

REGIONAL DISTRICT OF NANAIMO
ELECTORAL AREA PLANNING COMMITTEE
TUESDAY, OCTOBER 10, 2006
6:30 PM

(RDN Board Chambers)

A G E N D A

PAGES

CALL TO ORDER

DELEGATIONS

- 3 **Allen Meyer**, re Development Variance Permit Application No. 90616 – Meyer
– 3512 Bluebill Place – Area E. (Package included as separate enclosure)

MINUTES

- 4-7 Minutes from the regular meeting of the Electoral Area Planning Committee held
September 12, 2006.

BUSINESS ARISING FROM THE MINUTES

PLANNING

DEVELOPMENT PERMIT APPLICATIONS

- 8-18 Development Permit Application No. 60624 – Fern Road Consulting Ltd. on
behalf of A G Project Management Inc. – McColl Road – Area H.
- 19-29 Development Permit Application No. 60651 – Anderson/Sims – 5151 Island
Highway West – Area H.

DEVELOPMENT VARIANCE PERMIT

- 30-39 Development Variance Permit Application No. 90608 – Zajes/Sims – 2260
Alberni Highway – Area F.
- 40-47 Development Variance Permit Application No. 90620 – Dave Scott for 3536696
Canada Inc – 2360 Bonnington Drive – Area E.

OTHER

- 48-52 Request for Relaxation of the Minimum 10% Perimeter Requirement – Fern
Road Consulting Ltd., on behalf of Arthur Coben & Peter Swann – 510 & 530
Grovehill Road – Area H.
- 53-59 Request for Relaxation of the Minimum 10% Perimeter Frontage Requirement –
Timberlake-Jones Engineering Ltd., on behalf of 699399 BC Ltd. – off
Northwest Bay Road – Area E.

ADDENDUM

BUSINESS ARISING FROM DELEGATIONS OR COMMUNICATIONS

NEW BUSINESS

IN CAMERA

ADJOURNMENT

Allen Meyer

From: Allen Meyer [aameyer@shaw.ca]

Sent: ~~Wednesday, September 13, 2006 9:54 PM~~

Oct. 2, 2006.

To: ~~'gkeller@rdn.bc.ca'~~

Linda.

Subject: development application # 90616 Allen and Linda Meyer

To Greg Keller, RDN Planning Department

Please consider this my application to speak at the ~~September 26, 2006 board~~ meeting.

October 10 planning committee

I desire to represent myself and Linda before the meeting in order to confirm with the board that the proposed beach access stairs have been designed with consideration of the environmental impact, safety for those using the stairs and with consideration for both neighbors and marine traffic. The design has been changed once to hopefully accommodate the wishes of neighbors with accompanying structural engineering approval. I understand the allotted time to be ten minutes or less.

Thank you for your consideration,

Allen Meyer

10/1/2006

REGIONAL DISTRICT OF NANAIMO

**MINUTES OF THE ELECTORAL AREA PLANNING COMMITTEE
MEETING HELD ON TUESDAY, SEPTEMBER 12, 2006, AT 6:30 PM
IN THE RDN BOARD CHAMBERS**

Present:

Director J. Stanhope	Chairperson
Director J. Burnett	Electoral Area A
Director M. Young	Electoral Area C
Alternate	
Director F. Van Eynde	Electoral Area E
Director L. Biggemann	Electoral Area F
Alternate	
Director D. Heenan	Electoral Area H

Also in Attendance:

C. Mason	Chief Administrative Officer
W. Moorman	Manager of Engineering Standards & Subdivisions
J. Finnie	General Manager of Environmental Services
T. Osborne	General Manager of Recreation & Parks
M. Pearse	Manager of Administrative Services
N. Avery	Manager of Financial Services
N. Tomn	Recording Secretary

CALL TO ORDER

The Chairperson welcomed Alternate Directors Van Eynde, Heenan and the new General Manager of Development Services, Paul Thorkelsson, to the meeting.

DELEGATIONS

Brenda Arthur, re Budget Steel – 2073 Main Road – Area A.

Ms. Arthur provided a short history of the property and the previous development permit which was issued in 1998 and provided written background information as well as circulating informational pictures to the Committee for their information.

David Dunaway, re Budget Steel – 2073 Main Road – Area A.

Mr. Dunaway raised his concerns with Budget Steel's continued practice of receiving vehicles containing fluids which could possibly contaminate surface groundwater and eventually, the Cassidy aquifer.

LATE DELEGATIONS

MOVED Director Burnett, SECONDED Director Van Eynde, that two late delegations be permitted to address the Committee.

CARRIED

Will Burrows, Budget Steel, re Budget Steel – 2073 Main Road – Area A.

Mr. Burrows, Manager of Budget Steel, provided an overview of Budget Steel's operating practices and stressed their commitment to resolving any outstanding issues through their recent development permit application.

Allen Meyer, re Development Variance Permit Application No. 90616 – Meyer – 3512 Bluebill Place – Area E.

Mr. Meyer spoke in favour of DVP Application No. 90616 and provided the Committee with additional written information with respect to the application.

MINUTES

MOVED Director Burnett, SECONDED Director Biggemann, that the minutes of the Electoral Area Planning Committee meeting held July 11, 2006 be adopted.

CARRIED

PLANNING

DEVELOPMENT PERMIT APPLICATIONS

Development Permit Application No. 60644 – D & B McKee – 5061 Island Highway West – Area H.

MOVED Director Heenan, SECONDED Director Biggemann, that Development Permit Application No. 60644, to allow the construction of a dwelling, be approved according to the terms outlined in Schedule No. 1.

CARRIED

Development Permit Application No. 60645 – Cloarec – 2615 Noble Road – Area E.

MOVED Director Van Eynde, SECONDED Director Young, that Development Permit Application No. 60645, to allow for the construction of a dwelling unit at 2615 Noble Road, be approved according to the terms outlined in Schedule No. 1.

CARRIED

Development Permit Application No. 60648 – Fern Road Consulting Ltd., on behalf of R. & L. Wells – 677/669 Barclay Crescent North – Area G.

MOVED Director Burnett, SECONDED Director Young, that Development Permit Application No. 60648 submitted by Fern Road Consulting Ltd., on behalf of R. & L. Wells in conjunction with the subdivision on the parcels legally described as Lots 2 & 3, District Lot 28, Nanoose District, Plan 23031 and designated within the Sensitive Lands Development Permit Area pursuant to the “French Creek Official Community Plan Bylaw No. 1115, 1998”, be approved, subject to the conditions outlined in Schedule Nos. 1 and 2 of the corresponding staff report.

CARRIED

DEVELOPMENT VARIANCE PERMIT

Development Variance Permit Application No. 90616 – Meyer – 3512 Bluebill Place – Area E.

MOVED Director Van Eynde, SECONDED Director Burnett, that Development Variance Permit No. 90616 to legalize the existing beach access stairs as shown on Schedule No. 2 located at 3512 Bluebill Place, be approved subject to the terms outlined on Schedule No. 1, and that staff do the following:

- a) Develop a policy for the Board’s consideration regarding the appropriate development of beach access stairs, and the associated staff review of development variance permit applications.
- b) Proceed with seeking a Court Order to have the stairs removed, to comply with Bylaw No. 500 and Bylaw No. 1250 if the applicants do not meet the terms of Schedule No. 1 within 90 days from the date of the issuance of Development Variance Permit 90616.

CARRIED

Development Variance Permit Application No. 90618 – Allen and Parker – 448 Manse Road – Area G.

MOVED Director Burnett, SECONDED Director Young, that Development Variance Permit Application No. 90618, to relax the front lot line setback from 8.0 metres to 4.6 metres, to legalize an existing garage at 448 Manse Road, be approved according to the terms outlined in Schedule No. 1, and subject to the Board's consideration of comments received as a result of public notification.

CARRIED

Development Variance Permit Application No. 90619 – JE Anderson, BCLS on behalf of M. Porter – Spring Place – Area F.

MOVED Director Biggemann, SECONDED Director Van Eynde, that Development Variance Permit Application No. 90619, submitted by JE Anderson, BCLS, on behalf of M. Porter, to vary the minimum lot frontage requirement as shown on Schedule No. 3 in conjunction with a 2-lot subdivision proposal of Lot B, Block 544, Nanoose District, Plan VIP60806, be approved subject to the conditions set out in Schedule Nos. 1 and 2 and to the notification procedure pursuant to the *Local Government Act*.

CARRIED

OTHER

Request for Relaxation of the Minimum 10% Frontage Requirement – L. & C. Addison, on behalf of Wessex Enterprises Ltd. – Midora & Extension Roads – Area C.

MOVED Director Young, SECONDED Director Burnett, that the request for relaxation of the minimum 10% frontage requirement for proposed Lots 7 and 8 in conjunction with the subdivision application for Parcel Z (DD K83923), Section 13, Range 1 and Sections 12 and 13, Range 2, Cranberry District, be approved subject to the conditions set out in Schedule Nos. 1 and 2 of the staff report.

CARRIED

Riparian Areas Regulation Stream Declaration Policy.

MOVED Director Young, SECONDED Director Biggemann, that the Riparian Areas Regulation Stream Declaration Policy, attached to the staff report, be approved.

CARRIED

Incorporating Green Shores Project Principles into RDN Bylaws.

MOVED Director Young, SECONDED Director Heenan, that the Board direct staff to consider policies and development permit area guidelines regarding Green Shores' principles for inclusion in all future official community plan reviews.

CARRIED

BUSINESS ARISING FROM DELEGATIONS OR COMMUNICATIONS

Budget Steel – Development Permit Application.

MOVED Director Burnett, SECONDED Director Young, that staff review the Budget Steel file with the RDN lawyer to obtain a legal opinion as to whether or not the conditions as set out in the existing Development Permit can be enforced and other matters related to Budget Steel's operation; and that staff report back to the next Board meeting.

CARRIED

ADJOURNMENT

MOVED Director Young, SECONDED Director Van Eynde, that this meeting terminate.

CARRIED

TIME: 7:20 PM

CHAIRPERSON



CAO	GMES		
GMCS	GMR&P		
GMDS	GMRT&P		
OCT 3 - 2006			
CHAIR	BOARD		
EAP.			

MEMORANDUM

TO: Jason Llewellyn
Manager, Community Planning

DATE: October 3, 2006

FROM: Greg Keller
Planner

FILE: 3060 30 60624

SUBJECT: Development Permit Application No. 60624
Fern Road Consulting Ltd. on behalf of A G Project Management Inc.
Electoral Area 'H' – McColl Road

PURPOSE

To consider an application for a Development Permit with variances to permit the construction of a single dwelling unit within the Environmentally Sensitive Features and Hazard Lands Development Permit Areas on McColl Road in Electoral Area 'H'.

BACKGROUND

The subject property is legally described as Lot 12, District Lot 85, Newcastle District, Plan 2018, Except Part in Plan 3803 and Except Parcel A (DD 70745N) and located in the Bowser area in Electoral Area 'H'. It is adjacent to Eastdowne Road (unconstructed) on the north, the Strait of Georgia on the northeast, McColl Road (unconstructed) on the southeast, and the Island Highway on the southwest. This property is a part of a larger parcel, which is in the process of being subdivided. This application is consistent with the terms of Development Permit No. 60553, which was issued to allow the subdivision.

The subject parcel is designated within the Hazard Lands and Environmentally Sensitive Features development permit areas pursuant to "Regional District of Nanaimo Electoral Area 'H' Official Community Plan Bylaw No. 1335, 2003." The Highway Corridors Development Permit Area for the form and character of commercial, industrial, or multi-family residential development does not apply. The parcel is zoned Residential 2 (RS2) Subdivision District 'M' pursuant to the "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987." The subject property is not located within a building inspection area; therefore, a building permit is not required for the construction of the structures, and the regulations of "Floodplain Bylaw No. 1469" do not apply.

The proposed lot is approximately 0.4 ac. (1600m²) in size and contains a steep slope approximately 10.0 metres in height next to the Island Highway and a flat portion which extends upland from the natural boundary approximately 30.0 metres. The shoreline adjacent to the subject property is gently sloping and shows no apparent signs of erosion. There is native vegetation established on the shoreline as well as the area of the subject property adjacent to the ocean. The subject property has accreted and the applicant has received permission from the Surveyor Generals office for the accretion. Therefore, the setbacks shown on Schedule No. 2 are shown from the new lot line after the registration of the accretion.

The site contains a watercourse, which enters the property from a pipe under the highway. This watercourse disappears into the gravel before it reaches the beach. This is not considered a watercourse under the Riparian Areas Regulations (RAR). However, the zoning bylaw setbacks from a watercourse apply. The proposed dwelling unit complies with the minimum required setbacks from a watercourse.

This application was scheduled to be considered by the Electoral Area Planning Committee (EAPC) on June 13, 2006. The applicant withdrew the application prior to being considered by the EAPC in order to reconsider the siting of the dwelling unit in order to improve access in to the proposed attached garage. The applicant resubmitted an amended proposal that included a shoreline protection device/breakwater (retaining wall) approximately 1.9 metres in height and 7.0 metres in width. Staff provided the applicant with a copy of the Development Permit Area guidelines and the Board policy on Marine Retaining Walls for consideration. Upon further consideration, and discussions with staff, the applicant amended the proposal by removing the shoreline protection device.

Proposed Development

This application includes a request to vary "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987" as follows:

- a) Section 3.4.62 – **Maximum Number and Size of Buildings and Structures** is proposed to be varied by increasing the maximum dwelling unit height from 8.0 metres to 9.6 metres for the dwelling unit shown on Schedule No. 3 and generally sited as shown on Schedule No. 2.
- b) Section 3.4.62 – **Minimum Setback Requirements** is proposed to be varied by relaxing the minimum required setback from all lot lines from 5.0 metres to 2.1 metres for the dwelling unit shown on Schedule No. 3 and generally sited as shown on Schedule No. 2.
- c) Section 3.4.62 – **Minimum Setback Requirements** is proposed to be varied by relaxing the exterior side lot line from 5.0 metres to 4.5 metres in order to allow the construction of a retaining wall.

ALTERNATIVES

1. To approve Development Permit Application No. 60624, as submitted, according to the terms in Schedule No. 1 and subject to the Board's consideration of the comments received as a result of public notification.
2. To deny the Development Permit as submitted.

DEVELOPMENT IMPLICATIONS

Slope Stability

As required by the Hazard Lands Development Permit Area guidelines, the applicant has submitted both a Preliminary Geotechnical Assessment, which sets out requirements for the development for the parent parcel with some specifics for the subject parcel, and a Preliminary Geotechnical Design Report, which sets out requirements specific to the subject parcel for the house foundations and slope issues, including the driveway, retaining wall, and vegetation retention.

All construction adjacent to the existing slope must have a drainage system consisting of free-draining gravel and perimeter drain to prevent the build-up of water pressures and possible seepage problems. No water should be discharged on the slope. The applicant has agreed to have these reports registered on title as a section 219 covenant.

The Ministry of Transportation has required that the watercourse entering the property from under the highway be piped in order to deal with erosion issues on the embankment. The applicant has submitted approval from the Ministry of Transportation to construct works designed by Newcastle Engineering for the drainage of the redirected water from the parent parcel.

Floor Elevation and Building Height

The proposed dwelling unit has a design height of 7.9 metres. However, because the geotechnical engineer has determined that the underside of the floor must be raised to a point that is 1.5 metres above the present natural boundary of the ocean, the applicant is requesting a height variance of 1.6 metres to allow a height of 9.6 metres above natural grade.

As the dwelling is at the bottom of a slope, its highest ridge will be below the elevation of the Island Highway. Therefore, the height variance is not expected to have any impact on the views from adjacent properties.

Environmental Protection

The applicant has agreed to limit vegetation removal to that which is required to reasonably construct the proposed dwelling unit and one beach access trail. The applicant has agreed to retain the natural state of the marine foreshore. Given the site constraints, the dwelling is sited in the area of least impact on the environment and slope; and the proposed vegetation retention area is appropriate.

Setback Reductions

Given the setback from the ocean, the location of the watercourse, the siting of the sewage disposal system, and the desire to reduce disturbance of the steep bank, it is recommended that the dwelling be sited 2.1 metres from the McColl Road right-of-way. The grades also dictate that a retaining wall over 1.0 metre in height is required to construct the driveway. As this retaining wall is over a metre in height, it requires a setback relaxation from 8.0 metres to 0.0 metres on McColl Road and from 5.0 metres to 4.5 metres from the Island Highway.

The design of the access from McColl Road is shown on Attachment No. 2. A Geotechnical Design Report was submitted in regards to the driveway and retaining wall to be built alongside the embankment on the southwest. The applicant has applied to the Ministry of Transportation (MOT) to have their setback relaxed from 4.5 metres to 0.0 metres along the unconstructed portion of McColl Road.

