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MANAGER'S REPORT NO.	82
COUNCIL MEETING	Nov. 28/77

Re: SUMMARY OF THE PROVISIONS OF THE ZONING BYLAW
REGARDING CONVERSION OF BUILDINGS AND CHANGE OF USE

Following is a report from the Director of Planning dated November 2, 1977 summarizing the provisions of the zoning bylaw regarding conversion of buildings and change of use as requested by Council during discussion at its meeting of June 27, 1977.

The article that is suggested for inclusion in the Information Burnaby Newsletter will appear in the next edition which is scheduled for distribution in February, 1978.

This is for the information of Council.

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PLANNING DEPARTMENT
NOVEMBER 2, 1977

TO: MUNICIPAL MANAGER
FROM: DIRECTOR OF PLANNING
SUBJECT: SUMMARY OF THE PROVISIONS OF THE ZONING BYLAW
REGARDING CONVERSION OF BUILDINGS AND CHANGE OF USE

Arising from discussion at the June 27, 1977 meeting of Council, a report was requested on the Planning Department's interpretation of the requirements of the Zoning Bylaw concerning the conversion of buildings and changes in use, with particular reference to Section 6.5 of the Bylaw.

For convenient reference, Section 6.5 under "Supplementary Regulations", provides as follows:

"6.5 Conversion of Buildings:

Buildings may be converted, altered or remodelled for another use, provided that:

- (1) The Chief Building Inspector certifies that the building is structurally suitable for such conversion.
- (2) The converted building shall conform to all the provisions and regulations prescribed for the zoning district in which it is located."

The purpose of this report is to outline the applicable sections of the Burnaby Zoning Bylaw that relate to changes of use or building conversion, and the way in which these regulations apply in practice to changes in land use or conversion of buildings to other uses in this Municipality.

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BACKGROUND

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The Municipal Act, Part XXI, Community Planning, sets out the authority for Municipal Councils to adopt bylaws and plans to control development and the use of land in their communities, and to enact regulations designed to protect the interests of the community as a whole. Division (3) of this Part sets out the power of a Council to regulate use in zones, and in Section 702(2) further sets out the following criteria, to be considered by Council in making regulations under this section:

- "(a) The promotion of health, safety, convenience, and welfare of the public:
- (b) The prevention of the overcrowding of land, and the preservation of the amenities peculiar to any zone:
- (c) The securing of adequate light, air, and access:
- (d) The value of the land and the nature of its present and prospective use and occupancy:
- (e) The character of each zone, the character of the buildings already erected, and the peculiar suitability of the zone for particular uses:
- (f) The conservation of property values."

(These criteria are embodied in the adopted Burnaby Zoning Bylaw, under Section 2 "Purpose".)

The power given by the Municipal Act to Council to zone land includes the power (Municipal Act - Section 702(1)(b)) to:

"regulate the use of land, buildings and structures, including the surface of water within such zones, and the regulations may be different for different zones and for different uses within a zone.."

Further, Subsection (c) gives the authority to:

"regulate the size, shape, and siting of buildings and structures within such zones, and the regulations may be different for different zones and with respect to different uses within a zone."

In this way the Act provides for the distinguishing of different classes of uses within a given zone and for the application of particular regulations relating to such a class of uses. It is essential therefore, where a change of use occurs from one class to another, that the Municipality be satisfied that the pertinent specific regulations that have been created under the Bylaw are observed.

PROVISIONS OF THE BURNABY ZONING BYLAW

The 1965 Zoning Bylaw establishes a number of Zoning Districts and Schedules in accordance with the enabling legislation and sets out the regulations that have been made to secure the community planning objectives identified above.

The definition of "development" contained in the Zoning Bylaw refers specifically to "a change in the use of any land, building or structure for any purpose" and Section 7.3(1) spells out the need for any person wishing to undertake a development to apply for and receive Preliminary Plan Approval, except in instances related to exceptions (a) through (f), listed under that section. Section 7.3(3) requires

that the Director issue Preliminary Plan Approval when an application for development conforms to the provisions of the Bylaw and does not contravene any approved land use or road plan.

