

JUAN DE FUCA BOARD OF VARIANCE

Notice of Meeting on Wednesday, **July 21, 2021 at 6:00 pm**

Juan de Fuca Local Area Services Building, #3 – 7450 Butler Road, Otter Point, BC

AGENDA

1. Approval of Agenda
2. Approval of the Supplementary Agenda
3. Adoption of Minutes of June 1, 2021
4. Planner's Report
5. Applications
 - a) BV000481 - Common Property, Section 89, Sooke District, Strata Plan VIS5949 (7020/7022 East Sooke Road)
 - b) BV000482 - Lot 121, Section 95, Renfrew District, Plan 26054 (2825 Denewood Place)
6. Adjournment

Please note that during the COVID-19 situation, the public may attend the meeting electronically through video or teleconference. Should you wish to attend, please contact us by email at jdfinfo@crd.bc.ca so that staff may forward meeting details. Written submissions continue to be accepted until 4:00 pm the day before the meeting.



Making a difference...together

Minutes of a Meeting of the Juan de Fuca Board of Variance
Held Tuesday, June 1, 2021, at the Juan de Fuca Local Area Services Building,
#3 – 7450 Butler Road, Otter Point, BC

PRESENT: Paul Clarkston (Chair), Brad Fitchett, Axel Joosting (EP)
Staff: Iain Lawrence, Manager, Juan de Fuca Community Planning (EP);
Regina Robinson, Planning Assistant; Wendy Miller, Recorder (EP)
PUBLIC: Approximately 7 EP

EP – Electronic Participation

The meeting was called to order at 6:00 pm.

1. Approval of the Agenda

MOVED by Axel Joosting, **SECONDED** by Brad Fitchett that the agenda be approved.

CARRIED

2. Approval of the Supplementary Agenda

MOVED by Brad Fitchett, **SECONDED** by Axel Joosting that the supplementary agenda be approved.

CARRIED

3. Adoption of the Minutes of April 2, 2021

MOVED by Brad Fitchett, **SECONDED** by Axel Joosting that the minutes of April 2, 2021, be adopted.

CARRIED

4. Planner's Report

No report.

5. Applications

a) BV000476 - Lot A, District Lot 243, Section 97, Sooke District, Plan EPP75600 (71 Seagirt Road)

Regina Robinson outlined the staff report and advised that the applicant is requesting relief from the Board of Variance (BOV) by reducing the front yard setback requirement for an accessory building from 15 m to 5 m, by reducing the flanking yard requirement from 6 m 'clear to sky' (CTS) to 3 m, and by increasing the total combined accessory building floor area on a parcel less than 2,000 m² for the purpose of constructing a two-storey detached garage and workshop from 60 m² to 88 m².

Regina Robinson highlighted the subject property, concept plans and variance request. It was advised that the owners have applied to the Ministry of Transportation and Infrastructure (MOTI) for a setback permit since the accessory building will be within 4.5 m of Seagirt Road.

Regina Robinson directed attention to the applicant's hardship statement as included in the staff report and to the three submissions of non-support included in the supplementary agenda.

The Chair confirmed that the applicants were in attendance.

The applicants stated that they concur with staff's overview and that they are available to answer any questions that BOV may have.

Eric Mattson, East Sooke, stated that the proposed structure is large and imposing.

The applicants responded to questions from the BOV advising that:

- they were aware that there was no detached garage when they purchased the property in 2018
- the proposed structure will not exceed height regulations
- the proposed building location is the only feasible location due to site limitations and existing accessory structures
- the second storey is proposed to accommodate tool space and minor storage
- the main living space is small and cannot accommodate accessory use
- two of the smaller sheds are proposed to be removed

BOV comments included:

- the proposed structure is tall and will be very visible from the road
- the site is small and already busy
- variances were requested and approved in past
- an additional variance is a big ask
- adjacent residents have expressed concerns including concern for the Seagirt Water District line

MOVED by Brad Fitchett, **SECONDED** by Axel Joosting that having considered the matters set out in Section 542(1)(c) of the *Local Government Act*, and having found that undue hardship would not be caused to the applicant if Part 2, Sections 4.01 (1)(d), (1)(h)(ii), and (2)(c) of Bylaw No. 2040 were complied with, application BV000476, requesting permission from the Board of Variance in accordance with Section 540 of the *Local Government Act* to vary the front yard requirement specified by Part 2, Section 4.01 (1)(d) of Bylaw No. 2040 from 15 m to 5 m, to vary the flanking yard requirement specified by Part 2, Section 4.01 (1)(h)(ii) from 6 m 'clear to sky' to 3 m, and to increase the maximum combined total floor area on a parcel less than 2,000 m², as specified by Part 2, Section 4.01 (2)(c), from 60 m² to 88 m², for a proposed two storey garage and workshop on Lot A, District Lot 243, Section 97, Sooke District, Plan EPP75600, is denied.

CARRIED

b) BV000477 - Lot 12, Section 78, Renfrew District, Plan VIP58128 (Cedar Coast Road/West Coast Road)

Regina Robinson outlined the staff report and advised that the applicant is requesting relief from the Board of Variance by reducing the front yard setback requirement from 15 m to 3 m for the purpose of constructing a dwelling.

Regina Robinson highlighted the subject property and site plan with variance request. It was advised that the dwelling will be located in a previously cleared area and is located as to avoid any development permit areas.

Regina Robinson directed attention to the applicant's hardship statement as included in the staff report and to the letter of support included in the supplementary agenda.

The Chair confirmed that the applicant was present and noted that the highway right-of-way for Cedar Coast Road appears to be very large.

Iain Lawrence responded to a question from the BOV advising that the opening of Cedar Coast Road falls to MOTI and that MOTI continues to discuss opening of the road with upland property owners and with the Juan de Fuca Community Parks and Recreation Program.

MOVED by Axel Joosting, **SECONDED** by Brad Fitchett that having considered the matters set out in Section 542(1)(c) of the *Local Government Act*, and having found that undue hardship would be caused to the applicant if Part 2, Section 3.07 of Bylaw No. 2040 were complied with, that application BV000477 requesting permission from the Board of Variance in accordance with Section 540 of the *Local Government Act* to vary Bylaw No. 2040, Part 2, Section 3.07 by reducing the required yard setback from 15 m to 3 m on Lot 12, Section 78, Renfrew District, Plan VIP58128, for a proposed dwelling, be approved and that if construction is not substantially started within 2 years after the date of this order, the order shall terminate.

