

REGIONAL DISTRICT OF NANAIMO
ELECTORAL AREA PLANNING COMMITTEE
TUESDAY, APRIL 22, 2003
7:00 PM

(RDN Board Chambers)

A G E N D A

PAGES

CALL TO ORDER

DELEGATIONS

MINUTES

- 3-5 Minutes of the Electoral Area Planning Committee meeting held Tuesday, March 25, 2003.

BUSINESS ARISING FROM THE MINUTES

PLANNING

AMENDMENT APPLICATIONS

DEVELOPMENT PERMIT APPLICATIONS

- 6-16 DP No. 60301 – Juthans/Murphy – 5489 Deep Bay Drive – Area H.
- 17-25 DP No. 60310 – Schulze – 7922 Alison Road – Area D.
- 26-33 DP No. 60315 – Wiseman – Strata Lot 387, South Lake Road – Area H.
- 34-41 DP No. 60317 – Fern Road Consulting Ltd., on behalf of Seascope Properties Ltd., G & R Basaraba, & D & J Barwise – Flamingo Drive & Kinkade Road – Area G.
- 42-47 DP No. 60318 – Steven & Janet Atkinson – Jameson Road – Area D.
- 48-59 DP No. 60319 – Fairway Pointe Properties Ltd. – 730 Barclay Crescent – Area G.
- 60-64 DP No. 60320 – Roy/Sims – 3371 Blueback Drive – Area E.
- 65-77 DP No. 60322 – Intracorp Developments Ltd/Fairwinds – Andover Road/Goodrich Road – Area E.

DEVELOPMENT VARIANCE PERMIT APPLICATIONS

- 78-88 DVP No. 0304 – Melvyn – Seaview Drive – Area H.
- 89-95 DVP No. 90307 – Irwin – 771 Mariner Way – Area G.
- 96-104 DVP No. 90308 – Neale – 3495 Bluebill Place – Area E.
- 105-111 DVP No. 90309 – Homes By Kimberly on behalf of Walsh – 777 Mariner Way – Area G.

FRONTAGE RELAXATION

- 112-115 Request for Relaxation of the Minimum 10% Frontage Requirement – Leo Smith & Marilyn Rae Smith – Hobson's Road – Area D.
- 116-120 Request for Relaxation of the Minimum 10% Frontage Requirement – Leigh Millan, BCLS on behalf of Lois Dahl Holmgren – Cedar Road – Area A.
- 121-124 Request for Relaxation of the Minimum 10% Frontage Requirement – Keith & Linda Jack/CO Smythies – 2375 Hemer Road – Area A.

ADDENDUM

BUSINESS ARISING FROM DELEGATIONS OR COMMUNICATIONS

NEW BUSINESS

IN CAMERA

ADJOURNMENT

REGIONAL DISTRICT OF NANAIMO

MINUTES OF THE ELECTORAL AREA PLANNING COMMITTEE
MEETING HELD ON TUESDAY, MARCH 25, 2003, AT 7:00 PM
IN THE CITY OF NANAIMO COUNCIL CHAMBERS,
455 WALLACE STREET, NANAIMO, BC

Present:

Director E. Hamilton	Chairperson
Alternate	
Director H. Kreiberg	Electoral Area A
Director D. Haime	Electoral Area D
Director P. Bibby	Electoral Area E
Director L. Biggemann	Electoral Area F
Director J. Stanhope	Electoral Area G
Director D. Bartram	Electoral Area H
Director R. Longmuir	City of Parksville
Alternate	
Director A. Kruyt	Town of Qualicum Beach
Director L. Sherry	City of Nanaimo

Also in Attendance:

B. Lapham	General Manager, Development Services
N. Connelly	General Manager, Community Services
P. Shaw	Manager of Community Planning
N. Tomn	Recording Secretary

DELEGATIONS

Jerry Bordian, Englishman River Land Corporation, re Block 564.

Mr. Bordian presented the Englishman River Land Corporation's concept plan with respect to Block 564 and requested that the Electoral Area Planning Committee recommend to the Board that the approval process be advanced to allow for final consideration of the bylaws in May.

MINUTES

MOVED Director Haime, SECONDED Director Kreiberg, that the minutes of the Electoral Area Planning Committee meeting held February 25, 2003 be adopted.

CARRIED

PLANNING

AMENDMENT APPLICATIONS

Proposed OCP & Zoning Amendment Application No. AA0304 – Michael Rosen & Associates on behalf of Englishman River Land Holdings Ltd. – Kaye Road – Area G.

MOVED Director Stanhope, SECONDED Director Bibby,:

1. That the proposed public consultation strategy for the proposed amendment to the Englishman River Official Community Plan and Bylaw No. 500, 1987 for the Remainder of Block 564, Nanoose District, be approved with amendments as follows:

- ◆ to recognize consideration of 1st and 2nd reading at the April 8, 2003 Board meeting.
 - ◆ notice of the Public Hearing to proceed in mid April.
 - ◆ a Public Hearing to be held in late April or early May.
 - ◆ consideration of 3rd reading in May.
 - ◆ application forwarded to the Ministries of Transportation and Community, Aboriginal and Women's Services in May.
 - ◆ consideration of adoptions following completion of the conditions of approval.
2. That "Regional District of Nanaimo Englishman River Official Community Plan Bylaw Amendment Bylaw No. 814.08, 2003" amending the land use designation for a portion of the Remainder of Block 564 Nanoose District from Resource Management to Rural Residential, be given 1st and 2nd reading and referred to agencies in accordance with the *Local Government Act*.
3. That "Regional District of Nanaimo Land Use and Subdivision Bylaw Amendment Bylaw No. 500.291, 2003" be given 1st and 2nd reading, subject to the completion of the conditions and undertaking outlined in Schedule No. 1 of the staff report.

CARRIED

DEVELOPMENT PERMIT APPLICATIONS

DP Application No. 60307 – Heringa – Lot 1, Miller Road – Area G.

MOVED Director Stanhope, SECONDED Director Biggemann, that Development Permit Application No. 60307 by Connie and Hans Heringa, to construct a dwelling unit in a Sensitive Lands Development Permit Area pursuant to the "Regional District of Nanaimo French Creek Official Community Plan Bylaw No. 1115, 1998" on the property legally described as Strata Lot 1, District Lot 28, Nanoose District, Plan VIS4363 be approved, subject to the conditions outlined in Schedule Nos. 1 to 3 of the corresponding staff report.

CARRIED

DP Application No. 60308 – Palleson/Allen – 931 McFeely Drive – Area G.

MOVED Director Stanhope, SECONDED Director Bartram, that Development Permit Application No. 60308, submitted by Walter Allen on behalf of Palleson to vary the maximum building height for a proposed dwelling unit from 8.0 metres to 8.3 metres on the subject property legally described as Lot 6, District Lot 9, Newcastle District, Plan VIP69413 be approved, subject to the requirements outlined in Schedule Nos. 1, 2, 3 and 4 and subject to notification requirements pursuant to the *Local Government Act*.

CARRIED

DP Application No. 60312 – Guy (Pecora Holdings/Coast Distributors) – 6855 Mart Road – Area D.

MOVED Director Haime, SECONDED Director Stanhope, that Development Permit Application No. 60312 by Jack Anderson of Anderson Greenplan on behalf of Pecora Holdings – Coast Distributor Ltd. with a variance to relax the minimum 'other lot lines' setback requirement from 5.0 metres to 0 metres for the property legally described as Lot 11, District Lot 44, Wellington District, (situated in Nanoose District), Plan 15245 to accommodate an addition to a warehouse, be approved subject to Schedule Nos. 1 and 2 and the notification requirements pursuant to the *Local Government Act*.

CARRIED

ADJOURNMENT

MOVED Director Bartram, SECONDED Director Biggemann, that this meeting terminate.

CARRIED

TIME: 7:36 PM

CHAIRPERSON



REGIONAL DISTRICT OF NANAIMO		
APR 14 2003		
CHAIR		GMCrs
CAO		GMDS
GMCmS		GMEs
		EAP. ✓

MEMORANDUM

TO: Pamela Shaw
Manager, Community Planning

DATE: April 11, 2003

FROM: Keeva Kehler
Planner

FILE: 3060 30 60301

SUBJECT: Development Permit Application No. 60301 – Juthans/ Murphy
Lot 39, District Lot 1, Plan 20442, Newcastle District
Electoral Area 'H' – 5489 Deep Bay Drive

PURPOSE

To provide updated information on an application to legalize the siting of a hot tub and existing accessory structures within the Environmentally Sensitive and Natural Hazards Development Permit Area pursuant to the "Regional District of Nanaimo Shaw Hill – Deep Bay Official Community Plan Bylaw No. 1007, 1996."

BACKGROUND

This is an application to legalize the existing workshop, retaining wall and hot tub structure which are located within 15 metres of the natural boundary and to legalize the existing garage, courtyard and woodshed, which are located within the front and side lot line setback areas. The subject property is a 0.7 hectare (0.3 acre) parcel located along Deep Bay Drive (*see Attachment No. 1*).

The Board has reviewed two previous reports for the subject application. The first report was referred back to the Committee as a result of neighbouring property owner concerns about the siting of the hot tub and associated roof structure. In response, the applicant altered the proposed hot tub structure to remove the roof and lower the height of the hot tub. The second report was referred back as a result of incorrect measurements that showed setbacks to the foundations rather than the overhangs of buildings. Staff requested that an amended survey plan showing the correct setback information be provided to the RDN. As the requested variance to the setbacks will change, the adjacent landowners will have to be re-notified of the amended variance requests pursuant to the *Local Government Act* if the application is approved by the Committee.

Zoning and Proposed Variances

The subject property is zoned Residential 2 (RS2) pursuant to "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987." The minimum setback requirements for buildings and structures in this zone are: 8.0 metres from the front lot line; 2.0 metres from the rear lot line; 2.0 metres from the interior side lot lines; and 5.0 metres from other lot lines.

The locations of the existing buildings are shown in *Schedule No. 2*. The distances shown on *Schedule 2* are as a result of an amended survey. This plan shows the requested variances from the building eaves or overhangs to the lot lines.

Due to the location of the existing structures, the applicants are requesting to vary Section 3.4.62 of the "Regional District of Nanaimo Subdivision and Land Use Bylaw No. 500, 1987" as follows:

1. Reduce the minimum setback requirement for the front lot line from 8.0 metres (26.25 feet) to 2.8 metres (9.2 feet) to accommodate the existing garage and courtyard.
2. Reduce the minimum setback requirement for the front and eastern interior side lot lines from 8.0 metres (26.25 feet) and 2.0 metres (6.56 feet) respectively to 0.0 metres to accommodate the existing woodshed.
3. Reduce the minimum setback requirement for the eastern interior side lot line from 2.0 metres (6.56 feet) to 0.7 metres (2.3 feet) to legalize the existing workshop at the rear of the parcel.

No setbacks from interior or rear lot lines are required pursuant to Bylaw No. 500 for one accessory building not exceeding a floor area of 10 m² and with a maximum height of 3.0 m. There is one such accessory building located within the eastern interior side lot line of the property.

Development Permit Requirements

A large portion of the existing workshop is located within the Environmentally Sensitive and Hazard Lands Development Permit Areas. The applicant indicated that a previous owner constructed the workshop in 1988. There is a stone retaining wall located approximately 4.5 metres from the natural boundary, also installed by a previous owner.

The applicants propose to retain the hot tub structure within the development permit area. The structure has been substantially modified since the application was originally submitted. The applicants initially proposed to install a retractable roof on four corner posts on the deck structure. However, since the application was submitted, the applicants have abandoned the plans to install a roof and they have cut down the corner posts to a lower height. The applicants have also agreed to lower the level of the deck itself in an effort to mitigate some of the potential visual impacts on neighbouring lots.

The applicants are requesting permission to vary the minimum setback requirement from the natural boundary from 15 metres (49.2 feet) to 6.9 metres (22.63 feet) to accommodate the existing workshop and from 15 metres to 9.6 metres (31.4 feet) to accommodate the proposed hot tub structure. The subject property is not located within a building inspection area and therefore, building permits were not required prior to construction of any of the buildings.

The applicant indicated that the septic field occupies the majority of the remaining space in the rear yard. The applicant indicated they are reluctant to locate the hot tub structure on the septic field, as it would damage the drainage pipes below the surface. The applicants believe that there is no alternative site, outside the development permit area, to locate the hot tub structure.

The applicants further propose to install a cedar hedge along the property line to increase the privacy of the neighbour to the west and provide a buffer from any potential noise impacts that may arise from the hot tub use. Together with the other modifications to the hot tub structure itself, the applicants believe that they have addressed the potential concerns that may arise with neighbouring lots.

ALTERNATIVES

1. To approve Development Permit Application No. 60301 subject to conditions prepared by staff and contained in the report before the Board.
2. To deny the requested Development Permit.

LAND USE AND DEVELOPMENT IMPLICATIONS

A number of issues have been raised with respect to the potential impacts of the proposed variance for the hot tub on the views, property values and privacy of adjacent lots. Concerns have also been expressed regarding the removal of vegetation from the development permit area during construction of the hot tub and the potential contamination of the beach or ocean waters due to leakage/ drainage of chlorinated water from the tub itself.

The variances to accommodate the other existing structures appear to have less impact on the development permit area and surrounding residents. There is a large evergreen hedge located on the eastern property line behind the workshop. The workshop has existed on the property for 14 years and is lower in elevation than the hedge and therefore, has minimal impact on the viewscape. The variances at the front of the lot do not create a visual impact for surrounding properties due to the characteristics of the subdivision. That is, the properties are located along a spit so that properties on both sides of Deep Bay Drive have ocean front lot lines and views, and neighbouring properties do not currently have 'view cones' through the subject property.

VOTING

Electoral Area Directors – one vote, except Electoral Area 'B.'

SUMMARY/CONCLUSIONS

This is an application for a Development Permit within the Environmentally Sensitive and Hazard Lands Development Permit Areas pursuant to "Shaw Hill – Deep Bay Official Community Plan, Bylaw No. 1007, 1996." First, the application requests a variance to the minimum setback for the front lot line from 8.0 metres to 2.8 metres to legalize the garage and courtyard, and from 8.0 metres to 0.0 metres for the woodshed. Second, the applicant requests permission to vary the eastern interior lot line setback from 2.0 metres to 0.7 metres to legalize the workshop, and from 2.0 metres to 0.0 metres to legalize the same woodshed at the front of the property. Third, the application proposes to vary the minimum natural boundary setback requirement from 15.0 metres to 6.9 metres to accommodate the workshop and from 15 metres to 4.5 to legalize the retaining wall. Finally, the applicants request an additional variance to the natural boundary setback from 15.0 metres to 9.6 metres to permit the retention of the hot tub structure within the development permit areas.

After the first report was referred back to the Committee, staff completed a second site inspection with the owner to determine if was an alternative to locating the hot tub in the development permit area. The applicant maintains that due to the location of the septic tile field and other structures, the proposed location is preferable. In order to respond to complaints from neighbouring property owners, the applicant agreed to remove the roof structure and lower the hot

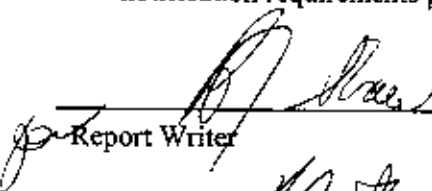
tub to reduce the impact. As a result, staff recommended approval of the requested variances subject to notification of neighbouring property owners. The second report was referred back to the Committee due to incorrect survey information on the plan. The requested setback variances have now been revised; however, concerns are still being expressed by neighbouring property owners about the requested variance. As staff have previously recommended that the application be approved subject to notification of adjacent property owners and given that the application information is being revised, staff again recommend that the application be approved subject to the conditions contained in Schedule No. 1 and subject to the notification of adjacent property owners pursuant to procedures as outlined in the *Local Government Act*.

RECOMMENDATIONS

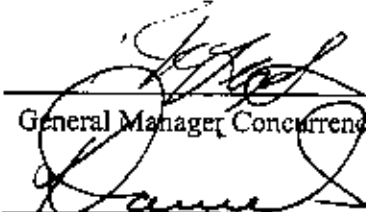
That Development Permit Application No. 60301, submitted by Sven Juthans and Colleen Murphy, for the property legally described as Lot 39, District Lot 1, Newcastle District, Plan 20442, requesting to:

1. Vary the minimum setback for the front lot line;
 - a.) From 8.0 metres to 2.8 metres to accommodate the existing garage and courtyard.
 - b.) From 8.0 metres to 0.0 metres to accommodate the existing woodshed.
2. Vary the eastern interior lot line setback;
 - a.) From 2.0 metres to 0.7 metres to accommodate the existing workshop at the rear of the parcel.
 - b.) From 2.0 metres to 0.0 metres to accommodate the existing woodshed
3. Vary the minimum setback requirement from the natural boundary;
 - a.) From 15 metres to 6.9 metres to accommodate the existing workshop at the rear of the parcel.
 - b.) From 15 metres to 4.5 metres to accommodate the existing retaining wall.
 - c.) From 15 metres to 9.6 metres to allow for the placement of a hot tub structure within the development permit area

be approved subject to the conditions outlined in Schedules No. 1, 2 and 3 and subject to the notification requirements pursuant to the *Local Government Act*.


Report Writer


Manager Concurrence


General Manager Concurrence


CAO Concurrence

COMMENTS:

Dev. permit application - Juthans/Murphy 5489 Deep Bay Drive

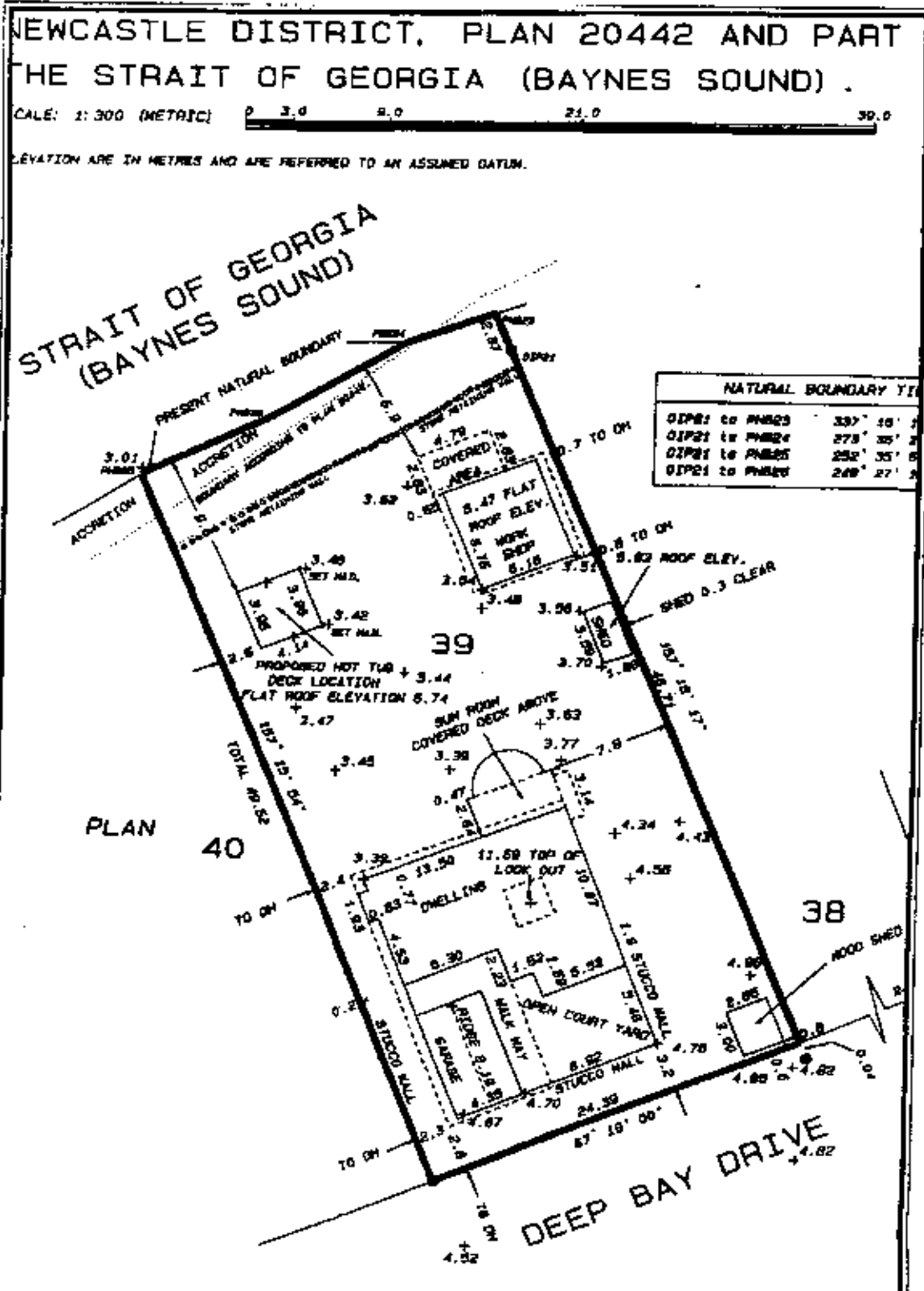
Schedule No. 1
Conditions of Approval
Development Permit Application No. 60301

- 1. Environmentally Sensitive & Hazard Lands Development Permit Area**
 - a.) The debris located within the Development Permit Area (DPA) at the rear of the lot is to be removed and the area is not to be used for storage of boat parts or other materials.
 - b.) Fire pits are prohibited in the DPA. The existing fire pit and ash debris shall be removed.
 - c.) There shall be no removal of vegetation from the DPA. The introduction of native vegetation shall be encouraged to reduce the potential for soil erosion.
 - d.) Land within the DPA will be reclaimed and restored to the original state when the hot tub hook-up works are complete.
 - e.) No additional structures are to be placed in the DPA without written approval from the Regional District of Nanaimo.
 - f.) There shall be no modification or alteration of the structures within the DPA without written approval of the Regional District of Nanaimo.

- 2. Hot Tub Structure**
 - a.) The platform on which the hot tub is to be located shall not exceed 0.3 metres in height so as to reduce the visual impacts on neighbouring properties.
 - b.) The roof beams must be removed so that visual impacts are reduced.
 - c.) The corner poles must not exceed 2.0 metres in height above ground level.
 - d.) Chlorinated water must not be drained or permitted to leak into the marine waters adjacent to the property.

- 3. Retaining Wall**
 - a.) There shall be no alteration of the existing retaining wall without a bioengineering assessment and written approval of the Regional District of Nanaimo.

Schedule No. 2
Amended Survey Plan
Development Permit Application No.60301
(As supplied by Applicant)



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**Schedule No. 3
Requested Variances
Development Permit No. 60301**

1. Vary the minimum setback for the front lot line;
 - d.) From 8.0 metres to 2.8 metres to accommodate the existing garage and courtyard.
 - e.) From 8.0 metres to 0.0 metres to accommodate the existing woodshed.
2. Vary the eastern interior lot line setback;
 - a.) From 2.0 metres to 0.7 metres to accommodate the existing workshop at the rear of the parcel.
 - b.) From 2.0 metres to 0.0 metres to accommodate the existing woodshed
3. Vary the minimum setback requirement from the natural boundary;
 - a.) From 15 metres to 6.9 metres to accommodate the existing workshop at the rear of the parcel.
 - b.) From 15 metres to 4.5 metres to accommodate the existing retaining wall.
 - c.) From 15 metres to 9.6 metres to allow for the retention of the hot tub structure within the development permit area.

Attachment No. 1
Development Permit Application No. 60301
Correspondence Received

Ruth Wahlgren

5493 Deep Bay Drive
Deep Bay B. C.
VOR 1G0
250-757-8660

Submission to the March 11, 2003 meeting at 7:30pm of the board of the
Regional District of Nanaimo

Re: Notice of variance to development permit application no. 0301. For the parcel of land located at 5489 Deep Bay Drive, legally described as Lot 39, District Lot 1, Newcastle District, Plan 20442

Dear RDN Board Members,

I do not oppose the setback regulations being relaxed to accommodate the existing structures on the property. The problems created by these buildings being located contrary to regulations is a matter for the present homeowners, the RDN and their reator.

I do oppose the setback regulations being relaxed to accommodate the hot tub for the following reasons:

1. When a structure is planned, the homeowner is expected to see if building codes apply before starting the project not after. A very bad precedent is set since a variance will simply be passed once you have built an illegal structure. This is a farce and does not uphold the ideas set out in the by-law.
2. When the hot tub is drained for cleaning, they cannot drain the chlorinated water into their septic field so they will probably drain this water directly into the environmentally sensitive beach area.
3. My son asked about the hot tub when it was newly constructed. At that time the owners of 5489 Deep Bay Drive said that since I did not live at my house year round my feeling were not important. They had absolutely no regrets about blocking a large portion of my view with a hot tub sitting on a raised platform covered by a roof.
4. The hot tub is located on an elevated platform directly in my view from the deck, living room and kitchen table. The owner had originally designed a roof supported by four poles to cover the hot tub. This would have completely ruined my view. The poles have since been sawn off but I do not know what the homeowner is planning to do now. Will the final design of the raised decked hot tub obstruct my view?
5. The placement of the hot tub on an elevated platform reduces the privacy in my yard since the hot tub sits above the fence level.
6. The owners were told after we had registered a complaint with the RDN Planning Department to halt construction. This did not happen and my son had to contact the Planning Department again. He was told that the Planner, Kceva Kehler even had to contact a manager to stop construction when a stop work order had already been issued.
7. There were several pine trees on the property line. The owners cut down two trees that were on their property. Some branches were touching the eaves and were causing rot. However, the owner also cut many limbs on a large pine tree on my property without my permission. These were popular nesting trees and included at least one Humming Bird nest. Also again, my privacy has been compromised since these trees provided a very nice screening effect.

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Attachment No. 2
Development Permit Application No. 60301
Correspondence Received

Regional District of Nanaimo

Attention: Planning Department

Please enter this letter as a submission to the March 11 board meeting at 730 PM.

Re: Notice of variance to development permit application no. 0301. For the parcel of land located at 5489 Deep Bay Drive, legally described as Lot 39, District Lot 1, Newcastle District, Plan 20442

We would like to support the letter sent by Mrs. Ruth Wahlgren in not issuing a development permit to the owners of 5489 Deep Bay Drive for the hot tub.

It is our feeling that the placement of the hot tub in the environmentally sensitive zone is counter to the intent of the by-law. Draining or leakage from the hot tub will negatively affect the beach area due to the chlorinated water. We frequently visit my mother's house and feel the placement of the hot tub on a raised platform is an infringement on our collective privacy. Sandra and I along with our two boys lived in my mother's house for four years. It is a shame that the trees that screened the two houses were removed. The remaining tree on my mother's side had branches removed by the neighbour and is now quite unsightly. We also enjoyed the view of Baynes Sound that is now obscured by the hot tub.

The board should not allow structures to be built and then make them legal by relaxing by-laws. This approach is backward since the law is only followed when a neighbour complains. The result is bad relations in the neighbourhood. In this case it is very unfair to my mother.

We suggest that the hot tub be placed in a location away from the environmentally sensitive area. It should also be relocated in an area that will not block my mother's sight lines and on the ground level.

Thank you,

Yours truly,

Sandra Wahlgren
Richard and Sandra Wahlgren

Richard Wahlgren

Sandra and Richard Wahlgren

5082 Longview Drive
Deep Bay B C VOR 1G0
Tel/fax: 250-757-8767

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REGIONAL
DISTRICT
OF NANAIMO

REGIONAL DISTRICT
OF NANAIMO

APR 14 2003

CHAIR		GMCS	
CAO		GMDS	
GMCS		GMES	
		EAP	✓

MEMORANDUM

TO: Pamela Shaw
Manager, Community Planning

DATE: April 14, 2003

FROM: Blaine Russell
Planning Assistant

FILE: 3060 30 60310

SUBJECT: Development Permit Application 60310 - Schulze
Electoral Area 'D' - 7922 Alison Road

PURPOSE

To consider a development permit application with a variance to facilitate an addition to an existing garage (with the enclosure of a carport) which is attached to an existing dwelling unit.

BACKGROUND

This is a development permit application with a variance, to allow for the construction of an addition to an existing garage on the subject property legally described as Lot 1, Nanoose Indian Reserve, Nanoose District, Plan 39482 and situated at 7922 Alison Road. The subject property is currently connected to community water and has a private septic disposal system. The subject property is surrounded by other 'Residential 1' properties and is bound by North Road to the west, Allison Road to the south, and by the ocean to the north (see Attachment No. 1 for location of property).

The subject property is currently zoned 'Residential 1' (RS1) pursuant to the "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987". The permitted uses of the 'Residential 1' zone are: Home Based Business and Residential Use. The application proposes to vary Section 3.3.8 a) i) Setbacks to a Watercourse of Bylaw No. 500 from 15.0 metres horizontal distance from the natural boundary to 10.0 metres.

In addition, the subject property is designated within the 'Bloods & Knarston Creeks Drainage Areas Development Permit Area' of the "Regional District of Nanaimo Lantzville Official Community Plan Bylaw No. 974, 1995" for the purpose of protecting the natural environment and protection of productive fish habitat. This development permit area is measured 15 metres from the natural boundary of Knarston Creek.

Proposal

The applicant is proposing a 28.45 m² addition (as measured from the overhang) to an existing dwelling unit on a 0.3125-hectare property. The addition will be of a similar form and style to that of the existing structure. Landscaping exists between the proposed addition and Knarston Creek.

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The applicant will be requested to obtain a site-specific exemption from the Ministry of Water Land and Air Protection for the setback relaxation. Ministry of Water Land and Air Protection has verbally indicated that the Ministry would not take issues with a reduction to the setback to 10.0 metres however, as a condition of this application formal approval will be required from the Ministry.

ALTERNATIVES

1. To approve the development permit application with variance as submitted, subject to notification procedures.
2. To deny the development permit application with variance.

DEVELOPMENT IMPLICATIONS

The proposal to allow for an addition to a garage follows the guidelines of the 'Bloods & Knarston Creeks Drainage Areas Development Permit Area'. The form of the addition will be similar in appearance, construction, and height to the existing dwelling unit. It should be noted that the site of the proposed addition is an existing gravel driveway and thus no vegetation removal would be occurring in order to facilitate its construction. It is anticipated that the small size of the proposed addition combined with its location outside of the immediate creek basin and 10.0 m from the natural boundary of Knarston Creek should have negligible to nonexistent runoff potential due to construction.

This proposed minor garage addition is exempt for the 1.5 metre flood elevation of Regional District of Nanaimo Bylaw 843, and thus a site-specific flood elevation exemption is not required for the proposed addition. However, as noted above, since the proposed addition is within the 15.0 metre setback of Knarston Creek, the applicant will be required to obtain a site-specific exemption from the Ministry of Water Land and Air Protection to relax the setback from natural boundary of Knarston creek. The site-specific exemption permit will be required prior to the issuance of a Building Permit and will be a condition of this application.

PUBLIC CONSULTATION IMPLICATIONS

As part of the required public notification process pursuant to the *Local Government Act*, adjacent and nearby property owners will have an opportunity to comment on the proposal prior to the Board's consideration of the permit.

VOTING


Electoral Area Directors – one vote, except Electoral Area 'B'.

SUMMARY

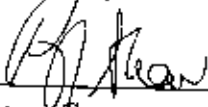
This is an application for a Development Permit in the 'Bloods & Knarston Creeks Drainage Areas Development Permit Area' with variance to Setback to a Watercourse provisions pursuant to Bylaw No. 500 to allow for an addition to an existing garage. The applicant has requested that the watercourse setback be relaxed from 15.0 to 10.0 metres to allow for the proposed addition. As development permit area has previously been landscaped and appears to adequately buffer Knarston Creek, staff recommends that the application be approved subject to the conditions outlined in Schedule No. 1.

RECOMMENDATION

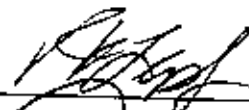
That Development Permit Application No. 60310 by Fritz Schulze and Ludmilla Schulze with variance to relax the minimum 'water course' setback requirement from 15.0 metres horizontal distance to 10.0 metres horizontal distance for the property legally described as Lot 1, Nanoose Indian Reserve, Nanoose District, Plan 39482 and situated at 7922 Alison Road to accommodate an addition to a garage be approved subject to Schedules No. 1, 2, 3, and 4 and the notification requirements pursuant to the *Local Government Act*.



