



BOARD OF VARIANCE

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, **2019 September 05** at 6:00 p.m.

1. CALL TO ORDER

PRESENT: Mr. Stephen Nemeth, Chair
Ms. Jacqueline Chan, Citizen Representative
Mr. Rana Dhatt, Citizen Representative

ABSENT: Ms. Brenda Felker, Citizen Representative
Mr. Wayne Peppard, Citizen Representative

STAFF: Ms. Margaret Malysz, Development Plan Approvals Supervisor
Mr. Maciek Wodzinski, Development Plan Technician
Ms. Monica Macdonald, Administrative Officer

The Chair called the meeting to order at 6:06 p.m.

2. MINUTES

(b) Minutes of the Board of Variance Hearing held on 2019 July 04

MOVED BY MR. DHATT
SECONDED BY MS. CHAN

THAT the minutes of the Burnaby Board of Variance Hearing held on 2019 July 04 be adopted.

CARRIED UNANIMOUSLY

3. APPEAL APPLICATIONS

(a) APPEAL NUMBER: B.V. 6372

APPELLANT: Jianting Ji

REGISTERED OWNER OF PROPERTY: Jianting Ji

CIVIC ADDRESS OF PROPERTY: 9890 Martin Court

LEGAL DESCRIPTION OF PROPERTY: Lot: 18 DL: 8 Plan: NWP18503

APPEAL: An appeal for the relaxation of Section 102.8 of the Burnaby Zoning Bylaw which, if permitted, would allow for the construction of a new single family dwelling with a secondary suite and attached garage at 9890 Martin Court, with a front yard depth of 30.63 feet where a minimum depth of 33.91 feet is required based on front yard averaging. Zone R2.

APPELLANT'S SUBMISSION:

Mr. Jianting Ji, property owner, submitted an application to allow for the construction of a new single family dwelling with a secondary suite and attached garage at 9890 Martin Court.

Mr. Ji and Mr. Jack Ji, his son, 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 Lyndhurst neighbourhood in which the age and condition of single family dwellings vary. This interior lot is approximately 35.05 metres (115.0 feet) deep along the western property line, and 29.87 metres (98.0 feet) along the eastern property line. The width of the lot also varies from the wider southern rear property line of approximately 22.86 metres (75.0 feet) to the narrower front property line. The front property line facing Martin Court to the north is a combination of a straight 9.75 metres (32.0 feet) section and a curved 10.36 metres (34.0 feet) section with a radius of 13.72 metres (45.0 feet). The north-east section of the property is "clipped off" by the circular turnaround of Martin Court. The site is flat, and single family dwellings abut the subject site to the west, east, south, and across Martin Court to the north. Vehicular access to the site is provided from Martin Court as there is no lane access. The subject lot is proposed to be developed with a new single-family dwelling with a secondary suite and a two-car garage, for which a variance has been requested.

The appeal proposes a front yard setback of 9.34 metres (30.63 feet), as measured to the corner of the proposed single-family dwelling, with a further projection of 0.80 metres (2.62 feet) for a covered porch where front yard averaging requires a minimum setback of 10.34 metres (33.91 feet) from the front property line.

In 1991, Council responded to the public concerns regarding the bulk and massing of the newer and larger homes that were built in existing neighbourhoods. Several text amendments to the Zoning Bylaw were made to address these concerns, including the

requirement that the front yard for the new constructions shall be based on the average front yards of the two properties on either side of the subject site. The intent was to maintain a unified and consistent streetscape along the properties' frontages.

In this case, the front yard averaging calculations are based on the front yards of the two dwellings at 9850 and 9870 Martin Court immediately west of the subject site, and two dwellings at 9970 and 9980 Martin Court immediately to the east. The front yard setbacks for these properties are 8.66 metres (28.42 feet), 9.01 metres (29.56 feet), 10.67 metres (35.02 feet) and 12.00 metres (42.64 feet) respectively. The two dwellings in the turnaround area immediately to the east of the subject site significantly affect the front yard averaging calculation. The new front yard requirement of 10.34 metres (33.91 feet) is much greater than the setback of the existing dwelling which was originally built in 1958 with a front yard setback of approximately 7.00 metres (23.00 feet). The requested front yard variance of 9.34 metres (30.63 feet) is a compromise between the two measurements.

The proposed dwelling has a staggered layout facing the curved north-east property line abutting the turn around to minimize the projections into the front yard. However, in two locations, parts of the building, which are roughly triangular in shape encroach into the required front yard setback. On the lower level there is a 1.00 meter (3.28 feet) garage encroachment which is 9.34 metres (30.63 feet) from the front property line where 10.33 metres (33.91 feet) is required. A similar encroachment occurs on the main floor where the great room is located directly over the garage, with further permitted bay window projections into the required front yard.

