Director	CAO

COUNCIL AGENDA	
Date: November 22, 2021	Item: 4./R-1

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

4./R-1

COUNCIL REPORT

Date:	October 22, 2021
From:	Eric Villeneuve, Manager of Land Development
Subject:	Appeal of Director of Planning's Denial of an Encroachment Application for a Fence at 6560 Nelson Avenue
File:	05-1008-01-2021

RECOMMENDATION

THAT:

1) the Director of Planning and Development Services' (the Director) denial of an application for an Encroachment Permit for a fence on the public boulevard abutting the property in the District of West Vancouver legally described as Plan 5357, District Lot 430, Block 36, Lot 20 (PID 011-168-463) with a civic address at 6560 Nelson Avenue be confirmed; and

2) the property owners be required to remove the fence from the public boulevard or that the fence be relocated onto private property.

1.0 Purpose

The purpose of this report is to provide information to Council regarding the fence on the public boulevard abutting 6560 Nelson Avenue that was to be removed as a condition of the building permit issued in 2018 for a new house on the lot. Staff are requesting Council confirm staff's decision and that the fence be removed or relocated onto private property.

As per Councils' bylaws, an applicant is able to appeal to Council if they are dissatisfied with staff's decision.

2.0 Legislation/Bylaw/Policy

Boulevard Bylaw No. 4886, 2016 regulates the use and occupation of highway boulevards. To build a fence on the boulevard, an owner must obtain permission under the Boulevard Bylaw through an Encroachment Permit. Under the Boulevard Bylaw, an applicant can appeal to Council a decision by staff regarding a delegated Encroachment Permit.

3.0 Official Community Plan

The Official Community Plan does not apply.

4.0 Financial Implications

Not applicable.

5.0 Background

5.1 Site and Context

The subject property is zoned RD2 and is approximately 538.3 m^2 in size (**Appendix A**). The property is situated at the corner of Nelson Avenue and Douglas Street, however Douglas Street is a dead end and not connected to Nelson Avenue. Driveway access to the property is from Douglas Street.

The fence is installed on the boulevard on the east side of Nelson Avenue between the existing sidewalk and property lines of 6560 and 6570 Nelson Avenue. The fence is made of wood and approximately 1.8 m (6 feet) in height, the date of original installation is unknown.

5.2 Previous Decisions

Not applicable.

5.3 History

A building permit at this property was issued for a new house in 2018, the house is currently under construction and nearing completion. The existing fence located on the boulevard was shown on the landscape plans submitted with the building permit application; notes on the accepted landscape plans required the fence to be relocated to property line as a condition of the building permit (**Appendix B**).

Land Development staff inspected the site on August 19, 2021 and notified the owners in writing that the fence was in contravention of the accepted building permit drawings and was to be removed or relocated to private property. The owners requested to keep the fence in the current location, but the request was denied by the Director of Planning on September 15, 2021. The owners are now appealing to Council to reverse the decision by the Director and have Council allow the fence to remain in its current location within the boulevard.

6.0 Analysis

6.1 Discussion

The Director may issue an Encroachment Permit for certain types of encroachments outlined in Section 7.5 of the Boulevard Bylaw; a fence is not included in that list. Section 7.7 allows the Director to issue an Encroachment Permit authorizing encroachments other than those described in Section 7.5 (such as the requested fence encroachment) if the Director is satisfied that the encroachment complies with a variety of conditions set out in Section 6.5 of the Bylaw, including:

6.5.1 Does not interfere with access to, bury, expose, or damage any pipe, hydrant, valve box, service post, manhole, or other utility infrastructure;

6.5.6 Is of a semi-permanent nature and may be easily removed;

6.5.7 Is not necessarily for the exclusive benefit of the owner of the real property to which the encroachment is adjacent to in the opinion of the Director.