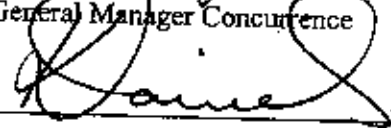
Report Writer



Manager Concurrence



General Manager Concurrence



CAO Concurrence

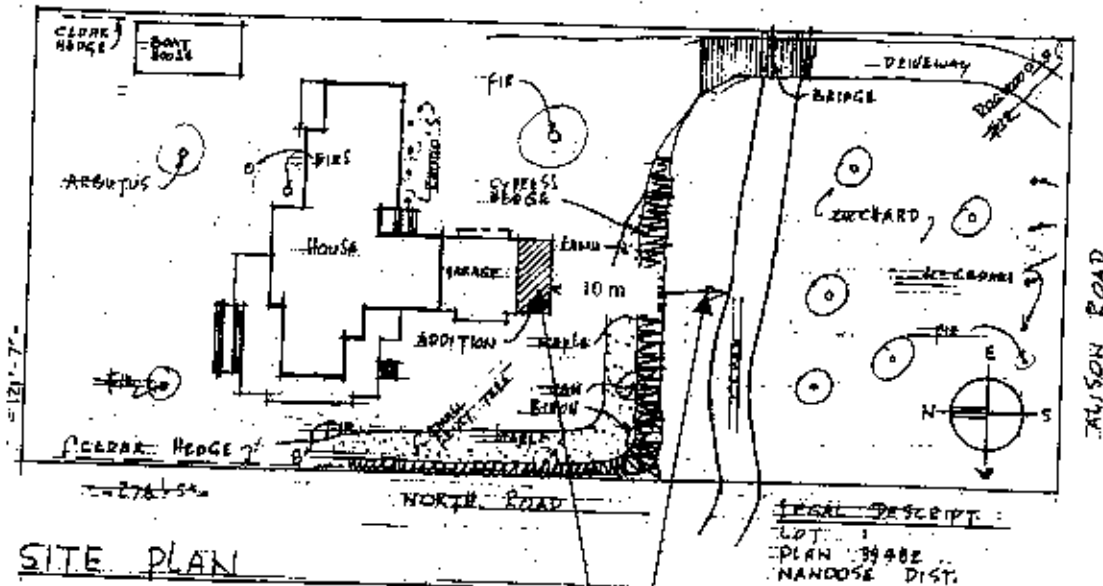
COMMENTS:

**Schedule No. 1
Conditions of Approval
Development Permit No. 60310**

The following set out the conditions of approval:

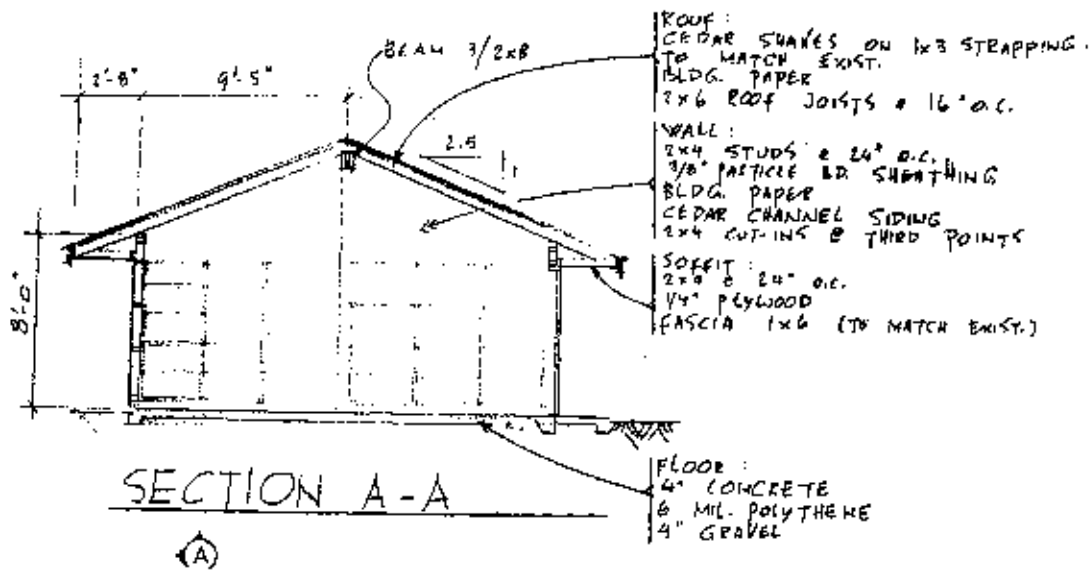
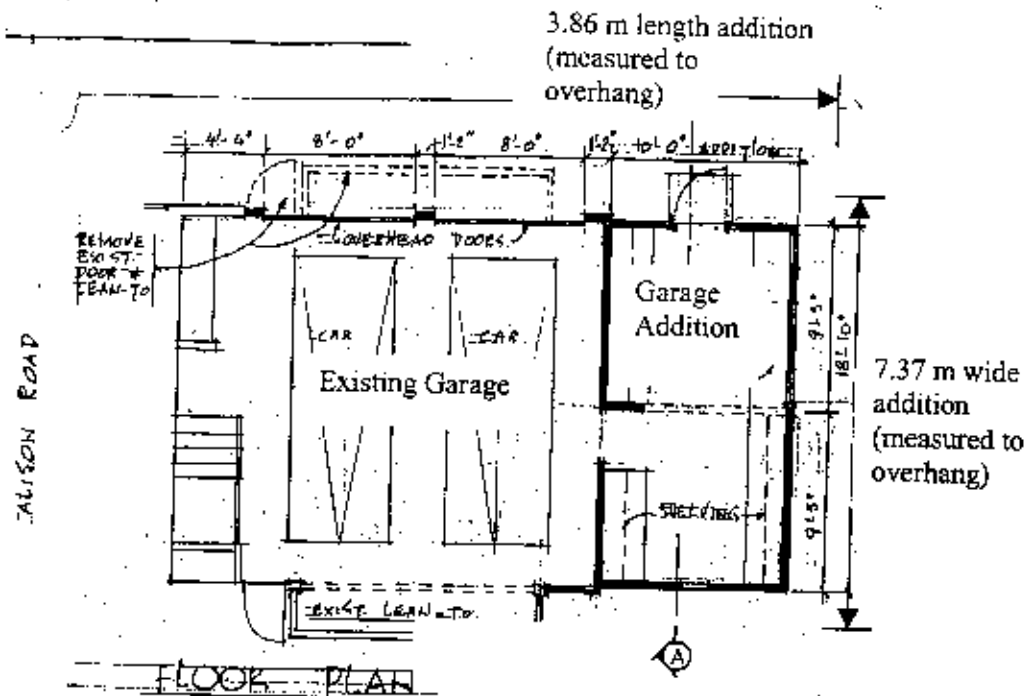
- 1 The attached garage addition is to be certified by a Professional Engineer and/or Professional Geotechnical Engineer to be safe for siting and use if deemed necessary by the Chief Building Inspector of the Regional District of Nanaimo.
- 2 The attached garage addition is to be surveyed by a British Columbia Land Surveyor if deemed necessary by the Chief Building Inspector of the Regional District of Nanaimo.
- 3 That a site specific exemption to Regional District of Nanaimo Bylaw 843 be obtained, from the Ministry of Water Land and Air Protection for a relaxation from 15.0 metres horizontal distance for the natural boundary to 10.0 meters, prior to the issuance a building permit for the proposed attached garage addition.

Schedule No. 2
Site Plan
Development Permit No. 60310

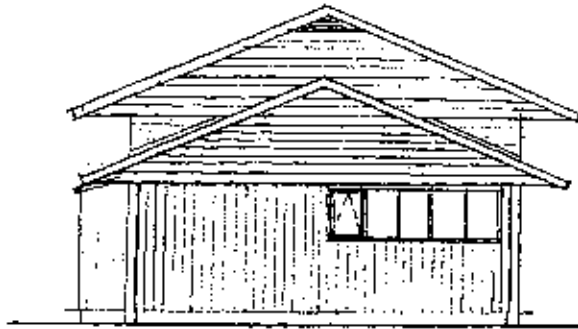


Minimum 10.0 metre
setback to Knarston Creek

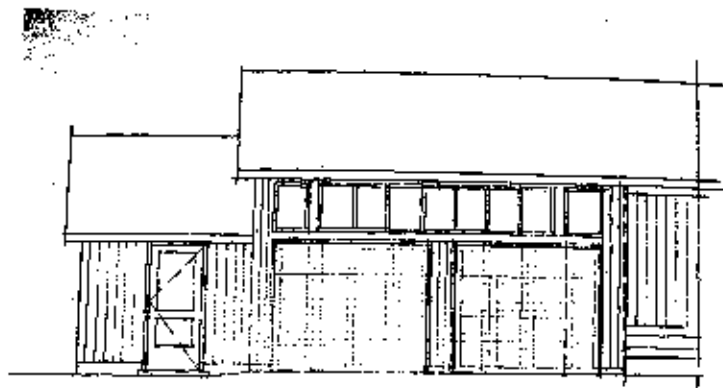
Schedule No. 2 part 2 of 2
 Building Plan
 Development Permit No. 60310



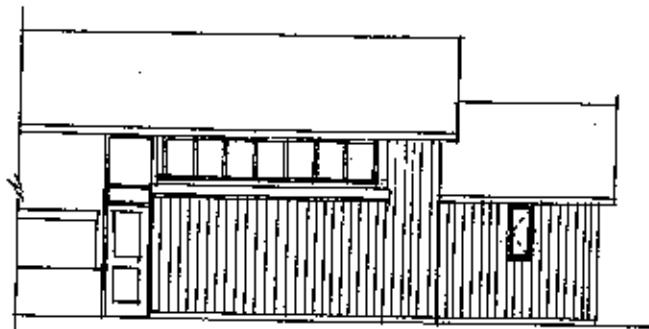
Schedule No. 2 part 2 of 2
Building Plan
Development Permit No. 60310



SOUTH ELEV.



EAST ELEVATION



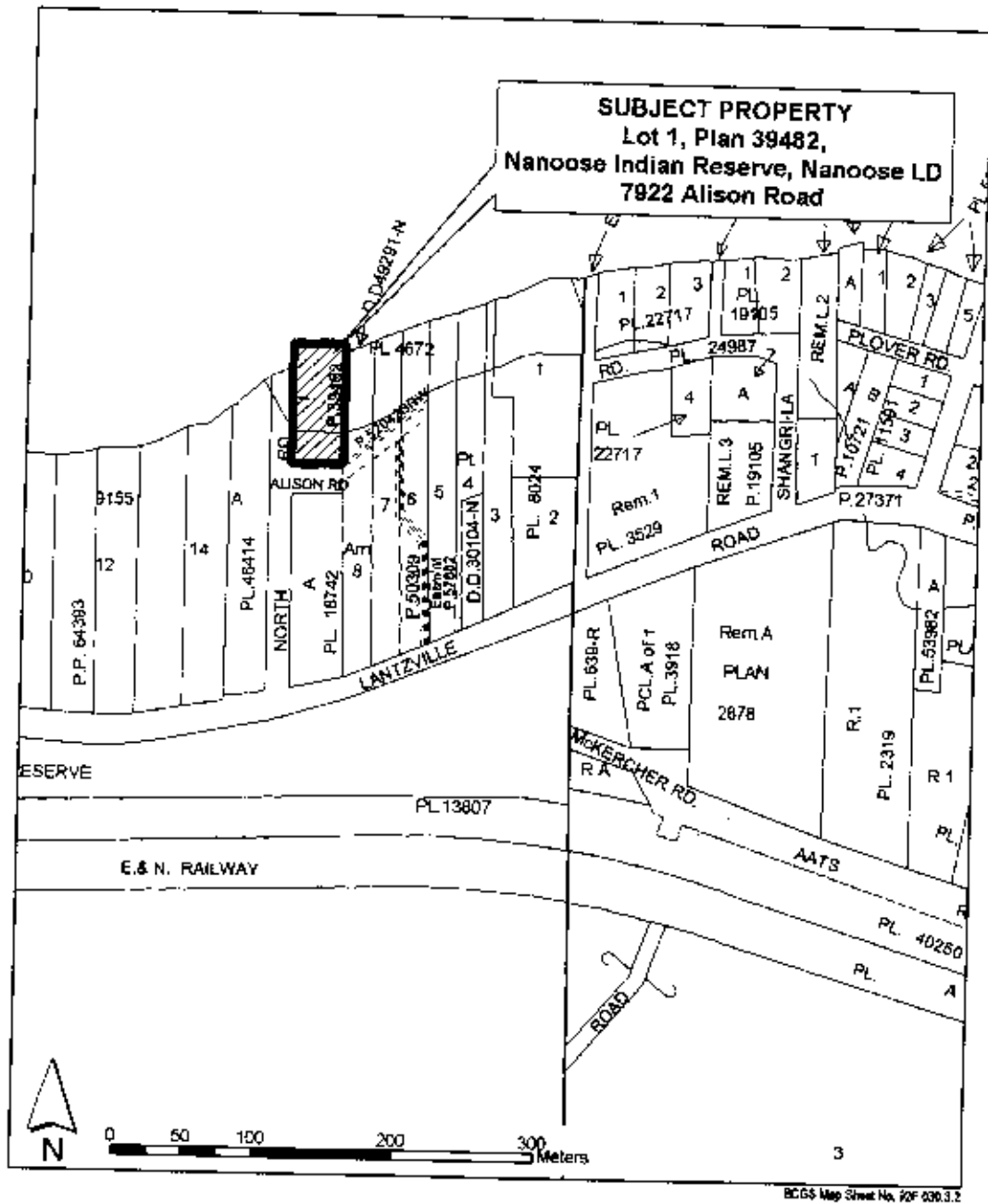
WEST ELEV.

**Schedule No. 4
Requested Variance
Development Permit No. 60310**

With respect to the lands, the Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987, is varied as follows:

1. Section 3.3.8 - Minimum Setback Requirements - The minimum setback requirement from Knarston Creek is hereby varied from 15.0 metres horizontal distance from the natural boundary to 10.0 metres, in order to accommodate a garage addition as shown on Schedule No. 2 and in accordance with the profile as shown on Schedule No. 3.

Attachment No. 1
Location of Subject Property





REGIONAL DISTRICT OF NANAIMO	
APR 14 2003	
CHAIR	GMCrs
CAO	GMDS
GMCms	GMES
CAP ✓	

MEMORANDUM

TO: Pamela Shaw
 Manager of Community Planning

DATE: April 11, 2003

FROM: Keeva Kehler
 Planner

FILE: 3060 30 60315

SUBJECT: Development Permit Application No. 60315 - Wiseman
 Electoral Area 'H' - South Lake Road - Strata Lot 387

PURPOSE

To consider an application to permit the construction of a new recreational residence and deck within the Environmentally Sensitive and Hazard Lands Development Permit Areas pursuant to the Regional District of Nanaimo Shaw Hill - Deep Bay Official Community Plan Bylaw No. 1007, 1996." Further, the application requests to vary the minimum setback requirement to an adjacent watercourse from 15 metres to 8 metres to accommodate the siting of the proposed recreational residence.

BACKGROUND

The subject property is legally described as Strata Lot 387, District Lot 251, Alberni District, Plan VIS5160 is located on South Lake Road at Horne Lake in Electoral Area 'H' (see Attachment 1).

The subject property is zoned Comprehensive Development 9 (CD9) pursuant to "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987." The bylaw states that: the maximum floor area of the main floor of the recreational residence shall not exceed 70 m²; the maximum floor area of the second storey (loft) shall not exceed 35 m²; and the maximum building height shall not exceed 6.1 metres. The applicant is proposing to meet these requirements.

Section 3.4.107.4 Minimum Setback Requirements establishes a 15-metre setback from the natural boundary for all watercourses except Horne Lake. The applicant is proposing to vary the minimum setback requirement from an adjacent watercourse from 15 metres to 8 metres to accommodate the proposed recreational residence and deck.

The applicant proposes to remove one cedar tree with a diameter of 0.6 metres from the development permit area and some alders from the property beyond the development permit area. The majority of the proposed building area was previously cleared by the applicant to facilitate the location of a recreational vehicle on the property. The applicant proposes to locate the new cabin and deck 10.5 metres from the present natural boundary of Horne Lake.

The Environmentally Sensitive Areas Development Permit Area was established to protect the natural environment. The Development Permit Area is measured 15.0 metres from the top of bank of the watercourse. In the case of Horne Lake, many properties do not have a verifiable top of bank so the setback is measured from the natural boundary of Horne Lake as shown on Plan VIS5160.

Concurrent with the adoption of Bylaw No. 500.275 (which created the CD9 zone and rezoned portions of the land surrounding Horne Lake to CD9 for the creation of a maximum of 400 Bare Land Strata

Lots), Development Permit No. 0120 was issued as a blanket development permit over all the strata lots at Horne Lake. DP 0120 provided detailed guidelines and conditions related to stormwater management; fill placement; construction and maintenance of docks; walkways and trails; foreshore and watercourse management; construction; vegetation management and landscaping; and sediment and erosion protection. Any new construction or land alteration must be consistent with DP 0120.

ALTERNATIVES

1. To approve the requested variance and development permit application subject to the conditions outlined in Schedules No. 1, 2, and 3.
2. To deny the requested variance and development permit application.

LAND USE AND DEVELOPMENT IMPLICATIONS

The applicant is requesting to vary the minimum setback requirement to an adjacent watercourse from 15 metres to 8 metres to accommodate the location of the new recreational residence. The applicant states that the requested variance would facilitate the use of the existing access to the property, minimizing additional site disturbance, while keeping pedestrian and vehicle traffic away from the watercourse. Parking will be located above the proposed residence to avoid any impacts on Horne Lake. Due to the topographical features of the property, the applicant states that it is necessary to locate the residence partially within the development permit area to allow for parking adjacent to South Lake Road. The applicant states that the proposed location for the cabin avoids the steeper slopes on the property, which reduces the potential for slope destabilization.

The applicant is proposing to locate his recreational residence behind the rear wall of the neighbouring residence on Lot 388, which will reduce potential visual impacts for the neighbouring property. The property is bordered to the south by a common property lot and beyond the common area lies Lot 386. Due to the configuration of the lots and Horne Lake, staff does not feel that views from Lot 386 will be negatively impacted by the proposed location of the new recreational residence.

ENVIRONMENTAL IMPLICATIONS

The applicant is proposing, for the most part, to utilize the existing cleared areas of the lot for the new construction. The proposed development will require the removal of one cedar tree and some alders from the lot. The proposed location of the residence would direct pedestrian and vehicle traffic away from the adjacent watercourse, minimizing potential disturbance to the riparian area.

VOTING

Electoral Area Directors – one vote, except Electoral Area 'B'.


SUMMARY/CONCLUSIONS

This is an application to construct a new recreational residence with a structural deck on a property located along South Lake Road at Horne Lake. The property is located within the Environmentally Sensitive and Hazard Lands Development Permit Areas (established for the protection of Horne Lake). The applicant requests that the required 15 metre setback to Horne Lake be relaxed to 10.5 metres and that the setback to an adjacent watercourse be relaxed from 15 metres to 8 metres to accommodate the proposed residence. In addition, because the application involves proposed variances to Section 3.4.107.4 Minimum Setback Requirements of "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987," adjacent landowners will be notified of the proposed variance pursuant to the notification requirements of the *Local Government Act*.

If the Board grants approval for this proposal, the applicant will also have to meet the conditions of Development Permit No. 0120, which was issued for the properties at Horne Lake.

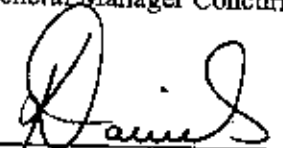
RECOMMENDATION

That Development Permit Application No. 60315 submitted by Bruce Wiseman to vary the minimum setback to an adjacent watercourse from 15 metres to 8 metres and to permit the construction of a new recreational residence and structural deck within the Environmentally Sensitive and Hazard Lands Development Permit Areas on the property legally described as Strata Lot 26, District Lot 251, Alberni District, Plan VIS5160, be approved subject to the requirements outlined in Schedules No. 1, 2, and 3 and to the notification requirements pursuant to the *Local Government Act*.


Report Writer


General Manager Concurrence


Manager Concurrence


CAO Concurrence

COMMENTS:

devsvs/reports/2003/dp ap 30315 Wiseman horne lk sl387

**Schedule No. 1
Conditions of Approval
Development Permit No. 60315**

The following conditions are to be completed as part of Development Permit No. 60315

Site Survey

1. A legal site survey completed by a BCLS confirming the siting of all buildings and structures on the lot must be submitted to the Regional District of Nanaimo prior to occupancy of the recreational residence.

Development Permit No. 0120

2. Subject property to be developed in accordance with Development Permit No. 0120 excluding section "Construction" subsection 1 through 4.

Sediment and Erosion Control

3. Sediment and erosion control measures must be utilized to control sediment during construction and to stabilize the site after construction is complete. These measures must include:
 - a. Exposed soils must be seeded as soon as possible to reduce erosion during rain events.
 - b. Tarps, sand bags, poly plastic sheeting and/or filter fabric are required to be onsite during works.
 - c. Cover temporary fills or soil stockpiles with polyethylene or tarps.

Vegetation Removal and Replanting

4. Vegetation removal within the development permit area shall be consistent with that which is required to locate the recreational residence and landscape deck and shall be consistent with the Vegetation Management and Landscaping Guidelines of Development Permit No. 0120.
5. Replanting of the eroded bank shall be undertaken in the late fall or spring when plants are best able to establish roots and temperatures are not extreme.
6. Replanting shall consist of trees, shrubs or groundcover native to the area and selected to suit soil, light and moisture conditions of the site.

Flood Construction Level

7. Certification of Flood Construction Level must be submitted to the Regional District of Nanaimo prior to occupancy of the recreational residence.
8. The Flood Construction Level may be achieved by structural elevation, provided however that for any building or structure within fifteen (15) metres from the natural boundary of Home Lake, the Flood Construction Level may not be achieved by means of fill unless the property owner first secures the written approval of the RDN acting in accordance with a Memorandum of Understanding between DFO, the Province and the RDN, and, in either case, DFO may, in its discretion, withhold its approval. Where landfill is used to raise the natural ground elevation, the toe of the landfill slope shall be no closer to the natural boundary of Home Lake than fifteen (15) metres unless permitted by the RDN pursuant to written approvals given pursuant to this

paragraph 4. The face of the landfill slope shall be adequately protected against erosion and flood flows. In no event shall the area below the required elevation be used for:

- a. human occupancy, commercial sales, business or storage of goods;
- b. the installation of furnaces or other fixed equipment damageable by floodwater or erosion; or
- c. the storage or use of contaminants

Pump & Haul Sewage Collection Service

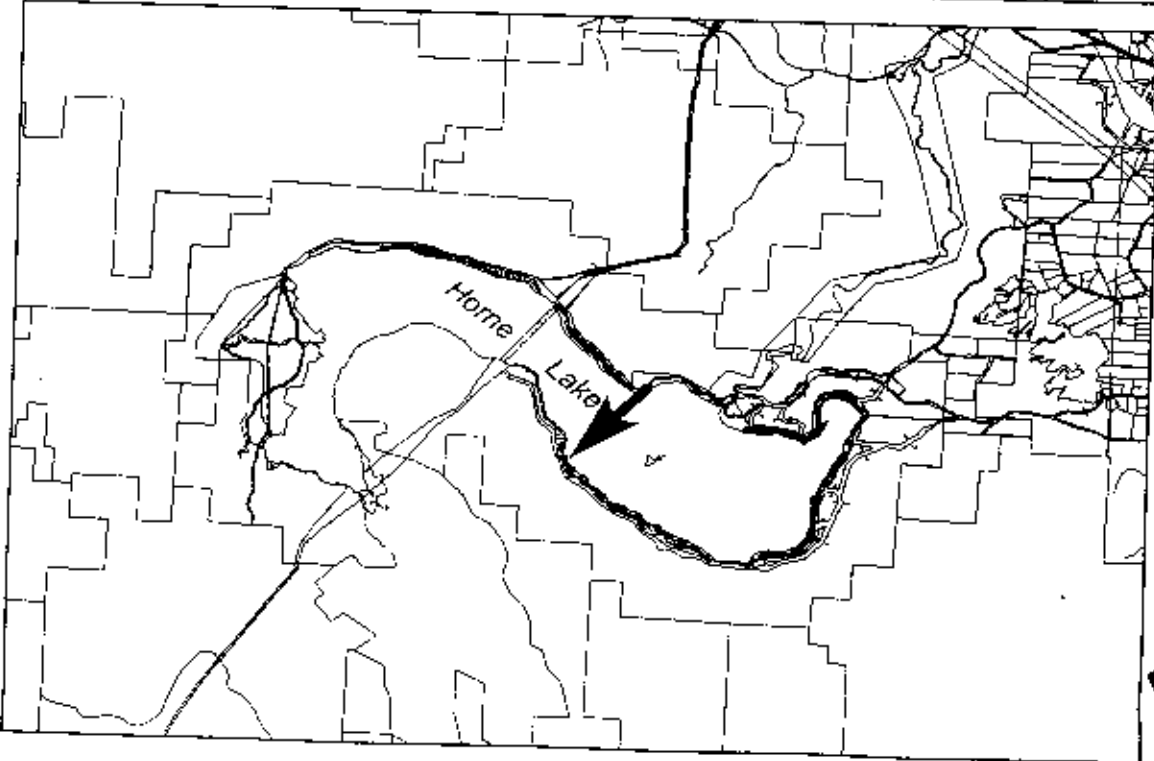
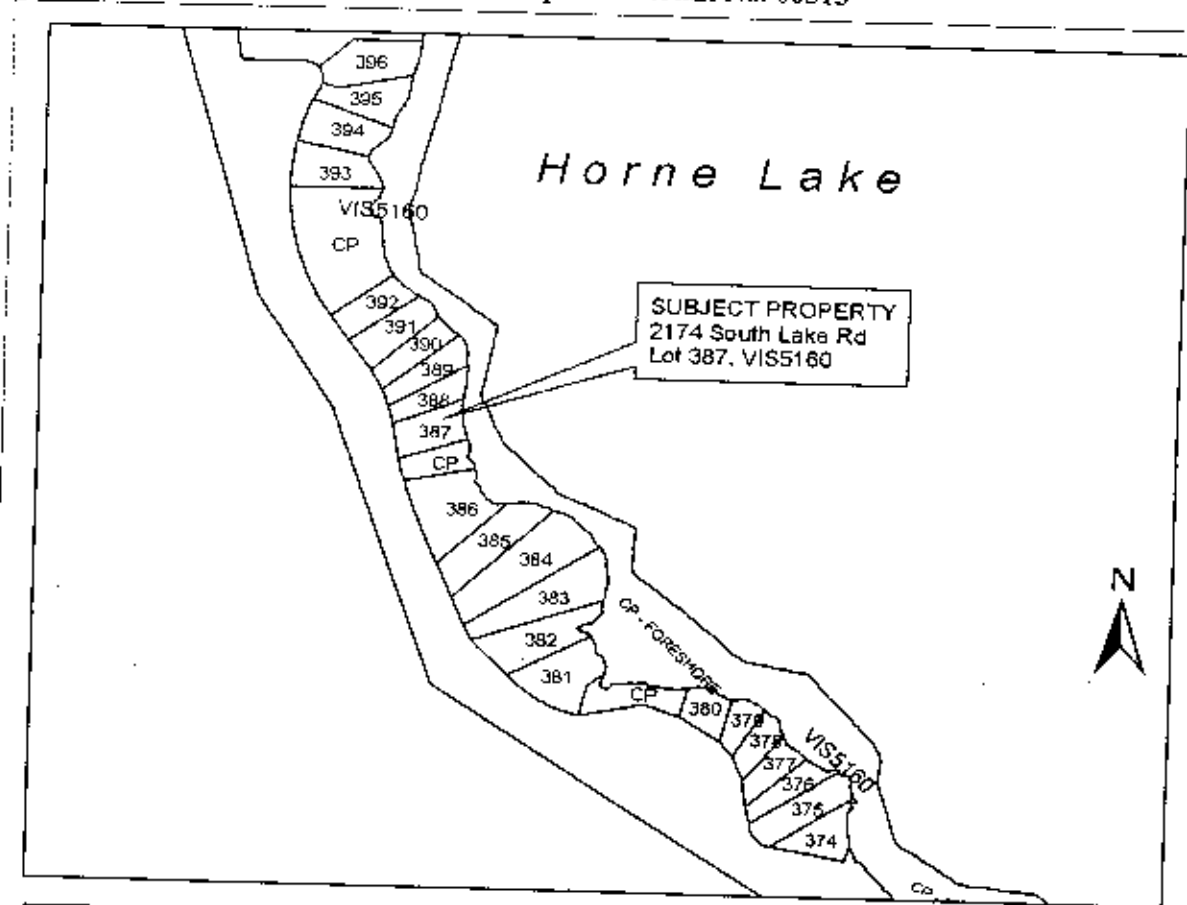
9. A condition of the issuance of this permit is a completed pump and haul holding tank and authorized connection be established by December 31, 2003 and that said pump and haul connection be established pursuant to "Home Lake Service Area Sewage Disposal Regulation Bylaw No. 1218, 2001".

Schedule No. 2
Requested Variances
Development Permit No. 60315

With respect to the lands, the Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987, the following variances are proposed:

1. Section 3.4.107.4 Minimum Setback Requirements – request to relax the minimum setback requirement from the natural boundary of an adjacent watercourse from 15 metres to 8 metres.

**Attachment No. 1
Subject Property
Development Permit No. 60315**





**REGIONAL
DISTRICT
OF NANAIMO**

REGIONAL DISTRICT OF NANAIMO			
APR 15 2003			
CHAIR		GMCrS	
CAO		GMDS	
GMCmS		GMES	
EAT L			

MEMORANDUM

TO: Pamela Shaw
Manager, Community Planning

DATE: April 14, 2003

FROM: Keeva Kehler
Planner

FILE: 3060 30 60317

SUBJECT: Development Permit Application No. 60317 – Fern Road Consulting Ltd., on behalf of Seascape Properties Ltd., G & R Basaraba, & D & J Barwise Electoral Area 'G', Flamingo Drive and Kinkade Road

PURPOSE

To consider an application for a development permit with variances within environmentally sensitive and natural hazards development permit areas pursuant to the Shaw Hill – Deep Bay Official Community Plan Bylaw No. 1007, 1996 to allow for the future construction of six dwelling units on six subject properties.

BACKGROUND

This is an application to permit the future construction of one dwelling unit per parcel on each of the six lots located within the designated floodplain of the Little Qualicum River along Flamingo Drive and Kinkade Road. The subject properties are legally described as Lots 1 to 6 District Lot 10 Newcastle District Plan VIP73563. Lots 1 to 5 are approximately 1.0 ha in size and Lot 6 is 1.73 ha in size. The properties are relatively flat and are currently densely vegetated. The Environmentally Sensitive Areas Atlas indicates the properties contain native riparian vegetation (*see Attachment No. 1 for location*).

The subject properties are currently zoned Residential 2 (RS2) pursuant to "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987". The minimum setback requirements for buildings and structures in this zone are: 8.0 metres from the front lot line; 2.0 metres from the rear lot line; 2.0 metres from the interior side lot lines; and 5.0 metres from other lot lines. The maximum height requirement for a dwelling unit is 8.0 metres as measured from the natural grade.

The subject properties are located within a Building Inspection Area (therefore the provisions of "Regional District of Nanaimo Floodplain Management Bylaw No. 843, 1991" apply to these parcels). It is also noted that these parcels are restricted by an RDN sewer servicing covenant to 1 dwelling unit per parcel.

There are a number of covenants registered on the titles of these parcels including a section 219 covenant that establishes a flood construction level for dwelling units and habitable space. For Lots 1 to 5 the covenant requires a flood construction level of 4.0 metres Geodetic Survey of Canada Datum (GSC) and for Lot 6 the required flood level is 4.7 metres GSC. Other covenants and documents are listed below:

- *Section 219 Covenant (E1039126)* applies to Lots 1 to 5 and requires that no area used for habitation, business, or storage of goods damageable by floodwaters shall be located within any building at an elevation such that the underside of the floor system thereof is less than 4.0 metres Geodetic Survey of Canada Datum. The required elevation may be achieved by structural elevation or by adequately compacted landfill.
- *Section 219 Covenant (E1039127)* applies to Lot 6 only and requires that no area used for habitation, business, or storage of goods damageable by floodwaters shall be located within any building at an elevation such that the underside of the floor system thereof is less than 4.7 metres Geodetic Survey of Canada Datum. The required elevation may also be achieved by structural elevation or by adequately compacted landfill.

- *Section 219 Covenant (EP010184)* applies to Lots 1 to 6 and restricts that the properties shall only be used for those permitted uses provided for sites with no community services in the Residential 2 (RS2) zone of Bylaw No. 500, 1987, therefore restricting the number of dwellings to one per parcel.
- *Section 219 Covenant (E1040474)* designates a portion of Lot 6 for a lane right-of-way to provide access to Lot 1, Plan VIP65041. The covenant reserves an area for road purposes and indicates that the area shall remain unencumbered by buildings or structures. This covenant area creates a buffer of approximately 25 metres along the rear portion of Lot 6 where no dwellings or buildings may be placed (see Schedule No. 3).
- *Building Scheme (E1039129)* affects Lots 1 to 6 and includes prohibiting the keeping of animals other than domestic pets on the lots (Under Bylaw No. 500, 1987, properties that are greater than 1.0 ha in area are permitted to keep household animals, pets and livestock); designating a building site area for each lot; restricting all accessory buildings to within the site area; restricting site clearing, forest retention, and yard setbacks as outlined in the site criteria plan diagrams (see Schedule No. 3).
- *Statutory Right-of-Way (E1040472)* creates an easement over portions of Lots 5 and 6 to facilitate the installation of sanitary and storm sewer facilities.

Development Permit Guidelines

All six properties are designated entirely within the Environmentally Sensitive and Hazard Lands Development Permit Areas (DPAs) pursuant to the Shaw Hill – Deep Bay Official Community Plan Bylaw No. 1007, 1996. These DPAs were established to protect those areas of the parcels that are environmentally sensitive and to protect future development from potential natural hazards such as, in this case, flooding. Because the DPAs affect each of the lots in their entirety, there are no available building sites outside of the DPAs. Therefore, a Development Permit is required.

Proposed Variances

In addition, the agent for the applicants is also requesting to vary the maximum 8.0 metre height requirement for the dwelling units pursuant to Bylaw No. 500. This would require the Board's consideration of variances as follows:

- a) For Lots 1 to 5: 9.5 metres as measured from the natural grade (*that is, 8 metres above the flood level of 4.0 metres GSC as required by the section 219 covenant*); and
- b) For Lot 6: 10.2 metres as measured from the natural grade (*that is, 8 metres above the flood level of 4.7 metres GSC as required by the section 219 covenant*).

Staff notes that the applicants have not specifically requested a variance to the maximum height of accessory buildings. Therefore, no variance to the maximum height provision of 6.0 metres as permitted in the RS2 zone is considered in this report. It is noted that garages without storage are not required to meet the flood construction level.

ALTERNATIVES

1. To approve Development Permit Application No. 60317 with variances as submitted by the applicant subject the conditions outlined in Schedules No. 1, 2, and 3 and subject to notification requirements pursuant to the *Local Government Act*.
2. To refuse the Development Permit Application with variances.

LAND USE AND DEVELOPMENT IMPLICATIONS

As the properties are located in the floodplain of the Little Qualicum River, any fill material placed on the lots has the potential to impact adjacent wetlands or watercourses if a flood event occurs. Also sediments from the lots have the potential to be eroded into adjacent watercourses during development if mitigative sediment and erosion control measures are not used. The properties themselves do not contain a sensitive watercourse or wetland area, which may reduce the potential risk of environmental degradation on the lots; however, to ensure protection of nearby sensitive lands, staff recommends that sediment and erosion control measures be required as a condition of development permit.

While the building scheme addresses some of the environmental issues, such as tree retention on portions of the lots and indicates building sites for the dwelling units, this is not enforceable by the RDN. However, staff recommends that in the absence of a vegetation management plan for each specific lot, the RDN should refer to the existing building scheme to identify the final building sites and areas where vegetation must be retained and enhanced. Therefore, it is recommended that building site areas as outlined in the building scheme be included in the conditions of the development permit.

Given the existing topography, large parcels, tree retention clauses in the building scheme, and existing natural vegetation, the potential impact on views to the ocean for adjacent lots is considered minimal. The subject lots are not located on the waterfront side of Flamingo Drive. Lots 18 to 22, Plan 10115, which are adjacent to the subject properties, are oriented towards the Island Highway and there currently does not appear to be an ocean view from these parcels.

As the applicant is requesting approval of building site envelopes without specific building plans, it is difficult for staff to assess specific impacts that might result from the construction and land clearing on individual lots. The alternative to approving the request for a blanket development permit would be to require individual development permits at the time of the proposed construction. However, the applicant has requested approval of a development permit with variances for all six lots and therefore, staff has included the necessary conditions as outlined in Schedule No. 1 that would satisfy the development permit area guidelines in the Official Community Plan.

It is noted that because no building plans have been submitted, staff has a limited ability to consider the impacts on adjacent property owners and concerns may be raised as part of the notification process. However, given that all of the parcels are 1.0 hectare or greater in size and that vegetation retention areas have been identified in the building scheme, and would be a condition of approval, staff is prepared to recommend that the application proceed to public notification.

PUBLIC CONSULTATION IMPLICATIONS

Public consultation with respect to this application will be pursuant to the notification requirements of the *Local Government Act*.

In the past, adjacent landowners have expressed concern with the Board reviewing applications for a variance in the absence of specific building plans indicating exact footprint, elevation, design, and location of proposed buildings. However, in this case, adjacent landowners will know the general location for the new dwellings and areas where the existing vegetation will be retained due to covenant and building scheme requirements. Notification on this application will provide a means for the public to review this application and seek clarification on any aspect of the application.

