



AGENDA
OAK BAY BOARD OF VARIANCE
TO BE HELD WEDNESDAY, JULY 24, 2019 AT 5:00 PM
COUNCIL CHAMBERS, MUNICIPAL HALL, 2167 OAK BAY AVENUE

1. Call to Order

2. Adoption of Agenda

3. Adoption of Minutes from January 16, 2019

4. Applications

FILE: BOV00012 **ADDRESS: 754 Mountjoy Avenue**

PURPOSE: To permit an increase to the height of a retaining wall along the east property line.

ZONING: RS-4 One Family Residential Use

5. Other Business

6. Adjournment

DISTRICT OF OAK BAY

REPORT TO: Board of Variance

FROM: Graeme Buffett, Planner

DATE: July 16, 2019

RE: Board of Variance Application (BOV00012) – 754 Mountjoy Avenue
RS-4, One Family Residential Use Zone
*Strata Lot 1. Section 47, Victoria District, Strata Plan EPS1876
Together with an Interest in the Common Property in Proportion to
the Unit Entitlement of the Strata Lot as Shown on Form V*

SUMMARY

Variance(s) Requested

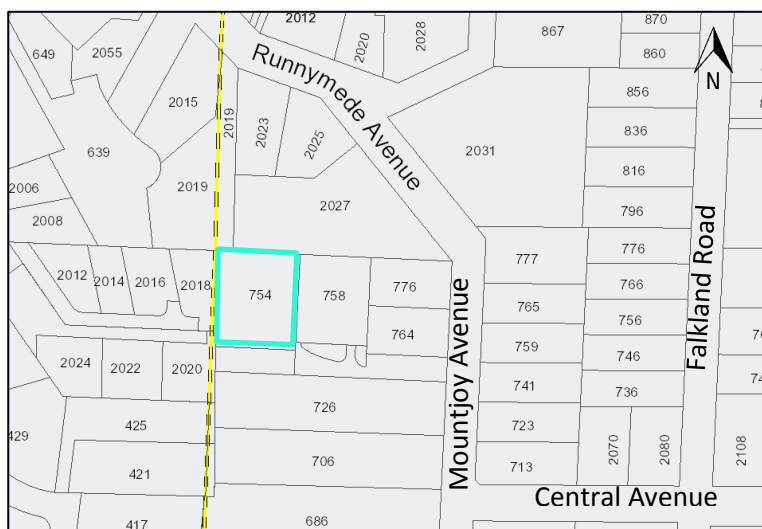
Vary the maximum exposed face of a retaining wall from 1.2 metres (4 ft) to 1.76 m (6 ft) to accommodate a portion of an existing retaining wall.

Stated Hardship – The applicant has indicated the hardship related to reducing the retaining wall height includes engineering challenges associated with grading the driveway to achieve a slope that will allow for proper drainage. The applicant has also stated reducing the retaining wall height would require reconstructing the driveway, necessitating excavation and placement of a drain pipe that would negatively impact three Garry oak trees adjacent to the driveway.

BACKGROUND

This is a Board of Variance application to permit an increase to the maximum exposed face of a portion of a retaining wall by 0.56 m (2 ft). The proposal requires varying the provisions of the District of Oak Bay *Zoning Bylaw No. 3531*.

The applicant has constructed a retaining wall, which does not meet the height requirements of the *Zoning Bylaw*, on the east property line to support a driveway and additional parking space at 754 Mountjoy Avenue.



The approximately 1645 m² (17,707 ft²) subject property is part of a two lot strata subdivision accessed via common property to Mountjoy Avenue, north of the intersection of Mountjoy Avenue

and Central Avenue. A single family dwelling occupies the site and is surrounded by other single family homes.

Variations Requested

Zoning Bylaw Section(s)	Permitted	Requested	Variance
4.17.(1) Maximum Vertical Distance Exposed Face of Retaining Wall	1.20 m (4 ft)	1.76 m (6 ft)	0.56 m (2 ft)

Note: Imperial measurements are approximate and provided for convenience only.

