

**City of Surrey
Board of Variance
Minutes**

1E – Committee Room B
City Hall
13450 - 104 Avenue
Surrey, B.C.
WEDNESDAY, SEPTEMBER 11, 2019
Time: 9:00 a.m.
File: 0360-20

Present:

Gil Mervyn, Chair
Inderjit Dhillon
Puneet Sandhar
Beerinder Sidhu

Absent:

Jennifer Rahiman

Staff Present:

K. Broersma, Planning & Development
J. Wonfor, Plan Review, Building
L. Anderson, Secretary

A. ADOPTION OF MINUTES

1. Minutes of the Board of Variance hearing held July 10, 2019.

Moved by I. Dhillon
Seconded by P. Sandhar

THAT the Minutes of the Board of Variance hearing held on July 10, 2019, be received and adopted as circulated.

CARRIED UNANIMOUSLY

B. DEFERRED APPEALS

C. NEW APPEALS

1. **Appeal No. 19-05 – Kang**

For permission to relax the side yard on flanking street (168 Street) setback from 30.0m to 15.3m, to allow construction of a farm accessory building at 4136 – 168 Street.

The Chair confirmed the Appellant was not present to speak to the appeal.

Therefore, it was

Moved by I. Dhillon
Seconded by P. Sandhar

THAT Appeal No. 19-05, to relax the side yard on flanking street (168 Street) setback from 30.0m to 15.3m, to allow construction of a farm accessory building at 4136 – 168 Street, be **DEFERRED**.

CARRIED UNANIMOUSLY

2. Appeal No. 19-05 – Baluyot

For permission to increase the fence height from 1.2m to 1.8m in the front yard, flanking street side yard and interior side yard, and to increase the fence height from 1.0m to 1.8m within 9m of the intersecting front (east) and flanking street (south) property lines, to permit the existing fence at 13985 – 113A Avenue.

The Board acknowledged Cloyd and Filomena Baluyot, Appellants, in attendance to speak to the application.

Mrs. Baluyot informed that a letter from the Bylaws department was received on July 10, 2019, advising that an inspection of her property was conducted in response to complaints made regarding the fence at the front and side of the property. The inspection revealed the fence exceeds the permitted height and may also be on City property and it was requested that the illegal use be stopped by July 30, 2019. A follow-up inspection confirmed the fence was 0.8m over the maximum allowed and too close to the fire hydrant. A solution to the proximity of the fence to the fire hydrant was discussed and it was determined that the fence will be moved further onto the property by angling the corner away from the fire hydrant. The Appellant further informed the fence had been installed solely for the purpose of protecting her five-year old child, who has a sensory disorder, requiring a safety buffer from the distraction and curiosity of the busy road. The fence was not built to offend anyone.

In response to questions from the Board, the Appellant made the following comments:

- The backyard fence was in place when the property was purchased.
- Although the play equipment is currently in the backyard, the equipment is not used due to the proximity to the neighbour's property and their activities (parties, smoking, etc.); held off moving the play equipment until the decision for the appeal was received.

In response to questions from the Board, Staff made the following comments:

- The intent of the Bylaw is the sightlines and unrestricted access to the fire hydrant.
- Engineering has not expressed any concerns with the way the fence is currently.
- To prevent a similar tall fence in the future, there could be a time limit attached to the approval of the existing fence.

The Chair confirmed that, although the Appeal was initiated due to complaints received by Bylaws, there were no persons present to speak to the application

and no correspondence received in response to the notification regarding the appeal.

Members of the Board made the following comments regarding the requested variance:

- The significant change in elevation from the curb of the street to where the fence is measured is noticeable; looks like it is 1-2 ft. down.
- There is a very specific reason for the height restrictions; the intent of the Bylaw is to ensure significant sightlines for traffic approaching the intersection. The impression of the property and images shown do not indicate the intersection is more dangerous due to the height of the existing fence.
- There can be an argument made on both sides: the impression of the property being equivalent and reviewed by staff, the intent of the Bylaw has been met; and, with the Board's decision being permanent and the Appellants' child eventually outgrowing the need for a play area, it is prudent for the Board to consider the retention of the existing fence only.
- Undue hardship has been demonstrated as a result of the family's situation with the child's diagnosis and necessity for a taller fence to ensure the child's safety.

