

# MEMORANDUM

DEVELOPMENT SERVICES DEPARTMENT



**DATE:** May 12, 2023  
**TO:** Christopher Garrish, Planning Manager  
**FROM:** Shannon Duong, Planner II  
**RE:** Development Variance Permit (DVP) — Electoral Area “I”

**FILE NO.:** I2023.017-DVP

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Owners: William Bidlake & Lesley LaCroix      Agent: Brody Dockendorf      Folio: I-01458.020  
Civic: 272 Ponderosa Avenue      Legal: Lot B, District Lot 105S, SDYD, Plan KAP90953

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### Proposed Development:

This application is seeking a variance to Section 6.13.4 of the Okanagan Valley Zoning Bylaw No. 2800, 2022, that applies to the subject property in order to construct an over-height retaining wall.

Specifically, it is being proposed to increase the maximum permitted height of a retaining wall from 2.0 metres to 3.66 metres.

In support of this request, the applicant has stated that “[the] purpose for retaining wall is to create a usable back yard. Do not have sufficient space to build a stepped wall. The tall wall will also create a cleaner less intrusive look and allow for proper backfill against the house”.

### Site Context:

The subject property is approximately 2,023 m<sup>2</sup> in area and is situated on the west side of Ponderosa Avenue, approximately 8 km south of the boundary of the City of Penticton. The property is understood to contain one single 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 June 16, 2010, while available Regional District records indicate that a building permit has been issued for a single detached dwelling (2022).

Under the Electoral Area “I” Official Community Plan (OCP) Bylaw No. 2683, 2016, 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 Two (RS2), which permits “accessory building or structure, subject to Section 7.1” (which includes retaining walls) as an accessory use.

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* ...”

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**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 April 12, 2023, and provided 15 working days to submit comments electronically or in-person to the Regional District.

As of May 3, 2023 being 15 working days from the date of notification, no representations had been 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 an 83% increase in the maximum height of a retaining wall from 2.0 metres to 3.66 metres is a fairly substantial deviation from the bylaw standard (nearly 1.5 times greater) and therefore not minor in nature.

With regard to the proximity of the proposed retaining wall to neighbouring properties, the nearest parcel lines is approximately is 7.5 metres to the north. As the retaining wall is not to be constructed within the rear parcel line setback, the requested variance is seen minor and unlikely to adversely impact the use of adjacent properties.

With regard to the final criteria and the character of development in the vicinity of the subject property, it is noted that the use of retaining walls in Kaleden is fairly common. It is unclear, however, there have not been Development Variance Permits issued for over-height

For these reasons, the proposed variances are 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;*

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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 walls be integrated into the terrain and respect the natural character of the site in order to achieve environmentally sound and liveable hillside neighbourhoods.

In this instance, Administration notes that a retaining wall is a permitted use on the subject property as an accessory structure under the applicable RS2 zoning. In this regard, the construction of a retaining wall is consistent with the general purpose and intent of the zone.

As it relates to Criterion 2, it is noted that retaining walls are typically constructed as a means of addressing physical constraints (i.e., topography) and create useable area on a site. In this case, the applicant has indicated that the retaining wall is proposed in order to create a useable backyard and that there is not sufficient space to build a stepped wall. Administration therefore finds that the proposed variance would address the topographical constraints on the property.

In terms of potential impacts on the character of the streetscape and surrounding neighbourhood, Administration notes that retaining walls should be aesthetically well integrated into a hillside to enhance the desirability and marketability of hillside developments. This allows flexibility and innovation in design while recognizing the importance of preserving natural features and hillside character.

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

While the construction of an over-height block wall is discouraged, Administration recognizes that numerous properties in Kaleden face topographical constraints as much development has occurred on hillsides. As a result, it is not uncommon to see the use of retaining walls in the general vicinity of the property. In this regard, the proposal for an over-height retaining wall is not seen to substantially deviate from, or unduly impact, the existing character of the streetscape and surrounding neighbourhood.

In light of the comments above, strict compliance with the zoning regulation is not seen to be necessary.

