

**DATE:** April 2, 2019

**FILE:** 3730-20 / BV 1A 19

**TO:** Chair and Members  
Board of Variance

**FROM:** Russell Dyson  
Chief Administrative Officer

Supported by Russell Dyson  
Chief Administrative Officer

***R. Dyson***

**RE: Board of Variance Application – 8288 Island Highway South (1075371 BC Ltd.)  
Electoral Area A (Baynes Sound – Denman / Hornby Islands)  
Lot A, District Lot 12 and 196, Newcastle District, and part of the bed of  
Baynes Sound, Nanaimo District, Plan VIP87717, PID 028-174-429**

### Purpose

To provide information on a Board of Variance (BOV) application to decrease the minimum required setback from a side property line that abuts a highway (Appendix A).

### Executive Summary

- The subject property is a 4.8 hectare waterfront lot, which is narrow and bisected by the Island Highway, the railway and the mouth of Waterloo Creek.
- The applicant is seeking to construct a two-storey house on the 0.26 hectare portion of the property between the highway, the shoreline and the creek.
- In support of the proposal, the applicant obtained an Aquatic and Riparian Habitat Development Permit in which a Qualified Environmental Professional identified a building envelope that maintains the environmental integrity of the site.
- The proposed house design and location includes a first floor garage and a second floor recreation room within the regulated side yard setback abutting a highway. So, to construct in accordance with this proposed design at this location a variance from 7.5 metres to 1.5 metres from the property line abutting the highway is required.
- The alternatives would be to construct a smaller house within the setbacks or construct elsewhere on the property west of the highway.
- The Ministry of Transportation and Infrastructure has granted an approval-in-principle for the setback reduction towards the highway.
- Notification was sent to property owners within 100 metres of the subject property.

Prepared by:

***J. MacLean***

Jodi MacLean, MCIP, RPP  
Rural Planner

Concurrence:

***T. Trieu***

Ton Trieu, MCIP, RPP  
Manager of Planning Services

Concurrence:

***S. Smith***

Scott Smith, MCIP, RPP  
General Manager of  
Planning and Development  
Services Branch

### Stakeholder Distribution (Upon Agenda Publication)

Applicant	✓
-----------	---

### Background/Current Situation

The subject property is a 4.8 hectare waterfront lot bisected by the Island Highway (Figures 1 and 2). The property includes approximately 0.26 hectares of land between the highway, the shoreline and Waterloo Creek. In this waterfront area there is an existing driveway and a dilapidated accessory building which the applicant intends on replacing with a new house. The property is otherwise undeveloped.

In support of locating the dwelling in the waterfront area, the applicant obtained a Biophysical Assessment prepared by Warren Fleenor, R.P. Bio., and Caitlin O'Neill, Technologist, of Current Environmental Ltd. In order to preserve and protect habitat values, the report recommended a setback of 30 metres from Waterloo Creek, a setback of 15 metres from the present natural boundary of the sea, and the retention of an identified 98 square metre cluster of mature trees beyond those setbacks. These recommendations were accepted by staff and are being enforced through the Aquatic and Riparian Habitat Development Permit (File DP 12A 18). This results in a limited building envelope in this waterfront area. To make this work for a house with the desired house elements, the applicant is proposing to build within the regulated setback area towards the highway (Figure 3).

### Planning Analysis

#### Official Community Plan Analysis

The subject property is designated Rural Settlement Area in the Official Community Plan, being the “Rural Comox Valley Official Community Plan Bylaw, No. 337, 2014”. It is one of the objectives of this designation to minimize the impact of new development on existing neighbourhoods. Policy 44(5) of this designation directs that new development maintains the rural character of the surrounding area. The proposed house and its location does not detract from rural character.

