

PUBLIC HEARING INFORMATION PACKAGE

Zoning Amendment Bylaw (Retaining Walls & Fences) No. 3891

Public Hearing Notice & Draft Bylaw No. 3891

1. Notice of Public Hearing for **January 18, 2023 at 7:00 p.m.**
2. Public Hearing Ad – 1st Notification – Publication Date: January 5, 2023
3. Public Hearing Ad – 2nd Notification – Publication Date: January 12, 2023
4. Zoning Amendment Bylaw (Retaining Walls & Fences) No. 3891


Planning Staff Reports

1. Report to December 21, 2022 Regular Council - 1st and 2nd Reading of Bylaw 3891

Minutes

1. Excerpt from December 21, 2022 Regular Council Minutes - 1st and 2nd Reading – Schedule Public Hearing

Public Comments

1. Email from and to Randy Noble dated December 26, 2022 – Comments
 2. Email from Nicholas Schwetz dated January 4, 2023 – In Support
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NOTICE OF PUBLIC HEARING

The Director of Planning and Building gives notice that a Public Hearing will be held at **7:00 p.m.** on **Wednesday, January 18, 2023** to allow Council to receive public input on Bylaw No. 3891 which proposes to amend "Zoning Bylaw 1997," No. 2950. As authorized by the *Local Government Act*, this hearing will be conducted by electronic means and members of the public will be provided an opportunity to be heard verbally or by submitting their comments in writing in advance of the hearing. This hearing will be conducted by video conference using the Cisco Webex platform, and though electronic, is open to the public and anyone wishing to participate may do so in person by attending Council Chambers, or by joining the meeting using a computer, smartphone or tablet. If you wish to participate electronically, please visit www.northcowichan.ca/virtualmeeting for instructions on how you can join this hearing and find the link to join. You may also view the hearing as it is streamed live by going to www.northcowichan.ca/Agendas, and click on the '[View Live Stream](#)' link. A copy of the recording will be made available after the hearing on North Cowichan's website for on-demand viewing.

Zoning Amendment Bylaw (Retaining Walls & Fences), No. 3891, 2022 proposes to amend Zoning Bylaw 1997, No. 2950 by amending:

- Part 3, Section 12 [Definitions] the definitions "fence", "retaining wall" and "structure", and by adding a new definition "guardrail".
- Part 4, Section 37 [Fences] renaming the title from "Fences" to "Fences & Retaining Walls"; removing subsections "(1)" and "(2)"; and adding new sections "37.1 Fences" and "37.2 Retaining Walls".
- "Conditions of Use" in all Zones to delete fence height restrictions and articulate them instead for each zone in a table within the new section 37.1.

The purpose of this Bylaw is to amalgamate fence regulations into one table and to introduce new retaining wall regulations.

PUBLIC INPUT

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Rob Conway, Director of Planning and Building

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PUBLIC HEARING NOTICE
NEWSPAPER AD

Newspaper Publication Dates
January 5 and 12, 2023

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The purpose of the Bylaw is to create a new zone, Infill Residential Neighbourhood Zone (R3-N) and to reclassify 3016 George Street (PID: 031-163-475) from Residential One and Two-Family Zone (R3) to Infill Residential Neighbourhood Zone (R3-N). The new zone will allow for a detached third dwelling unit (single-floor garden suite) on the subject property (PID: 031-163-475) as outlined in bold on the map.

PUBLIC INPUT

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The Corporation of the District of North Cowichan
Zoning Amendment Bylaw (Retaining Walls & Fences)
Bylaw 3891

The Council of The Corporation of The District of North Cowichan enacts in open meeting assembled as follows:

Title

- 1 This Bylaw may be cited as *"Zoning Amendment Bylaw No. 3891, 2022"*.

Amendment

- 2 Zoning Bylaw No. 2950, Part 3, Section 12 [Definitions] is hereby amended by striking out the following definitions:

"fence" means a free-standing structure used to enclose or screen around all or part of a lot or site and does not include hedges and similar landscaping;

"retaining wall" means a wall erected to hold back water or support a bank of earth;

"structure" means any construction fixed to, supported by, or sunk into land or water but excludes concrete slabs on finished or natural grade and retaining walls or decks on grade which are less than 0.61 m (2') in height;"

And inserting the following in its place:

"fence" means a free-standing structure used to enclose all or part of a lot. It can include retaining walls but does not include hedges or similar landscaping;

"retaining wall" means a structure erected to hold back, stabilize or support water or land. It involves the alteration of land and is used to stabilize or modify slopes, level sites, and correct grade differences. Retaining walls may also form a system containing one or more retaining wall elements;

"structure" means any construction fixed to, supported by, or sunk into land or water but excludes concrete slabs on finished or natural grade, and decks on grade which are less than 0.61 m in height;"

- 3 Zoning Bylaw No. 2950, Part 3, Section 12 [Definitions] is hereby amended by inserting, in alphabetical order, the following definition:

"guardrail" means a barrier placed along the edge of something such as a retaining wall or staircase so as to improve safety and prevent falls."

4 Zoning Bylaw No. 2950, Part 4, Section 37 [Fences] is hereby amended by renaming the section title "Fences" to "Fences & Retaining Walls."

5 Zoning Bylaw No. 2950, Part 4, Section 37 [Fences] is hereby amended by striking out the following two subsections:

"(1) There is no maximum height for fences unless otherwise specified in a zone as set out in this Bylaw.

(2) Fence height shall be determined by measuring vertically from the average natural grade level within 1 m (3.28') of both sides of the fence to the highest part of the fence."

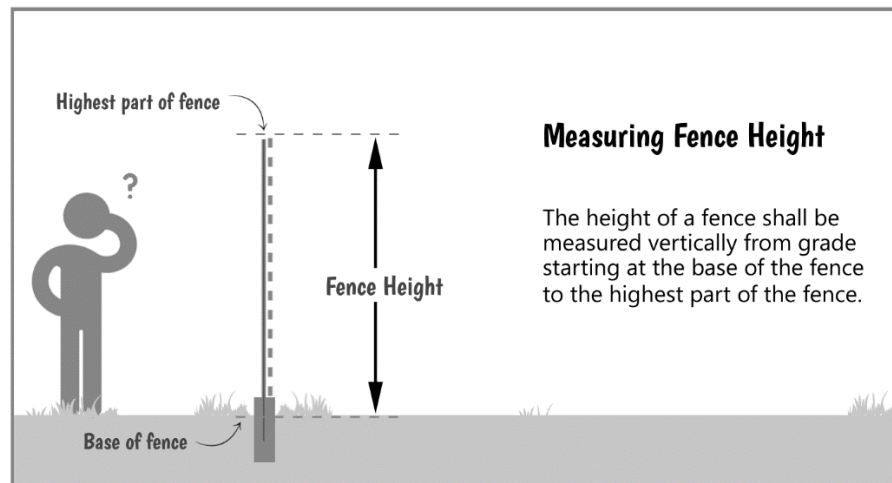
6 Zoning Bylaw No. 2950, Part 4, Section 37 [Fences] is hereby amended by adding sections 37.1 and 37.2 as follows:

"37.1 Fence height determined by zone

(1) There is no maximum height for fences unless otherwise specified in a zone as set out in this Bylaw and summarized in subsection 37.1 (8).

Measuring height

(2) The height of a fence shall be measured vertically from grade starting at the base of the fence to the highest part of the fence.



Fence additions

(3) Fence additions (e.g. barbed wire or ornamentation) shall be included in the calculation of total fence height.

(4) For the purpose of calculating fence height, any arch, arbor, trellis or pergola affixed to or supported by a fence shall be deemed part of the fence.

Front yard fence

- (5) Where a fence on the side of a property is also located within the setback of the front lot line, the "front" fence height restriction shall take precedence for that portion of the side fence.

Vision clearance

- (6) Fences are subject to vision clearance provisions of section 36.

Fences located near retaining walls

- (7) Fence height for any fence located within 1.2 m of a retaining wall is regulated under subsection 37.2 (4).

