

Report

Date	December 21, 2022	File: SPP00085
Subject	Zoning Bylaw Amendment Bylaw 3891 (Retaining Walls & Fences) & Building Bylaw Amendment Bylaw 3892 (Retaining Walls)	

PURPOSE

To introduce "Zoning Bylaw Amendment Bylaw (Retaining Walls & Fences) No. 3891" (Attachment 1) and "Building Bylaw Amendment Bylaw (Retaining Walls) No. 3892" (Attachment 2) for Council's consideration of initial readings.

BACKGROUND

North Cowichan's staff routinely handles development proposals, building permit applications and inquiries that include the construction of retaining walls. These inquiries are not uncommon as the area has mountainous topography, which results in recurrent construction challenges.

Section 2 of the Building Bylaw specifically excludes retaining walls from the permitting process. While this exclusion is appropriate for the construction of smaller retaining walls incorporated into residential landscaping, it has resulted in the unregulated construction of retaining walls, some of which were undertaken without engineering review or supervision. In turn, the zoning bylaw provides little assistance in that retaining walls are neither defined nor explicitly regulated.

To illustrate why this lack of regulation is problematic, Zoning Bylaw section 33.1, "Projections into Required Yards/Setbacks," requires setback areas to be kept free of buildings and structures in order to maintain relatively unimpeded access around buildings, along with "breathing space" to adjoining neighbours. This is particularly important if there are any rights-of-way present for infrastructure where at any time, the rights-holder may need to excavate to inspect and repair access roads, water or drainage lines. While in many cases, the addition of a retaining wall in these locations is harmless, they are thus implicitly regulated through this provision. They are currently not permitted within a setback if the wall is greater than 0.61 metres in height or a variance has been obtained. Regulating retaining walls explicitly within the Zoning Bylaw can make provisions for placement within setbacks under certain conditions, which would, in turn, lead to fewer instances where a variance is required.

In addition to the above concern, with no clear or transparent regulations in effect, consistent interpretation is difficult to provide, and as a result, it has led to the following concerns/consequences:

- lack of aesthetic appeal (unsightly)
- overused throughout neighbourhoods
- unnatural manipulation of land to get around height restrictions to construct taller homes
- falling hazard created
- lack of privacy between neighbours when in close proximity
- danger of wall failure when constructed without qualified professional oversight

As such, staff propose amendments to the Zoning and Building Bylaws that aim to:

- provide clear and transparent regulatory direction (plain language with visual aids) relating to retaining walls and associated regulations
- add retaining wall regulations into the Building Bylaw where none existed before and harmonize the building and zoning bylaws
- create departmental efficiencies by reducing the volume of variance applications received (for retaining walls located in setbacks) and bylaw enforcement files to free up staff time and resources
- align retaining wall best practices requirements with neighbouring jurisdictions

While this issue could be addressed as part of the comprehensive zoning bylaw update that will be undertaken in 2023, given its relatively self-contained nature and the detailed work completed to date, staff are in a position to bring this forward to Council ahead of that project. This is an opportunity to provide clarity in the near term to an issue that has confused and frustrated landowners and builders and has consumed inordinate staff time.

DISCUSSION

A. Proposed Amendment to Zoning Bylaw No. 2950

The proposed amendment to Zoning Bylaw No. 2950 is specific to three areas of the bylaw: *'Part 3 – Definitions'*, *'Part 4 – General Regulations'* and *'Part 5 – Division 2 – Zones'*. No other amendments are being recommended at this time. However, as part of the upcoming general zoning bylaw revision, there may be further opportunities to refine the approach to retaining walls, including addressing design aspects within the development permit guidelines. The amendments are as follows:

1) Proposed amendments to *'Part 3 – Definitions'* include:

- a) Amend definitions: "fence," "retaining wall," and "structure"
- b) Add new definition: "guardrail"

2) Proposed amendments to *'Part 4 – General Regulations'* include:

- a) Amend *'Section 37 - Fences'* to *'Section 37 – Fences & Retaining Walls'*
- b) Add new section *'37.1 Fences'* to introduce both new and amended fence regulations
- c) Add new section *'37.2 Retaining Walls'* to introduce new retaining wall regulations

The proposed regulatory amendments provide for the placement of retaining walls within setbacks under certain conditions without the need for a variance. They also anticipate situations such as where a property owner builds a retaining wall that easily overlooks into the neighbour's yard and provides for the affected property owner to determine their maximum fence height from the top of the neighbouring retaining wall (as opposed to grade level on their own parcel), thus mitigating a potential privacy issue.

