

TO: CHAIR AND MEMBERS
PLANNING AND DEVELOPMENT COMMITTEE

DATE: 2021 October 20

FROM: DIRECTOR PLANNING AND BUILDING

FILE: 42000 20
Reference: Bylaw Amendments

SUBJECT: FRAMEWORK FOR ESTABLISHING DEVELOPMENT VARIANCE PERMITS AND PROCESSES

PURPOSE: To propose a framework to establish the application of Development Variance Permits, and define a procedure for the review and issuance of Development Variance Permits.

RECOMMENDATION:

1. THAT Committee request Council to establish the *Burnaby Development Procedures Bylaw* to define a procedure for the review and issuance of Development Variance Permits and to authorize staff to bring forward a report to propose an amendment to the *Burnaby Planning and Building Fees Bylaw, 2017* to include a fee for the Development Variance Permit Applications.

REPORT**1.0 BACKGROUND INFORMATION**

Section 498 of the *Local Government Act (LGA)* allows a local government by Council resolution, to issue a Development Variance Permit (DVP) to vary specific provisions of bylaws that regulate the use and development of lands. These provisions include, but are not limited to, the requirements of the Zoning Bylaw related to siting and size of buildings/structures, the Subdivision and Development Bylaw, and the Sign Bylaw.

In many municipalities in British Columbia, DVPs are used to vary bylaws permitted in section 498 of the *LGA*, to facilitate development or improvements to a property, or improve form and design of a development, where siting restrictions or unique circumstances make it difficult to meet such requirements. Examples of the use of DVPs in other municipalities include variances to building height, building depth, or siting requirements of the Zoning Bylaw, as well as some provisions of the Subdivision and Development Bylaw and the Sign Bylaw.

Burnaby currently has not established a review process for DVP applications. However section 460 of the *LGA* requires that a local government which has adopted a zoning bylaw or an official community plan bylaw must consider every application for the issuance of a permit under part 14 of the *LGA*, including DVPs, which requires a resolution of Council. Section 460 of the *LGA*, also requires that

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such local governments must by bylaw, define procedures under which an owner of land may apply for issuance of these permits.

This report provides general information and statutory requirements related to the issuance of DVPs, and proposes criteria to determine the supportability of future DVP applications. It also requests Council to authorize staff to bring forward a report to propose a Development Procedures Bylaw to establish a procedure for the review and issuance of DVPs, as well as an application fee for DVP applications.

2.0 CITY POLICY FRAMEWORK

Establishing DVPs in Burnaby aligns with the following Council-adopted policies: *Official Community Plan* (1998), *Economic Development Strategy* (2007), *Social Sustainability Strategy* (2011), and the *Corporate Strategic Plan* (2017).

3.0 DEVELOPMENT VARIANCE PERMITS

3.1 Legislation Governing Development Variance Permits

The *LGA* provides legislative requirements for issuing DVPs, governs associated public notification requirements, and identifies provisions of the bylaws which may be varied by DVPs. Under Section 498 of the *LGA*, a local government, on application by an owner of land, may issue a DVP by Council resolution to vary the following bylaws/types:

- The Zoning Bylaw, with the exception of the use or density of land, and the requirements related to residential rental tenure, including:
 - the siting, size, and dimensions of buildings, structures, and uses that are permitted on the land;
 - the location of uses on the land and within buildings and structures; and
 - the shape, dimensions and area, including the establishment of minimum and maximum sizes, of all parcels of land that may be created by subdivision.
- a bylaw that regulates and requires the provision of works and services in respect of the subdivision of land (subdivision and development);
- other land use regulation powers, including bylaws to regulate the disposal of surface runoff and storm water, off-street parking and loading spaces, signs, screening and landscaping;
- regulation of farming businesses in farming areas; and
- a bylaw to regulate the construction and layout of trailer courts, manufactured home parks and camping grounds, including the requirements in relation to health, safety or protection of persons or properties.

Under the *LGA*, in the event of a conflict, the provisions of a DVP prevail over any provision of the associated bylaws.

