



## TOWN OF SIDNEY

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### Report to Council

**TO:** Mayor and Council  
**FROM:** Kevin Webber, Planning Technician  
**DATE:** February 4, 2020 **Folder:** 9647 Third Street (Land)  
**SUBJECT:** Development Variance Permit Application No. DV100289  
9641 & 9647 Third Street

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#### **PURPOSE:**

The purpose of this report is to address **Development Variance Permit Application No. DV100289**, for the properties at 9641 and 9647 Third Street (*aerial photo attached as Appendix A*).

#### **BACKGROUND:**

Council approved a Development Permit (DP100724) for construction of two small lot single family dwellings on the subject properties on February 13, 2018. The dwellings have now been constructed and landscaping is nearing completion. One element of that DP was a 1.8 metre (5.9 ft) high fence, as measured from the existing grade, along the rear and side interior lot lines of the subject properties. Through the subsequent Building Permit review process it was identified that the applicant would need to raise the grade of the properties to comply with the recommendations for minimum floor level from a geotechnical report required by the Town's Interim Flood Construction Level Policy (Policy DV-014). In order to retain the raised grade of the subject properties, the applicant constructed a concrete retaining wall along the rear lot lines (east lot line) of both properties, and along the south side interior lot line of the property located at 9641 Third St.

#### **OVERVIEW OF DEVELOPMENT PROPOSAL:**

The applicant is proposing to construct a 1.6 metre (5.3 ft) high fence on top of the newly built retaining wall. The retaining wall has a height of 0.75-1.35 metres (2.5-4.4 ft) above the existing grade of the adjacent properties (2477 Orchard Ave. and 9633 Third St.). The top of the retaining wall extends 0.15 metres (6 inches) above the newly established grade on the subject properties. Subsequently, the combined height of the proposed fence and retaining wall, as measured from the newly established grade on the subject properties, would be 1.75 metres (5.75 ft) and would range from 2.35-2.95 metres (7.7-9.7 ft) above the existing grade of the adjacent properties (*see Proposed Fence Plan in Appendix C*).

The proposed fence is to be constructed out of corrugated galvanized steel panels framed by naturally stained cedar 2"x6" boards, and affixed to naturally stained 6"x6" cedar posts (*see Proposed Fence Design in Appendix D*).

The Zoning Bylaw states that where a fence is constructed on top of a retaining wall, the combined height of the retaining wall and fence shall not exceed the maximum permitted height of a fence in that location. The maximum height of a fence in an interior side yard or a rear yard is 1.8 metres (5.9 ft). The combined height of the retaining wall and proposed fence would exceed the maximum permitted 1.8 metre height of a fence built on top of a retaining wall as specified in Section 6.1 of Zoning Bylaw No. 2015, therefore a Development Variance Permit is required.

The required variance is as follows:

<b>Zoning Bylaw 2015</b>	<b>Requirement</b>	<b>Proposed Fence</b>
<b>Section 6.1.</b>	<p><i>a. No fence shall exceed 1.8 metres in height above grade.</i></p> <p><i>g. Where a fence is constructed on top of a retaining wall, the combined height of the retaining wall and fence shall not exceed the maximum permitted height of a fence in that location.</i></p>	<p>A fence constructed on top of a retaining wall with a combined height ranging from 2.35-2.95 metres (7.7-9.7 ft) above grade.</p>

**OFFICIAL COMMUNITY PLAN BYLAW 1920:**

The subject property is designated under the OCP as Intensive Single Family Residential (RES-2). Staff have reviewed the Objectives and Policies outlined in the Official Community Plan and found that the proposal generally conforms.

**ZONING BYLAW 2015:**

The subject property is zoned Single-family High Density Residential – Orchard Area (R1.3), the intent of which is to provide for small-lot single-family housing and low density single-family housing with the potential for a secondary suite or detached secondary dwelling.

Staff have reviewed the proposed fence and determined that the proposal is in full conformance with the Zoning Bylaw, with exception of the requested variance.

**INTENSIVE SINGLE-FAMILY RESIDENTIAL DEVELOPMENT PERMIT AREA GUIDLINES:**

As the property is located within an area designated under the OCP as Intensive Single-Family Residential (RES-2), the site is subject to the Intensive Single-family Residential Development Permit Area Guidelines. The purpose of these guidelines is to address the form and character of the proposed development, including landscaping and the siting, exterior design and finish of the building.

