

REGIONAL DISTRICT OF NANAIMO
ELECTORAL AREA PLANNING COMMITTEE
TUESDAY, JUNE 24, 2003
6:30 PM

(RDN Board Chambers)

A G E N D A

PAGES

CALL TO ORDER

DELEGATIONS

2 **Rob Pinneo**, re DP No. 60326 – Pinneo – 3500 Berton Road – Area D

MINUTES

3-5 Minutes of the Electoral Area Planning Committee meeting held Tuesday, May 27, 2003.

BUSINESS ARISING FROM THE MINUTES

PLANNING

DEVELOPMENT PERMIT APPLICATIONS

6-11 DP No. 60325 – Brooks – 3352 Rockhampton – Area E.

12-21 DP No. 60326 – Pinneo – 3500 Berton Road – Area D.

22-30 DP No. 60327 – McKinnon – 2377 Higginson Road – Area E.

31-38 DP No. 60330 – Marshall – 1117 Surfside Drive – Area G.

39-47 DP No. 60331 – Wiens – 1355 Marina Way – Area E.

48-57 DP No. 60332 – Yorke/Turner – 1435 Private Road – Area G.

DEVELOPMENT VARIANCE PERMIT APPLICATIONS

58-63 DVP No. 90313 – Alexander – 5093 Seaview Drive – Area H.

ADDENDUM

BUSINESS ARISING FROM DELEGATIONS OR COMMUNICATIONS

NEW BUSINESS

IN CAMERA

ADJOURNMENT

June 13, 2003

Ron Pinneo
3500 Berton Road
Nanaimo
V9R 6W9

Phone: 758-0615

Mr. Ron Pinneo would like to be added to the upcoming Electoral Area Planning Committee agenda as a delegation to speak to his Development Permit application - No. 60326 - Berton Road.

REGIONAL DISTRICT OF NANAIMO

MINUTES OF THE ELECTORAL AREA PLANNING COMMITTEE
MEETING HELD ON TUESDAY, MAY 27, 2003, AT 7:00 PM
IN THE RDN BOARD CHAMBERS

Present:

Director H. Hamilton Alternate	Chairperson
Director H. Kreiberg	Electoral Area A
Director D. Haime	Electoral Area D
Director P. Bibby	Electoral Area E
Director L. Biggemann Alternate	Electoral Area F
Director Mable Klee	Electoral Area G
Director D. Bartram	Electoral Area H

Also in Attendance:

B. Lapham	General Manager, Development Services
P. Shaw	Manager of Community Planning
M. Burton	Recording Secretary

LATE DELEGATIONS

MOVED Director Bibby, SECONDED Director Kreiberg, that Mr. Ken Kyler address the Board as a late delegation.

CARRIED

Mr. Ken Kyler requested that the Board consider amending the French Creek Official Community Plan to allow staff to waive the requirement for development permits for proposals that meet the flood plain and other environmental criteria within the sensitive lands development permit area.

MINUTES

MOVED Director Haime, SECONDED Director Bartram, that the minutes of the Electoral Area Planning Committee meeting held April 22, 2003 be adopted.

CARRIED

PLANNING

AMENDMENT APPLICATIONS

Zoning Amendment Application No. ZA0305 – Sarkozy – Wembley Road – Area G – Land Use & Subdivision Amendment Bylaw No. 500.293.

MOVED Director Klee, SECONDED Director Haime, that the summary of the Public Information Meeting on Amendment Application No. 0305, submitted by Fern Road Consulting Ltd. on behalf of Paul Sarkozy be received.

CARRIED

MOVED Director Klee, SECONDED Director Bartram, that "Regional District of Nanaimo Land Use and Subdivision Bylaw Amendment Bylaw No. 500.293, 2003" be given 1st and 2nd reading.

CARRIED

MOVED Director Klee, SECONDED Director Haime, that Amendment Application No. 0305, submitted by Fern Road Consulting Ltd. on behalf of Paul Sarkozy, to rezone the subject property legally described

as Lot B, District Lot 29, Nanoose District, Plan VIP74062, from Residential 1 (RS1) to Residential 2.1 (RS2.1) be advanced to a public hearing subject to the conditions outlined in Schedule No. 1.

CARRIED

MOVED Director Klee, SECONDED Director Bartram, that the Public Hearing on "Regional District of Nanaimo Land Use and Subdivision Bylaw Amendment Bylaw No. 500.293, 2003" be delegated to Director Stanhope or his alternate.

CARRIED

DEVELOPMENT PERMIT APPLICATIONS

DP Application No. 60324 – Weldon/Kyler – 796 Miller Road – Area G.

MOVED Director Klee, SECONDED Director Bartram, that Development Permit No. 60324, submitted by Ken Kyler, BCLS on behalf of Vivian Isabel Weldon to permit the construction of a dwelling unit within a Sensitive Lands Development Permit Area on the property legally described as Lot 28, District Lot 28, Nanoose District, Plan 26472 be approved, subject to the conditions outlined in Schedule No. 1 and 2, and subject to a geotechnical report.

CARRIED

DEVELOPMENT VARIANCE PERMIT APPLICATIONS

DVP Application No. 90310 – Raines – 2424 Ainsley Place – Area E.

MOVED Director Bibby, SECONDED Director Haime, that Development Variance Permit Application No. 90310, submitted by Fern Road Consulting Ltd. on behalf of Derek Raines and Janet Raines, to facilitate the development of a two storey dwelling unit and vary the maximum permitted dwelling unit height within the Residential 1 zone from 8.0 metres to 9.2 metres for the property legally described as Lot 40, District Lot 78, Nanoose Land District, Plan VIP68559, proceed to public notification as submitted subject to the notification procedures pursuant to the *Local Government Act*.

CARRIED

DVP Application No. 90311 – Fern Road Consulting Ltd. on behalf of R. & I. Todsén & McTay Holdings Ltd. – Off Hawthorne Rise & White Pine Way – Area G.

MOVED Director Klee, SECONDED Director Biggemann, that Development Variance Permit Application No. 90311, submitted by Fern Road Consulting on behalf of Richard and Linda Todsén and McTay Holdings Ltd., to relax the minimum setback requirements for proposed Lots 2, 3, and 4 to 9.0 metres horizontal distance from the adjacent watercourse and for proposed Lots 7, 8, 9, and 10 to 6.0 metres horizontal distance from the adjacent watercourse/port in order to facilitate future building site for these parcels in conjunction with the subdivision of The Remainder of Lot 1, District Lot 49, Nanoose, Plan 19351, be approved subject to Schedules No. 1 and 2 and the notification requirements pursuant to the *Local Government Act*.

CARRIED

DVP Application No. 90312 & Request for Relaxation of the Minimum 10% Frontage Requirement – K. & B. Sorenson on behalf of Kristoff Enterprises – Hodge's & Lowry's Roads – Area G.

MOVED Director Klee, SECONDED Director Biggemann, that the request, submitted by K & B Sorensen, on behalf of Kristoff Enterprises to relax the Minimum 10% frontage requirement for the Proposed Remainder of Lot A as shown on the plan of subdivision of Lot A, District Lots 19 & 81, Nanoose District, Plan 13475 and to relax the minimum interior lot line setback requirement from 8.0 metres to 2.5 metres for the accessory building and from 30.0 metres to 23.0 metres for the agricultural

building housing livestock, be approved, subject to Schedules No. 1 and the notification requirements pursuant to the *Local Government Act*.

CARRIED

OTHER

Aquaculture – Official Community Plan & Zoning Amendments Issues & Public Consultation Framework.

MOVED Director Bartram, SECONDED Director Bibby, that the staff report on Aquaculture and potential amendments to Regional District of Nanaimo bylaws be received for information.

CARRIED

MOVED Director Bartram, SECONDED Director Bibby, that staff be directed to proceed with the Public Consultation Strategy as outlined in Attachment No. 1, with the addition of Odyssey Shellfish Ltd. to the referral listing, and clarification in the Terms of Reference that potential conflicts might result from land use activities adjacent to aquaculture operations.

CARRIED

Terms of Reference & Public Consultation Strategy for a 'Finetuning' Exercise for the Electoral Area 'F' Zoning & Subdivision Bylaw No. 1285.

MOVED Director Biggemann, SECONDED Director Haime, that the staff report on the Electoral Area 'F' Zoning Bylaw Finetuning Project be received.

CARRIED

MOVED Director Biggemann, SECONDED Director Bartram, that Electoral Area 'F' Zoning Bylaw Finetuning Project Terms of Reference and Consultation Strategy (*Attachment No. 1*) be endorsed by the Board.

CARRIED

ADJOURNMENT

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

CARRIED

TIME: 7:25 PM

CHAIRPERSON



REGIONAL DISTRICT OF NANAIMO		
JUN 17 2003		
CHAIR		GMCrS
CAO		GMDS
GMCmS		GMES
		EAP
DATE: _____		

MEMORANDUM

TO: Pamela Shaw
Manager, Community Planning

FROM: Deborah Jensen
Planner

SUBJECT: Development Permit Application No. 60325 - Brooks
Electoral Area 'E' - 3352 Rockhampton

FILE: 3060 30 60325

DATE: June 13, 2003

PURPOSE

To consider an application for a Development Permit within the Nanoose Bay Official Community Plan Bylaw No. 1118, 1998 Watercourse Protection Development Permit Area to permit the construction of a single dwelling unit and retaining walls.

BACKGROUND

This is an application for a development permit to facilitate the construction of a single dwelling unit and associated retaining walls on a residential property located on Rockhampton Road, legally described as Lot 17, District Lot 30, Nanoose District, Plan VIP57407 (see Attachment No. 1).

The subject property is located within a building inspection area and is zoned Residential I (RS1) 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 and interior side lot lines; and 5.0 metres from other lot lines. The subject property is located on a steep bank that slopes down from north to south toward Dolphin Lake; therefore, setbacks to watercourses pursuant to Bylaw No. 500 also apply.

The subject property is within the Watercourse Protection Development Permit Area pursuant to the Nanoose Bay Official Community Plan Bylaw No. 1118, 1998 (OCP). This OCP designates a 30-metre leave strip from watercourses in the Plan Area, including Dolphin Lake.

As stated, the applicants are proposing to construct a single dwelling unit on the subject property, as shown on Schedule No. 2. Due to the overall depth and slope of the lot, the applicant has indicated that it is difficult to accommodate the proposed dwelling unit and retaining walls without variances to setbacks. The proposed dwelling unit is 21.1 metres from the natural boundary of Dolphin Lake and therefore a development permit application is required to permit construction in the development permit area.

In addition, the siting of one of the retaining walls (the concrete block wall adjacent to Rockhampton Road) will require a setback variance to the front and interior side lot lines pursuant to Bylaw No. 500. Schedule No. 2 illustrates building envelopes for the retaining walls that show the approximate location of the proposed walls.

A report prepared by Lewkowich Geotechnical Engineering Ltd., dated June 5, 2003, notes the proposed house site is safe and suitable for construction of a residence so long as certain precautions are taken with respect to drainage and rock fill. The report also recognizes that retaining walls should be engineered and constructed along the cut banks of the driveway and building area as support for the rock fill.

Legal Notations

There are notations of several restrictive covenants listed on the title of the subject property, including a building scheme, but only one relates to the current application. The Ministry of Environment, Lands and Parks / RDN covenant states that no building shall be constructed within 7.5 metres of the natural boundary of any lake and that the underside of any floor subsystem must be greater than 1.5 metres above the natural boundary of any nearby lake. The proposed construction satisfies these requirements.

ALTERNATIVES

1. To approve Development Permit No. 60325 subject to the conditions outlined in Schedule No. 1.
2. To deny the requested permit.

ENVIRONMENTAL IMPLICATIONS

The proposed building site is on a natural bedrock terrace with rock fill placed on it as a result of nearby development. The property is also located on a steep slope, so erosion control is an issue. Fisheries and Oceans Canada recommends that erosion controls follow the methods set out in Section 3 of their "Land Development Guidelines for the Protection of Aquatic Habitat" to retain soil and mitigate any potential damage from runoff, construction or any other activity on the site. Staff recommends that erosion control be addressed as part of the geotechnical assessment as a condition of the permit.

LAND USE AND DEVELOPMENT IMPLICATIONS

A leave strip of 30 metres is designated in the Nanoose Bay OCP for Dolphin Lake. The justification for this Development Permit Area is to ensure the environmental integrity of watercourses in the Nanoose Bay area. That is, watercourses and their leave strips provide essential habitat and corridors for fish, birds and other wildlife. They also act as natural water storage, drainage, and purifying systems. For the subject property, the proposed dwelling unit is set back 21.1 metres from the natural boundary of Dolphin Lake; given the depth of the lot, the building envelope for the site is quite limited by the Watercourse Development Permit Area and staff would concur that some encroachment into the Development Permit Area is necessary to permit the construction of a dwelling unit 'in line' with other properties along Rockhampton. The majority of parcels sited along Dolphin Lake are of similar topography and are already developed; similar development permit applications have been considered and approved by the Board for properties bordering Dolphin Lake.

Proposed development on the site is to include a single dwelling unit and a number of "lock-block" retaining walls. The dwelling unit will consist of a one-storey structure on a crawl space. Due to its design and placement at an elevation lower than the roadway, the dwelling unit will not be visible from Rockhampton Road.

Given the steep slope of the site, the retaining walls are required to retain fill where the slope has been cut into for the driveway and building site, and to support the dwelling unit on the 'water side' of the development. One of these retaining walls will require setback variances pursuant to Bylaw No. 500 from the front and interior side lot lines; building envelopes for the retaining walls are indicated on *Schedule No. 2*. The retaining walls will vary in height with the topography of the lot. Generally, the retaining walls will not exceed two to three metres in height, excluding the retaining wall to the south of the driveway which will reach a maximum height of no more than 6 metres. These retaining walls will require engineering certification and the issuance of a permit from the Building Inspections Department. The geotechnical report provided for the subject property supports the construction of retaining walls along the cut banks of the driveway and building area as support for the rock fill on the site. Therefore, staff would recommend support for the setback variances as illustrated on *Schedule No. 2*.

VOTING


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

SUMMARY/CONCLUSIONS


This is an application for a development permit to construct a single dwelling unit and associated retaining walls within the Nanoose Bay Watercourse Protection Development Permit Area. The application includes requests to vary the minimum permitted setbacks from the front lot line and interior side lot line to allow for placement of one of the three proposed retaining walls on the subject property. Given that the proposed development will have no significant impacts views or the use of surrounding parcels, and given that the geotechnical report indicates the site is suitable for development, staff recommends the application be approved subject to the conditions outlined in Schedule No. 1, and subject to notification procedures pursuant to the **Local Government Act**.

RECOMMENDATION

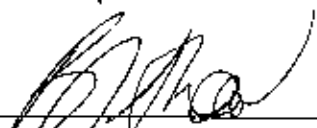
That Development Permit Application No. 60325, submitted by Fern Road Consulting, Agent, on behalf of Peter Brooks and Patricia Brooks, to permit the construction of a single dwelling unit and associated retaining walls within a Residential 1 (RS1) zone by varying the minimum permitted setbacks to the front lot line and interior side lot lines subject to the conditions outlined in Schedule No. 1 and the siting as illustrated in Schedule No. 2, for the property legally described as Lot 17, District Lot 30, Nanoose District, Plan V1P57407, be approved, subject to notification procedures pursuant to the **Local Government Act**.




Report Writer



General Manager Concurrence



Manager Concurrence



CAO Concurrence

COMMENTS:

**Schedule No. 1
Conditions of Approval
Development Permit No. 60325**

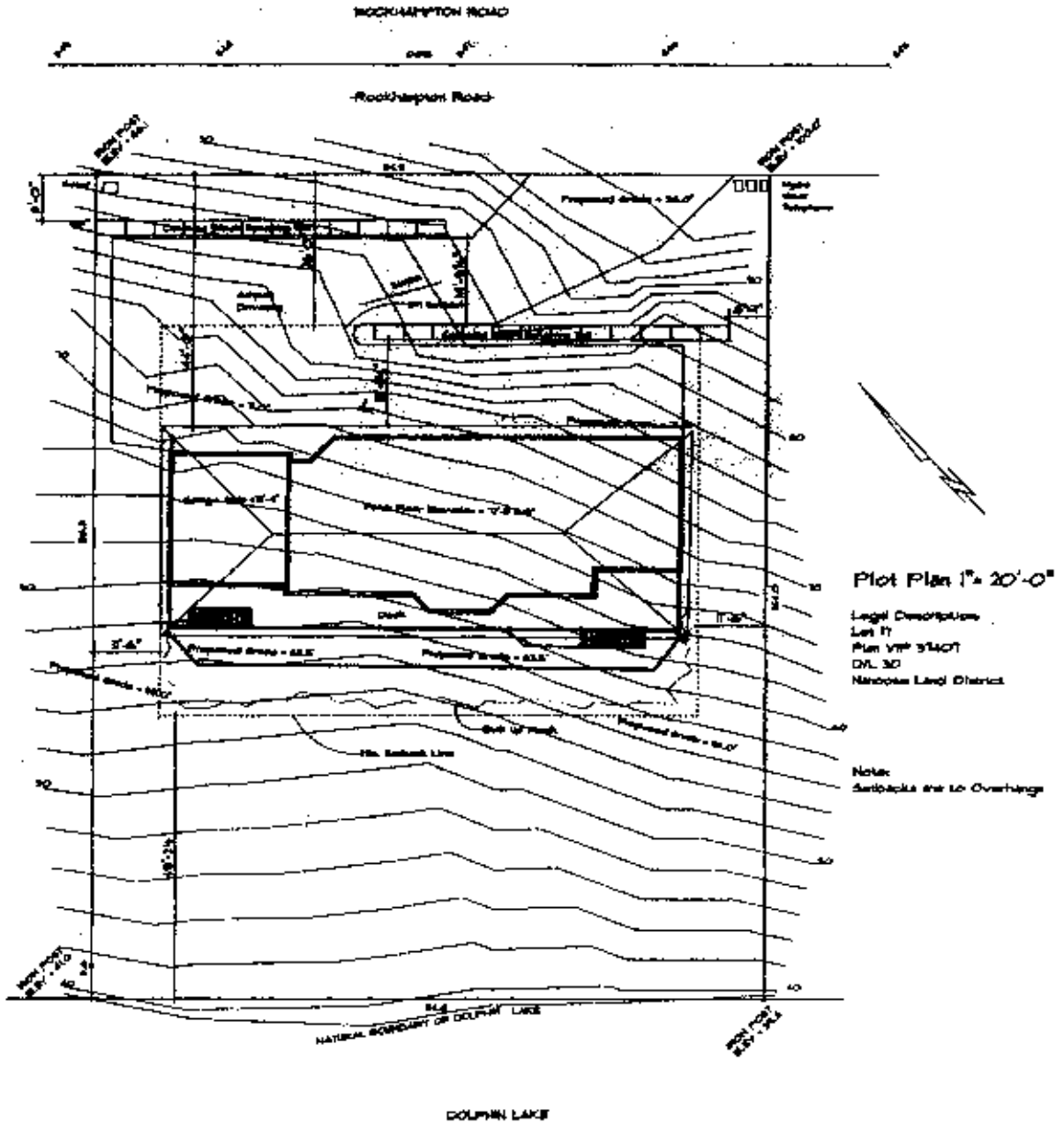
1. Submission of a site plan indicating siting of proposed retaining walls.
2. Registration of a Section 219 covenant pertaining to the geotechnical report, as prepared by Lewkowich Geotechnical Engineering Ltd., dated June 5, 2003. The covenant shall also address erosion control, stipulate that no vegetation is to be removed within the 30-metre leave strip, 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.
3. Replant vegetation within the disturbed area. Replanting to use trees, shrubs and ground cover native to the area and selected to suit soil, light and groundcover conditions of the site.

