

Development Variance Permits (DVPs) allow bylaw provisions to be varied as set out in the *Local Government Act*, Section 922. Within the Regional District of Nanaimo (RDN) typically these variances relate to Bylaw No. 500, 1987 and Bylaw No. 1285, 2002 (not involving a change in use or density).

Where the requested variance relates to proposed construction, for example relaxation of a setback or height provision, a building permit may only be issued, or construction started, once the development variance permit is in place.

It is strongly recommended that you contact Planning Staff to discuss your proposal prior to submitting an application. Upon submission of a DVP application, including all required information and application fee(s), planning staff will review the information and prepare a report to the Electoral Area Services Committee (EASC), which is a committee of the RDN Board. *Please note that planning staff or the Committee may require additional information in support of your application.* Following the EASC's review of the proposed development, public notification is completed in accordance with "Regional District of Nanaimo Development Application and Notification Procedures Bylaw No. 1776, 2018". The committee's recommendation is then forwarded the RDN Board for consideration.

A resolution by the Board must be passed to approve and authorize issuance of the DVP. *Please note that some DVPs may also require the approval of the Ministry of Transportation & Infrastructure prior to issuance of the permit.* Once the permit is in place, the required building permits may be issued.

Board Policy

The RDN Board has adopted a policy (Policy B1.5) which sets out evaluation criteria to be used in the consideration of development variance permit applications. This policy is attached for information. Information required as a result of Board adoption or amendment of Policies and Bylaws may change from time to time. Please contact Planning staff prior to making an application.

Submission Requirements

To make an application for a development permit, the required fee and a completed application form must be submitted, along with any applicable additional information as listed in the application form.

Development Variance Permit Application Form

OFFICE USE ONLY

Application Fee: _____

Receipt No. _____

File No. _____

SECTION 1: DESCRIPTION OF PROPERTY
(AS INDICATED ON THE STATE OF TITLE CERTIFICATE)

Legal Description _____

Civic Address _____

Electoral Area _____ Parcel Identifier (PID) _____

SECTION 2: OWNER INFORMATION
(ATTACH ADDITIONAL PAGE IF MORE THAN TWO OWNERS)

| | | | |
|-----------------|-------|-----------------|-------|
| 1) | _____ | 2) | _____ |
| Name | _____ | Name | _____ |
| Mailing Address | _____ | Mailing Address | _____ |
| Town / Province | _____ | Town / Province | _____ |
| Postal Code | _____ | Postal Code | _____ |
| Telephone/ Cell | _____ | Telephone/ Cell | _____ |
| Fax | _____ | Fax | _____ |
| Email | _____ | Email | _____ |

SECTION 3: AGENT INFORMATION
(TO BE COMPLETED IF THE APPLICANT IS NOT THE REGISTERED OWNER)

| | | |
|-------------|-----------------|---------------|
| _____ | _____ | _____ |
| Name | Mailing Address | Town/Province |
| _____ | _____ | _____ |
| Postal Code | Telephone/ Cell | Fax |
| _____ | _____ | Email |

*NOTE: IF THE APPLICANT IS NOT THE REGISTERED OWNER A LETTER OF AUTHORIZATION WILL BE REQUIRED

SECTION 4: DESCRIPTION OF PROPOSAL

Proposed variances requested: _____

Purpose of proposed variance: _____

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Personal information collected on this form is collected for the purposes of processing this application and for administration and enforcement. The personal information is collected under the authority of the *Local Government Act*, Regional District of Nanaimo Bylaws and pursuant to section 26 of the *Freedom of Information and Protection of Privacy Act*.

