



# Corporate Report

NO: R083

COUNCIL DATE: May 8, 2006

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## REGULAR COUNCIL

TO: **Mayor & Council** DATE: **April 28, 2006**  
FROM: **Acting General Manager, Planning and Development** FILE: **6745-20 (By-law Amendments)**  
SUBJECT: **The Encroachment of Stairs into Required Building Setbacks on Lots in RF-12 and RF-9 Single Family Residential Zones**

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## RECOMMENDATION

It is recommended that Council:

1. Receive this report as information;
2. Endorse the proposed procedure, as described in Appendix I of this report, as part of the application review process for developments in the RF-12, RF-12C, RF-9, RF-9C, RF-9S and RF-SD Zones; and
3. Instruct the City Clerk to forward a copy of this report to Marie Cooper, Chair of the Board of Variance.

## BACKGROUND

At the Regular Council - Public Hearing on January 9, 2006, Marie Cooper, a Newton resident and Chair of the Surrey Board of Variance, appeared before Council to address Application No. 7905-0138-00 (By-law No. 15894), which proposed rezoning of a property to the RF-12 Zone. Mrs. Cooper's concerns related to the number of applications received by the Board of Variance to allow stairs with more than three risers in the front yards of the houses constructed on lots that are zoned either RF-12 or RF-9. The Zoning By-law restricts the number of stair risers permitted within a front yard setback to a maximum of three. Mrs. Cooper expressed concern that by the time the Board of Variance receives these applications, the houses are already under construction, making it difficult for the Board to deny the variance request. As a result of the delegation, Council requested staff to report further on the issues raised by Mrs. Cooper. This report addresses Mrs. Cooper's concerns.

## **DISCUSSION**

### **Stairs in the Front Yard Setback areas in the Small Lot Zones**

The Zoning By-law stipulates that stairs cannot encroach in the building setback areas by more than three risers. This provision applies to all zones, but in the case of the single family small lot residential zones (RF-12, RF-12C, RF-9, RF-9C, RF-9S and RF-SD Zones) it can have significant impact on the front yard space and streetscape, because these zones allow significantly reduced setbacks in comparison to the other single family residential zones. The following compares the required front yard setbacks between the conventional RF Zone and the more popular small lot RF-12 and RF-9 Zones:

- The RF Zone, with a minimum lot area of 560 square metres/6,000 square feet, requires a minimum front yard setback of 7.5 metres (25 feet);
- The "small lot" RF-12 Zone, with a minimum lot area of 320 square metres/3,445 square feet, requires a minimum front yard of 6 metres (20 feet), but it permits a minimum front yard setback of 2 metres (6.6 feet) for a veranda/porch across a maximum of 50% of the front yard; and
- The "small lot" RF-9 Zone, with a minimum lot area of 250 square metres/2,690 square feet (which may be reduced to a minimum of 220 square metres/2,368 square feet for up to 33% of the total proposed lots), requires a minimum front yard of 3.5 metres, but it permits a minimum 2-metre (6 foot 7 inch) front yard setback for a veranda/porch across the entire frontage of the lot.

Most houses built under the small lot zones have a veranda. Although the 2 metres (6.6 feet) is the minimum front yard setback for a veranda, it has become the norm in order to maximize the footprint of the house.

Typically, a three riser stair, in fact, provides a rise of four steps from ground level to the floor level and would extend approximately 0.76 metres (2 feet 6 inches) into the front yard setback area, leaving only 1.24 metres (4 feet 1 inch) between the property line and the first step. An additional riser in the front yard will reduce the front yard by at least 0.25 metres (10 inches), thus further impacting the already compact front yard space. An example is illustrated in Appendix II. Three risers would mean that the floor level of the veranda could be a maximum of 0.80 metres (2 feet 8 inches) in height above the finished grade at the bottom of the stair.

### **Appeals to the Board of Variance for Stairs in the Front Yard Setback Area on Single Family Lots**

The small lot zones were introduced between 2002 and 2004. Between April and December 2005, the Board of Variance has received 10 applications for variances to allow more than three stair risers in the front yard on lots in the "small lot" zones (primarily the RF-12 Zone). In most of these instances, the building permit was issued without staff recognizing that there would be a problem with the number of risers in the front yard setback. Typically, the building inspector discovered the problem during the inspection process while the dwelling was being constructed, but after the foundation has been poured.

