



CITY OF BURNABY

BOARD OF VARIANCE

NOTICE OF OPEN MEETING

MINUTES

A Hearing of the Board of Variance was held in the Council Chamber, Main Floor, City Hall, 4949 Canada Way, Burnaby, B.C., on Thursday, 2016 October 06 at 6:00 PM

1. CALL TO ORDER

PRESENT: Ms. Charlene Richter, Chair
Mr. Guyle Clark, Citizen Representative
Mr. Rana Dhatt, Citizen Representative

ABSENT: Mr. Stephen Nemeth, Citizen Representative
Mr. Brian Pound, Citizen Representative

STAFF: Ms. Margaret Malysz, Planning Department Representative
Ms. Eva Prior, Administrative Officer

The Chair for the Board of Variance called the meeting to order at 6:10 p.m.

2. MINUTES

**(a) Minutes of the Board of Variance Hearing held on 2016
September 08**

MOVED BY MR. DHATT
SECONDED BY MR. CLARK

THAT the minutes of the Burnaby Board of Variance Hearing held on 2016 September 08 be adopted as circulated.

CARRIED UNANIMOUSLY

3. 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. 6245

APPELLANT: DAVID SARRAF

REGISTERED OWNER OF PROPERTY: 450617 BC LTD

CIVIC ADDRESS OF PROPERTY: 7876 13th Avenue (7709 6th Street)

LEGAL DESCRIPTION OF PROPERTY: Lot 22; DL 28; Plan NWP24032

APPEAL: An appeal for the relaxation of Section 302.6 of the Burnaby Zoning Bylaw which, if permitted, would allow for the retention of an addition (built without permit) to an existing commercial building at 7876 13th Avenue (7709 6th Street). There would not be a front yard setback where a minimum front yard setback of 6.5 feet is required. (Zone - Community Commercial District C2)

APPELLANT'S SUBMISSION

David Sarraf submitted an application requesting a relaxation of the zoning bylaw to allow for retention of an addition which has no front yard setback. The addition provides uniformity along the 60 feet of storefronts. The applicant advises that since the purchasing of the building in October 2015, he has spent considerable time and money improving the property.

Mr. Sarraf and Ms. Tihanenok appeared before members of the Board of Variance.

BURNABY PLANNING AND BUILDING DEPARTMENT COMMENTS

The subject site is located in the Edmonds area, in a mixed-use commercial neighbourhood in which the age and conditions of buildings vary. The site is zoned C2 Community Commercial District, which is intended to provide for the daily and occasional shopping needs of the residents of several neighbourhoods. The subject lot measures approximately 51.25 ft. in width and 135.30 ft. in depth. This corner lot fronts onto the southwest side of Sixth Street and flanks Thirteenth Avenue to the northwest. The site takes vehicle access from Thirteenth Avenue; there is no lane access. To the southeast and southwest the site is bordered by lots containing single family dwellings. There is a small commercial building immediately across Thirteenth Avenue to the northwest of the subject site and a larger townhouse complex immediately across Sixth Street to the northeast. The site observes a downward slope of approximately 3.00 ft. in the northwest-southeast direction.

The subject property is improved with a two storey commercial building at the front of the lot and a parking/landscape area to the rear of the lot. The existing building was originally built in 1912/50 and further improved over the years with various interior and exterior alterations.

In March 2016 a building permit was issued for interior alterations and finishing for a future tenant by the landlord (BLD16-00313). The associated occupancy permit was issued in May 2016. Since then the applicant applied for a preliminary plan approval (PPA) with respect to a change of use from retail to self-improvement school within the same tenancy space. During a PPA review process an error was identified by City staff which allowed a new addition to the front of the building in the issued building permit. As a result, a variance is required in order to legalize the new addition encroaching into the front yard, in accordance to the Burnaby Zoning Bylaw.

The appeal proposes the relaxation of Section 302.6 – “Front Yard” of the Burnaby Zoning Bylaw from 2.0 m. (6.5 ft.) to 0.0 m. (0.0 ft.) (nil front yard). The purpose of this variance is to retain the already built addition to the existing commercial building located at the front yard of 7876 Thirteenth Avenue (it should be noted that the subject property is a corner lot fronting to Sixth Street although it’s addressed off of Thirteenth Avenue).

The intent of the “Front Yard” requirements of the Zoning Bylaw is to mitigate the massing impacts of the buildings and structures on the neighbouring properties and the adjoining streets, to preserve a unified streetscape and to create pedestrian oriented sidewalks with pedestrian scale.

The existing building is legally non-conforming with respect to the front yard requirements. The building envelope occupies the entire front portion of the property as the front building façade on the second floor facing Sixth Street aligns with the front property line. The main floor of the building observes small recessions (up to an approximately 4.0 ft. in depth) from the front property line on the northern and southern sections of the building. The new addition (approximately 36.0 sq. ft.) which extends the main floor of the building to the front property line at the southern corner, created further encroachment into the front yard. However, this encroachment is still within the existing building envelope. It should be noted that most of neighbouring commercial properties along Sixth Street and north of Thirteenth Avenue are legally non-conforming with respect to the front yard requirements of the Bylaw.