SUMMARY

This is an application for a development permit within the Shaw Hill - Deep Bay Official Community Plan, Bylaw No. 1007, 1996 Environmentally Sensitive and Hazard Lands Development Permit Areas. The application requests a blanket height variance for six dwelling units on six parcels (one dwelling unit per parcel) pursuant to the requirements of Bylaw No. 500, 1987. This would result in the dwelling units being between 9.5 metres and 10.2 metres in height as measured from the natural grade. Because the agent for the applicants has not included detailed building and site information, it is difficult for staff to fully assess the potential impacts with the variance request. With buildable site areas and vegetation retention areas established by the building scheme and recommended to be part of the development permit staff recommends the development permit application be approved subject to notification requirements pursuant to the *Local Government Act* and subject to the conditions outlined in Schedules No. 1, 2, and 3.

RECOMMENDATION

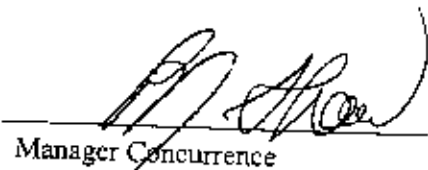
That Development Permit Application No. 60317, submitted by Fern Road Consulting on behalf of Seascope Properties Limited, G & R Basaraba, & D & J Barwise for the properties legally described as Lots 1 to 6 District Lot 10 Newcastle District Plan VIP73563 to facilitate future construction of six dwelling units with variances as well as the construction of permitted accessory buildings including garages and landscape features be approved, subject to the conditions outlined in Schedules No. 1, 2, and 3 of the staff report and subject to the notification requirements pursuant to the *Local Government Act*.



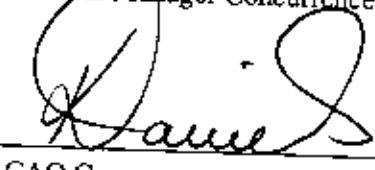
Report Writer



General Manager Concurrence



Manager Concurrence



CAO Concurrence

COMMENTS:

Schedule No. 1
Conditions of Approval
Development Permit Application No. 60317

The following sets out the conditions of approval with respect to DP No. 60317:

1. Buildings and Structures

All dwelling units and accessory buildings and landscape features shall be located within the designated building sites as shown on Schedule No. 3 attached to and forming part of this development permit. Future dwelling units shall be designed to a maximum of 2 storeys and provide for only uninhabitable crawl space and uninhabitable attic areas. There are no variances for the construction of accessory buildings or landscape features.

2. Vegetation Removal

- a. There shall be no removal of vegetation outside the designated building sites, shown as hatched areas on Schedule No. 3 attached to and forming part of this development permit application.
- b. The removal of invasive plants or noxious weeds on a small scale within the development permit area is permitted. Examples of invasive or noxious species include Scotch broom, Himalayan blackberry, morning glory and purple loosestrife. Replanting of the development permit area is to occur immediately.
- c. The planting of native trees, shrubs and groundcover to enhance habitat values in the development permit area is encouraged.
- d. The retention of significant trees within building site areas is encouraged.

3. Sediment and Erosion Control

Sediment and erosion control measures must be utilized to control sediment during the development and to stabilize the site after the works are complete. These measures must include:

- a. Exposed soils must be seeded as soon as possible to reduce erosion during rain events;
- b. Tarps, sand bags, ploy plastic sheeting and/ or filter fabric are required to be onsite during the works; and
- c. Cover temporary fill or soil stockpiles with polyethylene or tarps.

The placement of fill is restricted to the location of construction as approved by a building permit or to permit reasonable access and egress to buildings and structures. All other placement of fill will require an approved development permit.

4. Flood Elevation

There shall be no habitable space located below the required flood elevation of 4.0 metres GSC for Lots 1-5 and 4.7 metres GSC for Lot 6.

5. Bylaw Compliance

Development of the properties must be in compliance with the Regulations of all applicable Regional District of Nanaimo Bylaws except where variances have been granted by this permit.

6. Drainage Works

This development permit does not provide for the construction of drainage works including drainage ditches, trenches, culverts except that necessary drainage works may be approved as part of a building permit to allow for approved construction.

**Schedule No. 2
Requested Variances
Development Permit Application No. 60317**

With respect to the lands and the "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987," the following variances are to be considered:

Part 2 Interpretation Section 2.1 Definitions 'height' is varied from:

The elevation of a point directly below:

- a) that part of a building or structure being measured above land (or the surface of water at high water), and;
- b) on a line connecting the two intersections of the natural grade and the outermost exterior building walls or supports as indicated on a plan showing any complete vertical section of that part of the building or structure being measured;

but specifically excludes chimney, mast aerial, church spire, flag pole, water tank, observations and transmission tower, mechanical devices necessary for the operation of a building, and agriculture building or structures where permitted in the zone.

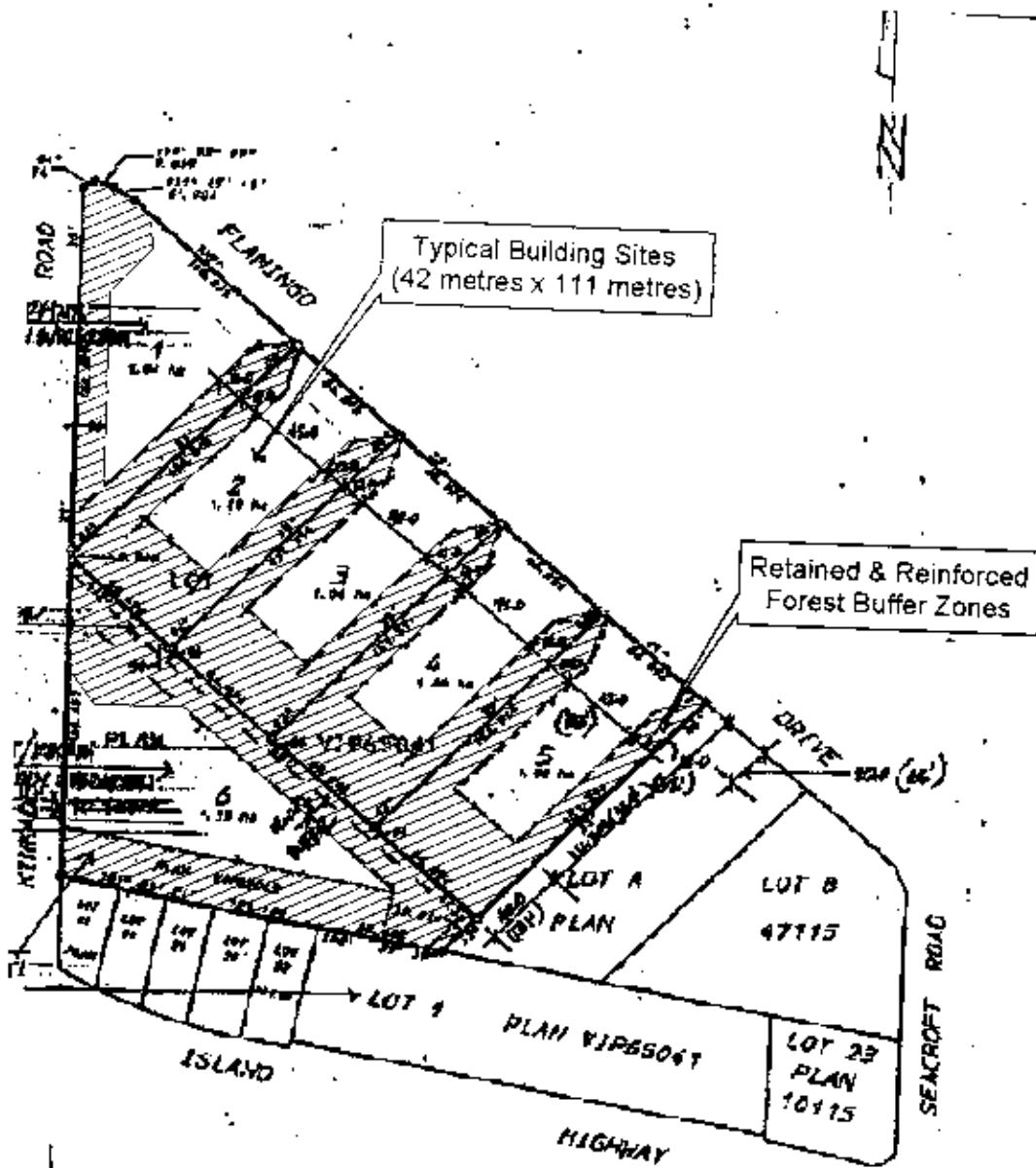
to:

The maximum dwelling unit height is varied as follows:

- a) For Lots 1 - 5, District Lot 10, Plan VIP73563, Newcastle District to 8.0 metres above the flood level of 4.0 metres GSC, not to exceed 12.0 metres GSC.
- b) For Lot 6, District Lot 10, Plan VIP73563, Newcastle District to 8.0 metres above the flood level of 4.7 metres GSC not exceeding 12.7 metres GSC.

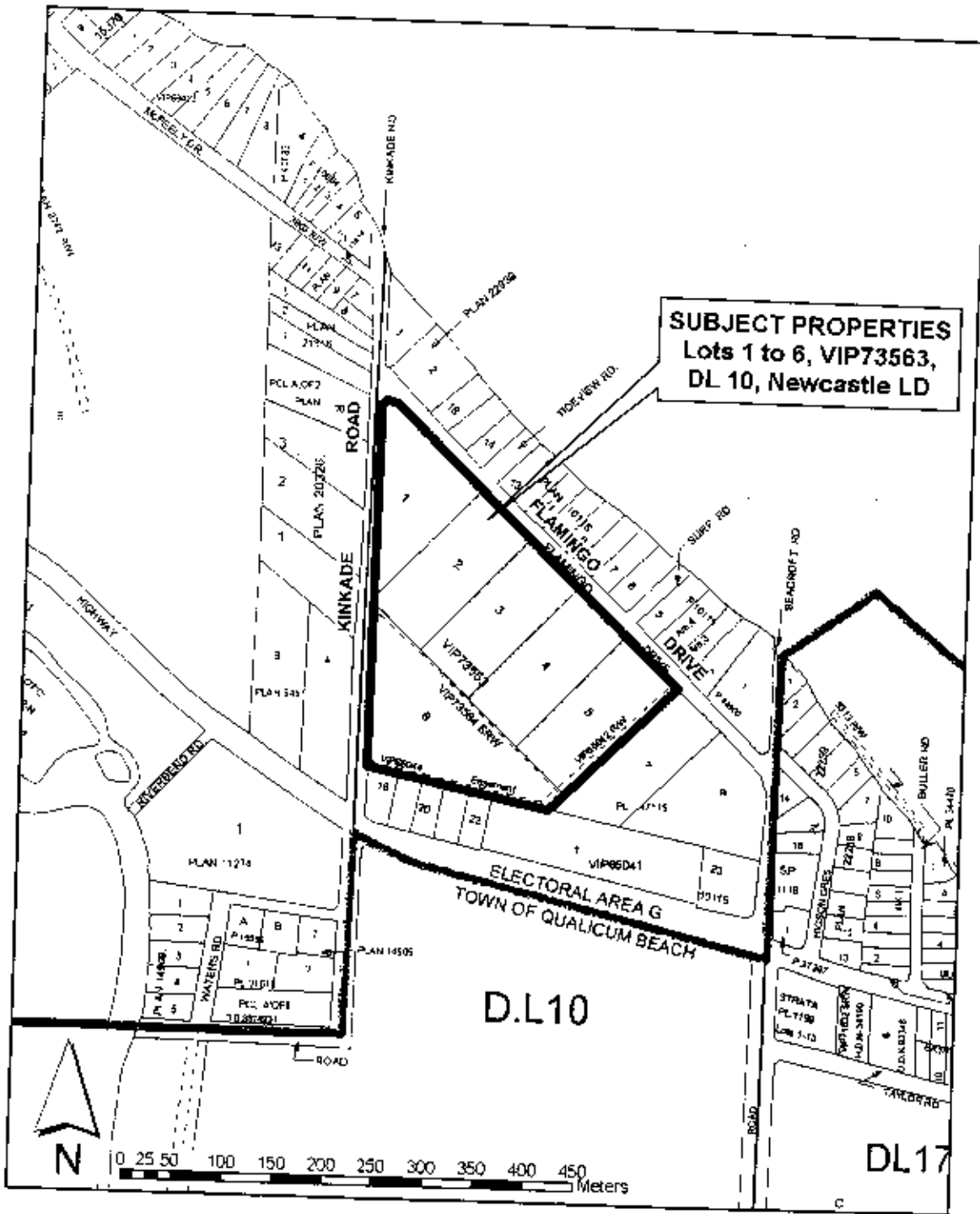
exclusive of chimneys, but specifically restricting the number of storeys within each dwelling unit to 2 (two) and providing only for uninhabitable crawl space and uninhabitable attic areas.

Schedule No. 3
Building Sites and Vegetation Retention Areas
Development Permit Application No. 60317
(As supplied by applicant)



~~BUILDING SITES - MIN. FOREST RETENTION 1-300 2246~~
~~AND ADDITIONAL SIGNIFICANT TREES ARE WITHIN BLACK SITE ZONE~~
~~TO BE RETAINED IN PERPETUITY.~~

Attachment No. 1
Location of Subject Properties
(Attached for convenience only)



BCGS Map Sheet No. 02F.038.4.1



REGIONAL DISTRICT OF NANAIMO		
APR 14 2003		
CHAIR		GMCrS
CAO		GMDS
GMCmB		GMES
EAP ✓		
DATE:		April 11 2003
FILE:		3060 30 60318

MEMORANDUM

TO: Pam Shaw
Manager of Community Planning

FROM: Susan Cormie
Senior Planner

SUBJECT: Development Permit Application No. 60318 - Steven and Janet Atkinson
Electoral Area 'D' - Jameson Road

PURPOSE

To consider an application for a development permit to facilitate a 4-lot subdivision within the Environmentally Sensitive Areas Development Permit Area pursuant to the East Wellington - Pleasant Valley Official Community Plan.

BACKGROUND

The subject property, which is 8.17 ha in size and legally described as Lot B, Block 2, Section 12, Ranges 3 & 4, Mountain District, Plan VIP68030, is located on Jameson Road in Electoral Area 'D' (see Attachment 1 for location). The property, which is currently vacant, is zoned Rural 1 (RU1), and is within Subdivision District 'D' (2.0 ha minimum parcel size with or without community services) pursuant to the "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987". The applicants are proposing to create a 4-lot subdivision which would permit 2 dwelling units on each proposed parcel greater than 2.0 ha in size (see Schedule No. 2 for proposed subdivision). It is noted that the applicant has received Preliminary Layout Approval of Subdivision (PLA) from the Regional Approving Officer.

Pursuant to the "Regional District of Nanaimo East Wellington - Pleasant Valley Official Community Plan Bylaw No. 1055, 1997", the subject property is designated within the Environmentally Sensitive Areas Development Permit Area (DPA), which was established for, in this case, the protection of Fleming Creek which crosses the parent parcel. The development permit area includes the area on either side of the watercourse as measured 30.0 metres from the top of the bank. As the applicant is proposing to create a 4-lot subdivision, a development permit is required to be in place.

As part of the conditions of a previous subdivision, the parent parcel currently has two section 219 covenants registered on title. Briefly, these covenants restrict the following:

1. a covenant held by the Ministry of Water, Land & Air Protection for the purposes of allowing no filling, no building, no removal of vegetation or other changes by human hands along the creek beds or within 18 metres of the centre line of any creeks and restricting the location of buildings and structures to beyond 15 metres from the natural boundary or 18 metres from a stream centerline, whichever is greater on areas with an average slope of 5% or less and 9 metres from the top of a slope on areas with an average slope of 5% or greater; and
2. a covenant held by the Ministry of Water, Land and Air Protection and the RDN for the purposes of defining a flood construction elevation 1.5 metres above the natural boundary of any creek.

These covenants correspond with the current Bylaw No. 500, 1987 requirements for minimum setbacks from watercourses for buildings and structures.

The parent parcel is located within a RDN Building Inspection Area and is therefore subject to the requirements of the RDN Floodplain Management Bylaw No. 843, 1991 at the time of building permit applications.

ALTERNATIVES

1. To approve the development permit subject to the conditions outlined in Schedule Nos. 1 and 2.
2. To deny the requested development permit.

DEVELOPMENT / ENVIRONMENTAL IMPLICATIONS

The Ministry of Water, Land and Air Protection is agreeable to the applicant continuing with the current covenants with respect to the subdivision application. The Ministry has indicated that these covenants will provide an adequate level of protection for Fleming Creek. However, the Ministry will not support any additional creek crossings including servicing pipes and accesses (It is noted that there are 2 existing creek crossings which are proposed to serve the 4 parcels). As a result, staff recommends that the Ministry's concerns be included in the development permit as a condition of permit.

The applicant has indicated that there are available building sites between Fleming Creek and Jameson Road. The Ministry of Water, Land and Air Protection will only support such building sites if all requirements of the Regional District and the Ministry of Transportation can be met and there are no additional crossings of the creek (including all service lines such as water and septic disposal services). In support of the Ministry's issues, staff note that any future buildings or structures proposed to be located within the development permit area will be subject to a development permit. It is also noted that the terms of the covenant documents will have to be taken into consideration at the time of any future development permit application to locate a building or structure within the development permit area.

It is noted that the Building Inspection Department has indicated that geotechnical reports will likely be required at the time of building permit applications.

VOTING

Electoral Area Directors - one vote, except Electoral Area 'B'.

SUMMARY

This is a development permit application required as part of a subdivision application to permit the creation of 4 minimum 2.0 ha sized parcels on land designated within an Environmentally Sensitive Lands Development Permit Area pursuant to the East Wellington - Pleasant Valley Official Community Plan. The parent property currently has two section 219 covenants registered on title, which restrict building and structure setbacks from Fleming Creek, the minimum building elevation requirements, and the removal of vegetation within an 18-metre wide riparian area measured from the centerline of the creek. These covenants correspond with the current Bylaw No. 500 requirements for locating building and structures from watercourses. The Ministry of Water, Land and Air Protection will support this application, but will not support additional crossings of the watercourse, including servicing lines and pipes and will only support future buildings and structures between the watercourse and Jameson Road where both the Ministry of Transportation and the Regional District's requirements can be met. As a result, the Ministry's conditions are recommended to be included in the development permit (see Schedule No. 1 of the staff report).

As the Ministry of Environment will support the retention of the current protective covenants and the development permit secures the conditions the Ministry has with respect to future crossings of the watercourse, staff support the issuance of the development permit subject to the conditions set out in Schedule Nos. 1 and 2 of the staff report.

RECOMMENDATION

That Development Permit Application No. 60318 submitted by Steven and Janet Atkinson, to allow for a 4-lot subdivision designated within the Environmentally Sensitive Areas Development Permit Area pursuant to the Regional District of Nanaimo East Wellington - Pleasant Valley Official Community Plan Bylaw No. 1055, 1997 on the property legally described as Lot B, Block 2, Section 12, Ranges 3 & 4, Mountain District, Plan VP68030 be approved, subject to the conditions outlined in Schedule Nos. 1 and 2 of the corresponding staff report.

Mcormie

Report Writer

[Signature]

General Manager Concurrence

[Signature]

Manager Concurrence

[Signature]

CAO Concurrence

COMMENTS:

devs\reports\2003\dp ap 3060 30 0318 Atkinson.doc

SCHEDULE No. 1
Conditions of Approval
Development Permit Application No. 60318

The following sets out the conditions of approval in conjunction with the proposed 4-lot subdivision application (File No. 21288) of Lot B Block 2 Section 12 Ranges 3 and 4 Mountain District Plan VIP68030:

1. Existing Covenants

- a Covenant documents EM108710 and EM108708 shall be registered on the titles of all future parcels.

2. Creek Crossings

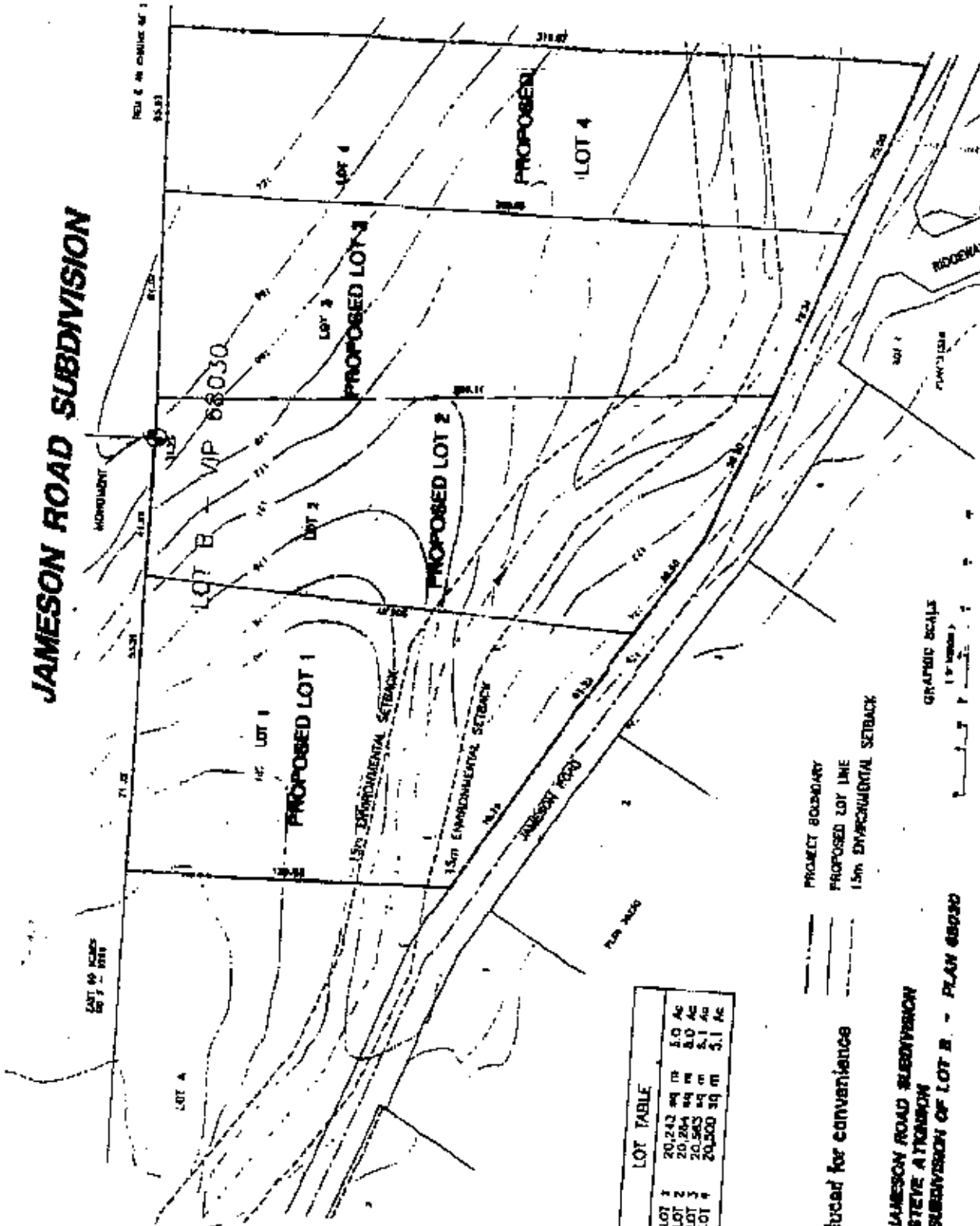
- a There shall be no additional access crossings of Fleming Creek, including culverts or bridging except for the 2 current crossings, which have been approved by the Ministry of Water, Land & Air Protection.
- b There shall be no crossings of Fleming Creek for the purposes of providing any service pipes or lines including domestic water or septic disposal pipes or lines.

3. Future Buildings and Structures

- a All future buildings and structures shall be located a minimum of 30.0 metres from the top of the bank as outlined in the Environmentally Sensitive Areas Development Permit Area unless permitted by way of a development permit approved by the Regional Board of Directors.
- b All future buildings and structures shall meet the minimum setback from watercourse requirements pursuant to Bylaw No. 500, 1987 to the satisfaction of the Regional District of Nanaimo.

SCHEDULE No. 2
Proposed Plan of Subdivision
Development Permit Application No. 60318

JAMESON ROAD SUBDIVISION



LOT TABLE	
LOT 1	20,242 sq m 1.0 Ac
LOT 2	20,284 sq m 2.0 Ac
LOT 3	20,545 sq m 2.1 Ac
LOT 4	20,500 sq m 3.1 Ac

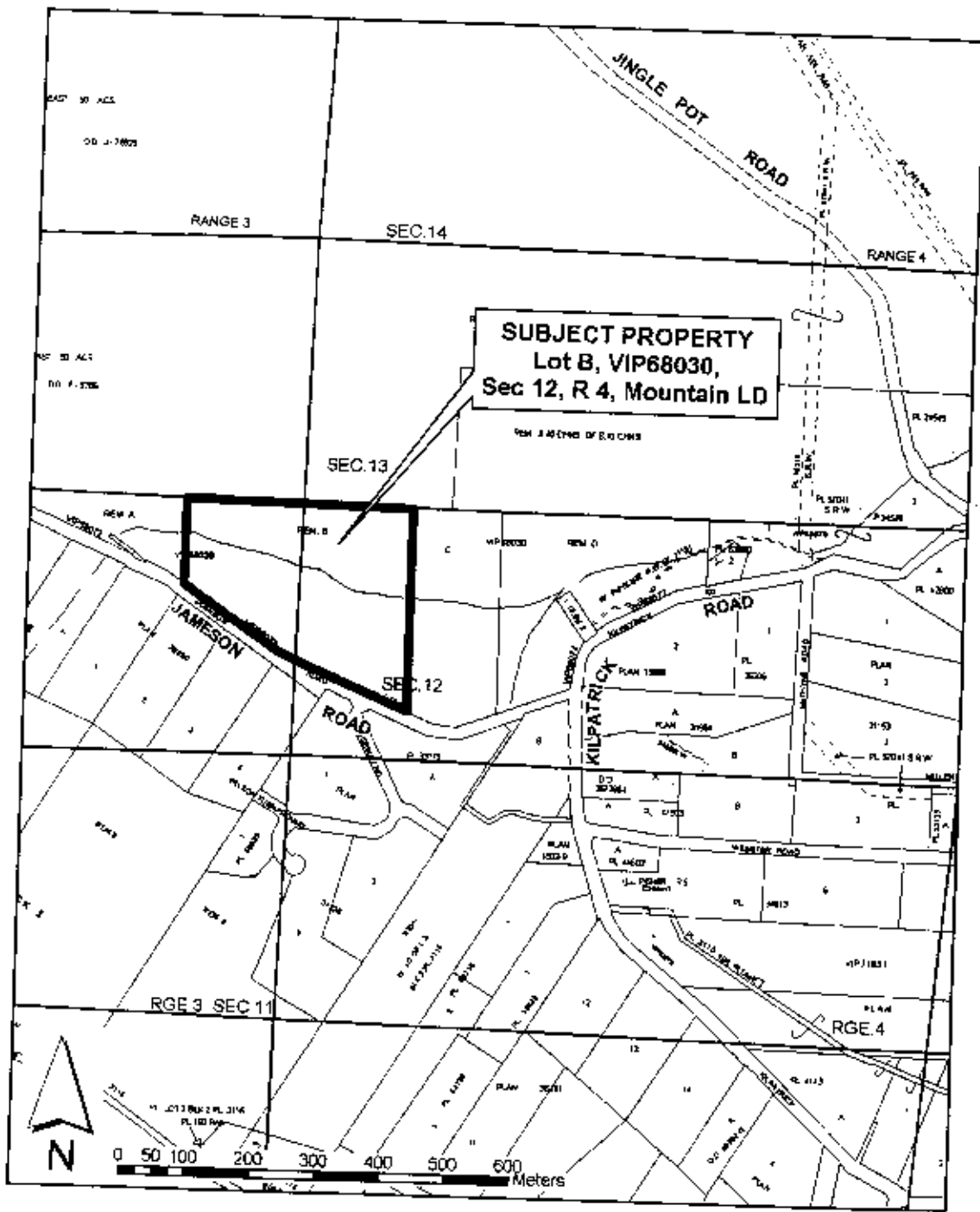
PROJECT BOUNDARY
 PROPOSED LOT LINE
 15m ENVIRONMENTAL SETBACK

Reduced for convenience

JAMESON ROAD SUBDIVISION
 STEVE ATKINSON
 SUBDIVISION OF LOT B - PLAN 60318

GRAPHIC SCALE
 1" = 100m

ATTACHMENT No. 1
Development Permit Application No. 60318
Location of Subject Property



BCGS Map Sheet No. 92F.020.4.2



APR 14 2003

CHAIR		GMCrS	
CAO		GMDS	
GMCmS		GMES	
		EAT	✓

MEMORANDUM

TO: Pamela Shaw
Manager, Community Services

DATE: April 14, 2003

FROM: Susan Cormie
Senior Planner

FILE: 3060 30 60319

SUBJECT: Development Permit Application DP 60319 – Fairway Pointe Properties Ltd.
Electoral Area 'G', 730 Barclay Crescent

PURPOSE

To consider an application for a development permit to allow the development of a 54-unit multiple family residential phased strata complex in French Creek.

BACKGROUND

The subject property, legally described as Lot D, District Lot 126, Nanoose District, Plan 49145, is located at the end of Barclay Crescent within Electoral Area 'G' (see Attachment '1' for location).

The property, which is 3.86 ha in size and currently vacant, is zoned Residential 5 (RS5) and is within Subdivision District 'Q' (majority of the property) and Subdivision District 'D' (future park land area) pursuant to the Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987. Surrounding uses include single dwelling residential parcels to the north, the Morningstar Golf Course to the east and southeast, the E&N Railway corridor and a dedicated road to the southwest, and a portion of the French Creek corridor to the west.

A portion of the subject property is located within the Sensitive Lands Development Permit Area pursuant to the French Creek Official Community Plan Bylaw No. 1116, 1998. This development permit area was established for the protection of the natural environment as well as for the protection of development from hazardous conditions as the property is adjacent to the top of a steep bank approximately 60.0 metres from French Creek. Therefore, as the applicant is developing the site, a development permit is required.

In addition to the zoning and development permit requirements, the RDN is the charge holder of a section 219 covenant over the property that was registered as a condition of the rezoning of the property. This covenant secures a number of conditions pertaining to the development of the site, which are to be implemented by the development permit process. Conditions outlined in the covenant include off-site sanitary sewer works, the dedication of park land and the construction of a trail, the upgrading of Robertson Boulevard, a statutory right-of-way crossing the site to provide public access to the undeveloped road south of the property, and the design and construction of a storm water management plan.

Proposed Development

The applicant is proposing to construct a 54-unit multiple residential development consisting of 27 duplex units with 4 styles of housing varying in size from 134 m² to 162 m² (see Attachment Nos. 2 and 3 for proposed layout and building designs). The applicant is also proposing to construct an integrated storm water management system, which includes a retention pond system incorporated with landscaping throughout the site. Landscaping is proposed to include a variety of native vegetation including along the

top of the bank adjacent to the future park land (see Attachment No. 4 for landscaping details). Construction is proposed to be completed in 12 phases pursuant to the *Strata Property Act*.

As part of the submission requirements, the applicant has submitted a geotechnical report dealing with the siting of the proposed buildings located next to a steep bank.

Servicing of the site is proposed to be with community water from Breakwater Enterprises and community sewer from the RDN. The main access to the development is via Barclay Crescent (see Attachment No. 2 showing proposed layout). The required development cost charges will be collected at time of issuance of building permits.

Proposed Bylaw Variances

A number of variances are required as part of this application. These include variances from the future park land lot line located along the top of the steep bank, variances from the proposed retention ponds, variances from the exterior lot lines adjacent to the Morningstar Golf Course, and variances from the pond located on the adjacent golf course property.

These proposed variances are outlined in Schedule No. 2 and may be considered with the development permit application.

ALTERNATIVES

1. To approve the development permit as submitted with the variances subject to the conditions outlined in Schedule Nos. 1 to 5 and the notification procedure pursuant to the *Local Government Act*.
2. To deny the development permit as submitted and provide staff with further direction.

DEVELOPMENT IMPLICATIONS

OCP Implications/ Development Permit Guidelines Implications

The application is consistent with the French Creek Official Community Plan guidelines for the Sensitive Lands Development Permit Area. The proposed variance to the setback from the top of the bank (future park land lot line) will not significantly affect the riparian habitat of French Creek, due to the distance to the high water mark of the creek, which exceeds 60 metres. It should also be noted that the creek is not on the property but is on adjoining land beyond 15 metres of the bottom toe of the slope.

With respect to the protection of the natural environment, the section 219 covenant, placed on title at the time of rezoning, requires the transfer of for all land area below the top of the bank to the Regional District to be used as park land. This will provide protection to the sensitive riparian features of the slope and the riparian areas at the toe of the bank. The provision of a vegetative barrier to be located at the top of the bank together with the dedication of the lands below the top of the bank should ensure the protection of the riparian area adjacent to French Creek. The applicant is in concurrence to construct a fence and provide native plantings at the top of the bank to reinforce the surface material along the top of the bank and to avoid pedestrian access to the steep slope from the development.

Ministry of Transportation Implications

The applicant has received Ministry of Transportation 'approval in principal' for this development subject to the applicant completing road improvements including the upgrading of Barclay Crescent from Robertson Boulevard to the subject property and the completion of storm water management plans to the Ministry's satisfaction. It is noted that the storm water management plan is also conditional upon approval from the Ministry of Water, Air & Land Protection and the Regional District. This approval process is secured by both the section 219 covenant and the development permit conditions. In addition,

the applicant has been instructed that no storm water can be directed to French Creek and no net increase in peak storm water runoff from the land is permitted.

Site Servicing Implications

The applicant has provided written confirmation that community water service will be provided by Breakwater Enterprises subject to the Comptroller of Water Right's approval. With respect to community sewer, under the terms of the section 219 covenant, the applicant is required to construct an oversized sewer main from Robertson Boulevard to service the property. These works have partially been completed and must be approved to the satisfaction of the Regional District. The applicable development cost charges will be payable at time of building permit.

In addition, the applicant is also required to complete a storm water management works to the satisfaction of the Ministry of Transportation, the Ministry of Water, Air, & Land Protection, and the Regional District within 6 months of the commencement of construction. This requirement is outlined in the section 219 covenant and the applicant is in concurrence to complete these works. It is noted that the applicant is proposing the use of retention ponds integrated into the landscaping as part of the overall drainage system for the site.

The Environmentally Sensitive Areas Atlas indicates that a portion of the French Creek Fisheries Planning Boundary crosses the west side of the subject property. Under the provision of the covenant, the applicant is required to dedicate this area as park land or transfer the land to the Regional District. The applicant acknowledges and concurs with this requirement.

Proposed Variance Implications

The applicant has supplied a geotechnical report stating that the 3 duplex buildings located at the top of the bank of French Creek will be within a safe building setback area. These recommendations are based on the understanding that good slope management practices will be followed included directing roof leaders and perimeter building drainage away from the slope, no dumping of debris over the slope, no underground irrigation near the slope and maintenance of existing vegetation on the slope. The Ministry of Water, Air and Land Protection also recommends the use of protective fencing during construction. In order to ensure the recommendations of the geotechnical report will be met, staff recommends this geotechnical report included as part of the corresponding development permit.