There are a variety of reasons for the issue not being discovered until the construction stage of the process. These include, the house designer not providing correct information about the grade of the lot on building permit drawings or miscalculating the number of stair risers, or the builder constructing the house at an elevation somewhat higher than anticipated by the design. In one instance, the lots had a steep grade (12% to 16%) from back to front and backed onto a rear lane. The owner of the lot applied for and was granted a Development Variance Permit ("DVP") to allow vehicular access from the front because of the steep grade. This resulted in one-storey height basements facing the front yard (i.e., a three storey façade toward the street with the main entrance to the home being at the second level) and, consequently, a long set of stairs was required within the front yard with the number of risers far exceeding the by-law allowances. In other instances, the main floor levels had to be higher than 2 feet 6 inches (the maximum height achievable with three risers) from the finished grade at the bottom of the stair, because the basement level had to be set higher due to the shallow depth of the underground services.

Despite concerns about the on-site conditions, the Board would have to approve the applications because the houses were well along in the construction process and any change to the design at the stage would be a significant hardship to the owner. Appendix III shows examples of stairs/houses that were brought before the Board of Variance for consideration.

### **Issues related to the Stair Encroachment**

The encroachment of stairs into the required front yard setback, typically is a problem when the lot slopes significantly toward the fronting street. This typically results in the main floor being higher than 0.80 metres (2 feet 8 inches) above the finished grade and the stairs leading to the main floor entrance needing more than three risers to make up the difference in elevation between the finished lot grade and the elevation of the main floor. Given that the owner is not aware of the problem until the building permit stage, the owner's options in these circumstances are likely to be as follows:

- Increase the front yard setback of the dwelling to a distance greater than 2 metres (6 feet 7 inches). This could mean the main floor of the dwelling may have to be reduced in size if the lot is of minimum dimensions;
- Modify the interior of the house to accommodate the additional risers within the house;
- Lower the main floor; or
- Eliminate the basement.

Appendix IV illustrates how compliance with the Zoning By-law might be achieved through setback and/or design modifications. The owners and builders are usually reluctant to make changes that result in a house that is unconventional in design or is smaller in floor area than the maximum permitted by the Zone, particularly for lots in the small lot Zones.

To maximize lot yield, lot areas and lot depths are often kept at the minimum, regardless of the site topography. It is not uncommon for house designers to not properly account

for the impacts of slope on the proposed dwelling on the lot. The minimum-sized lots provide little flexibility in relation to house design for houses of the maximum permitted floor area, particularly if the lot is sloped significantly.

### **Optional Courses of Action to Reduce the Potential of Variances on Small Lots**

Staff considered the following options to address the issue of the stair encroachment into the setbacks:

1. *Amend the small lot zones to require larger setbacks or increased depth for lots that are on sloping sites.*

This option is not recommended as it would result in many of the existing lots becoming non-conforming and would not necessarily eliminate the issue.

2. *Amend the Zoning By-law to increase the number of risers permitted in the building setbacks or to eliminate the restriction on the number of risers altogether in the small lot zones.*

Such amendments would be contrary to the objective of having the restriction on the number of risers, which is to minimize the encroachment of yard space and avoid tall/long stairs in the front yards of small lots. This would detract from the objectives of creating pedestrian-friendly streetscapes.

3. *Incorporate "triggers" in the rezoning, subdivision and in the building permit application review processes for all single family residential small lot zones (RF-12, RF-12C, RF-9, RF-9C, RF-9S and RF-SD) to ensure the developers, lot owners, consultants, designers and builders are made aware of the zoning regulations concerning the encroachment of a building setback by exterior stairs very early in the process, and have them avoid encroachment by adjusting the proposed plans, as required, at the rezoning and subdivision stages or address the encroachment adequately, to the satisfaction of Council, through a DVP process .*

### **Recommended Changes to the Rezoning and Subdivision Procedures**

The following "triggers" are proposed in the process at the rezoning and subdivision stage, with further details included in Appendix I:

