

ITEM	17
MANAGER'S REPORT NO.	49
COUNCIL MEETING	1979 07 16

RE: RESIDENTIAL OCCUPANCY STANDARDS

Following is a report from the Director of Planning regarding residential occupancy standards.

RECOMMENDATION:

1. THAT the recommendations of the Director of Planning be adopted.

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1979 July 11

TO: MUNICIPAL MANAGER  
FROM: DIRECTOR OF PLANNING  
RE: RESIDENTIAL OCCUPANCY STANDARDS

RECOMMENDATIONS:

1. THAT the Council receive the report of the Planning Department and request the preparation of a by-law by the Municipal Solicitor to permit the introduction of the proposed text amendments, as outlined in Section "E", into the Burnaby Zoning By-law, and that these amendments be advanced to a Public Hearing on 1979 August 14.
2. THAT the Council make representation to the Province to request the amendment of the Strata Titles Act to provide that all strata plan applications, whether or not new and unoccupied buildings are involved, be made subject to the approval of the Approving Officer of the municipality, and that this be followed, if necessary, by the submission of a resolution to the 1980 annual convention of the Union of British Columbia Municipalities.
3. THAT the Council authorize the Planning Department to carry out studies of R4 and R5 zoned districts with a view to determining areas which could suitably be proposed for rezoning to single family use only.

REPORT

A. BACKGROUND

Residential occupancy standards in the municipality have been the subject of a considerable amount of recent discussion in the Council, as a result of a variety of submissions from Burnaby residents. This matter has also prompted discussion and correspondence involving the Building, Legal and Lands and Planning Departments, and formed the basis for a number of reports to the Council.

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As a result of a special meeting of the Council on 1977 August 02, certain changes were made to a number of Zoning By-law regulations governing residential occupancy. These included the revision of the in-law suite requirements to allow for the accommodation of sons or daughters, as well as parents and grandparents of the owner-occupier of the dwelling; a reduction in the number of unrelated persons who may constitute a "family" from five to three; and the amendment of the definitions of "dwelling unit" and "single, two and multiple family dwelling" in order to clarify and improve the standards of these types of residential accommodation. The Council also gave blanket approval to the Municipal Manager to authorize injunction applications being sought to restrain offenders from maintaining illegal suites when circumstances are approved by the Municipal Solicitor; and adopted a recommendation for the hiring of an additional staff member to the Building Department to enforce the Building and Zoning By-law regulations.

In 1976 the Eastburn N.I.P. Committee circulated a questionnaire in which a number of respondents noted the excessive building bulk resulting from illegal fourplexing as being a problem. The N.I.P. Plan presented to Council in November of 1976 included the recommendation "that the municipality should enforce regulations to prevent the uncontrolled use of duplexes as fourplexes". The same problem was identified in the Willingdon Heights N.I.P. area in 1977. With the objective of maintaining the present residential character of the neighbourhood the Willingdon Heights Plan of 1978 May contained the recommendation "that new houses should be in keeping with the scale and character of existing houses".

The Chief Building Inspector submitted a report to the Council on 1979 February 26 in response to two letters from a group of persons called "Concerned Tenants and Owners" from the Douglas Road-Westminster Avenue area of central Burnaby. The Council adopted a recommendation that a copy of the report be sent to the writers of the letters. During discussion of the subject, a number of questions were raised as to the occupancy standards in residential zones with particular reference to boarders and lodgers.

The above mentioned report, the Council enquiry of 1979 March 12 concerning the installation of four furnaces within duplexes and the information obtained from the surveys made by the Housing Inspector have prompted discussions between the Building and Planning Departments concerning enforcement problems and possible methods of further improving the residential occupancy standards of the Zoning By-law, particularly with respect to alleviating the growing trend towards the illegal fourplexing of two-family dwellings in this municipality. These concerns were reflected in an information report to the Council by the Chief Building Inspector on 1979 April 09 when it was indicated that: "Further strengthening of the Zoning By-law by text amendment is indicated, and if implemented will substantially aid the Corporation in maintaining residential occupancy densities throughout the municipality as are designated in the by-law." These designations are designed to reflect the established housing policies of the Council.

