

COUNCIL AGENDA
Date: June 19, 2017 Item: 10.

10.

DISTRICT OF WEST VANCOUVER
750 17TH STREET, WEST VANCOUVER BC V7V 3T3

COUNCIL REPORT

Date:	May 31, 2017
From:	Kevin Spooner, Manager of Permits and Inspections Ray Sept, Building Inspector
Subject:	733 20 th Street - Community Charter, Section 57 Notice on Land Title
File:	12.2410.01

RECOMMENDATION

Council direct the Municipal Clerk to file in the Land Title Office pursuant to section 57 of the *Community Charter* a notice on title to that property legally described as PID 011-724-935, Lot 12, Block 6, District Lot 775, Plan 4155, which notice shall state that a resolution relating to that land has been made under this section and that further information about it may be inspected at Municipal Hall.

1.0 Purpose

The purpose of this report is to recommend that Council direct that a notice be registered at the Land Title Office in accordance with *Community Charter* Section 57, on the title of that property legally described as Parcel Identifier PID 011-724-935, Lot 12, Block 6, District Lot 775, Plan 4155, with the civic address of 733 20th Street, West Vancouver, B.C. (the "Property").

2.0 Legislation/Bylaw/Policy

Relevant sections of the District of West Vancouver's Building Bylaw No. 4400, 2004 (the "Building Bylaw") provide as follows:

Part 5 General Prohibitions

- 5.1 No Construction of any *Building* or *Structure*, or part thereof, shall be carried out without a *Permit* being first obtained from the *Building Inspector*
- 5.2 No person shall tamper with any notice posted or affixed to any *Building* pursuant to any provision of this Bylaw.
- 5.3 No person shall use or occupy any new *Building* or part thereof until an approval for occupancy has been granted by the *Building Inspector*.
- 5.4 No person shall do any work that is at variance with approved plans or *Permits*, unless such change has been approved in writing by the *Building Inspector*.

Part 6 Inspector Powers

- 6.1 The Building Inspector may:
 - 6.1.3 Revoke a *Permit* where it is based on incorrect information, or there is a contravention of this Bylaw, the Building Code, or a *Permit*;
 - 6.1.4 Suspend a *Permit*, by ordering the cessation of work, for a period of time and on terms determined by the *Building Inspector*, where there is a contravention of this Bylaw or a *Permit*;
 - 6.1.5 Order the cessation of work when the project is proceeding contrary to the approved traffic or storm water management plan;
 - 6.1.6 Order the correction of any work where the *Construction* is not in compliance with this Bylaw or the *Building Code*, *Structure* is in an unsafe condition;

Part 7 Owner Responsibilities

- 7.1 The issuance of a *Permit*, the approval of plans, or inspections made by the Building Inspector do not relieve the *Owner* from full responsibility for carrying out the work in accordance with the approved plans, *Permits*, this bylaw or the *Building Code*.

Part 8 Owner Duties

- 8.1 Every *Owner* of a property or their Agent shall:
 - 8.1.1 Obtain from the *Building Inspector* prior to commencement of work *Permits* relating to *Construction of Buildings or Structures*, or change in classification of occupancy;
 - 8.1.2 Except for the Construction of a Part 3 Building, give at least 24 hours notice to the Building Inspector and obtain inspection and Building Inspector acceptance of the following aspects of the work prior to covering:
 - 8.1.3 Following completion of *Construction* and prior to occupancy submit *Letters of Assurance* from the respective *Registered Professionals* confirming design and field review responsibilities;
 - 8.1.4 Obtain from the *Building Inspector* a Certificate of Occupancy prior to the occupancy of any new *Building*, after all aspects of the work have received inspection approval;

Part 9 Building Permits

- 9.5 Where existing *Structures* have been damaged or demolished such that only 25% of the existing Structure remains above the foundations, the entire Structure shall be demolished.

Part 10 Plumbing Permits

- 10.8 *Pool* drains are to be connected to the Municipal sanitary sewer.
- 10.10 A drainage permit is required for the installation and inspection of drain tile, foundation damproofing, building sanitary and storm sewers and on-site building water service lines.

