

Report

Date	February 21, 2023	File: SPP00085
Subject	Zoning Bylaw Amendment Bylaw No. 3891 (Retaining Walls & Fences) & Building Bylaw Amendment Bylaw No. 3892 (Retaining Walls) Revisions	

PURPOSE

To consider amending:

- 1) Zoning Bylaw Amendment Bylaw No. 3891 (Retaining Walls) prior to consideration of third reading.
- 2) Building Bylaw Amendment Bylaw No. 3892 (Retaining Walls) prior to consideration of third reading.

BACKGROUND

A. December 21, 2022, Council Meeting

At the December 21, 2022, Council Meeting, Council resolved: 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".

B. January 18, 2023, Public Hearing

At the January 18, 2023, Public Hearing, Council received two email submissions for the agenda package and three email submissions after the agenda was published, with three members of the public speaking at the public hearing. A summary of this input is provided in Attachment 5.

DISCUSSION

A. Amendments to Proposed Zoning Bylaw Amendment Bylaw No. 3891

In response to the public feedback received at the public hearing, Council may wish to consider changes to the proposed Zoning Bylaw Amendment prior to giving third reading. The most significant change is to insert a provision that exempts retaining walls that have been approved as part of the subdivision process. Effectively, this allows the Approving Officer to determine the most appropriate height for retaining walls in new subdivisions while preventing inappropriate or significant grade and fence height manipulation on established properties by setting a maximum height allowance in all other cases.

This change means that subdivision applications may include walls in excess of the height restrictions without needing to obtain a variance. This protects any in-stream applications and/or developments from triggering the variance process as long as the retaining walls are clearly established within the subdivision approval. A building permit will still be required for each retaining wall over 1.2m when constructed, whether as part of the subdivision works themselves or a subsequent construction on a fully-subdivided lot.

A revised version of Bylaw 3891 incorporating all proposed changes in redline format is included as Attachment #2 attached to this report. A summary of these changes is listed below:

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

- a) Amend definitions "retaining wall" and "guardrail" to include additional explanatory wording

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

- a) Amend '*Section 37.1.7 - Fences located near retaining walls*' to include subdivision process
- b) Amend '*Sections 37.2.1 & 2 – Maximum allowable height*' to include subdivision process
- c) Amend '*Section 37.2.5 – Maximum allowable retaining wall height when combining a retaining wall and fence*' to include subdivision process
- d) Amend '*Section 37.2.7 – Maximum fence height measurement for an abutting property*' to include the reference of Section 37.1 (2) for further clarification
- e) Amend '*Section 37.2.8 – Terraced retaining walls*' to change the wording from 'outer' face to 'opposing' faces, including the change to the associated image which reflects this
- f) Amend '*Section 37.2.13 – When is a building permit required for a retaining wall*' to remove the section number as the image is a standalone piece of supplemental information and not a zoning regulation in its own right.

B. Amendments to proposed Building Bylaw Amendment Bylaw No. 3892

For Council's consideration, two minor changes to Building Bylaw Amendment Bylaw No. 3892 are identified, the first of which was the omission of an amendment to Building Bylaw No. 3172. A summary of these changes is listed below:

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

- a) Strike out '*Section 2 (2)(b)*' of Building Bylaw No. 3172, which states the building bylaw does not apply to retaining structures

2) Proposed amendment to '*Part 3 – Definitions*' that includes:

- a) Amend the definition of "Retaining Wall" to match that set out within the BC Building Code

Note: Having different definitions for "Retaining Wall" within the Zoning Bylaw and Building Bylaw is not problematic since each bylaw regulates retaining walls in a different way and for different purposes. The proposed definition within the Building Bylaw is, therefore, a more technical definition that will assist in regulating the construction of retaining walls in a manner consistent with the BC Building Code and standards prescribed by *Engineers and Geoscientists BC*. In contrast, the Zoning Bylaw seeks primarily to identify retaining walls as features on the land to which height restrictions apply depending on their specific location with respect to other retaining walls and fences.

A revised version of Bylaw No. 3892 incorporating the proposed change in redline format is included as Attachment #4.

Note: In order to amend Bylaw No. 3892, third reading must be rescinded to return the bylaw to second reading, as a bylaw may not be amended after third reading.

