

MEMORANDUM

DEVELOPMENT SERVICES DEPARTMENT



DATE: September 22, 2022

FILE NO.: E2022.038-DVP

TO: Christopher Garrish, Planning Manager

FROM: Shannon Duong, Planner II

RE: Development Variance Permit (DVP) — Electoral Area “E”

Administrative Recommendation:

THAT Development Variance Permit No. E2022.038-DVP, to allow for an over-height retaining wall on the property at 126 Slate Place, be approved.

Owners: Nicola & Simon Nuttgens Agent: Nicola Nuttgens

Civic: 126 Slate Place Folio: E-06834.455

Legal: Strata Lot 37, District Lots 2711 and 3474, SDYD, Strata Plan KAS3445 Together with an Interest in the Common Property in Proportion to the Unit Entitlement of the Strata Lot as Shown on Form V

Proposed Development:

This application is seeking a variance to the maximum height of a retaining wall located within an interior side parcel line setback that applies to the subject property.

Specifically, it is being proposed to increase the maximum height of a retaining wall located within an interior side parcel line setback from 1.2 metres to 3.048 metres.

In support of this request, the applicant has stated that the purpose of the variance is to “gain additional space for vehicles to back out of [a] carport and drive forward down [the] driveway”, and stated that:

- they “cannot step [the] retaining wall back because this will take away space and encroach on [the] entrance to [the] carport;
- “the retaining wall will improve [the] aesthetic of [the] side parcel line for neighbouring properties and provide a safe exit from [the] property in all climate conditions”.

Site Context:

The subject property is approximately 2,261 m² in area and is situated on the east side of Slate Place, approximately 0.4 km north of the boundary of the City of Penticton. The property is understood to contain one (1) singled detached dwelling.

The surrounding pattern of development is generally characterised by similar residential development.

Background:

The current boundaries of the subject property were created by a Plan of Subdivision deposited with the Land Titles Office in Kamloops on May 2nd, 2008, while available Regional District records indicate that building permits were issued for a single detached dwelling (2020), and a pool (2021). A building permit application was submitted for the proposed retaining wall as of May 6, 2021; however, the proposed variance is required to proceed.

Under the Electoral Area “E” Official Community Plan (OCP) Bylaw No. 2458, 2008, the subject property is currently designated Low Density Residential (LR).

Under the Okanagan Valley Zoning Bylaw No. 2800, 2022, the property is currently zoned Low Density Residential Three (RS3) which permits “accessory building or structure, subject to Section 7.1”.

BC Assessment has classified the property as “Residential” (Class 01).

Under Section 3.49 of the Regional District’s *Chief Administrative Officer Delegation Bylaw No. 2793, 2018*, “the CAO or his designate shall ... be delegated authority to issue a development variance permit under Section 498.1 of the *Local Government Act* ...”

Public Process:

In accordance with Section 2.4 of Schedule 4 (Application for a Development Variance Permit) of the Regional District’s Development Procedures Bylaw No. 2500, 2011, adjacent residents and property owners were notified of this DVP application on August 11, 2022, and provided 15 working days to submit comments electronically or in-person to the Regional District.

As of September 2, 2022, being 15 working days from the date of notification, one representation was received electronically or by submission at the Regional District office.

Delegated Authority:

Under Section 498.1(2) of the *Local Government Act*, a local government that has delegated authority to an officer or employee to issue a development variance permit (DVP) must include “criteria for determining whether a proposed variance is minor.”

Under Section 3.49 of the Regional District’s Chief Administrative Officer Delegation Bylaw No. 2793, 2018, staff are to consider if the variance would be “minor and would have no significant negative impact on the use of immediately adjacent or nearby properties” through the use of the following criteria:

1. *degree or scope of the variance relative to the regulation from which a variance is sought;*
2. *proximity of the building or structure to neighbouring properties; and*
3. *character of development in the vicinity of the subject property.*

With regard to the degree of the requested variance it is considered that a 154% increase in the maximum height of a retaining wall from 1.2 metres to 3.048 metres is not minor.

With regard to the proximity of the proposed retaining wall to neighbouring properties, it is noted that the proposed retaining wall would be located against the interior side parcel line to the north. Despite this, Administration recognizes that the location of the retaining wall would be adjacent to a driveway, which would likely have reduced impacts on and may provide additional benefits to the neighbouring property via soil stabilization.

With regard to the final criteria and the character of development in the vicinity of the subject property, the use of over-height retaining walls is not common feature within the area.

For these reasons, while the proposed height is seen to deviate substantially from the maximum height permitted within the Zoning Bylaw, the proposed variance is deemed to be minor, and consideration by staff of whether to issue a development variance permit (DVP) under delegation may proceed.