CARRIED

c) BV000479 - Lot 1, Section 8, Otter District, Plan 22722 (11-8895 West Coast Road)

Iain Lawrence outlined the staff report and advised that the applicant is requesting that the BOV approve a minor variance to relieve hardship by permitting alterations to an existing non-confirming structure for the purpose of completing structural repairs.

Iain Lawrence directed attention to the applicant's hardship statement as included in the staff report and advised that:

- the *Local Government Act* stipulates that alterations to an existing non-confirming structure can only be approved by the BOV
- the property is considered legal non-confirming as it has fourteen one-family dwellings and the zone currently only allows up to three one-family dwellings
- if the BOV approves the request, a development permit with floodplain exemption application will be required in addition to a building permit
- no comments were received in response to the notice of intent mailed to adjacent property owners within 50 m of the subject property

The Chair confirmed that the applicants were present.

The applicants stated that they are pursuing all required permits to allow for continued use of the dwelling.

MOVED by Brad Fitchett, **SECONDED** by Axel Joosting that having considered the matters set out in Section 531(2)(c) of the *Local Government Act*, and having found that undue hardship would be caused to the applicant if Section 531(1) of the *Local Government Act*, were complied with, that application BV000479 requesting permission from the Board of Variance in accordance with Section 540 of the *Local Government Act* to complete structural alterations to an existing non-conforming cottage on Lot 1, Section 8, Otter District, Plan 22722, be approved and that if construction is not substantially started within 2 years after the date of this order, the order shall terminate.

CARRIED

d) BV000480 - Lot A, Section 53, Renfrew District, Plan EPP20739 (9908 West Coast Road)

Iain Lawrence outlined the staff report and advised that the applicant is requesting relief from the BOV by reducing the front yard setback requirement from 15 m to 6 m for the purpose of constructing a dwelling.

Iain Lawrence directed attention to the applicant's hardship statement as included in the staff report and advised that:

- a development permit with variance (DV000069) was approved to reduce the side yard setback from 15 m to 3 m to construct a home and related services
- the site plan drawings submitted for DV000069 indicated a proposed front yard setback of 19.5 m
- foundation location certificate for the proposed dwelling confirmed a front yard setback of 9.9 m
- the AF zone requires a 15 m front yard setback
- the owner has requested a variance to reduce the front yard setback to 6 m
- no comments were received in response to the notice of intent mailed to adjacent property owners within 50 m of the subject property

Iain Lawrence responded to a question from the BOV advising that lands required by MOTI for the highway improvement project were expropriated from the larger properties along West Coast Road.

The BOV noted the subject property's rocky terrain and steep slopes and acknowledged that the property would be unusable without the variance.

MOVED by Axel Joosting, **SECONDED** by Brad Fitchett that having considered the matters set out in Section 542(1)(c) of the *Local Government Act*, and having found that undue hardship would be caused to the applicant if Part 2, Section 3.07 of Bylaw No. 2040 were complied with, that application BV000480 requesting permission from the Board of Variance in accordance with Section 540 of the *Local Government Act* to vary Bylaw No. 2040, Part 2, Section 3.07 by reducing the required front yard setback from 15 m to 6 m on Lot A, Section 53, Renfrew District, Plan EPP20739, for a proposed dwelling, be approved and that if construction is not substantially started within 2 years after the date of this order, the order shall terminate.

CARRIED

6. Adjournment

The meeting was adjourned at 6:32 pm.

P. Clarkston, Chair



**REPORT TO THE JUAN DE FUCA BOARD OF VARIANCE
MEETING OF JULY 21, 2021**

File No: BV000481
Location: 7020/7022 East Sooke Road
Legal: Common Property, Section 89, Sooke District, Strata Plan VIS5949
Zoning: Rural Residential 6 (RR-6) – JdF Land Use Bylaw No. 2040
Land Use Designation: Settlement (S) – East Sooke OCP Bylaw No. 4000
Adjacent Uses: N – Sooke Harbour S – East Sooke Road
W – RR-6 parcel E – RR-6 parcel

REQUESTED VARIANCE

The applicant has requested that the Board of Variance approve a minor variance to relieve hardship, in accordance with Section 540(a) of the *Local Government Act (LGA)*, by reducing the rear and side yard setback requirements for accessory structures to authorize a deck.

LEGISLATIVE IMPLICATIONS

Section 542(1) of the *LGA* outlines that the Board of Variance may order that a minor variance be permitted from the requirements of the applicable bylaw, if the Board of Variance:

- (a) has heard from the applicant and any person notified under Section 541;
- (b) finds that undue hardship would be caused to the applicant if the bylaw or Section 531(1) is complied with; and
- (c) is of the opinion that the variance or exemption does not do any of the following:
 - (i) result in inappropriate development of the site;
 - (ii) adversely affect the natural environment;
 - (iii) substantially affect the use and enjoyment of adjacent land;
 - (iv) vary permitted uses and densities under the applicable bylaw;
 - (v) defeat the intent of the bylaw;
 - (vi) vary the application of an applicable bylaw in relation to residential rental tenure.

Section 542(3) of the *LGA* outlines that in relation to an order under Section 542(1),

- (a) if the order sets a time within which the construction of the building, structure or manufactured home park must be completed and the construction is not completed within that time, or
 - (b) if that construction is not substantially started within 2 years after the order was made, or within a longer or shorter time period established by the order,
- the permission or exemption terminates and the bylaw or section 531(1), as the case may be, applies.

STAFF COMMENTS

Background:

The 0.43 ha property is located at 7020/7022 East Sooke Road and is zoned Rural Residential (RR-6) in the Juan de Fuca Land Use Bylaw No. 2040 (Appendix A). Portions of the property are designated as Steep Slopes, and Shoreline Protection Development Permit Areas in the East Sooke Official Community Plan, Bylaw No. 4000.

There is an existing duplex constructed under building permit JD05-074 on the property; the building strata was registered after construction giving both sides of the duplex legal title with the remainder of the parcel shared as common property. In response to a stop work order through the Building Inspection department, Development Permit DP000334 was issued to legitimize an accessory building and deck within the Shoreline DP area after construction was completed. The professional reports provided in support of the development confirm that the structure is safe for the use intended and that the addition of the structure has had minimal impact to the shoreline.