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

**Recommendation:**

THAT Development Variance Permit No. I2023.017-DVP, to allow for the construction of an over-height retaining wall at 272 Ponderosa Avenue, be approved.

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**Respectfully submitted:**

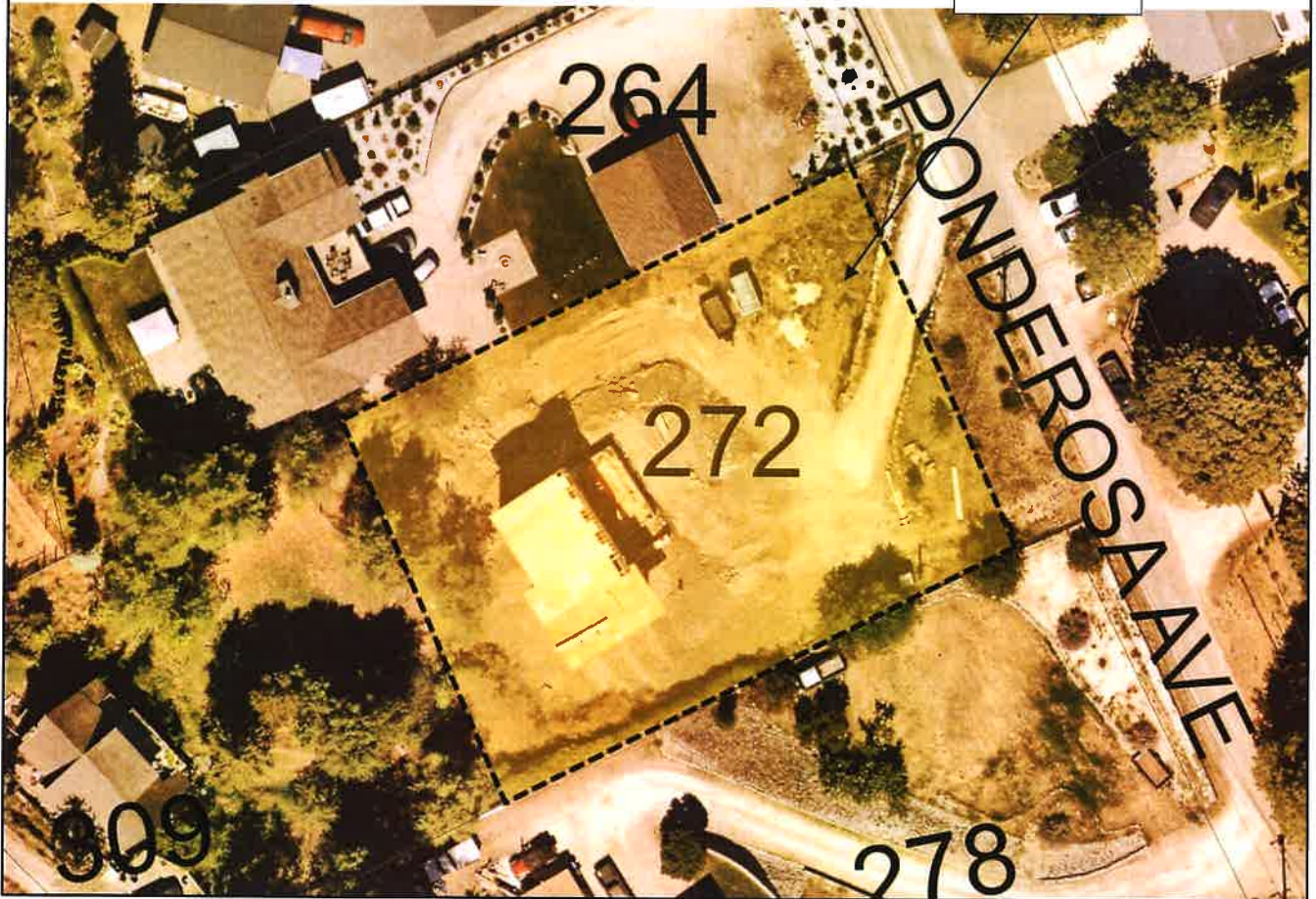
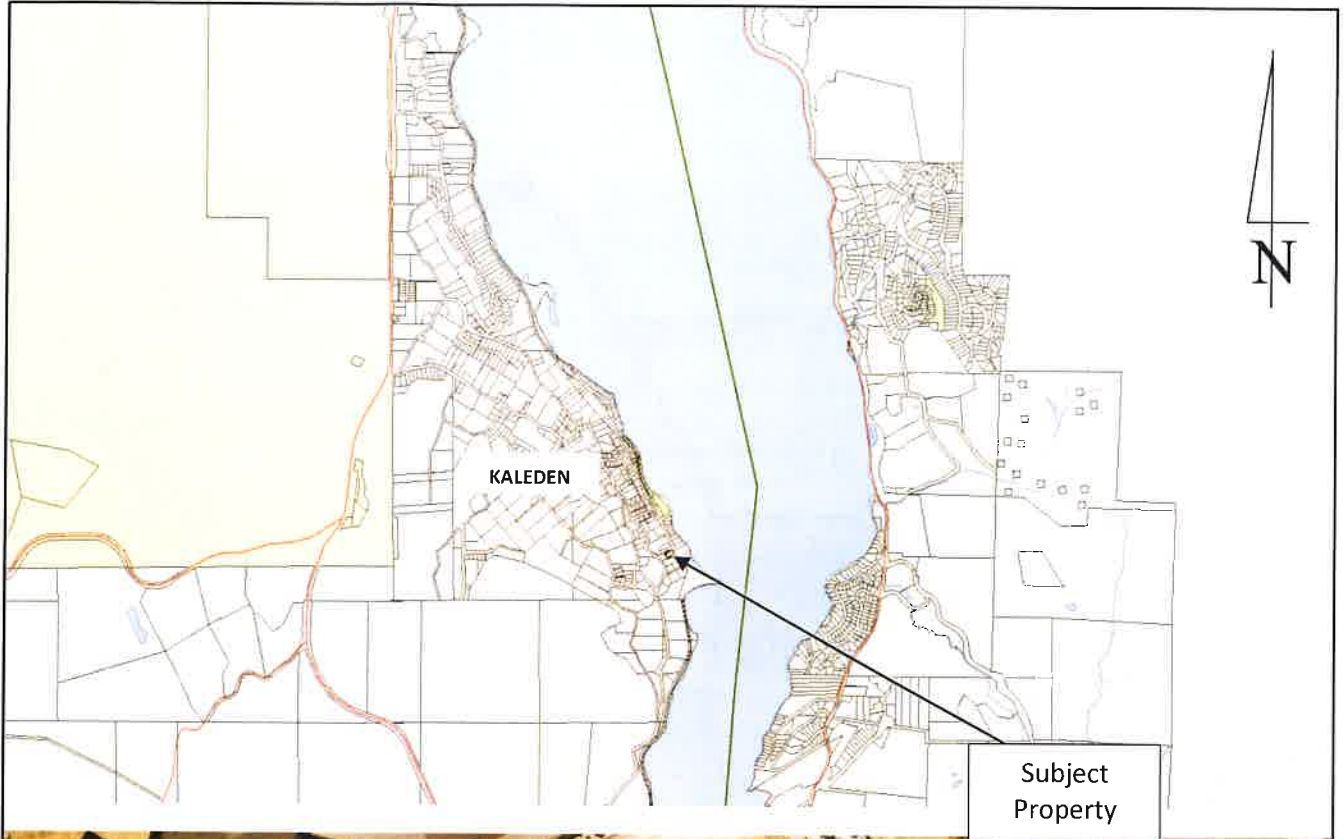