Fence Height Restrictions by zone and yard location

- (8) The maximum fence heights in each zone are as follows:

ZONE	NAME	MAXIMUM FENCE HEIGHT RESTRICTIONS		
		YARD, FRONT	YARD, SIDE	YARD, REAR
A1	Agriculture	No restrictions		
A2	Rural	No restrictions		
A3	Rural Restricted	1.2 m	2.0 m	2.0 m
A4	Rural Resources	No restrictions		
A5	Rural Residential	1.2 m	2.0 m	2.0 m
A6	Rural Market	No restrictions		
R1	Residential Rural	1.2 m	2.0 m	2.0 m
R2	Residential Restricted	1.2 m	2.0 m	2.0 m
R2-A	Residential Restricted Properties	1.2 m	2.0 m	2.0 m
R3	Residential One and Two Family	1.2 m	2.0 m	2.0 m
R3-S	Residential Small Lot Single Family	1.2 m	2.0 m	2.0 m
R3-CH	Residential Two-Family Detached	1.2 m	1.8 m	1.2 m
R3-MF	Residential Medium Density Multi-Family	1.2 m	1.8 m	1.2 m
R4	Residential Small Lot Mobile Home	1.2 m	2.0 m	2.0 m
		Conditions as per Section 39.1		
R5	Residential Mobile Home Park	Subject to "Mobile Home Park Bylaw 1978", No. 1775.		
		Conditions as per Section 39.1		
R6	Residential Townhouse	1.2 m	2.0 m	2.0 m
		Conditions as per Section 39.1		
R7	Residential Multi-Family	1.2 m	2.0 m	2.0 m
		Conditions as per Section 39.1		
R7-A	Residential Ground-Oriented Multi-Family	1.2 m	2.0 m	2.0 m

		Conditions as per Section 39.1		
R8	Residential Multi-Family Apartment	1.2 m	2.0 m	2.0 m
		Conditions as per Section 39.1		
W1	Private Residence Water Lot	No restrictions		
W2	Light Commercial Water Lot	No restrictions		
W3	Mixed Use Commercial Water Lot	No restrictions		
MA1	Upland Tourist Commercial Marine	No restrictions		
MA2	Upland Tourist Commercial/Residential Marine	No restrictions		
C1	Commercial Local	Conditions as per Section 39.2		
C2	Commercial General	Conditions as per Section 39.2		
C3	Commercial Service	Conditions as per Section 39.2		
C4	Commercial Recreational	Conditions as per Section 39.2		
C6	Commercial Professional	Conditions as per Section 39.2		
C7	Commercial Rural Hospitality	Conditions as per Section 39.2		
C8	Commercial Rural Recreation	Conditions as per Section 39.2		
C9	Chemainus Commercial	Conditions as per Section 39.2		
I1	Industrial Light	Conditions as per Section 39.3		
I2	Industrial Heavy	Conditions as per Section 39.3		
PI	Private Institutional	No restrictions		
PU	Public Use	No restrictions		
PC	Public Conservation	No restrictions		
CD1	Cliffs CDZ	1.2 m	2.0 m	2.0 m
CD2	Chemainus Quay CDZ	No restrictions		
CD4	CDZ – Mixed Family	1.2 m	2.0 m	2.0 m
CD5	CDZ - Low Density Family	1.2 m	2.0 m	2.0 m
CD6	Chemainus Artisan Village CDZ - Areas 1 and 2	1.2 m	1.2 m	2.0 m
CD6	Chemainus Artisan Village CDZ - Area 3	1.2 m	1.2 m	1.5 m
CD7	Stonehill CDZ	1.2 m	1.2 m	1.8 m
CD8	Maple Bay School Site CDZ	No restrictions		
CD9	Multi-Family CDZ	1.2 m	2.0 m	2.0 m
CD10	Urban Medium Density CDZ	No fences over 1.2 m in any yard that abuts public property, a highway or lane		
		No fences over 1.8 m in any other yard		
CD11	Community Services (Health Care) CDZ	No restrictions		
CD12	Residential Two-Family CDZ	1.2 m	1.8 m	1.2 m
CD13	Ground-Oriented Urban Residential CDZ	1.2 m	2.0 m	2.0 m
CD14	University Village Mid-Rise Residential CDZ	1.2 m	2.0 m	2.0 m
CD15	Mixed Use Residential	1.2 m	2.0 m	2.0 m
CD16	Mixed Use Commercial Core	No restrictions		
CD17	Congregate Housing CDZ	1.2 m	1.2 m	2.0 m
		Fencing along Friendship Trail must not exceed 2.0 m		
CD18	Kingsview CDZ	1.2 m	2.0 m	2.0 m
CD19	University Village	No restrictions		
CD20	The Commons CDZ	1.2 m	2.0 m	2.0 m
CD21	Motorsport Circuit CDZ	No restrictions		

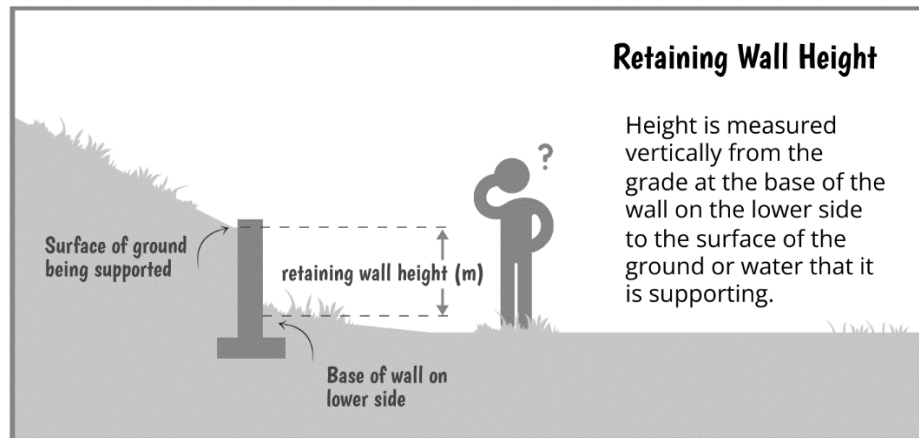
Section 37.2 – Retaining Walls

Maximum allowable height

- (1) Retaining walls located in yards are subject to fence height restrictions in subsection 37.1 (8), whether or not combined with fencing elements.
- (2) In no circumstances will a retaining wall be greater than 2 m in height.

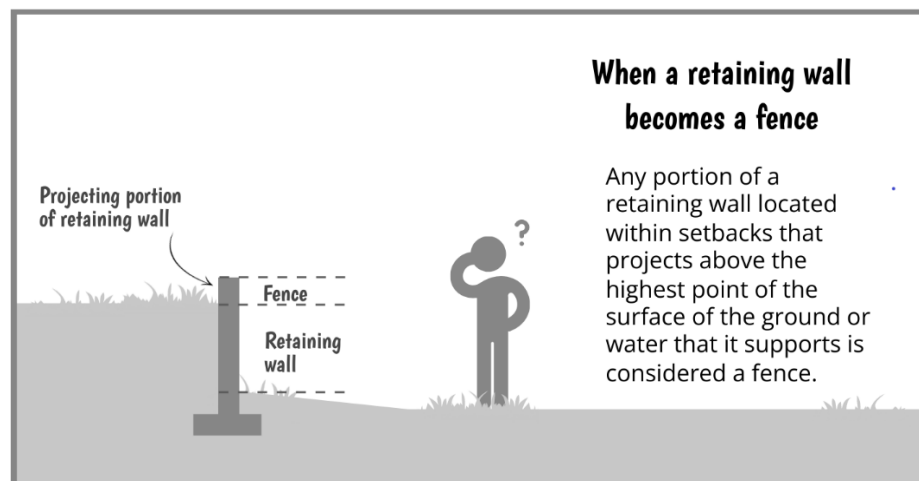
Measuring retaining wall height

- (3) Retaining wall height shall be measured vertically from the grade at the base of the wall on the lower side to the surface of the ground or water it supports.