The MOT has given verbal approval to the design shown on Attachment 2. It is recommended that the Board approve the permit and direct staff to not issue the permit until written approval from the MOT is received.

Public Consultation Process

As part of the required public notification process pursuant to the *Local Government Act*, adjacent and nearby property owners located within a 50.0 metre radius will receive a direct notice of the proposal and will have an opportunity to comment on the proposed variance prior to the Board's consideration of the permit.

VOTING

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

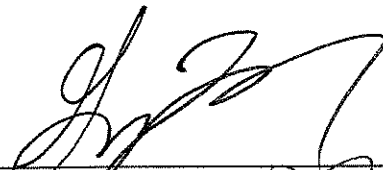
SUMMARY

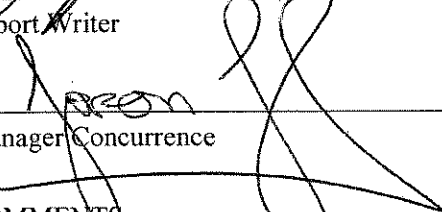
This is an application for a Development Permit with variances to permit the construction of a single dwelling unit within the Environmentally Sensitive Features and Lands Development Permit Areas on McColl Road in Electoral Area 'H'.

In staff's assessment of this application, the applicants have adequately addressed the Development Permit Area guidelines. In addition, in staff's opinion, the applicant has adequately addressed the safety and drainage issues in accordance with the recommendations of a geotechnical engineer, and the proposed variances do not appear to have any impact on the views from the adjacent properties. Staff is also of the opinion that the environmental issues have also adequately been addressed. Therefore, staff recommends, Development Permit Application No. 60624 with variances be approved subject to the terms outlined in Schedule No. 1 and subject to the Board's consideration of the comments received as a result of public notification.

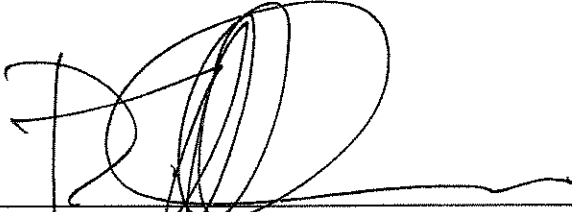
RECOMMENDATIONS


That Development Permit Application No. 60624, with variances to allow the construction of a dwelling on McColl Road, be approved according to the terms outlined in Schedule No. 1 and subject to consideration of the comments received as a result of public notification.



Report Writer


Manager Concurrence



General Manager Concurrence


CAO Concurrence

COMMENTS:
devsvs/reports/2006/dp oc 3060 30 60624 AG Project Management Inc Report

Schedule No. 1 (Page 1 of 3)
Terms of Development Permit
Application No. 60624

Issuance of Permit

Prior to the issuance of the permit, the applicant shall complete the following:

1. at the applicant's expense and to the satisfaction of the Regional District of Nanaimo, register a Section 219 covenant registering the Geotechnical Report and addendum and any subsequent addendums, including a save harmless clause saving the Regional District of Nanaimo from any action or loss that might result from flooding or erosion and priority agreement.
2. The applicant shall submit written proof from the Ministry of Transportation that the provincial lot line setback has been relaxed to accommodate the proposed development and provide written proof that the Ministry of Transportation has approved the proposed access off of McColl Road.

Proposed Variances

3. The following variances apply to the dwelling unit and the retaining walls constructed in substantial compliance with Schedules No. 2 and 3:
 - a) Section 3.4.62 – **Maximum Number and Size of Buildings and Structures** is proposed to be varied by increasing the maximum dwelling unit height from 8.0 metres to 9.6 metres for the dwelling unit shown on Schedule No. 3 and generally sited as shown on Schedule No. 2.
 - b) Section 3.4.62 – **Minimum Setback Requirements** is proposed to be varied by relaxing the minimum required setback from all lot lines from 5.0 metres to 2.1 metres for the dwelling unit shown on Schedule No. 3 and generally sited as shown on Schedule No. 2.
 - c) Section 3.4.62 – **Minimum Setback Requirements** is proposed to be varied by relaxing the exterior side lot line from 5.0 metres to 4.5 metres in order to allow the construction of a retaining wall.

Development Permit No. 60624

4. The conditions of Development Permit No. 60624 are applicable except as specifically varied or amended by this Permit, including the following:
 - a) Construction of septic management systems shall be, at a minimum, in accordance with the recommendations set out by EBA Engineering Consultants Ltd. concerning septic management (minimum Type 2 pre-treatment of septic waste prior to pressurized disposal into mounded septic field beds in accordance with the 2005 BC Sewage System Regulation).

**Terms of Development Permit
Application No. 60624**

Site Development

5. The site development must be completed in substantial compliance with Schedules No. 1, 2, and 3.
6. All placement of buildings and structures to be undertaken must be consistent with "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987", except where varied by this permit.
7. The applicant shall develop the site in accordance with *Provincial* and *Federal* regulations. It is the responsibility of the landowner to ensure that all works on the lands are in compliance with the applicable *Provincial* and *Federal* regulations.

Geotechnical

8. The applicant shall develop and maintain the subject property in accordance with the recommendations established by the Geotechnical Reports prepared by EBA Engineering Consultants dated July 2005 and May 2006 and any subsequent geotechnical reports.
9. Sediment and erosion control measures must be utilized to control sediment during construction in order to stabilize the site after construction is complete. These measures must include:
 - a) Exposed soils must be seeded as soon as possible to reduce erosion during rain events;
 - b) Tarps, sand bags, poly plastic sheeting, and/or filter fabric are required to be on-site during the works;
 - c) Temporary fill or soil stockpiles must be covered with polyethylene or tarps; and,
 - d) The discharge of surface drainage, including drainage from perimeter drains, roof leaders, driveways, and other hard surfaces shall be directed away from the ocean and away from the base of the slope.
10. Any retaining wall construction that is to be constructed along the sloped southwest side of the property must be engineered, and the construction must be supervised by an engineer.

Survey

11. A final survey prepared by a British Columbia Land Surveyor shall be submitted by the applicant to the Regional District of Nanaimo that shows the siting and height of the dwelling, drainage works, driveway, and retaining wall within 60 days of the date of completion of the proposed works.

Ministry of Transportation

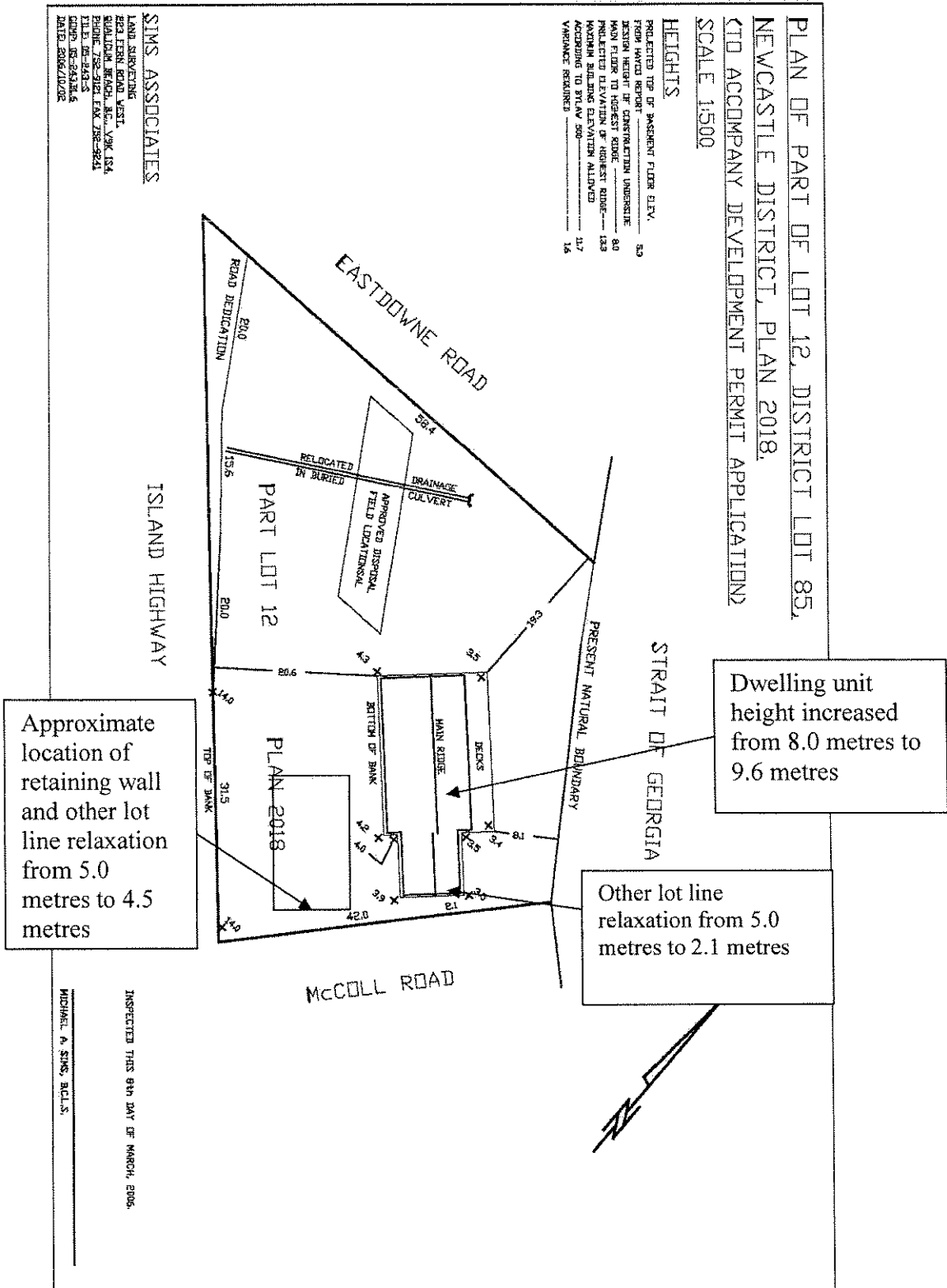
12. The subject property shall be developed in accordance with all requirements of the Ministry of Transportation (MOT). Issuance of this development permit is to be withheld until written approval is received from MOT concerning the access permit and building setback relaxations.

Schedule No. 1 (Page 3 of 3)
Terms of Development Permit
Application No. 60624

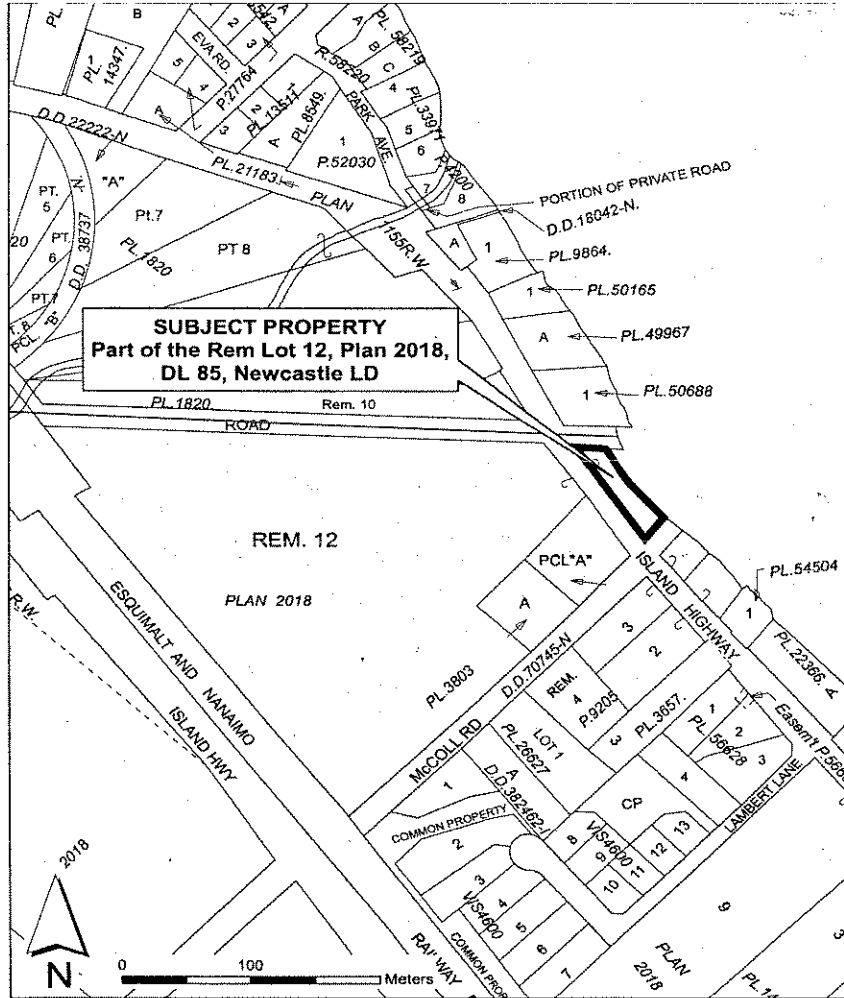
Vegetation

13. Vegetation removal shall be limited to that which is reasonable required to permit the construction of the proposed dwelling unit and one beach access trail less than 1.0 metre in width. Any additional land alteration or vegetation removal new in this area is subject to the applicable Development Permit Area guidelines.
14. Additional planting of trees, shrubs, or groundcovers for the purpose of enhancing the habitat values and/or soil stability is permitted within the Development Permit Area provided the planting is carried out in accordance with the guidelines provided in Stream Stewardship, 1993 and Land Development Guidelines, 1992 publications by the Department of Fisheries and Oceans Canada and the Ministry of Environment and the Environmental Requirements and Best Management Practices for the Review of Land Development Proposals, March 2001, publication by the Ministry of Environment and subsequent editions prior to commencing work.

Schedule No. 2
Development Permit No. 60624
Site Survey



Attachment No. 1
Location of Subject Property
Development Permit 60624





R D N			
CAO	(NW)	GMES	
GMCS		GMR&P	
GMDS		GMRT&P	
OCT 2 - 2006			
CHAIR		BOARD	
DP			

MEMORANDUM

TO: Jason Llewellyn
Manager of Community Planning

DATE: October 2, 2006

FROM: Greg Keller
Planner

FILE: 3060 30 60651

SUBJECT: Development Permit Application No. 60651 – Anderson/Sims
Electoral Area 'H' – 5151 Island Highway West

PURPOSE

To consider an application for a Development Permit with variances to permit the construction of a single dwelling unit, legalize the siting of a two existing accessory buildings and one deck, and permit the decommissioning of an existing single dwelling unit and septic field.

BACKGROUND

This application is for the property legally described as Lot 3, District Lot 81, Newcastle District, Plan 7071. The subject property is 1.36 hectares in area and is located at 5151 Island Highway West in Electoral Area 'H' (see Attachment No. 1). The subject parcel is zoned Rural 1 Subdivision District 'D' (RU1D) pursuant to "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987."

The RU1 zone permits a maximum of 2 dwelling units per parcel on parcels having an area greater than 2.0 hectares and requires a minimum setback of 8.0 metres from all lot lines. As the area of the subject parcel is less than 2.0 hectares only one dwelling unit is permitted. Bylaw No. 500 requires a minimum setback of 8.0 metres horizontal distance inland from the top of a slope of 30% or greater. The existing single dwelling unit, deck, and accessory buildings have been sited in their current location for a number of years with no objections received from adjacent property owners.

The subject property is located within the Hazard Lands and Environmentally Sensitive Features Development Permit Areas pursuant to "Regional District of Nanaimo Electoral Area 'H' Official Community Plan Bylaw No. 1335, 2003." Please note the Environmentally Sensitive Features Development Permit Area guidelines are not applicable to the proposed development as the building site is located outside of this Development Permit Area.

The northern half of the subject parcel has been designated within the Hazard Lands Development Permit Area due to a steep bank sloping down towards the ocean. Since the proposed development is within the Hazard Lands Development Permit Area, a development permit is required.

In order to satisfy the Hazard Lands Development Permit Area guidelines, the applicant has submitted a geotechnical report dated January 11, 2006 and addendums dated September 20, 2006 and October 2, 2006 prepared by Ground Control Geotechnical Engineering addressing the proposed development and existing deck on the subject parcel. The applicants also submitted an engineering report proposing

drainage improvements on the subject property and on Driftwood Road Right of Way and assessing the structural integrity of the deck.