Part 11 Electrical Permits

- 11.1 Electrical Permits are issued to qualified persons in accordance with the provisions of the *Safety Standards Act* and associated regulations. Electrical Permits may also be issued to a homeowner for work on their own home as per Section 17 of the Electrical Safety Regulation.
- 11.2 All work is to be done in accordance with the *Canadian Electrical Code*, the *Safety Standards Act* and associated regulations.

Part 12 General Permit Regulations

- 12.8 The issuance of a *Permit* and the acceptance of drawings shall not prevent the *Building Inspector* from thereafter requiring the correction of any work which is in contravention of this Bylaw and the *Building Code* or other Municipal bylaw;...

Part 13 Occupancy

- 13.1 No *Building* or *Structure*, or portion thereof, is to be occupied until approval to do so is granted by the Building Inspector and is subject to all *Permits* receiving final inspection approval;...

Subsections 911(9) and 911(10) of the *Local Government Act*, RSBC 1996, c. 232 provide:

Non-conforming uses and siting

911 (9) If the use and density of buildings and other structures conform to a bylaw under this Division but,

- (a) the siting, size or dimensions of a building or other structure constructed before the bylaw was adopted does not conform with the bylaw, ...

the building or other structure or spaces may be maintained, extended or altered to the extent authorized by subsection (10).

(10) A building or other structure or spaces to which subsection (9) applies may be maintained, extended or altered only to the extent that

a) 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...

3.0 Background

- 3.1 On October 30, 2013, Mr. Philip Garrow made an application for a building permit to renovate the then-existing small one-storey dwelling on the Property ("the Original Dwelling") and to add an addition on the south side and a garage on the northwest side of that dwelling. **Appendix "A"** to this Report is a copy of a photograph attached to an appraisal report for the property showing the Original Dwelling in August 2013. **Appendix "B"** is a copy of this building permit application (the "2013 Application"). The current registered owner of the Property is Ms. Raven Flelo.
- 3.2 Upon receiving the 2013 Application, District staff contacted the Homeowner Protection Office to determine if, in its opinion, the scope of work amounted to a substantial reconstruction of the existing dwelling and, hence, a "new home" under the *Homeowner Protection Act* and its regulations. The HPO determined that it was a "substantially reconstructed" home and their legislation applied; therefore the 2013 Application had to be amended to add an HPO licenced builder.
- 3.3 In early February 2014, before review of the 2013 Application was complete, the District received a complaint that demolition was taking place at the Property. On February 12, 2014, District building staff conducted an inspection of the Property and confirmed that work, specifically interior and exterior demolition, had commenced on the Original Dwelling without a building permit.
- 3.4 District staff posted a stop work order ("the First SWO") on the east face of the Original Dwelling. **Appendix "C"** attaches seven digital photographs of the Original Dwelling being demolished on February 12, 2014.
- 3.5 On February 27, 2014, building permit number 111480 was issued for the Property based on the amended 2013 Application. A copy of this building permit (the "First Building Permit"), attaching approved plans, appears as **Appendix "D"** to this Report.
- 3.6 The First Building Permit approved the following work shown on the **Appendix "D"** plans:

