

DATE: September 7, 2017

FILE: 3730-20 / BV 3B 17

TO: Chair and Members
Board of Variance

FROM: Russell Dyson
Chief Administrative Officer

RE: Board of Variance Application, 1436 Anderton Road (Jackson)
Lazo North (Electoral Area B)
Lot 1, District Lot 91, Comox District, Plan 45081, PID 007-466-919

Purpose

To provide information on a Board of Variance (BOV) application to allow a structural alteration (i.e. attached garage) to be constructed on a building that houses a legal non-conforming use (i.e. duplex).

Policy Analysis

Division 15 of Part 14 of the *Local Government Act* (RSBC, 2015, c. 1) (LGA) requires a local government that has adopted a zoning bylaw to establish a BOV. Section 531 (2) enables structural alterations or additions to legal non-conforming uses where permitted by the BOV in accordance with Section 542 (1). A property owner may apply to the BOV for an order of variance if the owner alleges that not being able to alter or add to the building containing the legal non-conforming use would cause hardship. Section 542(1) of the LGA states that the BOV may order that a minor variance be permitted if the board:

- a. Has heard the applicant and any person notified of the variance;
- b. Finds that undue hardship would be caused to the applicant if the subject bylaw is complied with; and
- c. Is of the opinion that the variance will not result in inappropriate development of the site, adversely affect the natural environment, substantially affect the use and enjoyment of adjacent land, vary permitted uses and densities, or defeat the intent of the bylaw.

Executive Summary

- The applicant has applied to the BOV to allow an attached garage to be constructed on a building containing a legal non-conforming use (i.e. duplex).
- A duplex is not permitted in the Country Residential One (CR-1) zone. However, the duplex is considered to be a legal non-conforming use as it was built in 1965 prior to the establishment of the zoning bylaw.
- According to the applicant, the existing attached garage was water damaged beyond repair.
- As per Section 531 (2) of the LGA, a BOV order of variance is required to make structural alterations or additions to a building containing a legal non-conforming use.
- The new garage will be built in the same footprint.

Respectfully:

R. Dyson

Russell Dyson
Chief Administrative Officer

Background/Current Situation

An application has been received to consider a variance to allow an attached garage to be constructed on a duplex that is considered a legal non-conforming use. Pursuant to Section 531 (2) of the LGA, a structural alteration or addition to a legal non-conforming use can be made if a BOV issues an order. The subject property is 0.45 hectares and contains a duplex built in 1965 and workshop (Figures 1 and 2). The property is bound by Priddy Road to the north, Anderton Road to the west and residential properties to the south and east.

Planning AnalysisOfficial Community Plan

The subject property is designated Settlement Expansion Area (SEA) in the Regional Growth Strategy (RGS), being the “Comox Valley Regional District Regional Growth Strategy Bylaw No. 120, 2010” and the Official Community Plan being the “Rural Comox Valley Official Community Plan Bylaw No. 337, 2014”. The proposed alteration does not conflict with residential policies in either of these bylaws.

Zoning Bylaw

The property is zoned Country Residential One (CR-1) (Appendix A). The owner would like to rebuild the attached garage as it has been water damaged beyond repair (Figure 3). A duplex is not a permitted use in the CR-1 zone, however, the construction of the duplex appears to pre-date the zoning bylaw and is considered a legal non-conforming use. The proposed garage meets the setbacks and height requirements.

Options

The BOV could either approve or deny the requested variance.

Financial Factors

Applicable fees have been collected for this application under Bylaw No. 328, being the “Comox Valley Regional District Planning Procedures and Fees Bylaw No. 328, 2014”.

Regional Growth Strategy Implications

The RGS designates the subject property within SEAs. This designation identifies fringe areas of Municipal Areas to be reserve areas to accommodate the long term growth demands within the Comox Valley. Development within this designation should occur in a phased and orderly manner so that development does not detract from compact growth options within Municipal Areas. The proposed addition of an attached garage does not conflict with the policies found in the RGS.

