

TO: CITY MANAGER

1999 JANUARY 12

FROM: DIRECTOR PLANNING AND BUILDING

SUBJECT: APPLICATION TO AMEND A COVENANT RESTRICTING
THE DEVELOPMENT OF THE SITE
6719 BRANTFORD AVENUE (SEE ATTACHED SKETCH)
Amended Covenant #1/98

PURPOSE: To provide Council with a recommendation on the request to amend the Covenant limiting the development of the property to that which was presented on a plan of development at the 1990 May 29 Public Hearing.

RECOMMENDATION:

1. **THAT** Council not give favourable consideration to the request to amend the Section 219 Covenant on the subject property.

R E P O R T

1.0 BACKGROUND INFORMATION

- 1.1 This report is submitted in response to an application received by this Department to amend the covenant on the subject property to permit greater gross floor area than is permitted by the Covenant on the property.

This property has been the subject of two previous rezoning applications and a previous request to amend the covenant discussed in this report. These previous applications are pertinent to this application and background information on these applications is provided in some detail.

- 1.2 On 1988 May 02, Council received a report on a request by the owner of the subject property, Mr. & Mrs. Marando, to rezone (Rezoning Reference #6/88) the property at 6715 Brantford Avenue from R5 Residential District to R9 Residential District to enable the subdivision of the site into two lots (now 6719 and 6727 Brantford Avenue) to construct two single-family dwellings. No information was provided or special consideration requested

at that time regarding the size of the proposed single-family dwellings. The Public Hearing for Rezoning Reference #6/88 was held on 1988 June 21 and Final Adoption was given on 1988 December 12.

- 1.3 On 1989 September 25, Council received a report on a request by Mr. & Mrs. Marando to rezone (Rezoning Reference #71/89) the property at 6719 Brantford Avenue (one of the two lots created through rezoning to the R9 District) to R9a Residential District in order to permit the development of a single-family dwelling having a floor area greater than that permitted under the prevailing zoning.

The report noted that with the approved R9 District rezoning of the site and the subdivision into two lots, the permitted development density increased by 149.5m² (1,609.2 sq.ft.) or 40%, while if the subject site were to be rezoned to the R9a District, the permitted development density of the two lots would increase by 261.5m² (2,814.8 sq.ft.) or 70% of the original development density. The report concluded that in light of the predominantly moderate-sized single-family dwellings in the area, the inappropriateness of permitting a dramatic increase in permitted development density on this site and the potential shadow casting and privacy concerns related to the sites to the north and west, rezoning the site to the R9a Residential District would not be compatible with the surrounding neighbourhood.

At that time, Council adopted the recommendation that Council not give favourable consideration to the rezoning request.

- 1.4 On 1989 October 02, Council received a delegation from Mr. & Mrs. Marando, which requested that Council reconsider its decision on the application to the R9a District. In the delegations' presentation, Mrs. Marando stated that their proposal would not utilize the full density potential that R9a zoning would allow, but that the dwelling would be approximately 3,600 sq.ft. in size. At that time, Council reconsidered the rezoning application and referred the application to the Planning and Building Department for further consideration.

On 1989 October 23, Council authorized staff to work with the applicant towards the submission of a suitable plan of development based on certain considerations. These considerations included the recommendation that 3,600 sq.ft. be set as the maximum size of the dwelling, in keeping with Mrs. Marando's presentation.

- 1.5 A further report was submitted to Council on 1990 April 30 regarding Rezoning Reference #71/89 indicating that the applicant had submitted a plan of development suitable for presentation to a Public Hearing. In keeping with the stipulated maximum size of the dwelling, the development plans indicated a Floor Area Ratio of 0.52 and a development density of 329m² (3,543 sq.ft.).

Mr. Marando subsequently entered into a Section 219 Covenant limiting the development of the property to the plan that was presented to the Public Hearing for the rezoning and the covenant was registered at the Land Title Office. Rezoning Reference #71/89 was given Final Adoption on 1990 July 23. A Building Permit was issued in accordance with the approved design plans.

- 1.6 On 1991 May 06, Council received a delegation from Mrs. Marando to request that the covenant on the subject property be amended to permit the development of additional gross floor area to the cellar of the single-family dwelling currently under construction on the property.