Therefore, it was

Moved by P. Sandhar
Seconded by I. Dhillon

THAT the Board finds that undue hardship would be caused to the Appellants by compliance with the Zoning Bylaw and orders that Appeal No. 19-06, to increase the fence height from 1.2m to 1.8m in the front yard, flanking street side yard and interior side yard, and to increase the fence height from 1.0m to 1.8m within 9m of the intersecting front (east) and flanking street (south) property lines, to permit the retention of the existing fence at 13985 – 113A Avenue, as presented to the Board, be **ALLOWED**.

CARRIED UNANIMOUSLY

3. Appeal No. 19-07 – Ackerman

For permission to relax the 80/20 provision that the second floor area be 80% of the ground floor area, to permit renovations to the existing dwelling at 1837 – 128 Street.

The Board acknowledged Scott Ackerman, Appellant, in attendance to speak to the application.

Mr. Ackerman informed he would like to renovate his home to increase the living space with an addition to the main floor at the back of the home. The application for a Building Permit was submitted on April 10, 2019, with inquiries and additional information required from various City departments (Drainage, Storm, Trees, etc.) beginning by May 7th. All inquiries were responded to and dealt with on a timely basis, fully adhering to requests as they arose, including constructing tree barriers, moving existing storm and sanitary services and paying various fees and tree bonds. Based on the general timelines indicated by the City, plans moved forward and the family moved to a rental home in June for the duration of the construction period. Unfortunately, it was not until the family had moved out of the home that the "80/20 Rule" (80/20) was noted. As with many two-storey homes built around the same time (1974), they were typically built with equal floor space on both floors; prior to the 80/20, which stipulates the second floor area must be no more than 80% of the ground floor area. The renovation plan proposes the second floor coverage will ultimately be 74.93% of the ground floor area, which is well below the 80% threshold. The design is unique and offers architectural detail designed to meet the intent of the bylaw, however the strict application of the 80/20 requires the offset to be visible from the street when looking at the centre front of the home. A significant amount of unforeseen time and money has been invested in the application process already, including the extended rental fees, etc. and, although the application meets all requirements, (allowable square footage, setbacks and lot coverage), the offset is not visible as required and a variance of the 80/20 is sought to achieve compliance.

In response to questions from the Board, the Appellant made the following comments:

- The proposed renovation design conserves the existing layout and works well for the adjoining neighbours (noted in their letters of support submitted to the Board), as the addition at the rear of the home will not impede on the neighbours' backyards.
- As required, BC Housing confirmed the project construction does not exceed 75% of the entire project and that a Home Warranty Registration is not required.
- Due to the slope of the property (sloping downward from 128 Street towards the house), it would be extremely difficult to add significant additional living space to the front of the home at the first storey level. Therefore, plans were made for an addition to the rear of the home, which will also improve the existing structure.
- To keep the renovations costs to a minimum, the renovated kitchen layout was designed to duplicate the original kitchen (as completely renovated a few years ago) and the cabinets and countertops were removed and put in storage after the family had moved to the rental home.
- Tree barriers and storm/sani services were moved (by an independent contractor) and inspected. Site servicing fees have been paid, hazardous

material testing completed and hydro, gas, cable and sewer systems have already been disconnected, as required.

- City staff have been very responsible throughout the process and everything required has been done in good faith.
- The only significant setback has been the 80/20, discovered in late July/early August. City staff acknowledged that the interpretation varies, and although not clearly set out, the general understanding is that the 80/20 offset should be visible from the front of the home when standing at a 90 degree angle. Two options were proposed going forward: revise the proposal to meet the 80/20 which, because of the existing foundation, would require the entire home to be demolished and a new home built; or a Development Variance Permit, anticipated to take a few more months.

