

DATE: February 25, 2021

FILE: 3090-20/DV 1B 21

TO: Chair and Members
Electoral Areas Services Committee

FROM: Russell Dyson
Chief Administrative Officer

Supported by Russell Dyson
Chief Administrative Officer

R. Dyson

**RE: Development Variance Permit – 2086 Hector Rd (Willis/Zimmerman)
Lazo North (Electoral Area B)
Lot 4, District Lot 170, Comox District, Plan 21086, PID 003-488-136**

Purpose

To consider a Development Variance Permit (DVP) (Appendix A) to reduce the minimum front yard setback pertaining to Acacia Road from 7.5 metres to 5.0 metres for the foundation of a carriage house, and from 5.5 metres to 4.25 metres for the eaves of a carriage house.

Recommendation from the Chief Administrative Officer:

THAT the Comox Valley Regional District Board approve the Development Variance Permit DV 1B 21 (Willis/Zimmerman) to reduce the front yard setback pertaining to Acacia Road from 7.5 metres to 5.0 metres for the foundation of the carriage house and from 5.5 metres to 4.25 metres for the eaves of the carriage house on property described as Lot 4, District Lot 170, Comox District, Plan 21086, PID 003-488-136 (2086 Hector Road);

AND FINALLY THAT the Corporate Legislative Officer be authorized to execute the permit.

Executive Summary

- A DVP application has been received to reduce the front yard setback pertaining to Acacia Road for the construction of a carriage house, from 7.5 metres to 5.0 metres for the foundation, and from 5.5 metres to 4.25 metres for the eaves.
- The Advisory Planning Commission (APC) for Area B considered the file at their February 16 meeting, voting to oppose the file primarily due to a lack of information. In addition, adjacent property owners within a 100 metre radius were notified of the variance request, and a referral was sent to planning staff at the Town of Comox.
- Staff are recommending that the variance be approved as there is sufficient space to maintain the building, sightlines are maintained, and it is unlikely to detract from the rural form and character of the neighbourhood.

Prepared by:

D. Thiessen

Dylan Thiessen, MA, MCP
Planner

Concurrence:

T. Trieu

Ton Trieu, RPP, MCIP
Manager of Planning Services

Concurrence:

A. Mullaly

Alana Mullaly, 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

A DVP application has been received to reduce the front yard setback to facilitate the construction of a carriage house. The variance only pertains to the lot line adjacent to Acacia Road. The subject property is approximately 0.19 hectares in size, zoned Country Residential One (CR-1), designated as a Settlement Expansion Area (SEA), and is bound by Hector Road and the Town of Comox to the south, Acacia Road to the west, and other CR-1 zoned properties to the north and east (Figures 1 and 2). Existing development on the property includes a single detached house and a detached garage. The development proposal includes removing part of the garage and constructing a carriage house in the area, and a variance is being requested to help facilitate this development (Figures 3 - 7). The variance sought is from 7.5 metres to 5.0 metres for the foundation of the building, and from 5.5 metres to 4.25 metres for the eaves.

The subject property is serviced by the Comox Valley Water Local Service Area and has an on-site septic system for sewage disposal. The location of the septic field is a primary component of the variance request as its current location, between the existing dwelling and detached garage, make it difficult for the applicants to locate the carriage house in a way that meets the current minimum front yard setbacks. There is also already a driveway constructed to provide access to the detached garage, which would only be minimally expanded to provide access to the carriage house.

Policy Analysis

Section 498 of the *Local Government Act* (RSBC, 2015, c.1) (LGA) authorizes a local government to consider the issuance of a DVP that varies the provision of a bylaw, provided that the use or density of the land is not being varied, the land is not in a designated floodplain, or the development is not part of a phased development agreement.

Official Community Plan and Regional Growth Strategy Analysis

Bylaw Nos. 120 and 337, being the “Comox Valley Regional District Regional Growth Strategy Bylaw No. 120, 2010” and the “Rural Comox Valley Official Community Plan Bylaw No. 337, 2014” respectively, designate the land as being within a SEA. Development and densification within the SEA is to be limited until a point at which those lands can be incorporated by a member municipality. The proposed development does not conflict with any of the residential policies, goals, or objectives outlined in either Bylaw No. 120 or Bylaw No. 337.

Zoning Bylaw Analysis

The Zoning Bylaw, being the “Rural Comox Valley Zoning Bylaw No. 520, 2019,” defines a front yard lot line as “the lot line which is common to the lot and a highway ...[and]...where two or more lot lines are common to a lot and a highway, they shall be deemed to be the front lot line.” Because of this definition, the lot lines adjacent to Acacia Road and Hector Road are both considered front yard lot lines and the foundation of residential structures near either lot line are subject to the 7.5 metre minimum setback. Per Section 403(1) of the Zoning Bylaw, the eaves and other protruding features are subject to a 5.5 metre setback from both lot lines. Given this, the applicant is seeking a 2.5 metre reduction in the front yard setback pertaining to the foundation, and a 1.25 metre reduction pertaining to the eaves, with respect to the lot line adjacent to Acacia Road. The request is also summarized in the table on the following page.

Table 1: Variance Summary

Zoning Bylaw	Variance	Zoning	Proposed	Difference
Section 703(5)	Front yard setback	7.5 metres	5.0 metres	2.5 metres
Section 403(1)	Siting exemptions	5.5 metres	4.25 metres	1.25 metres

Planning staff are currently drafting amendments to the Zoning Bylaw, and one of the proposed amendments will alter the definition of front yard lot line as the current definition and resulting interpretation was made in error. Should the bylaw amendments be approved, the change in definition will result in the northern lot line (shared with the property at 866 Acacia Road) becoming the rear lot line rather than a side lot line, and the minimum setback for a residential structure from a rear yard lot line is 7.5 metres. If this current variance is approved, the carriage house would hold legal non-conforming status and no further action would be required by the owners; however, the owners would be prohibited from making any alterations that further reduce the distance between the carriage house and the new rear yard lot line.

Recommendation and Rationale

Staff are in support of the application and are recommending that the Electoral Areas Services Committee (EASC) support the application for the following reasons:

1. While the applicant will still need to go through the Ministry of Transportation and Infrastructure if the eaves of the building come within 4.5 metres of the road right-of-way, the siting of the foundation outside of 4.5 metres from the right-of-way helps maintain sightlines, which increase vehicular and pedestrian safety.
2. The proposed setback leaves sufficient space for the maintenance of the building.
3. It is unlikely that the proposal will alter the rural character of the neighbourhood.
4. The minimum side and rear yard setbacks are maintained, so privacy concerns are mitigated.

