

DATE OF MEETING March 19, 2018

AUTHORED BY DAVE STEWART, PLANNER, CURRENT PLANNING AND SUBDIVISION

**SUBJECT DEVELOPMENT VARIANCE PERMIT APPLICATION NO. DVP343 – 110 FRY STREET AND 114 FRY STREET**

## OVERVIEW

### **Purpose of Report**

To present for Council’s consideration, a development variance permit application to permit an over-height retaining wall and fence and the placement of two oversized containers on properties located at 110 Fry Street and 114 Fry Street.

### **Recommendation**

That Council issue Development Variance Permit No. DVP343 for 110 and 114 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 1 year;
- increase the maximum number of containers permitted on a property from one to two to be located at 110 Fry Street;
- 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; and,
- increase the maximum allowable height for a retaining wall/fence from 1.8m to 6.5m within the rear yard located at 114 Fry Street.

## BACKGROUND

A development variance permit application, DVP343, was received from Greenplan on behalf of W2 Enterprises Ltd., to vary the provisions of City of Nanaimo “Zoning Bylaw 2011 No. 4500” in order to permit an over-height retaining wall with a guardrail fence, and to legalize the siting of two oversized refrigerated shipping containers that were recently placed on the properties located at 110 Fry Street and 114 Fry Street.

### **Subject Properties**

<i>Zoning</i>	COR3 – Community Corridor
<i>Location</i>	The subject properties are located on Fry Street approximately 42m south of the intersection of Fry Street and Finlayson Street.
<i>Lot Size</i>	110 Fry Street- 808m <sup>2</sup> ; 114 Fry Street- 257m <sup>2</sup> Total Lot Area- 1065m <sup>2</sup>
<i>Official Community Plan</i>	Map 1 - Corridor
Neighbourhood Plan – South End Neighbourhood Plan	Corridor – Mixed Use

The subject area includes two separate properties under the same ownership. 110 Fry Street is 808m<sup>2</sup> in size while 114 Fry Street is a small narrow remnant property of 257m<sup>2</sup> located immediately south of 110 Fry Street. The properties are located on the opposite side of Fry Street from the ‘Robins Gardens’ housing development and one block west of the Assembly Wharf. With the exception of the recently located containers, both properties are currently vacant. The property owner also owns a warehouse building (Omni Foods) at 106 Fry Street immediately north of the subject area. On 2018-JAN-18, the roof of the warehouse building collapsed, so the property owner requires temporary storage to continue to operate while the existing building is repaired.

The subject properties are within a portion of the South End neighbourhood transitioning from historical industrial uses to mixed-use corridor uses. The properties were 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 Zoning Bylaw 4500 in 2011. Warehouse is recognized as a site-specific permitted use within the Zoning Bylaw for the subject properties. 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>Length of Temporary Use</b>	<b>Max Allowable Size of Container</b>	<b>No. of Containers Permitted on 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 properties are zoned Corridor, they are 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. The bylaw does not support the permanent use of shipping containers for warehouse or storage. Containers are generally prohibited as permanent structures as they do not meet fire safety requirements or require development cost charges and are not aesthetically appealing. In order to allow the temporary use of containers for storage a variance is required.

## Proposed Development

The owner of the subject properties 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 recently rented two refrigerated containers and located them along the property lines of both 110 Fry Street and 114 Fry Street. It is the owner's intent to warehouse items within the containers until the warehouse is repaired. During the one-year period, it is expected the applicant will repair the adjacent warehouse building and remove the containers.

Given the COR3 zoning of the property limits the size of a container to 20m<sup>2</sup> and the maximum length of time to 30 days, a number of variances are required to permit the location of the two 29m<sup>2</sup> containers on the lot.

On 2017-APR-24, Council approved a Development Variance Permit, DVP307, to allow the construction of an over-height retaining wall with a fence at 106 Fry Street and 110 Fry Street. The variance permits an increase in the maximum fence height for a rear yard retaining wall and fence from 1.8m to 6.5m. The retaining wall was necessary to retain the vertical bank, and the fence is proposed as a safety precaution for the neighbouring property at 115 Irwin Street, due to the 4.7m drop between the properties. Due to a misunderstanding in which properties were approved with the 2017 variance, the contractor has constructed the form work for a retaining wall on the 114 Fry Street property as well. The applicant is requesting the same variance previously approved for 110 Fry Street and 106 Fry Street be approved for 114 Fry Street to permit the retaining wall extension currently under construction to extend along the rear and south side property lines of 114 Fry Street.

## 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 the following variances to permit the placement of the containers:

- 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 one year;
- increase the maximum number of containers permitted on a property from one to two for the property located at 110 Fry Street; 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 for up to one year. If the variance is granted, the containers will be removed once final inspection of the warehouse is approved, or within one year of the approval of the development variance permit.

As the COR3 zone does not require side yard setbacks, no variance is required to allow the containers to straddle the lot line.

#### *Maximum Fence Height*

The maximum permitted height for a retaining wall/fence located in a rear yard is 1.8m. The proposed height of the retaining wall with fence is 6.5m, a proposed variance of 4.7m.