#### Zoning Bylaw Analysis

The subject property is zoned Country Residential One (CR-1) in Bylaw No. 2781, being the “Comox Valley Zoning Bylaw, 2005”, which allows for the construction of up to two single detached dwellings. The property line abutting the Island Highway is deemed to be the side lot line to which Section 402(2)(ii) applies which requires a minimum side yard setback of 7.5 metres from the boundary of a highway right-of-way.

Zoning Bylaw	Variance	Required	Proposed	Difference
Section 402(2)(ii)	Side yard setback adjacent to road	7.5 metres	1.5 metres	6 metres

Also of relevance, Section 402(1)(i) of the Zoning Bylaw requires a 19.5 metre setback from the centre line of the Island Highway which is being adhered to. The highway right-of-way at this location is 30 metres wide (Figures 4 and 5).

The portion of the building proposed to be located within the setback area consists of a two-car garage on the first floor and habitable space on the second floor. The wall facing the highway would be a side wall with small windows into the garage and a second story window. The garage door would face towards the driveway near the middle of the property. An exterior staircase is proposed for the backside of the garage to a second floor landing and door.

Alternatively, should the variance not be approved, the development of a dwelling on the property can be accommodated by deleting the garage portion of the house or by constructing in an area west of the highway.

**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. A property owner may apply to the BOV for an order of variance if the owner alleges that compliance with provisions of the Zoning Bylaw regulating the siting, dimensions or size of a building or structure 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.

**Options**

The BOV can either approve or deny the variance application.

**Financial Factors**

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

**Legal Factors**

The report and recommendations contained herein are in compliance with the LGA and the Comox Valley Regional District (CVRD) bylaws. BOV applications are permitted in certain circumstances under Division 15 of Part 14 of the LGA.

**Regional Growth Strategy Implications**

The subject property is designated Rural Settlement Area in the Regional Growth Strategy, being the “Comox Valley Regional District Regional Growth Strategy Bylaw No. 120, 2010”. MG Policy 2A-1 of this designation states, “*All new development within Rural Settlement Areas must maintain the rural character of its surroundings... This requires careful consideration of the permitted uses, the form and scale of development and lot sizes.*”

**Intergovernmental Factors**

The Ministry of Transportation and Infrastructure has considered safety and operational requirements of the highway and granted approval-in-principle to reduce the building setback to 1.5 metres.

**Interdepartmental Involvement**

The application was circulated to applicable staff at the CVRD for comment. No concerns were identified. BOV approval is required for issuance of a Building Permit.

**Citizen/Public Relations**

Notice of the requested variance has been 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 ten 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.

Attachments: Appendix A – “Applicant submissions – BV 1A 19”