The site plan also proposes to construct 2 ponds, which will be integrated into the overall storm drainage plan for the development. 13 duplex units are proposed to be located within the required 15.0 metre setback from a watercourse with the closest units proposed to be 5.5 metres from the larger pond and 4.1 metres from the smaller pond (*see Attachment No. 1 for location of buildings in relation to ponds*). A further geotechnical report will be required at time of building permit to ensure the development protection from the ponds. The applicant is aware of this requirement.

The applicant is also requesting a variance from the lot lines adjacent to the Morningstar Golf Course from 10.0 to 3.0 metres to allow for the siting of the duplex units adjacent to the golf course. This portion of the subject property is separated from the nearest fairway by a large pond. As a result of the location of this off-site pond, the applicant is also requesting a variance from the golf course pond for 3 of the dwelling units from 15.0 metres to 7.3 metres.

In addition, the applicant is proposing a phased strata plan. This will involve internal lot lines being created as the phases are built. When the phasing is completed, the individual phases will be consolidated, thus eliminating any internal lot lines created by the phased subdivision. Therefore, to ensure that there are no issues with minimum setbacks requirements being met during the phased subdivision of the site, staff recommends that a variance to 0 metres for setbacks from the lot lines created due to the phasing of the subdivision.

VOTING

Electoral Area Directors – one vote, except Electoral Area 'B'.

SUMMARY

This is an application for a development permit for the property located at the top of Barclay Crescent within the French Creek area of Electoral Area 'G'. A portion of the subject property is within the Sensitive Lands Development Permit Area pursuant to the French Creek OCP. The applicant is proposing to develop a 54-unit multiple residential strata use. The applicant has supplied a geotechnical report supporting the location of the proposed dwelling units adjacent to a bank located approximately 60 metres from French Creek. There is a section 219 covenant on title, which requires a number of conditions, be met at the time of development. The applicant is in concurrence to meet these conditions including dedication of park land, trail building through the park land, a statutory right-of-way over the property to allow access to the unnamed road to the south of the property (future trail location), and engineering works and services associated with the development of the site. With respect to landscaping, the applicant has supplied plans and specifications. Under Bylaw No. 500, 1987, a landscape deposit will be held by the RDN to secure completion of these works. As part of the development permit application, the applicant is requesting relaxation of a number of setback provisions including relaxation of the lot lines adjacent to the Morningstar Golf Course, the landscaped ponds which will be integrated into the storm water management system, the golf course pond, the new lot line which will be created when the park land portion of the site is dedicated, and the internal phased strata lot lines.

The development permit is consistent with the French Creek Official Community Plan guidelines for the Sensitive Lands Development Permit Area and due to the fact that it is located beyond 60 metres from French Creek, will not significantly impact the riparian habitat of the creek. The proposal includes native plantings along the top of the bank to enhance the environment and protect the subject property from hazardous conditions. The sensitive area of the slope below the top of the bank is to be dedicated or transferred to the Regional District as park land, including riparian areas closer to the creek. Staff is of the opinion that the development permit guidelines can generally be met for this application and the conditions of the section 219 covenant can be met as well. For the above reasons, staff recommends Alternative No. 1, to approve the development permit subject to conditions outlined in Schedule Nos. 1 to 5 inclusive and to notification procedures with respect to the proposed variances.

RECOMMENDATION

That Development Permit No. 60319 submitted by Fairway Pointe Properties Ltd. for the property legally described as Lot D, District Lot 126, Nanoose District, Plan 49145, be approved, subject to the conditions outlined in Schedule Nos. 1, 2, 3, 4, and 5 of the corresponding staff report and to the notification procedure subject to the *Local Government Act* with respect to the proposed variances to Bylaw No. 500, 1987.

Kormie

Report Writer

[Signature]
General Manager Concurrence

[Signature]

Manager Concurrence

[Signature]
CAO Concurrence

COMMENTS:

devsvs/reports/2003/dp ap 3060 30 0319 Fairway Pointe Lot D.doc

Schedule No. 1
Conditions of Approval
Development Permit Application No. 60319

The following sets out the conditions of approval:

1. Building Development

- a A maximum of 54 duplex residential units may be located on site as illustrated on Schedule No. 2.
- b The buildings shall be designed and constructed, including the incorporation of building materials, as shown on Schedule No. 3.
- c The 3 residential buildings within 15.0 metres of the top of the bank of the steep slope shall be located within safe building setback area identified by Levelton Engineering Solutions. No building shall be closer than the safe building distance from the top of the bank as set out in Levelton Geotechnical Report dated 25 March 2003, which will be attached to the development permit.

2. Landscaping Requirements

- a Landscaping to be provided as shown on Schedule No. 4 and shall, at the minimum, satisfy the following criteria:
 - i. Landscaping shall be totally comprised of biologically diverse and drought resistant plants.
 - ii. Individual plants to be used in the landscaping shall have normal, well developed branches and vigorous, fibrous root systems; such plants shall be healthy, vigorous and free from defects, decay, disfiguring roots, sunscald, injuries, abrasions of the bark, plant diseases, insect pests' eggs, borers and all forms of infestations or objectionable disfigurements.
 - iii. All landscaping shall be permanently maintained in good condition with, at a minimum, the same quality and quantity of landscaping as was initially approved and without alteration of the approved design; the owner shall make provisions for the permanent irrigation works necessary to water the landscaping.
 - iv. The design of landscaping shall be such that the growth of roots, trunks, and branches of natural or introduced vegetation or the location of planted berms shall not conflict with the utilities, structures, necessary access, or require sight triangle.
 - v. A watering system for all landscaped areas.
 - vi. All landscaped areas shall be constructed completed with a permanent curbs a minimum of 15 cm in height to protect all landscaped areas from potential vehicular damage.
- b A landscape security deposit in the amount of \$15,000.00 be held by the RDN pending the completion of the required landscaping to the satisfaction of the Regional District of Nanaimo.
- c All postage boxes and electric closets within the 'landscaped buffer area' shall be screened from adjoining residential property with hedging and vegetation retention.
- d Native vegetation shall be provided along the top of the bank to prevent encroachment to the hazardous slope area, to help stabilize the soil material, and to avoid future public access to the hazardous slope area from the development. Fencing may be incorporated into this area provided the bank stability is maintained.
- e A temporary fence (snow fence) delineating the property boundary along the top of the bank (park boundary) shall be installed during the construction phase.
- f No yard waste be deposited in the park or behind the hedge at the top of the bank.

4. Community Water

Community water shall be supplied to serve the development.

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5. Community Sewers

- a Applicant to provide detailed design drawings and construct the following works to RDN standards as certified by a professional engineer : a 200 mm sanitary sewer main from the end of the existing sewer main to the proposed construction, complete with man hole and service connection.

6. Storm Water Management Plan

- a Applicant's engineer to prepare an integrated storm water management plan and corresponding works subject to the approval of the Ministry of Transportation, Ministry of Water, Land, & Air Protection, and the Regional District.
- b A storm water plan and schedule for construction is to be completed prior to the commencement of any works.
- c No net increase in peak storm water runoff from the land to adjoining lands or French Creek will be permitted.

7. Off-Street Parking Spaces and Aisle Ways

- a A minimum of 121 off-street parking spaces shall be provided in accordance with Schedule No. 2.
- b All parking areas, including aisle ways, shall be constructed to Bylaw No. 500 standards and all parking spaces shall be clearly delineated through the use of painted lines on paved surfaces or concrete parking stops on compacted and dust free surfaces.
- c No off-street parking spaces shall be located within the traveled portion of the internal road ways.

8. Signage

A maximum of 2 identification signs shall be permitted at the entrance to the development. Each sign shall not exceed 3 m² in area or exceed a height of 2 m. These signs shall be incorporated into the landscaping and be aesthetically pleasing with a minimal amount of lighting or boldness.

9. Geotechnical Requirements

The applicant shall comply with the requirements of the geotechnical report prepared by Levelton Engineering Solutions, which is to be attached to the development permit.

10. Park Land and Trails

- a Transfer to the Regional District area shown as park land as set out in the section 219 covenant registered on title shall be completed to the satisfaction of the Regional District of Nanaimo. Transfer to be completed with registration of first phase of strata plan.
- b Applicant shall construct a trail through the park land as set out in the section 219 covenant registered on title to the satisfaction of the Regional District of Nanaimo.
- c The applicant shall provide a statutory right-of-way of the internal roadways to provide public access to the undeveloped road south of the property as set out in section 219 covenant registered on title to the satisfaction of the Regional District.
- d Applicant shall include in the statutory right-of-way a connecting pathway to access the undeveloped road south of the property to connect as set out in section 219 covenant registered on title to the satisfaction of the Regional District.

11. Refuse Containers and Other Outdoor Storage

All refuse containers and other outdoor storage shall be adequately screened with a combination of landscape plantings and fencing.

12. Street Lighting

If requested by applicant, street lighting is subject to inclusion into the Morningstar Street Lighting Local Service Area.

Schedule No. 2

Bylaw No. 500, 1987 – Requested Variances
Development Permit Application No. 60319

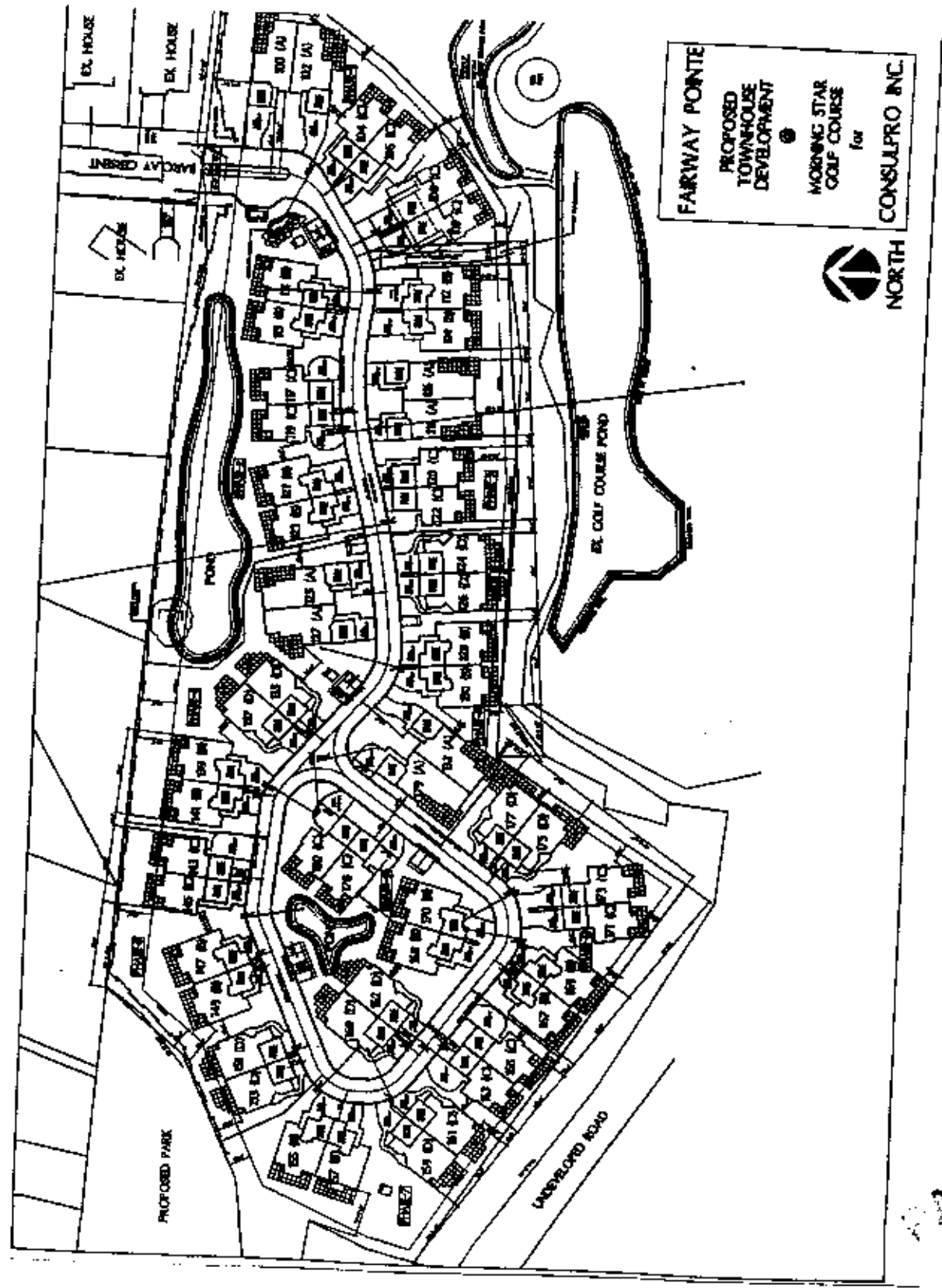
With respect to the lands, the Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987, the following variances are proposed:

1. Setback from the future lot line adjacent to the park land be varied from 10.0 metres to 7.8 metres to accommodate the siting of 4 units.
2. Setbacks from the exterior property lines adjacent to the Morningstar Golf Course be varied from 10.0 metres to 3.0 metres to accommodate the siting of 20 units.
3. Setbacks from the proposed larger man made ponds be varied from 15.0 metre horizontal distance to 5.5 metres horizontal distance to accommodate the siting of 10 units and from the proposed smaller pond to 4.1 metres horizontal distance to accommodate the siting of 6 units.
4. Setbacks from the golf course pond be varied from 15.0 metre horizontal distance to 7.3 metres horizontal distance to accommodate the siting of 3 units.
5. Setbacks from internal lot lines created during the phased subdivision of the property be varied from 10.0 metres to 0 metres to accommodate the subdivision phasing stage.

With respect to the lands, the Regional District of Nanaimo Sign Bylaw 993, 1995 the following variance is proposed:

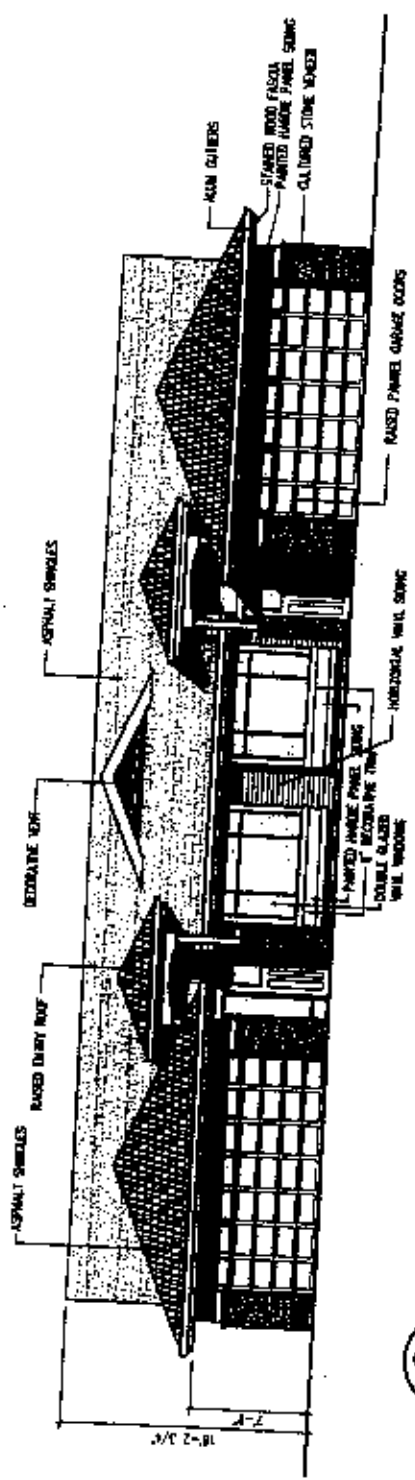
1. Section 5 (b) be varied to permit 2 free standing signs provided that each sign shall not exceed 3 m² in area or exceed a height of 2 m.

Schedule No. 3
Proposed Site Layout
Development Permit Application No. 60319
(as submitted by applicant/reduced for convenience)

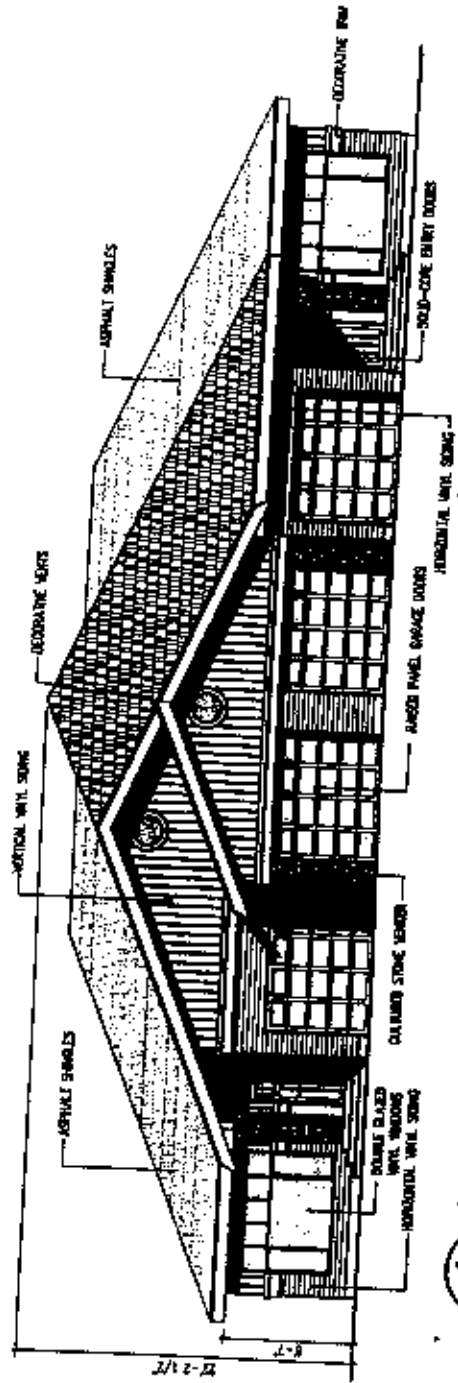


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Schedule No. 4 (Page 1 of 2)
 Proposed Residential Building Facades
 Development Permit Application No. 60319
 (as submitted by applicant/reduced for convenience)



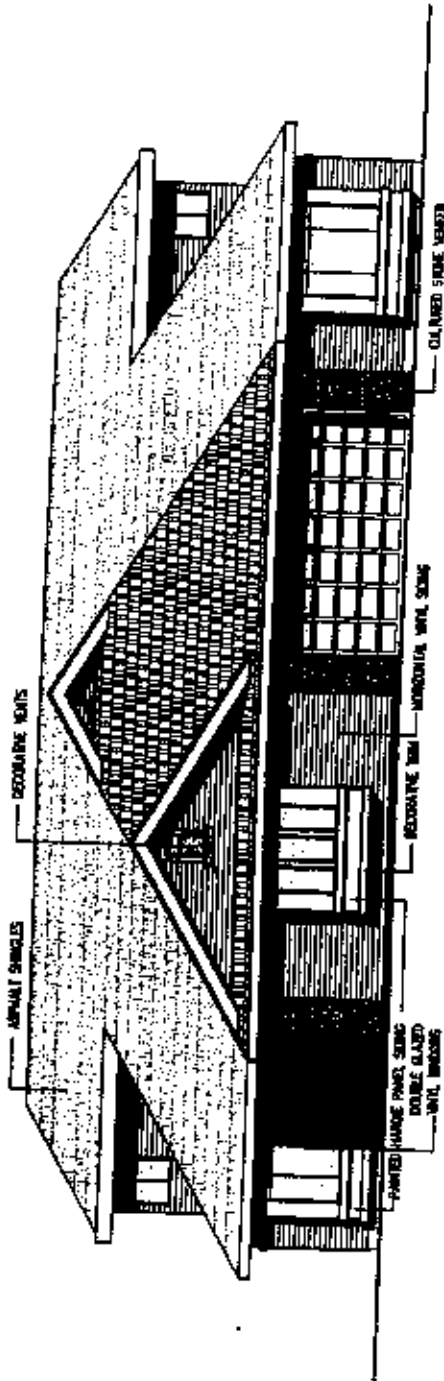
2 UNIT A FRONT ELEVATION
 1/8"=1'-0"



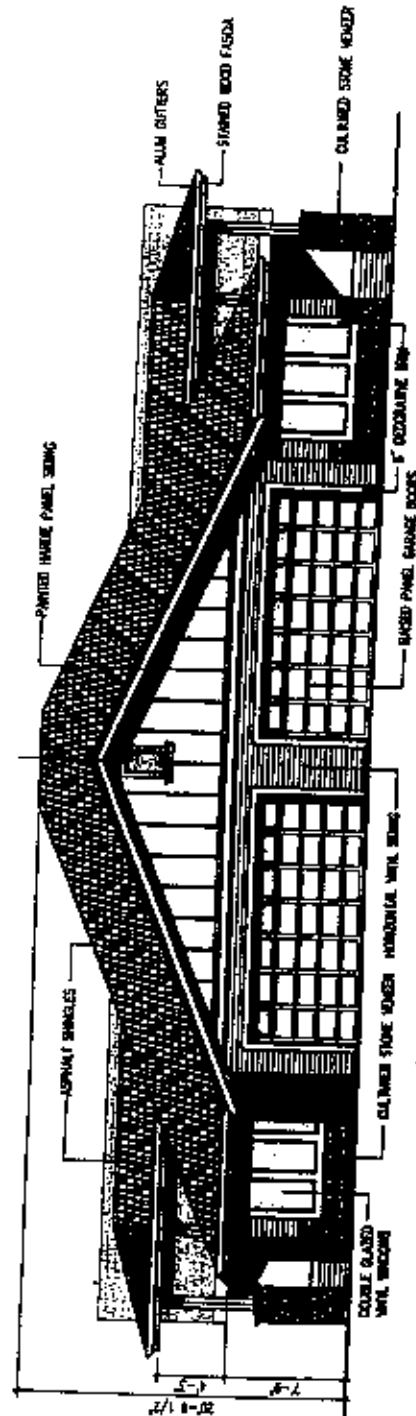
4 UNIT B FRONT ELEVATION
 1/8"=1'-0"

Schedule No. 4 (Page 2 of 2)
Proposed Residential Building Facades
Development Permit Application No. 60319
(as submitted by applicant/reduced for convenience)

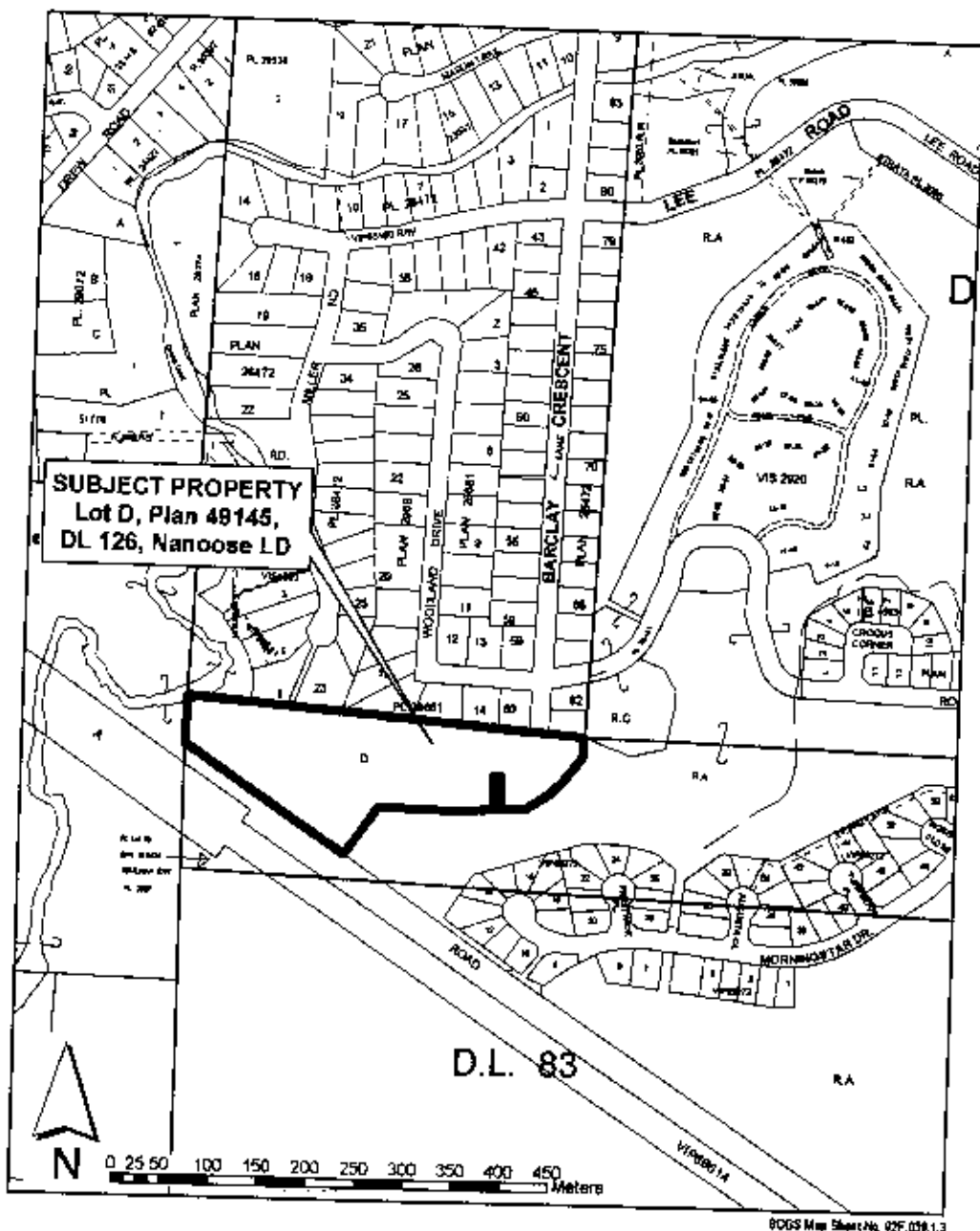
5 UNIT C FRONT ELEVATION
1/8" = 1'-0"



2 UNIT D FRONT ELEVATION
1/8" = 1'-0"



Attachment No. 1
Location of Subject Property



8065 Map Sheet No. 02F.038.1.3



REGIONAL DISTRICT OF NANAIMO			
APR 15 2003			
CHAIR		GMCrS	
CAO		GMDS	
GMCmS		GMES	
		EAP	✓

MEMORANDUM

TO: Pamela Shaw
 Manager of Community Planning

DATE: April 11 2003

FROM: Brigid Reynolds
 Planner

FILE: 3060 30 60320

SUBJECT: Development Permit Application No. 60320 - Roy/Sims
 Electoral Area 'E' - 3371 Blueback Drive

PURPOSE

To consider an application to legalize an existing retaining wall within the Watercourse Protection Development Permit Area pursuant to the "Regional District of Nanaimo Nanoose Bay Official Community Plan Bylaw No. 1118, 1998".

BACKGROUND

The subject property, legally described as Lot 28, District Lot 78, Nanoose District, Plan 15983, is located at 3371 Blueback Drive in the Fairwinds area of Electoral Area 'E' (see Attachment No. 1).

The subject property is zoned Residential 1 (RS1) pursuant to "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987." The retaining wall ranges in height from 0.8 m to 3.0 m. As the wall is over 1.0 m in height a building permit is required. The retaining wall was constructed as the contractor determined it was necessary to contain the backfill around the foundation and to stabilize the driveway.

The retaining wall is located within the 4.5 metre Ministry of Transportation setback from Blueback Drive. Permission has been received from the Ministry for these works.

The Watercourse Protection Development Permit Area was established to protect the natural environment. The Development Permit Area is measured 15.0 metres from the natural boundary of the marine foreshore. The retaining wall has been sited a minimum of 8.2 m from the natural boundary, within the Development Permit Area.

In November 2002, the property owner made application for a development permit with variances to site the dwelling unit a minimum of 8.1 m from the natural boundary and to vary the height of the dwelling unit from 8.0 m to 9.4 m. At the Regional Board's regular meeting of December 10, 2002, the Board passed the following resolution

That Development Permit Application No. 0254, submitted by Fern Road Consulting, Agent, on behalf of Louise Roy, to facilitate the construction of a single dwelling unit within the Development Permit Area, and to vary the maximum permitted height of the dwelling unit within the Residential 1 (RS1) zone from 8.0 metres to 9.4 metres for the property legally described as Lot 28, District Lot 78, Nanoose District, Plan 15983, be approved, subject to conditions as outlined in Schedule No. 1 and subject to notification requirements pursuant to the Local Government Act.

Development permit application no. 0254 did not include the proposed retaining wall construction.

ALTERNATIVES

1. To approve the requested development permit subject to the conditions outlined in Schedule Nos. 1, 2 and 3.
2. To deny the requested development permit.

LAND USE AND DEVELOPMENT IMPLICATIONS

Approval of the requested development permit would legalize an existing retaining wall located a minimum of 8.2 m from the natural boundary of the marine foreshore.

The topography of the lot required that extensive fill be brought on site to create a level area to site the dwelling unit. As a result the fill was required to be retained on the west side of the lot.

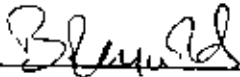
The retaining wall is over 1 m in height in some locations. As a result, a building permit is required. As part of the building permit process a geotechnical assessment will be required to assess the stability of the retaining wall.

SUMMARY/CONCLUSIONS

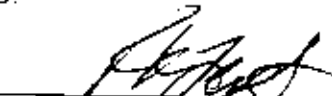
This is an application for a development permit to legalize an existing retaining wall within the Watercourse Protection Development Permit Area. From staff's assessment of this application, the siting of the retaining wall was necessary to retain the fill introduced on the lot and will have a minimal impact on the features within the Development Permit Area. Therefore staff recommends that the Development Permit No. 60320 be approved.

RECOMMENDATION

That Development Permit Application No. 60320, submitted by Fern Road Consulting/Roy to legalize a retaining wall sited a minimum of 8.2 m from the natural boundary with the Nanoose Bay Official Community Plan Bylaw No. 1118, 1998 Watercourse Protection Development Permit Area on the property legally described as Lot 28, District Lot 78, Nanoose District, Plan 15983, be approved subject to the requirements outlined in Schedule Nos. 1, 2, and 3.



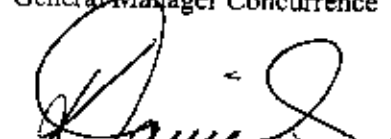
Report Writer



General Manager Concurrence



Manager Concurrence



CAO Concurrence

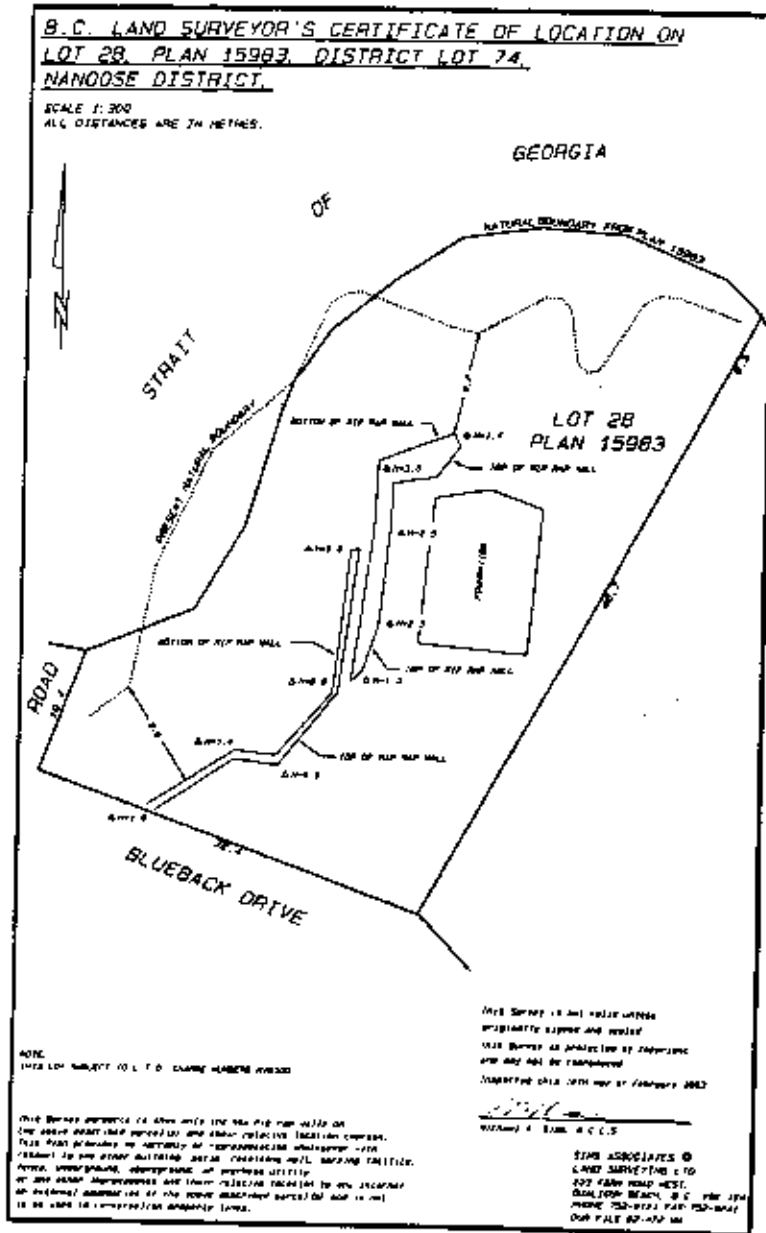
COMMENTS:

devsvs/reports/2003/dpap 3060 30 0320 roy sims

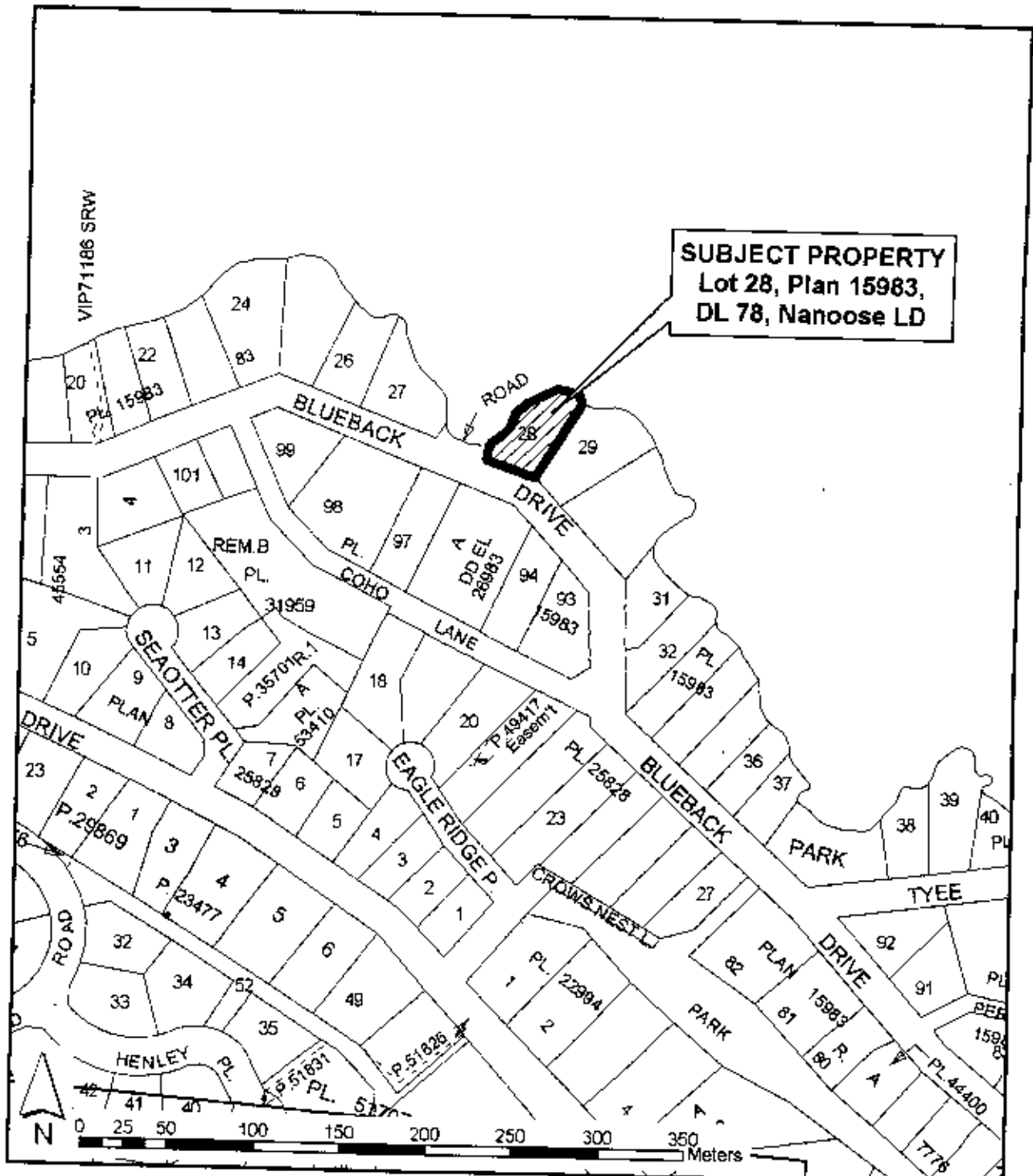
Schedule No. 1
Conditions of Approval
Development Permit No. 60320

1. Secure a Building Permit from the Regional District of Nanaimo Building Inspection Department for the retaining wall.

Schedule No. 2
Site Plan
Development Permit No. 60320



Attachment No. 1
Subject Property
Development Permit No. 60320



BCGS Map Sheet No. 92F.030.1.4



REGIONAL DISTRICT OF NANAIMO			
APR 16 2003			
CHAIR		GMCrS	
CAO		GMDS	
GMCmS		GMES	
			EAP ✓

MEMORANDUM

TO: Robert Lapham
General Manager, Development Services

FROM: Pamela Shaw
Manager, Community Planning

SUBJECT: Development Permit Application DP 60322- Intracorp Developments Ltd/Fairwinds Electoral Area 'E' - Andover Road/Goodrich Road

DATE	April 15, 2003
FILE:	3060 30 60322

PURPOSE

To consider an application for a development permit with variances to allow the construction of a 4 phase, multiple unit strata development (20 duplex and 2 single units) in the Fairwinds Area of Electoral Area 'E'.

