



## COMMUNITY SAFETY & DEVELOPMENT

**MINUTES OF THE MEETING  
OF THE BOARD OF VARIANCE  
HELD IN THE BOARDROOM, 455 WALLACE STREET, NANAIMO, BC  
ON THURSDAY, 2012-JUL-19 COMMENCING AT 7:00 P.M.**

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**PRESENT:**   Members:   Mr. Tim Wait - Chair  
                                  Ms. Janet Cowling  
                                  Mr. Allan Dick  
                                  Mr. Mark Dobbs  
                                  Mr. Amarjit Minhas

                  Staff:       Mr. Dave Stewart, Planner, Planning & Design Section  
                                  Ms. Penny Masse, Planning Clerk, Planning & Design Section

**1.    CALL THE MEETING TO ORDER:**

The regular meeting was called to order at 6:59 p.m.

**2.    ADOPTION OF MINUTES:**

It was moved and seconded that the Minutes of the meeting of the Board of Variance held in the Boardroom, 455 Wallace Street, Nanaimo, BC on Thursday, 2012-JUN-21 be adopted as circulated. The motion carried unanimously.

**3.    APPLICATIONS:**

**APPEAL NO.:**                   **BOV597**

**Applicant:**                   Ms. Maureen Pilcher (Maureen Pilcher & Associates Ltd.) on behalf of Max Cool Mobile Air Conditioning Ltd. (Ms. Karen Hovestad).

**Civic address:**             605 Bowen Road

**Legal Description:**       LOT 11, BLOCK 5, SECTION 1, NANAIMO DISTRICT, PLAN 1465

**Purpose:**                    The applicant is requesting approval for a structural alteration to a legal non-conforming use. The applicant is also requesting flanking side yard, side yard and rear yard setback variances; from 4m to 0m for the flanking side yard, 3m to 0m for the side yard and 4.5m to 0m for the rear yard in order to renovate the existing structure.

**Zoning Regulations:** Local Service Centre - CC1. The applicant requests Board of Variance approval for the continuation of a non-conforming use with the City of Nanaimo "ZONING BYLAW 2011 NO. 4500":

*"Section 10.2.1" does not permit Automotive Repair Shops.*

Local Service Centre - CC1. The applicant requests a variance to the City of Nanaimo "ZONING BYLAW 2011 NO. 4500", Section 10.5.1:

Zone	Minimum Front Yard Setback	Maximum Front Yard Setback	Side Yard	Flanking Side Yard	Rear Yard
CC1	4.5m	7.5m	3m	4m	4.5m

**Local Government Act:** The use of the property is considered legal non-conforming. *Local Government Act*, Section 911 – Non-conforming Uses and Siting [article 5] states:

*"A structural alteration or addition, except one that is required by an enactment or permitted by a board of variance under section 901 (2), must not be made in or to a building or other structure while the non-conforming use is continued in all or any part of it."*

**Discussion:**

Ms. Karen Hovestad of 1410 Sherwood Drive (owner of Max Cool Mobile Air Conditioning Ltd.) was in attendance for her appeal. Ms. Maureen Pilcher (Maureen Pilcher & Associates Ltd.) was in attendance and presented to the Board regarding the appeal. Mr. Fred Taylor of 204 Emery Way was in attendance and presented to the Board regarding the appeal. Mr. Will Melville (Delinea Design Consultant) was in attendance for the appeal.

Ms. Pilcher's and Mr. Taylor's presentations are attached as a part of "Schedule A – Submissions Received for Board of Variance Application No. BOV597".

It was moved and seconded that Board of Variance application No. BOV597 not proceed until legal opinion is obtained to ascertain the jurisdiction of the Board on this matter. The motion was defeated.

*Opposed: Mr. Dick, Mr. Dobbs and Mr. Wait.*

Mr. Stewart confirmed that the Board of Variance could act within its authority under the *Local Government Act* in considering a structural alteration of an existing non-conforming use.

**Decision:**

It was moved and seconded that the request for a structural alteration to a legal non-conforming use and requests for flanking side yard, side yard and rear yard setback variances; from 4m to 0m for the flanking side yard, 3m to 0m for the side yard and 4.5m to 0m for the rear yard in order to renovate the existing structure be approved. The motion carried.

*Opposed: Ms. Cowling. Abstained: Mr. Minhas*

The variance requests were deemed to be a hardship.

**APPEAL NO.:** BOV598

**Applicant:** Ms. Colleen Layman

**Civic address:** 706 Connaught Avenue

**Legal Description:** LOT 1, BLOCK 3, SECTION 1, NANAIMO DISTRICT, PLAN 1555

**Purpose:** The applicant is requesting to vary the minimum required front yard setback from 4.5m to 1.6m in order to remodel an existing covered carport. This represents a front yard setback variance of 2.9m.