Variances

The following variances are approved based upon completion of the above-noted conditions:

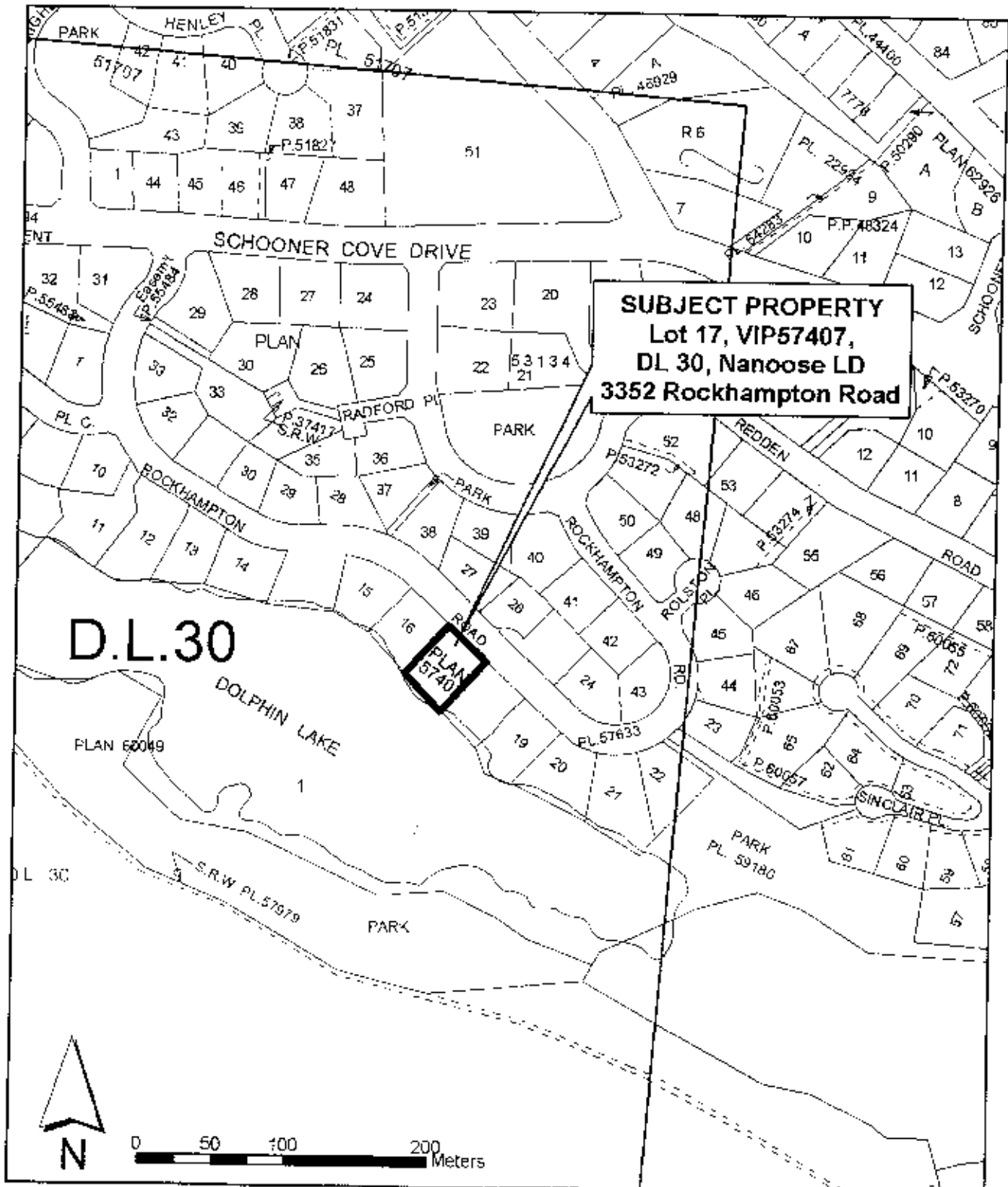
- a) Relaxation of the front lot line and interior side lot lines to permit construction of "lock-block" retaining walls intended for slope stability; height of retaining walls not to exceed 6.0 metres.

Schedule No. 2
Site Profile
Development Permit No. 60325



Driveway - north wall 13'
 - south wall 19'

Attachment No. 1
Subject Property Map





REGIONAL DISTRICT OF NANAIMO			
JUN 13 2003			
CHAIR		GMCrS	
CAO		GMDS	
GMCmS		GMES	
		EAP	✓

MEMORANDUM

TO: Pamela Shaw
 Manager, Community Planning

DATE: June 13, 2003

FROM: Keeva Kehler
 Planner

FILE: 3060 30 60326

SUBJECT: Development Permit Application No. 60326 - Pinneo
 Electoral Area 'D' - 3500 Berton Road

PURPOSE

To consider an application to legalize the siting of two existing accessory structures and to amend a Restrictive Covenant to permit the use of one of the structures for storage of livestock within an Environmentally Sensitive Development Permit Area pursuant to the East Wellington – Pleasant Valley Official Community Plan Bylaw No. 1055,1997.

BACKGROUND

The 1.09 ha subject property, legally described as "Strata Lot A, Section 16, Range 3, Mountain District, Strata Plan VIS5167 Together with an Interest in the Common Property in Proportion to the Unit Entitlement of the Strata Lot as Shown on Form V," is located off Berton Road in Electoral Area 'D' (see Attachment No. 1).

The applicants constructed the 6.5 metre by 11 metre (71.5m²) and the 4 metre by 5 metre (20m²) structures without the necessary building permits. The applicants intended to use the 71.5m² structure as a barn for housing a horse. The smaller building is currently used for tool storage. However, when the applicants were advised of the necessity for building permits and made their application to legalize the structures, it was determined that a development permit application with variance was also required.

At the time of subdivision, a number of Restrictive Covenants were registered on the title of the parent parcel (see legal notations below). One such covenant (ES19121) is registered in favour of the Regional District of Nanaimo and prohibits the siting of any structures housing livestock or storing manure within 30.0 metres of a watercourse, as measured from the top of the bank.

The subject property is zoned Rural 1 (RU1) pursuant to "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987." The minimum setback requirements for this zone are 8.0 metres from all lot lines, except for buildings and structures housing livestock or storing manure where the minimum setbacks are 30.0 metres from all lot lines. The property is not located within the Agricultural Land Reserve.

Proposed Variances and Amendments to Covenants

The applicants are requesting a modification to the covenant document referenced above (see ES19121) in order to permit an agricultural use within the 71.5m² structure, which is sited within 30.0 metres of McClure Creek, as measured from the top of the bank.

Further, the applicants are requesting a development permit with variances to legalize the two accessory structures located within 30.0 metres of the top of the bank of McClure Creek. If approved as submitted, this will permit the siting of an agricultural structure housing livestock within 6.6 metres of the top of the bank of McClure Creek and within 6.9 metres of the western interior side lot line and the siting of an accessory tool shed within 14.8 metres of the top of the bank.

In addition, the applicant is requesting to vary "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987," **Section 3.4.81 Minimum Setback Requirements** for buildings and structures for housing livestock or for storing manure from 30.0 metres to 6.9 metres to legalize the existing 71.5m² structure and use it for agricultural purposes (i.e. housing livestock).

Legal Notations on Title

ES19121 – This is a Section 219 Covenant registered in favour of the Regional District of Nanaimo stating that no buildings or structures of any kind whatsoever intended for the housing of livestock or for the storage of manure shall be placed, erected or constructed within thirty (30.0) metres of the top of the bank of McClure Creek.

ES019109 – This is a Section 219 Covenant registered in favour of the Crown of the Province of British Columbia (Ministry of Water, Land and Air Protection) establishing a minimum 15.0 metre setback from the natural boundary of McClure Creek for all buildings (the structures are located within 15.0 metres of the top of the bank of McClure Creek, but not within 15.0 metres of the natural boundary of the Creek.) This document also establishes a 1.5 metre flood construction elevation above the watercourse for habitable and storage space. The document also states that there shall be no additional access crossings over McClure Creek.

EP076343 Development Permit No. 0014 - This Development Permit was required at the time of subdivision to mitigate the potential negative impacts of development on the fish habitat in McClure Creek and the Millstone River watershed. The Development Permit requires that all development on the lands is done in accordance with the requirements and conditions of the geotechnical report prepared by Lewkowich Geotechnical Engineering Ltd. on February 15, 2000 and the Environmental Evaluation prepared by Aquaterra Environmental Monitoring and Fish Consulting on June 9, 2000 and its subsequent addendum dated June 21, 2000.

ES19129 This is a Building Scheme registered on the title, which establishes timelines for construction on the lots and provides guidelines for building design. The scheme does not address setbacks for buildings but it does include a clause that all buildings must obtain the approval of the appropriate authority within 9 months of construction.

ES19117 – Section 219 Health Covenant: this document discusses the siting and design standards for the onsite sewage disposal system to service the lands. No buildings or structures may be placed within the disposal area.

ES019125 – This is a Section 219 Covenant that states no buildings shall be constructed without the Approving Officer being satisfied that evidence of a reliable source of potable water is available to service the lands.

ALTERNATIVES

1. To approve the requested development permit as submitted by the applicant subject to the notification process pursuant to the *Local Government Act*.
2. To approve a development permit for two accessory buildings as recommended by staff, subject to the conditions outlined in Schedules No. 1, 2 and 3 and subject to the notification process pursuant to the *Local Government Act*.
3. To deny the requested development permit.

LAND USE AND DEVELOPMENT IMPLICATIONS

The applicant is requesting a relaxation of the minimum setback requirements for an agricultural building from 30.0 metres to 6.9 metres from the western interior side lot line. This represents a significant relaxation to the setbacks established by the "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987." The 30.0 metre setback was established to protect neighbouring properties from any potential negative impacts that may arise from the housing of livestock or storage of manure on an adjacent lot. Such issues may include manure spills, occurrence of pests, odours or possible impacts on adjacent wells.

The applicants provided a statement from Glenn Gibson, Vancouver Island Health Authority, indicating that the location of the structures does not interfere with the sewage disposal system. The Health Authority has no concerns with the structures under its current policies.

The applicants submitted a geotechnical report prepared by Lewkowich Geotechnical Engineers Ltd. on May 5, 2003 with the application that states that the buildings are safe for their intended ancillary use. The geotechnical report prepared for the subdivision in February, 2000 recommended a minimum 15.0 metre setback for all buildings, but the report included a statement that the setbacks could be reduced based on a more detailed site specific evaluation. Staff confirmed with Tim Oxland, P.Eng. that the previous Lewkowich report was general in nature and addressed the entire subdivision. Based on his site evaluation, the existing structures are safe for their intended ancillary use despite their proximity to the crest of the slope.

The 71.5m² building has both roof and perimeter drains. Drainage is collected and conveyed in a solid pipe to a discharge point on the creek gully side. There is a rock pit at the pipe outlet to reduce erosion impacts. The pipe is located at a natural swale on the gully sidewall. The tool shed does not have perimeter drains and the roof drain leaders simply discharge onto the ground surface.

If the applicants were to use the 71.5 m² building for non-agricultural purposes, a minimal relaxation to the setbacks would be required (from 8.0 metres to 6.9 metres). The applicants have stated that they wish to retain the structures on the property, as they have invested significant cost in their construction, and that they will find an alternative boarding location for the daughter's horse (yet to be purchased) if necessary. The legalizing of a storage building in this location rather than an agricultural building would also greatly reduce the negative impacts on McClure Creek.

Due to the significant relaxation required to legalize an agricultural building and the potential for negative impacts on adjacent properties and McClure Creek, staff would support the use of the larger structure only for non-agricultural purposes.

OFFICIAL COMMUNITY PLAN IMPLICATIONS

The Environmentally Sensitive Development Permit Area (DPA) was established to recognize productive fish habitat that requires protection within the plan area. The DPA establishes a minimum 8 metre wide undisturbed buffer strip between development and a watercourse, as measured from the top of the bank. Natural vegetation should be maintained and enhanced within this buffer strip. Development within 30.0 metres of a watercourse as measured from the top of the bank requires the issuance of a development permit.

Approval of the requested development permit as submitted by the applicants would permit the location of an agricultural building housing livestock and storing manure within the DPA approximately 6.6 metres from the top of the bank of McClure Creek. The area fenced off for the proposed livestock use is located between the structure and the top of the bank and has been cleared of all natural vegetation. There is a steep ravine leading down to the creek that remains vegetated. The fence line is approximately 0.7 metres from the top of the bank. Using this small cleared space for the keeping of livestock would undoubtedly lead to waste management issues and associated environmental impacts on McClure Creek due to the adjacent steep ravine leading to the watercourse. According to the DPA guidelines, the majority of the area proposed for the keeping of the horse should be left in a natural vegetated state.

At the time of subdivision the Regional District required a Development Permit Application (DP No. 0014) to mitigate the potential impacts of development on McClure Creek. As part of the application process Aquaterra Environmental Monitoring and Fisheries Consulting prepared an Environmental Evaluation of the fisheries resources of McClure Creek dated June 9, 2000. This report states that there are anadromous and non-anadromous salmonids present in the watercourses in the Millstone River watershed, which is comprised of 16 tributaries, including McClure Creek. Rainbow and cutthroat trout and coho salmon have used McClure Creek for spawning and rearing grounds. Other fish species that may be present in McClure Creek include threespine stickleback, pumpkinseed and western brook lamprey. The Nanaimo River Hatchery stocks coho salmon fry in the upper reaches of the Millstone River and Brannon Lake. The report concluded that McClure Creek supported valuable fisheries resources and fish habitat and required protection from land alteration. The report recommended the protection of the watercourse and its associated riparian vegetation with a Restrictive Covenant.

An addendum to the June 9, 2000 report specifically addresses the issue of agricultural activities within 30 metres of the top of the bank of McClure Creek. The report states that "to minimize the environmental impact, farming activities such as construction of a barn-like structure or the storage of livestock manure can not occur within 30 metres from the top of bank of McClure Creek" (addendum report dated June 21, 2000, Aquaterra Environmental).

ENVIRONMENTAL IMPLICATIONS

McClure Creek is a valuable fisheries resource within the Millstone River watershed. This is reinforced by the protective covenants registered on title as well as a geotechnical report and an environmental evaluation conducted at the time of subdivision and further verified by the Environmentally Sensitive Areas designation in the East Wellington OCP. The Restrictive Covenant registered on the title is very clear that the siting of agricultural buildings housing livestock or storing manure is prohibited within 30.0 metres of the top of the bank of McClure Creek.

If the Board were to approve the siting of an agricultural building within 30.0 metres of the top of the bank of McClure Creek, requiring a modification of the RDN's Restrictive Covenant, there would be implications for the land use within the remaining properties in the subdivision. Currently, only two of the seven properties

have sufficient site area to construct agricultural buildings without requiring a variance to the zoning bylaw. The purpose of the RIDN covenant is to protect McClure Creek by reducing the potential for pollution due to run-off from livestock operations.

In staff's opinion, the applicants have not provided sufficient justification for the requested modifications to the covenant or for the variance to accommodate an agricultural building so close to the lot lines and the top of the bank of McClure Creek. The applicants state that they were not aware of the land use restrictions when they constructed the buildings. The fact that the structures were located on the property illegally does not provide any rationale to legitimize a potentially detrimental land use in an environmentally sensitive area. Given the lack of a planning rationale to permit the agricultural use in this location, staff cannot support the applicants' request to use the structure for housing a horse. However, staff would support the legalizing of the 71.5m² structure as a non-agricultural accessory building.

In order to legalize the 71.5m² structure for use as an accessory building only, not for storing manure or housing livestock, the applicant would require a variance to "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987," **Section 3.4.81 Minimum Setback Requirements** from 8.0 metres to 6.92 metres. No variances to Bylaw No. 500, 1987 are required for the tool shed structure.

If the development permit application with variance were approved by the Board, as recommended by staff, there would be no modifications to the Restrictive Covenants registered on title.

PUBLIC CONSULTATION IMPLICATIONS

The applicant has submitted five letters of support from adjacent landowners. Due to the variance request included in the application, the proposal will be mailed directly to all neighbouring properties located within 50 metres of the subject property. Anyone who believes that their interests are affected by the proposal will be provided an opportunity to comment on the application prior to the Board's decision.

VOTING

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

SUMMARY/CONCLUSIONS

This is an application for a development permit with variance within the Environmentally Sensitive Development Permit Area pursuant to the East Wellington - Pleasant Valley Official Community Plan Bylaw No. 1055, 1997.

The applicants are requesting to modify a Restrictive Covenant registered on the title, which addresses setbacks from the top of the bank of McClure Creek for agricultural buildings. The Covenant establishes a minimum 30.0 metre setback from the top of the bank for agricultural buildings housing livestock or storing manure. There are currently two accessory structures located within 30.0 metres of the top of the bank of McClure Creek, which the applicants wish to legalize.

The applicants are further requesting to vary Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987 **Section 3.4.81 Minimum Setback Requirements** for buildings and structures for housing livestock or for storing manure from 30.0 metres to 6.9 metres to accommodate an agricultural use within the 71.5m² structure.

