

DATE: July 30, 2019

FILE: 3090-20 / DV 7B 19

TO: Chair and Directors
Electoral Areas Services Committee

FROM: Russell Dyson
Chief Administrative Officer

Supported by Russell Dyson
Chief Administrative Officer

R. Dyson

**RE: Development Variance Permit
5956 Aldergrove Drive (Clarke)
Electoral Area B (Lazo North)
Lot 20, Block 29, Comox District, Plan 11986, PID 001-293-052**

Purpose

To consider a Development Variance Permit (DVP) to reduce the minimum side yard road setback for the dwelling and to reduce the minimum side yard and front yard setback for the accessory building (Appendix A).

Recommendations from the Chief Administrative Officer:

THAT the Comox Valley Regional District Board approve the Development Variance Permit DV 7B 19 (Clarke) to:

1. Reduce the minimum side yard road setback from 4.5 metres to 2.75 metres for the dwelling (2.5 metres to 2.15 metres for the eaves)
2. Reduce the minimum front yard setback from 7.5 metres to 6.0 metres for the accessory building (5.5 metres to 5.37 metres for the eaves)
3. Reduce the minimum side yard setback from 1.75 metres to 1.3 metres for the accessory building (0.88 metres to 0.63 metres for the eaves).

for property described as Lot 20, Block 29, Comox District, Plan 11986, PID 001-293-052 (5956 Aldergrove Drive);

AND FINALLY THAT the Corporate Legislative Officer be authorized to execute the permit upon receipt of a setback permit from the Ministry of Transportation and Infrastructure.

Executive Summary

- The oceanfront property is 0.17 hectares in size and contains a single detached dwelling that is proposed to be removed from the property.
- The building envelope on the property is limited by the floodplain and steep slope. The applicants are requesting several variances to accommodate a single detached dwelling and accessory building (one car garage).
- To accommodate a covered deck attached to the dwelling, the applicants are requesting to reduce the minimum side yard road setback from 4.5 metres to 2.75 metres (2.5 metres to 2.15 metres for the eaves). Normally, the side yard setback is 1.75 metres, but due to Eel Road the setback is 4.5 metres. Larger road setbacks ensure future works within the road are not affected. Development of Eel Road (for vehicle or trail access) is constrained by the steep slope of drainage ditch that conveys runoff from neighbouring roads and properties into the sea.
- To accommodate a one car garage, the applicants are requesting to reduce the minimum front yard setback from 7.5 metres to 6.0 metres (5.5 metres to 5.37 metres for the eaves) and to

reduce the minimum side yard setback from 1.75 metres to 1.3 metres (0.88 metres to 0.63 metres for the eaves). A reduced front and side yard setback leaves sufficient space for the access and maintenance. The garage will be several metres shorter than the neighbour’s attached garage (5960 Aldergrove Drive) and the reduced setback is not expected to increase the visual impact. A large hedge exists between the two properties, however, the applicants are in discussions with the neighbours to remove it. Staff recommends the permit contain a condition that either a fence or a hedge is required adjacent to the proposed accessory building to delineate the northwest property boundary.

- The applicants are working on obtaining a setback permit from the Ministry of Transportation and Infrastructure (MoTI) to reduce the Eel Road setback. If the Board approves the DVP, staff recommend withholding DVP issuance until MoTI approval has been obtained.
- Similar variances have been approved in the vicinity, including on both adjacent properties.
- For these reasons, staff recommends issuance of the DVP with a condition that a fence or a hedge is required adjacent to the proposed accessory building to delineate the northwest property boundary.

Prepared by:

B. Labute

Brianne Labute, MCIP, RPP
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)

Applicants	✓
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Background/Current Situation

An application has been received to consider a DVP. The oceanfront property is 0.17 hectares in size and is surrounded by a residential property to the northwest, Strait of Georgia to the northeast, Eel Road (closed road allowance) to the southeast and Aldergrove Road to the southwest (Figures 1 and 2). The applicants would like to remove the existing dwelling, construct a single detached dwelling and accessory building (Figures 3 and 4). To accommodate a covered deck attached to the dwelling, they are requesting to reduce the minimum side yard road setback (from Eel Road). To accommodate a standard length garage and have a roof pitch architecturally consistent with the dwelling, they are requesting to reduce the minimum front and (northwest) side yard setback. The available building envelope is constrained by the floodplain associated with the sea and the steep slope.

