

RE: LETTERS FROM MR. MIDMORE AND MRS. MCKENZIE  
BOARD OF VARIANCE APPEALS  
4075 AND 4085 MCGILL STREET

ACTING MUNICIPAL MANAGER'S RECOMMENDATION:

1. THAT the recommendation of the Municipal Clerk be adopted.

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TO: MUNICIPAL MANAGER  
FROM: MUNICIPAL CLERK  
SUBJECT: BOARD OF VARIANCE APPEALS  
4075 AND 4085 MCGILL STREET

PURPOSE: To provide Council with a response to correspondence received from Mr. Wes Midmore, 4066 McGill Street, Burnaby, and Mrs. G.E. McKenzie, 4060 McGill Street, Burnaby, regarding Board of Variance appeals at 4075 and 4085 McGill Street, Burnaby.

RECOMMENDATION:

1. THAT a copy of this report be sent to Mr. Wes Midmore, 4066 McGill Street, Burnaby, B.C., V5C 1M5 and Mrs. G.E. McKenzie, 4060 McGill Street, Burnaby, B.C., V5C 1M5.

S U M M A R Y

The role of the Board of Variance is often misunderstood by persons both wishing to appeal to the Board and neighbours who are notified of pending appeals.

This report briefly describes the function of the Board and provides the specifics regarding the two appeals in question.

R E P O R T

BACKGROUND

A local Board of Variance must be established once a Municipal Council has enacted a zoning bylaw. The Board of Variance functions as an avenue of appeal on the interpretation and the strict application of certain local government provisions and regulations in specific circumstances defined in Provincial legislation. It functions separately from the local government that established it and has its own authority under the Municipal Act.

The Board of Variance is not an appeal Board for local government policy decisions and it cannot replace decisions of elected officials. The Board is confined to considering variances that will not impact adversely upon a policy decision or change the intent of a bylaw adopted by Council. Variances can be granted respecting bylaw requirements for the siting, dimensions, or size of buildings that are designed to deal with the most common circumstances and to be applied universally to these situations. In some special cases, general regulations or ones prohibiting structural changes in a nonconforming building or requiring services upon subdivision may result in undue hardship if applied to a particular site. A person may appeal to the Board for a variance only if the application of these general regulations to this particular site would impose such a hardship. The Board may also decide on the correctness of a certain type of decision made by the Building Inspector with respect to the amount of damage a nonconforming building has sustained as a result of a fire or other calamity. The Board is guided in making its decisions by requirements in the Municipal Act.

The Municipal Act dictates the composition of the Board which provides for a five member Board, two (2) to be appointed by Council, a further two (2) members to be appointed by the Minister of Municipal Affairs and these four (4) appointees then appoint a fifth (5th) member. The members of the Board of Variance cannot be members of an Advisory Planning Commission, elected officials or employees of the local government which appoints them.

The types of appeals that a Board of Variance may deal with are provided in Attachment I affixed to this report.

The mechanics of how the Burnaby Board of Variance shall operate are spelled out in the Burnaby Board of Variance Bylaw, 1971.

#### NOTIFICATION OF APPEAL

The Burnaby Board of Variance Bylaw requires that the Secretary shall at least five days prior to the hearing date of an appeal by the Board mail to the appellant and the Corporation and to the owners and occupiers of all real property located adjacent to the property with respect to which the appeal is being heard a notice of the date, time and place of hearing.

Similar to the procedure followed for rezoning applications, the Clerk's Office has expanded on the Board of Variance Bylaw requirements and notifies every owner/occupier of property located within a 30 metre (100 foot) radius of the property under appeal. This, in most residential areas, includes two to three neighbours on each side of the property, three to four neighbours across the street and three to four neighbours across the rear lane.

The Board hears approximately two hundred appeals per year and because the Board is only permitted to provide minor variances, most of the appeals go uncontested and are handled in a routine manner. However, there are some appeals such as the two described below that cause considerable concern in the neighbourhood and therefore the period of notification appears to be extremely short. Because many of the appeals are of a routine nature and the homeowner or business wish to proceed with their construction as soon as possible the current waiting period for the hearing of appeals, which can vary from two (2) to six (6) weeks, already poses some hardship. Although the notification period may appear short in the two cases cited below it did enable a number of neighbouring owners to attend the hearings and express their opposition to the granting of any relaxation of the bylaw.

#### THE TWO APPEALS

(a) 4085 McGill Street

The Board of Variance heard this appeal on 1989 January 05 with the description of the appeal as communicated to the abutting owners reading as follows:

"An appeal for the relaxation of Section 105.2 (1) of the Burnaby Zoning Bylaw to allow for an addition to the rear and a third floor addition to the existing single family dwelling on the subject property which, if permitted, will observe a finished height of three stories where the height of a single family dwelling shall not exceed 29.53 feet or two and one half (2-1/2) stories."

In this particular instance the basement floor did not qualify as a cellar under the definition in the Burnaby Zoning Bylaw and therefore was considered a storey. In allowing this appeal the Board of Variance permitted the construction of an additional storey; however, the height restriction as provided for in the bylaw of 29.53 feet was not exceeded.

The Planning and Building Inspection Department is invited to comment on each of the Board of Variance appeals and following is the Department's comment with respect to this appeal:

"The appeal before the Board requests relaxation of Section 105.2 (1) to permit renovations and additions that would result in the creation of a three storey dwelling where a maximum of 2-1/2 stories are permitted.

From observations made on site, the existing structure is approximately 35 years old and is in need of general maintenance repairs. The appellant's letter also makes reference to poor insulation and questionable plumbing and electrical systems.