Staff do not support the variance request to permit the use of the existing 71.5m² structure for housing livestock due to the Restrictive Covenant registered on title, the recommendations contained in the Environmental

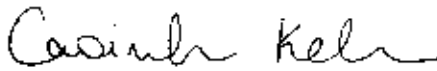
Evaluation and the geotechnical report prepared at the time of subdivision, the proximity of the structure to the lot lines and to the top of the bank of McClure Creek, the designation of the property within the Environmentally Sensitive Areas Development Permit Area and the implications for land use on the adjacent lots.

For these reasons, staff recommend that the Board consider an alternative proposal. The applicants have stated that as an alternative, they would agree to use the 71.5m² structure for non-agricultural storage purposes only. The applicants wish to retain the buildings in their current locations if possible. Staff recommend allowing the development permit with a variance to the western interior side lot line to legalize the existing structures, subject to the structures being used only for non-agricultural storage purposes.


If approved by the Board, the development permit will require a variance to Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987 **Section 3.4.81 Minimum Setback Requirements** for all other buildings and structures from 8.0 metres to 6.9 metres.

RECOMMENDATION

That Development Permit No. 60326 submitted by Ron and Mern Pinneo to legalize the siting of two accessory structures within the Environmentally Sensitive Areas Development Permit Area and to vary the western interior side lot line from 8.0 metres to 6.9 metres to accommodate the 71.5m² accessory structure on the property legally described as Strata Lot A, Section 16, Range 3, Mountain District, Strata Plan VIS5167 Together with an Interest in the Common Property in Proportion to the Unit Entitlement of the Strata Lot as Shown on Form V be approved as recommended by staff, subject to the conditions outlined in Schedules No. 1, 2 and 3 and subject to the notification process pursuant to the *Local Government Act*.



Report Writer


General Manager Concurrence



Manager Concurrence


CAO Concurrence

COMMENTS:

devvsireports/2003/rip Ju 1060 30 60326 Pinneo

**Schedule No. 1
Conditions of Approval
Development Permit No. 60326
3500 Berton Road**

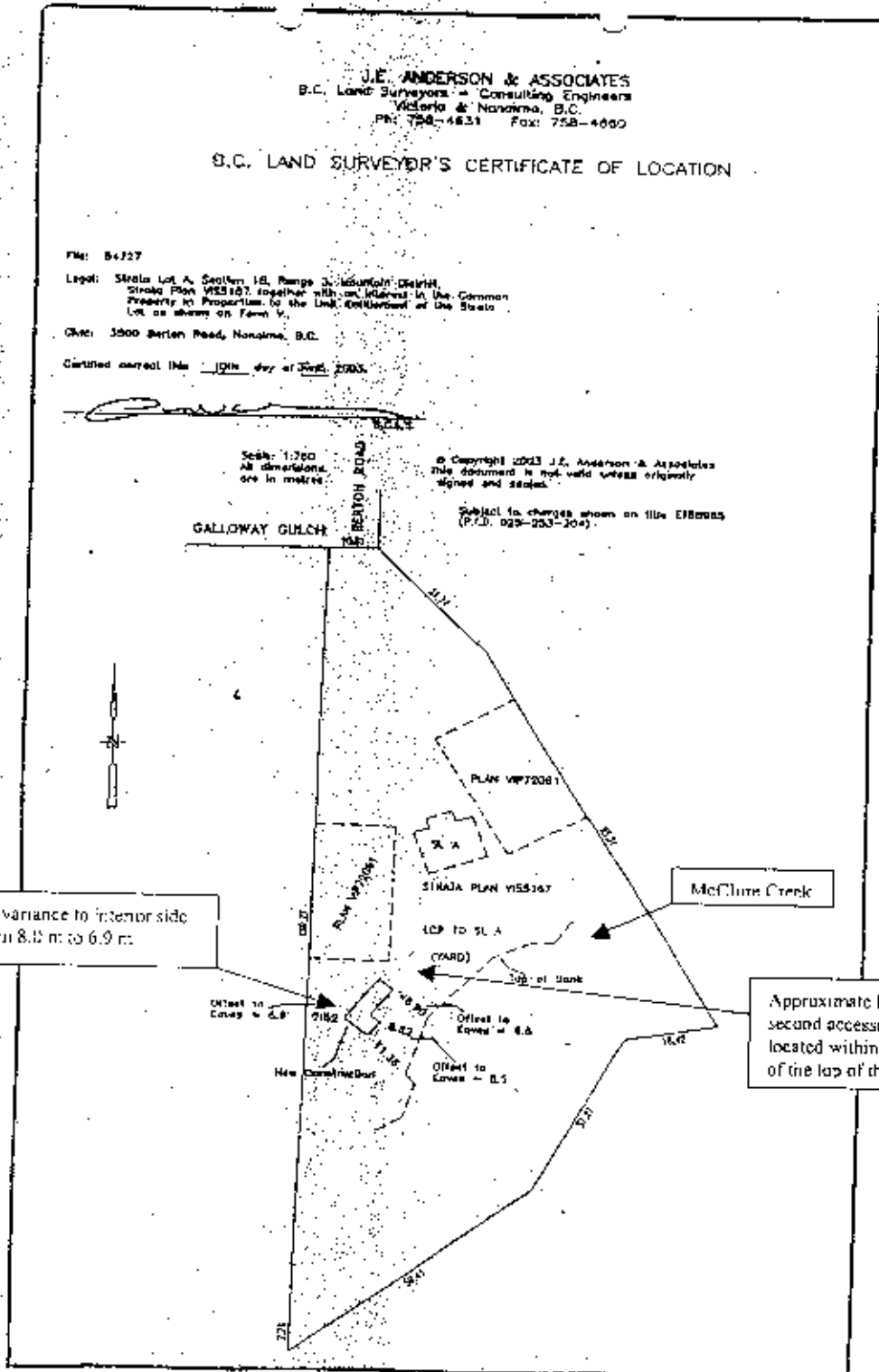
1. Accessory Structures

- a. There shall be no housing of livestock or storage of manure within the accessory structures at any time. The definition of livestock pursuant to "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987" is "animals used for agricultural purposes, which are used or the products of which are sold, and includes any horse, donkey, mule, cow, goat, sheep or pig."
- b. There shall be no alteration or addition to the accessory structures without written permission from the Regional District of Nanaimo.

2. Watercourse Development Permit Area

- a. A one (1) metre wide buffer strip directly adjacent to the southern fence line shall be replanted with native species selected for the site-specific conditions of the soil, climate and topography of the property. The purpose of this buffer is to provide protection for McClure Creek from any development on the lot and to further enhance the slope stability.
- b. There shall be no additional removal of vegetation within eight (8) metres from the top of the bank of McClure Creek without written approval from the Regional District of Nanaimo.

Schedule No. 2
Site Plan (as submitted by applicants)
Development Permit No. 60326
3500 Berton Road



Requested variance to interior side lot line from 8.0 m to 6.9 m.

McClure Creek

Approximate location of second accessory building located within 14.8 metres of the top of the bank.

**Schedule No. 3
Requested Variances
Development Permit No. 60326
3500 Berton Road**

The applicant is requesting a development permit with the following variances:

1. The applicant is requesting to vary "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987," **Section 3.4.81 Minimum Setback Requirements** for buildings and structures for housing livestock or for storing manure from 30.0 metres to 6.9 metres to legalize the existing 71m² structure and use it for housing a horse.

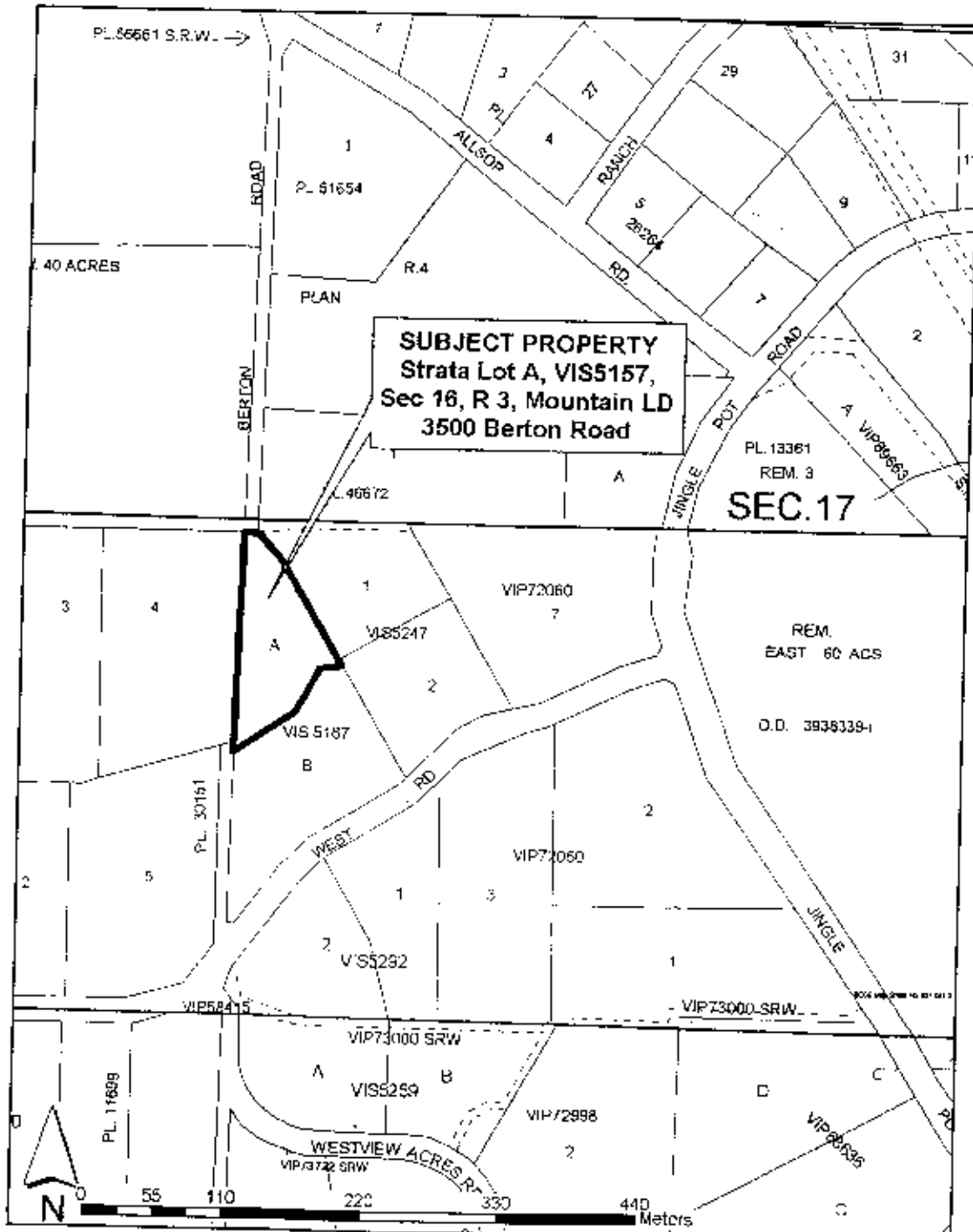
If the Board approves this variance request the Restrictive Covenant registered in favour of the Regional District of Nanaimo will also have to be modified. The Board will have to provide a written waiver to permit the applicants to locate an agricultural building within 30.0 metres of the top of the bank of McClure Creek.

Alternatively, staff recommend approving the following variance:

2. Vary "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987," **Section 3.4.81 Minimum Setback Requirements** for all other buildings and structures from 8.0 metres to 6.9 metres to legalize the structure as an accessory storage building only, not to be used for housing livestock or storing manure.

If the variance is approved by the Board as recommended by staff no modifications to the Restrictive Covenants are required.

Attachment No.1
Subject Property Map
Development Permit No. 60326
3500 Berton Road



8065 Map Sheet No. 82F.02C.4.4



REGIONAL DISTRICT OF NANAIMO		
JUN 16 2003		
CHAIR		GMCrS
CAO		GMDS
GMCrS		GMEB
EAP		Colt

MEMORANDUM

TO: Pamela Shaw
 Manager, Community Planning

DATE: June 16, 2003

FROM: Blaine Russell
 Planning Assistant

FILE: 3060 30 60327

SUBJECT: **Development Permit Application No. 60327 - McKinnon Electoral Area 'E' - 2377 Higginson Road**

PURPOSE

To consider an application for a development permit to facilitate the construction of a shoreline protection device in the form of a retaining wall within a Watercourse Protection Development Permit Area.

BACKGROUND

This is an application for a development permit to facilitate the construction of a shoreline protection device (retaining wall) to be located on the residential property at 2377 Higginson Road in the Northwest Bay area of Electoral Area 'E' and legally described as Lot 8, District Lot 102, Nanoose District, Plan 21022 (see Attachment No. 1 for location).

The subject property, which supports a single dwelling unit, is currently zoned 'Residential 1' (RS1) pursuant to "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987". Surrounding land uses include Northwest Bay to the north, an undeveloped road providing a beach access to the east, residentially zoned parcels to the west, and residentially zoned parcels across from Higginson Road to the south.

Pursuant to the Nanoose Bay Official Community Plan Bylaw No. 1118, 1998, the subject property is designated within the Watercourse Protection Development Permit Area (DPA) which was established for the protection the natural environment, in this case, the coastal foreshore and an adjacent stream located within the undeveloped road right-of-way. Therefore, as the applicant is proposing to construct a retaining wall within the leave strip area (15.0 m from the natural boundary of the ocean and 30.0 m from the natural boundary of a stream) of the Watercourse Protection Development Permit Area, a development permit is required (see Schedule No. 3 for site plan).

The applicant has submitted, as part of the application, a sea wall design prepared by a professional engineer (see Schedule Nos. 3 & 4). As the subject property is within a building inspection area; therefore, a building permit will be required. As part of the requirements for a building permit, the applicant may be required to submit a geotechnical report prepared by professional engineer with expertise in that field if deemed necessary by the Chief Building Inspector.

In addition, as the retaining wall is considered a structure under the provisions of Bylaw No. 500, 1987, a number of variances have been requested as part of the application. The proposed variances are outlined in Schedule No. 2 and may be considered with the development permit application.

ALTERNATIVES

1. To approve Development Permit No. 60327 subject to the conditions outlined in Schedule Nos. 1, 2, 3, and 4.
2. To deny the development permit as requested.

DEVELOPMENT AND ENVIRONMENTAL IMPLICATIONS

The subject property is located in an area where the adjacent foreshore is comprised of a gravel pocket beach with the upland soils consisting predominately of sandy, rapidly draining marine deposits and as a result of these conditions, there is considerable erosional forces from rainfall, wind, and tidal activity. The construction of the proposed retaining wall will help to protect the subject property from these activities.

Retaining walls are currently located on the properties situated to the west of the subject property. The applicant is proposing that the new retaining wall be sited in line with the neighbour's retaining wall. The result of this construction would reclaim a small portion of land that has already been eroded adjacent to the neighbouring seawall. It is anticipated that construction of the retaining wall in this location will result in a reduction of further damage to the property.

On the east side of the subject property is an undeveloped road right-of-way providing access to the beach. The right-of-way contains a small non-fish-bearing stream that drains into Northwest Bay via underground percolation. Due to the stream's drainage pattern and as the stream is over 25.0 metres horizontal distance from the proposed retaining wall, no anticipated negative impact on the stream is anticipated.

As part of the building permit process, the applicant will be required to supply certification from a professional engineer to ensure the structure is built to an acceptable standard.

GOVERNMENTAL AGENCY IMPLICATIONS

While the Department of Fisheries and Oceans (DFO) staff have not yet had an opportunity to comment on this specific proposal, DFO staff have reviewed other similar requests in the same area and have supported the works subject to conditions being met. Therefore, it is anticipated that DFO staff will support the proposed works provided there is minimal impact on the lands and water and the applicant complies with DFO conditions. As a result, conditions of the development permit include that the applicant is to contact DFO staff prior to and during construction to ensure protection of the foreshore area and that the applicant will meet all conditions required by DFO to its satisfaction. The applicant is in concurrence with these conditions.

The Ministry of Transportation staff have indicated that the Ministry will support the location of proposed retaining wall provided that it will be contained wholly on the subject property, it will not

encroach on the adjacent undeveloped road, and will not impact vehicle safety by limiting vision. The Ministry's conditions will be part of the conditions of the development permit.

VOTING

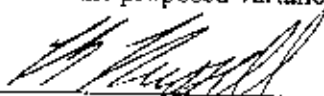
Electoral Area Directors – one vote, except Electoral Area 'B'.

SUMMARY

This is an application for a development permit with variances to construct a shoreline protection device in the form of a retaining wall within the designated Watercourse Protection Development Permit Area pursuant to the Nanoose Bay Official Community Plan Bylaw No. 1118, 1998. The proposed variances to Bylaw No. 500, 1987 are outlined in Schedule No. 2 of the staff report. The retaining wall is proposed to connect to an existing retaining wall on the neighbouring property and will form the new natural boundary. Staff from the Department of Fisheries and Oceans (DFO) has indicated approval for similar developments in the area; this report recommends (in Schedule No. 1) that the applicant meet all conditions of DFO's conditions and contact DFO prior to commencing construction. Ministry of Transportation will support the construction of the retaining wall provided the wall is contained wholly within the subject property, does not encroach into the road right-of-way, and will not impede sight distance for vehicular traffic. The applicant is aware and in concurrence with these conditions. Given the proposed retaining wall will provide protection to the subject property as well as neighbouring properties, staff recommends approval of this development permit application subject to the conditions outlined in Schedule Nos. 1, 2, 3, and 4 notification pursuant to the requirements of the *Local Government Act*.

RECOMMENDATION

That Development Permit Application No. 60327 to construct a shoreline protection device in the form of a retaining wall for the property legally described as Lot 8, District Lot 102, Nanoose District, Plan 21022 be approved, subject to the conditions outlined in Schedule Nos. 1, 2, 3, and 4 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.



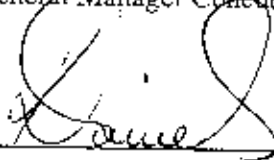
Report Writer



General Manager Concurrence



Manager Concurrence



C.A.O. Concurrence

COMMENTS:

Schedule No. 1
Conditions of Approval
Development Permit Application No. 60327

The following sets out the conditions of approval:

1. Location

The retaining wall (shoreline protection device) is to be located in the exact location as shown on Schedule No. 3.