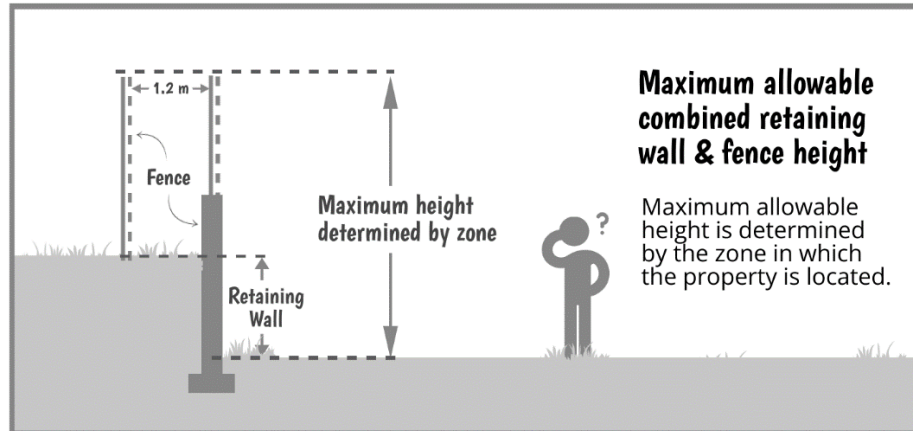
Portion of retaining wall considered as a fence

- (4) Any portion of a retaining wall that projects above the highest point of the surface of the ground or water it supports is considered a fence.



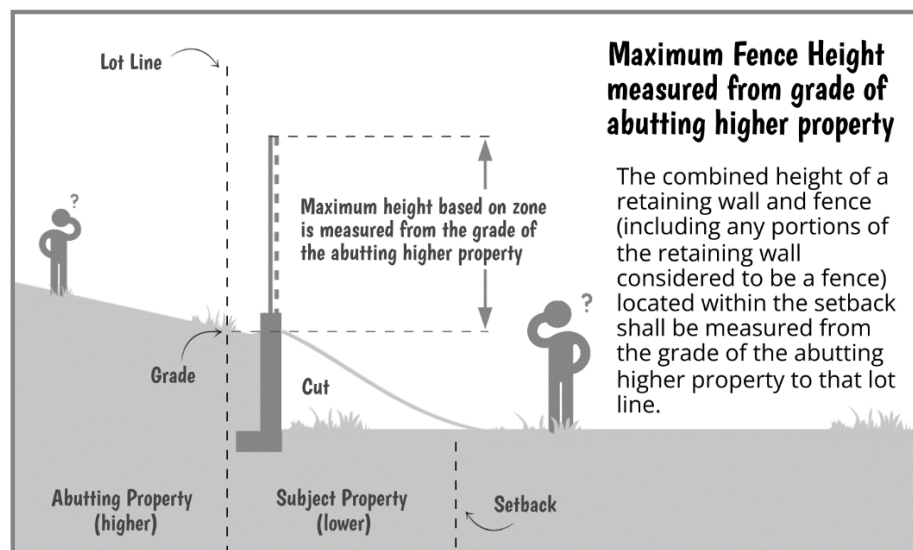
Maximum allowable retaining wall height when combining a retaining wall and fence

- (5) The combined height of a retaining wall and fence (where the fence is located within 1.2 m of that retaining wall), or any portion of a retaining wall considered to be a fence, shall not exceed the applicable maximum allowable fence height as per subsection 37.1 (8).



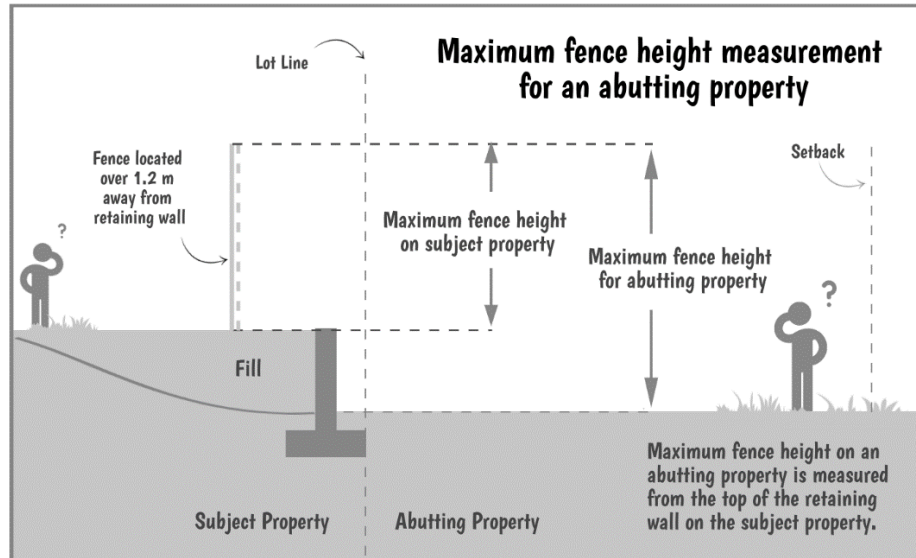
Maximum height measured from grade of higher abutting property

- (6) In the case of a retaining wall constructed in accordance with subsection 37.2 (5), the combined height of a retaining wall and fence (including any portions of the retaining wall considered to be a fence) located within the setback shall be measured from the grade of the abutting higher property to that lot line.



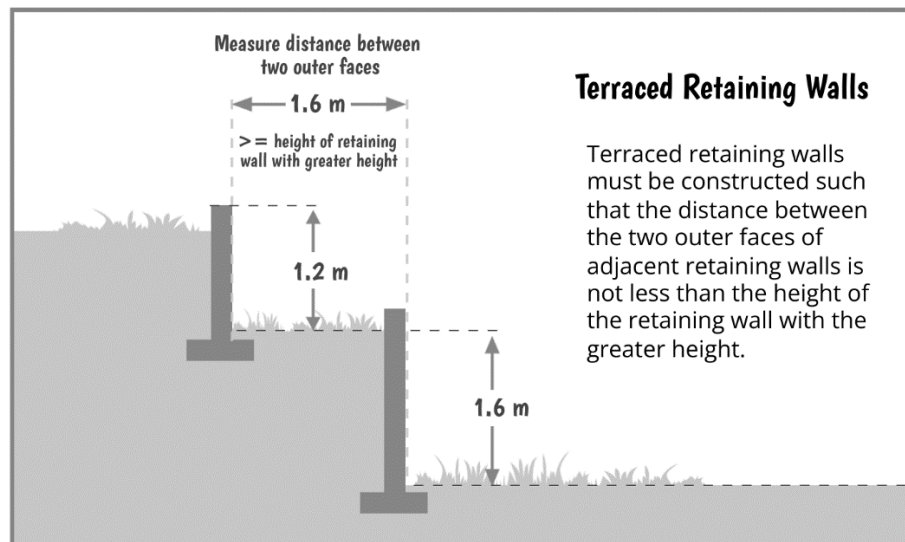
Maximum fence height measurement for an abutting property

- (7) Notwithstanding subsection 37.2 (6), where a retaining wall exists on the subject property and is located within 1.2 m of the lot line, the maximum height for a fence located within the setback on the abutting property shall be measured from the top of the retaining wall on the subject property to the top of the fence.



Terraced retaining walls

- (8) Terraced retaining walls must be constructed such that the distance between the two outer faces of adjacent retaining walls is not less than the height of the retaining wall with the greater height.



The area between the terraced retaining walls

- (9) The backfilled area between terraced retaining walls may include drainage, irrigation, and landscaping and shall be level and maintained in good condition, free of debris, yard waste, graffiti and invasive species.

Adding a guardrail onto a retaining wall

- (10) Guardrails up to a maximum height of 1.07 m located on retaining walls are excluded from the overall maximum allowable retaining wall height.

