

DATE: June 29, 2017

FILE: 3090-20/DV 2C 16

TO: Chair and Directors
Electoral Areas Services Committee

FROM: Russell Dyson
Chief Administrative Officer

RE: Development Variance Permit and Zoning Amendment Option
7413 Island Highway North (Wainies)
Puntledge – Black Creek (Electoral Area C)
Lot A, District Lot 249, Comox District, Plan 19196, PID 003-697-495

Purpose

To provide a report that reviews options that would bring the subject property into compliance with the zoning bylaw.

Policy Analysis

Section 479 of the *Local Government Act* (RSBC, 2015, c. 1) (LGA) authorizes a local government to establish a zoning bylaw to regulate, among other items, the siting, size and dimensions of buildings and other structures; and the density of the use of land, buildings and other structures.

Section 498 of the LGA authorizes a local government to consider issuance of a Development Variance Permit (DVP) that would vary the provisions of a zoning bylaw, provided the permit does not vary the use or density of the land.

Section 460 of the LGA enables a property owner to apply for an amendment to the zoning bylaw, such as a change to the bylaw's regulations concerning use or density.

Sections 528 to 535 of the LGA address non-conformity of buildings and uses with respect to land use regulations. Regarding lawfully non-conforming uses, these sections state the use may not expand but may continue until the use is discontinued for a period of six months or the building in which the use is occurring is damaged or destroyed to the extent of at least 75 per cent of its value. Section 531 states, "*a structural alteration or addition must not be made in or to a building or other structure while a non-conforming use is continued in all or any part of it.*" Regarding lawfully non-conforming buildings, Section 529 states that building with lawfully non-conforming siting, size or dimensions may be maintained, extended or altered only to the extent that there is no further contravention of the regulation.

Executive Summary

- This report relates to a DVP application (Appendix A) to vary the height and setback of an accessory building and a request by the Electoral Areas Services Committee (EASC) to review a rezoning option;
- The property is 0.71 hectares and is located in the 'Rural Settlement Area' designation which supports a range of low density rural residential uses;

- The property is developed with three lawfully non-conforming dwellings which are all under 90 square metres; the zoning bylaw otherwise permits one dwelling and one secondary dwelling (Figures 1, 2 and 3);
- Following many discussions with staff, the applicants have stated (Appendices B and C) that their preferred development aspiration is to finish work on the accessory building for use as a workshop, retain and improve the three existing cabins (i.e. enlarge), and build a new, fourth dwelling as a principal dwelling;
- There is no indication to suggest that Island Health would support four dwellings on on-site services on a 0.71ha parcel;
- Four dwellings of the property would not be consistent with the Regional Growth Strategy (RGS) or Official Community Plan (OCP) “rural settlement area” designation direction;
- Staff recommend issuance of the DVP (Appendix D) for the accessory building’s height and setback with the condition that the second floor wall facing the neighbours not include a window or door. Staff does not recommend amending the zoning bylaw to increase the allowable residential density of the property;
- Staff’s recommendation allows the applicant to make application for a building permit to bring the accessory building to completion and retain the three existing cabins as lawfully non-conforming, and even convert one of the cabins to a principal dwelling and a second to a secondary dwelling (which would have the effect of allowing alterations to floor area) under the regulations concerning lawfully non-conforming and the zoning bylaw.

Recommendation from the Chief Administrative Officer:

THAT the board approve the Development Variance Permit DV 2C 16 (Waines) to vary the accessory building’s maximum height from 6.0 metres to 7.2 metres, its minimum side yard setback from 3.5 metres to 2.5 metres, and roof overhang setback from 1.75 metres to 1.3 metres on the property described as Lot A, District Lot 249, Comox District, Plan 19196, PID 003-697-465 with the condition that no window or door be installed in the second floor wall facing the closest side property line;

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

Respectfully:

R. Dyson

Russell Dyson
Chief Administrative Officer

Background/Current Situation

The property owner began work, without a building permit, to expand an existing accessory building by increasing its height to add a second floor, as well as foundation repair and interior work to create habitable space. Following the issuance of a stop work order and the examination of the plans, the property owner applied for a DVP that would allow the work to be brought to completion and agreed that the building would not be used as a dwelling. Specifically, the proposed DVP would allow the accessory building to exceed the maximum height limit by 1.2 metres and encroach into the side yard setback area by 1.0 metres with a roof overhang that is 0.45 metres into its regulated setback area.

Table 1: Variance Summary

Zoning Bylaw No. 2781	Variance	Required	Proposed	Difference
Section 309(3)	Height	6.0 metres	7.2 metres	1.2 metres
Section 801(6)	Side yard setback	3.5 metres	2.5 metres	1.0 metre
Section 403(2)	Roof overhang setback	1.75 metres	1.3 metres	0.45 metres

At its February 6, 2017 meeting, the EASC reviewed the application and, in considering the context of the application with respect to the property's development, use, density and non-conformances, carried the following motion:

“THAT development variance permit application DV 2C 16 for 7413 Island Highway North (Waines) be referred to staff to investigate an appropriate zoning amendment that will bring the property into compliance.”

The applicant attended the above noted meeting and subsequently submitted a letter (Appendix B) dated February 16, 2017, addressing the above motion. After discussions with staff, the applicant submitted a second letter dated June 9, 2017 (Appendix C). The property owners specify that their development aspiration is to improve the existing three residential dwellings, bring the accessory building to completion with the requested varied height and setback, and construct a fourth dwelling as the principal house. To achieve that level of development a zoning amendment to increase the number of dwellings permitted on the property would be required, as well as issuance of the proposed DVP.

Planning Analysis

Official Community Plan

The subject property is designated Rural Settlement Area (RSA) in the OCP, Bylaw No. 337, being the “Rural Comox Valley Official Community Plan Bylaw No. 337, 2014”. Policy 45 of the OCP states the RSA “will provide for a range of low density rural residential uses, including accessory dwellings such as secondary dwelling, secondary suites and carriage houses”. This policy direction is implemented by the zoning regulations’ allowance for an accessory dwelling (i.e. a secondary suite, a carriage house, or secondary dwelling limited to 90 square metres) on properties under 1 hectare and two single detached dwellings on properties over 1 hectare. A zoning amendment bylaw to allow this 0.71 hectare subject property to build three or four dwellings is not consistent with how the RSA’s policy direction has been implemented to date.

Zoning Bylaw

This 0.71 hectare subject property in Merville is currently zoned Rural Eight (RU-8). On properties under 1.0 hectare, that zone allows for a residential density of one single detached dwelling and one secondary dwelling limited in area to 90.0 metres². There are three existing dwellings on the subject property: one principal dwelling, one secondary dwelling, and one lawfully non-conforming dwelling. Because all three were constructed prior to the establishment of a zoning bylaw that limited residential density and all three are under 90.0 metres², any of them may be deemed to be the principal and secondary dwellings and improved as such. A zoning amendment to permit the subject property to have a residential density of three or four dwellings could take the form of a zone exception that would only apply to this one parcel or the creation of a new multi-family zone.