2. Sediment and Erosion Control Measures

a. Sediment and erosion control measures must be utilized to control sediment during wall construction and land clearing works, and to stabilize the site after construction is complete. These measures must include:

- i) Tarps, sand bags, poly plastic sheeting and /or filter fabric are required to be on site.
- ii) Direct run-off flows away from the marine environment using swales or low berms.
- iii) Exposed soils must be seeded immediately after disturbance.
- iv) Cover temporary fills or soil stock piled with polyethylene or tarps.

b. Replant vegetation within disturbed part of the leave strip of the development permit area. Preferred plantings to be trees, shrubs, and ground cover native to the area; all replanting to maintain and enhance the natural characteristics of the riparian area.

3. Maximum Height and Dimensional Constraints

a. The retaining wall shall not exceed 2.0 metres in height as measured from the natural grade pursuant to the Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987 nor shall the retaining wall shall not exceed 2.3 metres in height as measured from the bottom of the foundation to the top of the wall.

b. The retaining wall's two anchoring ends shall not exceed 2.0 metres in length along the interior side lot line and the other lot line.

4. Engineering

a. The retaining wall is to include a mechanism to drain soils from the upland without allowing for the loss of upland soils to the marine environment. A filter fabric barrier to restrain upland soils is recommended.

b. The retaining wall is to be constructed in accordance with engineering standards and certified by a professional engineer to the satisfaction of the RDN.

c. The applicant is subject to the requirements of the RDN Building Inspection Department and shall obtain a building permit for the retaining wall.

5. Construction

a. All construction to take place within the time period designated by the Department of Fisheries and Oceans, with notification of this time period being provided by the applicant to the RDN.

b. The shoreline protection device shall be constructed as a retaining wall.

c. Any excavated materials must be placed upland such that there is no potential for introduction onto the foreshore or within the leave strip area of the adjacent stream.

d. No fill is to be placed near the shoreline protection device, excluding backfill placed upland of the retaining wall.

e. All backfill materials to consist of free-draining material, as recommended by the Department of Fisheries and Oceans.

f. All machinery to operate from the upland portion of the subject property only.

6. Department of Fisheries and Oceans

- a. The applicant is to contact the Department of Federal Fisheries staff prior to commencing any construction as well as during the construction phase as requested by DFO.
- b. The applicant to meet all conditions of the Department of Fisheries and Oceans to its satisfaction.

7. Ministry of Transportation

The applicant is to meet the following requirements to the satisfaction of the Ministry of Transportation:

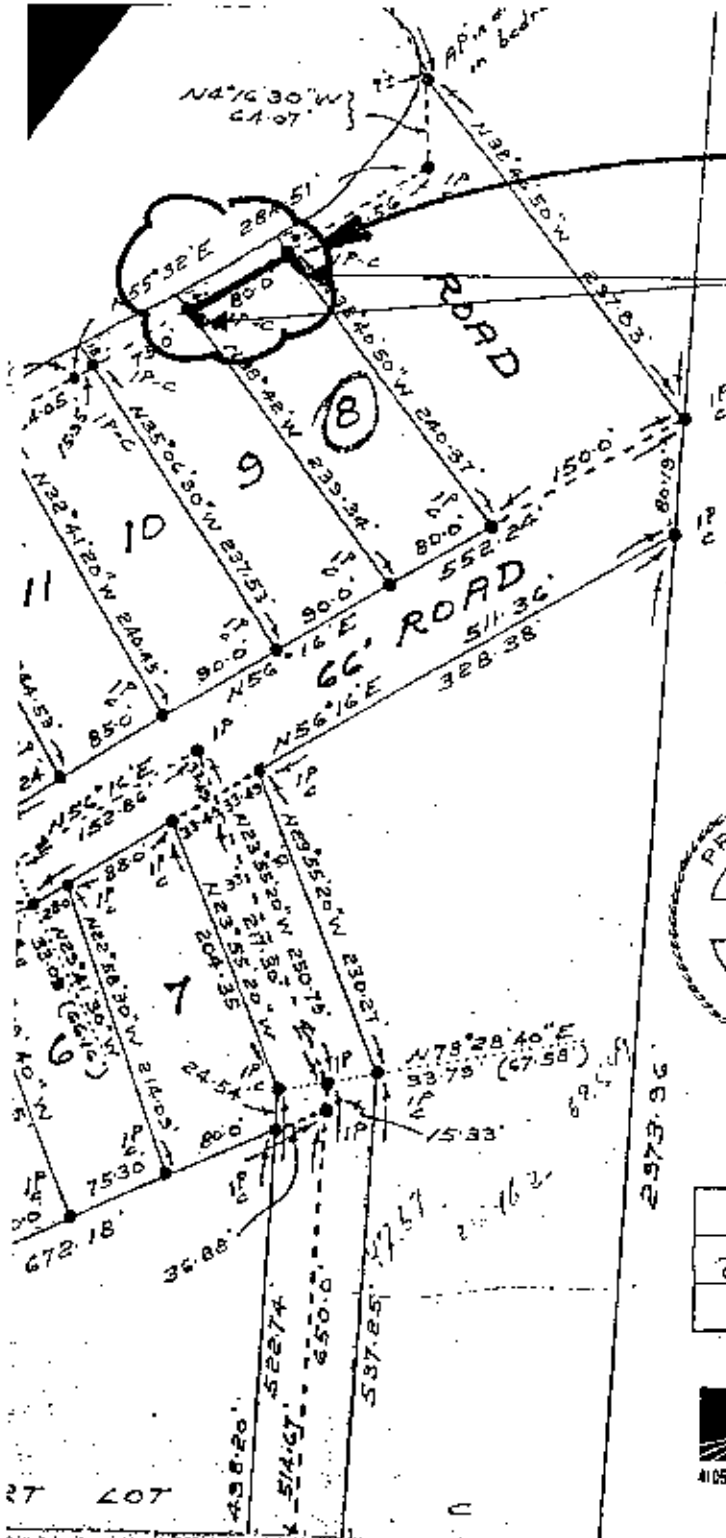
- i) the retaining wall is contained wholly within the subject property,
- ii) the retaining wall does not encroach on the adjacent undeveloped road, and
- iii) the retaining wall will not impact vehicle safety by limiting vision.

**Schedule No. 2
Proposed Variances
Development Permit Application No. 60327**

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 3.3.9 - Minimum Setback Requirements - The minimum setback requirement from the sea is proposed to be varied from 8.0 metres horizontal distance from the natural boundary to 0.0 metres, in order to accommodate the proposed retaining wall;
2. Section 3.4.61 - Interior Side Lot Line Setback Requirement - The minimum setback requirement from the interior side lot line is proposed to be varied from 2.0 metres to 0.0 metres, in order to accommodate the proposed retaining wall; and
3. Section 3.4.61 - Other Lot Line Setback Requirement - The minimum setback requirement from the other lot line, in this case, the lot line adjacent to the undeveloped road is proposed to be varied from 5.0 metres to 0.0 metres in order to accommodate the proposed retaining wall.

Schedule No. 3
Site Plan
Development Permit Application No. 60327



Plan 21022

RETAINING WALL
LOCATION

Anchoring ends not to exceed 2.0 metres in length
along interior side and other lot lines.

- IP -
- BT -
- C -
- E -
- BC (EG) -
- HW-M -
- Bearings
and 186.

Centreline
are 186
on which



MAY 29 2003

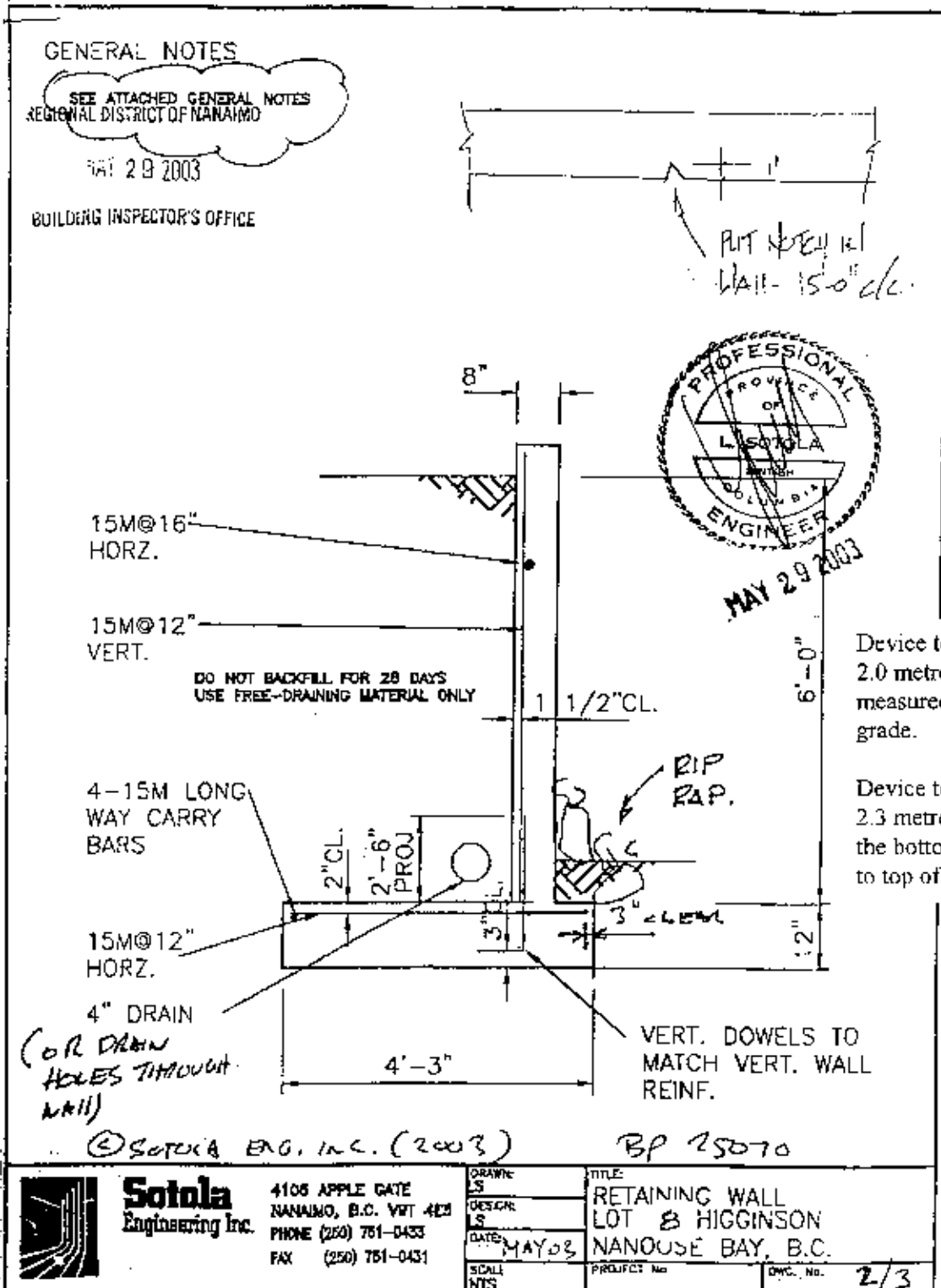
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PROJECT NAME 2377 HIGGINS	
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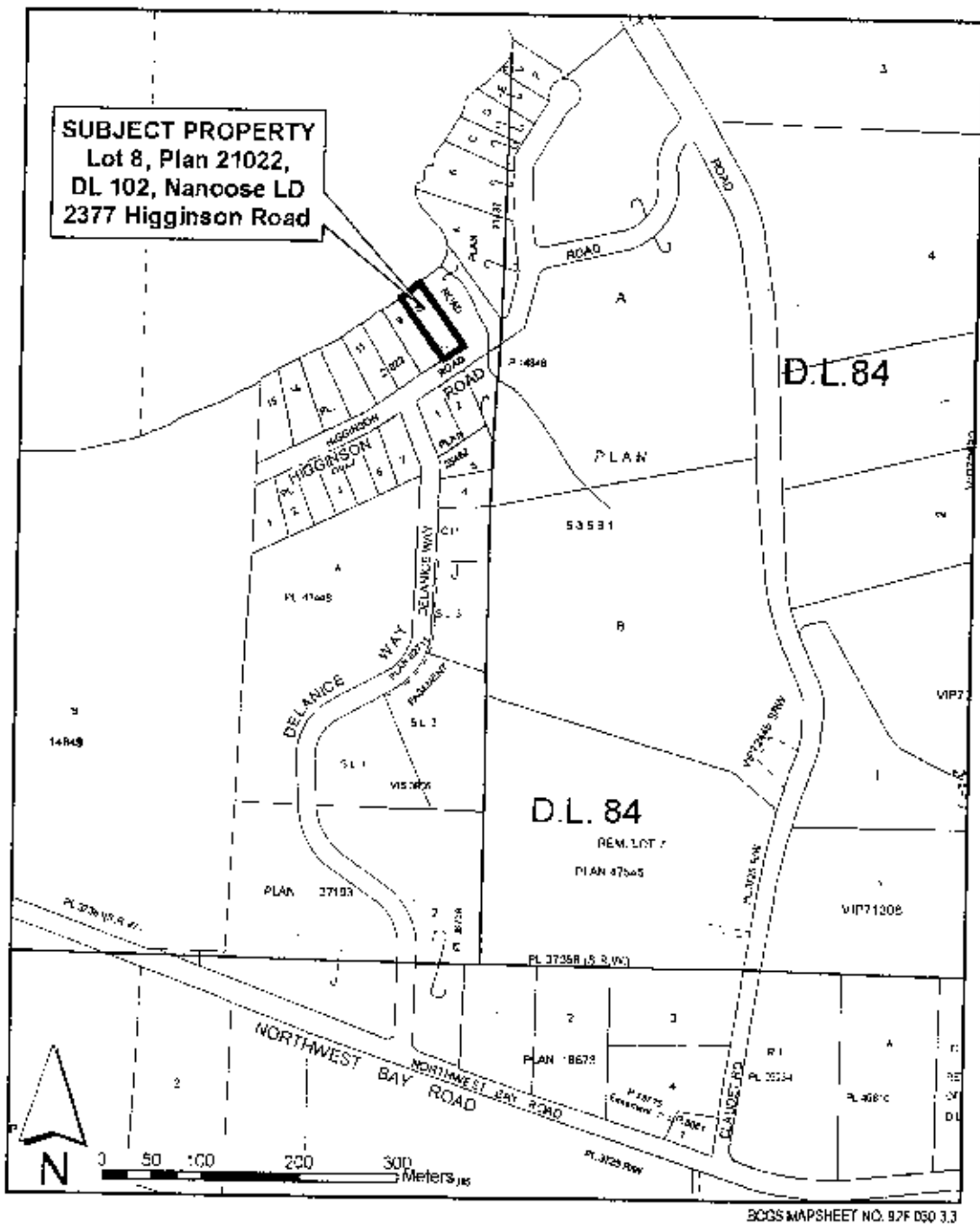
Sotola
Engineering Inc.
CONSULTING
STRUCTURAL
ENGINEERS
4105 APPLE GATE, NANAIMO, B.C. V9T 4E5 781-0433

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08

**Schedule No. 4
Structural Plan
Development Permit No. 60327**



Attachment No. 1
Subject Property Map





REGIONAL DISTRICT OF NANAIMO			
JUN 17 2003			
CHAIR		GMCRS	
CAO		GMDS	
GMCRS		GMES	
		<i>SAP</i>	DATE:
			FILE:

TO: Pamela Shaw
Manager, Community Planning

FROM: Blaine Russell
Planning Assistant

SUBJECT: Development Permit Application No. 60330 – Marshall
Electoral Area 'G' – 1117 Surfside Drive

June 13, 2003

3060 30 60330

PURPOSE

To consider an application for a Development Permit to allow for the construction of an addition to an existing dwelling unit pursuant to the "Regional District of Nanaimo Shaw Hill – Deep Bay Official Community Plan Bylaw No. 1007, 1996" Environmentally Sensitive Areas and Hazard Lands Development Permit Areas'.

BACKGROUND

This is an application to allow for the construction of an addition to an existing dwelling unit on the subject property legally described as: Lot A of District Lots 9, 11 and 110, and part of the bed of the Strait of Georgia and of parts of the bed of the Little Qualicum River, Newcastle District, Plan 27752.

The subject property (16.18 acres or 6.548 hectares in size) is located both within the Environmentally Sensitive Areas and Hazard Lands Development Permit Areas, which are intended to protect the natural environment along the coastal shore and protect development from hazardous conditions such as flooding.

The subject property is zoned 'Conservation 1' (ES1) Subdivision District 'Z' pursuant to the "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987". It should be noted that 4.61 hectares of the existing parcel are proposed to be subdivided for a park and wildlife preserve (as per an agreement among government agencies and the property owner). The property is bound by the Strait of Georgia to the north and west, and is bound by the Little Qualicum River to the south. The subject property is bound to the east by 'Residential 1' (RS1) zoned lots (see Attachment No. 1 for location of property).

The dwelling unit addition is proposed to be sited 13.4 metres from the natural boundary of the sea and thus would exceed "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987" Section 3.3.9 setback requirements of 8.0 metres horizontal distance from the natural boundary of the sea. Therefore, no variance to Bylaw No. 500 is required.

In addition, pursuant to Bylaw No. 500, 1987, section 3.3.8 states that on a parcel with a slope of 5% or less adjacent to or containing a watercourse, no buildings or structures shall be constructed, altered, mover or extended within 30.0 metres horizontal distance from the natural boundary of the Little Qualicum River. The existing structures are approximately 50.0 metres from the natural boundary of the Little Qualicum River and thus exceed the setback requirements.

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". Bylaw No. 843, 1991 under Section 3.2.2 requires a Floodplain Setback of 15.0 metres from the natural boundary of the sea, except that this setback may be reduced to 8.0 metres where the sea frontage is protected from erosion by natural bedrock formation or works designed by a professional engineer and maintained by the owner.

The subject property is located within the Little Qualicum River estuary and is adjacent the Strait of Georgia. The flood elevation on the subject property is 3.8 metres GSC; this elevation is required for all new construction, unless it has been granted either a Site Specific exemption by the Ministry of Water Land and Air Protection (formerly the Ministry of Environment) or if it has been granted a General Exemption pursuant to RDN Bylaw No. 843, 1991. General Exemptions already have Ministry approval provided they meet the established criteria.

The subject property is currently on community water and septic disposal system.

The proposed dwelling unit addition has a main floor area of approximately 17,465 m² (188 sq. ft.) and a second floor area of 96,244 m² (1036 sq. ft.) (see Schedule Nos. 2 and 3 for details).

ALTERNATIVES

1. To approve the request for a Development Permit No. 60330 subject to the conditions outlined in Schedule No. 1, 2 and 3.
2. To not approve the request for a development permit.