While the proposal generally conforms to the guidelines, staff would like to highlight the following guideline for Council’s consideration:

*19.3.10 Screening for private patios, porches, balconies and decks may be provided with light lattice work or landscaping. Porches, balconies and decks facing a street should present an open and accessible appearance that encourages interaction between the dwelling and the street.*

The above guideline recommends a softer screening treatment for patios in a rear yard than what the applicant is proposing.

**DISCUSSION:**

Permitting fences that exceed the required height regulations is generally avoided as over-height fences tend to create large, blank, monotonous walls which can detract from the aesthetic appeal of a residential neighborhood and present an unwelcoming character. However, staff acknowledge that there are extenuating factors that lend this proposal a need for further consideration:

- The proposed fence is over-height in part because the applicant raised the grade of the properties in order to meet the recommendations of their engineer's report on recommended minimum flood construction level, as per requirements of the Town's Interim Flood Construction Level Policy. The intent of the Policy is to ensure that flood hazard is taken into account when floor elevations in new construction are determined. If property owners choose to meet recommended levels by raising the grade of properties as was done on the subject properties, this will result in the gradual increase in the elevation of all properties in low-lying areas susceptible to flooding as the properties are redeveloped over time. The neighbouring property to the east of the subject properties (2477 Orchard Ave.) was redeveloped with a new house in 2013, prior to the Interim Flood Construction Level Policy being adopted, meaning it will likely be some time before the property is redeveloped again and the grade raised to address flood hazard. However, the neighbouring property to the south at 9633 Third St. is occupied by an older house, and the applicant has indicated in their Letter of Rationale that they are considering the property for redevelopment (*see Letter of Rationale in Appendix C*). The redevelopment of 9633 Third St. would likely include raising the grade of the property to meet the Flood Construction Level as determined by an engineer, which would likely bring the proposed over-height fence along the south side interior lot line of the subject properties into conformance with the Zoning Bylaw.
- The applicant is proposing the higher fence height in order to increase privacy for the patios in the rear yards of the two dwellings. Intensive Single-Family Residential Development Permit Area Guideline 19.3.10 recommends a softer screening treatment for patios than what the applicant is proposing. However, it does not factor into account that in this instance the screening is to be built on top of a retaining wall. Given the height of the retaining wall, the BC Building Code requires a guard rail measuring 1.07 metres (3.5 ft) in height from the newly established grade be built along the entire length of the wall. Used on its own, light lattice work or landscaping would not be a sufficient barrier to meet the Building Code requirement. The combined height of the concrete retaining wall and required guard rail would measure 1.67-2.27 metres (5.5-7.4 ft) in height from the existing grade, which equals 0.68 metres (2.2 ft) less than the applicant's proposed fence, or an approximately 23-29% decrease in the overall height. It could be argued that in relation to the height of the guard rail, the increase in height of the applicant's proposed fence is relatively minor when factoring into account the mutual benefits of enhanced privacy that the applicant and neighbours are striving to achieve.
- The lower grade of the neighbouring properties abutting the retaining wall and proposed fence coupled with the shorter minimum rear and side interior setbacks of the R1.3 zone create extensive overlook from the subject properties down to the neighbouring properties. Furthermore, the narrow setbacks of the subject properties provide limited space to install a naturally landscaped buffer between the adjacent properties. Due to these factors, it would be difficult for the neighbouring properties to maintain the privacy of their yards without a greater level of screening being provided on the subject properties, such as what the applicant is proposing.

Given the above noted factors, staff are of the opinion that the Zoning Bylaw regulation for maximum fence height on top of a retaining wall could be relaxed to permit the applicant's proposed 1.6 metre (5.3 ft) high a fence to be constructed on top of the existing 0.75-1.35 metre (2.5-4.4 ft) high retaining wall along the rear lot lines of both properties, and along the south side interior lot line of the property located at 9641 Third St.

**STAFF RECOMMENDATION:**

That owners and tenants in occupation of property within 75m (246ft) of 9641 and 9647 Third Street be notified regarding Development Variance Permit Application No. DV100289 (to relax the maximum permitted height of a fence constructed on top of a retaining wall) and that any written correspondence received be forwarded to Council at the time of consideration of approval of the variance.