Regarding the accessory building, the RU-8 zone allows a maximum of 300 square metres of accessory gross floor area. Over the two floors, this accessory building would have approximately

187 square metres of total floor area. It was constructed 2.5 metres from the side yard property line whereas the zoning requires a setback of 3.5 metres. While the applicant believes the accessory building was also constructed prior to the establishment of the zoning bylaw, and therefore has lawfully non-conforming siting, staff was not able to verify this. Regardless, adding a second floor in the setback area constitutes an expansion of floor area within the setback and requires a DVP. Similarly, raising the height even further beyond what it was originally constructed and beyond the 6 metre zoning height limit, requires a DVP.

Lawful Non-Conformance, Development Variance Permit, Zoning Amendment

A building or use that is lawfully non-conforming means that when the building was constructed or the use started it was consistent with the zoning bylaw that applied at the time but that the zoning regulation changed so that it no longer conforms. When new zoning regulations are adopted, such as a property line setback requirement or a limit to residential density, those buildings or uses that exist but do not conform to the new regulations are deemed “lawfully non-conforming”. The LGA allows buildings that are lawfully non-conforming with respect to siting, size and dimensions to continue to exist with the limitation that any extensions and alterations must involve no further contravention of the bylaw. Any such extensions or alterations that do involve further contravention of regulations involving siting, size and dimensions requires issuance of a DVP.

Regarding a lawfully non-conforming use, such as operating three residential dwellings in this case, the LGA allows the use to continue until the building is damaged or destroyed to the extent of 75 per cent or more of its value above its foundations. An application (e.g. for a zoning amendment) is unnecessary to address lawful non-conformance because the LGA allows the building to continue to be used; there is no need to ‘legalize’ the dwellings because they are already lawful. The LGA prevents expansion of the non-conformance and expects all new uses and development to adhere to the zoning bylaw in effect. As all three existing dwellings have equal claim to being deemed the lawfully non-conforming third dwelling a structural alteration or addition may be done on only two of the dwellings. A zoning amendment would allow continual alterations and redevelopment of the third dwelling.

A DVP is the proper tool to vary a regulation concerning the siting, size and dimensions of buildings because they are issued in consideration of specific circumstances, including the type of building (e.g. residential, accessory, etc.), orientation of building features towards neighbours (e.g. doors/windows, roof height, projections, outdoor lighting, etc.) and impacts to adjacent land uses, and can include conditions relating to building features. Because Section 498(2) of the LGA specifically excludes varying use or density with a DVP, a zoning amendment is the proper tool to change regulations concerning use or density, even if the amendment only affects one property.

Impact Analysis

A zoning amendment to allow this property to develop and re-develop three or four dwellings would not be consistent with the OCP’s approach to low density rural residential uses in the RSA or the Regional Growth Strategy’s approach to rural character with minimum lot sizes ranging between 4 and 20 hectares in the RSA. A zoning amendment initiated by the Comox Valley Regional District that provides only one property in the RU-8 zone, and the RSA designation, with more development rights than the others may lead to increased development expectations in areas intended to maintain a rural character with low density rural residential development. Should the property owner initiate a zoning amendment by application it would only affect the properties listed in the application and the specifics of the proposal, including consistency with the OCP and RGS, would be analysed with an open mind.

Regarding the accessory building, the requested variance adds a second floor which is 2.5 metres away from the side property line. On the neighbouring lot, adjacent to this accessory building is a small fence, several metres of bush and trees and driveway that leads to a dwelling (Figure 4). The end of the accessory building that faces the neighbouring lot was altered to have a walk door and a window on both floors (Figure 5). The applicant has agreed to eliminate the second floor walk door on this end in consideration that the associated deck and stairs (which were not built) would even further encroach into the setback area. With consideration to the RSA designation's objective in the OCP that new development minimize its impact on existing neighbourhoods, staff recommends elimination of the second floor window on this end which, if completed, would overlook the neighbour's driveway and homesite. The window and walk door (which would also include a landing pad and porch light) on the first floor opens towards a cleared area on the subject property partially sheltered by the roof overhang and bushes and trees which exist on the neighbouring property between its driveway and fence. This buffer area, the distance to the neighbouring dwelling, and the use of building being limited to accessory uses (e.g. hobbies, work shop, storage, etc.) minimizes the impacts of this first floor encroachment.

Options

1. The board may initiate the zoning amendment process to permanently allow three or four dwellings on the subject property, as the applicant has requested, by directing staff to draft a zoning bylaw amendment that could take the form of a zone exception or a new multi-family residential zone for review at a future EASC meeting. Staff would work with the applicant to commence that process.
2. The board may approve the variances to the accessory building.
3. The board may deny the variances which would require the applicant undo the work that was undertaken to add a second floor.

Staff recommends (1) that a zoning amendment addressing the property's development and use not be pursued at this time as it exceeds what was intended in the OCP's policy direction regarding low density rural residential uses in the RSAs and (2) that the board approve issuance of the DVP with the condition that there be no windows or doors on the second floor wall closest to the side property line.

Financial Factors

The property owner has paid the \$500 DVP applicable fee. Pursuant to the "Comox Valley Regional District Planning Procedures and Fees Bylaw No. 328, 2014" the application fee for a zoning amendment that would increase residential density beyond two dwelling units is \$3000, with an additional fee of \$1500 should the proposed zoning amendment be advanced to the public hearing stage.

Legal Factors

This report and the recommendations contained herein are in compliance with the LGA and CVRD bylaws.

Regional Growth Strategy

The subject property is designated Rural Settlement Area in the Regional Growth Strategy, Bylaw No. 120, being the "Comox Valley Regional District Regional Growth Strategy Bylaw No. 120, 2010". Policy MG 2A-1 states that "*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*". Staff has considered this policy in the recommendation to allow the siting variances.

Intergovernmental Factors

Should the board opt to initiate with the zoning amendment option, staff will prepare an external agency referral list for board approval consistent with Bylaw No. 328 and report back at a future EASC meeting.

Interdepartmental Involvement

If the variances are approved as recommended, a Building Permit will be required in order for the owner to address the building alterations that were underway prior to the issuance of the Stop Work Order.

Citizen/Public Relations

Regarding the DVP, the Advisory Planning Commission ‘C’ considered the application on November 23, 2016, and adopted the resolution that the application “*be tabled for further investigation and discussion.*” Notices to adjacent property owners were mailed on January 24, 2017, and no written correspondences were received as a result. No additional notices have been issued since.

As part of the application package, the applicant submitted two letters from area residents (Appendix A).

Should the board proceed with the zoning amendment option, statutory notice requirements (i.e. public hearing) will be addressed as the application moves through the zoning amendment process.

