

JUAN DE FUCA BOARD OF VARIANCE

Notice of Meeting on Monday, **November 14, 2022, 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 May 16, 2022
4. Planner's Report
5. Applications
 - a) BV000489 - Lot A, Section 7, Otter District, Plan VIP75055 (8709 West Coast Road)
 - b) BV000490 - Lot 6, Section 77, Renfrew District, Plan VIP58128 (Juan de Fuca Road/West Coast Road)
6. Adjournment

PLEASE NOTE: The public may attend the meeting in-person or electronically through video or teleconference. To attend electronically, please contact us by email at jdfinfo@crd.bc.ca so that staff may forward meeting details.



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Minutes of a Meeting of the Juan de Fuca Board of Variance
Held Monday, May 16, 2022, at the Juan de Fuca Local Area Services Building,
#3 – 7450 Butler Road, Otter Point, BC

PRESENT: Paul Clarkston (Chair), Axel Joosting (EP)
Staff: Iain Lawrence, Senior Manager, JdF Local Area Services (EP)
Wendy Miller, Recorder
ABSENT: Brad Fitchett
PUBLIC: 2

EP – Electronic Participation

The meeting was called to order at 6:05 pm.

1. Approval of the Agenda

MOVED by Axel Joosting, **SECONDED** by Paul Clarkston that the agenda be approved.

CARRIED

2. Approval of the Supplementary Agenda

No supplementary items.

3. Adoption of the Minutes of March 16, 2022

MOVED by Axel Joosting, **SECONDED** by Paul Clarkston that the minutes of March 16, 2022, be adopted.

CARRIED

4. Planner's Report

Iain Lawrence reported that Darren Lucas will be starting on May 30, 2022, filling the Planner position that has been vacant since January.

5. Application

a) BV000488 - Lot 1, Section 110, Sooke District, Plan 24649 (1292 Covina Drive)

Iain Lawrence outlined the staff report and advised that the applicant has requested a variance to reduce the required front yard setback for a single-family dwelling from 7.5 m to 1.7 m to permit the conversion of an accessory building to a single-family dwelling.

Iain Lawrence highlighted the subject property, site plan and photo from a site visit attended by staff which shows the public access to the foreshore that runs parallel to the subject property. It was reported that applicant has applied to the Ministry of Transportation and Infrastructure for a setback permit since the building is proposed to be located within 4.5 m of Covina Place. It was further reported that future interests in the right-of-way by the CRD for public access to the foreshore are not anticipated to be affected by the reduced setback as the dwelling would be physically separated from the access by a row of large, mature trees located within the right-of-way.

Iain Lawrence directed attention to the applicant's hardship statement as included in the staff report and confirmed that 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 confirmed that the applicant was present.

Iain Lawrence responded to a question from the BOV to advise that there is no building permit history for the two existing buildings.

MOVED by Axel Joosting, **SECONDED** by Paul Clarkston that having considered the matters set out in Section 542(1) of the *Local Government Act*, and having found that undue hardship would be caused to the applicant if Bylaw No. 2040 were complied with, the Board of Variance hereby orders that a minor variance to Bylaw No. 2040, Part 2, Section 4.10(a), by reducing the required front yard setback for a single-family dwelling from 7.5 m to 1.7 m on Lot 1, Section 110, Sooke District, Plan 24649, be permitted, 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 6:14 pm.

P. Clarkston, Chair



**REPORT TO THE JUAN DE FUCA BOARD OF VARIANCE
MEETING OF NOVEMBER 14, 2022**

File No: BV000489
Location: 8709 West Coast Road
Legal: Lot A, Section 7, Otter District, Plan VIP75055
PID: 025-664-468
Zoning: Gordon's Beach Recreation Residential 4 Zone (R-4)
JdF Land Use Bylaw No. 2040
Land Use Designation: Settlement Area 1 (SA-1)
Otter Point Official Community Plan (OCP) Bylaw No. 3819
Adjacent Uses: W – Pacific Ocean E – AG zoned parcels
N – RR-OB zoned parcel S – RR-3 zoned parcels

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 front yard setback requirement for the principle building in the R-4 zone for the purpose of completing construction of a one-family dwelling with an attached accessory building.

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:

8709 West Coast Road (the subject property) is located within a 1.9 ha parcel (the parcel) that contains multiple residences (8645-8749 West Coast Road) in Otter Point (Appendix A). The parcel is zoned Gordon's Beach Recreation Residential 4 (R-4) under the Juan de Fuca Land Use Bylaw, 1992, Bylaw No. 2040 (Appendix B). The adjacent lands are zoned Rural Residential 3 (RR-3) to the south; Rural Residential Orveas Bay (RR-OB) to the north; West Coast Road and Agricultural (AG) zoned properties to the east; and the Pacific Ocean (Juan de Fuca Strait) to the west. The parcel is subject to the Settlement Area 1 Land Use Designation and predominantly located in the Marine Shoreline Development Permit Area of the Otter Point Official Community Plan (OCP) Bylaw No. 3819 (Appendix C).

Development Permit with a Variance (DV000080) was issued on September 13, 2021, to reduce the front yard setback from 4.5 m to 2.3 m; to vary the definition of height; and to permit the elevation of the subject property to be increased. The conditions of DV000080 require the proposed development to be in accordance with the geotechnical report & building design under the Marine Shoreline Development Permit Area (Appendix D).

Subsequent to DV000080, a BCLS Building Location Certificate dated September 14, 2022 (Appendix E), showed that the exterior walls of the substantially constructed building are 2.12 m from the front property line, which is beyond the 2.3 m setback authorized by the Permit.

As seen in Appendix C, the specified setback and related portion of the substantially constructed building are located outside of the Marine Shoreline Development Permit Area. The applicant has received approval of the siting from the Ministry of Transportation and Infrastructure (Appendix F), and has provided a statement of hardship ("Purpose of Application") indicating the rationale for the requested variance (Appendix G).

