

MINUTES  
**BOARD OF VARIANCE**  
COMMITTEE ROOM NO. 2, SAANICH MUNICIPAL HALL  
**NOVEMBER 12, 2015 AT 7:00 P.M.**

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Members: H. Charania, D. Gunn, R. Gupta, R. Kelley  
Absent: R. Riddett  
Staff: A. Pickard, Planner, P. Masse, Senior Committee Clerk  
Minutes: Moved by D. Gunn and Seconded by R. Kelley: "That the minutes of the Board of Variance meeting held October 14, 2015 be adopted as circulated."  
**CARRIED**

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Morningside Place Deck addition  
BOV #00514  
**Applicant: Mark deLeeuw**  
**Property: 1644 Morningside Place**  
**Variance: Relaxation of front lot line setback from 6.0 m to 4.86 m**  
**Relaxation of combined front and rear setback from 15 m to 12.59 m**

The Notice of Meeting was read and the applicant's letter received. Signatures of no objection received from: P. and B. Hickman, 1640 Morningside Place; G. and A. Mercer, 1636 Morningside Place; J. Gile, 1641 Morningside Place; J. and S. Burrows, 1645 Morningside Place; V. Bruce, 1652 Morningside Place; T. and H. Graham, 1653 Morningside Place.

Applicants Mark deLeeuw, applicant/owner, was present in support of the application and had nothing to add other than to note that his variance application is in line with Board of Variance requirements and criteria.

In response to questions from the Board, Mr. deLeeuw stated:

- A Stop Work Order was not formally issued; his variance request was submitted on a voluntary basis. He applied for a Building Permit and was notified the Permit was denied due to the setback infringement.
- A replacement deck is not proposed nor wanted; the intention is only to update and improve aesthetics and functionality. The previous deck did however provide weather protection and cover, which is why the canopy is being proposed.
- Five posts were originally proposed, the middle post has been removed from the plans in order to decrease possible sightline impacts.

In Favour Nil

In Opposition Nil

**MOTION: MOVED by D. Gunn and Seconded by R. Kelley: "That the following variances be granted from the requirements of Zoning Bylaw 2003, Section 210.4(a)(i), further to the construction of a deck addition to the house on Lot 7, Section 55, Victoria District, Plan 19166 (1644 Morningside Place):**

- a) relaxation of front lot line setback from 6.0 m to 4.86 m
- b) relaxation of combined front and rear setback from 15 m to 12.59 m

**And further that the variances so permitted be in accordance with the plans submitted to the Board, and expire on November 12, 2017, if not acted upon."**

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Board comments:

- The variance request is due to the layout of the cul-de-sac as it relates to the subject property and only a small section of the setback is affected.
- The previous non-conforming deck needed to be removed or replaced.
- No increase in floor area is proposed.
- The average setback will be maintained.
- The shape of the lot and the siting of the home are deemed a hardship.
- There is no impact to neighbours and the awning over the main entrance is consistent with neighbourhood character and design trends.