This procedure is necessary in order to ascertain that when a change in land use is being proposed, the pertinent requirements of the Zoning Bylaw related to that particular use will be satisfied.

Under Section 4 of the Zoning Bylaw, Basic Provisions, Section 4.1 provides that:

"4.1 Application

Within the Corporation of the District of Burnaby no land, buildings and structures, including the surface of water, shall hereafter be used or occupied, and no building or structure or part thereof shall be erected, moved, altered or enlarged, unless in conformity with this Bylaw, and the contrary shall be unlawful."

Moreover, Section 7.2 of the Bylaw, under Administration and Enforcement, provides as follows:

"The Chief Building Inspector shall not issue any permit, nor shall the Chief Licence Inspector issue any licence for a building, structure or use which violates any of the provisions of this Bylaw."

The process for ascertaining whether or not a building, structure, or use being proposed satisfies the provisions of the Bylaw entails the examination of an application for Preliminary Plan Approval.

The Preliminary Plan Approval process also provides the applicant with the opportunity to receive pertinent comments from other Municipal Departments to whom the application is circulated (Engineering, Fire, and Health Departments) at the preliminary stage, before the applicant incurs further expenses in detailed design and drawing work.

REPLACEMENT OF NON-CONFORMING USE

In the special case of historically non-conforming uses that were in existence at the time of adoption of the Bylaw, the Municipal Act in Section 705 sets out the provisions for their recognition, continuance, extension, and the like. In a parallel fashion, Section 4.2 of the Zoning Bylaw recognizes non-conforming uses, buildings, and structures, and provides for their continuance, subject to the provisions of Section 705 of the Municipal Act. Section 705(2) of the Act however, goes on to require that if a lawful use of the premises existing at the time of the adoption of a Zoning Bylaw is discontinued for a period of 30 days, any future use of those premises must be in conformity with the provisions of the (current) Zoning Bylaw. Accordingly it will be seen that in the case of replacement of historically non-conforming uses it is necessary to ascertain that a new use ("development") satisfies all the requirements of the Bylaw.

CHANGE IN LAND USE

In the general case of a change of use, whether or not past non-conformity was involved, it is necessary for staff to examine the new use with reference to numerous sections of the Zoning Bylaw in order to ascertain that the specific requirements of the Bylaw pertaining to that particular use will be satisfied.

In this connection, it is important to note that a change of occupant does not necessarily constitute a change of use; that is to say, the tenancy or proprietorship of a given industrial or commercial activity, for example, may be changed without altering the class of use. When this occurs, the new operator simply makes application for the necessary business licence, and there is no requirement to obtain Preliminary Plan Approval, as no change of use is involved. Where the nature of the activity to be conducted is to be changed however, as for example, in the case of a warehouse use being replaced by a manufac-

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turing use, or a retail store being replaced by a restaurant, then a change in class of use for Zoning Bylaw purposes is involved, and it is required that the various provisions of the Bylaw that apply to the new use be satisfied.

The following lists a number of the particular requirements that vary from use to use within any particular zoning category:

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1. Parking Requirements

Section 800.1(1) requires that off-street parking be provided and maintained in accordance with Schedule VIII of the Bylaw for "any change or addition" to a use existing on the effective date of the Bylaw. Section 800.6(6) of this schedule refers to the requirements of Section 6.15 of the Bylaw, which in turn spells out the landscaping and screening requirements to be satisfied in conjunction with such parking. As different uses within a given zoning district have differing parking requirements (Schedule VIII) it is necessary to assess a particular use when a change occurs in order to be satisfied that the necessary parking is being provided for that new use.

2. Loading Requirements

Sections 900 and 900.1 of Schedule IX relate to the provision of loading facilities, and specific reference is made to the provision and maintenance of loading in accordance with this Schedule "where there is a change in the principal use". Section 6.15 again sets out the landscaping and screening requirements to be observed in connection with the provision and maintenance of such loading facilities.

