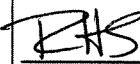
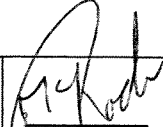


COUNCIL AGENDA/INFORMATION		
<input type="checkbox"/> Closed	Date: _____	Item # _____
<input checked="" type="checkbox"/> Reg. Council	Date: <u>Jan 10, 11</u>	Item # <u>9</u>
<input type="checkbox"/> Supplemental	Date: _____	Item # _____

 Director	 CAO
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9

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

COUNCIL REPORT

Date: January 4, 2011 File: 1010-20-04-002
From: Tony Tse, Manager of Development Engineering
Subject: Request to Retain Boulevard Encroachments at 3390 Radcliffe Avenue

RECOMMENDED THAT:

1. The Request for a Boulevard Encroachment Permit and Licence of Occupation for 3390 Radcliffe Avenue, to retain a fence and shrubs located in the boulevard, be declined; and
2. The owners of 3390 Radcliffe Avenue remove all encroachments within the boulevard adjacent to their property and reinstate the boulevard to an acceptable condition within 30 days of Council's resolution at their expense; and
3. If the boulevard encroachments are not removed and the boulevard not reinstated within the 30 day period, District staff conduct the work and charge the cost to the owners.

Purpose

The purpose of this report is to provide information to Council on a Boulevard Encroachment Request for 3390 Radcliffe Avenue, to retain a fence and a number of shrubs located in the boulevard.

1.0 Background

1.1 Bylaw and Policies

On December 8, 2003, Council authorized staff to approve encroachments in the boulevard which comply with the current Boulevards Bylaw No. 3191, 1984 and the Boulevard Maintenance and Encroachment Policy, using the current draft Boulevard Maintenance and Encroachment Bylaw No. 4321, 2003 as a guideline when assessing applications.

2.0 Balanced Scorecard

STRATEGIC INITIATIVES	2010 MILESTONE	2011 MILESTONE
Implement the recommendations of the Community Dialogue on Neighbourhood Character and Housing Working Group	See footnote ¹ below	See footnote ¹ below

3.0 Analysis

3.1 Description of Site

The subject site is zoned RS4 and is approximately 8276 sq. ft. in size. The waterfront property contains an existing one storey house and garage with basement. The property uses a portion of the boulevard within Radcliffe Avenue as front yard and the area is contained with a wrought iron fence and several shrubs.

3.2 Background

The existing house was built under approved Development Variance Permit 04-002 which allowed the house to be built with a 5.6 ft. Front Yard and a Side Yard of 0.8 ft. A condition of the approved Development Variance Permit required all encroachments within the boulevard on Radcliffe Avenue to be removed.

At the time of the Development Variance Permit application in 2004, a wooden fence and hedge were located within the boulevard. The encroachments were subsequently removed during construction but as a result of a Final Inspection for the building permit and a complaint received by staff, the new encroachments within the boulevard were found.

Staff and the District's solicitor have written to the property owner and their solicitor on several occasions requesting that the encroachments be removed. The owners are now seeking approval from Council to retain the encroachments.

3.3 Description of Encroachments

The boulevard encroachments include a black wrought iron fence and ornamental cedar shrubs which, over time will grow into a hedge. The details² of the encroachments are:

¹ Strategic Initiative and 2010 Milestone – The review and processing of development applications is a significant component of the District's day-to-day operations, and is not specifically reflected in the Balanced Scorecard as either a Strategic Initiative or annual milestone.

² The details were hand measured onsite and have not been confirmed by a legal survey.