Also on the main floor, the covered porch projects approximately 1.79 metres (5.89 feet) into the front yard. This projection exceeds the permitted 1.20 metres (3.94 feet) encroachment into the yard by 0.59 metres (1.95 feet). If the appeal is permitted, the outer edge of the covered porch will be 8.54 metres (28.02 feet) from the front property line.

With respect to the existing streetscape, the proposed dwelling would be located approximately 2.17 metres (7.11 feet) behind the adjacent dwelling to the west, and approximately 1.34 metres (4.39 feet) in front of the adjacent dwelling to the east (or approximately 2.44 metres (8.00 feet) if the west corner of the neighbouring dwelling to the east, and the east corner of proposed dwellings are considered). Therefore, this proposal may have some impacts on this neighbouring property to the east.

With regard to the broader neighbourhood context, the siting of the proposed dwelling maintains the existing transition between the smaller front yard setback of the properties to the west, and the larger front yard setbacks of the properties to the east, which fulfills the intent of the Bylaw to ensure consistency of the new construction with the existing street frontages.

ADJACENT OWNER'S COMMENTS:

No correspondence was received regarding this appeal.

MOVED BY MR. DHATT
SECONDED BY MS. CHAN

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

CARRIED UNANIMOUSLY

The Board found that compliance with the bylaw would cause the applicant undue hardship owing to the characteristics of the lot, and noted that the variance is minor.

(b) APPEAL NUMBER: B.V. 6373

APPELLANT: Shu Bing Zheng

REGISTERED OWNER OF PROPERTY: Ming F. Zhang

CIVIC ADDRESS OF PROPERTY: 4684 Burke Street

LEGAL DESCRIPTION OF PROPERTY: Lot: 56 DL: 33 Plan: NWD 16622

APPEAL: An appeal for the relaxation of Section 6.3.1 of the Burnaby Zoning Bylaw which, if permitted, would allow for the construction of a new single family dwelling with a secondary suite and detached garage at 4684 Burke Street, with a distance between buildings on the same lot of 6.58 feet where a minimum distance of 14.8 feet is required. Zone R4.

APPELLANT'S SUBMISSION:

Mr. Shu Bing Zheng, husband of the property owner, submitted an application to allow for the construction of a new single family dwelling with a secondary suite and detached garage at 4684 Burke Street.

Mr. Zheng and Mr. Wiseman Ni, builder, appeared before members of the Board of Variance.

BURNABY PLANNING AND BUILDING DEPARTMENT COMMENTS:

The subject site, zoned R4 Residential District is located in the established single family Marlborough neighbourhood. The majority of the houses dated from 1950s to present and form a consistent and uniform streetscape. The subject site measures approximately 18.29 metres (60.0 feet) wide by 32.74 metres (107.4 feet) long. It is surrounded on all sides by single family dwellings with the majority of them containing a detached garage accessed from the rear lane.

The applicant proposes to improve the property with a single family dwelling containing a secondary suite and a detached two-car garage.

The appeal is to vary Section 6.3.1 - "Distance between Buildings on the same Lot" of the Zoning Bylaw to reduce the distance between the detached garage and the principal building from 4.5 metres (14.8 feet) to 2.0 metres (6.58 feet) to allow for construction of a detached garage.

The Bylaw requires a minimum separation between a principal building and a detached garage on the same lot, to reduce the impact of the overall massing of the buildings, as well as maintaining an adequate distance between the buildings, to prevent overshadowing and to protect the resident's privacy.

In this case, the proposed rear yard setback of the principal building will be only 9.31 metres (30.53 feet) because the new house observes a front yard setback of 13.42 metres (44.02 feet). The front yard setback was calculated based on the average depth of the front yards of the neighbouring properties on each side of the subject property, in order to fit the new dwelling into the established streetscape. The proposed design meets this requirement.

The southeast corner of the rear yard is occupied by a detached garage, 6.86 metres (22.5 feet) wide by 6.1 metres (20.0 feet) deep in size. Almost the entire width of the garage (5.86 metres (19.22 feet)) overlaps the principal building. The windows of the kitchen and wok kitchen on the main floor, and the bedroom and kitchen windows of the secondary suite in the cellar face onto the overlapping portion of the two-car garage. In general, most cellars do not have sufficient openings to receive enough sunlight during the day. In this case, the cellar's lighting conditions is additionally compromised by proposing small windows in small window wells, and the overlapping wall of the garage which is only 2.0 metres (6.58 feet) away. The kitchens on the main floor will receive more daylight due to the lower height of the garage, the sloping garage roof, and the southern exposure. Therefore, there are major impacts from this variance on the occupants of the secondary suite in the cellar, and minor impacts on the occupants of the main floor.

The overlapping area would be at least 10.36 metres (34.0 feet) away from the western shared property line, and this generous side yard setback helps to alleviate any possible impacts on the neighbouring property to the west. The neighbouring dwelling to the east has no windows facing the space between the garage and the building on the subject site.

