



Special Council Agenda Hearing for Property at 7686 125 Street

Hybrid Format:
Electronically by Teams and
In person in Council
Chambers
City Hall 13450 - 104 Avenue
Surrey, B.C.
Live Streamed at surrey.ca
WEDNESDAY, JULY 24, 2024
Time: 10:01 a.m.

Present:

Chairperson - Mayor Locke
Councillor Annis
Councillor Bains
Councillor Bose
Councillor Elford
Councillor Hepner
Councillor Kooner
Councillor Stutt

Absent:

Councillor Nagra

Guests:

Property Owner
Property Engineer

Staff Present:

City Manager
City Clerk and Director Legislative
Services
Manager, Legislative Services
City Solicitor
Assistant City Solicitor
Director of Building Division
Building Inspector
Bylaw Enforcement Officer

Councillor Bains joined the meeting electronically via Microsoft Teams.

In the matter of the filing of a notice on title to the property at 7686 - 125 Street pursuant to Section 57 of the *Community Charter*.

A. OPENING REMARKS BY CHAIR

This hearing is for Council to consider the recommendation of the Building Inspector to file a notice on title to the property at 7686 - 125 Street, pursuant to Section 57 of the *Community Charter*.

The following principles of natural justice must be followed by Council:

1. Council must consider the issue anew and exercise its discretion based on the evidence and submissions made at this hearing.
2. Council must not consider evidence not presented at the hearing.
3. Council must provide each party the opportunity to be heard.
4. Council must act in good faith and be unbiased and fair.

B. OPENING REMARKS BY COUNSEL

Benjie Lee, Counsel for the Building Inspector with the City of Surrey, provided an introduction of counsel and parties present and of the agenda for the hearing.

Council is here to decide whether to direct staff to file a notice on title for the Unpermitted Construction located at 7686 - 125 Street (the "Property"). The notice will alert the public to the Unpermitted Construction at the Property.

C. PRESENTATION BY COUNSEL FOR THE BUILDING INSPECTOR

1. Submissions by Counsel

Counsel informed that *Corporate Report R156: Filing a Notice on Title, 7686 – 125 Street, Surrey, BC* had been circulated to Council and the Owner and will be relied on for the presentation.

2. Overview by Counsel

This is a hearing to protect the public, in particular potential buyers that may unknowingly purchase a property with Unpermitted Construction. The Owner of the Property in question is a realtor as indicated by the title search. The Owner has repeatedly disregarded staff direction to stop constructing the unpermitted works at the property. Her contractors took active and deliberate steps to evade and avoid Bylaw Enforcement Officers (BEO). Stop Work Orders (SWO) were repeatedly removed after being reposted. The Owner has had opportunity since 2022 to correct the non-compliance but has failed to do so. Staff has recently discovered that portions of the Property is being used for unlicensed Air BnB rental.

Questions for Council to consider are:

- a. Did construction occur at the Property without the necessary building permits?
- b. Should Council make a resolution directing staff to file a notice on title alerting the public to the Unpermitted Construction?

Councillor Kooner joined the meeting electronically via Microsoft Teams at 10:07 a.m.

3. Presentation Highlights

- Section 57 of the *Community Charter* allows Council to direct staff to file a notice on title at the Land Title Office. The notice would indicate that a resolution has been made under Section 57 of *Community Charter* and that further information may be inspected at Surrey City Hall.

- Section 57 notice is not permanent and may be removed in certain circumstances. The most obvious case is when the property is brought into compliance, through method such as demolition of Unpermitted Construction.
- There are several different grounds that Council may rely on to direct staff to file notice on title. We are relying on the basis that the Owner failed to obtain the required permit for the Unpermitted Construction.

