

DATE OF MEETING | December 17, 2018 |

AUTHORED BY | LAINYA ROWETT, MANAGER, CURRENT PLANNING SECTION,  
COMMUNITY DEVELOPMENT |

SUBJECT | **DEVELOPMENT VARIANCE PERMIT APPLICATION NO. DVP373 –  
110 FRY STREET** |

## **OVERVIEW**

### **Purpose of Report**

To present for Council's consideration, a request for an extension to the previously approved Development Variance Permit No. DVP343 in order to permit the temporary placement of two refrigerated shipping containers within the subject property. |

### **Recommendation**

That Council issue Development Variance Permit No. DVP373 for 110 Fry Street with the following variances:

- increase the maximum allowable size of a container from 20m<sup>2</sup> to 29.75m<sup>2</sup>;
- increase the length of time containers are permitted to be located on a property from 30 days within a calendar year to a maximum of four months;
- increase the maximum number of containers permitted on a property from one to two; and
- reduce the rear yard setback from 7.5m to 4.5m for a building or structure in order to legalize the siting of two refrigerated shipping containers. |

## **BACKGROUND**

A development variance permit application, DVP373, was received from Greenplan on behalf of W2 Enterprises Ltd., to vary the provisions of City of Nanaimo "Zoning Bylaw 2011 No. 4500" (the "Zoning Bylaw") in order to extend the temporary placement of two oversized refrigerated shipping containers within the property located at 110 Fry Street while an existing industrial warehouse is being repaired at 106 Fry Street.

On 2018-MAR-19, Council approved a Development Variance Permit (DVP343) to legalize the siting of two refrigerated shipping containers and an over-height retaining wall/fence within the subject property. The containers were placed on the subject property to provide insulated cold storage space following a roof collapse (2018-JAN-18) within the existing industrial building (Omni Foods) at 106 Fry Street. The property owner requires temporary storage to continue to operate while the existing building is repaired. The applicant requested up to one year for the temporary siting of the containers; however, in response to neighbourhood concerns about noise impacts resulting from the refrigerated containers, Council approved a variance for up to six months, concurrent with the anticipated building repairs, with the condition that the applicant implement a sound mitigation plan within 30 days from approval.

The applicant subsequently engaged an engineer and submitted an acoustic study (2018-APR-23) that measured noise emission levels at various locations. The report concluded

that none of the readings exceeded 48.7 decibels (dB), which is within a range deemed acceptable by the Canadian Mortgage and Housing Corporation's (CMHC) residential guidelines for nuisance noise within urban environments ('Road and Rail Noise: Effect on Housing'). The engineer's report did, however, recommend measures to further mitigate nuisance noise for neighbouring residential buildings along Irwin Street and Esplanade, including:

- the installation of a 1.5m-high (approximately) solid panel fence on top of the retaining wall; and
- a single, open-top wood enclosure, approximately 1.5m wide x 5m long and 1.5m high containing noise barrier system/baffle panels to surround the sides of the containers.

The applicant has advised that the goal was to reduce the sound level at all stations by 3 dB, as this is generally accepted as an approximate 25% change in perceived loudness.

Installation of the noise baffle panels completed on 2018-JUN-25 following delays in appropriate materials from out of province, and labour.

In July 2018, the same neighbourhood locations were re-evaluated following installation of the improvements and a final 'post mitigation' report was provided that confirmed reductions in noise levels at all locations by approximately:

- 18 to 22 dB at the source;
- 7.5 dB at Fry Street; and
- a minimum of 3 dB at the nearby residential locations.

The report also noted that vehicle traffic on Fry Street and active ship loading (deck cranes) on nearby Port of Nanaimo property raised background noise levels by an order of +5 to +7 dB, to an average of 54 to 57 dB.

The applicant submitted a building permit application (BP124504) for the repairs on 2018-JUN-04. Through the permit review process, it was determined that additional requirements had to be met prior to permit issuance, which extended the timeline, including servicing easements, covenants, and the lot consolidation of 114 and 110 Fry Street. The building permit was recently issued on 2018-NOV-22. The applicant is currently undertaking the building repairs and is seeking an extension to the previously granted variance in order to allow the storage containers to remain in place until the building repairs are complete and the building can be reoccupied, at which time the containers will be removed.

