

# Staff Report

Date: June 23, 2020  
To: Chief Administrative Officer  
From: James van Hemert, Consulting Planner  
Re: **Application for a Development Variance Permit for Rem. Lot A, Plan VIP64669, District Lot 13, Cowichan Lake Land District**



---

## APPLICATION:

The applicant requests a **Development Variance Permit** to vary the maximum height of a retaining wall by as much as 5 metres, plus a 1.2 metre chain link fence, from the maximum height of 2 (two) metres per the Town of Lake Cowichan Zoning Bylaw Section 4.10. The new maximum height of a retaining wall would vary from 2.5 metres to 7 metres, plus a 1.2 metre chain link fence.

## BACKGROUND

The subject property is in the process of **subdivision review** and approval and has received a 'preliminary lot layout' approval from the Approving Officer.

The subject property is under concurrent review of a **Development Permit** application. For hazard lands and watercourse and streamside protection

The subject property received **rezoning approval** by the Town Council on January 22, 2019 for increased density and flexibility. The new zone district is R-1-B Single Family and Duplex Urban Residential Zone and allows for smaller lots, duplexes and secondary suites.

The subject property is in the process of **subdivision review** and approval and has received a 'preliminary lot layout' approval from the Approving Officer on March 8, 2020.

Relevant approval conditions include:

### 3. Additional prerequisites

- (iii) Portions of the land affected by the development proposal is in one or more of the Development Permit Areas and is therefore subject to Development Permit application and approval before final approval for subdivision can be given.
- (vii) Requirements of the applicable zone district and the Subdivision, Works and Services Bylaw must be met.

The Town issued a **construction permit** 'to Construct Works within Highway Right-of-Way' on March 10, 2020, subject to 'zoning requirements are met.'

Specifically, the works permitted are:

- 1) Clearing and removal of vegetation;
- 2) Rough grading;





Figure 2 Illustration of retaining wall design

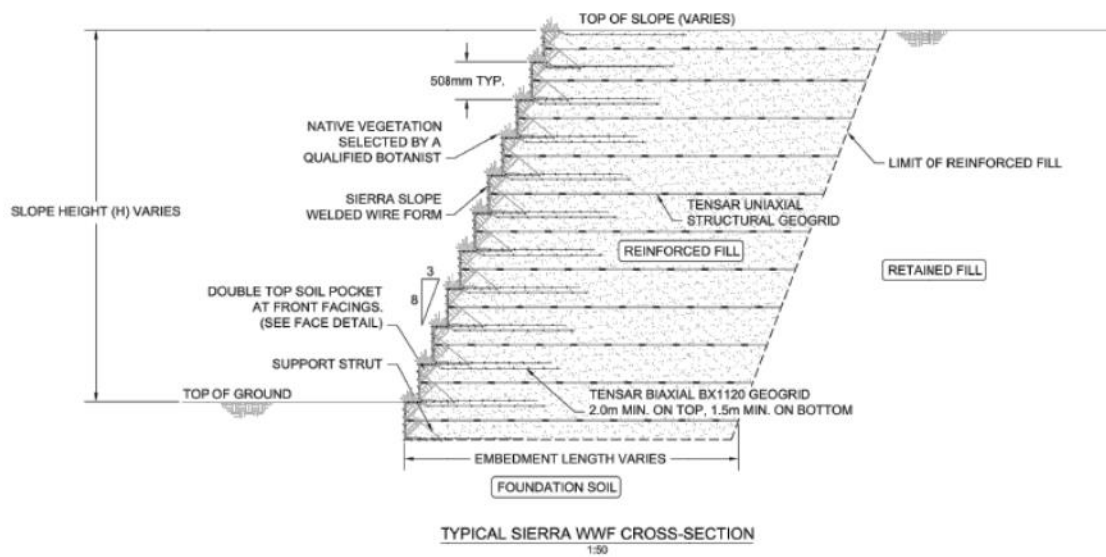


Figure 3 Retaining wall cross section

The retaining wall's cross-section is at a slope of 8 foot rise for every 3 feet distance. The design is illustrated in Figure 3.