The fence encroachment does not satisfy these criteria because it would interfere with access to the water service and water meter for 6560 Nelson Avenue, not be considered "semi-permanent" and would not be easily removed, and provides exclusive benefit and use of the boulevard adjacent to 6560 Nelson Avenue.

The owners were notified of the Director's decision and reasons why the encroachment permit was denied on September 15, 2021. The owners, in compliance with the Boulevard bylaw, requested an appeal to Council and provided reasons why the fence should be allowed to remain in its current location. The Director's decision and the owner's response are included in **Appendices C and D**, respectively.

The property owners could 1) remove the fence, or alternatively, 2) relocate the fence onto the subject property in accordance with the Boulevard and Zoning Bylaw regulations.

6.2 Sustainability

Not applicable.

6.3 Public Engagement and Outreach

Not applicable.

6.4 Other Communication, Consultation, and Research

Not applicable.

7.0 Options

7.1 Recommended Option

THAT Council directs the property owners to remove the fence from municipal property or relocate the fence onto private property.

7.2 Considered Options

THAT Council approve the Encroachment Permit application to retain the fence through an Encroachment Agreement.

8.0 Conclusion

The existing fence on the boulevard adjacent to 6560 Nelson Avenue was to be removed or relocated to private property as a condition of obtaining the building permit for a new house. The fence is in contravention of Boulevard Bylaw No. 4886, 2016 and an application for an Encroachment Permit was denied by the Director of Planning. In accordance with District bylaws, the owners of 6560 Nelson Avenue have appealed to Council to overturn the decision by the Director. Staff recommend that Council uphold the Director's decision to deny the Encroachment Permit and that the property owners be directed to remove the fence from municipal property.

Author:

Eric Villeneuve, Manager of Land Development

Appendices:

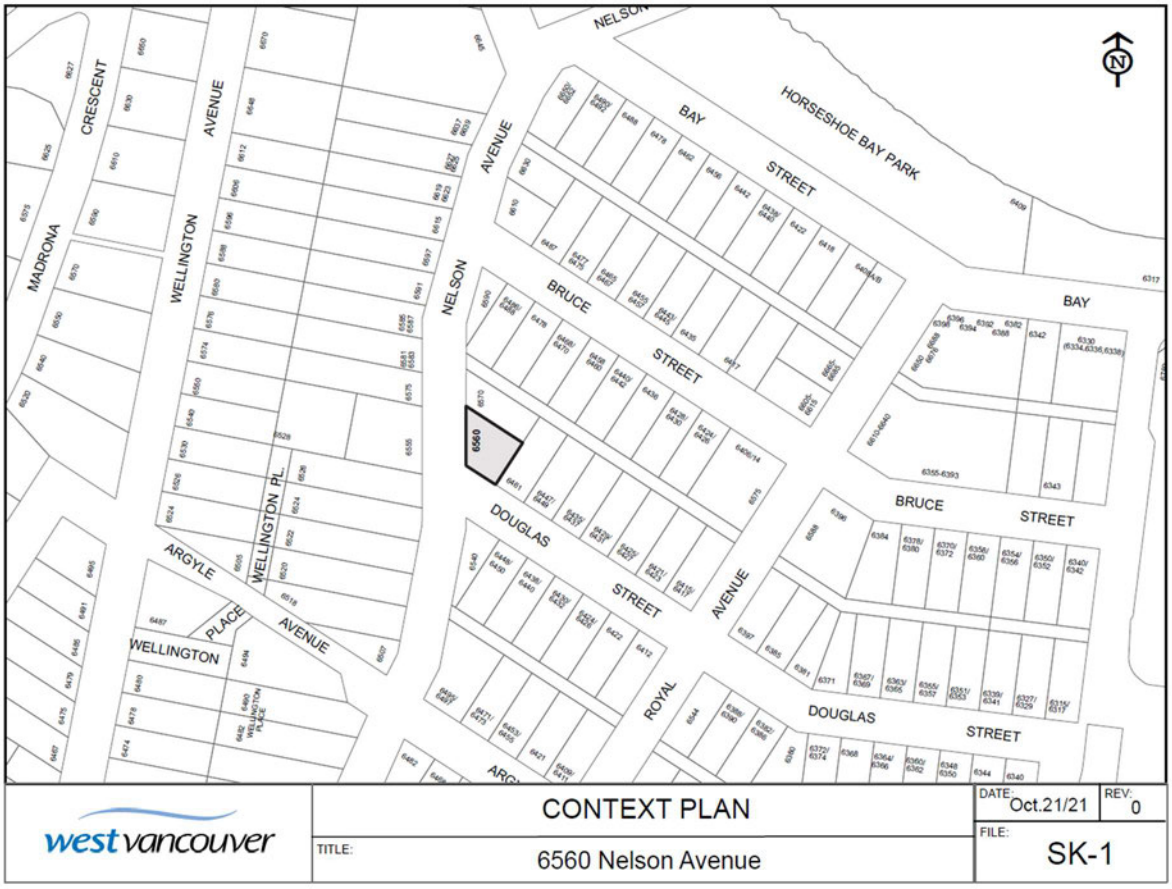
A – Context plan and aerial image of 6560 Nelson Avenue

