



BOARD OF VARIANCE

MINUTES

A Hearing of the Board of Variance was held in the Council Chamber, Burnaby City Hall, 4949 Canada Way, Burnaby, B.C., on Thursday, **2018 March 01** at 6:00 p.m.

1. CALL TO ORDER

PRESENT: Mr. Stephen Nemeth, Chair
Mr. Rana Dhatt, Citizen Representative
Ms. Brenda Felker, Citizen Representative
Mr. Wayne Peppard, Citizen Representative
Mr. Brian Pound, Citizen Representative

STAFF: Ms. Sharon Knapp, Development Plan Technician
Ms. Monica Macdonald, Administrative Officer

The Administrative Officer called the meeting to order at 6:00 p.m.

2. ELECTION

(a) Election of Chair

Nominations for Chair of the Burnaby Board of Variance were called for.

Mr. Brian Pound nominated Mr. Stephen Nemeth for the position of Chair of the Board of Variance from 2018 March 01 to 2018 December 31.

There were no further nominations received.

MOVED BY MR. POUND

SECONDED BY MR. DHATT

THAT Mr. Stephen Nemeth be appointed as the Chair for the Burnaby Board of Variance from 2018 March 01 to 2018 December 31.

CARRIED UNANIMOUSLY

3. **MINUTES**

(a) **Minutes of the Board of Variance Hearing held on 2018 February 01**

MOVED BY MR. PEPPARD
SECONDED BY MR. POUND

THAT the minutes of the Burnaby Board of Variance Hearing held on 2018 February 01 be adopted.

CARRIED UNANIMOUSLY

4. **APPEAL APPLICATIONS**

The following persons filed application forms requesting that they be permitted to appear before the Board of Variance for the purpose of appealing for the relaxation of specific requirements as defined in the Burnaby Zoning Bylaw 1965, Bylaw No. 4742.

(a) **APPEAL NUMBER: B.V. 6320**

APPELLANT: Tony Zaurrini

REGISTERED OWNER OF PROPERTY: William Bradley

CIVIC ADDRESS OF PROPERTY: [208 Ellesmere Avenue North](#)

LEGAL DESCRIPTION OF PROPERTY: Lot 2; DL 189; Plan 4953

APPEAL: An appeal for the relaxation of Section 6.14(5)(a)(b) of the Burnaby Zoning Bylaw which, if permitted, would allow for the construction of a new single family dwelling with a detached garage at 208 Ellesmere Avenue North. The following variances were requested:

a) construction of a fence from the original grade up to 10.17 feet in the required front yard, where a maximum fence height of 3.51 feet is permitted;

b) construction of a retaining wall up to 6.6 feet in the required front yard, where a maximum retaining wall height of 3.51 feet is permitted; and,

c) construction of a retaining wall up to 17.25 feet located in the rear of the required front yard, where a maximum retaining wall height of 5.91 feet is permitted. Zone R2

APPELLANT'S SUBMISSION:

Mr. Tony Zaurrini, contractor, submitted an application for the construction of his client's new home.

Mr. Zaurrini appeared before members of the Board of Variance.

BURNABY PLANNING AND BUILDING DEPARTMENT COMMENTS:

The subject site is located in the Capitol Hill District, in an R2 neighbourhood where the ages and conditions of the single family dwellings vary. This interior lot measures 89.99 feet in width and 121.32 feet in depth. On the west, the site fronts onto Ellesmere Avenue North, and vehicular access is taken from the rear lane to the east. Single family dwellings abut the property to the north and south, and west across Ellesmere Avenue North, and across the rear lane to the east. The site observes a downward slope of approximately 36.00 feet from the front to the rear property line. The slight upward slope of 2.32 feet extends from the north to the south across the Ellesmere Avenue North frontage. There is a similar north-south upwards slope of 6.37 feet at the property line along the lane.

The subject lot has been redeveloped with a new single family dwelling and detached two-car garage. The initial Building Permit application (BP 14-01058), which was approved in July 2015, did not show any retaining walls in the front yard: the ground was bermed up from the main floor level at Elev. 579.70' over a distance of approximately 34.00 feet to the front property line at Elev. 588.74'. In the summer of 2017, the Building Inspector saw that retaining walls had been constructed which were not shown on the approved Building Permit plans, and the applicant was referred to the Board of Variance. Site visits by City staff in July 2017 show that the retaining wall was constructed, and then fill was added to the City boulevard over time. Metal fence sections were added to the top of the retaining wall between July 2017 and January 2018.

The first a) appeal would permit a fence that was constructed without being shown on the building permit drawings. The fence height measures up to 10.17 feet, as measured from the original, natural grade in the required front yard where a maximum fence height of 3.51 feet is permitted.