DEVELOPMENT PERMIT IMPLICATIONS

Hazard Lands Development Permit Area

The subject property is located within the 'Hazard Lands' Development Permit Area, however there are no geotechnical studies of on record for the subject property. With the ever-changing shoreline, due to erosive and accretive hydrological forces, a geotechnical report will be required to determine the extent of hazards and any mitigated measure that may need to be taken. Comparing the original survey conducted in 1974 with air photos from 2002, it is clear that the natural boundary has changed substantially. Accretion has occurred along the portions of the coastline that are bound by the Strait of Georgia. Near the existing dwelling unit, the natural boundary appears to be mostly unchanged. This stability near the dwelling unit may be due to the existing riprap seawall. Along the Little Qualicum River the most active land shaping has occurred as the river erodes and deposits fluvial sediments. The current path of the river has caused erosion on the subject property. However, it must be noted that this is a very large parcel of land and that the erosion is not in proximity to the existing dwelling unit or proposed additions.

Ultimately, the only method of protecting the dwelling from flooding would be to raise the building to the recognized flood construction elevation level. The applicants have indicated that, given the age of the dwelling unit and the phased construction of the dwelling unit, it would not be practical to raise the dwelling unit.

Environmentally Sensitive Lands Development Permit Area

Land alteration to facilitate the proposed addition would be minimal as most of the addition is proposed to be on the second floor of the structure. The portion of the addition that is proposed to be constructed at

the main floor level is located be on an existing concrete deck. This location should have no impact on the natural environment nor should it cause additional erosion potential. In addition, there will be support posts from the second floor addition that will contact the ground, as these are in close proximity to the existing dwelling unit their impact on the natural environment should also be negligible.

LAND USE IMPLICATIONS

The subject property features a riprap seawall. This riprap wall is labeled as an Engineered Seawall on the building plan submitted by Professional Engineer R. A. Davcy, however the Regional District does not possess any record or correspondence with respect to this wall as a foreshore protection device. In order for Bylaw No. 843, 1991 to allow for the relaxation of the setback of the sea from 15.0 to 8.0 metres, a letter from a Professional Engineer certifying the structural integrity and suitability of the wall as a foreshore protection device will be required.

The existing dwelling unit does not meet flood elevation requirements. However, pursuant to "Regional District of Nanaimo Floodplain Management Bylaw No. 843, 1991" 'Schedule '3' Section 1. b) an addition to a building that would increase the size of the building or structure by less than 25 percent of the floor area existing at the date of the adoption of the bylaw is exempt from section 969 (5) (a) of the *Municipal Act* (now the *Local Government Act*) with respect to the Flood Levels Specified in Section 3.2.1 of Bylaw No. 843, 1991.

After reviewing the available building permit information it has been determined that the dwelling unit had an area of approximately 575 m² prior to the adoption of Bylaw No. 843, 1991 and the proposed addition has an area of approximately 114 m². Therefore the proposed addition is approximately 20% of the dwelling and would meet the exemption provisions with respect to the Flood Levels in Bylaw No. 843, 1991. As a condition of this permit, any further building additions will require that all of the structure be modified to meet the floodplain elevation and setback requirement.

LEGAL IMPLICATIONS

Legal advice obtained on similar development permit applications has indicated that the RDN should only consider issuance of a development permit as requested if the applicant is prepared to agree to a restrictive covenant that saves the Regional District harmless from any action or loss that might result from hazardous conditions. This covenant would require that the applicant fully acknowledge the concerns addressed in a geotechnical report with respect to flooding. Further, the covenant would also require that the applicants acknowledge that the ultimate mitigation of the flood potential would be to raise the dwelling unit to meet the required flood construction elevation as established by the province. This covenant must be prepared to the satisfaction of the RDN.

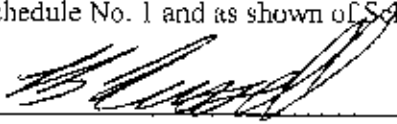
SUMMARY/CONCLUSIONS

This is an application for a development permit within the "Shaw Hill – Deep Bay Official Community Plan, Bylaw No. 1007, 1996 Environmentally Sensitive Areas and Hazard Lands Development Permit Areas" where an existing dwelling does not meet the recommended flood construction level and the applicant is proposing an addition to the dwelling unit.

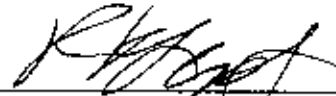
Legal advice obtained on the application has indicated that a 'save harmless' covenant must be entered into between the applicant and the RDN fully acknowledging the concerns cited in the required geotechnical report with respect to flooding and other hazards on the subject property.

RECOMMENDATION

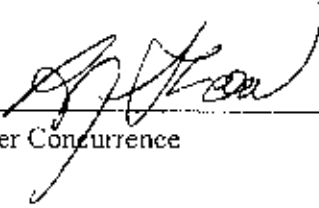
That Development Permit Application No. 60330, submitted by Maureen Greta Marshall for the property legally described as Lot A of District Lots 9, 11 and 130, and part of the bed of the Strait of Georgia and of parts of the bed of the Little Qualicum River, Newcastle District, Plan 27752 to allow for the construction of an addition to the existing dwelling unit be approved subject to the conditions outlined in Schedule No. 1 and as shown on Schedules No.2 and 3.



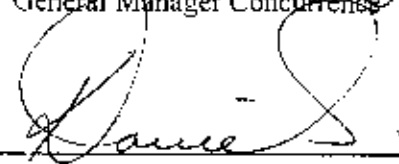
Report Writer



General Manager Concurrence



Manager Concurrence



CAO Concurrence

COMMENTS:

Schedule No. 1**Conditions of Approval - Development Permit Application No. 60330
1117 Surfside Drive****1. Seawall Improvements**

- The existing riprap seawall shall be certified by a Professional Engineer to be structural sound and suitable as a foreshore protection device.
- The existing riprap wall shall be maintained on the subject property.
- The maintenance of the seawall shall be conducted ongoing basis to ensure the maximum protection from marine erosion along the property's coastal boundary.
- The maintenance of the seawall shall be the sole responsible for the property owner.
- Native vegetation shall be planted within the rock rubble seawall and the soil berm to further protect against erosion.
- All mitigative works shall be conducted on the subject property and on the upland side of the existing seawall.

2. Site Survey

- All property lines, natural boundaries and structures on the subject property are to be surveyed. Structures to be surveyed include the dwelling unit, all accessory buildings and structures and the riprap seawall.

3. Vegetation Removal

- There shall be no removal of vegetation within the Development Permit Area. The introduction of native vegetation shall be encouraged in the Development Permit Area to prevent soil erosion.

4. Sediment and Erosion Control

- Sediment and erosion control measures must be utilized to control sediment during the mitigative works 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;
 - c) Cover temporary fill or soil stockpiles with polyethylene or tarps.

5. Registration of Geotechnical Report on Title

- The geotechnical report is to be conducted on the subject property and it is to be registered on the Certificate of Title of the property to advise future owners of the potential flood hazard associated with the Development Permit Area and any conditions or recommendations that the report contains.

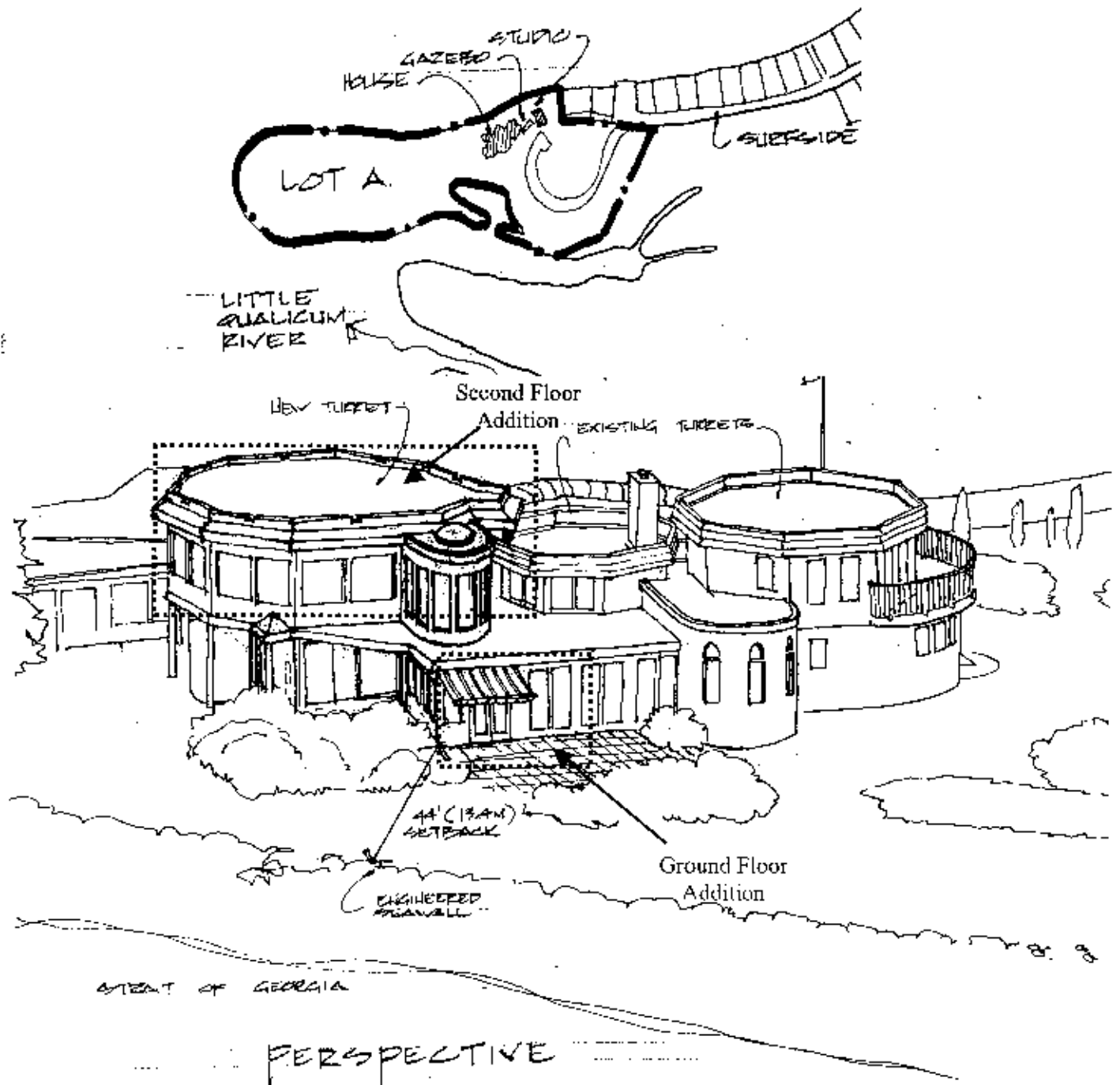
6. Flood Elevation

- That any subsequent addition to the dwelling unit, other than what has been specified in this development permit, shall require the property owner to raise the dwelling unit in order to comply with the flood elevation requirement of 3.8 metres GSC.

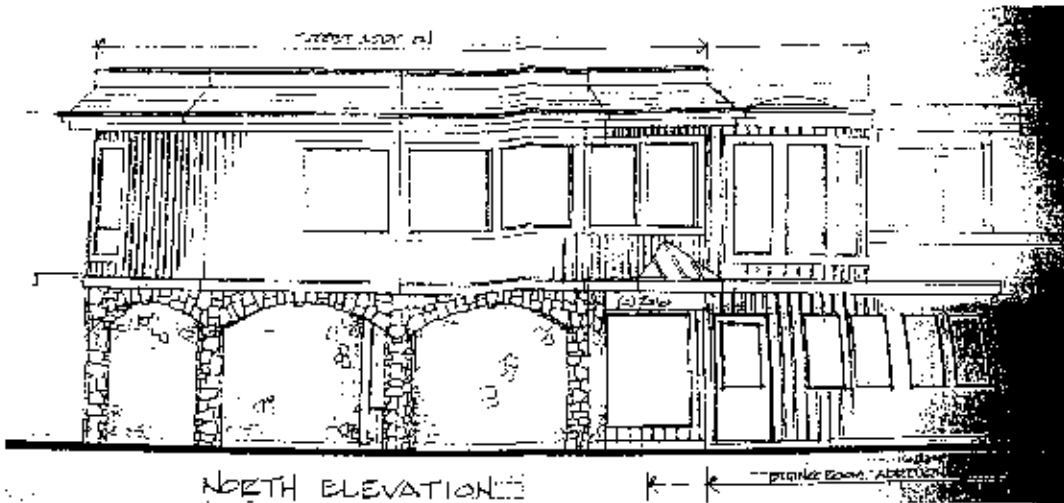
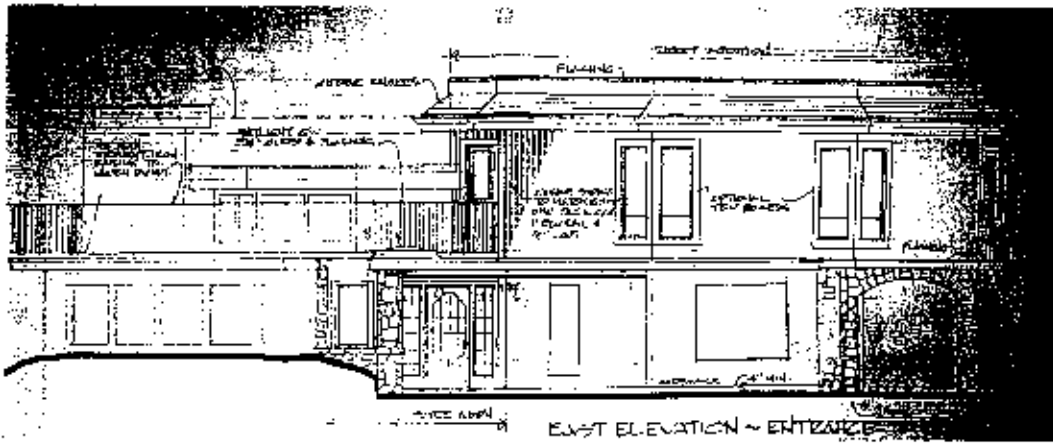
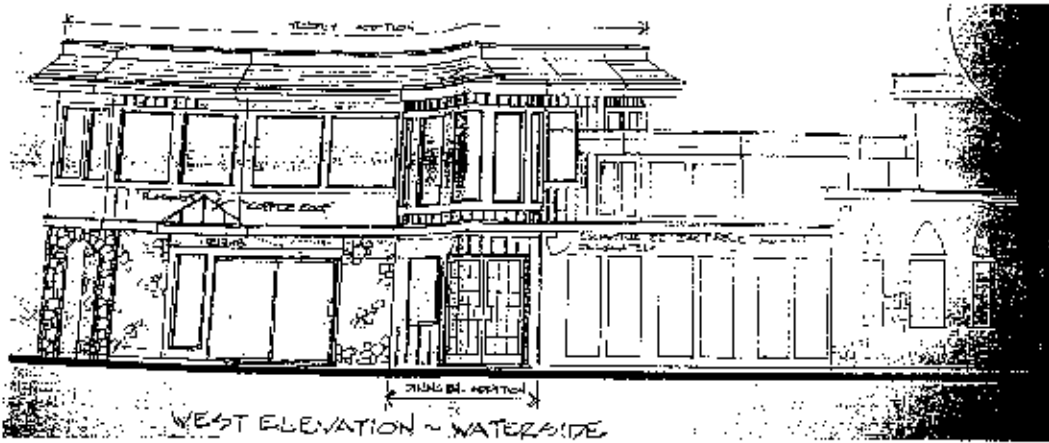
7. Save Harmless Covenant

- The applicant shall enter into a restrictive covenant saving the Regional District of Nanaimo harmless from any action or loss that might result from hazardous conditions and acknowledging the flood risk associated with the existing construction and occupancy of the dwelling unit on the property. The restrictive covenant shall be to the satisfaction of the Regional District of Nanaimo.

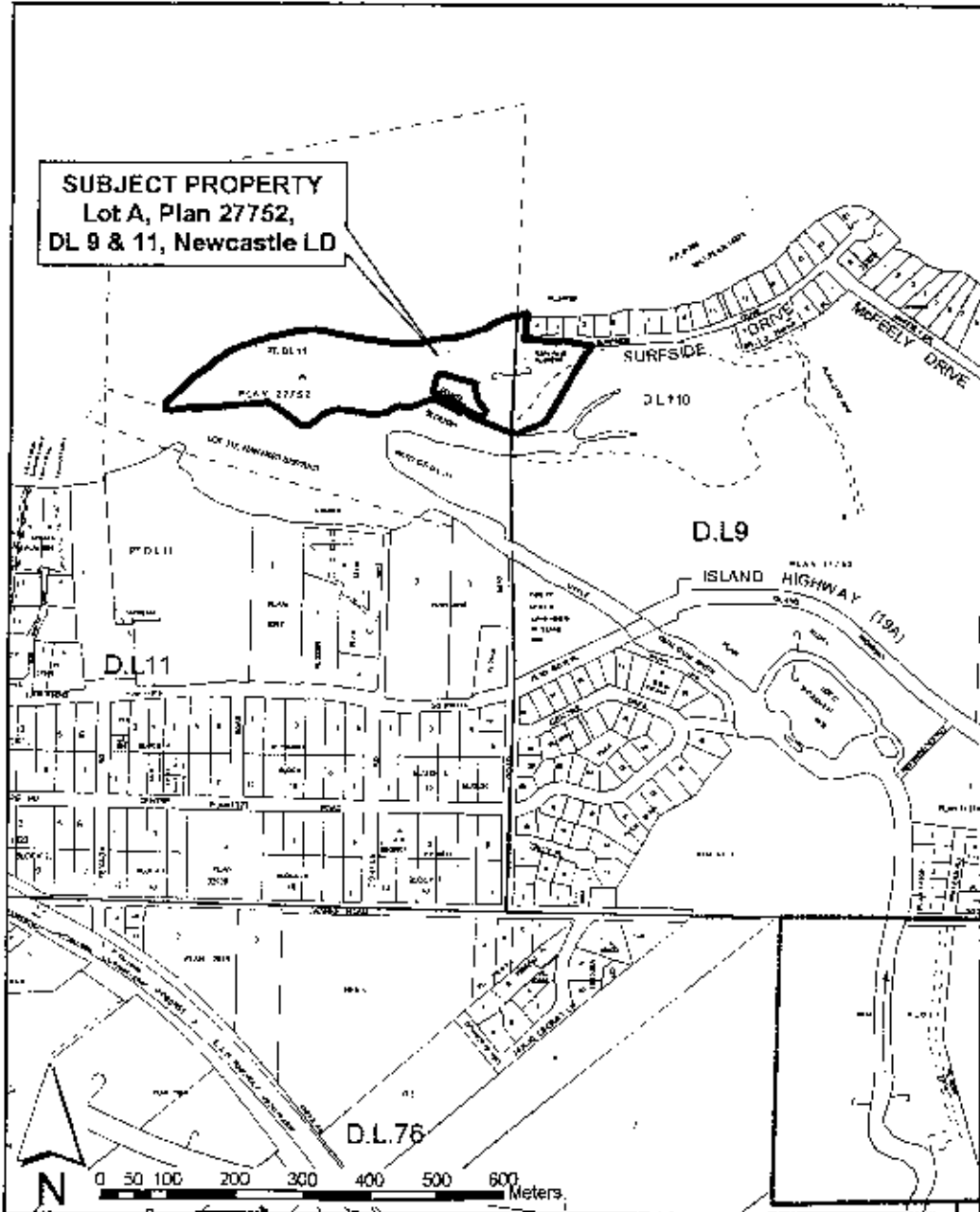
Schedule No. 2
Site Plan - Development Permit Application No. 60330
1117 Surfside Drive



Schedule No. 3
Profile Plan - Development Permit Application No. 60330
1117 Surfside Drive



Attachment No.1
Subject Property Map





REGIONAL DISTRICT OF NANAIMO	
JUN 17 2003	
CHAIR	GMCrs
CAO	GMDS
GMCrs	GMES
	EAP

MEMORANDUM

TO: Pamela Shaw
Manager, Community Planning

DATE: June 16, 2003

FROM: Blaine Russell
Planning Assistant

FILE: 3060 30 60331

SUBJECT: Development Permit Application No. 60331 – Wiens
Electoral Area 'E' – 1355 Marina Way

PURPOSE

To consider a development permit application with variances to legalize the siting of a detached deck located within the Watercourse Protection Development Permit Area and to vary the minimum setback requirements to allow for the reconstruction of decks attached to the existing dwelling unit as well as partial enclosure of one deck to a greenhouse/solarium use.

