

REGIONAL DISTRICT OF NANAIMO

P O L I C Y

SUBJECT:	<i>Development Variance Permit, Development Permit with Variance & Floodplain Exemption Application Evaluation</i>	POLICY NO: B1.5 CROSS REF.:
EFFECTIVE DATE:	March 8, 1994	APPROVED BY: Board
REVISION DATE:	October 28 ² , 2014 ¹⁸	PAGE: 1 of 5

PURPOSE

This policy is to provide staff with guidelines for reviewing and evaluating development variance permit applications, development permit applications that include bylaw variances, and site-specific exemptions to the Floodplain Bylaw.

PART A – DEVELOPMENT VARIANCE PERMIT AND DEVELOPMENT PERMIT WITH VARIANCE APPLICATION EVALUATION

1. Demonstration of Land Use Justification

- a) An application should demonstrate that the proposed variance is necessary and is supported by an acceptable land use justification; such as:
 - i. the ability to use or develop the property is unreasonably constrained or hindered by having to comply with the bylaw requirement; or,
 - ii. there is a net benefit to the community or immediate area that would be achieved through the variance approval.
 - iii. the proposed variance would allow for more efficient and effective use and development of the subject property.
- b) Failure to provide an acceptable land use justification as outlined in Part A, Section 1(a) may be grounds for staff to recommend that the application be denied by the Board.
- c) If an acceptable land use justification is identified the applicant should demonstrate that a reasonable effort has been made to avoid the need for, or reduce the extent of, the requested variance. If such efforts are not made this may be grounds for staff to recommend that the application be denied by the Board.
- d) Examples of acceptable land use justifications are as follows:
 - i. A physical constraint such as a steep slope, watercourse, or rock outcrop results in an unreasonably small building site when setbacks are applied. In such a case a setback variance

- may be recommended where the impact of the variance is considered acceptable by planning staff.
- ii. A man-made constraint such as an archaeological site, odd shaped lot, restrictive or conservation covenants, easement, or right-of-way results in an unreasonably small building site when setbacks are applied. In such a case a setback variance may be recommended where the impact of the variance is considered acceptable by planning staff.
 - iii. A hazardous condition exists that requires that the underside of the floor joists be raised to meet floodplain elevations. This may result in an average designed building or structure exceeding the maximum height restrictions. In such a case a height variance may be recommended where the impact of the variance is considered acceptable by planning staff.
 - iv. A topographical constraint such as a depression or sloped area results in an average designed building or structure exceeding maximum height restrictions. In such a case a height variance may be recommended where the impact of the variance is considered acceptable by planning staff.
 - v. An environmentally significant feature such as a stand of Garry Oak trees, a watercourse, or sensitive ecosystem exists on site that the applicant is proposing to avoid, preserve, and/or enhance, which restricts potential building sites on a lot. In such a case a setback variance may be considered where the proposed variance will reduce the impact to the Environmentally Sensitive Area and any other impact considered acceptable by the reviewing planning staff member.
 - vi. The only building site on a lot will block a significant view for area residents. In such a case a setback variance may be considered to allow the relocation of the building to allow the preservation of that view, where the impact of the variance is acceptable.
 - vii. Where a longstanding existing building or structure does not conform to siting or height requirements a variance may be considered to legalize that structure where the impact of the variance is acceptable and the use of the building or structure conforms to the current zoning regulations.
 - viii. The inclusion of a renewable solar or wind energy system, or a rainwater harvesting system proposed for the operation of a building or structure results in the building or structure exceeding maximum height restrictions, or encroaching into a setback area. In such a case, a height variance or setback variance may be recommended where the impacts of the variance are considered acceptable.
- e) Part A, Section 2(d) is not intended to be an exhaustive or definitive list of acceptable land use justifications for a variance application. Staff are to use their judgment in evaluating the specific circumstances involved in each application.

2. Impact Evaluation

- a) Where a land use justification for a proposed variance has been demonstrated, the application shall then be evaluated based upon the impact(s) (positive or negative) of the variance. Impact(s) may be classified into the following three general categories:

- i. Aesthetic impact. This includes the impact of the proposed variance on the streetscape, the views from adjacent properties, compatibility with neighbourhood design standards, etc.
 - ii. Functional impact. This includes the impact of the proposed variance on the function of the property for the permitted uses and the potential impact of the variance on the function of adjacent properties, or road right-of-ways.
 - iii. Environmental impact. This includes the impact of the proposed variance on the long term sustainability of the natural environment or the direct impact on a specific feature of the natural environment.
- b) An unacceptable impact, as evaluated by planning staff, is grounds for staff to recommend that the application be denied by the Board.
 - c) An applicant should demonstrate that a reasonable effort has been made to minimize any and all potential negative impacts associated with a variance. If such efforts are not made this would be grounds for staff to recommend that the application be denied by the Board.
 - d) Part A, Section 2(a) is not intended to be an exhaustive or definitive list of potential impacts. Staff are to use their judgment in identifying and evaluating all potential impacts associated with the specific circumstances involved in each application.