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- a) the interior renovation of the Original Dwelling;
 - b) an addition on the south side of the Original Dwelling; and
 - c) the addition of a garage the northwest side of the Original Dwelling.
- 3.7 The approved plans in **Appendix "D"** do not show any substantial work to the Original Dwelling, beyond some interior renovations, and do not include the removal of the Original Dwelling from its concrete foundations. The First Building Permit does not give approval for any repair or removal of the foundations under the Original Dwelling.
- 3.8 The Property is located within the RS-5 zone. The current Zoning Bylaw requires a setback of 7.6 metres for the front yard and 9.1 metres for the rear yard. The Original Dwelling, which was constructed prior to the passage of the current Zoning Bylaw, was located 1.86 metres within the front yard setback and 0.2 metres within the rear yard setback, making it legally non-conforming with respect to siting.
- 3.9 The approved plans attached to the First Building Permit were marked "No Work to be done on the existing structure (Non-Conforming)". District Building staff specifically made this notation because any unapproved work on the Original Dwelling could result in the loss of the legal non-conforming status and require compliance with the Zoning Bylaw setbacks for the entire building.
- 3.10 On March 10, 2014, District engineering staff conducted an inspection of the Property and found that the Original Dwelling had been almost entirely demolished, with the remaining portion completely removed from the foundations and placed on the boulevard. The District Building Inspector calculated that only little of the Original Dwelling above the foundations remained intact (although relocated), and all the foundations had been removed. None of this work was shown on or approved by the First Building Permit.
- 3.11 The state of the Property on March 10, 2014 is show in three photographs attached as **Appendix "E"**. The first photo shows work on the new foundation in the foreground with the floor structure of the remaining portion of the previously existing dwelling barely visible on the left side. The second photo shows the foundation work in the foreground and the remaining part of the floor structure of the previously existing dwelling at the top. The third photo shows the unpermitted foundation work, with part of the floor structure of the previously existing dwelling to the right.
- 3.12 District Building staff inspected the Property again on March 18, 2014 and took four photographs, attached as **Appendix "F"**, showing the remaining portions of the Original Dwelling, consisting of a portion of a

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stripped frame and attached stripped wall (note the building with scaffolding is on a neighboring property).

- 3.13 On March 20, 2014 District building staff posted a second Stop Work Order (the "Second SWO") on the east fence of the Property. The photos attached as **Appendix "G"** show the placement of the Second SWO and the condition of the Property on that date.
- 3.14 The Second SWO was removed by an unknown person. District building staff posted two further Stop Work Orders on the Property on March 21, 2014, both of which were also removed without the District's permission.
- 3.15 As a result of the substantial destruction of the Original Dwelling, the District determined that legal non-conforming status had been lost, triggering requirements for a demolition permit for the Original Dwelling, new building plans accurately showing the new dwelling and foundations to be built, and a new permit application to authorize these new structures, all before the project could proceed.
- 3.16 The First Building Permit was cancelled, since the Original Dwelling no longer existed and therefore the work authorized by that permit could not be carried out.
- 3.17 Due to the destruction of the Original Dwelling and the loss of legal non-conforming status, the Zoning Bylaw now applied with respect to the siting of any new building on the Property. Ms. Fiello submitted a new set of plans showing a new dwelling built atop new foundations which encroached into the setbacks. A copy of these plans is attached as **Appendix "H"**.
- 3.18 The **Appendix "H"** plans were rejected. However, the Second SWO was lifted prior to the issuance of a new building permit, to allow the Petitioner to do some minor work on the forms that complied with the setbacks and to have an electrician install a temporary power pole.
- 3.19 Ms. Fiello then provided the District with a series of plans, all of which continued to show a dwelling being built on foundations within the setback area. These plans were all rejected. Finally, Ms. Fiello submitted a set of plans for a dwelling, entitled "The Pretend House", that did not encroach into the setback on any of the plan views (although non-conforming encroachments were still shown on the elevation views).
- 3.20 District staff annotated the elevation plans to remove the non-conforming areas, clearly marking them to show that no encroachments into the setbacks were permitted, and then issued building permit number 111973 based on these modified plans on April 10, 2014 (the "Second Building Permit") which is attached to this report along with the final annotated plans as **Appendix "I"**.