The outdoor living space will be available immediately west of the garage in the rear yard, and in the generous front yard. It is also noted that most of the existing houses on the south side of Burke Street have shorter lot depths due to the configuration of the street block. This combined with their consistently deep front yard setbacks, which are almost twice as deep as the standard R4 front yard setback, means that the other houses also observe a similar pattern of reduced distance between principal buildings and detached garages.

ADJACENT OWNER'S COMMENTS:

Correspondence was received from the owners of 4668 and 4683 Burke Street in support of the appeal.

MOVED BY MS. CHAN

SECONDED BY MR. DHATT

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

CARRIED UNANIMOUSLY

The Board found that compliance with the bylaw would cause the applicant undue hardship owing to the physical characteristics of the adjacent sites (homes are set well back).

(c) APPEAL NUMBER: B.V. 6375

APPELLANT: Eric Lee, VictorEric Design Group

REGISTERED OWNER OF PROPERTY: Bakhshish S. Haylat

CIVIC ADDRESS OF PROPERTY: 7038 Mawhinney Close

LEGAL DESCRIPTION OF PROPERTY: Lot: A DL: 78 Plan: EPP39700

APPEAL: An appeal for the relaxation of Section 102.6(1)(a) of the Burnaby Zoning Bylaw which, if permitted, would allow for the construction of a new single family dwelling with a secondary suite and attached garage at 7038 Mawhinney Close, with a principal building height 34.0 feet, measured from the rear average grade for the proposed dwelling with a sloping roof, where a maximum building height of 29.5 feet is permitted. Zone R2.

A previous BOV decision (BOV 6337 - 2018 September 06) denied a principal building height of 34.81 feet, measured from the rear average grade (sloping roof); however, allowed a building depth of 74.0 feet (where the maximum building depth of 60.0 feet is permitted).

APPELLANT'S SUBMISSION:

Mr. Eric Lee, VictorEric Design Group, on behalf of the property owner, submitted an application to allow for the construction of a new single family dwelling with a secondary suite and attached garage at 7038 Mawhinney Close.

Mr. Joe Gerl, VictorEric Design Group, appeared before members of the Board of Variance.

BURNABY PLANNING AND BUILDING DEPARTMENT COMMENTS:

This property was the subject of an appeal before the Board on 2018 September 06. Two variances were sought to allow for a principal building height increase from 9.0 metres (29.5 feet) to 10.6 metres (34.81 feet), and the principal building depth increase from 18.3 metres (60.0 feet) to 22.55 metres (74.0 feet). The Board denied the first building height appeal, and granted the second appeal regarding the building depth.

This appeal proposes to vary Section 102.6(1)(a) – “Height of Principal Building” of the Zoning Bylaw from 9.0 metres (29.5 feet) to 10.36 metres (34.0 feet).

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.

This appeal proposes to reduce height of the building by approximately 0.25 metres (10 inches) compared to the original proposal back in 2018, from 10.6 metres (34.81 feet) to 10.36 metres (34.00 feet). It should be noted that the proposed reduction in height is the result of an oversight made by the Building Department in the original Board of Variance appeal. The physical height of the building has not been reduced in this appeal. The applicant tried to raise grades on both east and west sides of the garage to reduce the weighted average grade calculations, but the proposal was refused by BC Hydro on east side of the garage, where a number of retaining walls are located over BC Hydro Right of Ways. No other design attempts to reduce the building height have been noted.

Considering the proposal has not being changed from the original appeal, this Department’s comments remain similar to comments on the 2018 September 06 appeal.

The subject site, zoned R2 Residential District is located in the Sperling-Broadway neighbourhood in which the age and condition of single family dwellings vary. This undeveloped through lot is an irregular (trapezoid shaped) interior lot, approximately 18.56 metres (60.9 feet) wide by 55.86 metres (183.27 feet) deep along the shorter property line to the west, and 61.73 metres (202.54 feet) deep along the longest property line to the east. The subject site fronts onto Ellerslie Avenue along its angled southern property line and onto the Mawhinney Close cul-de-sac to the north. The proposed vehicular access is from Mawhinney Close.

The subject site abuts single family lots along the east side property line and across the Mawhinney Close cul-de-sac to the north. There is a multi-family development across Ellerslie Avenue to the south (separated by Pollywog Creek green area) and an undeveloped residential lot immediately to the west of the subject lot. This neighbouring lot is currently proposed to be developed with a single family dwelling, and previously was the subject of the Board of Variance Appeal # BV 6336.

The subject property observes a substantial downward slope of approximately 22.84 feet from the northwest corner to the southeast corner.