Prepared by:

Concurrence:

Concurrence:

A. Mullaly

A. MacDonald

Jodi MacLean, MCIP, RPP
Rural Planner

Alana Mullaly, M.Pl., MCIP, RPP
Manager of Planning Services

Ann MacDonald, MCIP, RPP
General Manager of
Planning and Development
Services Branch

- Attachments: Appendix A – “Application DV 2C 16 and correspondence”
 Appendix B – “Letter from David and Audry Waines dated February 16, 2017”
 Appendix C – “Letter from David and Audry Waines dated June 9, 2017”
 Appendix D – “Development Variance Permit DV 2C 16”

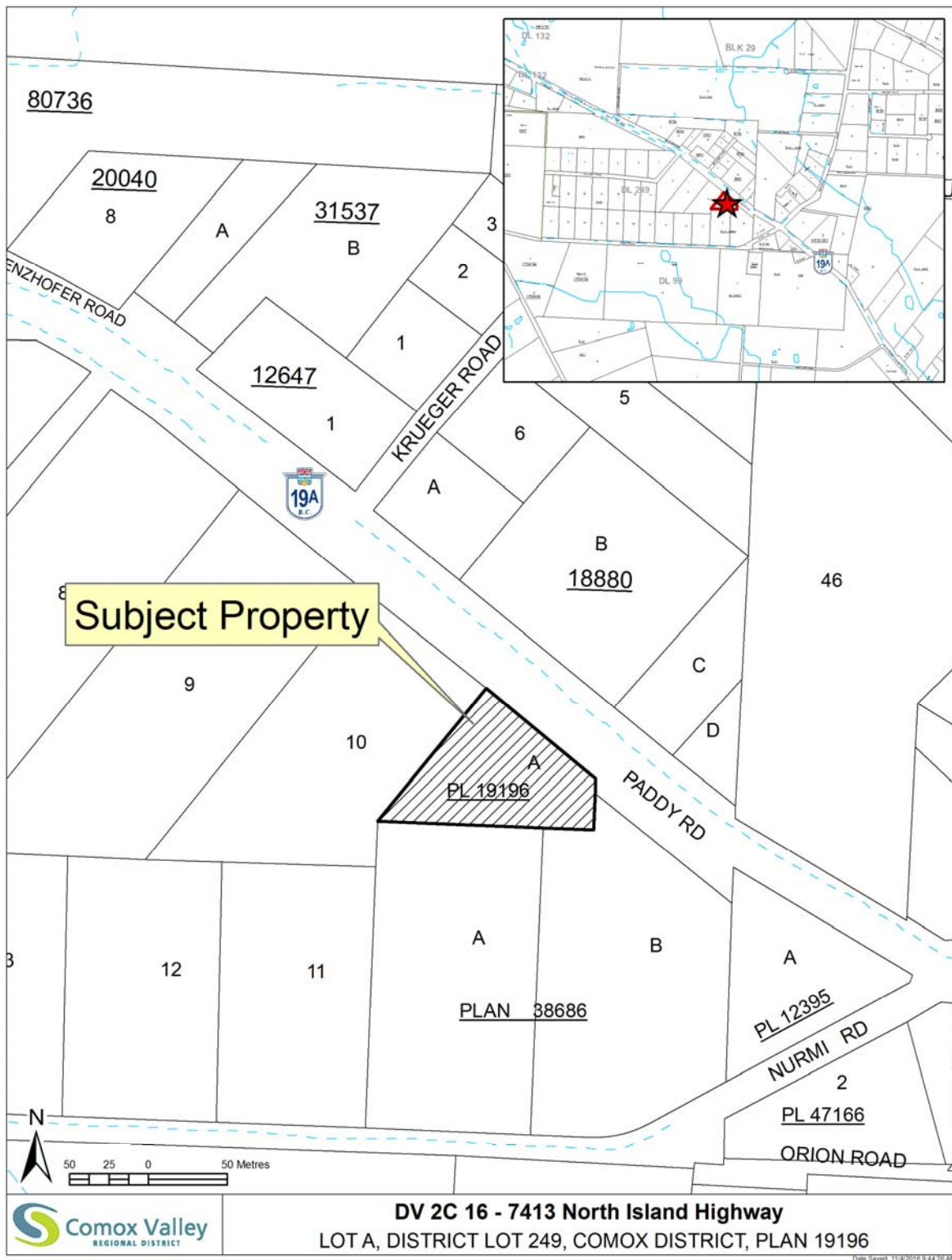


Figure 1: Subject Property

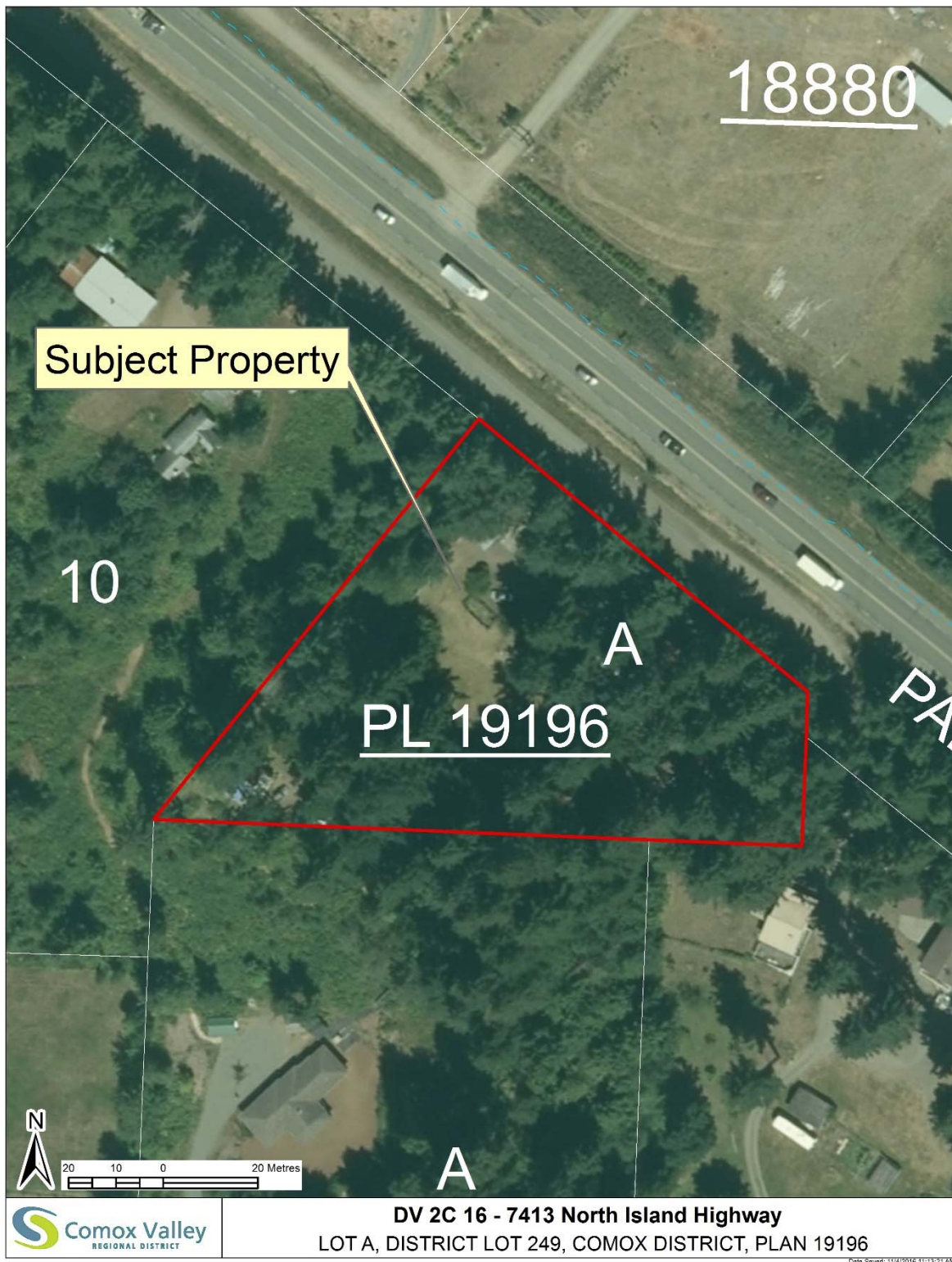


Figure 2: Air Photo (2014)

