for the property legally described as Lot 3, Block 11, District Lot 150, Kamloops (formerly Osoyoos) Division Yale District, Plan 211A and located at 803 Vernon Street to permit a retail sales/food service business to operate out of a temporary building, and to use a shipping container for storage purposes, for a three-year period, subject to the following conditions:

- a) Throughout the duration of the Temporary Use Permit, the applicant must provide adequate dust control measures for the subject property and adjacent parcels also owned by the applicant that are implicated in the proposed use;
- b) Throughout the duration of the Temporary Use Permit, the applicant must remove particulate matter tracked onto Vernon Street from the subject property or adjacent parcels also owned by the applicant that are implicated in the proposed use;
- c) Throughout the duration of the Temporary Use Permit, the applicant must provide sufficient on-site garbage and recycling receptacles which are well-maintained;
- d) The dimensions and siting of the temporary building and parking spaces shall be in general accordance with the attached Schedule 'A';
- e) With regards to the use of a shipping container for storage purposes:

- i. Only one shipping container is permitted on the subject property;
 - ii. The use, siting and sizing of the shipping container must adhere to all relevant City of Enderby health and safety specifications;
 - iii. The use, siting and sizing of the shipping container must adhere to the regulations expressed in the Zoning Bylaw, as if it were a permitted use, unless otherwise varied (except for the provision of screening);
 - iv. The siting and sizing of the shipping container shall be in general accordance with the attached Schedule 'A', except that to the extent of a conflict between Schedule 'A' and the Zoning regulations or health and safety specifications for shipping containers, the Zoning regulations and health and safety specifications shall prevail;
 - v. The exterior of the shipping container shall be complimentary to the aesthetics of the site and surrounding neighbourhood.
- f) The applicant shall provide security in the form of an irrevocable letter of credit, or a cash deposit, in the amount equal to 120% of the estimated costs of removing, transporting and disposing of the temporary building and shipping container from the subject property; and
- g) The Temporary Use Permit shall expire three years from the date the Permit is issued.

BACKGROUND:

This is a Temporary Use Application which proposes to permit a retail sales/food service business to operate out of a temporary building, and to use a shipping container for storage purposes, on the property located at 803 Vernon Street for a three-year period. Given that the City of Enderby Zoning Bylaw No. 1550, 2014 does not permit principal uses to occur out of a temporary building, nor does it permit shipping containers to be used in the General Commercial (C.1) zone, the applicant is seeking a Temporary Use Permit in accordance with Section 493 of the *Local Government Act*.

A Temporary Use Permit is a tool to allow a short-term use that does not comply with the Zoning Bylaw. A Temporary Use Permit may only be issued for a maximum of 3 years and may be renewed once for an additional 3 years as per Section 497 of the *Local Government Act*. Temporary Use Permits are intended to be temporary in nature, and are not a suitable long term land use solution.

Site Context/History:

The 0.068 hectare (0.168 acre) subject property is located along the eastern side of Vernon Street, which is identified in Schedule 'C' of the City's Official Community Plan as a 'Municipal Major Collector' road. The subject property is relatively flat and access to the property is gained off of Vernon Street.

In 2016, a Temporary Use Permit was issued to Edward and Jennifer Koochin which permitted the use of a temporary building on the subject property for the purposes of food service, retail sales, and fitness/recreational services. Following the issuance of the Temporary Use Permit, a one-storey temporary building on skids was constructed along the eastern edge of the subject property. Given that the construction of a temporary building did not trigger the need to bring the property up to the City of Enderby Zoning Bylaw standard with regards to landscaping and paving, the property was allowed to remain at a gravelled standard. A shipping container was subsequently placed in the southeast corner of

the property, with Council's permission for the use of the shipping container only extending to the end of the Temporary Use Permit period.

Given that the Temporary Use Permit has expired, the use of the temporary building and shipping container is no longer permitted unless a new Temporary Use Permit is issued, or the permanent use of a temporary building and shipping container are secured through a Zoning Text Amendment.