B – Accepted landscape plans from building permit for 6560 Nelson Avenue

C – Email notifying the owners of the Director's denial of encroachment permit

D – Email from homeowners of 6560 Nelson Avenue requesting Council appeal of Director's decision

APPENDIX A


NELSON
HORSESHOE BAY PARK
BAY
STREET
AVENUE
CRESCENT
MADRONA
WELLINGTON
WELLINGTON PL.
BRUCE
DOUGLAS
ARGYLE
PLACE
ROYAL
6560
CONTEXT PLAN
6560 Nelson Avenue
Oct.21/21
0
SK-1

Approx fence location
6575
6570
6560
6555
6461
6447/
6449
200
150
200 (D)
150
450

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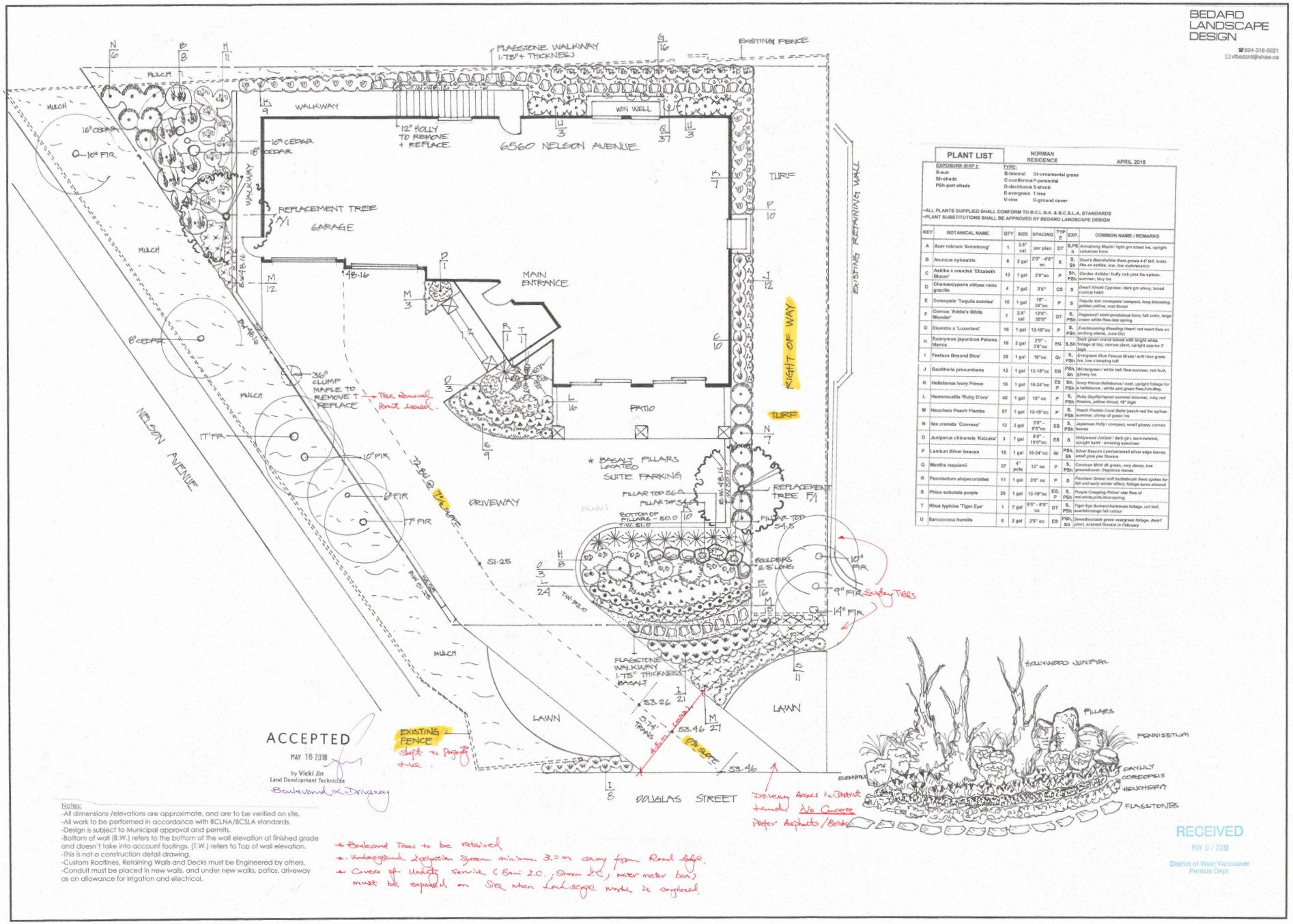
BEDARD LANDSCAPE DESIGN
604-318-0221
vlbedard@shaw.ca
REVISIONS
BY
NORTH
NORMAN RESIDENCE
6560 NELSON AVENUE, WEST VANCOUVER, B.C.
Date APRIL 2018
Scale 3/16" = 1'0"
Drawn V. BEDARD
Job
Sheet
Of Sheets
PLANT LIST
NORMAN RESIDENCE
APRIL 2018
EXPOSURE (EXP.):
S-sun
Sh-shade
PSh-part shade
TYPE:
B-biennal
C-coniferous
D-deciduous
E-evergreen
V-vine
Gr-ornamental grass
P-perennial
S-shrub
T-tree
G-ground cover
-ALL PLANTS SUPPLIED SHALL CONFORM TO B.C.L.N.A. & B.C.S.L.A. STANDARDS
-PLANT SUBSTITUTIONS SHALL BE APPROVED BY BEDARD LANDSCAPE DESIGN
KEY | BOTANICAL NAME | QTY | SIZE | SPACING | TYPE | EXP. | COMMON NAME / REMARKS
A | Acer rubrum 'Armstrong' | 1 | 2.5" cal | per plan | DT | S,PSh | Armstrong Maple / light grn lobed lvs, upright columnar form
B | Aruncus sylvestris | 8 | 2 gal | 2'0" - 4'0" oc | S | S, Sh | Goat's Beard/white flwrs grows 4-6' tall, looks like an astilbe, low, low maintenance
C | Astilbe x arendsii 'Elizabeth Bloom' | 10 | 1 gal | 2'0"oc | P | Sh, PSh | Garden Astilbe / fluffy rich pink flw spikes-summer, lacy lvs
D | Chamaecyparis obtusa nana gracilis | 4 | 7 gal | 3'6" | CS | S | Dwarf Hinoki Cypress / dark grn shiny, broad conical habit
E | Coreopsis 'Tequila sunrise' | 16 | 1 gal | 18" - 24"oc | P | S | Tequila sun coreopsis/ compact, long blooming, golden yellow, rust throat