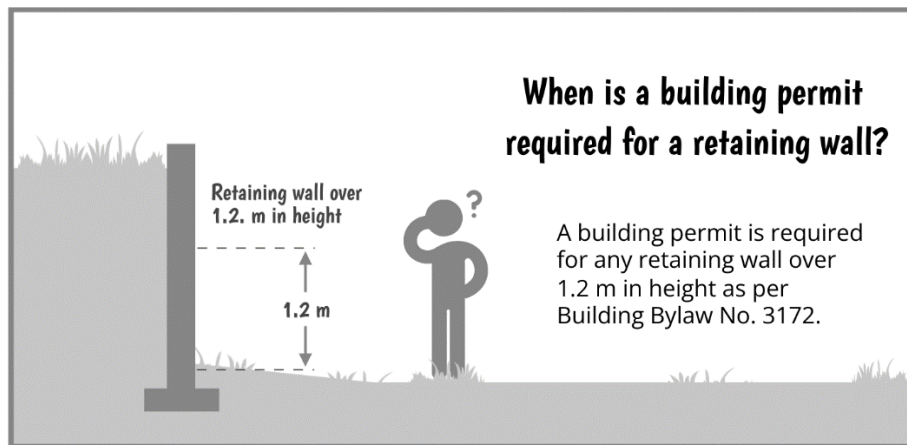
Vision clearance

- (11) Retaining walls are subject to vision clearance provisions of section 36.

Easements, covenants, and rights-of-way

- (12) All retaining walls, or any portion thereof, shall be located entirely on the applicable parcel and shall not be located within any right-of-way, easement or covenant area except with the express written permission of the right-of-way holder, easement holder, or covenantee, as the case may be.

- (13) *When is a building permit required for a retaining wall*



- 7 Zoning Bylaw No. 2950, Part 5 [Zones, Division (2)] is hereby amended by striking out the following subsections:

- (1) 53(8)(a) and (b) and (c) of Rural Restricted Zone (A3)
- (2) 55(8)(a) and (b) and (c) of Rural Residential Zone (A5)
- (3) 56(8)(a) and (b) and (c) of Residential Rural Zone (R1)
- (4) 57(8)(a) and (b) and (c) of Residential Restricted Zone (R2)
- (5) 57.1(8)(a) and (b) of Residential Restricted Properties Zone (R2-A)
- (6) 58(8)(a) and (b) and (c) of Residential One and Two-Family Zone (R3)

- (7) 58.1(10)(a) and (b) and (c) of Residential Small Lot Single-Family Zone (R3-S)
- (8) 58.2(13)(e) of Residential Two-Family Detached Zone (R3-CH)
- (9) 58.3(11)(a) and (b) and (c) of Residential Medium Density Multi-Family Zone (R3-MF)
- (10) 59(8)(a) and (b) and (c) of Residential Small Lot Mobile Home Zone (R4)
- (11) 61(11)(a) and (b) and (c) of Residential Townhouse Zone (R6)
- (12) 62(13)(a) and (b) and (c) of Residential Multi-Family Zone (R7)
- (13) 62.1(11)(a) and (b) and (c) of Residential Ground-Oriented Multi-Family Zone (R7-A)
- (14) 63(12)(a) and (b) and (c) of Residential Multi-Family Apartment Zone (R8)
- (15) 80.1(6) and (7) of The Cliffs Comprehensive Development Zone (CD1)
- (16) 80.4(8)(a) of Comprehensive Development Zone – Mixed Family Zone (CD4)
- (17) 80.5(8)(a) of Comprehensive Development Zone – Low Density Family Zone (CD5)
- (18) 80.6(7)(a) and (b) and (c)(i) of Chemainus Artisan Village Comprehensive Development Zone (CD6)
- (19) 80.7(11)(a) and (b) and (c) of Stonehill Comprehensive Development Zone (CD7)
- (20) 80.9(10)(a) and (b) of Multi-Family Comprehensive Development Zone (CD9)
- (21) 80.10(9)(a) and (b) of Urban Medium Density Comprehensive Development Zone (CD10)
- (22) 80.12(13)(c) of Residential Two-Family Comprehensive Development Zone (CD12)
- (23) 80.13(9)(a) and (b) and (c) of Ground-Oriented Urban Residential Comprehensive Development Zone (CD13)
- (24) 80.14(10)(a) and (b) of University Village Mid-Rise Residential Comprehensive Development Zone (CD14)
- (25) 80.15(11)(a) and (b) and (c) of Mixed-Use Residential Zone (CD15)
- (26) 80.17(10)(a) and (b) and (c) of Congregate Housing Comprehensive Development Zone (CD17)
- (27) 80.18(6) and (7) of Kingsview Comprehensive Development Zone (CD18)
- (28) 80.20(12)(a) and (b) of The Commons Comprehensive Development Zone (CD20)

READ a first time on December 21, 2022

READ a second time on December 21, 2022

CONSIDERED at a Public Hearing on

READ a third time on

APPROVED by Ministry of Transportation and Infrastructure on

ADOPTED on

CORPORATE OFFICER

PRESIDING MEMBER

PLANNING 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



The Corporation of the District of North Cowichan
Zoning Amendment Bylaw (Retaining Walls & Fences)
Bylaw 3891

The Council of The Corporation of The District of North Cowichan enacts in open meeting assembled as follows:

Title

- 1 This Bylaw may be cited as *"Zoning Amendment Bylaw No. 3891, 2022"*.

Amendment

- 2 Zoning Bylaw No. 2950, Part 3, Section 12 [Definitions] is hereby amended by striking out the following definitions:

"fence" means a free-standing structure used to enclose or screen around all or part of a lot or site and does not include hedges and similar landscaping;

"retaining wall" means a wall erected to hold back water or support a bank of earth;

"structure" means any construction fixed to, supported by, or sunk into land or water but excludes concrete slabs on finished or natural grade and retaining walls or decks on grade which are less than 0.61 m (2') in height;"

And inserting the following in its place:

"fence" means a free-standing structure used to enclose all or part of a lot. It can include retaining walls but does not include hedges or similar landscaping;

"retaining wall" means a structure erected to hold back, stabilize or support water or land. It involves the alteration of land and is used to stabilize or modify slopes, level sites, and correct grade differences. Retaining walls may also form a system containing one or more retaining wall elements;

"structure" means any construction fixed to, supported by, or sunk into land or water but excludes concrete slabs on finished or natural grade, and decks on grade which are less than 0.61 m in height;"

- 3 Zoning Bylaw No. 2950, Part 3, Section 12 [Definitions] is hereby amended by inserting, in alphabetical order, the following definition:

"guardrail" means a barrier placed along the edge of something such as a retaining wall or staircase so as to improve safety and prevent falls."

4 Zoning Bylaw No. 2950, Part 4, Section 37 [Fences] is hereby amended by renaming the section title "Fences" to "Fences & Retaining Walls."

5 Zoning Bylaw No. 2950, Part 4, Section 37 [Fences] is hereby amended by striking out the following two subsections:

"(1) There is no maximum height for fences unless otherwise specified in a zone as set out in this Bylaw.

(2) Fence height shall be determined by measuring vertically from the average natural grade level within 1 m (3.28') of both sides of the fence to the highest part of the fence."