BACKGROUND

The subject property, legally described as Lot 27, District Lots 8 and 78, Nanoose District, Plan VIP73214, is accessed via Goodrich Road within Electoral Area 'E' (see Attachment '1' for location).

The property, which is approximately 1.7 hectares in size and currently vacant, is zoned Residential 8, Subdivision District N (RS8N) pursuant to the Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987. The permitted use in this zone is a multi residential development. Surrounding uses include a strata development (Residential 5, Subdivision District N) to the north, Fairwinds Golf Course to the east (Recreation 1, Subdivision District Z), federal lands to the south (no zoning) and single dwelling units (Residential 1, Subdivision District N) zoned parcels to the west. Minimum setback provisions in a RS8 zone are 10 metres from all lot lines. Maximum height for all buildings and structures is 15.0 metres. All other relevant provisions of Bylaw No. 500 apply to this application, including required parking (minimum requirements are established at 2 sites per unit and 6 visitor parking stalls for the 22 units) and landscaping provisions. It should be noted that, given the availability of full services to the site, the zoning could allow for the development of an approximately 55-unit multi residential development.

The subject property is located within Development Permit Area No.1- Form and Character pursuant to the Nanoose Bay Official Community Plan Bylaw No. 1118, 1998. The purpose of this is Development Permit Area (DPA) is to establish objectives and guidelines for the form and character of commercial, industrial and multiple family residential development in Nanoose Bay. The justification for this DPA is primarily to ensure that the form of the development is compatible with the form of development on surrounding lands; the objectives and guidelines require that developments in this DPA blend with the surrounding landscape, complement the unique topographical features of the area, and that the developments be designed and situated to minimize the disturbance of significant natural vegetation.

In addition to the zoning and development permit requirements, there are a number of restrictive covenants registered on the title of the subject property. Several of these are RDN covenants, which were

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registered on the larger parent parcel and have carried through to the title of the subject property (including covenants registered at the time of subdivision concerning parcel averaging and development permits issued for other parcels subdivided from the parent parcel). In addition, various easements are registered on the title (for sewer lines, water lines and storm drainage), as well as several documents referencing building scheme criteria.

The applicant is proposing to construct a 22-unit multiple residential development consisting of 20 duplex units and two single units varying in size from approximately 2700 to 2900 ft² (see *Schedule Nos. 3 and 4 for proposed layout and building designs*). Construction is proposed to be completed in 4 phases pursuant to the *Strata Property Act*.

As part of the submission requirements, the applicant has submitted a geotechnical report dealing with the siting of the proposed buildings located next to a steep bank. In addition, the applicant has provided an Environmental Impact Study with specific reference to a Douglas fir eagle perching tree, which is located on the subject property. Briefly, the arborist's report (attached under separate cover) concludes that the top 10 metres of the tree are considered hazardous and removal of this portion of the tree is recommended. In addition, the arborist recommends spiral pruning of the tree to reduce the sail area, and yearly monitoring of the tree stem to measure decay. In addition, the applicant's landscaping plan proposes the thinning of several trees within the view corridor of the ocean view units; natural landscaping is to be largely maintained on the sloped area adjacent to Andover Road. Landscaping is proposed to include the retention of some existing trees on site as well as the introduction of a variety of native and non-native vegetation (see *Schedule No. 5 for landscape plan*).

Servicing of the site is proposed to be with community water and sewer (Fairwinds Local Service Areas). According to the Site Engineering Report provided by the applicant, roof and storm drainage will tie into existing piped connection points on Goodrich Road on the southwest side of the site and to two 250 mm diameter storm sewer service stubs at the southeast corner of the site. The required development cost charges will be collected at time of issuance of building permits.

A Public Meeting was held on April 14, 2003 to provide an opportunity for citizens to comment on the on the proposed development. A summary of the meeting is provided for the Board's information (see *Attachment No. 2*).

Proposed Bylaw Variances

Two variances are required as part of this development permit application. The first is a variance to the number of required parking stalls on site pursuant to Bylaw No. 500; the Bylaw requires 6 stalls, the applicant is proposing to provide 5 stalls on site (see *Schedule No. 5*). A variance is also required to the setback provisions of Bylaw No. 500 pursuant to the Residential 8 (RS8) zone requirement of 10 metres. The applicant is proposing to reduce this setback from three lot lines to a minimum of 4.6 metres, as shown on *Schedule No. 2*. The proposed variances are summarized in *Schedule No. 2* and may be considered with this development permit application.

ALTERNATIVES

1. To approve the development permit as submitted with the variances subject to the conditions outlined in Schedule Nos. 1 to 5 and the notification procedure pursuant to the *Local Government Act*.
2. To deny the development permit as submitted and provide staff with further direction.

DEVELOPMENT IMPLICATIONS

The application is consistent with the Nanoose Bay Official Community Plan guidelines for the Form and Character Development Permit Area. The applicant has reduced the number of units that could be constructed pursuant to the zoning on this site to ensure the development is compatible with the nearby strata development and surrounding Residential 1 (RS1) zoned lands. In addition, the applicant is proposing finish materials for the units (cedar wall shingles, natural stained timbers, rock facing and natural colour schemes) that are in keeping with existing development in the Fairwinds Area and the requirements of the building schemes registered on the title of the subject property. The proposed units are sited to maximize available view corridors and to fit the topography of the subject property. As well, the retention of natural vegetation where possible is intended to be more fully integrate the proposed development into the surrounding landscape.

With respect to the eagle perching tree located on the subject property, the applicant's arborist's report strongly recommends the retention of the tree. However, topping and pruning of the tree is recommended to remove dead sections and to reduce the 'sail' of the tree. While eagle perching trees are not protected under the *Wildlife Act* or other provincial legislation, the applicant has indicated that all efforts will be made to retain the tree. Yearly monitoring will help to ensure that the tree does not become a hazard to surrounding residences.

With respect to the proposed variances, the requested variance to visitor parking (reducing the number of spaces from 6 to 5) attempts to meet the Development Permit Area requirement to ensure that off-street parking be generally unobtrusive. It should be noted that additional apron parking (parking on driveway areas) is available on several units. The variance to setback provisions from three lot lines pursuant to Bylaw No. 500 is largely necessitated due to the topography of the site and the requirement to maintain an adequate turning radius on the internal access road. A 10-metre setback is required; the applicant is proposing to reduce this setback to a minimum of 4.6 metres. This minimum proposed setback would still allow adequate separation of the proposed use from adjacent residential lands.

In addition, the applicant is proposing a phased strata plan. This will involve internal lot lines being created as phases are built. When the phasing is completed, the internal phases will be consolidated, thus eliminating any internal lot lines created by the phased subdivision. Therefore, to ensure that there are no issues with minimum setback requirements being met during the phased subdivision of the site, staff recommend that a variance to 0 metres for setbacks for the phased lot lines be permitted.

PUBLIC CONSULTATION IMPLICATIONS

As previously noted, a Public Meeting (chaired by Director Pauline Bibby) was held on April 14, 2003 to offer citizens an opportunity to review the proposed development. Local resident associations, Oceanside Development and Construction Association, and owners of the nearby strata development were direct-mailed notices of the Public Meeting (along with other property owners within a 250 metre radius of the subject property). There were 14 residents in attendance at the meeting, along with representatives of Intracorp Development and RDN staff. Comments at the Public Meeting focused on the eagle perching tree, construction phasing, and the reduction of construction impacts on neighbouring residences. It should be noted that should this application proceed as requested, property owners in the area will be notified pursuant to the requirements of the *Local Government Act* given that variances to Bylaw No. 500 are being considered as part of the application.

VOTING

Electoral Area Directors – one vote, except Electoral Area 'B'.


SUMMARY

This is an application for a development permit for a property located within the Fairwinds Area of Electoral Area 'E', accessed from Goodrich Road. The subject property is within the Form and Character Development Permit Area pursuant to the Nanoose Bay Official Community Plan. The applicant is proposing to develop a 22-unit multiple residential strata use in 4 phases of construction. The applicant has supplied a geotechnical report supporting the location of the proposed units. With respect to landscaping, the applicant has supplied plans and specifications with specific reference to the retention of an eagle perching tree on the subject property. Under Bylaw No. 500, 1987, a landscape deposit will be held by the RDN to secure completion of the landscaping works. As part of the development permit application, the applicant is requesting relaxation of the setback provisions pursuant to Bylaw No. 500 for three lot lines; the minimum requested setback would be 4.6 metres. In addition, variances to 0.0 metres will be required due the phased strata lot lines. The applicant is also requesting that required visitor parking spaces be reduced from six to five; it is noted that parking is available on the driveway aprons of some of the units and visitor parking as proposed meets the Development Permit Area guidelines by ensuring that parking remains unobtrusive.

Given that this Development Permit Application is consistent with the Nanoose Bay Official Community Plan guidelines for the Form and Character Development Permit Area and given the variances to Bylaw No. 500 are required due to physical site constraints, staff recommends Alternative No. 1, to approve the development permit subject to conditions outlined in Schedule Nos. 1 to 4 inclusive and to notification procedures pursuant to the *Local Government Act* with respect to the proposed variances.

RECOMMENDATION

That Development Permit No. 60322 by Intracorp Development Ltd for the property legally described as Lot 27, District Lots 8 and 78, Nanoose District, Plan VIP 73214 be approved subject to the conditions outlined in Schedule Nos. 1, 2, 3, 4, and 5 of the corresponding staff report and to the notification requirements pursuant to the *Local Government Act* with respect to the proposed variances to Bylaw No. 500, 1987.


Report Writer


General Manager Concurrence


CAO Concurrence

COMMENTS:

devsvs/repons/2003/dp ap 3060 30 60322 Intracorp.doc

Schedule No. 1
Conditions of Approval
Development Permit Application No. 60322

The following sets out the conditions of approval:

1. **Building Development**
 - a) A maximum of 22 residential units may be located on site as shown on Schedule No. 3.
 - b) The buildings shall be designed and constructed, including the incorporation of building materials, as shown on Schedule No 4.
2. **Landscaping Requirements**
 - a) Landscaping to be provided as shown on Schedule No. 5 and shall, at the minimum, satisfy the following criteria:
 - i. Landscaping shall be totally comprised of biologically diverse and drought resistant plants.
 - ii. Individual plants to be used in the landscaping shall have normal, well developed branches and vigorous, fibrous root systems; such plants shall be healthy, vigorous and free from defects, decay, disfiguring roots, sunscald, injuries, abrasions of the bark, plant diseases, insect pests' eggs, borers and all forms of infestations or objectionable disfigurements.
 - iii. All landscaping shall be permanently maintained in good condition with, at a minimum, the same quality and quantity of landscaping as was initially approved and without alteration of the approved design; the owner shall make provisions for the permanent irrigation works necessary to water the landscaping.
 - iv. The design of landscaping shall be such that the growth of roots, trunks, and branches of natural or introduced vegetation or the location of planted berms shall not conflict with the utilities, structures, necessary access, or require sight triangle.
 - v. A watering system for all landscaped areas.
 - vi. All landscaped areas shall be constructed completed with a permanent curbs a minimum of 15 cm in height to protect all landscaped areas from potential vehicular damage.
 - b) A landscape security deposit shall be held by the RDN pending the completion of the required landscaping to the satisfaction of the Regional District of Nanaimo.
 - c) All postage boxes and electric closets within the 'landscaped buffer area' shall be screened from adjoining residential property with hedging and vegetation retention.
4. **Community Water and Sewer**

Community water and sewer services (Fairwinds Local Service Area) shall be supplied to serve the development.
5. **Storm Water Management Plan**

Storm water management plans as detailed in the Engineering Report from Koers & Associates dated April 2nd, 2003 (file reference D0302-02) for the subject property shall be adhered to by the applicant.
6. **Off-Street Parking Spaces and Aisle Ways**
 - a) A minimum of 5 off-street parking spaces shall be provided as shown on Schedule No. 5.
 - b) All parking areas, including aisle ways, shall be constructed to Bylaw No. 500 standards and all parking spaces shall be clearly delineated through the use of painted lines on paved surfaces or concrete parking stops on compacted and dust free surfaces.
 - c) No off-street parking spaces shall be located within the traveled portion of the internal roadways.
- d) **Signage**

A maximum of 1 identification sign not to exceed 3 m² in area or exceed a height of 2 m shall be permitted at the entrance to the development. This sign shall be incorporated into the landscaping and be aesthetically pleasing with a minimal amount of lighting or boldness.

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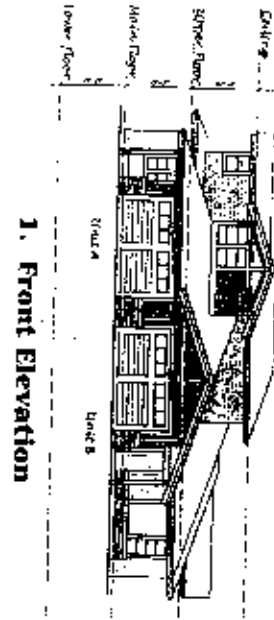
Schedule No. 2

**Bylaw No. 500, 1987 – Requested Variances
Development Permit Application No. 60322**

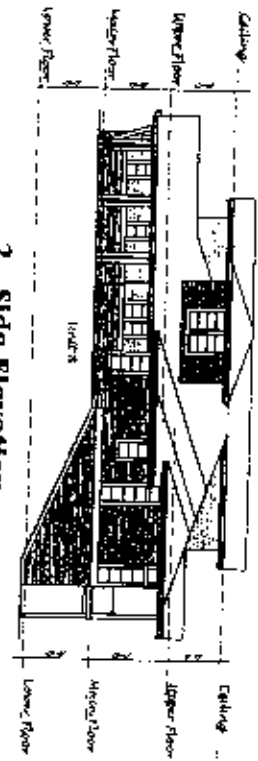
With respect to the lands, the Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987, the following variances are proposed:

1. Setbacks from the interior lots lines be varied from 10.0 metres to 4.6 metres to accommodate the siting of 22 residential units and parking.
2. Setbacks from internal lot lines created during the phased subdivision of the property be varied from 10.0 metres to 0.0 metres to accommodate the subdivision phasing stage.
3. Visitor parking provisions be varied from six parking stalls to five parking stalls.

**Schedule No. 4
Representative Sample of Elevations
Development Permit Application No. 60322
(as submitted by applicant/reduced for convenience)**



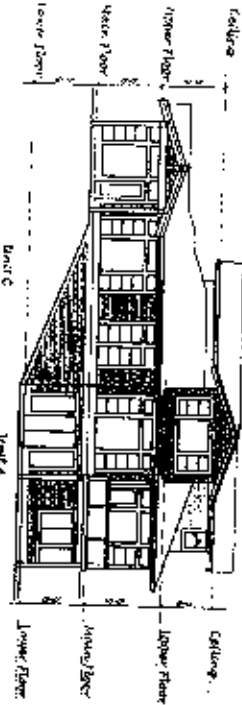
1. Front Elevation



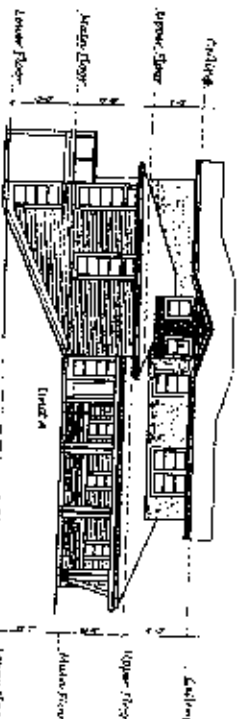
2. Side Elevation

Exterior Finish Legend

- ① Roof Asphalt Roof Shingles
- ② Siding Plywood 2 1/4" on 2 w/12 Cedar Strands
- ③ Siding Plywood 2 1/4" on 2 w/12 Cedar Strands
- ④ Wall Shingles Plywood on 2 1/4" x 10" Tracelath
- ⑤ Roof Shingles Plywood on 2 1/4" x 10" Tracelath
- ⑥ Roof Shingles Plywood on 2 1/4" x 10" Tracelath
- ⑦ Windows Double Glazing set on Vinyl Frame
- ⑧ Balcony Railing 2 x 4 Wood Railing on 4" x 6" Posts
- ⑨ 2 x 4 Siding on 2 x 4 Studs and 2 x 4 Tracelath with Sheetrock Finish
- ⑩ Window Treat 2 x 4 Cedar, Stain
- ⑪ Wall Siding Wood Shingles on 2 1/4" x 10" Tracelath
- ⑫ Cementitious Finish on 2 1/4" x 10" Tracelath
- ⑬ Storage Door Wood Panel from Above
- ⑭ 4" x 6" Siding Plywood on 2 1/4" x 10" Tracelath



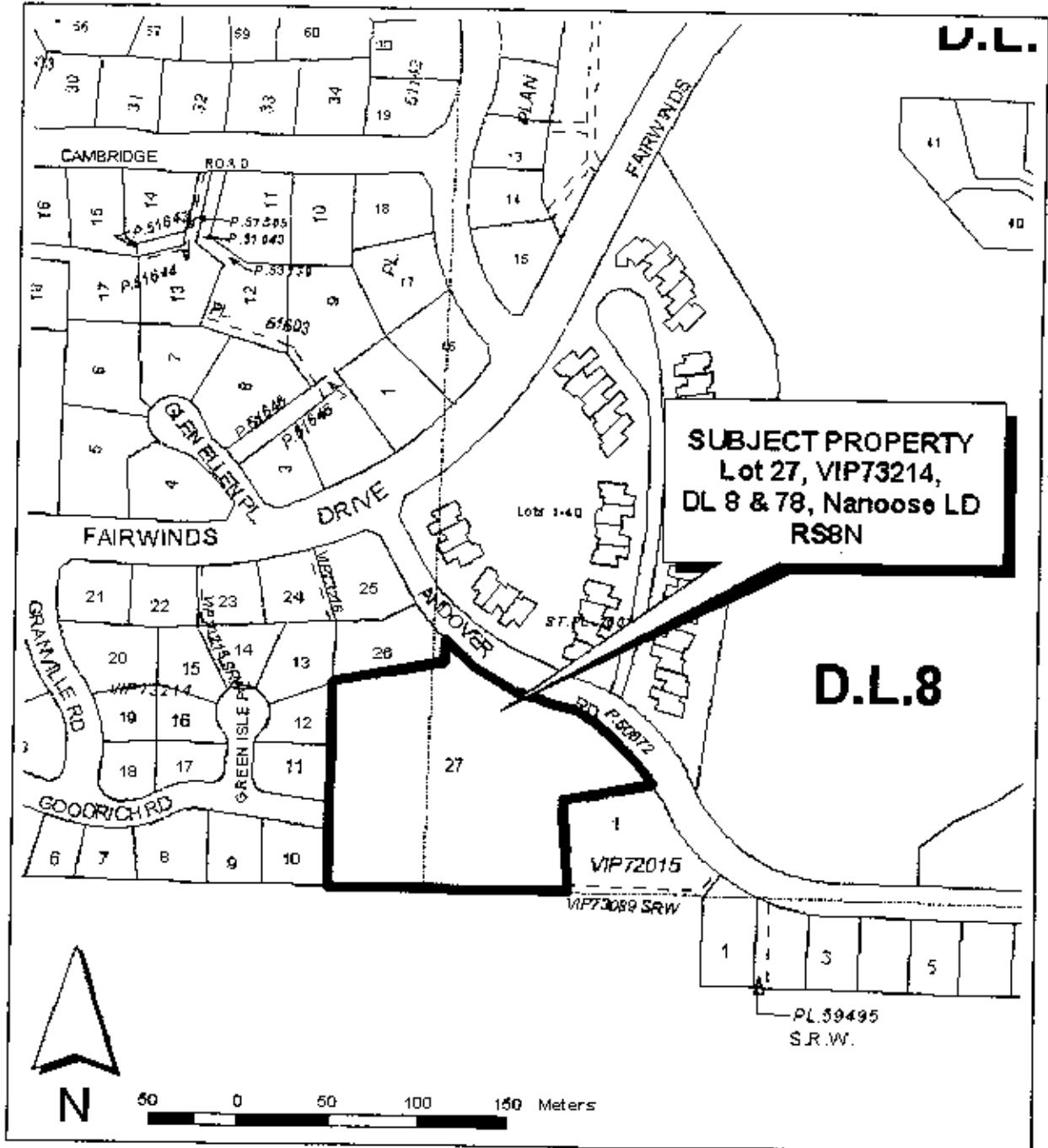
3. Rear Elevation



4. Side Elevation

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Attachment No. 1
Location of Subject Property



Attachment No. 2
Summary of a Public Meeting
On Development Permit Application No. 60322- Intracorp Developments Inc.
Held Monday, April 14, 2003, 7:00 pm Nanoose Place, Nanoose Bay, BC

The following summary is not intended to be a verbatim reporting of the meeting; instead the summary is intended to provide an overview of comments at the meeting.

Chair: Director Pauline Bibby

Present: Tom Miller, Vice President Development, Intracorp
Brian Larsen, Project Manager, Intracorp
Pamela Shaw, Manager Community Planning, RDN

There were 14 citizens in attendance at the meeting.

Director Bibby introduced the proponents and staff, then indicated that this was a Public Meeting to review the Form and Character Development Permit Area requirements pursuant to Intracorp's Development Permit Application. Director Bibby indicated that while the RDN normally does not hold public meetings on development permit applications, there seemed to be sufficient interest in the community in development in their area to warrant a special information meeting.

Pamela Shaw then outlined the relevant components of the Form and Character Development Permit Area pursuant to the Nanoose Bay Official Community Plan Bylaw No. 1118, 1998.

Director Bibby then turned the meeting over to the applicants to explain their development proposal.

Mr. Tom Miller indicated that this is a 22-unit development (20 duplex units and 2 single units). Access to the site is from Goodrich Road via a loop road with 22 units wrapping around the site. Mr. Miller indicated that there are ocean views from several of the units. Further, Mr. Miller indicated that there are three types of units (A, B and C) all with double garages (the C unit is a single level, the B is a single with a walk out basement, and the A unit is a two level unit). The majority of units will be B units. Mr. Miller indicated that a landscape plan and elevations had been prepared as part of the application and for the public's information. In addition, an arborist's report and environmental report will be submitted to the RDN. Mr. Miller indicated that site issues included the slope to Andover Drive and the eagle perching tree. Mr. Miller indicated that they would like to do some minor thinning and clearing on the slope to improve the viewscape for the view properties. Mr. Miller indicated that the pricing for the units will range from approximately \$270,000 to \$380,000 excluding GST (depending on unit plans and views). Mr. Miller indicated that they estimate start of construction for September 2003, and that the project will likely be completed in four phases. With respect to the form of the buildings, Mr. Miller indicated that all units would have rock highlights and/or stone facing, beveled siding and heavy timbers with a natural stain (similar to the Fairwinds Recreation Centre).

Mr. Brian Larsen indicated concerns had been raised regarding the Douglas fir eagle perching tree on the site. Mr. Larsen indicated that a full arborist's report is available to the public on this tree; briefly, the arborist has indicated that the tree has high wildlife value and should be maintained. However, the arborist considers the top 10 metres of the tree to be hazardous and removal is recommended in the report. In addition, the arborist recommends spiral pruning of the tree to reduce the sail area, and yearly monitoring of the tree stem to measure decay.

Mr. Bill Evans, Fairwinds resident requested clarification on how the tree had been assessed and how much of the tree needed to be removed relative to the overall height of the tree.

Mr. Larsen indicated that there was some decay in the butt area of the tree, but removal was only recommended for the top 10 metres of the tree. The overall height of the tree is estimated at 44 metres.

Ms. Liz Davies, 2665 Andover Drive indicated that eagles currently perched on the top of the tree and that this top portion of the tree seemed to be critical to the eagles. Ms. Davies wondered how removal of the top portion of the tree would affect its status as a perching tree.

Mr. Larsen indicated that, similar to the eagle tree situation on the golf course, once a hazardous issue has been identified, it must be addressed by the landowner. Mr. Larsen expressed concern with surrounding property should the tree or portions of the tree collapse.

Mr. Bob Davies, 2665 Andover Drive indicated that surrounding properties would only be affected should the entire tree collapse. Mr. Davies indicated that if the tree is such a hazard, perhaps the entire tree should be removed. Further, Mr. Davies inquired if the arborist was the same individual who recommended the replacement of an eagle tree with a telephone pole on the golf course.

Mr. Larsen indicated that the arborist's report recommended only the removal of the top portion and some pruning.

Mr. Alistar McLean, Fairwinds Development Corp. indicated that once the tree is identified as a hazard, the company is required to take action. Further, Mr. McLean indicated that the telephone pole on the golf course was a recommendation of the Ministry of Environment and has been successfully used as eagle habitat in other locations.

Mr. Hubert Daners inquired as to who would be supervising tree cutting and construction on the site.

Mr. Larsen indicated that he would be managing the project.

Mr. Bill Evans inquired as to the phasing of the construction and the plans for blasting on the site.

Mr. Larsen indicated that he estimated about a 22 month construction time frame, with most of the site work done up front (about 80% of the site work should be done in a 12 week period). Mr. Larsen indicated they would conform to the area's bylaws for construction (no Sunday operations).

Mr. Ron Ens, Fairwinds resident indicated that, since Intracorp had begun to develop in the area, two major infractions have occurred. The first is the clearing of lots and stump burning, which is not permitted. Other citizens are required to haul away wood waste, but Intracorp seems to be disregarding this bylaw. Mr. Ens indicated that the second infraction is the use of shingles instead of cedar shakes on roofs. While Mr. Ens had been required to construct a shake roof, Intracorp appeared to be ignoring this bylaw and using shingles.

Mr. Larsen indicated that different phases of the development had different building schemes attached to the title for the properties, and that the quality of cedar shakes has declined substantially in the last few years. Mr. Larsen indicated that the best value for their customers is a 50-year duroid roof.

Mr. Ens indicated that he was not specifically opposed to duroid shingles, but that the bylaws were not being followed.

Mr. Miller indicated that he would check on the bylaws regarding the burning of stumps.

AGE
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Mr. Davies indicated that, as good citizens, Intracorp might wish to cease wood waste burning.

Mr. Daners reiterated that burning had negative impacts on surrounding residences. Further, Mr. Daners inquired as to the impact of the proposed development on water quality (rust colour), and concerns with the impact of water system flushing on water quality.

Mr. Gil Meier inquired as to the ownership of the development (strata vs. fee simple).

Mr. Larsen indicated that it is a strata development.


Mr. Davies inquired as to the RDN's role in the development process.

Director Bibby indicated that the proposal must comply with the RDN's Growth Management Plan, the Nanoose Bay Official Community Plan, the development permit area requirements, and zoning on the parcel, as well as any other relevant local government bylaws.

Director Bibby concluded the meeting by announcing that this application will be considered by the Electoral Area Planning Committee at the Tuesday, April 22, 2003 meeting. Director Bibby noted that the meeting would be held at the new RDN Board Room at 7:00 pm.

The meeting concluded at 7:40 pm.

Respectfully submitted,



Pamela Shaw



REGIONAL DISTRICT OF NANAIMO		
APR 15 2003		
CHAIR		GMCrs
CAO		GMDS
GMCm8		GMES
EAP		
		DATE:
		FILE:

MEMORANDUM

TO: Pamela Shaw
Manager, Community Planning

DATE: April 11, 2003

FROM: Deborah Jensen
Planner

FILE: 3090 30 0304

SUBJECT: Development Variance Permit Application No. 0304 - Melvyn Electoral Area 'H' - Seaview Drive

PURPOSE

To consider an application for a Development Variance Permit to legalize the construction of a retaining wall along a steep bank and to facilitate the construction of a single dwelling unit on Seaview Drive in Electoral Area 'H', and further, to provide additional information to the Board subsequent to the staff report submitted at the February 25, 2003 meeting of the Electoral Area Planning Committee. This application includes variances to setbacks for both the retaining wall and the dwelling unit.

BACKGROUND

This is an application to facilitate the construction of a dwelling unit and to legalize the construction of a retaining wall along a steep bank located on a residential property in the Bowser area of Electoral Area 'H' (see Attachment Nos. 1 and 2). The southern portion of the property consists of a relatively flat area adjacent to Seaview Drive. The remainder of the property consists of a steep bank sloping down toward Shoreline Drive and the ocean. Fill has been introduced to the lot and a retaining wall has been constructed along a portion of the slope.

The subject property is zoned Residential 2 (RS2) pursuant to "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987." The maximum dwelling unit height in this zone is 8.0 metres, and the minimum setback requirements for buildings and structures in this zone are: 8.0 metres from the front lot line; 2.0 metres from the rear lot line and interior side lot line; and 5.0 metres from the other lot lines. With respect to existing and proposed construction on the site, the following variances are requested in this application:

- relaxation of east interior side lot line from 2.0 metres to 0.0 metres to legalize existing retaining wall;
- relaxation from setback to a watercourse from 18.0 metres horizontal distance from a stream centerline to 0.0 metres horizontal distance from a stream centerline to legalize existing retaining wall;
- relaxation from setback to a watercourse from 18.0 metres horizontal distance from a stream centerline to 10.5 metres horizontal distance from a stream centerline to allow for construction of a dwelling unit; and
- relaxation of the maximum dwelling unit height from 8.0 metres to that height required to accommodate an 8.0 metre dwelling unit, as measured from the existing fill grade.

The Electoral Area Planning Committee (EAPC) originally reviewed a staff report for this application at their February 25, 2003 meeting and recommended approval of the requested variances subject to notification of adjacent property owners. Subsequent to concerns raised by community residents following notification to residents of the proposed variances, the Regional Board at its regular meeting held March 11, 2003 referred this application back to the Electoral Area Planning Committee (EAPC). Staff were directed to provide clarification on issues raised by residents. Therefore, the intent of this staff report is to provide clarification on issues raised by residents (*as outlined below*) and also to introduce new information obtained from provincial agencies subsequent to the EAPC's receipt of the previous staff report.

Works in and About a Watercourse

Works on the adjacent property resulted in the culverting of a watercourse. These works were constructed with approval from the Ministry of Environment (MOE), Ministry of Transportation (MOT), and Department of Fisheries and Oceans. Local residents questioned whether appropriate care had been taken with respect to any works affecting the creek, and whether all approvals for completion of work had been received.

Retaining Wall

Subsequent to placement of fill, a retaining wall was constructed along the slope of the subject and adjacent property, covering the culverted watercourse and retaining a large amount of earth. Comments received from the public have questioned the stability of this wall and its potential for sustaining the proposed dwelling unit and retained earth, or preventing land slippage. A geotechnical report supplied by the applicant indicates the site is considered safe for construction of wood frame residential or ancillary structures as long as a 5.0 metre "no build" zone running along the top of the bank is retained.

Building Scheme

A building scheme is registered to the title of the subject property, stipulates that no buildings shall have a height of more than 15 feet and no dwelling unit shall contain a living area floor plan of less than 1000 square feet. To date, the applicant has not finalized any building plans, therefore the exact height of the proposed dwelling unit is unknown. The proposed footprint of the building pursuant to the application is established at approximately 1100 ft², including an attached garage. Comments received from the public indicated concern for a potential height variance and its lack of enforcement of the building scheme. As a result of these comments, the applicant has obtained a legal opinion regarding the status of the building scheme (*see Attachment No. 3*).

ALTERNATIVES

1. To approve Development Variance Permit No. 0304 subject to the conditions outlined in Schedule No. 1.
2. To deny the requested permit.

PUBLIC CONSULTATION IMPLICATIONS

Subsequent to the initial staff report for this application, notification was sent to property owners within a 50-metre radius. Comments were received from four separate sources. Two were received from local residents, one of which resides within the 50-metre notification radius. The remaining two was received from local community associations. These comments refer to issues as noted above. No comments were

received from residents located adjacent to the subject property. It should be noted that, should this application proceed, a second 50-metre notification would be provided to the property owners advising of this development variance permit application pursuant to the notification requirements outlined in the *Local Government Act*.

PROVINCIAL AGENCY IMPLICATIONS

Development on the subject property includes an existing riprap retaining wall that was constructed within the required setback according to the zoning regulations. The retaining wall, of which approximately one-third is located on the adjacent property and envelops the enclosed watercourse, is sited along a steep bank that dissects the property.