- During the review of the application, the applicant will be required to demonstrate that the by-law compliance concerning the encroachment by stairs in the building setbacks is achievable for houses on the proposed lots;
- In the event a DVP is required, either to allow some encroachment of the front yard by more than three risers, because the main floor had to be higher than 0.80 metres (2 feet 8 inches), or to allow vehicle access from the front due to steep grades that may result in the main floor being higher, requiring more than three risers in the front yard, support for the DVP will be subject to the applicant satisfactorily showing how the impact on the streetscape will be mitigated and incorporating it into the DVP and, if required, into the building scheme; and

- The model building scheme would be amended to stipulate that, unless the Zoning By-law's three riser in the setback provision is varied by Council or the Board of Variance, the height of the main floors and/or verandas of the houses in the small lot zones should be a maximum of 0.80 metres (2 feet 8 inches) from the finished grade, which is the maximum height that is achievable with three risers located in the minimum setback.

### **Recommended Changes to the Building Permit Procedure**

- For lots in the subdivisions approved after Council endorses the recommendations of this Corporate Report, the design consultant for the building scheme will be required to show the Building Division staff that the dwelling design, including the height of the main floor from the finished grade, is in compliance with the approved building scheme. If this cannot be satisfactorily shown, the owner will be required to apply for a DVP and obtain Council's approval for the by-law variance before the building permit is approved. The DVP will provide an opportunity for staff to work with the applicant to determine if there are alternatives that could eliminate the need for the variance, such as by providing a larger setback and/or doing design modifications or, if that is not possible, to ensure that any impacts of the variance are addressed. It is noted, however, that this procedure will not eliminate the possibility, although remote, that at the construction stage it is discovered that the grading is not right or different than anticipated by the plans.

For the existing lots, pre-dating this report, staff will continue to check the lot grading and building permit plans, as is the case now, to ensure that the plans comply with the Zoning By-law, including the three risers in the building setback restriction. If the plans do not comply, the owner is required to modify the plans or, if this is not possible, the owner is required to apply for a DVP.

The proposed procedures to the application process reflect the view that the minimum setbacks required in the small lot zones and the restriction on the number of risers allowed in a setback, are appropriate and the Zoning By-law should not be amended. The proposed procedure is based on the review of the circumstances leading to the appeals to the Board of Variance to allow relaxation of the by-law regulation regarding the encroachment of a setback by stairs.

This will give staff a tool to work the applicants and design consultants to ensure that by-law compliance is achieved. Where compliance is not possible, this process will give Council an opportunity to review the DVP applications in light of the efforts made by the applicant to address the impacts of the stairs in the setbacks. Also, these procedures do not affect or change the statutory role of Board of Variance, which may continue to receive and rule on appeals regarding the three riser provision of the Zoning By-law, as the Board sees fit. It is expected that after these procedures are implemented, the number of such appeals to the Board of Variance will be significantly reduced. However, on some existing lots where building permits have been issued, building inspectors may find that the stairs, as built, in the setbacks do

not comply with the Zoning By-law and the owner may choose to appeal to the Board of Variance or apply for a DVP.

While the proposed procedures will not completely eliminate the issue of stair encroachments in the building setbacks on compact lots, any DVP application that may need to be considered by Council to address the issue will undergo a rigorous review.

## CONCLUSION

A concern has been expressed about the number of appeals being made to the Board of Variance, for a number of houses constructed over the past several months in the small lot zones, to relax the Zoning By-law's restriction on the number of stair risers encroaching into a building setback to a maximum of three. It is recommended that Council:

- Endorse the proposed procedures, as described in Appendix I of this report, as part of the application review process for developments in the RF-12, RF-12C, RF-9, RF-9C, RF-9S and RF-SD Zones; and
- Instruct the City Clerk to forward a copy of this report to Marie Cooper, Chair of the Board of Variance.