### Subject Property

<i>Zoning</i>	COR3 – Community Corridor
<i>Location</i>	The subject property is located on Fry Street just south of the intersection of Fry Street and Finlayson Street.
<i>Lot Size</i>	110 Fry Street – 1,065.4m <sup>2</sup>
<i>Official Community Plan (OCP)</i>	Map 1 – Corridor
<i>Neighbourhood Plan – South End Neighbourhood Plan</i>	Corridor Mixed Use

The lot is undeveloped except for the refrigerated containers located in the southwest corner of the lot and an existing concrete retaining wall. Surrounding uses include a mix of residential and industrial/commercial uses to the north and south. A railway marshalling yard and the Port of Nanaimo Assembly Wharf are located to the east.

The subject property is within a portion of the South End Neighbourhood currently transitioning from historical industrial uses to mixed-use corridor uses. The property was designated as Corridor in the 2008 OCP and Mixed Use Corridor within the South End Neighbourhood Plan adopted in 2010, and subsequently rezoned to Community Corridor (COR3) with the adoption of the Zoning Bylaw 4500 in 2011. Warehouse is recognized as a site-specific permitted use within the Zoning Bylaw for the subject property. By zoning the property as COR3 with a site-specific industrial use, the Zoning Bylaw recognizes the immediate and historic industrial use of the property and allows the property to transition into a mixed-use or residential development as envisioned within the OCP and Neighbourhood Plan.

## **DISCUSSION**

A container is defined as a non-combustible, portable unit designed for the storage or intermodal transportation of goods, and includes cargo containers, but specifically excludes dumpsters and recycling receptacles intended for neighbourhood collection. Generally, a container is not permitted anywhere in the city except as an accessory temporary use. A container is permitted as an accessory use for a temporary period, subject to the following requirements:

<b>Zones</b>	<b>Temporary Use Time (Duration)</b>	<b>Maximum Allowable Size of Container</b>	<b>Number of Containers Permitted on the Property</b>
I4	2 years	30m <sup>2</sup>	No more than 2
I1, I2 and I3	1 year	30m <sup>2</sup>	No more than 1
CC3, CC4 and DT6	6 months within a calendar year	30m <sup>2</sup>	No more than 1
All other Zones	30 days within a calendar year	20m <sup>2</sup>	No more than 1

Although the property is zoned Corridor, it is currently being used for Industrial (warehouse) use as permitted by site-specific zoning. Within Light Industrial zones, containers are permitted for up to one year as a “one-time” only accessory use. If further storage needs are required on a property, a permanent structure is required. In order to allow the temporary use of containers for storage a variance is required.

## **Proposed Development**

The owner of the subject property also owns Omni Foods, a food warehouse and delivery business. Following the collapse of the roof of the warehouse building on 2018-JAN-18 at 106 Fry Street, the owner has sought temporary warehouse services in multiple locations within Nanaimo. The temporary warehouse spaces, however, have not been able to provide essential refrigeration for temperature-sensitive foods. The owner rented two refrigerated containers and placed them within 110 Fry Street. It is the owner’s intent to store goods within the containers

until the warehouse is repaired. During the four-month period, it is expected the applicant will repair the adjacent warehouse building and remove the containers.

## Proposed Variances

### *Containers*

The use of the land for the placement of containers is prohibited in the COR3 zone except as a temporary use of not more than 30 days within a calendar year. No more than one container is permitted per property, and the maximum size of a container cannot exceed 20m<sup>2</sup>.

The applicant is requesting an extension to the previously approved variances to permit the continued use of the containers at 110 Fry Street:

- increase the maximum allowable size of a container from 20m<sup>2</sup> to 29.75m<sup>2</sup>;
- increase the length of time temporary use containers are permitted to be located on a property from 30 days within a calendar year to up to a maximum of four months, or until the building is reoccupied, whichever occurs first;
- increase the maximum number of containers permitted on a property from one to two; and
- reduce the rear yard setback from 7.5m to 4.5m for a building or structure in order to permit the placement of refrigerated shipping containers.

Approval of the proposed variances will allow the property owner to continue storing items incidental to his warehouse business within containers until the building repairs are complete. If the variances are approved, the containers will be removed once final inspection of the warehouse is approved, or within four months of the approval of the development variance permit, whichever occurs first.

Staff support the proposed variances.

### **SUMMARY POINTS**

- Development Variance Permit No. DVP373 proposes variances to permit the temporary placement (up to four months) of two refrigerated containers on 110 Fry Street.
- The containers are required to store previously-warehoused items until the owner's warehouse located at 106 Fry Street is repaired.
- Staff support the proposed variances.