The subject parcel is currently developed with a dwelling unit, two accessory buildings, and a deck. The existing dwelling unit is located approximately 4.5 metres from the top of the bank, the existing deck overhangs the bank, and the existing accessory buildings are approximately 24.3 metres from the top of the bank but encroach on to the driftwood road right of way by 0.2 metres and 1.3 metres. The proposed dwelling unit is located approximately 21.4 metres from the top of the bank and exceeds the maximum permitted height of 9.0 metres by 0.9 metres. Therefore the applicants are requesting variances to legalize the siting of the existing accessory buildings and to permit the construction of an over height dwelling unit.

Proposed Variances

This application includes a request to vary "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987" as follows:

1. Section 3.3.9– **Setbacks - Sea** is proposed to be varied by relaxing the minimum setback requirement from the top of a slope of 30% or greater from 8.0 to 0.0 metres horizontal distance from the top of the slope for the deck shown on schedule No. 2.
2. Section 3.4.81 – **Maximum Number and Size of Buildings and Structures** is proposed to be varied by increasing the maximum dwelling unit height from 9.0 metres to 9.9 metres for the dwelling unit shown on Schedule No. 3 and generally sited as shown on Schedule No. 2.
3. Section 3.4.81 – **Minimum Setback Requirements** is proposed to be varied by relaxing the minimum required setback from all lot lines from 8.0 metres to 0.0 metres for the two accessory buildings labeled 'shed' on Schedule No. 2.

ALTERNATIVES

1. To approve the requested variances and development permit subject to the terms outlined in Schedule Nos. 1, 2, and 3 and subject to the Board's consideration of the comments received as a result of public notification.
2. To deny the requested variance and development permit as submitted.

DEVELOPMENT IMPLICATIONS

Geotechnical Implications

The geotechnical report submitted by the applicant found the site to be stable from a geotechnical perspective and suitable for the intended use if developed in accordance with its recommendations.

The report recommends that no buildings be located within 10.0 metres of top of the bank. With respect to the deck, the applicant has submitted two addendums specifically reviewing the deck. The deck was found to be safe for the intended use, provided the applicant complies with the following conditions:

1. Use of the deck is restricted to an occasional basis.
2. No modifications can occur to the deck for the purpose of residential occupancy (i.e. no roofs or walls, or used as a living quarters.
3. No heavy items such as hot tubs, large planters, are permitted without prior engineering assessment.
4. The owners must maintain the deck, deck supports, and foundations in a good state of repair throughout the service life of the structure.
5. The present and future owners must accept that due to the decks proximity to the slope that there is a small degree of risk to physical damage to the deck due to potential rare conditions such as small to moderate earthquake or an unusually intense rainfall event.

In order to ensure that the present and future owners are aware of the potential risk associated with the deck and development of the subject parcel, staff recommends, that prior to the issuance of the corresponding permit, that the applicant be required to register a Section 219 covenant and save harmless agreement registering all engineering reports and addendums. The applicant has concurred with this request.

Structural Implications

The applicant's structural engineering report found the structure to be safe for the indented use without further modification. As the subject property is not located in a building inspection area, no building permit is required.

Drainage

With respect to drainage, the applicant's engineering report recommends that surface water should be collected with a combination of perforated french drains, ditches, and pipes and directed to a common point located at the northwest corner of the property before being directed down the slope in a pipe, which should be anchored in to the glacial till in the slope. The water outlet should be located past the toe of the slope on the beachfront below. The drainage report was reviewed by the applicant's engineer, who found the proposed drainage works to be beneficial to the stability of the slope.

Land Use and Development Implications

The existing dwelling unit and accessory buildings have been in their current location for many years with no record of complaints received from the adjacent property owners. The existing accessory buildings were constructed to close to the Driftwood Road right-of-away, which is primarily undeveloped. Both accessory buildings encroach on to the road right of way, one by 0.2 metres and the other by 1.3 metres. The applicant's agent has spoke with the Ministry of Transportation regarding the encroachment. The applicant's agent has advised that the Ministry has verbally approved the encroachment and that written approval is anticipated prior to the Board's consideration of this application. The existing deck was constructed by the previous property owners without a Development Permit or variance and has been there for a number of years. The structure has recently been upgraded.

The south portion of the subject parcel and the building site are gently sloping before sloping steeply down towards the ocean. The subject parcel is separated from the adjacent parcel to the east by Driftwood Road (a partially undeveloped road allowance). There are significant ocean views from the subject parcel and adjacent properties. However, the proposed variances would not negatively affect the ocean view from the adjacent properties given the topography of the land and the existing mature vegetation between properties.

Based on the size of the parcel (1.36 hectares), only one dwelling unit is permitted. The applicants have requested permission to live in the existing dwelling unit until the proposed dwelling unit is complete. Once the applicants complete the proposed dwelling unit, the applicants plan to remove the existing dwelling unit and decommission the existing septic field. The applicant's geotechnical engineer recommends that the existing foundations of the dwelling unit be maintained and backfilled to restore the ground level with existing surrounding land. The applicants engineer states that the removal of the existing dwelling unit and decommissioning of the septic disposal system would be beneficial to the slope.

The proposed dwelling unit is over height due to the topography of the lot, which is gently sloping at the building site. If constructed on a level lot, the proposed dwelling would be under the maximum required 9.0 metre height requirement.

VOTING

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

SUMMARY/CONCLUSIONS

This is an application for a development permit to legalize the siting of two existing accessory buildings and one deck and to facilitate the construction of a dwelling unit within the Hazard Lands Development Permit Area.

The site is considered safe from a geotechnical perspective and safe for the intended use provided the applicant develops the site in accordance with the recommendations contained in the applicant's geotechnical engineering report and addendums. The applicant has agreed to follow all recommendations of the geotechnical report and addendums and has agreed to register these reports on title to ensure the the current and future owners of the property are aware of hazards associated with this lot.

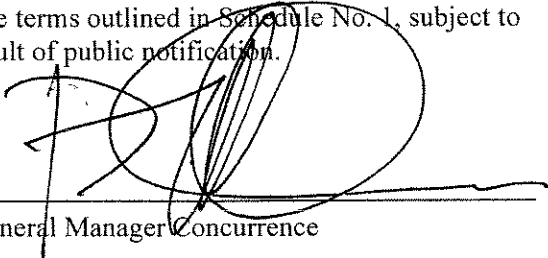
In staff's assessment of this application, the proposed development appropriately addresses the hazard concerns, and the proposed variances are not expected to have any negative impact on the views from adjacent properties due to the relatively large lot size, topography, and existing vegetation. In addition the existing buildings and structures have been in their current location for a number of years with no complaints received from the adjacent property owners. Staff are of the opinion that the proposed variances are acceptable and recommends that the Board approve the proposal subject to the Boards consideration of comments received as a result of public notification.

RECOMMENDATION

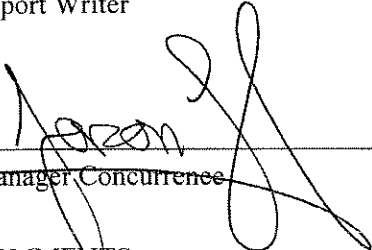
That Development Permit Application No. 60651 for a parcel located at 5151 Island Highway, including variances to legalize two existing accessory buildings and one existing deck, and allow the construction of an overheight dwelling unit, be approved according to the terms outlined in Schedule No. 1, subject to the Board's consideration of the comments received as a result of public notification.



Report Writer



General Manager Concurrence



Manager Concurrence



CAO Concurrence

COMMENTS:
devserv/reports/dp oc 3060 30 60651Anderson-Sims

Schedule No. 1
Terms of Development Permit No. 60651
Lot 3, District Lot 81, Newcastle District, Plan 7071
5151 Island Highway West

The following are to be completed as part of Development Permit No. 60651:

Issuance of Permit

1. Prior to the issuance of this permit the applicant must, at the applicant's expense and to the satisfaction of the Regional District of Nanaimo, register a Section 219 covenant(s) with save harmless clause and priority agreement that registers all geotechnical, drainage, and structural engineering reports on title.

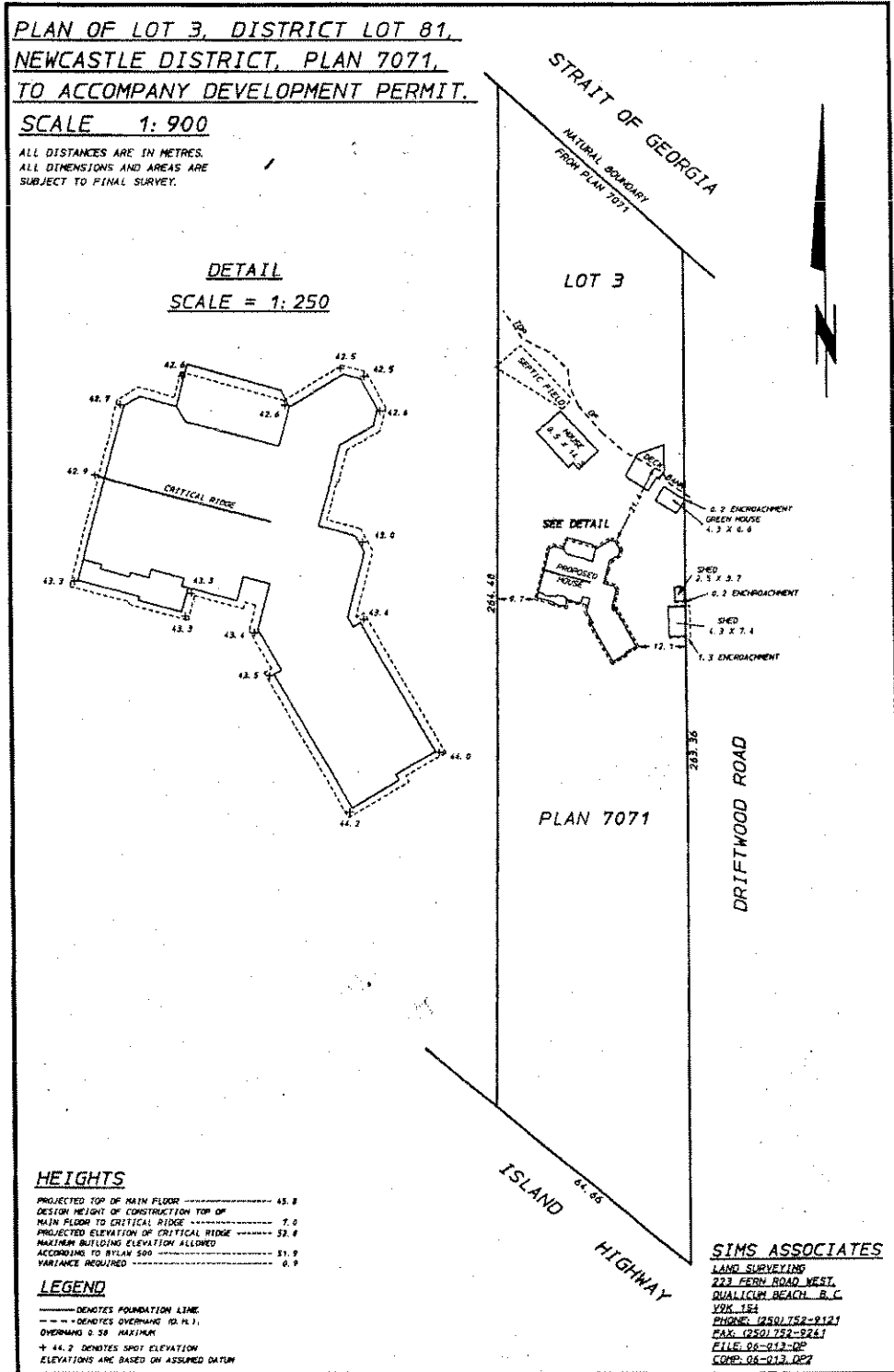
Proposed Variances

2. The following variances to "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987" apply only to one dwelling unit, two existing accessory buildings, and the deck sited as shown on Schedule No. 2 and generally constructed as shown on Schedule No.3:
 - a. Section 3.3.9– **Setbacks - Sea** is proposed to be varied by relaxing the minimum setback requirement from the top of a slope of 30% or greater from 8.0 to 0.0 metres horizontal distance from the top of the slope for the deck shown on schedule No. 2.
 - b. Section 3.4.81 – **Maximum Number and Size of Buildings and Structures** is proposed to be varied by increasing the maximum dwelling unit height from 9.0 metres to 9.9 metres for the dwelling unit shown on Schedule No. 3 and generally sited as shown on Schedule No. 2.
 - c. Section 3.4.81 – **Minimum Setback Requirements** is proposed to be varied by relaxing the minimum required setback from all lot lines from 8.0 metres to 0.0 metres for the two accessory buildings labeled 'shed' on Schedule No. 2.

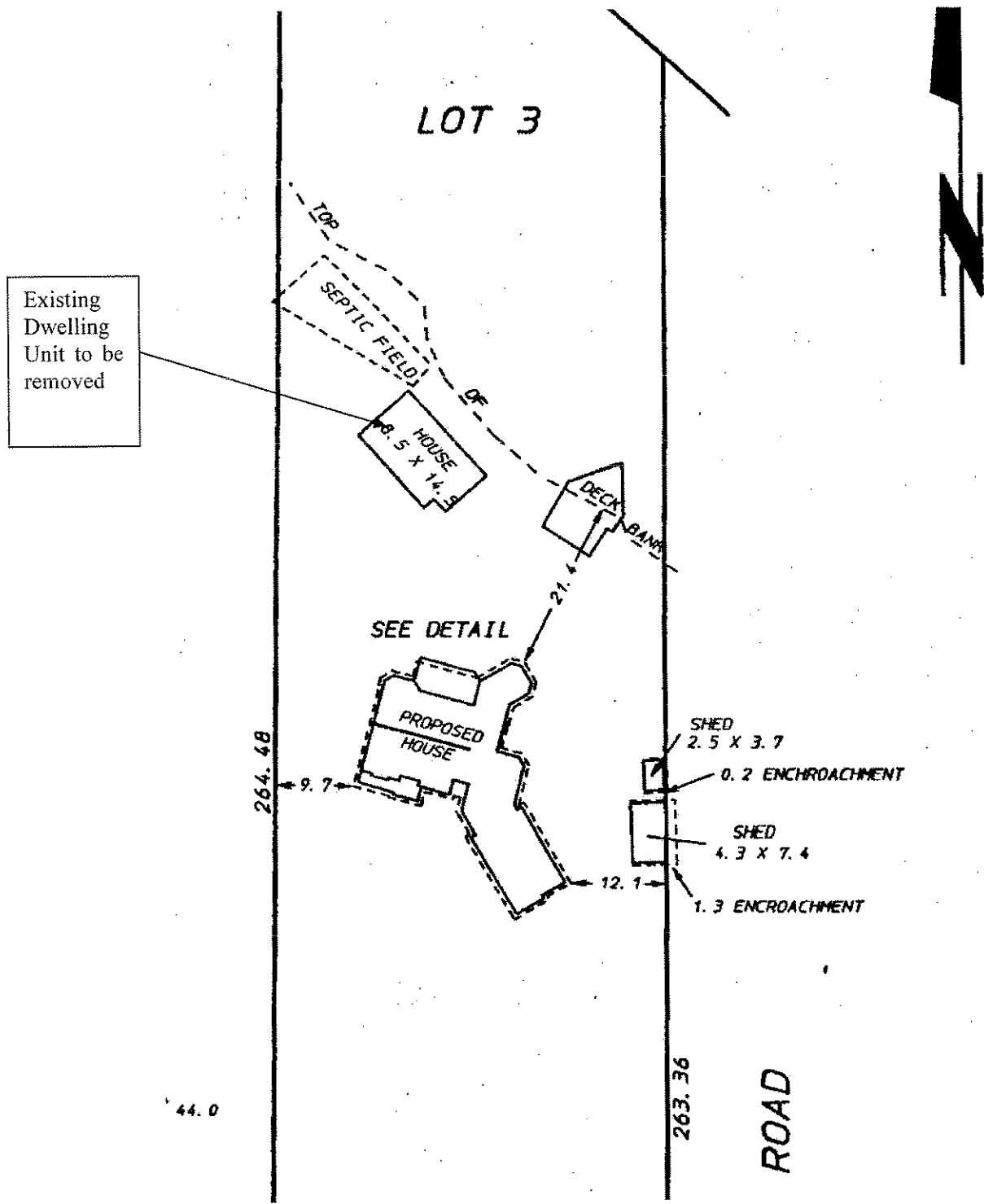
Development of Site

3. Subject property shall be developed in accordance with Schedules No. 1, 2, and 3.
4. All construction to be undertaken must be consistent with "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987", except as where varied by this permit.
5. The subject property shall be developed in accordance with all recommendations contained in the geotechnical report dated January 11, 2006 and addendums dated September 20, 2006 and October 2, 2006 prepared by Ground Control Geotechnical Engineering.
6. The subject property shall be developed in accordance with all recommendations contained in the drainage plan dated April 26, 2006 prepared by Park City Engineering Ltd.

