



TOWN OF SIDNEY

Report to Committee of the Whole

TO: Chair and Committee Members
FROM: Kevin Webber, Planning Technician
DATE: July 7, 2020 Folder: 9650 Fifth St (Land)
SUBJECT: Development Variance Permit Application No. DV100296
9650 Fifth Street

PURPOSE:

The purpose of this report is to address Development Variance Permit Application No. DV100296 for the property located at 9650 Fifth St. (see aerial photo of subject property in Appendix A).

BACKGROUND:

On May 17, 2020, the Town's Bylaw Enforcement Officer observed that a wooden fence and raised sundeck that did not conform to Town bylaws had recently been constructed on the subject property, which is located on the north-west corner of the intersection of Fifth Street and Orchard Avenue (see Site Photos in Appendix B). Upon further inspection, it was identified that the majority of the fence had been constructed on the municipal boulevard, running east-west, approximately 0.9 m (2.95 ft) outside the south lot line of the subject property. The remainder of the fence was constructed bordering the driveway, running north-south, in the exterior side yard of the subject property. The fence was measured to be approximately 1.9 metres (6.2 feet) in height above grade, exceeding the 1.2 metre (3.9 feet) maximum permitted height of a fence in an exterior side yard as per Zoning Bylaw No. 2015 regulations. The sundeck was also partially constructed on the municipal boulevard and did not conform to the 3.0 metre (9.8 foot) minimum side exterior setback requirement for buildings and structures. A pre-existing 1.75 metre (5.7 foot) high section of fence was additionally noted to be sited in the front yard of the property, and further investigation revealed that this fence section was also built contrary to the Zoning Bylaw (i.e. it is not legally non-conforming).

The property owner (applicant) was notified of the contraventions to the Zoning Bylaw and was requested to remove the portions of fence and sundeck from the municipal boulevard by June 28, 2020. Staff informed the applicant that if they wished to keep any non-conforming fence or structure on their property, a Development Variance Permit would be required.

OVERVIEW OF DEVELOPMENT PROPOSAL:

The applicant is proposing the following (see Drawing Set V2 in Appendix C):

- To reconstruct a 7.66 metre long span of the 1.9 m high fence along the south lot line of the property, abutting a lowered 3.2 metre long span of 1.2 m high fence towards the southwest property corner;
Keep a 2.5 metre long span of 1.9 m high fence paralleling the driveway in the exterior side yard, connecting to a new 1.2 metre high gate abutting the residence;
Keep the pre-existing 1.75 metre high fence in the front yard; and
Keep the 0.2 metre high raised sundeck in the exterior side yard at a 0 m setback.

The proposed 1.9 metre high sections of fence exceed the maximum 1.2 metre height requirement for a fence in a front or exterior side yard.

The pre-existing 1.75 metre high section of fence exceeds the maximum 1.2 metre height requirement for a fence in a front yard.

The sundeck extends from the south face of the single family dwelling to the south lot line, leaving a 0 metre setback. Section 5.9.2 of the Zoning Bylaw requires a 3.0 m setback for buildings and structures, including sundecks, in an exterior side yard.

As the proposed fence and sundeck contravene Sections 5.9.2 and 6.1 of the Zoning Bylaw, a Development Variance Permit is required.

The details of the required variances are as follows:

Zoning Bylaw No. 2015	Required	Proposed
Section 5.9.2: Minimum Side Exterior Setback (sundeck)	3.0 m	0
Section 6.1.b. Maximum permitted fence height in a front or exterior side yard	1.2 m	1.9 m in a front and exterior side yard, 1.75 m in a front yard

OFFICIAL COMMUNITY PLAN BYLAW 1920:

The subject property is designated as Multi-Family Residential (RES-3) in the Town of Sidney Official Community Plan (OCP).

Staff are of the opinion that the proposed development generally conforms to the objectives and policies for Residential Lands in the OCP.

ZONING BYLAW 2015:

The subject property is zoned Comprehensive Development 24 (CD24), the intent of which is to provide for modest single-family dwellings at a high density.

