



REGIONAL  
DISTRICT  
OF NANAIMO

**DEVELOPMENT PERMIT WITH VARIANCE APPLICATION NO. PL2022-085  
2794 SUNSET TERRACE, ELECTORAL AREA H**

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**RECOMMENDATIONS**

1. That the Board approve Development Permit with Variance No. PL2022-085 to secure vegetation enhancement of the riparian area and recognize the siting of a series of existing retaining walls and a shed subject to the terms and conditions outlined in Attachment 2.
2. That the Board direct staff to complete the required notification for Development Permit with Variance No. PL2022-085.

**BACKGROUND**

The Regional District of Nanaimo (RDN) has received an application from Kenneth Springer and Martine Wolff Von Wulffing to recognize the siting of a series of existing retaining walls and shed within the setback to the interior side lot line. The subject property, legally described as Strata Lot 245, District Lot 251, Alberni District, Strata Plan VIS5160 Together with an Interest in the Common Property in Proportion to the Unit Entitlement of the Strata Lot as Show on Form V, is approximately 0.08 hectares in area and is zoned Horne Lake Comprehensive Development Zone 9 (CD9), pursuant to "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987". The property is located on the east side of Horne Lake and is surrounded by developed recreational properties to the north and south, Sunset Terrace to the east and Horne Lake to the west (see Attachment 1 – Subject Property Map).

The property contains an existing recreational residence that was constructed in 2019 on the upper portion of the parcel, a series of rock retaining walls to support the slope to the west of the residence and a small storage shed on the lower portion of the property. A crushed gravel pathway provides access to the shoreline, traversing between the upper two rock walls and then follows a direct route down the gentler portion of the slope.

Redevelopment of the property began in 2016 when the previous recreational residence, located on the lower portion of the property closer to the lake, was removed under a demolition permit. Two small sheds and a total of seven danger trees were also removed as part of the redevelopment of the site. The applicant obtained a development variance permit (PL2017-053) in 2017 to allow the construction of the new recreational residence with variances to increase the maximum permitted floor area and height for a cabin and to reduce the setbacks for a proposed retaining wall. As the proposed recreational residence was located greater than 15 metres from the natural boundary of Horne Lake and no work within the DPA was identified at that time; a development permit was not required. However, during the construction of the residence additional work, including the construction of a series of retaining walls and the placement of the new shed, was completed within the 15 metre Development Permit Area (DPA) without the required Development Permit (DP). Following construction of the retaining walls, it was discovered through a survey that portions of the walls were greater than 1.0 metre in height and that sections of the walls were also located within the setback from the interior side lot line and

therefore would require a building permit and a variance to recognize their location. The new storage shed is also located within the setback from the interior side lot line but greater than 10 metres from the natural boundary of the lake. The applicant applied for a building permit for the rock retaining walls, however the building permit was never completed as the applicant had not obtained the required variance to recognize their siting. Despite not completing the building permit and development permit with variance processes, the applicants continued to work with their Qualified Environmental Professional (QEP) to establish a revegetation plan and completed approximately 50% of the recommended planting prior to applying for a development permit with variances in 2022.

The proposed development is subject to the Freshwater and Fish Habitat Development Permit Area (DPA) per the “Regional District of Nanaimo Electoral Area ‘H’ Official Community Plan Bylaw No. 1335, 2017”.

### ***Proposed Development and Variances***

The proposed development permit with variances is required to address the construction of a series of rock retaining walls and vegetation removal within the DPA and to secure re-vegetation of the riparian area that was impacted when the property was redeveloped. In addition, variances are required to recognize the siting of two portions of existing rock retaining walls and a small storage shed within the subject property. The applicant proposes to vary the following regulations from the “Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987”:

- Section 3.4.107.4 Minimum Setback Requirements – to reduce the minimum setback from the interior side lot line from 1.5 metres to 0.7 metres for portions of the existing retaining walls.
- Section 3.4.107.4 Minimum Setback Requirements – to reduce the minimum setback from the interior side lot line from 1.5 metres to 0.0 metres for an existing storage shed.

### ***Land Use Implications***

The applicant has provided a Lakeshore Riparian Enhancement Plan (Enhancement Plan) prepared by Tributary Environmental Consulting Inc. dated April 7, 2022, in accordance with the DPA guidelines to address work that was completed as part of redevelopment of the site and restore functional riparian vegetation within the 15-metre riparian assessment area for Horne Lake. The goals of the Enhancement Plan are to replace removed danger trees, offset ongoing land use, and establish riparian vegetation to provide the features, functions, and conditions that support fish and wildlife within 15 metres of the natural boundary of the lake.

The Enhancement Plan notes that a total of seven danger trees were identified and subsequently removed as part of redevelopment of the property and little to no shrub clearing was apparent. The Plan incorporates criteria outlined in the Horne Lake Strata Tree Removal Approval and Replanting Policy and historical Development Permit 0120, to determine the number of trees needed to replace the removed danger trees. Based on these and provincial tree replacement criteria, a total of 37 replacement trees would be required to replace the seven danger trees that were removed. In addition, the Enhancement Plan outlines recommendations to off-set existing land use in the riparian area, including the small storage shed and the gravel pathway which cover approximately 77 m<sup>2</sup> or 1/5<sup>th</sup> of the riparian area. This land use is proposed to be offset by planting the majority of the riparian area, approximately 208 m<sup>2</sup>, with native vegetation which would offset the non-vegetated areas by a ratio of 2.7:1 (2.7 m<sup>2</sup> of enhancement to offset 1 m<sup>2</sup> of non-vegetated area).