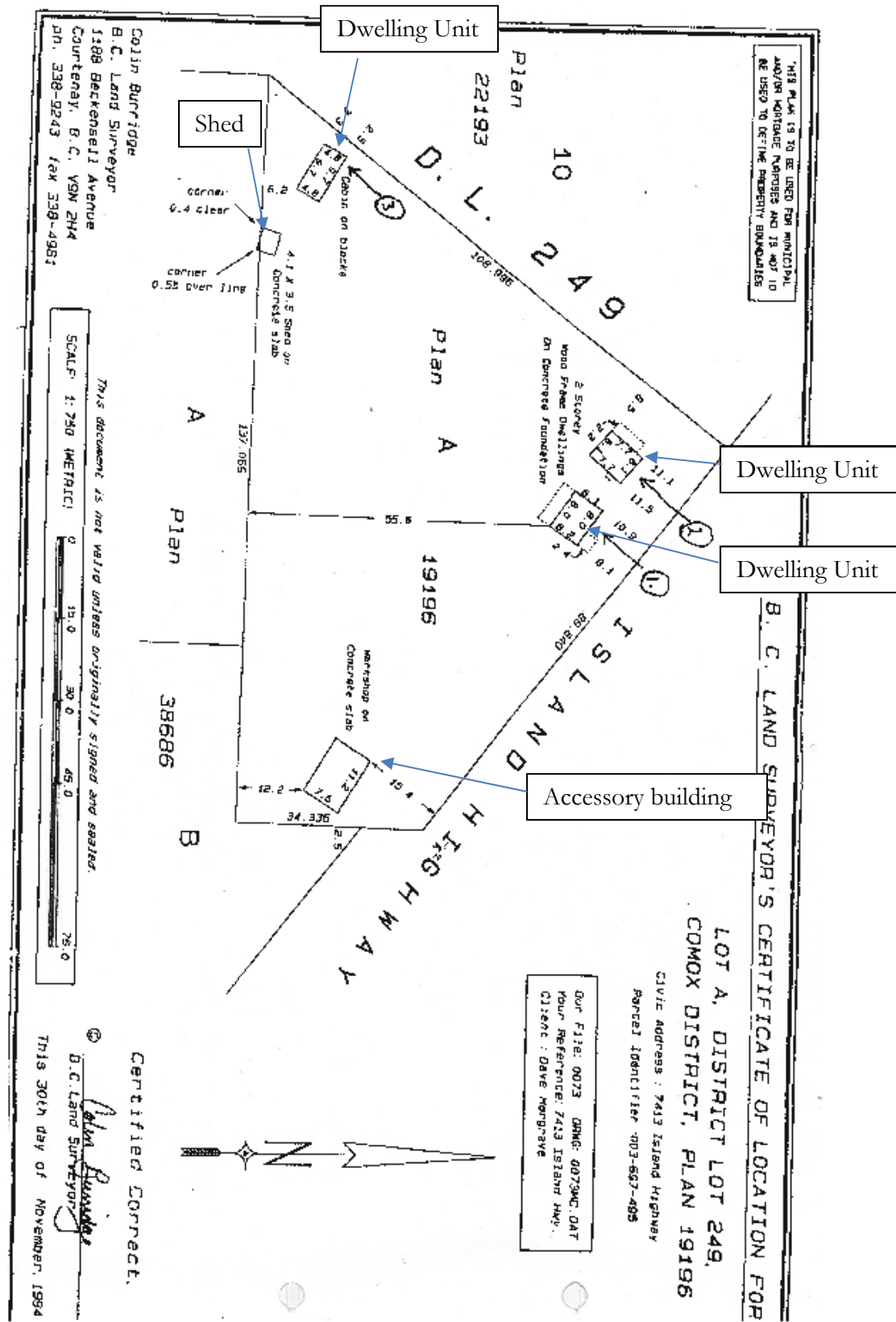


Figure 3: Site Plan, dated November 30, 1994, of the Subject Property Illustrating the Location of the Three Residential Dwellings, the Shed (at the rear) and the Accessory Building (at the side)



Figure 4: View of Neighbouring Property, Distance Between end of Accessory Building to Fence Line

