

TO: MUNICIPAL MANAGER 1991 JANUARY 03

FROM: DIRECTOR PLANNING & BUILDING INSPECTION

SUBJECT: LEGALLY NON-CONFORMING GROUP DAY CARE CENTRE  
8179 GOVERNMENT STREET

PURPOSE: To address queries raised by Mr. William L. Enefer in connection with the history and status of the legally non-conforming group day care facility.

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**RECOMMENDATION:**

1. THAT a copy of this report be sent to Mr. William L. Enefer, 3653 Brahms Avenue, Vancouver, B.C. V5S 4G9.

**R E P O R T**

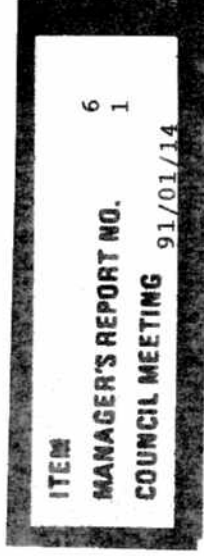
1.0 **BACKGROUND**

1.1 Appearing on the Agenda for the 1990 December 17 meeting of Council was an item of correspondence from William L. Enefer on behalf of Mr. Reginald Enefer concerning a legally non-conforming group day care centre located at 8179 Government Street. Mr. Reginald Enefer resides at the address immediately to the west of the subject property, at 8165 Government Street.

The majority of the questions put by Mr. Enefer are of an historical and technical nature, going back to the early 1960's and beyond, and have required an extensive search of records which remain from those years. In general, the questions centre on the non-conforming status enjoyed by the day care operation and the relevance of building permits and Board of Variance involvement on numerous occasions dating from 1968 October to the present.

For Council's information, the operation of this day care centre was also the subject of a report to Council in 1986 (Item 9, Manager's Report No. 4, 1986 07 21, copy attached) in response to concerns expressed by neighbours in the immediate area. That report outlined some of the relevant information on the legally non-conforming status enjoyed by the centre; a copy of that report as well as other particulars relating to the pertinent Municipal Bylaws, the Municipal Act, and the mandate of the Board of Variance were discussed with Messrs. Enefer and another interested neighbour in 1988.

1.2 Mr. Enefer in his letter indicates that he believes the residence at 8179 Government Street, Kiddie Lane Daycare Center, contravenes the building code governing residential construction and local non-conforming facilities. Due to the number and the detailed nature of the questions advanced, staff have prepared a letter for Mr. Enefer giving such detailed information as can be obtained from a review of the files. The following is a summary of the salient points, leading to the conclusion that the day care centre continues to enjoy a legally non-conforming status and that the use is not in contravention of the relevant bylaws and codes.



2.0 SUMMARY

The following points are derived from an examination of the files of this Department and consultation with staff of the Environmental Health Division:

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- Single-family residence with attached garage and breezeway constructed under permits issued in 1958 and 1959. Completed in 1960.
- Municipal approval first granted in 1960 for kindergarten operation in the basement area, for a maximum of 15 pre-school children at this address.
- Licenced operation of kindergarten and day nursery for maximum total of 15 children continued through under bylaws pre-dating 1965.
- Adoption of a new Zoning Bylaw in June 1965 brought with it new regulations that would have limited maximum number of children to 5 on this property.
- However, provisions of the Municipal Act (then Section 722 and subsequently Section 970) resulted in the day care component of the existing lawful use acquiring a legal non-conforming status; the single-family residential use component of course continued to be a conforming use.
- The provisions of the Act allowed the lawful use of the premises to continue (subject to conditions related to discontinuity of use), and indeed to be extended throughout the building or structure existing at the time of the adoption of the bylaw, subject to conditions related to structural alterations.
- Physical renovations within the extent of the building or structure existing in 1965 and not involving structural alterations have been permitted, under permit since 1965, and the non-conforming day care use was relocated from one part of the existing structure to another in 1969, in a manner not inconsistent with the provisions of the Act.
- An addition to the residential portion of the building, which involved structural alterations but did not involve the day care centre operation, was constructed in 1977, following approval by the Board of Variance.
- Approval of an uncovered swimming pool to the south of the dwelling in connection with the conforming residential use of the property was approved in 1972.
- A site inspection and reference to the aerial photographs reveals that a small glass enclosure has been installed on the pool deck area, at some time since the pool was constructed, abutting glass doors from the existing residence and replacing a former trellis. It is assumed that this is the solarium referred to by Mr. Enefer. There is no record of any application having been made for a permit for this structure but the Building Inspector advises that it is not common for permit applications to be made for this type of minor enclosure. From an initial site inspection, it appears that approval could be given if an application were received.
- Apart from the foregoing observation regarding the glass enclosure, the Building Division confirms that a review of the inspection records indicates no outstanding objections.
- Through the years and up to the present time, the community care facility licence has been maintained in force without a discontinuity that would cause loss of the legal non-conformity.