Variance Request:

The owners have requested to change their previously issued variance from 2.3 to 2.12m; for the purpose of siting and the continued construction of their dwelling. Section 542 of the LGA regulates the powers for a Board of Variance (BOV) on an application to vary a Bylaw; whereas the LGA does not extend these powers to an issued permit (DV000080). The BOV must therefore consider the application's request to vary the front yard setback specified by Part 2 Section 13A.13 a) of Bylaw No. 2040 from 4.5 m to 2.1 m.

The subject property is 16.1 m to 16.2 m deep where construction must comply with the geotechnical reports identified geodetic flood construction level of 5.3 m for the underside of any floor system and a 7.5 m setback from the natural boundary of the shoreline. While the attached survey in Appendix E, illustrates two separate foundations, the structures are attached by a common roof line (Appendix H).

Staff are in the opinion, that with the exception of the front yard setback, the proposal is generally consistent with the conditions of DV000080 and considered appropriate for the site. The variance will allow the dwelling to be rebuilt at the location shown on the proposed strata plan in accordance with the R-4 zone and staff do not anticipate that this request to vary the front yard setback will negatively impact the use and enjoyment of the adjacent lands. Pursuant to the Juan de Fuca Board of Variance Bylaw No. 4288, notification letters have been sent to the applicant, as well as to the owners and occupants within 50 m of the subject property. Any responses received will be presented at the November 14, 2022, Board of Variance hearing. If the Board of Variance finds that not granting the variance would result in the undue hardship and finds that the variance meets

the considerations of Section 542(1)(c) of the *LGA*, the Board may order that a variance from the requirements of the bylaw be permitted.

OUTLINE MOTION

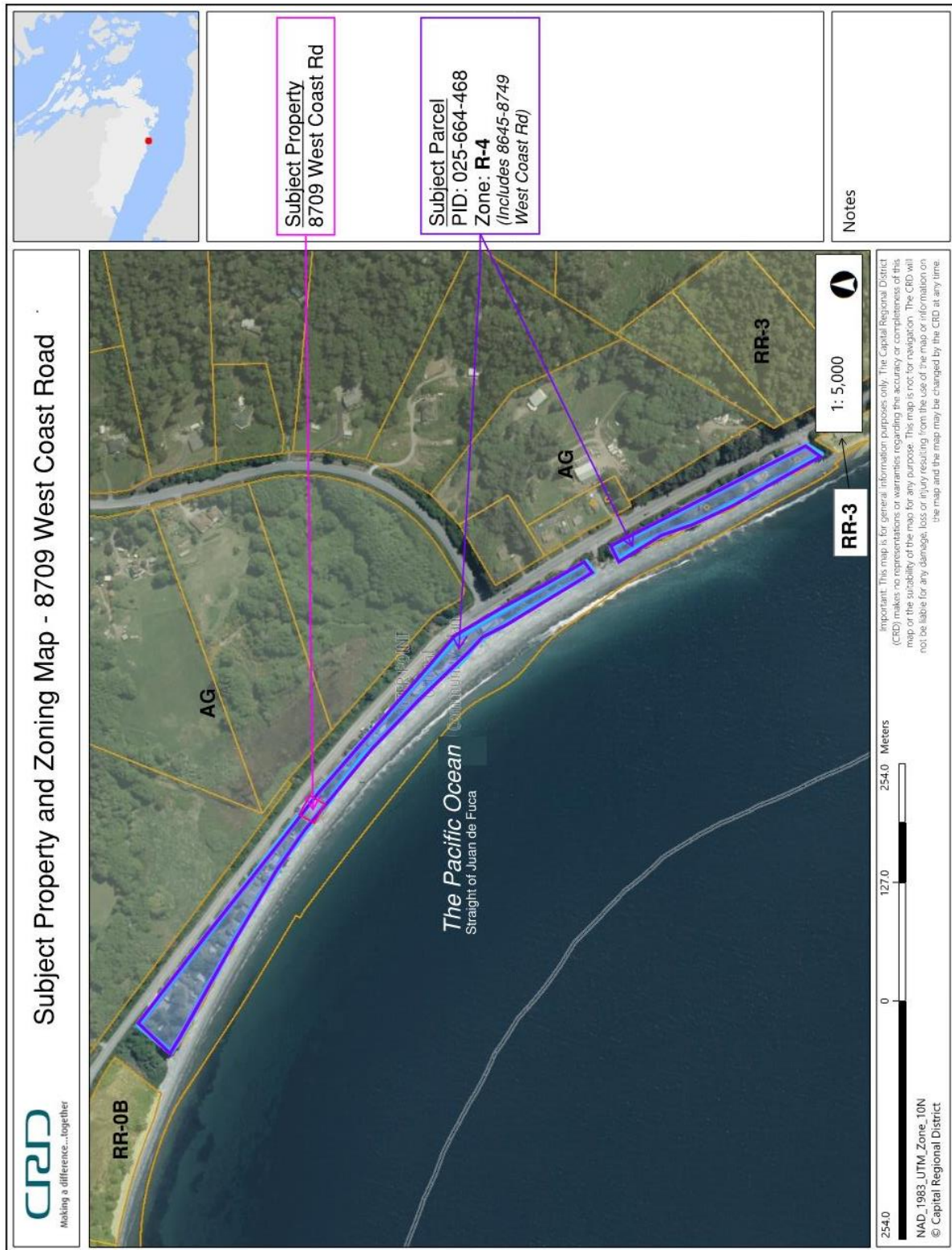
Having considered the matters set out in Section 542(1) of the *Local Government Act*, and having found that undue hardship <would/would not> be caused to the applicant if Bylaw No. 2040 were complied with, the Board of Variance hereby orders that a minor variance to Bylaw No. 2040, Part 2, Section 13A.13(a), by reducing the required front yard setback for a one-family dwelling from 4.5 m to 2.1 m on Lot A Section 7 Otter Point District Plan VIP75055, be <permitted/denied>.