The following two figures illustrate the profile and plan view of all the lots proposed to include retaining walls, which include lots 15-18 and 31-34.

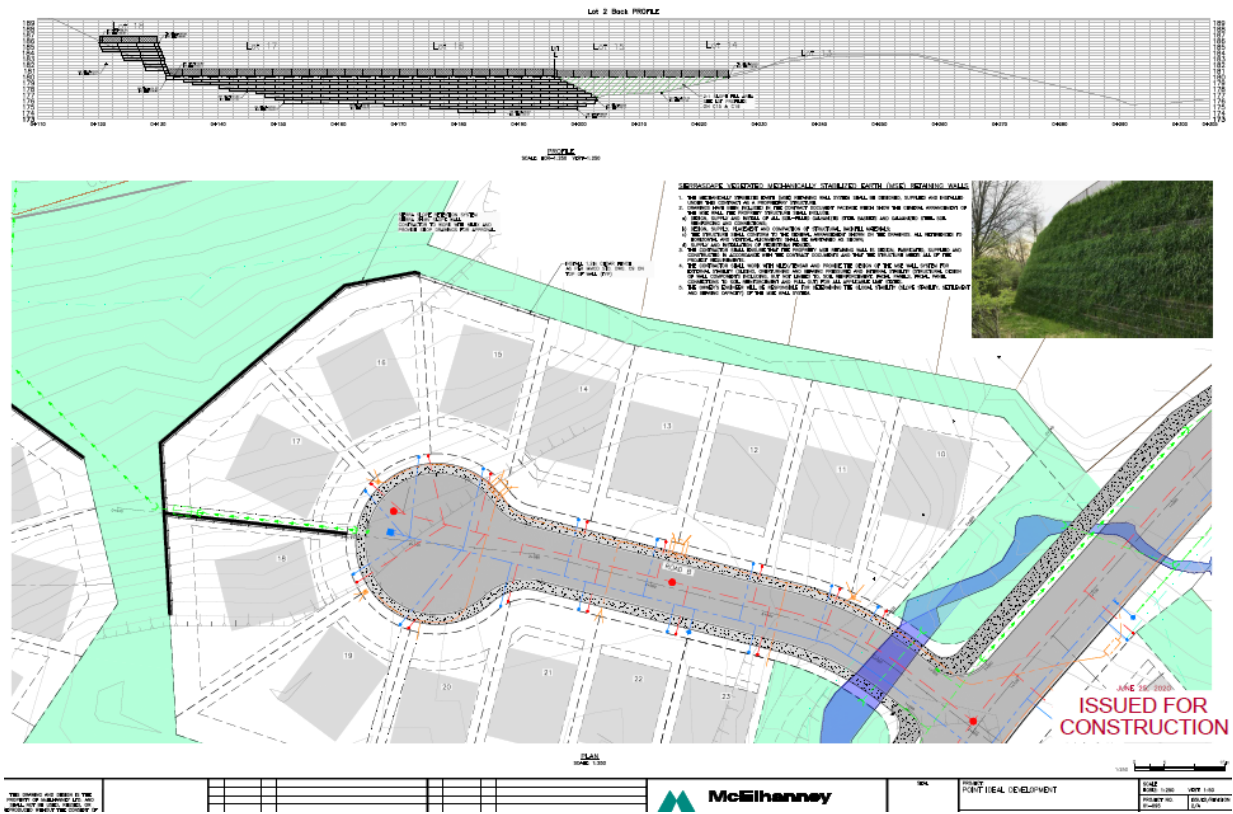


Figure 4 Retaining Wall Profile and Plan for Lots 15-18

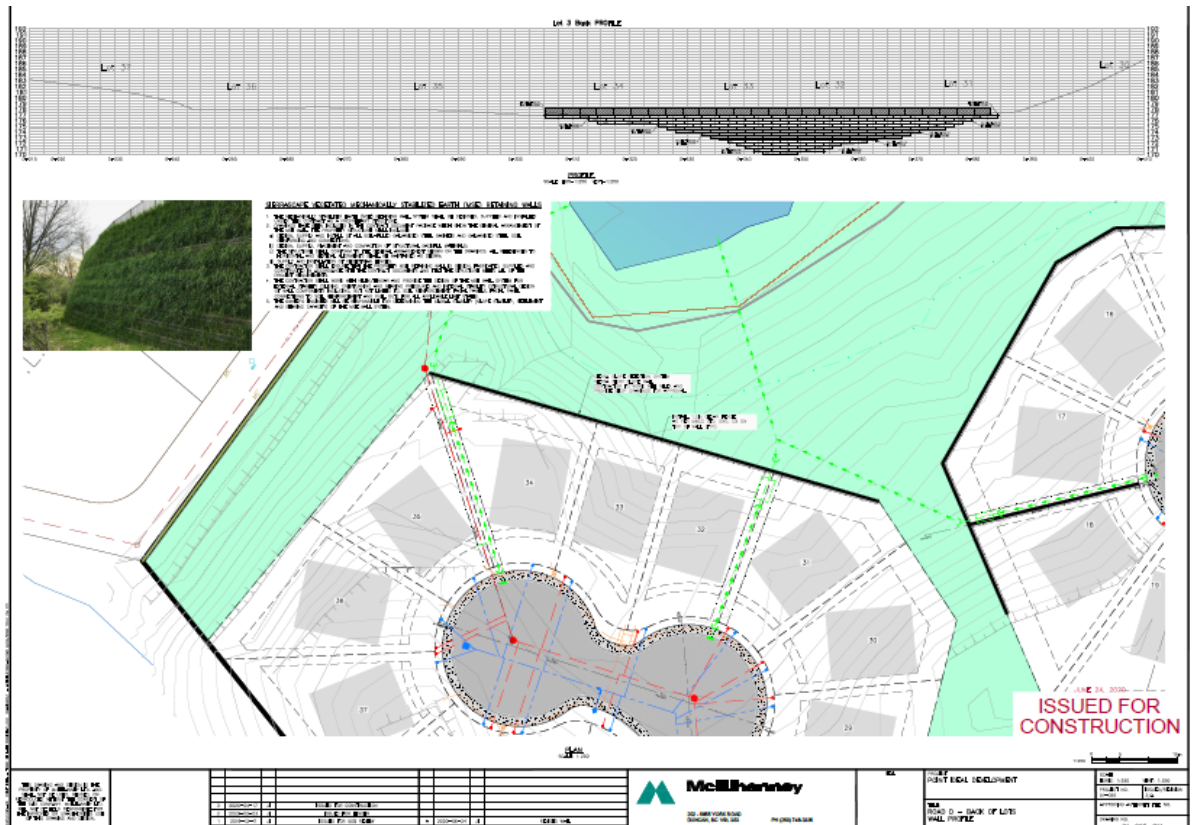


Figure 5 Retaining Wall Profile and Plan for Lots 31-34

## **TOWN BYLAW REVIEW & ANALYSIS**

### **Zoning Bylaw**

#### **Height of retaining walls**

Town's Zoning Bylaw limits fences and retaining walls to no more than 2 metres, except for light industrial zones.