## **ATTACHMENTS**

ATTACHMENT A: Permit Terms and Conditions  
ATTACHMENT B: Location Plan  
ATTACHMENT C: Site Survey  
ATTACHMENT D: Aerial Photo |

### **Submitted by:**

L. Rowett  
Manager, Current Planning

### **Concurrence by:**

D. Lindsay  
Director, Community Development

# ATTACHMENT A

## PERMIT TERMS AND CONDITIONS

### TERMS OF PERMIT

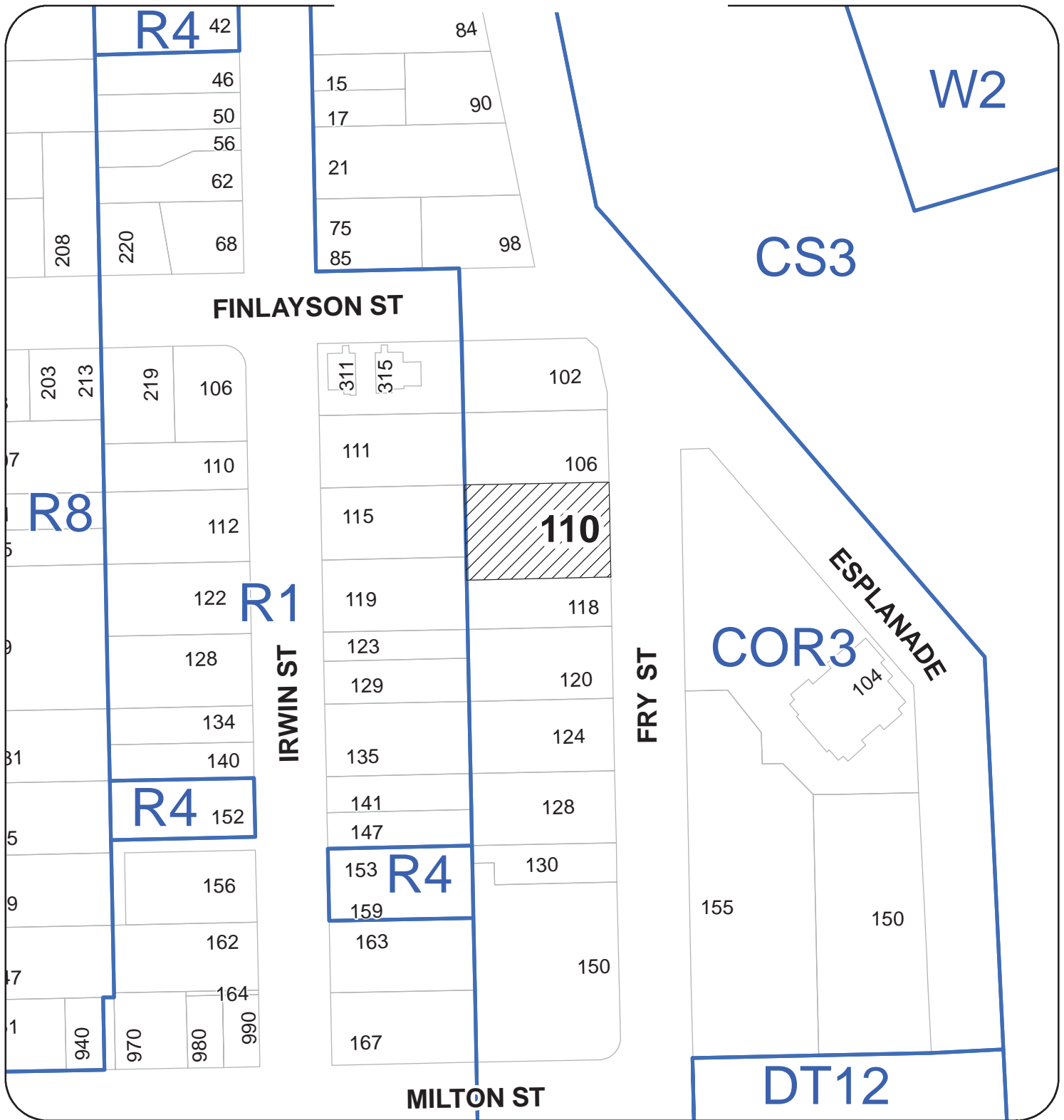
The City of Nanaimo "ZONING BYLAW 2011 NO. 4500" is varied as follows:

1. *Section 6.2.1.2 Containers:*
  - to increase the maximum allowable size of a container from 20m<sup>2</sup> to 29.75m<sup>2</sup>.
  - to increase the length of time a temporary use container is permitted on the subject property from 30 days to a maximum of four months; and,
  - to increase the maximum number of containers permitted on the subject property (110 Fry Street) from one to two.
  