Submitted by:	Darren Lucas, Planner, JdF Community Planning
Concurrence:	Iain Lawrence, MCIP, RPP, Secretary to the Board of Variance

ATTACHMENTS

Appendix A: Subject Property and Zoning Map
Appendix B: Gordon's Beach Recreation Residential Zone – R-4
Appendix C: Marine Shoreline Development Permit Area
Appendix D: Development Permit with a Variance - DV000080
Appendix E: BCLS Building Location Certificate, Sept 14, 2022
Appendix F: Ministry of Transportation Correspondence and Permit
Appendix G: Statement of Hardship "Purpose of Application", from Applicant
Appendix H: Photograph from Site Visit on August 24, 2022

Appendix A: Subject Property and Zoning Map



Appendix B: Gordon's Beach Recreation Residential Zone – R-4

Schedule "A" of Capital Regional District Bylaw No. 2040
Juan de Fuca Land Use Bylaw

13A.0 GORDON'S BEACH RECREATION RESIDENTIAL 4 ZONE - R-4

Bylaw 2639

13A.01 In addition to the uses permitted by Section 4.15 of Part 1 of this Bylaw, the following uses and no others are permitted in the Gordon's Beach Recreation Residential 4 R-4 Zone:

- (a) One-family dwelling;
- (b) Two Boarders or lodgers;
- (c) Home Based Business - Category One;
- (d) Accessory building in accordance with Section 13A.10.

Bylaw 3705

13A.02 Minimum Lot Size for Subdivision Purposes

The minimum lot size shall be 500m².

13A.03 Minimum Service Level

- a) Each lot shall have the capability for on site sewage disposal or be connected to a common disposal area;
- b) Each lot shall have sufficient quantity of potable water to meet the requirements of at least 1400 litres per day;
- c) Quality of water shall be in accordance with the Capital Health Region requirement.

13A.04 Minimum Frontage for Subdivision Purposes

The minimum lot frontage shall be 6m.

13A.05 Minimum Average Lot Width for Subdivision Purposes

The minimum average lot width shall be 10m.

13A.06 Number of Dwelling Units

- (a) One one-family dwelling is permitted per lot;
- (b) Secondary suites and guest cottages are specifically excluded.

13A.07 Panhandle Lots

Panhandle lots are not permitted.

13A.08 Minimum Ground Floor Area

The minimum ground floor area for a dwelling unit is 20m².

13A.09 Maximum Floor Area for Residential Buildings

Provided that percolation and septic field requirements are met to the satisfaction of the Medical Health Officer:

- (i) The total floor area of a residential building shall not exceed 130m²;
- (ii) The maximum total floor area of a residential building can be achieved in two stories;
- (iii) Basements are not permitted; and
- (iv) Uninhabited crawl spaces to protect the buildings from possible flood damage are permitted in accordance with Ministry of Environment requirements.

Schedule "A" of Capital Regional District Bylaw No. 2040
Juan de Fuca Land Use Bylaw

13A.10 Accessory Buildings

Part 1, General Regulations, Section 4.0 does not apply to accessory buildings for the Gordon's Beach Recreation Residential 4 Zone.
Accessory building(s) shall comply with the following:

- a) Height shall not exceed 3m;
- b) Located not less than 1m clear to the sky from a side yard;
- c) Located in the rear yard in accordance with Ministry of Environment requirements;
- d) Located not less than 1m from the principal building;
- e) Shall not be used as a dwelling unit;
- f) Shall not exceed 10m² in total area; and
- g) Existing accessory buildings are shown on plan deposited at the Land Title Office dated April 16, 1995 and accessory buildings may be rebuilt in accordance with that plan.

13A.11 Height

- a) Maximum height shall be 7.5m or 2 stories for all buildings and structures except accessory buildings;
- b) Elevation of the lot shall not be increased or decreased.

13A.12 Lot Coverage

- a) Maximum lot coverage shall not exceed 50 percent;
- b) Lot coverage includes all principal and accessory buildings.

