
TO: Electoral Area Services Committee **DATE:** March 12, 2019
FROM: Nick Redpath
Planner **FILE:** PL2019-024
SUBJECT: Development Variance Permit Application No. PL2019-024
2254 Alberni Highway – Electoral Area F
Lots 7 and 8, Block 1, Salvation Army Lots, Nanoose District, Plan 1939

RECOMMENDATIONS

1. That the Board approve Development Variance Permit No. PL2019-024 to reduce the minimum parking and other lot line setback requirements subject to the terms and conditions outlined in Attachments 2 and 3.
2. That the Board direct staff to complete the required notification for Development Variance Permit No. PL2019-024.

SUMMARY

The applicant proposes to vary the minimum parking and other lot line setback requirements to bring an existing building proposed for retail use into compliance with the existing zoning regulations. As an acceptable land use justification was demonstrated to support the variance, and no negative impacts are anticipated as a result of the proposed variance, it is recommended that the Board approve the development variance permit pending the outcome of public notification and subject to the terms and conditions outlined in Attachment 2.

BACKGROUND

The Regional District of Nanaimo (RDN) has received an application from Fern Road Consulting Ltd. on behalf of Kim Young to vary the minimum parking and other lot line setback requirements to bring the southwest building on the property into compliance. The applicant previously submitted a separate application for a licence to permit the sale of non-medical cannabis out of an existing building on the property. As part of the Non-Medical Cannabis Retail Store (NMCRS) Licence Application, a site review identified that the property did not meet the minimum parking requirements for a commercial zone and the existing building on the southwest portion of the property where the change of use is proposed did not meet the setback requirements of the west property line. The site review also identified that the southwest building also straddles the property line that separates Lots 7 and 8. To bring the southwest building into compliance, the applicant was instructed to apply for a variance to address the minimum parking and setback requirements on the property and to undertake a lot consolidation to address the existing building straddling the property line. The building located on the north portion of the property does not require a variance as it predates zoning regulations in the area.

The subject properties are each approximately 0.07 hectares in area and zoned Commercial 2 (C-2), pursuant to “Regional District of Nanaimo Electoral Area ‘F’ Zoning and Subdivision Bylaw No. 1285, 2002”. The properties are located to the south of Alberni Highway and bordered by Terry Road to the east, a commercially zoned property to the west and a laneway to the south (see Attachment 1 – Subject Property Map).

It is important to note that should the Directors approve the requested variances to parking and siting, the building will be available for any retail commercial use. Consideration of future Cannabis Retail License will be subject to the applicable process and separate consideration by the Board.

The properties contain a residential building on the southwest portion and a commercial building on the north portion that are both serviced by the same on-site well and sewage system.

Proposed Development and Variance

The applicant proposes to vary the following regulations from the “Regional District of Nanaimo Electoral Area ‘F’ Zoning and Subdivision Bylaw No. 1285, 2002”:

- **Section 2.17 – Parking** to reduce the minimum parking requirements for all uses in a C zone from 1 per 20 m² Floor Area to 1 per 39 m² Floor Area, effectively reducing the minimum parking requirements for this property from 12 spaces to 6 spaces (see Attachment 3 – Proposed Site Plan and Variances).
- **Section 4.3 – Minimum Setback from All Other Lot Lines** to reduce the minimum side yard setback requirement of the west property line from 2.0 metres to 1.1 metres for an existing building.

Land Use Implications

The applicant proposes to vary the minimum parking and other lot line requirements of Bylaw 1285 to bring the southwest building into compliance as part of an ongoing NMCRS Licence Application. The two existing buildings on the property were constructed prior to zoning being implemented in the area and currently hold legal non-conforming status as defined by the *Local Government Act*. The applicant intends to change the use of the southwest building from residential to commercial in order to open a proposed non-medical cannabis retail store. Once a building changes use, it loses its legal non-conforming status and must comply with all existing land use regulations. The variance application does not include the existing commercial building on the north portion of the property as it is not changing use and will continue to maintain its legal-non-conforming status. To address the proposed change of use to the southwest building and bring it into compliance, the applicant has submitted an application to vary the minimum parking and other lot line setback requirements.

Parking Requirements

The minimum number of parking spaces required for a commercial zone is 1 per 20 m² Floor Area for all buildings on the property. The combined total floor area of both buildings is 234 m², requiring a minimum of 12 parking spaces for this property. Due to limited space on the property, the proposed site plan provided by Sims Associates Land Surveying Ltd. shows that a configuration of only 6 parking spaces is possible. In support of the variance request, the

applicant indicates that Terry Road adjacent to the east of the property provides additional parking spaces for nearby services and residences and that the combination of on-site and street parking should adequately accommodate the proposed use.