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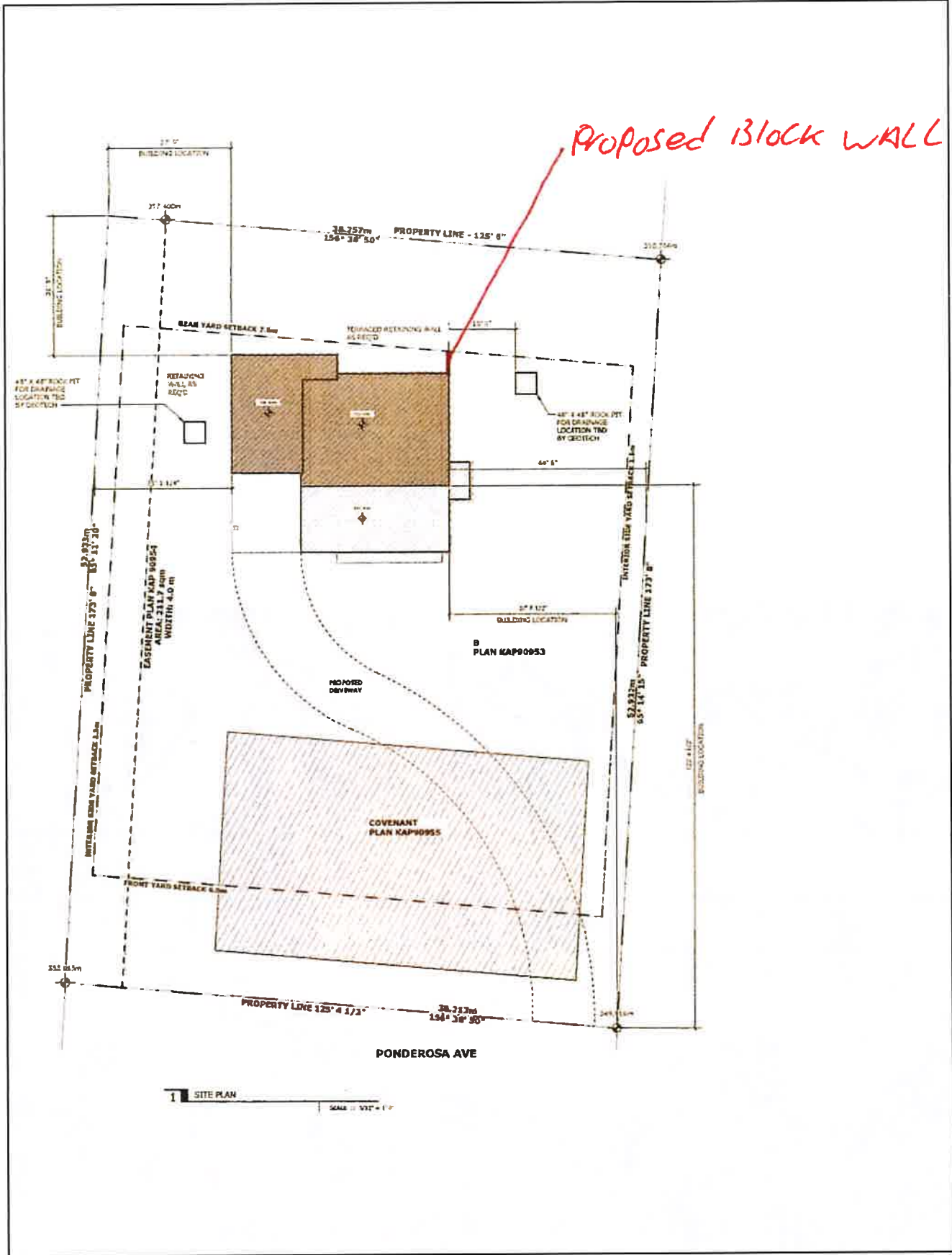
Shannon Duong, Planner II

