

DATE OF MEETING February 28, 2022

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**SUBJECT COVENANT AMENDMENT APPLICATION NO. CA16 and
DEVELOPMENT PERMIT APPLICATION NO. DP1165 – 3789 &
3801 SHENTON ROAD**

OVERVIEW

Purpose of Report

To present for Council's consideration a covenant amendment application and development permit application for a proposed mixed-use residential and office development at 3789 and 3801 Shenton Road.

Recommendation

That:

1. Council direct Staff to amend the Section 219 covenant (CA6139861) on the property titles at 3789 and 3801 Shenton Road to remove the requirement that the lots be consolidated; and,
2. Council approve the issuance of Development Permit No. DP1165 at 3789 and 3801 Shenton Road for a mixed-use residential and office development, with variances to:
 - increase the maximum allowable building height from 18.00m to 20.15m for the proposed building at 3801 Shenton Road; and,
 - reduce the minimum front yard setback for an underground parking structure from 1.8m to 0.0m.

BACKGROUND

A covenant amendment application and a development permit application, CA16 and DP1165, were received from RW (Bob) Wall Ltd., on behalf of Diver Lake Investments Ltd., to amend an existing Section 219 covenant on the property titles of 3789 and 3801 Shenton Road in order to facilitate a proposed mixed-use residential and office development. The existing covenant (CA6139861) was registered on the properties in 2017 as a condition of rezoning (RA346). Among other items, the covenant requires consolidation of the subject properties prior to issuance of a development permit. In addition to the covenant, a blanket statutory right-of-way for the future Diver Lake Loop Trail across the property (exact alignment to be determined) was secured through rezoning and will remain on title until such time that the trail is developed.

On 2022-FEB-07, Council provided direction to proceed with public notification prior to consideration of the covenant amendment application. The public notification has occurred and notices were distributed to neighbouring property owners and occupants as per the City of Nanaimo's Covenant Amendment Process Policy.

Subject Property and Site Context

<i>Location</i>	The subject properties are located on the south side of Shenton Road facing Diver Lake, between Jingle Pot Road and Kenworth Road.
<i>Total Area</i>	0.54ha
<i>Zoning</i>	Mixed Use Corridor (COR2)
<i>Official Community Plan (OCP) Future Land Use Designation</i>	Map 1 – Future Land Use Plan – Corridor Map 3 – Development Permit Area DPA No. 9 – Commercial, Industrial, Institutional, Multiple Family, and Mixed Commercial / Residential Development

The subject properties are located in the Diver Lake neighbourhood and are across Shenton Road from the Island Corridor Rail and Island Highway corridors. Both properties are currently vacant, and the property at 3789 Shenton Road previously contained a single residential dwelling that was demolished in 2019. The rear of the properties, adjacent to Diver Lake, includes a 15m-wide protected riparian setback. The site slopes downhill by approximately 4m from Shenton Road to Diver Lake.

Surrounding land uses are a mix of residential, commercial, and industrial. The adjacent property to the east contains a dental office and the adjacent property to the west is an undeveloped portion of Diver Lake Park.

DISCUSSION

Proposed Development

The applicant is proposing to construct a three to five-storey mixed-use development consisting of two buildings with a combined total of 18 residential dwelling units and 547m² of medical office space. The building at 3801 Shenton Road (Lot 1), to the west, will be five-storeys and will be primarily residential with 15 dwelling units, including two live/work units at ground level. The building at 3789 Shenton Road (Lot 2), to the east, will be three-storeys and will contain a medical/dental office at ground level and three dwelling units above. Both buildings will be on top of an under-the-building parking structure that will be partially exposed to the rear, presenting a six-storey and four-storey elevation towards Diver Lake for the west and east buildings, respectively.

The proposed residential unit composition is as follows:

- 2 studio units;
- 5 one-bedroom units; and
- 11 two-bedroom units.

The proposed gross floor area on Lot 1 is approximately 1,806m² and approximately 1,158m² on Lot 2, with a combined total of 2,964m². The maximum permitted Floor Area Ratio (FAR) in the COR2 zone is 1.25 and the proposed FAR is 0.61 for Lot 1 and 0.47 for Lot 2.

Site Design

The site is constrained by the shallow depth of the lots and the 15m riparian setback from Diver Lake and its adjacent wetlands. The buildings are sited closer to Shenton Road to avoid encroachment into the riparian setback. Each building will have an under-the-building parking level separated by a fire wall following the existing property line. The parking level for Lot 1 will be accessed by a ramp from Shenton Road, and the parking level for Lot 2 will be accessed through the neighbouring property to the east at 3767 Shenton Road. This property contains the existing Diver Lake Dental Clinic and is owned by the same ownership group as the subject properties. An easement agreement will be required as a condition of the development permit to secure access to Lot 2.

In addition to the under-the-building parking level, two surface parking areas are proposed with separate vehicle entries; a central parking court between both buildings, and a parking court to the east of medical/dental building on Lot 2. All required parking will be provided on the subject properties. Three of the surface parking stalls for Lot 1 will cross the property line into Lot 2 and will be secured by covenant, as permitted by the City of Nanaimo “Off-Street Parking Regulations Bylaw 2018 No. 7266”.

Pedestrian access to both buildings is proposed from Shenton Road. Both surface parking areas and the buildings will be connected by a pedestrian walkway adjacent to Shenton Road. A small plaza is proposed outside of the front entry for each building, in addition to a plaza overlooking the lake within the central parking court. Bicycle parking is proposed with long-term bicycle storage in the under-the-building parking level and short-term bicycle parking in the plazas near the building entries. Refuse/recycling receptacles for Lot 1 will be stored in an enclosure facing the surface parking lot, and for Lot 2 within the under-the-building parking level.

