



BOARD OF VARIANCE

MINUTES

A Hearing of the Board of Variance was held in the Council Chamber, City Hall, 4949 Canada Way, Burnaby, B.C. on Thursday, **2018 July 05** 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: Mr. Maciek Wodzinski, Development Plan Technician
Ms. Monica Macdonald, Administrative Officer
Ms. Lauren Cichon, Administrative Officer

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

2. MINUTES

(a) Minutes of the Board of Variance Hearing held on 2018 June 07

MOVED BY MR. POUND

SECONDED BY MS. FELKER

THAT the minutes of the Burnaby Board of Variance Hearing held on 2018 June 07 be adopted.

CARRIED UNANIMOUSLY

3. APPEAL APPLICATION

The following person filed an application form 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. 6330

APPELLANT: Sukhdev Sandhu

REGISTERED OWNER OF PROPERTY: Kawaldeep Dhaliwal

CIVIC ADDRESS OF PROPERTY: [7028 Mawhinney Close](#)

LEGAL DESCRIPTION OF PROPERTY: Lot B; DL 78; Plan 39700

APPEAL: An appeal for the relaxation of Section 6.14(5)(a) and 102.6(1)(a) of the Burnaby Zoning Bylaw which, if permitted, would allow for the construction of a new single family dwelling with secondary suite and attached garage at 7028 Mawhinney Close. The following variances are requested:

a) Construction of a fence in the required front yard up to a maximum of 4.62 feet, where a maximum fence height of 3.51 feet is permitted;

b) A principal building height of 35.54 feet (sloped roof) measured from the rear average grade, where the maximum height of 29.5 feet is permitted;

c) A principal building height of 30.95 feet (sloped roof) measured from the front average grade, where the maximum height of 29.5 feet is permitted; and,

d) A principal building height of 3 storeys, where 2½ storeys is permitted. Zone R2

APPELLANT'S SUBMISSION:

Mr. Sukhdev Sandhu, on behalf of the property owner, submitted an application to allow for the construction of a new single family dwelling with secondary suite and attached garage.

Mr. Sandhu and the designer, Mr. Raj Singh, 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 Sperling neighbourhood in which the age and condition of single family dwellings vary. This slightly irregular (trapezoid shaped) large interior lot, approximately 144.1 ft. wide by 117.7 ft. deep (along the shorter west side property line), fronts with the east portion of

the north property line onto Mawhinney Close to the north and Ellerslie Avenue to the south. The subject site abuts the green "Pollywog Tributary 1" buffer zone of the single family lots to the north and west; there are single family dwellings across Mawhinney Close to the north, a vacant residential lot to the east and "Pollywog Creek" across Ellerslie Avenue to the south. Vehicular access to the subject site is proposed from Mawhinney Close; there is no lane access. The subject property observes a substantial downward slope of approximately 23.1 ft. from the northeast corner to the southeast corner. "Pollywog Tributary 1" runs roughly parallel along west property line as well as a drainage Right of Way.

Due to the presence of "Pollywog Tributary 1", this proposal is subject to the Streamside Protection and Enhancement Area (SPEA) regulations provided in Section 6.23 of the Zoning Bylaw. A Section 219 covenant is registered on the Title to protect the SPEA, including a 'no-build' zone 49.21 ft. (15 m.) wide extending from top of the bank line.

Along the south property line, there are two Rights-of-Way (R.O.W.): a Sanitary Sewer R.O.W and a B.C. Hydro R.O.W, which is approximately 80.0 ft. wide. Although, this property is 22,390 sq.ft. in size, the area remaining for permitted development is 3,255 sq. ft.

The subject lot is proposed to be developed with a new single family dwelling with a secondary suite and an attached garage, for which four variances have been requested.

The first a) appeal is for construction of a retaining wall in the required front yard along the eastern property line with varying heights of up to 4.26 ft., where a maximum height of 3.51 ft. is permitted.

The intent of the Bylaw in limiting the height of retaining walls to a maximum of 3.51 ft. 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 new retaining wall would permit the creation of a moderate 5.5% slope for the driveway from the front property line to the garage. The retaining wall is proposed along the entire east side property line adjacent to the vacant residential property. A conforming 3.5 ft. high aluminum fence would be positioned on top of the retaining wall.

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 retaining wall drop down from the driveway level at the property line into the neighbouring property, so the total 4.26 ft. height of retaining wall and 3.50 ft. fence on top of it, would be visible from the neighbouring property to the east of the subject site and from Mawhinney Close at street level. However, it should be noted that the future neighbour to the east may face the same challenge of a steep driveway, and may choose the same solution, by raising their garage slab elevation to level out the slope of the driveway, and practically eliminating the need for the retaining wall between the two driveways of the neighbouring properties.

Considering the challenging topography of the subject site and the unknown future impact on the vacant neighbouring property, this Department does not object to the granting of the first a) variance.

The following two appeals are related to the principal building height and are co-related.