	Draft Guidelines	Proposed	Variance
Semi-Transparent Fence	Max height 1.2m (3.9 ft)	1.9m (6.2 ft.)	0.7m (2.3 ft)
Min Distance to Road Surface from Fence	Minimum 2m (6.5 ft) from road surface	Approx. 1.2m (3.9ft)	Approx. 0.8m (2.6 ft)
Shrubs/Hedge	Minimum 3m (9.8 ft) from road surface	1.2m (3.9 ft)	1.8m (6 ft)
Distance outside Front Lot Line	No requirements	Approx 1.1m (3.7 ft)	n/a

3.4 Implications

Traffic Safety

The Radcliffe Avenue road allowance is approximately 33 ft. wide and has a relatively narrow travelled road surface of approximately 16 ft. As the road surface is located further north in the road allowance, the majority of the street parking along Radcliffe Avenue is located along the southern boulevard due to the larger available area.

The fence and shrubs are located so close to the travelled road surface that:

- (a) vehicles parked in front of the subject property are located partially on the travelled road surface and impede vehicle and pedestrian traffic; and
- (b) parked vehicles will impede emergency and servicing vehicles accessing west of the subject property. This is a concern as Radcliffe Avenue is a dead end street with no other vehicle access to Marine Drive past this point.

Streetscape

The encroachments are contrary to the majority of other encroachments along the southern side of Radcliffe Avenue in that the fence and shrubs are located very close to the travelled road surface and are highly visible from the street and neighbouring properties. They also privatize a large area of the boulevard for the exclusive use of the owners of 3390 Radcliffe Avenue.

3.5 Conclusion

For the reasons given above, staff recommends that the request to retain the boulevard encroachments be rejected.

4.0 Options

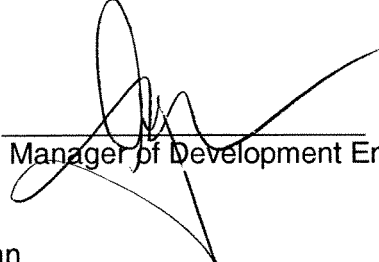
4.1 At the time of consideration of this report, Council may:

1. (a) Reject the applications for a Boulevard Encroachment Permit and Licence of Occupation (recommended); and
- (b) Order the owners of 3390 Radcliffe Avenue remove all encroachments within the boulevard adjacent their property and reinstate the boulevard to an

acceptable condition within 30 days of Councils resolution at their expense (recommended); and

- (c) If the boulevard encroachments are not removed and the boulevard not reinstated within the 30 day period, order District staff to conduct the work and charge the cost to the owners (recommended); or
- 2. Approve issuance of a Boulevard Encroachment Permit and Licence of Occupation; or
- 3. Request further information.