At that time, Council directed staff to prepare a report on the request, including past history on the rezoning of the property and the pertinent Public Hearings. A 1991 May 27 Council report on the matter advised that the request put forward was that Council agree to amend the present registered agreement (a Section 219 Covenant) which limits the development of the property, by replacing it with one that would permit construction of an additional 522 sq.ft. of living area in the dwelling.

In subsequent discussions, staff were informed that the proposed change would take the form of a conversion of an area of the crawl space (essentially the southerly 1/3 of the dwelling) to create a large additional room. The area of the crawl space as described was calculated to be 531 sq.ft., which would result in a Floor Area Ratio slightly over 0.60 and a gross floor area of 4,074 sq.ft., whereas the maximum that could be approved under R9a zoning, if the covenant were deleted, would be 4,065 sq.ft.

The 1991 May 27 report concluded that in light of the considerable and inappropriate increase in development density on the site, the original concerns that were expressed over rezoning the subject property to the R9a District and the assurances to Council that the proposed single-family dwelling would not be over 3,600 sq.ft. in size, which was included as information presented to the Public Hearing for Rezoning Reference#71/89, this Department recommends that Council not amend the Section 219 Covenant on this property.

Council adopted the recommendation at that time.

- 1.7 In consideration of the above request to amend the covenant on this property and one other request to amend a covenant on an R"a" zoned property, on 1992 June 29 Council adopted a recommendation regarding a procedure to consider such requests.

In light of the reliance placed on covenants to ensure that the development conforms to that presented to Council and the public, Council approved a process for considering requests for

certain changes to the approved plans which is similar to rezoning applications. Consideration of such requests includes its submission to a Public Meeting in place of a Public Hearing. The types of proposed changes that Council concurred should be processed through an Amended Covenant process, similar to rezoning applications, are as follows:

1. Altering the gross floor area permitted on the site.
2. Changing the overall building bulk of the improvements on the site; or
3. Altering the impact any improvements on the site would have on the adjacent properties through changes to the structures or their siting.

2.0 GENERAL DISCUSSION:

- 2.1 In October 1996, a complaint was received by the Building Department regarding alleged construction without permits on the subject property. An inspection on 1996 November 5 confirmed that the designated crawl space had been converted into habitable space in contravention of the approved building permit, the plans submitted to the Public Hearing for Rezoning Reference #71/89, and the covenant entered into by the property owner. At that time, the property owner was ordered to restore the unauthorized habitable area to crawl space.
- 2.2 In response, the property owner's lawyer indicated that they wished to explore all possible avenues by which the Marando's might legally maintain the subject construction. Over the next 15 months Building staff corresponded with and received information from the applicants' lawyer numerous times in order to determine the exact amount of floor area which is not in conformance. In February 1998, Building provided the Marando's' lawyer with the following information:

Maximum Gross Floor Area permitted by the registered covenant:	-	3,543 sq.ft.
Theoretical maximum gross floor area permitted by R9a Zoning on this property (if no covenant had been entered into)	-	4,065 sq.ft.
Gross floor area actually constructed:	-	4,680 sq.ft.

This results in a gross floor area which is 615 sq.ft. over the theoretical maximum permitted under R9a zoning (without the registered covenant) and 1,137 sq.ft. over that permitted by the registered covenant. Since that time, Bylaw Enforcement staff have continued to pursue compliance and eventually were informed that an application to amend the covenant would be submitted.

City Manager
Amended Covenant #1/98
6719 Brantford Avenue
1999 January 12 Page 5

- 2.3 The application was subsequently received to amend the covenant to permit the theoretical maximum gross floor area permitted by R9a Zoning. Development plans have been submitted indicating an additional area of 530 sq.ft. approximately beyond that permitted by the registered covenant.
- 2.4 As indicated, on 1991 May 27, Council adopted a recommendation to not amend the covenant on this property in response to a request to increase the permitted gross floor area. This Department did not support amending the covenant in light of the considerable and inappropriate increase in development density on the site, the original concerns that were expressed over rezoning the subject property to the R9a District and the assurances to Council that the proposed single-family dwelling would not be over 3,600 sq.ft. in size, which was included as information presented to the Public Hearing for Rezoning Reference #71/89.