The second b) appeal is to vary Section 102.6(1)(a) – “Height of Principal Building” of the Zoning Bylaw from 29.5 ft. to 35.54 ft., as measured from the rear average elevation.

The third c) appeal is to vary Section 102.6(1)(a) – “Height of Principal Building” of the Zoning Bylaw from 29.5 ft. to 30.95 ft., as measured from the front average elevation.

The intent of the height requirements of the Zoning Bylaw is to mitigate the massing impacts of the new buildings and structures on neighbouring properties and to preserve the views.

With respect to the second b) appeal, the proposed dwelling observes a rear elevation height of 35.54 ft. from the Ellerslie Avenue property line, which is substantially (6.04 ft.) greater than the allowed maximum height. In this case, the height calculation is based on the existing average grade at the outermost face of the rear elevation. It should be noted that the grade difference between the front and the rear of the subject site is one of the contributing factors to the excess height of the rear elevation. The affected over height area includes the whole roof as seen from the south. However the only impact is on the streetscape as there are no immediate neighbours to the south of the subject site due to the Pollywog Creek conservation area across Ellerslie Avenue, to the west due to “Pollywog Tributary 1” and currently vacant lot to the east.

It should be noted that despite the difficult site topography and the legal limitations in the west and south portions of the property, the building area is located between the required setbacks, and the requested variances are not the cause of these restrictions. The over height nature of the proposed dwelling is a design choice, and the major contributing factor is the clear floor to ceiling height proposed on all 3 floors of the building: 9.0 ft. clear in the secondary suite/rec. room basement, 10.0 ft. clear on main level and 9.0 ft. clear height on the upper level.

With respect to the third c) appeal, the proposed dwelling observes a front elevation height of 30.95 ft., which is 1.45 ft. more than the allowed maximum building height. The over height area is located in a relatively small area in the center of the sloped roof. This proposal would slightly affect south views from the properties directly across the Mawhinney Close to the north, which are located at approximately 10.0 ft. higher elevations than subject dwelling.

In summary, the second b) variance is a major variance which appears to be the result of design choices rather than a hardship, and the variance could easily be lessened

with design modifications. The requested third c) variance to the height requirements of the Zoning Bylaw would create some impacts on the views from the neighbouring properties across Mawhinney Close.

For these reasons, this Department cannot support of the granting the second b) and third c) variances.

The fourth d) appeal is to vary Section 102.6(1)(a) - Height of Principal Building” of the Zoning Bylaw from 2 ½ storey to 3 storey.

According to the Zoning Bylaw a storey is considered a “half storey” if it contains less than 50% of the gross floor area of the storey immediately below. The proposed 1,709 sq.ft. second floor, which consists of four bedrooms, four bathrooms, lounge and a high volume space open to the foyer below, is 76% of the size of the 2,237 sq.ft. main floor. The second floor as proposed exceeds the permitted 50% size by 528 sq. ft., which is a major variance. However, while being clearly a design choice and not a hardship, the increased second floor area will have a limited negative influence on the properties on the other side of Mawhinney Close, which are situated approximately 10.0 ft. above the subject property. However, the proposed excess height, in combination with the fact that the entire rear elevation would appear as a three-storey form, would create negative massing impacts on the Ellerslie Avenue street scape.

Therefore, because the request for a variance is the result of a design choice and lack of demonstrated hardship, this Department cannot support of the granting the fourth d) variance.

ADJACENT OWNER’S COMMENTS:

A letter was received from 7056 Mawhinney Close in opposition to the appeal. The owner and her daughter also appeared and expressed concern with the loss of sunlight to the garden and patio on the west side.

No further submissions were received regarding this appeal.

MOVED BY MR. DHATT
SECONDED BY MR. POUND

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

CARRIED UNANIMOUSLY

MOVED BY MR. DHATT
SECONDED BY MR. POUND

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

FOR: MS. FELKER
MR. NEMETH
MR. PEPPARD
MR. POUND

OPPOSED: MR. DHATT

CARRIED

This appeal was DENIED.

MOVED BY MR. DHATT
SECONDED BY MR. POUND

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

FOR: MR. DHATT

OPPOSED: MS. FELKER
MR. NEMETH
MR. PEPPARD
MR. POUND

LOST

This appeal was DENIED.

MOVED BY MR. DHATT
SECONDED BY MR. POUND

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

FOR: MR. DHATT

OPPOSED: MS. FELKER
MR. NEMETH
MR. PEPPARD
MR. POUND

LOST

This appeal was DENIED.

4. **NEW BUSINESS**

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

5. **ADJOURNMENT**

MOVED BY MR. PEPPARD
SECONDED BY MR. POUND

THAT this Hearing do now adjourn.

CARRIED UNANIMOUSLY

The Hearing adjourned at 6:24 p.m.

Mr. S. Nemeth, CHAIR

Mr. R. Dhatt

Ms. B. Felker

Mr. W. Peppard

Ms. L. Cichon
ADMINISTRATIVE OFFICER

Mr. B. Pound