The proposed development is a 4.7m-high retaining wall to be located along the rear of the subject properties with a 1.8m-high wood fence placed directly on top of the retaining wall. The variance request is for the property at 114 Fry Street only and is identical to the fence height/ retaining wall variance previous approved for 110 Fry Street and 106 Fry Street on 2017-APR-24.

#### **SUMMARY POINTS**

- Development Variance Permit No. DVP343 proposes a number of variances to permit the placement of two refrigerated containers on 114 Fry Street and 110 Fry Street. The application also includes a variance to increase the maximum allowable height for a retaining wall with a fence in a rear yard for the property at 114 Fry Street.
- The containers are required to store previously-warehoused items until the owner's warehouse located 106 Fry Street is repaired.
- The retaining wall/ fence variance is identical to a previously-approved variance (DVP307) at 110 Fry Street and 106 Fry Street.

#### **ATTACHMENTS**

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

#### **Submitted by:**

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L. Rowett  
Manager, Current Planning and Subdivision

#### **Concurrence by:**

\_\_\_\_\_  
D. Lindsay  
Director, Community Development

# ATTACHMENT A PERMIT TERMS AND CONDITIONS

## TERMS OF PERMIT

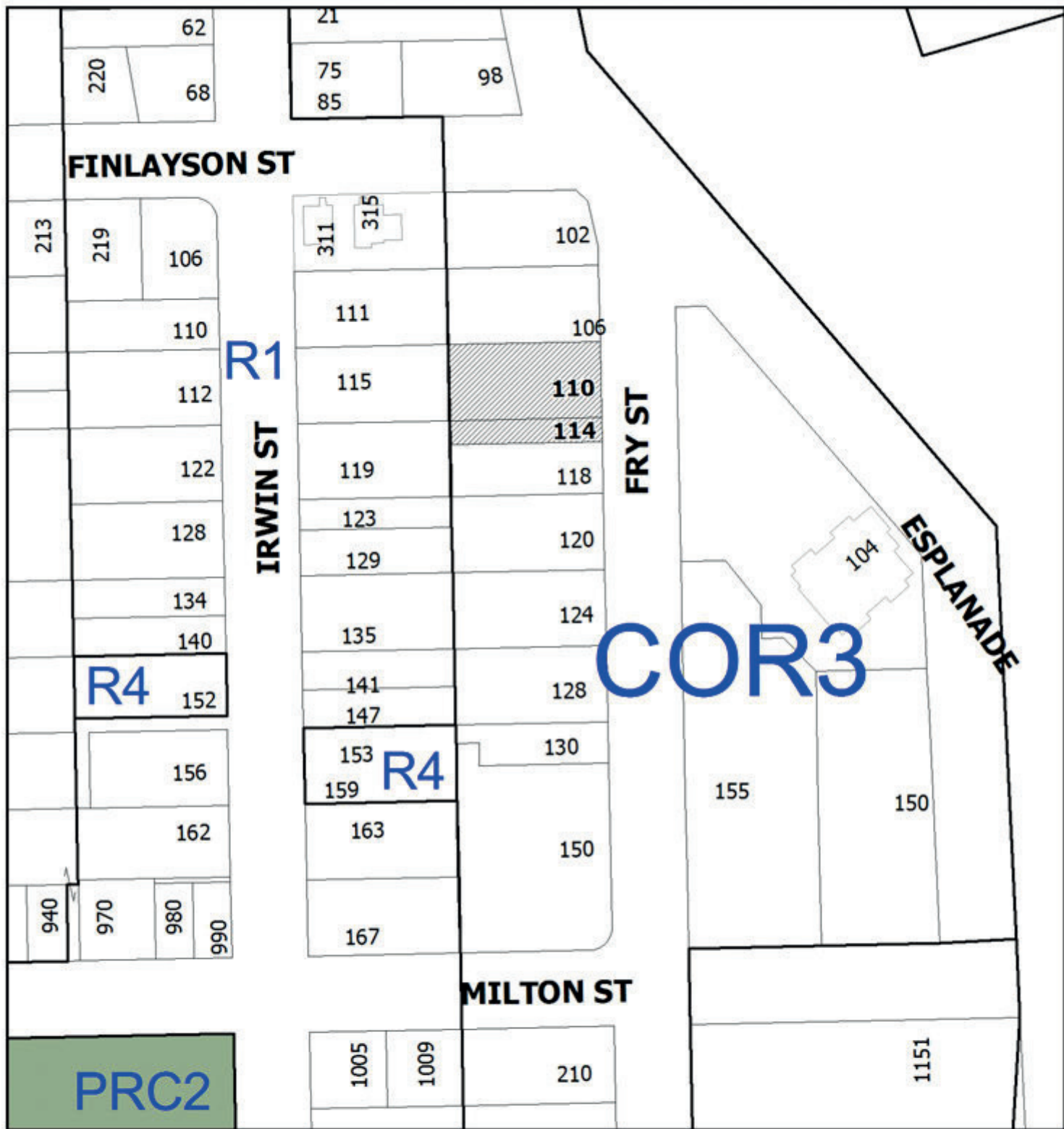
The City of Nanaimo "ZONING BYLAW 2011 NO. 4500" is varied as follows:

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 a property from 30 days to up to 1 year within a calendar year; and,
  - to increase the maximum number of containers permitted on a 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 on 110 and 114 Fry Street for a building or structure to permit the temporary placement of storage containers.
3. *Section 6.10.2 Fence Height* - to increase the maximum allowable height for a retaining wall/fence from 1.8m to 6.5m along the rear property line of 114 Fry Street.