**Zoning Regulations:** Single Dwelling Residential – (R1) The applicant requests a variance to the City of Nanaimo “ZONING BYLAW 2011 NO. 4500”:

*“Section 7.5.1 – Siting of Buildings - a front yard of 4.5 metres must be provided.”*

**Local Government Act:** Please note: Section 911 (9) and (10) of the Local Government Act, which states:

*“If the use and density of buildings and structures conform to a bylaw under this division... but the siting, size or dimensions of a building or structure constructed before the bylaw was adopted does not conform with the bylaw, ... the building or structure ... may be maintained, extended or altered ... only to the extent that the repair, extension or alteration would, when completed, involve no further contravention of the bylaw than that existing at the time the repair, extension or alteration was started.”*

**Discussion:** Ms. Colleen Layman was in attendance for her appeal. Reverend Albert Ramsay was in attendance for the appeal.

**Decision:** It was moved and seconded that the request to vary the minimum required front yard setback from 4.5m to 1.6m in order to remodel an existing covered carport be approved. The motion carried unanimously.

The variance request was deemed to be a hardship.

**APPEAL NO.:** BOV599

**Applicant:** Mr. Bill Corsan (City of Nanaimo) on behalf of Mr. Jim Moriez and Mr. Dalton Moriez.

**Civic address:** 590 Bradley Street

**Legal Description:** THE EASTERLY ½ OF LOT 27, SUBURBAN LOT 31, NEWCASTLE TOWNSITE, SECTION 1, NANAIMO DISTRICT, PLAN 388C



**Purpose:** The applicant is requesting to correct an historic survey error. The applicant requests approval to vary the side yard requirement to the existing building from 3.0m to 1.16m, this represents a side yard setback variance of 1.84m.

**Zoning Regulations:** Medium Density Residential (R8). The applicant requests a variance to the City of Nanaimo "ZONING BYLAW 2011 NO. 4500":  
  
*"Section 7.5.1 – Siting of Buildings - a side yard of 3.0 metres must be provided."*

**Local Government Act:** The property is considered legal-conforming and, as such; *Local Government Act, Section 911 – Non-conforming Uses and Siting*, does not apply.

**Discussion:** Mr. Jim Moriez and Mr. Dalton Moriez were in attendance for their appeal. Mr. Bill Corsan (Manager of Real Estate, City of Nanaimo) and Ms. Nancy Peterson (Real Estate Technician, City of Nanaimo) were in attendance for the appeal.

**Decision:** It was moved and seconded that the request to correct an historic survey error and vary the side yard requirement to the existing building from 3.0m to 1.16m be approved. The motion carried unanimously.

The variance request was deemed to be a hardship.

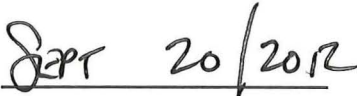
4. **OTHER BUSINESS:**

Mr. Stewart gave a short presentation to the Board regarding the City of Nanaimo online tool "What's Building in My Neighbourhood".

5. **ADJOURNMENT:**

It was moved and seconded at 8:10 p.m. that the meeting terminate. The motion carried unanimously.

  
\_\_\_\_\_  
CHAIR  
CERTIFIED CORRECT

  
\_\_\_\_\_  
DATE:

**Attachment A**

**Submissions**

**For**

**Board of Variance Application  
No. BOV597**

*(605 Bowen Road)*

# Maureen Pilcher & Associates

## Land Use Consultants

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**Board of Variance Presentation**

**2012-July-19**

**Re: 601 Bowen Road – BOV597**

Good Evening Mr. Chairman, Members of the Board, Members of Staff, Ladies and Gentlemen:

My name is Maureen Pilcher and I am a Land Use Consultant in the central Vancouver Island area.

The appeal before you this evening has been submitted by Mr. and Mrs. Ron and Karen Hovestad. Ron and Karen have been downtown business owners for more than 15 years – and their business enjoys an excellent reputation. It is the only automotive business to ever receive an Environmental Stewardship award from the City of Nanaimo. They have now outgrown their present location and are excited to move to the building at 605 Bowen Road.

This art deco building was built in the 1940's and has enjoyed a long history of serving Nanaimo's citizens with automotive products. Ron and Karen wish to honour that history by renewing the building and restoring it to its former glory.

