

**City of Surrey  
Board of Variance  
Minutes**

**Virtual Meeting  
WEDNESDAY, OCTOBER 14, 2020  
Time: 9:00 a.m.  
File: 0360-20**

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**Present:**

Gil Mervyn, Chair  
Inderjit Dhillon  
Puneet Sandhar  
Beerinder Sidhu

**Absent:**

Dave Hans

**Staff Present:**

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

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**A. ADOPTION OF MINUTES**

1. The minutes of the Board of Variance hearing held on July 15, 2020 to be adopted.

Moved by P. Sandhar  
Second by I. Dhillon

THAT the Minutes of the Board of Variance hearing held on July 15, 2020, be received and adopted as circulated.

CARRIED UNANIMOUSLY

**B. DEFERRED APPEALS**

**C. NEW APPEALS**

1. **Appeal No. 20-08 – Werner**

*For permission to reduce the flanking street yard setback (144A Street) from 3.6m to 1.8m, to permit replacement of an existing garage with a new garage at 14425 – 114 Avenue.*

The Board acknowledged Rita Werner, Appellant and Yuliya Vityuk, Vancouver General Contractors, Agent for the Appellant, in attendance to speak to the application.

The Agent informed the house was built in the mid 1970s and the garage was added at a later date, but before the Appellant purchased the property. It wasn't until the contractor was hired to replace the garage structure that, after going through the proper channels to permit the work, it was discovered the house itself was not built according to the zoning bylaw which hadn't been identified during the plan review or prior to initiating the work already in place. The current zoning requires a 3.6m setback but the original and replacement garage is 1.83m setback. With the new garage foundation already in place, it would be extremely difficult to meet the required setbacks, e.g. if the garage

has to be moved 6 ft. more along the wall, the Appellant would lose the bathroom window on the ground floor and the exit to the deck from the dining room on the upper floor. Furthermore, moving the structure would require extensive envelope work and framing a new door to the deck, which would affect the kitchen layout as well. The extent of the work required to achieve compliance would cause significant financial hardship, therefore a variance to reduce the specified setback is being sought.

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

- The previous structure was showing visible signs of sinking and coming apart and was not used for the safety reasons. The new structure provides the opportunity for the Appellant to safely utilize the space, without worry of its unstable structure.
- Although unaware of the extent of repairs needed at the onset, replacing the garage identified the true scope of the work required.
- Demolition started one year ago, and the new foundation was installed in April of this year. To date, there haven't been any complaints received from neighbours.

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

- The new attached garage is nonconforming.
- The zoning is RA; a Land Use Contract area, but still in an RA Zone. It is likely that the property was subdivided at some point without changing the Zone.
- The Building Permit (BP) was issued in September 2019 and the issue of the setback was found during the foundation inspections.

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

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

- It is fascinating that not only the Appellant's home, but all of the houses in this area are nonconforming, do not have the 1.8m setback.
- This is a nonconforming house and under the provision of the *Local Government Act*, is an appropriate appeal for the Board's consideration.
- If the setback requirement had been identified prior to the issuance of the BP, an Appeal before the Board would have been anticipated.

- Undue hardship has been demonstrated. The Appellant was not aware of the non-conforming garage prior to starting the additional repairs required and new foundation installed, which would be difficult and costly to remove.

Therefore, it was

Moved by P. Sandhar

Second 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. 20-08, to reduce the flanking street yard setback (144A Street) from 3.6m to 1.8m, to permit replacement of an existing garage with a new garage at 14425 – 114 Avenue, as presented to the Board, be **ALLOWED**.

CARRIED UNANIMOUSLY

## 2. **Appeal No. 20-09 – Dhillon**

*For permission to reduce the side yard setback of the A-1 Zone from 15.0m to 5.0m and to reduce the front yard setback of the A-1 Zone from 30.0m to 13.3m, to allow for the retention of an existing building at 17325 – 48 Avenue that is to be converted to a farm storage building.*

The Board acknowledged Kavinder Dhillon, Agent and son of the Appellant, in attendance to speak to the application.