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- The scale or extent or degree of the non-conforming use has not been allowed to increase from that which lawfully existed in 1965 nor to extend beyond the confines of the structure that existed at the time of the adoption of the 1965 bylaw: the facility continues to be licenced for a maximum of 15 preschool children aged 3 to 5 years. (An appeal to the Board of Variance in 1972 to be allowed to increase the number to 20 was denied.)
- During this time, there have been various hearings before the Board of Variance on different aspects ranging from side yard setbacks to the maximum number of children to the height of a hedge on the property. According to records still on file there was neighbourhood opposition expressed in connection with most if not all of the appeals, and it is evident that several of the nearby residents have consistently opposed the continuation of the day care centre.
- Notwithstanding, the operation of the day care centre has been continued in conformance with the legal non-conforming status accorded it under the Municipal Act, and the present owners hold a valid Community Care Facility Licence to provide group day care for a maximum of 15 children between the ages of 3 and 5 years.
- The Public Health Inspector advises that while the Centre continues to be licenced for a maximum of 15 children, it has in fact been operating at a lower level for several months, providing service at the present time for only 7 pre-school children.
- More specific comments on topics raised by Mr. Enefer in his correspondence are provided in a separate letter directed to him.

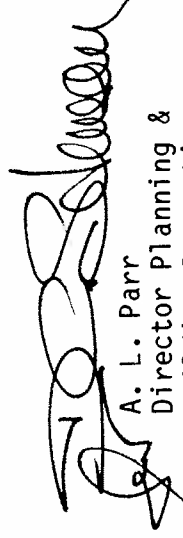
### 3.0 CONCLUSIONS

From staff's review of the records, it has been concluded that the Kiddie Lane Day Care Center continues to enjoy its legally non-conforming status and the building alterations that have taken place under permit have been duly inspected and approved in accordance with the relevant municipal bylaws and codes.

The continuing operation of the day care centre is under the auspices of a valid group day care licence held by the present property owner, and is subject to the normal inspection procedures of the Child Public Health Inspector to ensure that the operation continues to comply with the relevant requirements of the Provincial Child Care Facilities regulations.

The contents of this report have been discussed with Mr. Enefer. This is for the information of Council.

  
DGS:lf

  
A. L. Parr  
Director Planning &  
Building Inspection

Attachment

cc: Chief Public Health Inspector  
Chief Building Inspector

RE: LETTERS OF COMPLAINT WHICH APPEAR ON THIS  
SALE OF PROPERTY 8179 GOVERNMENT ROAD  
LICENSED GROUP DAY CARE

MUNICIPAL MANAGER'S RECOMMENDATION:

1. THAT the recommendations of the Chief Public Health Inspector be adopted.

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TO: MUNICIPAL MANAGER

1986 JULY 14

FROM: CHIEF PUBLIC HEALTH INSPECTOR

SUBJECT: LETTERS OF COMPLAINT TO MUNICIPAL COUNCIL  
REGARDING SALE OF PROPERTY  
INCLUDING LICENSED GROUP DAY CARE  
8179 GOVERNMENT ROAD

RECOMMENDATION:

1. THAT copies of this report be sent to the correspondents to Council on this subject.
2. THAT a copy of this report be forwarded to Dr. H.M. Richards, Chairman, Provincial Child Care Licensing Board, Ministry of Health, 1515 Blanshard Street, Victoria, B.C., V8V 3C8.

SUMMARY

The subject Group Day Care occupancy was approved in 1964, prior to adoption of the Zoning Bylaw, designating it as legally non-conforming. Providing a new owner of the property continues the business within six months of purchase, the Group Day Care occupancy could continue as a legal non-conforming use.