During the initial application to construct works in and about a stream (*the retaining wall*), the Ministry of Environment referred the application to the Department of Fisheries and Oceans. Upon review of the application, DFO stated they had no objection to the proposed changes in and about the stream so long as the works were "undertaken in the dry or in isolation of streamflow, and during a dry weather period, preferably May through October." In response, works were constructed during the summer months, with follow-up site visits completed by Ministry of Environment staff. Recent correspondence from this agency, now Land and Water British Columbia Inc., indicates they are satisfied with completion of the works for Approval A1-0913, and have no outstanding concerns with respect to the construction or placement of fill on the culvert.

The Ministry of Transportation also acted as a referral agency during the retaining wall application process. At that time, MOT had no objections to the proposal so long as certain conditions were met. In particular, MOT specified that all works should be supervised by a certified professional engineer. To date, MOT has not received confirmation that all works have been completed and constructed in an acceptable manner, therefore, they are requesting that this condition be fulfilled. The professional engineer who supervised the works has indicated that he has forwarded this approval to the MOT in order to satisfy their conditions.

Staff notes that any approval for works in and about the watercourse is, in fact, applicable to the adjacent parcel where the stream is located and not the subject property. However, an easement is registered to the title of the subject property with respect to construction and maintenance of culvert and drainage structures on the neighbouring property. Therefore, the applicant has accepted responsibility for works performed in the area of the watercourse.

LAND USE AND DEVELOPMENT IMPLICATIONS

As previously noted, a building scheme is registered to the title of the subject property, stipulating that no buildings shall have a height of more than 15 feet and no dwelling unit shall contain a living area floor plan of less than 1000 square feet. However, the Regional District of Nanaimo has no authority to enforce building scheme covenants, and it is the responsibility of the property owner to ensure any development meets the requirements of a building scheme.

A legal opinion obtained by the applicant (*see Attachment 3*) indicates that the height restriction set out in the building scheme is unenforceable as numerous infractions have already occurred on other properties affected by this covenant. As well, the legal opinion contends that the building scheme does not indicate where the measurement is taken from for the 15 feet maximum height. The legal opinion also suggests that approximately one-third of the waterfront lots affected by this building scheme contain two-storey dwelling units, all of which are affected by the same building scheme.

Single-storey residences are located on each side of the subject property, both of which are also view lots. As the applicant is proposing to site the dwelling unit either in line or behind the adjacent dwelling units, the proposed construction would appear to have a limited impact on the existing view corridors of the two adjacent properties. One two-storey and two single-storey residences are also located opposite the subject property on Seaview Drive. The siting of any buildings or structures on the subject property will have an impact on the view corridor for these parcels.

The applicant would contend that the subject property faces a number of site constraints, thereby necessitating the need for the consideration of variances in order for the site to be "buildable." The septic area has been located to the southwest portion of the property, thereby maximizing the distance between the field and the watercourse. The northern portion of the property consists of a steep slope, thereby prohibiting the development of this portion of the property. Placement of fill on a portion of the property has created a level building area with some constraints. A professional report prepared by Lewkowich Geotechnical Engineering Ltd., dated November 27, 2002, confirms that fill placed on the property is considered safe for construction of wood frame residential or ancillary structures so long as a 5.0 metre "no build" zone running along the top of the bank is recognized. It also indicates the retaining wall, consisting of large boulders, is considered to be suitable for the purpose of fill facing.

While placement of fill allowed for a building site, the applicant would contend that it has also resulted in the need for a height variance as dwelling unit height is measured from the natural grade of the property. That is, the natural grade of the parcel is several metres below the surface of the existing grade (the applicant has indicated the exact measure cannot be determined); should the height be measured from the natural grade, the applicant may not be able to build even a single storey dwelling unit. Instead, the applicant is proposing that the height for a dwelling unit on this subject parcel be measured from the existing grade, not the natural grade of the parcel. Further, the applicant has indicated that, due to non-compliance with the building scheme by other residents in the affected area, they may also choose to construct a two-storey dwelling unit. Therefore, the applicant has requested a variance of 8.0 metres.

The footprint of the dwelling unit envelope proposed by the applicant is approximately 1100 square feet, including an attached garage. The applicant would contend that this modest size also necessitates the height variance to allow for a second storey. However, staff's review of the site and site plan suggests that there is additional space to increase the size of this footprint outside the setback areas. This would allow for a modest-sized single-storey residence in keeping with the existing neighbourhood.

While the RDN is not responsible for enforcing the building scheme, public comments received to date indicate the height of the house should be in keeping with development on adjacent properties, the character of the area, and the building scheme. As the proposed dwelling unit is surrounded along Seaview Drive by existing single-storey structures, staff suggest that consideration should be given to providing a variance allowing the construction of a dwelling unit that would be in keeping with the form of development on adjacent properties.

Despite the fact that the building scheme is not binding or enforceable by the RDN, due to concerns expressed by neighbours, staff recommends that bylaw variance be considered that would permit a maximum height of 15 feet (4.572 metres) for the proposed dwelling unit, as measured from the existing fill. This would recognize the constraints associated with the features of the lot and previous deposit of fill on the site, but would also recognize what appears to be the preferred building allowance as communicated by neighbouring property owners and local resident associations. This would allow for the construction of a single storey dwelling unit. The applicant could also expand the proposed footprint of the dwelling unit within other areas outside the zoning setback to accommodate additional floor space.

VOTING

Electoral Area Directors – one vote, except Electoral Area 'B'.


SUMMARY/CONCLUSIONS


This is an application for a development variance permit to facilitate the development of a single dwelling unit and to legalize an existing riprap retaining wall. The application includes requests to vary the minimum permitted setbacks from a watercourse for placement of a dwelling unit and retaining wall, to vary the minimum permitted setback from an interior side line for placement of the retaining wall, and to vary maximum permitted height for construction of the dwelling unit by allowing the height to be calculated from the existing grade instead of the natural grade of the subject property.

Fill has been placed on the subject property and works in and around a watercourse (including construction of a retaining wall) have taken place with the consent of the Ministry of Water, Land and Air Protection and the Ministry of Transportation but without the required variances to the zoning bylaw as approved by the RDN. A geotechnical report for the property indicates safe construction on the fill is possible as long as a 5.0 metre "no build" zone along the top of bank is maintained, and states the retaining wall is stable. A building scheme also affects the subject property, stipulating a maximum height for buildings; however, it is noted that it is not within the jurisdiction of the RDN to enforce building schemes. While the applicant has requested a variance to allow the construction of a two storey dwelling unit, given concerns voiced by residents in the area, the form of development on adjacent properties, and the impact of the proposed development on upland parcels, staff would recommend that the height variance be limited to 4.572 metres (15 feet) from the existing grade to allow for the construction of a single storey dwelling unit subject to the conditions outlined in Schedule No. 1 of this report, and subject to the notification procedures pursuant to the *Local Government Act*.


RECOMMENDATION

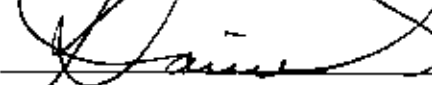
That Development Variance Permit Application No. 0304, submitted by Fern Road Consulting, Agent, on behalf of Anthony Melvyn, to facilitate the development of a single dwelling unit and to legalize the existing rip rap retaining wall within a Residential 2 (RS2) zone by varying the minimum permitted setback to an interior side lot line from 2.0 metres to 0.0 metres, and to a watercourse from 18.0 metres horizontal distance from a stream centerline to 0.0 metres for the retaining wall and 10.5 metres for the dwelling unit, and to vary the maximum permitted height of a dwelling unit from 8.0 metres to 4.572 metres as measured from the existing fill grade, for the property legally described as Lot 3, District Lot 28, Newcastle District, Plan 22249, be approved, subject to notification procedures pursuant to the *Local Government Act* and subject to the conditions outlined in Schedule No. 1.



Report Writer


Manager Concurrence



General Manager Concurrence


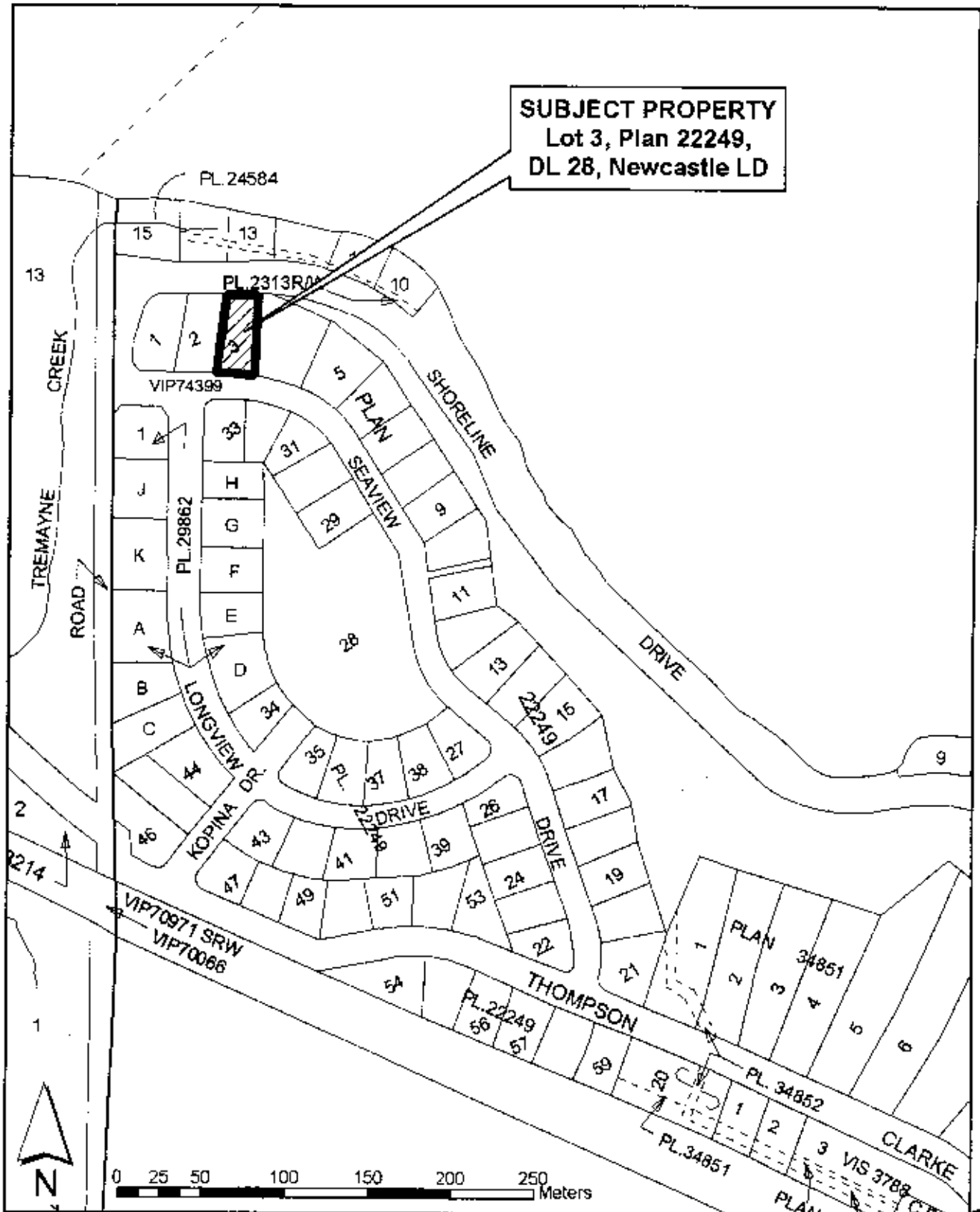
CAO Concurrence

COMMENTS:

Schedule No. 1
Conditions of Approval
Development Variance Permit No. 0304

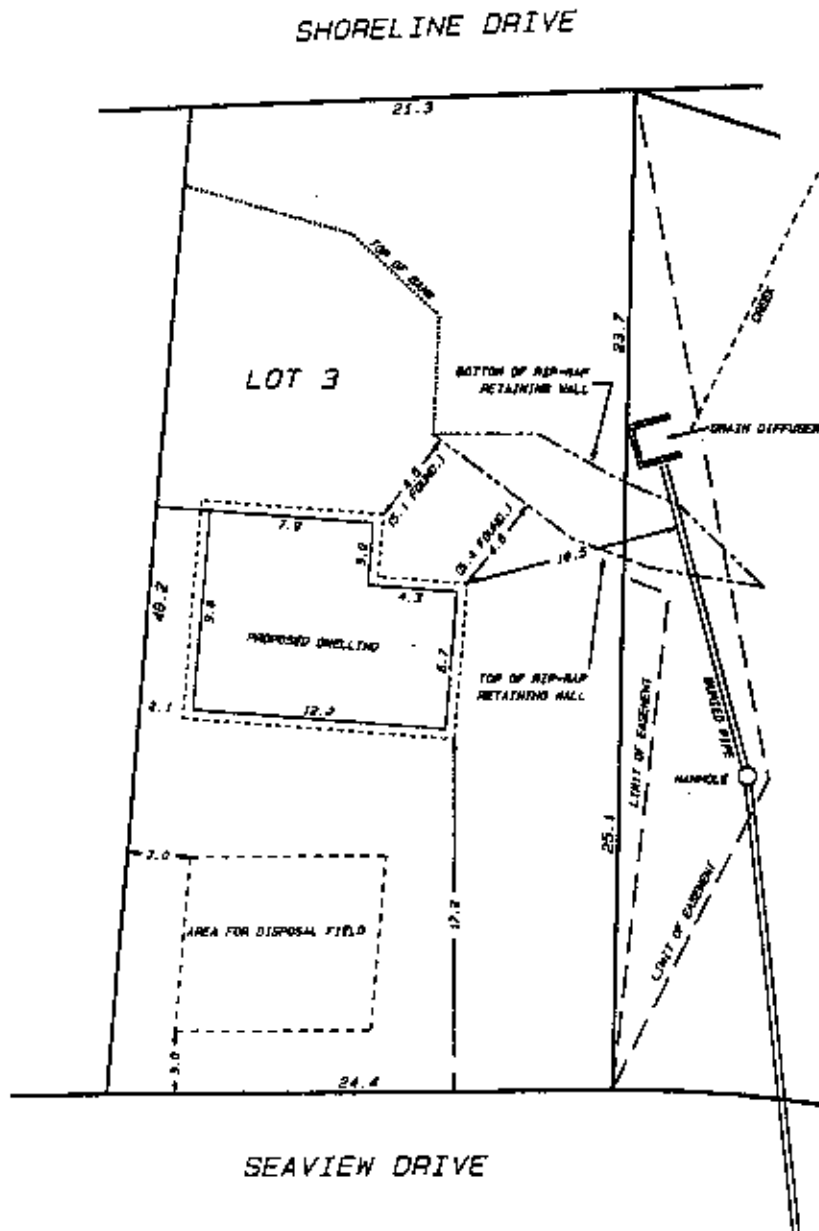
1. Registration of a Section 219 covenant pertaining to the geotechnical report, as prepared by Lewkowich Geotechnical Engineering Ltd., dated November 27, 2002. The covenant shall stipulate that any development must meet the required 5.0 metre "no-build" setback from top of bank, as indicated in this report, that no vegetation is to be removed from the bank and that the Regional District shall be saved harmless from any action that may result from land slip, slope failure or any other occurrence that might result on the subject lands.
2. An approved health permit for a septic system, as issued by the Ministry of Health.
3. Confirmation from the Ministry of Transportation that all necessary approvals for works in and about the watercourse have been issued.
4. The following variances are approved based upon completion of Items No. (1) and (2) above:
 - a) relaxation of east interior side lot line from 2.0 metres to 0.0 metres to legalize existing retaining wall;
 - b) relaxation from setback to a watercourse from 18.0 metres horizontal distance from a stream centerline to 0.0 metres horizontal distance from a stream centerline to legalize existing retaining wall;
 - c) relaxation from setback to a watercourse from 18.0 metres horizontal distance from a stream centerline to 10.5 metres horizontal distance from a stream centerline to allow for construction of a dwelling unit; and
 - d) relaxation of the maximum dwelling unit height from 8.0 metres to that height required to accommodate a 4.572 metre dwelling unit, as measured from existing fill grade.

Attachment No. 1
Subject Property Map



Attachment No. 2
Site Plan
Development Variance Permit No. 0304

PLAN OF LOT 3, PLAN 22249,
DISTRICT LOT 28, NEWCASTLE DISTRICT,
TO ACCOMPANY DEVELOPEMENT PERMIT APPLICATION
SCALE 1:250
ALL DISTANCES ARE IN METRES



INSPECTED THIS DAY OF JANUARY, 2003.

ROMEL A. SIMS, P.C.L.S.

SIMS ASSOCIATES
LAND SURVEYING
223 PETER ROAD MELB.
SOUTHVIEW BRICKS & C. - 10th FL.
PHONE 752-8121 FAX 752-8121
WWW: 65-611-862
TEL: 65-611-862
DATE: 2003/01/20

Attachment No. 3
Legal Opinion
(As Supplied by Applicant)
Page 1 of 3

**MARSHALL &
LAMPERSON**
LAWYERS &
NOTARIES

Douglas H. Marshall, B.A., M.A., LL.B.
Ronald G. Lamperson, B.A., LL.B.
Lisa O. Holmgren, B.Sc., LL.B.

P.O. Box 879
710 Memorial Avenue
Qualicum Beach, BC
Canada V9K 1T2

lawfirm@bcsupernet.com
Fax (250) 752-2055
Phone (250) 752-5615

File No: 5535
Reply to: Douglas H. Marshall

March 26, 2003

VIA FAX: 752-9241

Fern Road Consulting Ltd.
P. O. Box 405
Qualicum Beach BC V9K 1S9

Attention: Helen M. Sims

Dear Madam:

Re: Melvyn – Lot 3, District Lot 28, Newcastle District, Plan 22249 – Development Variance Permit

We are in receipt of your letter dated February 6, 2003 addressed to the Regional District of Nanaimo in support of Mr. Melvyn's application for a Development Variance Permit together with the letter from the Deep Bay Planning and Environment Association (signed by Greta Taylor) dated March 10, 2003, handwritten letter from Anne Copas (undated), letter from Maple Guard Ratepayers' Association (signed by Dianne Eddy) dated March 10, 2003, letter from John Debolt dated March 9, 2003 and Memorandum of Deborah Jensen, planner, in connection with the said application.

You have asked us to comment generally on the letters which negatively reflect on Mr. Melvyn's application and in particular to provide our opinion as to the enforceability of the restrictive covenant – statutory building scheme registered against the title to the subject property insofar as it restricts construction to a height of no more than 15 feet.

With respect to the statutory building scheme, we advise that it is our opinion that the 15 foot height restriction set out in the statutory building scheme is unenforceable.

As an aside, we note that the Regional District of Nanaimo has no authority to enforce restrictive covenants of the nature of the statutory building scheme in question. When a new subdivision is created which is subject to a statutory building scheme, the right to take the benefit of and enforce the statutory building scheme devolves upon each of the owners in the subdivision. A statutory building scheme is not enforceable by a municipal or regional authority. Thus, for the purpose of the Development Variance Permit application, the statutory building scheme is not relevant.

In addition to the foregoing, it is our view that the height restriction set out in the statutory building scheme is unenforceable for two reasons. First, the height restriction is impossibly vague. There is nothing in the statutory building scheme to describe what is meant by the 15

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Legal Opinion
(As Supplied by Applicant)
Page 2 of 3

Page 2
March 26, 2003

foot restriction or how it is to be determined. Does it mean a measurement from the foot of the foundation to the top of the roof, or to the top of the chimney, or to the top of the second storey? Does it mean that the 15 foot high measurement begins from the highest point on the land, the highest point in the subdivision, the lowest point in the subdivision, the lowest point on the land, the average natural grade, the top of the foundation or the point where the land meets the building (at the highest, lowest or average point)? Should fill be taken into account or not?

Secondly, the height restriction is unenforceable because 19 of the 44 lots which are subject to the height restriction are two storey homes (and thus likely in excess of 15 feet in height however that height might be measured). Traditionally, the Courts refuse to enforce a restriction in a statutory building scheme where it is clear that the various owners have to date ignored the restriction in question. It is a defence then for Mr. Melvyn that there has been acquiescence by various of the other owners to the conduct being complained of or that there has been a significant departure from the scheme originally adopted (e.g., see the case of *Shaughnessy Heights Property Owners' Association v. Campbell* (1951), 3 WWR (N.S.) 407 (BCSC)).

Having dealt with the statutory building scheme, we now turn to the comments set out in the letters that you have provided to us. These comments fall into three categories. There are complaints about the alleged breach of the statutory building scheme, complaints about the general environmental conditions at the property and thirdly, the geotechnical integrity of the subsurface of the property is brought into question.

First, with respect to the alleged breach of the statutory building scheme, we note as above that the statutory building scheme is, in our opinion, unenforceable in respect of the height restriction. We note too in this connection that the letter of Dianne Eddy on behalf of the Mapleguard Ratepayers' Association is surprising as Ms. Eddy has a two storey house notwithstanding the same height restriction registered against her property.

Secondly, with respect to the general environmental conditions at the property, we note that the Ministry of Environment has approved the works installed to protect the watercourse in question. They have done so despite the general environmental conditions at the property. Also, the portion of the work carried out by Mr. Melvyn was carried out under the guise of earth moving and the protection of the watercourse. Mr. Melvyn innocently carried out his work not knowing that a permit was required. Nevertheless, these works have been approved by the Ministry of the Environment.

Thirdly, concerns are raised regarding the geotechnical integrity of the subject property. There is much speculation by the various neighbouring owners regarding alleged instability. However, none of the letters indicate that any of the neighbours have supported their speculation with expert opinion. The only expert report is that of Lewkovich Geotechnical Engineering Ltd. dated November 27, 2002, which specifies the way in which the Melvyn lot may be built upon in a safe manner. Clearly, the expert's opinion must be taken over that of the speculation of the various neighbours.

Finally, we note that some of the comments set out in the letters of the neighbours seem to be directed at Mr. Melvyn personally and the Regional District of Nanaimo (as opposed to the application itself and the issues themselves). In fact, the development permit variance process itself is attacked. What we must all realize is that "one size fits all" zoning is simply impossible. We must allow for variances from one property to the next as not all lots are the same. The result of strictly enforcing the existing zoning and restrictions on the subject property would

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Page 3
March 26, 2003

result in an unbuildable lot which would, of course, be a very harsh result indeed. The neighbours have spoken positively of the old use of the property as a vegetable garden, but this is not a practical result for the future and would be a difficult pill to swallow for any property owner.

It seems that if we had applied the strict approach of the neighbours to the Kopina Estates Development generally from day one, it is possible that no building would have ever occurred. It seems that over time the various owners have ignored the height limits in the neighbourhood, the seismic concerns now raised by the neighbours, the riparian and fisheries issues raised, the variable weather conditions, the alleged unstable substrate, the use of fill and the like. The experts, on the contrary, have indicated that Mr. Melvyn's proposed use of the property can be carried out reasonably safely and we see nothing in the letters to suggest otherwise.

If you have any concerns or questions regarding the foregoing, please do not hesitate to contact the writer.

Yours truly,

MARSHALL & LAMPERSON

Per:

DOUGLASH MARSHALL
DHM/am



REGIONAL DISTRICT OF NANAIMO			
APR 14 2003			
CHAIR		GMCrs	
CAO		GMDS	
CMCms		GMES	
EAV			
DATE		April 11, 2003	
FILE:		3090 30 90307	

MEMORANDUM

TO: Pamela Shaw
Manager, Community Planning

FROM: Deborah Jensen
Planner

SUBJECT: Development Variance Permit Application No. 90307 - Irwin
Electoral Area 'G', 771 Mariner Way

PURPOSE

To consider an application for a development variance permit to relax the minimum interior side lot line setback requirement to facilitate the construction of an addition to an existing single dwelling unit.

BACKGROUND

This is an application to facilitate the construction of an addition to an existing dwelling unit located in the San Pareil area of Electoral Area 'G' (see Attachment No. 1). The subject property, which is a 0.17 hectare parcel located on Mariner Way, is currently zoned Residential 1 (RS1) pursuant to "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987". The property is bordered by the Strait of Georgia to the north, residentially zoned parcels to the east and west, and Mariner Way to the south. Across Mariner Way is the Englishman River Estuary.

The subject property is located within a building inspection area. An application for a building permit to construct the existing dwelling unit was made in 1974. At that time, Zoning Bylaw No. 55, 1972 was in effect and required a minimum side lot line setback of 5.0 feet (1.5 metres). The dwelling unit was located 6.4 feet (1.95 metres) from the side lot line as measured to the foundation, thereby meeting the requirements of the zoning bylaw. Including the roof overhang, the dwelling unit is 1.1 metres from the interior side lot line. The implementation of Bylaw No. 500, 1987 increased the interior side lot line minimum setback to a minimum 2.0 metres (as measured from the roof overhang). This means that while the existing dwelling unit is encroaching into the current Bylaw No. 500 setback requirements, the dwelling is still considered to be legally sited.

In addition, in 2001 the Province granted legal accretion of adjoining crown land to a number of properties along Mariner Way, including the subject parcel. As the residential zoning boundary coincides with the area of accretion, property owners may now potentially construct buildings and structures further north toward the Strait of Georgia. New development is occurring on the parcel immediately to the east of the subject property. As a result of this situation, the subject property now has a reduced view and less privacy. In order to regain some privacy, still maintain an ocean view in a northwesterly direction, and retain the architectural design of the home, the applicant is proposing a single-storey addition to the living area of the dwelling unit adjacent to the east lot line. As the applicant is proposing this addition be 1.1 metres from the interior side lot line, a variance to Bylaw No. 500, 1987 is required (see Schedule Nos. 2 & 3 for proposal).

There are no restrictive covenants or other legal notations registered to the title of the subject property.

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ALTERNATIVES

1. To approve Development Variance Permit No. 90307, subject to conditions outlined in Schedule Nos. 1, 2, and 3 and the notification requirements pursuant to the *Local Government Act*.
2. To deny the requested variance permit.

ENVIRONMENTAL IMPLICATIONS

The subject property is located adjacent to the Strait of Georgia. In addition, the Englishman River estuary is located to the south of Mariner Way, opposite the subject property. The area proposed for construction is located on the Strait of Georgia side of the existing residence, in an area that has already been landscaped. The undeveloped coastal foreshore environment is located beyond this area.

It is noted that even though the subject property is located adjacent to a coastal watercourse (Strait of Georgia), it is not within a designated development permit area for the protection of the environment. A proposal was initiated in 2001 to implement development permit guidelines in the San Pareil coastal area, including provision for a 30-metre setback from the natural boundary of the sea. However, due to lack of community support, no further action was taken and the development permit area was not adopted. As a result, this application is subject only to the zoning and building permit regulations.

LAND USE AND DEVELOPMENT IMPLICATIONS

Those coastal properties in the San Pareil neighbourhood that have legal accretions have an opportunity to construct buildings and structures closer to the marine foreshore. In this instance, the adjacent dwelling unit under construction extends further into the foreshore than the proposed addition for the subject property. This has resulted in a loss of view and privacy for the applicant. In addition, the applicant has indicated that a heat pump and air conditioning unit will be located on the adjacent property close to their existing deck, thereby creating a possible noise disturbance. As a result, the proposed addition has been designed and sited in such a manner as to retain an ocean view, create some privacy from this adjacent dwelling unit, and reduce potential noise.

The addition has been designed to extend the line of the existing exterior wall and roof overhang by approximately 6.0 metres. The width of the addition is estimated at 3.0 metres, tying in with a support beam located at the north side of the residence composed of primarily glass panels. Both the location of the existing dwelling unit and the architectural and structural design of the building support the proposed design rather than creating a jog in the building to meet current zoning setbacks.

In addition, development of the single-storey structure is separated from the adjacent residence by an existing fence line and the roof line should fall below the window line of the adjacent dwelling unit. Given the location of the proposed addition relative to adjacent buildings and placement of mature vegetation, there is no apparent impact to view corridors for nearby residences.

The proposed addition has been sited 26.0 metres from the present natural boundary of the sea. The property is located within a floodplain area, but as the proposed addition does not increase the total size of the existing dwelling unit by more than 25%, the proposed addition is exempt from the requirements of the Floodplain Management Bylaw No. 843. Therefore, no Site Specific Exemption from the Ministry of Water, Land, & Air Protection is required for this proposed addition. However, it is noted that a geotechnical report may be a requirement at time of building permit.

VOTING


Electoral Area Directors – one vote, except Electoral Area 'B'.

SUMMARY

This is an application for a development variance permit to vary the minimum permitted setback for an interior side lot line from 2.0 metres to 1.1 metres to facilitate the construction of a single-storey addition to an existing dwelling unit. The existing dwelling unit was built under a previous zoning bylaw, which permitted buildings to be located closer to the interior side lot line than the present regulations under Bylaw No. 500, 1987 allow. In order to continue the building lines and given the interior floor plan, the applicant would like to extend the proposed addition into the setback area. This proposed location of the addition will also create some privacy from this adjacent dwelling unit, and reduce the potential noise from the neighbouring heat pump and air conditioning unit. Given that the proposed addition does not have any substantial visual or other apparent impacts on the neighbouring properties, staff recommends Alternative No. 1 to vary the minimum interior side lot line setback to accommodate an addition to the existing dwelling unit be approved subject to notification requirements pursuant to the *Local Government Act*.

RECOMMENDATION

That Development Variance Permit Application No. 90307, submitted by Maureen Irwin, to vary the minimum permitted setback within the Residential 1 (RS1) zone from 2.0 metres to 1.1 metres for the interior side lot line in order to facilitate the construction of a single-storey addition to an existing dwelling unit for the property legally described as Lot C District Lot 181 Nanoose District and Part of the Bed of the Strait of Georgia Plan VIP72454 be approved subject Schedules Nos. 1, 2, and 3 of the staff report and the notification requirements pursuant to the *Local Government Act*.



Report Writer



Manager Concurrence



General Manager Concurrence



CAO Concurrence

COMMENTS:

devs\reports\2003\devp ap 60307 Irwin 771 Mariner Way

Schedule No. 1
Conditions of Approval
Development Variance Permit No. 90307

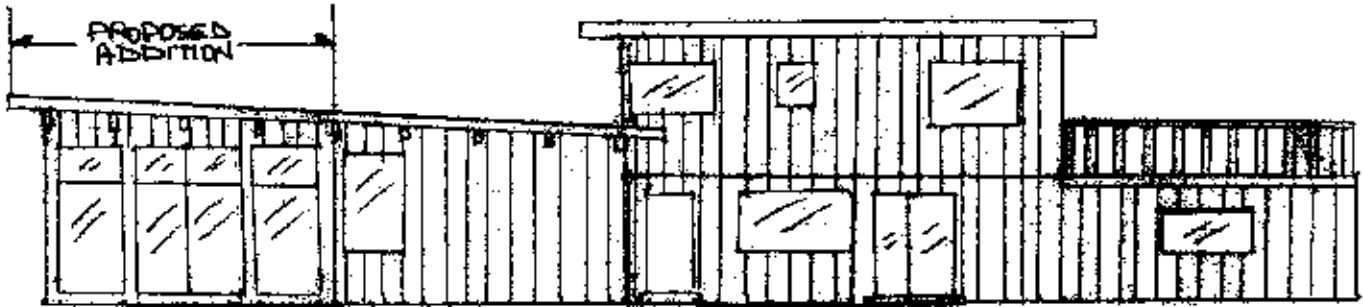
With respect to the lands, the Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987, the following conditions apply:

1 Building Development

- a The addition to the dwelling unit is to be situated in the location as shown on the site plan on Schedule No. 2.
- b The building addition shall be a single-storey structure and designed and constructed as shown on Schedule No. 3.
- c The dwelling unit addition is to be surveyed by a British Columbia Land Surveyor (BCLS) at building permit time to verify building setbacks.

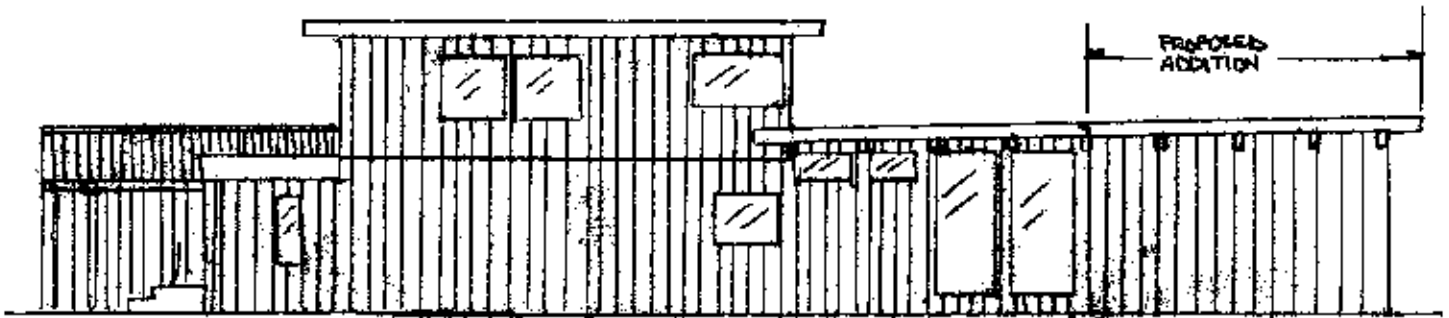
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GE

Schedule No. 3
Building Profile
Development Variance Permit Application No. 90307
(as submitted by applicant / reduced for convenience)



771 MARINERWAY
PARKSVILLE
WEST ELEVATION.

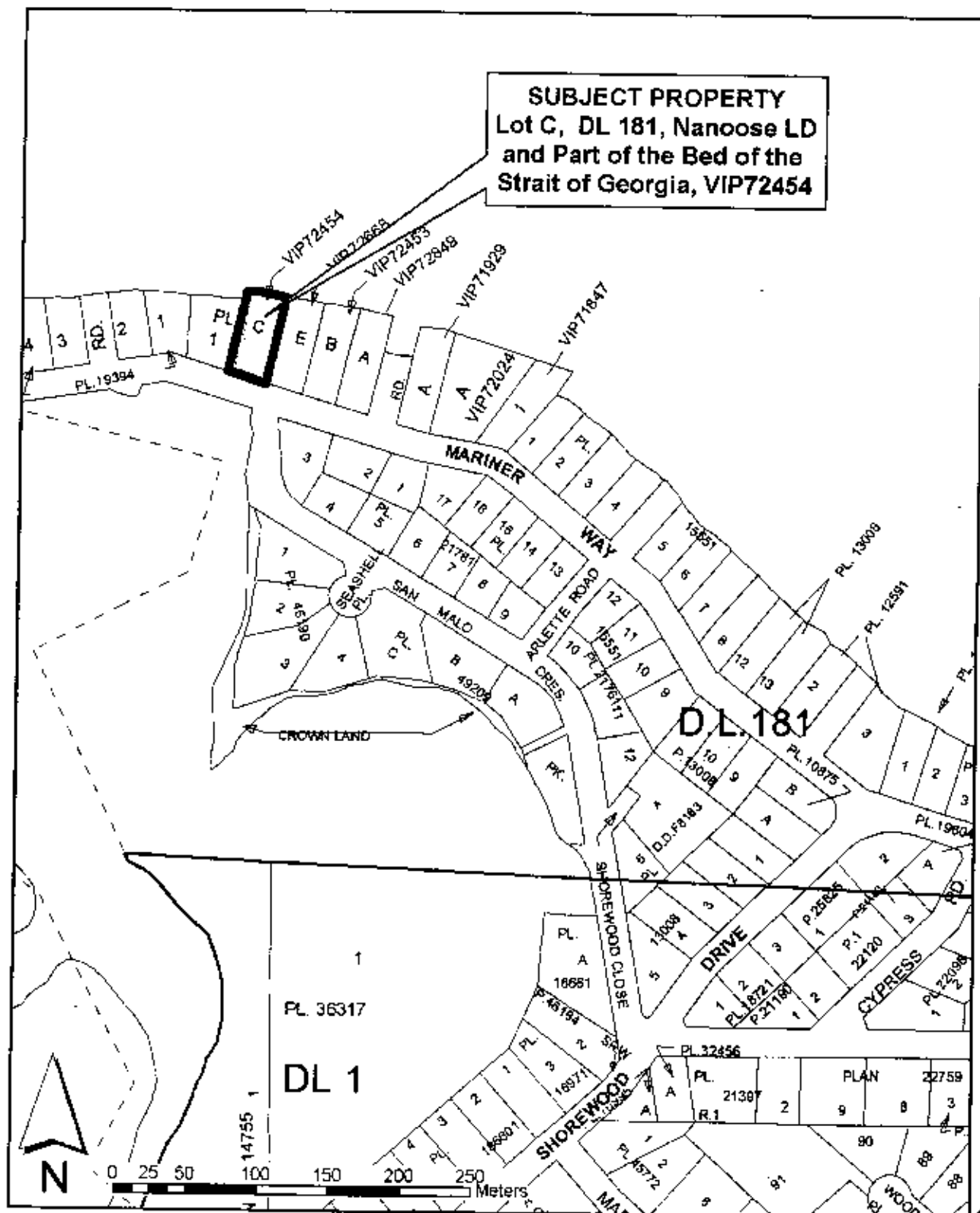
$\frac{1}{10} = 1'$



771 MARINERWAY
PARKSVILLE

EAST ELEVATION $\frac{1}{10} = 1'$

Attachment No. 1
Subject Property Map
Development Variance Permit Application No. 90307





REGIONAL DISTRICT OF NANAIMO			
APR 14 2003			
CHAIR		GMCrs	
CAO		GMDS	
GMCm8		GMES	
		<i>EAP</i>	<input checked="" type="checkbox"/>

MEMORANDUM

TO: Pamela Shaw
Manager, Community Planning

DATE: April 11 2003

FROM: Blaine Russell
Planning Assistant

FILE: 3090 30 90308

SUBJECT: Development Variance Permit Application 90308 -Neale
Electoral Area 'E' - 3495 Bluebill Place

PURPOSE

To consider a Development Variance Permit Application to relax the minimum setback requirements from the 'interior side lot line' to allow the siting and construction of an attached garage and to legalize an existing accessory building for the subject property located at 3495 Bluebill Place in Electoral Area 'E'.

