

ITEM	22
MANAGER'S REPORT NO.	49
COUNCIL MEETING	1979 07 16

Re: BOARD OF VARIANCE APPEAL #1978 - TARGET CONCRETE
PRODUCTS LIMITED - 7550 CONRAD STREET
LOT 79, D.L. 43, PLAN 27194

Following is a report from the Director of Planning regarding a decision of the Board of Variance.

RECOMMENDATION:

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

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TO: MUNICIPAL MANAGER 1979 JULY 11
FROM: DIRECTOR OF PLANNING OUR FILE: 13.250/D.L. 43
SUBJECT: BOARD OF VARIANCE APPEAL #1978 - TARGET CONCRETE
PRODUCTS LIMITED - 7550 CONRAD STREET
LOT 79, D.L. 43, PLAN 27194

RECOMMENDATIONS:

1. THAT Council receive the report of the Planning Department and appeal the decision of the Board of Variance #1978; and,
2. THAT Council authorize the Planning Department not to approve any Preliminary Plan Approval Application on the subject site until such time as (1) is resolved.

REPORT

The Planning Department on 1979 June 13 received a Preliminary Plan Approval Application #5127 from Target Concrete Products to construct a rail spur line, a new 10.0m X 22.2m (32.8' X 72.82') storage building addition, and a conveyor system connecting the two at 7550 Conrad Street.

The operations conducted by Target Concrete on this property constitute's a use permitted only in the M3 and M3a Heavy Industrial Districts in this Municipality (Burnaby Zoning By-Law Section 403.1 (10)). The site is situated in an M2 General Industrial Zone, and the land use was initiated prior to the adoption of the 1965 Zoning By-Law.

As the status of the use at the above location is non-conforming to the uses which are permitted in the M2 General Industrial District, the Planning Department rejected PPA #5127.

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On 1979 July 05 an appeal was lodged by Target Concrete Products Limited to the Board of Variance requesting the Board's consideration of a variance to permit a physical addition to be constructed beyond the perimeter of the existing structures on the Target Concrete site.

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Section 705(2) of the Municipal Act provides that a legal non-conforming use may be continued; "A lawful use of a premises existing at the time of the adoption of the Zoning By-Law, although such use does not conform to the provisions of the By-Law, may be continued".

In this instance Section 705(3) also applies and states, "A lawful use of a building or structure existing at the time of the adoption of the Zoning By-Law, although such use does not conform to the provisions of the Zoning By-Law, may be extended throughout the building or structure, but no structural alteration except those required by Statute or by By-Law or those allowed by the Board of Variance shall be made therein or thereto."

There is no provision in the Municipal Act for the extension of a non-conforming use by adding an addition to a building which is used for a non-conforming purpose. In no sense can the construction of an addition to the existing structure in this case be considered as structural alterations. Therefore, in consultation with the Municipal Solicitor, the Board of Variance would have no jurisdiction whatsoever in consideration of a physical extension to the structure. The Board of Variance was obliged to receive the appeal from Target Concrete Products Limited. However, based on the Planning Department comments to the Board of Variance and the fact that the Solicitor did attend the meeting of 1979 July 05 to clarify Section 705(3) with respect to Board of Variance appeal #1978, the Board of Variance should have refused to deal with the subject appeal. The Board of Variance allowed the appeal for a 10.0m X 22.2m addition at the Target Concrete site.

The Planning Department feels that this particular decision is of great importance, as the non-conforming industry is situated in close proximity to an established regional park with natural features, public activity areas, and a waterfowl refuge located immediately to the south of the site. The potential for impairment of the amenities and natural beauty of the area and the well being of wildlife taking refuge in this conservation area are imperiled by expanded Industrial activities of this type in close proximity, in view of the noise, dust, and other emissions associated with such heavy industry.

In addition the appropriate zoning categories for the Government Road Industrial area were reviewed in the light of the area's proximity to the Government Road residential area and extensive areas were rezoned to higher quality, lighter Industrial categories in order to remove the possibility of development such as that proposed by Target Concrete Products taking place. In other words the Board of Variance decision to deal with this matter is contrary to Council's land use policy for the area.

Inasmuch as the Municipal Solicitor is willing to assist the Board of Variance, the Planning Department recommends that on occasions when Board of Variance appeals involve clarification of legal jurisdiction or terminology, the Board consult with the Municipal Solicitor. In summary, the Planning Department recommends that a) Council appeal the decision of Board of Variance #1978 in that the appeal was not within the Board's jurisdiction; b) Council authorize the Planning Department not to issue any Preliminary Plan Approval Application until such time as a) is resolved.


A. L. Parr
DIRECTOR OF PLANNING

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cc: Municipal Solicitor