Options

The EASC can either approve or deny the requested variance. Based on the analysis above, staff recommend approving the setback variance.

Financial Factors

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

Legal Factors

This report and the recommendations contained herein are in compliance with the LGA and applicable Comox Valley Regional District (CVRD) bylaws. DVPs are permitted in certain circumstances under Section 498 of the LGA.

Regional Growth Strategy Implications

This application does not have any implications for the Regional Growth Strategy, as the variance requested does not conflict with any of the residential policies, principles, or objectives outlined within Bylaw No. 120.

Intergovernmental Factors

Because the subject property is adjacent to a municipal boundary with the Town of Comox, a referral was sent to planning staff with the Town. A response was not received in time to be included in this report, but will be included in staff’s oral presentation of the file.

Interdepartmental Involvement

This application was referred to staff within the bylaw enforcement, fire services, building, and engineering departments to provide staff an opportunity to comment on the application. Staff in the building department noted that the spatial calculations between the carriage house and existing building and fire department response time will need to be confirmed during the building process.

Citizen/Public Relations

The APC for Electoral Area B considered this application at their meeting held on February 16, 2021. The APC decided to vote to oppose the application, noting that not knowing the precise location of the septic field made the application difficult to assess. APC members were concerned about vehicles possibly needing to traverse over the septic field to access the carriage house or detached garage, and questioned the need for a variance if the location of the septic field may need to change. Staff have worked with the applicant to determine the precise spacing between the carriage house/driveway and septic field, which is now noted on the site plan attached (Figure 3). Any potential safety issues will be addressed during the building permit process, but the applicant has already retained a septic professional and both parties are confident that the spacing provided is sufficient.

Further, notice of the requested variance was mailed to adjacent property owners within 100 metres of the subject property at least 10 days prior to the EASC meeting. This notice informs those property owners and/or tenants as to the purpose of the application and permit, the land that is the subject of the permit, and that further information on the proposed permit is available at the CVRD office. It also provided the date and time of the EASC meeting where the permit will be considered. Consultation with these property owners and/or tenants is through their written comments received prior to the EASC meeting or their attendance at the EASC meeting.

Attachments: Appendix A – “Development Variance Permit DV 1B 21”