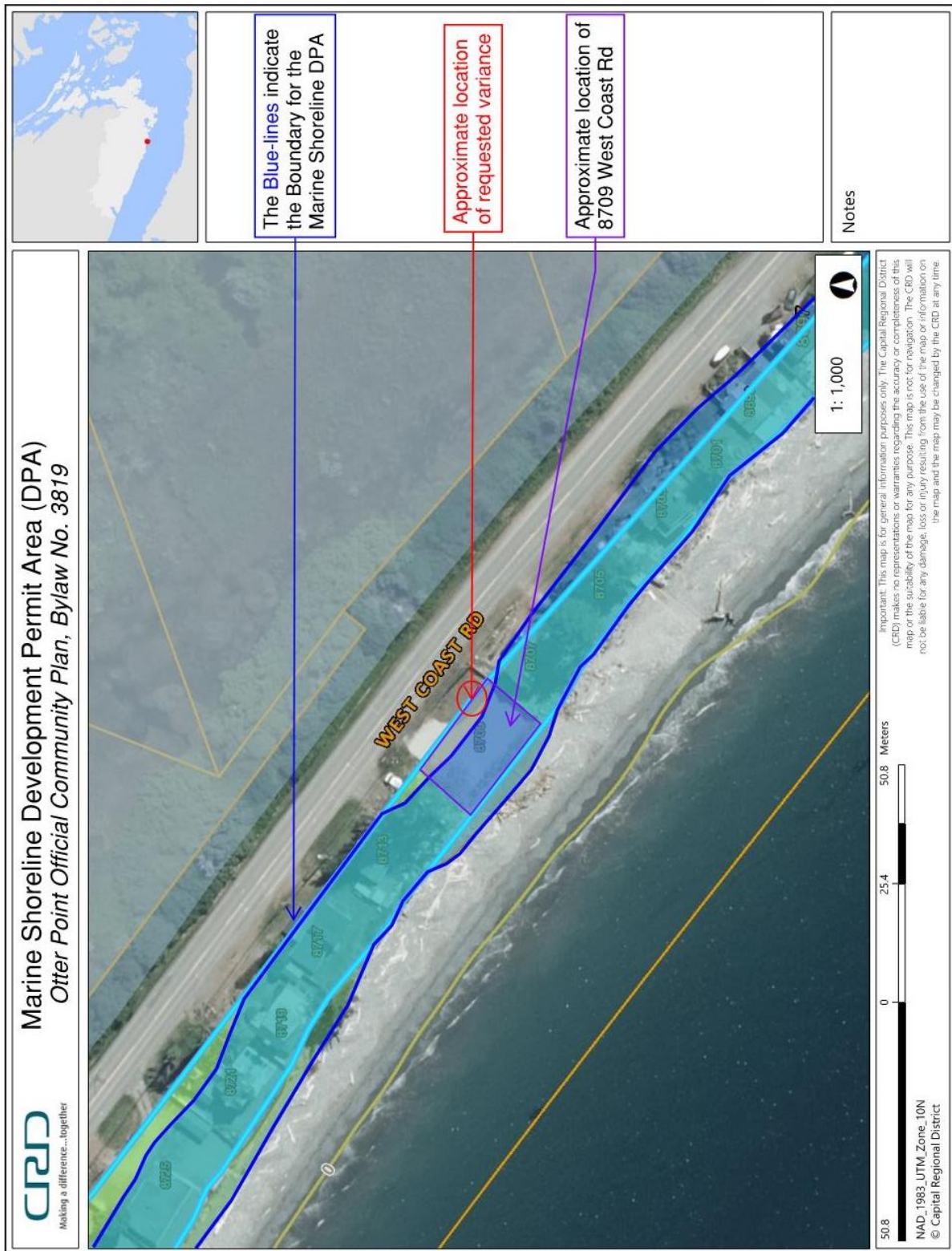
13A.13 Yard Requirements for Residential Building

Yard requirements, subject to Ministry of Transportation and Infrastructure and Ministry of Environment, shall be as follows: *Bylaw 3705*

- a) Front yards shall be a minimum of 4.5m;
- b) Side yards shall be a minimum of 1.5m, and the sum of the two side yards shall be not less than 4.5m;
- c) Rear yards shall be a minimum of 7.5m.

Residential buildings existing on April 16, 1995 as shown on a plan filed in the Victoria Land Title Office may be rebuilt in the location shown. *Bylaw 2639*

Appendix C: Marine Shoreline Development Permit Area



Appendix D: Development Permit with a Variance - DV000080



CAPITAL REGIONAL DISTRICT

DEVELOPMENT PERMIT WITH VARIANCE DV000080

1. This Development Permit with Variance is issued under the authority of Sections 490, and 498 of the *Local Government Act* and subject to compliance with all of the bylaws of the Regional District applicable thereto, except as specifically varied or supplemented by this Permit.
2. This Development Permit with Variance applies to and only to those lands within the Regional District described below (legal description), and any and all buildings, structures, and other development thereon:

PID: 025-664-468;
Folio: 762.16032.039
Legal Description: Lot A, Section 7, Otter District, Plan VIP75055
3. This development permit authorizes construction of a single-family dwelling (the "development") on the Land, located within the development permit areas established under the Otter Point Official Community Plan, 2014, Bylaw No. 3819, Section 6.4 (Marine Shoreline Areas), in accordance with the plans submitted to the CRD and subject to the conditions set out in this Permit.
4. The conditions under which the development referred to in section 3 may be carried out are as follows:
 - a. That the proposed development comply with the Site Plan dated June 23, 2021;
 - b. That the proposed development comply with the Building Design Drawings June 23, 2021;
 - c. That the proposed development comply with the recommendations outlined in the Geotechnical Reports certified by Scott Currie, P.Eng., dated June 14, 2021, and certified by Scott Currie, P.Eng. and Andrew Jackson, P.Geo., L.Eng., dated March 23, 2021; and
 - d. That upon substantial completion of the development, a final report be submitted from a qualified professional confirming that the recommendations outlined in the Geotechnical Reports have been completed in accordance with the reports.
5. The Capital Regional District's **Bylaw No. 2040** is varied under Section 498 of the *Local Government Act* as follows:
 - a. Part 1, Section 2.0 by varying the definition of *height* as it applies to the proposed single-family dwelling to mean the average vertical distance from finished grade at the outermost corners of the building to the mean level of the highest roof plane between the eaves and the ridge of a sloping roof;
 - b. Part 2, Section 13A.11(b) to allow that the elevation of the lot may be increased in accordance with the Building Design Drawings and Geotechnical Reports; and
 - c. Part 2, Section 13A.13(a) to reduce the front yard setback from 4.5 m to 2.3 m in accordance with the Site Plan.
6. Notice of this Permit shall be filed in the Land Title Office at Victoria as required by Section 503 of the *Local Government Act*, and the terms of this Permit (DV000080) or any amendment hereto shall be binding upon all persons who acquire an interest in the land affected by this Permit.
7. If the holder of a permit does not substantially start any construction permitted by this Permit within 2 years of the date it is issued, the permit lapses.
8. The land described herein shall be developed strictly in accordance with the terms and conditions and provisions of this Permit, and any plans and specifications attached to this Permit which shall form a part hereof.



DV000080

9. The following plans and specifications are attached to and form part of this Permit:

- Appendix A: Site Plan
- Appendix B: Building Design Drawings
- Appendix C: Geotechnical Reports

10. This Permit is NOT a Building Permit.

11. In issuing this Development Permit, the CRD does not represent or warrant that the land can be safely developed and used for the use intended and is acting in reliance upon the conclusions of the Geotechnical Report regarding the conditions to be followed for the safe development of the land.