Variance Request:

A location certificate survey provided for the development permit application confirms that the kayak shelter is sited in accordance with the accessory building regulations; however, relaxation of the side and rear yard setbacks are required since the deck is sited beyond the northernmost property boundary and 0.69 m from the lot line to the east (Appendices B and C). The owners propose to make minor alterations of the deck to amend the encroachment over the rear property boundary adjacent to the sea instead of undertaking a Crown Lease application through the Province to allow a structure to be partially located within the foreshore; either option involves a variance request for the rear yard setback to be reduced from 1 m to 0 m.

The owners have provided a statement of hardship indicating their rationale for the requested variances, including reluctance to undertake any modifications to the deck that require the foundation of the structure to be disturbed (Appendix D).

With the exception of the side and rear yard setbacks, the structure complies with all other requirements of the RR-6 zone and accessory building regulations. Proposed minor modifications to the deck to avoid the requirement for a Crown Lease application would not affect the development permit if the foundation of the structure remains intact and does not involve further disturbance of the land.

The variances are not anticipated to substantially alter the use and enjoyment of adjacent land. Pursuant to the Juan de Fuca Board of Variance Bylaw, Bylaw No. 4288, notification letters have been sent to the applicant, as well as to owners and occupants within 50 m of the subject property. Any responses received will be presented at the July 21, 2021, Board of Variance hearing.

If the Board of Variance finds that not granting the variance would result in undue hardship, considers the requested variance to be minor and finds that it meets the considerations of Section 542(1)(c) of the *LGA*, an order granting a minor variance may be permitted.

OUTLINE MOTION

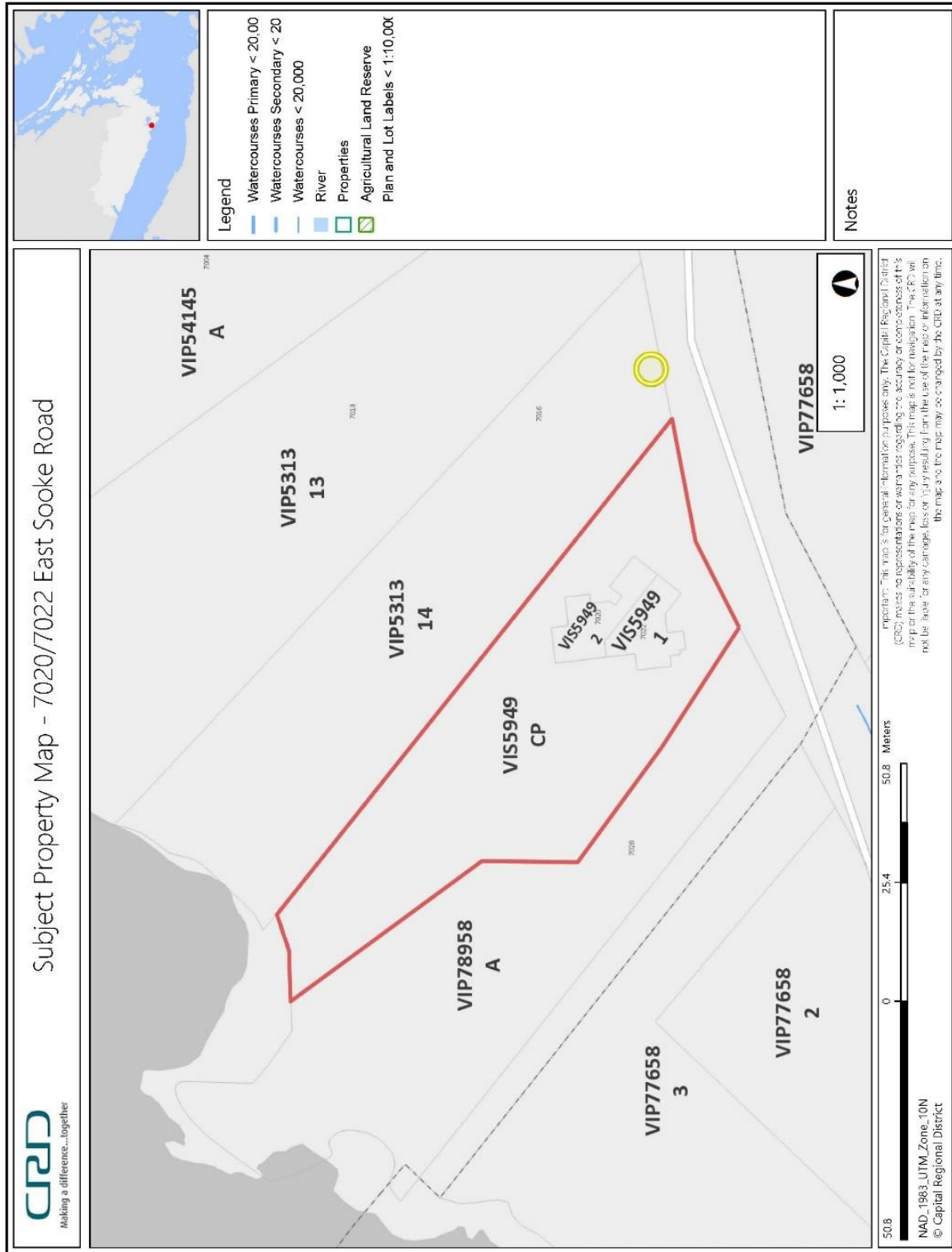
Having considered the matters set out in Section 542(1)(c) of the *Local Government Act*, and having found that undue hardship **<would/would not>** be caused to the applicant if Part 2, Section 4.01 (h) of Bylaw No. 2040 were complied with, that application BV000481 requesting permission from the Board of Variance in accordance with Section 540 of the *Local Government Act* to grant a minor variance to Bylaw No. 2040, Part 2, Section 4.01 (h)(i) by reducing the required side yard setback from 1 m to 0.69 m and the rear yard setback from 1 m to 0 m on the Common Property of Section 89, Sooke District, Strata Plan VIS5949, for a proposed deck, be **<approved/denied>** and that if construction is not substantially started within 2 years after the date of this order, the order shall terminate.