BACKGROUND

This is an application to relax the 'interior side lot line' setback requirement from 2.0 metres to 0.5 metres of Section 3.4.62 of "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987" to permit the construction of an attached garage and to relax 'interior side lot line' setback requirement from 2.0 metres to 0.0 metres to legalize an existing accessory building on the subject property legally described as Lot 53, District Lot 78, Nanoose District, Plan 15983.

The subject property (*approximately 1137 m² in size*) is currently zoned Residential 1 (RS1) Subdivision District 'N' pursuant to the "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987". The property is bound by other Residential 1 (RS1) zoned parcels to the south, east and west and is accessed off Bluebill Place to the south. To the north of the subject property is the Strait of Georgia (*see Attachment No. 1 for location of property*).

The attached garage is proposed to be sited more than 34.0 metres from the ocean and thus is outside the 'Watercourse Protection Development Permit Area' as defined in "Regional District of Nanaimo Nanoose Bay Official Community Plan Bylaw No. 1118, 1998". In addition, the subject property is not located in proximity to any Agricultural Land Reserve designated properties; therefore the 'Farmland Protection Development Permit Area' guidelines do not apply.

The subject property is located within the RDN Building Inspection Area and is subject to "Regional District of Nanaimo Floodplain Management Bylaw No. 843, 1991". The subject property is currently on community water and septic disposal system.

Existing structures on the subject property appear to be constructed more than 30 years ago prior to the adoption of Building Inspection in the Regional District of Nanaimo (that is, prior to October 15, 1974), and there is no record of a building permit. The property became subject to zoning under "The Regional

PAGE 4/6

District of Nanaimo Zoning By-law No. 53, 1973"; given the estimated age of structures on the subject property, staff are of the opinion that the existing accessory building predates the implementation of zoning and thus has legal non-conforming status pursuant to the current zoning bylaw. However, while the siting of the dwelling unit meets current bylaw standards, the siting of the accessory building would require a bylaw variance to become legal conforming.

The proposed attached garage is 5.20 metres from present grade to peak of roof and has horizontal dimensions of 7.62 metres by 7.93 metres as measured from the outermost portion of the structure. The existing accessory building is approximately 6 metres by 3.4 metres in size. (see Schedule Nos. 2 and 3 for details).

As part of the proposed construction for the attached garage the applicant is proposing to construct a new entrance to the existing dwelling unit and to enclose an existing deck. The applicant has indicated that the proposed garage is to be used for vehicles and storage.

ALTERNATIVES

1. To approve the development variance permit application as submitted, subject to notification procedures pursuant to the *Local Government Act*.
2. To deny the development variance permit application.

DEVELOPMENT IMPLICATIONS

Given the topography of the subject property and the location of existing structures, views from neighbouring properties are unlikely be impacted by the proposed attached garage. Pursuant to the *Local Government Act*, neighbours will be notified and have an opportunity to comment on the application prior to the Board's consideration of the permit. The applicant has indicated that he has spoken with neighbouring property owners and the applicant believes the neighbours do not take issue with the proposal.

Siting and Topography

Siting options on the parcel are limited due to a rock outcrop located to the left of the existing driveway and the existing access point to Bluebill Place (at the front of the property). Modification to the rock outcrop would be difficult and costly to the applicant. In addition, locating toward the west of the property would prohibit the applicant from integrating the garage into the existing dwelling. The only other option available for the applicant, aside from the application as submitted, would be to site the attached garage and entry toward the front of the property; however, this would require a relaxation to the 'front lot line' setback requirements. In addition, the applicant believes that this alternative would obstruct the view of the water from neighbouring properties. The applicant is proposing to site and construct the attached garage and entry towards the east side of the property. This location enables the use of the existing driveway and avoids above-mentioned issues. It should be noted that the subject property has an elevation of approximately 1.5 metres less than that of the neighbouring property. This lower elevation will reduce any potential impact on neighbouring views.

The topographic challenges of the subject property limit potential buildable sites for the proposed garage. The applicant's proposed location recognizes site constraints, limits the impact of the proposed development on neighbouring properties, and provides for efficient reuse of an existing driveway.

It is noted that a BCLS certified survey and a geotechnical report may be required by the RDN's Building Inspection Department as part of the Building Permit approval process.

PUBLIC CONSULTATION IMPLICATIONS

As part of the required public notification process pursuant to the *Local Government Act*, adjacent and nearby residents and property owners will have an opportunity to comment on the proposal prior to the Board's consideration of the permit.

VOTING

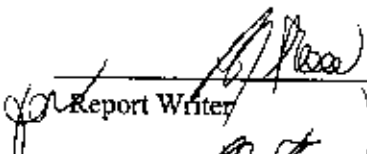
Electoral Area Directors – one vote, except Electoral Area 'B'.

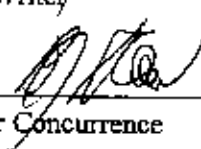
SUMMARY

This is an application to relax the minimum 'interior side lot line' setback requirement from 2.0 metres to 0.5 metres to allow for the construction of a proposed attached garage and to relax the minimum 'interior side lot line' setback requirement from 2.0 metres to 0.0 metres to legalize the siting of an existing accessory building. Staff would suggest that, due to the topography of the site and limited buildable areas, the application has merit to proceed to notification and can be supported due to the likely minimal impact on surrounding properties.


RECOMMENDATION

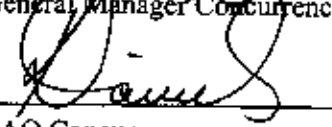
That Development Variance Permit Application No. 90308 to relax the 'interior side lot line' setback requirement from 2.0 metres to 0.5 metres for the siting and construction of an attached garage and to relax the minimum 'interior side lot line' setback requirement from 2.0 metres to 0.0 metres to legalize the siting of an existing accessory building for the property legally described as Lot 53, District Lot 78, Nanoose District, Plan 15983 be approved, subject to Schedules No. 1, 2, and 3 and to the notification requirements pursuant to the *Local Government Act*.



Report Writer


Manager Concurrence



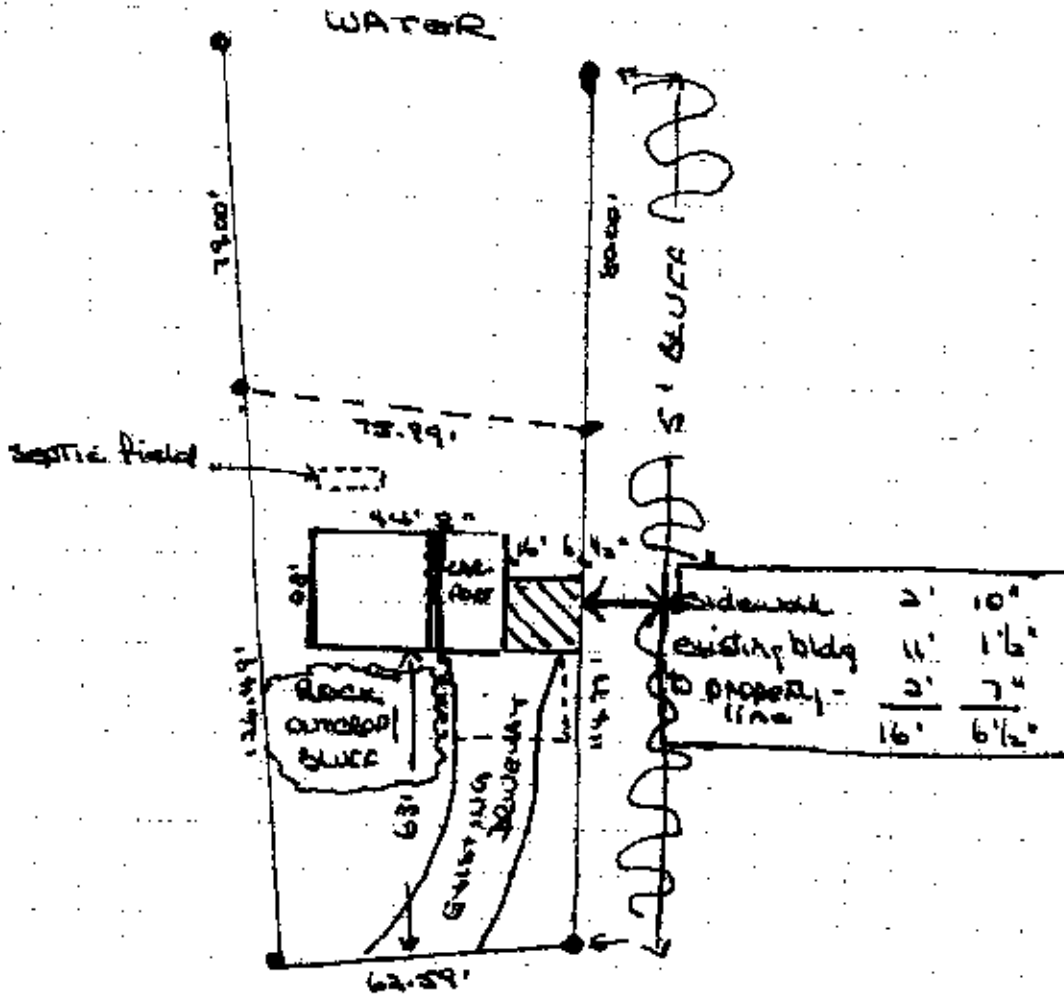
General Manager Concurrence


CAO Concurrence

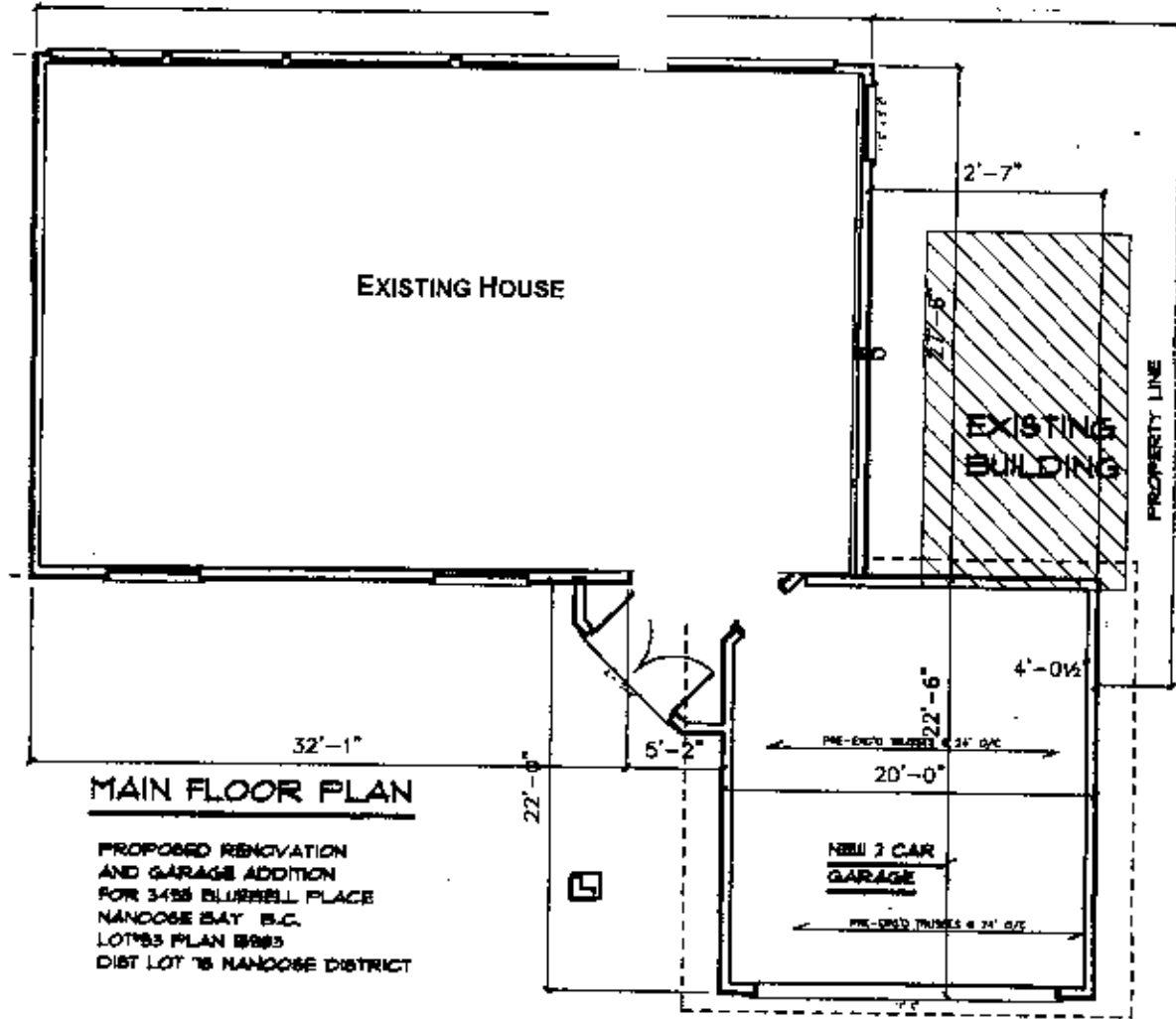
COMMENTS:

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Schedule No. 1
 Site Plan
 Development Variance Permit No. 90308
 (Page 1 of 2)



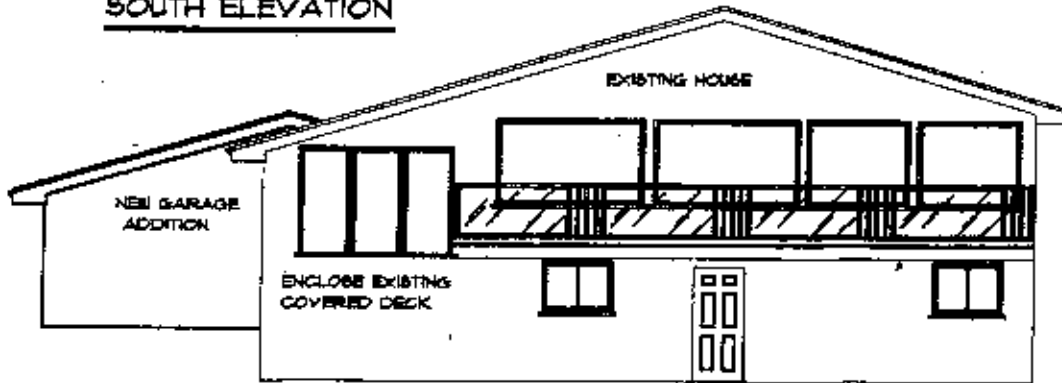
Schedule No. 1
Site Plan
Development Variance Permit No. 90308
(Page 2 of 2)



Schedule No. 2
Elevation Plan
Development Variance Permit No. 90308
(Page 1 of 2)

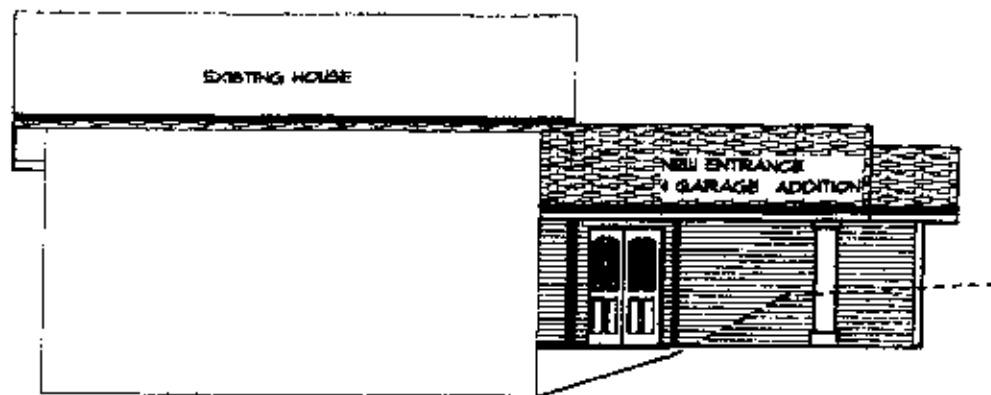


SOUTH ELEVATION

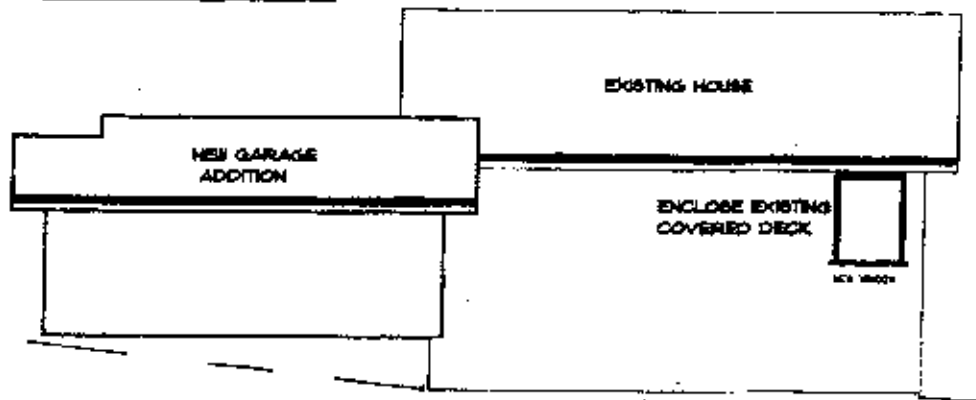


NORTH ELEVATION

Schedule No. 2
Elevation Plan
Development Variance Permit No. 90308
(Page 2 of 2)



WEST ELEVATION



EAST ELEVATION

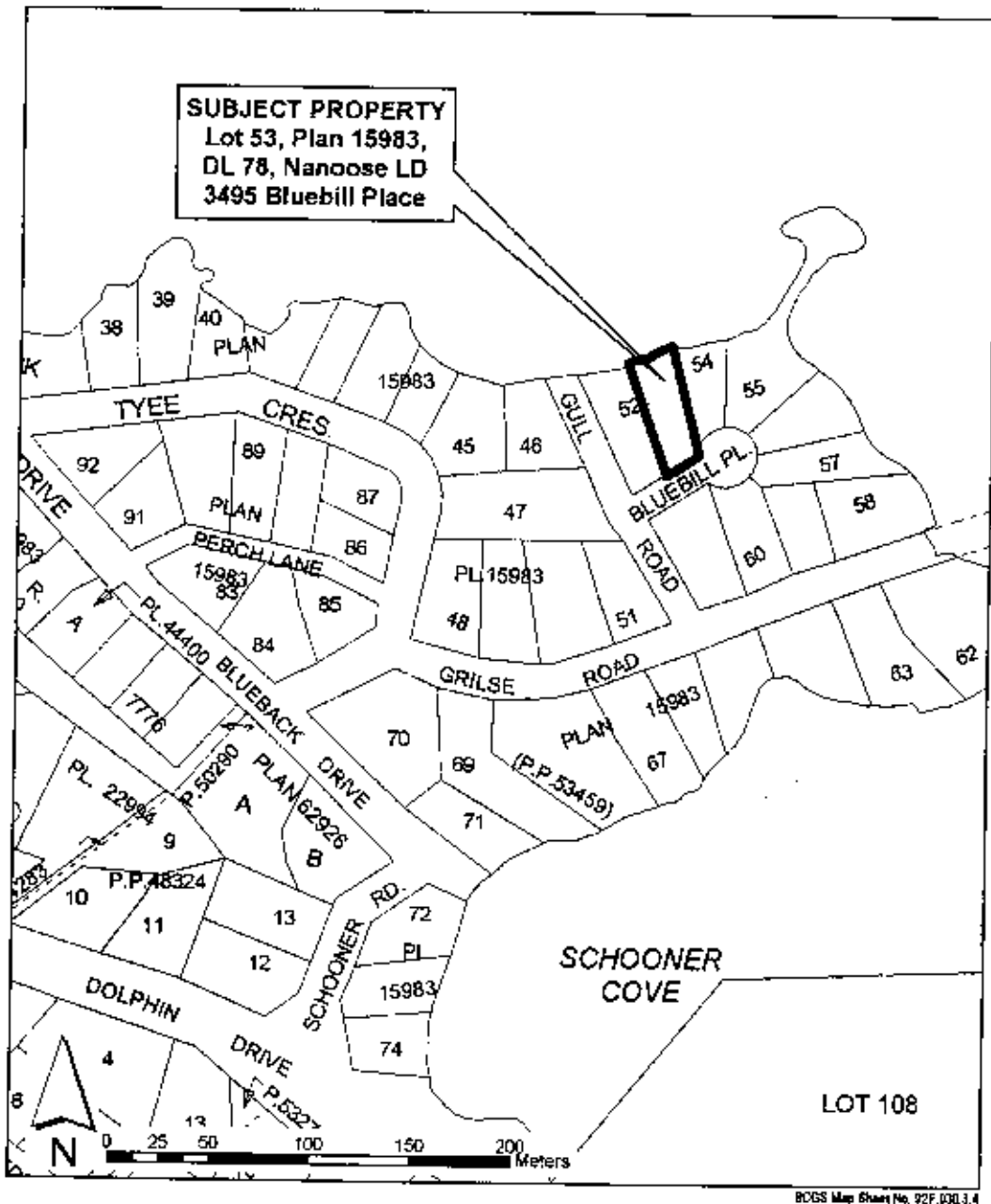
EXISTING

**Schedule No. 3
Requested Variance
Development Variance Permit No. 90308**

With respect to the lands, the Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987, is varied as follows:

1. Section 3.4.62 – Minimum Setback Requirements – The minimum setback requirement for the interior side lot line is hereby varied from 2.0 metres to 0.5 metres in order to accommodate an attached garage in the location as shown on Schedule No. 2 and in accordance with the profile as shown on Schedule No. 3.
2. Section 3.4.62 – Minimum Setback Requirements – The minimum setback requirement for the interior side lot line is hereby varied from 2.0 metres to 0.0 metres in order to legalize an attached accessory building in the location as shown on Schedule No. 2 and in accordance with the profile as shown on Schedule No. 3.

Attachment No. 1
Location of Subject Property





REGIONAL DISTRICT OF NANAIMO			
APR 14 2003			
CHAIR		GMCrS	
CAO		GMDS	
GMCmS		GMES	
CAPL			

MEMORANDUM

TO: Pamela Shaw
 Manager, Community Planning

DATE: April 11, 2003

FROM: Blaine Russell
 Planning Assistant

FILE: 3090 30 90309

SUBJECT: Development Variance Permit Application No. 90309 Homes By Kimberly, on behalf of Walsh
 Electoral Area 'G', 777 Mariner Way

PURPOSE

To consider a development variance permit application to relax the minimum interior side lot line setback requirement to accommodate the siting of an accessory building.

BACKGROUND

This is an application to relax the minimum interior side lot line setback requirement to permit the siting of an accessory building on the parcel legally described as Lot E District Lot 181 Nanoose District and Part of the Bed of the Strait of Georgia Plan VIP72668 and located at 777 Mariner Way within the San Pareil area of Electoral Area 'G' (see Attachment No. 1 for location of property).

The subject property, which is 0.181 hectare in size, is currently zoned Residential 1 (RS1) and is within Subdivision District 'N' (minimum parcel size 1600 m² with community water) pursuant to the "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987". The property is bordered by the Strait of Georgia to the north, residentially zoned parcels to the east and west, and Mariner Way to the south. Across Mariner Way are San Malo Crescent and 1 residentially zoned parcel and the Englishman River Estuary.

The applicant is requesting a relaxation of the minimum interior side lot line setback from 2.0 metres to 0.5 metres to site an accessory building to be used as storage for garden and outdoor equipment. The accessory building is proposed to be 4.1 metres by 6.1 metres in size and 4.4 metres in height as measured from the natural grade of 3.05 GSC (finished grade 3.65 metres) (see Schedule Nos. 2 and 3 for details). The building is proposed to be situated in the front yard 12.5 metres from the front lot line adjacent to Mariner Way.

The subject property is located within the RDN Building Inspection Area and will require a building permit at which time a geotechnical report may also be required due to the presence of fill on site. The property is also subject to the requirements of the "Regional District of Nanaimo Floodplain Management Bylaw No. 843, 1991". The property has had earth fill added in order to achieve the flood elevation. The present grade, with fill, is 3.80 metres Geodetic Survey of Canada Datum (GSC). As the flood elevation requirement is 4.1 metres GSC, the bottom of the accessory building floor joists or the top of concrete floor slab will be required to be above 4.1 metres GSC.

A single dwelling unit is currently being developed on the subject property and will be served with community water. A private septic disposal system will be installed within the front yard area.

ALTERNATIVES

1. To approve the development variance permit application subject to the conditions set out in Schedule Nos. 1, 2, and 3 of the staff report and the notification requirements.
2. To deny the development variance permit application.

DEVELOPMENT IMPLICATIONS

Siting the proposed accessory building in the yard area adjacent to the Strait of Georgia could potentially reduce view corridors of both the subject property and adjacent neighbouring properties. As a result, the applicant would like to locate the accessory building within the front yard area (between the dwelling unit and Mariner Way). Siting options in the front yard of the parcel are limited by the location of the future driveway, the future septic disposal system, and a proposed gazebo structure to be situated in the east side of the property. It is noted that the Ministry of Health has required the septic field to be located in a large central portion the front yard of the subject property due to proximity to the Strait of Georgia. As a result of these site constraints, an area for a storage shed becomes limited.

The applicant has agreed to reduce the height of the proposed accessory building to a height of 4.4 metres from peak of roof to natural grade in order to address staff concerns with respect to possible negative impact on the adjacent house with respect to retaining views and maintaining sun light into the house.

Views from neighbouring properties are unlikely to be impacted by the proposed accessory building.

PUBLIC CONSULTATION IMPLICATIONS

As part of the required public notification process pursuant to the *Local Government Act*, adjacent and nearby residents and property owners will have an opportunity to comment on the proposal prior to the Board's consideration of the permit.

VOTING

Electoral Area Directors – one vote, except Electoral Area 'B'.

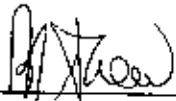
SUMMARY

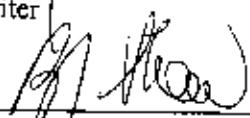
This is an application to relax the minimum interior side lot line setback requirement from 2.0 metres to 0.5 metre to facilitate the siting of an accessory building in the front yard area of the parcel located at 777 Mariner Way in the San Pareil area of Electoral Area 'G'. Construction of a new house is currently underway on the property. Due to the site limitations with respect to the location of the future septic field, the driveway, and a gazebo building and to avoid situating the building in the yard area adjacent to the Strait of Georgia, the applicant is requesting a variance to the interior side lot line requirement. The proposed location of the accessory building will not negatively impact neighbours' views. The required public consultation process will give neighbours an opportunity to comment on the proposal. Therefore, due to the limited buildable site areas in the front yard area and the effort made to limit the impact on potential view corridors staff recommend Alternative No. 1 to vary the minimum interior side lot line setback to accommodate the siting of the proposed accessory building subject to the notification requirements pursuant to the *Local Government Act*.

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RECOMMENDATION

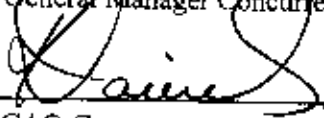
That Development Variance Permit Application No. 90309, to relax the minimum interior side lot line setback requirement from 2.0 metres to 0.5 metre to accommodate the siting of an accessory building for the property legally described as Lot E District Lot 181 Nanoose District and Part of the Bed of the Strait of Georgia Plan VIP72668 be approved, subject to Schedules No. 1, 2, and 3 and to the notification requirements pursuant to the *Local Government Act*.



Report Writer


Manager Concurrence



General Manager Concurrence


CAO Concurrence

COMMENTS:

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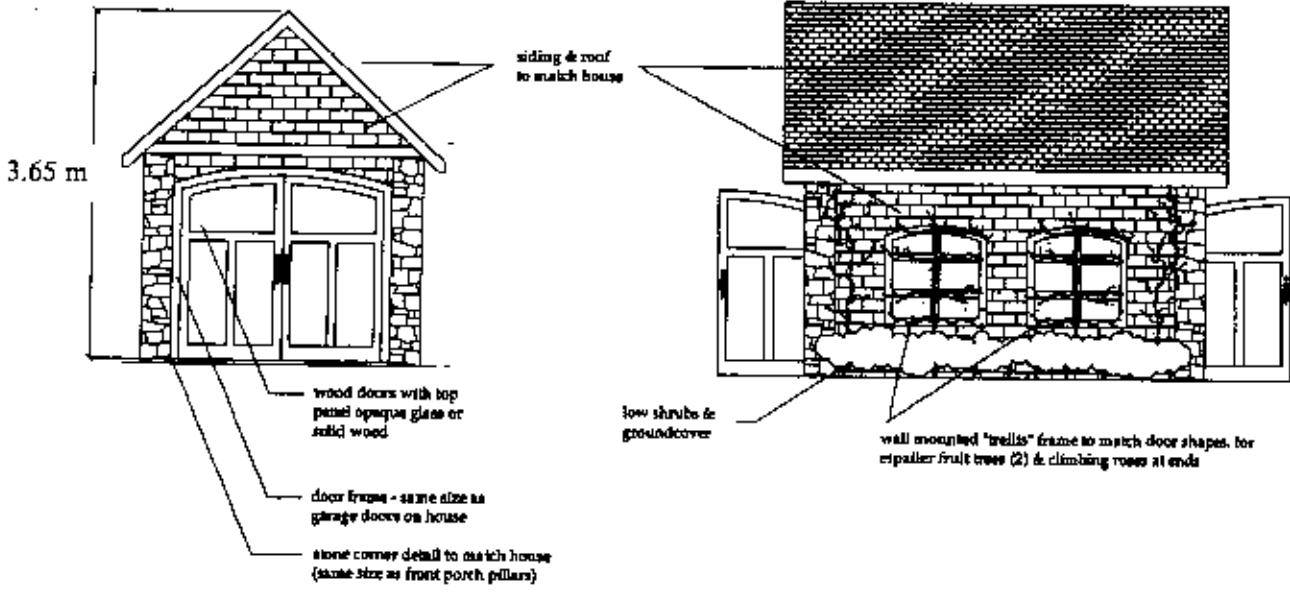
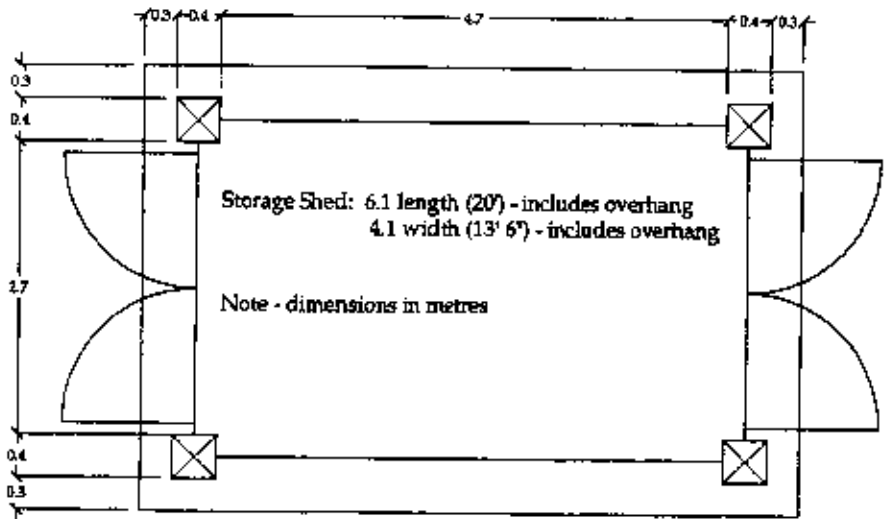
**Schedule No. 1
Conditions of Approval
Development Variance Permit No. 90309**

The following sets out the conditions of approval:

- 1 The accessory building is to be situated in the location as shown on the site plan in Schedule No. 2.
- 2 The accessory building is to be constructed as shown in Schedule No. 3 and is not to exceed 4.4 metres in height above the natural grade of 3.05 metres GSC nor is it to exceed 3.65 metres in height from finishing grade of 3.80 metres GSC and is to be a maximum size of 4.1 metres by 6.1 metres.
- 3 The accessory building is to be surveyed by a British Columbia Land Surveyor (BCLS) at building permit time to verify height of building and setbacks.
- 4 The accessory building floor is to be above 4.1 metres GSC as measured from top of floor slab or bottom of floor joists.
- 5 No storage is to occur below 4.1 metres GSC.
- 6 The accessory building is not to be used for habitable space.