Staff have reviewed the proposal and determined that it is in conformance with the Zoning Bylaw, with exception of the requested variances.

DISCUSSION:

The intent of minimum front and exterior side yard setback requirements for buildings and structures and the maximum fence height requirements within the Zoning Bylaw is to establish a set of urban design proportions that support a desired look and feel for a neighbourhood. In residential areas, greater front and exterior side yard setbacks and lower maximum fence height are used to create a pedestrian-friendly and welcoming character, where the built environment does not impose on public space.

Staff do not recommend approval of the applicant’s variance request for the sundeck for the following reasons:

- The proposed 0 metre setback leaves a limited 0.9 metre buffer space, all of which is municipal boulevard, between the public sidewalk and the raised private space of the patio;
- While raised sundecks are not permitted to extend into the required setback, at-grade patios are. The applicant already has an existing at-grade exposed aggregate concrete patio that the proposed sundeck would be built upon. The existing at-grade patio meets bylaw requirements and serves the same purpose as the proposed raised sundeck.

Staff do not recommend full approval of the fence variance request for the following reasons:

- The proposed fence is directly adjacent to a public sidewalk and at 1.9 metres, would in effect create a tall blank wall facing the pedestrian space and street. This is the opposite of the intent of the Zoning Bylaw regarding fence heights;
- Engineering staff have safety concerns with the height of the fence and its proximity to the Fifth Street/Orchard Avenue intersection. Section 6.4 of the Zoning Bylaw reads as follows:

6.4 Visual Clearance at Intersections

- a. Notwithstanding Section 6.1, in the area bounded by the intersecting lot lines at a street corner and a line joining points along the lot lines:
 - i. 7.0 metres from their point of intersection; or*
 - ii. where one or both abutting streets are lanes, 6.0 metres from their point of intersection; no structure other than a principal building or a fence shall be within 1.0 metres to 3.0 metres above the crown of the abutting streets, and no vegetation shall be maintained or allowed to grow so as to obstruct the zone of visual clearance between 1.0 metres and 3.0 metres above the crown of the abutting streets.**

While the above regulation excludes fences from the maximum 1.0 m height requirement, it does so assuming the fence would abide by the 1.2 m maximum height requirement for fences in a front or exterior side yard within Section 6.1 of the Zoning Bylaw, thus providing the acceptable level of visual clearance at intersections. As the subject property is located adjacent to an intersection, staff believe the maximum 1.2 m fence height requirement should be upheld at least in the area within 7.0 metres of the southeast corner of the lot to preserve the safe use of the intersection, as per the above regulation.

While staff do not support full approval of the variance, there are some mitigating circumstances that Council may wish to consider.

The dwelling is sited on the subject property in a way that does not provide any significant outdoor private space for the homeowners. The rear yard and interior side yard setbacks are 1.5 metres and 1.2 metres respectively, meaning the exterior side yard and front yard, which respectively have setbacks of 3.0 metres and 4.6 metres, are the only usable outdoor areas on the property.

Given this, staff understand the applicant's desire for a level of privacy surrounding the patio area and suggest that a compromise may be possible. Council may wish to consider granting a variance to allow a fence that has 1.2 metre high solid panels with an additional 0.3 m section of open lattice on top (1.5 metres or 4.9 feet total). For safety reasons, staff recommend that this only be approved in the area outside the 7.0 m setback area from the southeast property corner, as per Section 6.4 of the Zoning Bylaw. Staff believe this would afford the property a level of privacy while respecting the character of the neighbourhood and adjoining public space, as well as provide an adequate level of safety for the intersection.