**The Motion was then Put and CARRIED**

<p>Agate Lane New house</p> <p>BOV #00515</p> <p>Applicants</p>	<p><b>Applicant: Christopher Walker obo Morgan Harker and Nancy Lam</b></p> <p><b>Property: 5165 Agate Lane</b></p> <p><b>Variance: Relaxation of single face height from 6.0 m to 7.18 m</b></p> <p>The Notice of Meeting was read and the applicant's letter received.</p> <p>Christopher Walker, applicant, and Morgan Harker, owner, were present in support of the application and had nothing further to add.</p> <p>In response to questions from the Board, Mr. Walker stated:</p> <ul style="list-style-type: none"> <li>▪ The hardship for this variance request is due to the design of the home and the fact that it is in the EDPA buffer zone. To build the home in compliance with the Zoning Bylaw it would need to be sunk deeper into the ground creating deeper footings, which would lower the building but not change the overall height and it would not be in keeping with the natural grade nor existing neighbourhood homes. Another construction hardship is the separation between the garage and the proposed home, if they complied with the Zoning Bylaw it would result in a negligible separation.</li> <li>▪ The crawl space needs to be at a minimum height of 4 feet due to drainage concerns as there is a limited distance between the slab and high tide levels.</li> <li>▪ The property was purchased on June 29, 2015.</li> <li>▪ Concrete grade levels would be very similar to what pre-existed in order to minimize excavation.</li> <li>▪ Estimated overall height of the home is 7.81 m; however, this was not formally surveyed.</li> <li>▪ The patio and home would be located within the EPPA buffer zone only and would not infringe into the EDPA restricted area.</li> </ul> <p>In Favour Nil</p> <p>In Opposition Nil</p> <p><b>MOTION: MOVED by D. Gunn and Seconded by R. Kelley: "That the following variance be granted from the requirements of Zoning Bylaw 2003, Section 5.27(a), further to the construction of a new house on Lot 16, Section 31, Lake District, Plan 799 (5165 Agate Lane):</b></p> <p style="padding-left: 40px;"><b>a) relaxation of single face height from 6.0 m to 7.18 m</b></p> <p><b>And further that the variance so permitted be in accordance with the plans submitted to the Board, and expire on November 12, 2017, if not acted upon."</b></p>
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Board comments:

- The lot is narrow and the hardship relates to what could be built on the lot due to the layout.
- The height of the new home would be lower than the pre-existing home on the lot and the neighbouring home.
- The proposal is in keeping with neighbourhood character and context.
- The home needs to be setback due to EDPA restricted areas.
- The intent is not to raise the home; the applicants need a crawl space for protection against storm surges.
- The proposed plans follow closely to the existing topography and will not be over height.
- Unsure if all options or possibilities to comply with the Zoning Bylaw had been fully investigated.

**The Motion was then Put and CARRIED  
R. Gupta OPPOSED**

Sea View Road  
New house  
  
BOV #00516

**Applicant: Virginia Vincent**  
**Property: 2861 Sea View Road**  
**Variance: Relaxation of overall height from 7.5 m to 8.17 m**  
**Relaxation of single face height from 7.5 m to 9.0 m**

The Notice of Meeting was read and the applicant's letter received.

Applicants

Mr. Vincent, owner, and William Peereboom, Victoria Design Group, were present in support of the application.

Mr. Peereboom stated:

- The home could be designed to be placed further up the slope into the existing bank, which would avoid the variance; however, the owner wanted to retain the Garry oak grove located on the plateau. It was therefore decided to place the home in the same location as the existing home in order to minimize blasting and impacts to habitat and environmental areas.
- Moving the home down the bank would decrease the height; however a variance would still be required. If the proposal were in compliance with the Zoning Bylaw it would result in a home a metre higher than what is currently proposed.

Mr. Vincent stated:

- Submissions and photos received by the Board from the neighbouring Vasko family are not representative of true impacts to their views; if the home were to be placed in an alternate spot on the property their views could be dramatically impacted.

In Favour

Nil

In Opposition

T. and J. Vasco, 2870 Sea View Crescent, stated:

- He does not believe the submitted application and rationale are accurate.
- The views from their home will be impacted dramatically and will significantly affect the value of their property.
- Bedford Park is next to the subject property, many people stop at the park to enjoy the views. These views may be blocked by this proposed home.
- The variance rationale cites costs several times as a reason for the request, it does not indicate retaining Garry oak trees as a rationale.

In response to questions from the Board, Mr. Peereboom and Mr. Vincent stated:

- Although additional blasting estimates are not available for the meeting, the costs would be significant. Anything north of the building would be affected and it would result in a building that would be a metre higher in relation to the street.
- The existing home is 4,000ft<sup>2</sup>, the proposed home would be 8,100ft<sup>2</sup>.
- The property was purchased in July 2015 sight unseen as they knew it would have to be demolished. They did not have a design in mind, but there are not many options due to lot configuration and EDPA restricted areas.
- Decreasing the size of the home would not affect the height. The design could be manipulated, but it would incur costs, create more blasting and result in a bigger and higher home. The Garry oaks will need to be removed if considering any other design option.
- A flat roof was considered, which would result in the height going from 7.5 m to 6.5 m. The proposal includes a 7/12 pitch, the existing home as a 12/12 pitch. Dormers are considered a flat roof in the Zoning Bylaw due to the ratio.
- The basement will not use the same geodetic elevation as the existing home as it will be lowered slightly.
- Part of the existing and proposed homes are located in the EDPA buffer area, nothing is located or proposed to be located in the EDPA restricted areas.
- Bedford Park will not be disturbed by the proposal nor will it be fenced.
- The Landscape Plan will include a Tree Protection Plan for the Garry oak grove.