Considering the small scale of the addition and its confined nature, this relaxation would not increase the building’s massing impacts on the neighbouring sites or the street. However, it appears that the proposed addition was the result of improving the building aesthetics rather than hardship. It should be noted that issuance of the building permit for the proposed addition was based on the information provided on the applicant’s drawings, noted that “the existing part of wall to be moved out to original location.” Under this situation, no further encroachment could be made by approving the proposed addition to the building. However, the City records indicate that there was no wall existing in this location for at least several years.

Further, although it is recognized that the existing building on this site is legally non-conforming with respect to the front yard requirements, any additional encroachments into the required front yard, such as the subject extension of the main floor, contributes to further contraventions to the Bylaw than that existing at the time the extension was started.

For the above reasons, this Department cannot support the granting of this variance.

ADJACENT OWNER'S COMMENTS:

Correspondence was received from tenants at 7709 6th Street advising that the landlord has worked extremely hard to clean-up and renovate the building. The front addition allows parents to sit and watch their children while attending classes.

A form letter was received from owners/tenants of 7656, 7667, 7669, 7671, 7675, 7677 and 7695 6th Street in favour of the variance requested. The letter outlines the improvements to the building and the overall improvement to the neighbourhood.

No further submissions were received regarding this appeal.

MOVED BY MR. CLARK
SECONDED BY MR. DHATT

THAT based on the plans submitted this appeal be ALLOWED.

CARRIED UNANIMOUSLY

(b) APPEAL NUMBER: B.V. 6246

APPELLANT: Trevor Toy, Raffaele and Associates

REGISTERED OWNER OF PROPERTY: Sonny Gurjal

CIVIC ADDRESS OF PROPERTY: 7774 Government St.

LEGAL DESCRIPTION OF PROPERTY: Lot 54; DL 42; Plan 26832

APPEAL: An appeal for the relaxation of Section 101.8 of the Burnaby Zoning Bylaw which, if permitted, would allow for the construction of a new single family dwelling at 7774 Government Road. The front yard setback would be 29.53 feet where a minimum setback of 114.5 feet is required based on front yard averaging. All projections into the proposed front yard will conform to the requirements of Section 6.12. (Zone R1)

APPELLANT'S SUBMISSION

Trevor Toy, on behalf of the homeowners, submitted an application requesting a relaxation of the zoning bylaw to allow for construction of a new single family dwelling with a reduced front yard setback. The subject lot's depth is much less than the neighbouring properties and therefore skews the front yard averaging. The rear of the property also has a water course which requires a minimum rear yard setback of 55.77 feet.

Sunny Gujral, owner and Mayumi Hasegawa, designer, appeared before the members of the Board regarding this appeal.

BURNABY PLANNING AND BUILDING DEPARTMENT COMMENTS

The subject site, zoned R1 Residential District, is located in the Government Road neighbourhood in which the age and condition of single family dwellings vary. This interior lot, approximately 100.00 ft. wide and 155.09 ft. deep, fronts onto Government Road to the north. The subject site abuts single family residential lots to the east and south and further west. Vehicular access to the subject site is proposed to be retained from Government Road; there is no lane access. The subject property observes a downward slope of approximately 11.2 ft. from the northeast corner to the southwest corner, which contains the creek ravine.

Eagle Creek runs in close vicinity to the southwest (rear) portion of the subject site. As such, this proposal is subject to the Streamside Protection and Enhancement Area (SPEA) regulations provided in Section 6.23 of the Zoning Bylaw. In April 2016, the Environmental Review Committee (ERC) supported the application to vary the SPEA from 98.4 ft. (30.0 m) to a variable setback, ranging from 49.2 ft. (15.0 m) to 75.5 ft. (23.0 m) consistent with the "SPEA Protection Zone" at the southwest (rear) portion of the subject site. The requested variance was approved subject to provision of a formal rear yard, 26.3 ft. (8.0 m) wide, measured from the south boundary of the "potential development area". In addition to providing a rear yard, there are number of other conditions including the registration of a covenant protecting the SPEA and the formal rear yard. The registration of the covenant is now in progress. In addition, a Greater Vancouver Sewerage and Drainage District (GVS&DD) easement, which generally follows the creek alignment, occupies the southwest corner of the subject lot.

Location of the above mentioned covenants and easement would result in approximately 55.82 ft. (17.01 m) deep "no built" zone along the rear property line which would significantly restricts the developable area within the property.

The subject lot is proposed to be re-developed with a new single family dwelling, with a secondary suite and attached garage, for which a variance has been requested.

