

MINUTES
BOARD OF VARIANCE
Held electronically via MS Teams
March 13, 2024 at 6:00 p.m.

Members: J. Uliana (Chair), M. Cole, A. Gill, and C. Schlenker

Staff: A. Whyte, Senior Planning Technician; C. Yancoff, Planning Technician; and M. MacDonald, Senior Committee Clerk

Regrets: K. Zirul

Minutes: **MOVED by A. Gill and Seconded by C. Schlenker: "That the Minutes of the Board of Variance meeting held February 14, 2024, be adopted as circulated."**

CARRIED

Cordova Bay Road Setbacks BOV #01060	Applicant: Robert Jackes Property: 4901 Cordova Bay Road Variance: Relaxation of the minimum interior side lot line setback from 1.5 m (4.9 ft) to 0.99 m (3.25 ft). Relaxation of the minimum sum of both sideyards from 4.5 m (14.8 ft) to 3.59 m (11.78 ft). Relaxation of the maximum height for a dwelling in any RS zoned lot having an area less than 444 m ² or a width less than 13.5 m from 6.0 m (19.6 ft) to 8.58 m (28.15 ft) for a sloped roof. Relaxation of the maximum height for a dwelling in any RS zoned lot having an area less than 444 m ² or a width less than 13.5 m from 5.0 m (16.4 ft) to 8.48 m (27.82 ft) for a flat roof. Relaxation of the maximum vertical portion of a dwelling within 5.0 m of a vertical plane extending from the lowest outermost wall from 6.0 m (19.6 ft) to 7.78 m (25.52 ft) for a sloped roof. Relaxation of the maximum vertical portion of a dwelling within 5.0 m of a vertical plane extending from the lowest outermost wall from 6.0 m (19.6 ft) to 7.68 m (25.20 ft) for a flat roof.
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The Notice of Meeting was read, the applicant's letter and four pieces of correspondence were received.

Applicants: R. Jackes, applicant/owner, was present in support of the application, the following was noted:

- The proposal is for a modest addition to modernize the 1930's home while maintaining the character of the older cabin style home.
- There are three major impediments to keeping the old home, which are changes to the Zoning Bylaw, the geography and the odd shaped lot.
- A significant slope from the road down to the water complicates building.
- The original owner subdivided the lot and maximized building space; however, the lot is irregularly shaped and small by today's standards.

Public input: Z. Hu, Cordova Bay Road

- Concerned about the proximity of the addition to adjacent properties.
- There could be noise issues given the lack of distance between houses.

Discussions: The applicant stated the following in response to questions from members of the Board:

- The neighbour who expressed concerns is not located adjacent to the setback which requires a variance.
- The expansion will be in the area where an existing sunroom and deck are located. These will be removed and replaced with livable space.
- The proposed design allows for integration of the old home into new home. The foundation of the existing porch will be expanded.
- This is a narrow and steeply sloped property. The site specific hardship of building on this lot is due to the topography and narrow lot lines.
- The proposed .99m setback for the addition is the same as the setback of the existing home. The house will be in the same spot, just extending 4' towards the water for the addition.

In response to questions, the Planning Technician stated the following:

- The setback variance is not located adjacent to the neighbour who expressed concerns about proximity to the addition.
- The requested variance is for a new portion of the home, which will have the same setbacks as the existing home. The addition will not be any closer to the neighbours than the existing home.

The following was noted during Board discussion:

- Tough existing conditions necessitate the request for a variance. The significant slope means the height variance is difficult to avoid. They have done what is possible to minimize the variance.
- Appropriate for the site as it is an extension of the existing non-compliant house. The owners are doing the best they can with the challenging lot.
- No further impact to adjacent lands or the environment.

MOTION: **MOVED by C. Schlenker and Seconded by M. Cole: "That the following request to vary from the requirements of Zoning Bylaw 2003, Sections 5.27 (a) and 295.3 (a)(iii) further to the construction of an addition on Parcel "A" (DD 7318-W) of Lot 12, Section 28, Lake District, Plan 3155 (4901 Cordova Bay Road) be APPROVED:**

- Relaxation of the minimum interior side lot line setback from 1.5 m (4.9 ft) to 0.99 m (3.25 ft).
- Relaxation of the minimum sum of both sideyards from 4.5 m (14.8 ft) to 3.59 m (11.78 ft).
- Relaxation of the maximum height for a dwelling in any RS zoned lot having an area less than 444 m² or a width less than 13.5 m from 6.0 m (19.6 ft) to 8.58 m (28.15 ft) for a sloped roof.
- Relaxation of the maximum height for a dwelling in any RS zoned lot having an area less than 444 m² or a width less than 13.5 m from 5.0 m (16.4 ft) to 8.48 m (27.82 ft) for a flat roof.
- Relaxation of the maximum vertical portion of a dwelling within 5.0 m of a vertical plane extending from the lowest outermost wall from 6.0 m (19.6 ft) to 7.78 m (25.52 ft) for a sloped roof.

