

NO THIRD PARTY APPEALS TO BOARD OF VARIANCE – SUPREME COURT OF CANADA

By: Jonathan Baker¹

Under s. 573 of the *Vancouver Charter* “any person aggrieved by a decision on a question of zoning by any official charged with the enforcement of a zoning bylaw” has a right of appeal to the Board of Variance. It was assumed by the City and citizens alike for at least sixty years that this gave the neighbors of a permit holder the right to appeal to the Board and have a permit set aside. They were wrong.

The City of Vancouver issued a development permit to Richard Niebuhr to build two duplexes on two 30 foot lots with minor relaxations. Ms. Street, the next door neighbor, filed an appeal to the Board of Variance in which she argued that (1) two existing houses on the lot had heritage merit, and (2) the City should buy the property and make it a park. She was supported by many neighbors who considered the lots in East Vancouver known as Salsbury Gardens to be quasi public property. The Board of Variance sympathized and quashed the permits.

Niebuhr applied to the Court to set aside the decision. He reasoned that none of the matters argued by Ms. Street dealt with the impact of the relaxations on her house next door or upon other neighbours.

Ms. Street spoke briefly to the Court but she never asked to be made a party to the action. Mr. Justice Goepel handed down his decision and held that, upon a close reading of the *Vancouver Charter*, the Board had no jurisdiction to hear third party appeals at all.

Ms. Street appealed. Then matters heated up and Council fired the entire Board of Variance. The replacement Board did not appeal Justice Goepel’s decision. Ms. Street's appeal eventually reached the Court of Appeal who refused to hear it on the merits because Ms. Street had failed to properly apply to be a party to the action. She then applied to the Supreme Court of Canada. Leave to Appeal was denied in mid March.

As things stand today, any citizen who wants to challenge a development permit issued to a neighbour must do so through the courts. This is an effective but expensive procedure. Accordingly, the DRA has written to City Council and asked them to amend the *Vancouver Charter* to allow the Board to hear neighbours’ third party appeals in appropriate circumstances.

¹ Jonathan Baker was counsel for Mr. Niebuhr