The site is constrained by the BC Hydro SROW along the south (angled) property line, approximately 25.6 metres (85.0 feet) wide, which is overlapped by a sanitary SROW roughly within its southern portion. These SROWs occupy almost half of the entire site. According to the submitted topographical survey, the lot area is 1,083.6 square metres (11,664 square feet).

The appeal proposes the subject site to be developed with a new single family dwelling with a secondary suite and an attached garage, for which one variance is requested.

The proposed dwelling observes a front (northern) elevation height of 7.97 metres (26.14 feet), which is 1.02 metres (3.36 feet) less than the permitted maximum height. Therefore, this proposal would not affect views from the properties across the Mawhinney Close cul-de-sac to the north, which are at substantially higher elevations.

The requested variance is for the rear elevation height. In this case, the height calculation is based on the proposed average grade as measured at the outermost face of the southern elevation; this elevation is assumed to be the rear elevation. It should be noted that the grade difference between the front and the rear of the subject site is a contributing factor to the excess height of the rear elevation.

The revised height calculations indicate that the encroachment of 1.37 metres (4.5 feet) occurs over the entire roof area. However, with respect to the massing impacts of this major encroachment, the generous rear yard setback of more than 25.6 metres (84.0 feet) would essentially eliminate any impacts on the Ellerslie Avenue streetscape. It should be noted that there are no immediate neighbours to the south of the subject site due to Pollywog Creek green area across Ellerslie Avenue.

With respect to the west and east side elevations, with the exception of the light well area on west side, the proposed dwelling would appear to be within the allowed maximum height limits. Therefore, no substantial massing impacts are expected on any future development on the neighbouring vacant lot to the west, and to the neighbouring residences to the east. Also, the front portion of the proposed dwelling which would overlap the neighbouring residence at 7056 Mawhinney Close (the north-eastern lot) is only one storey high. The proposed dwelling would not overlap the neighbouring residence at 3015 Ellerslie Avenue (the south-eastern lot).

However, the revised proposed height of 10.36 metres (34.00 feet), as viewed from Ellerslie Avenue property line, is substantially greater than the allowed maximum 9.0 metres (29.5 feet) height. Despite the challenging site conditions, the requested variance is not exclusively related to these conditions. The excess height of the proposed dwelling is a result of several design choices. The major contributing factors are the proposed clear floor to ceiling height on two floor levels: 2.74 metres (9.0 feet) in the basement, and 3.05 metres (10.0 feet) on the main floor level.

In addition, the placement of the two car garage on the south side of the building with a large turnaround directly in front of the garage doors contributes to the average grade calculations and an increased building height on the south side of the building.

ADJACENT OWNER'S COMMENTS:

Property owners of 7056 and 7068 Mawhinney Close appeared before the Board in opposition to the appeal. In addition to comments submitted in a letter to the Board, the owner of 7056 Mawhinney Close advised that the anticipated loss of light arising from the construction would negatively affect her health.

Correspondence was received from the owner of 7056 Mawhinney Close in opposition to the appeal. The neighbour expressed concern regarding the size of the building and how it will overshadow her deck and garden. She stated further that the new construction would not fit into the neighbourhood.

MOVED BY MS. CHAN
SECONDED BY MR. DHATT

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

CARRIED UNANIMOUSLY

The Board acknowledged that compliance with the bylaw would cause undue hardship because of the topography and the BC Hydro Right-of-Way on the property; however, noted that the scale of the appeal was excessive and denied the request.

(d) APPEAL NUMBER: B.V. 6376

APPELLANT: Vikram Tiku, TD Studio Inc.

REGISTERED OWNER OF PROPERTY: Ravi Bansal

CIVIC ADDRESS OF PROPERTY: 7280 Inlet Drive

LEGAL DESCRIPTION OF PROPERTY: Lot: 56 DL: 216 Plan: NWP11555

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 over height fences and retaining walls in the front and rear yard of a new single family dwelling with a secondary suite at 7280 Inlet Drive. The following variances are requested:

a) a fence height up to 7.06 feet where a maximum height of 3.51 feet is permitted for heights of constructed fences located in the required front yard;

- b) a retaining wall height up to 7.12 feet where a maximum height of 3.51 feet is permitted for heights of constructed retaining walls located in the required front yard;
- c) a fence height up to 8.5 feet where a maximum height of 5.91 feet is permitted for heights of constructed fences located to the rear of the required front yard; and,
- d) a retaining wall height up to 10.6 feet where a maximum height of 5.91 feet is permitted for heights of constructed retaining walls located to the rear of the required front yard. Zone R2.

This appeal was brought forward to the 2019 April 04 hearing but was withdrawn prior to any decision made.

APPELLANT'S SUBMISSION:

Mr. Vikram Tiku, TD Studio Inc, on behalf of the property owner, submitted an application to allow for the construction of over height fences and retaining walls in the front and rear yard of a new single family dwelling with a secondary suite at 7280 Inlet Drive.