The appeal proposes the relaxation of Section 101.8 – "Front Yard" of the Burnaby Zoning Bylaw from 114.5 ft. (based on front yard averaging) to 29.53 ft. The purpose of

this variance is to allow construction of the proposed single family dwelling with the front porch encroaching into the required front yard abutting the Government Road. Section 6.12 – “Yards” of the Zoning Bylaw allowing specific projections into the front yard will also be applicable.

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 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 consistency and harmony of the new construction with the existing neighbourhood.

To calculate the required front yard of the subject property (front yard averaging), the front yard of the two neighbouring properties immediately west of the subject site, at 7732 and 7750 Government Road, and the two neighbouring properties immediately east of the subject site, at 7798 and 7814 Government Road, were calculated. These front yards are 179.6 ft. and 137.0 ft. for the properties to the west and 73.8 ft. and 67.6 ft. for the properties to the east, respectively. All four neighbouring properties affect these calculations, particularly the two lots immediately west of the subject site, which are approximately 307 ft. deep (the two lots immediately east of the subject site are approximately 230 ft. deep). The neighbouring properties’ average front yards, measured from the front property line to the outermost section of the building (none of the buildings has a front porch), calculated as 114.5 ft.

The proposed front yard of the subject property is measured to the posts of the front porch of the proposed dwelling as 29.53 ft. The porch, which is measured 19.18 ft. wide and 6.83 ft. deep, would be located off center to the east of the front elevation. The main body of the dwelling would observe various setbacks from the front porch post, up to 9.3 ft. at the northeast corner and up to 14.8 ft. at the northwest corner, resulting in a setback of 38.8 ft. and 44.33 ft. respectively from these corners to the front property line. The upper floor would be generally aligned with the main floor at the front.

According to the proposed front yard, the proposed dwelling will be located 44.27 ft. further to the north compare to the detached garage on the neighbouring property to the east. This property was recently redeveloped, following the successful appeal to the Board of Variance in August 2011 (BV 5922) with respect to the front yard setback and height of the accessory building (detached garage). According to the Building Permit drawings (BLD 11-01085) the principal building at this property observes a front yard setback of 111.56 ft. Therefore, considering the proposed front yard setback (29.53 ft.) and the proposed dwelling depth of 60 ft., including the front porch, there would be no direct overlap between the two dwellings. In fact, the proposed dwelling would only partly overlap the neighbouring detached garage, by approximately 7.2 ft. It could be argued that the proposed siting would be an improvement from the previous condition where the existing dwelling on the subject site partly overlapped the neighbouring

residence to the east (the existing dwelling on the subject site, which is now demolished, observed a front yard setback of approximately 86 ft.). Further, since the proposed dwelling features limited amount of windows at the upper level facing east toward the neighbouring property, the proposed front yard would have minimal impacts on the neighbouring property to the east.

With respect to the neighboring property to the west, considering the location of the neighbouring residence at the rear of the property, as well as a complete visual separation provided by the mature greenery of the Eagle Creek tributary area between the two properties, this proposal would have minimal impact on the neighbouring residence to the west.

The proposed front yard has minimal impact on the neighbourhood context as the neighbouring properties' front yard in the block vary significantly, ranging from 16.0 ft. to 180.0 ft. As a result, the proposed siting of the subject dwelling would not be out of ordinary within the existing streetscape.

Moreover, given the presence of the stream setback and sewer easement on the subject site, the transitioning of the front yard setback forward, in line with the minimum required setback in the R1 District, is suitable for the subject site.

For all of the reasons stated above, this Department does not object to the granting of this variance.

ADJACENT OWNER'S COMMENTS:

Correspondence was received from 7468, 7478, 7732 and 7750 Government Road advising they support the requested front yard setback.

Correspondence was received from the residents of 7798 Government Road advising they are not in support of the appeal. The owners advised that their view and property value will be adversely affected by the variance requested.

A form letter was received from the residents/owners at 7785 and 7798 Government Road advising they are not in support of the proposed front yard setback. They also sited that the owners of 7774 Government Road have already been granted a variation to the creek by the Burnaby Environmental Review Committee.

Form letters were received both in support and in opposition to the appeal from residents/occupants at 7765 and 7775 Government Road.

Mr. Brad Lamoureux, 4178 Rose Crescent, West Vancouver, appeared representing owners of 7798 Government Road. Mr. Lamoureux expressed concern regarding the requested front yard setback and advised it would adversely affect the property at 7798 Government Road.

MOVED BY MR. CLARK
SECONDED BY MR. DHATT

THAT based on the plans submitted this appeal be DENIED.

CARRIED

OPPOSED: Mr. Dhatt

4. **NEW BUSINESS**

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

5. **ADJOURNMENT**

MOVED BY MR. DHATT
SECONDED BY MR. CLARK

THAT this Hearing do now adjourn.

CARRIED UNANIMOUSLY

The Hearing adjourned at 7:05 p.m.

Ms. C. Richter

Mr. G. Clark

Ms. E. Prior
ADMINISTRATIVE OFFICER

Mr. R. Dhatt