B. THE NEED FOR A FURTHER STRENGTHENING OF RESIDENTIAL OCCUPANCY STANDARDS

While the changes which have already been made in the upgrading of residential occupancy standards in the Zoning By-law have improved the enforcement situation, there continue to be a number of loopholes in the regulations, particularly where the fourplexing of two-family dwellings is concerned.

As noted in an earlier report on this subject (1977 July 18), semi-detached, two-family dwellings are overbuilt with full area, above ground basements not used in conjunction with the main floor dwelling unit. The unused basement is capable of being roughed in and finished to duplicate the layout of the main floor dwelling unit. Single family dwellings are similarly overbuilt, but the conversion of basements in this case is not as prevalent as in the case of two-family dwellings.

This overbuilding has, in many instances, required the purchaser to supplement his income in order to meet the resulting high payment obligations by renting out excess building space not required for the principal dwelling unit. The situation has been seized upon by the speculative builders to the point that now the majority of single-family dwellings and most two-family, semi-detached dwellings are prepared with extra space capable of providing rental income. This condition is growing very rapidly throughout the entire Lower Mainland Area.

In 1977 it was estimated that there were approximately 3,920 illegal suites in the municipality from a total of 29,509 units in the five residential district categories (R1, R2, R3, R4, R5), which would account for 13.3 percent of the total. Although this was an approximation only, it provided an indication of the magnitude of the problem. The housing survey, which began in 1978 March will provide more precise information on this matter in the future.

The fourplexing of two-family dwellings results in the doubling of existing densities in the R4 District from approximately 8 to 16 units per acre, while in the R5 category this would increase from about 9.5 to 19 units per acre, figures which are higher than townhousing (i.e. 10 to 12 units per acre) and more characteristic of apartment use, yet without the consideration that is given to this type of development (i.e. usable open space, parking, availability of community and recreation facilities, etc.). In fact, under the Zoning By-law an apartment is defined as a building divided into three or more units. Such densities have a considerable impact on the residential areas in which they occur including the creation of parking problems, a growth in traffic volumes on residential streets, an added load on municipal services and utilities, and increased pressures on neighbourhood parks and community facilities. A continuation of illegal fourplexing would also have the effect of changing the character of many of the R4 and R5 areas which, although zoned for two-family use, are predominantly developed with single family dwellings. In many cases these are occupied by owners who, unaware of the ramifications of R4 and R5 Zoning, believe they live in areas zoned exclusively for single family use. Thus, when a duplex is proposed for development, the result is generally one of opposition. An example of this, is the recent concern expressed by the residents of the Malvern area.

The hierarchy of approximate densities of the various basic housing types which can be developed under the Zoning By-law, and a comparison of these with illegal fourplexes in the R4 and R5 Districts, is shown in the table which follows:

Type of Housing	Zoning Category	Approximate Number of units per Acre
(1) Single-family	R1	3.5
(2) Single-family	R2	5.0
(3) Single-family	R3	6.0
(4) Two-family	R4	8.0
(5) Two-family	R5	9.5
Illegal Fourplexing of Two-family units	R4	16.0
Illegal Fourplexing of Two-family units	R5	19.0
(6) Row Housing	R6	13.0
(7) Townhousing	CD	10.0 to 12.0
(8) Garden Apartments (2 storey)	RM1	16.0 to 20.0
(9) Walk-up Apartments (3 storey)	RM2	28.0 to 36.0
(10) Walk-up Apartments (3 storey)	RM3	50.0 to 60.0
(11) Medium-rise Apartments (4 to 10 storey)	RM4	60.0 to 80.0
(12) High-rise Apartments (to 180 ft.)	RM5	80.0 to 100.0

In addition to the foregoing, the permitted conversion of single family dwellings to two-family use in the R4 and R5 Districts would provide densities in the order of 9.5 and 10.6 units per acre respectively. The table serves to illustrate the significant increases in densities resulting from the illegal fourplexing of two-family dwellings in the R4 and R5 zoning categories. As noted earlier, these are quite out of scale with the densities of the areas in which they are located and are more characteristic of apartment development. They also tend to affect the social fabric of a neighbourhood since, in many cases, the units involved are rented out by absentee landlords. Maintenance and upkeep problems are often the result of such cases.