Intergovernmental Factors

As the subject property is within the SEA, an external referral was sent to the Town of Comox and City of Courtenay. At the time of writing this report, no comments have been received from the City of Courtenay or Town of Comox.

Interdepartmental Involvement

This application was referred to other internal departments. At the time of writing this report, no concerns were identified.

Citizen/Public Relations

Notice of the requested variance will be mailed or otherwise delivered to the owners of the subject property, as well as adjacent property owners and legal tenants within 100 metres of the subject property, at least 10 days prior to the BOV meeting. The notice includes the description of the requested variance, the land that is the subject of the requested variance, and the time and location

of the BOV meeting. Any resident correspondence or comments received by staff will be provided to the members at the BOV meeting.

Prepared by:

Concurrence:

Concurrence:

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Attachments: Appendix A – “Copy of the CR-1 Zone”

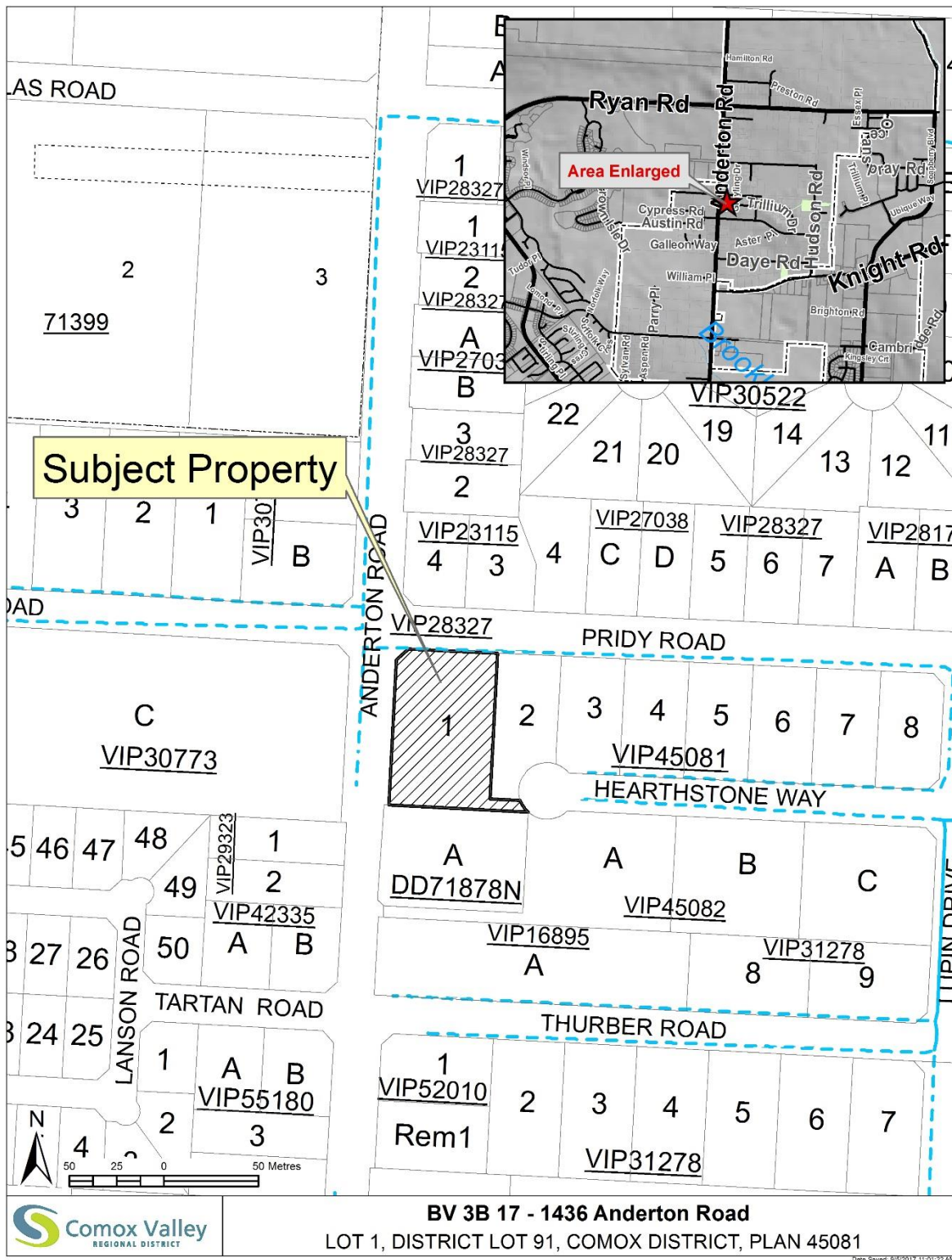


Figure 1: Subject Property Map



Figure 2: Aerial Photo

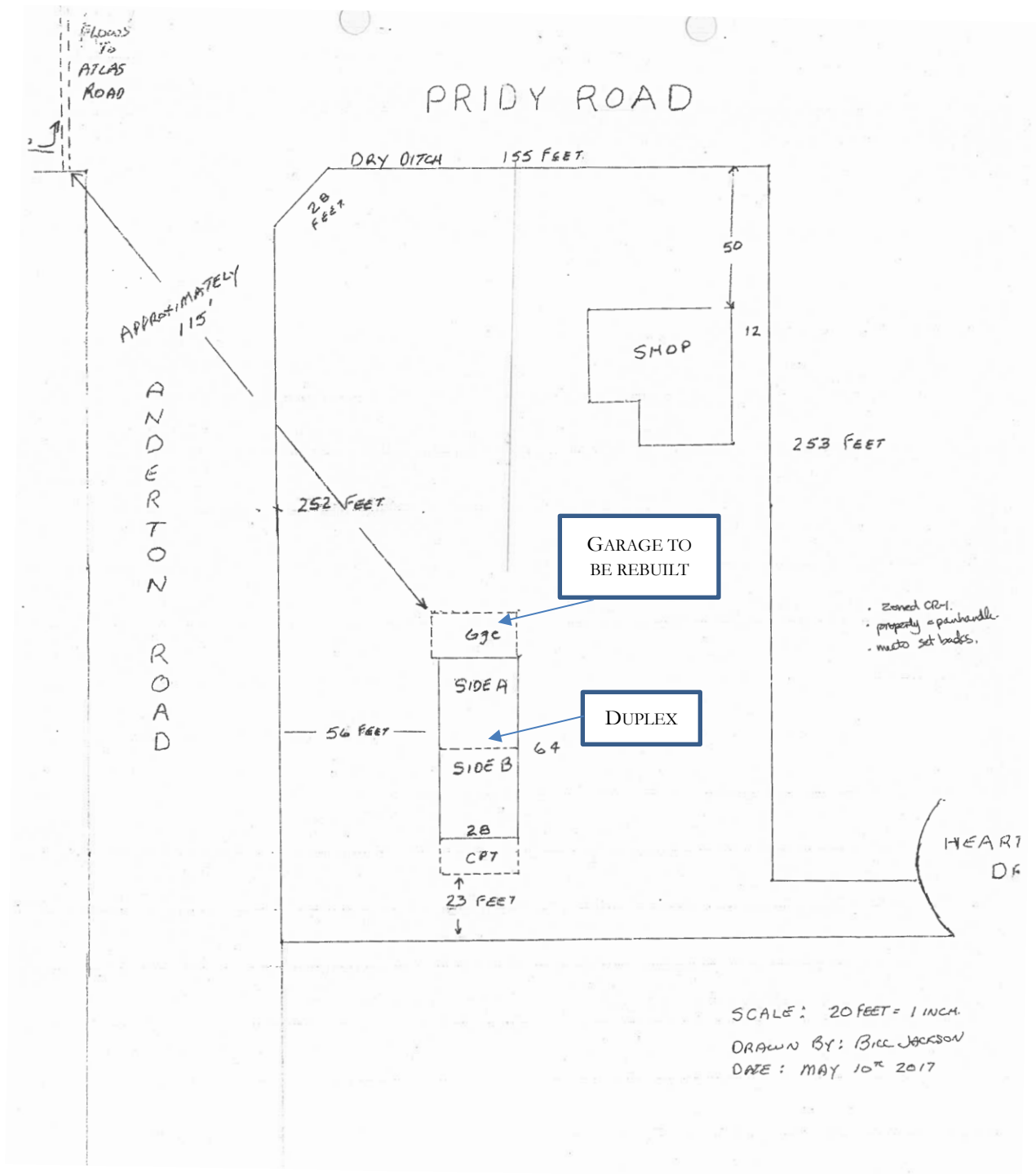


Figure 3: Site Plan, as Submitted by Applicant

707**Country Residential One (CR-1)****1. PRINCIPAL USE**

- i) **On any lot:**
 - a) Residential use.
- ii) **On any lot over 4000 metres² (1.0 acre):**