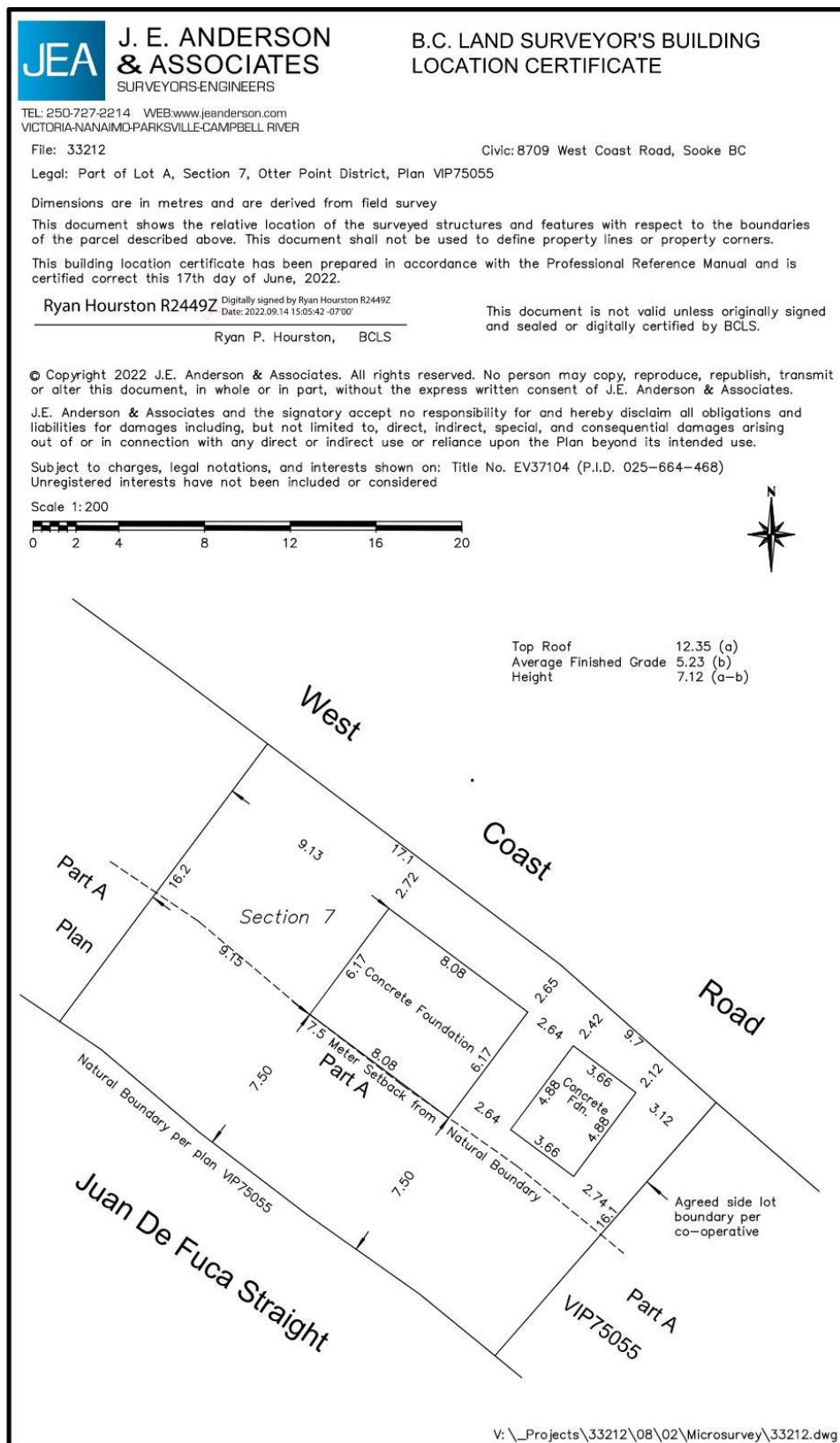
RESOLUTION PASSED BY THE BOARD, THE 8 day of September, 2021.

ISSUED this 13 day of September, 2021



Kristen Morley
Corporate Officer

Appendix E: BCLS Building Location Certificate



Appendix F: Ministry of Transportation Correspondence and Permit

From: [Dyer, Jennifer TRAN:EX](#)
To: [Darren Lucas](#)
Subject: RE: MOTI Permit with survey - 8709 West Coast Road - MCMURTRY
Date: Monday, October 03, 2022 8:55:19 AM
Attachments: [image001.png](#)

CAUTION: This Email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

Hi Darren,

Yes, that is correct. The Ministry has no objections to the reduced setback of 2.12m.

Thanks,

Jennifer Dyer
Senior Development Officer
Ministry of Transportation and Infrastructure
Vancouver Island District - Saanich
(778) 576-1109



BRITISH
COLUMBIA

Ministry of
Transportation

Permit/File Number: 2021-02791 – REV 1
Office: Saanich Area Office

**PERMIT TO REDUCE BUILDING SETBACK LESS THAN 4.5 METRES FROM THE
PROPERTY LINE FRONTING A PROVINCIAL PUBLIC HIGHWAY**

**PURSUANT TO TRANSPORTATION ACT AND/OR THE INDUSTRIAL ROADS ACT AND/OR THE
MOTOR VEHICLE ACT AND/OR AS DEFINED IN THE NISGA'A FINAL AGREEMENT AND THE
NISGA'A FINAL AGREEMENT ACT.**

BETWEEN:

The Minister of Transportation and Infrastructure

Saanich Area Office
240-4460 Chatterton Way
Victoria, British Columbia V8X 5J2
Canada

("The Minister")

AND:

Jason Dault

("The Permittee")

WHEREAS:

A. The Minister has the authority to grant permits for the auxiliary use of highway right of way, which authority is pursuant to both the Transportation Act and the Industrial Roads Act, the Motor Vehicle Act, as defined in the Nisga'a Final Agreement and the Nisga'a Final Agreement Act;

B. The Permittee has requested the Minister to issue a permit pursuant to this authority for the following purpose:

The construction of a building, the location of which does not conform with British Columbia Regulation 513/04 made pursuant to section 90 of the Transportation Act, S.B.C. 2004, namely; to allow a residential dwelling to be constructed within the 4.5m setback from the road dedication of West Coast Road (Highway 14), located, as shown on attached drawing "Proposed Sooke Cabin", prepared by Karl Wein Associates.

