

**City of Nanaimo
REPORT TO COUNCIL**

DATE OF MEETING: 2013-SEP-09

AUTHORED BY: DAVE STEWART, PLANNER.
PLANNING & DESIGN SECTION

RE: DEVELOPMENT VARIANCE PERMIT NO. DVP215 – 5030 BANNING COURT

STAFF RECOMMENDATION:

That Council issue Development Variance Permit No. DVP215 at 5030 Banning Court.

PURPOSE:

The purpose of this report is to seek Council authorization to vary the provisions of "ZONING BYLAW 2011 NO. 4500", in order to permit the location of a heat pump to the side yard of a single residential dwelling and vary the side yard setback from 4.5 m to 4.4 m from the side yard lot line.

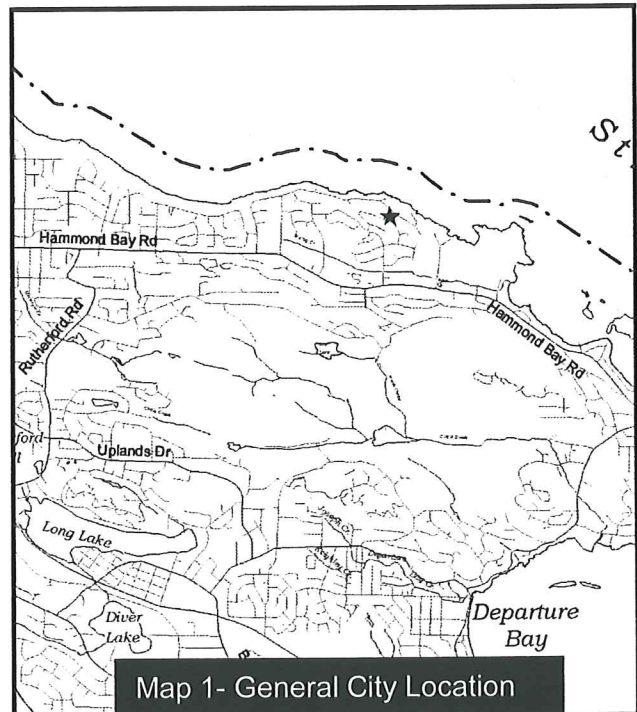
BACKGROUND:

A development variance permit (DVP) application was received from Richardson Homes Ltd. (Mr. Brad Richardson), on behalf of Mr. Paul Heising and Ms. Judith McFtridge, to vary the provisions of the City of Nanaimo "ZONING BYLAW 2011 NO. 4500" to permit the siting of a heat pump within the side yard.

At the Council Meeting held 2013-AUG-26, Council approved Statutory Notification for Development Variance Permit DVP00215. Statutory Notification must take place prior to Council's consideration for the approval of the variance.

DISCUSSION

The subject property, located at 5030 Banning Court, is included within a bare land strata subdivision. The property is included within the Townhouse Residential (R6) zone and is designated as Neighbourhood within the Official Community Plan (OCP). Given the bare land strata tenure of the property, in which the owner owns the surrounding property but the lot is accessed off a common strata road as opposed to a City road, the subject property is essentially a single dwelling residential lot.



The surrounding area is entirely low density residential with neighbouring bare land strata properties bordering the subject property along both side lot lines, and fee simple single dwelling residential lots bordering the property along the rear lot line. The subject property includes a recently constructed single residential dwelling which was built on a steep slope, which runs downhill approximately 16 m from the front yard to the rear.

Board of Variance

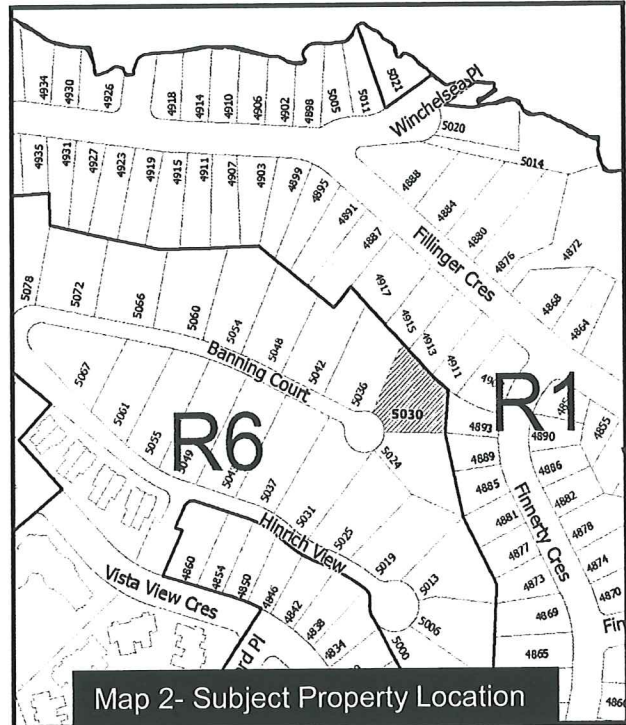
The applicant has previously applied to the Board of Variance (BOV) to permit the placement of the heat pump within the side yard. At the meeting of 2013-JUN-20, the variance request was denied as a result of a 2-2 tie vote. The Board members who voted against the appeal did not believe the request to be a hardship.