Analysis:

When considering a “minor” variance request, and in accordance with Section 498.1(2) of the *Local Government Act*, the Regional District Board requires that staff consider the following guidelines when deciding whether to issue a DVP:

1. *is the proposed variance consistent with the general purpose and intent of the zone;*
2. *is the proposed variance addressing a physical or legal constraint associated with the site (e.g. unusual parcel shape, topographical feature, statutory right-of-way, etc.);*
3. *is strict compliance with the zoning regulation unreasonable or un-necessary; and*
4. *Would the proposed variance unduly impact the character of the streetscape or surrounding neighbourhood.*

The Zoning Bylaw’s use of regulations to govern the placement of retaining walls are generally to encourage retaining walls be integrated into the terrain and respect the natural character of the site in order to achieve environmentally sound and liveable hillside neighbourhoods.

Further, retaining walls should be aesthetically well integrated into a hillside to enhance the desirability and marketability of hillside developments, allowing flexibility and innovation in design while recognizing the importance of preserving natural features and hillside character.

For these reasons, the use of large concrete block retaining walls in residential areas that create a negative visual impart are discouraged, whereas, surface treatments that harmonize the natural texture and colours are encouraged.

In this instance, the applicant has submitted that the proposed variance is to increase the useable space on the property to improve the use of an existing carport and driveway.

Although Administration has concerns with over-height retaining walls, it is noted that the use of the retaining wall is consistent with the overall purpose of improving residential use on hillside terrains.

It is recognized that there is a fairly steep slope located on the northerly interior side parcel line (see Attachments No. 6 & 7) which is the proposed location of the retaining wall. In this regard, the proposed variance would address a topographical constraint associated with the site.

While the proposed variance is not necessary to utilise the property for residential purposes, it is understood that it would increase the usable area on the property and also facilitate safe use of the site. Therefore, strict compliance with the zoning regulation is not seen to be necessary.

Conversely, Administration does have concerns with respect to the visual impact of the over-height retaining wall on the surrounding neighbourhood and streetscape, particularly as the proposed design would be utilising large concrete blocks which are discouraged in residential areas.

While streetscape impacts are a consideration in whether a proposed variance is “minor” or not, it is recognised that in some cases, there may be other factors, such as safety benefits, which may outweigh visual concerns.

For the reasons above, it is recommended that the requested variances be approved.

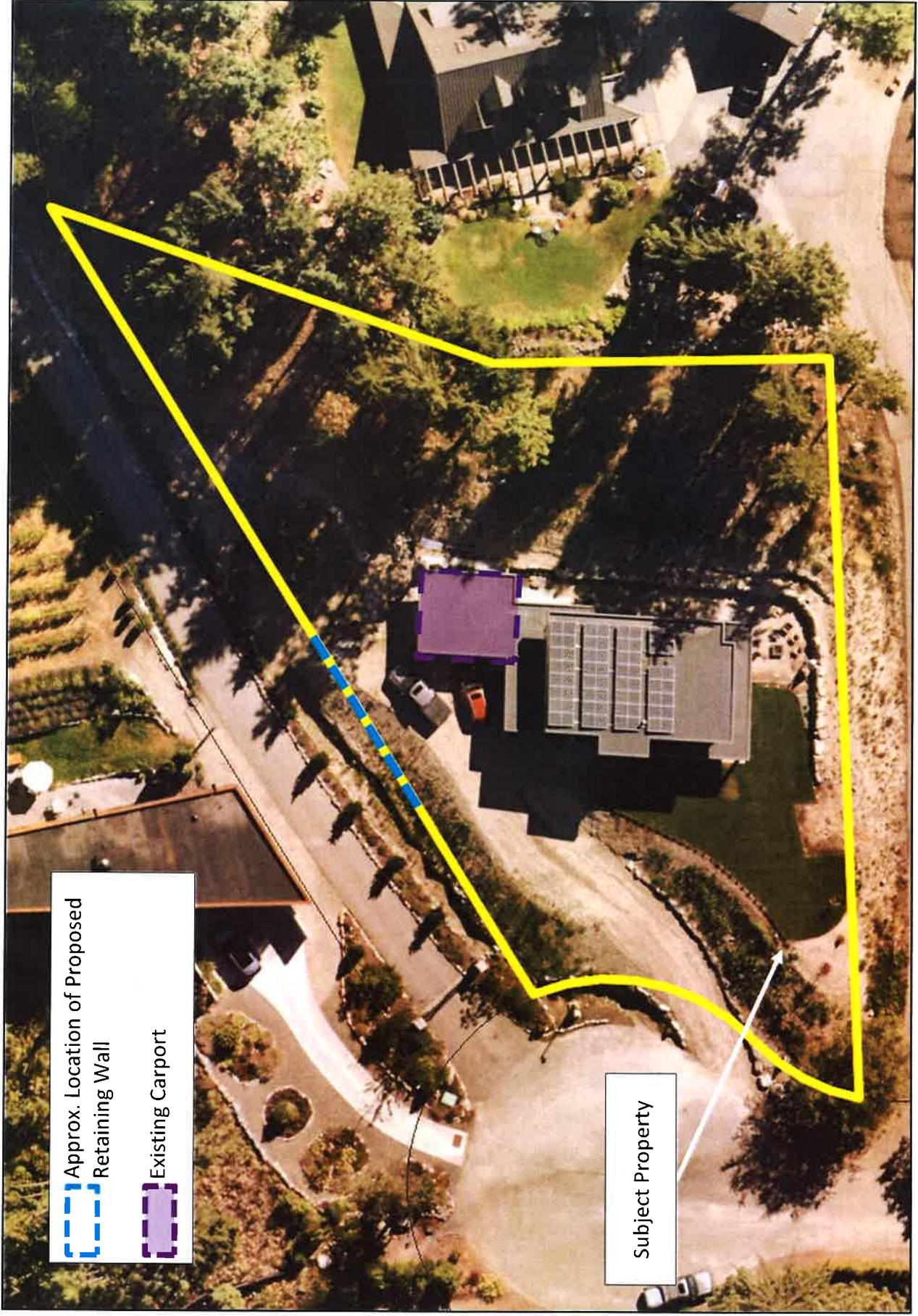
Respectfully submitted:



Shannon Duong, Planner II

Attachments: No. 1 – Aerial Photo
 No. 2 – Site Photo 1 (2022)
 No. 3 – Site Photo 2 (2022)

Attachment No. 1 -- Aerial Photo

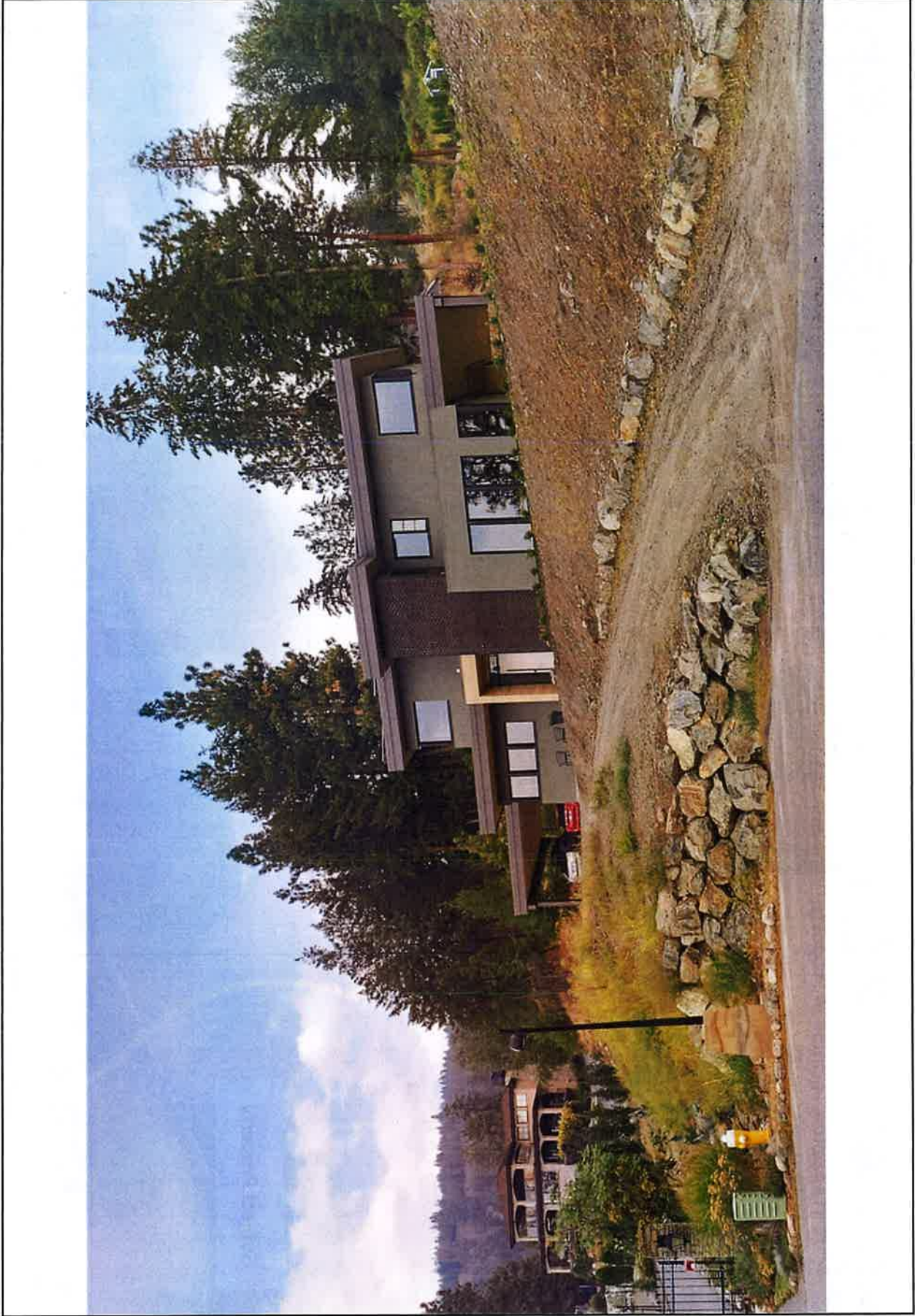


Approx. Location of Proposed Retaining Wall

Existing Carport

Subject Property

Attachment No. 2 – Site Photo 1 (2022)



Attachment No. 3 – Site Photo 2 (2022)