 - a) Agricultural use.

2. ACCESSORY USES

- i) **On any lot:**
 - a) Home occupation use;
 - b) Accessory buildings; and
 - c) Bed and Breakfast
- ii) **On any lot 2.0 hectares (4.9 acres) or larger:**
 - a) Animal kennels.

3. DENSITY**Residential use is limited to:**

- i) **On any lot:** One single detached dwelling and secondary suite, or one single detached dwelling and one carriage house, or one single detached dwelling and one secondary dwelling limited in area to 90 metres² (968.8 feet²).
- ii) **On any lot 1.0 hectare (2.5 acres) and over:** Two single detached dwellings.

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4. SITING AND HEIGHT OF BUILDINGS AND STRUCTURES

The setbacks required for buildings and structures within the Country Residential One zone shall be as set out in the table below.

Type of Structure	Height	Required Setback			
		Front yard	Rear yard	Side yard	
				Frontage <31m	Frontage >31m
Principal	10.0m (32.8ft)	7.5m (24.6ft)	7.5m (24.6ft)	1.75m (5.8ft)	3.5m (11.5ft)
Accessory	4.5m-or less (14.8ft)	7.5m (24.6ft)	1.0m (3.3ft)	1.0m (3.3ft)	1.0m (3.3ft)
Accessory	6.0m-4.6m (19.7ft)	7.5m (24.6ft)	7.5m (24.6ft)	1.75m (5.8ft)	3.5m (11.5ft)

Except where otherwise specified in this bylaw, no building or structure shall be located in any required front and side yard setback areas. [Note: Part 400, Siting Exceptions, of this bylaw and Bylaw No. 1836 being the "Floodplain Management Bylaw, 1997" may affect the siting of structures adjacent to major roads and the natural boundaries of watercourses and the sea, respectively.]