F | Cornus 'Eddie's White Wonder' | 1 | 2.5" cal | 12'0" - 20'0" | DT | S, PSh | Dogwood/ semi-pendulous form, fall color, large cream white flwrs late spring
G | Dicentra x 'Luxuriant' | 16 | 1 gal | 12-18"oc | P | S, PSh | Everblooming Bleeding Heart/ red heart flws on arching stems, June-Oct
H | Euonymus japonicus Paloma blanca | 19 | 2 gal | 2'0" - 3'0"oc | EG | S,Sh | Dark green round leaves with bright white foliage at top, narrow plant, upright approx 3' high
I | Festuca Beyond Blue' | 29 | 1 gal | 18"oc | Gr | S, PSh | Evergreen Blue Feacue Grass / soft blue grass lvs, low clumping tuft
J | Gaultheria procumbens | 12 | 1 gal | 12-18"oc | EG | PSh, Sh | Wintergreen / white bell flws-summer, red fruit, glossy lvs
K | Helleborus Ivory Prince | 16 | 1 gal | 18-24"oc | ES P | Sh, PSh | Ivory Prince Hellebores / neat, upright foliage for a hellebore , white and green flws,Feb-May
L | Hemerocallis 'Ruby D'oro' | 40 | 1 gal | 18" oc | P | S, PSh | Ruby Daylily/repeat summer bloomer, ruby red flowers, yellow throat, 18" high
M | Heuchera Peach Flambe | 57 | 1 gal | 12-18"oc | P | S, PSh | Peach Flambe Coral Bells/peach-red flw spikes-summer, clump of green lvs
N | Ilex crenata 'Convexa' | 13 | 3 gal | 3'0" - 6'0"oc | ES | S, PSh | Japanese Holly / compact, small glossy convex leaves
O | Juniperus chinensis 'Kaizuka' | 3 | 7 gal | 8'0" - 10'0"oc | ES | S | Hollywood Juniper/ dark grn, semi-twisted, upright habit - amazing specimen
P | Lamium Silver beacon | 10 | 1 gal | 18-24"oc | GI | PSh, Sh | Silver Beacon Lamium/silver edge leaves, small pink pea flowers
Q | Mentha requienii | 37 | 4" pots | 12" oc | P | S, PSh | Corsican Mint /A green, very dense, low groundcover, fragrance leaves
R | Pennisetum alopecuroides | 11 | 1 gal | 3'0" oc | P | S | Fountain Grass/ soft bottlebrush flwrs spikes for fall and early winter effect, foliage turns almond
S | Phlox subulata purple | 20 | 1 gal | 12-18"oc | EG, P | S, PSh | Purple Creeping Phlox/ star flws of red,white,pink,blue-spring