In response to questions from the Board, A. Pickard stated:

- A covenant will be processed through the Development Permit stage and the Permit requirements would include protective fencing around the Garry oaks during construction. A Tree Protection Plan would be required at the Building Permit stage and would be monitored through the Parks Department.

**MOTION:**

**MOVED by R. Gupta: "That the following requests for variances from the requirements of Zoning Bylaw 2003, Sections 290.3(b)(i) and (ii), further to the construction of a new house on Lot E, Section 44, Victoria District, Plan 24236 (2861 Sea View Road) be denied:**

- a) relaxation of overall height from 7.5 m to 8.17 m
- b) relaxation of single face height from 7.5 m to 9.0 m

**The Motion FAILED due to a lack of a Secunder**

**MOVED by R. Gupta and Seconded by R. Kelley: "That the following requests for variances be granted from the requirements of Zoning Bylaw 2003, Sections 290.3(b)(i) and (ii), further to the construction of a new house on Lot E, Section 44, Victoria District, Plan 24236 (2861 Sea View Road):**

- c) relaxation of overall height from 7.5 m to 8.17 m
- d) relaxation of single face height from 7.5 m to 9.0 m

**And further that the variances so permitted be in accordance with the plans submitted to the Board, and expire on November 12, 2017, if not acted upon."**

Board comments:

- More information regarding additional costing due to blasting, etc., was expected to be presented as it is referenced several times in the supporting rationale.
- Property owners need to undertake due diligence prior to investing in property.
- The limitations on the site including the Garry oak trees and the rock outcrops are recognized; however, the proposed home is very large and is unsupportable.
- While the proposed home is very large, it is permitted. A slight modification to the design would negate the need for a variance request. Hardship has not been clearly defined.
- Massing could have been reduced and design is excessive in height. A lesser variance could be supportable.
- The proposal is required to go through EDPA and development processes.
- Additional blasting could be very costly and would result in damage to the natural environment.
- Alternate design options may not result in a better design than what is proposed, any other location for the home could be detrimental to the neighbourhood and property.
- Bylaws do not protect views nor are views guaranteed.
- Additional costs can be considered a hardship.
- Request to amend the Motion to include the proviso that a Tree Protection Plan be registered and no fence be erected between the subject property and Bedford Park.

**The Motion FAILED due to a Tie Vote  
R. Kelley and R. Gupta – OPPOSED  
H. Charania and D. Gunn – IN FAVOUR**

**Consideration of this item was automatically TABLED for a future meeting.**

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Prospect Avenue Fence height	<b>Applicant: Barry and Deborah Bowman</b> <b>Property: 4914 Prospect Avenue</b> <b>Variance: Relaxation of fence height from 1.9 m to 2.13 m</b>
BOV #00517	The Notice of Meeting was read and the applicant’s letter received. Letter of opposition received from R. and E. Deol, 4918 Prospect Avenue.
Applicants	Deborah and Barry Bowman, applicants and owners, were present in support of the application. Ms. Bowman stated: <ul style="list-style-type: none"> <li>▪ The fence is composed of thirteen 6’ panels, the property slopes towards the bottom of the property and there is an additional 7”-10” gap underneath the panels as they stagger downward, these gaps are filled with plywood in order to keep the fence level as it slopes down.</li> </ul>
In Favour	Nil
In Opposition	J. Coates and M. Innis, 4965 Prospect Avenue, stated: <ul style="list-style-type: none"> <li>▪ A land assessor has advised them that the over height fence will result in a negative impact on the value of their land, which creates an undue hardship on them.</li> <li>▪ There has been some loss of views.</li> <li>▪ Not disturbed with the fence panels that are 6’ high; however, the panels that measure 8’4” are a concern.</li> </ul>

- The applicant's second level deck has resulted in a loss of privacy, in order to mitigate this loss of privacy they levelled off a lower corner of their property to the cost of \$3,000.00 to create a private seating area. The fence makes the efforts moot as it feels like a compound.
- They understand the desire to keep neighbourhood dogs out of their yard; however, the fence is just too high.