The Enhancement Plan identifies three key areas for enhancement planting including the area within 2 metres of the lakeshore, on and within the rock retaining walls, and within the 1.5 metre setbacks. While provincial tree replacement criteria would require a total of 37 trees to replace the 7 trees that were removed, the

Enhancement Plan confirms that a total of 19 trees would be sufficient to cover the available planting area, provided the plantings are well maintained and achieve a high rate of survival. These trees in addition to proposed 208 m<sup>2</sup> planting area, which can accommodate approximately 234 plants, will result in tree replacement being far exceeded by vegetation enhancement within the planting area (Attachment 2 – Schedule 3 Riparian Enhancement Plan).

At the time the Enhancement Plan was complete, the QEP confirmed that 111 of the 234 plants, including 6 trees, had been installed in the riparian area by the landowner. Since that time, the applicants recently had the remaining plantings professionally installed at the appropriate locations and spacing and soils have been amended with topsoil. The QEP has also confirmed that recent plantings include 13 additional trees, 114 shrubs, and 15 groundcover, which exceed the total number of remaining plants required. Effectiveness monitoring is required over the next two years, with inspections in the late summer or early fall of 2023 and 2024 and a summary of the findings, including any adaptive measures needed to meet the targets of the enhancement plan, will be provided following each of the inspections.

As the replanting has already been completed in accordance with the recommendations of the Enhancement Plan, it is recommended the applicant be required to provide a landscape security deposit equivalent to the cost of recent plantings in the amount of \$2,152 (see Schedule 1 of Attachment 2 – Draft of Development Permit).

“Board Policy B1.5 Development Variance Permit, Development Permit with Variance and Floodplain Exemption Application Evaluation” (Policy B1.5) for the evaluation of development variance permit applications requires that there is an adequate demonstration of an acceptable land use justification prior to the Board’s consideration. In support of this application, the applicant has provided a field review of the rock retaining walls prepared by Lewkowich Engineering Associates Ltd., dated June 13, 2019. This review confirms that the existing retaining walls are safe in both normal and design seismic states and that they are suitable for the intended purpose of providing support to the terraced slope. The applicant has confirmed that the rock walls were constructed in two phases and that portions closest to the lake were completed with approval from the strata and in correspondence with the RDN in 2016. The additional retaining walls were completed during the construction of the new residence for landscaping and to support the slope between the residence and lower walls, and facilitate a gradual sloped trail access to the lower portion of the property and lake. The applicants have provided the following rationale in support of the requested variances for the retaining walls:

- The required engineering documentation has been provided with this application and the previous building permit application.
- At the time the walls were constructed the applicants believed they were less than 1.0 metre in height but over time some settling of the soil has resulted in sections of the walls exceeding 1.0 metre in height.
- There is no access for equipment to remove or alter the existing retaining walls and no suitable location to place rocks if they could be removed.
- The rock work is not visible to neighbours and does not impact the functionality or enjoyment of neighbouring properties.
- The retaining walls provide an area between and within the tiers for revegetation to occur.

With respect to the requested variance for the existing shed, the applicants have indicated that the property previously contained two sheds that were removed following demolition of the previous cabin and that the new 2m x 2m shed replaced a 3m x 3m garden shed in the same location. The applicants have provided the following rationale to support the requested variance for the shed:

- There has been a shed on-site since approximately 1990 when the previous cottage was constructed.

- Due to the slope of the lot and the siting of the new cottage on the upper portion of the property, there is no other practical location for the new shed.
- The shed is not located on a foundation and has less impact than the previous shed.
- While the shed may be designed to be moveable, there is no way to move it and keep it intact and disassembling it would result in destruction of the shed.
- The shed does not impact the neighbours and is located within the subject property.

In addition, it should be noted that proposed draft amendments to Bylaw 500 include amendments to the existing CD9 zone which would not require any setback from an interior or rear parcel line for one accessory building not exceeding a floor area of 10 m<sup>2</sup> and with a maximum height of 3.0 metres. For reference, this is consistent with existing Residential 1 and 2 zones in Bylaw 500. As the proposed shed meets these criteria related to dimensions and height, no variance would be required in the future should these proposed changes be supported and adopted by the Board in the new zoning bylaw.

Given that the applicants have provided sufficient rationale; the variances are not anticipated to result in negative implications for adjacent property owners; and the siting of the existing retaining walls and shed have been addressed by the QEP in the Enhancement Plan, the applicants have made reasonable efforts to address Policy B1.5.

### ***Public Consultation Implications***

Pending the Electoral Area Services Committee's recommendation and pursuant to the *Local Government Act* and the "Regional District of Nanaimo Development Application, Notification Procedures and Fees Bylaw No. 1845, 2022", property owners and tenants of parcels located within a 100 metre radius of the subject property 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.

### **FINANCIAL IMPLICATIONS**

The proposed development has no implications related to the Board 2022 – 2026 Financial Plan.

### **STRATEGIC PLAN ALIGNMENT**

The proposed development has been reviewed and the proposal is in keeping with the 2019-2022 Board Strategic Plan goal to protect and enhance the natural environment, including land, water, and air for future generations. The DPA guideline requirements for a Riparian Condition and Impact Assessment helps ensure that site-specific environmentally sensitive features are identified and that the impacts of development on the natural environment are identified and that vegetation enhancement is required where necessary.

### **REVIEWED BY:**

P. Thompson, Manager, Current Planning  
 L. Grant, General Manager, Planning and Development  
 D. Holmes, Chief Administrative Officer

### **ATTACHMENTS:**

1. Subject Property Map
2. Draft Development Permit with Variances