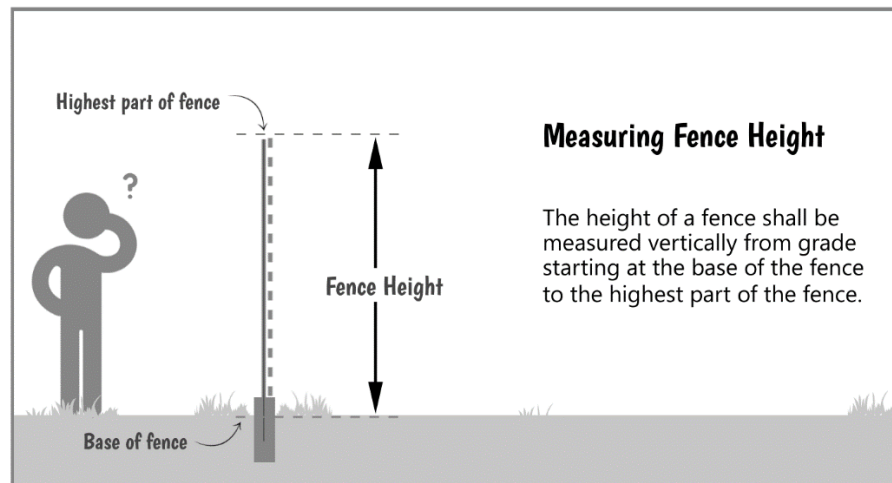
6 Zoning Bylaw No. 2950, Part 4, Section 37 [Fences] is hereby amended by adding sections 37.1 and 37.2 as follows:

"37.1 Fence height determined by zone

(1) There is no maximum height for fences unless otherwise specified in a zone as set out in this Bylaw and summarized in subsection 37.1 (8).

Measuring height

(2) The height of a fence shall be measured vertically from grade starting at the base of the fence to the highest part of the fence.



Fence additions

(3) Fence additions (e.g. barbed wire or ornamentation) shall be included in the calculation of total fence height.

(4) For the purpose of calculating fence height, any arch, arbor, trellis or pergola affixed to or supported by a fence shall be deemed part of the fence.

Front yard fence

- (5) Where a fence on the side of a property is also located within the setback of the front lot line, the "front" fence height restriction shall take precedence for that portion of the side fence.

Vision clearance

- (6) Fences are subject to vision clearance provisions of section 36.

Fences located near retaining walls

- (7) Fence height for any fence located within 1.2 m of a retaining wall is regulated under subsection 37.2 (4).

Fence Height Restrictions by zone and yard location

- (8) The maximum fence heights in each zone are as follows:

ZONE	NAME	MAXIMUM FENCE HEIGHT RESTRICTIONS		
		YARD, FRONT	YARD, SIDE	YARD, REAR
A1	Agriculture	No restrictions		
A2	Rural	No restrictions		
A3	Rural Restricted	1.2 m	2.0 m	2.0 m
A4	Rural Resources	No restrictions		
A5	Rural Residential	1.2 m	2.0 m	2.0 m
A6	Rural Market	No restrictions		
R1	Residential Rural	1.2 m	2.0 m	2.0 m
R2	Residential Restricted	1.2 m	2.0 m	2.0 m
R2-A	Residential Restricted Properties	1.2 m	2.0 m	2.0 m
R3	Residential One and Two Family	1.2 m	2.0 m	2.0 m
R3-S	Residential Small Lot Single Family	1.2 m	2.0 m	2.0 m
R3-CH	Residential Two-Family Detached	1.2 m	1.8 m	1.2 m
R3-MF	Residential Medium Density Multi-Family	1.2 m	1.8 m	1.2 m
R4	Residential Small Lot Mobile Home	1.2 m	2.0 m	2.0 m
		Conditions as per Section 39.1		
R5	Residential Mobile Home Park	Subject to "Mobile Home Park Bylaw 1978", No. 1775.		
		Conditions as per Section 39.1		
R6	Residential Townhouse	1.2 m	2.0 m	2.0 m
		Conditions as per Section 39.1		
R7	Residential Multi-Family	1.2 m	2.0 m	2.0 m
		Conditions as per Section 39.1		
R7-A	Residential Ground-Oriented Multi-Family	1.2 m	2.0 m	2.0 m

		Conditions as per Section 39.1		
R8	Residential Multi-Family Apartment	1.2 m	2.0 m	2.0 m
		Conditions as per Section 39.1		
W1	Private Residence Water Lot	No restrictions		
W2	Light Commercial Water Lot	No restrictions		
W3	Mixed Use Commercial Water Lot	No restrictions		
MA1	Upland Tourist Commercial Marine	No restrictions		
MA2	Upland Tourist Commercial/Residential Marine	No restrictions		
C1	Commercial Local	Conditions as per Section 39.2		
C2	Commercial General	Conditions as per Section 39.2		
C3	Commercial Service	Conditions as per Section 39.2		
C4	Commercial Recreational	Conditions as per Section 39.2		
C6	Commercial Professional	Conditions as per Section 39.2		
C7	Commercial Rural Hospitality	Conditions as per Section 39.2		
C8	Commercial Rural Recreation	Conditions as per Section 39.2		
C9	Chemainus Commercial	Conditions as per Section 39.2		
I1	Industrial Light	Conditions as per Section 39.3		
I2	Industrial Heavy	Conditions as per Section 39.3		
PI	Private Institutional	No restrictions		
PU	Public Use	No restrictions		
PC	Public Conservation	No restrictions		
CD1	Cliffs CDZ	1.2 m	2.0 m	2.0 m
CD2	Chemainus Quay CDZ	No restrictions		
CD4	CDZ – Mixed Family	1.2 m	2.0 m	2.0 m
CD5	CDZ - Low Density Family	1.2 m	2.0 m	2.0 m
CD6	Chemainus Artisan Village CDZ - Areas 1 and 2	1.2 m	1.2 m	2.0 m
CD6	Chemainus Artisan Village CDZ - Area 3	1.2 m	1.2 m	1.5 m
CD7	Stonehill CDZ	1.2 m	1.2 m	1.8 m
CD8	Maple Bay School Site CDZ	No restrictions		
CD9	Multi-Family CDZ	1.2 m	2.0 m	2.0 m
CD10	Urban Medium Density CDZ	No fences over 1.2 m in any yard that abuts public property, a highway or lane		
		No fences over 1.8 m in any other yard		
CD11	Community Services (Health Care) CDZ	No restrictions		
CD12	Residential Two-Family CDZ	1.2 m	1.8 m	1.2 m
CD13	Ground-Oriented Urban Residential CDZ	1.2 m	2.0 m	2.0 m
CD14	University Village Mid-Rise Residential CDZ	1.2 m	2.0 m	2.0 m
CD15	Mixed Use Residential	1.2 m	2.0 m	2.0 m
CD16	Mixed Use Commercial Core	No restrictions		
CD17	Congregate Housing CDZ	1.2 m	1.2 m	2.0 m
		Fencing along Friendship Trail must not exceed 2.0 m		
CD18	Kingsview CDZ	1.2 m	2.0 m	2.0 m
CD19	University Village	No restrictions		
CD20	The Commons CDZ	1.2 m	2.0 m	2.0 m
CD21	Motorsport Circuit CDZ	No restrictions		

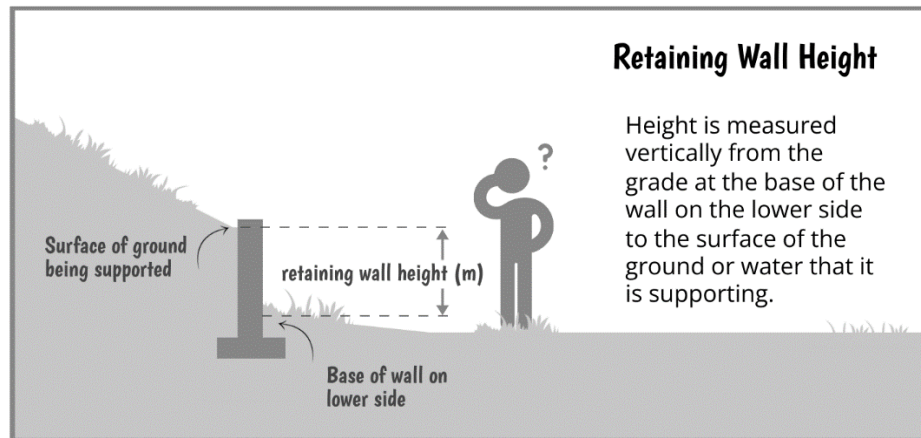
Section 37.2 – Retaining Walls

Maximum allowable height

- (1) Retaining walls located in yards are subject to fence height restrictions in subsection 37.1 (8), whether or not combined with fencing elements.
- (2) In no circumstances will a retaining wall be greater than 2 m in height.