In response to questions from the Board, Ms. Coates stated:

- She only communicated with the contractor who installed the fence after it was constructed; she never verbally or otherwise agreed to the height of the fence.
- Property owners need to undertake due diligence prior to investing in property.

In response to questions from the Board, Ms. Bowman stated:

- The correspondence received from Mr. and Mrs. Deol is not valid as the fence does not encroach on their property in any way and is beyond their line of sight. The 6' fence panels that are closest to the Deol's are in compliance with the Zoning Bylaw.
- The fence is constructed upon the old and grandfathered retaining wall.
- The fence was professionally installed and the contractor knew the height could be a concern to neighbours so they consulted neighbours about how to accommodate any desired views.
- The fence pre-fabricated construction, installation, tree and shrub planting and reinstallation of the water system cost over \$7,500.00; it would be a financial hardship to remove, cut and reinstall the panels for a matter of 10".
- Leyland Cyprus hedging was installed in 2014 on recommendation from their landscape architect and was chosen for privacy and cost reasons.

**MOTION:**

**MOVED by R. Gupta and Seconded by D. Gunn: "That the following variance be granted from the requirements of Zoning Bylaw 2003, Section 6.2(f)(ii), further to the retention of an existing fence on Lot 2, Section 89, Lake District, Plan 427 (4914 Prospect Avenue):**

- a) relaxation of fence height from 1.9 m to 2.13 m**

**And further that the variance so permitted be in accordance with the plans submitted to the Board."**

Board comments:

- The topography of the lot is a hardship, the height did not seem overly intrusive when attending the site.
- Many people have to contend with the same issues and they comply with the Zoning Bylaw. Two neighbours have formally complained, unable to support the variance request.
- This is likely an honest mistake on behalf of the contractor and while this is basically a minor variance; the massing of the fence is a concern.
- This was assessed as though the fence had not yet been installed. The fence naturally follows the topography of the land through a staggered and graduated design and is an aesthetically pleasing.

**The Motion was then Put and CARRIED  
R. Kelley OPPOSED**

Walema Court      **Applicant: Robert Greig**  
 Deck addition    **Property: 5190 Walema Court**  
                          **Variance: Relaxation of rear lot line setback from 7.5 m to 3.73 m**

BOV #00518

The Notice of Meeting was read and the applicant's letter received.

Applicants

Robert Greig and Sue Jergens, applicants and owners, were present in support of the application.

Mr. Greig stated:

- The purpose of the variance request is to obtain direct access to their outdoor patio by installing a useable, safe and flush sundeck addition. The current configuration is a fall hazard as the deck is lower than the access to it. The proposed deck would be supported on concrete pad footings and would be an average 12" above the existing grade.

In response to questions from the Board, Mr. Greig stated:

- The existing deck conforms to the Zoning Bylaw.
- The variance request is to mitigate a safety issue and to ensure the enjoyment of the outdoors and of their property. If the layout of the home were reversed they would have direct access to the exterior and if the Zoning Bylaw were complied with stairs would need to be installed.
- They took possession of the home on July 30, 2015.
- The use, as intended, precludes the consideration of building a new deck flush with the existing concrete line.

In Favour

Nil

In Opposition

Nil

**MOTION:**

**MOVED by R. Gupta and Seconded by D. Gunn: "That the following variance from the requirements of Zoning Bylaw 2003, Section 230.4(a)(i), further to the construction of a deck addition to the house on Lot 3, Section 44, Lake District, Plan 48646 (5190 Walema Court) be denied:**

**a) relaxation of rear lot line setback from 7.5 m to 3.73 m**

Board comments:

- This is a major variance request and a hardship has not been established.
- A smaller variance request could be supportable, the proposed deck may not be a problem to neighbours now but could be in the future.
- The design of the home could be construed as a hardship and the effects to neighbours will be minimal as it is low profile and would be a natural fit to the current design of the home.
- The existing patio being continued would not give the applicant's the utility they desire, it is a minor height difference of 8"-12" and is not a structure per say. Drainage issues could result in damage to the deck and the investment of renovations undertaken to date would result in a hardship if the application were defeated.
- The severity of a variance does not always correlate to the reason for the request, no compelling reasons to deny the request.