BACKGROUND

This is a development permit application with variances for a 1475 m² sized property legally described as Lot 26, Block A, District Lot 38, Nanoose Land District, Plan 10777 and situated at 1355 Marina Way in the Beachcomber area of Electoral Area 'E' (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 property supports 1 dwelling unit. Surrounding uses include residential properties to the northwest and southeast, Marina Way to the northeast, and Northwest Bay to the southwest.

The subject property is designated within the Watercourse Protection Development Permit Area pursuant to the Regional District of Nanaimo Nanoose Bay Official Community Plan Bylaw No. 1118, 1998 for the purpose of protecting the natural environment, in this case, the coastal environment. The leave strip for this development permit area is measured 15.0 metres from the natural boundary of the ocean.

Proposal as Submitted

The applicant is proposing to reconstruct a number of decks that are attached to the dwelling unit, including enclosing a portion of the lower deck into a solarium / greenhouse. The dwelling unit and attached decks are outside the development permit area (see Schedule No. 2 for proposal). The existing decks were already constructed when the applicant purchased the property approximately 2 years ago.

In addition the applicant is proposing to legalize the siting of an existing deck with minor modifications situated on the waterfront within the leave strip of the development permit area. The applicant is requesting that the siting of this detached deck be legalized under the setback requirements pursuant to Bylaw No. 500, 1987.

The majority of the decks attached to the dwelling appear to have been constructed some time ago possibly at the time of the original construction of the dwelling however, the detached deck at the edge of the waterfront was constructed more recently, approximately 5 years ago.

The detached deck requires minor modifications to remove a portion of the deck that is encroaching into the neighbour's property. The proposed variances are outlined in Schedule No. 4 of this staff report and may be considered with the development permit application.

This application is exempt from flood construction elevation requirements pursuant to Bylaw No. 843, 1995 as the detached deck is not considered habitable space and the attached decks are beyond the required setback.

ALTERNATIVES

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

DEVELOPMENT / ENVIRONMENTAL IMPLICATIONS

With respect to the decks attached to the dwelling unit, these decks have deteriorated and are in need of repair. As a result, the applicant has removed the decking in anticipation of being able reconstruct the decks as before but with some minor modifications including changing the style of the railings and enclosing a portion of the lower deck to a greenhouse/solarium. The proposed reconstruction of these decks, including the enclosure of a portion of the lower deck, is not proposed to encroach any further into the setback area than previously. It is not anticipated that view corridors of surrounding properties will be additionally affected by the proposed changes to the decks.

The proposed enclosure of the lower deck with a solarium/greenhouse is not anticipated to impact surrounding properties, as the proposed enclosure does not protrude any farther into the setback area than the existing deck.

The detached deck is located within the development permit area and requires variances to both the side yard and waterfront setback to be legalized. The neighbouring property owners have indicated that they have no objections to the siting of the decks. In principle, staff do not support the request to legalize the detached deck because it was sited contrary to the zoning, development permit and building regulations. However, as the structure was not constructed by the current owner, and given that the immediate neighbours do not object to its location and it does not appear to be visible to residents in the area, other than from the water, staff recommend to the siting be approved as constructed.

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. It should be noted that the applicants have obtained the signatures of both adjacent property owners stating that they do not object to the rebuilding of the attached decks or to the existing detached deck remaining in the same location.

VOTING

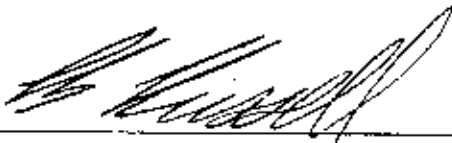
Electoral Area Directors – one vote, except Electoral Area 'B'.

SUMMARY

This is an application for a development permit with variances to legalize the siting of an existing detached deck located within the leave strip of the Watercourse Development Permit Area pursuant to the Nanoose Bay Official Community Plan Bylaw No. 1118, 1998. The applicant is also requesting a relaxation of the interior side setback allow for the reconstruction of 2 decks attached to the dwelling unit and to enclose a portion of the lower deck as a greenhouse/solarium. The applicant has proposed minor changes to the detached deck to remove the encroachment onto the neighbouring property. This minor work is not expected to disturb vegetation or alter the land within the development permit area. The reconstruction of the existing decks, which are attached to the dwelling unit, will not increase the current encroachment into the interior side lot line setback area. As neighbours will have an opportunity to comment on this proposal through the notification procedure, and as the setback relaxations to the proposed attached decks do not propose further encroachment into the setback areas, staff supports Alternative No. 1 to approve this development application with variances subject to the notification requirements pursuant to the *Local Government Act*.

RECOMMENDATION

That Development Permit Application No. 60331 submitted by Stephen Wiens and Pamela Wiens, to legalize the siting of an existing detached deck within the leave strip of the Watercourse Development Permit Area and to allow the reconstruction and partial enclosure of the attached middle and lower decks to the existing dwelling unit within the minimum interior side setback area on the property legally as Lot 26, Block A, District Lot 38, Nanoose Land District, Plan 10777 be approved, subject to the conditions outlined in Schedules 1, 2, 3, and 4 and the notification requirements pursuant to the *Local Government Act*.



Report Writer



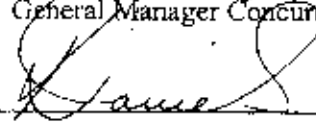
General Manager Concurrence



Manager Concurrence

Devsvs/reports/2003/jp 3066 30 60331

COMMENTS:



CAO Concurrence

Schedule No. 1
Conditions of Approval
Development Permit Application No. 60331

The following set out the conditions of approval:

1. Siting and Structural Compliance and Safety Confirmation

- a. All structures on the site are to be surveyed by a British Columbia Land Surveyor.
- b. All structures on the subject property are 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.
- c. All proposed structures and proposed modifications to structures are to require a Building Permit pursuant to what the Chief Building Inspector deems necessary.

2. Location

The dwelling unit decks, dwelling unit deck enclosures, and detached accessory deck are to be located in the exact location as shown on Schedule No. 2.

3. Sediment and Erosion Control Measures

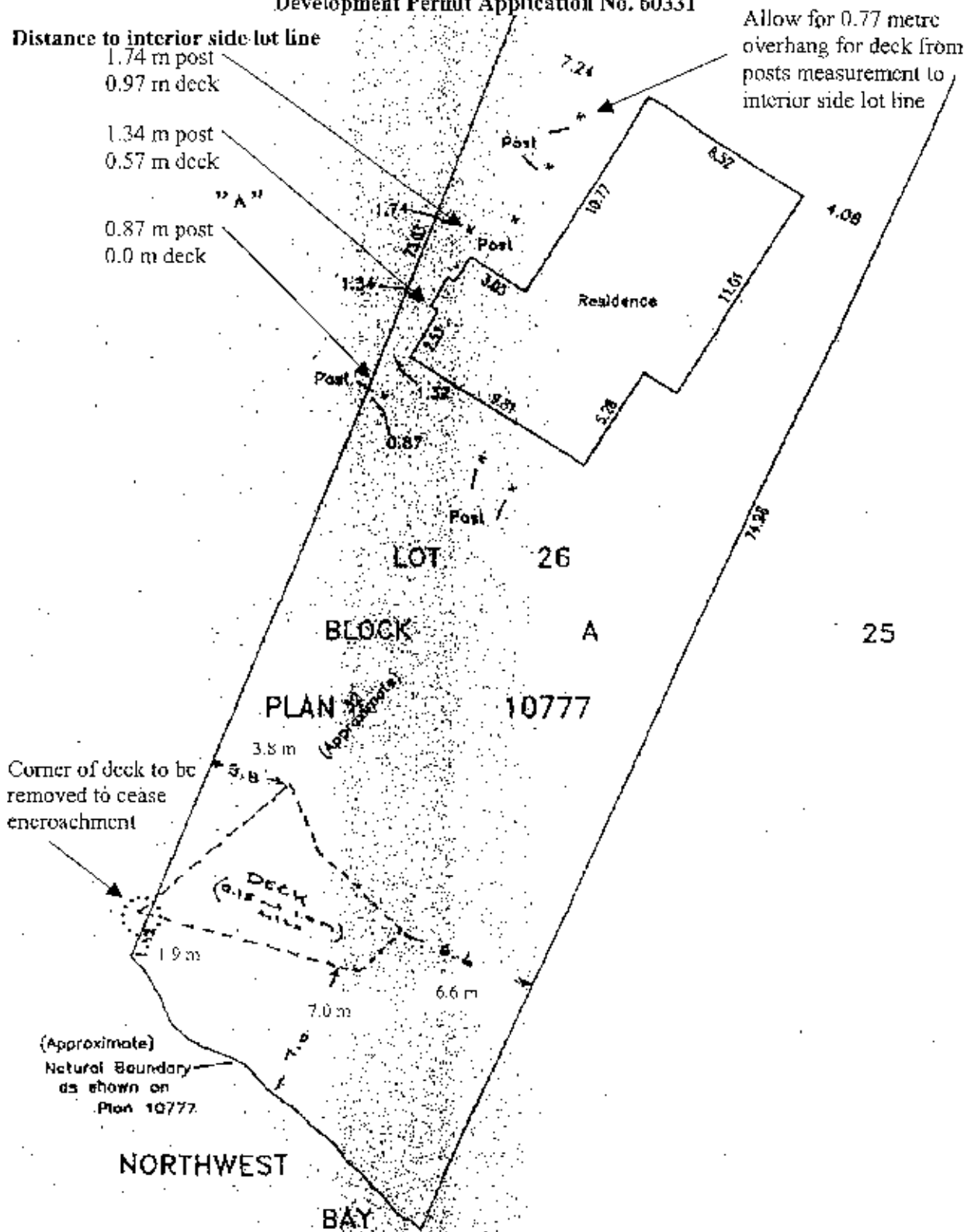
Sediment and erosion control measures must be utilized to control sediment during the modification of the detached accessory deck. These measures must include:

- i) Tarps, sand bags, poly plastic sheeting and /or filter fabric are required to be on site;
- ii) Direct run-off flows away from the marine environment using swales or low berms;
- iii) Exposed soils must be seeded immediately after disturbance;
- iv) Cover temporary fills or soil stock piled with polyethylene or tarps; and,
- v) Replant vegetation within disturbed part of the Development Permit area. Preferred plantings to be trees, shrubs and ground cover native to the area; all replanting to maintain and enhance the natural characteristics of the riparian area.

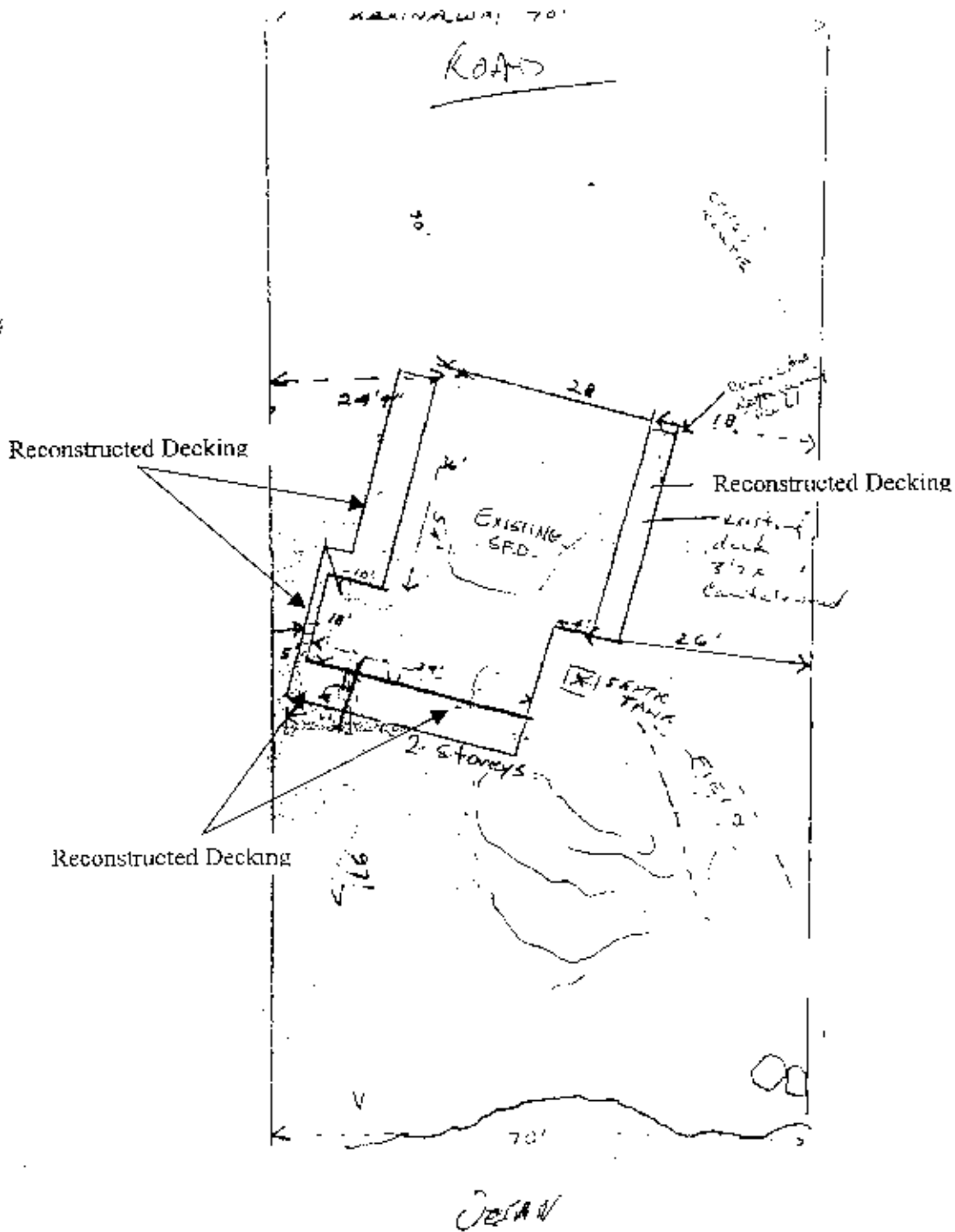
4. Construction

- a. There shall not be any excavation within the development permit area.
- b. There shall not be any fill placed within the development permit area.
- c. There shall not to be any machinery, other than hand tools used with in the development permit area, and that these hand tools should be manually or electrically powered.