Schedule No. 2 (Page 1 of 2)
 Site Plan (reduced for convenience)
 For Lot 3, District Lot 81, Newcastle Land District, Plan 7071



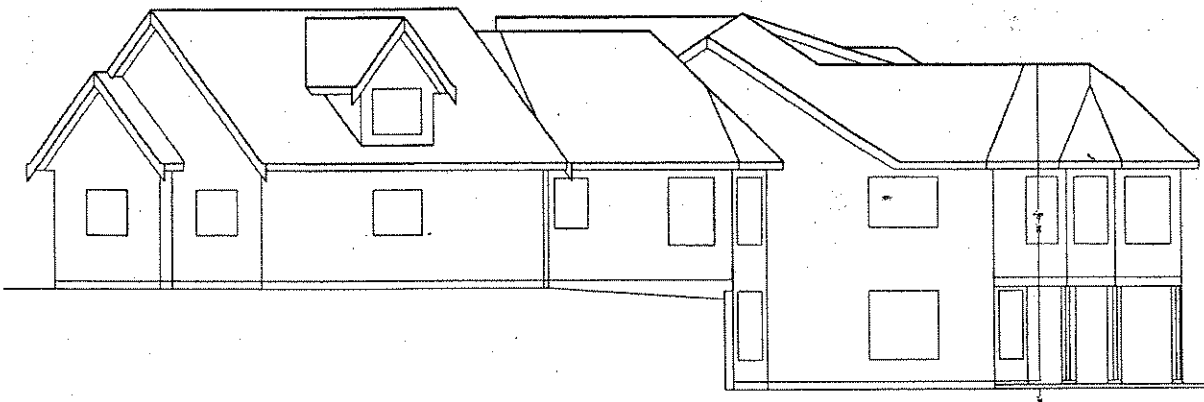
Schedule No. 2 (Page 2 of 2)
Site Plan (enlarged for convenience)
For Lot 3, District Lot 81, Newcastle Land District, Plan 7071



Schedule No. 3 (1 of 2)
Building Elevations
Development Permit No. 60651
5151 Island Highway West

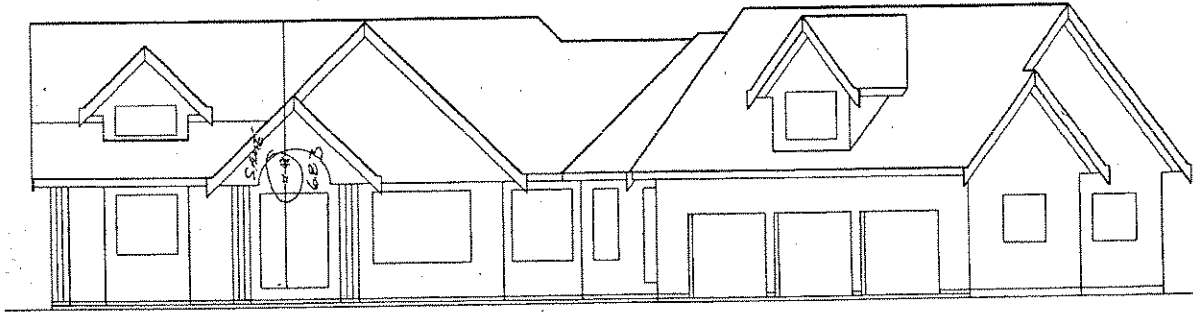


North Elevation

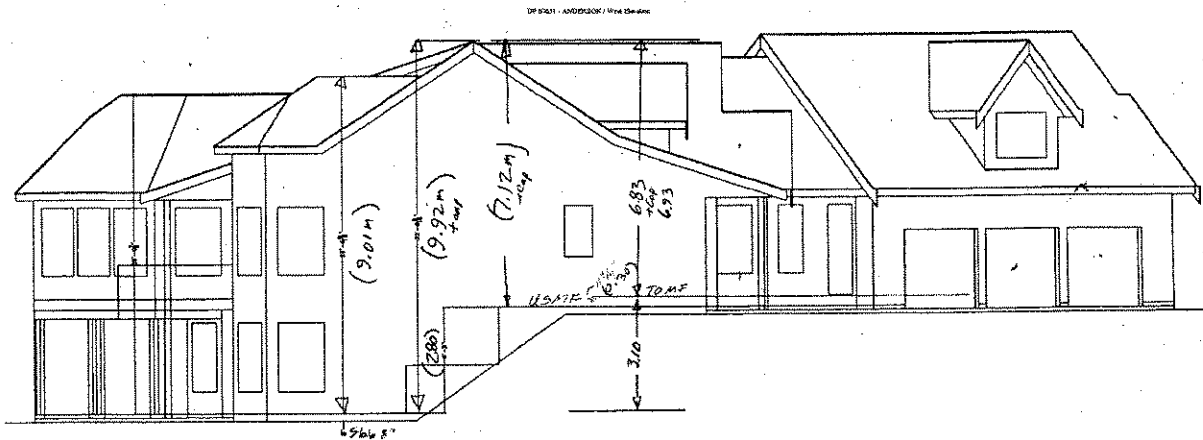


East Elevation

Schedule No. 3 (2 of 2)
Building Elevations
Development Permit No. 60651
5151 Island Highway West

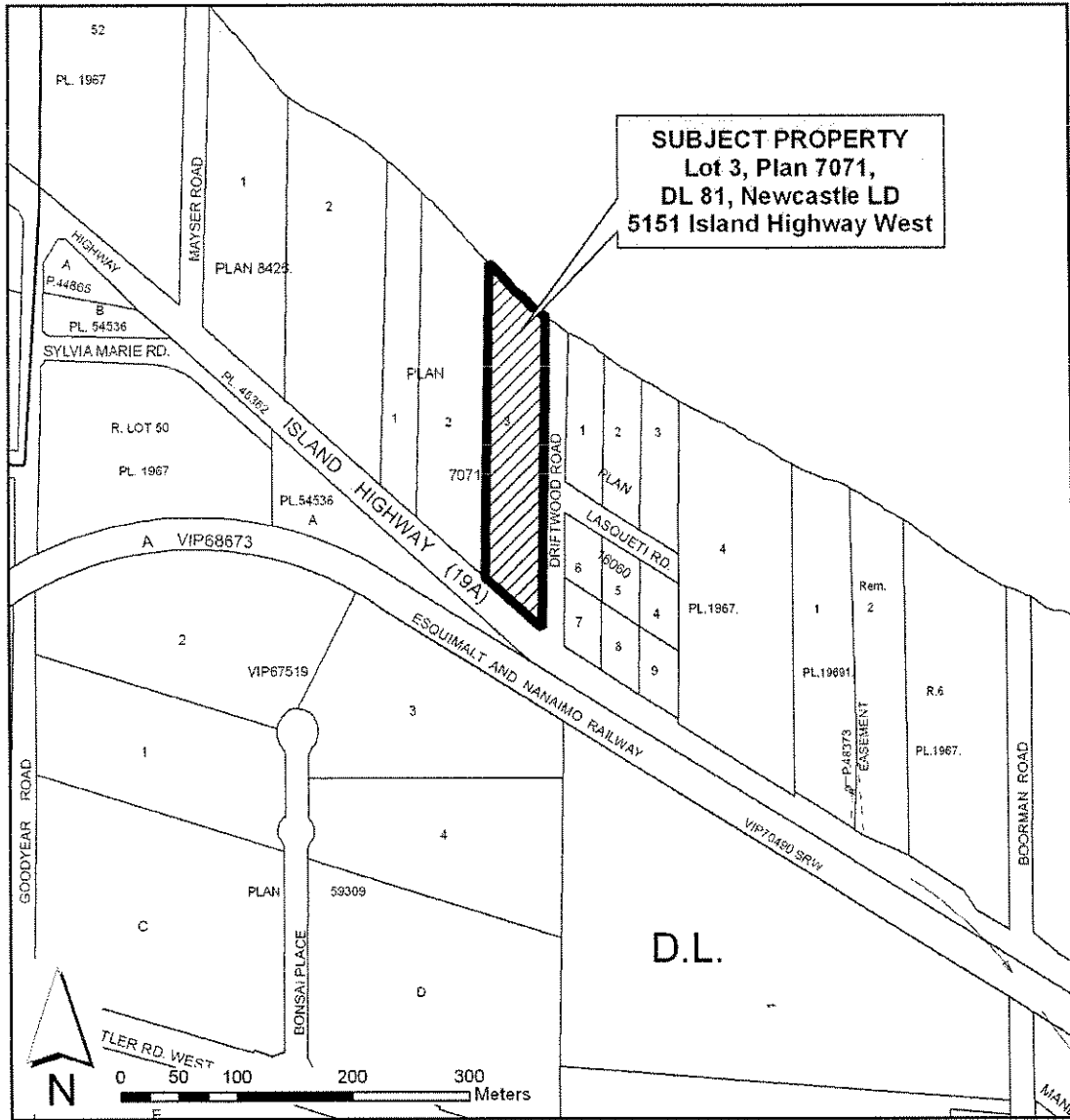


South Elevation



West Elevation

Attachment No. 1
Subject Property
Development Permit No. 60651
5151 Island Highway West



BCGS Map Sheet No. 92F.038.3.3



RDN		
OCT 2 - 2006		
CHAIR		BOARD
EAP		

MEMORANDUM

TO: Jason Llewellyn
Manager, Community Planning

DATE: October 2, 2006

FROM: Greg Keller
Planner

FILE: 3090 30 90608

SUBJECT: Development Variance Permit Application No. 90608 – Zajes/Sims
Electoral Area 'F' – 2260 Alberni Highway, Coombs

PURPOSE

To consider an application for a Development Variance Permit to legalize the siting of an existing commercial building for a property located at 2260 Alberni Highway in Electoral Area 'F'.

BACKGROUND

The planning department received a Development Variance Permit application to relax the minimum parking requirements, front lot line, and other lot line setbacks, to legalize the siting of an existing commercial building straddling two properties, legally described as Lots 4 and 5, Block 1, Salvation Army Lots, Nanoose District, Plan 1939 (see Attachment No. 1).

The subject properties are primarily flat and total approximately 674.9 m² combined area. The subject properties are located in the Coombs Village Centre at 2260 Alberni Highway. The subject properties are currently zoned Commercial 2 (C-2) pursuant to "Regional District of Nanaimo Zoning and Subdivision Bylaw No. 1285, 2002." The use of the property, for retail use is permitted by the C-2 zone.

The Regional District of Nanaimo (RDN) Bylaw Enforcement Department attended the subject property on April 15, 2004 to investigate the construction of a concrete foundation on the subject property, believed to be located within the minimum required lot line setbacks. Bylaw Enforcement staff discussed this concern with the applicant on April 15th and 20th, 2004. At that time, the applicant's indicated that the concrete foundation (pad) was to be used as a deck. Based on this information, as a deck is exempt from the setback requirements of "Regional District of Nanaimo Zoning and Subdivision Bylaw No. 1285, 2002", Bylaw Enforcement staff did not take action, but informed the applicant that the deck could not be used as retail floor area or as part of the business.

Bylaw Enforcement staff visited the site on numerous occasions as summarized below:

- June 23, 2006 - Observed that a roof and at least one wall were being constructed on top of the foundation. The applicants indicated that the roof was for the purpose of preventing weather damage. Bylaw Enforcement advised the applicants that the structure under construction was no longer considered a deck, and it was an illegal land use which should cease.

- July 16, 2004 - Discovered that construction had continued despite the previous recommendation to cease development. Bylaw Enforcement sent a letter to the applicants indicating that the structure was no longer considered a deck as it had a roof and walls and was in contravention to the Zoning Bylaw.
- September 30, 2004 - Observed that construction had been completed and the foundation was a fully enclosed extension of the existing building.
- September – November, 2004 – Observed on numerous occasions that the newly constructed addition was being used as an extension to the existing business.

In response, the RDN proceeded with enforcement action, which resulted in a Court Order being issued in November 2005 that required the applicants to remove the illegal addition within sixty days from the date the order was issued and authorized the RDN to remove the addition at the applicants' expense if it was not removed within the 60 days.

The applicant and staff have developed an alternative proposal to resolve the situation in a manner that results in a net benefit to the community. The proposal recognizes the existing structure and addition, secures onsite parking and access improvements in accordance with the requirements of the Ministry of Transportation, and results in the overall clean up of the property. In Staff's opinion, the proposal is much better than the simple enforcement of the Court Order.

The applicants approached the RDN Planning department to discuss options for the illegal addition. In cooperation with the applicants, the Planning Department negotiated a potential solution through a Development Variance Permit process. This option requires the applicants to apply for a Development Variance Permit and agree to do the following:

- a) to remove the first addition, which is in a state of disrepair;
- b) to upgrade the lane behind the subject property to the satisfaction of the Ministry of Transportation;
- c) to provide a minimum of five on-site parking stalls, one disability space, and one loading space;
- d) to register an easement, securing the parking for use by both lots;
- e) to register a covenant, securing the water and septic disposal system for use by both lots; and,
- f) to register a covenant, binding both lots together so they can not be sold independently.

The applicants have agreed to the above terms and conditions, and have entered into an agreement with the adjacent property owner(s) to the east, to use that lot to provide additional parking. The agreement allows the use of that land for parking during regular business hours while the fairgrounds are not in use. The agreement stipulates that the property must be gated to restrict unauthorized parking outside of regular business hours. The applicants have also agreed to erect a directional sign on the lot used for parking, to identify the area to be used for parking for the subject property.

The original building is at least 60 years old and is currently being used as a retail/auction use. There are three separate parts to the building, including the original building, and two additions. There is a false walkway on the upper storey of the building that the applicants are proposing to extend to the new addition. The site is serviced by an individual private well, and pump and haul sewage removal system. Currently, there is no on-site parking available. Traditionally, users of the site have parked on the Alberni Highway road right of way.

Proposed Variances

The applicants are proposing the following variances to "Regional District of Nanaimo Zoning and Subdivision Bylaw No. 1285, 2002," to legalize the siting of the existing building and parking as shown on Schedule No. 2.

1. Section 2.17 – Parking, minimum parking requirements for all uses in a 'C' zone is proposed to be varied from 17 parking stalls (1 per 20 m² of floor area) to 5 parking stalls (1 per 68 m² of floor area) and one disability space and one loading space.
2. Section 4.3.3(g) – Minimum setback requirements from the front and exterior side lot line is proposed to be varied by relaxing the front lot line from 4.5 metres to 0.3 metres to legalize the siting of the building shown on Schedule No. 2.
3. Section 4.3.3(g) – Minimum setback requirements from the front and exterior side lot line is proposed to be varied by relaxing the exterior lot line adjacent to the lane to the south of the subject properties from 4.5 metres to 3.6 metres to legalize the siting of the building shown on Schedule No. 2.
4. Section 4.3.3(g) – Minimum setback requirements from all other lot lines is proposed to be varied by relaxing the west side lot line from 2.0 metres to 0.0 metres to legalize the siting of the building shown on Schedule No. 2.
5. Section 4.3.3(g) – Minimum setback requirements from all other lot lines is proposed to be varied by relaxing the east side lot line from 2.0 metres to 1.6 metres to legalize the siting of the building shown on Schedule No. 2.
6. Section 4.3.3(g) – Minimum setback requirements from all other lot lines is proposed to be varied by relaxing the shared interior lot line from 2.0 metres to 0.0 metres to legalize the siting of the building shown on Schedule No. 2.

ALTERNATIVES

1. That Development Variance Permit No. 90608 be approved, subject to the terms outlined on Schedule No. 1 and subject to the Board's consideration of the comments received as a result of public notification.
2. That the Board deny the requested Development Variance Permit; and if the illegal addition is not voluntarily removed within 90 days, direct staff to have the illegal addition removed in accordance with the Court Order issued in November, 2005.

LAND USE AND DEVELOPMENT IMPLICATIONS

Parking and Access

Since the original structure was erected prior to the implementation of zoning in the RDN, it is considered a legal, non-conforming building, and as such is afforded the rights and protections under

section 911 of the *Local Government Act*. This includes the fact that no onsite parking was provided. However, the addition as constructed in 2004, is not in compliance with "Regional District of Nanaimo Zoning and Subdivision Bylaw No. 1285, 2002," as it is located too close to the front and side lot lines. This application seeks to recognize the siting of the original building and legalize the siting of the addition as well as reduce the number of parking stalls required by Bylaw No. 1285.