The subject property and the properties to the north, northeast, south and, west are zoned General Commercial (C.1) and are designated as General Commercial in the City of Enderby Official Community Plan (OCP); the property to the east is zoned Transportation Corridor (S.2) and is designated as Transportation Corridor in the OCP.

The following map shows the Zoning designation of the subject and surrounding properties:

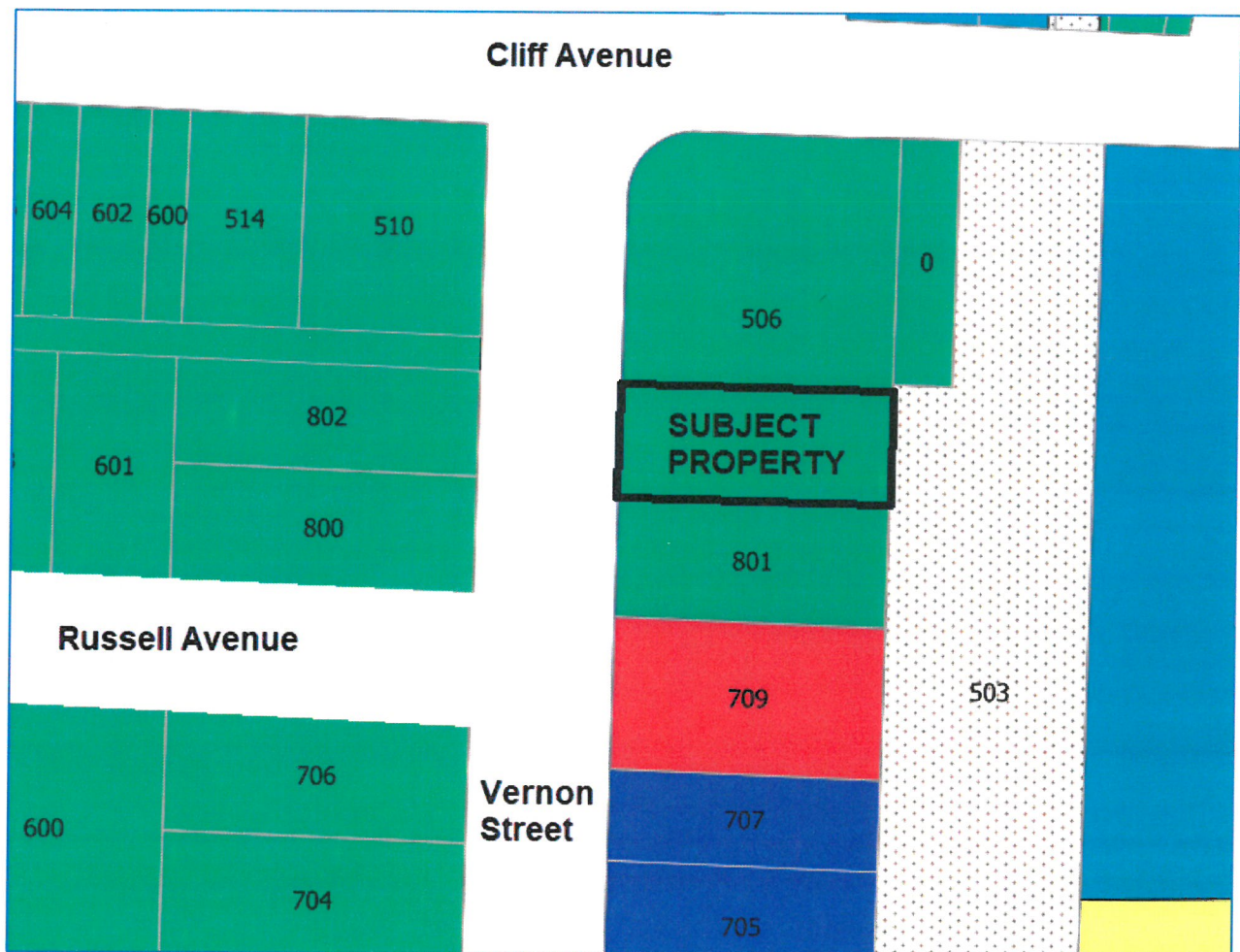


Figure 1: Zoning Map

- Green – General Commercial (C.1)
- Blue – Light Industrial (I.1)
- Red – Service Commercial (C.4)
- Dotted – Transportation Corridor (S.2)

The following orthophoto of the subject and surrounding properties was taken in 2011:



Figure 2: Orthophoto

****NOTE:** The property lines shown above are not an accurate representation of their true locations and are intended for display purposes only.

