

ITEM	8
MANAGER'S REPORT NO.	79
COUNCIL MEETING	Nov. 14/77

Re: PROPOSED TEXT AMENDMENT TO BURNABY ZONING BY-LAW MAINTAINING CONFORMITY OF EXISTING BUILDINGS UPON STREET WIDENING

Following is a report from the Director of Planning on a proposed text amendment to the Zoning By-law.

RECOMMENDATIONS:

1. THAT the Burnaby Zoning By-law be amended to introduce a Section under Section 6.12 of the By-law as specifically noted in the Director of Planning's report; and
2. THAT the proposed text amendment be submitted to the Public Hearing scheduled for December 13, 1977.

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PLANNING DEPARTMENT
NOVEMBER 9, 1977

TO: MUNICIPAL MANAGER
FROM: DIRECTOR OF PLANNING
SUBJECT: PROPOSED TEXT AMENDMENT TO BURNABY ZONING BYLAW
MAINTAINING CONFORMITY OF EXISTING BUILDINGS
UPON STREET WIDENING

From time to time, the Municipality finds it necessary to acquire portions of private properties abutting existing dedicated streets in order to have sufficient right-of-way width to accommodate planned street improvements. In instances where such properties have experienced development and contain existing buildings which have respected the prevailing setbacks from that street, such widening results in a reduced setback, in an amount less than the permitted minimum front or side yard setback of the zoning district in which the lot is located, such that non-conformity is incurred.

While the Municipal Act Section 705 and the Burnaby Zoning Bylaw Section 4.2(2) recognize the legal non-conformity of buildings or structures made non-conforming with respect to size, shape or siting at the time of adoption of the Zoning Bylaw, non-conformity resulting from road widening acquisitions is not presently recognized under the Bylaw, and as a result property owners in such cases frequently submit that the acquisition results in hardship or injurious affection with respect to such buildings.

Examples of the claims of hardship include difficulty in refinancing or sale of properties in which the building's siting is non-conforming, or in obtaining fire insurance for the buildings involved.

As the Planning Department had pointed out in its report to the Council on May 24, 1977 (Item #1, In Camera, Manager's Report No. 38) provision is made for appeals to the Board of Variance on the grounds of hardship with respect to siting, size or shape of buildings or structures. However, it is not possible to anticipate the future disposition of a Board of Variance when acquisitions for property

required for road widening are being negotiated, and as a result there is a great deal of uncertainty and difficulty experienced by property owner and Land Agent alike in negotiations for property required for such public purposes where existing buildings would become non-conforming.

In order to minimize the difficulties that are thus brought about, staff have sought for a legal means whereby the municipality could officially recognize in its zoning bylaw the continuing legality of existing buildings or structures in this situation where a reduced building setback was incurred as a result of land being obtained for creating or widening a public street, whilst ensuring that any additions or extensions to such existing structures would reflect the normal requirements of the Bylaw at the time of their construction.

Under Section 6.12(2) the existing Zoning Bylaw provides for exception to the front yard requirements of the A and R Districts under certain circumstances and with certain limitations. In a rather similar manner, it is possible to adopt a provision as a text amendment to the Bylaw to both protect the interests of the property owners where public streets are created or widened and also to assist the Municipality in its effort to obtain the necessary rights-of-way with a minimum of conflict and with a minimum of resulting non-conformity.

Proposed Amendment:

Under Section 6.12 - Yards - add the following:

"(4) Exceptions to Yard Requirements upon Widening of Road Rights-of-Way

In all zoning districts, where a portion of a lot is acquired for the purpose of creating or widening a public street, and where such lot was improved prior to the time of such acquisition with one or more permitted principal buildings, the yard abutting that street may be reduced in depth for those existing buildings by an amount equal to the depth of land obtained for such purposes, provided however that any additions or extensions to such existing buildings shall observe the yard requirements established for the zoning district in which the lot is located, and provided further that such reduction does not exceed the original setback of the existing building."

It should be noted that this proposed amendment would assist in resolving some of the problems that have been encountered in negotiating the acquisition of widenings along the Norland Avenue right-of-way where existing buildings are situated less than 30' from the existing front property line. Moreover, similar situations will be encountered in many future instances where widenings of streets are contemplated, but where building line setbacks have not been previously established under Section 6.16 of the Bylaw. Examples of such potential instances include properties adjacent to Edmonds Street, Gilley Avenue, the south side of Kingsway, and the like.

In order to amend the Bylaw to achieve these purposes, it will be necessary to have an Amending Bylaw prepared by the Solicitor, and submitted to a Public Hearing prior to giving readings to the amendment.

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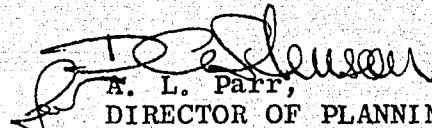
RECOMMENDATION:

It is recommended THAT the text of the Burnaby Zoning Bylaw be amended to introduce the following Section under Section 6.12 of the Bylaw:

"(4) Exceptions to Yard Requirements upon
Widening of Road Rights-of-Way

In all zoning districts, where a portion of a lot is acquired for the purpose of creating or widening a public street, and where such lot was improved prior to the time of such acquisition with one or more permitted principal buildings, the yard abutting that street may be reduced in depth for those existing buildings by an amount equal to the depth of land obtained for such purposes, provided however that any additions or extensions to such existing buildings shall observe the yard requirements established for the zoning district in which the lot is located, and provided further that such reduction does not exceed the original setback of the existing building."

and THAT the proposed text amendment be submitted to the Public Hearing scheduled for December 13, 1977.


A. L. Parr,
DIRECTOR OF PLANNING.

DGS:cm

c.c. Municipal Solicitor
Land Agent
Municipal Engineer
Chief Building Inspector
Municipal Clerk