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**TO:** Electoral Area Services Committee      **DATE:** March 12, 2019  
**FROM:** Sarah Martin  
Planning Technician      **FILE:** PL2018-215  
**SUBJECT:** **Development Variance Permit Application No. PL2018-215**  
**2515 Island Highway East – Electoral Area E**  
**Lot 2, District Lot 79, Nanoose District, Plan 13504**

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## **RECOMMENDATIONS**

1. That the Board approve Development Variance Permit No. PL2018-215 to reduce the interior lot line setback from 2.0 metres to 0.15 metres 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. PL2018-215.

## **SUMMARY**

The Regional District of Nanaimo is in receipt of an application for a variance to allow a recently constructed retaining wall that does not meet the exemption criteria, to be sited within the interior lot line setback. The applicant has provided a letter outlining the land use justification, a site survey, and an Engineers assessment in support of this application.

Given that “Board Policy B1.5 Development Variance Permit, Development Permit with Variance and Floodplain Exemption Application Evaluation” has been met 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 JE Anderson & Associates on behalf of Marcy Sjostrom to permit two retaining walls that do not meet the definition of landscaping within the interior lot line setback. The subject property is approximately 0.174 hectares in area and is zoned Residential 1, Subdivision District ‘F’ (RS1, F), pursuant to “Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987”. The property is located on Island Highway West, south of Northwest Bay Road in an area of mixed land uses surrounded by agricultural land (see Attachment 1 – Subject Property Map).

The property contains a dwelling unit (under construction), and two retaining walls. It is serviced by a well and on-site sewage disposal.

### ***Proposed Development and Variance***

The proposed development includes two retaining walls erected to support a ground floor patio on a steeply graded site. The walls range in height from 1.15 metres to 2.21 metres above natural grade. This variance is associated with building bylaw enforcement file PR2018-458. The applicant proposes to vary the following regulations from the “Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987”:

- **Section 3.4.61 – Minimum Setback Requirements** to reduce the minimum interior lot line setback from 2.0 metres to 0.15 metres for portions of the existing retaining walls that are over 1.0 metre in height.

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

The applicant has submitted a site survey, cross section drawings, a land use justification letter, and an Engineers assessment of the patio drainage. The subject property slopes steeply away from the road frontage, towards a pan handle lot to the rear. The property is being re-developed with a new dwelling unit, which has been issued occupancy (PR2017-725, January 30, 2019). As the property owner desired a walkout patio at the rear, retaining walls were constructed to support a concrete pad along the north (rear) and west building elevations. The western extent of the patio abuts the interior lot line on the west side. The dwelling unit is located to the west side of the parcel to take advantage of a view corridor overlooking the sea. As a result of this, and the desire for a walk out patio on a steep lot, one of the retaining walls supporting the patio is within the interior lot line setback. As built, the retaining wall is high enough in some areas to be considered a structure under the zoning bylaw. An additional retaining wall constructed along the rear (north) lot line has been amended so that it does not require a variance.

“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.

The applicant has provided the following justification for the requested variance:

- Due to the steep grade of the site, retaining walls are necessary to support the construction of a patio.

As the height of the retaining wall within the setback is less than or equal to 1.21 metres higher than 1.0 metre and is largely screened by an existing fence, it is not anticipated that the variance will result in any serious aesthetic impacts, though privacy of the neighbouring parcel could be a concern. It should be noted that the neighbouring dwelling unit’s eastern elevation overlooks the patio, as well as the presence of a second story deck. However, this dwelling unit is sited further back on the neighbouring parcel, putting it forward of the subject property. The applicant has not proposed to provide screening along the highest portion of the retaining wall, which is towards the front elevation of the dwelling unit. While the wall itself is screened by the existing fence, the side of the dwelling unit is not. Letters of support from neighbouring properties, while not required, have not been submitted in support of the variance request. Pending the outcome of the notification process, the applicant may need to address aesthetic impacts in support of the variance request.

Functional impacts of the variance could be of concern. As stormwater accumulation at the bottom of the slope appears to be an issue and the applicant has constructed an impervious surface up to 0.15 metres (6.0 inches) of the interior lot line, drainage onto neighbouring properties is a concern. As a condition of building permit, the property owner was required to secure an easement for storm drainage (CA7198227), which has been installed and passed inspection by Building Services (January 30, 2019). The applicant has submitted an assessment prepared by Lewkowich Engineering and Associates Ltd, dated February 28, 2019, that states that at this time, sheet flow is the predominant runoff mechanism, which has low erosion potential. It goes on to state that if erosion becomes an issue, a lip or small curb can be constructed to direct flow to a suitable discharge area. The patio is not connected to the storm drainage system installed for the dwelling unit. It is recommended that as a condition of permit that the retaining walls and patio be developed and maintained in accordance with the recommendations of this assessment (see Attachment 2 – Terms and Conditions of Permit).