The fence has been constructed on top of a retaining wall at the front property line on Ellesmere Avenue North that is the subject of appeal b). The height of the fence is measured from the average natural grade along the front property line, which results in an overall fence height of 10.17 feet.

The retaining wall at the property line was constructed because the applicant filled the City boulevard to a maximum height of 5.40 feet at the front property line. The depth of fill tapers upwards to the edge of the paved road over the road right-of way which is approximately 23.00 feet wide in front of the subject property. (The unapproved fill on

City property is a separate issue from the subject of this variance; it is mentioned to account for the construction of the over-height retaining wall at the front property line, which is part of the overall fence height.)

The intent of the Zoning Bylaw in limiting the heights of fences and/or retaining walls to a maximum of 3.51 feet in the required front yard is to ensure unified “open” front yards and to limit the massing or other impacts of such structures on neighbouring properties.

As seen from Ellesmere Avenue North, the top 2.00 to 3.00 feet of the concrete retaining wall is visible. The metal is attached to the top of the retaining wall which is articulated with four stone clad pillars. From the street, with the additional fill placed on the public road allowance, the fence and top section of the retaining wall appear to be approximately 4.50 feet high. From the inside the property, the fence and retaining wall height measures 10.75 feet. (The existing natural grade is just behind the top of the retaining wall that is 10.00 feet parallel to the first one.)

The overall fence height is the result of artificially manipulating the grades: by raising the level of the grade in the public road allowance by up to 5.40 feet, and by excavation on the subject property to create a wider terrace at the base of the wall. Combined, these design choices require nine additional stair risers to access the Ellesmere Avenue entry from the house. (It would have required 14 stair risers to access the former existing natural grade in this location from the terrace; now 23 stair risers are required.)

If the grades at the property had not been manipulated, it would have been possible to have a 3.51 feet fence at the property line. However, as the fence height includes the height of the retaining wall, the two cannot be separated. The existing fence height appeal results from a design choice to re-contour the property without obtaining the necessary Zoning Bylaw approvals. As such, the fence defeats the intent of the Bylaw to regulate the appearance of front yards and the massing at property lines. In addition, it is a major variance that has been requested.

Although the site has topographical constraints, these constraints are shared by many properties on the east side of Ellesmere Avenue North, and therefore do not present a unique hardship. As such, the implications of the proposed variance on future development of the neighbourhood must be considered. In the broader context, the piecemeal granting of variances, particularly when they are already constructed, undermines the integrity of the Bylaw. For this reason, this Department cannot support the granting of the first a) appeal.

The second b) appeal would permit two retaining walls which were not shown on the approved Building Permit drawings. They would measure up to 6.60 feet in height as measured from the original natural grade in the required front yard, where a maximum retaining wall height of 3.51 feet is permitted.

The first retaining wall runs in a north-south direction at the front property line. It measures up to 6.60 feet where a maximum retaining wall height of 3.51 feet is permitted.

The second wall is located ten feet behind the first, and parallel to the front property line. It measures up to 5.75 feet where a maximum retaining wall height of 3.51 feet is permitted.

The intent of the Zoning Bylaw in limiting the heights of retaining walls to a maximum of 3.51 feet in the required front yard is to ensure unified "open" front yards and to limit the massing or other impacts of such structures on neighbouring properties.

Building Permit application (BP 14-01058), which was approved in July 2015, did not show any retaining walls in the front yard: the ground was bermed up from the main floor level at Elev. 579.70' over a distance of approximately 34.00 feet to the front property line at Elev. 588.74'. As noted in the discussion of the first appeal, the first retaining wall is the result raising the level of the grade in the public road allowance by up to 5.40 feet. The second retaining wall was built to create a wider terrace. Now the front yard has been excavated down to the main floor level (Elev. 579.70') to create a walk-out terrace that varies from 12.00 to 19.00 feet wide across the width of the house, where the approved Building Permit drawings showed a 7.00 feet deep x 29.0 feet wide terrace.

Both retaining walls in the front yard are design choices resulting from a desire to re-contour the property without the necessary approvals. The retaining walls were not required in order to build this particular house design, as the first approved Building Permit drawings demonstrate. It is also noted that the neighbours on both sides of the subject lot, who have houses on similar slopes, do not have retaining walls in the front yards. The 2014 aerial photograph (attached) shows how the topography of the subject site once followed the natural grade of the slope, without any retaining walls in the front yard.