3.2 Public Notification Requirements

Section 499 of the *LGA* requires that a local government proposing to pass a resolution to issue a DVP must give public notice containing the following information:

- in general terms, the purpose of the proposed permit;
- the land or lands that are subject of the proposed permit; and
- the place, times and dates when copies of the proposed permit may be inspected.

The required public notice must be mailed or otherwise delivered at least ten (10) days before the adoption of the resolution, to the owners or any tenants in occupation of all parcels, any part of which is the subject of the permit, or is located within an identified distance from the parcel which is the subject of the permit as specified in the procedures bylaw.

3.3 Proposed Framework to Establish Development Variance Permits in Burnaby

Currently, a process for reviewing DVP applications has not been established in Burnaby. In the absence of a procedure to review and issue DVPs, variances to the *Burnaby Zoning Bylaw* or other requirements of the bylaws referred to in section 498 of the *LGA*, have been granted through one of the following options:

- CD Comprehensive Development District: subject to section 700.2(2) of the *Burnaby Zoning Bylaw*, on a property that is zoned CD District, the following provisions of the *Burnaby Zoning Bylaw* may be varied:
 - off-street parking and loading spaces;
 - requirements related to carwash stalls;
 - screening and landscaping;
 - fences and retaining walls;
 - minimum frontage of businesses;
 - projection into required yards; and
 - bulk regulations, including maximum building height, minimum lot area and lot width, minimum required yards, maximum lot coverage and floor area,

provided that the floor area ratio and density for the development as a whole are in conformity with the applicable requirements of the *Burnaby Zoning Bylaw*, and that such variance results in an improved relationship between the various parts of the proposed development.

- Board of Variance (BOV): subject to section 540 of the *LGA*, a person may apply to the BOV to vary the following requirements, if the person alleges that compliance with these requirements would cause the person hardship:
 - a bylaw with respect to the siting, size or dimensions of a building or other structures;
 - a bylaw with respect to the siting of a manufactured home in a manufactured home park;
 - a subdivision servicing requirement under section 506(1)(c) of the *LGA* (provision of water, sewer and other systems) in an area zoned for agricultural or industrial use;

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- the prohibition of structural alteration or addition of buildings containing legally non-conforming uses; and
- a bylaw to regulate, prohibit and impose requirements in relation to trees, subject to conditions.

The BOV may not vary permitted uses and densities, application of an applicable bylaw related to residential rental tenure, or floodplain requirements.

Considering that density and use in a development may not be varied except through adoption of a zoning amendment bylaw, a CD rezoning is an effective tool to allow a mix of uses and densities that are permitted in multiple zoning districts. In general, the ultimate use of a CD rezoning is to enable the tailoring of specific uses, and density, siting, parking, sign and landscaping requirements to a particular site, in place of the application of pre-determined regulations in the zoning districts. In developments where use and density meet the requirements of the *Burnaby Zoning Bylaw*, pursuing a CD rezoning with the sole purpose of varying other requirements referred to in section 700.2(2) of the *Zoning Bylaw*, such as building height, required yards, minimum lot area, or landscaping, may be considered onerous considering the length of time, cost, and uncertainty of the rezoning process.

Relaxation of the requirements of the *Burnaby Zoning Bylaw* related to siting, size, and dimensions of buildings/structures through BOV are limited to those developments where hardship can be demonstrated, and where the variances are minor in nature. The board does not have authority to grant a variance that is in conflict with a Section 219 covenant registered on title of a property that concern matters that are covered in land use permits or phased development agreements, or that are for a property with heritage values and characters. In Burnaby, BOV has been pursued primarily for single and two-family dwellings.

Alternatively, DVPs can provide discretionary flexibilities to allow developments that do not meet the applicable bylaw requirements, due to unique circumstances or special conditions of the property, through a streamlined approval process that requires Council approval. Unlike a zoning amendment bylaw that requires three readings and a public hearing prior to final adoption, a DVP may be issued by a Council resolution. As such, a DVP process generally results in a faster decision from Council than a rezoning, provides an opportunity for the public to comment on a proposal, while also providing Council the opportunity to request necessary changes to the proposal before their final decision on issuing the permit.