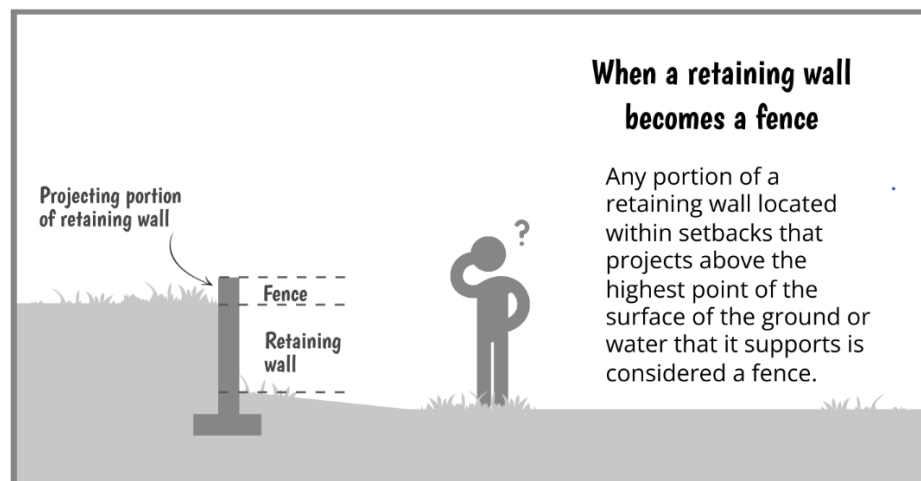
Measuring retaining wall height

- (3) Retaining wall height shall be measured vertically from the grade at the base of the wall on the lower side to the surface of the ground or water it supports.



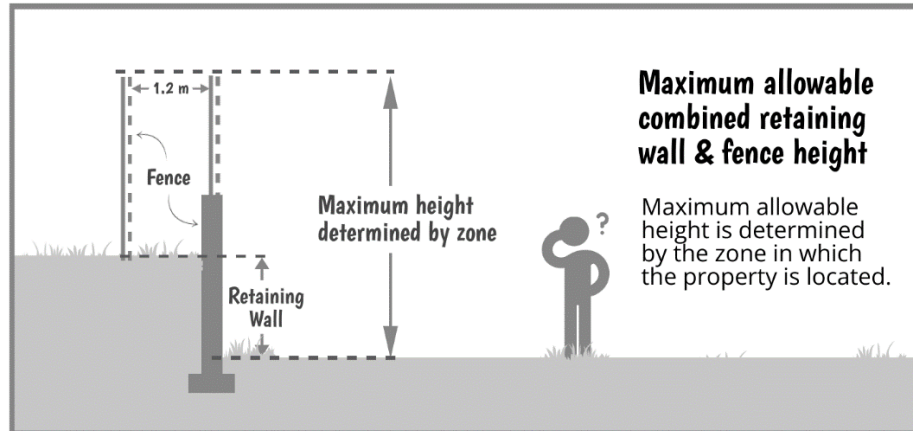
Portion of retaining wall considered as a fence

- (4) Any portion of a retaining wall that projects above the highest point of the surface of the ground or water it supports is considered a fence.



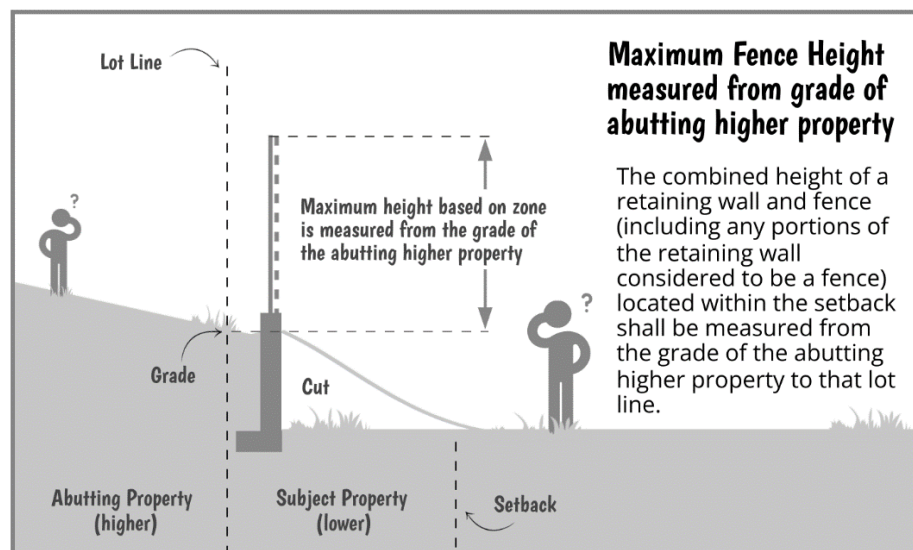
Maximum allowable retaining wall height when combining a retaining wall and fence

- (5) The combined height of a retaining wall and fence (where the fence is located within 1.2 m of that retaining wall), or any portion of a retaining wall considered to be a fence, shall not exceed the applicable maximum allowable fence height as per subsection 37.1 (8).



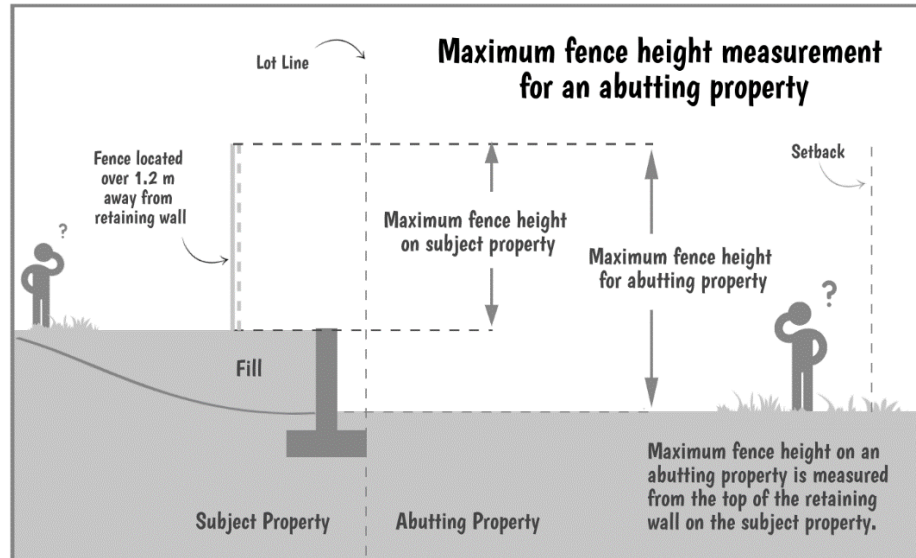
Maximum height measured from grade of higher abutting property

- (6) In the case of a retaining wall constructed in accordance with subsection 37.2 (5), the combined height of a retaining wall and fence (including any portions of the retaining wall considered to be a fence) located within the setback shall be measured from the grade of the abutting higher property to that lot line.