The ground that staff is relying on in Section 57 of *Community Charter* can be broken down into three components:

- a. The Building Inspector discovers that something was done with respect to a building or other structure that required a permit;
 - b. The Permit was required under a municipal bylaw that relates to construction or safety of buildings or other structures; and
 - c. The permit was not obtained
- Surrey Building Bylaw regulates the construction and safety of buildings and structures. Sections 8 and 21(a) of the Building Bylaw require that property owners must apply for and obtain a permit before performing any construction work. The definition of construction under the Building Bylaw includes erecting, altering and renovating a building. This satisfies component (b) of Section 57 that staff is relying on.
 - Unpermitted Construction work at the Property was first discovered by BEO and building inspector in 2022. At no time has a building permit been issued for the Unpermitted Construction. This satisfies component (a) and (c) of Section 57 that staff is relying on.
 - Counsel presented aerial photograph comparisons of the original property and Unpermitted Construction. The works done without permit (the “Unpermitted Construction”) are:
 - a. A two-storey addition to the south side of the Property, which is approximately 14’ by 36’ feet;
 - b. A two-storey addition to the rear of the Property, which is approximately 21’ by 17’ feet;
 - c. A small roof structure over the front door;
 - d. A laundry room; and
 - e. Three additional dwelling units.

- Counsel highlighted the three additional dwelling units by specifying their occupying space and orientation. Unit one is on the second floor of the Property and runs along the South side. It is a self-contained, one bedroom unit with a bathroom, kitchen, cupboards, sink, counter, venting and an area for a stove. Unit two is on the second floor facing roughly eastward, located at the rear of the Property. It is also a self-contained, one room unit with a bathroom, kitchen, cupboards, sink, counter, venting and an area for a stove. Unit three is on the ground floor located at the rear of the Property. It is a self-contained unit separated from the main house with a dead bolt door labelled “do not open.” The unit consists of kitchen area, a bedroom, bathroom, office area and living area. The exterior and interior of the Property have remained largely the same since 2022.
- The Property was previously zoned “Single Family Gross Density Zone” and as of July 8, 2024 has been rezoned to “Small Lot Residential Zone”. This new zoning permits either a single family dwelling with one secondary suite or a duplex with one secondary suite for each principal dwelling unit.
- The Owner purchased the Property around December 2021 and is the current owner of the property. The Unpermitted Construction began around January 2022 and continued despite numerous attendances and posting of numerous SWO.
- The history of workers on site ignoring or actively evading City staff is as follows:
 - January 23, 2022: workers onsite ran into the house upon seeing the Officer.
 - January 25, 2022: BEO observed two males working on the addition. The Officer attempted to get their attention, but they ignored him and continued working.
 - January 27, 2022: workers were observed using a nail gun and actively working. Upon seeing the Officer, the workers fled the scene.
 - February 6, 2022: Officer approached workers onsite with questions, the workers refused to answer and asked who had called to complain about the construction work. Officer then observed multiple workers who ran inside the addition and held the door shut. Requests for the workers to come out were ignored. Later, the Officer saw a worker peeking over the roofline, who quickly retreated after making eye contact and slipping on the roof.
 - March 5, 2022: Officer saw a man in a yellow shirt doing roofing work and a concrete pump truck on the lawn. An individual initially claimed to have poured concrete but later said he was only providing a quote. The Officer noted wet concrete on the individual’s shirt and boots.
 - April 14, 2022: a compliance order was sent by the Building Division to the Owner advising that additions were constructed without permits and that the City requested that the Owner apply for the required building permits to correct the situation by May 19, 2022.

- SWO are posted under the authority of the Building Bylaw where there is a contravention of the bylaw. They are posted in conspicuous location at the property, advising owners and contractors that no further work is to be conducted. SWO were posted at the Property and were removed in blatant disregard of the City's direction.
 - The history of the SWO posted at the Property is as follows:
 - January 31, 2022: first SWO posted
 - August 2, 2022: no SWO posted
 - August 4, 2022: SWO reposted
 - August 5, 2022: SWO largely removed
 - August 22, 2022: no SWO posted
 - September 28, 2022: SWO reposted
 - October 24, 2022: no SWO posted
 - February 20, 2024: no SWO posted
 - April 5, 2024: no SWO posted
 - The City has issued the Owner six bylaw contravention notices for a total of \$3000, and seven site visits fees totaling \$1498. Bylaw contravention notices were not disputed and remain unpaid. All site visit fees have been paid except for the most recent one.
 - After *Corporate Report R156: Filing a Notice on Title, 7686 – 125 Street, Surrey, BC* was finalized, the Owner submitted a building permit application on June 28, 2024 in an attempt to keep most of the Unpermitted Construction. Building division rejected the application because the additions to the Property were constructed without the required inspections by the City. The City cannot be satisfied that the Unpermitted Construction conforms with the building code without the usual inspections. The Unpermitted Construction also fails to comply with the applicable zoning.
4. Conclusion by Counsel
- Staff submit that the evidence that has been presented sufficiently answers the two questions for Council to consider. The answers to both questions are in the affirmative. The criteria in Section 57 of *Community Charter* are met, and Council may direct staff to file a notice in the Land Title Office pursuant to Section 57.

