

**City of Surrey
Board of Variance
Minutes**

**Virtual Meeting
WEDNESDAY, FEBRUARY 3, 2021
Time: 9:09 a.m.
File: 0360-20**

Present:

Gil Mervyn, Chair
Inderjit Dhillon
Dave Hans
Hossam Meawad
Beerinder Sidhu

Absent:

Staff Present:

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

ELECTIONS and APPOINTMENTS

1. Election of Chair for 2021

The Secretary called for nominations for the Chair of the Board for the 2021 calendar year.

It was

Moved by I. Dhillon
Seconded by B. Sidhu

THAT Gil Mervyn be nominated for Chair of the Board of Variance for the 2021 calendar year.

Following due process, Gil Mervyn was elected Chair of the Board of Variance for the 2021 calendar year, by acclamation.

There was a round table of introductions and, on behalf of the Board, the Chair expressed sincere appreciation to Puneet Sandhar, Board member from 2012 to 2020, noting her dedication and informative manner in which she succinctly performed her duties as a member of the Board.

A. ADOPTION OF MINUTES

1. The minutes of the Board of Variance hearing held on October 14, 2020 to be adopted.

Moved by I. Dhillon
Second by B. Sidhu

THAT the Minutes of the Board of Variance hearing held on October 14, 2020, be received and adopted as circulated.

CARRIED UNANIMOUSLY

B. DEFERRED APPEALS**C. NEW APPEALS****1. Appeal No. 21-01 – Poon**

For permission to relax the rear yard (south) setback from 7.5m to 6.0m to permit the retention of an existing covered deck, and to relax the flanking street (128 Street) setback from 3.6m to 1.62m from the ultimate property line (or baseline setback), for the existing dwelling at 12812 – 64 Avenue.

The Board acknowledged William Poon, Applicant, and Neil Prakash, Nick Milkovich Architects, Agent for the Appellant, in attendance to speak to the application.

The Agent reported that on April 22, 2020, a vehicle crashed into a front portion of the Appellants' home, making it the third accident that has happened since the Appellants purchased the home in 2016. The insurance process for fixing the damage commenced in early May. When the inspector reviewed the damage, the unpermitted extension to the rear deck and additional storage were identified, unrelated to the area of the house requiring repair. The covered portion of the deck was the original deck constructed in 2011, but the deck extension and enclosure are nonconforming and were already in place when the Appellants purchased the home in 2016. As a result, the repair to the hole in the living room at the front of the house was put on hold until the matter could be resolved. Six months later, with the onset of the cold, damp weather, the City granted a partial resolution to allow the unpermitted works to be decoupled from the repair requirements so that the repair could be carried out while the matter of the unpermitted works was looked after. It has been a very stressful nine months for the Appellants, especially as they didn't cause the accident, the unpermitted works had not been disclosed when the property was purchased and that all of this was happening during a pandemic. The house has been unsecured and the stress of having to deconstruct a portion of the house exacerbates the condition the Appellants have been living in the last few months. Permission to relax the rear yard and flanking yard setbacks is being sought.

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

- The unpermitted works affect the rear yard set back, do not add value to the home or affect any of the neighbours.

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 covered deck is the original, and the extended portion is the subject of the Appeal, relative to the property line.
- There is a lane at the rear of the property, giving further separation to neighbour behind the property.
- The Planning checklist confirms that the floor space, ratio including the existing extensions, is within the limits.
- It is reported that at the time of construction there were two complaints, quite likely because of the unpermitted work, but nothing was done about it at that time. Now the City is requesting the unpermitted work be addressed, even though it wasn't the area in question at the time of the inspection. The Appellant is a victim of circumstance.
- Undue hardship has been demonstrated. The house, with the existing rear deck extension and storage enclosure, was built before the road widening was done in 2011. The previous owner did not disclose the unpermitted work and it would be a hardship for the Appellants to now have to remove that work after having to repair unrelated damages to the house that were not their fault. It has already been nine months since the accident happened causing damage to the house, and it would take another six months and considerable cost to achieve compliance. Furthermore, there have not been any complaints from the neighbours and there is a lane separating the property from properties at the back.

Therefore, it was

Moved by I. Dhillon

Second by B. Sidhu

THAT the Board finds that undue hardship would be caused to the Appellants by compliance with the Zoning Bylaw and orders that Appeal No. 21-01, to relax the rear yard (south) setback from 7.5m to 6.0m, to permit the retention of an existing deck, and to relax the flanking street (128 Street) setback from 3.6m to 1.62m from the ultimate property line (or baseline setback), for the existing dwelling at 12812 – 64 Avenue, as presented to the Board, be **ALLOWED.**

CARRIED UNANIMOUSLY

2. Appeal No. 21-02 – Lidder

For permission to increase the building height from 9.0m to 10.0m, to permit the construction of a new single family dwelling at 11263 – 128 Street.