3. Specific Impact Evaluation by Application Type

- a) Height variance requests for a residential use may not be supported where; in the opinion of planning staff:
 - i. the applicant is requesting a height variance to accommodate a third storey;
 - ii. the applicant has not made a reasonable effort to reduce the height of the proposed building or structure by reducing the roof pitch, reducing ceiling height, minimizing the crawl space, etc.;
 - iii. the appearance of the proposed structure from the street will appear out of character with the height of buildings in the immediate neighbourhood;
 - iv. the proposed height variance will result in a notable reduction in a neighbouring properties view of a significant viewscape; or
 - v. the proposed height variance will result in a notable shading of, or lack of privacy for, a neighbouring property.
- b) Lot line relaxation, ~~ceen~~ setback **from the sea** relaxation, and watercourse setback relaxation requests may not be supported where; in the opinion of Planning Staff:
 - vi. the applicant has not made a reasonable effort to reduce the need for a setback variance by amending the house design or finding an alternative building site;
 - vii. the proposed setback variance will result in an unreasonable reduction in a neighbouring properties view of a notable viewscape;

- viii. the proposed setback variance will result in the building or structure appearing to extend closer to the ocean sea or other watercourse than other houses in the immediate vicinity;
 - ix. the proposed setback variance may result in a geotechnical or flooding hazard, including impacts associated with sea level rise to the year 2100;
 - x. the proposed setback variance may result in a negative impact on the natural environment;
 - xi. the proposed setback variance may have a negative impact on an archaeological site; or
 - xii. the proposed setback variance is contrary to senior government legislation (e.g. **Transportation Act, Fish Protection Act, Water Act, Land Title Act**, etc.).
- c) Parking Variance requests for Commercial, Industrial, or Institutional uses may not be supported where:
- i. the proposed variance would interfere with internal traffic flow, loading and unloading, access and egress, pedestrian safety, etc.;
 - ii. the applicant is not proposing to provide adequate parking spaces constructed to Regional District of Nanaimo standards on a hard durable dust free surface; or
 - iii. the proposed variance, in staff's opinion, does not provide an adequate number of parking stalls for the intended use.
- d) Signage variance requests may not be supported where:
- i. the proposed variance would result in an increased appearance of "sign clutter" on the subject property (sign consolidation should be encouraged);
 - ii. the proposed variance creates a visual obstruction which interferes with the safe movement of pedestrians and/or traffic on and off site; or
 - iii. the illumination of a proposed sign is not compatible with the surrounding neighbourhood or would create an unreasonable aesthetic impact on the adjacent properties.

PART B – FLOODPLAIN EXEMPTION APPLICATIONS

1. Demonstration of Land Use Justification

- a) An applicant must demonstrate that the proposed exemption is necessary and is supported by an acceptable land use justification; such as:
- i. that due to existing site characteristics and the location of the existing infrastructure (if any), it is impractical to meet the Flood Construction level (FCL)
 - ii. the proposed construction methods are designed to mitigate flood damage, and
 - iii. there are no other practical building sites located on the subject property;
 - iv. the applicant has exhausted all other options including amendments to zoning setback and height requirements; or
 - v. it is not practical to develop the subject property without a site specific exemption.

2. Demonstration that the Exemption is Advisable

a) Where an acceptable land use justification has been demonstrated in accordance with Part B, Section 1 of this Policy, the owner must submit a completed Site Specific Exemption Application as prescribed in the "Regional District of Nanaimo Floodplain Management Bylaw No.1469, 2006".

~~a) Where an acceptable land use justification has been demonstrated, the applicant must demonstrate that the proposal is in compliance with Province of BC's Flood Hazard Area Land Use Management Guidelines and provide a flood hazard assessment report prepared by a professional engineer or geoscientist experienced in geotechnic engineering that the land may be used safely for the use as proposed.~~

b) Where a flood assessment report has been submitted, to the satisfaction of the Regional District, and the owner grants a restrictive covenant, under Section 219 of the *Land Title Act*, respecting the use and development of the land that includes:

i. flood assessment report recommendations, restrictions or conditions, where applicable, and

ii. an indemnity in favour of the Regional District to indemnify and save harmless the Regional District against any loss or damage with respect to the flooding to the property, or flood damage to the land, structures and contents thereof, or any injury (including death) to any person or animal arising from the flooding of the property or flood damage to the land.

PART C - TERMS OF USE OF THIS POLICY

1. This policy is intended to apply to staff evaluation of development variance permits, development permit applications that include bylaw variances, and site specific exemptions to the Floodplain Bylaw.
2. The Board of the Regional District of Nanaimo is not in any way bound by this policy and is free to apply, or not apply, any evaluation criterion it deems appropriate in its consideration of applications.