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With respect to the matter of boarders or lodgers, the present Zoning By-law regulations permit, under the Home Occupation provisions, two boarders or lodgers to be accommodated within a dwelling unit. This is in addition to the resident family and applies to both single and two-family dwellings. The experience has been that this is providing a loophole in the regulations, particularly in the case of two-family dwellings, where such persons occupy additional dwelling units and thus contribute to the fourplexing problem.

There are prosecutions pending in the Burnaby Provincial Court concerning properties which have been fourplexed and strata titled. The argument being advanced is that where a structure divided by a party wall is located on a lot line, each portion of such structure is deemed a separate building under the Burnaby Zoning By-law (definition of building), even though the lot line in question divides a strata lot. The opinion was expressed that, because the legal lot involved is shared in common by the tenants, the overall lot area requirement of the by-law is met, even though four units are being accommodated on a lot zoned for two-family use (R4). It was also pointed out that it is possible under the Strata Titles Act to strata a building without municipal approval in cases involving new developments that have not been previously occupied. This particular regulation, and the preceding arguments will have serious implications for the future unless effective preventive measures are taken.

#### C. DISCUSSION OF POSSIBLE SOLUTIONS

There are a number of factors which have contributed to the trend towards increased densities within residential areas. The problem involves physical and occupancy aspects, as well as legal considerations. It is proposed to review these and discuss possible solutions to them in this section of the report. This is considered as an essential first step aimed at the improvement of the residential environment which would be followed by neighbourhood area studies and possible rezoning proposals.

The overbuilding of semi-detached (side by side) two-family dwellings has, as noted earlier, been the major concern. In an examination of 16 recent plans for semi-detached two-family dwellings by the Building Department, it was found that the floor areas ranged from 1182 square feet to 2100 square feet for each dwelling unit. The overall average for these building plans amounted to 1430 square feet per unit. This is felt to be somewhat high, however, and it is considered that a floor area in the vicinity of 1250 square feet per unit would provide a reasonable maximum figure for this type of residential development. The use of a specified maximum per unit floor area, as in the case of other municipalities in the Lower Mainland Area (i.e. Richmond) is considered the most practical means of limiting the bulk of semi-detached two-family dwellings and controlling overbuilding or illegal conversions. Other methods considered were the application of a floor area ratio standard and a reduction in site coverage. However, in these cases, building bulk is directly related to lot area and excessively large buildings could still be constructed on large sites in residential areas.

In view of the problems associated with semi-detached dwellings, it is considered desirable that a distinction be made in the Zoning By-law between these and duplex type two-family dwellings (one unit above the other). This has been done in a number of other Lower Mainland municipalities including Vancouver, New Westminster, Richmond and West Vancouver.

The usual method of increasing residential densities is through the conversion of basements into additional dwelling units. This relates directly to those regulations in the Zoning By-law which govern the height of buildings and the number of storeys permitted. Under the existing standards it is specified that the height of a building shall not exceed 10.5 m (34.45 feet) nor 2½ storeys in R4 and R5 Districts. This applies to both single and two-family dwellings. A basement which contains habitable accommodation is regarded as a storey. Therefore, a semi-detached two-family dwelling may include two storeys and thus provide the basis for fourplexing.

In order to overcome this problem, it is considered necessary that a lower maximum building height should be applied to semi-detached dwellings and, further, that this form of accommodation be limited to one storey. This is the case in Vancouver where 20 feet is the specified maximum height for semi-detached two-family dwellings. It is also considered desirable that more realistic height limitations be applied to both single family and duplex dwellings in order to provide a greater degree of control over building bulk and possible view obstruction problems.