The Health Department's Community Care Licensing Staff are currently conducting a review of this Group Day Care. In 1986 June, action was taken on violations of the Provincial Child Care Regulations. The review is taking into consideration the complaints mentioned in the correspondence to Council.

REPORT

Further to receipt of correspondence regarding the sale of residential property including a licensed Group Day Care business, at 8179 Government Road, we would advise as follows:

A. BACKGROUND:

A review of Health Department records revealed that the subject property was licensed in 1964 as a Group Day Care. In 1973 June the Health Department recommended approval to the Provincial Child Care Licensing Board for the granting of a licence to the current operator for a Group Day Care, for children of ages 3 - 5. The total approved capacity was 15, the maximum number permitted under the Provincial Child Care Regulations.



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B. SALE OF PROPERTY AND THE GROUP DAY CARE BUSINESS:

The Director of Planning & Building Inspection has provided the following comments with regards to the use of the property for a Group Day Care occupancy.

The subject property is currently situated in an R1, Residential Single Family District. This district permits "Home Occupations" as a principal use, which permits the operation of a kindergarten or day nursery for not more than five (5) children. (Bylaw No. 4765-65-09-20).

The subject day care facility is currently licensed for 15 children but is considered legally non-conforming under the regulations of the current Zoning Bylaw. Documents on file (microfilm) in the Building Department reveal that the site received Municipal Approval for a 15 children day care facility in 1964 (prior to the adoption of the Zoning Bylaw). Any increase in the number of children could not be approved.

Due to this historical non-conformity; the continuation of this use, by the present owners or any future owners of the property, would be permitted as set out in Sections 970(1) and 970(7) of the Municipal Act which states:

(1) "Where land, a building or a structure is lawfully used, at the time of the enactment of a rural land use bylaw or adoption of a bylaw under this division, but that use does not conform to the bylaw, the use may be continued as a non-conforming use, but if the non-conforming use is discontinued for a continuous period of six months, any subsequent use of the land, building or structure becomes subject to the bylaw."

(7) "For the purposes of this Section, a change of owners, tenants or occupants of any land, or of a building or structure, does not, by reason only of the change, affect the use of the land or building or structure."

Taking into consideration the Provincial Child Care Licence, a change of ownership would require a new application. Upon receiving documentation that the property conforms with the Zoning Bylaw requirements the Health Department, Community Care Licensing Staff, would review the application focussing on qualifications of staff and the content of the Day Care Program. Upon completion of the review, a recommendation for licensing would be forwarded to the Provincial Child Care Licensing Board.

It should be pointed out that there is no restriction under the Provincial Child Care Regulations as to the number of licensed facilities in any community. Prior to any application being received for a Community Care Licence, either an Adult or Child Care facility, the applicants are directed to the Planning & Building Inspection Department for zoning approval.

C. CURRENT OPERATION:

As previously mentioned, the current operator of the Group Day Care at 8179 Government Road received their Provincial Child Care Licence approval in June of 1973. This particular Group Day Care has recently been under monitoring by the Health Department, Community Care Licensing Staff. On 1986 June 04 a meeting was held between the Chief Public Health Inspector and the Licensee to discuss the following violations of the Provincial Child Care Act.

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- 1) The operation of an out-of-school program which resulted in an exceedance of the permitted number of children in attendance on the property.
- 2) An unsatisfactory number of staff to care for the approved number of children in attendance at the Group Day Care.

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The Licensee was advised that the Health Department, Community Care Licensing Staff and the Ministry of Human Resources Day Care Consultant, would be immediately conducting a review of the Group Day Care Program to ensure that the requirements of the Provincial Child Care Regulations are being met. The concerns of disturbing noise, etc. mentioned in the correspondence to Council will also be taken into consideration during the review.

Correspondence has been delivered to the Licensee confirming the above meeting and stating that should further violations of the permitted maximum number of children in attendance at the Group Day Care occur, the Health Department would have no alternative than requesting the Provincial Child Care Licensing Board to take appropriate action.

Correspondence on this subject has been forwarded to the Provincial Child Care Licensing Board.

This matter has been discussed with the correspondent's contact person, Mr. E. Rideout.

*George U. Harvie*

G.V. Harvie, C.P.H.I.(C)  
CHIEF PUBLIC HEALTH INSPECTOR

GVH/gl

cc: Director Administrative & Community Services  
Medical Health Officer  
Director Planning & Building Inspection