Letter of Authorization

for Representative / Agent

Date: _____

As the registered owner(s) of the following property:

Civic Address: _____

Legal Description: _____

I / We hereby authorize the following person to act as agent on my / our behalf in all matters pertaining to the application for development on the above noted property and by doing so will be deemed to know of and to understand the contents of the applications and associated documents. I / We acknowledge the authority of the agent to bind me/us in all matters relating to the work to be performed under the following applications (please check all applicable):

- | | | |
|---|--|--|
| <input type="checkbox"/> OCP Amendment | <input type="checkbox"/> Rezoning | <input type="checkbox"/> Subdivision |
| <input type="checkbox"/> Development Permit | <input type="checkbox"/> Development Variance Permit | <input type="checkbox"/> Board of Variance |
| <input type="checkbox"/> Temporary Use Permit | <input type="checkbox"/> Agricultural Land Reserve | <input type="checkbox"/> Other |

Owner Name (please print)

Owner Name (please print)

Signature of Owner

Signature of Owner

Agent's Information

Agent's Name

Company Name

(Address)

City

Postal Code

Telephone

Fax No.

Cellular Phone

Email

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Property Declaration Form

for Riparian Areas, Nesting Trees,
Coastal Floodplain, and Site Profiles

| | |
|--------------------|--------------|
| Civic Address: | 9 Digit PID: |
| Legal Description: | |

Riparian Areas

I (we) acknowledge that the province of British Columbia enacted the *Riparian Areas Regulation* to protect the critical features, functions, and conditions required to sustain fish habitat. Furthermore, this legislation prohibits the Regional District of Nanaimo (RDN) from approving or allowing a development to proceed adjacent to a watercourse until it has received notice that a report prepared by a Qualified Environmental Professional has been received by the Ministry of Environment & Climate Change Strategy.

I (we) understand that a water feature includes any of the following:

- a) any watercourse, whether it usually contains water or not;
- b) any pond, lake, river, creek or brook; and/or,
- c) any ditch, culvert, spring, or wetland.

I (we) declare that I (we) are familiar with the property and area, and have inspected the property and immediate area for the existence of any water features. I (we) declare that (***please check the one that applies***):

- ☐ that there are no water features located on the subject property; or
- ☐ there are water features located on the subject property.

I (we) declare that all proposed development including land alteration, vegetation removal, alteration or construction of a building or structure (please check the one that applies):

- ☐ is greater than 30.0 metres from a water feature; or
- ☐ is less than 30.0 metres from a water feature.

Coastal Floodplain

I (we) acknowledge that a building located in a marine coastal area may be subject to flooding as a result of high tides, storm surges and wave effects.

I (we) declare that we are familiar with the property and area, and have inspected the property and immediate area for the existence of the marine coast.

I (we) declare that (***please check the one that applies***):

- ☐ the property is located more than 100 metres from the marine coast; or
- ☐ the property is located less than 100 metres from the marine coast.

Eagle and Heron Nesting Trees

I (we) acknowledge that the *Wildlife Act* protects Bald Eagles and Great Blue Herons, their eggs and nests. Bald Eagles and Great Blue Herons are sensitive to development near their nesting sites and may return to a nest that has been unused for a number of years.

While the provincial government and the RDN undertake mapping of nesting sites from time to time, not all are mapped. Some on private property may have been undetected, and new nests are continually being built. Typically, a 60 metre radius for an eagle nesting tree and depending on the level of development in an area, a 60 - 300 metre radius for a heron nesting tree (or trees) is considered to be sensitive to disturbance. Electoral Areas A, E, G and H require that a development permit be obtained prior to development near an eagle or heron nest.

Mapped eagle and heron nest trees can be found on the Community Mapping Network at www.cmnmaps.ca/WITS/ and www.cmnmaps.ca/GBHE/.

I (we) declare that I (we) are familiar with the property and area, and have inspected the property and immediate area for the existence of eagle or heron nests prior to completing this form. I (we) declare that (***please check the one that applies***):

- ☐ there are no eagle or heron nesting trees on or within 100 metres of the subject property;
- ☐ there is an eagle or heron nesting tree on or within 100 metres of the subject property.