The Chair confirmed there were no persons present to speak to the application and two letters of support received in response to the notification regarding the appeal.

Members of the Board made the following comments regarding the requested variance:

- The renovations meet all the provisions of the Bylaw, including the 80/20, with the exception that the proposed offsets are not visible when looking from the centre point of the front property line. The only way to meet that criteria is to demolish the home.
- Undue hardship has been demonstrated. The Appellant's proposed renovation design meets the 80/20, however the requirement for the offset to specifically be visible is not possible without demolishing the home or providing an addition to the front of the home, both of which would incur undue hardship.

Therefore, it was

Moved by I. Dhillon

Seconded by P. Sandhar

THAT the Board finds that undue hardship would be caused to the Appellant by compliance with the Zoning Bylaw and orders that Appeal No. 19-07, to relax the 80/20 provision that the second floor area be 80% of the ground floor area, to permit renovations to the existing dwelling at 1837 – 128 Street, as presented to the Board, be **ALLOWED**.

CARRIED UNANIMOUSLY

4. Appeal No. 19-05 – Deol

For permission to relax the 80/20 provision that the second floor area be 80% of the ground floor area, to permit the construction of an addition to the rear of the existing house and to add a garage portion at the front of the house at 14174 – 75 Avenue.

Board member I. Dhillon declared a conflict of interest regarding Appeal No. 19-05 and left the meeting at 9:39 a.m.

The Board acknowledged Gurpreet Mann, Agent for the Appellant, in attendance to speak to the application.

Mr. Mann informed the proposed renovation design, for an addition to the rear of the home to accommodate an extended family, meets all the requirements of the Zoning Bylaw except the "80/20 Rule" (80/20), which requires that the second floor area must be no more than 80% of the ground floor area. The home was constructed prior to the introduction of the 80/20, when many homes were built with equal floor space on each floor (box like). In an effort to meet the 80/20 requirements, the architect tried to design a veranda at the front of the home but the location of the door and windows interfere with the centre portion of the home and would require additional renovations to achieve.

In response to questions from the Board, the Appellant's Agent made the following comments:

- There will not be any changes to the front of the home. The proposed addition is to the back of the home only.
- The additional space will accommodate the extended family, which includes two brothers with families and their parents.

The Chair confirmed there were no persons present to speak to the application and no correspondence received in response to the notification regarding the appeal.

Members of the Board made the following comments regarding the requested variance:

- All provisions of the Bylaw, except the 80/20, have been met. The appeal is consistent with other appeals the Board has considered for homes built prior to the 80/20.
- Any attempt to meet the 80/20 would result in a need to demolish a portion of the existing home.

- Undue hardship has been demonstrated. It is a large family that needs additional space and the proposed renovation design does meet all of the requirements of the Bylaw except the 80/20, which would require demolishing a portion of the existing home in order to comply, causing significant hardship.

Therefore, it was

Moved by B. Sidhu

Seconded by P. Sandhar

THAT the Board finds that undue hardship would be caused to the Appellant by compliance with the Zoning Bylaw and orders that Appeal No. 19-08, to relax the 80/20 provision that the second floor area be 80% of the ground floor area, to permit the construction of an addition to the rear of the existing house and to add a garage portion at the front of the house at 14174 – 75 Avenue, as presented to the Board, be **ALLOWED**.

CARRIED UNANIMOUSLY

I. Dhillon rejoined the meeting at 9:55 a.m.

D. OTHER BUSINESS

1. Administration Concerns

(a) 80/20 Rule

With respect to the 80/20 Rule ("80/20") Appeals considered above, the Chair reiterated concerns noted at the February 13 and June 19, 2019 meetings; in particular, when citizens are impacted by the 80/20 when seeking a Building Permit for an addition to their home built prior to the adoption of the Bylaw regulation. In many of these cases, the application to alter/add to the existing residential property encounters a series of setbacks, added expenses and unnecessary frustration for the property owners as a result of trying to comply with the 80/20.