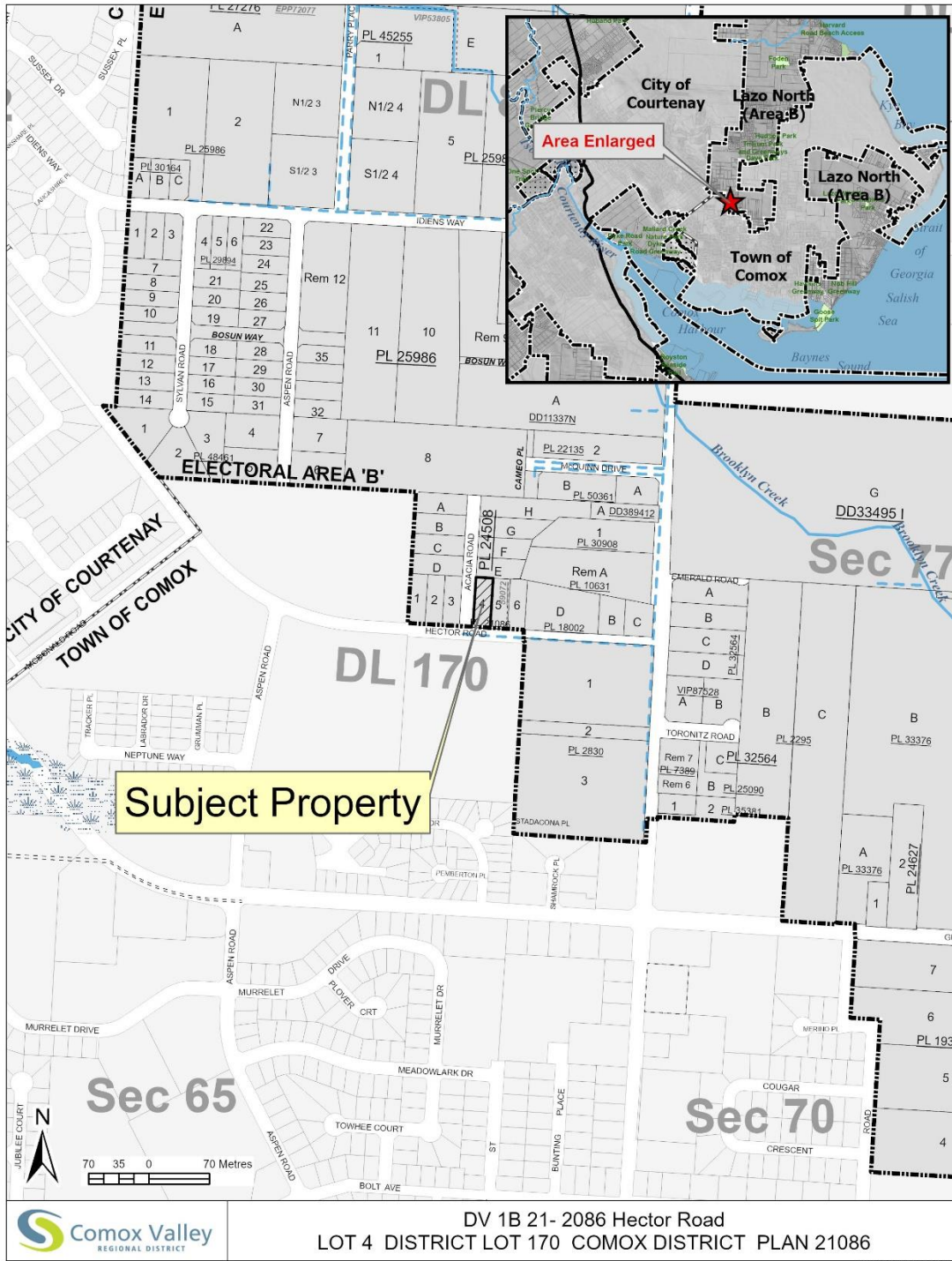


Figure 1: Subject Property Map

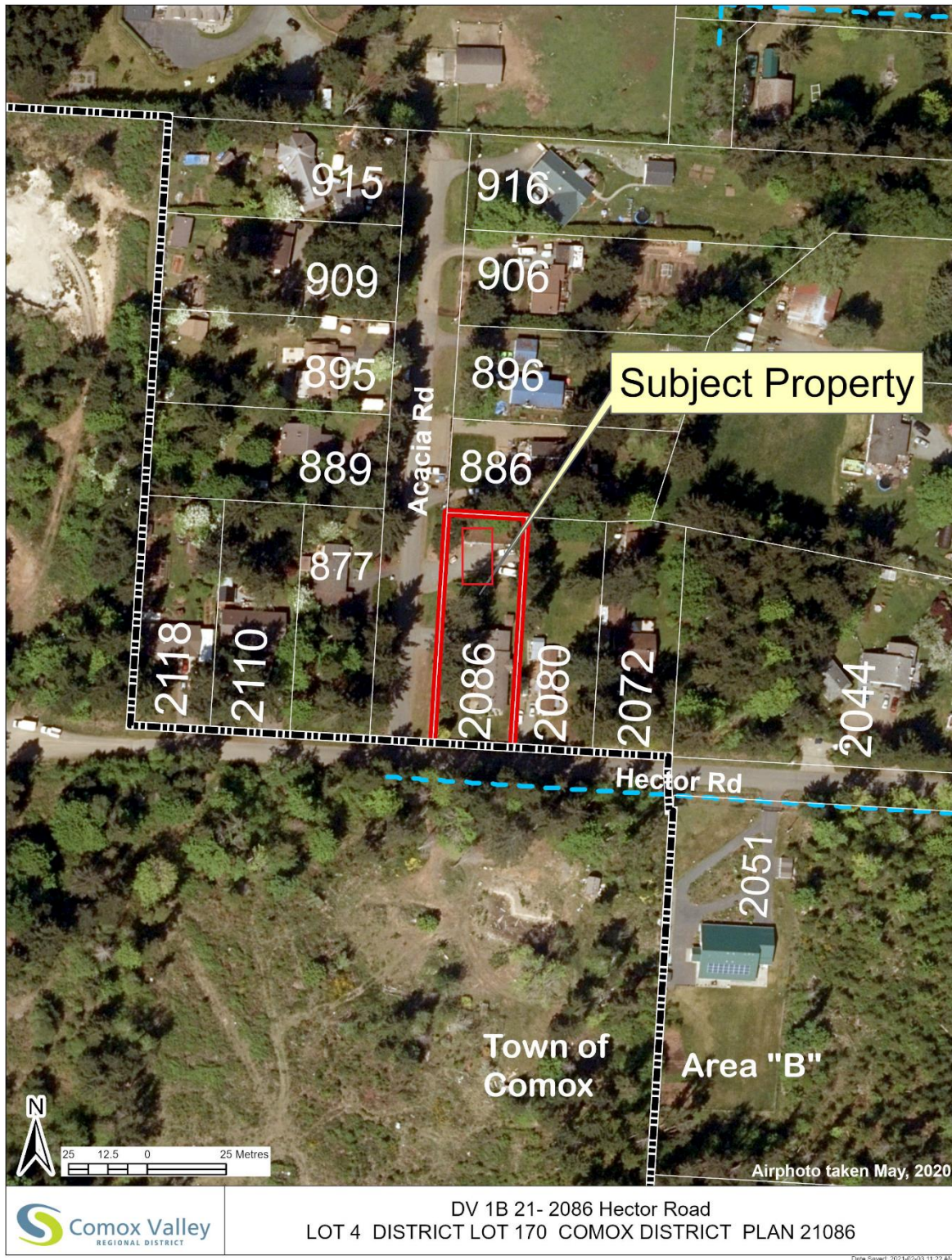


Figure 2: Air Photo