T | Rhus typhina 'Tiger Eye' | 1 | 7 gal | 6'0" - 8'0" oc | DT | S, PSh | Tiger Eye Sumach/chartreuse foliage, cut leaf, scarlet/orange fall colour
U | Sarcococca humilis | 6 | 2 gal | 2'6" oc | ES | PSh, Sh | Sweetbox/dark green evergreen foliage, dwarf plant, scented flowers in February
FLAGSTONE WALKWAY 1-.75" THICKNESS
EXISTING FENCE
WALKWAY
WIN WELL
12" HOLLY TO REMOVE + REPLACE
6560 NELSON AVENUE
TURF
REPLACEMENT TREE
GARAGE
MAIN ENTRANCE
RIGHT OF WAY
EXISTING RETAINING WALL
PATIO
36" CLUMP MAPLE TO REMOVE + REPLACE
Tree Removal Permit Issued.
BASALT PILLARS LOCATED SUITE PARKING
DRIVEWAY
REPLACEMENT TREE
BOULDERS 2.5' LONG
9" FIR Existing Tree
14" FIR
LAWN
EXISTING FENCE Shift to Property line
Boulevard Crossing
DOUGLAS STREET
NELSON AVENUE
MULCH
16" CEDAR
10" FIR
8" CEDAR
17" FIR
7" FIR
HOLLYWOOD JUNIPER
PILLARS
PENNISETUM
DAYLILY
COREOPSIS
HEUCHERA
FLAGSTONES
ACCEPTED
MAY 16 2018
by Vicki Jin
Land Development Technician
Boulevard or Driveway
Driveway Access in Concrete
Prefer Asphalt / Brick
RECEIVED
MAY 07 2018
District of West Vancouver
Permits Dept.
Notes:
-All dimensions /elevations are approximate, and are to be verified on site.
-All work to be performed in accordance with BCLNA/BCSLA standards.
-Design is subject to Municipal approval and permits.
-Bottom of wall (B.W.) refers to the bottom of the wall elevation at finished grade and doesn't take into account footings. (T.W.) refers to Top of wall elevation.
-This is not a construction detail drawing.
-Custom Rooflines, Retaining Walls and Decks must be Engineered by others.
-Conduit must be placed in new walls, and under new walks, patios, driveway as an allowance for irrigation and electrical.
* Boulevard Trees to be retained
* Underground Irrigation System minimum 3.0 m away from Road edge
* Covers for Utilities Service (Sani S.C., Storm S.C., water meter box) must be exposed on Site when Landscape Works is completed