How Yin Leung  
Acting General Manager  
Planning and Development

BP/kms/saw

### Attachments:

- Appendix I Proposed amendments to application review procedures for small lot developments
- Appendix II Illustration: The Zoning By-law regulation for the encroachment of a building setback by stairs
- Appendix III Images from the Board of Variance Hearings re: stairs in the required setbacks
- Appendix IV Illustration: Possible options to achieve by-law compliance re: stairs permitted in the setbacks on existing lots

**Proposed Procedures for the Application Review Process Related to  
Small Lot Developments under the RF-12, RF-12C, RF-9,  
RF-9C, RF-9S and RF-SD Zones,  
Regarding Stair Risers in the Required Building Setbacks**

1. The following procedural guidelines will be followed in the review of the applications for small lot developments:

**At the Rezoning and Subdivision Stages**

- On sloped sites where the subdivision will result in lots with more than 5% grade between the front and rear lot lines, the applicant will be advised of the Zoning By-law restriction on the number of risers permitted in a setback and its potential impact on the building permit approval. The design consultant will be required to demonstrate that by-law compliance can be achieved without requiring a development variance permit. If this cannot be demonstrated, the applicant will be asked to look at alternatives such as reconfiguring the lots or increasing the lot depths, which would allow options for placing a dwelling on the lot to the full allowable floor area in compliance with the by-law without needing a development variance permit.
- On steeply sloped sites (with 10% or more grade) where a development variance permit application is submitted to allow vehicle access from the fronting street rather than from the rear lane, the applicant will be required to demonstrate to the satisfaction of the City, that the heights of the resulting floor levels of the ground floor and/or veranda/porch will be such that the by-law compliance regarding the stairs in the setbacks will be achievable or, in the case this cannot be demonstrated, show how the impacts on the yard space and streetscape will be mitigated in light of the City's objective to create a pedestrian friendly streetscape. Any special provisions in this regard will be incorporated into the building scheme.

**At the building permit stage**

- The design consultant (for the building scheme) will be required to demonstrate to the Building Division staff that the design of the dwelling, including the height of the main floor from the finished grade, is in compliance with the approved building scheme. If this cannot be satisfactorily demonstrated, the owner will be required to apply for a development variance permit and obtain Council's approval for the variance before the building permit is approved. The development variance permit will provide an opportunity for staff to work with the applicant to determine if there are alternatives that could eliminate the need for the variance, such as a larger setback and/or design modifications or, if that is not possible, to ensure that any impacts of the variance are addressed.
2. The model building scheme will be amended to insert the following new clauses in Sections 3 and 4:

### Section 3 - Single Family Lot Restrictions

#### **3.3 Height of the Main Floor and/or Floor Level of Porch/Veranda from the Finished Grade [Optional – This Section is for lots in the RF-12, RF-12C, RF-9, RF-9C, RF-9S and RF-SD Zones. Delete the Section if not applicable]**

- (a) Unless Section E.17(b) of Part 4 General Provisions of Surrey Zoning By-law, 1993, No. 12000, as amended, is varied by the City or by the City's Board of Variance, where an exterior stair is provided from a yard to a porch/veranda or a sun deck or directly to the main floor, the height of the floor level of the porch/veranda or sun deck or of the main floor when there is no porch/veranda or sun deck, does not exceed 0.80 metres measured between the finished grade at the bottom of the stair to the applicable floor level and the stair does not contain more than three risers within the required building setback.