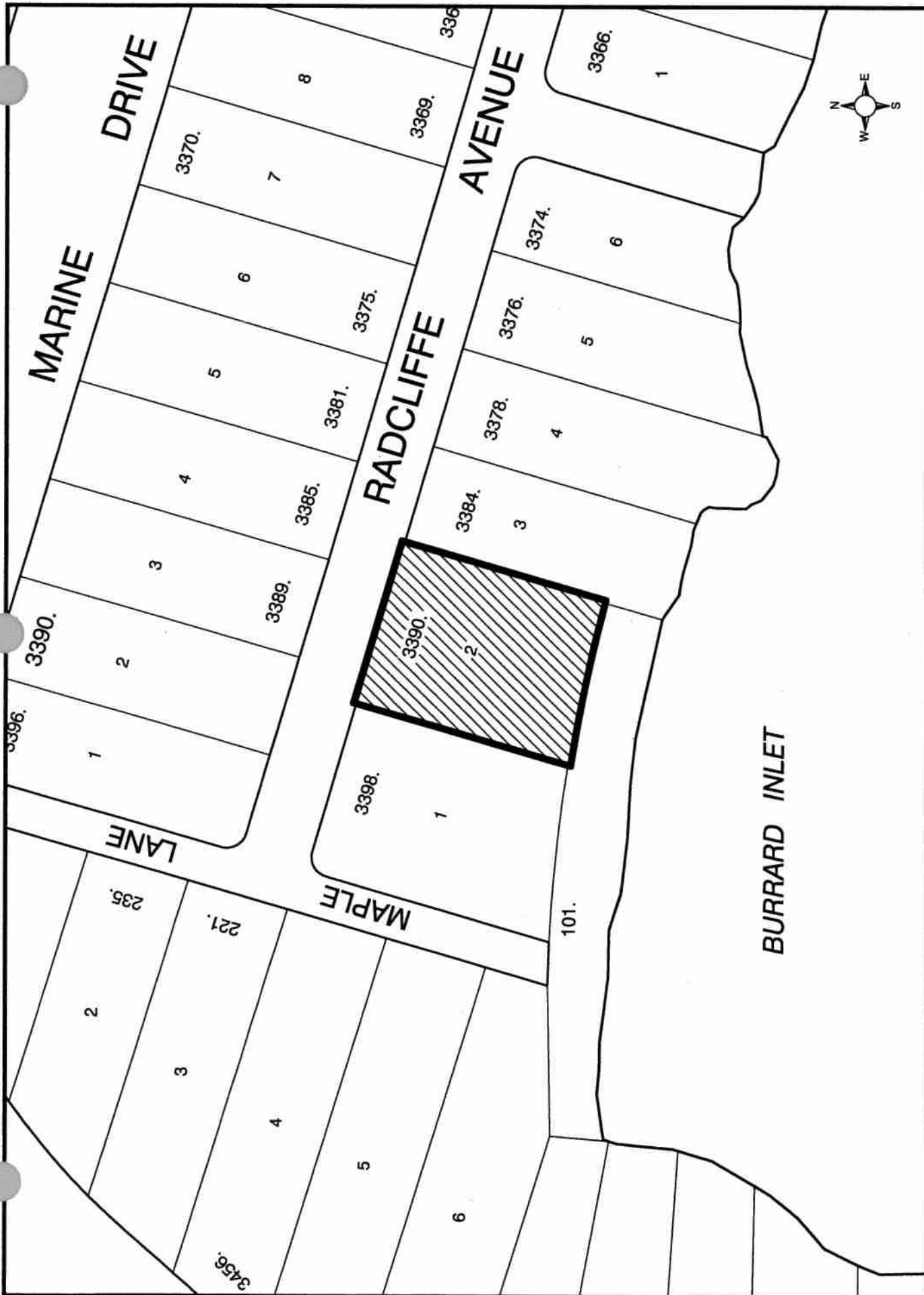
Author:



Manager of Development Engineering

Appendices:

- A: Context Plan
- B: Letter to Property Owner from Director of Engineering
- C: Letter to Property Owner from District's Solicitor
- D: Photo of Encroachments
- E: Approved Development Variance Permit 04-002



DATE: DEC 31/10 REV: 0
FILE:

TITLE:
CONTEXT PLAN
3390 Radcliffe Avenue

westvancouver
THE WATERFRONT COMMUNITY

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west vancouver

APPENDIX 'B'

ENGINEERING AND TRANSPORTATION

750 17TH STREET, WEST VANCOUVER, B.C. V7V 3T3
TELEPHONE: 604 925-7020 FACSIMILE: 604 925-5968

October 12, 2010

BY REGISTERED MAIL

WITHOUT PREJUDICE

File No.: 1010-20-04-002

Sally Anne Negus
3390 Radcliffe Avenue
West Vancouver, BC V7V 1G6

Re: Encroachments onto Boulevard

I am writing to you in regard to the state of your property at 3390 Radcliffe Avenue, West Vancouver, BC. The District of West Vancouver (the "District") has confirmed that there are certain landscaping features and other structures that are encroaching onto the District's boulevard. Specifically, there are approximately 22 cedar shrubs and a six foot high wrought iron fence (the "Encroachments") that are encroaching onto the District's boulevard.

Therefore, please take notice that the District hereby requests and requires that, pursuant to the District's *Boulevards Bylaw* No. 3191, 1984 (the "Boulevards Bylaw"), the Encroachments be removed from the boulevard no later than November 19th, 2010.