STAFF RECOMMENDATION:

- 1. That the proposed sundeck be brought into conformance with Zoning Bylaw No. 2015;**
- 2. That the front yard fence be brought into conformance with Zoning Bylaw No. 2015;**
- 3. That the proposed exterior side yard fence be redesigned as a 1.5 metre high fence, constructed of no more than 1.2 metres of solid panels topped with 0.3 metres of open lattice, in the exterior side yard of the subject property outside a 7.0 m setback from the southeast corner of the property; and**
- 4. That owners and tenants in occupation of property within 75 metres (246 feet) of 9650 Fifth Street be notified regarding Development Variance Application No. DV100296 (to vary the maximum permitted fence height in an exterior side yard) and that any written correspondence received be forwarded to Council at the time of consideration of approval of the variance.**

Respectfully submitted,



Kevin Webber
Planning Technician

I concur,



Alison Verhagen, MCIP RPP
Senior Manager, Current
Planning

I concur,



Randy Humble, MCIP RPP
Chief Administrative Officer

Attachments:

- Appendix A: Aerial photo of subject property
- Appendix B: Site Photos
- Appendix C: Letter of Rationale
- Appendix D: Drawing Set V2

Presenter: Alistair MacKay

Appendix A: 2019 aerial photo of the subject property (10216 Robinia Place), showing the OCP (red) and zoning (white) designations. The subject property is outlined in blue.



Looking east (west and south exterior elevations):



Looking west from Fifth Street Sidewalk (south and east exterior elevations):



Views from Orchard Avenue (south exterior elevation):



Interior south view from rear exit towards Orchard Avenue:



Interior view southeast from rear exit towards Fifth Street and Orchard Avenue:



Raised patio above existing concrete patio:

APPENDIX B



We are seeking a variance to the bylaws that we have inadvertently breached. We removed the decaying hedge as it was becoming see through after trimming. We erected a fence on what we thought was our property line. We used the removed hedge line as a guide. However, it has been pointed out to us that our actual property line is the edge of the concrete patio. The fence and raised patio constructed on Town of Sidney land will be removed as per discussions with planning technician Kevin Webber. This will be removed by June 28th 2020.

Obviously, some vindictive neighbour contacted the bylaw dept on the holiday weekend and reported we had erected a fence. We are seeking a variance on the fence height for part of the patio. The first 3.2m from Fifth St would be reduced to the appropriate height of 1.2m, this would provide easy sight lines across the intersection. While not the suggested 7.0m, we feel there is sufficient sight line for any vehicle at the intersection. Having the other panels at the 1.9m height would afford us privacy whilst using our side yard space (we do not have a back yard). Also having a fence as opposed to a hedge is better for our allergies. If the height of any fence has to be 1.2m any personal property on the patio may not be safe. This would be flower planters with solar lights and furniture. With a low fence they would be easily visible and accessible to anyone walking on the pathway. Having a low-level fence exposes our personal safety and infringement of enjoyment of our personal sanctuary. I, Margaret suffer from anxiety and want to feel safe on my own property. If the 1.2m fence would be enforced using the patio would be lost as we would not want to be exposed to all and sundry whilst using the patio with family and friends. Anyone driving on Fifth or Orchard may be distracted trying to view what was happening on our property. This could be detrimental to anyone using the Fifth St crosswalk. We have talked to our immediate neighbours regarding the fence as opposed to having another hedge. They agree the fence is a great improvement. We also had discussions with other neighbours who regularly walk on the pathway.

At the same time as building the fence we elected to build a raised patio. We are also seeking a variance on this part. This raised patio is 0.2m above the concrete patio. The raised patio is the same height as the previous step into our house. Only difference is it extends to the fence. Someone seems to classify it as a deck. However, having talked to several people the general consensus is a raised patio becomes a deck when steps and guardrails are required. We have been made aware of the Town Bylaw regarding minimum setback. In our case its 3.0m. Whilst it is attached to the house it could become detached and be a free-standing area. It would only be attached at the door where the previous step was located. This would be for safety.

Photographs have been provided showing what the fence and raised patio look like.