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Eric Villeneuve

From: Eric Villeneuve
Sent: Wednesday, September 15, 2021 3:59 PM
To: [redacted]
Cc: Vicki Jin; Jim Bailey
Subject: RE: BP at 6560 Nelson Avenue - LD final
Attachments: Landscape- approved.pdf

Hi Sarah,

As discussed on the phone today, the Director of Planning and Development Services (the Director) will not be issuing an encroachment permit for the fence on the Nelson Avenue boulevard and the District requires the fence moved to property line in accordance with the accepted landscape plan submitted with your building permit (attached for reference).

Pursuant to the Boulevard Bylaw No. 4886, 2016, section 7.7, the Director may, but is not obliged to, issue an encroachment permit authorizing encroachments not specifically listed in the bylaw (such as the requested fence encroachment) if the Director is satisfied that the encroachment complies with conditions of section 6.5. Section 6.5 includes the following subsections which the requested fence encroachment does not satisfy:

6.5.1: Does not interfere with access to, bury, expose, or damage any pipe, hydrant, valve box, service post, manhole, or other utility infrastructure.

6.5.6: Is of a semi-permanent nature and may be easily removed

6.5.7: Is not necessarily for the exclusive benefit of the owner of the real property to which the encroachment is adjacent to in the opinion of the Director

As mentioned in our phone conversation, you would like to appeal to Council for reconsideration of the decision by the Director of Planning and Development Services. Pursuant to sections 7.13 and 7.14 of the Boulevard Bylaw No. 4886, 2016 an application for reconsideration must be made in writing to the Municipal Clerk (Mark Panneton mpanneton@westvancouver.ca) within ten days of the decision being communicated to you. Please refer to the Boulevard Bylaw No. 4886, 2016 for the requirements of your application for reconsideration.

If you have any questions please let me know. Thank you.

Eric Villeneuve P.Eng., he/him/his
Manager, Land Development | District of West Vancouver
t: 604-921-3494 | westvancouver.ca

Municipal Hall is closed to the public due to COVID-19, but we continue to provide service by email, phone and onsite inspections.

We acknowledge that we are on the traditional, ancestral and unceded territory of the Squamish Nation, Tsleil-Waututh Nation and Musqueam Nation. We recognize and respect them as nations in this territory, as well as their historic connection to the lands and waters around us since time immemorial.