Due to the size of the subject properties, even after the first addition is removed, it is not possible to provide the minimum required number of onsite parking stalls as per Bylaw No. 1285, 2002. The applicants are proposing a total of five parking stalls, one disability space, and one loading bay, located at the rear of the properties.

Staff is concerned that the number of parking spaces being proposed does not adequately meet the demands for parking during peak business hours. However, given the historical use of the Alberni Highway road right-of-way for parking, staff is recommending acceptance of the proposed number of parking stalls as it benefits the surrounding community by decreasing the demand for parking on the right-of-way and is a net improvement over the status quo.

In addition, the applicant has secured an agreement to use the adjacent property to the east for parking during regular business hours. It should be noted, that the off-site parking is being secured by an agreement between property owners and is not a requirement of this permit. Therefore, should the agreement be terminated, the number of available parking stalls would be reduced back down to five onsite parking stalls, as proposed by this application.

The proposed parking area is a gravel surface with concrete bump stops, delineating each parking stall. The existing lane is constructed, but does not meet current Ministry of Transportation standards. The applicants have submitted an access permit from the Ministry of Transportation. The access permit authorizes access off of the lane and requires the lane to be upgraded from Ford Road to the southeast corner of the subject property to current Ministry of Transportation Standards. The access permit also requires the applicants to remove the existing loading ramp adjacent to the Alberni Highway. In order to ensure that the parking and road upgrades are complete, staff recommends that the applicants be required to install the parking stalls shown on Schedule No. 2 and satisfy all requirements imposed by the Ministry of Transportation prior to the issuance of this permit. The applicant's agent has agreed to this request.

Servicing

As mentioned above, one of the subject properties is serviced with an individual well and pump and haul tank for septic disposal. Due to the small size of the properties, it may not be possible for each parcel to support individual servicing. Staff are concerned that if the applicants sold one of the lots, that the lot currently without servicing would not be able to function independently of the lot with servicing. Therefore, staff recommends that the applicant be required to register a covenant and an easement binding both properties together so that they cannot be sold separately and granting access to the parking, water, and pump and haul service for both lots prior to the issuance of the corresponding permit.

The applicants have requested that the documents contain wording that permits the amendment or discharge of the documents at the discretion of the RDN if both properties were to be serviced with an approved means of water and septic disposal. Staff is of the opinion that the requested wording is appropriate.

Board Policy B1.5

The Board approved Policy B1.5 provides staff with guidelines for reviewing and evaluating development variance permit applications. The primary land use justification, in support of the variance, is the fact that it involves legalizing the siting of a building, that has historically been part of the community in its current location, and an addition that was constructed to reflect the location of the existing building. In addition, due to the small size of the subject properties, there are no viable options, other than removing or dramatically altering the building, for alleviating the need for a variance.

FUTURE DEVELOPMENT IMPLICATIONS

Staff is concerned with the current density of development on the subject property. The maximum parcel coverage permitted by the C-2 zone in this case is 30 percent (30%). The original building exceeds that parcel coverage and the addition is slightly under 30 percent (30%) parcel coverage. Therefore, no additional expansion of the existing development is permitted by the C-2 zone.

PUBLIC CONSULTATION IMPLICATIONS

As part of the required public notification process, pursuant to the *Local Government Act*, property owners located within a 50 metre radius will received Notice of the proposal and will have an opportunity to comment on the proposed variances prior to the Board's consideration of the permit.

VOTING

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

SUMMARY/CONCLUSIONS

This is an application for a Development Variance Permit to legalize the siting of a commercial building and addition located on two properties at 2260 Alberni Highway in Electoral Area 'F'.

In staff's assessment of this application, although the size and location of the existing building and addition, and the number of parking spaces provided are not ideal in today's standards. The original building has been there for approximately 60 years and the addition was constructed to complement the original building. Staff recommends that the Board approve the requested variances based on the net benefit to the community of having some onsite parking and an improvement to the access lane at the rear of the subject properties.

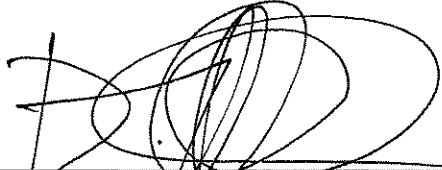
Staff is satisfied with applicants' agreement to register an easement and covenant to secure the onsite parking, water, and pump and haul tank, as well as to bind the two properties together so that they can not be sold separately. Therefore, staff recommends that the requested Development Variance Permit be approved subject to the Boards consideration of the comments received as a result of public notification.

RECOMMENDATION

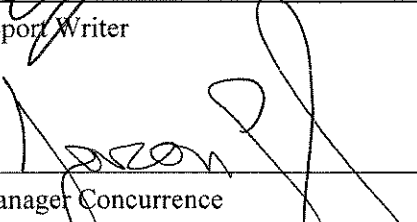
1. That Development Variance Permit Application No. 90608, to vary "Regional District of Nanaimo Zoning and Subdivision Bylaw No. 1285, 2002," for property located at 2260 Alberni Highway, as outlined on Schedule No. 1, be approved subject to the Board's consideration of the comments received as a result of public notification.
2. That if terms number 1 to 5 contained in Schedule No. 1 are not complete to the satisfaction of Regional District of Nanaimo by January 5, 2007, that the Board approval of this permit be withdrawn, and the Board direct staff to withhold the issuance of this permit and proceed with the removal of the illegal addition in accordance with the Court Order issued in November 2005.



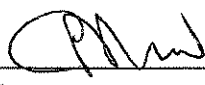
Report Writer



General Manager Concurrence



Manager Concurrence



CAO Concurrence

COMMENTS:
devsvs/reports/2006/dvp oc 3090 30 90608 Zajes/Sims Report

Schedule No. 1 (page 1 of 2)
Terms of
Development Variance Permit Application No. 90608
for Lots 4 and 5, Block 1, Salvation Army Lots, Nanoose District, Plan 1939

Issuance of Permit.

Prior to the issuance of this Permit, the applicants shall complete the following to the satisfaction of the Regional District of Nanaimo by January 5, 2007:

1. Remove the first addition.
2. Remove all refuse and outside storage
3. Register a Section 219 covenant, at the expense of the applicant and to the satisfaction of the Regional District of Nanaimo, binding the two subject properties together so they cannot be sold independently.
4. Register a Section 219 covenant/easement as appropriate providing for the following:
 - a) to grant Lot 5 the right to use and access to the parking area located on Lot 4,
 - b) to grant Lot 4 the right to use and access the water and pump and haul tank located on Lot 5.
5. To complete all requirements of the Ministry of Transportation to the Ministry's satisfaction.

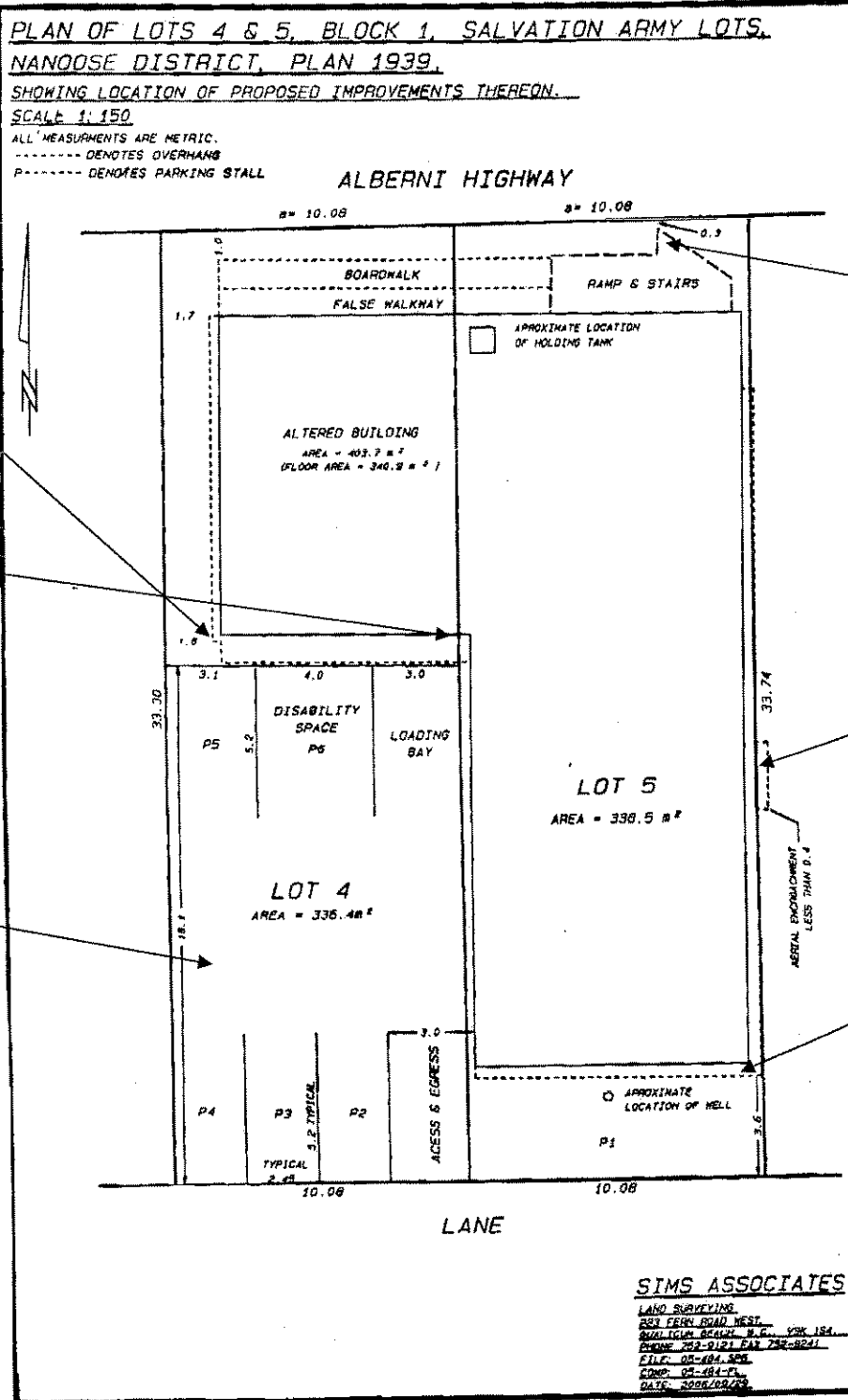
VariANCES:

6. This permit authorizes the following variances to "Regional District of Nanaimo Zoning and Subdivision Bylaw No. 1285, 2002," to legalize the siting of the existing building and parking as shown on Schedule No. 2:
 - a) Section 2.17 – Parking, minimum parking requirements for all uses in a 'C' zone is proposed to be varied from 17 parking stalls (1 per 20 m² of floor area) to 5 parking stalls (1 per 68 m² of floor area), one disability space and one loading space.
 - b) Section 4.3.3(g) – Minimum setback requirements from the front and exterior side lot line is proposed to be varied by relaxing the front lot line from 4.5 metres to 0.3 metres to legalize the siting of the building shown on Schedule No. 2.
 - c) Section 4.3.3(g) – Minimum setback requirements from the front and exterior side lot line is proposed to be varied by relaxing the exterior lot line, adjacent to the lane to the south of the subject properties from 4.5 metres to 3.6 metres, to legalize the siting of the building shown on Schedule No. 2.

Schedule No. 1 (page 2 of 2)
Terms of
Development Variance Permit Application No. 90608
for Lots 4 and 5, Block 1, Salvation Army Lots, Nanoose District, Plan 1939

- d) Section 4.3.3(g) – Minimum setback requirements from all other lot lines is proposed to be varied by relaxing the east side lot line from 2.0 metres to 0.0 metres, to legalize the siting of the building shown on Schedule No. 2.
- e) Section 4.3.3(g) – Minimum setback requirements from all other lot lines is proposed to be varied by relaxing the west side lot line from 2.0 metres to 1.6 metres to legalize the siting of the building shown on Schedule No. 2.
- f) Section 4.3.3(g) – Minimum setback requirements from all other lot lines is proposed to be varied by relating the shared interior lot line from 2.0 metres to 0.0 metres to legalize the siting of the building shown on Schedule No. 2.
- g) These variances apply only to the structure located as shown on Schedules No. 2.

Schedule No. 2
Building Location Certificate (Submitted by applicant reduced for convenience)
Development Variance Permit Application No. 90608



Interior Side Lot line relaxed from 2.0 metres to 1.6 metres

Interior Lot line relaxed from 2.0 metres to 0.0 metres

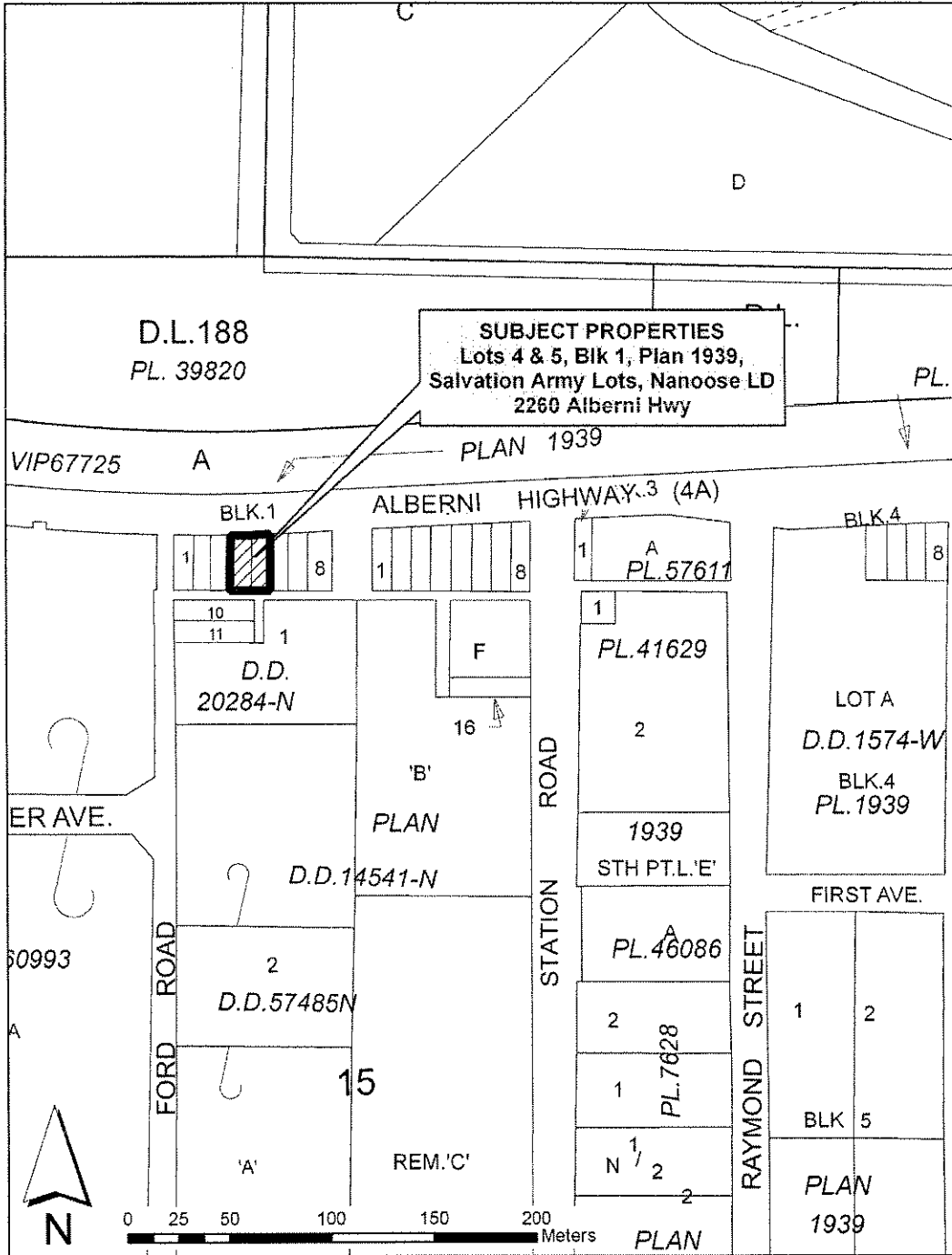
Five parking stalls, one disability space, and one loading bay.

Front lot line relaxed from 4.5 metres to 0.3 metres

Side lot line relaxed from 2.0 metres to 0.0 metres.

