

DATE: January 6, 2021

FILE: 3730-20/BV 2A 20

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 – 5441 Tappin Street
Lymburner / Gilchrist
Electoral Area A (Baynes Sound – Denman/Hornby Islands)
Lot 7, Section 32, Township 1, Nelson District, Plan 20618, PID 003-545-261**

Purpose

To provide information on a Board of Variance (BOV) appeal to reduce the minimum rear yard setback for a detached garage.

Executive Summary

- An applicant has submitted an appeal to the BOV to reduce the setback of an existing detached garage as follows:
 - Rear yard setback reduced from 4.5 metres to 0.84 metres for the foundation,
 - Rear yard setback reduced from 2.5 metres to 0.53 metres for the eaves,
 - Side yard setback reduced from 1.75 metres to 1.35 metres.
- The garage was built without a building permit by previous owners approximately 10-15 years ago and the applicant would like to construct a second storey to provide additional accessory space, but its siting must first be legalized.
- The applicant has proceeded with the BOV because of a claim of undue hardship due to the size of the property. According to the applicant, the building cannot be relocated, nor can a tiered second storey that meets the setback requirement be constructed, because any vacant space on the lot is used for vehicular access to the garage or for the septic field.

Prepared by:

Concurrence:

Concurrence:

D. Thiessen

T. Trieu

S. Smith

Dylan Thiessen, MA, MCP
Planner

Ton Trieu, RPP, MCIP
Manager of Planning Services

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

Government Partners and Stakeholder Distribution (Upon Agenda Publication)

Applicant	✓
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Background/Current Situation

An application has been received to consider a BOV appeal to reduce the rear and side yard setbacks pertaining to an existing detached garage on which the applicant would like to add a second storey (to be used as accessory space, not for residential purposes). The subject property, located 5441 Tappin Street, is zoned Residential One (R-1), is designated as a Settlement Node, and is

approximately 0.07 hectares in size (700 square metres) (Figures 1 and 2). The existing detached garage is on a slight angle in relation to the rear lot line, but the existing setbacks are 0.84 metres at their shortest and 0.98 metres at their longest (Figure 3). The roof overhangs toward the rear lot line to provide a covered outdoor space and hangs over the lot line (Figure 4).

The garage was constructed by previous owners without a building permit approximately 10-15 years ago, so the desire by the current owners to construct a second storey on the garage requires that the structure comply with the current Zoning Bylaw. This can either be done through its relocation to meet current setback requirements or through a variance, in this case to the BOV. The applicant has indicated that the building cannot be relocated and a tiered second storey cannot be constructed because any space between the garage and house is used by the septic field, and any space on the south end of the property is used for garage access (Appendix A).

The property located to the rear of the subject property is part of a 53.4 hectare property zoned Kensington Comprehensive Development Mixed-Residential (CDA-4). The large property is split by a railway corridor, and the parcel immediately behind the subject property is 2.3 hectares in size and will be given in its entirety to the Comox Valley Regional District (CVRD) as park dedication.

Policy Analysis

Official Community Plan Analysis

The subject property is designated as being within a Core Settlement Area within the Official Community Plan, being the “Rural Comox Valley Official Community Plan Bylaw No. 337, 2014.” The policies and objectives contained therein for the Core Settlement Area includes concentrating commercial and higher density residential developments in the area. This BOV appeal does not conflict with any of the residential policies, goals, or objectives contained in Bylaw No. 337.

Zoning Bylaw

The subject property is zoned Residential One (R-1) in Bylaw 520, being the “Rural Comox Valley Zoning Bylaw No. 520, 2019.” Bylaw 520 stipulates minimum setback requirements which differ depending on the lot line and the height of the structure or building. The variances requested are summarized in the table below and are based on the required setbacks for a structure taller than 4.5 metres, which the garage will be if a second storey is added. In addition, Section 403(1) of Bylaw 520 allows for more lenient setbacks for features like eaves that protrude outward without adding floor area, which is why the rear yard setback variances differ for the foundation of the building and the building’s eaves.

Minimum setback requirements are stipulated for several reasons. Particularly with respect to lot lines that abut a road, minimum setbacks help maintain sightlines that increase pedestrian and vehicular safety. More generally, minimum setback requirements also help maintain a reasonable expectation of privacy to, and from, adjacent properties.

Table 1: Summary of Variances Requested

Rear Yard	Section of Bylaw No. 520 to be Varied	Required Setback	Current Setback	Variance Requested
Foundation	701(4)(i)	4.5 metres	0.84 metres	3.66 metres
Eaves	403(1)	2.5 metres	0.53 metres (after removal of roof overhang)	1.97 metres

Side Yard	Section of Bylaw No. 520 to be Varied	Required Setback	Current Setback	Variance Requested
Foundation	701(4)(i)	1.75 metres	1.35 metres	0.4 metres
Eaves	No variance is needed for the eaves as they pertain to the side yard lot line.			