Mr. Tiku and Ms. Ravi Bansal, property owner, 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 Westridge neighbourhood in which the majority of single family homes were built in the early 1950's. Only a few properties have since undergone redevelopment. The subject lot is an irregular interior lot which resembles a rough trapezoid shape. The lot is approximately 18.53 metres (60.8 feet) wide, with the depth of 34.0 metres (111.5 feet) along northern property line and 39.44 metres (129.4 feet) along southern property lines. The subject site fronts onto Inlet Drive to the west and is flanked by a lane to the east. Single family lots abut the subject site on all sides. The site observes a substantial downward slope of approximately 4.57 metres (15.0 feet) from the rear to the front. Vehicular access to the site is provided from the rear lane at the high point of the property.

Currently, the subject site is under construction in accordance with the Building Permit BLD18-00949, issued on 2018 December 20, for a new single family dwelling with a secondary suite and a parking pad.

The applicant is proposing changes to the retaining walls within the rear yard. This is the second attempt to resolve the retaining wall heights through the Board of Variance. The initial application was made in March 2019, for two variances, both for the height of the retaining walls in the rear yard but the application was withdrawn. The Board did not vote on these initial appeals. This time, four variances are requested in order for these changes to be added to the works under the current building permit.

The first a) appeal is to vary Section 6.14(5)(a) – “Fences” of the Zoning Bylaw height requirement from 1.07 metres (3.51 feet) to 2.15 metres (7.06 feet) to allow for construction of the fences located in the required front yard.

The second b) appeal is to vary Section 6.14(5)(a) – “Fences” of the Zoning Bylaw height requirement from 1.07 metres (3.51 feet) to 2.17 metres (7.12 feet) to allow for construction of the retaining walls located in the required front yard.

The third c) appeal is to vary Section 6.14(5)(b) – “Fences” of the Zoning Bylaw height requirement from 1.8 metres (5.91 feet) to 2.95 metres (8.5 feet) to allow for the construction of the fences located to the rear of the required front yard.

The fourth d) appeal is to vary Section 6.14(5)(b) – “Fences” of the Zoning Bylaw height requirement from 1.8 metres (5.91 feet) to 3.23 metres (10.6 feet) to allow for the construction of the retaining walls located to the rear of the required front yard.

In reference to all four appeals, the intent of the Bylaw is to mitigate the massing impacts of new fences, walls and other structures (retaining walls) on neighbouring properties.

In reference to the first a) and third c) appeals, the fence height is determined by measurement from the ground level at the average grade level within 0.9 metres (2.95 feet) on both sides of the fence. Since any portion of a retaining wall which projects above the surface of the ground which it supports shall be considered as a fence, the portion of the retaining wall above this average grade level is included in calculation of the fence height.

In reference to the second b) and fourth d) appeals, the retaining wall height is determined by measurement from the exposed ground level to the surface of the ground which the retaining wall supports. In this case, the portion of the retaining wall above this surface is not included in calculation of the retaining wall height.

The first a) and second b) appeals are related to fences and retaining walls within the front yard which will be reviewed together.

This appeal proposes to expand the flat landscape area from the building footprint to 1.22 metres (4.0 feet) from the front property line where the first of two retaining walls is located. The first retaining wall has a 1.07 metres (3.5 feet) high fence on top, and the second lower retaining wall with a stepped planter is located at the property line. The “L” shaped stairs down to the street level are proposed in north-west corner of the property. The proposed retaining wall exceeds the permitted 1.07 metres (3.51 feet) height along whole length of the wall by up to 1.1 metres (3.61 feet), and the fences exceed the permitted 1.07 metres (3.51 feet) height by up to 1.08 metres (3.55 feet). There is an approximately 1.83 metres (6.0 feet) high sound barrier wall located in front of the property. This wall will partially hide the view of the lower portion of the more than 2.13 metres (7.0 feet) high retaining wall from Inlet Drive, leaving the upper

portion of the wall and the 1.07 metres (3.5 feet) fence still visible from the street. It is also worth noting that the sound barrier wall was implemented in 1990's as a Provincial project and is now owned by the City of Burnaby. The City may remove the sound barrier and the massive retaining walls (along other parts of Inlet Drive) in the future to expand the road for construction of the sidewalks or a bike path, or planting boulevard trees.

The third c) and fourth d) appeals are related to fences and retaining walls within the rear yard which will be reviewed together.

According to the previous building permit drawings, the rear yard retaining wall design consists of two parallel 1.52 metres (5.0 feet) high retaining walls, stepping down 1.52 metres (5.0 feet) apart towards the dwelling. These retaining walls are proposed around the edge of the parking pad, which is located in the northeast corner of the site. From there the retaining walls continue across the rear yard to the south, with the retaining wall at the higher level (closer to the lane) connecting to the south property line approximately 3.75 metres (12.3 feet) away from the southeast (rear) corner.

