

DATE OF MEETING [October 24, 2022]

AUTHORED BY [SADIE ROBINSON, PLANNER, CURRENT PLANNING]

**SUBJECT [DEVELOPMENT PERMIT APPLICATION NO. DP1272 AND  
DEVELOPMENT VARIANCE PERMIT APPLICATION NO. DVP419  
– 6083 GARSIDE ROAD]**

## **OVERVIEW**

### **Purpose of Report**

To present for Council’s consideration a concurrent development permit application and development variance permit application to reduce the required watercourse setback, side and rear yard setbacks, and to increase the allowable fence height and lot coverage to allow the siting of an existing non-conforming dwelling and the reconstruction of an existing deck with a pool at 6083 Garside Road.

### **Recommendation**

That Council issue:

1. Development Permit No. DP1272 at 6083 Garside Road with a variance to the watercourse setback from the wetland adjacent to Brannen Lake from 15m to 1.1m to allow an existing non-conforming dwelling and proposed site improvements; and,
2. Development Variance Permit No. DVP419 at 6083 Garside Road with with variances to the side and rear yard setbacks; fence height; and lot coverage as outlined in the “Proposed Variances” section of the Staff Report dated 2022-OCT-24. |

## **BACKGROUND**

A development permit application, DP1272, along with a concurrent development variance permit application, DVP419, were received from Douglas and Leah Pope to vary the watercourse setback from Brannen Lake, fence height, lot coverage, and side and rear yard setbacks to allow an existing non-conforming dwelling and proposed site improvements including the reconstruction of an existing deck with a proposed pool within the watercourse leave strip.

### **Subject Property and Site Context**

<i>Zoning</i>	R2 – Single Dwelling Residential – Small Lot
<i>Location</i>	The subject property is located between Garside Road and Brannen Lake, north of Mildmay Road and immediately south of the intersection of Garside Road and Turnstone Place.
<i>Total Area</i>	419.7m <sup>2</sup>
<i>City Plan</i>	Schedule 2 – Future Land Use – Suburban Neighbourhood Schedule 6 – Development Permit Area 1: Environmentally Sensitive Areas

The subject property is a residential bare-land strata lot within Lakeside Estates Strata with single residential dwellings to the north and east across Garside Road. The subject parcel is positioned adjacent to a wetland of Brannen Lake and in close proximity of a water channel within the adjacent common property to the south.

The lot was previously disturbed (100% cleared) for residential development in the late 1990s. The majority (80%) of the property is contained within the required leave strip, including the house, driveway, deck, concrete on-grade patio, and fencing. No riparian vegetation has existed within the property since it was cleared for development. The subdivision (1992) and building permit (1998) applications were made based on survey plans which identified the high water mark of Brannen Lake. The wetland boundary was not identified at the time of subdivision. At the time of construction, the subject property and site improvements were outside of the Environmentally Sensitive Areas Development Permit Area, and compliant with zoning requirements at the time.

Work to remove a rotting wooden deck within the rear yard started in 2020 with the intention of re-building a portion of the deck and installing an above-ground swimming pool within the footprint of the deck. A “Stop Work Order” was issued by the City of Nanaimo as the work is located within the leave strip adjacent to the wetland of Brannen Lake. It was subsequently identified that the existing deck and proposed improvements would not comply with the current “City of Nanaimo Zoning Bylaw No. 4500” (the “Zoning Bylaw”) requirements for fence height, lot coverage, and side and rear yard setbacks, and the house and proposed improvements are located within the Environmentally Sensitive Areas Development Permit Area (DPA1).

A development permit must be obtained before further work is completed to re-build a deck and install a pool within the DPA. The proposed fence height, lot coverage and side and rear yard setback variances are not directly related to the purpose of Development Permit Area No. 1 – Watercourses, as such these variances are being considered through a concurrent development variance permit. If the requested variances are approved, the applicant will be required to apply for a Building Permit to proceed with the proposed site improvements. |

## **DISCUSSION**

### **Proposed Development**

The applicant proposes to retain the existing over-height fence along the rear and side property lines, of which a section will be replaced with new railings. Within the fenced area, the applicant proposes to reconstruct the majority of the deck supported on the existing concrete post footings on the south and west sides of the yard, and install an above-ground swimming pool within the deck area. The pool footprint is approximately 39m<sup>2</sup> in area and the proposed deck is approximately 55m<sup>2</sup>, both of which fall entirely within the watercourse setback. The existing on-grade concrete patio that surrounds the east and north sides of the pool is to remain.

A Qualified Environmental Professional (QEP) was retained to review the existing site conditions, the proposed development, and potential for restoration in order to address the DPA guidelines. The QEP provided an Environmental Impact Assessment which establishes environmental protection measures and a riparian restoration plan.