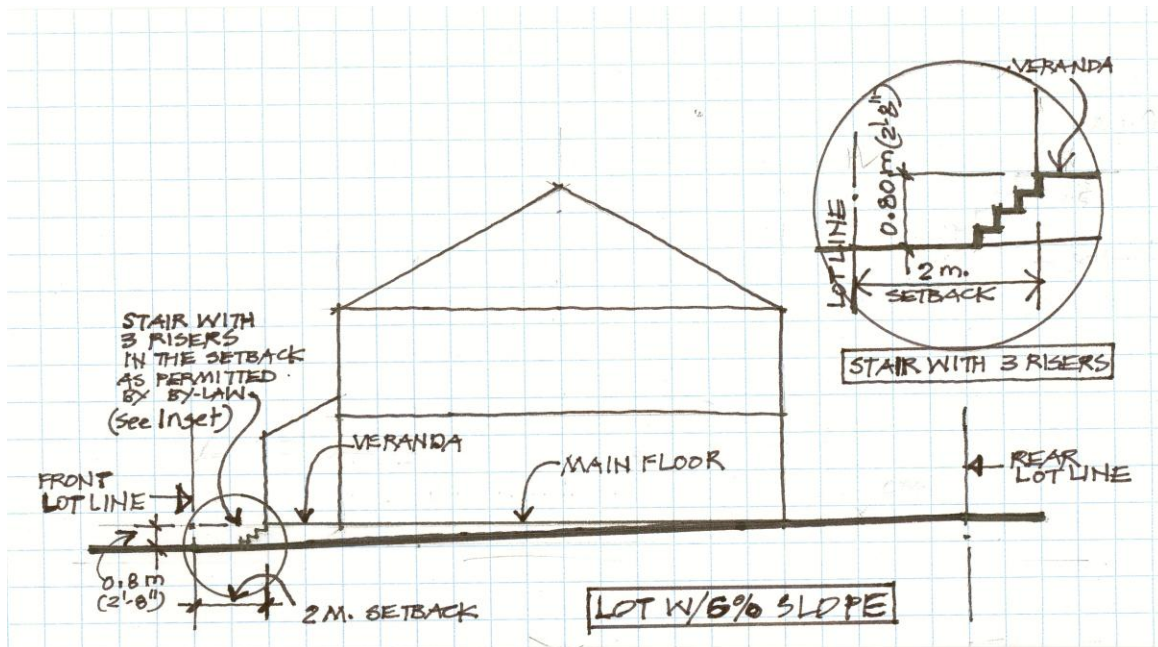
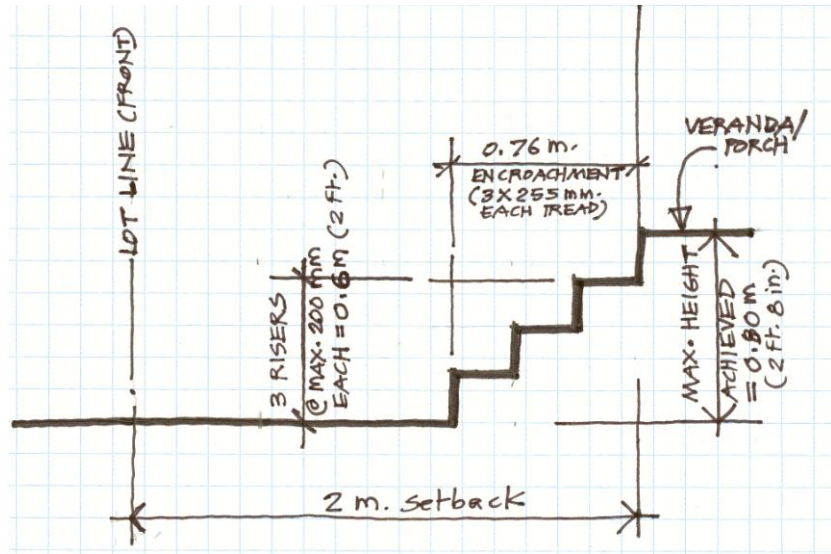
### Section 4 - Single Family Dwelling Design Restrictions

#### **4.12 Stairs in Front Yard**

- (a) the access to the stair located in the front yard is not obstructed in the opinion of the *consultant*, by any above-grade pipes, vents and utility or engineering servicing structures located within the *lot*;
- (b) when the stair faces the front of the *lot*, it is not located within 0.9 metres from the front *lot* line, or when, in the opinion of the *consultant*, this is not possible it is not located closer than 0.75 metres from the front *lot* line; and
- (c) when the stair does not face the front of the *lot*, the distance between it and the front *lot* line is no less than 0.75 metres, and the area over this distance is landscaped with shrubs to visually screen the stair.