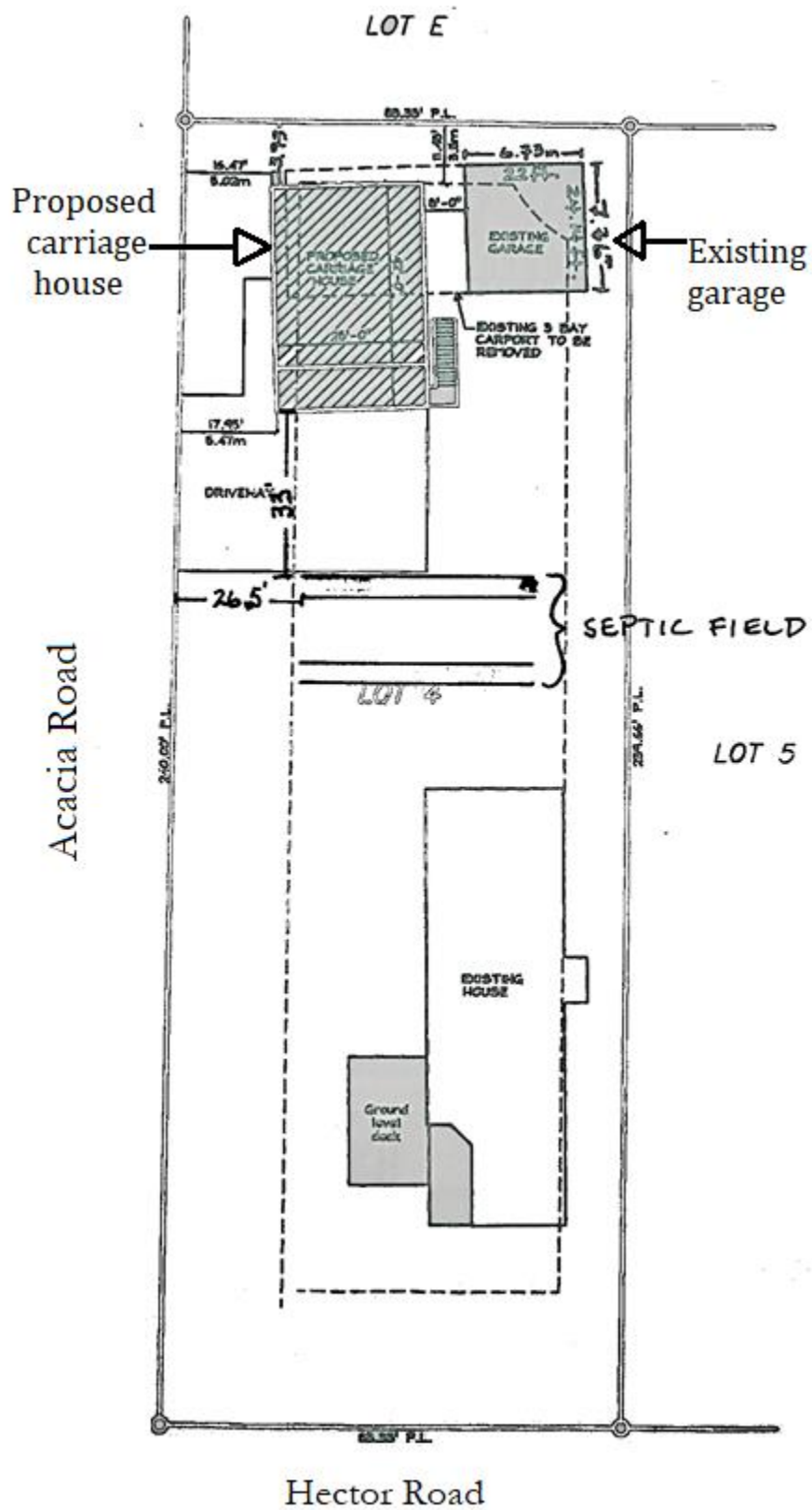
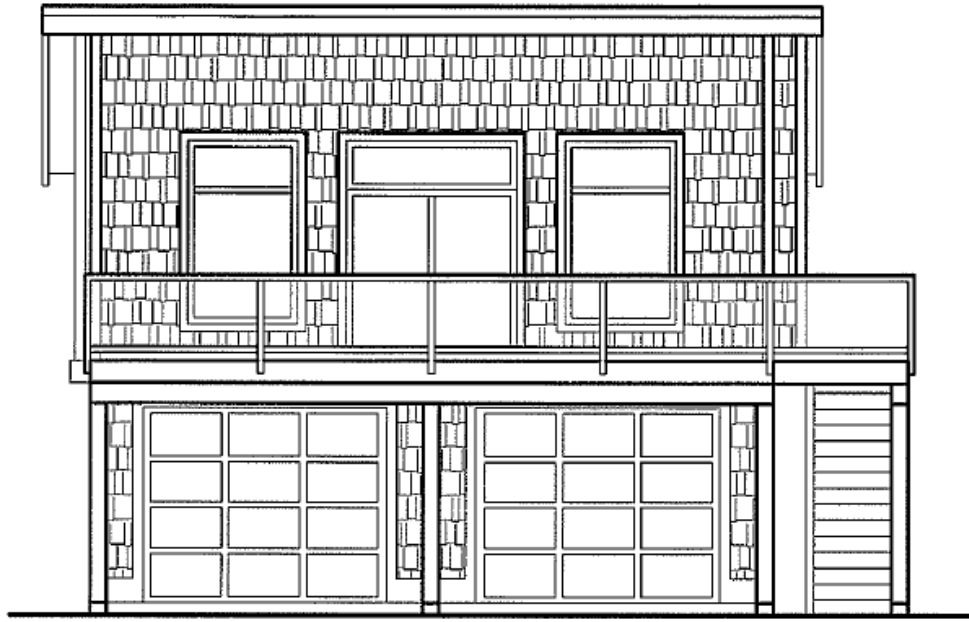
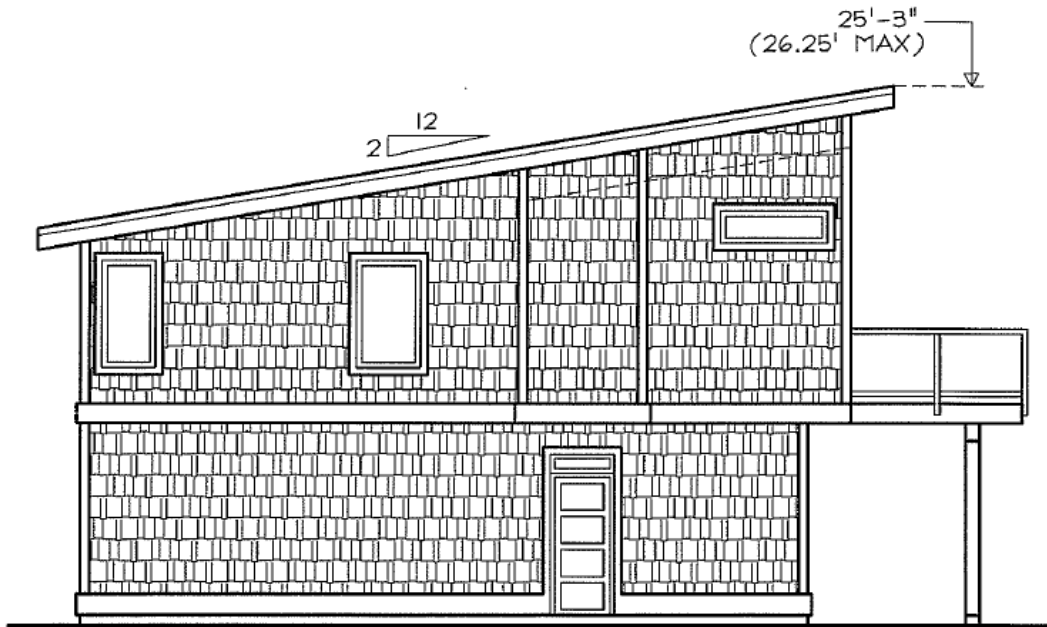