Site Profile - section to be completed for demolition, subdivision, rezoning, development or development variance permit

I (we) acknowledge that when an application is made to the RDN, Section 40(1) of the *Environmental Management Act* requires that a Site Profile be completed when the applicant knows, or reasonably should know, that the land is being used or has been used for industrial or commercial purposes of the type listed in Schedule 2 of the *Contaminated Sites Regulation*, unless otherwise exempt under the Regulation. Please find the list of Schedule 2 activities and Site Disclosure Statement on the Government of BC website at www2.gov.bc.ca/gov/content/environment/air-land-water/site-remediation/site-identification. Please contact the RDN Planning Department if any of the activities listed in Schedule 2 apply to the subject property.

I (we) declare that (***please check the one that applies***):

- ☐ I (we) have read the *Contaminated Sites Regulation* Schedule 2 document, and determined that the subject property has been used for purposes listed in Schedule 2, and filled out the Site Disclosure Statement; or
- ☐ I (we) have read the *Contaminated Sites Regulation* Schedule 2 document and am (are) not required to submit a Site Disclosure Statement as to my (our) knowledge, the subject property has not been used for any of the activities listed in Schedule 2; or
- ☐ I (we) have read the *Contaminated Sites Regulation* Schedule 2 document and am (are) exempted from being required to submit a Site Disclosure Statement under Section 4 of the *Contaminated Sites Regulation*. I (we) have provided the following information in support of this exemption: (List information below, use additional pages as required)

DECLARATION SIGNATURE

Please provide an additional page with owners' names and signatures if required.

I (we) declare that I (we) have read and filled out the above form.

| | | |
|----------------------------|-------------|--------|
| Owner 1/Agent (Print Name) | (Signature) | (Date) |
|----------------------------|-------------|--------|

Phone: _____ Email: _____

| | | |
|----------------------------|-------------|--------|
| Owner 2/Agent (Print Name) | (Signature) | (Date) |
|----------------------------|-------------|--------|

Phone: _____

| | | |
|----------------------------|-------------|--------|
| Owner 3/Agent (Print Name) | (Signature) | (Date) |
|----------------------------|-------------|--------|

Phone: _____ Email: _____

OR if the owner is a Corporation or Limited Company:

_____) _____
 _____) Corporate Seal
 (Company Name) _____) _____
 _____) _____
 Authorized Signatory _____) _____
 _____) _____

Witnessed By:

 Witness (Print Name) (Signature) (Date)

Phone: _____

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REGIONAL DISTRICT OF NANAIMO

POLICY

| | | |
|-----------------|---|--------------------------------|
| SUBJECT: | <i>Development Variance Permit, Development Permit with Variance & Floodplain Exemption Application Evaluation</i> | POLICY NO: B1.5 CROSS REF.: |
| EFFECTIVE DATE: | March 8, 1994 | APPROVED BY: Board |
| REVISION DATE: | October 2, 2018 | PAGE: 1 of 5 |

PURPOSE

This policy is to provide staff with guidelines for reviewing and evaluating development variance permit applications, development permit applications that include bylaw variances, and site-specific exemptions to the Floodplain Bylaw.

PART A – DEVELOPMENT VARIANCE PERMIT AND DEVELOPMENT PERMIT WITH VARIANCE APPLICATION EVALUATION

1. Demonstration of Land Use Justification

- a) An application should demonstrate that the proposed variance is necessary and is supported by an acceptable land use justification; such as:
 - i. the ability to use or develop the property is unreasonably constrained or hindered by having to comply with the bylaw requirement; or,
 - ii. there is a net benefit to the community or immediate area that would be achieved through the variance approval.
 - iii. the proposed variance would allow for more efficient and effective use and development of the subject property.
- b) Failure to provide an acceptable land use justification as outlined in Part A, Section 1(a) may be grounds for staff to recommend that the application be denied by the Board.
- c) If an acceptable land use justification is identified the applicant should demonstrate that a reasonable effort has been made to avoid the need for, or reduce the extent of, the requested variance. If such efforts are not made this may be grounds for staff to recommend that the application be denied by the Board.
- d) Examples of acceptable land use justifications are as follows:
 - i. A physical constraint such as a steep slope, watercourse, or rock outcrop results in an unreasonably small building site when setbacks are applied. In such a case a setback variance

may be recommended where the impact of the variance is considered acceptable by planning staff.