ANALYSIS

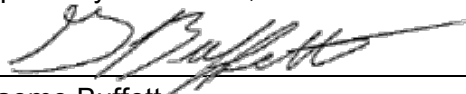
The home on the property was constructed in 2017 and subject to a design covenant that regulates the design of the home. The home and overall site plan were approved by Council and no variances were required to accommodate construction. The construction of the home was reviewed by District building officials through a building permit and inspection process. During this process, staff verified the height of the subject retaining wall complied with the 1.2 m (4 ft) height permitted by the *Zoning Bylaw*. A portion of the retaining wall height now exceeds the permitted 1.2 m (4 ft) maximum exposed face by 0.56 m (2 ft). A wall cap extends above the grade of the driveway and ranges from approximately 0.13 m (0.5 ft) to 0.28 m (1 ft). The wall cap is part of the retaining wall and is included in the overall height. In order to maintain the retaining wall at its current height a variance is requested for a 17.5 m (57 ft) portion of the wall. Of the portion of the retaining wall that exceeds the maximum permitted height, approximately 7.5 m (24 ft) is adjacent to the driveway and 10 m (33 ft) is adjacent to the parking stall. The remaining portion of the wall is in compliance.



The applicant has indicated the hardship is due to the siting of the driveway and slope of the site, and that in order to achieve adequate drainage the retaining wall height is necessary. The applicant also indicates that in order to lower the retaining wall the driveway will need to be excavated and resurfaced. The existing drain pipe will have to be reinstalled at a lower depth, which will negatively impact three Garry oak trees adjacent to the driveway.

The District arborist has reviewed the application and indicated that the impacts to the Garry oak trees would result from a complete rebuild of the driveway and retaining wall. If the works were limited to the 17.5 m (57 ft) portion of the retaining wall that does not meet the *Zoning Bylaw*, the impacts could be mitigated.

Respectfully Submitted,



Graeme Buffett
Planner

cc: Deborah Jensen, Secretary, Board of Variance

Sketch Plan of Existing Wall along Boundary Between Strata Lots 1 & 2 Strata Plan EPS1876

2
Plan 9023

Date	June 24, 2019
Drawing	0920 SITE WALL 02
File	10920
POWELL & ASSOCIATES B C Land Surveyors 250-2950 Douglas Street Victoria, BC V8T 4N4 phone (250) 382-8855	



SCALE 1 : 250
 0 2 10 20
 All distances are shown in metres.
 Plot on 11" x 17" sheet

3
Plan 9023

Certified Correct
 Digitally signed by James Worton
James Worton
JXBJ19
 James Worton, B.C.L.S.