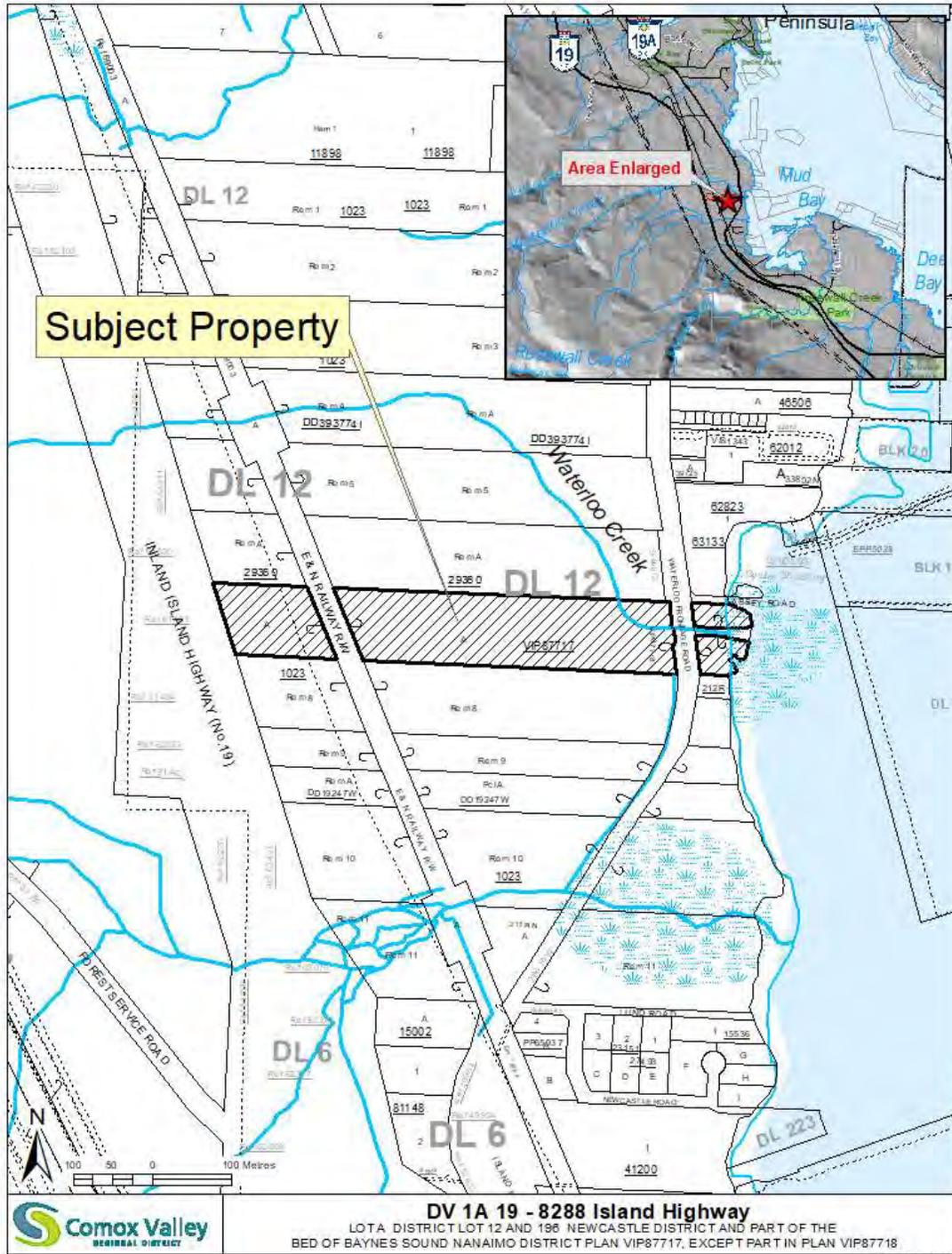


Figure 1: Subject Property



Figure 2: Air Photo (2016)