The Proposal

The applicant has submitted a Temporary Use Application which proposes to permit a retail sales/food service business to operate out of a temporary building, and to use a shipping container for storage purposes, for a three-year period. The application describes the business as a “...seasonal summer store, offering snacks, drinks, ice and tubing supplies, etc. to tourists, catering to the river floating crowds specifically. Parking and garbages made available to downtown users.”

The siting of the temporary building and shipping container, along with the parking layout, is shown on the attached Schedule ‘A’.

ZONING BYLAW:

The subject property is currently zoned General Commercial (C.1); uses permitted within this zone include:

- Accessory buildings and structures;

- Accommodation including apartments, dwelling units, hotels and motels;
- Assembly and civic use;
- Educational facilities and professional studios;
- Entertainment and recreation facilities;
- Food service (including dairy bars, coffee shops and restaurants);
- Office and commerce facilities;
- Public service use;
- Retail sales (including beverages, candy, clothing, food, fruit, gifts, groceries, produce, sporting goods including rentals, and toys);
- Service and repair; and
- Transportation facilities.

Section 313 of the City of Enderby Zoning Bylaw states that all zones within the City are designated as areas for the issuance of Temporary Use Permits, subject to the following general conditions:

- a. The use is temporary or seasonal in nature;
- b. The use is not noxious or undesirable because of smoke, noise, vibration, dirt, glare, odour, radiation, electrical interference, or an offensive trade within the meaning of the Health Act;
- c. There are no negative impacts on the lands in the vicinity;
- d. There is no significant increases in the level or demand for services;
- e. There are no permanent alterations to the subject site; and
- f. The use complies with all of the conditions specified by Council as a condition of the issuance of the Permit.

Section 307.2.b of the Zoning Bylaw states:

“A temporary building or structure shall not be used as a dwelling and shall not be placed or erected on any lot, except in the case of a mobile home where permitted under the provisions of the Bylaw, and except where a permit for the replacement or erection and use and occupation of such temporary building or structure has been validly issued under the provisions of the Building Bylaw of the authority having jurisdiction and amendments thereto from time to time in force.”

Section 314 of the Zoning Bylaw states that shipping containers are permitted in the following zones:

- Industrial (I.1, I.2);
- Service Commercial (C.4);
- Country Residential (C.R); and
- Assembly, Civic, and Public Service (S.1).

OFFICIAL COMMUNITY PLAN:

Policies contained within the OCP which apply to this development include:

- Policy 2.2.b - To maintain and enhance the City of Enderby as a sustainable, diverse, vibrant, unique and attractive community.

- Policy 3.3.c - Council recognizes that development of land has social impacts and will act through the approval process to minimize negative and maximize positive impacts.
- Policy 5.3.c - Council will work with the business community and stakeholders to promote a diverse local economy that provides the goods and services necessary to competitively meet local demand and attract visitors.
- Policy 5.3.f - Council will develop strategies and tools to encourage and facilitate infill and redevelopment within existing developed areas of the community.
- Policy 12.3.c - Council encourages and supports creative and innovative infilling, development, redevelopment and renovation of existing buildings in order to maintain a strong focus on commercial activity in commercial areas.
- Policy 18.1 - Subject to the designation of areas and conditions in the Zoning Bylaw, Council may issue Temporary Use Permits in all areas of the City.
- Policy 20.3.f - Council will encourage infill, redevelopment and brownfield strategies that focus growth towards areas with existing infrastructure.

REFERRAL COMMENTS:

The subject application was referred for comment to the City of Enderby Public Works Manager, Building Inspector, and Fire Chief.

The City of Enderby Public Works Manager provided the following comments:

"If the temporary use is going to be generally the same as previous, I am supportive of the same terms and conditions except for with respect to shipping containers.