### Illustration: The Zoning By-law Regulation for the Encroachment of a Building Setback by Stairs

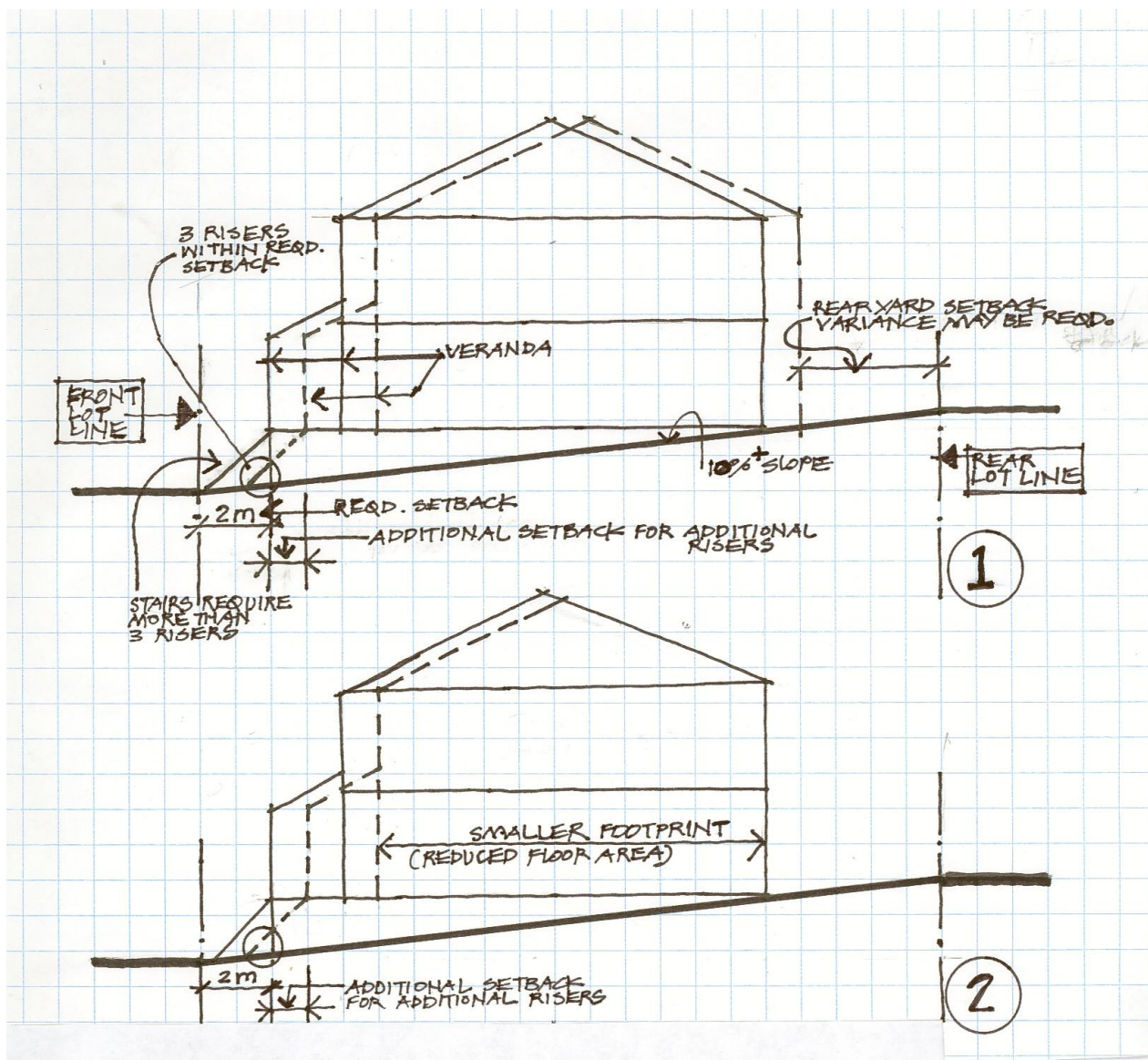


House with stair consisting 3 risers in the setback

**Images from the Board of Variance Hearings  
Re: Stairs in the Required Setbacks**



**Illustration: Possible Options to Achieve By-law Compliance  
Re: Stairs Permitted in the Setbacks on Existing Lots**



**Illustration: Possible Options to Achieve By-law Compliance  
Re: Stairs Permitted in the Setbacks on Existing Lots**