Considering the broad application of DVPs under the *LGA*, it is advisable to establish criteria to limit the application of DVPs to situations where the ability to use or develop a property is unreasonably compromised by having to comply with the bylaws. The requested variances should only be supportable if they allow a more effective and efficient use and development of a property or other desirable outcome, such as retention of protected trees. While the City is obligated to consider DVP applications, establishment of criteria would minimize the misuse of this statutory tool for personal preferences, by identifying conditions for when staff are likely to support an application. *Appendix 1* provides a general list of the provisions of the City bylaws which may be varied through the DVP application process, and the City's approach to support these variances in accordance with the City's goals, objectives and policies. It should be noted that the ultimate decision to support a DVP application would be that of Council based on a comprehensive review of the proposal and the public comments. In general, to support a DVP application, the applicant should demonstrate that the requested variance(s):

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- are in line with the goals and objectives of the City's *Official Community Plan*, or other Community Plans in which the property is located, as well as other City policies;
- generally meet the intent of the City's bylaws and regulations, including but not limited to the *Burnaby Zoning Bylaw* and *Subdivision Control Bylaw*;
- do not unjustifiably impact adjacent properties, street, City services, public safety, the natural environment, and the visual integrity of the area; and
- are generally compatible with adjacent buildings/structures and uses, and would not impact the long-term best use of the property.

As a requirement of the DVP applications, the applicant would be required to provide a rationale to support the request for the proposed variance, and to demonstrate that reasonable efforts have been made to eliminate the need for, or reduce the extent of such variances. It would also be required that the applicant applies mitigating measures, such as screening, landscaping, architectural design, etc., to minimize the impacts associated with the variance on adjacent uses.

In addition, the owners or tenants whose interest may be impacted by the proposed variances should be notified prior to issuance of the permits. DVP applications would also be circulated to other appropriate City departments and external agencies for review. Any terms and conditions, including a security deposit, landscaping and screening, etc., may be required prior to issuance of the permit or as conditions of the permit, to mitigate the impacts of the proposed variances on the adjacent neighbourhood.

In addition to the BOV and the CD Rezoning process, DVPs provide another means of varying the requirements of specific bylaws. In this regard, DVPs are intended to be used in circumstances where the use of the BOV is not permitted by the *LGA*, or the use of the CD Rezoning is not appropriate or feasible.

If the DVP process is established, those applications would be reviewed and processed concurrently with a Rezoning, Subdivision, or Preliminary Plan Approval (PPA) applications. When a DVP is required for the construction, extension, or alteration of a building/structure outside of a Rezoning, Subdivision, or PPA application, DVPs would be issued prior to issuance of the associated Building Permit.

3.4 Proposed Procedure for DVPs

If Committee and Council approves the establishment of the DVP application process in Burnaby, staff will bring forward a further report to propose a Development Procedures Bylaw for DVPs. This bylaw would establish a framework for the review of DVP applications, and define a procedure under which an owner of land may apply for the issuance of a DVP in line with the *LGA* provisions, to ensure fairness, consistency and accountability in the review of the applications. This bylaw would include the requirements related to DVP applications including the following: application referral process; the review and issuance process; public notifications including notification delivery distance; notification signs including the duration that a sign should be posted on a site; and other related information.

It is further requested that Committee recommends Council authorize staff to bring forward a bylaw amending the "*Burnaby Planning and Building Fees Bylaw*" to include a new application fee for DVP applications in order to cover the cost of review of DVP applications.

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4.0 CONCLUSION

This report provides an overview of DVPs as a discretionary tool required under the *LGA* to facilitate developments on properties with siting restrictions, or under unique circumstances which make it difficult to meet the requirements of a bylaw referred to in section 498 of the *LGA*. This report also provides information related to the statutory approval requirements to issue DVPs, as regulated by the *LGA*. It is recommended that Committee requests that Council authorize staff to bring forward a report to propose an amendment to the *Burnaby Planning and Building Fees Bylaw* to include an application fee for DVP Applications, and to establish the “*Burnaby Development Procedures Bylaw*” to define a procedure for the review and issuance of DVPs.