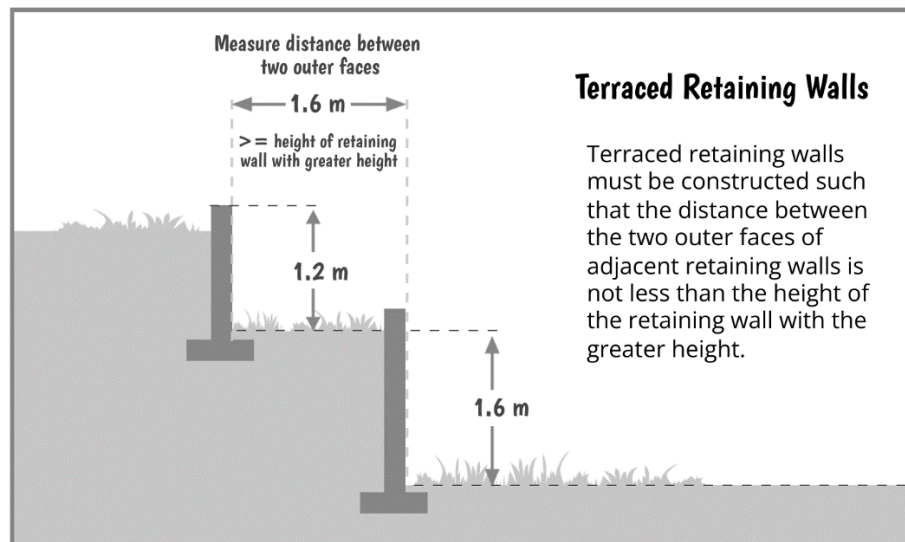
Maximum fence height measurement for an abutting property

- (7) Notwithstanding subsection 37.2 (6), where a retaining wall exists on the subject property and is located within 1.2 m of the lot line, the maximum height for a fence located within the setback on the abutting property shall be measured from the top of the retaining wall on the subject property to the top of the fence.



Terraced retaining walls

- (8) Terraced retaining walls must be constructed such that the distance between the two outer faces of adjacent retaining walls is not less than the height of the retaining wall with the greater height.



The area between the terraced retaining walls

- (9) The backfilled area between terraced retaining walls may include drainage, irrigation, and landscaping and shall be level and maintained in good condition, free of debris, yard waste, graffiti and invasive species.

Adding a guardrail onto a retaining wall

- (10) Guardrails up to a maximum height of 1.07 m located on retaining walls are excluded from the overall maximum allowable retaining wall height.

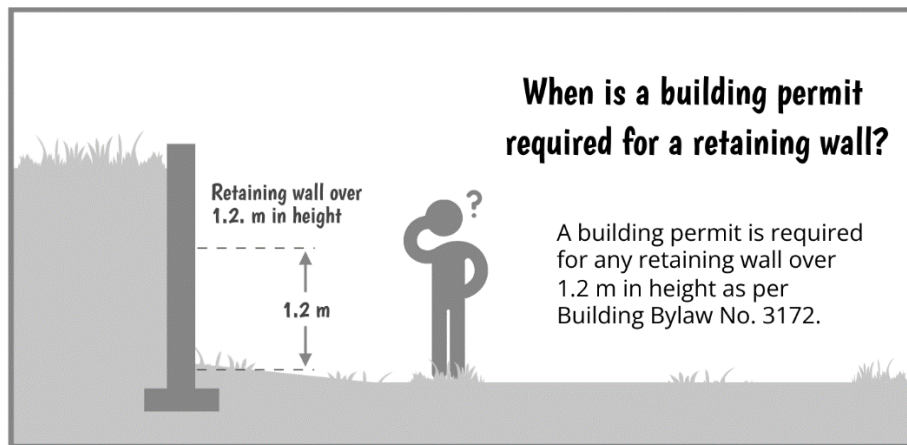
Vision clearance

- (11) Retaining walls are subject to vision clearance provisions of section 36.

Easements, covenants, and rights-of-way

- (12) All retaining walls, or any portion thereof, shall be located entirely on the applicable parcel and shall not be located within any right-of-way, easement or covenant area except with the express written permission of the right-of-way holder, easement holder, or covenantee, as the case may be.

- (13) *When is a building permit required for a retaining wall*



- 7 Zoning Bylaw No. 2950, Part 5 [Zones, Division (2)] is hereby amended by striking out the following subsections:

- (1) 53(8)(a) and (b) and (c) of Rural Restricted Zone (A3)
- (2) 55(8)(a) and (b) and (c) of Rural Residential Zone (A5)
- (3) 56(8)(a) and (b) and (c) of Residential Rural Zone (R1)
- (4) 57(8)(a) and (b) and (c) of Residential Restricted Zone (R2)
- (5) 57.1(8)(a) and (b) of Residential Restricted Properties Zone (R2-A)
- (6) 58(8)(a) and (b) and (c) of Residential One and Two-Family Zone (R3)

- (7) 58.1(10)(a) and (b) and (c) of Residential Small Lot Single-Family Zone (R3-S)
- (8) 58.2(13)(e) of Residential Two-Family Detached Zone (R3-CH)
- (9) 58.3(11)(a) and (b) and (c) of Residential Medium Density Multi-Family Zone (R3-MF)
- (10) 59(8)(a) and (b) and (c) of Residential Small Lot Mobile Home Zone (R4)
- (11) 61(11)(a) and (b) and (c) of Residential Townhouse Zone (R6)
- (12) 62(13)(a) and (b) and (c) of Residential Multi-Family Zone (R7)
- (13) 62.1(11)(a) and (b) and (c) of Residential Ground-Oriented Multi-Family Zone (R7-A)
- (14) 63(12)(a) and (b) and (c) of Residential Multi-Family Apartment Zone (R8)
- (15) 80.1(6) and (7) of The Cliffs Comprehensive Development Zone (CD1)
- (16) 80.4(8)(a) of Comprehensive Development Zone – Mixed Family Zone (CD4)
- (17) 80.5(8)(a) of Comprehensive Development Zone – Low Density Family Zone (CD5)
- (18) 80.6(7)(a) and (b) and (c)(i) of Chemainus Artisan Village Comprehensive Development Zone (CD6)
- (19) 80.7(11)(a) and (b) and (c) of Stonehill Comprehensive Development Zone (CD7)
- (20) 80.9(10)(a) and (b) of Multi-Family Comprehensive Development Zone (CD9)
- (21) 80.10(9)(a) and (b) of Urban Medium Density Comprehensive Development Zone (CD10)
- (22) 80.12(13)(c) of Residential Two-Family Comprehensive Development Zone (CD12)
- (23) 80.13(9)(a) and (b) and (c) of Ground-Oriented Urban Residential Comprehensive Development Zone (CD13)
- (24) 80.14(10)(a) and (b) of University Village Mid-Rise Residential Comprehensive Development Zone (CD14)
- (25) 80.15(11)(a) and (b) and (c) of Mixed-Use Residential Zone (CD15)
- (26) 80.17(10)(a) and (b) and (c) of Congregate Housing Comprehensive Development Zone (CD17)
- (27) 80.18(6) and (7) of Kingsview Comprehensive Development Zone (CD18)
- (28) 80.20(12)(a) and (b) of The Commons Comprehensive Development Zone (CD20)

READ a first time on
 READ a second time on
 CONSIDERED at a Public Hearing on
 READ a third time on
 ADOPTED on

CORPORATE OFFICER

PRESIDING MEMBER



The Corporation of the District of North Cowichan

Building Amendment Bylaw (Retaining Walls)

Bylaw 3892

The Council of The Corporation of The District of North Cowichan enacts in open meeting assembled as follows:

Title

- 1 This Bylaw may be cited as *"Building Amendment Bylaw No. 3892, 2022"*.

Amendment

- 2 Building Bylaw No. 3172, Section 3 [Definitions] is hereby amended by striking out the following definition:

*"**structure**" means a construction, or part of a construction, of any kind, whether fixed to, supported by, or sunk into, land or water, but excludes landscaping, fences, paving, and retaining walls."*

And inserting the following in its place:

*"**structure**" means any construction fixed to, supported by, or sunk into land or water but excludes concrete slabs on finished or natural grade, and decks on grade which are less than 0.61 m (2') in height;"*

- 3 Building Bylaw No. 3172, Section 3 [Definitions] is hereby amended by inserting, in alphabetical order, the following definition:

*"**retaining wall**" means a structure erected to hold back, stabilize or support water or land. It involves the alteration of land and is used to stabilize or modify slopes, level sites, and correct grade differences. Retaining walls may also form a system containing one or more retaining wall elements;"*

- 4 Building Bylaw No. 3172, is hereby amended by adding the following section:

*"Retaining Wall Building Permit
19.2*

- (1) A building permit must be obtained prior to the construction of a retaining wall over 1.2 m in height.
- (2) Multiple retaining walls over 1.2 m in height will require separate building permits except where they form a single terraced retaining wall system.