Figure 3: Site Plan



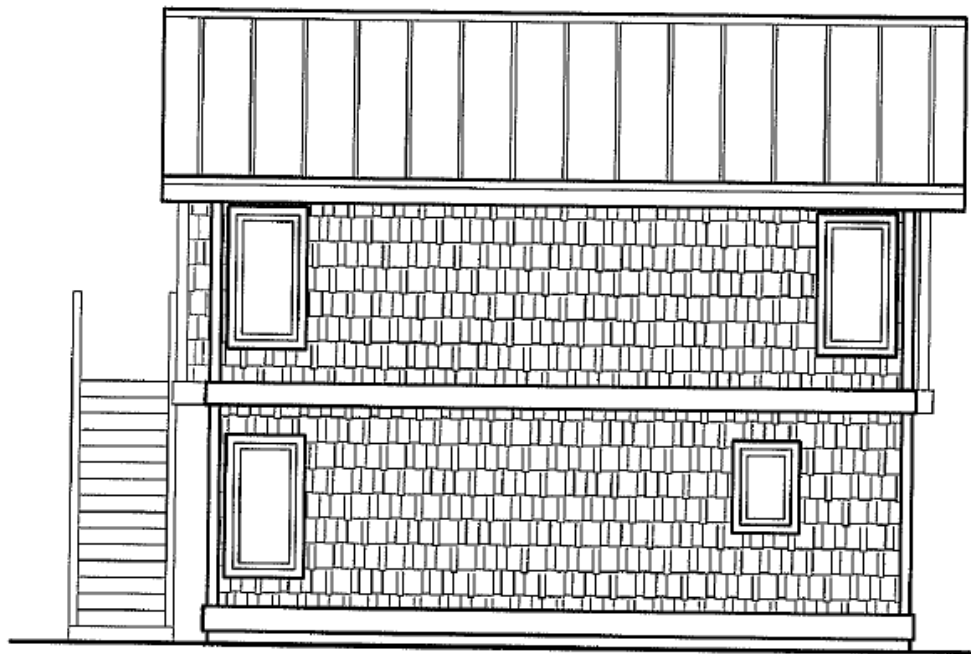
RIGHT ELEVATION

Figure 4: Elevation Drawing 1



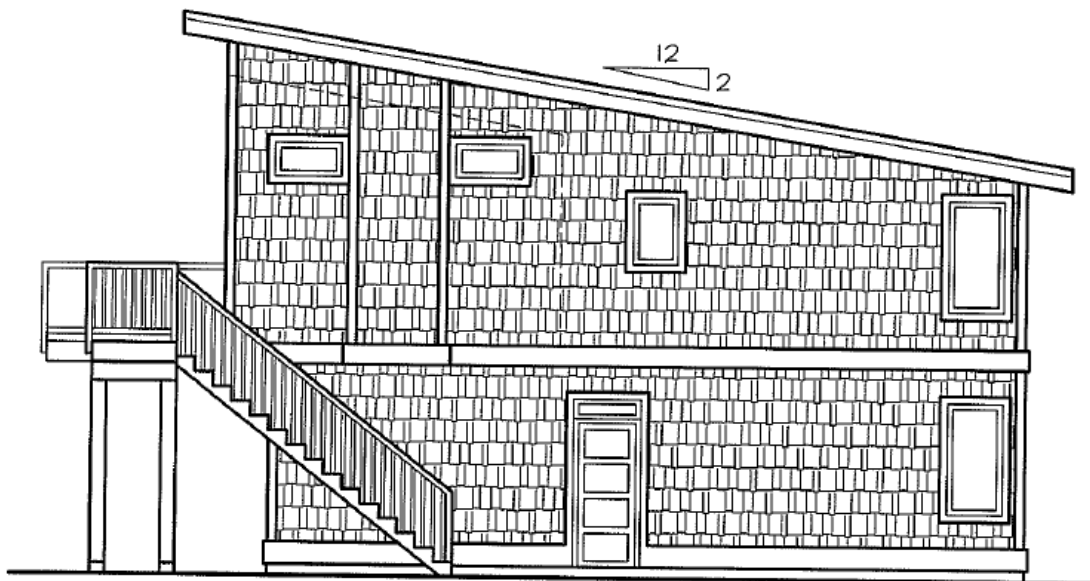
FRONT ELEVATION
VIEW FROM ACACIA ROAD

Figure 5: Elevation Drawing 2



LEFT ELEVATION

Figure 6: Elevation Drawing 3



REAR ELEVATION

Figure 7: Elevation Drawing 4

DV 1B 21

TO: Kary Zimmerman and Lawrence Willis

1. This Development Variance Permit (DV 1B 21) is issued subject to compliance with all of the bylaws of the Comox Valley Regional District applicable thereto, except as specifically varied or supplemented by this permit.
2. This Development Variance Permit applies to and only to those lands within the Comox Valley Regional District described below:
Legal Description: Lot 4, District Lot 170, Comox District, Plan 21086
Parcel Identifier (PID): 003-488-136 Folio: 02702.020
Civic Address: 2086 Hector Road
3. The land described herein shall be developed strictly in accordance with the following terms and provisions of this permit:
 - i. THAT the development shall be carried out according to the plans and specifications attached hereto which form a part of this permit as the attached Schedules A and B.
 - ii. THAT any permits required from the Ministry of Transportation and Infrastructure, including those required for encroachments within road rights-of-way or second access points, be obtained.
4. This Development Variance Permit is issued following the receipt of an appropriate site declaration from the property owner.
5. This Development Variance Permit (DV 1B 21) shall lapse if construction is not substantially commenced within two (2) years of the Comox Valley Regional District Board's resolution regarding issuance of the Development Variance Permit (see below). Lapsed permits cannot be renewed; therefore application for a new development permit must be made, and permit granted by the Comox Valley Regional District Board, in order to proceed.
6. This Development Variance Permit is *not* a Building Permit.

CERTIFIED as the **DEVELOPMENT VARIANCE PERMIT** issued by resolution of the board of the Comox Valley Regional District on _____.

Jake Martens
Deputy Corporate Legislative Officer

Certified on _____

Attachments: Schedule A – “Resolution”
Schedule B – “Subject Property Map, Air Photo, Site Plan, and Elevation Drawings”

Draft

Schedule A

File: DV 1B 21

Applicants: Kary Zimmerman and Lawrence Willis

Legal Description: Lot 4, District Lot 170, Comox District, Plan 21086

Specifications:

THAT WHEREAS pursuant to Section 703(5)(i) of Bylaw No. 520, being the “Rural Comox Valley Zoning Bylaw No. 520, 2019,” the minimum front yard setback for principal dwellings on the property is 7.5 metres;

AND WHEREAS pursuant to Section 403(1) of Bylaw No. 520, being the “Rural Comox Valley Zoning Bylaw No. 520, 2019,” the minimum front yard setback for features of construction that protrude toward the lot line without incorporating floor area is 5.5 meters;

AND WHEREAS pursuant to Section 315(2)(i) of Bylaw No. 520, being the “Rural Comox Valley Zoning Bylaw No. 520, 2019,” the siting of a carriage house shall be in accordance with the principal structure setbacks;

AND WHEREAS the applicants, Kary Zimmerman and Lawrence Willis, wish to construct a carriage house, shown on Schedule B, with the siting specifications listed below:

- Front yard lot line setback of 5.0 metres as it pertains to the foundation of the structure
- Front yard lot line setback of 4.25 metres as it pertains to the eaves of the structure

THEREFORE BY A RESOLUTION of the board of the Comox Valley Regional District on _____, the provisions of Bylaw No. 520, being the “Rural Comox Valley Zoning Bylaw No. 520, 2019,” as they apply to the above-noted property are to be varied as follows:

701(5) “The minimum front yard setback, pertaining to Acacia Road, of the carriage house shown on Schedule B is 5.0 metres for the foundation.”