- **Relaxation of the maximum vertical portion of a dwelling within 5.0 m of a vertical plane extending from the lowest outermost wall from 6.0 m (19.6 ft) to 7.68 m (25.20 ft) for a flat roof.**

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

Taylor Street Fence	Applicant: James Ham
	Property: 1755 Taylor Street
BOV #01063	Variance: Relaxation of the maximum fence height within the exterior side yard from 1.5m (4.9ft) to 2.07m (6.79ft) Relaxation of the maximum fence height from 1.9m (6.2ft) to 2.10m (6.89ft)

The Notice of Meeting was read, the applicant’s letter and seven pieces of correspondence were received.

Applicants: J. Ham, applicant/owner, were present in support of the application, the following was noted:

- A contractor was hired to build a visually appealing fence to keep wildlife out of the yard. Most neighbours are supportive, as indicated by letters.
- The contractor was instructed to build the fence within bylaw allowances.
- Maximum fence height on a corner lot is different than other lots, the maximum of 4.9 feet was not realized until after construction was complete. The allowable height would not be enough to deter deer.

Public input: T. Wright, Oriole Street

- The fence is built well and visually appealing. The many deer in the area necessitate having a fence tall enough to deter them from a garden.
- Supportive of the variance to allow for the fence to remain.

Discussions: Members of the Board did not have questions for the applicant.

In response to questions, the Planning Technician stated the following:

- As the lot is a corner lot there is a requirement for a lower fence height facing the street, other areas have a taller maximum fence height.
- The green line on the plans showed where the height bylaw changes.

The following was noted during Board discussion:

- Neighbours are supportive of the application as per the letters submitted.
- Cutting the fence to match the bylaw seems unfair. The owners trusted the contractors to provide a compliant fence, and now have this issue.
- The bylaw is clear on intent, this does not defeat the purpose.
- Hardship for this site would be found in the limited ways to bring it into compliance. The trusted advice given proved to be wrong, and rectifying the issue is not simple. There is no way to be compliant and deter deer.
- Members agreed that rectifying this issue would be an undue hardship.
- Even if the issue could be easily resolved, bringing the fence height to be compliant will not keep deer out of the yard, which is part of the issue.

MOTION: **MOVED by A. Gill and Seconded by C. Schlenker: “That the following request to vary from the requirements of Zoning Bylaw 2003, Sections 6.2 (f)(i) & (ii) further to the construction a fence on Lot 92, Section 27, Victoria District, Plan 11000 (1755 Taylor Street) be APPROVED:**

- Relaxation of the maximum fence height within the exterior side yard from 1.5m (4.9ft) to 2.07m (6.79ft).
- Relaxation of the maximum fence height from 1.9m (6.2ft) to 2.10m (6.89ft).

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

Grange Road Accessory Building	Applicant: Rajkumar Yadav Property: 4068 Grange Road Variance: Relaxation of the minimum front lot line setback from 7.5m (24.6ft) to 1.5m (4.9ft)
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BOV #01066

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

Applicants: N. Saunders, Java Design, on behalf of the applicant/owner, was present in support of the application, the following was noted:

- The lot is defined as a double-fronting lot, as the front and rear lot lines are both adjacent to a street, however, Interurban Road is approximately a full storey below the property and access to the road is not possible.
- If the rear lot line was not considered a frontage, the setbacks would be considerably different. The application would be compliant if it were so.

Public input: Nil

Discussions: The applicant stated the following in response to questions from members of the Board:

- The back side of the house facing Interurban Road would normally be seen as a rear lot, the definition as per the Zoning Bylaw is problematic.
- The accessory building would be for recreational use.

MOTION: **MOVED by M. Cole and Seconded by A. Gill: “That the following request to vary from the requirements of Zoning Bylaw 2003, Section 5.34 (a)(i) further to the construction of an accessory building on Lot 17, Block 21, Section 12, Lake District, Plan 1393 (4068 Grange Road) be APPROVED:**

- Relaxation of the minimum front lot line setback from 7.5m (24.6ft) to 1.5m (4.9ft).

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.”