There is a direct relationship between maximum building heights, number of storeys permitted and basements. One of the problems which has made the fourplexing of two-family dwellings possible has been the development of additional units within a basement. This could be overcome by altering the regulations to provide that all basements be considered as a storey, as in the case of the New Westminster Zoning By-law. In this way a side by side two-family dwelling that is limited to one storey would have to be set on a cellar (i.e. more than half of its height would be required to be situated below average grade level). Although implied in the by-law, the use of a cellar for living accommodation is not specifically prohibited. The insertion of a statement to this effect would serve to strengthen the standards governing residential occupancy. Basements could continue to be provided in two storey buildings and, where they met the requirements of Section 6.9 (Living Accommodation in Basements) could be used for dwelling purposes.

As noted in the preceding section of the report, the keeping of two boarders or lodgers in each dwelling unit is permitted as a home occupation under the existing Zoning By-law regulations. Thus, two additional persons, over and above the occupying family, may be accommodated in each unit of a two family dwelling and provides the basis for a considerable increase in densities. It is also a contributing factor to the current fourplexing problem since it provides an opening for the illegal development of additional units within a building. For these reasons, it is considered that such a provision should apply only to single family dwellings, as in the case of in-law suites.

With regard to the legal aspects of residential occupancy, it has always been the intent of the Zoning By-law that each type of dwelling should be subject to the same regulations which apply to the district category in which it is located, regardless of the form of ownership (including strata titles). In view of the pending prosecutions in the Burnaby Provincial Court, however, there would appear to be a need to make this clear in the by-law regulations. It is considered that this could best be accomplished by amending the definition of "Building" and making an addition to the all inclusive Section 4.1 (Application) of the by-law. As a further measure, it is desirable that the by-law include a regulation which specifies that where a parcel of land is divided into strata lots, the area of the parcel and the development which occurs on it must be in compliance with the Zoning By-law standards.

These proposed changes to the Zoning By-law, made necessary by increasing illegal development activity, will not alter the original intent of the by-law to provide the municipality with a balanced range of housing for its residents in keeping with the level of community facilities provided.

Finally, with respect to the question of control over the strata titling of new and unoccupied buildings, it is considered that changes will also be needed to ensure municipal involvement in these cases. In order to achieve this it is proposed that representation be made to the Province to amend the Strata Titles Act to make such strata title conversions subject to the approval of the municipality through the Approving Officer. This should be followed, if necessary, by the preparation and submission of an appropriate resolution for consideration at the 1980 annual convention of the U.B.C.M. (The deadline for the receipt of 1979 U.B.C.M. resolutions was June 22).

D. EXISTING AND PROPOSED REGULATIONS

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This section of the report sets forth the various items proposed for amendment, the applicable existing by-law regulations, the recommended changes and the justification for them. This material is presented in the following table.

Item	Existing Regulations	Proposed Changes	Intent of Changes
1) Definition of "Building".	"BUILDING" means a structure, located on the ground, which is designed, erected or intended for the support, enclosure, or protection of persons or property. When a structure is separated by party walls located upon lot lines, then each portion of such structure shall be deemed a separate building.	The deletion of the last sentence, i.e. "When a structure is separated by party walls located upon lot lines, then each portion of such structure shall be deemed a separate building."	Will prevent a dwelling unit from being considered as a separate building when divided by a strata lot line from another dwelling unit as noted in Section B of this report.
2) Definition of "Cellar"	"CELLAR" means that portion of a building between two floor levels which is partly or wholly underground and which has more than one half of its height, from finished ceiling, below average adjacent finished grade as determined by the Building Inspector. The height measured between floor and ceiling surfaces shall be not less than 1900 mm (6.23 feet). (B/L No. 5883-71-05-03).	The addition of the following sentence to this definition: "No dwelling unit, house-keeping unit, sleeping unit, bedroom or living quarters of any kind shall be permitted in a cellar."	To prevent living accommodation in cellars.
3) Definition of "Dwelling, Duplex" (new)	-	"Dwelling, Duplex means a two-family dwelling wherein the two dwelling units are placed one above the other."	To differentiate between up-and-down and side-by-side two-family dwellings in order to assist in controlling illegal fourplexing.
4) Definition of "Dwelling, Semi-Detached" (new)	-	"Dwelling, Semi-Detached means a two-family dwelling wherein the two dwelling units are placed side by side under one roof."	As Item 3 above.