Attachments:    No. 1 — Context Maps  
                          No. 2 — Applicant's Site Plan  
                          No. 3 — Applicant's Elevations  
                          No. 4 — Aerial Photo (2022)

Attachment No. 1 – Context Maps

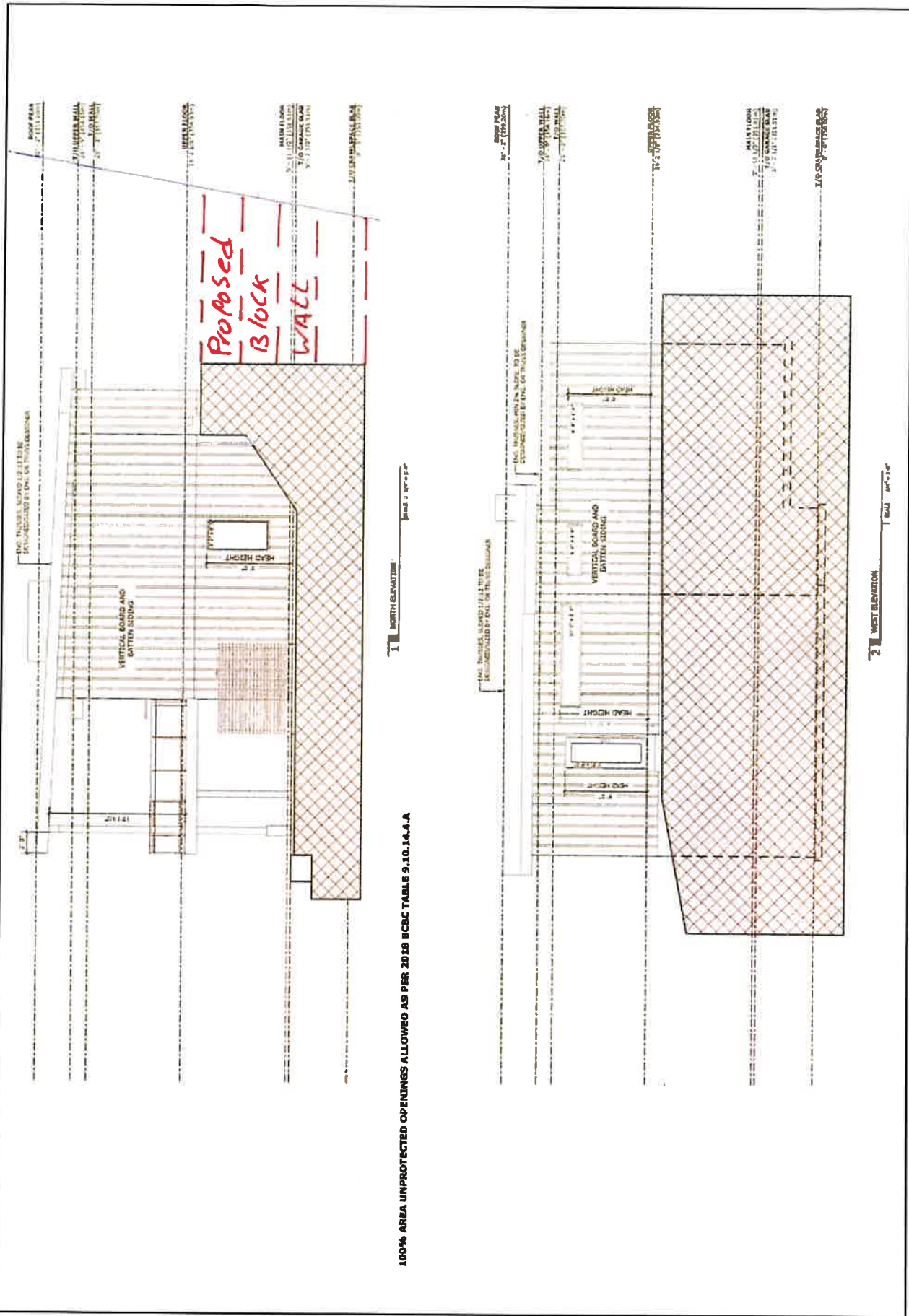


