

OAK BAY BOARD OF VARIANCE
WEDNESDAY, JULY 24, 2019
COUNCIL CHAMBERS, MUNICIPAL HALL, 2167 OAK BAY AVENUE

The meeting was called to order at 5:00 pm.

It was moved and seconded that the minutes from January 16, 2019 be adopted.

The motion carried.

FILE **BOV00012**
RE **754 Mountjoy Avenue**
Strata Lot 1, Section 47, Victoria District, Strata Plan EPS1876, Together
With an Interest in the Common Property in Proportion to the Unit
Entitlement of the Strata Lot as Shown on Form V

ZONING RS-4 One Family Residential Use

BEFORE James Murtagh, Chair Tim Wait
Robert Peterson

APPLICATION Local Government Act Section 540(a)(i)

DECISION

That the application to vary the maximum vertical distance for the exposed face of a retaining wall be denied.

BACKGROUND

An application has been received to vary the maximum exposed face of a portion of a constructed retaining wall at 754 Mountjoy Avenue. The proposal would recognize the existing height of a portion of the existing retaining wall along the east property line as per the following:

Zoning Bylaw Section(s)	Permitted	Requested	Variance
4.17.(1) Maximum Vertical Distance Exposed Face of Retaining Wall	1.20 m (4 ft)	1.76 m (6 ft)	0.56 m (2 ft)

The *Local Government Act* allows the Board of Variance to consider applications where a minor variance is involved. Therefore, in order to accommodate the wall height as proposed, the applicant is asking for Board consideration in accordance with Sections 540 and 542(1) of the *Local Government Act*.

PROCEEDINGS

In Attendance:

Adam Cooper, Applicant
Mike Miller, Applicant
Taylor Alexander, Applicant

Graeme Buffett, Planner
Deborah Jensen, Board of Variance Secretary

Members of the Public: 7

J. Murtagh, Chair, provided an introduction to the process, indicating the Board of Variance can consider minor variances, that the applicant has to show undue hardship without defeating the intent of the bylaw, and that the application would be considered against a set of criteria. He confirmed that all Board of Variance members had attended the property, and that there were no perceived conflicts of interest from any of the members.

G. Buffett provided an overview of the application, noting that the variance proposed was to the maximum vertical distance of the exposed face of a constructed retaining wall, where the retaining wall does not comply with the maximum permitted 1.2 metres for an approximately 17 metre portion of the wall. He also noted the applicant has stated hardship is due to engineering concerns for regrading the driveway, and to the impact of regrading on three Garry oak trees.

D. Jensen, Secretary, advised that notice of the hearing had been given in accordance with the *Local Government Act* and that the four items of correspondence received as a result of notification had been distributed to the Board.

A. Cooper, applicant, explained the ownership of the site and the existing overheight situation of the retaining wall, where the wall reaches 1.76 metres at its highest point; and further referenced the four key criteria considered by the Board, suggesting: the overheight wall is in conformance with the character of the neighbourhood and not an inappropriate form of development; required works to remedy the situation would impact the natural environment by impacting the health of nearby Garry oak trees; does not defeat the intent of the bylaw, which was to limit massive walls; and does not necessarily impact the neighbour's use and enjoyment of their land as any requirement for lowered height would be marginal in its impact.

A. Cooper also noted the site construction did go through a building permit review process with the municipality, and neither Abstract nor the District determined that the retaining wall was overheight. He added that the grading work had been prepared by a civil engineer, who has indicated it would be difficult to meet slope requirements and coverage over the drain.

M. Miller, applicant, advised a design for the site was undertaken by Zebra Design, including a voluntary landscape plan, that went through a District design process and building permit process.

Board members asked whether the retaining wall height had been changed following its original construction and whether it was originally in compliance, and inquired as to the constructed versus originally designed grade of the driveway and the impact on trees.

A. Cooper, applicant, advised the wall height had not changed, and noted there had been engineering challenges for the driveway, particularly drainage and impact to trees. He also noted works to rebuild the driveway and complete wall work are estimated at approximately \$145,000.

M. Miller, applicant, reiterated the wall height had not changed and referenced concrete receipts to show when the work had been undertaken, and advised some changes had been made to wall design to accommodate the previous neighbour, later realizing that the wall was overheight. He confirmed that the building inspector had sent an email advising him to make sure he was compliant with wall height, that the driveway was complete at the time of occupancy and lower than what was approved on the original plan, and noted it would be almost impossible to build the driveway configuration and have it compliant.

M. Miller, applicant, noted they were advised by the District to retain as many oak trees as possible, so had to create a slope and swale system to achieve a functioning catch basin. He also advised they had to utilize a floating driveway system, and managed to save an additional oak tree.

J. Murtagh, Chair, advised the Board was in receipt of, and had read all correspondence submitted in response to notification for this application.

Heather Sinclair, resident, stated that more than two thirds of the length of the retaining wall is overheight, and that the additional visitor parking space does not read as normal. She noted that the design of their home was intended to celebrate the Garry oak trees and natural light, but with their westerly windows, what is in their view is at the wrong height.

Richard Wilson, resident, stated that in his discussions with the previous owner, there was no mention of the top of the retaining wall.

Barry Carin, resident, questioned whether, if the grade proved to be higher, then the retaining wall should be lower.

Gerard McLean, resident, stated that the wall was intended to be in compliance and so would not have been part of the occupancy permit, and questioned the obligation of the building inspector if the retaining wall was not on the building permit.

Heather Sinclair, resident, noted the ADP approved minutes did not include the retaining wall on the landscape layout, and if the wall was always going to be overheight, then should there not have been an approval.

The applicants answered further questions from members of the Board respecting top of driveway along the retaining wall, siting of the visitor parking space, and requirements for an engineered wall.

T. Wait noted he had attended the site and measured the retaining wall, with the upper mortared layer of the wall beginning at the approximately 1.2 metre height.

DECISION

After considering the facts before it, the Board determined that the circumstances of the case were not consistent with those in which it had the discretion to authorize works as permitted by the *Local Government Act*, determining that the proposed variance was not minor in nature and that the applicant had not demonstrated an undue hardship. The Board agreed that while some financial hardship was present this was not enough to warrant undue hardship, and that the request did not meet the specific criteria to be considered by the Board.

The Board was also of the opinion that the variances would not:

- adversely affect the natural environment; or
- vary permitted uses and densities under the Zoning Bylaw.

However, the Board determined that the variances would:

- result in inappropriate development of the site;
- substantially affect the use and enjoyment of adjacent land; and
- defeat the intent of the Zoning Bylaw.

It was moved and seconded that the application to permit a variance to the maximum vertical distance of the exposed face of an existing retaining wall at 754 Mountjoy Avenue be approved.

The motion failed.

J. Murtagh, R. Peterson, T. Wait opposed.

Accordingly, the Board denied the request to allow a variance to the maximum vertical distance of the exposed face of an existing retaining wall at 754 Mountjoy Avenue.

The meeting was adjourned at 6:44 pm.

Secretary

For the Board

James Murtagh, Chair