

TO: CITY MANAGER 2000 JULY 24

FROM: DIRECTOR PLANNING AND BUILDING

SUBJECT: ZONING BYLAW TEXT AMENDMENT

PURPOSE: To propose a number of text amendments to the Burnaby Zoning Bylaw, including three which have been previously approved by Council for preparation of an amending bylaw, but have not yet been pursued.

RECOMMENDATIONS:

1. **THAT** Council authorize the preparation of a bylaw amending the Burnaby Zoning Bylaw as outlined in Section 2.0.
2. **THAT** the bylaw be forwarded to First Reading and to a Public Hearing.

REPORT

1.0 INTRODUCTION

As part of the on-going review of the Zoning Bylaw, text amendments are brought forward from time to time to ensure that the bylaw is kept current or to provide clarifications and improvements where warranted. This report provides recommendations on 10 separate text amendments to the Zoning Bylaw, which range from very minor wording clarifications to more significant regulatory changes meant to support existing bylaws and Council policies. Of the ten proposed text amendments, three have been previously proposed and authorized by Council to be prepared in a bylaw amending the Zoning Bylaw, but the required amending bylaw has not yet been advanced and are now proposed to be pursued as previously authorized. The background of those three bylaw amendments is discussed in the pertinent sections of this report.

2.0 TEXT AMENDMENTS

2.1 Side Yard Exception in M Districts

In Section 6.12 (3) of the Zoning Bylaw, which deals with exceptions to side yard requirements, the word “yard” is missing from the description of an exception to a side yard requirement in an M District, as outlined in Section 6.12 (3) (c). It is therefore recommended

that the word “yard” be inserted into the first line of Section 6.12 (3) (c) in order to clarify this section of the bylaw.

2.2 Lot Area and Width in R5 Residential District

Section 105.2 (2) in the R5 Residential District describes the lot area and width requirements for the R5 Single Family Dwelling - Small designation. This section begins with “Notwithstanding section 105.3 (2), ...,” but should read “Notwithstanding section 105.2 (1).” It is therefore proposed that the noted section be changed from 105.3 (2) to 105.2 (1). This does not change the intent or application of this section of the bylaw.

2.3 Zoning Districts Permitted as Guidelines for Comprehensive Development Districts (CD)

The CD Districts provide for the development of an area embracing one or more land use classifications based upon a comprehensive development plan. The CD District currently applies to the uses permitted in a wide range of zoning Districts. As the flexibility and site specific nature of Comprehensive Development zoning has become more appropriate and useful for a wide variety of situations, more zoning districts have been added over the years to Section 700.1 of the Zoning Bylaw, which lists the zoning districts upon which Comprehensive Development zoning may be based .

On 1995 August 14 Council adopted a recommendation authorizing the preparation of a bylaw amending the Zoning Bylaw, which involved a large number of specific text amendments, including adding the uses permitted under a number of zoning districts to those permitted through Comprehensive Development zoning. These zoning districts were added to those listed in Section 700.1, with the exception of the P7 Special Institutional District, which was inadvertently left off the amending bylaw. It is therefore proposed that this addition be included in a zoning bylaw amendment as previously authorized. It is also appropriate and beneficial to include the M8 Advanced Technology Research District, which is the basis for the zoning of the majority of the lands within Discovery Place, and the C4 Service Commercial District and C7 Drive-In Restaurant District as zones upon which Comprehensive Development District zoning may be based.

It is therefore proposed that the CD District be amended to include uses permitted under the following districts:

- P7 Special Institutional District
- M8 Advanced Technology Research District
- C4 Service Commercial District
- C7 Drive-In Restaurant District

While this amendment will affect the eligibility of these zones to be included in a CD bylaw, it is emphasized that the suitability and appropriateness of using the respective categories in a particular instance is evaluated by Council on a case by case basis.