Attachment No. 2 – Applicant’s Site Plan



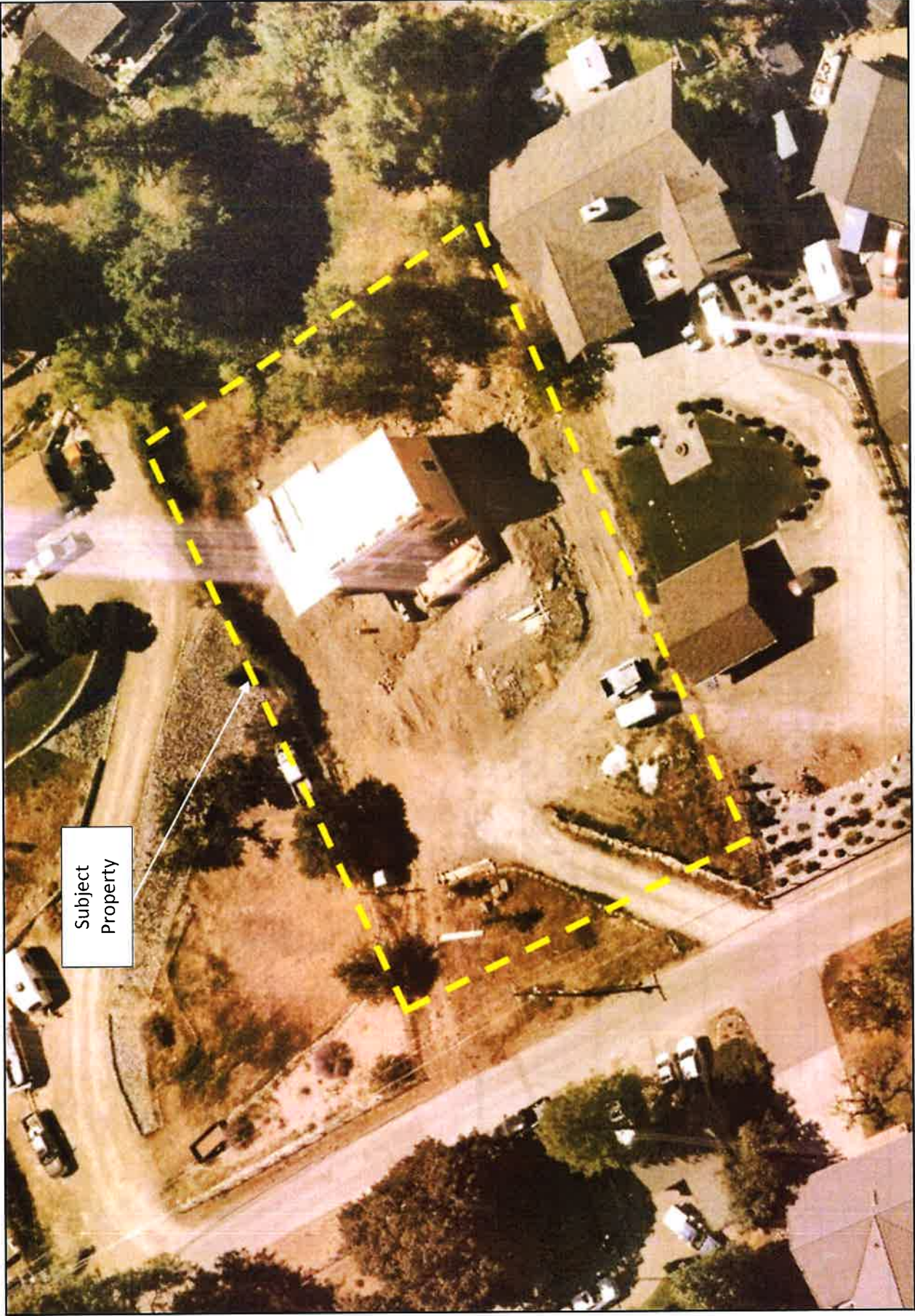
1 SITE PLAN  
SCALE: 1/8" = 1'-0"

# Attachment No. 3 – Applicant's Elevations



100% AREA UNPROTECTED OPENINGS ALLOWED AS PER 2018 BCBC TABLE 9.10.14.4.A

Attachment No. 4 – Aerial Photo (2022)





Attachment No. 5 – Site Photos (2023)