**The Motion was then Put and DEFEATED  
 H. Charania and R. Kelley OPPOSED**

**MOVED by R. Kelley and Seconded by D. Gunn: “That the following variance be granted from the requirements of Zoning Bylaw 2003, Section 230.4(a)(i), further to the construction of a deck addition to the house on Lot 3, Section 44, Lake District, Plan 48646 (5190 Walema Court):**

- b) relaxation of rear lot line setback from 7.5 m to 3.73 m**

**And further that the variance so permitted be in accordance with the plans submitted to the Board, and expire on November 12, 2017, if not acted upon.”**

**The Motion was then Put and CARRIED  
R. Gupta OPPOSED**

Wilkinson Road  
New house  
  
BOV #00519

**Applicant: Maurizio Conforti**  
**Property: 3886 Wilkinson Road**  
**Variance: Relaxation of overall height from 7.5 m to 8.14 m**  
**Relaxation of single face height from 7.5 m to 8.94 m**

The Notice of Meeting was read and the applicant’s letter received. Letter of support received from C. Duncan, 3898 Wilkinson Road.

Applicants

Maurizio and Donna Conforti, owner and applicants, were present in support of the application and had nothing further to add.

In response to questions from the Board, Mr. Conforti stated:

- He is a builder by trade and he is attempting to raise the house to avoid water build-up at the lowest point of the site as he is unsure of the results of a flash flood or water occurrence. He would prefer to mitigate any drainage issues at the building stage.
- A secondary suite is proposed for the rear of the home.
- A flat roof would not be preferable with the design of the proposed home.
- Perimeter drainage would be located on the side of the home. Contour lines would result in a lot of water to drain into the site from existing slopes.
- Street access is shared by three or four lots and includes a reciprocal easement. The original owner registered a covenant on the property; however, the variance request does not impact the restrictions of the covenant.

In Favour

Nil

In Opposition

Nil

**MOTION:**

**MOVED by R. Kelley and Seconded by R. Gupta: “That the following variances from the requirements of Zoning Bylaw 2003, Sections 230.4(b)(i) and (ii), further to the construction of a new house on Lot 1, Section 16, Victoria District, Plan EPP51855 (3886 Wilkinson Road) be denied:**

- a) relaxation of overall height from 7.5 m to 8.14 m**
- b) relaxation of single face height from 7.5 m to 8.94 m**

Board comments:

- A hardship has not been clearly established nor can a hardship be associated with the physical layout of the lot. This is instead a request based on personal preference.



- There are alternative ways to mitigate drainage issues, a Development Variance Permit application may be better suited for this request.
- The lot does present some challenges as much of it is unusable due to the slope. It is better to build something that will not require correcting in the future.
- A sloping driveway cannot be construed as a hardship; challenges were apparent at the time the lot was purchased.

**The Motion was then Put and CARRIED  
D. Gunn OPPOSED**

Gorge Road West Addition      **Applicant: William Kuhnke**  
    **Property: 748 Gorge Road West**  
    **Variance: Relaxation of Exterior Side Lot Line From 3.5 m to 1.57 m**

BOV00520      The Notice of Meeting was read and the applicant's letter received.

Applicants      William and Barb Kuhnke, owner and applicants, were present in support of the application and had nothing further to add.

In response to questions from the Board, Mr. Kuhnke stated:

- The existing deck conforms to the Zoning Bylaw.
- They are purchasing a new hot tub and even the smallest version researched will not fit on the existing deck. When he was taking the deck apart it was realized the foundation would not suffice. Proposal is to rebuild the deck properly.
- Original plan was to place the hot tub on the north side of the house; however, due to recent health issues involving arthritis the preferred approach is to avoid stairs as much as possible and keep the hot tub at the living level of the home.
- All neighbours have been consulted and no concerns were noted. The new deck will be an aesthetic improvement and no privacy will be infringed upon.