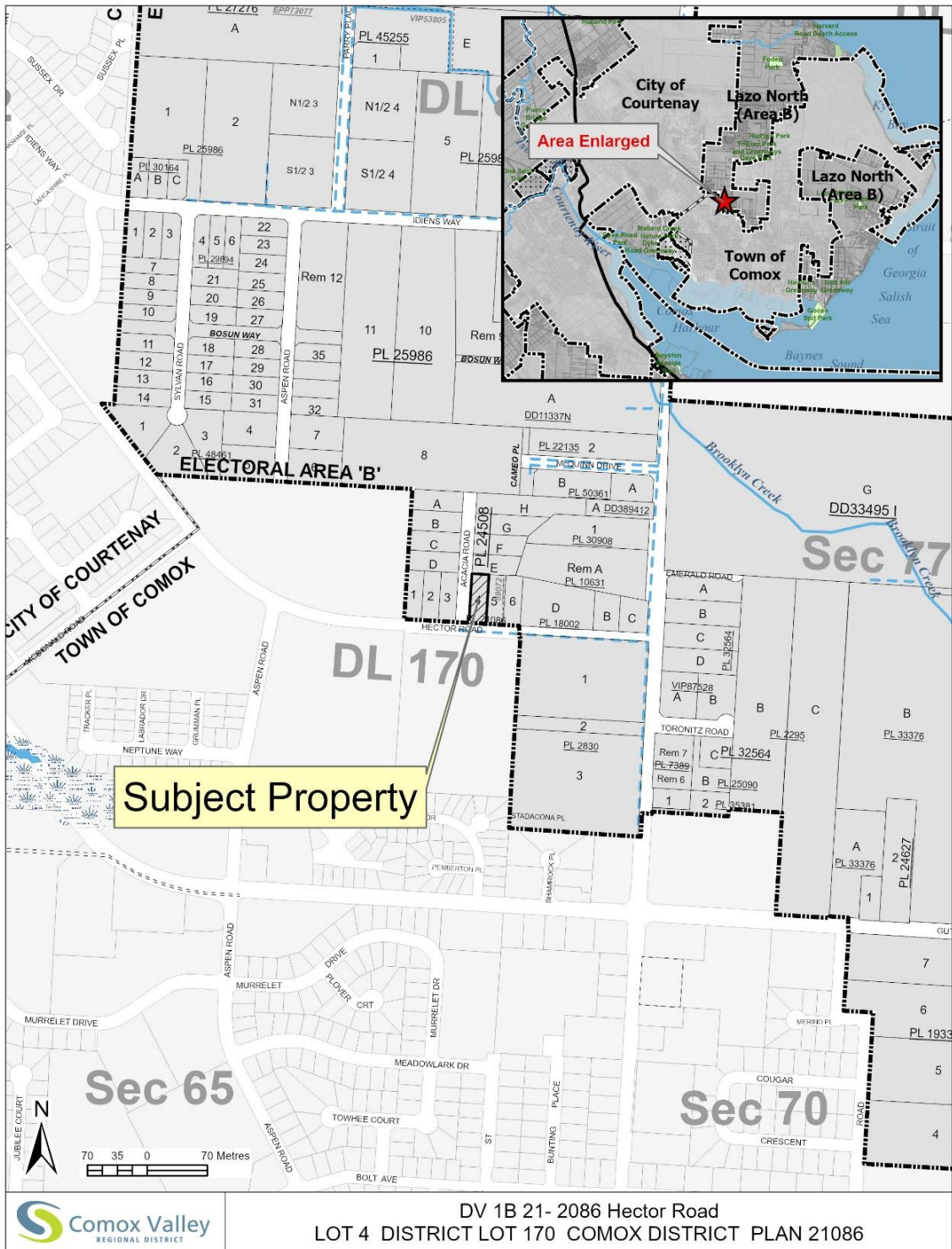
403(1) “The minimum front yard setback, pertaining to Acacia Road, of the carriage house shown on Schedule B is 4.25 metres for the eaves.”

I HEREBY CERTIFY this copy to be a true and correct copy of Schedule A being the terms and conditions of Development Variance Permit File DV 1B 21.