2.4 Persons as a Unit of Measurement for Parking Requirements

In the Off-Street Parking Schedule of the Zoning Bylaw, there are parking standards for different land uses. Some of the parking requirements are based on the number of employees, number of students and staff doctors. Section 800.3 (2) explains how this parking standard is applied:

- (2) *Where number of employees is used as a unit of measurement, it shall mean the greatest number of persons at work, at any time of the day or night in a particular building or for a particular use during any season of the year.*

It is proposed that “employees” be replaced with “persons” and the phrase “or study” be inserted after the word “work” in order to include students and other categories of persons which are also used as units of measurement for parking requirements.

2.5 Side Yard Requirements on Residential Zoned Corner Lots

In each of the single family residential zoning districts there is a separate side yard setback requirement for the side yard adjoining a flanking street on a corner lot. In each zoning district, the side yard setback requirement is greater for the side yard adjoining a flanking street on a corner lot than that required for side yards flanking other lots, with the side yards proportionate to the lot size permitted in the respective zoning districts. This is necessary to provide sufficient space between the dwelling and the street, without unduly penalizing residential corner lots by considering both property lines which abut streets to be front yards.

Under Section 6 SUPPLEMENTARY REGULATIONS, Section 6.12 (3) (b) reads as follows:

- (b) *In A, R or RM Districts, on a corner lot, the required side yard adjoining the flanking street may be reduced to a minimum width of 1.8 m (5.91 ft.) provided that:*
 - (i) *for every unit of length reduction in required side yard width the required front yard shall be increased by such unit of length .*
 - (ii) *the lot is used for a single family dwelling.*

Building staff advise that there are few building permit applications submitted utilizing this section of the bylaw due to the compensation required under section 6.12 (3) (b) (i). It is also noted that there is already a specific provision in the R4 and R5 Districts which permits a reduced side yard setback for the side yard adjoining the flanking street on a corner lot on a small lot created through the R4 and R5 District Single Family Dwelling - Small designation. It is therefore recommended that Section 6.12 (3) (b) be deleted. It is also noted that if there is a need to consider individual site specific circumstances regarding a side yard setback flanking a street, a variance can be considered by the Board of Variance.

In addition, Section 109.9 in the R9 Residential District provides for two different side yard setback requirements for the side yard adjoining a flanking street on a corner lot, depending upon whether the width of the lot is below 12.2 m (40 ft.). This section indicates that if the lot is below 40 feet in width that the required side yard adjoining the flanking street may be reduced to a minimum width of 1.8 m (5.9 ft.) if for every unit of length reduction in required side yard, the required front yard is increased by such unit of length.

In order to be consistent with the deletion of Section 6.12 (3) (b) above and to not reduce the potential rear yard useable space on small R9 District lots by requiring a greater front yard setback, it is recommended that the phrase “if for every unit of length reduction in required side yard, the required front yard is increased by such unit of length” be deleted from section 109.9 (2) of the R9 Residential District.

There is one additional amendment which is required to deal with the deletion of Section 6.12 (3) (b) in order to remain equitable and reasonable in terms of the development of residentially zoned small corner lots. Currently, through Sections 104.10 (3) and 105.10 (3) of the Zoning Bylaw, a reduced side yard setback is permitted for the side yard adjoining the flanking street on a corner lot, where the lot is considered a small lot as permitted through the R4 and R5 District small lot subdivision provisions. These sections of the bylaw do not, however, apply to legally non-conforming small lots in the R4 and R5 Districts. The reduced side yard setback requirement for the flanking side yard on legally non-conforming small corner lots are currently permitted through Section 6.12 (3) (b), which this report proposes to be deleted. In order to continue to deal with the setback on these lots, whether they be newer R4 and R5 District small lots or legally non-conforming small lots, it is proposed that the provision for this side yard reduction be broadened in Sections 104.10 (3) and 105.10 (3) to include all small lots. For example, Section 105.10 (3) reads:

- (3) *A small lot described in Section 105.2(2) shall be provided with a side yard on each side of the building that is not less than 1.22 m (4.0 ft.) in width, and in the case of a corner lot, the side yard adjoining the flanking street shall be not less than 1.83 m (6.0 ft.) in width.*

It is recommended that Section 104.10 (3) and 105.10 (3) be amended to read:

“Any lot with a lot width of less than 12.1 m (40 ft.) shall be provided with a side yard on”

This will ensure equitable treatment of small corner lots in the R4 and R5 Districts, whether they are newly created or legally non-conforming.