Please be advised that if the required actions are not carried out within the stated time, the District may take the required action itself without further notice to you. Pursuant to section 17 of the *Community Charter*, any action taken by the District may be charged back to you as the owner of the property.

If you have any questions or require any further information, please contact Tony Tse, Manager of Development Engineering at 604.925.7109.

Sincerely,



Raymond Fung, P. Eng
Director of Engineering & Transportation

TT:rr

cc: Bob Sokol, Director of Planning, Lands & Permits

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LIDSTONE & COMPANY
BARRISTERS AND SOLICITORS

November 15, 2010

BY MAIL

Brandon J. Smith
Barrister and Solicitor
Cascadia Law Corporation
400 - 525 Seymour Street
Vancouver, BC V6B 3H7

Dear : Mr. Smith

Re: 3390 Radcliffe Avenue - Encroachments on Highway
10006.108

We are the Solicitors for the District of West Vancouver in regard to this matter. We are instructed on behalf of the District to write to you in response to your letter dated October 25, 2010.

We have reviewed the District's file and have concluded that approximately 15 shrubs and a 5 foot high iron fence, including an iron gate, encroach on a highway owned by the District (the "encroachments"). The District has inspected the shrubs and fence and has concluded that the encroachment has created a nuisance in relation to parking and vehicular movements. Accordingly, the District wrote to your client on October 12, 2010 to demand that the encroachments be removed from the highway no later than November 19, 2010.

We have reviewed your October 25, 2010 letter. In regard to "grandfathering", we are not aware of any rule of law that would allow your clients to retain the shrubs and fence. These are not lawful non-conforming uses. Also, as you are aware, all the existing methods of acquiring a right in or over land by prescription were abolished under section 24 of the *Land Title Act*.

You have also suggested that Council should consider exercising its discretion to grant relief. In this regard, you will recall that the District's Council at the time of considering your client's development variance permit application imposed conditions that would prohibit encroachments on the District's highway.

SUITE 1300 - SUN TOWER - 100 PENDER STREET WEST - VANCOUVER BC - V6B 1R8
TELEPHONE 604-899-2269 - FACSIMILE 604-899-2281 - TOLL FREE 1-877-339-2199
(00165877: 1)

You have also asked for written reasons for the District's unwillingness to support the notion that the encroachment is "grandfathered". First, you refer to a retaining wall being grandfathered. We are not aware of a retaining wall. We are instructed that the District's concern is with the shrubs and 5 foot fence not a retaining wall. Second, the reasons the District is concerned about the encroachments on the District's highway are as follows:

1. It is an offence to obstruct a highway or portion of a highway under section 46 (1) of the *Community Charter*,
2. It is an offence under section 5 of the District's *Boulevard Bylaw* 3191, 1984 to obstruct the boulevard portion of the highway;
3. Section 17 of the *Community Charter* provides that the District may take action at the expense of a person who has defaulted under an order pursuant to a bylaw, and in this regard, the District has given you notice under the *Boulevard Bylaw* to remove the encroachments from the boulevard no later than November 19, 2010.

Finally, you state that your client wishes to exhaust those means available to him to remedy the issues so that no action will be taken with respect to the alleged encroachment. You state further that the District is in no way prejudiced by letting the homeowner exhaust all available procedural solutions. We do not agree. The means available to your client to remedy the issue consists of removal of the encroachment on the District's highway.

Accordingly, nothing in your letter gives the District any reason to alter the deadline for your client to remove the encroachment.