LCP 2

LCP 2

LCP 1

Common Property Access

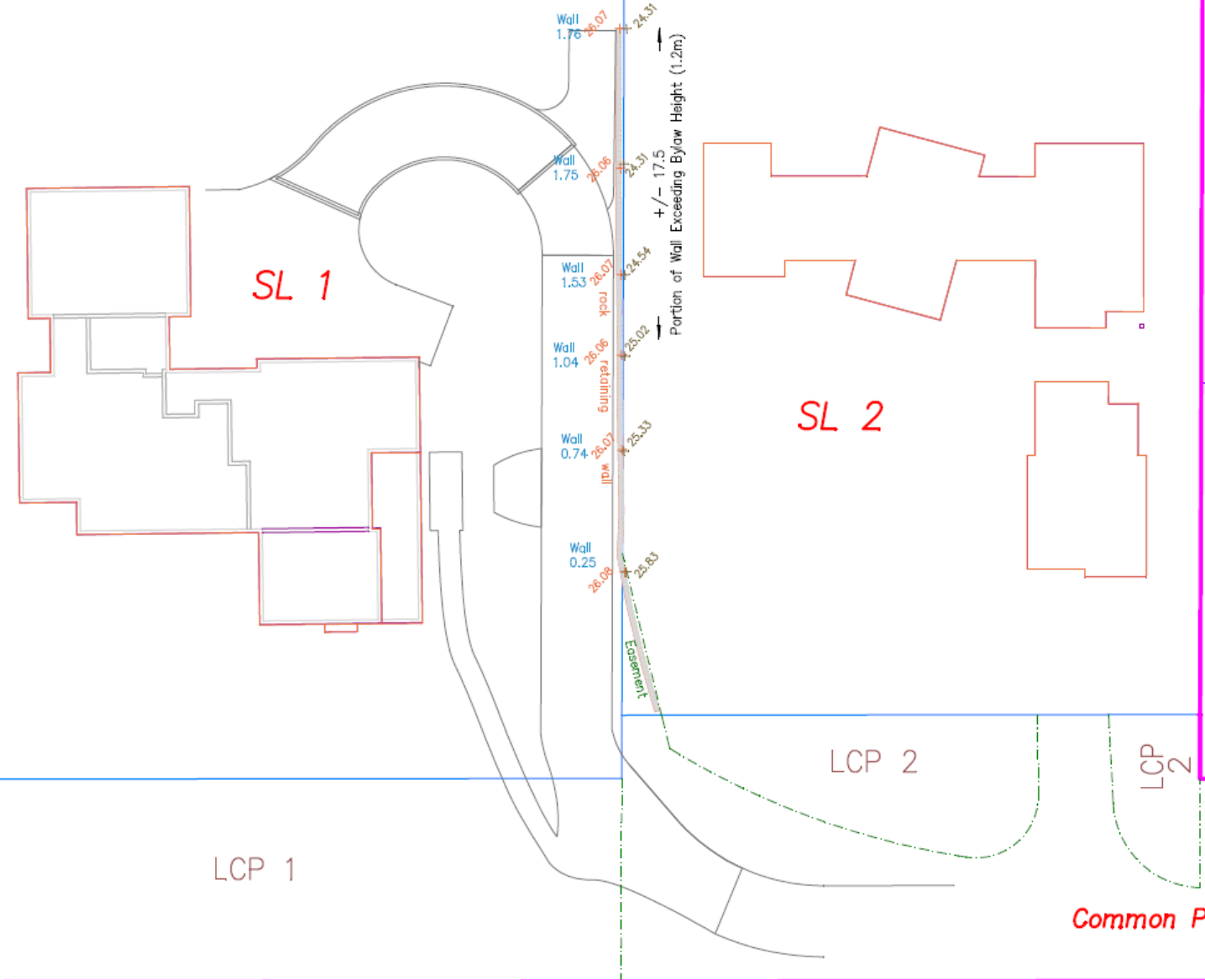
1
Plan 4383

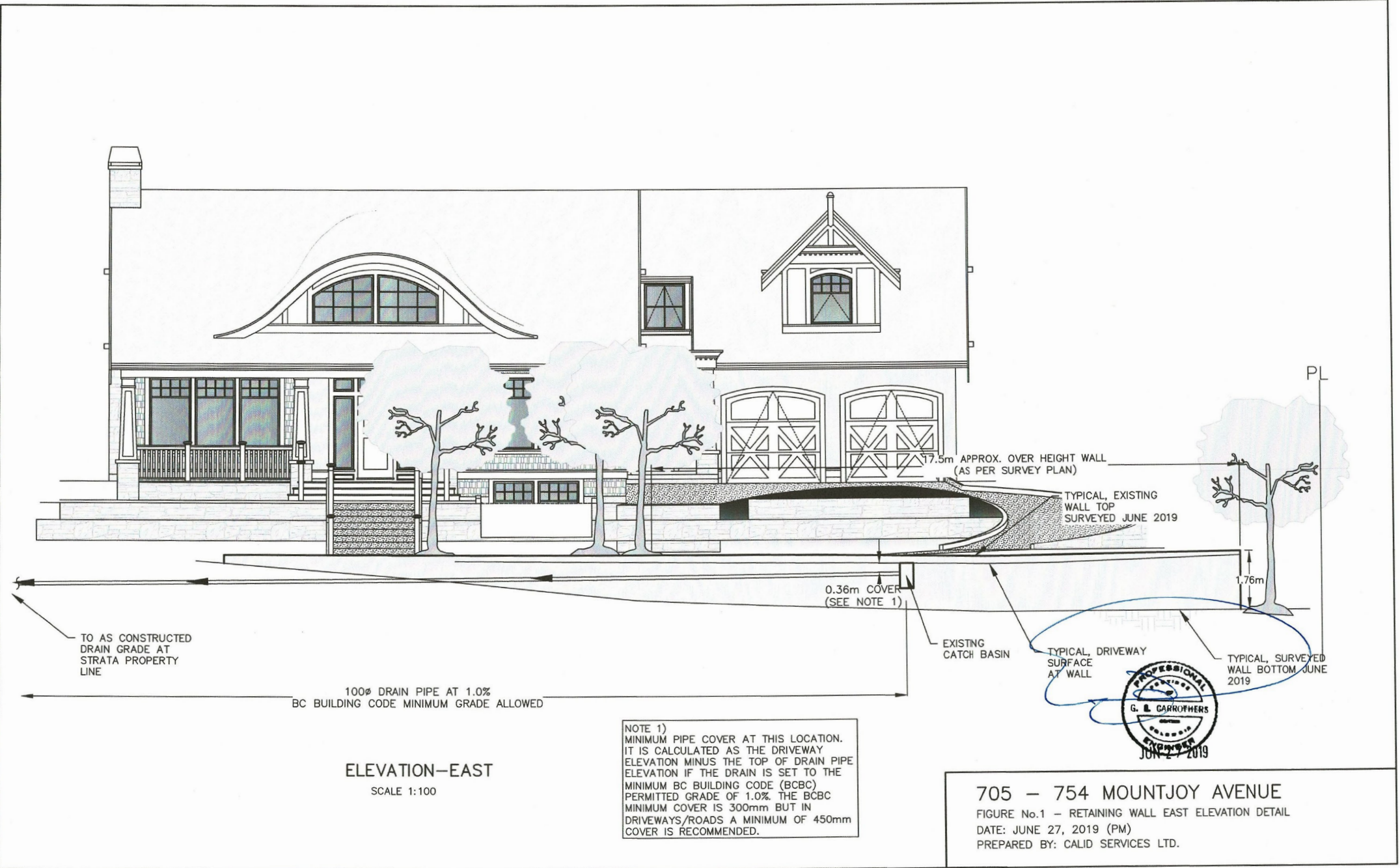
SL D

SL 1

SL 2

SL 3





TO AS CONSTRUCTED
DRAIN GRADE AT
STRATA PROPERTY
LINE

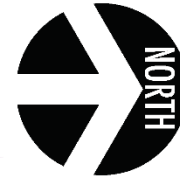
100mm DRAIN PIPE AT 1.0%
BC BUILDING CODE MINIMUM GRADE ALLOWED

ELEVATION—EAST
SCALE 1:100

NOTE 1)
MINIMUM PIPE COVER AT THIS LOCATION.
IT IS CALCULATED AS THE DRIVEWAY
ELEVATION MINUS THE TOP OF DRAIN PIPE
ELEVATION IF THE DRAIN IS SET TO THE
MINIMUM BC BUILDING CODE (BCBC)
PERMITTED GRADE OF 1.0%. THE BCBC
MINIMUM COVER IS 300mm BUT IN
DRIVEWAYS/ROADS A MINIMUM OF 450mm
COVER IS RECOMMENDED.



705 - 754 MOUNTJOY AVENUE
FIGURE No.1 - RETAINING WALL EAST ELEVATION DETAIL
DATE: JUNE 27, 2019 (PM)
PREPARED BY: CALID SERVICES LTD.



LEGEND

HARDSCAPE FINISHES:

- PP1: C/P coloured concrete, Stamped (in smooth w/w sawcut 900mm)
- PP2: C/P coloured concrete, Charcoal
- PP3: Concrete unit paving, Old Country Stone, all sizes
- PP3: Paved Asphalt or Natural Concrete (C/P) Driveway
- PP4: Permeable Gravel: fill (tree protection TBD in conjunction w/ project Arborist)

SOFTSCAPE:

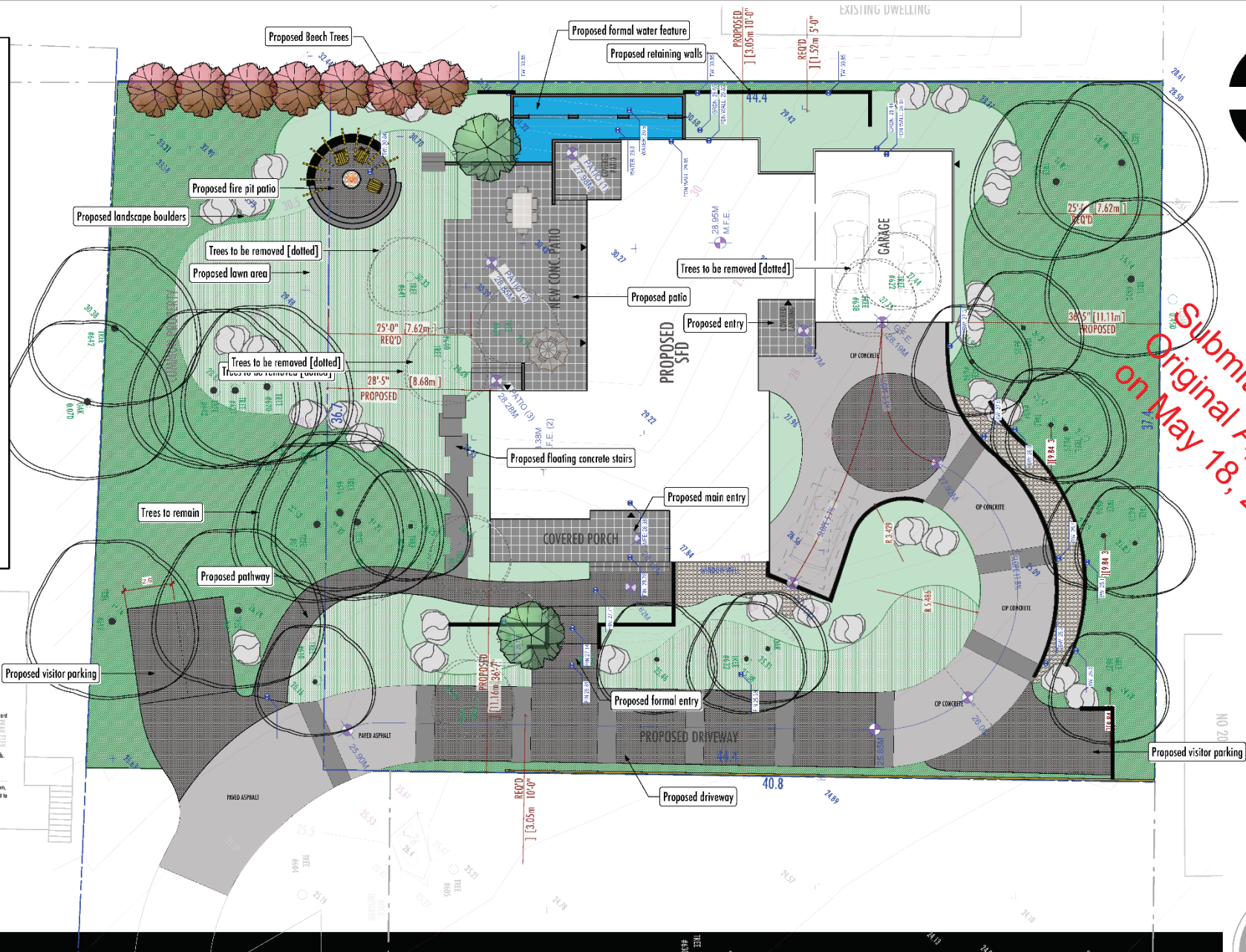
- Lawn
- Planting area
- Natural/seed area

MISCELLANEOUS:

- Wooden privacy screening approx. 1500-2400mm height
- Large rock boulders approx. 4' x 5' dia.
- Concrete or masonry rock retaining/upstand walls. Heights vary.

NOTES:

- All building layout information and notes if omitted is supplied by Green Design Ltd.
- All survey information supplied by Zebra Design Ltd.
- Site drawing must not be scaled. The Surveyor/Contractor shall verify all dimensions, details and levels prior to commencement of work.
- All areas and boundaries must be rechecked immediately by the Designer.
- Site drawing is the exclusive property of the Designer and can be reproduced only with the permission of the Designer, in which case the reproduction must bear the Designer's name.



Submitted for Original Approval on May 18, 2016

NOTES:

Plant material, installation and maintenance to conform to BCSA/ BCLA standard (current edition)

All paving materials to conform to BCSA/ BCLA standard designation (T/P - Low-I-Water - Ground frost)

Underground irrigation system to be installed. Irrigation materials and installation to conform to a minimum to BCSA/ BCLA Standard (current edition) and IASBC Standards.

All irrigation systems and/or accessories to be installed.

Fencing to be built to secure all areas, sections of fencing along subdivided to be built with 1.8m high chain link.

All existing trees located on site are approximately. Size and type of trees are not shown, and should be verified by a surveyor or arborist where necessary. Protect adjacent to install tree protection for trees where necessary.

SKL01
11.MAY.2016
1:100
LATEST REVISION: 18.MAY.2016

754 MOUNT JOY LANDSCAPE LAYOUT



RESIDENTIAL SFD :: 754 MOUNT JOY - Oak Bay :: SKL01 :: landscape layout ::

**OAK BAY BOARD OF VARIANCE
WEDNESDAY, JANUARY 16, 2019
COUNCIL CHAMBERS, MUNICIPAL HALL, 2167 OAK BAY AVENUE**

The meeting was called to order at 5:03 pm.

It was moved and seconded that the minutes from August 1, 2018 be adopted.

The motion carried.