The following was noted during Board discussion:

- The proposed use of the accessory building is questionable; however, the Board must discuss what is shown, not what they think could happen.
- The frontage on Interurban Road is not a real street frontage, and access is not possible. Applying the front lot line setbacks to that side is not fair to this applicant, doing so creates a site-specific hardship.
- The application does not defeat the intent of the bylaw.
- Efforts to preserve the natural environment have been made.
- The application would not require a variance if the Interurban Road lot line definition was a rear lot line rather than front lot line.

In response to questions, the Planning Technician stated the following:

- It is a condition of the building permit that the accessory building is not to be used as a dwelling. If that use is desired in future the applicant could apply for a garden suite conversion.

The Motion was then Put and CARRIED

Sea View Road Fence BOV #01067	<p>Applicant: Michael Newson</p> <p>Property: 2786 Sea View Road</p> <p>Variance: Relaxation of the maximum fence height within the front yard from 1.5 m (4.9 ft) to 2.54 m (8.33 ft). Relaxation of the maximum fence height from 1.9 m (6.2 ft) to 2.59 m (8.50 ft).</p>
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The Notice of Meeting was read, the applicant's letter and one piece of correspondence was received.

Applicants: M. and M. Newson, applicants/owners, were present in support of the application, the following was noted:

- The Saanich Urban Gardening Program promotes higher fence heights to deter deer from ruining gardens. The fence was built in line with these principles. They do not make it clear that this initiative may cause issues due to the allowable fence height being less in the Zoning Bylaw.
- Much time and resources have been spent working on a lovely garden.
- The back of the property is unfenced, as are neighbouring properties.
- This unfenced natural area allows for wildlife to live and thrive in a space of their own. The intention has never been to obstruct the wildlife area.
- The owners would like to continue to beautify the front yard area without having deer destroy all plants and vegetation. The fence is necessary.
- Most neighbours and those walking in the area have expressed their admiration for the fence. It is well built and still allows everyone to enjoy the beauty of the garden, while keeping the deer out.

Public input: Leanne Martinson, Seaview Road

- Previous fence was torn down without consultation and a new one built.
- Owners have not demonstrated hardship for this application.
- The fence may substantially affect use and enjoyment of the adjacent property. This variance is major, not minor and it defeats the intent of bylaw. The Board should not approve the application.
- If the fence height is approved, they could change out the wire panel for solid wood panels which would further impact the neighbours.

The Senior Committee Clerk noted the following:

- Any Motion passed by the Board of Variance contains specific wording which limits the approval to the plans that were submitted for consideration. The owners would not be allowed to change the panels to solid wood and would have to apply for another variance to do so.

Discussions: The applicant stated the following in response to questions from members of the Board:

- The fence is required to protect the food garden and ornamental plants from the deer. Alternative options to prevent deer from destroying the garden area failed, and the fence was determined to be the only option.
- The fence does not impede the views of neighbours.
- Three panels at the rear of the house are solid. This portion existed along with a pergola in the space for many years prior to the new wire panels.
- The previously built portion was falling apart as it aged. When building the new fence, the solid panels were replaced and the pergola removed.
- The pergola was two or three feet higher than the panels in that location.

In response to questions, the Planning Technician stated the following:

- The fence height was calculated by the applicant based on grade on their property. The neighbouring lot has a retaining wall, and the driveway is lower than grade of the applicant's lot. This means that the fence is considerably taller when looking at it from the neighbour's driveway.
- The Zoning Bylaw definition and consideration of a fence under these circumstances is complicated, as the fence is higher if looking at the fence from the neighbour's driveway. Given the location on the applicant's lot, the measurements provided are correct.

The following was noted during Board discussion:

- Deer are an issue in this area, fencing is the only feasible solution.
- The solid panels may impact the view from the driveway of the neighbour; however, a lower compliant fence would still impact the view.
- The bylaw allows for a solid fence up to six feet high all the way around the property. This fence may be higher than the bylaw allows, but efforts were made to minimize the visual impact to neighbours.
- The fence was built to protect the garden and natural environment, it does not defeat the intent of the bylaw or adversely affect neighbours.

MOTION: MOVED by C. Schlenker and Seconded by M. Cole: "That the following request to vary from the requirements of Zoning Bylaw 2003, Sections 6.2 (f)(i) & (ii) further to the construction of a fence on Lot B, Section 44, Victoria District, Plan 10019 (2786 Sea View Road) be APPROVED:

- Relaxation of the maximum fence height within the front yard from 1.5 m (4.9 ft) to 2.54 m (8.33 ft).
- Relaxation of the maximum fence height from 1.9 m (6.2 ft) to 2.59 m (8.50 ft).

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

Adjournment On a motion A. Gill, the meeting was adjourned at 7:25 pm.

J. Uliana, Chair

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

Recording Secretary