All works shall be in accordance with the permit application submitted May 20, 2021, attached drawing and permit conditions herein.

C. The Minister is prepared to issue a permit on certain terms and conditions;

ACCORDINGLY, the Minister hereby grants to the Permittee a permit for the Use (as hereinafter defined) of highway right of way on the following terms and conditions:

1. This permit may be terminated at any time at the discretion of the Minister of Transportation and Infrastructure, and that the termination of this permit shall not give rise to any cause of action or claim of any nature whatsoever.
2. This permit in no way relieves the owner or occupier of the responsibility of adhering to all other legislation, including zoning, and other land use bylaws of a municipality or regional district.
3. The Permittee shall indemnify and save harmless the Ministry, its agents and employees, from and against all claims, liabilities, demands, losses, damages, costs and expenses, fines, penalties, assessments and levies made against or incurred, suffered or sustained by the Ministry, its agents and employees, or any of them at any time or times, whether before or after the expiration or termination of this permit, where the same or any of them are based upon or arise out of or from anything done or omitted to be done by the Permittee, its employees, agents or Subcontractors, in connection with the permit.



BRITISH
COLUMBIA

Ministry of
Transportation

Permit/File Number: 2021-02791 – REV 1

Office: Saanich Area Office

4. The rights granted under this permit are for an indefinite period.
Should the said structure be destroyed, removed or dismantled, this permit is automatically cancelled and another permit will not necessarily be granted.
5. The Permittee will at all times indemnify and save harmless Her Majesty the Queen in Right of the Province of British Columbia, as represented by the Minister of Transportation and Infrastructure, and the employees, servants, and agents of the Minister from and against all claims, demands, losses, damages, costs, liabilities, expenses, fines, fees, penalties, assessments and levies, made against or incurred, suffered or sustained by any of them, at any time or times (whether before or after the expiration or termination of this permit) where the same or any of them are sustained in any way as a result of the Use, which indemnity will survive the expiration or sooner termination of this permit.
6. The Permittee will ensure that the works do not, impair, impede or otherwise interfere with; I. public passage on the Highways; II. the provision of highway maintenance services by the Province, or by its servants, contractors, agents or authorized representatives of the Province in connection with the Highways; or III. the operation of the Highways;
7. This permit in no way relieves the owner or occupier of the responsibility of adhering to all other legislation, including zoning, and other land use bylaws of a municipality or regional district.
8. The layout shown on the submitted drawing is a condition of this permit, and any change in layout without the prior consent in writing of the Designated Ministry Official shall render the permit void.
9. The Permittee shall ensure all equipment working on or hauling material on to and from the Site does not damage or deposit material.
onto any part of an existing roadway. Materials spilled onto the public roadways or driveways opened to public traffic shall be cleaned
up immediately. The Permittee has the full responsibility to repair any damage to existing highways, local roads and driveways caused
by its construction equipment and/or operations.
10. No further additions or improvements shall be made to the said structure without prior consent of the Ministry of Transportation and Infrastructure.
11. Any damage to the Ministry of Transportation and Infrastructure right-of-way as a direct result of the permitted works shall be repaired and maintained by the Permittee in perpetuity.
12. If the Permittee proceeds on this permit, it is deemed that all terms and conditions have been accepted.

The rights granted to the Permittee in this permit are to be exercised only for the purpose as defined in Recital B on page 1.

Dated at Victoria, British Columbia, this 14 day of September, 2022

On Behalf of the Minister

Appendix G: Statement of Hardship “Purpose of Application”, from Applicant

PURPOSE OF APPLICATION

In September of 2021 we were approved by the Board of Variance for a relaxation of the front set back to our property located at 8709 West Coast Road from the required 4.5 m to 2.3 m.

We were also required to request variance for an elevation of the lot increase due to main floor elevation requiring to be 5.3 m above sea level.

The design drawings submitted and approved by the CRD on September 9, 2021 for the Development Permit with Variance DV000080 were not consistent.

The site plan showed the dwelling and accessory building foundations off set from each other and then the main and second floor plan as well as the foundation plan showed the foundations in line with each other.

When we instructed the survey crew from JE Anderson to visit the site for exact location for excavation, they contacted the design architect for instruction at which time the design architect send the wrong plan from the package of plans that were submitted to the CRD for variance and permit.

The survey crew pinned the foundations in line instead of off set which has left us now with a set back of 2.12m instead of the 2.3m. This is only on the front north east corner of the accessory building. All other set backs are correct as approved by CRD.

The difference between the approved variance of 2.3 and 2.12 is .18 which is approximately 6.5” closer to the road. MOTI has been contacted and has no issues with the change, please see attached.

We feel that this error was out of our control, however take full responsibility for the mistake. We apologize for any disregard we may have caused to the CRD or any neighbours.

We would like request your approval please, to change the existing variance of 2.3 m to 2.12 m on the front set back.

Sincerely the Owners of 8709 West Coast Road



Appendix H: Photograph from Site Visit on August 24, 2022





**REPORT TO THE JUAN DE FUCA BOARD OF VARIANCE
MEETING OF NOVEMBER 14, 2022**

File No:	BV000490
Location:	Juan de Fuca Road/West Coast Road
Legal:	Lot 6, Section 77, Renfrew District, Plan VIP58128
Zoning:	Forestry (AF) – Juan de Fuca Land Use Bylaw No. 2040
Land Use Designation:	Pacific Acreage (PA) – Shirley-Jordan River OCP Bylaw No. 4001
Adjacent Uses:	N – Forestry (AF) zoned parcel/Private driveway access E – Forestry (AF) zoned parcel S – West Coast Road W – Forestry (AF) zoned 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 from 15 m to 7.5 m for the purpose of constructing a dwelling and detached accessory suite.