D. PRESENTATION BY THE OWNER

1. Submission by the Owner

The Owner presented one binder of printed material that was not provided in advance. The material was presented to Council verbally by the Owner.

2. Overview by the Owner

The Owner made the following requests to Council:

- a. To refrain from filing notice on title of the Property
- b. To direct staff to review the architectural and structural drawings being submitted
- c. To seek approval of development variance permit for the existing rear setback
- d. To direct Bylaw Enforcement Officers to cease harassment at the Property

3. Presentation Highlights

- The Owner lives at the Property with her mother and sister. After being abandoned by their father they had to earn livelihood independently. They are first time home buyers in Canada and purchased the Property in December 2021 with the life savings of the Owner and her mother. They have been residents of Surrey for approximately five years and consider the Property as family home.
- Due to the father's abandonment in 2020, the Owner's mother suffered emotionally, and was diagnosed with several serious health challenges. The mother underwent two surgeries in the same year. As a result of caring for her ailing mother, the Owner also developed several health concerns. The Owner was then put on medications that affected her day-to-day abilities. The Owner had surgery in January 2023 which resulted in her inability to attend to daily activities for an extended period of time.
- The long period of health problems and doubled mortgage payment led to major financial constraints. The Owner is the sole provider for the family.
- In December 2021, a renovation construction contractor approached the Owner with an offer to undertake renovation and additions to the Property. The contractor provided references from several projects on the same street. The Owner entrusted the entire project to this contractor expecting a move in ready house. During the construction, the Owner and her mother were unable to attend nor supervise the work due to their health challenges. The Owner was also unfamiliar with the construction process and assumed the contractor knew their responsibility based on previous similar projects.
- The Owner was never notified of the SWO by contractors. The Owner also was not informed of SWO and its implications by BEO or City officials. The Owner claimed that compliance would have been achieved as soon as possible if she was made aware.

- The Unpermitted Construction was completed in April 2022 and the Owner moved to the Property in May 2022. In June 2022 BEO informed the Owner that the Property has unauthorized construction. This caused significant distress to the Owner and her family, compounding the existing health challenges. The contractor did not offer the Owner satisfactory assistance despite reaching out for help.
- In August 2022, BEO informed the Owner that the SWO was not posted on the door. In response, the Owner claimed that seeing the SWO posted caused her mother significant stress and so the SWO has been moved to the interior of the Property. BEO advised the Owner that construction plans should be submitted to the City for review and that she should seek out an engineer's assistance.
- Four inspections were undertaken in November 2022, February 2024, March 2024, and April 2024 where photographs and measurements of the Property were taken. The Owner stressed that they were compliant with the inspection and did not hinder the City's requests. Two tenants were in the Property at the time of the first inspection.
- Three of the Owner's neighbours with unpermitted construction received City permits under the guidance of the same engineering consulting firm. The Owner retained the service of this engineering consulting firm. The Owner was unable to obtain existing plans, but was able to obtain a topographical survey, architectural drawings, and structural designs. The plans were submitted to the City on June 28, 2024.
- In April 2024, The Owner applied for a development variance permit (DVP), to vary the front and rear setback of the Property. The Owner was advised to wait for the provincial legislation implementation which would change the zoning regulation of the Property. On May 21, 2024 the Owner approached the Legal Department explaining that the Special Council on July 24, 2024 was unnecessary.
- On June 28, 2024 demolition plans, current plans, proposed plans, and structural drawings were submitted to the City by Owner's retained engineering consulting firm. The Owner claimed that the submission was concluded without reviewing the submitted plans.
- The Owner claimed that their neighbours have no concerns with the rear setback requested in their DVP. The argument is that if the house was built further to the rear of the yard they would not require such a large setback variance and that the Eastview Trail Park can offset the rear setback variance.

