

MINUTES
BOARD OF VARIANCE
Via Microsoft Teams
May 11, 2022 at 6:01 p.m.

Members: J. Uliana (A/Chair), K. Zirul, A. Gill, M. Cole

Regrets: M. Horner

Staff: K. Kaiser, Planning Technician; J. McLaren, Planning Technician; and
N. Chaggar, Senior Committee Clerk

Earl Grey Street
Addition

BOV00968

Applicant: Nathan Muller
Property: 3121 Earl Grey Street
Variance: Relaxation of the minimum combined sideyard setback from 4.5 m (14.8 ft) to 3.35 m (11.0 ft)
Relaxation of the total non-basement floor area from 212 m² (80%) to 261.16 m² (98.5%)

The Notice of Meeting was read, and the applicant's letter and one letter from a neighbour received.

Applicants: Nathan Muller, applicant/owner, was present in support of the application and noted the following:

- The home was built in 1939 and the applicants wish to expand the home to accommodate their growing family.
- A large apple tree is deterring the applicants from building towards the back of the home so they are proposing to build sideways.
- It would cause undue hardship to create a basement because of the existing layout of the house.

Public input: Nil

Discussions:

In response to questions from the Board, the applicants stated:

- The proposed deck would be approximately 2-4 m from the base of the tree.
- The basement is currently 12 inches below grade at one corner.
- The proposal is to use the existing driveway access.
- A branch of the apple tree would encroach onto the proposed deck. The applicant would remove this branch.

In response to questions from the Board, the Planning Technician stated:

- The request for variance of 98.5% non-basement area doesn't include the garage space.
- The maximum ratio for allowable space in this zone is 262 m² with 212 m² allowed for non-basement.

Board discussion:

- According to the bylaw, 1.5 m is the minimum distance underground for a space to be considered a basement.
- The lower level is not considered a basement because it's at grade with only 1 foot of depth at its deepest point.
- This design doesn't propose for any underground living space, of which the bylaw allows 20%.
- It's difficult to rationalize why the Board would approve almost 600 ft² over what the bylaw allows.

- If this structure were a new build, the non-basement floor area variance would not be allowed.
- The intent of the bylaw is to limit the size of the structure above ground and not make homes seem too large.
- If the Board denies this variance, it would have a greater impact on the neighborhood than what is proposed should the applicant dig down and build a basement.
- If the applicant builds a basement, then they would qualify for 262 m² above ground, in addition to the space in the basement.
- The applicant would still be able to build a smaller addition than what is proposed, up to 212 m².
- The applicants are proposing to add 1,417 ft². They would have to reduce that to slightly less than 1,600 ft².
- The design proposes fairly large rooms for a property of this size.

MOTION: **MOVED by K. Zirul and Seconded by A. Gill: “That the following request to relax the minimum combined sideyard setback from 4.5 m (14.8 ft) to 3.35 m (11.0 ft), and to relax the total non-basement floor area from 212 m² (80%) to 261.16 m² (98.5%) from the requirements of Zoning Bylaw 2003, Sections 210.4 (a)(ii) and (c) further to the construction of an addition on Lot 22, Block P, Victoria District, Plan 860, Section 11&12 (3121 Earl Grey Street) be DENIED.”**

CARRIED
With J. Uliana OPPOSED

<p>Service Street Fence Height BOV00972</p>	<p>Applicant: Mary Giudici Property: 3199 Service Street Variance: Relaxation of the maximum height of a fence within the minimum setback distance of the principal building and abutting the street from 1.5 m (4.9 ft) to 1.9 m (6.2 ft) Relaxation of the maximum height of a fence at a street corner from 1.0 m (3.3 ft) to 1.5 m (4.9 ft)</p>
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The Notice of Meeting was read and the applicant’s letter received.

Applicants: Mary Giudici, applicant/owner, was present in support of the application and noted the following:

- The applicant enjoys gardening and is frustrated with deer entering and feeding off the garden.
- The deer work their way through the existing netting and the applicant must continually repair the damage.
- The bylaw stipulating fence heights is not adequate to keep deer out, specifically in the front yard.
- The main hardship is the deer.
- The applicant engaged with the neighbour to the south and agreed to build the fence on the applicant’s side of the hedge, about 2-3 feet in from the property line to accommodate the neighbour.
- The applicant is not proposing a solid fence, rather a wooden frame with a hog wire squared pattern.

Public input: Nil

Discussions: In response to questions from the Board, the applicant stated:

- The applicant used cable ties to attach the netting to the rebar which the deer tore through; this happened on a regular basis.
- The applicant has not tried the spray product which deters deer.

- The backyard currently has hedges.
- The proposed hog wire fence is durable.