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 1.07 ha property is located on West Coast Road between Cedar Coast Drive and Juan de Fuca Road, and is zoned Forestry (AF) under the Juan de Fuca Land Use Bylaw, 1992, Bylaw No. 2040 (Appendix A). The 26-lot subdivision plan was created through lot averaging, which resulted in lot sizes in the range of 1 ha, rather than 4 ha, as required by the zone.

The subject property is accessed by a private road that runs from Juan de Fuca Road towards Cedar Coast Drive, along the boundary of subject property and the large remainder lot to the north. Steep slopes dominate the southern half of the property and portions of the parcel are designated as Development Permit Areas in the Shirley-Jordan River Official Community Plan, Bylaw No. 4001 (Appendix B).

Variance Request:

The owners propose to build a single family dwelling and detached accessory suite adjacent to the rear yard driveway access from the private road (Appendix C). A variance is requested to reduce both the side and rear yard setbacks from 15 m to 7.5 m. The agent has provided a statement of hardship indicating that the rationale for the requested variances are the limited options for siting the structures due to the size and topographic restrictions of the parcel (Appendix D).

Staff are of the opinion that the proposal is considered appropriate for the site and complies with the other requirements of the AF zone and the detached accessory suite regulations. The development is not expected to adversely affect the natural environment since it will be located outside of any designated development permit or covenant areas, and the proposed siting is similar to typical setbacks required for a dwelling and detached accessory suite in Rural Residential zones. The variance is 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 November 14, 2022, 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 3.07 of Bylaw No. 2040 were complied with, that application BV000490 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 rear and side yard setbacks from 15 m to 7.5 m on Lot 6, Section 77, Renfrew District, Plan VIP58128, for a proposed dwelling and detached accessory suite, 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: Development Permit Areas Map
- Appendix C: Site Plan and Variance Request
- Appendix D: Hardship Statement from Applicant

Legend

- Watercourses Primary < 20.00
- Watercourses Secondary < 20
- Watercourses < 20,000
- River
- Properties
- Agricultural Land Reserve
- Private Managed Forest Land
- Plan and Lot Labels < 1:10,000

Map Labels: CEDAR COAST DR, SHERBOURNE DR, ALIDA CREEK, PRIVATE GAME MANAGEMENT, WEST COAST RD, JUAN DE FUCA RD, Park, VIP58128, VIP57335, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 21, 22, 23, 25, 26.