Exterior lot line relaxed from 4.5 metres to 3.6 metres

Attachment No. 1
Subject Property Map
Development Variance Permit Application No. 90608



BCGS MAPSHEET NO. 92F.038.2.2



R D N			
CAO	✓	GMES	
GMCS		GMR&P	
GMDS		GMRT&P	
OCT 4 - 2006			
CHAIR		BOARD	
EAP.			

MEMORANDUM

TO: Jason Llewellyn
Manager, Community Planning

DATE: September 27, 2006

FROM: Norma Stumborg
Planner

FILE: 3090 30 90620

SUBJECT: Development Variance Permit Application No. 90620 – Dave Scott for 3536696 Canada Inc.
Lot 1, District Lot 78, Nanoose Land District, Plan VIP80854
Electoral Area 'E', RDN Map Ref. No. – 92F.030.3.4

PURPOSE

To consider an application for a Development Variance Permit to legalize the height of an existing dwelling.

BACKGROUND

The subject property, legally described as Lot 1, District Lot 78, Nanoose Land District, Plan VIP 80854, is located at 2360 Bonnington Drive in Electoral Area 'E' (See Attachment No. 1). The parcel is 1277 m² in size and is zoned Residential 1 (RS1) Subdivision District P, pursuant to "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987."

The subject property is within the Sensitive Ecosystem Protection Development Permit Area, pursuant to "Regional District of Nanaimo Official Community Plan Bylaw No. 1400, 2005." There are no visible watercourses within 30.0 metres of the lot. Additionally, the Environmentally Sensitive Features Atlas does not indicate the presence of any environmentally sensitive features.

The dwelling is located at the corner of Bonnington and Fairwinds Drives. The subject property is bordered by vacant residential properties to the north, proposed parkland to the east, Bonnington Drive to the west and Fairwinds Drive to the south. A large tract of undeveloped, residentially zoned land exists to the west of the subject property.

Requested Variance

Development Permit No. 60604, previously approved on February 28, 2006, authorized the construction of a dwelling, on the subject property, with a height variance from 8.0 metres to 9.83 metres. A final survey taken during construction indicated that the height of the dwelling from natural grade is 10.04 metres. The applicant has stated that the reason for the difference in height was a discrepancy between the building design and truss design that wasn't discovered until the survey was completed. The applicant requests a variance for the additional height of 0.21 metres, which is the difference between the originally approved variance of 9.83 metres and the constructed height of 10.04 metres. The development conforms to the setbacks specified under Bylaw 500.

ALTERNATIVES

1. To approve Development Variance Permit No. 90620 subject to the conditions outlined in Schedule No. 1, and subject to the Board's consideration of comments received as a result of public notification.
2. To deny the requested permit.

LAND USE AND DEVELOPMENT IMPLICATIONS

The building site for the dwelling was in a low spot, therefore fill was brought in to raise the underside of the floor approximately 1.5 metres, which is about the same level of the road. The height of the structure from the main floor to the highest ridge was calculated to be 8.53 metres. Therefore, the structure exceeds the 8.0 metre maximum height restriction specified in Bylaw 500. The amount of the variance required was increased by the need to raise the ground level of the building site.

The additional variance of 0.21 metres (approximately 8 inches) to the height of the dwelling is not substantial. The dwelling is the first home in the subdivision; there are currently no structures, or neighbours in the vicinity of the subject property. Thus, future neighbours will be aware of the structure prior to developing. There are no adjacent lots to the west or south of the subject property because the parcel is at the corner of Bonnington and Fairwinds Drives. Mature coniferous trees buffer the view to the east of the dwelling, and the applicant proposes to retain several acres of land to the east as well as a strip to the south along Fairwinds Drive as parkland.

The survey indicates that the natural grade of the building site was approximately 2.0 metres lower than the elevation of the adjacent lot to the north. During construction, the elevation of the building site was raised to almost the same level as that of the adjacent lot. As the structure itself is only 0.53 metres overheight and the building site is slightly lower than the adjacent lot, staff does not expect that the structure will impede views of future owners of the adjacent lot. In staff's assessment of the development, the height of the existing dwelling is not expected to negatively impact future adjacent property owners. The development is expected to fit with the character of the neighbourhood.

Public Consultation Process

As part of the required public notification process, pursuant to the *Local Government Act*, property owners and tenants located within a 50 metre radius, will receive a direct notice of the proposal, and will have an opportunity to comment on the proposed variance, prior to the Board's consideration of the application.

VOTING

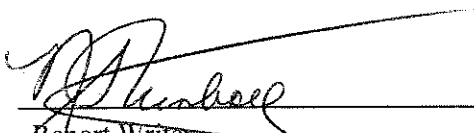
Electoral Area Directors – one vote, except Electoral Area 'B'.

SUMMARY/CONCLUSIONS

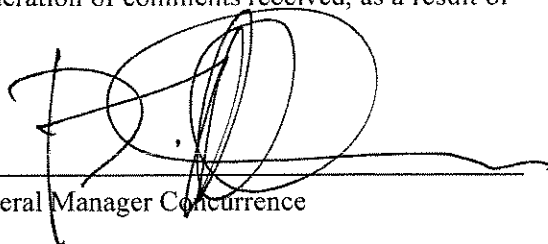
This is an application for a Development Variance Permit to vary the height of a previously approved structure from 9.83 metres to 10.04 metres. The additional variance of 0.21 metres to the height is not substantial and staff does not anticipate that it will have a negative impact on the neighbouring properties, or streetscape. Therefore, staff recommends that the requested Development Variance Permit be approved subject to the terms outlined in Schedule No. 1 of this report, and subject to notification requirements pursuant to the *Local Government Act*.

RECOMMENDATION

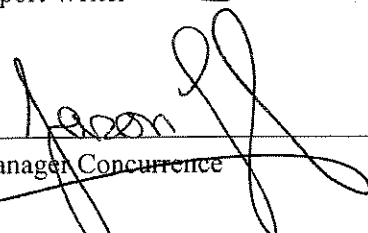
That Development Variance Permit Application No. 90620, to vary the permitted height of an existing dwelling at 2360 Bonnington Drive from 9.83 metres to 10.04 metres, be approved according to the terms outlined in Schedule No. 1, and subject to the Board's consideration of comments received, as a result of public notification.



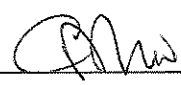
Report Writer



General Manager Concurrence



Manager Concurrence



CAO Concurrence

COMMENTS:
devsvs/reports/2006/dvp oc 3090 30 90620 - 3536696 Canada Inc. Report

Schedule No. 1
Terms of Development Permit No. 90620

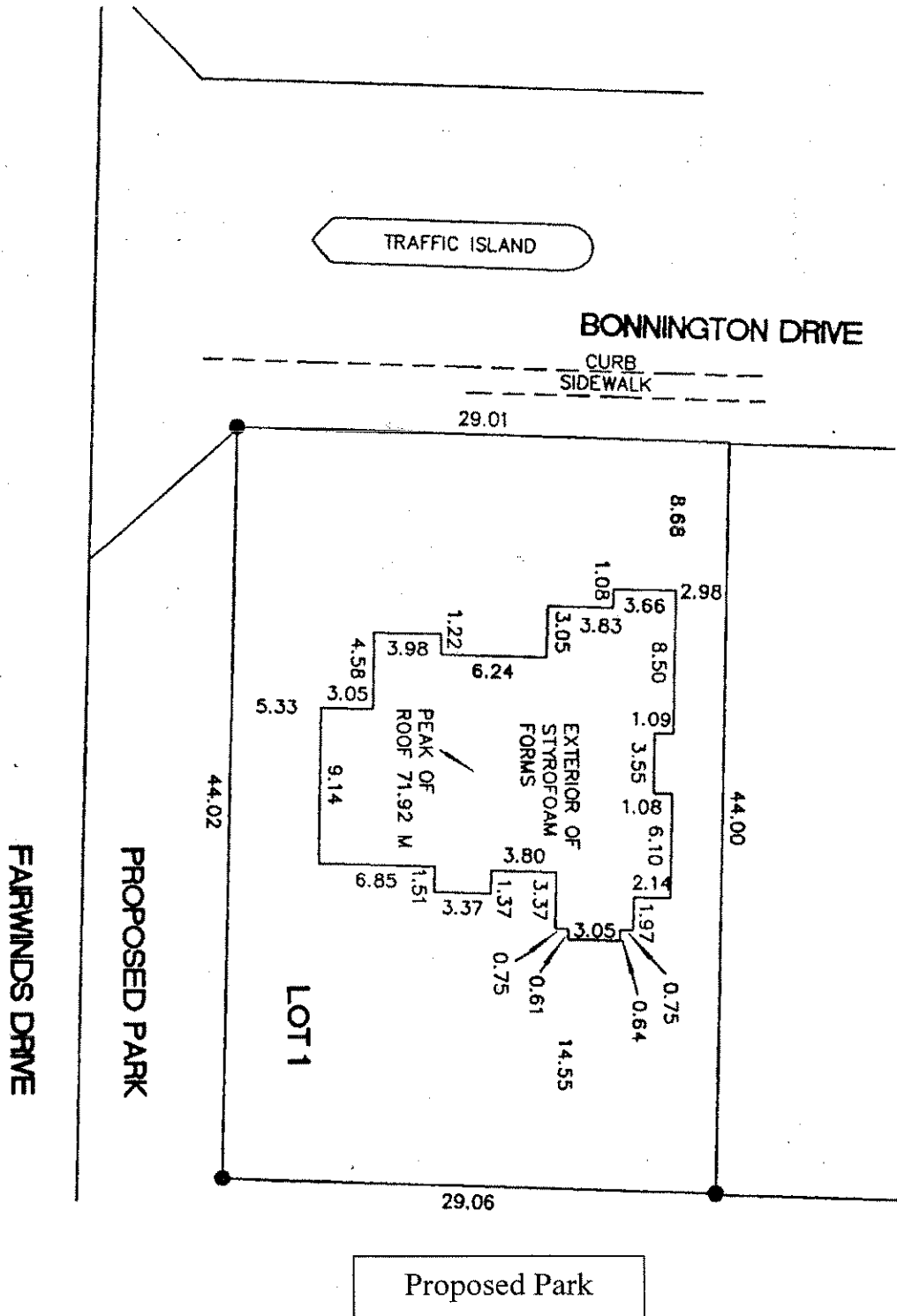
Variances

- a) "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987," is hereby varied by increasing the maximum dwelling unit height for the dwelling from 9.83 metres to 10.04 metres. The variance applies only to a building designed and sited as shown on Schedules No. 2 and 3.

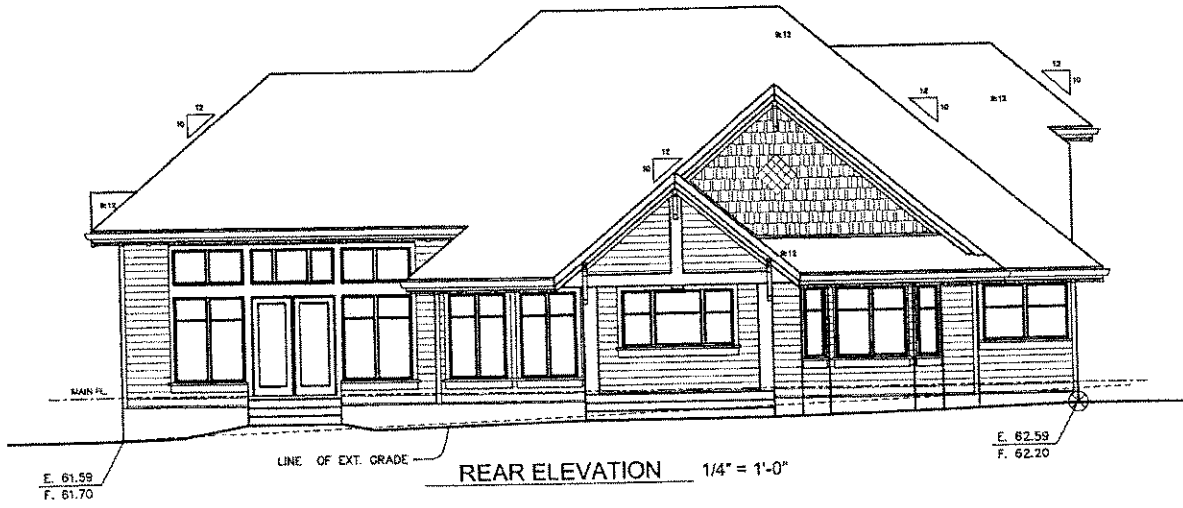
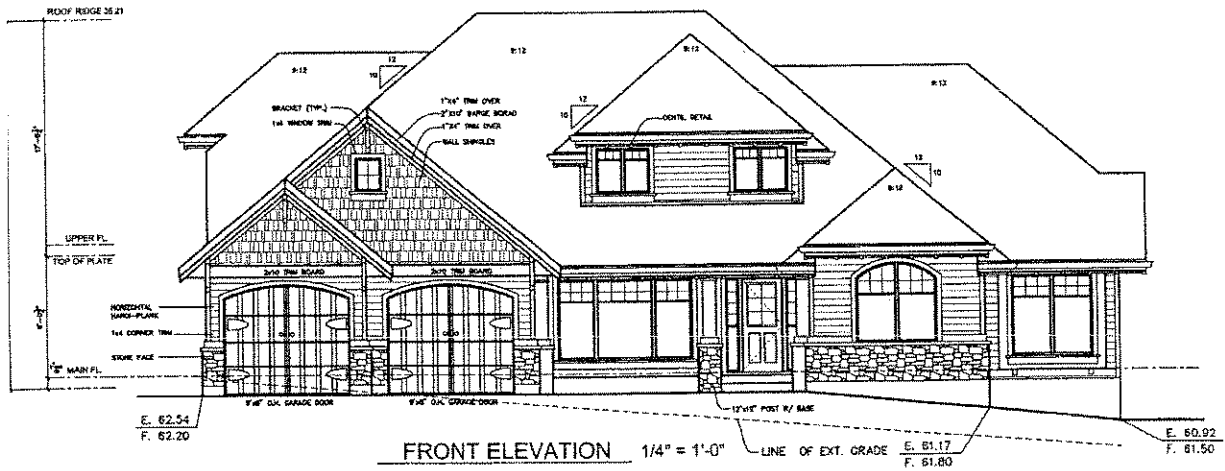
Development of Site

- a) This Development Permit allows the construction of the single-family dwelling developed in substantial compliance with Schedules No. 2 and 3.