With respect to shipping containers on site for permanent storage for the duration of the TUP, it should be made explicit whether they are (a) required to meet the zoning bylaw requirements or (b) permitted to vary all or part of the applicable zoning bylaw regulations through the TUP. The prior permit was silent on shipping container bylaw conformity, largely because it took the view that these shipping containers were temporary (this use has now passed the intended meaning of "temporary" and is well into a "permanent" nature); however, it is important that this be made explicit on the new permit, should it be granted, to avoid any assumptions about implied terms contained in the prior permit that the applicant may be relying upon. Given recent policy decisions around proactive compliance, we should address this at the permit stage. I will defer to your planning judgement on what is appropriate to recommend.

Again, to avoid any implied representation, the health and safety policy for shipping containers should be attached as a required condition. These would not be something that can or should be varied through a TUP.

I think that it is important to communicate to the applicant that the standard expressed in the TUP application is not a desirable long-term / permanent use of the property, and it is the City's expectation that it be brought into conformity with the zoning bylaw standard by the time that this TUP expires. If the applicant wants this standard to be permanent, they should be preparing to advance a Zoning Text Amendment well before the end of the TUP term so that they will still have time to bring the property into conformity with the zoning bylaw should the amendment not

be adopted by Council. It is reasonable to consider granting another TUP to extend the current use, as the applicant is a new owner and should have time to get established, and there does not appear to be a significant change from the prior temporary use. In addition, the highway alignment remains unknown and the rail-trail corridor has not yet been established, so it would add a considerable risk to the owner to proceed with permanent site changes given the dynamic nature of the surrounding area. For that reason, I support this TUP, but I think that it is important that the applicant is aware that an ongoing reliance upon TUPs cannot and should not replace the appropriate measure to address this matter on a permanent basis. At the end of the day, the property should either be brought up to the bylaw standard or the standard permanently varied, if appropriate."

The City of Enderby Fire Chief provided the following comments:

"The use of the shipping container should be subject to the applicant demonstrating adherence to the City's health and safety requirements for shipping containers."

No other comments were received in response to the referral.

PLANNING ANALYSIS:

As noted above, Section 313 of the City of Enderby Zoning Bylaw states that pursuant to Section 920.2 (now Section 492) of the *Local Government Act*, all zones within the City are designated as areas for the issuance of Temporary Use Permits, subject to the following general conditions:

- a. The use is temporary or seasonal in nature;
- b. The use is not noxious or undesirable because of smoke, noise, vibration, dirt, glare, odour, radiation, electrical interference, or an offensive trade within the meaning of the Health Act;
- c. There are no negative impacts on the lands in the vicinity;
- d. There is no significant increases in the level or demand for services;
- e. There are no permanent alterations to the subject site; and
- f. The use complies with all of the conditions specified by Council as a condition of the issuance of the Permit.

Temporary or Seasonal Nature of Use

The applicants' proposal to operate a retail sales/food service business out of an existing temporary building, and to use a shipping container for storage purposes, for a three year period is temporary in nature as there are no proposed permanent alterations to the subject property.

Noxious or Undesirable Use

The proposed use of a temporary building on the subject property for the purposes of retail sales/food service, and using a shipping container for storage purposes, is a relatively low-intensity use; however, the retail sales/food service use will result in additional vehicular traffic on the site which may create issues related to dust given that the lot is maintained to a gravelled standard and the issuance of a Temporary Use Permit would not trigger the need to pave the parking areas and maneuvering aisles. Given this, it is

recommended that issuance of a Temporary Use Permit be subject to the applicant providing adequate dust control measures and removing particulate matter that is tracked onto Vernon Street throughout the duration of the Temporary Use Permit.

Impacts to Adjacent Properties

Given that the proposed use of food services and retail sales will be targeted towards tourists and river users who muster in Belvidere Park, it is anticipated that the proposal will result in a significant increase in foot traffic in the areas surrounding the subject property; given this, it is recommended that the issuance of a Temporary Use Permit be subject to the applicant providing sufficient on-site garbage and recycling receptacles which are well-maintained throughout the duration of the Temporary Use Permit.