3. Uses Subject to Special Conditions

Within a given zoning category there are frequently certain uses listed which are subject to conditions that are specifically identified with that use, and not necessarily to other permitted uses listed for the same zoning category. Examples include certain types of:

- (a) Drive-in businesses in the C4 District.
- (b) Personal service, grocery and printing establishments in the C4 District.
- (c) Welding shops in the M2 District.
- (d) Neighbourhood pubs in the C1, C2 and C3 Districts.
- (e) "Conditions of Use" in the various C and M zones.

In the case of such uses it is necessary for staff to examine the new use proposed to ascertain that these special provisions will be satisfied.

4. Screening Requirements for Differing Uses

Within certain districts a variety of uses are permitted, and where such uses involve outdoor storage or loading areas, particular requirements related to visual screening must be observed. Where a change of use is proposed in such cases it is necessary to locate such facilities on a plan and ascertain that the pertinent screening requirements will be met.

5. Landscaping and Site Development Standards

When a change of use occurs, formerly existing facilities such as unpaved parking lots, loading areas etc. are required to be brought into conformance with the minimum standard under the current Bylaw as related to the development and maintenance standards set out in Sections 800.7 and 900.6 respectively, in order that the requirements of Sections 800.1(1) and 900.1(1) mentioned above, be satisfied.

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6. Conditions Arising from Previous Approvals

Processing a Preliminary Plan Approval for a change in use allows for the necessary follow-up on non-fulfilled conditions related to previous approvals, where a previous occupant has failed to satisfy the pertinent requirements of the Bylaw on a property.

From the foregoing it may be seen that a change of land use from one class to another within a zone necessitates the satisfaction of particular requirements, and under the definition of "development" Preliminary Plan Approval is the appropriate vehicle for examining a change of use and determining the applicable requirements that must be met.

CONVERSION OF BUILDINGS

Where a physical change to a building is contemplated, involving the conversion, alteration, or remodeling of the building for another use, Section 6.5 of the Zoning Bylaw applies. This section is quoted in the introduction to this report.

This provision relates to material, physical changes to the building or structure, and requires that the building itself conform to the provisions of the Bylaw (such as siting, lot coverage, etc.), and as well be structurally adequate for conversion. The latter aspect is determined under the authority of the Chief Building Inspector; the size, shape, and siting of the building on the other hand is examined by the Planning Department in the Preliminary Plan Approval process, and if approval cannot be given by reason of non-conformity in size, shape, or siting, an appeal may be submitted to the Board of Variance, which has the authority to grant a variance from the Bylaw in such instances.

SUMMARY

While the existence of historical non-conformity in continuing historic uses is recognized and respected by the Zoning Bylaw, it is the intent of the Bylaw that properties and districts be improved over a period of time when and as a change of use or redevelopment occurs, such that upgrading will occur and there will be a gradual tendency for developed areas to reflect the adopted community standards for development.

Accordingly, the adopted Zoning Bylaw sets out the criteria to be met when development occurs, including a change in use of land, buildings, or structures. Under the Bylaw, the onus is placed on the person undertaking the change of use of land to satisfy the requirements of the Bylaw and application for Preliminary Plan Approval, except in the case of single- and two-family dwellings, is the procedure established in the Bylaw for examining such development and ascertaining that minimum standards are met.

In practice, there exists a good working relationship between the Planning Department, Licence Department, and Building Department, such that the need for satisfaction of Bylaw requirements and possible Preliminary Plan Approval is identified early in the great majority of cases, and a person proposing a change of use is advised of the way in which he can seek approval and meet the requirements of the Bylaw.

In order to facilitate the process and to assist citizens who may be contemplating such changes of use to understand the requirements, it is proposed that space be devoted in a future issue of the Information Burnaby Newsletter to an article outlining the procedure that applies when a change of use or building conversion is undertaken, and further that a brief information brochure giving similar information be prepared for handout purposes in the Licence, Planning and Building Departments.

The foregoing is provided for the information of Council.

AWP
DGS:cm

[Signature]
A. L. PAFF,
DIRECTOR OF PLANNING.

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