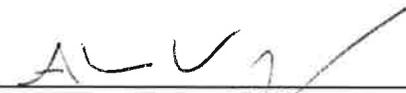
Respectfully submitted,

I concur,

I concur,



Kevin Webber,  
Planning Technician



Alison Verhagen, MCIP, RPP  
Senior Manager, Current Planning



Bandy Humble, MCIP, RPP  
Chief Administrative Officer

Attachments:

- Appendix A: Aerial photo of subject properties
- Appendix B: Letters of Rationale
- Appendix C: Proposed Fence Plan
- Appendix D: Proposed Fence Design

Presenter: Bernie Struck, Applicant

**Appendix A: 2017 Aerial Photo of the Subject Properties (9641 & 9647 Third Street), showing the OCP (red) and zoning (white) designations. The subject properties are outlined in blue and the location of the proposed over-height fence is drawn in a red dashed line.**



468543 B.C. Ltd  
c/o Bernd Struck

APPENDIX B

Town of Sidney  
2440 Sidney Ave.  
Sidney, B.C.  
V8L 1Y7

November 19, 2019

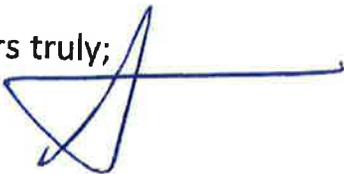
Re: 9641 3<sup>rd</sup>. Street – Variance Request – Section 6.1f of Zoning Bylaw No. 2015

Dear Council:

I am requesting for a variance to allow for a fence height of 1.8m for back and side yard in accordance with Section 6.1f but to be measured from final grade and not original grade. This variance request comes in conjunction with the variance request of Ross and Sarah Elliot. Both our back yards abut the same neighbor, located at 2471 Orchard Ave, whom is in full agreement and supports this request. As both the Elliot's and my request are for the same fence, if allowed we would be able to construct a similar fence allowing for conformity for the back neighbor. I am also the owner of the property adjoining the side yard. The adjoining house is currently being considered for redevelopment and its site will also require raising the property height to match this development height.

For background information and a suggestion for the future. Under the Provincial Flood Level Guidelines, this property required the original grade to be elevated in order to meet new flood height building requirements. The Provincial Building Code, addresses this elevation issue, by stating all elevations need to be measured from final grade. It may be worth considering changing the wording of Section 6.1f of the Zoning Bylaw to fence height to be measured from final grade and not original grade, as currently stated. This will save developers time and money as well as city staff and councilors time dealing with this issue which resulted in the adoption of the Provincial Flood Control Area.

Yours truly;



Bernd Struck

**Ross & Sarah Elliot  
9647 Third Street  
Sidney, BC V8L3A1**

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Town of Sidney  
2440 Sidney Avenue  
Sidney, BC V8L 1Y7

November 15, 2019

Re: Section 6.1.f of Zoning Bylaw No. 2015 - Variance Request

Dear Sidney Council:

We are requesting that a variance will be granted to allow the height of our back yard fence, located at 9647 Third Street, to be at 1.8 meters from our current rear grade. This will provide both us and our neighbour's privacy. Our neighbour located at 2471 Orchard Street is in full agreement and supports this request.

By way of background, early in the development stage of our property we were advised that due to the adoption of the interim flood construction level our original elevation had to be increased significantly from original grade in order to comply. Due to this adoption, the privacy of the two properties has been impacted thus the reason for our request.