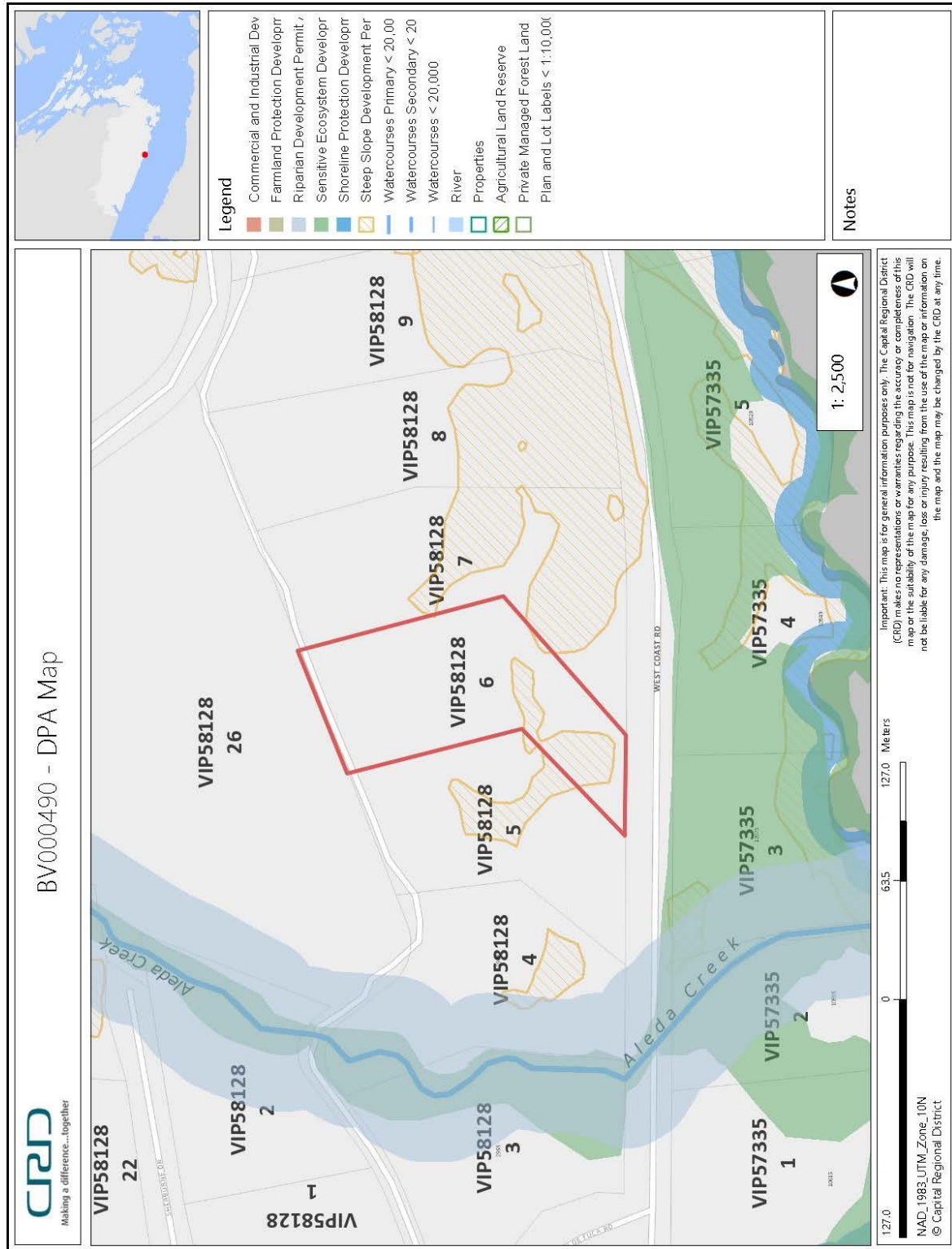
Scale: 1: 3,000

Important: This map is for general information purposes only. The Capital Regional District (CRD) makes no representations or warranties regarding the accuracy or completeness of this map or the suitability of the map for any purpose. This map is not for navigation. The CRD will not be liable for any damage, loss or injury resulting from the use of the map or information on the map and the map may be changed by the CRD at any time.

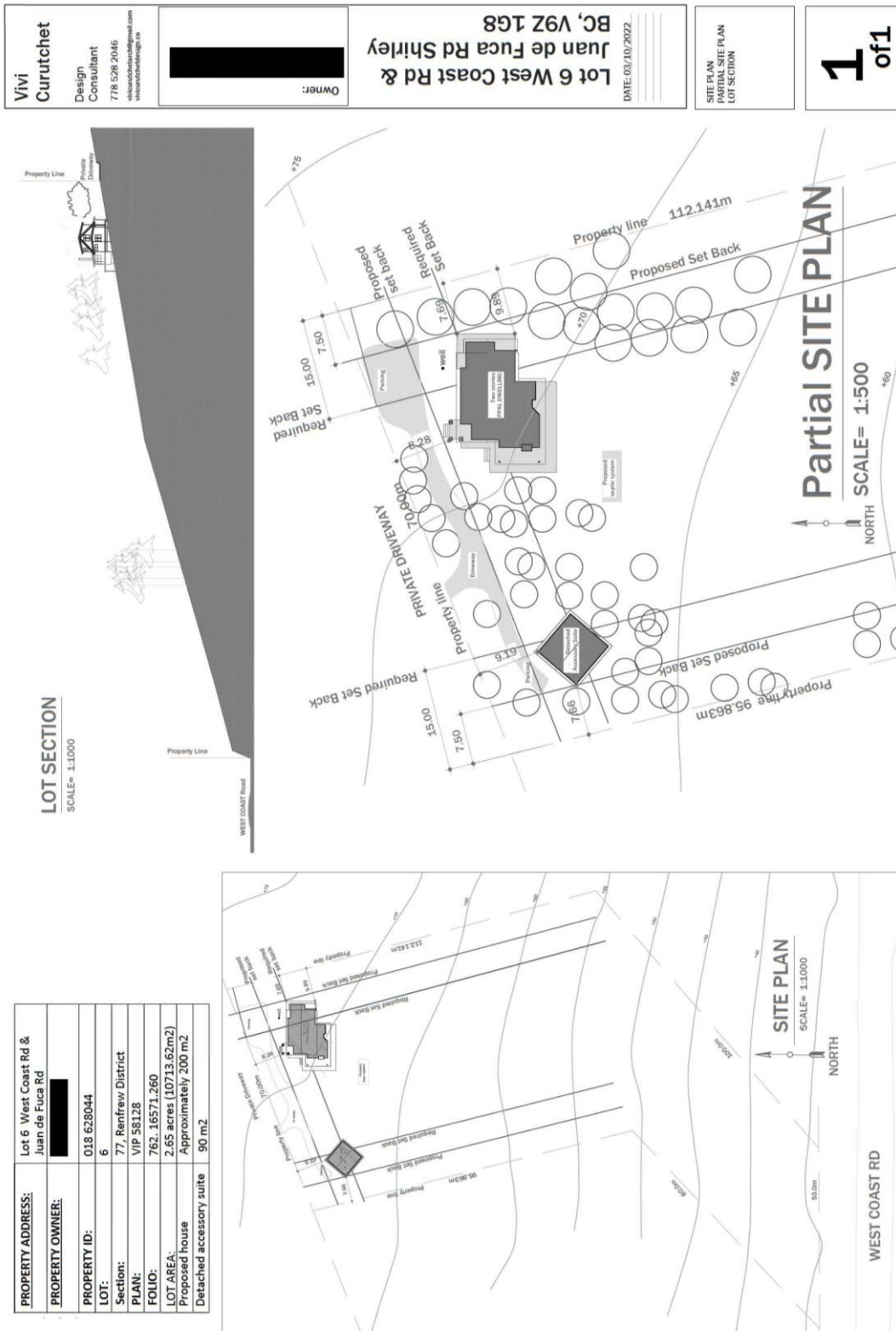
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Appendix B: Development Permit Areas Map



Appendix C: Site Plan and Variance Request



Appendix D: Hardship Letter from Applicant

[REDACTED]

Lot 6, West Coast Rd & Juan de Fuca Rd

Board of Variance Application

Statement of Hardship supporting purpose of application.

03/10/2022

Thanks for considering this application.

The rationale for this request is the limited options to locate main dwelling and detached suite due to the size and the natural restrictions on the lot.

For AF zoning typical 10 acres lots with principal uses on silviculture and mining, 15m setbacks are logical. For this lot with an area of 2.65 acres, a width of 70m, an irregular shape, a steep slope area and the main use being Residential, the 15m set back becomes a restriction to be considered as hardship.

We are requesting for a reduce of side setbacks and rear setback from 15m to 7.5m to be able to locate main residence and detached suite at the top of slope, near the "Private Driveway" (Back road access), avoiding steep driveways on the lot.

Thanks,

[REDACTED]

Applicant