FILE **BOV00011**
RE **812 Transit Road**
 Lot 24, Section 22, Victoria District, Plan 1129; PID 007-881-495

ZONING RS-5 One Family Residential Use

BEFORE James Murtagh, Chair
 Robert Peterson

APPLICATION Local Government Act Section 540(a)(i)

DECISION

That the application to vary:

- 1) the minimum permitted exterior side lot line setback for the home from 3.65 metres to 3.43 metres;
 - 2) the contextual setback to 9.66 metres; and
 - 3) the minimum permitted second storey setback from 3.00 metres to 2.76 metres
- be approved.
-

BACKGROUND

An application has been received to vary the exterior side lot line setback, contextual setback, and second storey setback for a single family home at 812 Transit Road. The proposal to increase the basement ceiling height to 2.46 metres results in an increase to the existing legal nonconforming building mass. There is no expansion to the building footprint, with the exception of new front entry stairs and one corner of the building.

The *Local Government Act* allows the Board of Variance to consider applications where a minor variance is involved. Therefore, in order to accommodate the building siting as proposed, the applicant is asking for Board consideration in accordance with Sections 540 and 542(1) of the *Local Government Act*.

PROCEEDINGS

In Attendance:

Duane Ensing, Applicant

Graeme Buffett, Planner

Deborah Jensen, Board of Variance Secretary

Members of the Public: 0

J. Murtagh, Chair, provided an introduction to the process, indicating the Board of Variance can consider minor variances, that the applicant has to show undue hardship without defeating the intent of the bylaw, and that the application would be considered against a set of criteria.

G. Buffett provided an overview of the application, noting that variances proposed were to the exterior side lot line setback, the contextual setback, and the second story setback. He also noted the contextual and second storey setbacks were not included in the previous zoning bylaw at the time of construction, and that the variances are required due to the increasing nonconformities.

G. Buffett advised the applicant considers the hardship to be the legal nonconforming siting of the home, which would require substantial alterations to meet the setbacks, including perimeter drains and cantilevering the home.

D. Ensing, applicant, reiterated that if they tried to make the existing house comply, a portion of the second level would have to shift and cantilever over the main level.

Board members confirmed that if the owners were to retain the existing foundation and base, that it would have to step in to meet the setbacks, and that the house is sitting slightly askew. They also confirmed that, even if the exterior side and contextual setbacks were resolved, that the second storey setback, the main living area, would not meet the required setback unless exterior walls were moved.

D. Ensing, applicant, provided an overview of the proposed works, indicating:

- With the main floor already quite small, applicants want to increase basement height to create and make better use of more habitable space
- New survey shows house is askew and already within required setbacks, which limits continued use of the building.
- Building is in good shape and this is a reasonable renovation, no height variance is required.
- Complying with setback requirements would generate substantial waste.
- Owners spoke with neighbours, who indicated no concerns.

Board members confirmed that the existing main floor will continue to be used as the main living space, and that no variance would be required for renovations to this floor so long as there was no expansion of the building. They also confirmed the contextual setback was measured from the two neighbouring properties to the north, that the building dimensions are essentially not changing as shown on the plans, and noted that no variances would be required if the owners lowered the basement into the ground to achieve additional ceiling height.

D. Ensing, applicant, noted the owners did not want to go lower into the ground due to monetary costs, and advised the second storey setback has been determined to be 2.75 metres.

Board members questioned whether this is a minor variance, as the building will just read as being higher. They also confirmed the building will result in approximately the same height as adjacent properties, and that this proposal is the result of discrepancies between the old and new zoning bylaws.

D. Jensen, Secretary, advised that notice of the hearing had been given in accordance with the *Local Government Act* and no correspondence had been received on the application with the exception of one inquiry confirming information related to the application.

DECISION

After considering the facts before it, the Board determined that the circumstances of the case were consistent with those in which it had the discretion to authorize works as permitted by the *Local Government Act*, determining that the proposed work was affected by a hardship. The Board agreed that hardship was present due to the proposed work being minor in nature, and the Zoning Bylaw placing an extraordinary burden on the proponent to achieve compliance.

The Board was of the opinion that the proposed works would not:

- result in inappropriate development of the site;
- substantially affect the use and enjoyment of adjacent land;
- adversely affect the natural environment;
- vary permitted uses and densities under the Zoning Bylaw; or
- defeat the intent of the Zoning Bylaw.

The Board advised they were in agreement with the variances as outlined in the staff report, and as noted by the applicant for the second storey setback so long as the dimensions were verified by District staff, or as noted in the design presented on the plans.

It was moved and seconded that the application to undertake alterations to a nonconforming single family home at 812 Transit Road, as presented, be approved.

The motion was carried.
None opposed.

Accordingly, the Board approved the request to allow variances to the exterior side lot line setback, the contextual setback, and the second storey setback at 812 Transit Road.

Secretary

For the Board

James Murtagh, Chair