AGE
108

Schedule No. 3
 Building Plan
 Development Variance Permit No. 90309





REGIONAL DISTRICT OF NANAIMO			
APR 14 2003			
CHAIR		GMCrS	
CAO		GMDS	
GMCmS		GMES	
		EAR	✓

MEMORANDUM

TO: Pamela Shaw
Manager of Community Planning

DATE: April 11 2003

FROM: Susan Cormie
Senior Planner

FILE: 3320 30 24890

SUBJECT: Request for Relaxation of the Minimum 10% Frontage Requirement
Applicants: Leo Smith & Marilyn Rae Smith
Electoral Area 'D' - Hobson's Road

PURPOSE

To consider a request to relax the minimum 10% perimeter frontage requirement as part of a proposed two-lot subdivision development.

BACKGROUND

The applicants have requested the minimum 10% perimeter frontage requirement be relaxed for 1 of the proposed parcels as part of a 2-lot subdivision proposal for the 2.01 hectare sized property legally described as Lot 1 District Lot 161 Nanoose District Plan VIP65475 Except That Part in Plan VIP73924 and located on Hobson's Road within the Lantzville area of Electoral Area 'D' (see Attachment No. 1 for location).

The subject property is currently zoned Residential 1 (RS1) and is within Subdivision District 'K' (4000 m² with or without community services) pursuant to the Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987. The applicant is proposing to subdivide the parent parcel into 2 1-ha sized lots, therefore meeting the minimum parcel size requirement. (see Attachment No. 2 for proposed subdivision). The parcels are proposed to be served by individual private septic disposal systems and private water wells.

Lot 2 is proposed to have a frontage of 23.0 metres or 5.3 % of the perimeter. Therefore, as this proposed parcel does not meet the minimum 10% parcel frontage requirement pursuant to Section 944 of the Local Government Act, approval of the Regional Board of Directors is required.

It is noted that cash in-lieu-of park land was paid for this parent parcel under a previous subdivision application.

ALTERNATIVES

1. To approve the request for the relaxation of the minimum 10% frontage requirement for proposed Lot 2.
2. To deny relaxation of the minimum 10% frontage requirement.

DEVELOPMENT IMPLICATIONS

Pursuant to discussions with the Ministry of Transportation, due to the existing location and width of the road right-of-way (Hobson's Road), any requirement for dedication of road for this subdivision application would result in the road not aligning correctly. As shown on *Attachment No. 1*, the extension of Hobson Road to the east would ultimately connect to Stone Road; however, a straight alignment paralleling existing roads would require additional dedication from Lot 2, Plan 60310, DL 161, Nanoose District (located to the north of the subject property) and would bisect the two large parcels fronting on Superior Road (instead of running along the parcel boundaries, as is the preferred scenario). Should Lot 2 be subdivided in the future, the Ministry would likely require the extension of the road, including the full 20-metre width, at that time. Additional consideration would have to be given to the further extension of Hobson Road to the east should the larger parcels be subdivided. As a result of this situation, Ministry of Transportation staff has indicated that they have no objection to the request for relaxation of the minimum 10% frontage requirement.

ENVIRONMENTAL IMPLICATIONS

The Regional District of Nanaimo Environmentally Sensitive Areas Atlas indicates the presence of a Fisheries Planning Boundary associated with a nearby Photo-interpreted Stream. This information will be forwarded to the Ministry of Transportation as part of the subdivision review process.

VOTING

Electoral Area Directors – one vote, except Electoral Area 'B'.

SUMMARY

This is a request to relax of the minimum 10% perimeter frontage requirement. As Hobson's Road is fully dedicated to the 20-metre width adjacent to the north lot line of the parent property and any road dedication within the subject property would result in the skewed road alignment of Hobson's Road, additional road dedication is not recommended for this application. As a result of this situation, Ministry of Transportation staff has indicated that they have no objection to the request for the proposed minimum 10% frontage relaxation. Therefore, staff recommends Alternative No. 1 approve the 10% frontage relaxation for this proposed subdivision.

RECOMMENDATION


That the request, submitted by Leo Smith and Marilyn Rae Smith to relax the minimum 10% frontage requirement for proposed Lot 2, as shown on the plan of subdivision of Lot 1 District Lot 161 Nanoose District Plan VIP65475 Except That Part in Plan VIP73924, be approved.



Report Writer



General Manager Concurrence



Manager Concurrence



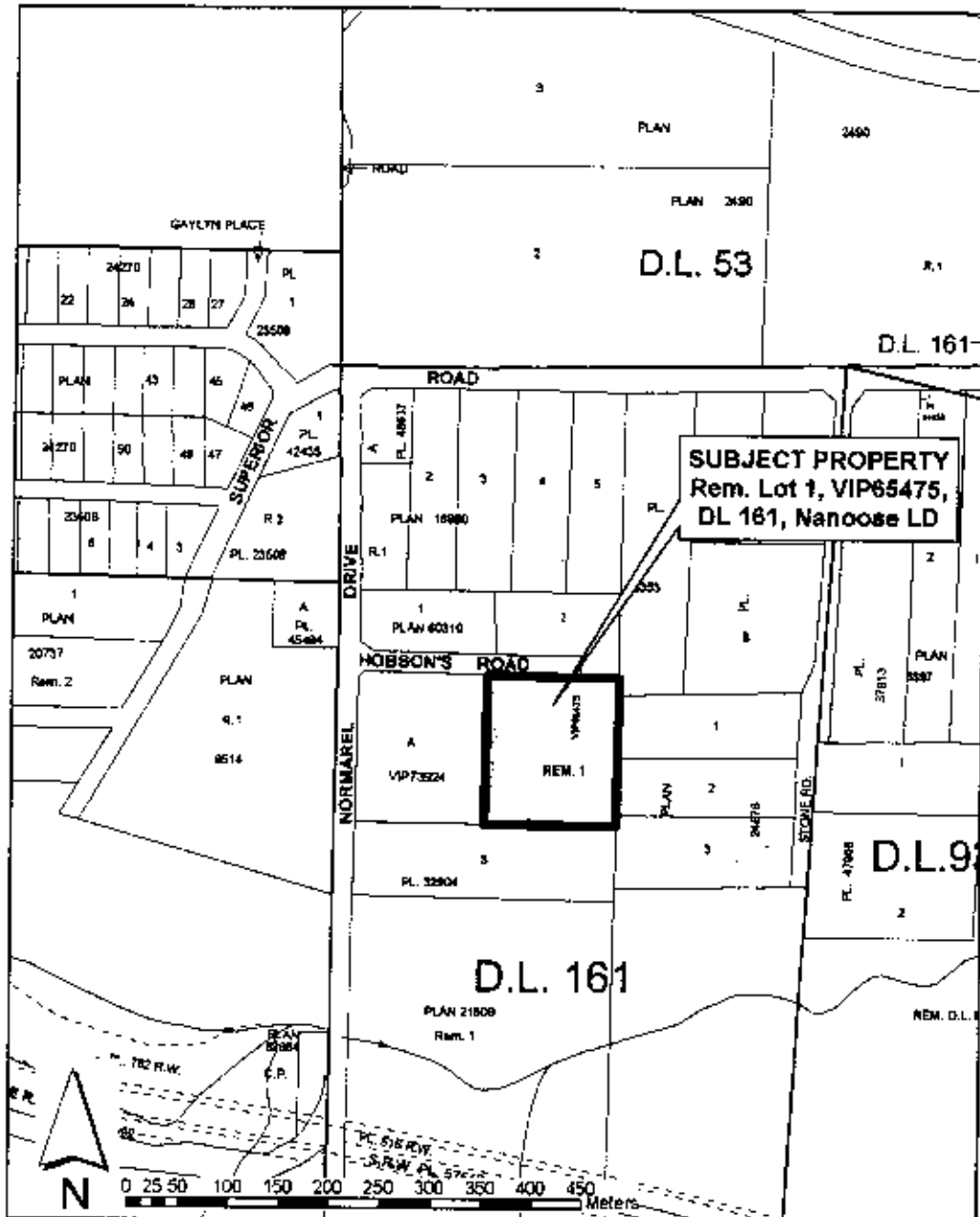
CAO Concurrence

COMMENTS:

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ATTACHMENT NO. 1 SUBJECT PROPERTY LOCATION



BCGS Map Sheet No. B2F.D30.1.4



REGIONAL DISTRICT OF NANAIMO	
APR 14 2003	
CHAIR	GMCrs
CAO	GMDS
GMCms	GMES
EAP	

MEMORANDUM

TO: Pamela Shaw
 Manager of Community Planning

DATE: April 11 2003

FROM: Susan Cormie
 Senior Planner

FILE: 3320 30 24965

SUBJECT: Request for Relaxation of the Minimum 10% Frontage Requirement
 Applicant: Leigh Millan, BCLS on behalf of Lois Dahl Holmgren
 Electoral Area 'A', Cedar Road

PURPOSE

To consider a request to relax the minimum 10% perimeter frontage requirement as part of a proposed three-lot subdivision development.

BACKGROUND

The applicant's agent has requested the minimum 10% perimeter frontage requirement be relaxed for 1 of the proposed parcels as part of a 3-lot subdivision proposal for the properties legally described as The Remainder of Section 7 with Exceptions and That Part of Section 8 Lying to the East of the Nanaimo River with Exceptions, Both of Range 1, Cedar District, and located on Cedar Road within the Electoral Area 'A' (see Attachment No. 1 for location).

The subject properties are currently zoned Rural 4 (RU4) and are within Subdivision District 'D' pursuant to the Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987. The properties are also situated within the Provincial Agricultural Land Reserve. The applicant is proposing to resubdivide the 2 parent parcels into 3 lots which will be greater than the 2.0 ha minimum parcel size, therefore meeting the minimum parcel size requirement. (see Attachment No. 2 for proposed subdivision). In addition, portions of the parent parcels are designated within the Provincial Nanaimo River Designated Floodplain. The parcels are proposed to be served by individual private septic disposal systems and private water wells.

The Remainder of Section 8 Range 1 Lying to the East of the Nanaimo River is proposed to have a parcel frontage of 153.25 metres. The applicant's agent (BCLS) has indicated that it is difficult to determine the exact equivalent frontage as a percentage because the boundaries of the Nanaimo River are included within the proposed remainder parcel. It would be costly to survey this boundary as surveying the proposed remainder parcel is not a requirement of subdivision approval and registration. However, the applicant's agent has confirmed that the proposed 153.25 metres frontage for this parcel will not meet the required 10% minimum frontage requirement. Therefore, as this proposed lot does not meet the minimum 10% parcel frontage requirement pursuant to Section 944 of the Local Government Act, approval of the Regional Board of Directors is required.

It is noted that this subdivision is being undertaken in order to resolve a bylaw enforcement issue pertaining to zoning and building inspection infractions involving the maximum number of dwelling units allowed per parcel under the Rural 4 zone. A section 700 filing is currently registered on title.

ALTERNATIVES

1. To approve the request for the relaxation of the minimum 10% frontage requirement for proposed Remainder of Section 7, Range 1, Cedar District.
2. To deny relaxation of the minimum 10% frontage requirement.

DEVELOPMENT IMPLICATIONS

The Provincial Agricultural Land Reserve Commission has approved the subdivision of these properties.

The parent parcels are situated within the Provincial Agricultural Land Reserve. In keeping with the guidelines of the Land Reserve Commission not to extent roads into the ALR as well as the requirements of the *Land Title Act* to limit roads being extended into ALR lands, there are no additional roads proposed to extent into the ALR lands. This means that no additional road frontage would be possible, thus restricting the proposed parcel to be served by the existing road network.

It is also noted that the Regional Approving Officer is prepared to waive the access to Nanaimo River as required pursuant to the *Land Title Act*. This is because the subject properties are located within the Agricultural Land Reserve and those portions of the parcels adjacent to the Nanaimo River are proposed to be registered as the remainders of the parcels and therefore not subject to legal survey.

This proposed subdivision, if approved, would rectify the bylaw enforcement issue dealing with the zoning infraction with respect to the permitted number of dwelling units per parcel. With respect to the building inspection infractions, the applicant is working with staff to resolve this outstanding issue.

OFFICIAL COMMUNITY PLAN / ENVIRONMENTAL IMPLICATIONS

The Regional District of Nanaimo Environmentally Sensitive Areas Atlas indicates the presence of a Salmon Present Fish Habitat (Nanaimo River), its Floodplain and corresponding Fisheries Planning Boundary as well as Unknown Fish Habitat and Photo-interpreted Stream crossing the subject properties. The Electoral Area 'A' Official Community Plan Bylaw No. 1240, 1999 (OCP) confirms, by ground survey, the presence of these streams as well as some wetland areas. As a result of these environmentally sensitive areas, the OCP designates portions of the subject properties within the Streams, Nest Trees, and Floodplain Development Permit Area No. 5. However, the requirements of this development permit area do not come into effect until December 11, 2003. Therefore, this application is not subject to a development permit unless it is not registered at Land Title Office by December 11, 2003. This information will be forwarded to the Ministry of Transportation as part of the subdivision review process. [Please note that the *Farm Protection (Right to Farm) Act* would still have precedence over any environmental covenants]. It is also noted that the Ministry of Land, Water and Air Protection has recommended that the Approving Authority require floodplain elevation covenants as a condition of subdivision.

VOTING

Electoral Area Directors - one vote, except Electoral Area 'B'.

SUMMARY

This is a request to relax the minimum 10% perimeter frontage requirement. This subdivision application is in order to rectify zoning and building bylaw infractions dealing with the permitted number of dwelling units per parcel. The subject properties are located within the Provincial Agricultural Land Reserve and the Commission has granted approval of the subdivision. The parent parcels contain a number of

environmentally sensitive features, but are exempt from the requirements of the corresponding development permit requirements of the Electoral Area 'A' OCP at this time. If the subdivision is not finalized and registered by December 11, 2003, the application will then be subject to the development permit process. Nevertheless, as part of the subdivision review process, staff will recommend to the Approving Authority the protection of the environmentally sensitive features by covenant. The Ministry of Transportation staff has indicated that they have no objection to the request for the proposed minimum 10% perimeter frontage relaxation. Therefore, as the Provincial Agricultural Land Commission has approved the subdivision and the Ministry of Transportation staff has no objection to this request, staff recommends Alternative No. 1 approve relaxation of the minimum 10% perimeter frontage for the proposed Remainder of Section 7, Range 1, Cedar District.

RECOMMENDATION


That the request, submitted by Leigh Millan, BCLS, on behalf of Lois Dahl Holmgren, to relax the minimum 10% frontage requirement for the Proposed Remainder of Section 7, Range 1, Cedar District as shown on the plan of subdivision of The Remainder of Section 7 with Exceptions and That Part of Section 8 Lying to the East of the Nanaimo River with Exceptions, Both of Range 1, Cedar District, be approved.



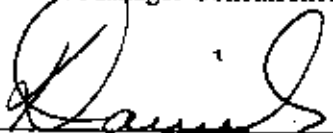
Report Writer



General Manager Concurrence



Manager Concurrence

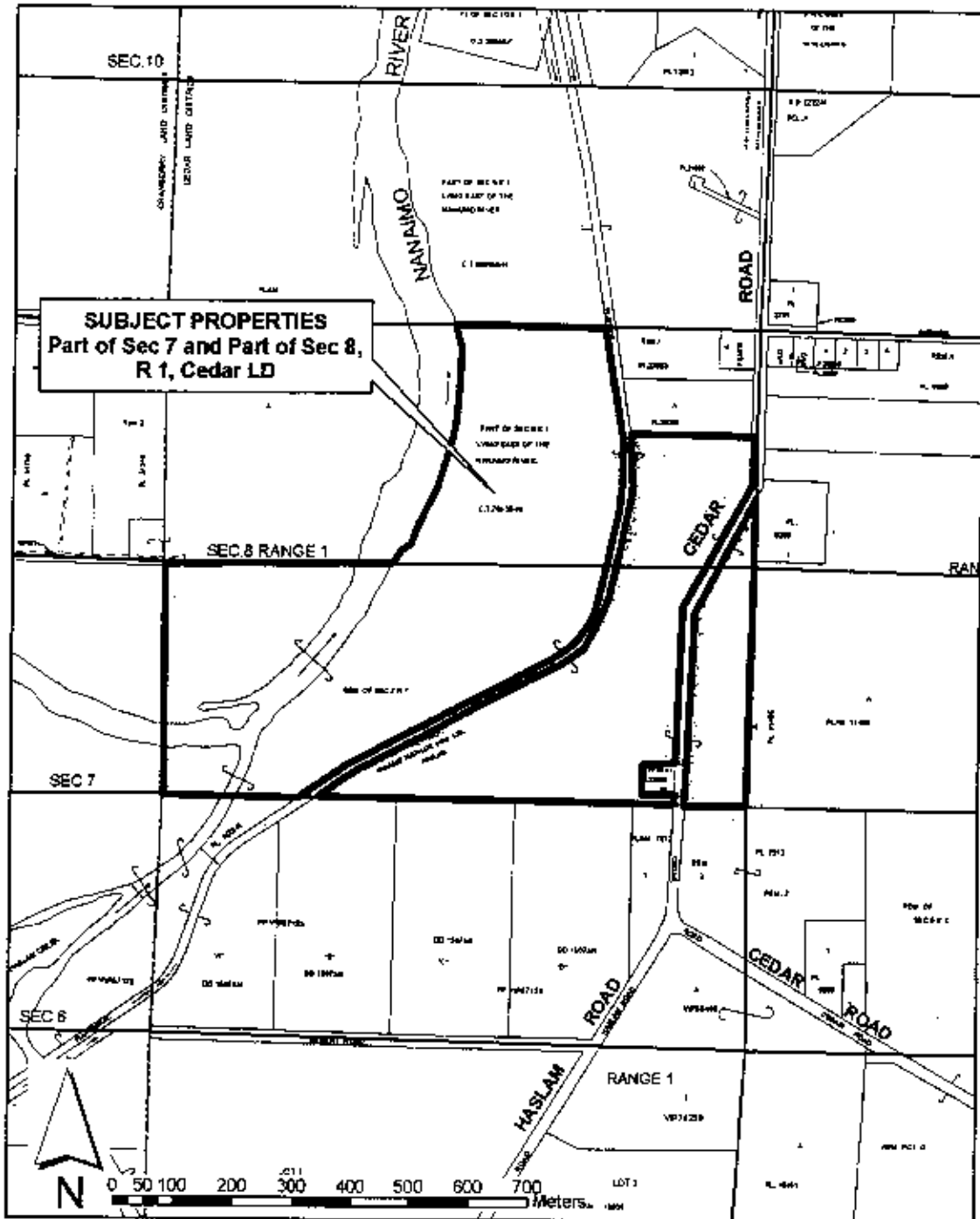


CAO Concurrence

COMMENTS:

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**ATTACHMENT NO. 1
SUBJECT PROPERTY LOCATION**

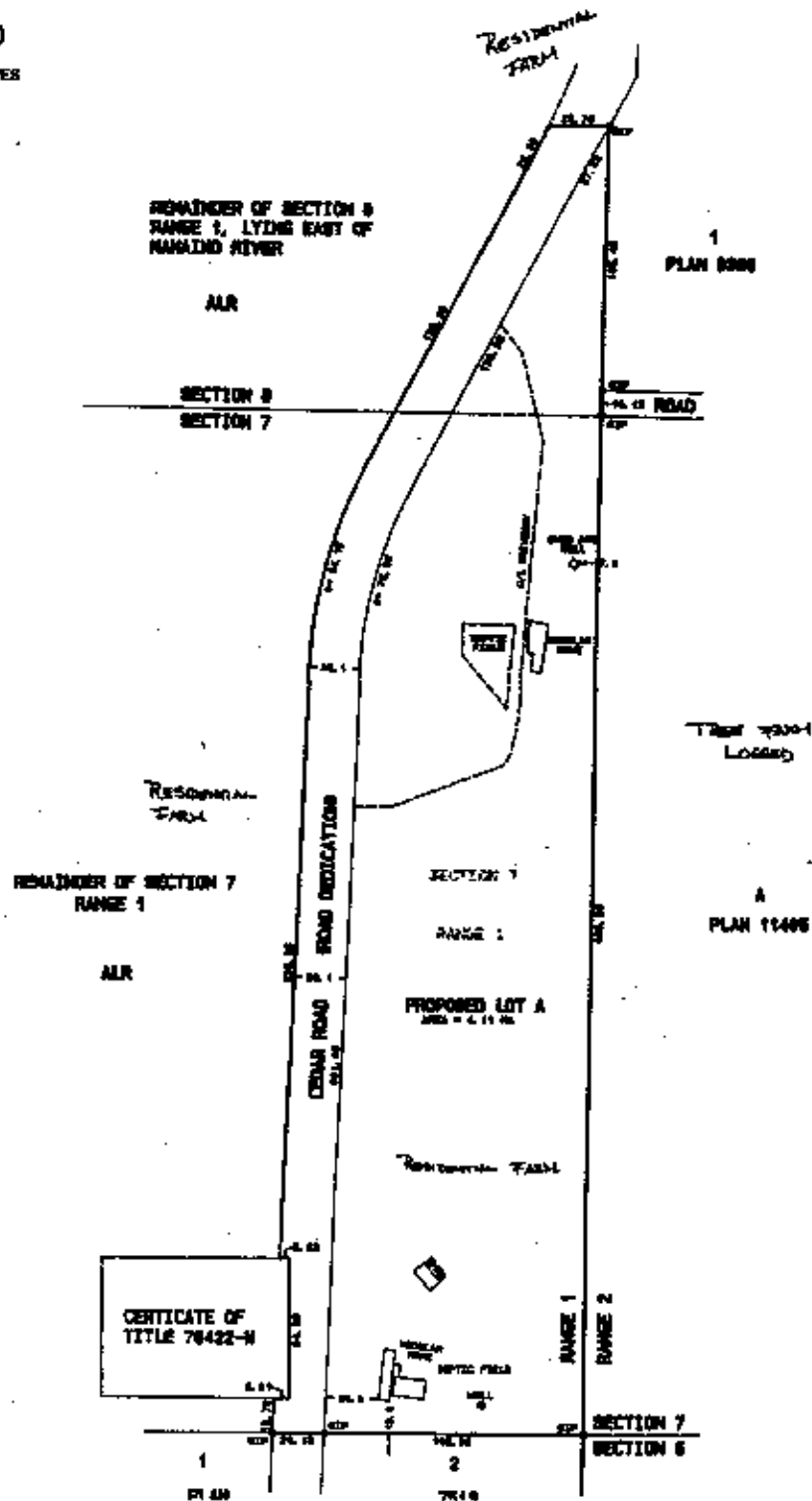
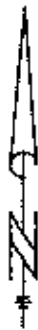


SCGS Map Sheet No. 92G.001.4.3

ATTACHMENT NO. 2
 PROPOSED SUBDIVISION
 (as submitted by applicant)

PLAN OF PROPOSED SUBDIVISION OF PARTS OF
 SECTIONS 7 AND 8, RANGE 1, CEDAR DISTRICT

SCALE 1 : 1250
 ALL DISTANCES ARE IN METRES



LEIGH A. MILLAN
 BRITISH COLUMBIA
 LAND SURVEYOR
 CANADA LAND SURVEYOR
 SUITE 1000 7



REGIONAL DISTRICT OF NANAIMO	
APR 15 2003	
CHAIR	GMCrs
CAO	GMDS
GMCms	GMES
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MEMORANDUM

TO: Pamela Shaw
Manager of Community Planning

DATE: April 11 2003

FROM: Susan Cormie
Senior Planner

FILE: 3320 30 24988

SUBJECT: Request for Relaxation of the Minimum 10% Frontage Requirement
Keith Douglas Jack & Linda Jeanette Taylor Jack/CO Smythies
Electoral Area 'A' - 2375 Hemer Road

PURPOSE

To consider a request to relax the minimum 10% perimeter frontage requirement as part of a proposed two-lot subdivision development.

BACKGROUND

The applicants have requested that the minimum 10% perimeter frontage requirement be relaxed for 1 of the proposed parcels as part of a 2-lot subdivision application for the 2.02 hectare sized property legally described as Lot 5, Section 13, Range 2, Cedar District, Plan 40406 and located on Hemer Road within Electoral Area 'A' (see Attachment No. 1 for location).

The subject property is currently zoned Residential 2 (RS2) and is within Subdivision District 'M' (minimum 2000 m² with community water service) pursuant to the Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987. The applicants are proposing to subdivide the parent parcel into 2 lots, both of which are greater than 2000 m² in size, therefore meeting the minimum parcel size requirements of Bylaw No. 500 (see Attachment No. 2 for proposed subdivision). The parcels are proposed to be serviced by individual private septic disposal systems and community water supplied by the North Cedar Improvement District.

Lot 2 is proposed to have a frontage of 20.0 metres or 3.3% of the perimeter. Therefore, as this proposed parcel does not meet the minimum 10% parcel frontage requirement pursuant to Section 944 of the Local Government Act, approval of the Regional Board of Directors is required.

It is noted that the adjacent parcel (Lot 6) currently has Preliminary Layout Approval of Subdivision (PLA) and as a condition of the PLA, the proposed parcel adjacent to the subject property is required to have a section 219 covenant registered on title restricting further subdivision. In addition, the existing parcels to the west of the parent parcel have existing section 219 covenants restricting further subdivision.

ALTERNATIVES

1. To approve the request for the relaxation of the minimum 10% frontage requirement for proposed Lot 2.
2. To deny the request relaxation of the minimum 10% frontage requirement for proposed Lot 2.

DEVELOPMENT IMPLICATIONS

There is one dwelling unit currently located on the parent parcel, which is situated in such a way as to limit the overall subdivision design layout including the ability to create a new parcel and still meet the minimum perimeter frontage requirements. The applicants have indicated that they are in concurrence to enter into a section 219 covenant restricting further subdivision of the proposed panhandle parcel, including strata subdivision. Ministry of Transportation staff has indicated that there would be a concern if the applicant was to propose a future road right-of-way where the panhandle is proposed to be located. This concern is due to Ministry guidelines with respect to the minimum sight distance requirements. However, with a covenant restricting future subdivision, Ministry staff has indicated that they have no objection to this relaxation request. In addition, such a covenant on title will ensure that future owners will be aware of the limitations associated with further subdivision and will avoid future requests for the creation of additional parcels by way of a panhandle access.

ENVIRONMENTAL IMPLICATIONS

The Regional District of Nanaimo Environmentally Sensitive Areas Atlas indicates that there are no environmentally sensitive areas within the parent property.

VOTING


Electoral Area Directors – one vote, except Electoral Area 'B'.

SUMMARY

This is a request to relax of the minimum 10% perimeter frontage requirement for 1 of the proposed parcel of a 2-lot subdivision. Due to the location of the existing dwelling unit, minimum 10% frontage requirement cannot be met. Adjacent parcels to the west of the subject property are restricted to no further subdivision while the parcel to the east currently has preliminary approval for subdivision which includes a condition to covenant for no further subdivision. The applicant is in concurrence to enter into a section 219 covenant to restrict further subdivision of the proposed panhandle lot. With the applicant being in concurrence to register a section 219 covenant, Ministry of Transportation staff would then have no objection to the request for the proposed minimum 10% frontage relaxation. Therefore, given that the location of the existing dwelling unit on the parent parcel limits the subdivision configuration, that the Ministry of Transportation has no objection, and the applicant is in concurrence to register a section 219 covenant restricting further subdivision of proposed Lot 2, staff recommends Alternative No. 1, to approve the 10% frontage relaxation subject to the applicant registering a section 219 covenant on proposed Lot 2 restricting further subdivision, including strata subdivision.

RECOMMENDATION


That the request, submitted by CO Smythies, BCLS, on behalf of Keith Douglas Jack & Linda Jeanette Taylor Jack, to relax the minimum 10% perimeter frontage requirement for proposed Lot 2, as shown on the plan of subdivision of Lot 5, Section 13, Range 2, Cedar District, Plan 40406, be approved subject to the applicant registering a section 219 covenant on proposed Lot 2 restricting further subdivision, including all forms of strata subdivisions.



Report Writer



General Manager Concurrence



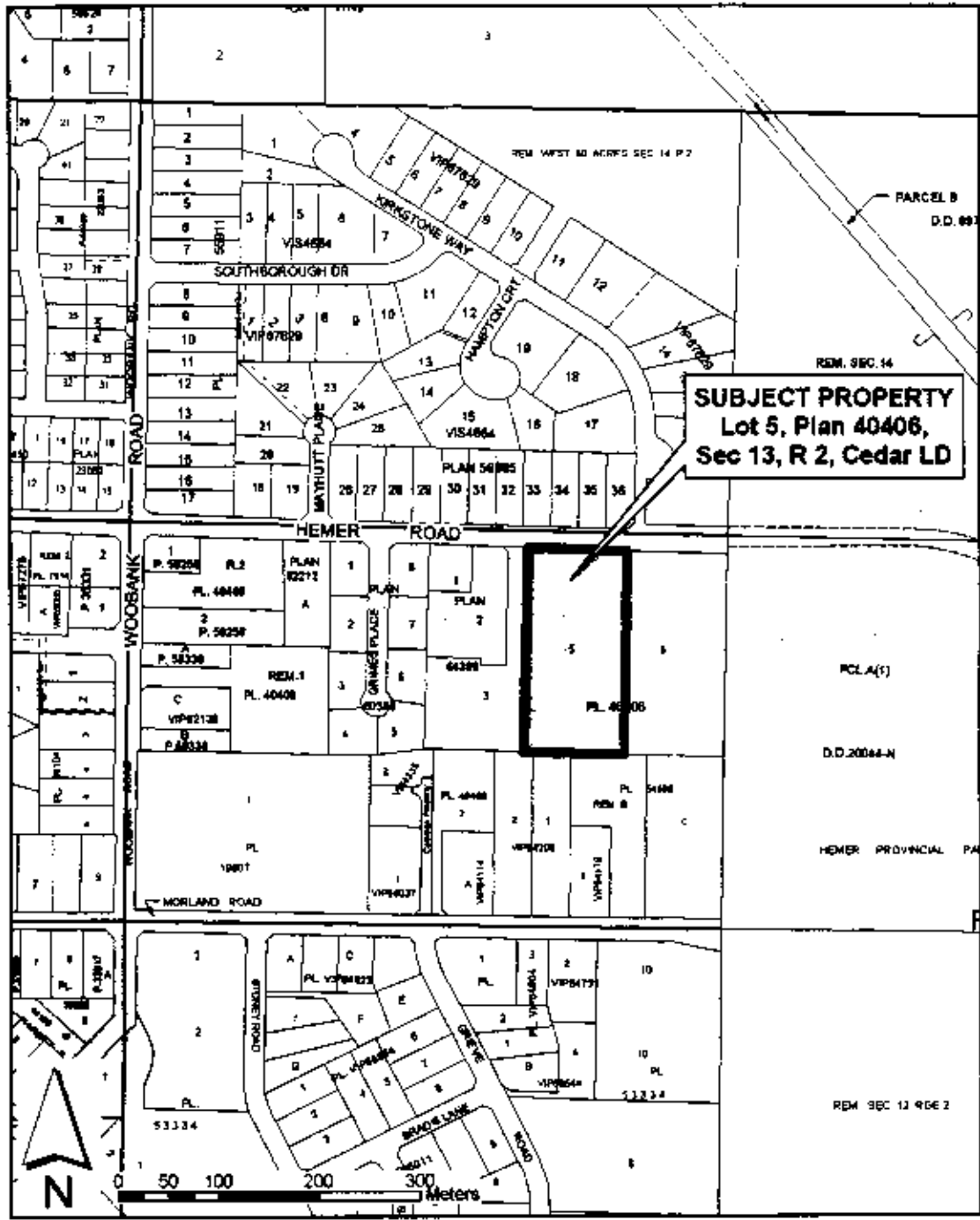
Manager Concurrence



CAO Concurrence

COMMENTS:

ATTACHMENT No. 1 SUBJECT PROPERTY LOCATION



BCGS Map Sheet No. 923.011.2.2

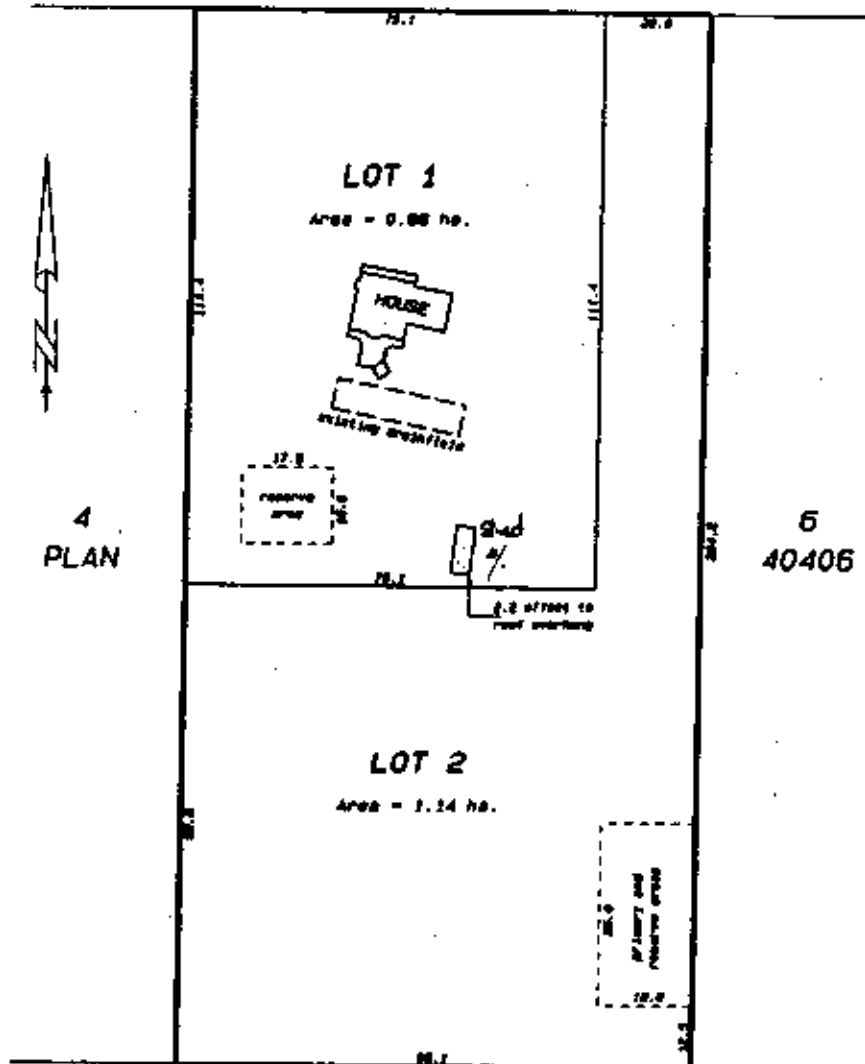
AGE
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ATTACHMENT No. 2
PROPOSED SUBDIVISION
(as submitted by applicant)

**PROPOSED SUBDIVISION OF LOT 5, PLAN 40406,
SECTION 13, RANGE 2, CEDAR DISTRICT.**

Scale = 1:1000
All distances are in metres.

HEMER ROAD



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Charles D. Seythies & Associates ©
P.C. Land Surveyors & Planners
Nanaimo, B.C.
Date: February 5, 2003.

File: 2-02-13-10011

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