



The Corporation of the City of Courtenay

# Staff Report

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**To:** Council

**File No.:** 3090-20-2406/DVP00056

**From:** Director of Development Services

**Date:** October 23, 2024

**Subject:** Development Variance Permit Application No. 2406 – 1975 Cliffe Avenue

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## **PURPOSE:**

For Council to consider approval of Development Variance Permit No. 2406 to allow for the development of a three-storey, approximately 1,925m<sup>2</sup>, mixed-use commercial building at 1975 Cliffe Avenue (LOT A SECTION 68 COMOX DISTRICT PLAN EPP140351) which varies Zoning Bylaw No.2500, 2007 Division 8, Part 9, Multiple Use Two Zone (MU-2) for height, setbacks and landscape buffers.

## **BACKGROUND:**

The property owner of 1975 Cliffe Avenue is seeking variances to Zoning Bylaw No. 2500, 2007, Multiple Use Two Zone (MU-2), to construct a new three-storey, approximately 1,925 m<sup>2</sup> mixed-use building that will accommodate a day care for up to 183 children and a small amount (148m<sup>2</sup>) of complementary office space. The MU-2 zone permits a variety of residential, commercial and combined commercial residential uses. The proposed uses of 'day care' and 'office' are considered permitted commercial uses within the MU-2 zone. To facilitate the proposed development, the subject property consolidated two lots; 1959 and 1975 Cliffe Avenue and demolished an existing single residential dwelling.

To accommodate this proposed development the applicant is requesting to vary the Zoning Bylaw No.2500, 2007, Division 8, Part 9, Multiple Use Two Zone (MU-2) sections 8.14.5(2) rear yard setback, Section 8.14.5(3) side yard setback, 8.14.6 building height and 8.14.10(1) front yard landscape and 8.14.10(2) side yard landscape, to support the proposed design and site layout.

The requested variances are as follows:

- Section 8.14.5(2) rear yard setback from 7.5m to 1.0m,
- Section 8.14.5(3) side yard setback from 6.0m where the back of a building is adjacent to or faces a side lot line to 4.5m on the southeast side yard,
- Section 8.14.6(2) maximum building height from 10m to 16.0m,
- Section 8.14.10(1) landscaping area from 7.5m to 1.5m inside the Cliffe Avenue property line and,
- Section 8.14.10(2) landscaped buffer from 2.0m to 1.5m, with no height requirement, on the northwest property line.

Figure 1: Site Location



Figure 2: Subject Property



The subject property (see Figures 1 and 2 above) is designated *Urban Corridor* in the Official Community Plan (OCP) Bylaw No. 3070, 2022 and is located in the 'Urban Corridor' along Cliffe Avenue (between 11<sup>th</sup> Street and Anfield Road). This area is intended primarily to support a mix of land uses, including commercial and multi-residential housing to promote the establishment of complete communities. The day care and office space align with the designs by providing services for residents and employer/employees of the downtown and surrounding area for creating complete and focused areas of growth within Courtenay.

Adjacent lots to the north and south of the subject property are also designated as *Urban Corridor* and currently consist of small mixed use, commercial and residential buildings. The property fronts Cliffe Avenue to the east and is bound by a City laneway to the west, with multi-unit residential buildings across the lane.

The current grade of the subject property (see Figure 3) gradually increases an estimated two metres from the front to rear property line. The property also has a similar elevation change dropping south to north, making the northeast corner of the lot the low point of the property. The proposal grades the site for building and drainage purposes however there will remain a rise from Cliffe Avenue to the centre of the property of about 1.5 metres.

In conformance with Courtenay's Tree Protection and Management Bylaw No. 2850, 2006, at minimum 12 mature trees continue to exist on the site, mostly along the property's southerly side. All of the site's trees are subject to removal through a Tree Cutting Permit if Council approves the requested variances.

The proposed day care is classified as an 'institutional' use. In accordance with Courtenay's Development Permit Guidelines, institutional uses are exempt from DPA-1: Commercial Form and Character Development permits and no Development Permit is required. If Council approves the requested variances, the owner will be able to proceed with a Building Permit Application.

Figure 3: Existing site from Cliffe Avenue (prior to September 2024 demolition)



Figure 4: Rendering of proposed development from Cliffe Avenue



**DISCUSSION:**

The variances being considered are to support the proposal for a 3-storey commercial building intended to be occupied primarily by a day care up to 183 children and associated office (148m<sup>2</sup>). The proposed design includes parking area at grade, outdoor play areas for the day care and roof-top play area.