In October 2017, the applicant was advised by the Building Department Plan Checker, after consultation with the Planning Department, to mitigate the effects of the retaining walls before making an appeal to the Board of Variance. The applicant was advised that the retaining walls should be modified with an improved quality of concrete and to soften the appearance of the walls with shrubs, vines and hanging plants. However, this Board of Variance application does not have a landscape plan that would soften the appearance of the retaining walls with shrubbery or hanging vines. The site plan shows two large graveled terraces, approximately 27.00 feet x 24.30 feet and 16.50 feet x 24.30 feet on the north side of the house, adjacent to 216 Ellesmere Avenue North. These two gravel terraces emphasize the retaining walls, instead of softening their appearance.

The first non-conforming retaining wall was constructed in order to support fill that was placed without approval on the public road allowance. The second non-conforming

wall, if it had been presented on the building permit plans, could have been reviewed and modified to comply with the Bylaw. In conclusion, these two retaining walls, which were constructed without approvals, are major variances that defeat the intent of the Bylaw to regulate the massing of structures in the front yard. As such, this Department does not support the granting of the second b) appeal.

The third c) appeal is to vary Section 6.14(5)(b) "Fences" of the Zoning Bylaw from 5.91 feet to a maximum of 17.25 feet for heights of constructed retaining walls located to the rear of the required front yard.

The intent of the Bylaw is to mitigate the massing or other impacts of new buildings or structures on neighbouring properties.

The approved Building Permit site plan (BP 14-01058) showed an existing 5.96 feet retaining wall at the north east corner of the rear property line which decreased to 3.99 feet at a point 50.00 feet south, where the proposed garage was located. Behind the existing retaining wall, the property sloped upwards to the house without further terracing.

Now there are two parallel non-conforming retaining walls in the rear of the required front yard, where a maximum retaining wall height of 5.91 feet is permitted. Beginning at the lane: the 5.96 feet retaining wall at the northeast property line has been replaced by a new 8.00 feet wall that tapers to 6.00 feet in height where it meets the garage wall. A 9 feet 7 inches retaining wall has been constructed at the southeast property line where the retaining wall turns, providing a wall that supports a concrete stairway. In this case, the height calculation is based on the existing natural grade at the lane elevation, which begins at 548.41 feet at the northeast corner and rises to 554.78 feet at the southeast corner of the property.

The first retaining wall supports a 22.00 feet deep x 39.00 feet wide grassed terrace. Behind the terrace is the second retaining wall that measures 17.10 feet (as measured from the lane) and which extends from a concrete stairway at the northeast property line to a concrete stairway at the southeast property line. The 17.10 feet high retaining wall supports a 22.00 feet wide patio that extends across the width of the property.

The two parallel sets of retaining walls present a stark and imposing appearance when viewed from the lane. They constitute major variances that defeat the intent of the Bylaw to mitigate the impacts of the massing of new buildings or structures on neighbouring properties.

Although the site has topographical constraints, these constraints are shared by many properties on the east side of Ellesmere Avenue North, and therefore do not present a unique hardship. As such, the implications of the proposed variance on future development of the neighbourhood must be considered. In the broader context, the piecemeal granting of variances, particularly when they are already constructed, undermines the integrity of the Bylaw. For this reason, this Department cannot support the granting of this major variance appeal c).

ADJACENT OWNER'S COMMENTS:

No submissions were received regarding this appeal.

MOVED BY MR. POUND
SECONDED BY MR. DHATT

THAT based on the plans submitted, part (a) of this appeal be DENIED.

CARRIED UNANIMOUSLY

THAT based on the plans submitted, part (b) of this appeal be DENIED.

CARRIED
(Opposed: Ms. Felker)

THAT based on the plans submitted, part (c) of this appeal be DENIED.

CARRIED UNANIMOUSLY

(b) APPEAL NUMBER: B.V. 6321

APPELLANT: Tohmm Cobban Architect

REGISTERED OWNER OF PROPERTY: Albert and Susan Tremblett

CIVIC ADDRESS OF PROPERTY: [4256 Venables Street](#)

LEGAL DESCRIPTION OF PROPERTY: Lot 6; DL 121; Plan 41318

APPEAL: An appeal for the relaxation of Section 105.10(3) of the Burnaby Zoning Bylaw, which if permitted, would allow for conversion of an attached carport to garage, with sundeck above, to an existing single family dwelling at 4256 Venables Street. The applicant requested a variance to allow a side yard setback of 3.79 feet, where a minimum set back of 4.0 feet is required. Zone R5

APPELLANT'S SUBMISSION:

Mr. Tohmm Cobban, architect, submitted an application to allow for the conversion of an attached carport to garage (with sundeck above) to his clients' existing home.

Mr. Cobban appeared before members of the Board of Variance.