5. LOT COVERAGE

- i) The maximum lot coverage of all buildings and structures shall not exceed 35% of the total lot area.

6. FLOOR AREA REQUIREMENTS

- i) The maximum combined gross floor area of all accessory buildings shall not exceed 200.0 metres² (2152.9 feet²).

7. SUBDIVISION REQUIREMENTS

- i) Despite any other provision of this bylaw, the minimum permitted lot area within areas designated as “settlement expansion areas” under “Comox Valley Regional Growth Strategy Bylaw No. 120, 2010” is 4.0 hectares. #200

- ii) Despite any other provision of this bylaw, for the purpose of subdivision, the following sections of this bylaw do not apply to lots within areas designated as “settlement expansion areas” under “Comox Valley Regional Growth Strategy Bylaw No. 120, 2010”:

- a) Section 503 Subdivision Standards 1. AREA AND FRONTAGE REQUIREMENTS i);
 b) Section 503 Subdivision Standards 2. LOT SIZE EXCEPTIONS i) a); and
 c) Section 503 Subdivision Standards 2. LOT SIZE EXCEPTIONS iii).

iii) **Lot Area**

The minimum lot area permitted shall be 2.0 hectares (4.9 acres)

Despite (iii), a subdivision with lots smaller than identified above may be created by subdivision provided that the average lot area within the subdivision is equal to the minimum lot area permitted.

End • CR-1