The MU-2 zone accounts for density through the combination of lot coverage and height; maximum coverage allowed is 40% of the total lot area for all buildings and accessory buildings and the maximum height of building is 10 metres.

The proposed development lot coverage is 29% of the total lot area and the applicant is requesting a building height variance to allow for up to 16 metres. The proposed building design (see Figure 4) shows the majority of the building will be under 16 metres in height, and when averaged, the volumetric measure is not greater

than what is permitted within the MU-2 zone. The variances do not affect the property’s density or use and no rezoning is required to facilitate the proposed development.

Rear and Side Yard Setbacks

The minimum required setbacks for the MU-2 zone are 7.5 m for the rear yard and 6.0 m for the side yard. The proposed setback for rear yard is 1.0 m, a requested variance of 6.5 m. The proposed setback for side yard is 4.5 m, a requested variance of 1.5 m.

The siting variances (rear and side yard building setbacks) would allow for an elongated building footprint and positions the front of the building facing the northwest interior lot line as opposed to Cliffe Avenue. This siting provides more privacy for the outdoor areas than would likely exist if the front of the building faced Cliffe Avenue and the rear of the building faced the lane. The proposed smaller building face, oriented towards the street, reduces the amount of massing along the Cliffe Avenue corridor. The proposed siting provides sufficient space for parking and supports good vehicle site circulation, with access to the site off Cliffe Avenue and the rear lane.

Height Allowance

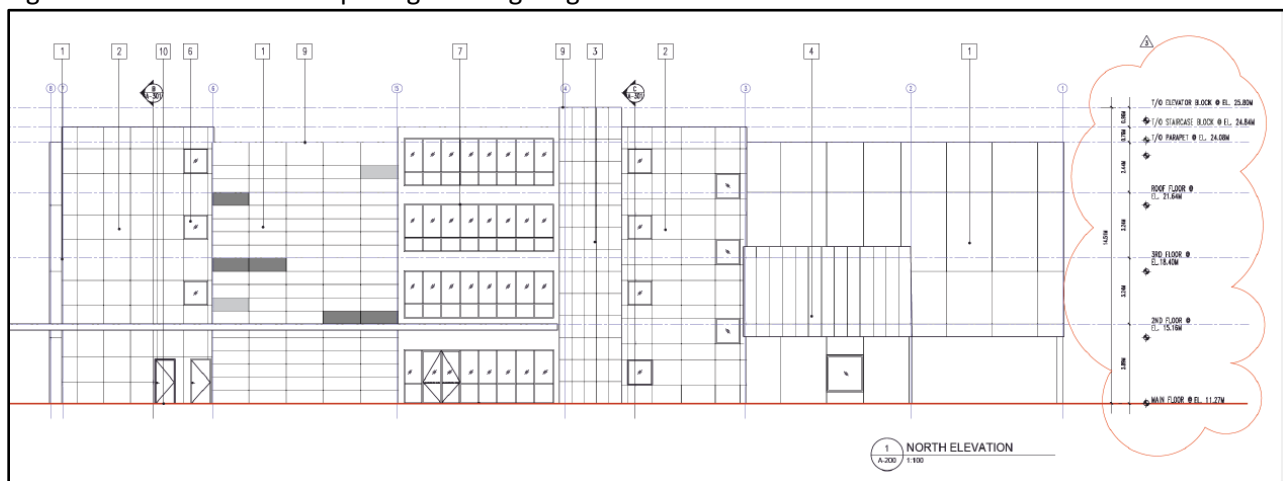
The maximum permitted height in the MU-2 Zone is 10.0 m. This proposal is requesting a 6.0 m variance to accommodate a 16.0 m building.

The floor of the building to the top of the highest part of the building (the elevator block) only rises about 15.0 m. The rest of the building’s roofline varies between 15.0 m to 12.8 m with articulation for the staircase blocks and parapets.

The need for an allowable height of 16 metres is the result of the site’s grading plan and how the Zoning Bylaw measures height. This technicality does not diminish the fact that from Cliffe Avenue especially, where the elevation is at its lowest, the building may be more imposing in its massing. However, the building provides good articulation, is setback nearly 10 metres from the front property line and the gentle rise in grade from the street to the building are likely to reduce the building’s perceived mass.