Options

The BOV can either approve or deny the appeal for a variance.

Financial Factors

Applicable fees have been collected for this application under Bylaw 328, being 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 *Local Government Act* (RSBC, 2015, c. 1) (LGA) and with 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 as a Core Settlement Area within the Regional Growth Strategy, being the “Comox Valley Regional District Regional Growth Strategy Bylaw No. 120, 2010.” As with Bylaw 337, the goals, policies, and objectives contained within Bylaw No. 120 for Core Settlement Areas include encouraging the growth of commercial and residential density within these areas. This BOV does not conflict with any of the residential policies, goals, or objectives contained in Bylaw No. 120.

Intergovernmental Factors

There are no intergovernmental factors with respect to this application.

Interdepartmental Involvement

The application was circulated to applicable staff at the CVRD for comment. No concerns were identified, although Parks staff noted that the roof overhang should be removed so as not to be permanent or extend beyond the property line.

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 50 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.

Attachments: Appendix A – “Applicants’ Written Brief – BV 2A 20”

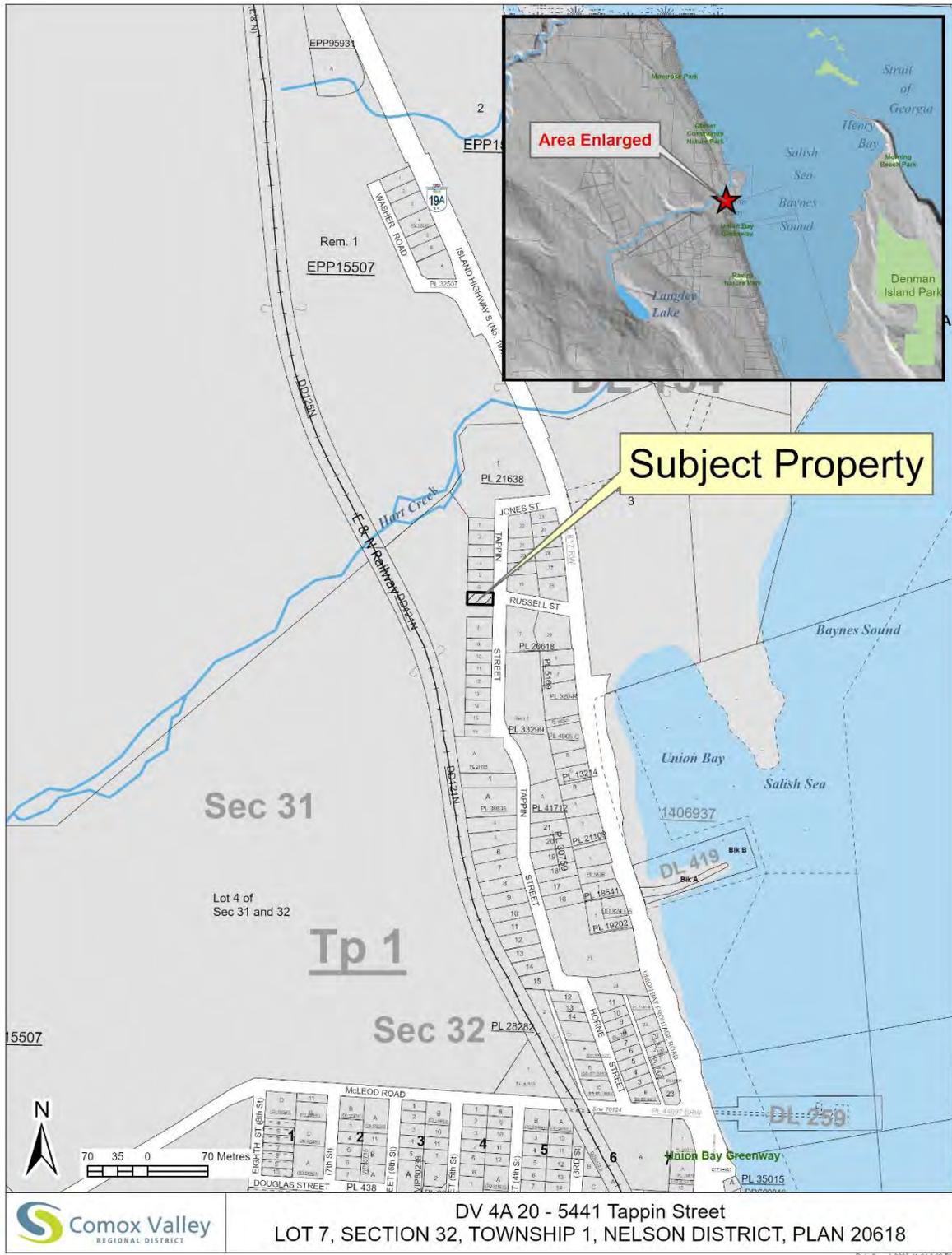


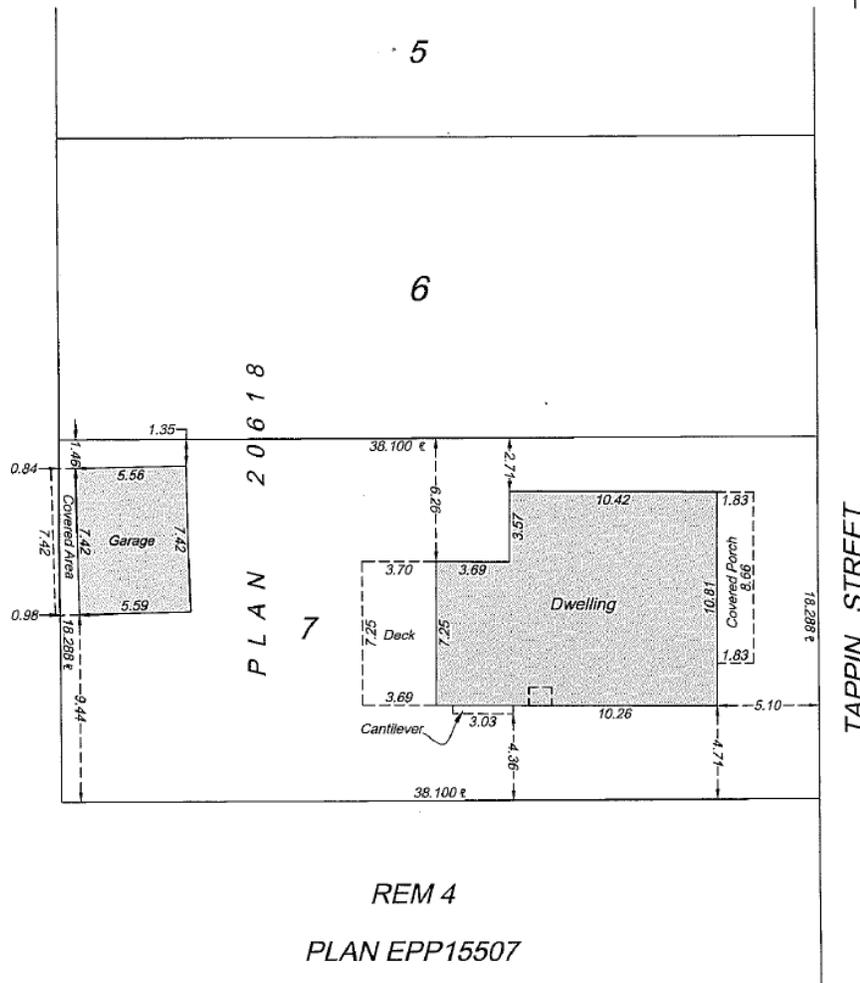
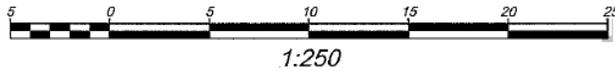
Figure 1: Subject Property Map



Figure 2: Air Photo

**B.C. LAND SURVEYOR'S CERTIFICATE OF LOCATION
ON LOT 7, SECTION 32, TOWNSHIP 1, NELSON
DISTRICT, PLAN 20618.**