Zoning Bylaw No. 935-02913, Section 4.10 'Fences and Retaining Walls' states:

#### 4.10 Fences and Retaining Walls

Except as otherwise specifically stated in this bylaw and subject to traffic sight lines,

.1 The height of a fence or wall following the slope of the property shall be measured from the finished grade to the top of the fence; or in the case of a stepped down fence, the height shall be measured at the mid-point between the posts of fence panels, as shown:

.2 In zones where commercial uses are permitted, a fence or wall erected or placed along a boundary line on any parcel shall not exceed 2.0 metres in height;

.3 In zones where industrial zones are permitted, a fence erected shall be an opaque 2.4 metres in height;

.4 In zones where residential uses are permitted, a fence at the front of the lot shall not exceed 1.2 metres and at the sides and rear shall not exceed 2.0 metres; and

.5 In the case of a retaining wall constructed in accordance with section 4.11, the combined height of a fence on top of a retaining wall shall not exceed the heights permitted for the zone and measured from average grade at the property line.

#### ***Commentary***

Over the past two decades the Town has consistently applied the maximum two (2) metres rule for all fences and retaining walls –or combination thereof –for all residential development.

Staff interpretation of this Bylaw provision is that the proposed retaining walls, which reach up to a height of 7 m, do not conform and therefore require a development variance permit.

#### **SUBJECT PROPERTY AND NEIGHBOURING PROPERTY CHARACTERISTICS**

The subject land is surrounded on the north and east by existing residential development of the Point Ideal neighbourhood. This includes a wetland conservation area and an east-west trail that leads to the Town's public beach and Lakeview Campground.

The western edge of the site adjoins the Lakeview Campground and road access to the beach.

The southern edge of the site is adjacent to the Town boundary and adjoins forested land owned by Timber West.

#### **APPLICATION REVIEW PROCESS & NEIGHBORING PROPERTY OWNERS CONCERNS**

Written notice of the applications was provided to all neighboring property owners on

June 15, 2020.

The Town has received an email from a resident (Peter Patsula), April 1 and also prior to that date a face to face meeting was held at the Town Office. Concerns raised include the following:

1. Retaining wall height (too high);
2. Consider lowering Road B (proposed behind existing homes on west side of Point Ideal Drive;
3. The 'eye sore' nature of retaining wall height and houses that sit atop;
4. Concerned with neighbourhood aesthetics— 'high density look'.

### **CONCLUDING DISCUSSION**

In consideration of impact on neighbours, there are no retaining walls proposed in proximity to existing developed residential lots. Additionally, a 5 metre green space setback is provided between proposed Lots 10-15 and existing developed residential lots.

For all other lots, the retaining walls are adjacent to open space, environmentally sensitive areas and community trails.

It is important to recognize that subdivision approval related matters such as rainwater management, retaining wall design, lot layout, density, environmental protection, infrastructure, and amenities are not relevant to the development variance consideration.

### **RECOMMENDATION**

A variance to the Zoning Bylaw No. 935-2013, Section 4.10 'Fences and Retaining Walls', to vary the 2.0 metre maximum height of a retaining wall and fence for the Point Ideal subdivision, legally described on this date as Remainder Lot A, Plan VIP64669, District Lot 13, Cowichan Lake Land District, and as described in the Preliminary Lot Layout approval of March 8, 2018, as follows:

1. A variance of additional height for a retaining wall as itemized for the following lots:
  - a. Lot 15: 4.0 metres;
  - b. Lot 16: 4.0 metres;
  - c. Lot 17: 2.5 metres;
  - d. Lot 18: 3.0 metres;
  - e. Lot 31: 1.5 metres;
  - f. Lot 32: 4.0 metres;
  - g. Lot 33: 5.0 metres; and
  - h. Lot 34: 2.0 metres.
2. A variance of an additional 1.2 metres for a transparent chain link fence for lots 15-18 and 31-34.



---

James van Hemert, MCIP, RPP  
Consulting Planner

CAO's Input:

The developer has acceded to the demands of all the affected neighbours and has made adjustments that are most palatable to the neighbourhood and has worked with Town staff to eliminate those walls that would have been obtrusive.

I must concur with the recommendation that retaining walls do not to exceed the maximum heights as recommended.

It may be of note that retaining for 8 lots have been eliminated.

A handwritten signature in black ink, appearing to be 'J. F. ...', written in a cursive style.