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Item	Existing Regulations	Proposed Changes	Intent of Changes
5) Definition of "Home Occupation"	<p>"HOME OCCUPATION" means an occupation or profession which is clearly incidental to the use of a dwelling unit for residential purposes, or to the residential use of a lot occupied by a dwelling, and includes:</p> <ol style="list-style-type: none"> <li>(1) the office of an accountant, architect, clergyman, dentist, engineer, lawyer, physician or other professional person;</li> <li>(2) the office or studio of an artist, chiropractor, dressmaker, music teacher, musician, seamstress, writer, or of persons engaged in home crafts or hobbies;</li> <li>(3) the keeping of not more than 2 boarders or lodgers or not more than 4 foster children in each dwelling unit;</li> <li>(4) the operation of a kindergarten or day nursery for not more than 5 children. (B/L No. 4765-65-09-20)</li> </ol>	<p>The deletion of clause (3) and its replacement by: "Within a single family dwelling only, the keeping of not more than 2 boarders or lodgers or not more than 4 foster children."</p>	<p>Will remove a loophole in the regulations in the case of two-family dwellings, where boarders or lodgers occupy additional illegal dwelling units and contribute to the fourplexing problem.</p>
6) Definition of "Storey"	<p>"STOREY" means a habitable space between two floors, or between any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling above. A basement which contains habitable accommodation shall be considered as a storey.</p>	<p>The deletion of the last sentence and its replacement by: "A basement shall be considered as a storey."</p>	<p>Designed to control the illegal conversion problem and to prevent the construction of unduly high buildings.</p>

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Item	Existing Regulations	Proposed Changes	Intent of Changes
7) Application of by-law regulations regardless of form of ownership or tenure.	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 By-law, and the contrary shall be unlawful.	Amend this section to read as follows: Within the Corporation of the District of Burnaby no land, buildings or structures, regardless of the form of ownership or tenure, 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 By-law, and the contrary shall be unlawful.	To clarify that the Zoning By-law regulations apply regardless of the form of ownership or tenure. (including strata titles).
8) Development under the Strata Titles Act. (new)	-	The addition of a new section 6.18 - Development Under The Strata Titles Act: "Where a parcel of land is divided into strata lots under the Strata Titles Act, such parcel and any buildings which occupy it shall conform in all respects with the bulk regulations of this by-law."	As item 7) above.
9) Maximum permitted gross floor areas for two-family dwellings in R4 and R5 Districts.	-	Maximum permitted gross floor areas of 116 m <sup>2</sup> (1247 sq.ft.) per dwelling unit.	To control the fourplexing problem and reduce building bulk.
10) Maximum permitted building heights in Residential Districts	Maximum of 10.5 m (34.45 feet) and 2½ storeys applies to both single and two-family dwellings.	Maximum permitted building heights of: a) Single family dwelling - 9.8 m (32.12 feet) b) Duplex dwelling - 9.0 m (29.53 feet) c) Semi-detached dwelling - 5.5 m (18 feet)	To control the problems of increased densities and excessive building bulk and height.



E. PROPOSED ZONING BY-LAW AMENDMENTS

The following amendments are proposed to the regulations governing residential occupancy in the Burnaby Zoning By-law:

1. Definition of "Building"

The deletion of the last sentence from the definition of "Building" in Section 3 which is as follows:

"When a structure is separated by party walls located upon lot lines, then each portion of such structure shall be deemed a separate building."