3) Proposed amendment to '*Part 5, Division 2 - Zones*' includes:

- d) Amend 'Conditions of Use' in all zones to exclude fence height restrictions

At present, fence height restrictions (if applicable) are included in each zone's 'Conditions of Use' section. However, with the introduction of a 'Fence Height Restrictions by Zone and Yard Location' table in the general regulations, fence height restrictions can be removed from each zone, making the bylaw more concise.

B. Proposed Amendment to Building Bylaw No. 3172

To address the inadequately constructed retaining walls and ensure the building and zoning bylaws are consistent with each other, the following amendments are proposed to Building Bylaw No. 3172. They are specific to three areas of that bylaw: '*Part 2 – Application*', '*Part 3 – Definitions*' and the introduction of '*Part 19.2 - Retaining wall building permits*':

1) Proposed amendment to '*Part 2 – Application*' includes:

- a) The removal of 'Section 2.2.b' which states, "This bylaw does not apply to retaining structures.

2) Proposed amendments to '*Part 3 – Definitions*' include:

- a) Addition of new definition: "retaining wall"
- b) Amend definition: "structure" consistent with the proposed zoning bylaw definition change

3) Proposed addition to '*Part 19*' that includes:

- a) Adding the new section '*Part 19.2 Retaining Wall Building Permit*' that seeks to introduce new retaining wall regulations in the Building Bylaw.

These amendments would mean that a building permit is now required for any retaining wall greater than 1.2 m in height. This is considered necessary from a safety standpoint. No other amendments are being recommended at this time.

C. Summary

To create clear and easy-to-understand regulations for retaining walls, amendments to "Zoning Bylaw Amendment Bylaw No. 3891" and "Building Bylaw Amendment No. 3892" are proposed for Council's consideration.

While the Building Bylaw amendment follows the usual bylaw adoption process as per s.135 of the *Community Charter*, s.464 the *Local Government Act* prescribes a different adoption process for zoning bylaws that include a public hearing. If and when a public hearing has been held for the Zoning Bylaw amendment, Council can then proceed to third reading of that bylaw and, if given, can then adopt both the Zoning Bylaw and Building Bylaw Amendment Bylaws at the same time.

OPTIONS

1. **(Recommended Option)** THAT Council:
 - (1) Give first and second reading to "Zoning Bylaw Amendment Bylaw No. 3891";
 - (2) Direct staff to arrange a Public Hearing for "Zoning Bylaw Amendment Bylaw No. 3891"; and,
 - (3) Give first, second and third readings to "Building Bylaw Amendment Bylaw No. 3892".
2. THAT Council defer consideration of "Zoning Bylaw Amendment Bylaw No. 3891" and "Building Bylaw Amendment Bylaw No. 3892" and requests additional information or substantial regulatory changes to:
 - *(Council to identify information or changes required)*
3. THAT Council direct staff to wait to bring forward retaining wall regulations for consideration by Council and to receive public input as part of the Zoning Bylaw review.

IMPLICATIONS

Implications	Concerns or Impacts to North Cowichan
Financial	N/A
Policy/Legislation	While this prefigures the comprehensive zoning bylaw update, it does not preclude revisiting this issue as part of that process, nor does it prejudice that process.
Strategic Priority	N/A
Sustainability	N/A
Communication	If adopted, information will be shared on multiple platforms: Retaining Wall project page, Facebook post, North Cowichan website, and as part of the ongoing Building Department email newsletters series that are sent out to the development community. In addition, a hardcopy informational fact sheet will be made available at the front counter of the Planning & Building Department.
Staffing implications	These amendments will result in a small increase in building permit applications; however, this would be more than offset by a reduction in the number of retaining wall variance applications.

RECOMMENDATION

THAT Council:

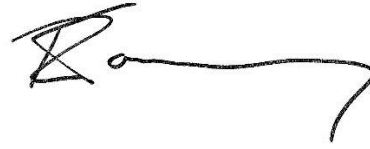
- (1) Give first and second reading to "Zoning Bylaw Amendment Bylaw No. 3891";
- (2) Direct staff to arrange a Public Hearing for "Zoning Bylaw Amendment Bylaw No. 3891"; and,
- (3) Give first, second and third readings to "Building Bylaw Amendment Bylaw No. 3892".

Report prepared by:



Patricia Taylor
Planner

Report reviewed by:



Rob Conway
Director, Planning and Building

Approved to be forwarded to Council:



Ted Swabey
Chief Administrative Officer

Attachments:

- (1) Zoning Bylaw Amendment Bylaw No. 3891
- (2) Building Bylaw Amendment Bylaw No. 3892