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

The Agent informed the Appellant hired a designer to prepare plans for the new home in accordance with the RF (Single Family Residential) Zone for the property, however it was determined that the 9.63m height required for the design of the home, to accommodate the required living space within the home, could not comply with the maximum building height of 9.0m due to floodplain construction restrictions, requiring the habitable space to be 4.4m above sea level. As a result of the floodplain limitations and height challenges for the design of the home, a variance 0.63m, to increase the height to 9.63m is being sought.

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

- The difference noted in the variance sought on the Appeal Application, from 9.0m to 10.0m, and the actual variance required, as identified in the design plans, from 9.0m to 9.63m, is acknowledged.
- The variance required is 9.63m.

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

- The main floor of the home will be 9ft. and upper floor will be 8ft.
- The Planning & Development Department have no concerns with respect to the proposed 447.28 sq. ft. suite to be located on the main floor of the home.

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:

- This is an area in Surrey that has a common issue as a result of the flood plain; property owners are limited to the height they can have.
- As raised with the Agent, typically an appeal for a variance is to vary the maximum permitted to the actual proposed variance as per the drawings

which, in this case, show a variance to 9.63m, but the request was for a variance is for 9.63m to 10m to allow for any unforeseen circumstances.

- The Agent has provided confirmation that the Board is to consider the variance as per the drawings submitted to a maximum of 9.63m, not as noted on the Appeal application.
- The phrasing generally used by the Board for approvals includes "in accordance with the drawings as provided to the Board", which aligns with the consensus on the part of the Board to proceed with this variance appeal to allow the maximum height to be a 9.63m.
- It is not a hardship to request/require any variance greater than what is needed. In this case, the requirement is a maximum height of 9.63m, resulting in 9.0 sq. ft. height on the main floor and 8.0 sq. ft. on the second (top) floor.
- Compared to other RF zoned areas in Surrey with a maximum height of 9.0m, the proposed residential dwelling is required to be pushed up to meet the minimum flood plain zone to begin with, leaving less space available to meet the requirements of the zoning bylaw.
- Undue hardship has been demonstrated as a result of the impact from the floodplain restrictions requiring the habitable space to be above the established floodplain level; the home cannot have a traditional ground floor, as the crawl space is not habitable. A variance from 9.0m to 9.63m, as confirmed with the Agent, is required to accommodate the design of the home detailed in the plans submitted to the Board for consideration.

Therefore, it was

Moved by I. Dhillon

Second by B. Sidhu

THAT the Board finds that undue hardship would be caused to the Appellants by compliance with the Zoning Bylaw and orders that Appeal No. 21-02, to increase the building height from 9.0m to 9.63m, to permit the construction of a new single family dwelling at 11263 – 128 Street, as per the plans presented to the Board, be **ALLOWED**.

CARRIED UNANIMOUSLY

A brief discussion ensued with respect to some of the newer homes within the subject Appeal neighbourhood. It was reported the homes were built under similar provisions however it consistently appears the homes now offer habitable space below the first floor, with windows, doors, etc., making them essentially three storey homes that no longer meet the zoning requirements; staff noted they were unaware this is happening and reported the information would be followed up with Bylaws.

Subsequent to the meeting, Staff were asked if there was any requirement of a Restrictive Covenant when these structures are being built and advised that an information bulletin from the Building Division was recently posted to the City's website, entitled "*A Guide to Applying for a Building Permit for Residential Buildings Located in the Bridgeview Floodplain*", which states:

"Floodplain Restrictive Covenant

A Restrictive Covenant (RC), registered on the property's title at the Land Titles Office, will be required for new homes in the Bridgeview Floodplain area. The RC will prohibit the creation of habitable floor area below the FCL value. The RC shall be registered on title before the issuance of the Building Permit. Sample RC template documents are available from the Building Division."

D. OTHER BUSINESS

E. NEXT MEETING

The next Board of Variance hearing is scheduled to be held on Wednesday, March 10, 2021, at 9:00 a.m.

F. ADJOURNMENT

Moved by I. Dhillon
Second by B. Sidhu

THAT the meeting be adjourned.

CARRIED UNANIMOUSLY

The meeting adjourned at 10:07 a.m.

Gil Mervyn, Chair

Lorraine Anderson, Secretary