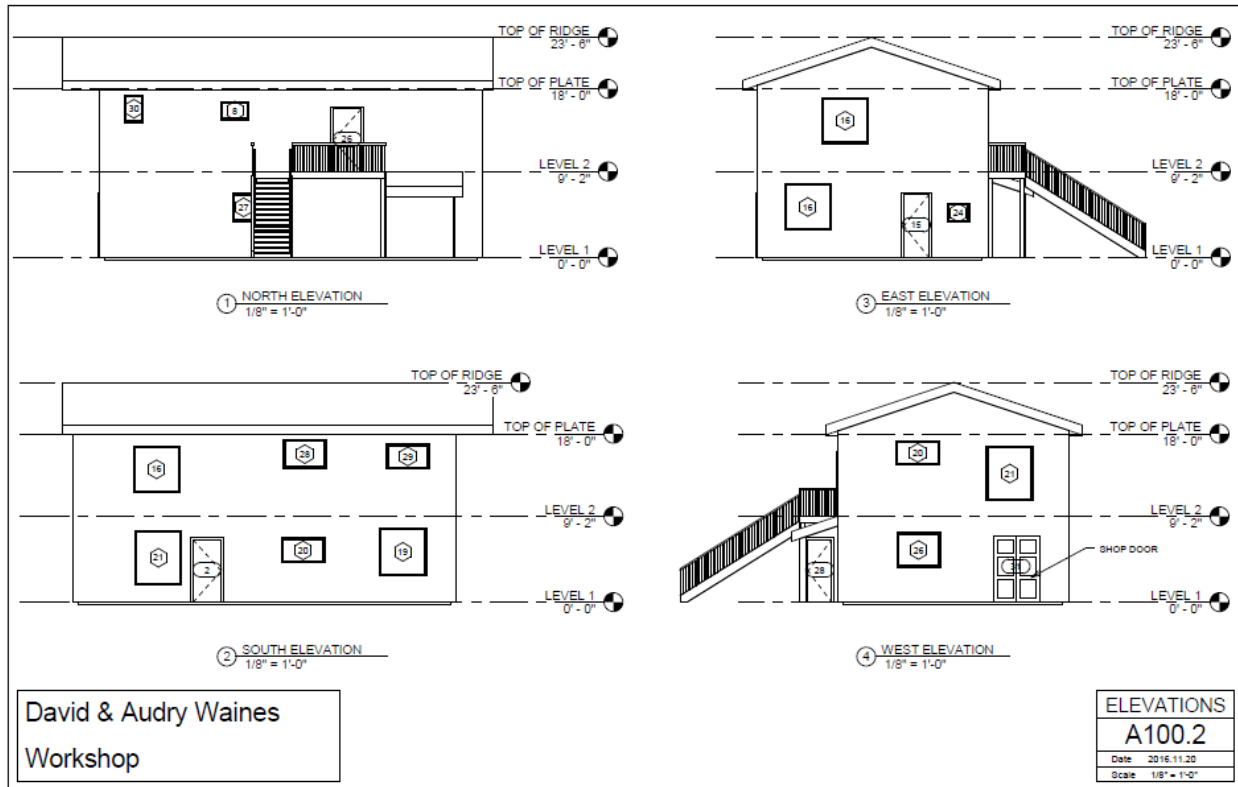


Figure 5: Revised Building Elevations, as Submitted by the Applicant

DV 2C 16.



Planning Application

Property information (Refer to your tax assessment notice or certificate of title.)

Legal description	Lot A District Lot 249 Comox District Plan 19196	
Civic address	7413 North Island Highway.	
PID	003-697-495	BC Assessment roll No.

Application type (If more than one application is needed, check the additional applicable boxes.)

Bylaw amendment		
<input type="checkbox"/> Official community plan	<input type="checkbox"/> Zoning bylaw (i.e., rezoning)	
Development permit		
<input type="checkbox"/> DPA #1: Aquatic (watercourse / foreshore)	<input type="checkbox"/> DPA #2: Eagles Drive	<input type="checkbox"/> DPA #3: Eagle nest trees
<input type="checkbox"/> DPA #4: Heron nest sites	<input type="checkbox"/> DPA #5: Back Road	<input type="checkbox"/> DPA #6: Commercial / industrial development
<input type="checkbox"/> DPA #7: Resort tourism	<input type="checkbox"/> DPA #8: Steep slopes	<input type="checkbox"/> DPA #9: Buffer for agricultural land
<input type="checkbox"/> DPA #10: Union Bay: tourist highway commercial	<input type="checkbox"/> DPA #11: Royston: village core	<input type="checkbox"/> DPA #12: Royston: residential conservation design
<input type="checkbox"/> Mount Washington mixed use	<input type="checkbox"/> DPA #17: Kensington comp. development	<input type="checkbox"/> DPA #18: Shoreline protection devices
Variance		
<input checked="" type="checkbox"/> Development variance permit	<input type="checkbox"/> Board of variance	
Others		
<input type="checkbox"/> Temporary use permit	<input type="checkbox"/> Site specific amendment to floodplain	<input type="checkbox"/> Strata conversion
<input type="checkbox"/> Home occupation, bed and breakfast...	<input type="checkbox"/> Temporary occup. of additional dwelling	<input type="checkbox"/> Property information request

Owner information

Name(s)	Company
Mailing address	City
	Province
Phone(s)	Email

Applicant information (If the applicant is not the owner(s), complete this and the agent authorization sections. All communication will be forwarded to the applicant only.)

Name(s)	Company	
Mailing address	City	
	Province	Postal code
Phone(s)	Email	

Agent authorization (Complete only if the applicant is not the owner(s).)

I/we, (owner's name)	declare that I am/we are the property owner(s) noted on this form, and hereby authorize	
(agent's name)	to act as agent in the matter of this/these application(s).	
Owner's name 1	Signature	
Owner's name 2	Signature	

All owners shown on the certificate of title must sign. Attach a separate page with additional signatures.

MS PLAN35
 500.00
 R 182582 / B 12016051201
 016 PAVCLA
 12 May 12

Height from 19.7' to 23.5' DW.


Development proposal (Describe the present and intended uses, and reasons for proposal. Attach additional pages if needed.)

Since the 60's and 70's this workshop has always been sited 2.5m from the nearest diagonal sideyard set back. For over 20 years (approx) it has been recognized as legally non conforming in this sideyard set back. We are asking for a variance from 3.5m to 2.5m to allow for a development application. Also since the 60's + 70's the natural grade + trees have increased the grade in many places by approx 3ft. to address the rot and other issues we are asking for a variance from 23.5" height from Net grade peak to 27.9" from NG to peak to apply for development permit

Provincial site profile

Section 40(1) of the Environmental Management Act requires a site profile to be completed with an application when the applicant knows, or reasonably should know, that a site has been used or is being used for commercial or industrial purposes. If any activities found in Schedule 2 of the Contaminated Sites Regulation apply to the subject property, the applicant is required to complete a site profile. Schedule 2 and the site profile application form are available in the "land remediation" section of the BC Government web site (www.gov.bc.ca), as well as at the Comox Valley Regional District (CVRD). If any of the listed activities in Schedule 2 applies, contact the CVRD. If any of the listed activities in Schedule 2 does not apply, complete the following declaration:

I hereby declare that, based upon my current knowledge of the subject property, no Schedule 2 activities have been carried out.

Signature		Date	May 12 2016
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Notice of collection of personal information

Personal information on this application form is collected for the administration, enforcement and processing of this application. The personal information is collected under the authority of the Freedom of Information and Protection of Privacy Act (FIPPA), Local Government Act and CVRD bylaws. All documentation, drawings, plans and information submitted in support of this application can be made available for public inspection pursuant to the FIPPA. For questions about the collection of personal information, please contact the corporate legislative officer at 600 Comox Road, Courtenay, BC or at 250-334-8007.

Declaration

I, the undersigned, have attached the required documentation, as noted on the submission checklist, along with the required application fee and hereby agree to submit further information deemed necessary for processing this application. I hereby certify that the documentation and information provided with respect to this application is full and complete¹ and is, to the best of my knowledge, a true statement of the facts related to this application. Lastly, I hereby acknowledge that an incomplete application will not be processed and will be returned to me, and that any fees paid are non-refundable except as noted in the Planning Procedures and Fees Bylaw.

Signature	Date
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¹ A complete application includes: application form properly filled out and all fees paid; plans and supporting information compiled by applicant into a complete, required set; compliance with existing development agreements on certificates of title and conditions of previous planning approvals; identification of existing easements and rights-of-way. Incomplete applications will not be processed and will be returned.

Office use

PSR	Date received	May 12/16	Received by	GB
	Fee \$	500	Security deposit \$	
Planning staff	Date a		Assigned to	

November 18, 2016

Audry and David Waines.
7413 North Island Highway.
Merville BC.

Re: 3090-20/DV 2C 16 – Development variance permit – 7413 Island Highway North (Waines) Lot A, District Lot 249, Comox District, Plan 19196

Dear members of the Advisory Planning Commission Area C Comox Valley Regional District,

Thank you for your consideration of this appeal for a variance of our modest existing workshop.