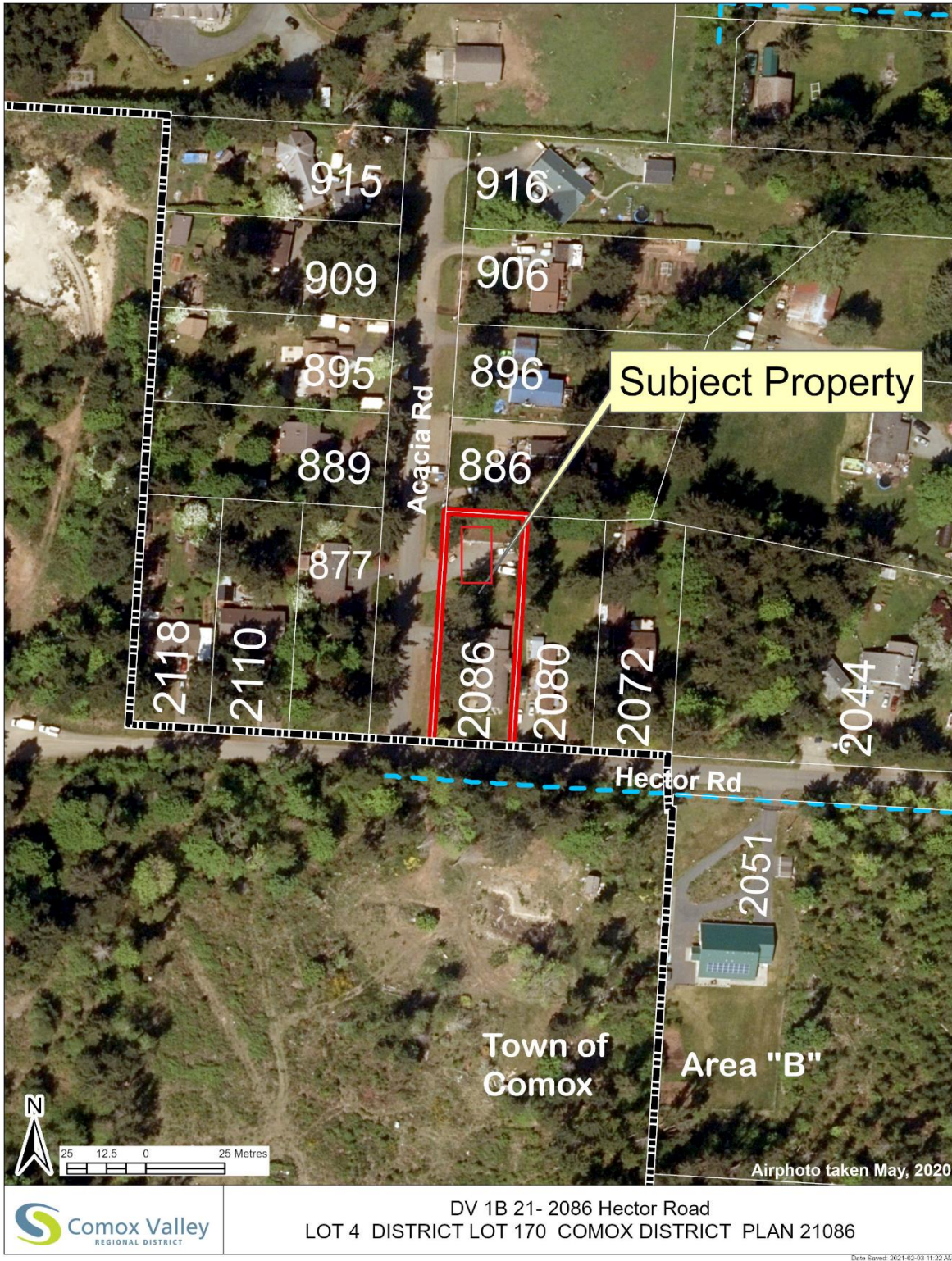
Jake Martens
Deputy Corporate Legislative Officer