C. Summary

Changes were identified to the proposed "Zoning Bylaw Amendment Bylaw No. 3891" and "Building Bylaw Amendment Bylaw No. 3892" in response to feedback received during the public hearing consultation process to add further clarity and, in one instance, to correct an omission. By working with the development and building community, North Cowichan can create retaining wall regulations that are clear and easy to understand. As such, the amendments to "Zoning Bylaw Amendment Bylaw No. 3891" (Attachment 1) and "Building Bylaw Amendment No. 3892" (Attachment 3) are proposed for Council's consideration prior to consideration of third reading.

Future Consideration: Delegation of Authority

In addition to the above considerations, staff have also identified an opportunity to streamline the variance process associated with retaining walls by delegating authority to the Director of Planning and Building to approve variances for retaining walls through the issuance of a development permit. Streamlining the approval process in this manner for variances specific to retaining walls will enable developers and staff to work together to deal with non-compliant retaining walls in a more nimble and process-efficient fashion. This will be brought forward for Council's consideration under a separate report along with draft amendments to the Delegation of Authority Bylaw.

OPTIONS

Option 1: (Recommended Option) This option requires that Council rescind third reading of Building Amendment Bylaw No. 3892 so that it may be amended and then consider the following five motions individually.

1. THAT Zoning Amendment Bylaw No. 3891, 2022 be amended by:
 - (1) Striking out the last sentence in of the definition for "retaining wall" in Section 2 and inserting *"Retaining walls may also form a system containing one or more terraced retaining walls" in its place;*
 - (2) Replacing the definition of "guardrail" in Section 3 with *"guardrail means a barrier such as a bar or a rail placed along the edge of something such as a retaining wall or staircase so as to improve safety and prevent falls";*
 - (3) Updating Section 6 to add *"except where such retaining wall is authorized in an accepted grading plan within the subdivision process"* to the end of subsection 37.1 (7);
 - (4) Updating Section 6 to add *"except where authorized on an accepted grading plan within the subdivision process"* to the end of subsection 37.2 (1);
 - (5) Updating Section 6 to replace subsection 37.2 (2) with *"No retaining wall in any location shall be greater than 2 m in height, except where authorized on an accepted grading plan within the subdivision process";*
 - (6) Updating Section 6 to add *"except where the retaining wall is authorized on an accepted grading plan within the subdivision process, in which case the fence component of a combined retaining*

wall and fence shall be subject to the maximum fence heights specified in subsection 37.1(8)" to the end of subsection 37.2 (5);

- (7) Updating Section 6 to insert "37.1 (2) *"Measuring Height" and subsection"* immediately after *"Notwithstanding subsection"* in subsection 37.2 (7);
 - (8) Updating Section 6 to replace Subsection 37.2 (8) with *"Terraced retaining walls must be constructed such that the distance between the two opposing faces of adjacent terraced retaining walls are not less than the height of the retaining wall with the greater height,"* and replacing the illustration with the one depicted in Attachment 1; and,
 - (9) Updating Section 6 to strike out subsection 37.2 (13) and move the illustration to subsection 37.2 (12).
2. THAT Council give third reading to "Zoning Amendment Bylaw No. 3891, 2022" as amended.
 3. THAT Council rescind third reading of "Building Amendment Bylaw No. 3892, 2022".
 4. THAT "Building Amendment Bylaw No. 3892, 2022" be amended by:
 - (1) Inserting *"Building Bylaw No. 3172, Section 2 [Application] is hereby amended by striking out section (2)(b) retaining structures"* as a new section in Bylaw No. 3892; and,
 - (2) Replacing the definition for "retaining wall in Section 3 with *"retaining wall means a vertical or near-vertical structure constructed to hold back Geotechnical Materials and safely deal with any hydrostatic pressure. Retaining Walls can be created out of a variety of structural and Geotechnical Materials. Retaining Walls typically stabilize soil and rock against downslope movement and provide lateral support for steep to vertical grade changes (Engineers and Geoscientists of BC definition, February 25, 2020)"*.
 5. THAT Council give third reading to "Building Amendment Bylaw No. 3892, 2022" as amended.

Option 2: Postpone further consideration of either bylaw following amendments in order to receive additional information.