## CONDITIONS OF PERMIT

1. The containers shall be removed from the property following the issuance of occupancy by the City of Building Inspections Department or by 2019-MAR-19, whichever date is lesser.
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. DVP00343



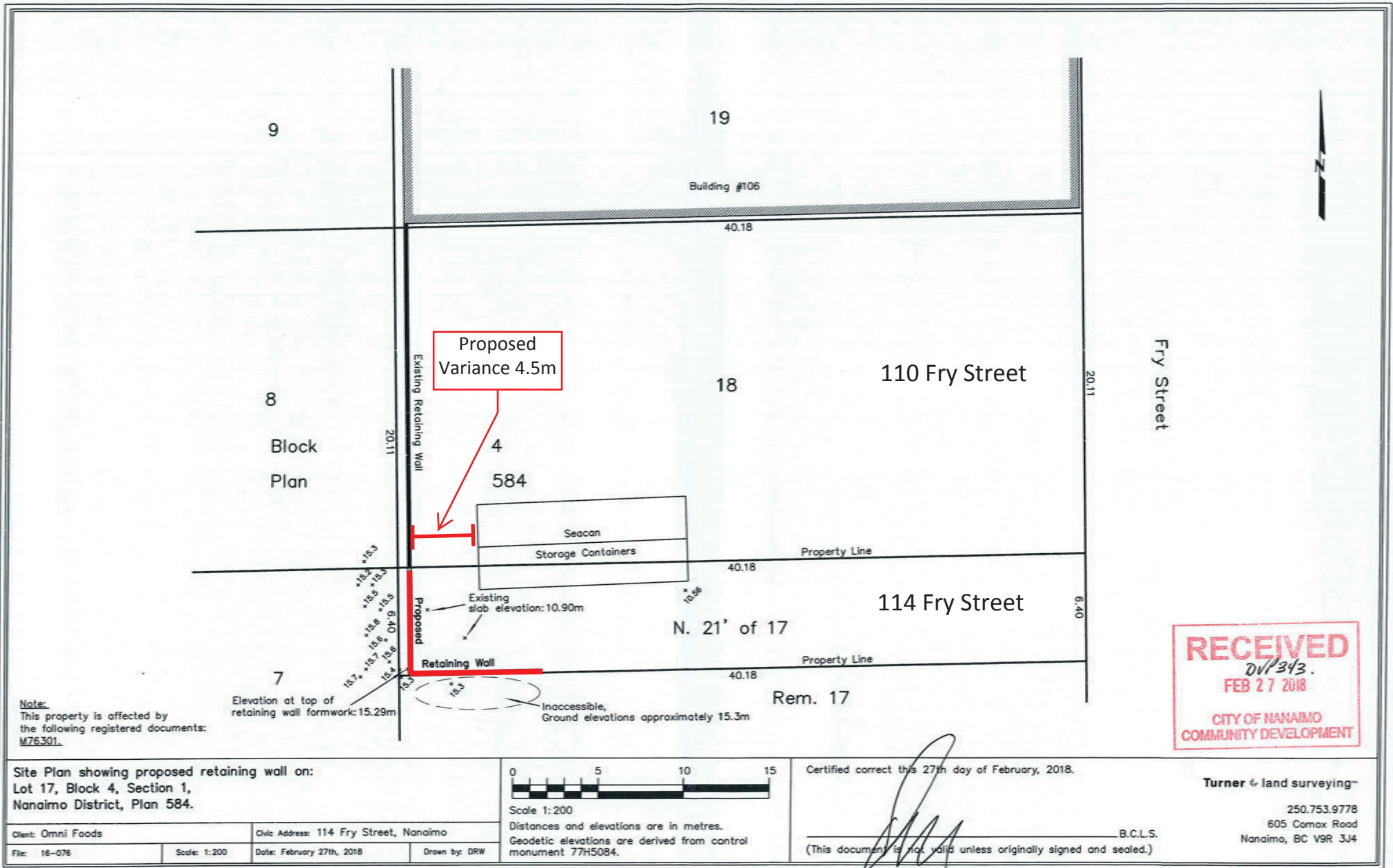
**LOCATION PLAN**

 **Subject Properties**

Civic: 110 and 114 Fry Street



# ATTACHMENT C SITE SURVEY



ATTACHMENT D  
AERIAL PHOTO



DEVELOPMENT VARIANCE PERMIT NO. DVP00343