2. Definition of "Cellar"

The addition of the following sentence to the definition of "Cellar" in Section 3:

"No dwelling unit, housekeeping unit, sleeping unit, bedroom or living quarters of any kind shall be permitted in a cellar."

3. Definition of "Dwelling, Duplex"

The addition of the following definition to Section 3:

"Dwelling, Duplex means a two-family dwelling wherein the two dwelling units are placed one above the other."

4. Definition of "Dwelling, Semi-Detached"

The addition of the following definition to Section 3:

"Dwelling, Semi-Detached means a two-family dwelling wherein the two dwelling units are placed side by side under one roof."

5. Definition of "Home Occupation"

The deletion of Clause (3) under the definition of "Home Occupation" in Section 3 and its replacement by:

"Within a single family dwelling only, the keeping of not more than 2 boarders or lodgers or not more than 4 foster children."

6. Definition of "Storey"

The deletion of the last sentence from the definition of "Storey" in Section 3 and its replacement by:

"A basement shall be considered as a storey."

7. Regulations applicable Regardless of Form of Ownership

The amendment of Section 4.1 (Application) to read as follows:

"Within the Corporation of the District of Burnaby no land, buildings or structures, regardless of the form of ownership or tenure, and 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 By-law, and the contrary shall be unlawful."

8. The addition of a new Section (6.18) to the by-law (Supplementary Regulations)

"6.18 Development Under The Strata Titles Act:

Where a parcel of land is divided into strata lots under the Strata Titles Act, such parcel and any buildings which occupy it shall conform in all respects with the bulk regulations of this by-law."

9. Height of Buildings in the R1 District

The deletion of Section 101.2 (Height of Buildings) and its replacement by:

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"The height of a building shall not exceed 9.8 m (32.12 feet) nor 2½ storeys."

10. Height of Buildings in the R2 District

The deletion of Section 102.2 (Height of Buildings) and its replacement by:

"The height of a building shall not exceed 9.8 m (32.12 feet) nor 2½ storeys."

11. Height of Buildings in the R3 District

The deletion of Section 103.2 (Height of Buildings) and its replacement by:

"The height of a building shall not exceed 9.8 m (32.12 feet) nor 2½ storeys."

12. Uses Permitted in the R4 District

The deletion of Clause (2) of Section 104.1 (Two-family dwellings) and its replacement by:

"Semi-detached or duplex dwellings with a maximum gross floor area of 116 m<sup>2</sup> (1247.30 square feet) per dwelling unit."

13. Height of Buildings in the R4 District

The deletion of Section 104.2 (Height of Buildings) and its replacement by:

- "(1) The height of a single family dwelling shall not exceed 9.8 m (32.12 feet) nor 2½ storeys.
- (2) The height of a duplex dwelling shall not exceed 9.0 m (29.53 feet) nor 2 storeys.
- (3) The height of a semi-detached dwelling shall not exceed 5.5 m (18 feet) nor 1 storey."

14. Uses Permitted in the R5 District

The deletion of Clause (2) of Section 105.1 (Two-family dwellings) and its replacement by:

"Semi-detached or duplex dwellings with a maximum gross floor area of 116 m<sup>2</sup> (1247.30 square feet) per dwelling unit."

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15. Height of Buildings in the R5 District

The deletion of Section 105.2 (Height of Buildings) and its replacement by:

- "(1) The height of a single family dwelling shall not exceed 9.8 m (32.12 feet) nor 2½ storeys.
- (2) The height of a duplex dwelling shall not exceed 9.0 m (29.53 feet) nor 2 storeys.
- (3) The height of a semi-detached dwelling shall not exceed 5.5 m (18 feet) nor 1 storey."

  
A. L. Parr  
DIRECTOR OF PLANNING

RBC/hf

c.c. - Chief Building Inspector  
Municipal Solicitor  
Municipal Clerk  
Assistant Director - Long Range  
Planning and Research