Table 1 (below) summarizes the requested variances.

Figure 5: North elevation depicting building heights



### Landscape Buffer

The minimum required landscape buffer areas for the MU-2 zone are 7.5 m inside the Cliffe Avenue property line and 2 m in width by 2 m in height along the inside of the property line where it adjoins a parking lot. The proposed setback for the Cliffe Avenue landscape buffer is 1.5 m, a requested variance of 6.0 m. The proposed landscape buffer for the northwest lot line where the parking lot adjoins the neighbouring lot is 1.5 m in width and 0.0 m in height, a requested variance of 0.5 m and 2.0 m.

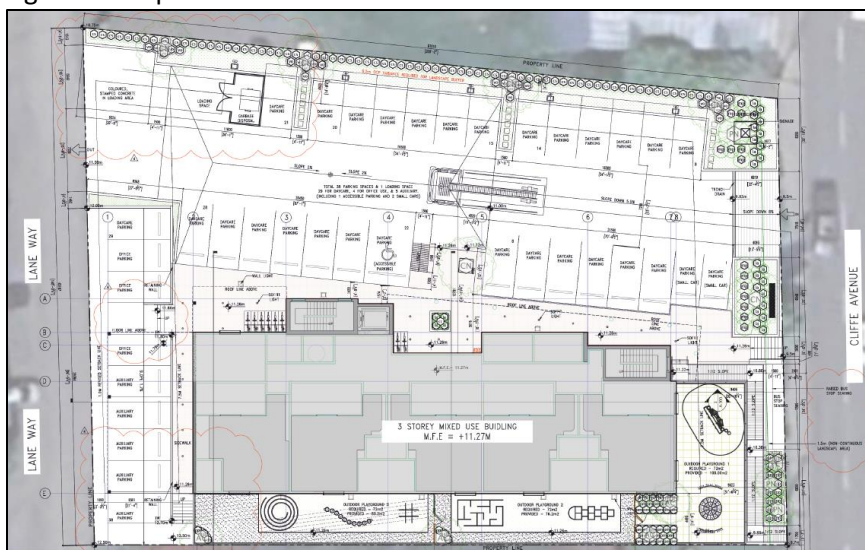
The landscape buffer along the north west property line is intended to separate parking from adjacent properties, particularly residential uses. Staff can support this request to reduce the landscape buffer from 2.0 m to 1.5 m in width and from 2.0 m to 0.0 m in height. The property adjacent to the parking lot is currently a mixed commercial, residential use. The proposal still provides a 1.5m buffer and portions of the buffer will continued to be screen by tress.

A landscape buffer variance along the Cliffe Avenue property is line from 7.5m to 1.5m is also requested. The older MU-2 zone requirements do not align with the described for Urban Corridors within the newer OCP. Constructing mid-rise to high-rise buildings along the Cliffe Avenue Corridor, including the parking required to support the development, can prove challenging if such a deep, continuous landscape buffer is required. Zones such as Commercial One (C-1), the dominant zone in Courtenay’s downtown core, require much less or in some cases no landscape buffer. These smaller landscape buffer requirements, particularly along a property line adjoining a street are more accommodating to the density and urban feel articulated in the OCP for areas such as the Cliffe Avenue corridor.

As shown in Figure 6, the requested variances allow a building height and siting so that:

- there is ample parking and good vehicle circulation on-site,
- the building can be built to a height that is supported by the OCP in this location without requiring a rezoning,
- there is less massing along the Cliffe Avenue corridor,
- there is greater privacy for outdoor play space associated with the building and proposed day care.

Figure 6: Proposed Site Plan



Staff support the variances being requested as reasonable, and that the variances support a design concept that the City’s guiding land-use policies encourage. The impacts of the variances are minimal to the surrounding properties based on mitigating factors such as building siting and landscaping and the current and future use of the properties on the block and Cliffe Avenue corridor more broadly. The maximum heights for zones in Courtenay’s Zoning Bylaw that permit commercial uses are currently too small to allow the mid- and high-rise forms that are supported in areas designed for density and growth (Town Centres and Urban Corridors) and therefore height variances are required.