Yours truly,

Alistair Mackay

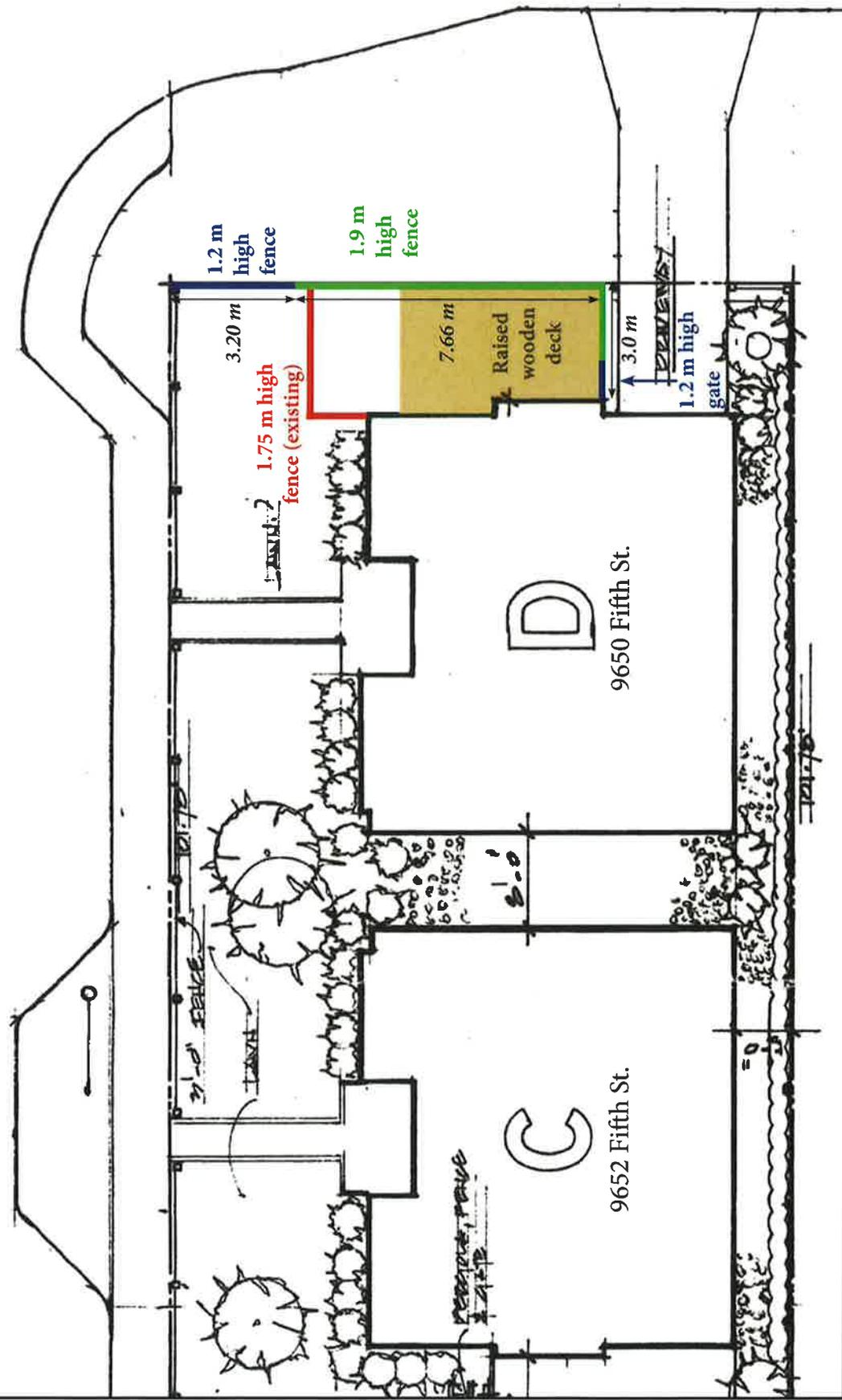
Margaret Mackay

SITE PLAN

9650 Fifth St.

Scale 1:100

FIFTH STREET

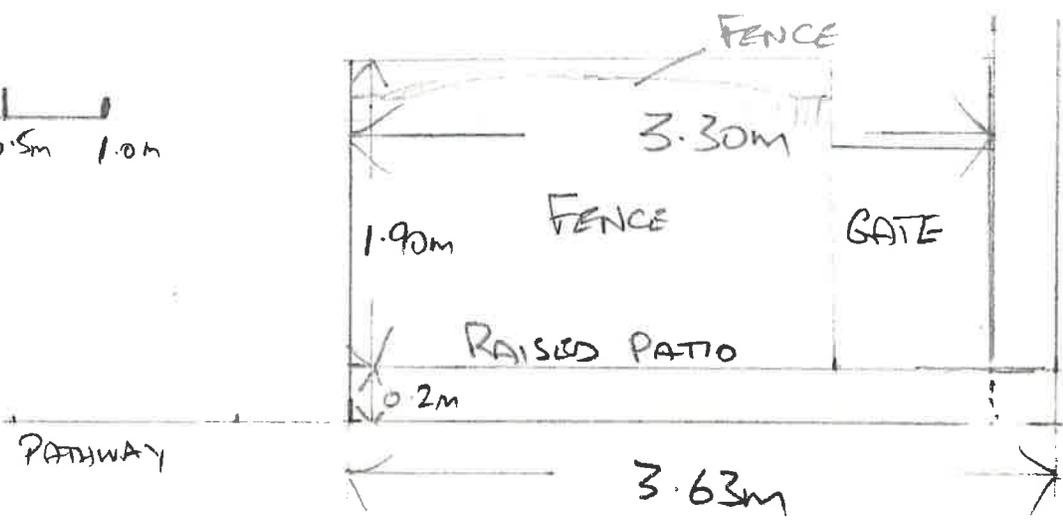
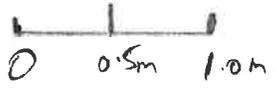