In Favour      Nil

In Opposition      Nil

**MOTION:      MOVED by R. Kelley: "That the following variance be granted from the requirements of Zoning Bylaw 2003, Sections 210.4(a), further to the construction of a deck on Lot 28, Section 21, Victoria District, Plan 5033 (748 Gorge Road West):**

- a) relaxation of the exterior side lot line setback from 3.5 m to 1.57 m

**And further that the variance so permitted be in accordance with the plans submitted to the Board, and expire on November 12, 2017, if not acted upon."**

**The Motion FAILED due to a lack of a Seconder**

**MOVED by D. Gunn and Seconded by R. Gupta: "That the following variance from the requirements of Zoning Bylaw 2003, Sections 210.4(a), further to the construction of a deck on Lot 28, Section 21, Victoria District, Plan 5033 (748 Gorge Road West) be denied:**

- a) relaxation of the exterior side lot line setback from 3.5 m to 1.57 m

Board comments:

- Side lots are not designed for the uses being contemplated, there is room to construct a deck or hot tub on grade.
- The existing deck was conforming, the proposed deck is not; the deck can be rebuilt in its current location.
- Privacy of neighbours could be affected by the proposed deck.
- The noted medical condition is a hardship as access would be difficult for the home owner if the hot tub was placed outside of the living level.

**The Motion was then Put and DEFEATED  
H. Charania and R. Kelley OPPOSED**

**MOVED by R. Kelley and Seconded by R. Gupta: “That the following variance be granted from the requirements of Zoning Bylaw 2003, Sections 210.4(a), further to the construction of a deck on Lot 28, Section 21, Victoria District, Plan 5033 (748 Gorge Road West):**

- a) relaxation of the exterior side lot line setback from 3.5 m to 1.57 m

**And further that the variance so permitted be in accordance with the plans submitted to the Board, and expire on November 12, 2017, if not acted upon.”**

**The Motion was then Put and CARRIED  
D. Gunn OPPOSED**

Wordsworth  
Street  
Addition

**Applicant: Josh Collins, Arya Design  
Property: 3211 Wordsworth Street  
Variance: Relaxation of allowable floor space in non-basement areas from 80% to 97%**

BOV00521

The Notice of Meeting was read and the applicant’s letter received.

Applicants

Robert Bull, owner, was present in support of the application and had nothing further to add.

In response to questions from the Board, Mr. Bull stated:

- If the variance is denied he and his family would need to move, they have lived there for seven years and love the home. The variance is required in order to build an additional bedroom for his growing family.
- Seismic upgrades will be undertaken as part of the proposal.
- The proposal results in a variance of 97.2%, not 97% as stated in the application.

In Favour

Nil

In Opposition

Nil

**MOTION:**

**MOVED by D. Gunn and Seconded by R. Gupta: “That the following variances be granted from the requirements of Zoning Bylaw 2003, Sections 210.4(c) further to the construction of an addition on Lot 10, Section 34, Victoria District, Plan 1228 (3211 Wordsworth Street):**

- a) relaxation of allowable floor space in non-basement areas from 80% to 97%

**And further that the variances so permitted be in accordance with the plans submitted to the Board, and expire on November 12, 2017, if not acted upon.”**

Board comments:

- Neighbours will not be affected by the variance if approved, it allows for the remediation of an older home and hardship has been established.
- Construction is the hardship as the home was not fully raised when built.
- The proposal has been responsibly proposed, the roof line being followed is appreciated.

**The Motion was then Put and CARRIED**

*Please note: The Planning Department advises that as long as the Building Permit application is consistent with the floor plans, and gross floor area indicated in the Board of Variance minutes (97.2%) then Planning staff will be able to sign off on the Building Permit application.*

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Adjournment      On a motion from R. Gupta, the meeting was adjourned at 10:00 p.m.

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Haji Charania, Chair

I hereby certify that these Minutes are a true and accurate recording of the proceedings.

\_\_\_\_\_  
Recording Secretary