The QEP determined that Provincial Riparian Areas Protection Regulation (RAPR) does not apply to the proposed site improvements as the existing site was previously disturbed and the proposed improvements do not increase the “*area of human disturbance*” on the lot, as defined by RAPR.

The proposed replacement of the old deck with a smaller deck and pool will have no additional impact to the lake or wetland riparian margin over the previous conditions. No habitat will be impacted, however, the QEP has identified an opportunity for some habitat improvement including riparian restoration offsite within strata common property immediately to the south of the subject property (Attachment G). The Vegetation Remediation Plan includes removal of invasive Himalayan blackberry, and a planting area of 43m<sup>2</sup> of native vegetation to be interspersed within the existing riparian vegetation. The remediation plan results in a net gain of riparian habitat and addresses the DPA guidelines. A three-year maintenance period and associated bonding will be required to ensure invasive species are monitored and the enhancement area becomes well established.

## **Proposed Variances**

### *Minimum Watercourse Setback*

The minimum required watercourse setback is 15m as measured from the boundary of a wetland adjacent to Brannen Lake. The applicant proposes to reduce the setback from 15m to 1.1m to allow the siting of the existing non-conforming dwelling, the siting of the existing fence, and proposed site improvements. Varying the watercourse setback will allow the siting of the existing house and enable the property owner to complete the site improvements within a previously disturbed area.

### *Maximum Fence Height*

The maximum permitted fence height within the side and rear yard setbacks on an R2-zoned lot is 2.4m. The applicant proposes to increase the maximum allowable fence height from 2.4m to 3.15m in the southwest and northwest corners of the property to allow retention of a portion of the existing fence and replacement of a portion of the fence with a proposed railing. The existing fence on top of the deck is approximately 1.07m high, while the skirting to close in the bottom of the deck is up to 2.08m at its highest point. As such, the combined fence height is 3.15m at its highest point, decreasing in height where the grade is higher. The existing fence and proposed railing height will not change, and aligns with the neighbouring fence height.

### *Minimum Required Setbacks (South Side and Rear Yard)*

The required yard setbacks on an R2-zoned lot are a minimum of 1.5m on the side, and 6m at the rear. An open deck is allowed to project 2.0m further into the rear yard for a minimum distance of 4.0m to the rear property line.

The applicant proposes to reduce the south side yard setback from 1.5m to 0.07m and the rear yard setback from 6.0m (or effectively 4.0m with the allowable projection) to 0.02m in order to allow the existing fence and proposed open deck as per the Proposed Site Plan by Turner & Associates Land Surveying, dated 2022-APR-04.

The requested setbacks are consistent with the existing deck siting. The setback variances will allow the property owners to reconstruct their existing deck, and allow the deck to wrap around the pool to provide access within their small residential lot.

### *Maximum Lot Coverage*

The maximum permitted lot coverage on an R2-zoned lot is 40% of the lot area. The applicant proposes to increase the maximum allowable lot coverage to 50% to allow reconstruction of a portion of the existing deck to maintain access around the pool.

Prior to the existing deck being partially removed, it contributed to an overall lot coverage of 57% when included with the house. The deck is proposed to be reduced in size by 28.2m<sup>2</sup>, reducing the overall lot coverage by 7%, bringing the lot coverage into closer alignment with current bylaw requirement.

Without the above variances, the dwelling siting would remain non-conforming and the owner would not be able to reconstruct their existing deck as proposed, thereby reducing the functional living space of their backyard.

The three most impacted neighbours have provided written letters advising of no objection to the proposed variances, and the applicant has advised that the Strata is also supportive of the proposed improvements and restoration.

The proposed variances will allow improvements to an existing property that is located predominantly within the watercourse setback, and within a previously disturbed area, while providing restoration that results in a net gain of riparian habitat. Given no negative impacts to the wetland have been identified, Staff support the proposed variances and restoration.

### **SUMMARY POINTS**

- The applicant proposes variances to allow an existing non-conforming dwelling and proposed site improvements within the watercourse setback.
- The QEP determined that Provincial Riparian Areas Protection Regulation (RAPR) does not apply to the proposed site improvements as the existing site was previously disturbed.
- The proposed restoration includes removal of invasive Himalayan blackberry, and a planting area of 43m<sup>2</sup> of native vegetation resulting in a net gain of riparian habitat.
- Staff support the proposed variances and restoration.

### **ATTACHMENTS**

- ATTACHMENT A: Permit Terms and Conditions
- ATTACHMENT B: Context Map
- ATTACHMENT C: Location Plan
- ATTACHMENT D: Existing Site Plan
- ATTACHMENT E: Proposed Site Plan
- ATTACHMENT F: Conceptual Renderings
- ATTACHMENT G: Vegetation Remediation Plan
- ATTACHMENT H: Site Plan detailing Restoration Areas
- ATTACHMENT I: Aerial Photo

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