- ii. A man-made constraint such as an archaeological site, odd shaped lot, restrictive or conservation covenants, easement, or right-of-way results in an unreasonably small building site when setbacks are applied. In such a case a setback variance may be recommended where the impact of the variance is considered acceptable by planning staff.
 - iii. A hazardous condition exists that requires that the underside of the floor joists be raised to meet floodplain elevations. This may result in an average designed building or structure exceeding the maximum height restrictions. In such a case a height variance may be recommended where the impact of the variance is considered acceptable by planning staff.
 - iv. A topographical constraint such as a depression or sloped area results in an average designed building or structure exceeding maximum height restrictions. In such a case a height variance may be recommended where the impact of the variance is considered acceptable by planning staff.
 - v. An environmentally significant feature such as a stand of Garry Oak trees, a watercourse, or sensitive ecosystem exists on site that the applicant is proposing to avoid, preserve, and/or enhance, which restricts potential building sites on a lot. In such a case a setback variance may be considered where the proposed variance will reduce the impact to the Environmentally Sensitive Area and any other impact considered acceptable by the reviewing planning staff member.
 - vi. The only building site on a lot will block a significant view for area residents. In such a case a setback variance may be considered to allow the relocation of the building to allow the preservation of that view, where the impact of the variance is acceptable.
 - vii. Where a longstanding existing building or structure does not conform to siting or height requirements a variance may be considered to legalize that structure where the impact of the variance is acceptable and the use of the building or structure conforms to the current zoning regulations.
 - viii. The inclusion of a renewable solar or wind energy system, or a rainwater harvesting system proposed for the operation of a building or structure results in the building or structure exceeding maximum height restrictions, or encroaching into a setback area. In such a case, a height variance or setback variance may be recommended where the impacts of the variance are considered acceptable.
- e) Part A, Section 2(d) is not intended to be an exhaustive or definitive list of acceptable land use justifications for a variance application. Staff are to use their judgment in evaluating the specific circumstances involved in each application.

2. Impact Evaluation

- a) Where a land use justification for a proposed variance has been demonstrated, the application shall then be evaluated based upon the impact(s) (positive or negative) of the variance. Impact(s) may be classified into the following three general categories:

- i. Aesthetic impact. This includes the impact of the proposed variance on the streetscape, the views from adjacent properties, compatibility with neighbourhood design standards, etc.
 - ii. Functional impact. This includes the impact of the proposed variance on the function of the property for the permitted uses and the potential impact of the variance on the function of adjacent properties, or road right-of-ways.
 - iii. Environmental impact. This includes the impact of the proposed variance on the long term sustainability of the natural environment or the direct impact on a specific feature of the natural environment.
- b) An unacceptable impact, as evaluated by planning staff, is grounds for staff to recommend that the application be denied by the Board.
- c) An applicant should demonstrate that a reasonable effort has been made to minimize any and all potential negative impacts associated with a variance. If such efforts are not made this would be grounds for staff to recommend that the application be denied by the Board.
- d) Part A, Section 2(a) is not intended to be an exhaustive or definitive list of potential impacts. Staff are to use their judgment in identifying and evaluating all potential impacts associated with the specific circumstances involved in each application.