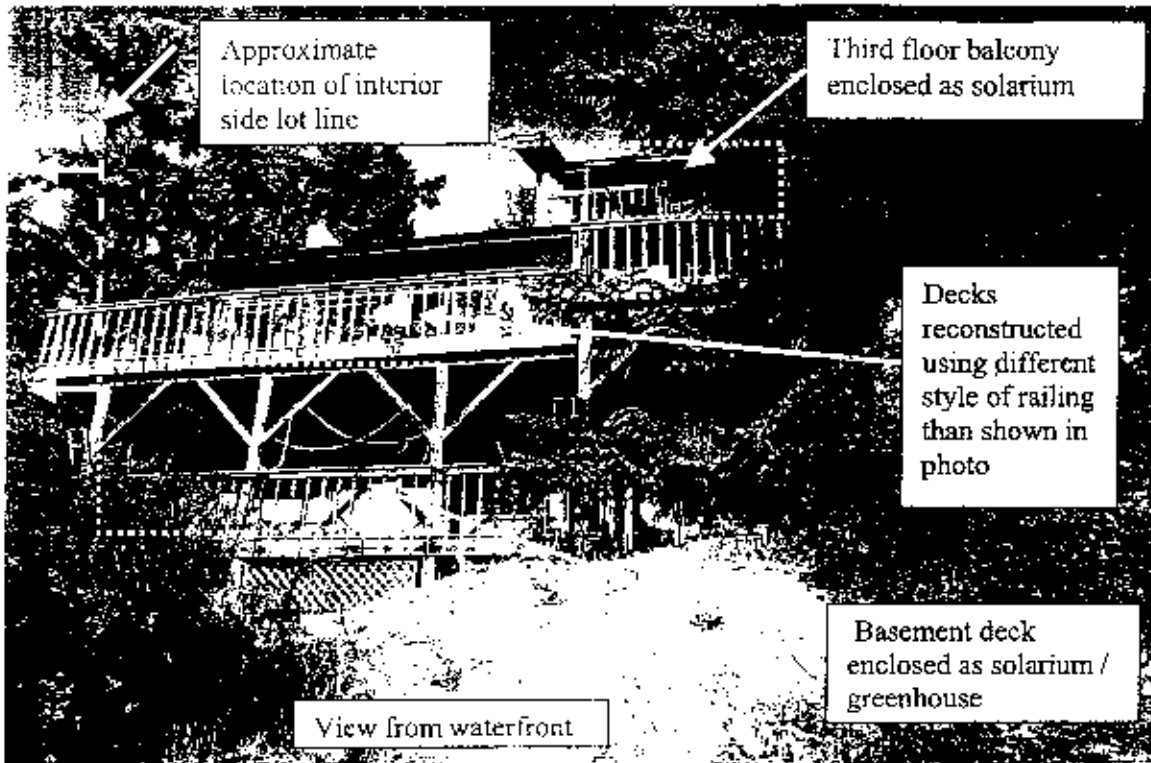
Schedule No. 2 (page 1 of 2)
Proposed Site Plan
Development Permit Application No. 60331



Schedule No. 2 (page 2 of 2)
Proposed Site Plan
Development Permit Application No. 60331



Schedule No. 3
Profile Plan
Development Permit Application No. 60331



Reconstructed decks adjacent to both interior side lot lines not shown in photo

Schedule No. 4
Requested Variances
Development Permit Application No. 60331

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

Detached Deck – Proposed Variances:

1. Section 3.3.9 – Minimum Setback Requirements – The minimum setback requirement from the sea be varied from 8.0 metres horizontal distance from the natural boundary to 1.9 metres, in order to legalize the siting of the existing detached deck as shown on Schedule No. 2.
2. Section 3.4.61 – Interior Side Lot Line Setback Requirement – The minimum setback requirement from the interior side lot line be varied from 2.0 metres to 0.0 metres, in order to legalize the siting of the existing detached deck as shown on Schedule No. 2.

Attached Decks (including enclosure of Greenhouse/Solarium) – Proposed Variances:

1. Section 3.4.61 – Interior Side Lot Line Setback Requirement – The minimum setback requirement from the interior side lot line be varied from 2.0 metres to 0.0 metres, in order to permit the reconstruction of the attached middle deck located as shown on Schedule No. 2.
2. Section 3.4.61 – Interior Side Lot Line Setback Requirement – The minimum setback requirement from the interior side lot line be varied from 2.0 metres to 0.87 metres, in order to permit the reconstruction of the attached deck and the enclosure of a portion of the deck to allow for a greenhouse/solarium as shown on Schedule No. 2.



**REGIONAL
DISTRICT
OF NANAIMO**

REGIONAL DISTRICT OF NANAIMO			
JUN 13 2003			
CHAIR		GMCrs	
CAO		GMDS	
GMCms		GMEs	
		<i>EAP</i>	

MEMORANDUM

TO: Pam Shaw
Manager, Community Planning

DATE: June 13, 2003

FROM: Brigid Reynolds
Planner

FILE: 3060 30 60332

SUBJECT: **Development Permit Application No. 60332 - Yorke/Turner
Electoral Area 'G' - 1435 Private Road**

PURPOSE

To consider an application to vary the maximum height of a dwelling unit from 8.0 metres to 8.3 metres and to recognize a concrete retaining wall, patio, steps and hot tub within the Environmentally Sensitive Area and Natural Hazard Development Permit Areas pursuant to the "Regional District of Nanaimo Shaw Hill - Deep Bay Official Community Plan Bylaw No. 1007, 1996."

BACKGROUND

The subject property, legally described as Lot 1, District Lot 80, Newcastle District, Plan 15785, is located at 1435 Private Road in the Dashwood area of Electoral Area 'G' (see Attachment No. 1).

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 adjacent to the sea are 8.0 metres horizontal distance from the natural boundary. The maximum height for buildings and structures is 8.0 metres.

The Board previously approved a development permit for the subject property. Development Permit No. 0306, was approved by the Regional Board at their March 11, 2003 Regular Meeting to site a two storey dwelling unit, drainage pit and legalize a rip rap retention wall located at the natural boundary with the following motion:

That Development Permit Application No. 0306, submitted by Yorke/Rowland to facilitate the construction of a single residential dwelling unit, retention wall and drainage rock pit, on the property legally described as Lot 1, District Lot 80, Newcastle District, Plan 15785 be approved subject to the requirements outlined in Schedules No. 1 and 3 and revised Schedule 2 as outlined in the correspondence on the Addendum from Andre Rowland.

CARRIED

Subsequently, the applicant has chosen to modify their original application to include a request to vary the maximum height of the dwelling unit from 8.0 metres to 8.3 metres, in order to achieve the Flood Construction Level of 3.8 metres GSC as required by the "Regional District of Nanaimo Floodplain Management Bylaw No. 843, 1991". The applicant is also requesting to recognize a concrete retaining wall, patio, stairs and hot tub that is sited a minimum of 5.3 metres from the natural boundary.

ALTERNATIVES

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

LAND USE AND DEVELOPMENT IMPLICATIONS

Approval of the requested variance would permit the construction of a dwelling unit with a maximum height of 8.3 metres.

Views from adjacent lots are unlikely to be impacted. There is an 'up' slope on the lot directly south of the subject property and any dwelling unit would be constructed at the top of the slope and would therefore not be impacted by the height variance. The lot to the west of the subject property is owned by the applicants. The westerly view for the lot to the east of the subject property may be marginally impacted by the siting of the dwelling unit, but not by the height. The owners of the lot east of the subject property will retain a clear view to the east and north.

The original application included a wood deck, however the applicant has already constructed a concrete retaining wall, patio, steps and hot tub as part of the development. The patio steps will be sited a minimum of 5.3 metres from the natural boundary of the ocean however no variance to the Setback to the Sea provisions of Bylaw No. 500 is required as the patio and steps do not exceed 1.0 metre in height and therefore do not meet the definition of a structure pursuant to the Bylaw.

Removing the concrete wall and patio would cause considerable damage. Conditions outlined in Schedule No. 1 are intended to mitigate any negative impacts to the marine environment from the completion of the deck, steps and hot tub structure.

ENVIRONMENTAL IMPLICATIONS

As the Development Permit Area covers the entire parcel, it is not possible for the applicant to locate the proposed development outside the Development Permit Area. As was outlined in the previous report, the applicant has indicated that there are no plans to build a garage or covered parking structure on this parcel and the vehicle-parking areas are proposed to be surfaced with natural permeable materials to avoid storm water runoff on the site. All surface drainage collected from roof leaders, perimeter drains for the dwelling and the water interceptor will be directed to the rock drainage pit for energy dissipation and infiltration.

As part of this revised application, the applicant is requesting that the concrete retaining wall and patio, approximately 133 m² (1,439 ft²) in area, sited a minimum of 5.3 metres from the natural boundary be legalized. In order to reduce the impacts caused by the increased runoff, the concrete patio will be required to have perimeter drains and a second drainage rock pit will need to be developed.

In addition, the siting the hot tub 6.0 metres from the natural boundary could result in highly chlorinated water being introduced into this sensitive marine environment when the hot tub is drained or if there is a leak. Therefore, the conditions outlined in Schedule No. 1 are intended to reduce potential negative impacts that a hot tub may have on the marine environment.

After construction the applicant will be required to provide a landscape plan and undertake landscaping in the area between the natural boundary and the concrete wall, using plants native to the area, to repair site conditions around the concrete retaining wall and patio.

VOTING

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

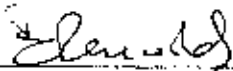
SUMMARY/CONCLUSIONS

This is a revised application to vary the maximum height requirements of the Residential 2 (RS2) zone from 8.0 metres to 8.3 metres to facilitate the construction of a dwelling unit and to recognize the siting of a concrete retaining wall, patio, steps and hot tub, located a minimum of 5.3 metres from the natural boundary of the ocean, within the Environmentally Sensitive Area and Natural Hazard Area Development Permit Area.

From staff's assessment of this revised application, the request to vary the maximum height from 8.0 metres to 8.3 metres could be supported, as the impacts to views for adjacent properties will be negligible given the variance request and the topography. As the concrete retaining wall, patio, steps and hot tub have already been constructed, staff recommend approval subject to mitigative measures to reduce the negative impacts to the marine environment as outlined in Schedule No.1.

RECOMMENDATION

That Development Application No. 60332 to vary the maximum height requirements of the Residential 2 (RS2) zone from 8.0 metres to 8.3 metres, and to recognize the siting of a concrete retaining wall, patio, steps and hot tub located a minimum of 5.3 metres from the natural boundary of the sea, within an Environmentally Sensitive Area and Natural Hazard Development Permit Area on the property legally described as Lot 1, District Lot 80, Newcastle District, Plan 15785, 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*.



Report Writer



General Manager Concurrence



Manager Concurrence



CAO Concurrence

COMMENTS:

devsvstheports/2003/idp.jn.3060.30.60332.york.turner

Schedule No. 1
Conditions of Approval
Development Permit No. 60332

Development of Site

1. The vehicle-parking areas shall be surfaced with natural permeable materials to avoid storm water runoff on the site.
2. All building materials currently placed between the concrete retaining wall/patio and rip rap wall shall be removed and placed more than 15.0 metres from the natural boundary of the ocean.
3. All soils/sands currently placed between the concrete retaining wall/patio and the rip rap wall shall be no closer than 5.3 metres from the natural boundary of the ocean.
4. The snow (hi viz) fence shall be moved to be sited 5.0 metres from the natural boundary of the ocean.
5. Sediment and control measures detailed in Development Permit No. 0306 shall be utilized.
6. Applicant to register Section 219 Covenant at Land Titles Victoria with respect to no further vegetation removal between the natural boundary and the concrete retaining wall/patio and adjacent to the dwelling unit up to 15.0 metres from the natural boundary.

Concrete Patio and Hot Tub

7. Perforated pipe shall be placed around the perimeter of the concrete patio and sidewalks and directed into a second drainage rock pit.
8. The second drainage rock pit shall be located on the east side of the dwelling unit at approximately 12.0 metres from the natural boundary.
9. A landscape restoration plan, acceptable to the Regional District, for the area between the natural boundary and the concrete retaining wall/patio shall be completed. The landscape restoration plan shall enhance the remaining riparian area, and shall, at a minimum, satisfy the following criteria:
 - a) Landscaping shall be totally comprised of biologically diverse and drought resistant native vegetation;
 - b) 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 infestation or objectionable disfigurements;
 - c) 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 irrigation necessary to water the landscaping;
 - d) The design of the 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 required sight triangle.

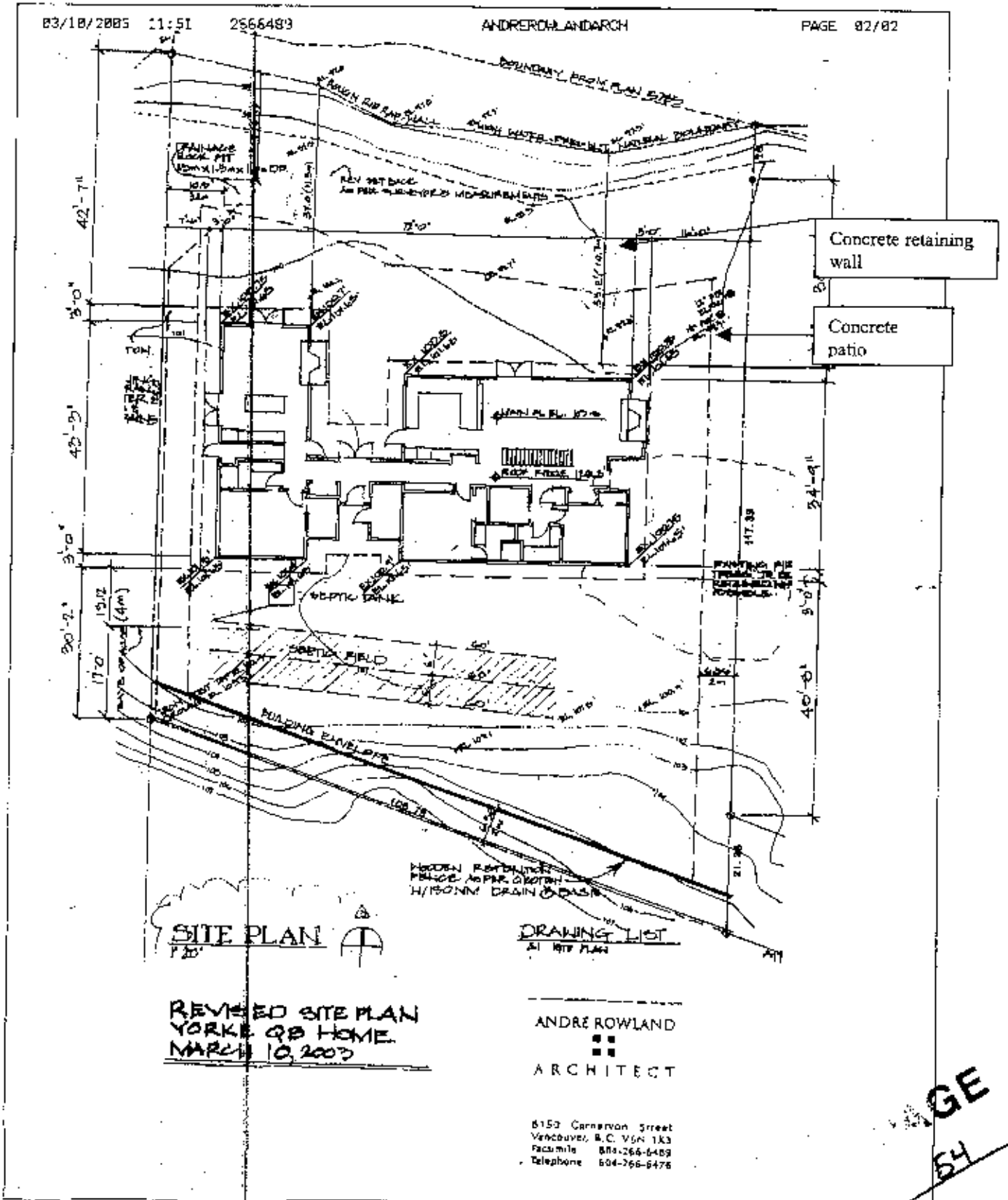
10. A security deposit in accordance with the provisions of the Regional District of Nanaimo Bylaw No. 500 Schedule '6F' - Landscaping Regulations and Standards shall be provided prior to the issuance of the permit.
11. Neutralizing agents shall be used to neutralize the water in the hot tub prior to it being drained.
12. Water from the hot tub shall not be drained within 15.0 metres of the natural boundary and a pump shall be used to direct this water away from the marine environment.

**Schedule No. 2
Requested Variances
Development Permit No. 60332**

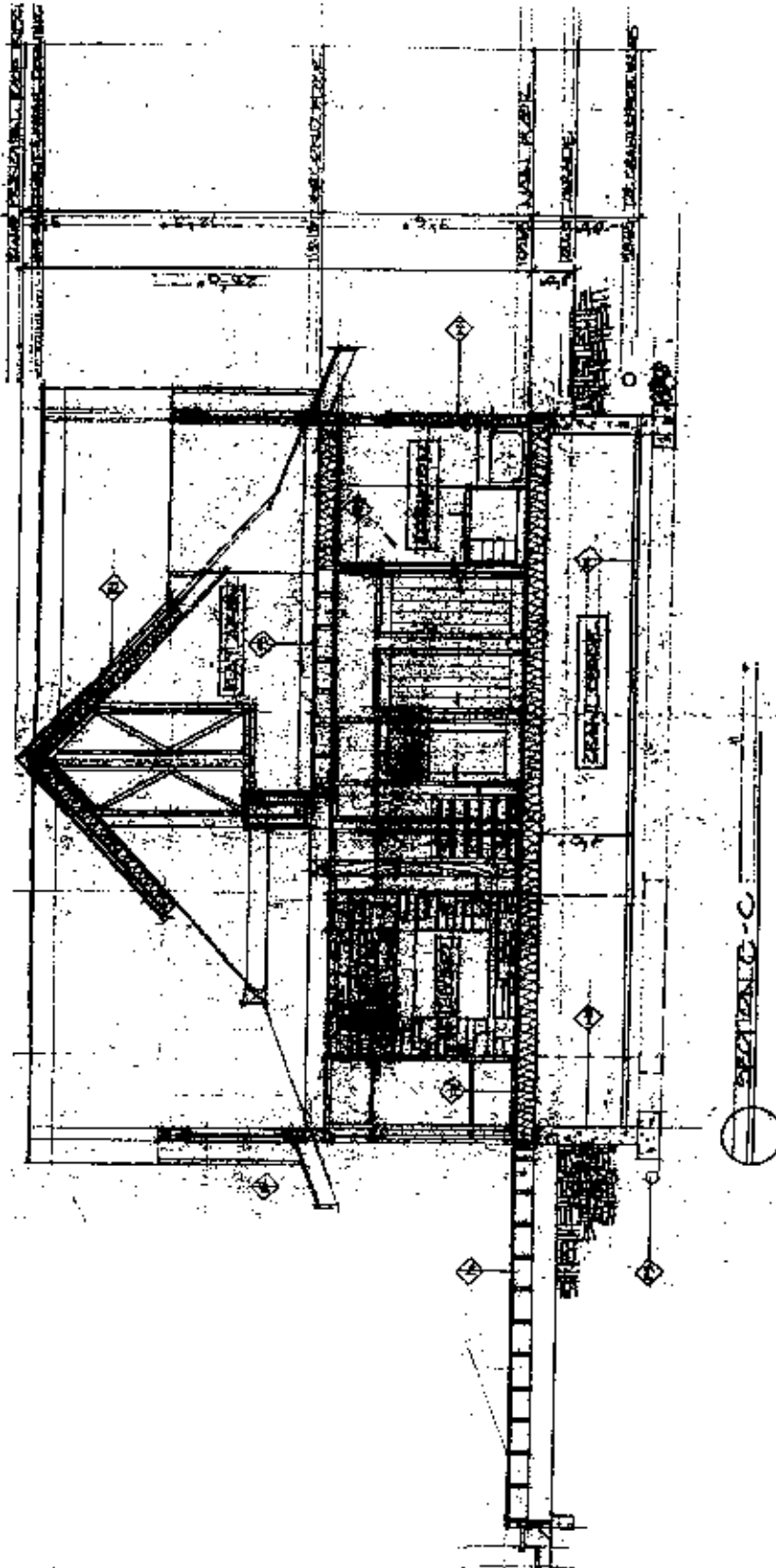
With respect to the lands, the Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987, the following variances are proposed:

- i. Section 3.4.62 Maximum Number and Size of Buildings and Structures – Dwelling Unit Height varied from 8.0 metres to 8.3 metres.