This current appeal proposes to replace the two 1.52 metres (5.0 feet) high parallel retaining walls with one 3.05 metres (10.0 feet) high retaining wall and a 1.07 metres (3.5 feet) high metal guardrail on top.

The proposed 3.05 metres (10.0 feet) high retaining wall location has been changed compared to the originally proposed location of the 1.52 metres (5.0 feet) high retaining wall at the lower level. The new wall has been moved approximately 1.22 metres (4.0 feet) towards the building in its southern portion, extending the gravel area near the lane by approximately 2.74 metres (9.0 feet) to the west. The size of the two required parking stalls in the northern portion of the rear yard was also increased by positioning the straight 3.05 metres (10.0 feet) high east-west retaining wall approximately 3.66 metres (12.0 feet) to the south. This change made room for a landscaped area on three sides of the required parking stalls, and for a new stair along the northern property line (the access from the parking pad down to the rear yard). There is also a small section of the 3.05 metres (10.0 feet) high retaining wall proposed along the shared south (side) property line, approximately 1.6 metres (5.25 feet) long, to accommodate the existing grades on the neighbouring property.

As a result of the proposed changes, the rear yard area directly west and south of the new 3.05 metres (10.0 feet) high retaining wall is reduced compared to the original proposal. The area along the lane, the two-car parking pad and the area identified on drawing as gravel have been enlarged. It is not clear on the submitted drawings if this entire gravel area is accessible by car from the lane, in which case an approval from the Engineering Department is required.

With respect to impacts on neighbouring properties, the over height portions of the new retaining walls and guardrails in the rear yard would be visible mainly by the occupants of the subject site, and also partially by the neighbours to the south and north, when

the trees and hedges that are currently creating visual barrier are removed due to the new construction. When viewed from the neighbouring properties across the lane to the east, essentially only the 1.07 metres (3.5 feet) high guardrail would be visible. Views of the guardrail/retaining walls in the rear yard from Inlet Drive would be blocked by the building itself.

In summary, it is noted that the use of retaining walls, fences and guards is common when dealing with challenging site topography, such as that of the subject site. Accordingly, the use of retaining walls is common in this neighbourhood. However, height and configuration of the retaining walls is a design choice, as is clearly demonstrated in this case.

ADJACENT OWNER'S COMMENTS:

Correspondence was received from the owners of 7275 Barnet Road in opposition to this appeal, advising that the fence height would obstruct their view of the inlet.

MOVED BY MS. CHAN
SECONDED BY MR. DHATT

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

CARRIED UNANIMOUSLY

MOVED BY MS. CHAN
SECONDED BY MR. DHATT

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

CARRIED UNANIMOUSLY

MOVED BY MS. CHAN
SECONDED BY MR. DHATT

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

CARRIED UNANIMOUSLY

MOVED BY MS. CHAN
SECONDED BY MR. DHATT

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

CARRIED UNANIMOUSLY

The Board found that compliance with the bylaw would cause undue hardship due to the site topography.

(e) **APPEAL NUMBER:** B.V. 6365

APPELLANT: Vern Milani

REGISTERED OWNER OF PROPERTY: Vern and Nicole Milani

CIVIC ADDRESS OF PROPERTY: 5591 Oakland Street

LEGAL DESCRIPTION OF PROPERTY: Parcel "One" (Plan 11711) except Parcel "F" (Plan 68816), DL 94, Group 1, New Westminster District

APPEAL: An appeal for the relaxation of Sections 6.3(1)(b), 104.9 and 104.10(2) of the Burnaby Zoning Bylaw which, if permitted, would allow for interior alterations, new secondary suite and new addition to an existing single family dwelling at 5591 Oakland Street. The following variances are requested:

a) a distance between overlapping exterior walls of the same building on the same lot of 12.5 feet, where a minimum distance of 14.76 feet is required;

b) a front yard depth of 15.63 feet, where a minimum front yard depth of 24.6 feet is required; and,

c) a side yard setback of 10.11 feet adjoining the flanking street, where a minimum side yard setback of 11.5 feet is required. Zone R4.

*This appeal had been submitted to the 2019 May 02 hearing, however, the Board passed a motion to **DEFER** the appeal to 2019 July 04. The appeal was subsequently rescheduled to the 2019 September 05 hearing at the request of the applicant.*

APPELLANT'S SUBMISSION:

Mr. Vern Milani, property owner, submitted an application to allow for the construction of interior alterations, a new secondary suite and new addition to an existing single family dwelling at 5591 Oakland Street.

Mr. Vern and Ms. Nicole Milani and their three children appeared before members of the Board of Variance.