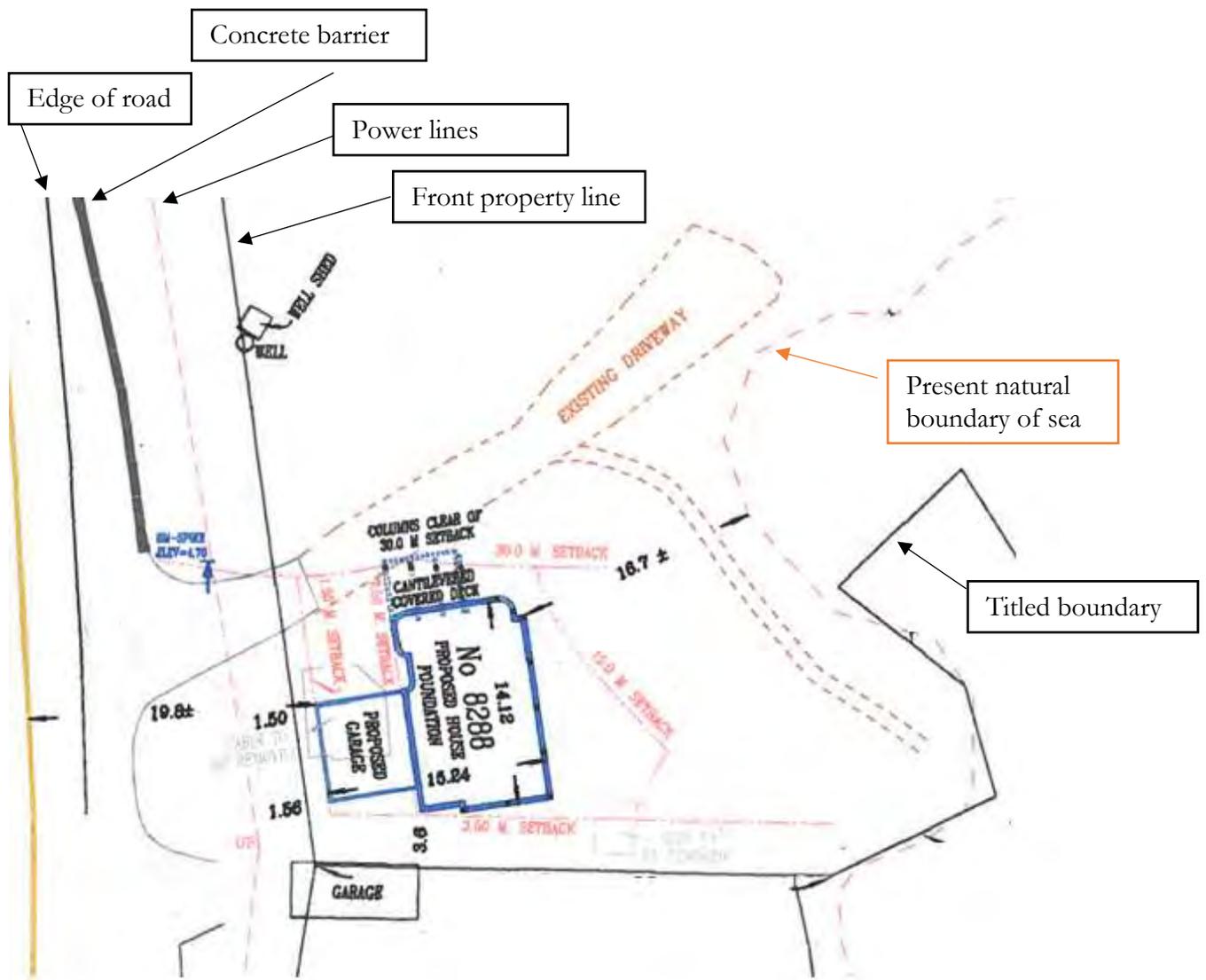


Figure 3: Building Envelope (Red Outline) with Proposed House Placement (Blue Outline), Property Lines (Thin Black Outline) and Center Line of Highway (Yellow Line)



**Figure 4: Photo of Highway Right-of-Way (facing north);  
Property Line is approximately 3 metre to the Right of the Power Pole.**



**Figure 5: Photo of Highway Right-of-Way (facing south);  
Accessory Building (visible on the left) to be Demolished is outlined in grey in Figure 3;  
Car parked on Waterloo Frontage Road.**

8288 S.I. Hwy

**PROPOSED HOUSE LOCATION FOR:  
LOT A, DISTRICT LOT 12 AND 196 NEWCASTLE DISTRICT  
AND PART OF THE BED OF BAYNES SOUND NANAIMO  
DISTRICT PLAN VIP87717, EXCEPT PART IN PLAN VIP87718**

SCALE = 1 : 400  
All distances are in metres and decimals thereof unless otherwise stated  
The intended plot size of this plan is 560 mm in width by  
432 mm in height (C size) when plotted at a scale of 1:400.

**BUILDING ENVELOPE SETBACKS**

ZONING: CR-1

BAYES SOUND SETBACK	15.0 M.
WATERLOO CREEK SETBACK	30.0 M.
ISLAND HIGHWAY (19A)	7.5 M.
ISLAND HIGHWAY (19A) (PROPOSED)	1.5 M.
SIDE YARD SETBACK (S. Body)	3.6 M.