Discussion ensued with respect to Appeal 19-07 (as an example), where the Applicant applied for a Building Permit (BP) in April, but not advised about the 80/20 until late July/August, long after all other requirements for the BP were met and considerable unforeseen expenses and disruption to the construction timeline incurred. Again, the Chair stressed the need to inform applicants of the 80/20 when seeking a BP and to provide the following three options for the applicant to pursue when a proposed design does not comply with the 80/20:

1. Re-design the proposal to comply;
2. Apply to City Council for a Development Variance Permit, or

3. Apply to the Board of Variance for a relaxation of the 80/20 on the basis of "undue hardship".

Applicants should not be reluctant to proceed with their plans with the knowledge there is a process in which they may receive a variance to achieve what they wanted in the first place.

Planning staff provided an overview of the current BP process and confirmed that the Board's concerns will be shared with staff as a reminder for any similar BP applications in the future. It was noted however, there have been scenarios where the professionals hired for the design/construction likely should have known the information or have consulted with a planner in advance, before any other requirements (service upgrades, etc.) for the BP were completed. It may be possible, in some cases, to amend a design to comply with the 80/20 before any other preparation and/or construction begins.

A further concern was acknowledged with respect to the unclear interpretation of the provision in the 80/20 pertaining to the visibility of the offset. As reported in the past, until approximately six months ago, the 80/20 was overlooked in some cases where there was an alteration only to the rear of the home, however this practise has now changed and the 80/20 is applied to all circumstances, notably that the offset is visible when looking from the centre of the front property line. Staff advised amendments to the Bylaw are underway which will provide a precise interpretation.

(b) Development Permit Applications vs. Board of Variance Appeals

The Chair queried the preliminary Board of Variance (BoV) Appeal process currently in place that requires the submission of a BoV Inquiry to staff prior to submitting the required Appeal documentation and applicable fees. In particular, the determination of whether the proposed variance should be submitted as an Appeal to the Board of Variance or if a Development Variance Permit (DVP) is required.

Staff reported that the new process was implemented to resolve situations where completed BoV Appeal applications were submitted to the Clerk's office and later determined that during the review process, the proposed variance could not be considered by the Board (e.g. outside of the Board's jurisdiction, a number of other issues that need to be addressed first, etc.). In some circumstances the proposed development may be far more complex than initially projected, and it is preferred in those situations that the all of requirements be dealt with comprehensively through the DVP process instead of starting with a BoV Appeal, only to be delayed further with other conditions. The necessity of the BoV preliminary inquiry has resulted in increased efficiency and coordination within the BoV Appeal and DVP processes.

In response, the chair emphasized that the decision of submitting an appeal to the Board of Variance is the right of the appellant. While recognizing that staff may advise an appellant, staff should not, under any circumstance, deny the right of appeal to the Board of Variance.

(c) *Appeal 18-65 – 9186 - 132 Street*

The Chair referenced Appeal 18-65 for the property located at 9186 132 - Street, which was considered and denied by the Board on December 12, 2018. It was noted that the property appeared to be operating a Beauty Salon in contradiction to the Board's decision, the provisions of the Bylaw and specific advice provided to the appellant.

The Chair requested staff investigate how the development had been permitted to proceed, contrary to the decision of the Board, and to follow-up on the legality of the operation of a Beauty Salon at this property.

E. NEXT MEETING

The next Board of Variance hearing is scheduled for Wednesday, October 9, 2019 at 9:00 a.m.

F. ADJOURNMENT

Moved by P. Sandhar
Second by B. Sidhu

THAT the meeting be adjourned.

CARRIED UNANIMOUSLY

The meeting adjourned at 10:43 a.m.

Gil Mervyn, Chair

Lorraine Anderson, Secretary