BURNABY PLANNING AND BUILDING DEPARTMENT COMMENTS:

The subject site, zoned R4 Residential District, is located in the Windsor neighbourhood. Residences in this area include a mix of single and two family dwellings, of varying ages and conditions. This large corner lot, trapezoid shaped, is approximately 159.58 feet wide and 154.52 feet deep along the east (longer) side

property line. The site fronts onto Oakland Street to the south and flanks Elgin Place to the west. To the north, the site is bordered by a 10.0 foot wide lane right-of-way, which is undeveloped. Single family dwellings surround the subject site on all sides. Vehicular access is provided at the southeast tip of the lot, from the secondary Oakland Street connection, off Baffin¹ Place further to the east. There is a significant grade difference (over 41.0 feet) from the southwest (front) corner of the site to the northeast (rear) corner, but the site has been flattened over the years with several terraced areas supported by retaining walls along the edges.

The subject site is improved with a larger two storey single family dwelling with cellar and attached garage and a second smaller one storey single family dwelling, the origins of which go back to 1950s, prior to the enactment of the Zoning Bylaw in 1965. Over time, the site and both dwellings have undergone various renovations, including an addition to the rear of the smaller secondary dwelling (around 1984), reconstruction of sundeck to the rear of the larger dwelling (around 1986), an addition to the larger dwelling (around 1997), all of which were subject of successful appeals to the Board of Variance: BV 2858, BV 3128, BV 4485 respectively. All appeals were related to the fact that the site contains two single family dwellings. Around 2005, the site was further improved with a swimming pool and a related accessory (mechanical) space, which were approved under BLD04-01337.

The BC Local Government Act regulates that no addition or structural alteration can be made in a building while the non-confirming use is continued in all or any part of it, except one permitted by a Board of Variance. Until recently, the subject site enjoyed the status of legal non-confirming with respect to use: the site contains two single family dwellings where the R4 District does not permit two single family dwellings on the same lot.

Around 2017, the smaller dwelling on the property was largely demolished, with the intent to rebuild, all of which was carried out without the benefit of a building permit. However, the BC Local Government Act regulates that if a building or structure, the use of which does not conform to the provisions of a bylaw, is damaged or destroyed to the extent of 75% or more of its value above its foundations, such a structure must not be repaired or reconstructed except for a conforming use in accordance with the bylaw. In this case, the second single family dwelling could not be reconstructed with another single family dwelling existing on the subject lot. The smaller dwelling is currently the subject of an active Bylaw Code Case.

In attempt to resolve the unauthorized construction of the second single family dwelling on the subject site, the applicant is proposing various additions and exterior/interior alterations, including the addition of a secondary suite and conversion of an accessory mechanical building into a (mechanical) crawl space. As a result, three variances are requested in order for the currently pending building permit application BLD18-00260 to move forward.

¹ Corrected from "Banff"

The first appeal a) is to vary Section 6.3(1)(b) - "Distance between Buildings on the same Lot" of the Zoning Bylaw requirement for the minimum distance between overlapping exterior walls of the same building from 14.76 feet to 12.5 feet to allow the new additions and exterior/interior alterations to the existing single family dwelling.

The Bylaw requires a separation between overlapping exterior walls of the same building or of any two buildings in a group on the same lot to ensure that the overall massing of the building(s) does not have a negative impact on the subject property, as well as to provide for sufficient outdoor space.

The second appeal b) is to vary Section 104.9 - "Front Yard" of the Zoning Bylaw for the minimum front yard depth from 24.6 feet to 15.63 feet to allow the new additions to the existing single family dwelling.

The intent of the Bylaw is to mitigate the massing impacts of new buildings and structures on neighbouring properties and to preserve a unified streetscape.

The third appeal c) is to vary Section 104.10(2) - "Side Yards" of the Zoning Bylaw requirement for the minimum side yard width from 11.5 feet to 10.11 feet to allow the new additions to the existing single family dwelling.

The intent of the Bylaw to require a side yard is to mitigate the impacts of building massing on neighbouring properties.

All three requests are related to the proposed addition of a secondary suite, which would replace the original second single family dwelling to the west² of the main single family dwelling. The secondary suite is proposed to be connected to the principal dwelling by a small corridor link at its west elevation, where the master bedroom exists. By linking the two structures the proposed secondary suite would become fully contained within the single family dwelling and therefore, remove the non-conformity situation of two single family dwellings on a single lot.

With regard to the first variance a), the overlapping walls do not contain habitable rooms; only one small window on the interior east elevation (for the secondary suite bathroom) and two clerestory windows 8.0 feet above floor level, on the interior west elevation (for the master bedroom ensuite bathroom). These windows would not overlap directly; so the user's privacy would not be impacted. Also, approximately 78.0 square feet of the proposed corridor would have a little effect on the plentiful outdoor space existing on the subject site.