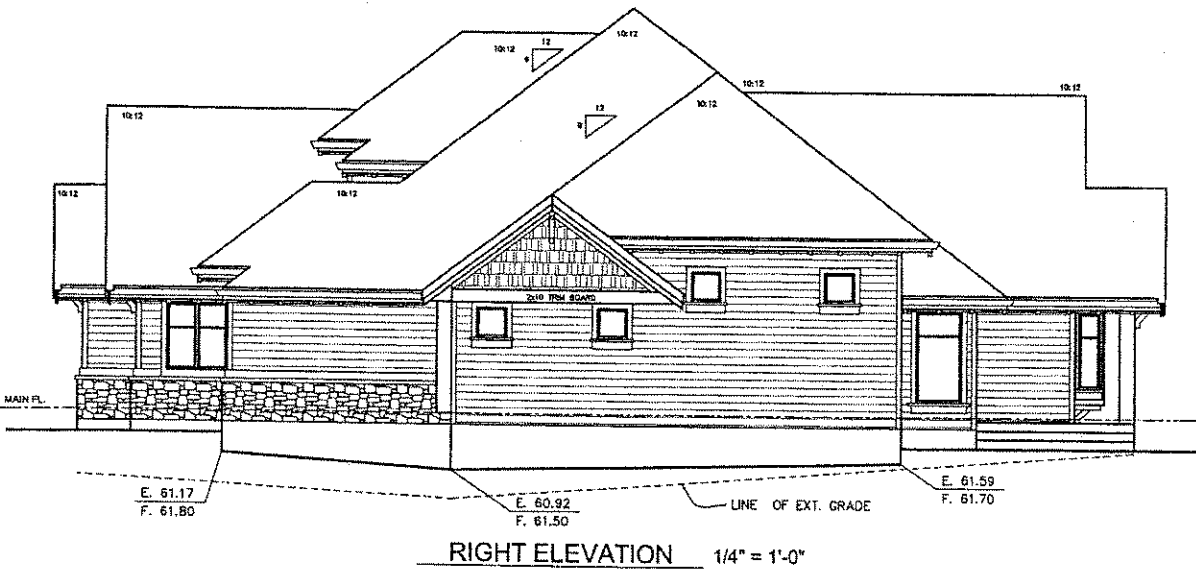
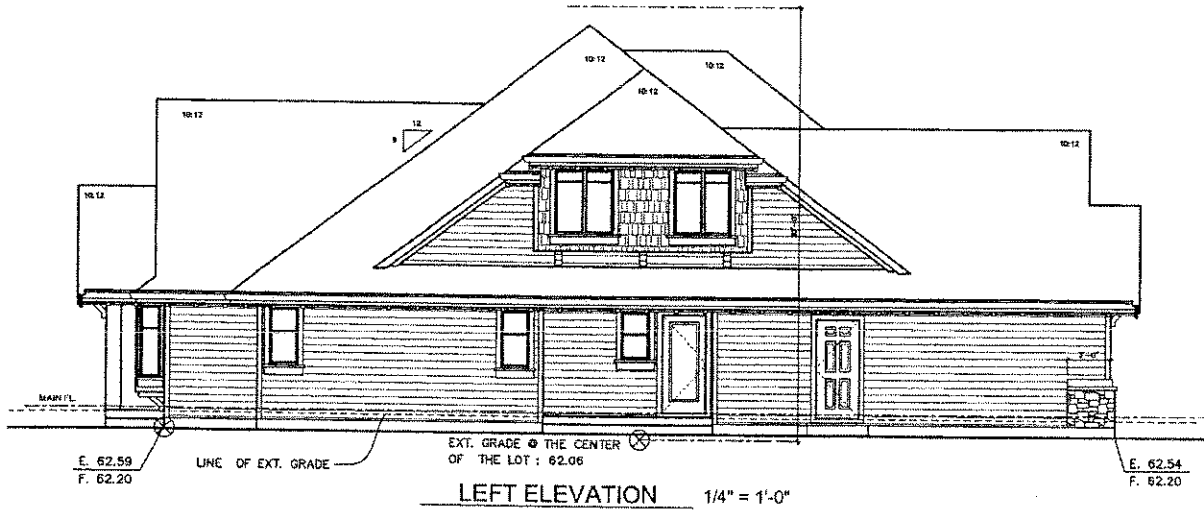
Schedule No. 2
Development Variance Permit No. 90620
Site Plan



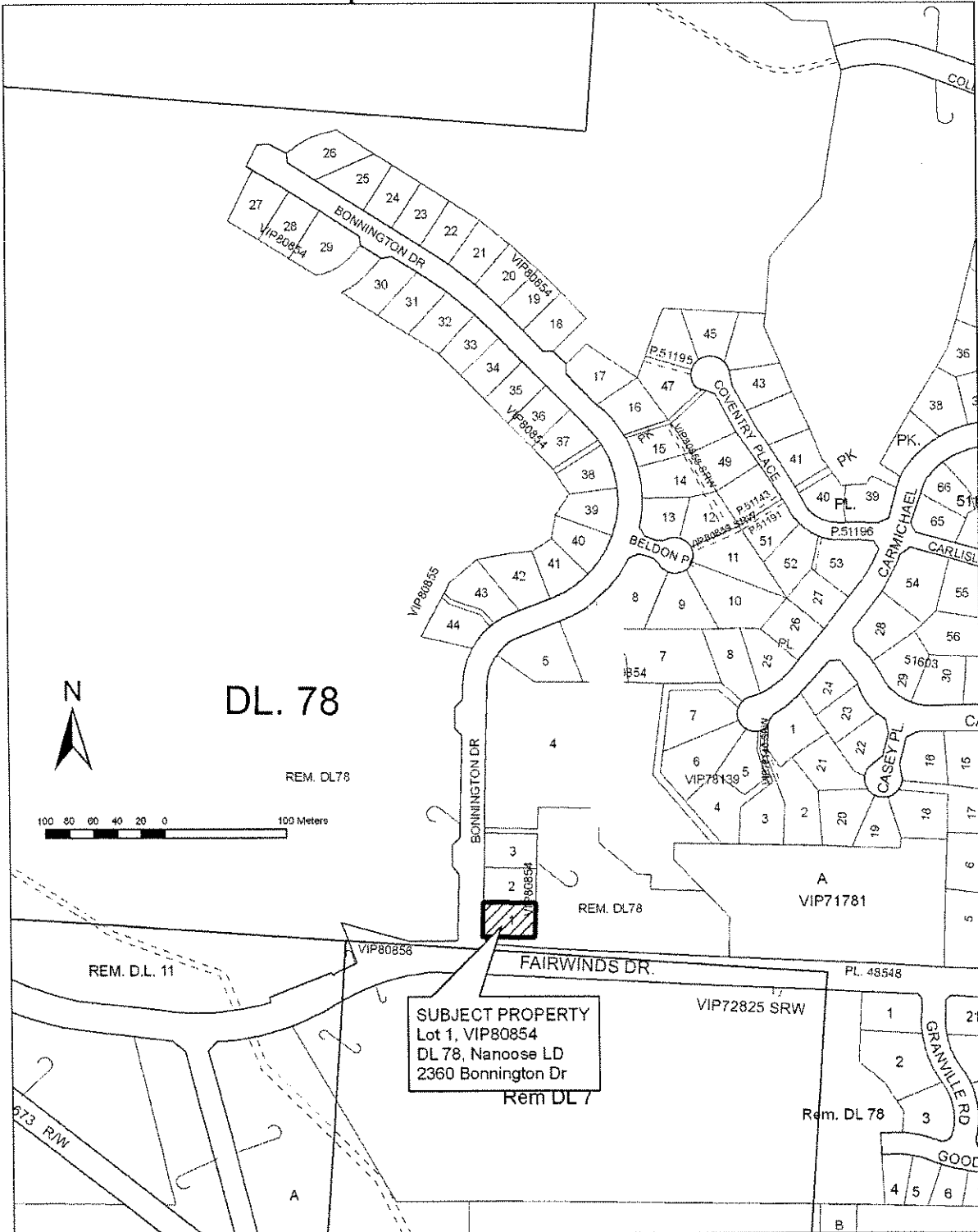
Schedule No. 3
Development Variance Permit No. 90620
Proposed Profiles (Page 1 of 2)



Schedule No. 3
Development Permit No. 90620
Proposed Profiles (Page 2 of 2)



Attachment No. 1
Subject Property
Development Variance Permit No. 90620



Mapsheet 92F.030.3.4



RDN		
CAO	GMES	
GMCS	GMR&P	
GMDS	GMRT&P	
SEP 29 2006		
CHAIR	BOARD	
EAP		

MEMORANDUM

TO: Wayne Moorman
 Manager, Engineering & Subdivisions

DATE: September 29, 2006

FROM: Susan Cormie
 Senior Planner

FILE: 3320 20 27056

SUBJECT: Request for Relaxation of the Minimum 10% Perimeter Requirement
 Fern Road Consulting Ltd., on behalf of Arthur Coben & Peter Swann
 Electoral Area 'H' – 510 & 530 Grovehill Road

PURPOSE

To consider a request to relax the minimum 10% perimeter frontage requirement in order to facilitate the creation of one parcel as part of a 2-lot subdivision proposal in Electoral Area 'H'.

BACKGROUND

This is an application requesting relaxation of the minimum 10% perimeter frontage requirement for a proposed parcel as part of a 2-lot subdivision for the property legally described as Lot 42, District Lot 81, Newcastle District, Plan1967, Except Part in Red on Plan 513RW and located at 510/530 Grovehill Road in Electoral Area 'H' (see Attachment No. 2 on Page 5 for location of parent parcel).

The parent parcel, which is 8.6 ha in size, is currently zoned Rural 1 (RU1) and is within Subdivision District 'D' pursuant to the "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987." The applicants are proposing to subdivide the parent parcel along the BC Hydro property, which currently splits the parcel into two portions, 2.8 ha on the north side and 5.8 ha on the south side of the Hydro property. The parcels are proposed to be greater than 2.0 ha each in size, therefore meeting the minimum parcel size requirement pursuant to Bylaw No. 500, 1987 (see Attachment No. 1 on Page 4 for proposed subdivision).

The parent parcel currently supports two dwelling units and accessory buildings. The parcels are proposed to be served by individual private septic disposal systems and private water wells. The property is also situated within the Provincial Agricultural Land Reserve.

There is a Terasen Gas right-of-way registered on title of the parent parcel which crosses the property along the south boundary of the BC Hydro property.

The surrounding properties are currently rurally zoned and are situated within the Provincial Agricultural Land Reserve.

In addition, a portion of the parent parcel is designated within the Environmentally Sensitive Features Development Permit Area pursuant to the Regional District of Nanaimo Electoral Area 'H' Official Community Plan Bylaw No. 1335, 2003", in this case for the protection of a stream located in the Grovehill Road right-of-way which flows into the Fletcher Creek system.

10% Minimum Frontage Requirement

The proposed Remainder of Lot 42, as shown on the plan of subdivision submitted by the applicant, does not meet the minimum 10% perimeter frontage requirement pursuant to section 944 of the *Local Government Act*. The requested frontage is as follows:

<i>Proposed Lot No.</i>	<i>Required Frontage</i>	<i>Proposed Frontage</i>	<i>% of Perimeter</i>
Rem. of Lot 42	112.9 m	54.3 m	4.8%

Therefore, as this proposed parcel does not meet the minimum 10% parcel frontage requirement pursuant to section 944 of the *Local Government Act*, approval of the Regional Board of Directors is required.

ALTERNATIVES

1. To approve the request to relax the minimum 10% perimeter frontage requirement for proposed Remainder of Lot 42.
2. To deny the request to relax the minimum 10% perimeter frontage requirement.

DEVELOPMENT IMPLICATIONS

Lot Configuration / Development Implications

The Provincial Agricultural Land Reserve Commission has approved this application to create two parcels, noting that the subdivision would have no impact on agriculture.

The parent parcel is bisected by a titled BC Hydro property and a Terasen Gas Right-of-Way crossing in a northwest to southeast direction thus creating a non-contiguous parcel with two distinct areas and restricting direct access between each portion. There is a dwelling unit located within each portion. The proposed subdivision will have little impact on the adjacent neighbourhood since the existing land uses are well established.

The applicants' BCLS has not provided setback information for the existing buildings because no new lot lines are proposed to be created. However, as this area does not have a building inspection function, in order to ensure that bylaw provisions for the existing buildings have been met, this matter will be referred to bylaw enforcement to determine whether there is an enforcement issue.

Site Servicing Requirements

Ministry of Transportation staff has indicated that access to the proposed parcels will meet Ministry standards and therefore, have no concerns at this time with this request for relaxation of the minimum 10% frontage.

The method of septic disposal for the proposed subdivision is subject to approval from the Central Vancouver Island Health Authority while proof of potable water is subject to the approval of the Approving Officer. These items will be considered at the time of subdivision. The issue of drainage is also a Ministry function and will be considered by Ministry staff as part of the subdivision review process.

OFFICIAL COMMUNITY PLAN / ENVIRONMENTAL IMPLICATIONS

This application for subdivision will meet the exemption provisions pursuant to the Environmentally Sensitive Features Development Permit Area (DPA) in that the minimum parcel size can be met exclusive of the development permit area and there will be no development activities associated with the subdivision occurring in the DPA. Therefore a development permit is not required to be issued for the protection of the wetland and its 15.0-metre riparian area. Despite this, staff will recommend to the Approving Authority that the protection of the riparian area of the adjacent stream be protected by way of section 219 covenant. It is noted that, with respect to the *Riparian Areas Regulation*, if a development permit is not required, the applicant is not required to submit an environmental assessment to the Ministry of Environment.

VOTING

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

SUMMARY

This is a request to relax the minimum 10% frontage requirement pursuant to section 944 of the *Local Government Act* in order to facilitate the creation of a two-lot subdivision. The Agricultural Land Reserve Commission has approved the request for subdivision. The Ministry of Transportation staff has indicated that the current access to the proposed Remainder of Lot 42 is acceptable. The parent parcel has been severed by a titled BC Hydro strip of land and there will be little, if no, impact on surrounding properties as the land uses are already well established.

Given that the Agricultural Land Reserve Commission has granted approval, the Ministry of Transportation is satisfied that accesses are achievable, and that the proposed parcels currently support rural / residential uses, staff recommends Alternative No. 1, to approve the relaxation of the minimum 10% frontage for proposed Remainder of Lot 42 as shown on the submitted plan of subdivision.

RECOMMENDATION

That the request from Fern Road Consulting Ltd., on behalf of Arthur Coben & Peter Swann, to relax the minimum 10% frontage requirement for the proposed Remainder of Lot 42, as shown on the submitted plan of the subdivision of Lot 42, District Lot 81, Newcastle District, Plan 967, Except Part in Red on Plan 513RW, be approved.