**LEGEND**

- Lot dimensions and Bearings as per Plan VIP87717
- - denotes - Iron Post found
  - △ - denotes - Traverse Hub
  - TOP - denotes - Top of Bank
  - UP - denotes - Utility Pole

NOTE: ELEVATIONS ARE GEODETIC, REFERENCED TO TRAVERSE HUB (THC) #337 (4.51 M.)

PURCHASER: ROBERT BOYKIW  
PARCEL IDENTIFIERS: 028-174-429  
CIVIC ADDRESS: 8288 ISLAND HIGHWAY

REM A  
PLAN 29360

LOT 1  
PLAN VIP62823

ABBEY ROAD  
(UNCONSTRUCTED)

WATERLOO CREEK

SOUND

BAYNES

cc:  
To:  
File:  
Comox Valley Regional District  
**RECEIVED**  
MAR 11 2019

REM A  
PLAN VIP87717

REM 8  
PLAN 1023

PART 8  
PLAN 1023  
(PLAN 212R)

- NOTES:**
- 1) Elevations are geodetic referenced to Geodetic Control Monument 604280 (7.086 M.)
  - 2) Geodetic Elevations were transferred on site by Leica, RTK dual frequency GPS receivers.
  - 3) Site Elevations are referenced to Traverse Hub Concrete nail (THC) #337 with a geodetic elevation of 4.51 M.
  - 4) Lot dimensions, offsets and area may vary upon full legal survey.

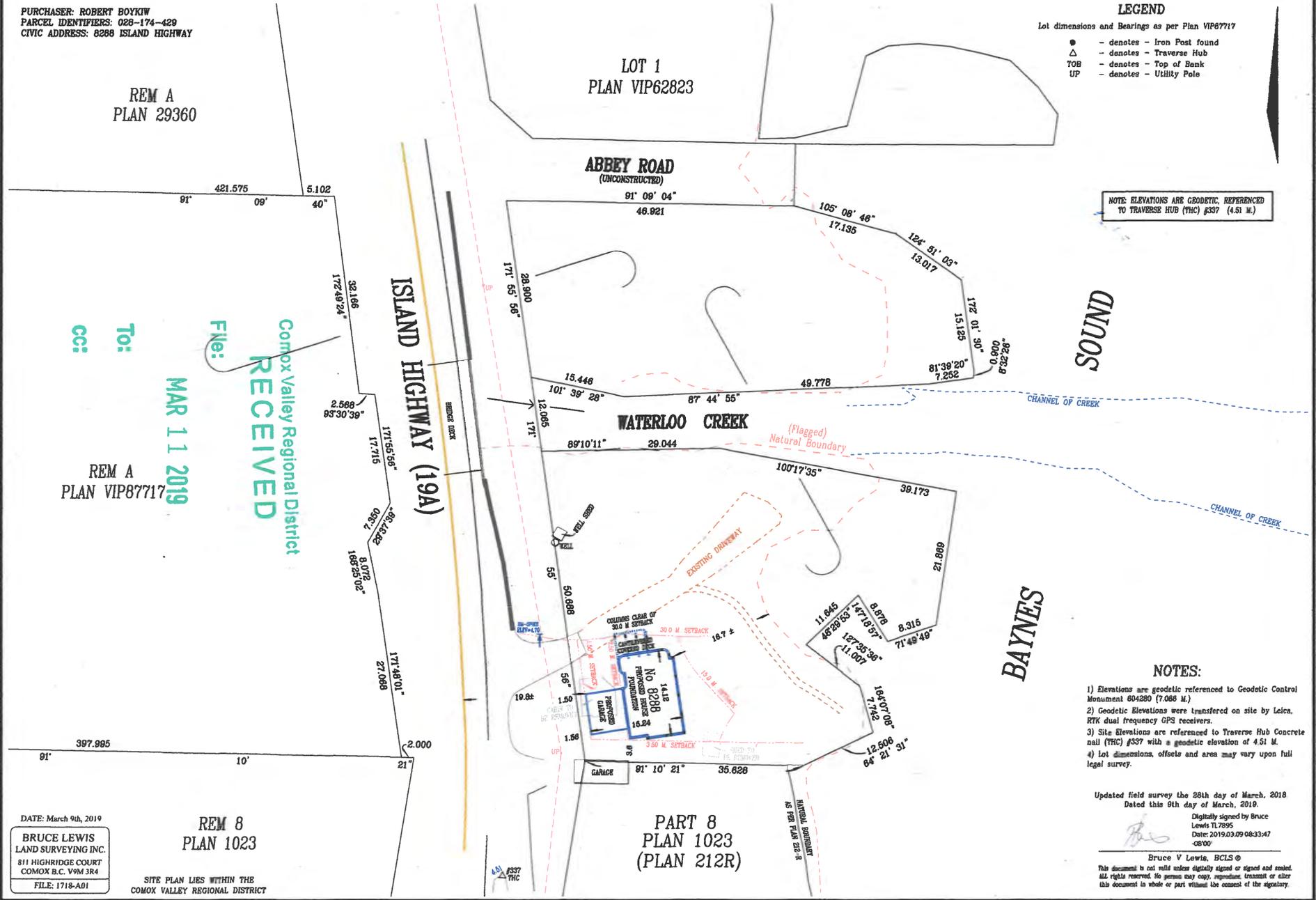
Updated field survey the 28th day of March, 2018  
Dated this 9th day of March, 2019.