Submitted by:	Regina Robinson, Planning Assistant, JdF Community Planning
Concurrence:	Iain Lawrence, MCIP, RPP, Secretary to the Board of Variance

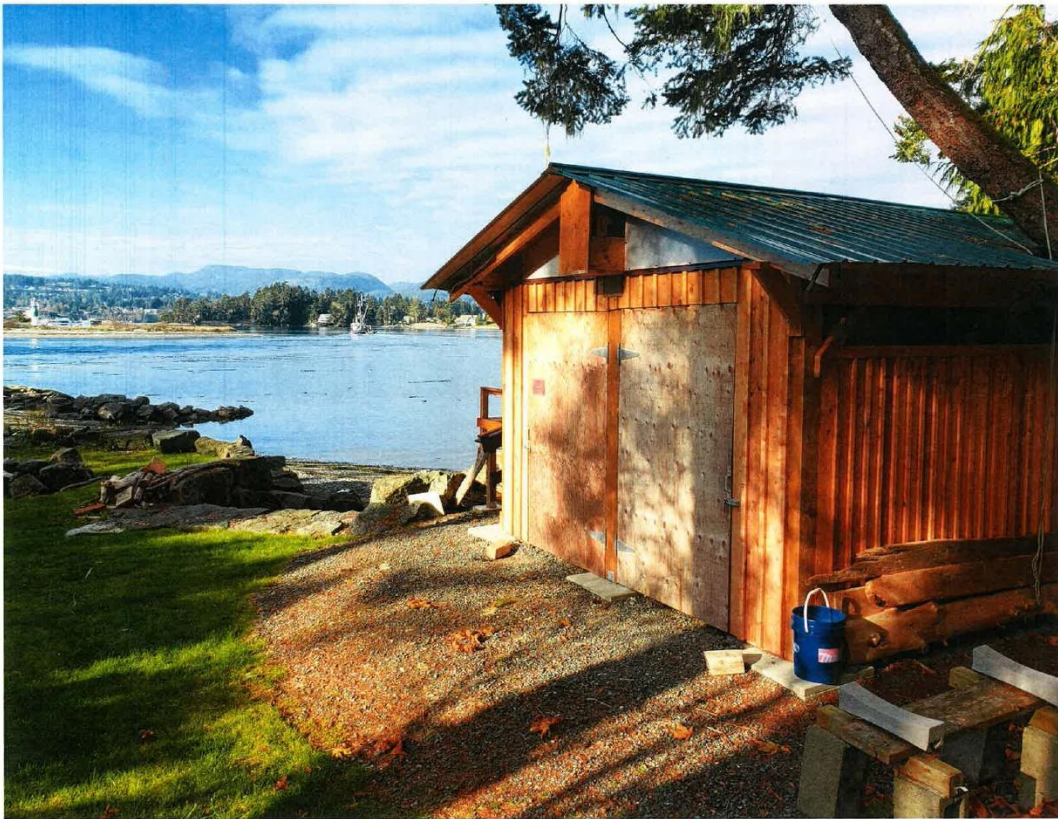
ATTACHMENTS

Appendix A: Subject Property Map
Appendix B: Site Visit Photos
Appendix C: Site Plan Survey and Variance Request
Appendix D: Hardship Statement from Applicant

Appendix A: Subject Property Map

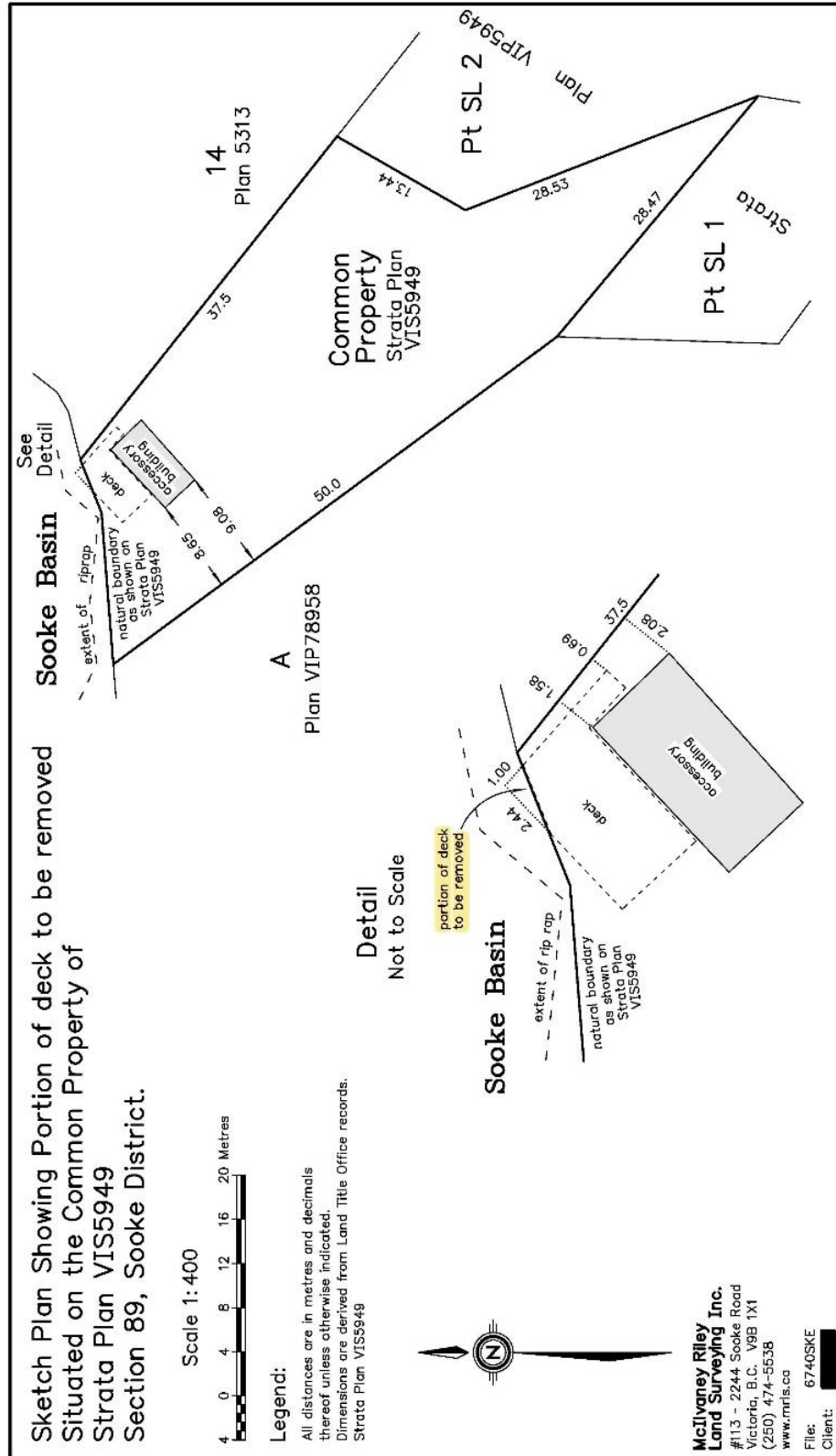


Appendix B: Site Visit Photos





Appendix C: Site Plan Survey and Variance Request



Appendix D: Hardship Letter from Applicant

Board of Variance Application for Deck at 7020/7022 East Sooke Rd.
Hardship Letter for Strata Owners VIS5949