9650 Fifth St.

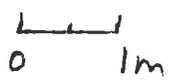
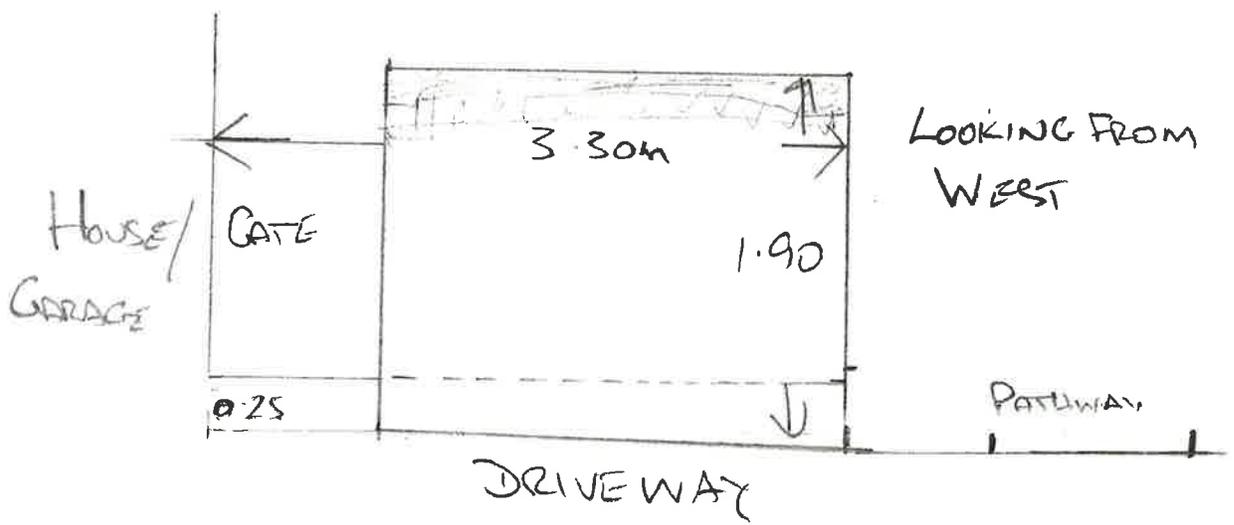
9652 Fifth St.

RICHARD AVE.

APPENDIX D
Looking From EAST END



LOOKING FROM WEST



LOOKING FROM SOUTH