E.W. Kezak, Director
PLANNING AND BUILDING

PS:sa

Attachment

cc:	Chief Administrative Officer	Director Engineering
	Deputy Chief Administrative Officer and Chief Financial Officer	City Solicitor
	Director Corporate Services	Chief Building Inspector
	Director Public Safety and Community Services	City Clerk

Appendix 1

Table 1 – Proposed general approach to vary the requirements of the City bylaws, as set out in section 498 of the *LGA*, through development variance permits.

Bylaws	Bylaw Requirements	Proposed Approach for the Requested Variance
Zoning Bylaw	Siting and location of a building or structure on a property, including the required yards, projection into the required yards, and distance between buildings.	Supportable; except in the R Districts, provided that it does not unduly impose on adjacent uses and streetscapes, and it maintains the visual integrity of the area.
	Siting and location of a use on a property or in a building/structure, such as parking, loading, storage yard, home-based child care facilities in the RM and P11 Districts, a number of uses in the C8 District, etc.	Supportable; provided that it does not unduly impose on adjacent uses street, City service, and public safety, and it complies with the applicable community plan's policies.
	Height and the number of storeys in a building or structure, provided that it does not increase the density of use of the building or structure. Note: Where the building height or number of storeys in a building are considered "density", they may not be varied through DVP.	Supportable; except in the R Districts, provided that it does not unduly impose on adjacent buildings and streetscapes, and it maintains the visual integrity of the area.
	Lot coverage, provided that it does not increase the density of use of the building, structure, or land. Note: Where lot coverage is considered "density" it may not be varied through DVP.	Not supportable; to limit the footprint of the buildings and ensure adequate outdoor open area is provided within a property.
	Minimum lot area and lot width, provided that it is not a condition of permitting a specific use, and it does not increase the density of use of land. Note: Minimum lot area or lot width as a condition of permitting a specific use may not be varied through DVP. The minimum lot area that is associated with the density of use of a building or land may not be varied through DVP.	Not supportable; to maintain consistency with surrounding neighbourhood.
	Minimum floor area for dwelling units, living units in supportive housing facilities, and secondary suites.	Not supportable; to ensure liveability of the units.

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Bylaws	Bylaw Requirements	Proposed Approach for the Requested Variance
Zoning Bylaw	Screening and landscaping requirements, including height, width, siting, etc.	Supportable ; provided that other mitigating measures are considered to minimize the impacts of the uses on adjacent neighbourhoods.
	Vision clearance at intersections	Not supportable ; to ensure visibility and safety at intersections.
	Retaining wall requirements, including height, horizontal distance and landscaping between wall segments, etc.	Not supportable ; to restrict the construction of imposing retaining walls that negatively impact adjacent properties and streetscapes.
	Fence requirements, including height.	Not supportable ; to restrict the construction of imposing fences that negatively impact adjacent properties and streetscapes.
	Antennae requirements, including area, height, etc.	Supportable ; provided that it does not unduly impose on adjacent buildings and streetscapes, and it maintains the visual integrity of the area.
	Streamside Protection and Enhancement Areas	Not supportable , to protect the environmentally sensitive areas.
	Impervious surface requirements, including percentage, material used, etc.	Not supportable ; to ensure the provision of adequate permeable surfaces on a property for storm water and ground water management purposes.
	The requirements regulating building size, including maximum building depth in the R Districts, minimum width of a building containing townhouse dwellings in the RM6 and RM7 Districts, etc.	Supportable , except in the R Districts, provided that it does not unduly impose on adjacent buildings, and it maintains the visual integrity of the area.
	The maximum floor area of accessory buildings in the RM and A Districts.	Not supportable , to maximize the provision of habitable spaces.