Table 1: Summary of MU-2 zone regulations and the proposed variances

Regulation	Required	Proposed	Variance
Building Height	10.0 m	16.0 m	6.0 m
Rear yard Setback	7.5 m	1 m (upper story projection)	6.5 m
Side Yard Setback(s)	Southeast side: 6.0 m Northwest side: 4.5 m	Southeast side: 4.5 m Northwest side: > 4.5 m	1.5 m
Landscape Buffer	Front Yard (Cliffe Ave): 7.5 m	Front Yard (Cliffe Ave): 1.5 m	6.0 m
	Adjacent properties (Northwest): 2.0m wide and 2.0m height	Adjacent properties (Northwest): 1.5m wide and 2.0m height	0.5 m

Off-Street Parking and Loading Spaces

In accordance with Division 7, Zoning Bylaw, 33 vehicles stalls are required for the proposed size and uses (day care and office space). No bike parking is required under the bylaw. The proposal meets and exceeds this requirement by providing 37 vehicle parking stalls including one accessible stall and one loading space. The proposal also provides eight covered bicycle spaces; six spaces for long-term use in a secured and two short-term bicycle spaces are proposed for the front entrance.

To support the development proposal, a Traffic Impact Assessment (TIA) was provided to the City. The report details the increase in traffic that will be generated by the development but summarizes that the existing road network can handle the increase satisfactorily, without requiring improvements. The TIA recommends that access onto Cliffe Avenue be restricted to right-in/right-out only traffic. This recommendation forms a condition of the draft Development Variance Permit (see **Attachment 1**).

Due to the site’s location adjacent to a provincially Controlled Access Highway, the Ministry of Transportation and Infrastructure (MOTI) was engaged early in the processing of this application. MOTI did not require involvement in the TIA, nor did they require additional opportunity to comment. However, the development directly accesses Cliffe Avenue (Highway 19A), a highway use permit is required for the changes to the driveway. Proof of receipt of this provincial permit is a condition of the draft Development Variance Permit.

Other Landscaping Considerations

To ensure the minimum landscaping, screening and retention of trees and vegetation is met, a Landscape Security is required. Based on the cost estimate has been received from Donald Duncan Landscape Architect Design, dated September 5, 2024, a landscape bond for \$176,693.13 (\$141,354.50 x 125%) and is to be paid prior to the issuance of a Building Permit. This will form a condition of Development Variance Permit No. 2406.

The applicant has voluntarily offered to provide a seating area on the subject property as an amenity. During the building permit application process, details for the seating design will be finalized.

#### Tree Management and Protection Bylaw No. 2850

A Tree Cutting Permit (TCP) has been applied for and if Council approves the Development Variance Permit, the issuance of the TCP will be required to remove the 12 mature trees on-site, none of which are protected species. The proposal's landscape plan currently shows 10 trees to be planted, whereas the Tree Density Target (TDT) for this site is 12 trees. This means the applicant will also be required to pay \$600 (2 x \$300 per tree) cash in lieu for two replacement trees into the Tree Planting and Replacement Reserve Fund.

The arborist report provided by the applicant to support their Development Variance Permit and Tree Cutting Permit states five Douglas Firs within the neighbour's yard that are recommended for removal as a result of poor health due to overcrowding that can be improved through thinning. The applicant has been in communication with the neighbour about the potential for the removal of these trees to both of the property owners' potential benefit and the neighbour has agreed in principal to this future tree cutting while acknowledging they must adhere to the City's tree removal policy.

The site will benefit from four Vine Maples that do not count toward the Tree Density Target. Vine Maples are often multi-stem without a dominant trunk and don't always grow more than five metres. The Vine Maples are not counted as a tree as defined in the Tree Management bylaw but they can still offer similar tree values. It is the opinion of the project's landscape architect that the species is a good fit along the southerly property line where it won't create excessive shadowing in the area in consideration of the stand of Douglas Firs directly on the other side of the neighbour's property.

The landscape plan was also updated to respond to the comments from the City's in-house arborist. This led to the inclusion of six Garry Oaks, a recommended species as identified in Courtenay's Urban Forest Strategy.

#### Municipal Infrastructure

The property is connected to City sewer, water and storm water services. Through the Building Permit application, the applicant is required to identify and address any off-site infrastructure improvements necessary to permit the proposed development.

The City has also received a Lane Condition Assessment for the rear lane to review the need for potential frontage improvements for the public right-of-way. If required, these improvements will be collected through the Building Permit application process.