Sincerely,

LIDSTONE & COMPANY

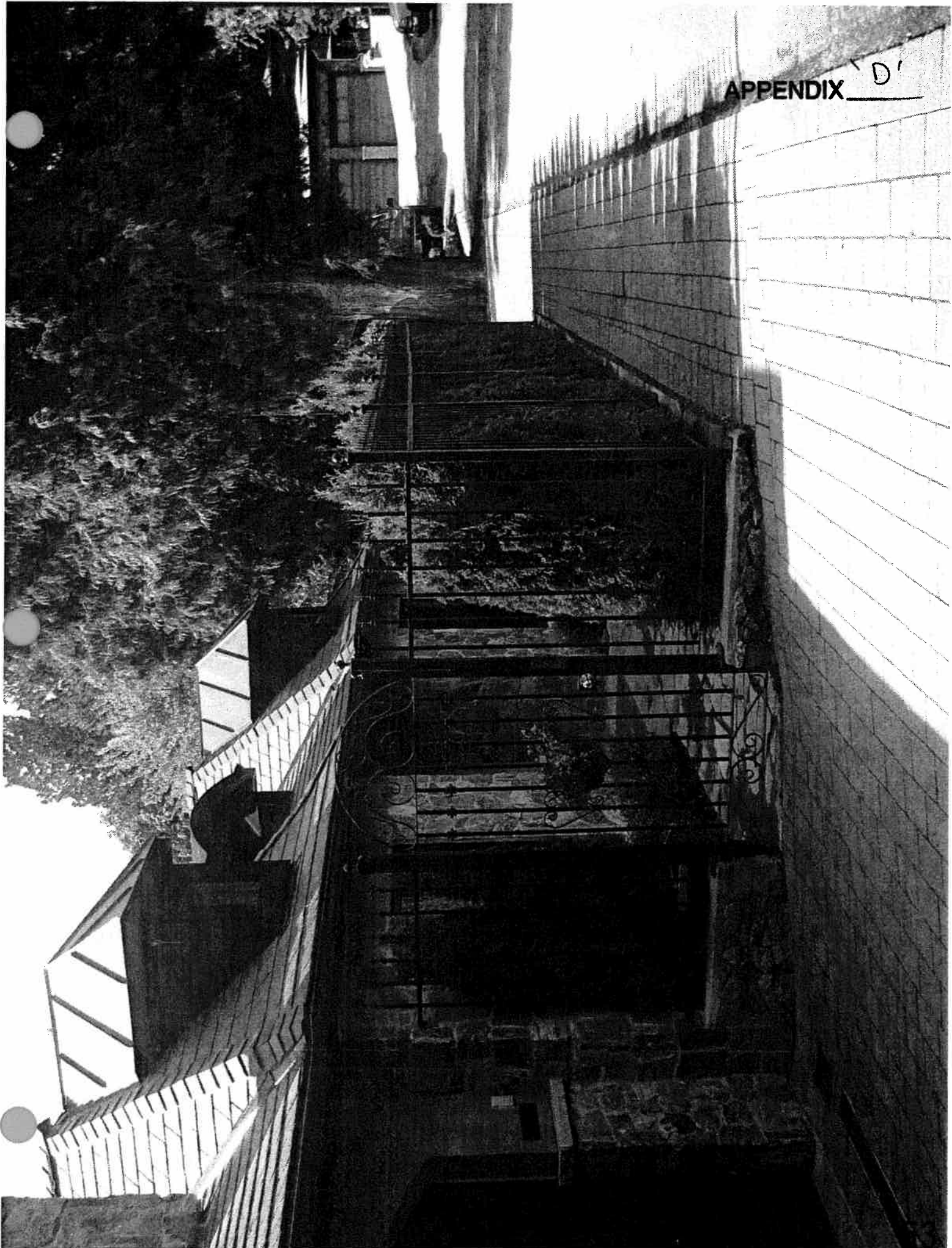


Don Lidstone, Q.C.
lidstone@lidstone.info

DPL/km

Cc. Grant McRadu, CAO
Raymond Fung, Director of Engineering and Transportation
Bob Sokol, Director of Planning, Lands & Permits

APPENDIX 'D'



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west vancouver

APPENDIX E

PLANNING, LANDS AND PERMITS
750 17TH STREET, WEST VANCOUVER, B.C. V7V 3T3
TELEPHONE: 604 925-7055 FACSIMILE: 604 925-5968