We, the Applicants (Strata Owners), request a variance to the 1 M setback for side yard and the rear yard of our Common Property of our strata VIS5949 for a deck. The deck is already built. In order to meet the bylaw regarding set backs, the deck would need to be dismantled to move the main support beam back from the property line. See the attached drawings of the deck. To dismantle the deck in order to meet the 1 metre setback would be very expensive and require more disturbance of the ground. It also would not be supported by the Strata Owners. Rather, the Strata Owners are prepared to modify the deck so that no part of it extends past the property lines. This modification can be completed without any significant support structure modifications and virtually no disturbance to the ground area.

We would like to provide background information in order for the Board to make their decision.

The Strata has 3 different families sharing the common property (which include the kayak shelter and associated deck). These are the only facilities that the Strata Owners have that are near the water front. All of the Strata Owners are either retired or semi-retired. The cost for permits, structural engineering certificates and an environmental assessment has thus far has exceeded cost expectations for the Strata Owners (permitting costs are now greater than the cost of materials of the structures) and thus there is no support for any additional costs.

If approval for Variances are withheld then it is likely that the deck will be disassembled and not rebuilt and instead a stone hard scraped patio used.

Prior to building the kayak shelter and deck, the Strata Owners found 4 iron pins that we believed identified the bottom quadrant of the Common Property. It was just recently discovered that one of the pins was not correct. The Strata Owners did attempt to keep a 1 M setback but used an incorrect iron pin which falsely indicated that the high tide line on the riprap could be used as a proxy for the rear yard property line of the Common Property on which the deck was built. Rather, the correct pin was deeply buried and only discovered by the Surveyors after digging a significant bit. We would note that the pin we thought was the correct pin had the proper setback from it as we had taken care to ensure we were within the 1 M. It was only when the Surveyor found the deeply buried pin and we remeasured that about 1/4 of the deck does not comply with the 1 M setback. Unfortunately the support beam location for the deck makes it impossible to alter the deck to meet the setback without dismantling the entire deck.

The deck was built as low as was possible (6 inches above the grade of the base of the kayak shelter) and lies about the same height as the top of the riprap (in some places higher and others lower) so to better blend in to the natural landscape. The Strata Owners built a deck versus creating a hard scraped (eg patio) as they felt this

was less intrusive to the environment (more rainwater retained for the trees and nearby vegetation).

The owners of the neighboring property (bordering on to the deck and potentially most impacted), have provided a letter of support for the the kayak shelter and deck. The other next door property (more distant) has been vacant for a number of years.

Yours truly,

[REDACTED]

[REDACTED] on his own behalf and on behalf of [REDACTED]
[REDACTED] (the other Strata Owners).



**REPORT TO THE JUAN DE FUCA BOARD OF VARIANCE
MEETING OF JULY 21, 2021**

File No: BV000482
Location: 2825 Denewood Place
Legal: Lot 121, Section 95, Renfrew District, Plan 26054
Zoning: Rural Residential 2 (RR-2) – JdF Land Use Bylaw No. 2040
Land Use Designation: Settlement (S) – Shirley – Jordan River OCP Bylaw No. 4001
Adjacent Uses: N – Rural Residential (RR-2) parcel
E – Forestry (AF) parcel
S – Rural Residential (RR-2) parcel
W – Denewood Place

REQUESTED VARIANCE

The applicant has requested that the Board of Variance approve a minor variance to relieve hardship, in accordance with Section 540(a) of the *Local Government Act (LGA)*, by increasing the maximum height for an accessory building used for a detached suite from 7 m to 8 m to the peak of the roof.

LEGISLATIVE IMPLICATIONS

Section 542(1) of the *LGA* outlines that the Board of Variance may order that a minor variance be permitted from the requirements of the applicable bylaw, if the Board of Variance:

- (a) has heard from the applicant and any person notified under Section 541;
- (b) finds that undue hardship would be caused to the applicant if the bylaw or Section 531(1) is complied with; and
- (c) is of the opinion that the variance or exemption does not do any of the following:
 - (i) result in inappropriate development of the site;
 - (ii) adversely affect the natural environment;
 - (iii) substantially affect the use and enjoyment of adjacent land;
 - (iv) vary permitted uses and densities under the applicable bylaw;
 - (v) defeat the intent of the bylaw;
 - (vi) vary the application of an applicable bylaw in relation to residential rental tenure.

Section 542(3) of the *LGA* outlines that in relation to an order under Section 542(1),

- (a) if the order sets a time within which the construction of the building, structure or manufactured home park must be completed and the construction is not completed within that time, or
- (b) if that construction is not substantially started within 2 years after the order was made, or within a longer or shorter time period established by the order, the permission or exemption terminates and the bylaw or section 531(1), as the case may be, applies.

STAFF COMMENTS

The 0.49 ha property is located on 2825 Denewood Place and is zoned Rural Residential (RR-2) in the Juan de Fuca Land Use Bylaw No. 2040 (Appendix A). The Sheringham Estates neighbourhood, in which the subject property is located, consists of 128 parcels ranging in size from 0.3 ha to 1.8 ha, with the majority of parcels being approximately 0.4 ha.

A single family dwelling was constructed on the subject property in 1991 (Building Permit # 37830) in compliance with the RR-2 zone regulations. In 2008, a development variance permit (VA000061) was granted for a proposed 53.6 m² accessory building with an increased height allowance; however, the approved variance and associated building permit (Building Permit # JD09-050) were not completed and subsequently lapsed. A currently unauthorized outbuilding will be removed to allow the new building to be constructed in the same location. There are also two smaller sheds not included on the site plan that are located to the south of the dwelling, approximately 10 m from the rear lot line. The smallest shed is in poor condition and will be removed.