2. *Section 6.2.1.4 Containers and Section 9.5.1 Siting of Buildings* – to reduce the minimum required rear yard setback from 7.5m to 4.5m for a building or structure to permit the temporary placement of storage containers within the subject property.

### CONDITIONS OF PERMIT

1. The containers shall be removed from the subject property following the approval to re-occupy the building at 106 Fry Street by the City of Nanaimo Building Inspections Department or by 2019-APR-17, whichever occurs first.
  
2. The subject property shall be developed in accordance with the Site Survey prepared by Turner Land Surveying dated 2018-FEB-27, as shown on Attachment C.

ATTACHMENT B  
LOCATION PLAN



DEVELOPMENT VARIANCE PERMIT NO. DVP00373

LOCATION PLAN

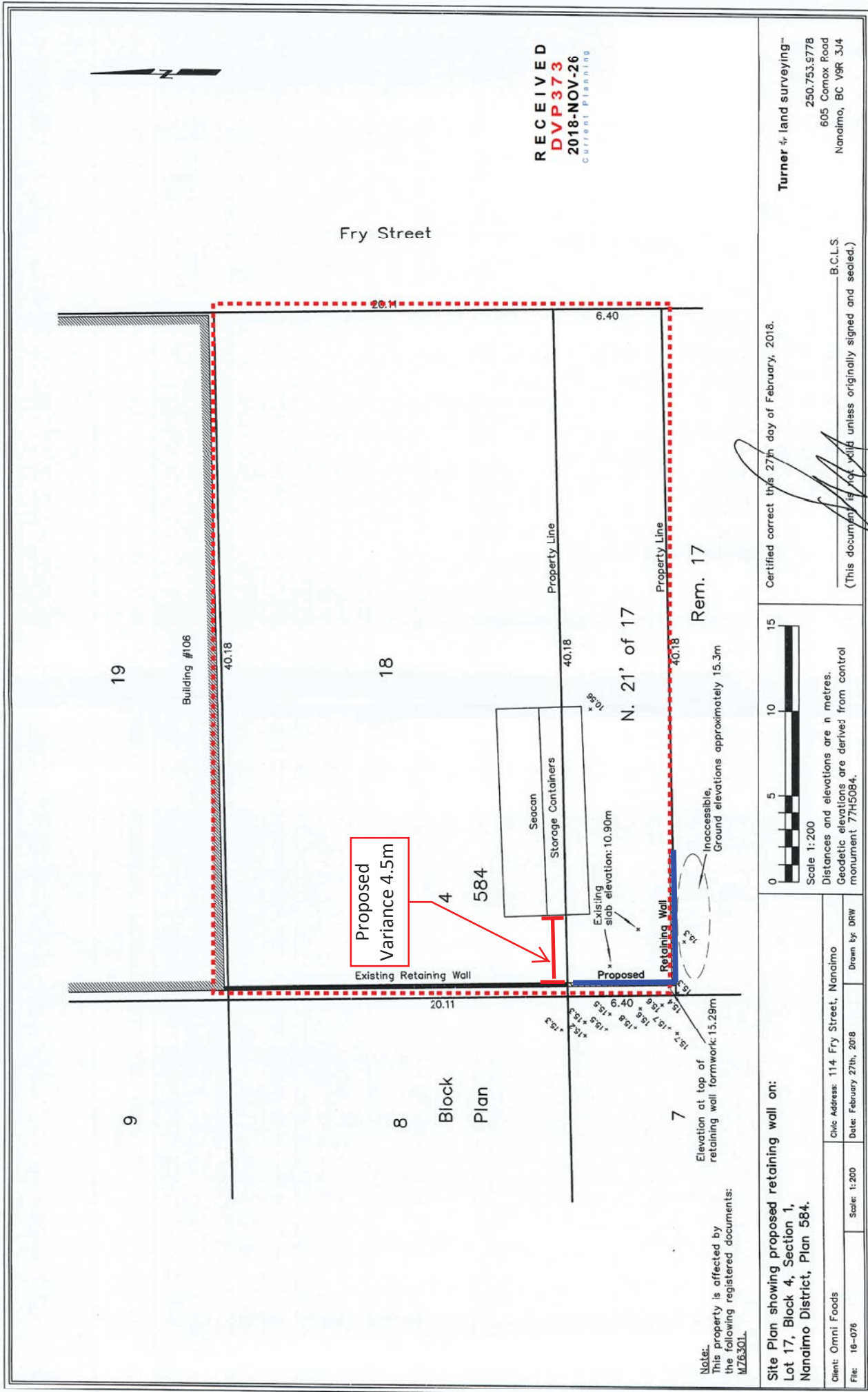
CIVIC: 110 FRY STREET  
LEGAL: LOT A SECTION 1 BLOCK 4  
NANAIMO DISTRICT PLAN EPP84590