Setback Requirements

The bylaw setback requirement for other lot lines in this zone is 2.0 metres. The building on the southwest portion of the property is situated 1.1 metres from the west property line, requiring a variance of 0.9 metres. The building was constructed prior to zoning regulations and the applicant intends to bring the siting of the building into compliance prior to the change of use from residential to commercial to facilitate the ongoing application for a licence to sell non-medical cannabis out of this building.

“Board Policy B1.5 Development Variance Permit, Development Permit with Variance and Floodplain Exemption Application Evaluation” for 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 this case, the applicant has provided an acceptable land use justification as the longstanding existing building does not conform to siting requirements and Policy B1.5 states that under this circumstance, a variance may be considered to legalize the structure as the variance is acceptable and the use of the building conforms to the current zoning regulations. In this case, the applicant indicates that adequate parking will be provided on the property and on Terry Road and the existing and proposed use conforms to the current permitted uses in the C-2 Zone.

The applicants have made reasonable efforts to address the guidelines in Policy B1.5 by providing sufficient rationale for the proposed variance.

The applicant will be required to consolidate Lots 7 and 8 and obtain all necessary permits prior to any construction or change of use on the property (see Attachment 2 – Terms and Conditions of Permit).

Environmental Implications

As part of the application, a letter from a Registered Onsite Wastewater Practitioner (ROWP) was provided noting that a recent inspection of the prescribed on-site sewage system identified no health hazards. The ROWP’s letter also noted that the proposed change in use of one of the buildings on the property from residential to commercial will not have any negative impacts on the existing system. The proposed variance is not anticipated to have any negative environmental impacts.

Intergovernmental Implications

The application was referred to the Coombs Volunteer Fire Department, Vancouver Island Health Authority (VIHA) and the Ministry of Transportation and Infrastructure (MOTI). The referral response from VIHA stated that since two buildings on the property share a well, a valid permit under the *Drinking Water Protection Act* (DWPA) is required. VIHA does not have records of an existing permit to operate under the DWPA and recommend a variance not be granted until such time that the proponent obtains this permit and is in compliance with the DWPA. As part of the conditions of the permit, the applicant will be required to obtain the necessary permit to operate under the DWPA prior to the issuance of the variance.

The referral response from MOTI stated that they have no concerns with the proposed variance to the required parking spaces and that the public is allowed to park along Terry Road.

The Coombs Volunteer Fire Department expressed no concerns with the proposed variance.

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 and Notification Procedures Bylaw No. 1776, 2018", property owners and tenants of parcels located within a 50.0 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.

ALTERNATIVES

1. To approve Development Variance Permit No. PL2019-024 subject to the conditions outlined in Attachments 2 and 3.
2. To deny Development Variance Permit No. PL2019-024.

FINANCIAL IMPLICATIONS

The proposed development has been reviewed and has no implications related to the Board 2018 – 2022 Financial Plan.

STRATEGIC PLAN IMPLICATIONS

The proposed development has been reviewed and has no implications for the 2016 – 2020 Board Strategic Plan.



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February 25, 2019

Reviewed by:

- P. Thompson, Manager, Current Planning
- G. Garbutt, General Manager, Strategic & Community Development
- P. Carlyle, Chief Administrative Officer

Attachments

1. Subject Property Map
2. Terms and Conditions of Permit
3. Proposed Site Plan and Variances

Attachment 2 Terms and Conditions of Permit

The following sets out the terms and conditions of Development Variance Permit No. PL2019-024:

Bylaw No. 1285, 2002 Variances

With respect to the lands, “Regional District of Nanaimo Electoral Area ‘F’ Zoning and Subdivision Bylaw No. 1285, 2002” is varied as follows:

- **Section 2.17 – Parking** to reduce the minimum parking requirements for all uses in a C zone from 1 per 20 m² Floor Area to 1 per 39 m² Floor Area, effectively reducing the minimum parking requirements for this property from 12 spaces to 6 spaces.
- **Section 4.3 – Minimum Setback from All Other Lot Lines** to reduce the minimum side yard setback requirement of the west property line from 2.0 metres to 1.1 metres for an existing building.

Conditions of Approval

1. The site is developed in accordance with the Site Plan prepared by Sims Associates Land Surveying Ltd. dated January 22, 2019 and attached as Attachment 3.
2. Prior to issuance of the Permit, the property owner shall consolidate Lots 7 and 8, Block 1, Salvation Army Lots, Nanoose District, Plan 1939.
3. The property owner shall obtain the necessary permits to operate under the *Drinking Water Protection Act*.
4. The property owner shall obtain the necessary permits for construction in accordance with Regional District of Nanaimo Building Regulations.