BV000473 was recently approved by the Board of Variance to increase the maximum combined total floor area allowance for accessory buildings and structures from 100 m² to 186 m² on a lot with an area of more than 2,000 m² and less than 5,000 m² (Appendix C). Development Permit DP000337 was issued to authorize construction of the proposed accessory building in a designated Riparian Area after Planning staff became aware of an unmapped seasonal creek bisecting the parcel.

Updated plans for the structure, prepared by West Coast Design and Development Services, show a two-storey accessory building with a total floor area of 161.55 m² and an 11.67 m² uncovered deck (Appendix B). The proposed changes still conform to the yard requirements of the general regulations for accessory buildings, and the combined footprint of all buildings located on the property is less than the 25% lot coverage allowance specified by the RR-2 zone; however, the new design does not meet the 7 m height requirement.

The owner is requesting a variance to increase the permitted height of an accessory building used for a detached suite to 8 m. The owner has provided a statement of hardship indicating that the rationale for the requested variance is that they would like the roofline to match the pitch of the existing house on the parcel (Appendix E).

The updated proposal meets the conditions outlined in DP000337 for works within a Riparian designated area and no additional environmental impacts are expected from the changes. Based on the overall modifications to the design, it is anticipated that the character and massing of the building will still be in keeping with other structures in the neighbourhood.

Pursuant to the Juan de Fuca Board of Variance Bylaw, Bylaw No. 4288, notification letters have been sent to the applicant, as well as to owners and occupants within 50 m of the subject property. Any responses received will be presented at the July 21, 2021, Board of Variance hearing.

If the Board of Variance finds that not granting the variance would result in undue hardship, considers the requested variances to be minor and finds that it meets the considerations of section 542(1)(c), an order granting a minor variance may be permitted.

OUTLINE MOTION

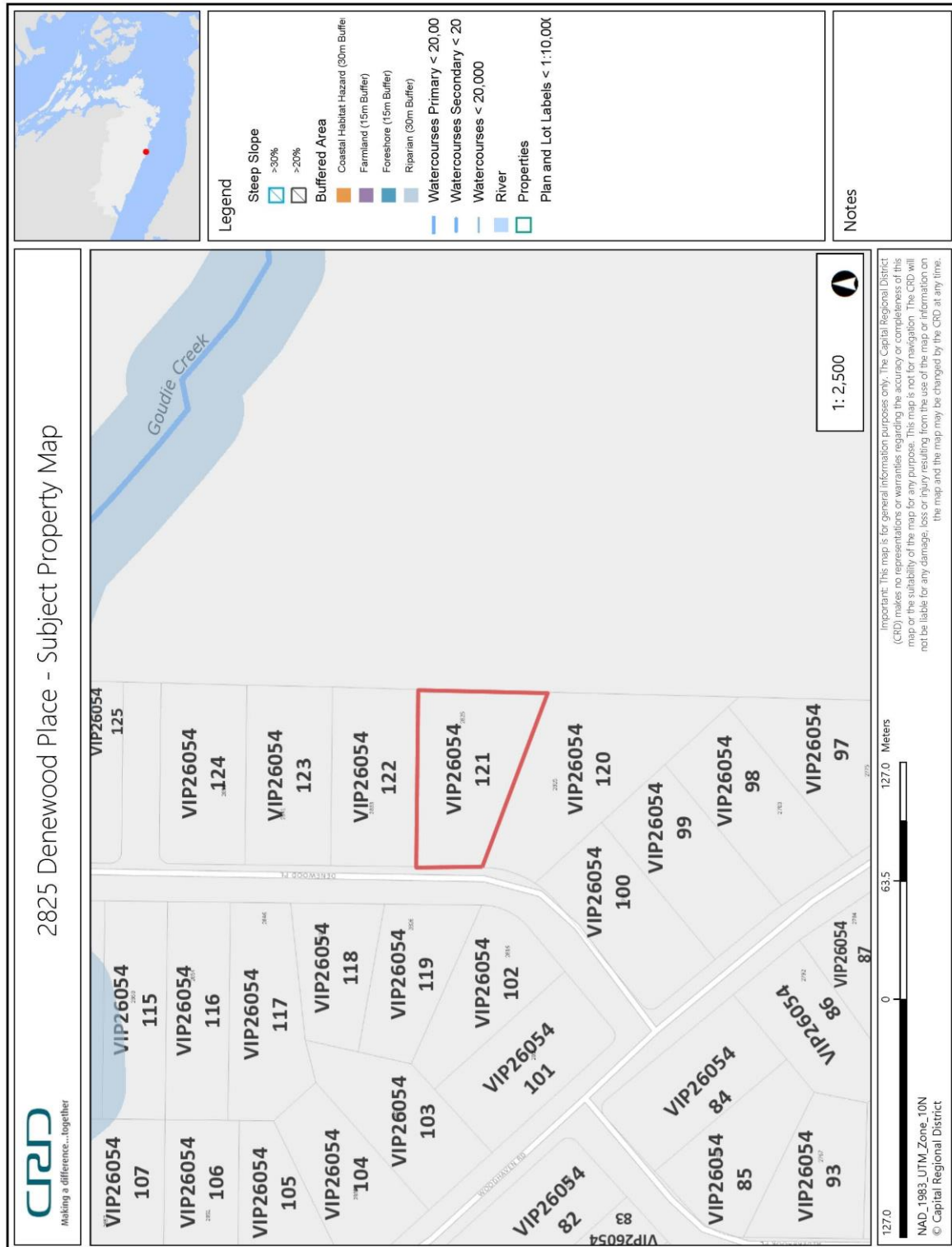
Having considered the matters set out in Section 542(1)(c) of the *Local Government Act*, and having found that undue hardship **<would/would not>** be caused to the applicant if Part 1, Section 4.20 of Bylaw No. 2040 were complied with, that application BV000482 requesting permission from the Board of Variance in accordance with Section 540 of the *Local Government Act* to grant a minor variance to Bylaw No. 2040, Part 1, Section 4.20(g) by increasing the maximum height of an accessory building used for a detached accessory suite from 7 m to 8 m, on Lot 121, Section 95, Renfrew District, Plan 26054, for a proposed detached accessory suite and garage, be **<approved/denied>** and that if construction is not substantially started within 2 years after the date of this order, the order shall terminate.