- The Owner claimed that the BEO attended the Property one hour prior to the scheduled time and stayed one hour extra in their visits. The Owner also claimed that despite their health challenges and compliance efforts they felt pressured by the process. The Owner claimed that there were approximately 150 homes in the neighbourhood with unauthorized construction but they were targeted by the BEO.

E. QUESTIONS

1. Counsel questions for the owner.

There were no questions from the Counsel.

2. Questions by the Owner for staff.

There were no questions from the Owner.

3. Questions by Council Members.

- The Owner is currently working as a housekeeper. The Owner occupation on title, as listed at the time of purchasing the Property, is a realtor.
- No engineer was consulted before Unpermitted Construction work started. The contractor did not mention permits and the Owner did not inquire about permits.
- Council permitted the Owner's engineer to answer questions in regard to the scope of demolition.
 - The Owner approached the engineering firm in March 2024 and they advised her to demolish the portion of the Property that is encroaching on the setback. The engineer also prepared new construction plans for after demolition. The engineer was hired in 2024 and is not related to the Unpermitted Construction work in 2021.
 - The engineer was involved in the post construction permitting process of several unpermitted works in the neighborhood. The engineer found it difficult to inspect completed properties. They use in progress construction photographs and open walls to perform the inspection.
- The contractor approached the Owner with the construction proposal. The Owner was living in the Property at the time.

- In total three SWO were applied to the Property. During the construction the Owner was not informed of the SWO but was informed by BEO in June 2022 of the SWO.
- The Owner did no due diligence to ensure that the hired contractor is properly bonded, licensed, and educated. The Owner was not aware of the full building process until 2024.
- Once the conditions that gave rise to the notice on title have been met, staff will file a notice of cancellation with the Land Title Office to remove the notice on title. The DVP and other variances to the zoning bylaw are secondary to the issue as the completed construction does not allow the required inspections to take place. Without the required inspections the building permit cannot be granted therefore even if zoning bylaw compliance is achieved, the Property still cannot receive a building permit.
- The Property received a SWO in January 2022 and the Building Division sent a non-compliance letter to the Property in April 2022 advising the Owner to bring the Property into compliance through the application of permits. The Unpermitted Construction continued after the initial SWO in January 2022.
- The proposed demolition by the Owner is for the rear portion of the Unpermitted Construction only.
- Counsel did not have information on neighbouring properties with Unpermitted Construction. It was reconfirmed that inspections must be conducted at various stages of construction before the construction advances to the cover up stage.
- Demolition would be the only solution to bring the Property into compliance at this time. The Owner is welcome to apply for renovations that comply with the building code and building bylaw after the Property is in compliance.
- There were no building permits granted before or after the Unpermitted Construction.
- The Owner and her mother were not attending the Property, due to health challenges, when the SWO was posted. The Owner left all aspects of the project to the contractor and only became aware of the SWO in June 2022.
- A main house door labelled with “do not open” is connected to an active Air BnB unit.

The Mayor recessed the meeting from 11:23 p.m. for 10 minutes.

The meeting reconvened at 11:34 p.m. with all members of Council in attendance except Councillor Nagra.

F. CLOSING SUBMISSIONS BY COUNSEL FOR THE BUILDING INSPECTOR

Counsel provided the following closing comments:

- The Owner was a realtor who repeatedly disregarded staff direction to stop constructing additions to the Property without permits. The contractors took active and deliberate steps to evade contact with the BEO and the SWO were repeatedly removed.
- The Owner could have addressed the non-compliance issues in 2022 but failed to do so until June 2024. The submitted building permit application in June 2024 is clearly a response to this hearing.
- Staff has recently discovered that some of the units at the Property are being used as an unlicensed Air BnB. Through staff investigation, the Owner does not live at the Property, contrary to the Owner's assertions.
- There is a pattern of the SWO being posted and reposted, with deliberate removal on many occasions.
- The Owner's personal circumstances and struggles to bring the Property into compliance may garner sympathy but it does not explain why a notice to title should not be filed or why the public should not be alerted to the Unpermitted Construction at the Property. The Owner's extenuating circumstances or the possibility of obtaining a retroactive building permit do not preclude Council from giving notice to the public that there's Unpermitted Construction at the Property. If somehow the Owner is able to bring the Property under compliance, then the notice may be removed.
- We do not know when or if the Owner will bring the Property under compliance, until then the notice serves to notify the public and potential buyers about the Unpermitted Construction. The potential buyers themselves may be first time buyers who have limited means to remedy the Unpermitted Construction.
- The Building Bylaw applies to everyone, regardless of their personal circumstances, medical conditions, or financial situations. The Owner made a decision to build without permits and it would be unfair to unload these problems onto an unsuspecting buyer.
- The Owner referred to the contraventions as being the contractor's fault, that is a matter between the Owner and the contractor. The matter has nothing to do with the City or any potential buyer of the Property. The Owner is ultimately responsible for the work that occurs on their property, and the building bylaw makes it clear that the property owner is responsible.

- The Owner has had since 2022 to bring the Property into compliance. Even if she was unaware of the SWO, she was sent a letter by the Building Division in April 2022 asking her to bring the Property into compliance. In the October 2022 conversation with the BEO, she mentioned the desire to retain an engineer; this is also referenced in Appendix I of the Corporate Report.
- BC Supreme Court made a decision on a case closely resembling this one recently, stating that ‘even if there were potential remedies to bring the structures into compliance, which I conclude there are not, the Court must not condone unlawful activity’. Counsel believes that quote should apply in this case.

G. CLOSING SUBMISSIONS BY THE OWNER

The Owner provided the following closing comments:

- The Owner again requested that Council not file the notice on title with the Land Title Office given her good faith compliance efforts immediately after she recovered from health challenges.
- The Owner emphasized that there is no intention of selling the only property they own and that it is their primary residence.
- The Owner claimed that if the notice is filed, the Property may foreclose and the family will be left without shelter. They have spent \$250,000 on the Unpermitted Construction and took on debt as result.
- The Owner requested Council to support their DVP application, and expressed a willingness to demolish the portion of the Property that encroaches on the setback should the DVP application be rejected. The Owner’s engineer can provide the necessary assessments and field reviews to the City.
- The Owner requested Council to direct the Building Division and Planning & Development Department to review the submitted architectural and structural drawings.
- The Owner advised of their neighbour’s house that was ordered by BC Court to be demolished to the setback. The demolition plan is currently being reviewed by the City. The Owner asked to have the same opportunity to apply for demolition permit to demolish to setback distance.
- The Owner requested Council to direct the BEO to cease ongoing harassment at the Property, including unwarranted visits and undue pressure. The Owner claimed that he BEO’s action is disproportionate to neighbouring areas with similar violations.

H. DECISION BY COUNCIL

It was
Moved by Councillor Elford
Seconded by Councillor Stutt
That Council:

After considering:

- a. Corporate Report R156 concerning the property located at 7686 – 125 Street, Surrey, British Columbia and legally described as:

PID: 005-486-874
Lot 268 Section 19 Township 2 New Westminster District Plan 56495
(the “Property”);

- b. The submissions presented by Counsel for the Building Inspector; and

- c. The submissions presented by the Property Owner.

Direct the City Clerk to pay any prescribed fee and file in the Land Title Office, pursuant to Section 57 of the *Community Charter*, a notice on title to the Property which shall, in substance, indicate that:

- a. A resolution relating to the Property has been made under Section 57 of the *Community Charter*; and

- b. Further information may be inspected at Surrey City Hall.

RES.R24-1623

Carried

I. ADJOURNMENT

It was
Moved by Councillor Annis
Seconded by Councillor Bose
That the meeting be adjourned.

RES.R24-1624

Carried

The Special Council meeting adjourned at 11:50 a.m.

Jennifer Ficocelli
City Clerk and
Director Legislative Services

Mayor Brenda Locke