Document # 157011 v.2
D.V.P. No.: 04-002
Zone: R.S.4

DEVELOPMENT VARIANCE PERMIT AS AMENDED July 25, 2005

DEVELOPMENT VARIANCE PERMIT EXPIRY: November 30, 2005

EXPIRY DATE AFTER COUNCIL RENEWAL _____

OWNER: SALLY ANNE NEGUS IN TRUST

ADDRESS: 3390 RADCLIFFE AVENUE
WEST VANCOUVER, BC V7V 1G6

This DEVELOPMENT VARIANCE PERMIT applies to the Property described as:

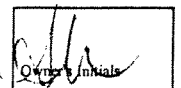
ADDRESS: 3390 RADCLIFFE AVENUE
WEST VANCOUVER, BC V7V 1G6

LEGAL DESCRIPTION: LOT 2; BLOCK 3; D/L 557; PLAN 4979
PID No. 004-646-142

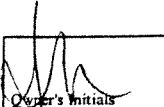
VARIANCES: front yard setback, side yard setback, parking requirements

For the purposes of this Development Variance Permit, the Property shall be developed in accordance with the drawings numbered 1, 4, 5 and 6 dated July 15, 2005, approved by Council resolution on July 25, 2005, attached as Schedule "A", and specifically in compliance with the regulations and variances listed hereunder:

1. (a) Zoning Bylaw No 2200, 1968 is varied and supplemented for this development proposal in accordance with the following regulations:
 - (i) Section 32-406 (front yard)
 - (ii) Section 32-408 (side yard)
 - (iii) Section 32-410 (off-street parking)


Owner's Initials

- (b) All buildings must conform to all applicable codes, bylaws and regulations;
and
 - (c) This Permit is issued to regulate construction and in particular, the variances approved. Additional repairs, extensions or alterations may occur provided they conform to all Municipal Bylaws.
2. As conditions precedent to the issuance of a Building Permit, the Owner shall:
- (a) Install protective fencing to protect the waterfront park and adjacent properties during construction, approved in writing, in advance by the District Environmental Coordinator
 - (b) Remove all existing encroachments on to Radcliffe Avenue
This amount may be reduced from time to time, at the sole discretion of the Director of Finance, after consultation with other relevant departments.
3. This DEVELOPMENT VARIANCE PERMIT lapses if a Building Permit and other Permits necessary for construction of the development authorized herein are not obtained by November 30, 2005 (in accordance with Council's July 25, 2005 resolution amending this Development Variance Permit) and construction is not commenced within twelve (12) months thereafter.


Owner's Initials

4. In the event the Owner is delayed or interrupted or prevented from commencing the construction of all works specified herein by reason of any Act of God, labour unrest (including strike and lockouts), weather conditions or any similar cause reasonably beyond the control of the Owner, the time for the completion of the works shall be extended for a period equal to the duration of the contingency that occasioned the delay, interruption or prevention, provided that commercial or financial consideration of the Owner shall not be viewed as a cause beyond the control of the Owner.

THE COUNCIL OF WEST VANCOUVER AUTHORIZED THE ISSUANCE OF THIS DEVELOPMENT VARIANCE PERMIT BY RESOLUTION PASSED ON May 31, 2004.

THE COUNCIL OF WEST VANCOUVER AUTHORIZED THE AMENDMENT OF THIS DEVELOPMENT VARIANCE PERMIT BY RESOLUTION PASSED ON July 25, 2005.

P. Goldsmith

MAYOR

A. Achols

MUNICIPAL CLERK

THE TERMS AND CONDITIONS UPON WHICH THIS PERMIT IS ISSUED ARE ACKNOWLEDGED AND AGREED TO.

August
OWNER

2 August 05
DATE

WITNESS:

Armstrong
NAME

Andrea Armstrong
ADDRESS
3565 Westmore Rd
West Vancouver

JA
Owner's Initials

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