

**DISTRICT OF NORTH SAANICH**  
MINUTES OF THE BOARD OF VARIANCE MEEETING  
NORTH SAANICH HALL – COUNCIL CHAMBERS

**15 November, 2018 at 10:00 a.m.**

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**ATTENDING:**

Board Members: Denny Warner, Chair  
Gordon Safarik  
Paige Gibson

Absent:

Staff: Steve Jesso, Recording Admin

Also Attending: 1 anonymous public member

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Chair, D. Warner called the meeting to order at 10:00 a.m.

**1. ADOPTION OF THE AGENDA**

MOVED BY: D. Warner  
SECONDED: P. Gibson

**47-BOV** To accept the Board of Variance agenda as circulated.

**CARRIED**

**2. ADOPTION OF THE MINUTES**

MOVED BY:  
SECONDED:

**48-BOV** That the approval of the minutes of the 18 October, 2018 Board of Variance Meeting be approved at a later date upon adoption of the new format.

**CARRIED**

**3. APPLICATIONS**

**3.1 772 Dalkeith Ave** – To decrease minimum required rear and side setbacks of an accessory building (storage shed) within a CD-4 zone.

- a) Location: Lot 13, Block 27, Section 8, Range 2 West, Plan VIP1437
- Civic Address: 772 Dalkeith Ave
- Applicant/Owner: Eric Ruygrok
- Variance:

**The applicant is requesting to vary section 204.1.5 of Zoning Bylaw No. 1255 in order to decrease the minimum allowable lot area to permit a guest cottage from 0.4 ha (0.99 acres) to 0.37 ha (0.91 acres), a decrease of 0.03 ha (.08 acres) or 8%**

Correspondence: None

**Chair, D. Warner:** Asked for discussion regarding the variance application.

**Eric Ruygrok** stated his desire to withdraw his application.

**P. Gibson** wished to speak to the jurisdiction on the matter. She read from a prepared statement which is attached to these Minutes as Appendix (A).

Chair called the question as there was no further discussion and the applicant wished to withdraw his variance application.

MOVED BY: Chair, D. Warner  
SECONDED: P. Gibson

**49-BOV**

**The application be withdrawn as per request of the applicant.**

**CARRIED**

**4. ADDITIONAL BUSINESS:**

**50-BOV** The Board discussed scheduling conflicts for the original date of the December BOV and motion that the date be moved forward one week, so that the next Board of Variance meeting will take place on the 13<sup>th</sup> of December, 2018.

MOVED BY: G. Safarik  
SECONDED: P. Gibson

**5. DATE OF NEXT MEETING**

The date of the next Board of Variance meeting will be 13 December, 2018 at 10:00 am.

**ADJOURNMENT**

MOVED BY: Chair, D. Warner

SECONDED: P. Gibson

**51-BOV** That the Board of Variance meeting be adjourned at 10:11 am.

**CARRIED**

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D. Warner  
Chair

ATTACHED:

Appendix A – Paige Gibson statement pursuant to application from 772 Dalkeith (15 Nov 2018)

Appendix A – Paige Gibson statement pursuant to application from 772 Dalkeith (15 Nov 2018)

The applicant has withdrawn his application this morning, however I would like to commit some comments to the records regarding the nature of the application.

The subject property at 772 Dalkeith is in the R-3 zone. The principal use in this zone is single family residential. Guest cottages are listed as a secondary use, subject to section 204 of our zoning bylaw, a subsection of which we were being asked to vary today. I do not believe that this board has the power to vary that section in the requested manner, and I will explain why.

Boards of variance are creatures of the Local Government Act. Specifically, Division 15 of that Act, which includes sections 536 to 544.

Section 540 sets out the circumstances under which a person may apply to a board of variance for reasons of hardship. It reads:

A person may apply to a board of variance for an order under section 542 if the person alleges that compliance with any of the following would cause the person hardship:

(a) a bylaw respecting

(i) the siting, size or dimensions of a building or other structure, or

(ii) the siting of a manufactured home in a manufactured home park;

(b) a subdivision servicing requirement under section 506 (1) (c) in an area zoned for agricultural or industrial use;

(c) the prohibition of a structural alteration or addition under section 531 (1);

(d) a bylaw under section 8 (3) (c) of the [Community Charter](#), other than a bylaw that has an effect referred to in section 50 (2) of that Act if the council has taken action under subsection (3) of that section to compensate or mitigate the hardship that is caused to the person.

The application that we were to consider today does not have to do with any of the bylaws, requirements or prohibitions listed in section 540. Applications of this nature are presumably submitted under (a)(i), “a bylaw respecting the siting, size or dimensions of a building or other structure”. But this was not an application to vary siting, size or dimension, rather it is an application to varying a zoning bylaw to permit for the construction of a habitable, residential structure that is explicitly not permitted on this lot. Had this application proceeded, it would not have been a siting issue any more than

an application to build a four plex on R-3 land would be. It was a request to vary the permitted density.

### **The Definition of Density**

Staff has noted that, in our zoning bylaws, density is calculated in relation to lot coverage and floor area ratio. However the Local Government Act, which governs this board, defines density very differently. I will read the definition, from section 455 of the Act:

In this Part:

**"Density"**, in relation to land, a parcel of land or an area, means

(a) The density of use of the land, parcel or area, or

(b) The density of use of any buildings and other structures located on the land or parcel, or in the area.

As I said earlier, this board finds its power in this legislation, and cannot act beyond it. There is no question that the definition of "density" we must use in deciding whether an application ought to be heard by this board is the definition in the Local Government Act.

So on to the definition itself. Chief Justice Bauman, writing for BC Court of Appeal in a case handed down in 2014 called the Society of Fort Langley Residents for Sustainable development et al v. Township of Langley (2014 BCCA 271), charitably described the definition of density in the Local Government Act as "most unhelpful". The Court of Appeal in that case then adopted at paragraph 30 a definition clarifying the meaning of "density" with respect to this statute. It is:

*"The quantity of people or things in a given area of space"*

The Court went on to note that the number of residential units on a property constitutes "things" under this definition.

In this application, we are being asked to vary a bylaw in order to allow for the construction of "things" in excess of what is permitted. Using the Court's clarification of the definition in the Local Government Act, it is clear that we are being asked to make an order respecting density. To my mind, this board has no jurisdiction to make such an order.

Further at section 542(a), the Act provides a list of effects incidental to an application that must not be allowed as the result of an order of a board of variance. Specifically, a board of variance may make an order permitting a minor variance if it is of the opinion that the variance or exemption does not do any of the following:

- (i) result in inappropriate development of the site;
- (ii) adversely affect the natural environment;
- (iii) substantially affect the use and enjoyment of adjacent land;
- (iv) vary permitted uses and densities under the applicable bylaw;
- (v) defeat the intent of the bylaw;
- (vi) vary the application of an applicable bylaw in relation to residential rental tenure.

I note that (iv) serves as a further backstop to prevent boards of variance from making orders which may have even an incidental effect on density, if such an application were to arise.

I think that this application came before us as a result of genuine misunderstanding, for which no one in this building is to blame. I am conscious of the fact that the applicant bears the brunt of this misunderstanding, having spent \$500 dollars to be here today only to receive in exchange a summary of a particularly dull branch of administrative law. As such, I would like to move that the board of variance recommend that Mr. Ruygrok's application fee be refunded to him, while noting that the board has no power to require such refund and that, in the event that Mr. Ruygrok encounters difficulty in that regard, he will have to contact Council for assistance.