Certified on _____

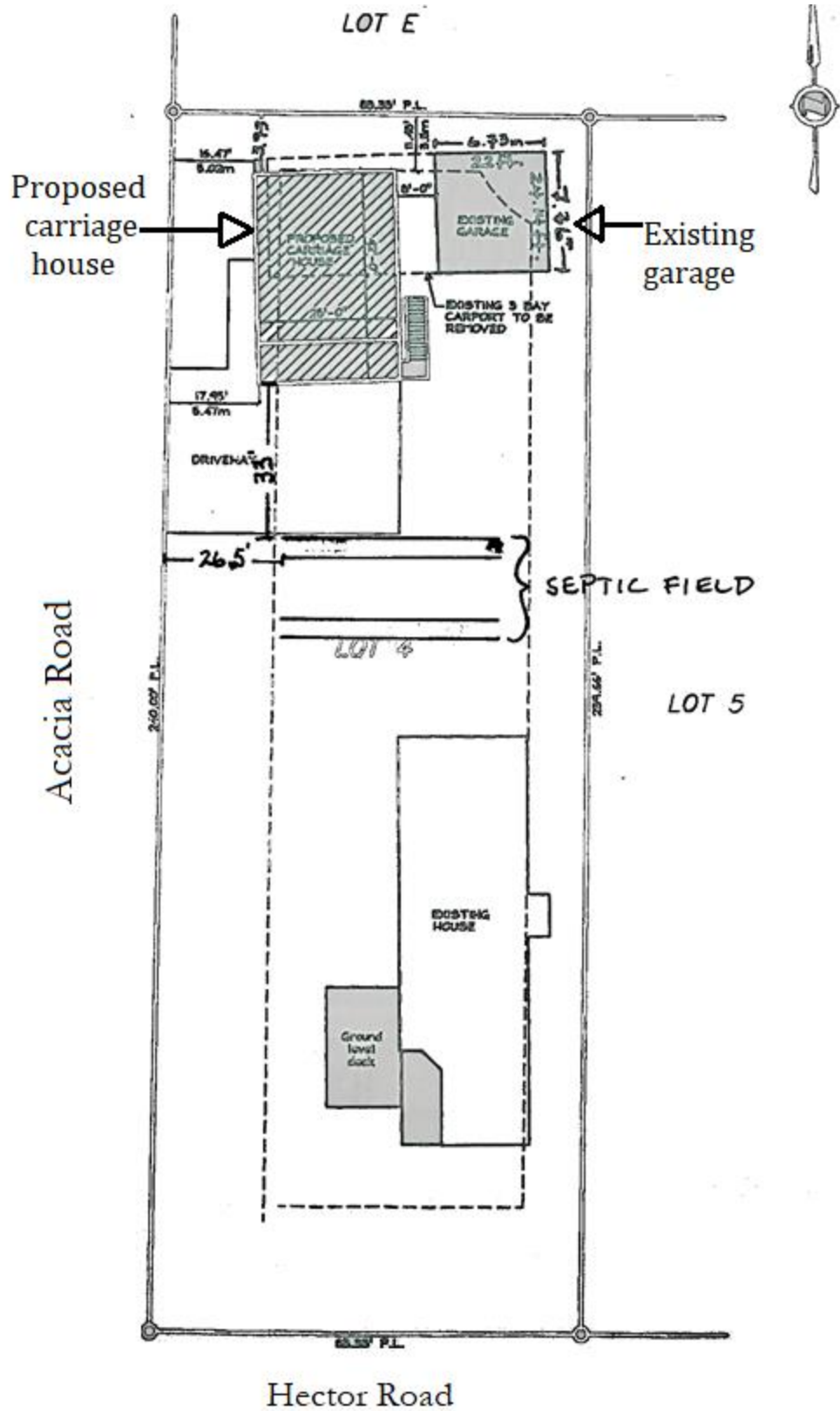
Schedule B



Subject Property Map



Air Photo

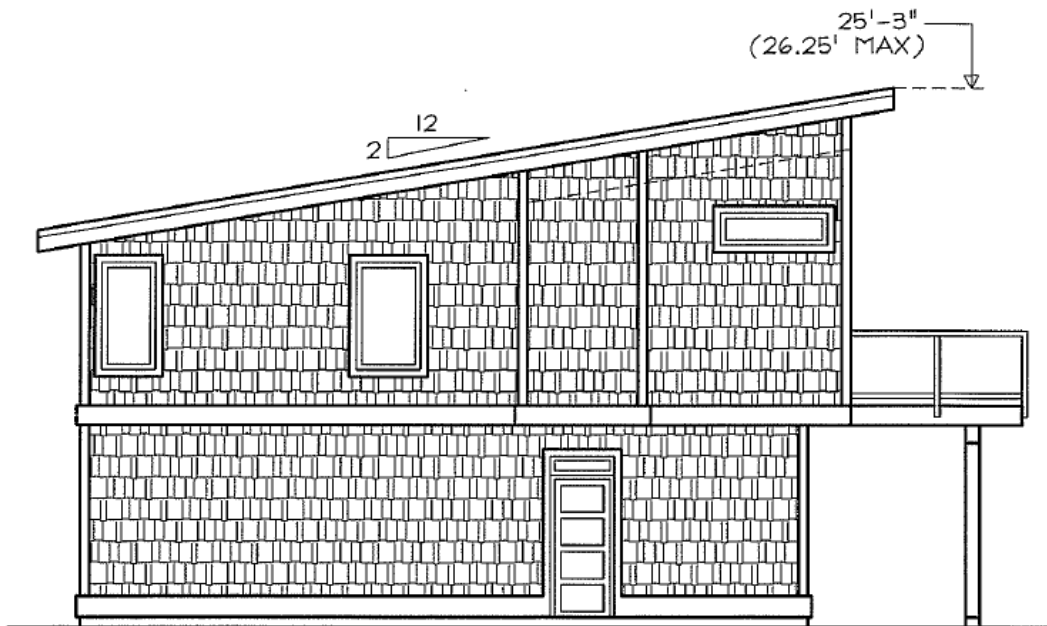


Site Plan



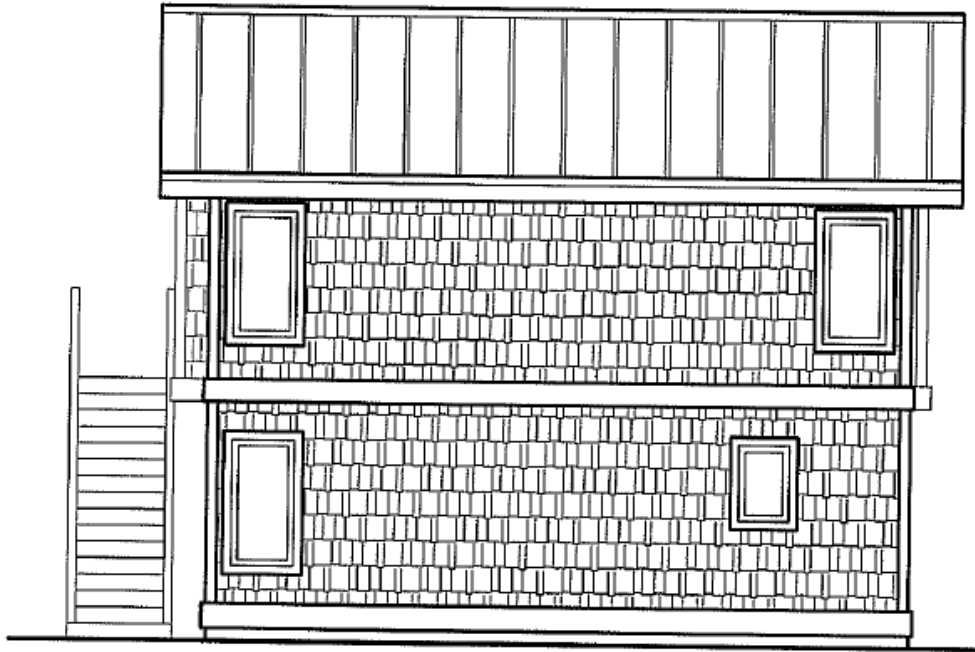
RIGHT ELEVATION

Elevation Drawing 1



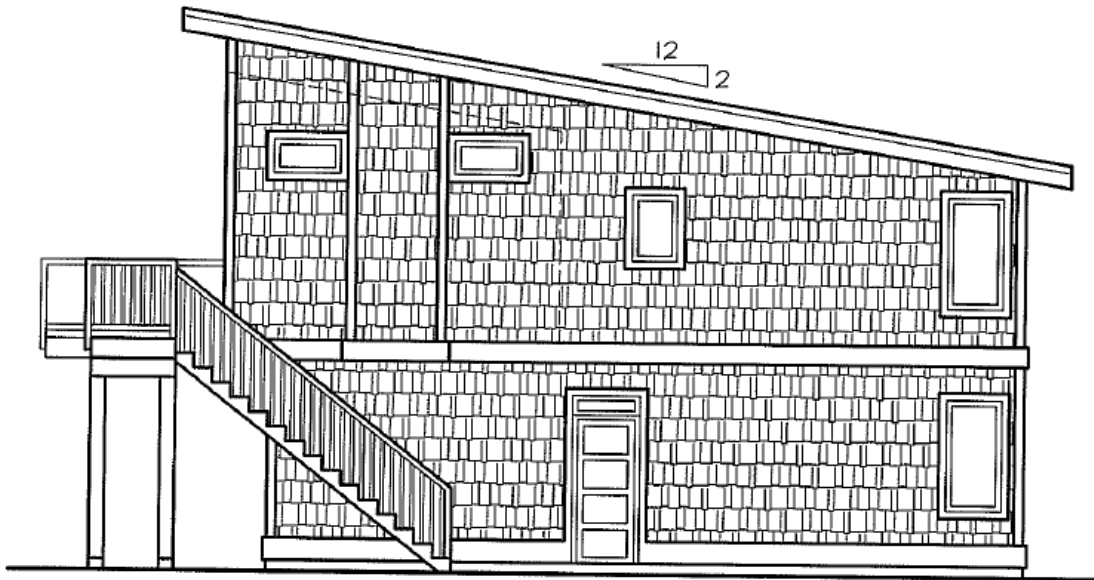
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VIEW FROM ACACIA ROAD

Elevation Drawing 2



LEFT ELEVATION

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REAR ELEVATION

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