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- 3.21 On April 9, 2014, Ms. Fello filed a petition in BC Supreme Court seeking judicial review of the decision to cancel the February 27, 2014 Building Permit. The Petition, supported by an Affidavit sworn by Mr. Philip Garrow who advises that he is Ms. Fello's husband, alleges that more than 25% of the Original Dwelling remained and was used in the construction of the new residence on the Property, and that therefore the changes constituted an "addition or alteration" such that the previous legal non-conforming status should have been preserved.
- 3.22 The District filed a Response to Ms. Fello's Petition, setting out the basis upon which the First Building Permit had been cancelled. The owner did not pursue the petition and no further steps have been taken in this litigation.
- 3.23 On May 4, 2014, District staff attended at the Property for an inspection and observed that a heated patio area had been added to the west side of the Property. This work was not part of the plans attached to the April 10, 2014 Building Permit and therefore was not permitted; in addition, the patio was not built in accordance with the BC Building Code since it lacked the proper insulation for the radiant heating slabs. Finally, no geotechnical engineer's site safety letter was posted on site.
- 3.24 On October 14, 2014 the building department received a letter and email from Mr. Garrow advising that he would be applying for a variance from the Board of Variance to authorize his previously proposed building plans that encroached in to the zoning setbacks.
- 3.25 To the District's knowledge, no such application has been made.
- 3.26 On April 16, 2016, District staff received a phone call from a neighbor of the Property, complaining that pool water was being pumped from the Property on to the neighbor's property. Bylaw staff attended to investigate, but the complained-of behavior had ceased.
- 3.27 On March 1, 2017, the District received a complaint letter from two neighbors of the Property, regarding inadequate management of underground and surface water drainage of the Property. Specifically, this letter identifies issues arising from a leaking hosepipe bib; excess impermeable surface area in the back yard, contrary to the Property's approved stormwater management plan; and a pool constructed on the Property without any drainage facilities, meaning that to be emptied, the pool must be illegally drained into the storm sewer or on to neighboring properties. A copy of this complaint letter, with photographs of the offending items, is attached to this Report as **Appendix "J"**.
- 3.28 On April 4, 2017, District bylaw and planning staff attended at the Property to conduct an inspection. A new residential building had been constructed on the Property (the "New Dwelling"). A picture of the New

Dwelling is attached as **Appendix "K"**. Staff observed furniture inside, lighting on and luxury vehicles periodically parked in the garage, leading staff to the conclusion that the New Dwelling may be occupied, with no occupancy permit.

- 3.29 During the April 4, 2017 inspection, at the rear of the Property, District staff observed a hosepipe bib leaking a significant amount of water, which had flooded the back yard of the Property approximately 6 to 8 inches deep. The leakage was flowing across an electrical outlet and wiring, creating an electrocution hazard. An in-ground pool had been constructed in the back yard and was half full of stagnant, dirty water. District staff also noted that green mould or algae was visible through the windows on the interior carpet of the basement level, likely as a result of the standing water having also flooded the house.
- 3.28 **Appendix "L"** to this report shows three photographs taken by District staff during this inspection.
- 3.29 On April 4, 2017, after the inspection, District staff received a call from Mr. Garrow, who advised that the leak would be fixed and the pool emptied the next day. District staff re-attended at the Property on April 6, 2017 and observed that neither had been done. Two photographs of the state of the Property on April 6, 2017, taken by District staff, are attached as **Appendix "M"**.
- 3.30 District staff investigated the history of the Property and determined that no inspections had been done since May 4, 2014, and that no occupancy permit had been issued for the New Dwelling.
- 3.31 On April 10, 2017, District Bylaw staff contacted Mr. Garrow and requested access to the interior of the New Dwelling to determine compliance with the Building Bylaw. Mr. Garrow advised that his wife Ms. Fliello would provide access on April 13, 2017. Later in the day, Mr. Garrow sent an email from his company account at ADC Homes Ltd., attaching pictures of the rear of the Property showing that the leak had been fixed and the pool had been drained.
- 3.32 On April 12, 2017, Mr. Garrow contacted the District to advise that his wife would not be available to provide interior access for the inspection the next day.
- 3.33 On April 13, 2017, District bylaw, permitting and building staff attended at the Property and conducted an exterior inspection only. Staff determined that the New Dwelling had not been built in accordance with the Zoning Bylaw or the Second Building Permit, in that the foundations and structure encroach into the required setbacks. These encroachments extend even further into the setback area than did the previous legally non-conforming Original Dwelling. A diagram showing

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the approximate dimensions of the New Dwelling compared to the approved footprint in the Second Building permit (shown as red cross-hatched area) and the footprint of the Original Dwelling (the blue hatched outlined area) is attached as **Appendix "N"**.