BURNABY PLANNING AND BUILDING DEPARTMENT COMMENTS:

The subject site is zoned R5 Residential District and is located in the Willingdon Heights neighbourhood where the age and condition of the existing single and two family dwellings vary. This interior lot is approximately 33.00 feet wide and 122.00 feet deep and fronts Venables Street to the north. The subject site abuts single family lots to the west and east. Vehicular access to the subject site is provided via the lane to the south.

The subject site contains a two storey single family dwelling, which was originally built in 1972. The applicant proposes various additions and interior alterations to the dwelling, including the conversion of the existing attached carport at the rear into an enclosed garage, and the replacement of the existing deck over the carport with an expanded sundeck on top of the proposed garage.

The appeal proposes a side yard setback of 3.93 feet, where a minimum side yard setback of 4.90 feet is required.

The intent of the Bylaw is to mitigate the impact of building massing on neighbouring properties.

The existing dwelling observes a west side yard setback of 3.93 feet and is legally non-conforming with respect to the side yard setback requirement (4.90 feet).

The proposed west side yard setback is measured from the property line to the proposed wall enclosing the former carport at the southwest corner of the dwelling, which would be in line with the footprint of the existing dwelling. At the ground level, the proposed encroachment would consist of the proposed garage wall (approximately 20.00 feet long) and a post set 3.50 feet beyond the face of the garage to support the cantilevered sundeck above. The wall and post would marginally decrease the west side yard setback, due to the slightly angled placement of the existing dwelling on the lot.

On the second floor, the sundeck over the proposed garage would extend 15.50 feet from the face of the existing dwelling towards the lane. It is noted that an existing sundeck projects 9.50 feet over the open carport at this location. The extension of the new open deck by 6.00 feet would create a relatively small increase to the massing at the upper level.

In summary, considering the small scale of the proposed side yard encroachment, no significant impacts are expected to neighbouring property at 4254 Venables Street, and this department does not object to the granting of this variance.

ADJACENT OWNER'S COMMENTS:

No submissions were received regarding this appeal.

MOVED BY MR. PEPPARD
SECONDED BY MR. POUND

THAT based on the plans submitted, this appeal be ALLOWED.

CARRIED UNANIMOUSLY

(c) **APPEAL NUMBER:** B.V. 6322

APPELLANT: Chris Williams, Basil Restoration Ltd.

REGISTERED OWNER OF PROPERTY: James Fitzgerald and Cori
Gabana

CIVIC ADDRESS OF PROPERTY: [7853 Goodlad Street](#)

LEGAL DESCRIPTION OF PROPERTY: Lot 4; DL 90; Plan 21440

APPEAL: An appeal for the relaxation of Section 6.12(3)(a) of the Burnaby Zoning Bylaw, which if permitted, would allow for addition to the main floor and interior alteration to an existing single family dwelling at 7853 Goodlad Street. The applicant requested a variance to allow a side yard setback of 4.36 feet, where a minimum set back of 5.20 feet is required. Zone R2

APPELLANT'S SUBMISSION:

Mr. Chris Williams, Project Manager Basil Restoration Ltd., submitted an application to allow for an addition to the main floor and interior alteration to his clients' home.

Mr. Mark Wittig, owner Basil Restoration Ltd., and Ms. Cori Gabana, homeowner appeared before members of the Board of Variance.

BURNABY PLANNING AND BUILDING DEPARTMENT COMMENTS:

The subject site, which is zoned R2 Residential District, is located in the Lakeview-Mayfield neighbourhood, where the age and condition of the existing single dwellings vary. This interior lot is approximately 52.00 feet wide and 207.00 feet deep. The subject site abuts single family lots to the west and east. Vehicular access to the subject site is provided via the rear lane to the north.

The subject site contains a two storey single family dwelling, which was originally built in 1993. The applicant proposes various interior alterations to the dwelling, including the addition of a floor to ceiling "bump-out" in the family room on the upper level, for which the following variance has been requested.

The appeal proposes a side yard setback of 4.36 feet, where a minimum side yard setback of 5.20 feet is required.

The intent of the Bylaw is to mitigate the impact of building massing on neighbouring properties.

The proposed variance is measured from the west property line to the face of the proposed addition to the upper (main) floor of the dwelling. The existing dwelling observes a west side yard setback of 6.17 feet, with a permitted chimney (4.00 feet wide and approximately 2.00 feet deep) in the northwest corner, which is a permitted encroachment, as per Section 6.12(1) (b) of the Zoning Bylaw.