 SUBJECT PROPERTY

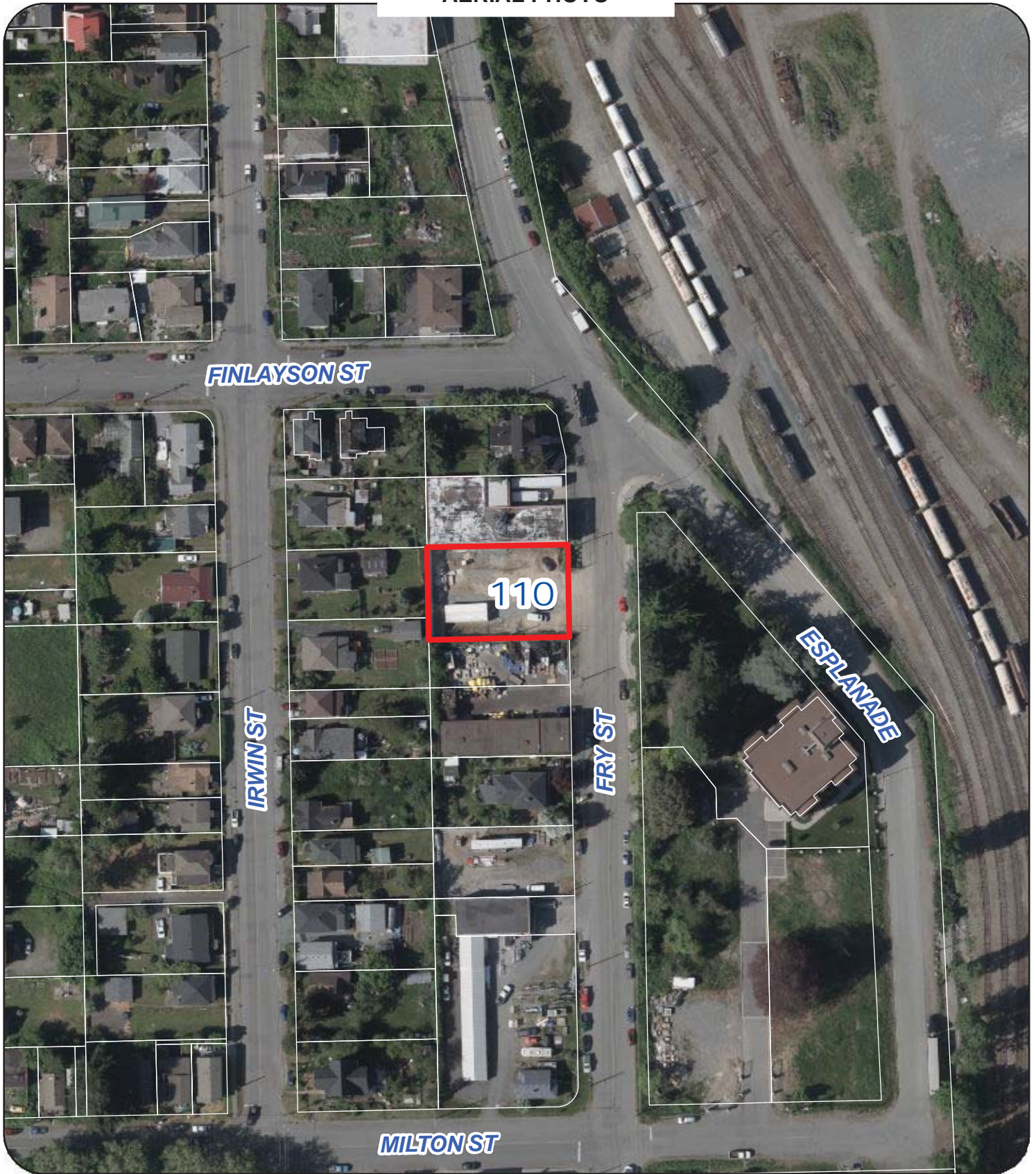


**ATTACHMENT C  
SITE SURVEY**





ATTACHMENT D  
AERIAL PHOTO



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DEVELOPMENT VARIANCE PERMIT NO. DVP00373

LEGEND

 SUBJECT PROPERTIES