Regards,

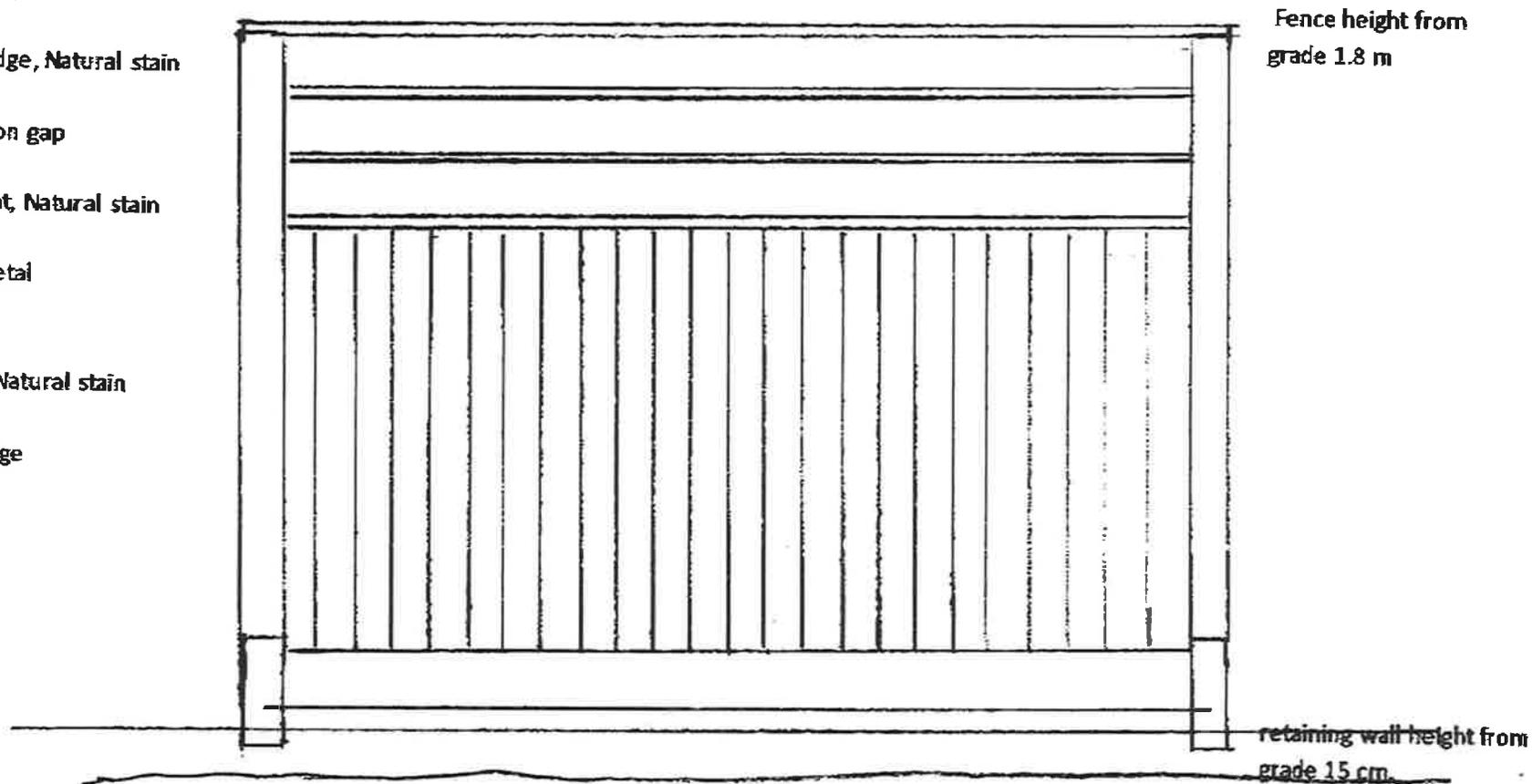
Ross & Sarah Elliot  
Owners





Proposed Fence Design  
9641 & 9647 Third St.

Cedar 2\*6 on flat, Natural stain  
Cedar 1\*6 on edge, Natural stain  
2.5 cm separation gap  
Cedar 2\*6 on flat, Natural stain  
Ribbed sheet metal  
Gray vertical  
Cedar 6\*6 post Natural stain  
Cedar 2\*6 on edge  
Natural stain  
9 cm gap  
Retaining wall  
Panel length  
2.5 m.



Fence height from  
grade 1.8 m

retaining wall height from  
grade 15 cm.

Proposed Fence Design  
9641 & 9647 Third St.

December 15, 2019



Dear Mayor and Council of the Town of Sidney,

We [redacted] support the variance permit application (submitted by the neighbouring properties) to increase the fence height to 1.8 meters from the final grade. The current fence height permitted will not provide adequate safety or privacy due to the increased grade of these neighbouring properties.

Sincerely yours,

Katie Willows and Bryant Gofsky

File No.	964/964774-d (L)
Mayor	
Councillor(s)	
Agenda	<input checked="" type="checkbox"/> Variance
CAO	
Administration	
Finance	
IT	
Dev Services	<input checked="" type="checkbox"/>
Engineering	
Parks	
Public Works	
Fire Dept	
RCMP	
Comments:	