2.6 R12 District Rezoning Process

On 1995 May 1, Council adopted the recommendations of the Housing Committee, now the Community Planning and Housing Committee (CPHC), regarding a variety of review processes to be followed in conjunction with area rezoning requests and defining a policy regarding the application of the R12 District.

The report provided details on both the criteria which would be used by staff in assessing a request for area rezoning to permit infill development and the process to be followed in considering such requests, including a neighbourhood consultation process, consideration by the CPHC and a subsequent recommendation to Council. The report stated that there is a concern that the ad hoc rezoning of lots to the R12 District in the absence of a larger neighbourhood planning process would disrupt stable single and two family neighbourhoods and remove the sense of certainty that is created through zoning. As a result it was recommended that the City Solicitor be directed to prepare a text amendment bylaw that would add to the text of the R12 District a provision that the R12 District be limited to lots within an area that has been the subject of an area rezoning consultation process and approved for consideration of a zoning change by Council.

The recommendation was adopted by Council at that time, but has not been advanced as a zoning bylaw amendment. Staff are working with the City Solicitor to formulate the wording for a zoning bylaw text amendment to forward to Council for First Reading as an administrative bylaw amendment, as previously authorized.

2.7 Lot Area and Width Requirements for Older Lots

Almost all zoning districts in the Burnaby Zoning Bylaw have minimum lot area requirements. One of the principal reasons behind having the minimum lot area and width requirements is the need to ensure that newly created lots are sufficient in size to accommodate the uses which are permitted through the zoning of the property. However, there are many lots in Burnaby which were created before the adoption of the Burnaby Zoning Bylaw in 1965 that do not conform to the lot area and width requirements of the

pertinent zoning district for the property. The Burnaby Zoning Bylaw recognizes that these older existing lots can not be made undevelopable by the lot area and width requirements. Section 6.11 (1) (a) deals with these older lots as follows:

(1) *Existing Lots:*

- (a) *The lot area and lot width requirements of this Bylaw shall not apply to any lot in an A, R, C1, C2, C3, C4, M1, M2, M3, M4, M5, or P5 District which has an area or width less than that required by this Bylaw, if such a lot was described on the official records on file in the Land Registry Office on or before 1978 January 01.*

The intent behind this section of the bylaw is to allow a **base** development or use on older existing properties which fall under the above zoning categories, as defined by the lot area and width requirements of each zone. For example, the C4 District has a minimum lot area requirement of 560 m² (6027.99 sq. ft.) for all permitted uses, but there is also a specific lot area requirement of 930 m² (10,010 sq. ft.) for car wash establishments and drive-in businesses. There are many other examples in the Zoning Bylaw of uses which have a higher lot area and/or width requirement than the base lot area and width requirement of the pertinent zoning district. The intent behind Section 6.11 (1) (a) of the Zoning Bylaw and the practice regarding its interpretation is that this section grants an exception to the base lot area and width requirements of the zone, but does not grant the additional development or use rights which require greater lot area and/or width requirements. The practice has also been to consider that this section of the bylaw applies to any of the basic land use categories (eg. industrial, commercial, residential) in a zoning district independently. The only zoning district which is affected by this practice is the M4 Special Industrial District, which permits residential and industrial uses, based on different lot area and width requirements. This allows single family dwelling and industrial use development on M4 zoned properties which do not have the required respective lot area and width requirements, but would not allow two family dwellings unless the specific area and width requirements for a two family dwelling is satisfied. Allowing industrial development on these properties is considered beneficial in order to not create a situation where only residential development can occur on existing undersize lots which are located in an area that is primarily industrial in character, such as the Beresford industrial area.