Furthermore, requiring the shipping container to be used, sited and sized in accordance with the City's health and safety specifications and Zoning Bylaw, and have an exterior finish that is complimentary to the site and neighbourhood, will ensure that the use of a shipping container will not have any negative impacts to adjacent properties with regards to safety or nuisance.

It should be noted that given that the proposed use of the shipping container is temporary in nature, the Zoning Bylaw requirement to provide screening, which is a permanent alteration to the site, would not be appropriate in this case.

Notwithstanding the above, it is not anticipated that the proposal will result in any negative impacts to lands in the vicinity.

Permanent Alterations to the Site

Given that a temporary building and shipping container are both structures that are relatively easy to remove, coupled with the fact that the applicant is proposing to leave the property in its existing gravelled state, the proposal will not result in any permanent alterations to the subject property and the ability to restore the site to its original state will not be compromised, should the applicant fail to remove or legalize the temporary building/shipping container once the Temporary Use Permit has expired.

It is recommended that the issuance of a Temporary Use Permit be subject to the applicant providing security in the form of an irrevocable letter of credit, or a cash deposit, in the amount equal to 120% of the estimated costs of removing, transporting and disposing of the temporary building and shipping container from the subject property; this condition will ensure that City of Enderby taxpayers are not subsidizing the costs of removing the temporary building/shipping container from the site should the applicants fail to remove or legalize them once the Temporary Use Permit ultimately expires.

Conditions of Temporary Use Permit

A number of conditions for the issuance of a Temporary Use Permit have been identified which will help to mitigate potential impacts and minimize any risks to the City of Enderby and its taxpayers; failure to adhere to the conditions imposed by Council may result in the applicants' Temporary Use Permit being revoked.

Broad Considerations

The City of Enderby Planner raises no objections to the applicant's request for a Temporary Use to permit a retail sales/food service business to operate out of a temporary building, and to use a shipping container for storage purposes, on the property at 803 Vernon Street for a three-year period. Upon consideration of input from adjacent land owners, it is recommended that Council authorize the issuance of the Temporary Use Permit for the following reasons:

- As mentioned by the City's Public Works Manager, there is uncertainty regarding the future highway alignment and use of the rail-trail corridor, both of which will have significant impacts on the future development of the subject property, particularly with regards to access and orientation of a permanent building; a Temporary Use Permit would allow the applicant to use the property in the short-term until such time as there is more information available as to how the highway and rail trail corridor will develop, at which point the applicant will be able to make a well-informed decision on how to permanently develop the site;
- A new Temporary Use Permit is appropriate given that the applicant is a new owner, and is looking to determine how best to establish a long-term use of the property;
- There were minimal impacts associated with the previous use of a temporary building and shipping container on the subject property; and
- It is not anticipated that the proposal would negatively impact the use and enjoyment of the subject or surrounding properties.

SUMMARY

This is a Temporary Use Application which proposes to permit a retail sales/food service business to operate out of a temporary building on the subject property, and to use a shipping container for storage purposes, for a three-year period. Given that the City of Enderby Zoning Bylaw No. 1550, 2014 does not permit principal uses to occur out of a temporary building, nor does it permit shipping containers to be used in the General Commercial (C.1) zone, the applicant is seeking a Temporary Use Permit in accordance with Section 493 of the *Local Government Act*.

The City of Enderby Planner recommends that Council authorize the issuance of a Temporary Use Permit subject to the specified terms and conditions.