Submitted by:	Regina Robinson, Planning Assistant, JdF Community Planning
Concurrence:	Iain Lawrence, MCIP, RPP, Secretary to the Board of Variance

ATTACHMENTS

Appendix A: Subject Property Map
Appendix B: Site Plan
Appendix C: Updated Building Plans and Elevations
Appendix D: Plans Approved for BV000473
Appendix E: Hardship Letter from Applicant

Appendix A: Subject Property Map

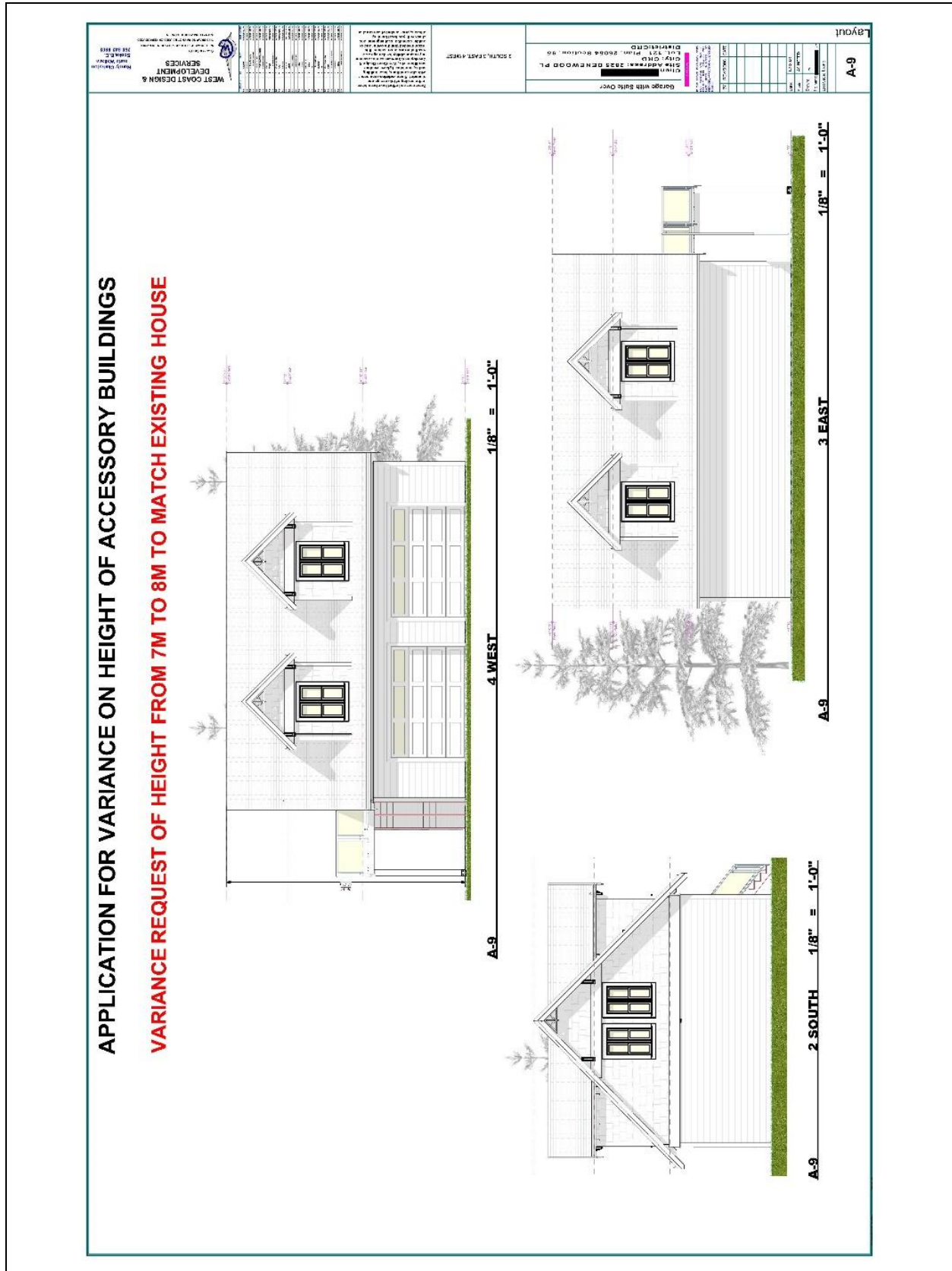


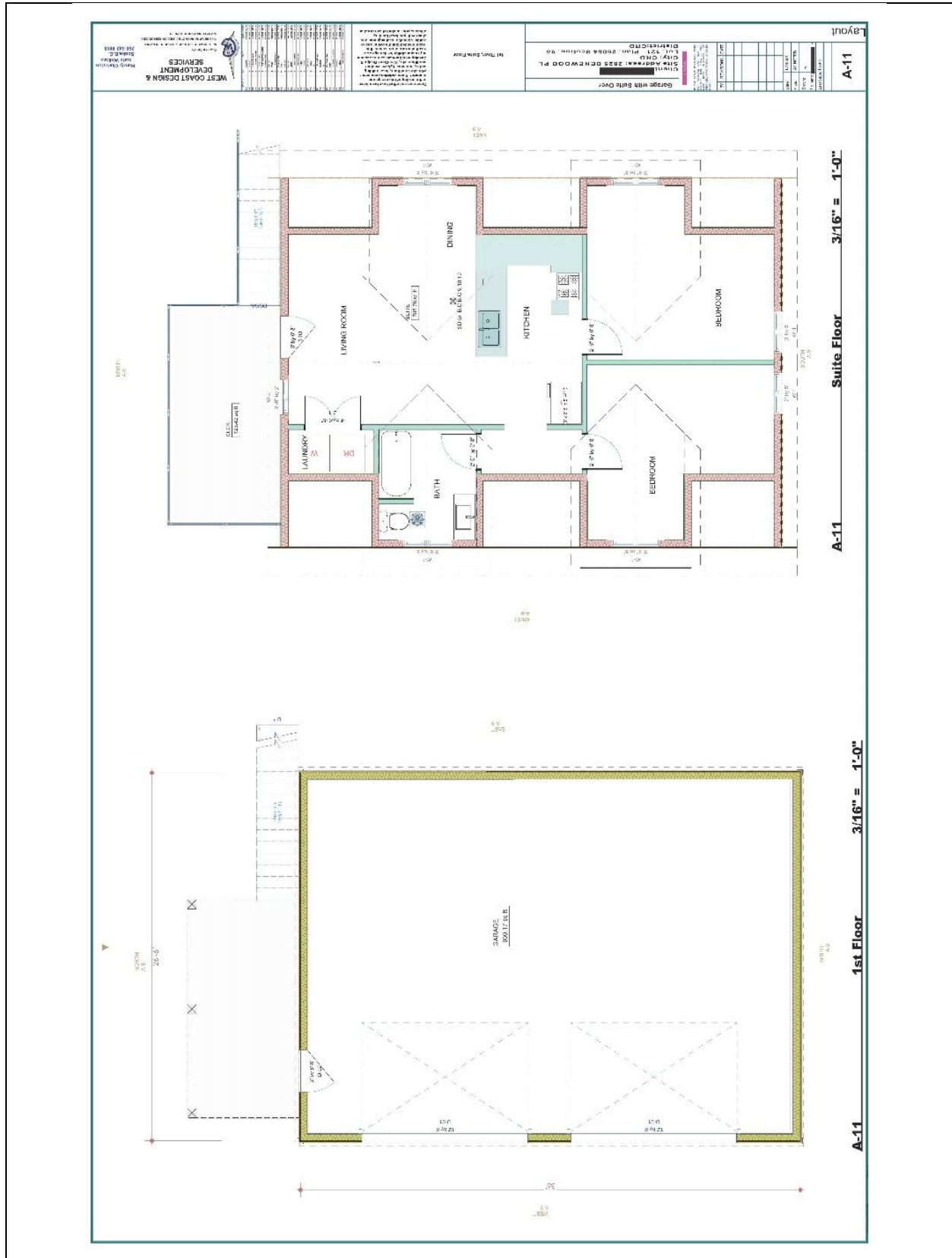
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APPLICATION FOR VARIANCE ON HEIGHT OF ACCESSORY BUILDINGS