The BOV is required to find that undue hardship would be caused to the applicant if the bylaw was complied with. When considering whether or not to approve a DVP application, Council is not required to consider hardship.

An applicant who has been previously denied by the BOV is entitled to apply for a DVP for the same or a similar variance request. This should not be considered an appeal to the BOV decision, but as a separate application which may be deliberated on accounting for different criteria.

Proposed Development

The existing single residential dwelling under construction includes a recently installed heat pump within the north-western side yard 4.4 m from the property line that borders the property at 5036 Banning Court. The property owners at 5036 Banning Court



Map 2- Subject Property Location

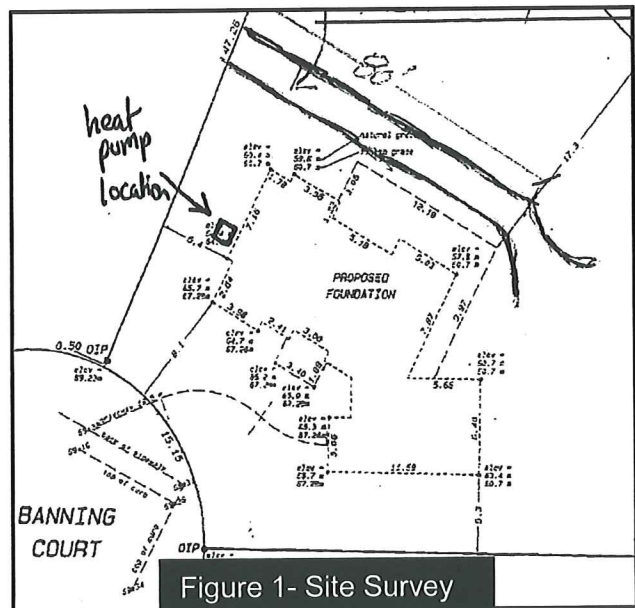


Figure 1- Site Survey

had previously indicated they have no concerns with the existing heat pump location or the requested variance to allow it. The heat pump is located behind a retaining wall and therefore is not visible from the road. A site survey indicating the location of the heat pump is included as Figure 1.

The dwelling itself was designed on pillars so that it is open underneath the two storeys. The applicant has advised that locating the heat pump within the rear yard, as required by the zoning bylaw, would result in greater noise disturbance for the property owner, as well as the neighbouring residents on Finnerty Crescent to the rear of the subject property. There are 2 to 7 foot high retaining walls in the rear yard area as shown on Figure 1 (Site Survey). A picture of the existing heat pump location is shown below as Figure 2, and northeast elevation drawing (the side the heat pump is located on) is also included as Figure 3. A photo of the rear of the building is included as Figure 4.