The Agent informed the building is approximately 60 years old and was the residential home of the Appellant until the new residence was built on the property. The Appellant would like to convert the building from residential to farm storage, however the pre-existing setbacks do not comply with the current zoning setback requirements. As the building does not require any structural changes in order to convert to farm storage, the Appellant would incur undue financial hardship if the building had to be demolished and rebuilt in order to comply with the current zoning. A variance from the Board to permit the pre-existing setbacks in order to retain the building is being sought.

### **In response to questions from the Board, the Agent made the following comments:**

- The building will be used for various farm storage. Currently used for farm papers/documents and miscellaneous farm materials and supplies. Could also be used for some small mechanical equipment, tractor, etc.
- Images shown of the property on the City's online mapping system identify other existing buildings used for storage, but the condition of the roofs of those buildings make them not suitable for storing items safely.
- This Appeal is for setbacks only, not the retention of the exiting building.

- The Agent has been working with the City for the past 18 months to determine requirements to retain the building as a farm storage building.

The Agent was asked if he was familiar with the wording of the Restrictive Covenant (RC) that the Appellant entered into when the new residential building was constructed, and the specific clause that sets out the ability to retain or reuse the building, which states:

*"The Covenantor agrees that the Lands shall be used for one (1) single family dwelling only and upon approval by the Covenantee of the Replacement Single Family Dwelling for occupancy, the Existing Dwelling will be removed or converted to a use conforming to all by-laws of the Covenantee within thirty (30) days, but in any case the Existing Dwelling shall be removed or converted to a use conforming to all by-laws of the Covenantee within eighteen (18) months of the date of issuance of the building permit for the Replacement Single Family Dwelling."*

The Chair noted the specific clause that sets out the ability to retain or reuse the building, but the building must comply with all bylaws.

The Chair further noted the provision of Section 542 (2) (a) of the *Local Government Act*, which states:

*"The board of variance must not make an order under subsection (1) that would do any of the following:  
(a) be in conflict with a covenant registered under section 219 of the Land Title Act or section 24A of the Land Registry Act, R.S.B.C. 1960, c. 208"*

Discussion ensued with respect to the Board's ability to consider the Appeal, given the strict conflict with the legislation that restricts the Board where there is an RC in place that specifically sets out limitations to retain the building.

The Chair advised the Board of two options: i) defer the Board's decision of the Appeal in order to seek and receive a legal opinion as to whether approval of the Appeal would be in conflict with the RC; or 2) deny the Appeal.

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

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

- The Appellant entered into the RC which specifically sets out that the requirement for the replacement building is that the existing building be removed or converted to a use conforming to all by-laws within 18 months.

- A Board decision cannot be made that conflicts with the RC. The RC provided for the building to be retained for an alternative use providing it complies with all bylaws, which it does not because of the setbacks. However, if the Board allows the setbacks (based on the hardship as reported) it will result in the Appellant retaining the building, for which the Board is not legally permitted to issue approval.
- It seems unnecessary to delay the Board's decision any further by deferring the Appeal. The RC requires a certain action by the Appellant that has not taken place within the timeline given.
- Currently there are alternate options for storage on site, especially for paper.
- Undue hardship has not been demonstrated. The original intent was to permit the construction of a replacement home and storage was not entertained at the time. Furthermore, it is the opinion of the Board that a decision would be in conflict of Section 542 (2)(a) of the *Local Government Act*.

Therefore, it was

Moved by I. Dhillon  
Second by B. Sidhu

THAT the Board finds that undue hardship would not be caused to the Appellant by compliance with the Zoning Bylaw, as there appears to be ample alternate storage facilities on site to accommodate the appellant's needs,

AND FURTHER THAT, approval of the Appeal would be contrary to the provisions of Section 542 (2) (a) of the *Local Government Act*,

AND THEREFORE orders that Appeal No. 20-09, to reduce the side yard setback of the A-1 Zone from 15.0m to 5.0m and to reduce the front yard setback of the A-1 Zone from 30.0m to 13.3m, to allow for the retention of an existing building at 17325 – 48 Avenue that is to be converted to a farm storage building, as presented to the Board, be **DENIED**.

CARRIED UNANIMOUSLY

#### D. OTHER BUSINESS

#### E. NEXT MEETING

The next Board of Variance hearing is scheduled to be held on Wednesday, November 18, 2020, 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 9:52 a.m.

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Gil Mervyn, Chair

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Lorraine Anderson, Secretary