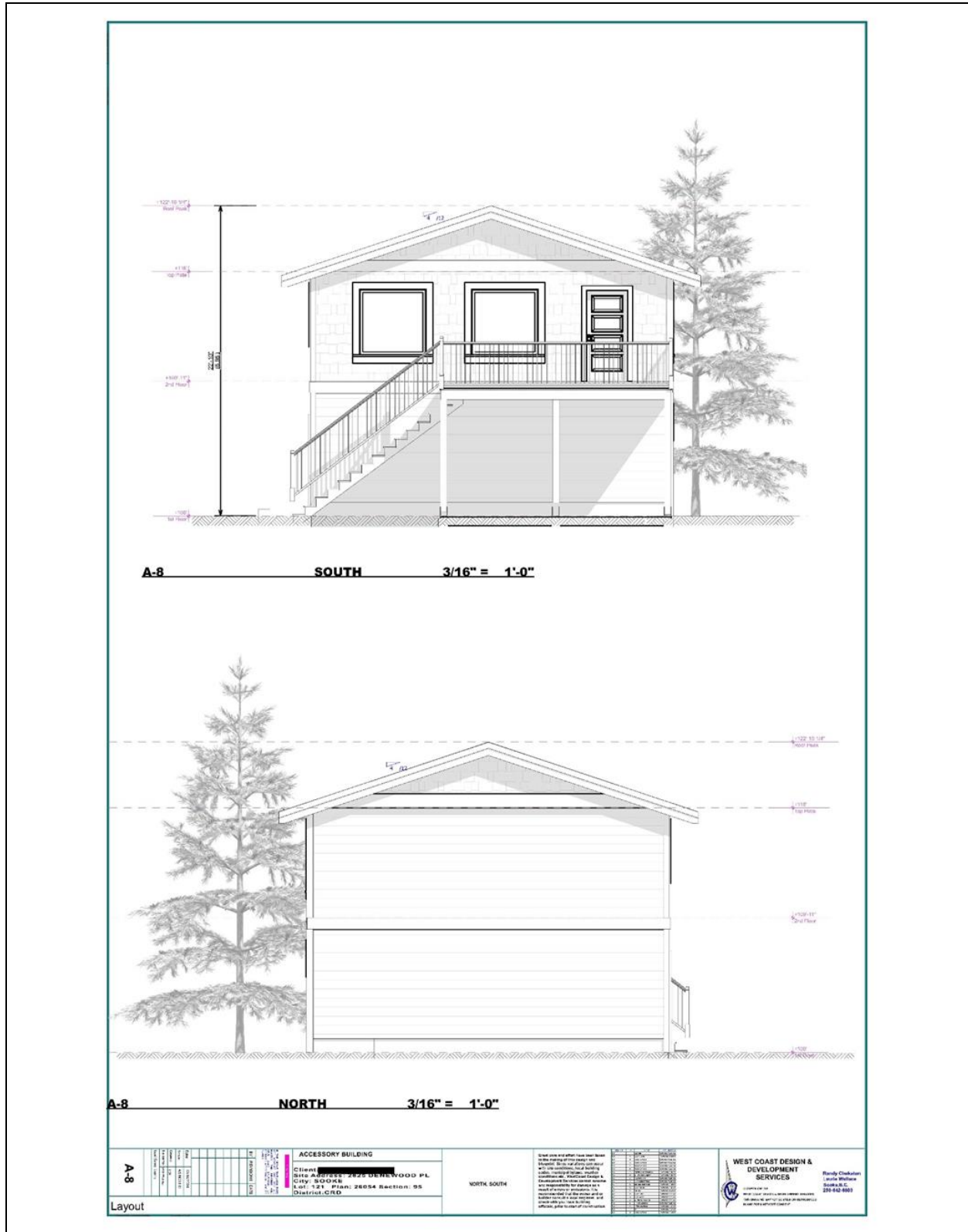
VARIANCE REQUEST OF HEIGHT FROM 7M TO 8M TO MATCH EXISTING HOUSE

A-8 **1 NORTH** **1/4" = 1'-0"** **PAGE 2**





Appendix D: Building Elevations Approved by BV000473





Appendix E: Hardship Letter from Applicant

Letter of Hardship,

I am building a shop with a detached suite. I would like it to match my house roofline with a 12 12 pitch. This will cause me to be slightly higher than allowed from 7meters to 8 meters. There are no view issues with the neighbors either. Thx. [REDACTED]