The proposal shows an approximately 12.50 feet long projection from floor to soffit that is 1'10" deep at the northwest corner of the dwelling. This projection would accommodate a fireplace and other new features inside the family room. The fireplace insert occupies approximately 4.00 feet of the 12.50 feet length of the proposed projection. Should the alcoves flanking the fireplace be intended to be filled with bookcases or cabinetry, these could be built elsewhere within the family room.

The Zoning Bylaw permits chimneys to project into side yards, so if the proposal was for a chimney alone, no variance would be necessary. The Bylaw also permits bay windows (which could contain window seats) to project to a depth of 2.00 feet when the window projection begins 18" above the floor joists. The request for a variance is the result of a design choice. This Department notes that it would not be difficult to achieve a similar effect to the one shown without requiring a variance. Efforts should be made to conform to the Bylaw.

In summary, the request is the result of a design choice, and every effort should be made to work within the framework of the Bylaw, which specifically makes allowances for chimneys and bay windows in side yards. As such, this Department does not support the granting of this appeal.

ADJACENT OWNER'S COMMENTS:

Letters of support were received from 7845 and 7863 Goodlad Street.

No further submissions were received regarding this appeal.

MOVED BY MR. DHATT
SECONDED BY MR. POUND

THAT based on the plans submitted, this appeal be ALLOWED.

CARRIED UNANIMOUSLY

(d) **APPEAL NUMBER:** B.V. 6323

APPELLANT: Daryl Berden, Ridgewater Homes

REGISTERED OWNER OF PROPERTY: Anthony and Roxanne Perry

CIVIC ADDRESS OF PROPERTY: [6555 Denbigh Avenue](#)

LEGAL DESCRIPTION OF PROPERTY: Lot 1; DL 94; Plan NWP11070

APPEAL: An appeal for the relaxation of Sections 105.8(1), 105.9, and 105.10(1) of the Burnaby Zoning Bylaw which, if permitted, would allow for the construction of a new secondary suite, interior and exterior alterations, and a rear addition to an existing single family dwelling at 6555 Denbigh Avenue. The following variances were requested:

- a) a principal building depth of 52.25 feet where the maximum building depth of 47.24 feet is permitted;
- b) a front yard setback of 16.28 feet, where a minimum set back of 25.40 feet is required, based on front yard averaging; and,
- c) a side yard setback of 3.06 feet, where a minimum side yard setback of 4.90 feet is required. Zone R5

APPELLANT'S SUBMISSION:

Mr. Daryl Berden, owner Ridgewater Homes, submitted an application to allow for the construction of a new secondary suite, interior and exterior alterations, and a rear addition to his clients' home.

Mr. Berden and Mr. Carlos Mendonca, Project Manager Ridgewater Homes, appeared before members of the Board of Variance.

BURNABY PLANNING AND BUILDING DEPARTMENT COMMENTS:

The subject site is zoned R5 Residential District and is located in the Windsor neighbourhood where the age and condition of the existing single and two family dwellings vary. This interior lot is a truncated wedge shape, approximately 72.76 feet wide on the Denbigh Avenue frontage and 28.21 feet wide at the rear property line. The longest (south) side yard is 99.00 feet deep, and the north side yard is 95.04 feet. The subject site abuts a C4 commercial development to the west and south, and a residential lot to the north. Vehicular access to the subject site is provided via Denbigh Avenue, as there is no lane access.

The subject site contains a one storey single family dwelling, which was built in 1949, consisting of a main floor and an unfinished basement. The applicant proposes various additions and interior alterations, including an extension at the rear of the dwelling, the addition of a secondary suite in the basement, raising the height of the main floor walls and the construction of a new roof.

The first a) appeal would permit a principal building depth of 52.25 feet where 47.24 feet is permitted.

The Bylaw's intent in limiting building depth is to prevent the creation of dwellings that present a long imposing wall, such that the massing of the building impacts neighbouring properties.

The City Surveyor has confirmed that the lot depth of the subject property is 94.48 feet. When a lot is less than 120.0 feet deep, the Bylaw prescribes that the building depth cannot exceed 50% of the lot depth, so the permitted building length is 47.24 feet.

The building depth calculation is based on the building depth as projected onto the lot depth, which is the line joining the center points of the Denbigh Avenue frontage and the rear property line. Due to the site geometry (the uneven widths of the front (72.76 feet) and rear (28.21 feet) property lines, the depth of the house is measured on a diagonal. Measured along this line, the building depth is 52.25 feet, which exceeds the maximum permitted building depth by 5.01 feet.

It is not anticipated that the additional length will have an impact on the parking lot or the rear drive aisle on the C4 property to the west and south of this property. In relation to 6545 Denbigh Ave. to the north, the rear façade of the proposed addition will be approximately in line with the rear façade of that dwelling. This Department also notes that the massing of the proposed addition has been staggered back from their shared property line, so that the neighbour will not face an overlong plain wall.