- 3.34 District staff posted a Stop Work Order on the Property (the "Third SWO"). Photographs of the Property taken during the April 13, 2017 inspection, including of the Third SWO, are attached as **Appendix "O"**.
- 3.35 On April 18, 2017, Mr. Garrow spoke to District staff via telephone and confirmed that he had seen the Third SWO posted on the Property. Mr. Garrow advised that he would be speaking with his lawyer before permitting an interior inspection, since he was unsure under which of the two previously issued building permits the inspection would be conducted.
- 3.36 On April 19, 2017, District staff attended at the Property and posted a 24-hour Notice of Inspection.
- 3.37 On April 20, 2017, District building inspection and bylaw staff attended at the Property and conducted an inspection. Mr. Garrow was present and permitted interior access to the New Dwelling. Attached as **Appendix "P"** are 19 photographs taken by District staff during this inspection.
- 3.38 Some deficiencies noted during the April 20, 2017 inspection, in addition to those noted in previous inspections, include:
- a) Electrical: no record of rough wire inspection for any low voltage work, no GFCI protection for fixtures, protective covers missing from exterior fixtures and relays, insufficient clearance for electrical panels, fixed equipment being improperly fed from flexible cabling, missing spa pump chassis bonding and leakage current collectors for all water inlets or outlets of spa, 12/2 teck cable not appropriately terminated, Loomex cabling not terminated, Loomex impermissibly installed underground, pot lights in shower stalls not waterproofed.
 - b) Heating: no certificate of installation
 - c) Sprinklers: no flow report or Schedule CB submitted, no alarm test results provided
 - d) Drainage: sanitary, water and storm services could not be inspected due to build; main sump lid improperly covered; deck drains improperly covered, lower courtyard drain plugged
 - e) Plumbing: no certification for floor mount vessel sinks, mechanical room floor drain grate not flush with floor surface, spa drain standpipe shorter than the required 24", cleanouts for sinks not accessible, unable to locate pressure reducing valve for toilet

connected to sprinkler system water, shower valve cover plate has gaps exposed to water leakage.

This is not meant to be and is not a complete list of all deficiencies.

- 3.39 District staff also observed that bleach appeared to have been dumped over the basement carpeting which had been covered in visible green mould or algae during previous inspections. Further non-visible mould issues in the New Dwelling may exist as a result of the prolonged unaddressed flooding.

Inspections required during the construction of a new building have not been completed. These required inspections include:

Missed Building Inspections:

- a) Slab inspection for house (initially rejected May 2,2014 and never recalled)
- b) Pool form inspection.
- c) Slab inspection for garage.
- d) Frame inspection for house and accessory building.
- e) Insulation inspection.
- f) Final inspection for house, accessory building and pool

Missed Electrical Inspections:

- g) Pool bonding inspection
- h) Pool shed rough wire inspection
- i) Pool shed underground cable/conduit feeder inspection
- j) Pool conduit inspection
- k) Landscape conduit/cable inspection
- l) Final inspection
- m) Low Voltage rough wire inspection
- n) Low Voltage final inspection

Missed Plumbing Inspections:

- o) Hot water heat rough-in inspection (rejected May 2,2014 and never re-inspected)
- p) Storm sewer rough-in
- q) Sanitary sewer rough-in
- r) Water service rough-in
- s) DWV above ground rough-in.

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- t) Water pipe rough-in
- u) Tubs and showers rough-in
- v) Sprinklers rough-in
- w) Sprinkler frost protection
- x) Pool sump
- y) Final plumbing
- z) Final sprinkler
- aa) Final hot-water heating
- bb) Final drainage
- cc) Final pool

4.0 Analysis

- 4.1 **Work Done Without Permit** – The construction of the New Dwelling at 733 20th Street has taken place without the required building inspections and in a configuration which does not accord with either the issued building permit or the Zoning Bylaw setback requirements:

In addition to these unpermitted structures, the construction of the New Dwelling has serious deficiencies. Due to Ms. Fieello's failure to call for required inspections during the construction process, the New Dwelling may have additional latent structural or other deficiencies which cannot be identified without substantial deconstruction of or damage to the New Dwelling.