- (3) The horizontal separation between terraced retaining walls must not be less than the height of the retaining wall with the greater height. Where the horizontal separation between retaining walls is less than 5x the height of the retaining wall with the greatest height, the retaining walls shall be considered to be components of a single terraced retaining wall system.
- (4) It is the responsibility of the property owner to install guardrails as appropriate to mitigate any falling hazards associated with retaining walls.
- (5) Guardrails, where installed, must be built to Section 9.8.8 of the BC Building Code.
- (6) Guardrails are not included in the overall height of the retaining wall.
- (7) Retaining walls greater than 1.2 m in height will require engineering oversight (designed and inspected by a registered professional) including letters of assurance in the form of a Schedule B (field review and oversight by registered professional) and Schedule C-B (final report and sign off by registered professional)."

READ a first time on
READ a second time on
READ a third time on
ADOPTED on

CORPORATE OFFICER

PRESIDING MEMBER

COUNCIL MINUTES

IT WAS MOVED AND SECONDED:

THAT the agenda be adopted as amended.

CARRIED

4. MAYOR'S REPORT

Mayor Douglas provided a verbal update on meetings and activities he recently attended.

5. DELEGATIONS AND PRESENTATIONS

5.1 Present Long Standing Service Award to Ken Denham

Mayor Douglas presented Ken Denham with the Federal Fire Service Exemplary Service Award and a municipal plaque for his 50 years of service with the North Cowichan Fire Department.

5.2 Salish Sea Stones Project

Peter Shepherd, on behalf of the Salish Sea Stones Project provided a presentation to Council regarding how the organization uses the Salish Sea Stones art to raise funds to help vulnerable kids and teach them the process of the stone art.

IT WAS MOVED AND SECONDED:

THAT Council approve the 2022 allocation for a grant in aid in the amount of \$1,500 for the Salish Sea Stones Project.

CARRIED

6. PUBLIC INPUT

Council received public input from 1 member of the public regarding agenda 8.1 and 8.2.

7. BYLAWS

7.1 Council Procedure Amendment Bylaw No. 3888 for adoption

IT WAS MOVED AND SECONDED:

THAT Council adopt Council Procedure Amendment Bylaw No. 3888, 2022.

CARRIED

7.2 Board of Variance Amendment Bylaw No. 3889 for adoption

IT WAS MOVED AND SECONDED:

THAT Council adopt Board of Variance Amendment Bylaw No. 3889, 2022.

CARRIED

7.3 Revenue Anticipation Borrowing Bylaw No. 3890 for adoption

IT WAS MOVED AND SECONDED:

THAT Council adopt Revenue Anticipation Borrowing Bylaw No. 3890, 2022.

CARRIED

7.4 Zoning Bylaw Amendment Bylaw 3891 (Retaining Walls & Fences) & Building Bylaw Amendment Bylaw 3892 (Retailing Walls)

IT WAS MOVED AND SECONDED:

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". CARRIED

8. REPORTS

8.1 Pre-Budget Approval for IT Client Support Specialist

IT WAS MOVED AND SECONDED:

THAT Council give pre-budget approval for a permanent full-time Information Technology Client Support Specialist position beginning in 2023. CARRIED

8.2 2023 Regular Council and Committee of the Whole Meeting Schedule

IT WAS MOVED AND SECONDED:

THAT Council:

- (1) Reschedule the February 14, 2023 Committee of the Whole meeting to February 7, 2023, the March 14, 2023 Committee of the Whole meeting to March 7, 2023, and the November 14, 2023 Committee of the Whole meeting to November 7, 2023;
- (2) Reschedule the February 15, 2023, Regular Council meeting to February 21, 2023, and the September 20, 2023, Regular Council meeting to September 26, 2023; and,
- (3) Direct that the regular Council and Committee of the Whole meetings for 2023 be conducted by electronic means. CARRIED

8.3 Community Emergency Preparedness Fund Grant Application

IT WAS MOVED AND SECONDED:

THAT Council authorize an application for a grant in the amount of \$30,000 under the Community Emergency Preparedness Fund's Volunteer and Composite Fire Departments Equipment and Training funding stream for marina firefighting training and associated costs for the North Cowichan Fire Department. CARRIED

10. UNFINISHED AND POSTPONED BUSINESS

No Items.

11. NEW BUSINESS

11.1 Appointment of three alternates to the Cowichan Valley Regional District's (CVRD) Cowichan Centre Commission

IT WAS MOVED AND SECONDED:

THAT Council appoint Councillors Justice, Toporowski, and Manhas as the Municipality of North Cowichan's alternate members on the Cowichan Valley Regional District's Cowichan Centre Commission for the 2022-2026 Council term. CARRIED

11.2 Consent Agenda Item 2.2.6 [Cowichan Valley Resident Re: Extend the deadline for Forestry Engagement Surveys]

IT WAS MOVED AND SECONDED:

THAT Council receive the December 8, 2022 email from the resident, and

PUBLIC COMMENTS

From: Patricia Taylor
Sent: Thursday, December 29, 2022 4:46 PM
To: [REDACTED] **FIPPA s. 22(1)**
Subject: RE: Retaining wall public meeting feedback

Hi Randy,

Thank you for your feedback on the proposed retaining wall regulations. I just wanted to let you know we received your email and it will be submitted as part of a package to Council for consideration.

Warmly,

Patricia Taylor

Planner, Community Planning
Development and Engineering Services | Planning
Municipality of North Cowichan
T 250.746.3263
patricia.taylor@northcowichan.ca
www.northcowichan.ca

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RETAINING WALLS

North Cowichan is making a change to its zoning and building bylaws: **RETAINING WALLS & FENCES**

Want to know more? Or do you have an idea about retaining walls and fences that Council should consider as part this new bylaw, or for a future bylaw update? Share them here. Input will be accepted up to when a public hearing is held for the bylaw.

➔ Scan the QR Code or click here to access our Retaining Wall & Fence project page.

From: Randy Noble [REDACTED] **FIPPA s. 22(1)**
Sent: Monday, December 26, 2022 8:10 AM
To: Community Planning <CommunityPlanning@northcowichan.ca>
Subject: Retaining wall public meeting feedback

Hello

Having reviewed the content for the upcoming public meeting on retaining walls I offer the following viewpoints:

- Vetting aesthetics of retaining walls is a function of the related official community plan and should not be relegated to a bylaw.
- To ensure safety and provide liability protection all retaining walls taller than one meter should be required to have structural drawings sealed by an engineer of record.
- As a general note no bylaw should have all three readings in a single sitting - maximum of first and second reading to ensure time for sober second thought. For the record I am opposed to any bylaw (Building or otherwise) that affects all three readings in a single sitting.

Thank you for providing a platform to share my opinions.

Randy Noble



FIPPA s. 22(1)

▪

From: Nicholas Schwetz [REDACTED] **FIPPA s. 22(1)**
Sent: Wednesday, January 4, 2023 12:40 PM
To: Public Meetings
Subject: Retaining wall public hearing

I am **in favour** of the application to change Zoning Bylaw amendment No. 3891 and Building Bylaw amendment No. 3892.

I will add that retaining walls and fences must avoid contraventions to other laws, such as the Riparian Areas Protection Act and the Water Sustainability Act. Retaining walls and fences should not alter protected natural heritage features and developers need to understand their development envelope limitations. There are many unmapped watercourses and waterbodies that need to be accounted for in development applications. In addition, I recommend that no retaining walls or fences are allowed below a ravine top of bank. Instead, a geotechnical setback from a ravine top of bank should be preferred to maintain biological objectives and avoid hazard areas.

Nicholas Schwetz
[REDACTED] **FIPPA s. 22(1)**