While the above practice has been utilized for many years regarding Section 6.11 (1) (a) of the bylaw, some clarification to the wording of this section is considered useful to ensure that it is clear to all that this section of the bylaw does not grant additional development rights to older existing properties which do not have the required lot area or width. The recommended text amendment will clarify the long standing practice that this section grants older existing lots the development and land use rights permitted by the **base** lot area and

width requirements, but not additional development and use rights which require greater lot area and width requirements.

2.8 Automobile Rental Use in the C3 District

This Department has recently received an enquiry regarding permitting a car rental business on a Comprehensive Development zoned site in the Metrotown area. The Comprehensive Development zoning of the site is based on C3 General Commercial District zoning, which does not include automobile sales or rental as a permitted use. In light of the planned high density development and intensive, pedestrian orientation of Burnaby's town centre areas, for which the primary commercial zoning is the C3 District, it is appropriate to continue to not permit automobile sales and rental lots as a stand alone principal use in the C3 District. Automobile showrooms within a building are permitted, however, as a principal use in the C3 District.

An automobile rental business which is located within a completely enclosed building, with the car storage/ display area integrated into the overall parking structure and as part of a Comprehensive Development project could provide a valuable service to visitors to Burnaby's town centres without detracting from the development form and character of these areas. Hotel and major shopping centre developments are examples of where these uses could potentially be accommodated to serve residents and visitors to these areas in a manner which does not conflict with the surrounding land uses and intended character of the area.

It is therefore recommended that automobile rental businesses be included as a permitted use in the C3 General Commercial District where such use is included as part of a comprehensive development plan that is subject to the provisions of the CD District. Council would be fully informed of the specifics of any proposal via the Comprehensive Development zoning report and take the suitability of the particular scheme into account as part of its zoning consideration.

2.9 Floor Area Calculations for Areas with High Ceilings in R Districts

On 1995 August 14 Council adopted a recommendation regarding a number of text amendments, some of which were advanced to the zoning bylaw amendment stage and adopted by Council. One text amendment which was not advanced, however, to the bylaw stage was a clarification of the method of calculation of gross floor area for areas with high ceilings in the single and two family residential zoning districts. The intent of Section 6.20.(4) of the Zoning Bylaw, which deals with this matter is to count areas with a high ceiling (where the height from the floor to the ceiling exceeds 3.7m (12.1 ft.)) twice, but with an allowance of up to 100 square feet. However, the current wording of the bylaw

could actually give a credit in the gross floor area calculation if the area of the high ceiling is less than 100 square feet in area.

It is therefore proposed that Section 6.20 (4) be amended to clarify the intent of this section, which is to count the floor area twice in areas of high ceilings, minus a maximum of 100 square feet.

2.10 Enclosure of Swimming Pools

On 2000 June 12 Council received a report from this Department regarding the enclosure of swimming pools and adopted the recommendation that the City enact a Swimming Pool Enclosure Bylaw. Currently Section 6.12 (1) (g) of the Zoning Bylaw regulates the siting of uncovered swimming pools and makes reference to the enclosure requirements of the National Building Code. The Swimming Pool Enclosure Bylaw which was given Final Adoption by Council on 2000 June 26 meets and exceeds the enclosure requirements of the National Building Code. Therefore, the reference to enclosure requirements in Section 6.12 (1) (g) of the Zoning Bylaw is no longer pertinent and is proposed to be deleted.

3.0 CONCLUSION

The above zoning bylaw text amendments are proposed in order to clarify certain aspects of the bylaw, make minor amendments in support of existing practices and Council policies, as well as other minor regulatory changes. It is recommended that Council approve the above proposed text amendments and authorize the preparation of a bylaw to be forwarded to First Reading and to a Public Hearing.



D. G. Stenson
Director Planning and Building

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cc: City Solicitor
Chief Building Inspector

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