- 4.2 **Discussion** – Subsection 57(1)(b) of the *Community Charter* permits the filing of a notice in the land title office if a building inspector “discovers that something was done with respect to a building or other structure, or the construction of a building or other structure, that required a permit or an inspection under a bylaw” and “the permit was not obtained or the inspection not satisfactorily completed”.

It may not be clear to prospective purchasers that the New Dwelling was not built in compliance with the Building Bylaw or the BC Building Code. A prospective purchaser may erroneously conclude that the District permitted or now tolerates the construction, either because of the age of the New Dwelling or because the New Dwelling is confused with permitted work.

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Registering a *Community Charter* Section 57 notice on the title of 733 20th Street should alert the public and prospective purchasers of the failure to call for or pass inspections and related deficiencies. Notified persons would be directed to Municipal Hall where they could obtain copies of the building file for 733 20th Street and this report. **For this reason, the Manager of Permits and Inspections is recommending to Council that a *Community Charter*, Section 57 notice be placed on the land title of this Property.**

- 4.3 **Consultation** - Municipal Solicitors. The District is seeking to provide a copy of this report to the property owner to allow for sufficient notice prior to Council consideration of this report on June 19, 2017.
- 4.4 Sustainability – Not Applicable
- 4.5 Public Engagement and Outreach – Not Applicable
- 4.6 Other Communication, Consultation, and Research – Not Applicable

5.0 Options

5.1 Recommended Option

Council may approve the resolution as written (recommended), or suggest amendments consistent with section 57 of the *Community Charter*.

5.2 Considered Options

- Council may approve the resolution as written (recommended)
- Council may suggest amendments consistent with section 57 of the *Community Charter*
- Council may decline to direct the placement of a s. 57 notice on the property
- Council may direct staff to consider and report back on additional enforcement options


6.0 Conclusion

A house has been constructed on the Property contrary to the approved building permit plans, and almost entirely without inspections and inspection approvals. It is highly recommended that Council place a s. 57 notice on title to the property to warn potential purchasers of the Property that the house has not been built in accordance with the building permit or building bylaw requirements.

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Date: May 31, 2017 Page 13
From: Kevin Spooner, Manager of Permits and Inspections and Ray Sept, Building Inspector
Subject: 733 20th Street - Community Charter, Section 57 Notice on Land Title

Author:


Kevin Spooner Manager of Permits and Inspections

Concurrence:


Ray Sept, Building Inspector

Appendices:

- Appendix A – Photograph showing the Original Dwelling in August 2013
- Appendix B – October 30, 2013 Building Permit Application
- Appendix C – 7 photographs of Original Dwelling being demolished on February 12, 2014
- Appendix D – February 27, 2014 Building Permit No. 111480
- Appendix E – 3 photographs showing the Property on March 10, 2014
- Appendix F – 4 photographs showing remnants of Original Dwelling on March 18, 2014
- Appendix G – 5 photographs showing Second SWO and the Property on March 20, 2014
- Appendix H – Plans showing new dwelling built atop non-conforming footprint, within the setbacks
- Appendix I – Building permit number 111973 issued April 10, 2014
- Appendix J – March 1, 2017 complaint letter and photographs
- Appendix K – Photograph of New Dwelling
- Appendix L – 3 photographs taken during April 4, 2017 Inspection
- Appendix M – 2 photographs taken during April 6, 2017 Inspection
- Appendix N – Hand-drawn plan showing encroachment of New Dwelling and Original Dwelling into setbacks
- Appendix O – 4 photographs taken during April 13, 2017 inspection
- Appendix P – 19 photographs taken during April 20, 2017 inspection

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