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Bylaws	Bylaw Requirements	Proposed Approach for the Requested Variance
Zoning Bylaw	The maximum number of employees for home occupations.	Not supportable , to maintain the small scale of home-based operations and minimize the impacts on adjacent neighbourhood.
	The “suite ready” requirements applicable to cellars in a number of R Districts.	Not supportable , to facilitate the future provision of secondary suites in the cellars.
	Driveway access off of lane in a number of R Districts.	Not supportable , to ensure driveways are provided off of lane when it is feasible, in order to improve pedestrian safety on the sidewalks, and maintain street parking, etc.
	The required number of carwash stalls.	Supportable , provided that other alternatives are considered to meet this requirement.
	Unit mix in Category B supportive housing facilities.	Supportable , provided that it is demonstrated that the proposed unit mix meets the need of the market and the target residents group.
	Floor area and siting requirements applicable to a section of a building, provided that it does not increase the total density of use of the building or structure on the property, such as floor area of a dwelling unit in a two-storey semi-detached dwellings in the R4 and R5 Districts, or side yard for the second storey in the R11 District.	Supportable , except in the R Districts, provided that it does not unduly impose on adjacent buildings and streetscapes, and it maintains the visual integrity of the area.
	The maximum building frontage for an individual user in the C8 District.	Not supportable , to maintain the small-scale, and pedestrian-oriented commercial nature of Hastings Street.
	The required bicycle parking and end-of-trip facilities in the P11 District.	Supportable , provided that it is demonstrated that it meets the actual needs of the users.

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Bylaws	Bylaw Requirements	Proposed Approach for the Requested Variance
Zoning Bylaw	The minimum dimensions of off-street parking spaces and maneuvering aisles.	Supportable , provided that it is approved by the Engineering Department to ensure safety, accessibility and convenience.
	The required number of off-street parking spaces, accessible/van accessible parking spaces, and visitor parking spaces.	Not supportable , to ensure other regulatory tools, such as payment-in-lieu of parking, use of excess off-site parking spaces, or shared use of parking spaces are used for this purpose.
	The requirement applicable to the shared use of parking spaces and the use of excess off-site parking spaces, including the maximum distance between the parking spaces and uses.	Supportable , provided that alternative measures are considered to ensure safety, accessibility, and convenience for the users.
	Payment-in-lieu (PIL) of parking.	Not supportable , to ensure consistency in application of the PIL program throughout the City.
	The accessible/van accessible parking requirements, including minimum dimensions of the access aisles, maximum slopes of the parking spaces and pedestrian routes connecting parking spaces to the building entrance.	Not supportable , to ensure safety, accessibility, and the convenience in the use of parking facilities for persons with mobility challenges.
	Visitor parking requirements, including dimensions of parking spaces and access aisles, the provision of turn-around areas, gates, etc.	Supportable , provided that other alternatives are provided to meet these requirements.
	EV charging infrastructure.	Not supportable , to ensure all parking spaces will have access to EV charging infrastructures.
	The minimum dimensions of off-street loading spaces.	Not supportable , to ensure safety, accessibility, and convenience in loading facilities.
	The required number of off-street loading spaces.	Supportable , provided that other alternatives are provided to meet the loading space requirement.

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Bylaws	Bylaw Requirements	Proposed Approach for the Requested Variance
Subdivision Control Bylaw	The provision of works and services in relation to the subdivision of land.	Not supportable , to ensure all properties have access to all required services.
	The minimum standards related to dimensions, location, alignment and gradient of roads, sidewalks, boulevards, street lighting, and underground wiring.	Not supportable , to ensure all properties have access to all required services.
	The minimum standards for water distribution system, sewage disposal system, fire hydrant system, sewage collection system, sewage disposal system, drainage collection system, drainage disposal system.	Not supportable , to ensure all properties have access to all required services.
Sign Bylaw	The requirements of the Sign Bylaw, including the maximum number, size and dimensions, siting and location, types, minimum height, projection over the public properties, etc.	Supportable , provided that it does not unduly impose on adjacent uses, street, City services, and public safety, and it maintains the visual integrity of the area.