Based on the present overall condition of the structure staff would question the merit of the proposed expansion irrespective of the current appeal.

The Planning and Building Inspection Division is opposed to the requested relaxation and would suggest that the applicants seek professional assistance to ascertain the cost benefits of renovation or expanding the present structure versus the construction of a new dwelling designed to fit both their needs and the requirements of the bylaw."

(b) 4075 McGill Street

The Board of Variance heard this appeal on 1990 April 05 with the description of the appeal as communicated to the abutting owners reading as follows:

"An appeal for the relaxation of Sections 105.6 (1) and 105.7 of the Burnaby Zoning Bylaw to allow for the raising of the roof of the existing legally nonconforming single family dwelling on the subject property which will observe a side yard setback of three feet nine inches where a side yard setback of not less than 4.92 feet is required and, in addition, will observe a rear yard setback of four feet where a rear yard setback of not less than 24.61 feet is required.

This appeal is somewhat more confusing than the appeal for 4085 McGill Street in that this appeal is the result of the house being currently classified as legally nonconforming. Anyone in the position as an owner of a legally nonconforming building must appeal to the Board of Variance to do any alterations or additions. In this case if the house had been in conformance with side yard and rear yard setbacks the owner would not have had to appeal to the Board of Variance in order to raise the roof on the home. The adjustment in the height would have been permitted under the existing bylaw.

The Planning and Building Inspection Department commented on this appeal as follows:

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"The existing dwelling to be renovated on the subject site is situated at the rear of the property approximately four feet from the rear lot line.

The owners are proposing extensive renovations to this existing older home, including conversion of the top floor, currently a half storey, into a full storey. The renovations involve a completely new roof configuration. The renovations will not decrease the rear yard setback below that which currently exists. However, what is proposed does increase the volumetric bulk within the required rear yard.

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Although this renovation will enhance the existing dwelling, it may be expected that it will prolong the life of this nonconforming situation.

Due to this change in building form, it appears that there will be some vantage points from which there will be an increased view obstruction, whereas from other vantage points, existing view obstruction will be reduced.

Moreover, it is of interest to note that the overall height of the proposed building will be lower given the present siting, than would have been the case if the building were situated in conformance with the bylaw, at a position further south and as a result at a higher elevation of the property."

The Board allowed these two appeals after due consideration of the appellant's applications, the Planning and Building Inspection Department comments and the presentations of a number of owners of neighbouring properties.

#### C O N C L U S I O N

The requirements established under the Burnaby Board of Variance Bylaw with respect to the general operation of the Board of Variance in areas such as notification and hearing procedures have worked very well in most instances. On a number of occasions our bylaw and procedures have been requested by adjoining municipalities for the purpose of amending their procedures to more closely align with Burnaby's. Several adjoining municipalities do not provide written notification to adjoining property owners but rather provide the date, time and address of each appeal by way of a newspaper advertisement. Changes to the operating procedures of the Board of Variance can be accomplished through an amendment to Burnaby's Board of Variance Bylaw. Should Council wish to reduce or alter the authority of the Board then Burnaby would have to petition the Minister of Municipal Affairs to amend the provisions of the Municipal Act.



C.A. Turpin  
MUNICIPAL CLERK

cc: Director Planning and Building Inspection

TABLE 1

TYPES OF APPEAL TO BOARDS OF VARIANCE

ITEM 21  
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EGORIES OF APPEAL	EXAMPLE	FURTHER APPEAL
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On the Basis of Undue Hardship Only

1. Relaxation of regulations for locating a building on a lot.

Section 962(1)(a)(i)

A person requests a variation from a bylaw provision for siting, shape or size of a building or for siting in a mobile home park because compliance would, in his particular case, create an undue hardship. The Board can allow a minor variation to the bylaw provisions if all the criteria listed in Section 962(2) can be met.

Procedural matters can be challenged in a court of law, but a decision made by the Board of Variance on the merits of the case cannot.

2. Extension of non-conforming uses.

Section 962(1)(a)(ii)

A person requests approval for putting in a new fire exit door on an outside wall or for adding a new room to a building whose use is non-conforming to the zoning or rural land use bylaw. He alleges denial of such approval could cause him undue hardship. The Board may approve the structural change providing the construction complies with the building code and all other conditions of Section 962(2).

Procedural matters can be challenged in a court of law, but a decision made by the Board of Variance on the merits of the case cannot.

3. Relaxation of Servicing Requirements

Section 962(1)(a)(iii)

An owner of property proposed for subdivision in an area zoned for agricultural or industrial use requests relaxation of the subdivision servicing bylaw provisions. He alleges undue hardship in supplying the sewage, water or drainage systems specified in the bylaw. The Board can exempt him from the requirements providing all the criteria of Section 962(2) are met.

Procedural matters can be challenged in a court of law, but a decision made by the Board of Variance on the merits of the case cannot.

On the Basis of Error

4. Reconstruction of a non-conforming building or structure.

Section 962(1)(b)

Following a fire in a building where the current use is non-conforming to the bylaw, a building inspector determines the extent of damage is 75% or greater. This means the building cannot be reconstructed and used for the nonconforming use. The applicant disagrees with the inspector's assessment and appeals his decision to the Board of Variance. The Board can decide the extent of the damage and nullify the inspector's assessment.

The applicant may appeal a decision of the Board of Variance to the County Court and that decision may be further appealed to a higher court by either the applicant or the local government. Procedural disagreements can also be decided by the court.