History of property and workshop. Because we love the rural lifestyle, have six children, and other family in the Merville/ Black creek area we bought the property in 1994. It had three small, simple cabins, the remnants of a dream home which burned down, and the subject existing workshop (see attached photographs as the workshop was in 2015 pre-reno and as it is today). **The workshop has exactly the same footprint, the same roof, the same footings and slab floor as always.** The exterior walls are the same as always with the exception of enclosing a 1 meter uncovered storage area in to the property and being approx. 1.2 m higher.

We have the **support of all our neighbors** who could possibly be affected by this old workshop's long standing need for a variance. They know that the workshop has always been in the same place (according to current bylaws lacking 1 m of setback) also that it is 1.2 m over height, and they have no objection to the variance being granted.

Urgent Need to save the workshop Because of all the debris (from mature Firs preserved on the property since early 1976 when the workshop was completed) there was an accumulation of 2 to 3 feet of debris and humus against the walls - especially the north wall. We moved some of this humus to low spots on the property. Therefore there was much rotten wood in the lowest meter of the workshop (plus serious rodent infestations) In 2015 we realized the urgent need to act to save the workshop which required raising it to do the repair. While doing repairs we made some logical adjustments to make it safer, seismically stronger (by adding a floor and interior sheeted walls), and more useful. The workshop has always had gas heat, electricity, venting, hot and cold water and a wash room including a toilet and shower safety station.

In March 2016 I realized the repair - turned to renovation project had become bigger than first imagined and I voluntarily approached Mr. Dennis Mirabelli to apologize for my genuine ignorance of many of the by-laws and regulations (no excuse), for not applying for a building permit before starting to repair, and to see how we could best work closely with the CVRD staff to have the existing workshop be as safe, useful and compliant as possible. He and his staff have been professional, kind and helpful with this process.

We continue to offer to make any modifications to the workshop, and give any guarantees required to address concerns regarding its future use and compliance as an RU8 workshop. We will work closely with all concerned to find an agreeable beneficial way ahead for this workshop which is much the same

as it has always been. It is true it now has a second floor but that only makes it approx. 1.2 m higher with a total floor area of only 184 sq. m - just over half the 300 sq. m allowed for a workshop.

As a family, like so many, who care for aging parents and children we **struggle to make ends meet** thus we pray for your grace in granting this height and set back variance for this workshop (which has needed a variance since the bylaws came in effect 1976). **The alternative to a variance** might be that to meet the letter of the law we are forced to spend thousands and thousands of dollars to move the old workshop onto a new lower foundation or cut off a corner of the building and replace the perfectly good existing roof with a new flat roof. All this **work and financial burden would benefit no one in the community in any way.**

Vision and Use of the Workshop. We wanted to repair and improve the workshop so that it would be useful to our family, and our tenants for productive and creative projects that support livelihoods and develop skills in keeping with RU8 usage. In particular, since we have three sons with learning disabilities, one with physical disabilities, and since all of our children are creative and good with their hands we have a vision that this workshop will be used by those with practical skills and creativity to pass on their skills to family and community members who have similar academic challenges but are gifted with their hands and creativity. We will give preference for workshop space to family and future tenants who will fit in to this vision. This is why we want separate parts of the workshop that function independently so that various family members and tenants can work on their very different creative projects without ongoing complications and clashing priorities.

We love the Merville area and have always done our best be good community members, to make our property useful to family, tenants and others, while respecting our neighbors and all those appointed to safeguard the common good.

We highly appreciate your kind consideration of this appeal for a variance and will be more than happy to answer any questions, address any concerns, make any changes, or give any assurances you wish.

Our very best regards,

Audry and David Waines

7413 North Island Hwy Workshop Photos

Before



7413 North Island Hwy workshop pre- renovation N. W. corner May 2015

After,

Note: the building has exactly the same footprint, roof, footings and slab floor as original



7413 North Island Hwy workshop with renovation N. E. corner Nov. 2016

7413 North Island Hwy Workshop Photos November 2016



North side view Nov 2016



North West side view Nov 2016

7413 North Island Hwy Workshop Photos November 2016



South side view Nov 2016 a portion of original siding replaced as rain shield



N. W. side view Bottom right window to be replaced by shop door

7413 North Island Hwy Workshop Photo November 2016



East side view Nov 2016

Note: 4 x 8 Deck will be removed

JUN - 3 1997

REGIONAL DISTRICT OF
COMOX-STRATHCONA
PLANNING DEPARTMENTMAY 30/97

TO WHOM IT MAY CONCERN,

THE MERVILLE PROPERTY LOCATED AT
7413 ISLD HWY. MERVILLE B.C. (LOT A
PLAN 19196, DISTRICT LOT 249 (X LAND DISTRICT))

TO THE VERY BEST OF OUR KNOWLEDGE
WE TOOK POSSESSION OF THE PROPERTY IN
1973. PLACED A MOBILE HOME THAT YEAR.
BUILT COTTAGE #1 BY THE ENTRANCE
THE FOLLOWING YEAR, 1974. BUILT
COTTAGE #2, NEXT TO COTTAGE #1
THAT WINTER & SPRING, 1974-1975.

COTTAGE #3, TO THE WEST, WAS BUILT
IN 1975. THE WORKSHOP LOCATED
ON THE SOUTHERN BOUNDARY WAS BUILT
IN EITHER LATE 1975 OR EARLY 1976

THE BEG HOUSE WAS BEGAN IN 1978
AND COMPLETED IN 1983. BURNED
DOWN IN 1985. THE FOOTINGS &
SOME WALLS STILL REMAIN.

I HOPE THIS MAY BE HELPFUL
SHOULD ANY FURTHER INFO BE
REQUIRED CONTACT US AT

8723 ISLD HWY BLAEN CREW B.C.

P.O. Box 11 195.



Comox-Strathcona

Attn. John Pollard

PL- GEN

May 8, 1997

Mr. David M. Waines
12951 Rice Mill Road
Richmond, B.C.
V6W 1A2

Sent by fax: (604) 277-1507

Attention: Mr. David M. Waines

Re: Letter of Comfort with respect to structures located on property at 7413 Island Highway, legally described as Lot A, Plan 19196, District Lot 249, PID #003 697 495.

Please be advised that on the basis of the information provided by the B.C. Assessment Authority with respect to the age of the structures, the following determinations have been made:

- Land use regulations became effective for the property pursuant to Bylaw 202, being "Electoral Area "C" Black Creek-Puntledge Interim Zoning Bylaw, 1974," adopted June 28, 1976.
- Cabin 1 (520 sq. ft., built 1976): If it can be proven that the structure was built before June 28, 1976 it would be considered **legally non-conforming**. If construction occurred after said date, the structure would be considered **illegally non-conforming**.
- Cabin 2 (384 sq. ft., built 1965): This structure would be considered **legally non-conforming**.
- Cabin 3 (500 sq. ft., built 1970): This structure would be considered **legally non-conforming**.
- Workshop (876 sq. ft., built 1985): If this structure is used for non-commercial purposes it would be considered a **legally conforming land use**.