In response to questions from the Board, the Planning Technician stated:

- The bylaw doesn't regulate materials.
- Construction is tied to the plans as submitted and would have to look like the photo provided by the applicant.
- There are no setback regulations for fencing.

Board Discussion:

- Building fences to keep deer out impacts the natural environment.
- The proposed 1.5 m height on the corner will not prevent deer from jumping over the fence.
- Deer can easily jump a 6 ft high fence. The fence height would have to be upwards of 8-9 ft to keep deer out.
- The spray product is a good alternative as deer deterrent.
- The proposed fence would not affect the use and enjoyment of adjacent properties.

MOTION:

MOVED by M. Cole and Seconded by A. Gill: "That the following request to relax the maximum height of a fence within the minimum setback distance of the principal building and abutting the street from 1.5 m (4.9 ft) to 1.9 m (6.2 ft), and to relax the maximum height of a fence at a street corner from 1.0 m (3.3 ft) to 1.5 m (4.9 ft) from the requirements of Zoning Bylaw 2003, Sections 6.2 (f) and 6.3 further to the construction of a fence on Lot 1, Block 5, Section 27, Victoria District, Plan 1311 (3199 Service Street) be DENIED."

CARRIED

Judge Place
Addition

BOV00973

Applicant: Eddie Williams
Property: 1255 Judge Place
Variance: Relaxation of the minimum front lot line setback from 6.0 m (19.7 ft) to 2.78 m (9.12 ft)
Relaxation of the minimum interior side lot line setback from 1.5 m (4.9 ft) to 0.77 m (2.53 ft)

The Notice of Meeting was read, and the applicant's letter and one letter from a neighbour received.

Applicants:

Eddie Williams, applicant, was present in support of the application and noted the following:

- The new property owners only found out about outstanding building permit requirements when they applied for a building permit to complete construction which previous owners did not complete.
- The applicant is requesting to keep the variance for the sideyard setback as is. This was a previously granted variance which was miscalculated by District staff.
- To slice off a portion of the side of the house would be a challenge.
- This proposal does not impact the adjoining property.

Public input:

Don Dewar, Judge Place:
 ▪ Expressed opposition to the side lot line variance.
 ▪ Concerns were expressed about liability as there wouldn't be enough space to setup a ladder or scaffold with only 2.5 ft between the structure and Mr. Dewar's property line.

- Mr. Dewar expressed concerns about potential issues arising should he need to construct on his property given that the neighbouring structure is so close by.
- Concerns about Mr. Dewar's property value being depreciated were expressed.
- The overhang on the side is not original to the house and was added by previous owners.

Barb and Devilyau Tymusko, Judge Place:

- Expressed opposition to the side yard setback variance, and support for Mr. Dewar.
- The front stairs don't affect anybody.
- Originally, the previous owners did not have stairs and accessed the home from the ground level. Subsequently, stairs were built but not to code.

Discussions:

In response to questions from the Board, the applicant stated:

- The new owner has inherited these outstanding permit and variance issues and is unable to occupy the home until the building permit is issued and the work completed.
- Mr. Dewar was supportive of the application when the applicant engaged with him.
- Mr. Dewar's property line and structure will remain unaffected.
- The variances requested do not devalue the neighbour's property.
- The front setback is not an issue, only the sideyard setback.
- There is a fir tree and a grade variation from the landing to the side of the house. These factors make it difficult to change the direction of the stairs.
- Changing the stairs' direction would decrease the required variance; however, a variance would still be required.
- The applicant does not see a benefit in changing the direction of the stairs.
- The homeowner was denied a tree permit to remove the fir tree.
- Although the front lot line setback does not conform with the bylaw, it does not interfere with road allowances.
- It would be possible to turn the stairs in the direction opposite from the tree but the design would not look as attractive or welcoming.

In response to questions from the Board, the Planning Technician stated:

- The original variance to lift the house was approved; however, there was an error by staff when measuring the variance.
- The new structure built by the previous owner is conforming.
- The previous owners did not build in accordance with the approved plans; the variance for the front lot line setback is a result of this change.
- The renovations (raising the house) were initially done without a permit.

Board Discussion:

- Based on the photos presented, the overhang on the west side looks like it was original to the house and not an addition.
- As there was a clerical error made, it is the Board's duty to uphold the original variance for the side lot line setback.
- The applicant has been able to address the adjacent neighbour's concerns. Mr. Dewar can put up a fence should he have further concerns about how access to the side of the property will occur.
- To take down a part of the house on the side would impose a larger impact to neighbours.