3. Specific Impact Evaluation by Application Type

- a) Height variance requests for a residential use may not be supported where; in the opinion of planning staff:
- i. the applicant is requesting a height variance to accommodate a third storey;
 - ii. the applicant has not made a reasonable effort to reduce the height of the proposed building or structure by reducing the roof pitch, reducing ceiling height, minimizing the crawl space, etc.;
 - iii. the appearance of the proposed structure from the street will appear out of character with the height of buildings in the immediate neighbourhood;
 - iv. the proposed height variance will result in a notable reduction in a neighbouring properties view of a significant viewscape; or
 - v. the proposed height variance will result in a notable shading of, or lack of privacy for, a neighbouring property.
- b) Lot line relaxation, setback from the sea relaxation, and watercourse setback relaxation requests may not be supported where; in the opinion of Planning Staff:
- vi. the applicant has not made a reasonable effort to reduce the need for a setback variance by amending the house design or finding an alternative building site;
 - vii. the proposed setback variance will result in an unreasonable reduction in a neighbouring properties view of a notable viewscape;

- viii. the proposed setback variance will result in the building or structure appearing to extend closer to the sea or other watercourse than other houses in the immediate vicinity;
 - ix. the proposed setback variance may result in a geotechnical or flooding hazard, including impacts associated with sea level rise to the year 2100;
 - x. the proposed setback variance may result in a negative impact on the natural environment;
 - xi. the proposed setback variance may have a negative impact on an archaeological site; or
 - xii. the proposed setback variance is contrary to senior government legislation (e.g. ***Transportation Act, Fish Protection Act, Water Act, Land Title Act***, etc.).
- c) Parking Variance requests for Commercial, Industrial, or Institutional uses may not be supported where:
- i. the proposed variance would interfere with internal traffic flow, loading and unloading, access and egress, pedestrian safety, etc.;
 - ii. the applicant is not proposing to provide adequate parking spaces constructed to Regional District of Nanaimo standards on a hard durable dust free surface; or
 - iii. the proposed variance, in staff's opinion, does not provide an adequate number of parking stalls for the intended use.
- d) Signage variance requests may not be supported where:
- i. the proposed variance would result in an increased appearance of "sign clutter" on the subject property (sign consolidation should be encouraged);
 - ii. the proposed variance creates a visual obstruction which interferes with the safe movement of pedestrians and/or traffic on and off site; or
 - iii. the illumination of a proposed sign is not compatible with the surrounding neighbourhood or would create an unreasonable aesthetic impact on the adjacent properties.

PART B – FLOODPLAIN EXEMPTION APPLICATIONS

1. Demonstration of Land Use Justification

- a) An applicant must demonstrate that the proposed exemption is necessary and is supported by an acceptable land use justification; such as:
- i. that due to existing site characteristics and the location of the existing infrastructure (if any), it is impractical to meet the Flood Construction level (FCL)
 - ii. the proposed construction methods are designed to mitigate flood damage, and
 - iii. it is not practical to develop the subject property without a site specific exemption.

2. Demonstration that the Exemption is Advisable

- a) Where an acceptable land use justification has been demonstrated in accordance with Part B,

Section 1 of this Policy, the owner must submit a completed Site Specific Exemption Application as prescribed in the “Regional District of Nanaimo Floodplain Management Bylaw No.1469, 2006”.

- b) All reports identified in Part B, Section 2(a) must also discuss the land use justifications in identified in Part B, Section 1 of this policy.
- c) Where a flood assessment report has been submitted, to the satisfaction of the Regional District, and the owner grants a restrictive covenant, under Section 219 of the *Land Title Act*, respecting the use and development of the land that includes:
 - i. flood assessment report recommendations, restrictions or conditions, where applicable, and
 - ii. an indemnity in favour of the Regional District to indemnify and save harmless the Regional District against any loss or damage with respect to the flooding to the property, or flood damage to the land, structures and contents thereof, or any injury (including death) to any person or animal arising from the flooding of the property or flood damage to the land.
- c) Failure to meet any of the above conditions is grounds for staff to recommend the Board deny a floodplain exemption application.

PART C - TERMS OF USE OF THIS POLICY

1. This policy is intended to apply to staff evaluation of development variance permits, development permit applications that include bylaw variances, and site specific exemptions to the Floodplain Bylaw.
2. The Board of the Regional District of Nanaimo is not in any way bound by this policy and is free to apply, or not apply, any evaluation criterion it deems appropriate in its consideration of applications.