.../2

4795 HEADQUARTERS ROAD, P.O. BOX 3370, COURTENAY, B.C. V9N 5N5

COURTENAY — Telephone (250) 334-6000 • CAMPBELL RIVER — Telephone (250) 287-9612

TOLL FREE in B.C. 1-800-331-6007 • Fax No. (250) 334-4358

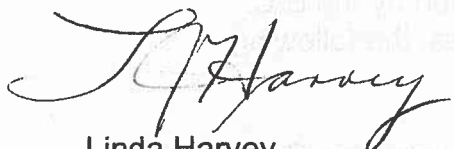
in 250 not 604

Regarding the dwellings, the above comments refer to residential density only and are based on the information provided. This letter does not offer comment on conformance with permitted use or siting of the dwellings, as no information was provided on the use and siting of these structures. We are also unable to comment on the siting of the workshop due to a lack of information. Please refer to Section 970 of the *Municipal Act* regarding the regulation of non-conforming structures.

Further, we wish to advise you that this letter does not constitute a variance of the siting provisions of Bylaw No. 869, being the "Comox Valley Zoning Bylaw, 1986," the bylaw currently in effect. In addition, all new development on the subject property must comply with the provisions of the applicable sections of Bylaw No. 869, and other regulations that may apply such as Building Bylaw No. 1915, and Provincial and Federal legislation. The property is not in the Agricultural Land Reserve or the Forest Land Reserve.

This letter does not constitute or prejudice approval by any other agency that may have an interest in this matter.

Yours truly,



Linda Harvey
Area Planning Technician

/df

cc: Barbara M. Currie, Appraiser, BC Assessment Authority, 2488 Idiens Way,
Courtenay, B.C. V9N 9B5

Mike Sevaqua Area Planner. Linda is His Technician

November 6, 2016

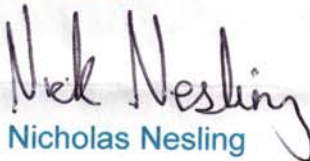
Comox Valley Regional District
600 Comox Road
Courtenay BC V9N 3P6

To whom it may concern:

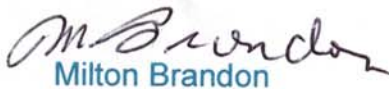
We understand our neighbour David Waines has applied for a variance for his workshop located at 7413 North Island Highway, Merville BC. The reason for this request is the height of his workshop is 1.5 meters over the 6 meter allowance, also the setback is 1 meter less than the 3.5 meter minimum setback requirement.

The height and setback variances do not affect us and we have no objection to this variance request being granted.

Sincerely,


Nicholas Nesling


Lynnette Nesling


Milton Brandon


Janice Brandon

7405 Paddy Rd
PO Box 520
Merville BC V0R 2M0

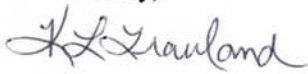
Merville, B.C.
November 7, 2016

To Whom it May Concern,

My neighbour, David Waines of 7413 N. Island Highway, has talked to me about the workshop on his property. He explained that he has applied for a variance given that the building is approximately 1.5 metres higher than normally allowed.

David's workshop is a fair distance away from my house although it is visible from here. Just the same, the additional height does not affect me and I don't have any objections to the current building dimensions.

Sincerely,



Kevin Travland
1428 Nurmi Road
Merville, B.C.

February 16, 2017

Appendix B Page 1 of 1

From: Audry and David Waines. 7413 North Island Highway. Merville BC.

Re: Application for rezoning 7413 Island Highway North (Waines) Lot A, District Lot 249, Comox District, Plan 19196 to bring it into compliance.

Dear Directors of Comox Valley Regional District,

Thank you very much for your decision: that 7413 Island Highway North (Waines) be referred to staff to investigate an appropriate zoning amendment that will bring the property into compliance.

This letter is to confirm to you that we have been inquiring, and requesting of CVRD staff regarding the possibility of an appropriate zoning amendment to bring the property into compliance. We also confirm that we are committed to the process of doing whatever is necessary to invest in succeeding with an appropriate rezoning amendment.


For 23 years we have been good neighbours, good to local businesses/tenants, contributing community members and taxpayers. As an extended family we have brought significant economic benefits to the regional economy. A rezoning that allows us to improve the property for future family/others use will make possible significant investment and ensure increased ongoing community/economic benefits.

We bought the property in 1994 with good faith intent, believing we could upgrade it and add value to the property and the community. It had three residential cabins, the remnants of a dream home which had burned down, and a workshop in use by tenants when we bought it. However, for over 22 years we have been unable to invest in the property and benefit the surrounding community and economy as we have always wanted to because we were later told of the "non-conforming status" of the buildings on the property. This has been a major barrier stopping investment and adding value and community benefits unfeasible.

We continue to be committed to investing nest egg savings in the property if an appropriate rezoning amendment can be made to allow us to benefit the community, bring the property into greater usefulness for family/others and bring it into compliance.

We highly appreciate your kind consideration of an appropriate rezoning amendment and are fully committed to addressing any concerns, make any changes to the property, or give any assurances that may be required.

Our very best regards,


Audry Waines and David Waines

June 9, 2017.

From: Audry and David Waines. 7413 North Island Highway. Merville BC.

Re: Request for meeting with Directors for advice: Could Option A or B zoning amendment of 7413 Island Highway North (Waines) Lot A, District Lot 249, Comox District, Plan 19196 have a realistic chance of support.

Dear Directors of Comox Valley Regional District,

Thank you very much for your January 2017 decision: that 7413 Island Highway North (Waines) be referred to staff to investigate an appropriate zoning amendment that will bring the property into compliance.

This request is further to our letter of February 16, 2017, confirming to you that since early 2016 we have been requesting of CVRD the possibility of an appropriate zoning amendment to bring the property into greater usefulness, legal conformity/compliance and confirming that we are committed to the process of investing in succeeding with an appropriate rezoning amendment.

For 23 years we have been good neighbours (they are supportive), good to local businesses/tenants, contributing community members and taxpayers. As an extended family we have brought significant economic benefits to the regional economy. An amendment that allows us to improve the property for future family/tenant use will make possible significant investment and ensure increased ongoing community/economic benefits.

We bought the property in 1994 with good faith intent, believing we could upgrade it and add value to the property and the community. It had/has three residential cabins (continual in use by tenants since 1994), the remnants of a dream home which had burned down, and a workshop. However, for over 22 years we have been unable to invest in the property and benefit the surrounding community and economy as we have always wanted to because we were later told of the "legal non-conforming status" of the buildings on the property. This has been a major barrier stopping investment to add value bringing community benefits, such as improved safety, affordable compliant rental housing (a huge need in CVRD) and increased tax revenue. When buildings are "legally non-conforming" it is not feasible to invest in improving them or the systems around them as we have no right to replace them should anything happen. We continue to be committed to investing nest egg savings and available credit in the property if an appropriate way ahead amendment can be supported to allow us "**legally conforming status**".

