

DATE OF MEETING APRIL 17, 2025

AUTHORED BY DAVE LABERGE, DIRECTOR, PUBLIC SAFETY

SUBJECT ILLEGAL CONSTRUCTION – 3860 NORWELL DRIVE

OVERVIEW

Purpose of Report

To inform Council that a two-storey accessory building and adjoining deck were constructed without a permit or inspections on the property at 3860 Norwell Drive, and to recommend that a Remedial Action Requirement be issued requiring the removal of all unauthorized structures.

Recommendation

That Council:

1. Declare that construction of the two-storey accessory building and adjoining deck structure at 3860 Norwell Drive is in contravention of City of Nanaimo “Building Bylaw 2016 No. 7224” and the Provincial Building Code.
2. Impose remedial action requirements in relation to the provisions of Sections 72 and 73 of the *Community Charter*.
3. Direct the remedial action requirement to include that all construction completed without required inspections or permit must be completely removed by no later than 60 days after the remedial action requirement is issued.
4. Direct staff to advise the owner(s) that they may request Council reconsider the remedial action requirement by providing written notice within 14 days of the date on which notice of the remedial action requirement was sent.
5. Direct staff or their authorized agents to take action in accordance with Section 17 of the *Community Charter* without further notice to remove all unauthorized construction at the owner’s expense if the said remedial action requirement is not undertaken within the time limit set out in the Council resolution.

BACKGROUND

3860 Norwell Drive is an R5 zoned waterfront property. The current owner acquired the property in the spring of 2022.

In May 2024, Building Inspections section became aware that a two-storey accessory building and deck was being constructed within the riparian area. On 29-MAY-2024 an inspector attended and found a new building that had been constructed without a required permit. A 'Stop Work' order was posted. It was noted that the building encroached within the 15 m. leave strip around Long Lake. Buildings, structures, roads, parking lots, driveways, patios, games courts or other impermeable surfaces are not permitted within a leave strip as per s. 6.3.2 of Zoning Bylaw 4500. The municipal environmental protection officer attended the site on 30-MAY-2024 and noted significant landscaping and additional pathways installed within the 15m lake setback.

The owner has stated the position that there has been a building structure on this footprint for many years and the current building is, in fact, a product of ongoing repair and maintenance. A review of the air photo history showed that an old, dilapidated structure once existed but was removed sometime after 2021. (The owner reports that it was built in 1973) The current area of disturbance (construction) is larger than the historic footprint. Therefore, the structure does not qualify for a 'maintenance and repair exemption' under Development Permit 1.

The owner has been directed to remove the accessory building and deck structure. Once removal is completed a qualified environmental professional will have to be engaged to provide a condition and impact assessment of the riparian area and to prepare a restoration plan.

The building inspector took note that the building and deck both contained numerous building code infractions including non-compliant foundations, framing deficiencies and lacking required guard rails.

At the 21-NOV-2024 Public Hearing, Council considered a staff recommendation to register notice of bylaw contravention on the property title of 3860 Norwell Drive. The owner appeared as a delegation and informed Council that the building was not 'new construction' rather it had been repaired 'piece-by-piece', proposing that a building permit was not required and that the riparian encroachment should be grandfathered. A motion to register notice of bylaw contravention on title was passed.

The Building Inspections section has forwarded this matter to the bylaw department for enforcement.

DISCUSSION

Council may impose remedial action requirements in accordance with Sections 72 and 73 of the *Community Charter* if a building or structure creates an unsafe condition, or if it contravenes the provincial building regulations or a building bylaw.

The construction has been completed without permit or inspection in contravention of the Building Bylaw. A building inspector has noted that the new construction contains foundation and framing deficiencies that contravene the BC Building Code.

The Building Inspections section has determined that the original structure has been completely removed and replaced with a newly constructed two-storey accessory building and deck which is larger than the original footprint. The construction was not completed piece by piece as the building would have to be removed for the replacement of footings and foundation. The structure does not qualify for an exemption for maintenance and repair and must be removed.

OPTIONS

1. That Council:
 1. Declare that construction of the two-storey accessory building and adjoining deck structure at 3860 Norwell Drive is in contravention of City of Nanaimo “Building Bylaw 2016 No. 7224” and the Provincial Building Code.
 2. Impose remedial action requirements in relation to the provisions of Sections 72 and 73 of the *Community Charter*.
 3. Direct the remedial action requirement to include that all construction completed without required inspections or permit must be completely removed by no later than 60 days after the remedial action requirement is issued.
 4. Direct staff to advise the owner(s) that they may request Council reconsider the remedial action requirement by providing written notice within 14 days of the date on which notice of the remedial action requirement was sent.
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 - The advantages of this option:
This action will address building and zoning contraventions
 - The disadvantages of this option:
Considerable staff time is required
 - Financial Implications:
Potential for future litigation
2. That Council provide alternative direction or take no action.

SUMMARY POINTS

- A dilapidated shed situated in a riparian zone has been removed and replaced with a new accessory building and deck.
- The construction was completed without permit or inspection and is in contravention of zoning regulations and the BC Building Code.
- Notice of bylaw contravention has been registered on property title.
- A remedial action requirement to remove the illegal construction is recommended.

Submitted by:

David LaBerge
Director, Public Safety

Concurrence by:

Darcy Fox
Manager, Building Inspections

Dale Lindsay
Chief Administrative Officer