#### Sign Permit

The proposed development includes signage. The applicant has been notified that a separate Sign Permit will need to be applied for and issued in compliance with Sign Bylaw No. 2760, 2013, before any signs can be erected.

#### Conditions of the Development Variance Permit:

- Registration of a BC Hydro Statutory Right-of-Way prior to issuance of Building Permit that was identified as a requirement through the referral process
- Securing of a Ministry of Transportation and Infrastructure (MOTI) Access Permit prior to issuance of Building Permit

- Payment of landscape bond in the amount of \$176,693.13 (\$141,354.50 x 125%) prior to issuance of Building Permit
- Access onto Cliffe Avenue be restricted to right-in/right-out only. Appropriate signage and pavement markings must be provided on-site to make this clear to vehicle traffic and incorporated into the building permit drawings, prior to issuance of Building Permit

#### **POLICY ANALYSIS:**

##### Official Community Plan Review

The subject property is designated *Urban Corridor* within the Official Community Plan. If the variances are approved, the proposed redevelopment would support the realization of the following OCP polices:

- Land Use Policy #1: “Allocate all growth in a manner generally consistent with Map B-1: Land Use Designation Map, to meet Courtenay's 2050 net-zero greenhouse gas emissions target and support a compact urban form...”
- Land Use Policy #6: “Co-locate residential, commercial, institutional, and suitable employment-generating land uses in the Downtown, Town Centres & Urban Corridor, and Neighbourhood Centres.”
- Social Infrastructure Policy #9: “Work regionally to increase child care spaces as identified in the Comox Valley Child Care Action Plan (2019).”
- Local Economy Policy #10: “Support land uses that provide employment opportunities within or close proximity to the Town and Neighbourhood Centres and Corridors such as intensification of mixed-use office, retail, live-work studios and other commercial uses.”

#### **FINANCIAL IMPLICATIONS:**

Proceeding with the approval of this Development Variance Permit application has no financial implications to the City's Financial Plan 2024 – 2029.

#### **ADMINISTRATIVE IMPLICATIONS:**

Processing Development Variance Permit applications is a statutory component of the corporate work plan and a core duty of the Development Services Department. Work to date has primarily been carried out by Development Services staff, although other departments have provided referral comments.

#### **STRATEGIC PRIORITIES REFERENCE:**

This initiative addresses the following strategic priorities:

- Good Governance - Review and streamline development process and set targets for application processing times

#### **PUBLIC ENGAGEMENT:**

Per *Development Procedures Bylaw No. 2106, 2023*, no Community Information Meeting (CIM) is required for this Development Variance Permit Application.

In accordance with *Local Government Act Section 499*, Staff mailed a public notification to 164 property owners and occupants within a 30-metre area on October 11, 2024 (see **Attachment 3**). Zero (0) public comments have been received at time of writing this report. Comments received after this report will be presented to Council at the Regular Council meeting.



**OPTIONS:**

1. THAT Council vary the requirements of Zoning Bylaw No. 2500, 2007 as follows:
  - a) Section 8.14.5(2) rear yard setback from “7.5 m” to “1.0 m”,
  - b) Section 8.14.5(3) side yard setback where the back of a building is adjacent to or faces a side lot line from “6.0 m” to “4.5 m” on the southeast side yard,
  - c) Section 8.14.6 maximum building height from “10.0 m” to “16.0 m”,
  - d) Section 8.14.10(1) landscaping area from “7.5 m” to “1.5 m” inside the Cliffe Avenue property line and,
  - e) Section 8.14.10(2) landscaped buffer area along the northwest property line from “2.0 m” to “1.5 m in width” and from “2.0 m in height” to “0.0 m in height” along the northwest property line.THAT Council approve “Development Variance Permit No. 2406 (1975 Cliffe Avenue)”; and  
THAT Council direct the Director of Development Services to issue “Development Variance Permit No. 2406 (1975 Cliffe Avenue)”.
2. THAT Council defer and request additional information from Staff for “Development Variance Permit No. 2406 (1975 Cliffe Avenue)”.
3. THAT Council deny the the application for “Development Variance Permit No. 2406 (1975 Cliffe Avenue)” and provide a reason for denial.

**ATTACHMENTS:**

1. Draft Development Variance Permit No. 2406
2. Architectural Drawings
3. Public Mailout Notice

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Concurrence: Geoff Garbutt, M.Pl., MCIP, RPP, City Manager (CAO)