The additional building length is due to a proposed decorative feature wall that projects approximately 3.66 feet from the middle of the front façade. It is 2.16 feet wide, so it would not significantly increase the bulk and massing of the house.

The proposal would not violate the intent of the Bylaw because it would not create a long "wall" effect when viewed from the properties to the east and west. Given the unique geometry of the subject site, and the low impact of the proposal on the neighbouring properties, this Department does not object to the granting of the a) appeal.

The second b) appeal proposes a front yard setback of 16.8 feet where a minimum setback of 25.40 feet is required based on front yard averaging.

In 1991, Council responded to the public concerns with respect to the bulk and massing of the newer and larger homes that were built in the established

neighbourhoods. Several text amendments to the Zoning Bylaw were made to address these concerns, including the requirement of a larger front yard where the average front yard depth of the two dwellings on either side of the subject site exceeds the required front yard applicable to the zone. The larger front yard requirement should be calculated through the "front yard averaging". The intent of the amendment was to improve the consistency and harmony of the new construction with the existing neighbourhood.

Here the front yard averaging is based on the front yard setbacks of the two R5 properties to the north, 6545 Denbigh (24.30 feet) and 6535 Denbigh Avenue (26.50 feet). The existing home on the subject site has a legally non-conforming front yard that is 20.00 feet deep.

The front yard setback is measured to the first point of structure, which is the decorative feature wall that projects 3.66 feet from the front face of the existing dwelling. This projection into the front yard is 2.16 feet wide, so it would not significantly increase the bulk and massing of the dwelling. As such, it would not defeat the intent of front yard averaging, which is to ease new and larger dwellings into an existing neighbourhood.

Given the siting of the existing dwelling and the low impact of the proposal on the neighbouring properties, this Department does not object to the granting of the b) appeal.

The third c) appeal proposes a side yard setback of 3.06 feet, where a minimum side yard setback of 4.90 feet is required.

The existing legally non-conforming dwelling observes a north side yard setback of 3.06 feet. The side yard is reduced because the property line is on a diagonal, and the existing dwelling is set at a right angle to Denbigh Avenue. The side yard narrows from approximately 5.00 feet wide at the front of the house (in conformance with the Bylaw) to 3.06 feet at the rear of the existing dwelling across a depth of 22.54 feet.

This variance would permit the existing 8.00 feet interior wall height (and the roof structure above it) on the main floor in this location to be raised to a maximum height of 10.50 feet as measured to the underside of the roof structure and to a maximum overall height of 19.0 feet when the new roof is taken into consideration.

The intent of the Bylaw in regulating side yards is to mitigate the impact of building massing on neighbouring properties.

The height encroachment begins approximately 9.54 feet from the front façade facing Denbigh Avenue, because the side yard narrows from the front to the rear of the property. The increase in the building height inside the nonconforming side yard would occur for a distance of approximately 13.00 feet, to increase the ceiling height to 10.50 feet in the living room, and in the bathroom, (which would be lowered by a dropped ceiling).

The Building Department does not have the plans from 1949 that show the height of the existing dwelling, so it is not possible to precisely know how much greater the massing will be if the variance is allowed. The new wall will be built where the existing nonconforming wall exists, and it will not further decrease the side yard depth. Any projections from the new roof, such as the eaves, would be permissible extensions into the side yard. However, the increased height within the non-conforming side yard would increase the impact of the non-conforming side yard on the adjacent dwelling at 6545 Denbigh Avenue.

The appeal results from a design choice to increase the ceiling height to the highest point in the scheme in this particular location. It would be possible to produce a design that does not exacerbate the non-conformity of the north side yard. As such, this Department does not support the granting of this c) appeal.

ADJACENT OWNER'S COMMENTS:

A letter was received from 5459 Kingsway in opposition to the appeal.

No further submissions were received regarding this appeal.

MOVED BY MR. POUND
SECONDED BY MR. PEPPARD

THAT based on the plans submitted, part (a) of this appeal be ALLOWED.

CARRIED UNANIMOUSLY

MOVED BY MR. POUND
SECONDED BY MR. PEPPARD

THAT based on the plans submitted, part (b) of this appeal be ALLOWED.

CARRIED UNANIMOUSLY

MOVED BY MR. POUND
SECONDED BY MR. PEPPARD

THAT based on the plans submitted, part (c) of this appeal be ALLOWED.