Prepared By:



Kurt Inglis, MCIP, RPP
Planner and Deputy Corporate Officer

Reviewed By:



Tate Bengtson
Chief Administrative Officer

THE CORPORATION OF THE CITY OF ENDERBY

TEMPORARY USE PERMIT APPLICATION

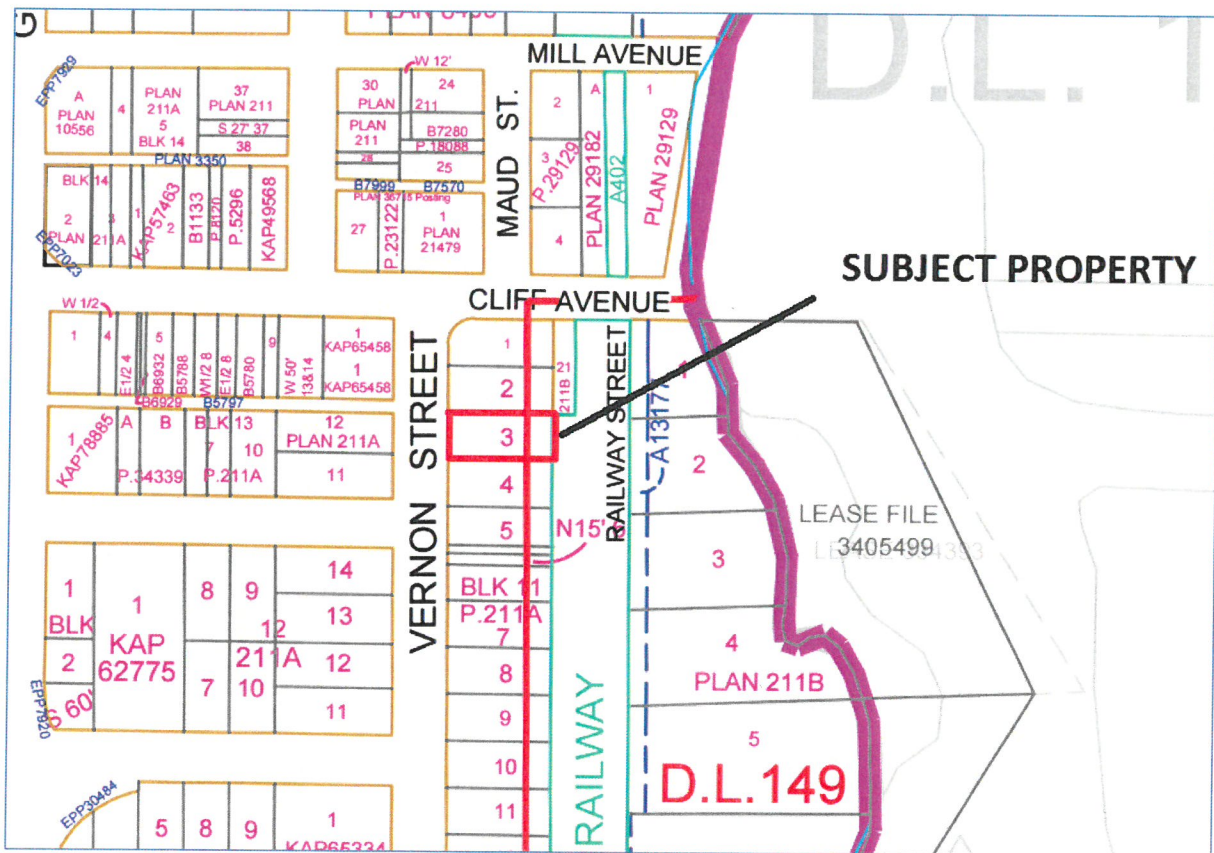
SUBJECT PROPERTY MAP

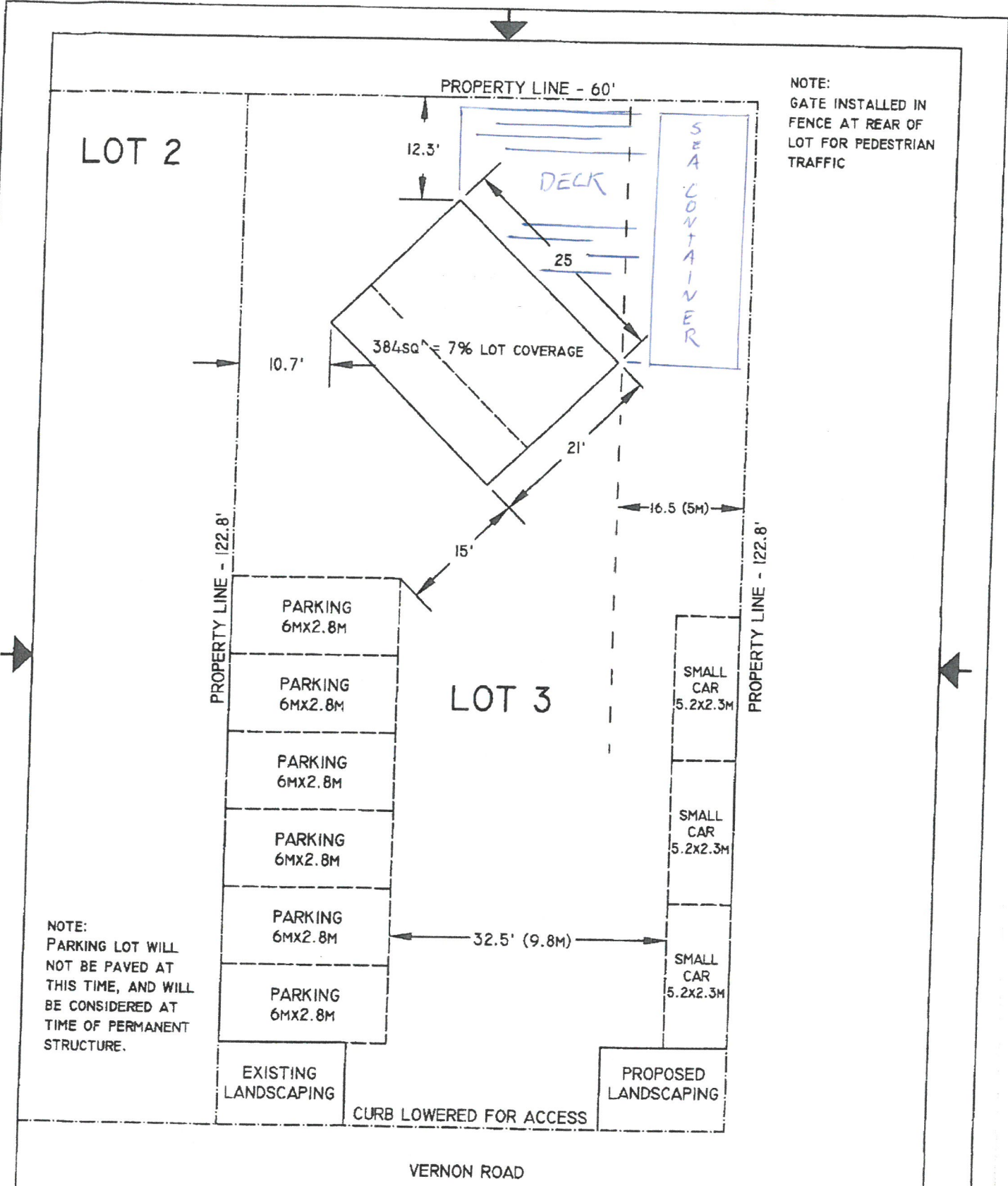
File: 0006-21-TUP-END

Applicant: Nik Vischschraper

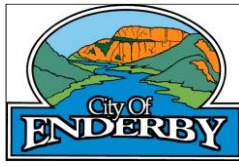
Owner: Splatsin Development Corporation

Location: 803 Vernon Street, Enderby BC





PLOT PLAN		SIZE A	FSCM NO.	DWG NO. 803 VERNON AVE	REV 1.2
ED & JEN KOOCHIN'S ICE CREAM STAND 506 CLIFF AVE., (LOT 3) ENDERBY		SCALE NTS		SHEET 2 OF 10	



TEMPORARY USE PERMIT

Application / File No.: 0006-21-TUP-END
To: Splatsin Development Corporation Ltd.
Address: <>

1. This Temporary Use Permit is issued in accordance with Sections 493 and 497 of the *Local Government Act* and subject to compliance with all applicable Bylaws of the City of Enderby, except as expressly varied.
2. This Temporary Use Permit applies only to those lands described below, and any and all buildings, structures, or other development thereon:

Lot 3, Block 11, District Lot 150, Kamloops (formerly Osoyoos) Division Yale District, Plan 211A

P.I.D #: 003-486-401

Civic Address: 803 Vernon Street, Enderby BC

3. Temporary Use Permit 0006-21-TUP-END is hereby approved for the property legally described as Lot 3, Block 11, District Lot 150, Kamloops (formerly Osoyoos) Division Yale District, Plan 211A and located at 803 Vernon Street, Enderby BC to permit a retail sales/food service business to operate out of a temporary building, and to use a shipping container for storage purposes, for a three-year period, subject to the following conditions:
 - a) Throughout the duration of the Temporary Use Permit, the applicant must provide adequate dust control measures for the subject property and adjacent parcels also owned by the applicant that are implicated in the proposed use;
 - b) Throughout the duration of the Temporary Use Permit, the applicant must remove particulate matter tracked onto Vernon Street from the subject property or adjacent parcels also owned by the applicant that are implicated in the proposed use;
 - c) Throughout the duration of the Temporary Use Permit, the applicant must provide sufficient on-site garbage and recycling receptacles which are well-maintained;
 - d) The dimensions and siting of the temporary building and parking spaces shall be in general accordance with the attached Schedule 'A';
 - e) With regards to the use of a shipping container for storage purposes:
 - i. Only one shipping container is permitted on the subject property;
 - ii. The use, siting and sizing of the shipping container must adhere to all relevant City of Enderby health and safety specifications;

- iii. The use, siting and sizing of the shipping container must adhere to the regulations expressed in the Zoning Bylaw, as if it were a permitted use, unless otherwise varied (except for the provision of screening);
 - iv. The siting and sizing of the shipping container shall be in general accordance with the attached Schedule 'A', except that to the extent of a conflict between Schedule 'A' and the Zoning regulations or health and safety specifications for shipping containers, the Zoning regulations and health and safety specifications shall prevail;
 - v. The exterior of the shipping container shall be complimentary to the aesthetics of the site and surrounding neighbourhood.
 - f) The applicant shall provide security in the form of an irrevocable letter of credit, or a cash deposit, in the amount equal to 120% of the estimated costs of removing, transporting and disposing of the temporary building and shipping container from the subject property; and
 - g) The Temporary Use Permit shall expire three years from the date the Permit is issued.
4. As a condition of the issuance of this Temporary Use Permit, the Council is holding the security set out below to ensure that development is carried out in accordance with the terms and conditions of this Permit. Should any interest be earned upon the security, it shall accrue to the Permittee and be paid to the Permittee if the security is returned. The condition of the posting of the security is that should the Permittee fail to carry out the development hereby authorized, according to the terms and conditions of this Permit within the time provided, the City of Enderby may use the security to carry out the work by its servants, agents, or contractors, and any surplus shall be paid over to the Permittee, or should the Permittee carry out the development permitted by this Permit within the time set out above, the security shall be returned to the Permittee. There is filed accordingly:
- a. a Bearer Bond in the amount of \$ **N/A**; or
 - b. a Performance Bond in a form acceptable to the City of Enderby in the amount of \$ **N/A**; or
 - c. an Irrevocable Letter of Credit in the amount of \$ **N/A**;
 - d. a certified cheque in the amount of \$ **N/A**;
 - e. a cash deposit in the amount of \$ **\$N/A**.
5. The land described herein shall be developed strictly in accordance with the terms, conditions and provisions of this Permit and any attached plans and specifications shall form a part of this Permit.
6. Temporary Use Permit 0006-21-TUP-END expires on the day of , 2024.

7. Upon expiry of the Temporary Use Permit, the uses of the subject property shall only be those permitted under the Zoning Bylaw in effect at the time of the Permit's expiry.
8. This Permit is not a Building Permit.

AUTHORIZING RESOLUTION PASSED BY COUNCIL THE DAY OF , 2021.

ISSUED THIS DAY OF , 2021.

Tate Bengtson
Chief Administrative Officer

NOTICE OF PERMIT:

Issued	
Amended	
Cancelled	

Filed with the Land Title Office this day of , 2021.