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From: Sarah Norman [redacted]>
Sent: Friday, August 20, 2021 12:39 PM

To: Vicki Jin <vjin@westvancouver.ca>
Subject: Re: BP at 6560 Nelson Avenue - LD final

CAUTION: This email originated from outside the organization from email address [redacted]. Do not click links or open attachments unless you validate the sender and know the content is safe. If you believe this e-mail is suspicious, please report it to IT by marking it as SPAM.

Hi Vicki

Thanks for the below summary. Can you confirm the person I need to speak with regarding the encroachment permit is Jim Bailey, Director of Planning and Development Services? Or is it someone else?

Kind regards

Sarah Norman
[redacted]

Sent from my iPhone

> On Aug 20, 2021, at 11:55 AM, Vicki Jin <vjin@westvancouver.ca> wrote:
>
> Hi Sarah
>
> To summary what we discussed at yesterday's site meeting, prior to building final, will need following items to be completed:
>
> - Driveway grade and gavel/asphalt/paver surface
> - Sani R.O.W. – post CCTV checking, please let me know if you are ready to call
> - all of hardscape as approved landscape plan include retaining wall, walkway etc
> - all of boulevard and minimum 80% soft scape as approved landscape plan
> - as built survey of retaining wall
> - schedule C-B of SWMP from design engineer
> - Fence issue in boulevard – remove or encroachment
>
> In regard to existing fence in boulevard on Nelson, it should be removed as approved plan (see attachment); Encroachment permit will be required if you keep fence in District boulevard zone. please see Boulevard Bylaw for regulation & application procedure.
>
> https://westvancouver.ca/sites/default/files/bylaws/4886%20BOULEVARD%20BYLAW%204886%202016.pdf
>
> Thanks
> **Vicki Jin**
> Land Development Tech | District of West Vancouver
> d: 604-921-2910 | westvancouver.ca
>
> <Landscape- approved.pdf>

Eric Villeneuve

From: Sarah Norman [redacted]
Sent: Wednesday, September 22, 2021 10:21 AM
To: Mark Panneton
Cc: Eric Villeneuve; Vicki Jin; Jim Bailey
Subject: Fwd: BP at 6560 Nelson Avenue - LD final. Boulevard Encroachment Permit Application
Attachments: Landscape- approved.pdf

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Hi Mark

As per the email below from Eric, we wish to appeal to Council for reconsideration of the decision by the Director of Planning and Development Services pursuant to sections 7.13 and 7.14 of the Boulevard Bylaw No. 4886, 2016 for the reasons stated below.

These are in no specific order, but public safety is obviously top priority:-

- Excessive slope from sidewalk to retaining wall that we will have to build at property line to retain boulevard soil (approx 1-1 slope) is a huge danger to public safety, as people could fall down the steep slope, over the retaining wall and onto our concrete driveway. **The sidewalk is 9ft - 10ft higher than our driveway and there will be no barrier to stop people falling down the slope once the fence is removed**
- 10+ substantial trees within 2ft of the sidewalk are a safety issue, as people could walk into them in the dark, given their proximity to the sidewalk
- Undulating ground, many exposed tree roots and rotten tree stumps are a tripping hazard
- People currently already use the area between Nelson & Douglas as a public lavatory, they would use the newly exposed trees along Nelson as a public lavatory also, creating a health hazzard

- Garbage would collect around all the trees, looking untidy and end up in our yard as nothing to stop it- today it is stopped by the fence which we then clean up regularly
- From Bay St to Marine Dr, every house has either a fence or a hedge immediately adjacent to the sidewalk (see photos attached). Removing the fence along our portion of boulevard, will detract from the uniformity of all other properties along the street, and therefore will not be consistent with the long established character of the boulevard and street of which it forms a part
- The City erected an approx 12ft high fence between Nelson and Argyle a few years ago along the same trajectory as our fence, thereby continuing the uniformity
- The current fence is 2m from the edge of the road and does not limit driver visibility in any way. It is also not adjacent to any intersection
- There is no benefit to us, as the land is unusable due to the steep slope and trees
- The current fence has been in place for probably 50+ years, maybe even longer as the original house was built in 1924
- With the fence removed, everyone walking along Nelson would be able to see straight into [redacted], as the upper floor is basically at street level - we would have absolutely zero privacy (see photos attached)

