

Report

Date April 3, 2024

File: DVP00103

Subject Development Variance Permit Application 9837 Napier Place, Chemainus. BC

PURPOSE

To consider a Development Variance Permit application to vary a side yard fence height for an existing fence from 1.2 m to 2.5 m at 9837 Napier Place.

BACKGROUND

The applicant recently replaced a fence, similar in height to the newly constructed fence, along the side yard adjoining their neighbour. Although the old and new fence are basically the same height, the neighbour has objected as the fence violates Zoning Bylaw section 37.1(8) which requires a side yard maximum side height of 1.2 m. The applicant is seeking relief from the bylaw standard to legalize the existing fence. Letter of Rationale (Attachment 1) and the north side yard fence drawing (Attachment 2) explain the circumstances and fence heights. Photos of the old and new fence (Attachment 3) illustrate the changes.

Other than height, the reason for the complaint is unclear, although the neighbour has cited the style, loss of light, and colour as reasons. The bylaw does not reference fence colour, style, or light requirements. Consequently, only the fence height is a violation. A minor change in the new fence's location may also have contributed to the complaint. It was previously located on the applicant's property a short distance but now follows the actual property line.

The neighbour requested that the side property line be resurveyed prior to any construction, which was done at the applicant's cost.

DISCUSSION

Factors involved in this application requiring Council's consideration include:

1. **Neighbourhood design:** The subdivision is zoned Chemainus Artisan Village Zone (CD6) (Attachment 4). When introduced in 2010, it was one of the first zones to create small single-family lots. The staff report introducing the bylaw explained the proposed new standards necessary for the small lot size. However, there was no commentary on the significant reduction of side yard fence height, which was changed from the traditional 2.0 m to 1.2 m.

Overall, the development is popular and well maintained. Residents have appreciated smaller lots and private areas in the rear yard. Napier Place does have a slope, so retaining walls are necessary to provide usable space for the rear yards. They were built as part of the development of the lots along the rear and side yards (Attachment 5). As a result, most homes in the development have fencing along the side yard greater than the maximum height of 1.2 m (3.93 ft), as illustrated in Attachment 6 (nearby examples of side yard fences).

2. **Zoning History for Fence Height:** Fencing is used to help define the space around a building. Front yard fences are typically low to distinguish the public street from the private property line, while allowing vision to and from the street for safety reasons. The side and rear yards by comparison are deemed private space.

Section 37.1(8) sets out fence heights for all zones in North Cowichan. Maximum front yard height of 1.2 m covers most zones except commercial, rural, or resource zones which have no standard. Side yard and rear yard maximum fence heights of 2.0 m (6.56 ft) predominate in all zones with a couple at 1.8 m (5.9 ft) for side yards. The notable exceptions are the CD6 Artisan Village and CD7 Stonehill zones at 1.2 m (3.9 ft). It is not known why these two zones have a lower fence height maximum than is typical elsewhere in North Cowichan and there is a lack of rationale present in the original Zoning Bylaw Amendment file to explain this disparity.

Of note is the Stonehill Zoning process. In the initial 2010 version of the CD7 zone under Conditions of Use section 3.01(3) it states: “*No fences over 2.0 m in height are permitted in the required side or rear yards.*” Bylaw 3452 was subsequently adopted with the following under Conditions of Use section 9(11): “*No fences over 1.8 m in height are permitted in the required side or rear yards.*” In the extensive commentary of changes, there is none given for the change in fence height.

The zoning bylaw was further amended last March (Bylaw 3891) by revising standards for fences and retaining walls citing among other reasons: “*lack of privacy between neighbours when in close proximity*” and “*lack of clarity*”. Previously each zone had a separate *Conditions of Use* section with specifications on fencing heights. The solution was to place all fence heights into one table (section 37.1(8) (pgs. 32 & 33). In so doing, however, there was a further change made to the Stonehill CD7 Zone which replaced the prior side yard height from 1.8 m to 1.2 m. Reports do not mention the change despite the desire to address “*lack of privacy*”. Again, it is unusual to have the side yard height the same as in the front yard.

Summary

Overall, the applicant has been endeavouring to follow the fencing practice in the neighbourhood. The oversight of not checking the zoning bylaw is common with many residents when it comes to such projects. This is evident in fencing, heat-pumps, sheds, etc. which are often sited contrary to zoning.

General planning practice in communities across BC, and elsewhere, is that maximum side yard fencing standards is higher than for front yards. The CD6 zone has been identified for update in this respect, whereas the CD7 zone is identified for elimination within the “Legacy Zones” Module 1 of the zoning bylaw review.

On a community wide basis, there seems to be a public expectation that side yard fences are usually 5 or 6 ft high. To single out the Artisan Village neighbourhood, which is already built out, to adhere to smaller side yards than elsewhere is potentially an ongoing issue administratively for North Cowichan as well as for the many residents with fencing exceeding the 1.2 m height limit.

Finally, the applicants request for a maximum height of 2.5 m rather than 2.0 m is intended to accommodate one fence post at the rear panel for consistency with the rear yard fence height of 2.0 m.

Staff are preparing a report updating the zoning bylaw to address a variety of matters which will include these inconsistencies with fence heights.

The ongoing zoning bylaw review will address a variety of matters which will include these inconsistencies with fence heights. Changes of this nature impacting "site standards" will likely be brought forward shortly after compliance with the new provincial residential density provisions has been achieved by the statutory June 30, 2024, deadline.

OPTIONS

1. **(Recommended Option)** THAT Council authorize the issuance of Development Variance Permit DVP00103 and grant a variance to section 37.1(8) of Zoning Bylaw No. 2950, 1997 to increase the maximum side yard fence height from 1.2 metres to 2.5 metres to regularize the existing fencing at 9837 Napier Place (PID 030-280-079).
 - This recommendation will allow the fencing to remain in place until it is replaced, at which time any new fencing shall be in accordance with current zoning requirements.
2. THAT Council deny Development Variance Permit DVP00103 and require the property owner to comply with the zoning bylaw in respect to fence height.

RECOMMENDATION

THAT Council authorize the issuance of Development Variance Permit DVP00103 and grant a variance to section 37.1(8) of Zoning Bylaw No. 2950, 1997 to increase the maximum side yard fence height from 1.2 metres to 2.5 metres to regularize the existing fencing at 9837 Napier Place (PID 030-280-079).

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Approved to be forwarded to Council:



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Attachments:

- (1) Letter of Rationale
- (2) North side yard fence drawing
- (3) Photos of old and new fence
- (4) Zoning
- (5) Orthophoto
- (6) Photos of side yard fencing in neighbourhood
- (7) Development Variance Permit