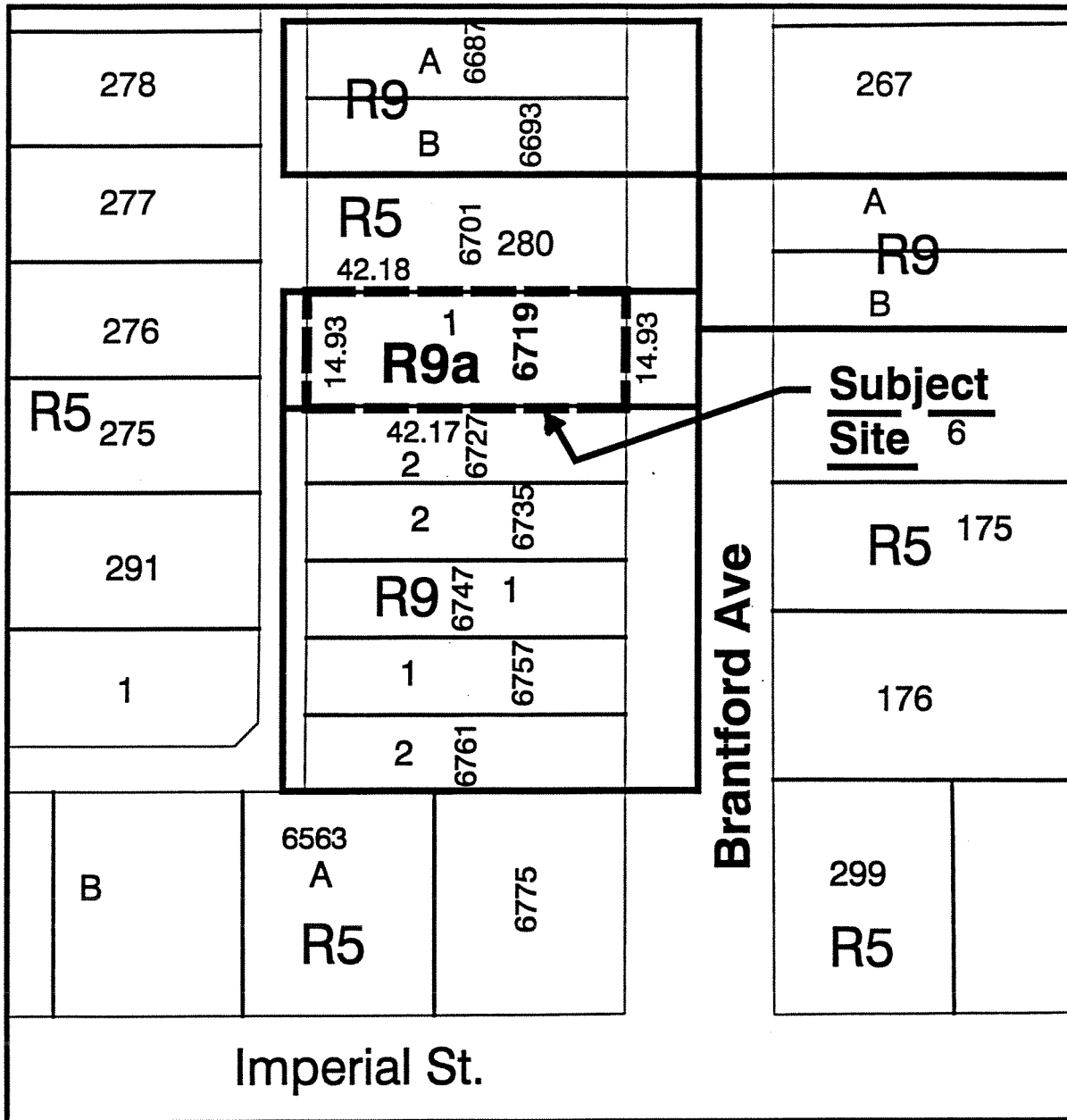
The above considerations are still pertinent to this request to amend the covenant. The one fundamental change in circumstances from when the previous request was received to amend the covenant, is that despite Council not granting the first request and contrary to the Building Permit and the registered covenant entered into by the owners, an additional 1,137 sq.ft. has been added to the dwelling. It is noted that Council recently expressed concern regarding the violation of covenants and possible precedent setting in connection with another R"a" zoned property in Burnaby. In light of the above considerations, this Department cannot support the application to amend the covenant on the subject property.



D. G. Stenson
Director Planning and Building

BW:gk
Attach

cc: Chief Building Inspector



Planning And Building Department



Scale: N.T.S.

Drawn By: JPC

Date: Jan.'99

Amended Covenant #1/98

6719 Brantford Ave.

Sketch # 1