Digitally signed by Bruce Lewis TL7895  
Date: 2019.03.09 08:33:47 -0800

Bruce V Lewis, BCLS ©  
This document is not valid unless digitally signed or signed and sealed.  
All rights reserved. No person may copy, reproduce, transmit or alter this document in whole or part without the consent of the signatory.

DATE: March 9th, 2019  
BRUCE LEWIS  
LAND SURVEYING INC.  
811 HIGHRIDGE COURT  
COMOX B.C. V9M 3R4  
FILE: 1718-A01

SITE PLAN LIES WITHIN THE  
COMOX VALLEY REGIONAL DISTRICT





8288 S.I. Hwy

cc:

To: Jodi.

MAR 11 2019

File: DV 1A19

Comox Valley Regional District  
**RECEIVED**

Sir/ Madame,  
The Variance Board,

In your review we ask you consider the multi-year history with all the practical environmental studies, documents & actions that have been taken, the basis of reasons for foot print reductions of this the now clean site.

The following are hardships (**bold**) to the site use applied for and myself:

- 1) **The history of this property's misuse** prior to my ownership is important as it was one of the worst if not the worst dumped on shore property in all of the CVRD -1 ship wreck, 2 boats (shipwrecked) 2 car or parts equal to, and many tons of construction materials oil containers etc. were removed. Even after removal of all these items, fenced and secured the dumping continued. It is apparent to us that our home site needed to be on the foreshore to stop, monitor and clean up further riparian/ foreshore abuses. This ocean front property's 300' ft. frontage is divided in two by Waterloo creek- a strong salmon spawning creek, estuary and uniquely a substantial amount of soil/land accretion (see #2) .
- 2) **The site itself** has had a large amount of soils and land accretion from what it original was, the registered survey in fact shows many feet into the ocean is the original land site and foreshore is out further. Irrespective we worked with the **CVRD's definition of the current foreshore** despite we have registered ownership of the land under the ocean
- 3) The CVRD Planning often suggested to build on the 'other side' the west side of the highway. I asked them point fully in January 2019 had they actually visited that side of the property. They said '*no*'. I then explained to them that on that side of the property (the west side of the highway) **many flood risks exist** from the streams tributaries, topography & natural spring (as well as always the ocean). These challenges on the 'other' side of the highway make it impossible to build there without damaging old growth forest, estuary and natural swamp. It was so great that even the Min. of Transportation's long term road plan to reduce these risks was to raise the bridge & road grades and install two very deep (7+ foot) culverts/spillways on the west side 'other side' to reduce flooding of the highway
- 4) **Waterloos creek's SPEA set back** was not adjusted from the 30 meter maximum, despite it was reasonable to. An private old road consumes approximately 10 meters at the outer edge of the SPEA. In our initial application our environment engineer was as surprised as we were, despite his recommendation to relax. A slight relation was more than reasonable, as no tree or foliage would be removed from the old road, but CVRD refused.