THAT Council postpone consideration of third reading to "Zoning Bylaw Amendment Bylaw No. 3891" and adoption of "Building Bylaw Amendment Bylaw No. 3892" until Council receives a report from staff that includes additional information or substantial regulatory changes in regards to:

- *(Council to identify information or changes required)*

Option 3: Not proceed with any changes to the Zoning or Building Bylaws at this time.

THAT Council abandon Zoning Amendment Bylaw No. 3891, 2022 and Building Amendment Bylaw No. 3892, 2022.

IMPLICATIONS

Implications	Concerns or Impacts to North Cowichan
Financial	N/A
Policy/Legislation	While changes to retaining wall regulations are proposed in advance of 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 is expected to be offset by a reduction in the number of retaining wall variance applications.

RECOMMENDATION

1. THAT Zoning Amendment Bylaw No. 3891, 2022 be amended by:
 - (1) Striking out the last sentence in of the definition for "retaining wall" in Section 2 and inserting *"Retaining walls may also form a system containing one or more terraced retaining walls" in its place;*
 - (2) Replacing the definition of "guardrail" in Section 3 with *"guardrail means a barrier such as a bar or a rail placed along the edge of something such as a retaining wall or staircase so as to improve safety and prevent falls";*
 - (3) Updating Section 6 to add *"except where such retaining wall is authorized in an accepted grading plan within the subdivision process"* to the end of subsection 37.1 (7);
 - (4) Updating Section 6 to add *"except where authorized on an accepted grading plan within the subdivision process"* to the end of subsection 37.2 (1);
 - (5) Updating Section 6 to replace subsection 37.2 (2) with *"No retaining wall in any location shall be greater than 2 m in height, except where authorized on an accepted grading plan within the subdivision process";*
 - (6) Updating Section 6 to add *"except where the retaining wall is authorized on an accepted grading plan within the subdivision process, in which case the fence component of a combined retaining wall and fence shall be subject to the maximum fence heights specified in subsection 37.1(8)"* to the end of subsection 37.2 (5);
 - (7) Updating Section 6 to insert *"37.1 (2) "Measuring Height" and subsection"* immediately after *"Notwithstanding subsection"* in subsection 37.2 (7);

- (8) Updating Section 6 to replace Subsection 37.2 (8) with "*Terraced retaining walls must be constructed such that the distance between the two opposing faces of adjacent terraced retaining walls are not less than the height of the retaining wall with the greater height,*" and replacing the illustration with the one depicted in Attachment 1; and,
 - (9) Updating Section 6 to strike out subsection 37.2 (13) and move the illustration to subsection 37.2 (12).
2. THAT Council give third reading to "Zoning Amendment Bylaw No. 3891, 2022" as amended.
 3. THAT Council rescind third reading of "Building Amendment Bylaw No. 3892, 2022".
 4. THAT "Building Amendment Bylaw No. 3892, 2022" be amended by:
 - (1) Inserting "*Building Bylaw No. 3172, Section 2 [Application] is hereby amended by striking out section (2)(b) retaining structures*" as a new section in Bylaw No. 3892; and,
 - (2) Replacing the definition for "retaining wall in Section 3 with "*retaining wall means a vertical or near-vertical structure constructed to hold back Geotechnical Materials and safely deal with any hydrostatic pressure. Retaining Walls can be created out of a variety of structural and Geotechnical Materials. Retaining Walls typically stabilize soil and rock against downslope movement and provide lateral support for steep to vertical grade changes (Engineers and Geoscientists of BC definition, February 25, 2020)*".
 5. THAT Council give third reading to "Building Amendment Bylaw No. 3892, 2022" as amended.

Report prepared by:



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Report reviewed by:



Rob Conway
Director, Planning and Building

Approved to be forwarded to Council:



Ted Swabey
Chief Administrative Officer

Attachments:

- (1) Revised Zoning Bylaw Amendment Bylaw No. 3891
- (2) Redline version of Bylaw 3891 showing proposed amendments
- (3) Revised Building Bylaw Amendment Bylaw No. 3892
- (4) Redline version of Bylaw 3892 showing proposed amendments
- (5) Summary of input received at public hearing held on January 18, 2023.