Building Design

The two buildings are contemporary in design and provide visual interest not only along Shenton Road but also from the Island Highway and from Diver Lake. The residential building on Lot 1 orients dwelling units to face away from the highway, but the street-facing elevation still presents itself as the front of the building with a covered entryway at ground level and live/work units facing the street. The vertical massing of the building is broken up by protruding balcony boxes and alternating materials. The building will feature a strong roofline on all elevations.

The design of the building on Lot 2 reflects its medical office use with significant glazing at ground level and strong horizontal lines. The building steps down on the rear elevation and reflects the scale of adjacent commercial uses to the east. A large private outdoor deck is proposed on the third level.

The proposed exterior materials include a mix of stucco, Lux smooth panels, and fibre cement siding. Building entries will be accentuated by thinstone veneer cladding. The two buildings present unique massing and architectural elements but with a cohesive design in the exterior materials and finishes.

Landscape Design

A landscape buffer is proposed along the street frontage including low shrubs, cascading plants, and coniferous trees near the edges of the properties, and a large deciduous tree to anchor the entry to each of the surface parking areas. Substantial vegetation is proposed along the west and east property lines. Raingardens are proposed to the south of both surface parking areas and adjacent to the under-the-building parking ramp. The building on Lot 2 will include a green roof with a mix of groundcovers and grasses. The building on Lot 1 will have a green roof on its entrance canopy and a living wall on the east elevation.

The riparian setback area will be revegetated and restored as required by an existing covenant on the subject properties. A large existing Sequoia tree within the riparian area will be retained.

Design Advisory Panel

The Design Advisory Panel, at its meeting held on 2020-DEC-15, accepted DP1165 as presented with support for the proposed variances. In the subsequent time, the applicant re-designed the project to accommodate the development without lot consolidation and submitted revised plans in December 2021.

Proposed Variances

Maximum Building Height

The maximum building height in the COR2 zone is 18.00m where at least 75% of the parking is provided below or beneath a building. The height of the proposed residential building at 3801 Shenton Road (Lot 1) is 20.15m, a requested variance of 2.15m. Both buildings will provide at least 75% of their respective required parking beneath the building.

The applicant is requesting the height variance in order to accommodate the proposed development on the constrained and sloping site. While the COR2 zone allows a maximum lot coverage of 60%, the proposed building on Lot 1 will have a lot coverage of only 18.5% in order to preserve the significant riparian setbacks. Due to the reduced building footprint, the applicant has proposed to increase the building height. Staff support the proposed height variance.

Projections Into Yards

The minimum front yard setback for an underground parking structure is 1.8m. The proposed parking structure setback from Shenton Road is 0.0m, a requested variance of 1.8m. The applicant is requesting the parking structure setback variance in order to site both buildings to the north away from Diver Lake. The variance will allow the development to accommodate the required dimensions for parking spaces in the parking level without encroaching into the riparian setback. Staff support the proposed parking structure setback variance.

Proposed Covenant Amendment

The proposed covenant amendment will remove the requirement to consolidate the lots prior to issuance of a development permit. At the time of rezoning, the proof of concept provided by the applicant would have necessitated consolidation of the lots in order to meet the COR2 zoning regulations. The east building was originally proposed to be entirely office and the COR2 zone

requires an equal amount of residential floor area on the same lot. Since the time of rezoning, the applicant has developed more detailed plans and included residential units on the same lot as the medical/dental office building (3789 Shenton Road). By doing so, the applicant has demonstrated that the two lots can be developed independently and meet the requirements of the COR2 zone. As a condition of development permit issuance, the applicant will be required to secure shared access and parking agreements between the two lots and the property to the east at 3767 Shenton Road.

The existing covenant CA6139861 is proposed to be amended as follows:

<i>Current Covenant</i>	<i>Proposed Amendment</i>
Section 2 prohibits the sale of the two properties separately from one either until lot consolidation, leaving the lots title-bound.	The timing of the title-bound clause will change, remaining in effect only until such time as the other requirements of the covenant are met.
Section 3 requires that the two lots be consolidate prior to development issuance.	This section will be removed and replaced with a new section to covenant and secure future parking and access agreements between the two lots.

The other conditions of the existing covenant, pertaining to extraordinary frontage works/services and riparian restoration, will remain. The applicant has demonstrated that there is a viable building envelope on each lot under the COR2 zone without having to consolidate the lots. Staff support the proposed covenant amendment.

SUMMARY POINTS

- Covenant Amendment Application No. CA16 proposes to amend an existing Section 219 covenant on the property titles of 3789 and 3801 Shenton Road in order to facilitate a proposed mixed-use residential and office development.
- The proposed covenant amendment will remove the requirement that the lots be consolidated prior to issuance of a development permit.
- Development Permit Application No. DP1165 is for a mixed-use development consisting of two buildings with a combined total of 18 residential dwelling units and 547m² of medical office space.
- Variances are requested to increase the maximum allowable building height from 18.00m to 20.15m for the building at 3801 Shenton Road and to reduce the minimum front yard setback for an underground parking structure from 1.8m to 0.0m. Staff support the proposed variances and covenant amendment.

ATTACHMENTS

ATTACHMENT A: Permit Terms and Conditions
ATTACHMENT B: Context Map
ATTACHMENT C: Location Plan
ATTACHMENT D: Site and Parking Plans
ATTACHMENT E: Building Elevations and Materials
ATTACHMENT F: Perspective Views
ATTACHMENT G: Landscape Plan and Details
ATTACHMENT H: Aerial Photo

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