In view of the above and considering the relatively small scale of this request to reduce the required wall separation of 14.76 feet by 2.26 feet, this Department does not object to the granting of this first variance a).

² Corrected from "east"

With regard to the second variance b), the requested 8.97 feet front yard encroachment is a major variance. However, there are several mitigating factors. The front yard setback is measured to the southwest corner of the principal building, which is the closest point to the angled front property line. The front yard setback gradually increases to the east, up to approximately 31.0 feet at the southeast corner of the building.

The western³ portion of the principal building, which is the closest to the front property line, is where the secondary suite is proposed. This is also, where the original second single family dwelling existed since approximately 1948. The proposed one storey massing of the addition would be consistent with the previous structure. Therefore, this variance would not create a significant change to the existing conditions.

It should be noted that the subject site originally observed a much more generous front yard setback, of over 40.0 feet, until the mid-1980's when improvements of Oakland Street took place. At that time a large portion of the front yard was acquired by the City of Burnaby to accommodate the widening and re-alignment of Oakland Street (from the west-east direction to the angled west-southeast direction). Vehicular access to the site was also relocated from the Oakland Street frontage along the south property line (as per the original alignment), to the east side, at the southeast corner of the lot. As such, the subject site became legal non-conforming with respect to the front yard setback requirements. Since the proposed secondary suite would be essentially within the footprint of the original second dwelling on the subject site, this variance, if granted, would not increase this non-conformity.

With regard to the broader neighbourhood context, due to the dropping terrain, the proposed addition, which is at the lower level than the street level, would be almost entirely (except for the roof peak area) screened by a mature hedge along the front property line. As such, the siting of the proposed addition would have a minimal impact on the existing streetscape.

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

With regards to the third variance c), again, the siting and massing of the proposed addition would be essentially consistent with the original second single family dwelling on the subject site. As such, there would be no significant change to the existing massing relationship between the proposed addition and the neighbouring residence to the west.

It is difficult to assess if the original second dwelling observed the same non-conforming side yard setback that has been requested for this addition. According to some City records, the original second dwelling observed a side yard setback of 15.71 feet on Elgin Street. However, City aerials do not support these records; it appears that the location of the addition (which has already commenced construction) is consistent with the original second dwelling which was set back at approximately 10.0 - 11.0 feet.

³ Corrected from "eastern"

Only the relatively small triangular area at the upper portion of the roof gable would be visible as viewed from Elgin Place (west); the remainder of the addition would be screened by a mature hedge along the east side property line. As a result, little impact is expected to result from the proposed side yard setback variance.

Considering all of the above and the relatively small scale of the requested 1.39 foot side yard encroachment, this Department does not object to the granting of this third c) variance.

ADJACENT OWNER'S COMMENTS:

Property owners of 5935 and 5995 Elgin Place appeared before the Board in opposition to the appeal. The owners highlighted concerns expressed in a letter submitted by the neighbours.

Correspondence was received from the residents at 5830 Elgin Place, 5835 Elgin Place, 5850 Elgin Place, 5930 Elgin Place, 5935 Elgin Place, 5950 Elgin Place, 5975 Elgin Place, and 5855 Elgin Place in opposition to the appeal.

Correspondence was received from the property owners of 5995 Elgin Place in opposition to the appeal, advising that moving the building north would affect their view.

MOVED BY MS. CHAN
SECONDED BY MR. DHATT

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

CARRIED

OPPOSED: MR. NEMETH

The Board provided the following comments:

Mr. Dhatt stated that this is a fairly minor variance, a little over two feet, with not much effect on the neighbours.

Mr. Nemeth stated that hardship is not evident.

Ms. Chan did not comment.

MOVED BY MS. CHAN
SECONDED BY MR. DHATT

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

CARRIED UNANIMOUSLY

The Board provided the following comments:

Ms. Chan stated that if this is a new building, we should comply with the law.

Mr. Dhatt stated that the scale of the variance is nearly 40% and beyond acceptable.

Mr. Nemeth agreed that the scale is substantial (almost nine feet) and repeated that he did not find any hardship.

MOVED BY MS. CHAN
SECONDED BY MR. DHATT

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

CARRIED
OPPOSED: MR. NEMETH

The Board provided the following comments:

Ms. Chan stated that the scale of variance small.

Mr. Dhatt stated hardship not clearly defined but the variance is so small.

Mr. Nemeth repeated his statement that the hardship is unclear.

4. **NEW BUSINESS**

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

5. **ADJOURNMENT**

MOVED BY MR. DHATT
SECONDED BY MS. CHAN

THAT this Hearing do now adjourn.

CARRIED UNANIMOUSLY

The Hearing adjourned at 7:35 p.m.

Mr. S. Nemeth, CHAIR

Ms. J. Chan

Mr. R. Dhatt

Ms. M. Macdonald
ADMINISTRATIVE OFFICER