- 5) **Development history** The Ministry of Transportation had original approved our original request for retention of the old homestead building in its relative position as dated in their approval letter of May 16<sup>th</sup> 2017. After much discussion and negotiation with CVRD it was formally submitted to the Min or Transportation and was approved by them in a final version on Dec 18, 2018. A copy was provided to CVRD. After that date the CVRD explained that the space between building and PL was too small (approx. 2') as they stated in their January 22/19 email '*it will be impossible to build and later maintain this side of the building without going into the road*'. Unless the distance was greater- we suggested 3 feet and redrew and resubmitted the drawings. Shortly after that the CVRD contacted the Min. of Transpiration and pointed out the property didn't have the 19.5 meter set back from the highway center line. After learning of this I called and went to the Min. of Transportation to question were the newest drawings okay(?) they explained because the CVRD 'complained about keeping to the adherence to the Min of Transportation old set back guidelines they would like the distance increased slightly to 1.5 meters. We said we will modify again. We redrafted the drawings again and got the surveyor to double check again that our drawings were correct and by our latest modification increased the set back to 19.8 meter set back (1.5 meters set back from the property line) The Ministry of Transportation gave the final acceptance to our drawings and survey verified on March 15, 2019 which we gave a copy to the CVRD
- 6) From our property's west building line to the actual Highway road way (white line) is 54 feet. This very wide 'boulevard' acts ostensibly as a front yard setback, being over twice the CVRD's 7.5 meter set back (**past expropriation**) is far wider then the road itself (21.65 feet) or any expected future need or what the neighbour's set back is. The ability for the Min. of Transportation to widen in future is still easily possible on the west side of the road, even 40+ feet, despite the new bridge's width's is 'in stone' has made this an extremely unlikely event which they acknowledge

**7)** As a result of the riparian adjustments above our buildable site area was left to be 2,560 square feet (sq. ft.). However the CVRD further requested **a grove of tall trees** in our foot print to be preserved which removed another 1207 sq. ft (47%) from our allowable site area; leaving 1353 sq. ft. We discussed this in detail and respected their intent of good stewardship. However it was during all these discussion we notified the planning department of our intent to utilise the old homestead area and its general position and on that basis agreed to the grove of trees being given. Our position was to retaining the general site area of the old homestead (445 sq. ft.) is reasonable considering it is approximately 1/3 of what was given for tree retention (1207 sq. ft. ) was to preserve foreshore forest eagle roost etc. We will be incurring a great expense to further safeguard the trees roots by installing the foundation on pilings between any roots It was on this basis that we proceeded with plans not hearing of the 7.5 front yard setback being an issue till near the end of the process in Jan 2019.

**8)** Of note our south neighbour's garage is three feet over their west property line into the Min of Transportation lands which was the **norm- past historical setbacks of this community**.

**9) My personal health, history and physical needs** require that I have a bedroom on the main floor and bedrooms for my children upstairs. I will require wider halls and a master bedroom to accommodate a wheel chair. This is due to many operations and the forecastable need of a wheel chair in my future as a senior. If the old homestead house was deleted from use then a normal size garage of 500 square feet would be needed as well as increased wall thickness making the balance of square feet noticeably less than 853 as a living area for our family with 3 children.

I believe the above **9 areas of hardship** support grounds for relaxation to approve our home design as submitted.

Yours truly,

Robert Boykiw