Given that the variance will not result in negative functional implications for adjacent properties, the applicants have made a reasonable effort to address Policy B1.5 guidelines.

### ***Intergovernmental Implications***

There are no intergovernmental implications associated with this application.

### ***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. PL2018-215 subject to the conditions outlined in Attachments 2 to 3.
2. To deny Development Variance Permit No. PL2018-215.

## **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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Sarah Martin  
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February 28, 2019

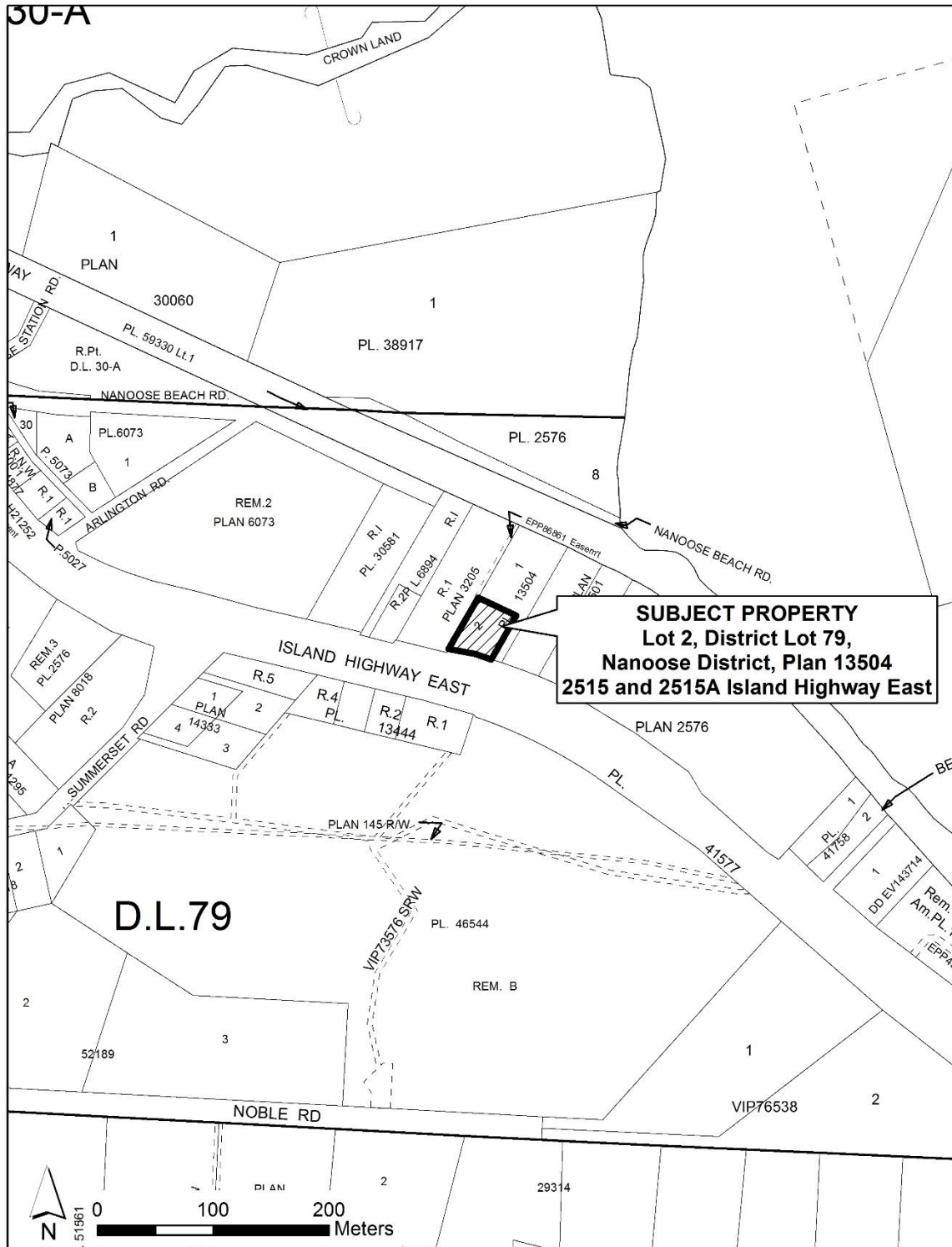
Reviewed by:

- 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 Survey Plan and Variances

**Attachment 1**  
**Subject Property Map**



**Attachment 2**  
**Terms and Conditions of Permit**

The following sets out the terms and conditions of Development Variance Permit No. PL2018-215:

Bylaw No. 500, 1987 Variance

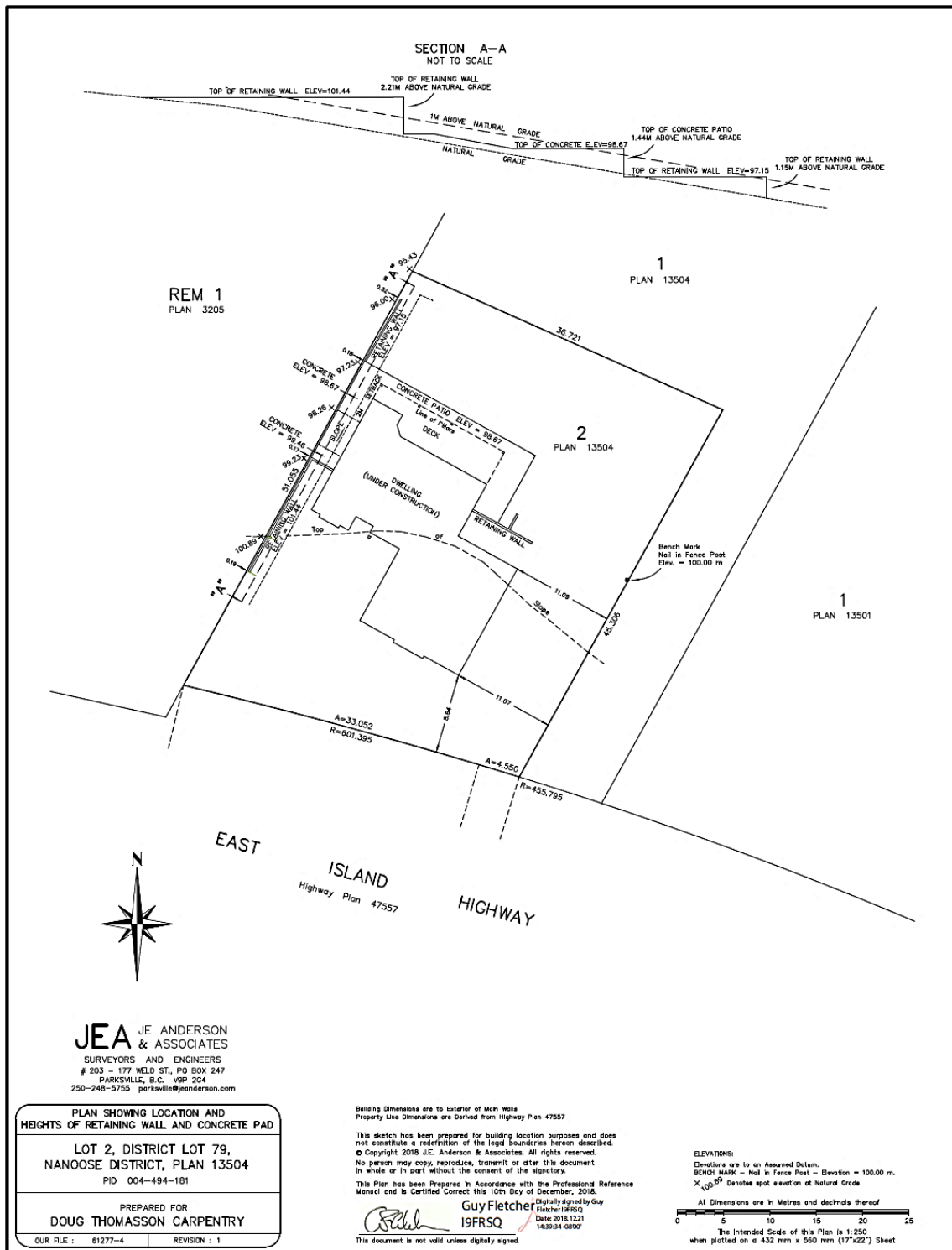
With respect to the lands, “Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987” is varied as follows:

1. Section 3.4.61 – Minimum Setback Requirements to reduce the minimum interior lot line setback from 2.0 metres to 0.15 metre for portions of the existing retaining wall that are over 1.0 metre in height.

Conditions of Approval

1. The site is developed in accordance with the Survey Plan prepared by JE Anderson & Associates, dated December 10, 2018 and attached as Attachment 3.
2. The retaining wall and patio are maintained in accordance with the recommendations of Lewkowich Engineering and Associates Ltd report dated February 28, 2019.
3. The property owner shall obtain the necessary permits for construction in accordance with Regional District of Nanaimo Building Regulations.

**Attachment 3**  
**Proposed Survey Plan and Variances**  
**(1 of 3)**



**Attachment 3**  
**Proposed Survey Plan and Variances**  
**(2 of 3)**

Proposed variance to reduce the Interior Lot Line setback from 2.0 m to 0.15 m.

REM 1  
PLAN 3205

1  
PLAN 13504

2  
PLAN 13504

Bench Mark  
Nail in Fence Post  
Elev. = 100.00 m

EAST

ISLAND

Highway Plan 47557

HIGHWAY



**Attachment 3**  
**Proposed Survey Plan and Variances**  
**(3 of 3)**