for Wayne Moon
Report Writer

Wayne Moon
Manager

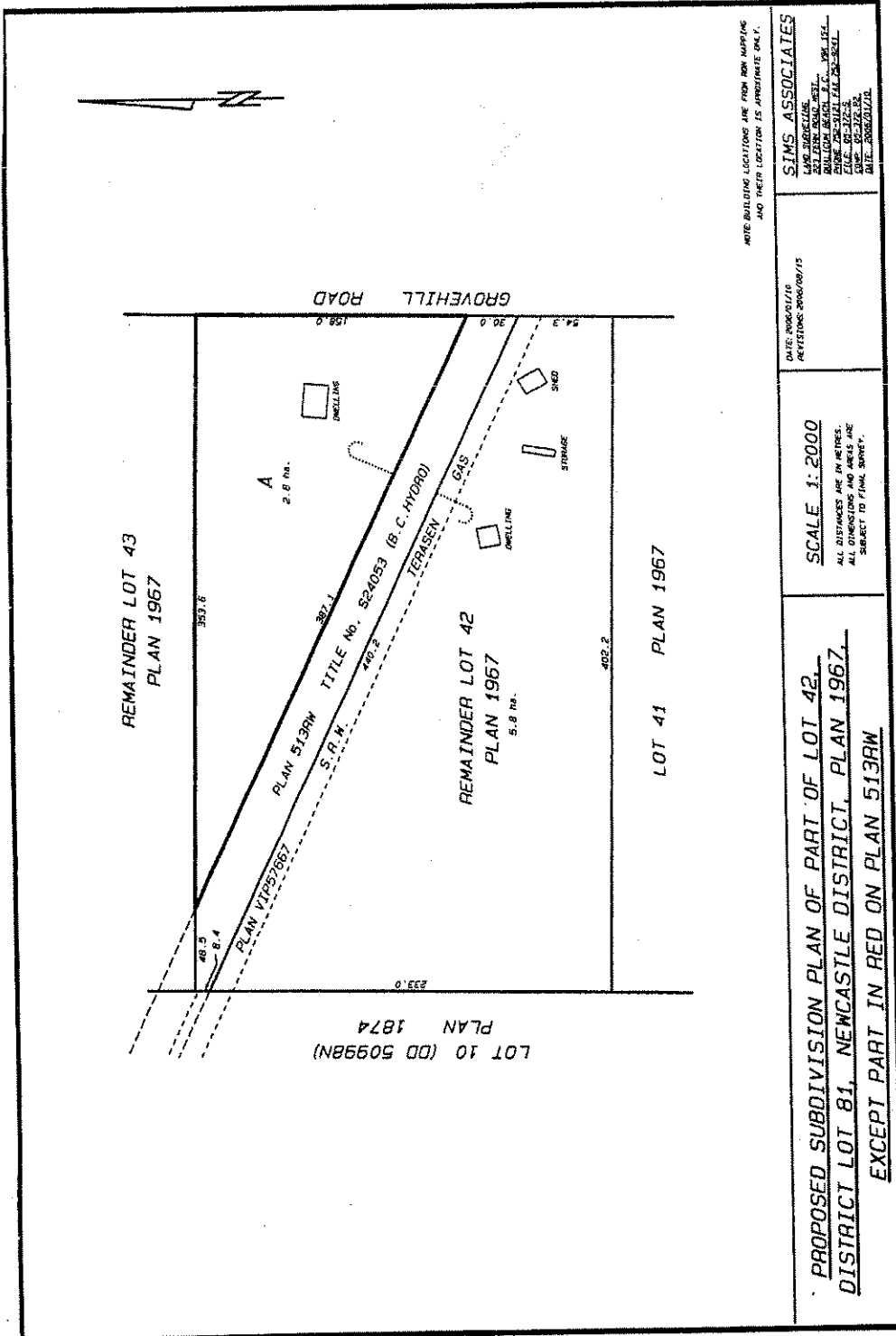
[Signature]
General Manager Concurrence

[Signature]
CAO Concurrence

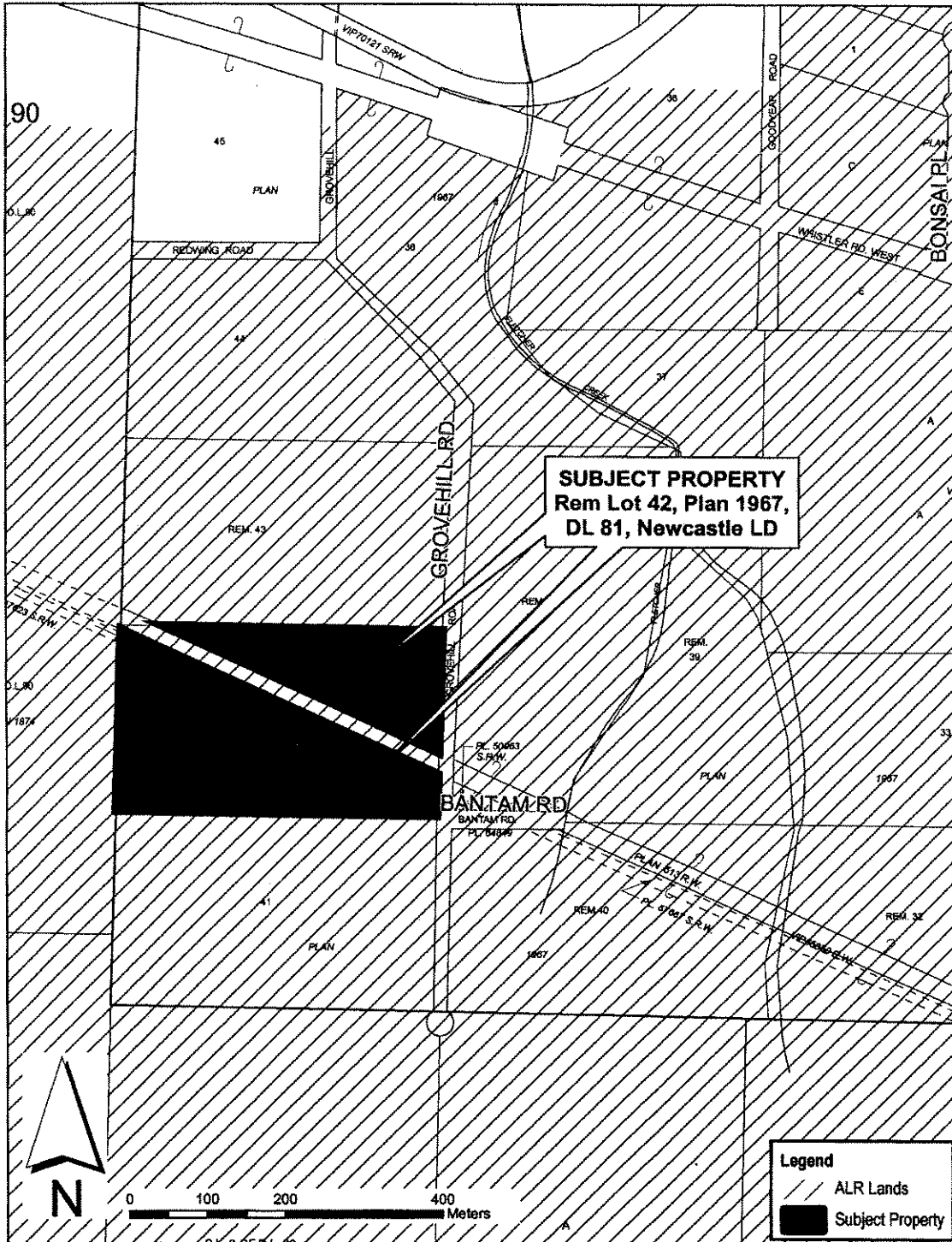
COMMENTS:

devsrs/reports/2006/10% oc 3320 20 27056 Coben Swann doc

Attachment No. 1
 Proposed Plan of Subdivision
 (As Submitted by Applicant)



Attachment No. 2
Location of Subject Property





R D N		
CAO	(M)	GMES
GMCS		GMR&P
GMDS		GMRT&P
OCT 3 - 2006		
CHAIR		BOARD
EAP		

MEMORANDUM

TO: Wayne Moorman
 Manager, Engineering & Subdivisions

DATE: October 2, 2006

FROM: Susan Cormie
 Senior Planner

FILE: 3320 20 27029

**SUBJECT: Request for Relaxation of the Minimum 10% Perimeter Frontage Requirement
 Timberlake-Jones Engineering Ltd., on behalf of 699399 BC Ltd.
 Electoral Area 'E' – off Northwest Bay Road**

PURPOSE

To consider a request for relaxation of the minimum 10% requirement on 1 bare land strata lot in conjunction with a subdivision proposal comprising 16 bare land strata lots and 1 fee simple parcel on property in the Madrona area of Electoral Area 'E'.

BACKGROUND

The parent parcel, legally described as District Lot 68 Nanoose District Except Amended Parcel A Thereof and Except Those Parts in Plans 3940, 26680, 27026, 27376, 30341, and VIP80336, is located in the Madrona area of Electoral Area 'E' adjacent to Northwest Bay Road (*See Attachment No. 1 on page 7 for location of subject property*).

This is the third phase involving the subdivision of the parent parcel. The Electoral Area Planning Committee may recall that a park land proposal was considered for this parcel in conjunction with the proposed subdivision of the adjacent parcel. The required park land has since been dedicated and is situated to the north west of this subdivision proposal.

The property is currently zoned Residential 1 (RS1) and is within Subdivision District 'N' pursuant to the "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987". There are no buildings or structures currently situated on the parcel.

Surrounding land uses include residential zoned lands to the north and east, Northwest Bay Road and residential zoned parcels to the west, and rural zoned parcels situated in the Provincial Agricultural Land Reserve to the south.

In addition, the parent parcel is designated within the Farm Land Protection Development Permit Area pursuant to the Nanoose Bay Official Community Plan Bylaw No. 1400, 2005 for the protection of farm land from development.

Proposed Development

The applicant is proposing to construct 16 bare land strata lots varying in size from 1604 m² to 6460 m² with community water service connections from the Regional District and a common septic disposal system. In addition, the applicant is also proposing to create 1 fee simple parcel 559 m² in size which will be transferred to the Regional District for community water utility purposes. The proposed bare land strata lots will meet the parcel averaging provisions of the *Bare Land Strata Regulations*. The fee simple parcel is exempt from minimum parcel size requirements under Bylaw No. 500 as it will be used for an unattended public utility use. It is also noted that such a use may be located in any zone (see *Schedule No. 2 on page 6 for proposed subdivision layout*).

10% Minimum Frontage Requirement

Proposed Strata Lot 9, as shown on the submitted plan of subdivision, will not meet the minimum 10% perimeter frontage requirement pursuant to section 944 of the *Local Government Act*. The requested frontage is as follows:

<i>Proposed Lot No.</i>	<i>Required Frontage</i>	<i>Proposed Frontage</i>	<i>% of Perimeter</i>
Strata Lot 9	18.5 m	11.4 m	6.2%

Therefore, as this proposed parcel does not meet the minimum 10% parcel frontage requirement, pursuant to section 944 of the *Local Government Act*, approval of the Regional Board of Directors is required.

ALTERNATIVES

1. To approve the request for relaxation of the minimum 10% frontage requirements for proposed Strata Lot 9.
2. To deny the request for relaxation of the minimum 10% frontage requirement.

DEVELOPMENT IMPLICATIONS

Farm Land Protection Development Permit Area

Proposed Strata Lots 9 to 16 inclusive and part of the proposed Common Property area are situated within the Farm Land Protection Development Permit Area (DPA) as the adjacent lands to the south are situated in the Provincial Agricultural Land Reserve. In this case, the subdivision application will be able to meet the exemption provisions of the development permit area guidelines in that the proposed parcels are greater than 50.0 metres in depth and will be able to still provide for a 15 metre buffer area. Currently, there is little existing vegetation within the DPA due to the location of an access for the adjacent farm property and a statutory right-of-way for RDN community water works, which includes up to 10 metres of the 15-metre buffer area. With respect to the proposed common property area, the applicant's agent has indicated that there will be no works associated with the development of the subdivision within the 15 metre buffer area. If a future owner wishes to place or develop a use within the Development Permit Area, a development permit would be required.

Request for Relaxation of Minimum 10 % Frontage Requirement

With respect to the request to relax the minimum 10% frontage requirement, Strata Lot 9 is proposed to be fronted on a cul-de-sac road, which due to the configuration of the road provides for less available frontage. This strata lot is designated within the Farm Land Protection Development Permit Area; however, due to the size of this parcel (1775 m²), there will be a sufficient area to support the intended residential use outside the Development Permit Area. Ministry of Transportation staff has indicated that they will support this request for relaxation of the minimum 10% frontage requirement.

Site Servicing Implications

The applicant has applied for an application for a common sewage disposal system to the Central Vancouver Island Health Authority. Details concerning the proposed system will be addressed as part of the subdivision review process.

The Ministry of Transportation is responsible for the storm drainage. As part of the subdivision review process, the Regional Approving Officer will examine the storm water management of the parent parcel and impose conditions of development as required.

Community water service will be provided by the Regional District. It is noted that the applicant has offered to transfer a fee simple parcel to the Regional District for water utility purposes. This offer is outlined in the *Conditions of Approval set out in Schedule No. 1* and will be secured through the subdivision approval process.

VOTING

Electoral Area Directors – one vote, except Electoral Area ‘B’.

SUMMARY


This is a subdivision application that involves a request for relaxation of the minimum 10% frontage requirement for 1 of the proposed bare land strata lots for the property located off Northwest Bay Road in the Madrona area Electoral Area ‘E’.

The subject property is within the Farm Land Protection Development Permit Area (DPA) pursuant to the Nanoose Bay OCP specifically for the purposes of ensuring protection of the adjacent lands located in the Provincial Agricultural Land Reserve. However, in this case, the subdivision application will meet the exemption provisions of DPA. As part of the subdivision proposal, the applicant has offered to transfer a small parcel for public utility use (*see Schedule No. 1 for Conditions of Approval on page 5*). With respect to the request for relaxation of the minimum 10% perimeter frontage for proposed Strata Lot 9, there is sufficient area outside the designated Farm Land Development Permit Area to support intended residential uses. The Ministry of Transportation staff has indicated they have no objection to this request.

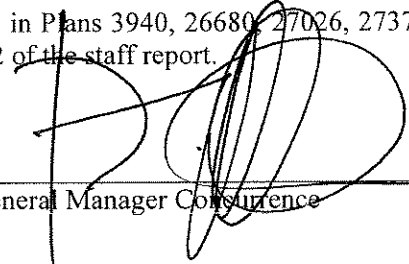
Therefore, given that the request for relaxation of the minimum 10% frontage requirements will not limit the availability of intended uses on Strata Lot 9 and as the applicant has offered to transfer a parcel to the Regional District for public utility use and, staff recommends Alternative No. 1 to approve the request for relaxation of the minimum 10% frontage requirement subject to the conditions outlined in Schedule Nos. 1 and 2 of this staff report.

RECOMMENDATION


That the request for relaxation of the minimum 10% frontage requirement for proposed Strata Lot 9 in conjunction with the subdivision of the property legally described as District Lot 68 Nanoose District Except Amended Parcel A Thereof and Except Those Parts in Plans 3940, 26680, 27026, 27376, 30341, and VIP80336 be approved subject to Schedule Nos. 1 and 2 of the staff report.



Report Writer



General Manager Concurrence



Manager Concurrence



CAO Concurrence

COMMENTS:

Devsr/reports/2006 oc 10% .subd 27029 Timberlake Jones.doc

**Schedule No. 1
Conditions of Approval**

**In conjunction with the subdivision application for the property legally described as
District Lot 68 Nanoose District Except Amended Parcel A Thereof and Except Those Parts in
Plans 3940, 26680, 27026, 27376, 30341, and VIP80336**

The following sets out the conditions of approval:

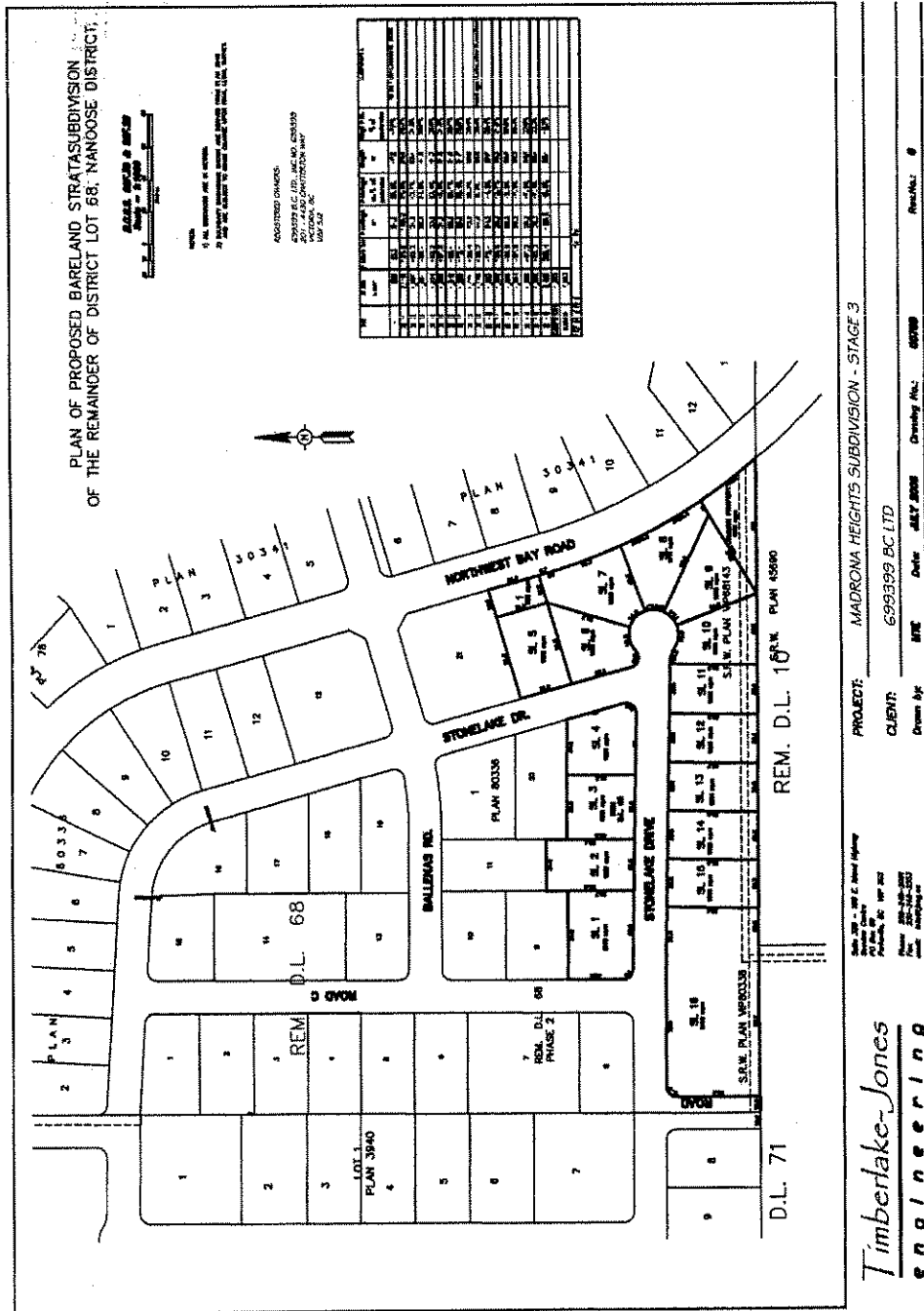
1. Subdivision

The subdivision shall be in substantial compliance with Schedule No. 2 of the corresponding staff report.

2. Transfer of fee Simple Parcel

- a. Proposed Fee Simple Lot 1 as shown on the submitted plan of subdivision on Schedule No. 2 to be transferred to the Regional District of Nanaimo for public utility purposes.
- b. Applicant's solicitor to provide Land Title Office transfer documents and arrange the transfer of title to the Regional District of Nanaimo.
- c. Applicant's solicitor to submit a Letter of Undertaking to complete this transfer of title concurrently with the registration of the plan of subdivision at Land Title Office, Victoria.

Schedule No. 2
Proposed Plan of Subdivision
 In conjunction with the subdivision application for the property legally described as
 District Lot 68 Nanoose District Except Amended Parcel A Thereof and Except Those Parts in
 Plans 3940, 26680, 27026, 27376, 30341, and VIP80336
 (as submitted by applicant)



Attachment No. 1
Location of Subject Property