Parcel Identifier: 003-545-261



Date of Survey: June 4th, 2020

Civic Address
5441 Tappin Street
Union Bay, BC

This document shows the registered dimensions of the above described property and the relative location of the surveyed structures and features with respect to the property boundaries. This document shall not be used to define property lines or property corners.

Digitally signed by Donald Grant
364AG6

DN: c=CA, cn=Donald Grant
364AG6, o=BC Land Surveyor,
ou=Verify ID at www.juricert.com/
LKUP.cfm?id=364AG6
Date: 2020.06.09 14:09:59 -07'00

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510 TAPPIN STREET
COURTENAY, B.C. V9N 1P8
250.941.0304

Figure 3: Site Plan



Figure 4: Site Photo

Board of Variance
5441 Tappin Street

This Board of Variance application is to vary the rear and side yard lot line setbacks pertaining to a detached garage on my property. I am wanting to construct a second floor over the existing foundation for an office space, and while the side yard setbacks are currently legal, they would not be once the building is over 4.5 metres in height. The variances requested are below:

Rear yard: 4.5 metres to 0.84 metres (existing at shortest point)
Side yard: 1.75 metres to 1.35 metres (existing at shortest point)
There will be eaves on the building that protrude a maximum of 12 inches.

I cannot build a second accessory building or a tiered second floor that would meet the setbacks because of the size of my property. Building to the south of the house or garage would block access to the garage, and the space between the house and garage is where the septic tank/field is located.