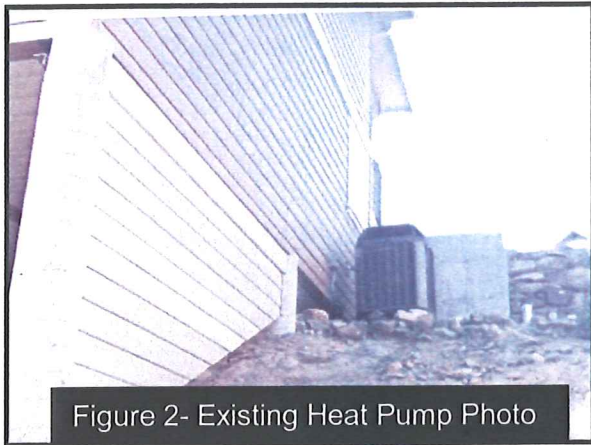


Figure 2- Existing Heat Pump Photo

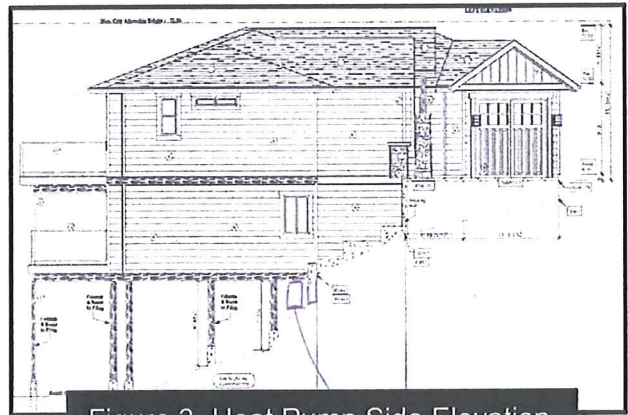


Figure 3- Heat Pump Side Elevation

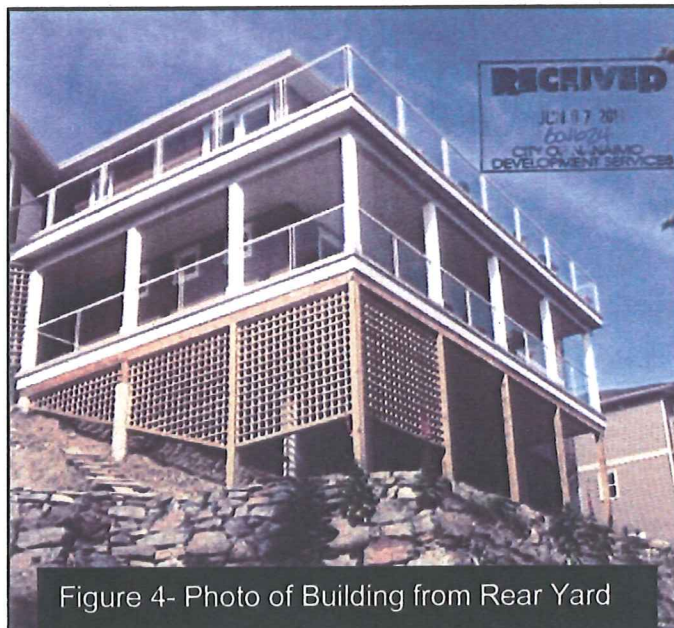


Figure 4- Photo of Building from Rear Yard

Applicants Rationale

A copy of the applicant's letter of rationale is included as Attachment A.

Required Variances

Section 6.5.2 of the City's Zoning Bylaw requires that where the principal use of a property is a single residential dwelling, heat pumps must be located to the rear of a principal building and shall not be closer than 4.5 m from the side lot lines. The proposed heat pump is located in the side yard and is 4.4 m from the side yard property line. A variance is required to permit the placement of a heat pump within a side yard and reduce the required side yard setback from 4.5 m to 4.4 m, a variance of 0.1 m.

STAFF COMMENT

On 2010-NOV-08, Council adopted a Zoning Bylaw amendment to regulate the siting of heat pumps on the property. The intent of the Zoning Amendment Bylaw was to prevent heat pumps from being located near neighbouring homes, thus reducing noise concerns.

The heat pump on the subject property is located only 0.1 m inside the required 4.5 m side yard setback, and is over 9 m from the closest neighbouring residence (5036 Banning Court). The heat pump is partially screened by a retaining wall. It is Staff's opinion that the current location of the heat pump will not result in any significant nuisance issues related to noise for the neighbouring property owners.

Staff supports the requested variance and recommends that Council approve this application.

Respectfully submitted,



B. Anderson, MCIP
MANAGER
PLANNING & DESIGN SECTION

Concurrence by:



A. Tucker, MCIP
DIRECTOR
PLANNING



Toby Seward
ACTING GENERAL MANAGER
COMMUNITY SAFETY & DEVELOPMENT

CITY MANAGER COMMENT:

I concur with the staff recommendation.

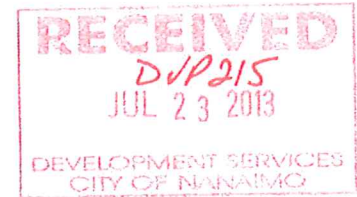
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ATTACHMENT A

VARIANCE RATIONALE FOR HEAT PUMP LOCATION

APPLICANT: Mr Brad Richardson (Richardson Homes Ltd) on behalf of Mr Paul Heising and Ms Judith McFatridge

CIVIC ADDRESS: 5030 Banning Court



LEGAL DESCRIPTION:

STRATA LOT 22, DISTRICT LOT 51, WELLINGTON DISTRICT,
STRATA PLAN VIS6310, TOGETHER WITH AN INTEREST IN
THE COMMON PROPERTY IN PROPORTION TO THE UNIT
ENTITLEMENT OF THE STRATA LOT AS SHOWN ON FORM V

RATIONALE:

- The relocation of the heat pump to the back of our home would have a substantial negative impact on the residents of Fillinger Crescent with respect to operating noise and visual appearance.
- The residents of Fillinger Crescent granted us a one time access to the "Private Road" at the back of the lot in order to build our house. If our relocated heat pump would require servicing, we may not be able to obtain access permission from the residents at Fillinger Crescent.
- The heat pump is presently located at the side of our house with a retaining wall in front of it, to present good curb appeal to other homes in our Strata development.
- The owners of the home next to us, Bonnie & Robin Oldring, 5036 Banning Court, have signed a document stating that they do not oppose the current location nor do they find it a hindrance.
- Relocating the heat pump from its current location would go from being a non-issue to residents to a negative effect on several homes outside of our Strata.
- Due to the steep slope of the lot and the associated challenges for the maintenance of the heat pump, we believe that the present unit location is the best compromise taking the impact to other residents adjacent to our home into account.

Monday, 22 July, 2013