This historic building is presently considered non-conforming as to use – the property is zoned Residential – however an automotive use has always been here. Because it is non-conforming - it must comply with the regulations of the Provincial Local Government Act – Section 911.5 which states that “a structural alteration or addition, except one that is permitted by the Board of Variance must not be made in or to a building while the non-conforming use is continued in all or any part of it”.

Work to repair this building includes restructuring of the roof assemblies over the service bays and reconstruction of the west wall to satisfy today's Building Code requirements for non-combustible construction and fire ratings.

The restoration will not result in any increased area or expansion of the present building footprint, and will not result in an increase to the height of the building. It will, however, result in a building true to its heritage design and will ensure a safe and secure environment for this business and its employees.

Until we made this application to the Board of Variance enactment we were unaware of concerns in the neighbourhood regarding the parking of vehicles associated with the present business. When Mr. & Mrs. Hovestad bought the property they inherited the leasing tenant who currently runs Active Motor Sports, which involves race cars.

# Maureen Pilcher & Associates

## Land Use Consultants

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Neighbours have recently advised that derelict wrecks were left here for months at a time, and that the lane behind the business was often blocked, causing the neighbouring property owners some concern. Karen has spoken to as many neighbours as possible and wants to ensure them all that they are now aware of the community concerns and will ensure that this is no longer a problem. Changes to the property will include the removal of an old concrete island at the front of the building which presently limits traffic movement. There will also be lot marking to determine and identify parking areas on site. The nature of Auto Check Automotive is service and repair – mainly wheel alignments and air conditioning service – all repairs will be in the bays in the building – and the cars will depart the property once they are repaired.

In closing, I would like to remind the Board that, although we acknowledge the parking issues, which brought some neighbours here this evening - that is not the reason for our appeal to you today. The Board of Variance mandate is to rule in cases of undue hardship, and specifically today - to rule on whether or not the structural alterations that I have described can be made to this non-conforming building. These repairs will not result in inappropriate development of the site, will not adversely affect the natural environment, will not substantially affect the use and enjoyment of adjacent land, does not vary the permitted uses and densities of the zoning bylaw – and does not defeat the intent of the bylaw. What it will do – is allow this business to continue to do business in a safe and sound environment.

Both Mr. and Mrs. Hovestad are in attendance, as well as their designer – Mr. Will Melville. We will all be pleased to answer any questions you may have. I thank you for your attention.



Western Neighbourhood Assoc.  
c/o 204 Emery Way  
Nanaimo, B.C.  
V9R 5Z8

July 19, 2012

Board of Variance  
City of Nanaimo  
455 Wallace Street  
Nanaimo, B.C.

Board Members:

RE: BOV597

The Western Neighbourhood Association represents adjoining property owners who have been notified of the request before the Board to vary yard set backs; and for continuation of a non-conforming use.

The application before the Board of Variance 'legal description' of the land is LOT 11, BLOCK 5, SECTION 1, NANAIMO DISTRICT, PLAN 1465.

The building in question actually occupies LOT 10 and 11; the application tonight for one half (1/2) the building (occupying LOT 11).

Any address of the entire building by the Board of Variance demands re notification of adjoining land owners.

I ask for direction of the BOV



The request for approval of continuation of a non-conforming use should not be of issue or before the Board of Variance.

Section 901(1) of the Local Government Act does not entertain the question of use; 901(2)(ciii) of the Local Government Act is specific "...variance does not vary permitted uses...".

Any question of legal non-conforming use has been well established, by section 911 (1) of the LGA and not of BOV authority.

It is understood 8 ft. height is going to be added to the front 2 bays; in my opinion a major change not before the Board.

Any address by the Board of Variance to reduce yard set backs for a building to 0 ignores vehicle parking demands of City bylaw on private property.

With at least a sales/reception area, at least 5 service bays plus 5 spaces (total of 11 spaces, minimum bylaw demand) are required; there appears at least 17 spaces in use at the applicants present location and one should remember larger customer vehicles may appear (8' higher doors)

Section 901(2)(cii) must be considered by the Board of Variance.

"BOV is of the opinion the variance does not (ii) substantially affect the use and enjoyment of adjacent lands."

Where is the parking for City Parking Bylaw demands, customer and employees, the neighbourhood ???

Yes, the Board may hear from owners of adjacent land, but in all questions before the Board of Variance I believe the Board of Variance must weigh the non resident to the existing neighbourhood residents.

In any matter to provide equal or greater support to non resident (other community residents) vs. the neighbourhood is irresponsible to our community.

I encourage the Board to consider application for -

1. only 1/2 the building
2. no mandate of BOV to consider use
3. hardship to the adjoining lands to accommodate vehicle parking.

Yours truly,

Fred Taylor  
Representative