- If the Board decides that the stairs should turn to the side, a larger landing would be required (to manoeuvre furniture); this may also have an impact on neighbours.
- The new owner has inherited these issues.
- Mr. Dewar was in support of the original variance based on the records provided.
- Approval of the original variance should have been for 0.7 m which is what is being requested in this application.
- The variance for the front lot line setback is more concerning because of the history of raising the house without a permit.
- The District would have been involved in reviewing and approving the proposed plan, including access into the home.
- If the intention was originally to access the house through the ground level, then that is a valid way of entering the home.
- It was known that the house was being raised, yet there was no proposal for stairs to access the home from the upper level.
- Sympathy was expressed for the new owners given the fact that stairs existed when they bought the home, but it is concerning that they were done without approval and permits.
- If the previous owners included the stairs in their proposal, this may have been approved as part of the original variance. Approval for the stairs is now sitting before the Board of Variance.
- The plans indicate a sliding door on the west side of the house which may eventually open up to a deck. If a deck were to be constructed, this may be a feasible option for access to the home.
- It was expressed that a reasonable hardship for the front lot line setback does not exist because: the stairs were constructed illegally; and there is a valid alternative by turning the stairs in the direction opposite of the fir tree.
- This is not an existing non-conforming issue; it was a design decision to have the stairs face straight out and into the setback.
- There should be a valid hardship of the lot for the Board to grant the variance.
- It was agreed that design shouldn't be considered as hardship.
- It was expressed that hardship in this case may apply by considering the fact that the current owner bought the home in this non-conforming condition. Should the owner be required to change the direction of the stairs, the landing would still encroach into the setback, although not as far. Consideration is also given to impact on neighbours by having the stairs closer to, and facing their property.
- Hardship is considered to be more specific to the lot itself. The bylaw is applied universally to all lots. Undue hardship means something specific about this lot that makes it different from other properties.
- The location where the house is currently situated is close to the street.

MOTION:

MOVED by K. Zirul and Seconded by M. Cole: "That the following request to relax the minimum front lot line setback from 6.0 m (19.7 ft) to 2.78 m (9.12 ft) from the requirements of Zoning Bylaw 2003, Section 210.4 (a) (i) be DENIED, and to relax the minimum interior side lot line setback from 1.5 m (4.9 ft) to 0.77 m (2.53 ft) from the requirements of Zoning Bylaw 2003, Section 210.4 (a) (ii) be APPROVED, further to the construction of an addition on Lot 7, Section 32, Victoria District, Plan 6136 (1255 Judge Place).

And further that if construction in accordance with the plans submitted to the Board in the application is not substantially started within two

years from the date of this Order, the variances so permitted by this Order will expire.”

CARRIED

Wicklow Street
Addition

Applicant: Epic Project Management Inc.
Property: 3290 Wicklow Street
Variance: Relaxation of the minimum exterior side lot line setback from 3.5 m (11.5 ft) to 3.39 m (11.12 ft)

BOV00974

The Notice of Meeting was read, and the applicant’s letter and one letter from a neighbour received.

Applicants:

Ben Schweitzer, applicant, and Matt and Sara Brownlee, owners, were present in support of the application and the following was noted:

- The home was built in 1992.
- A building permit application for an addition to the basement exists.
- The existing crawl space is being converted into a basement.
- There is no neighbour on this side of the property.

Public input:

Nil

Discussions:

In response to questions from the Board, the applicant stated:

- There are window wells on the main part of the house to access the new basement.
- The house will remain in the exact same position only with a new foundation which creates the requirement for the window wells; they are allowed to project into the side lot line setback.
- The applicant tried to find a way to achieve the goal without a variance and exhausted all options.

Board Discussion:

- One Board member noted that they were unable to access the site as the gate was locked.
- This is an existing non-conforming issue that the applicant is seeking approval on in order to dig down and build a basement.

MOTION:

MOVED by K. Zirul and Seconded by M. Cole: “That the following request to relax the minimum exterior side lot line setback from 3.5 m (11.5 ft) to 3.39 m (11.12 ft) from the requirements of Zoning Bylaw 2003, Sections 210.4 (a) (iii), further to the installation of an addition on Lot A, Section 62, Victoria District, Plan VIP53491 (3290 Wicklow Street) be APPROVED.”

And further that if construction in accordance with the plans submitted to the Board in the application is not substantially started within two years from the date of this Order, the variances so permitted by this Order will expire.”

CARRIED

Minutes:

MOVED by K. Zirul and Seconded by A. Gill: “That the minutes of the Board of Variance meeting held April 13, 2022 be adopted as amended.”

CARRIED

With J. Uliana Abstaining from the Vote

The Clerk provided an update regarding Board members' requests for training/information on Zoning Bylaw and legal considerations. Staff will be meeting on May 16th to discuss these requests, including an update on the Board's Memo to Council with regards to fencing provisions and deer.

Adjournment On a Motion from A. Gill, the meeting adjourned at 8:17 p.m.

John Uliana, A/Chair

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

Recording Secretary