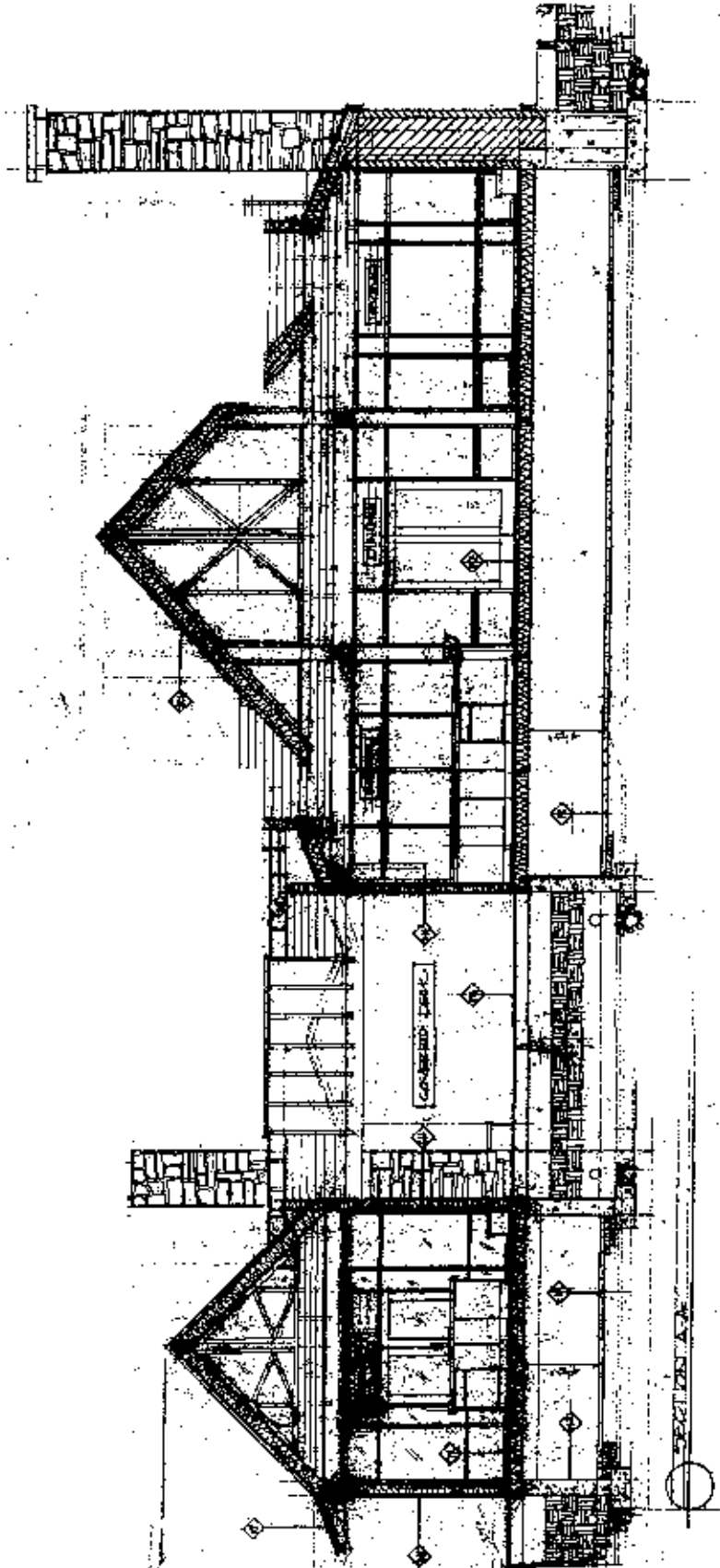
Schedule No. 3
Site Plan
Development Permit No. 60332



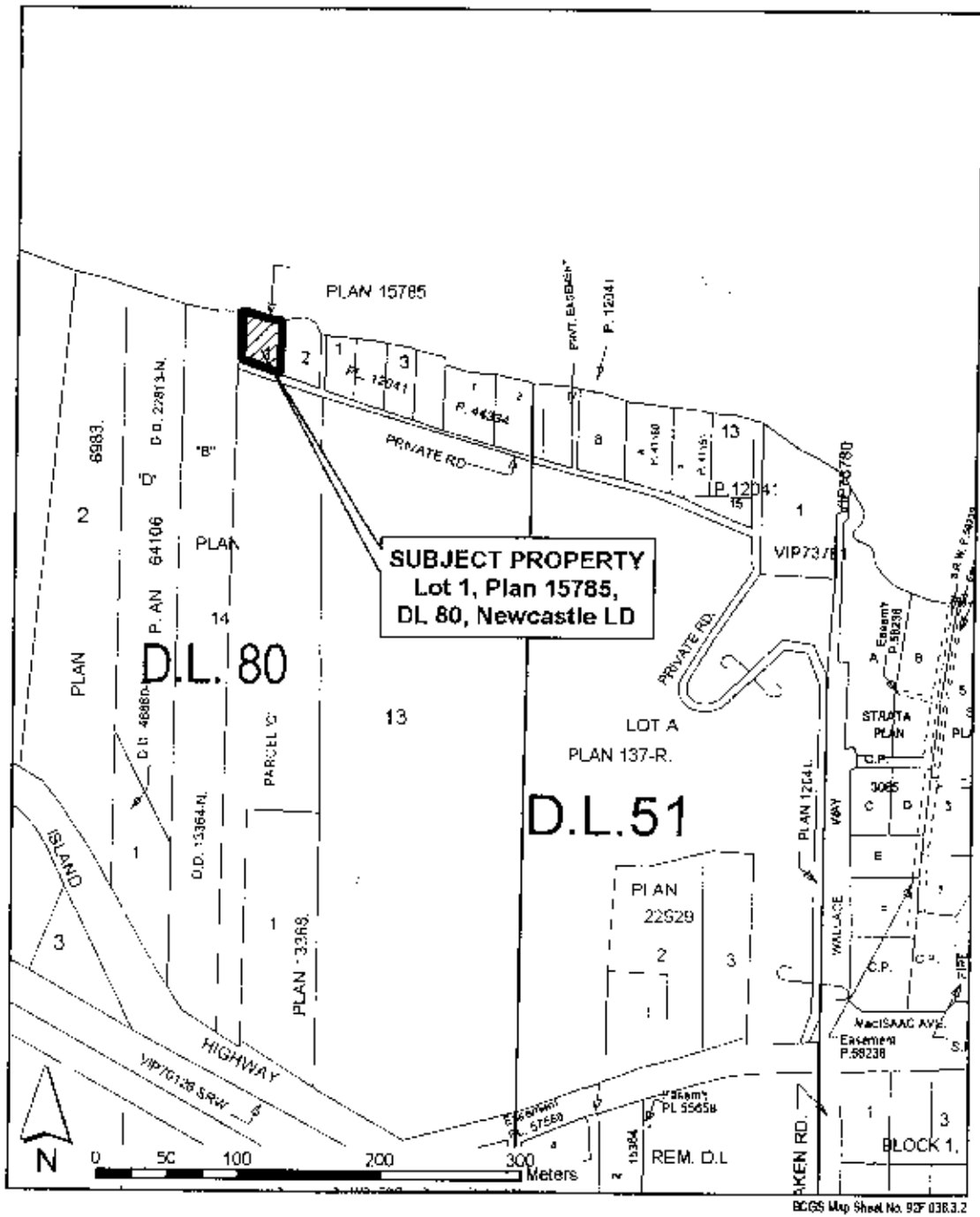
Schedule No. 4
House Plan (1 of 2)
Development Permit No. 60332



Schedule No. 4
House Plan (2 of 2)
Development Permit No. 60332



Attachment No. 1
Subject Property
Development Permit No. 60332





REGIONAL DISTRICT OF NANAIMO	
JUN 13 2003	
CHAIR	GMCrs
GAO	GMDS
GMCms	GMES
Call	

MEMORANDUM

TO: Pamela Shaw
Manager, Community Planning

DATE: June 13, 2003

FROM: Deborah Jensen
Planner

FILE: 3090 30 90313

SUBJECT: Development Variance Permit Application No. 90313 - Alexander Electoral Area 'H' - 5093 Seaview Drive

PURPOSE

To consider an application for a Development Variance Permit to legalize the construction of a retaining wall along a steep bank on a property located along Seaview Drive in Electoral Area 'H'. This application includes variances to setbacks for the retaining wall.

BACKGROUND

This is an application for a development variance permit 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', for the property legally described as Lot 4, District Lot 28, Newcastle District, Plan 22249 on Seaview Drive (see Attachment No. 1). Setback variances requested in this application include the western interior side lot line and setback to a watercourse.

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 and interior side lot lines; and 5.0 metres from other lot lines. Although a steep bank crosses the property, neither the bank nor the culverted watercourse are contained within environmentally sensitive or hazard lands development permit areas pursuant to the "Shaw Hill - Deep Bay Official Community Plan Bylaw No. 1007, 1996." Therefore, there are no development permit requirements for setbacks in addition to the aforementioned zoning bylaw requirements.

The adjacent property owner constructed on the subject and neighbouring property a rip rap retaining wall approximately three years ago. Construction of this wall also included placement of fill, thereby retaining a large amount of earth and covering the culverted watercourse. All works pertaining to this watercourse were constructed with approval from the Ministry of Environment, Ministry of Transportation, and Department of Fisheries and Oceans. A geotechnical report was also prepared and indicates the retaining wall has been constructed to good engineering standards.

However, as the retaining wall is more than one metre in height, it is considered a structure under Bylaw No. 500 and, therefore, this application includes variances for placement of the existing rip rap retaining wall. Specifically, the variances addressed in this application include relaxation of the west interior side lot line from 2.0 metres to 0.0 metres, and 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 the existing retaining wall. That portion of the retaining wall located on the adjacent property has already been approved by Development Variance Permit No. 0304, issued in May 2003.

Legal Notations

An easement is registered to the title of the property for construction and maintenance of culvert and drainage structures on the subject property, and indicates the adjacent property owner is responsible for any required works within the easement area. A notation for a restrictive covenant, indicating the presence of a building scheme, is also registered to the title of the subject property, but is not pertinent to the content of this application.

ALTERNATIVES

1. To approve Development Variance Permit No. 90313 subject to the conditions outlined in Schedule No. 1.
2. To deny the requested permit.

LAND USE AND DEVELOPMENT IMPLICATIONS

The subject property is a residential lot that is bordered by Shoreline Drive to the north and Seaview Drive to the south. Seaview Drive provides access to the site, where the terrain of the lot is level. The northern portion of the site slopes steeply down to Shoreline Drive, and this embankment leading down to Shoreline Drive remains heavily vegetated. An existing dwelling unit is located at the top of the embankment. The culverted watercourse flows along the west property line of the site, and exits from the culvert at the base of the retaining wall, continuing its course from the diffuser down toward Shoreline Drive (*see Schedule No. 2*).

This watercourse was originally subject to works in 1999 that resulted in placement of the creek within a culvert through a portion of the site. These works received approval from the Ministry of Environment, Ministry of Transportation, and the Department of Fisheries and Oceans. As noted above, the placement of fill and construction of a rip rap retaining wall occurred subsequent to watercourse alteration and a development variance permit is required for construction of the retaining wall. The adjacent property, also affected by this retaining wall, has already applied for and received a development variance permit for that part of the wall located on the neighbouring property.

During the development variance permit application process for the adjoining property, community residents expressed concerns regarding potential negative impacts of construction of the wall. Specifically, these comments focused on slope stability and watercourse protection. The geotechnical report, prepared by Lewkowich Geotechnical Engineering Ltd. states that placement of fill and construction of the retaining wall does not affect stability of the slopes, and does not negatively impact any natural drainage within the area. In addition, the caliber of drainpipe used in culverting the watercourse should sustain the placement of the retaining wall and its associated weight. The wall itself was examined during installation, and is considered to be of good construction and geotechnically safe and suitable for fill support. All relevant agencies, including the Ministry of Water, Land and Air Protection and the Ministry of Transportation, are satisfied with works that have been completed on site.

As previously noted, a development variance permit has already been issued for that portion of the retaining wall located on the adjacent property. If no variance is granted for the portion of the wall located on the subject property, then those works required to remove the structure could have significant impacts on the slope and watercourse, including restructuring of the remaining wall, and potential erosion of material down the slope and into the watercourse.

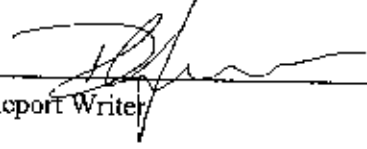
SUMMARY/CONCLUSIONS

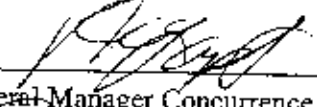
This is an application for a development variance permit to legalize the existing rip rap retaining wall. The application includes requests to vary the minimum permitted setbacks from the west interior side lot line and from a watercourse for placement of the retaining wall.


This report addresses the existence of a rip rap retaining wall and placement of fill on the subject property, including along a culverted watercourse. Approvals have been received from the Ministry of Environment, Ministry of Transportation, and the Department of Fisheries and Oceans. A geotechnical report for the property indicates the retaining wall is of safe construction and considered geotechnically sound. Therefore, staff recommends this application be approved subject to the conditions outlined in Schedule No. 1 of this report, and subject to the notification procedures pursuant to the *Local Government Act*.

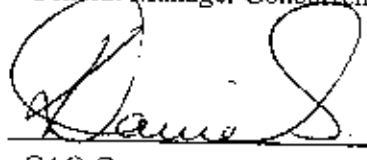
RECOMMENDATION

That Development Variance Permit Application No. 90313, submitted by Kathryn Alexander, 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 property legally described as Lot 4, 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


General Manager Concurrence


Manager Concurrence


CAO Concurrence

COMMENTS:

devsvs/reports/2000V

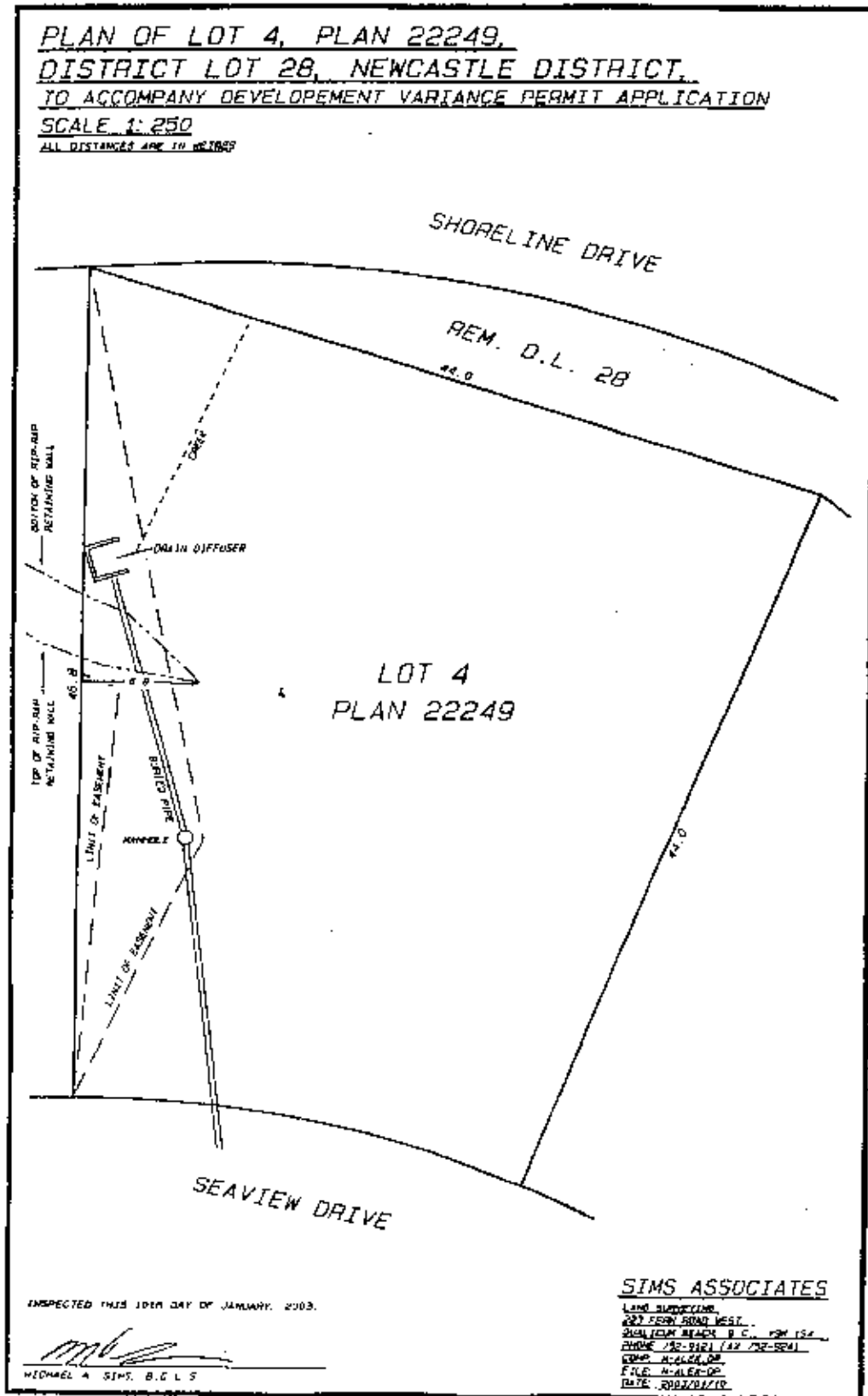
Schedule No. 1
Conditions of Approval
Development Variance Permit No. 90313

1. Registration of a Section 219 covenant pertaining to the geotechnical report, as prepared by Lewkowich Geotechnical Engineering Ltd. The covenant shall stipulate 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.

The following variances are approved based upon completion of the above-noted conditions:

- a) relaxation of west interior side lot line from 2.0 metres to 0.0 metres to legalize the existing retaining wall; and
- 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 the existing retaining wall.

Schedule No. 2
 Site Plan
 Development Variance Permit No. 90313



**Attachment No. 1
Subject Property Map**