CARRIED UNANIMOUSLY

(e) **APPEAL NUMBER: B.V. 6324**

APPELLANT: Parkat Lehal

REGISTERED OWNER OF PROPERTY: Adeep and Nimrit Lehal

CIVIC ADDRESS OF PROPERTY: [3819 Marine Drive](#)

LEGAL DESCRIPTION OF PROPERTY: Lot 133; DL 175; Plan 11579

APPEAL: An appeal for the relaxation of Sections 102.7(b) and 6.2(2) of the Burnaby Zoning Bylaw which, if permitted, would allow for construction of a new single family dwelling with secondary suite and detached garage at 3819 Marine Drive. The following variances were requested:

a) a principal building depth of 74.50 feet where the maximum depth of 60.0 feet is permitted; and,

b) construction of an accessory building in a required front yard, where no accessory building can be located in a required front yard. The proposed accessory building is 85.5 feet from the front (Marine Drive) property line and 8.0 feet from the north (Maple Tree Lane) property line.

Note: The property is a through lot with two front yards. Zone R2.

APPELLANT'S SUBMISSION:

Mr. Parkat Lehal submitted an application on behalf of the homeowners, to allow construction of a new single family dwelling with secondary suite and detached garage.

Mr. Lehal, homeowner, and Mr. Raj Singh, designer appeared before members of the Board of Variance.

BURNABY PLANNING AND BUILDING DEPARTMENT COMMENTS:

The subject site, zoned R2 Residential District, is located in the Suncrest District where the ages and conditions of the single family dwellings vary. This large through lot is a trapezoid: approximately 52.49 feet wide and 188.15 feet deep on its longest side. It fronts Marine Drive to the south and Maple Tree Lane to the north. Single family dwellings abut the subject site to the east and west. Vehicular access to the subject site is provided from Maple Tree Lane. The site observes a downwards slope of approximately 24.00 feet in the north-south direction.

The first a) appeal is for a principal building depth of 74.50 feet, where a maximum building depth of 60.00 feet is permitted.

The Bylaw's intent in limiting building depth is to prevent the creation of dwellings that present a long imposing wall, such that the massing of the building impacts neighbouring properties.

The building depth calculation is based on the building depth as projected onto the lot depth, which is the line joining the center points of the Marine Drive and Maple Tree Lane property lines. Due to the site geometry (the uneven lengths of the side yards), this line is at a diagonal in relation to the two front property lines. Measured along this line, the proposed projected building depth is 74.00 feet, which exceeds the maximum permitted building depth by 14.00 feet.

When a lot is trapezoidal in shape, this method of measuring the building depth skews the results, because the depth of the house is measured on a diagonal, which gives a longer measurement. If this house was on a rectangular lot, the overall building depth would be 52.00 feet, which is within the 60.00 feet permitted building length.

This Department also notes that the massing of the house is broken up into three offset segments, so that the neighbours on both sides would not face a single overlong wall.

With this design, the proposal would not create a long "wall" effect as viewed from the properties to the east and west. Given the geometry of the subject site, and the low impact of the proposal on the neighbouring properties, this Department does not object to the granting of the a) variance.

The second b) appeal is for the relaxation of Section 6.2(2) of the Burnaby Zoning Bylaw which, if permitted, would permit the construction of an accessory building in a required front yard, where no accessory building can be located. The proposed accessory building is 85.5 feet from the front (Marine Drive) property line and 8.0 feet from the north (Maple Tree Lane) property line.

The intent of the Bylaw in prohibiting construction of accessory buildings in front yards is to ensure a uniform streetscape and to limit impacts on neighbouring yards.

The proposed two car garage would be located in the northwest corner of the property, adjacent to the second front yards of 3807 and 3831 Marine Drive. It would have minimal impact, as these two properties also have garages and parking areas facing Maple Tree Lane. (It should be noted that all the front yards on the south side of Maple Tree Lane function as the rear yards for all six double fronting lots facing Marine Drive).

The closest lot that could be affected by the construction of the garage in this location is 8292 Joffre Street, which has a side yard and rear yard facing Maple Tree Lane.

However, views of the garage from this property would be screened by the thick hedging that borders their property.

In summary, the requested variance would not conflict with the existing development pattern in the subject block, and would create little impact on the neighbouring properties. Therefore, this Department does not object to the granting of the b) appeal.

ADJACENT OWNER'S COMMENTS:

No submissions were received regarding this appeal.

MOVED BY MR. PEPPARD
SECONDED BY MR. DHATT

THAT based on the plans submitted, part (a) of this appeal be ALLOWED.

CARRIED UNANIMOUSLY

THAT based on the plans submitted, part (b) of this appeal be ALLOWED.