We are requesting an opportunity to meet with you, to get your advice on which of the options below may be realistically supported. On May 29th the staff asked us what we really wanted to which I replied:

Option A) (Staff Option #2.) What we the Waines family really would like as first choice is to be able to **keep our 3 residential cabins (improved affordable rentals) and rebuild the Principal Residence** (the "Dream House" burned down years ago), **thus 4 residential units** (plus the partial renovated accessory workshop) **made legally conforming rather than legally non-conforming**. Advantage of this option: Add a principle residence and do not lose one or two residential cabins. Provides more compliant improved affordable rental housing, and maximum community benefits (see above) of all options. From initial discussion re water and sewage with VIHA and installers this seems feasible.

The staff cautioned we “could ask for this under Option 2 but there is practically zero chance of any rezoning - to be clear the Director’s make the decision – because there is no policy support for even the smallest increase in density” -even though we are right on the Highway and bus routes and are surrounded in our area by commercial and multi family properties. For example Hillview apartments beside us has 9 residential units, the Alders down the road has 22 residential units the current policy supports only 10% of new growth going to our rural area and (my paraphrase) others have received that already so there is virtually no chance for us because 4 units would increase density by one unit.

Because the staff were clear that there was practically zero chance of us getting what we really want (Option A) our compromise second choice after the May 29th meeting:

Option B) (sub option of Staff option #1? or #2?) **Have our 3 residential units/cabins (and one accessory partially renovated workshop) which are now legally non-conforming units made legally conforming. Under this option we are not asking for more density than we already have** – the basis of our request is simply to make what have been 3 legally non-conforming units for decades into 3 legal conforming units status.

After our initial discussion re rezoning options with staff on May 29th, 2017 they gave us two broad options in a May 29th email: “We agreed that there are likely two residential dwelling unit development options (with slight variations) from which you can choose:

1. 3 Dwelling Units:

- a. Decommission one of the existing cabins (i.e. either demolish or retain as accessory building – not a dwelling unit) and apply for a building permit to construct a new single detached dwelling (as your principal dwelling) the remaining two cabins would be regarded as a secondary dwelling (less than 90m²) and one lawful, non-conforming dwelling unit
- b. Decommission two of the existing cabins (i.e. either demolish or retain as accessory buildings – not dwelling units) and apply for building permits to construct a new single detached dwelling (as your principal dwelling) and a new secondary dwelling (limited to 90m²) and remaining cabin would be deemed lawful, non-conforming

2. More than 3 Dwelling Units (in various forms incorporating the existing cabins and partially constructed two-storey workshop or not)

We noted that Option 1, in either of its variations, does not require a rezoning application. Option 2 requires a rezoning application.”

Given the discussion and options which I have tried to summarize above our family delegation respectfully request to meet with the 3 Directors (in any way that is convenient to you) to answer your questions and get your highly valued advice. Could there be realistic support for our first choice Option A (4 units), or second choice Option B (same 3 units), as it was you as Directors who requested that a zoning amendment option be investigated.

We highly appreciate your kind consideration of an appropriate rezoning amendment and are fully committed to addressing any concerns, make any changes to the property, or give any assurances that may be required.

Our very best regards,

Audry Waines and David Waines

DV 2C 16

TO: David and Audry Waines

OF: 108 West 18th Avenue, Vancouver BC V5Y 2A5

1. This Development Variance Permit (DV 2C 16) 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 A, District Lot 249, Comox District, Plan 19196
Parcel identifier (PID): 003-697-495 Folio: 771 03752.000
Civic address: 7413 Island Highway North
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 the accessory building referred to in Schedules A and B shall not contain a window or door on the second floor wall that faces the side property line closest to the building;
 - iii. THAT all other buildings and structures must meet zoning requirements.
4. This Development Variance Permit (DV 2C 16) 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.
5. This 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 _____, 2017.

James Warren
Corporate Legislative Officer

Certified on _____

Schedule A

File: DV 2C 16

Applicants: David and Audrey Waines

Legal description: Lot A, District Lot 249, Comox District, Plan 19196

Specifications:

THAT WHEREAS pursuant to Section 309(3) “Buildings and Structures” Section 403(2) “Siting Exceptions”, and Section 801(6) “Siting and Heights of Buildings and Structures” of Bylaw No. 2781, being the “Comox Valley Zoning Bylaw, 2005,” an accessory building shall not exceed 6.0 metres in height, be located within 3.5 metres of the side yard property line and have eaves or sunlight controls that project more than 50 per cent into that setback area;

AND WHEREAS the applicants, David and Audry Waines, wish to increase the height and decrease the side yard setback for an accessory building and its eaves and sunlight controls projections;

THEREFORE BY A RESOLUTION of the Board of the Comox Valley Regional District on _____, 2017, the provisions of Bylaw No. 2781, being the “Comox Valley Zoning Bylaw, 2005,” as they apply to the above-noted property are to be varied as follows:

- 309(3) The maximum height of the accessory building, as illustrated on the portion of the surveyor’s certificate prepared by Colin Burrige, dated November 30, 1994, attached to this permit as Schedule B, is 7.2 metres.

- 403(2) Where eaves and sunlight controls project beyond the face of a building, the minimum distance to an abutting front, rear and side lot line as permitted elsewhere in this bylaw may be reduced by not more than 63 per cent of such distance up to a maximum of 2.2 metres, provided that such reduction shall only apply to the projecting feature.

- 801(6) The minimum side yard setback for all accessory buildings that are over 4.6 metres in height is 2.5 m, as illustrated on the portion of the surveyor’s certificate prepared by Colin Burrige, dated November 30, 1994, attached to this permit as Schedule B.

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 2C 16.

James Warren
Corporate Legislative Officer

Certified on _____

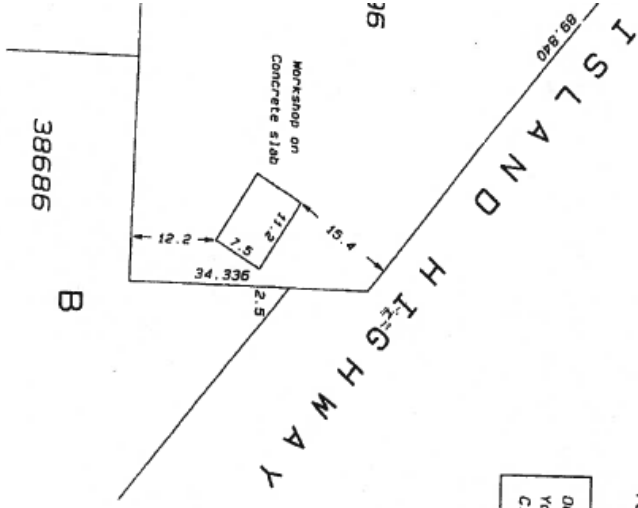
Schedule B Surveyor's Certificate

B. C. LAND SURVEYOR'S CERTIFICATE OF

LOT A, DISTRICT
COMOX DISTRICT

Civic Address : 7451
Parcel Identifier

Our File: 0073
Your Reference: 7451
Client : Dave Har



Certi

Less originally signed and sealed.
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