

ITEM 3

MANAGER'S REPORT NO. 57

COUNCIL MEETING Sept. 3/74

Re: Driveway Access to 4808 Neville Street  
(Item 41, Report No. 53, August 6, 1974)

On August 6, 1974, Council received a letter from Mr. and Mrs. Lothar Tschunko regarding their desire to retain access to an illegal parking area in the front yard of their property at 4808 Neville Street. The retention was justified on the basis that the front yard driveway existed when they purchased the property in 1971, advanced age, health impediments and on the fact that the double carport at the rear of the property is owned by their son. A report from staff (Item 41, Report No. 53) advised that the parking area is in violation of Section 800.6 of the Zoning By-Law, and that access to the area in question should be denied accordingly. Council subsequently tabled the matter pending receipt of additional information on whether an exception to the By-Law can be made for reasons of health.

The Solicitor advises that Section 702 (1)(b) of the Municipal Act, which regulates the use of land, does not contain any power to make exceptions or to discriminate in any way. Further comments on this matter are contained in the following report from the Engineer.

RECOMMENDATIONS:

THAT the health or other personal inconvenience of an individual not be considered a justification for relaxation of Municipal by-laws; and

THAT a vehicle crossing to service the subject existing front yard parking area now in violation of Section 800.6 of the Burnaby Zoning By-Law 1965 be denied; and

THAT Mr. and Mrs. Lothar Tschunko be sent a copy of this report.

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TO: MUNICIPAL MANAGER

AUGUST 16, 1974

FROM: MUNICIPAL ENGINEER

RE: DRIVEWAY ACCESS - 4808 NEVILLE STREET.

Reference the Clerk's memo of August 14, 1974.

The Council at its meeting of August 6, 1974, when considering an appeal from Mr. and Mrs. Tschunko to have a sidewalk crossing provided for an illegal front yard parking area raised the question should we not grant exceptions to bylaw violations for health reasons.

While we all sympathize with individuals who have health problems we feel that it would be extremely difficult to grant such exceptions to any individual for any purpose and still have an enforceable bylaw. If the Tschunko's were to be given a vehicle access to their front yard in violation to the Zoning Bylaw 1965 solely on the basis of their health, then we would be placing ourselves in the position where we could not refuse similar relaxations where the applicant claimed to have any number of ailments, without being accused of discrimination. It should also be borne in mind that if such a concession was granted it would be to accommodate a short term health condition, the concession however would establish a permanent feature to the street development.

During the enforcement of all of our bylaws we are continually being requested to give relaxations for one reason or another. We find that we cannot do this particularly where a relaxation would result in a permanent or continuing violation as there are no discretionary provisions contained within the Municipal Act for Councils or staff to justify such action. If we find that we cannot live with a certain bylaw or a section to a bylaw the proper course of action should be to rescind the particular bylaw or section.

RECOMMENDATION:

THAT the health or other personal inconvenience of an individual not be considered a justification for relaxation of Municipal Bylaws, and,

THAT Mr. and Mrs. Lothar Tschunko be sent a copy of this report.

*E. J. Ok...*  
MUNICIPAL ENGINEER

HB: pkm