- Our next door neighbour will also be hugely impacted as the fence between the two properties is approx 5ft inside the property line on our side, so we would have to remove the section of fence along Nelson which they currently benefit from. This would reduce their privacy and allow people to see straight into [redacted]
- We would address the issue of access to the water meter by installing a gate in the fence at the location of the meter so City staff could access the meter when necessary

Thank you for your consideration in this matter.

Kind Regards

Sarah & Mike Norman

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CAUTION

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6570

6570
s.22(1)

Begin forwarded message:

From: Eric Villeneuve <evilleneuve@westvancouver.ca>
Subject: RE: BP at 6560 Nelson Avenue - LD final
Date: September 15, 2021 at 3:59:13 PM PDT
To: "[redacted]" <[redacted]>
Cc: Vicki Jin <vjin@westvancouver.ca>, Jim Bailey <jbailey@westvancouver.ca>

Hi Sarah,

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Pursuant to the Boulevard Bylaw No. 4886, 2016, section 7.7, the Director may, but is not obliged to, issue an encroachment permit authorizing encroachments not specifically listed in the bylaw (such as the requested fence encroachment) if the Director is satisfied that the encroachment complies with conditions of section 6.5. Section 6.5 includes the following subsections which the requested fence encroachment does not satisfy:

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As mentioned in our phone conversation, you would like to appeal to Council for reconsideration of the decision by the Director of Planning and Development Services. Pursuant to sections 7.13 and 7.14 of the Boulevard Bylaw No. 4886, 2016 an application for reconsideration must be made in writing to the Municipal Clerk (Mark Panneton mpanneton@westvancouver.ca) within ten days of the decision being communicated to you. Please refer to the Boulevard Bylaw No. 4886, 2016 for the requirements of your application for reconsideration.

If you have any questions please let me know. Thank you.

Eric Villeneuve P.Eng., he/him/his
Manager, Land Development | District of West Vancouver
t: 604-921-3494 | westvancouver.ca

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From: [redacted]
Sent: Friday, August 20, 2021 12:39 PM
To: Vicki Jin <vjin@westvancouver.ca>
Subject: Re: BP at 6560 Nelson Avenue - LD final

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Hi Vicki

Thanks for the below summary. Can you confirm the person I need to speak with regarding the encroachment permit is Jim Bailey, Director of Planning and Development Services? Or is it someone else?

Kind regards

Sarah Norman
s. 22(1)

Sent from my iPhone

On Aug 20, 2021, at 11:55 AM, Vicki Jin <vjin@westvancouver.ca> wrote:

Hi Sarah

To summary what we discussed at yesterday's site meeting, prior to building final, will need following items to be completed:

- Driveway grade and gavel/asphalt/paver surface
- Sani R.O.W. – post CCTV checking, please let me know if you are ready to call
- all of hardscape as approved landscape plan include retaining wall, walkway etc
- all of boulevard and minimum 80% soft scape as approved landscape plan
- as built survey of retaining wall
- schedule C-B of SWMP from design engineer
- Fence issue in boulevard – remove or encroachment

In regard to existing fence in boulevard on Nelson, it should be removed as approved plan (see attachment); Encroachment permit will be required if you keep fence in District boulevard zone. please see Boulevard Bylaw for regulation & application procedure.

https://westvancouver.ca/sites/default/files/bylaws/4886%20BOULEVARD%20BYLAW%204886%202016.pdf

Thanks
Vicki Jin
Land Development Tech | District of West Vancouver
d: 604-921-2910 | westvancouver.ca

<Landscape- approved.pdf>