CARRIED UNANIMOUSLY

(f) **APPEAL NUMBER: B.V. 6325**

APPELLANT: Khim Chan

REGISTERED OWNER OF PROPERTY: Anthony Yiu

CIVIC ADDRESS OF PROPERTY: [398 Hythe Avenue North](#)

LEGAL DESCRIPTION OF PROPERTY: Lot 84; DL 189; Plan NWP27933

APPEAL: An appeal for the relaxation of Section 6.14(5)(a) of the Burnaby Zoning Bylaw which, if permitted, would allow for the repair and replacement of an over height retaining wall to an existing single family dwelling at 398 Hythe Avenue North. The applicant requested a variance to allow construction of a retaining wall up to 10.3 feet in the front yard, where a maximum height of 3.51 feet for any structure is permitted anywhere on a lot. Zone R2

A previous Board of Variance (BOV 5640 2008 June 05) decision allowed: a) a building height of 35.25 feet, where a maximum building height of 29.5 feet was permitted; b) a three storey height where a maximum 2 ½ storey height was permitted; c) a front yard setback of 40.2 feet where front yard averaging required a setback of 56.2 feet; d) a side yard setback of 4.7 feet where a

minimum side yard setback of 4.9 feet was required; e) a distance of 8.42 feet from the detached accessory building where a minimum distance of 14.8 feet was required between the two structures and with the detached accessory building in a required front yard observing f) a setback from front property line of 21.0 feet where front yard averaging required a minimum setback of 56.2 feet.

APPELLANT'S SUBMISSION:

Mr. Khim Chan, designer, submitted an application on behalf of the property owner to allow for the repair and replacement of an over height retaining wall.

Homeowner Mr. Anthony Yiu and Mr. Chan appeared before members of the Board of Variance.

BURNABY PLANNING AND BUILDING DEPARTMENT COMMENTS:

The subject site, zoned R2 Residential District, is located in the Capitol Hill neighbourhood in which the age and condition of single family dwellings vary. This corner lot has its front yard facing Hythe Avenue North (to the west) and part of its north side yard facing the lane that intersects at an angle with Hythe Avenue. The site is flanked by single family dwellings to the south and east. Vehicular access to the subject site is provided via Hythe Avenue. The site slopes significantly downward from the east to the west and north.

The site contains a large single family dwelling which was built in the early 1980s. Additions were added in 2008 that were the subject of a BOV in 2008 for building height and a reduced front yard setback, a reduced side yard setback and a reduced distance between the accessory building and the dwelling. These variances were granted in June 2008 under BOV 5640.

The lot is irregularly shaped due to the 45 degree corner truncation where the lane intersects with Hythe Avenue North. As a result, the depth of the property varies from approximately 121.00 feet at the south property line to 96.10 feet at the north property line, where the property line angles 45 degrees to meet the front property line on Hythe Avenue North.

The existing retaining wall is located along this angled portion (approximately 35.00 feet long) that faces the lane, and the northernmost frontage on Hythe Avenue. The retaining wall has failed in one location, and is in danger of failing elsewhere. The applicant proposes to rebuild the entire retaining wall, and has applied to the Board of Variance.

The appeal is for construction of retaining walls in the required front yard along the Hythe Avenue frontage with varying heights of up to 10.30 feet, where a maximum height of 3.28 feet is permitted.

The intent of the Bylaw in limiting the height of retaining walls in the required front yard is to ensure unified 'open' front yards and to limit the massing impacts of such structures on neighbouring properties.

In this case, the proposed retaining wall would replace an existing wall in the same location that has failed. The highest portion of the retaining wall (10.31 feet) is located near the intersection of the property line of Hythe Avenue North and the lane. The use of retaining walls, fences and guards is common when dealing with challenging site topography such as that of the subject site. In this case, the existing dwelling, which is built at the crest of the site, requires retaining walls and railings for safety reasons.

Considering the challenging topography of the subject site and the negligible impacts on neighbouring properties, this Department does not object to the granting of the variance.

ADJACENT OWNER'S COMMENTS:

No submissions were received regarding this appeal.

MOVED BY MR. POUND
SECONDED BY MR. PEPPARD

THAT based on the plans submitted, this appeal be ALLOWED.

CARRIED UNANIMOUSLY

5. NEW BUSINESS

No items of new business were brought forward at this time.

6. ADJOURNMENT

MOVED BY MR. POUND
SECONDED BY MR. DHATT

THAT this Hearing do now adjourn.

CARRIED UNANIMOUSLY

The Hearing adjourned at 7:00 p.m.

Mr. S. Nemeth, CHAIR

Mr. R. Dhatt

Ms. B. Felker

Mr. W. Peppard

Ms. M. Macdonald
ADMINISTRATIVE OFFICER

Mr. B. Pound