



MINUTES OAK BAY BOARD OF VARIANCE WEDNESDAY, NOVEMBER 25, 2020 VIRTUAL MEETING

MEMBERS PRESENT

James Murtagh, Chair
Robert Peterson

MEMBERS ABSENT

Tim Wait

STAFF PRESENT

Deborah Jensen, Board of Variance Secretary
Selina Williams, Director of Corporate Services

Graeme Buffett, Planner

1. Call to Order

The meeting was called to order at 5:02 pm.

2. Adoption of Agenda

It was moved and seconded that the agenda for November 25, 2020 be approved.

The motion was carried.
None opposed.

3. Adoption of Minutes from July 24, 2019

It was moved and seconded that the minutes from July 24, 2019 be adopted.

The motion carried.

4. Applications

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.

FILE BOV00013
RE 2617 Cadboro Bay Road
Lot 2, Block 2, Section 61, Victoria District, Plan 379
ZONING RS-5 One Family Residential Use
APPLICATION Local Government Act Section 540(a)(i)

DECISION

That the application to vary the minimum for lot line setback for an accessory building, from the required minimum of 0.61 metres (2 ft) to 0.15 metres (0.5 ft) to accommodate the siting of an existing carport be denied.

Background

An application has been received to vary the minimum rear lot line setback to accommodate the siting of a recently constructed accessory building, a carport, at 2617 Cadboro Bay Road.

Zoning Bylaw Section(s)	Permitted	Requested	Variance
6.5.4(2)(b) Minimum Setback Rear Lot Line	0.61 m (2.0 ft)	0.15 m (0.5 ft)	0.46 m (1.5 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 setback 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:

Peter Knowles, Applicant

G. Buffett provided an overview of the application, noting that the variance proposed was for the rear lot line setback for a carport at the rear of the home, along the laneway. He noted that the carport had been constructed with an issued building permit, but had been sited incorrectly. He confirmed that works to be undertaken also include removal of the eave encroachment into the laneway, and advised as to building permit process and requirements for a location certificate.

D. Jensen, Secretary, advised that notice of the hearing had been given in accordance with the *Local Government Act* and that no correspondence had been received as a result of notification.

P. Knowles, applicant, explained he had been contracted to build the carport at the rear of the property, and believed the siting had been confirmed when the footings were constructed. He noted the carport had been constructed around a tree, and that it would be impossible to disassemble and reconstruct the building.

Board members confirmed that the carport could have been constructed in the correct location with no hardship, and did indicate that undue hardship was present in terms of remedy to correct the siting. Board members also discussed whether this could be considered a minor variance given the 0.15 m (0.5) foot proximity of the carport to the rear lot line.

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 hardship was present to dismantle and reconstruct the building, 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:

- result in inappropriate development of the site; or
- substantially affect the use and enjoyment of adjacent land.

However, the Board determined that the variances would defeat the intent of the Zoning Bylaw.

It was moved and seconded that the application to permit a variance to the rear lot line setback from the required minimum of 0.61 metres (2 ft) to 0.15 metres (0.5 ft) to accommodate the siting of an existing carport be approved.

The motion failed.

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

FILE	BOV00014
RE	1917 Hampshire Road
	Amended Lot 24 (DD 122698-I), Section 61, Victoria District, Plan 1266
ZONING	RS-5 One Family Residential Use
APPLICATION	Local Government Act Section 540(c)

DECISION

That structural alterations affecting both the interior and exterior portions of a nonconforming duplex at 1917 Hampshire Road be approved.

Background

An application has been received to undertake structural alterations to both units of a nonconforming duplex located at 1917 Hampshire Road. Structural alterations include removing walls, adding structural beams, replacing doors, and adding skylights.

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:

Sheila Aujla, Applicant

David Aujla, Applicant

G. Buffett provided an overview of the application, noting that the home was constructed in 1912 and converted to a duplex in 1940. He advised that the majority of proposed renovations are internal, with some external alterations including door replacements.

D. Jensen, Secretary, advised that notice of the hearing had been given in accordance with the *Local Government Act* and that one item of correspondence had been received, as a result of notification, from T. Tom indicating no concern for the proposal.

S. Aujla, applicant, noted that the property had been tenanted for 32 years, and they now had an opportunity to make the home safer. Given the age of the building, she noted that required works include wiring and plumbing, and alterations to increase head room in some areas.

Decision

After considering the facts before it, the Board determined that the circumstances of the case were 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 minor in nature and that the applicant had demonstrated undue hardship. The Board agreed that some hardship was present due to the inability to have continued use and enjoyment of the property without an opportunity to upgrade the building.

The Board was of the opinion that the proposed works would not:

- result in inappropriate development of the site;
- substantially affect the use and enjoyment of adjacent land;
- adversely affect the natural environment;
- vary permitted uses and densities under the Zoning Bylaw; or
- defeat the intent of the Zoning Bylaw.

It was moved and seconded that the application to undertake structural alterations to a conforming duplex at 1917 Hampshire Road, as presented, be approved.

The motion was carried.
None opposed.

FILE **BOV00015**
RE **2507 Wootton Crescent**
 Lot 12, Section 28, Victoria District, Plan 9860
ZONING RS-5 One Family Residential Use
APPLICATION Local Government Act Section 540(a)(i)

DECISION

That the application to vary the minimum second storey setback for the principal building from the required minimum of 3.00 metres (10 ft) to 1.58 metres (5 ft) be denied.

Background

An application has been received to vary the minimum second storey setback from an interior side lot line to accommodate the siting of a recently constructed single family dwelling at 2507 Wootton Crescent.

Zoning Bylaw Section(s)	Permitted	Requested	Variance
4.17.(1) Minimum Setback Second Storey	3.00 m (10 ft)	1.58 m (5 ft)	1.42 m (5 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:

S. Thompson, Applicant

G. Buffett provided an overview of the application, noting that the variance proposed was for the interior side lot line setback for the second storey of the home. He noted that the new home had been issued a building permit, but had been sited incorrectly due to a contractor error in using the previous unapproved plans. He confirmed the home had been completed, and advised as to building permit process and requirements for a location certificate.

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

1. from C. Krohn indicating in opposition to the proposal; and
2. from M. Milner indicating opposition to the proposal.

S. Thompson, applicant, explained the builders sited the house in the wrong place but that the base of the home conforms to siting, and the second storey was not noticed until final occupancy. He further advised the house would have been adjusted if the mistake had been caught.

Board members confirmed the building permit and inspection process, and that the new home replaces a single storey bungalow with an existing fence running the length of the property between the new home and the neighbouring property. The Board recognized that the revised plans did not fundamentally change the design of the house, but moved it further into the site, noting that the second floor nonconformity runs almost the length of the house with the biggest intrusion at the front.

Board members discussed that, while it is a clear a series of mistakes were made and while undue hardship may be present, the nonconformity is not a minor variance and it does defeat the intent of the bylaw to retain openness between the buildings.

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.

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

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

However, the Board determined that the proposed variance 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 second storey setback from the interior side lot line, from the required minimum of 3.00 metres (10 ft) to 1.58 metres (5 ft) to accommodate the siting of an existing single family home be approved.

The motion failed.

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

5. Other Business

None.

6. Motion to Adjourn

The meeting was adjourned at 6:34 pm.

Certified as fair and accurate:

James Murtagh, Chair

Recorder