Planning Analysis

Official Community Plan Analysis

The subject property is designated Rural Settlement Area (RSA) in the Official Community Plan, being the “Rural Comox Valley Official Community Plan Bylaw, No. 337, 2014”. The RSA policies include minimizing the impact of new development on existing neighbourhoods and ensuring the rural character of the neighbourhood is maintained.

Zoning Bylaw Analysis

The property is zoned Country Residential One (CR-1) in Bylaw No. 2781, being the “Comox Valley Zoning Bylaw, 2005” (Appendix B). The CR-1 zone permits a dwelling and accessory building. The requested variances are detailed below. The applicants are working on obtaining a

setback permit from MoTI to reduce the Eel Road setback. The applicants' rationale for the proposed variances can be found in Appendix C.

Dwelling			
	Zoning Regulation	Proposed	Difference
Side yard setback (from Eel Road)	4.5 metres	2.75 metres	1.75 metres
Setback to Eaves	2.5 metres	2.15 metres	0.35 metres

Accessory Building			
	Zoning Regulation	Proposed	Difference
Front Yard Setback	7.5 metres	6.0 metres	1.5 metres
Setback to Eaves	5.5 metres	5.37 metres	0.13 metres
Side Yard Setback (northwest)	1.75 metres	1.3 metres	0.45 metres
Setback to Eaves	0.88 metres	0.63 metres	0.25 metres

Dwelling variance request

To maximize roof area for rainwater harvest, the applicants are proposing to construct a covered deck attached to the dwelling that is a minimum of 2.75 metres from the side lot line abutting Eel Road (2.15 metres for the eaves). The purpose on the side yard setback is to ensure sufficient space between the property boundary and building for maintenance, stormwater runoff, ease of access, landscaping, light infiltration and to avoid infringing on the rights of neighbours. Greater setbacks are often prescribed if the side yard abuts a public road to avoid impacting future activities within the road allowance. Eel Road is an undeveloped and unopened road allowance. Many similar road allowances exist due to a subdivision provision in the *Land Title Act*, which requires highway access to the water every 200 or 400 metres. Establishing a road or trail access through Eel Road is unlikely due to the steep slope and drainage ditch that conveys water from adjacent roads and properties into the sea. Reducing the setback is expected to have a minimal impact for the following reasons: no drainage issues are expected due to rainwater harvest, the road allowance is unlikely to be developed for public access, the neighbour's dwelling (5948 Aldergrove Drive) is at the bottom of the slope, proposed dwelling would encroach less than existing dwelling, and there is sufficient space for maintenance. As MoTI approval is required to reduce the setback from Eel Road, staff recommend the permit is not issued until said approval is confirmed.

Accessory building variance requests

The CR-1 zone is intended for lots with a minimum lot size of 2.0 hectares, however, due to historical subdivision there are many undersized CR-1 zoned lots that may have difficulty meeting the larger setbacks. For comparison, the Residential One (R-1) zone has a minimum front yard setback of 4.5 metres. The applicants have requested a minimum front yard setback of 6.0 metres for the accessory building (5.37 metres for the eaves). The proposed setback allows for sufficient separation between the private property and public use of the Aldergrove Drive right-of-way.

Additionally, the setback maintains space for a parking area outside the garage on the private property.

Accessory buildings require a larger side yard setback if they are over 4.5 metres in height (1.75 metres vs. 1.0 metre). To have an architecturally consistent roof pitch with the dwelling and to ensure adequate space between buildings for access and maintenance, the applicant is requesting a minimum side yard setback of 1.3 metres (0.63 metres for the eaves). At a proposed height of 5.72 metres, the accessory building would be several metres shorter than the neighbour's attached garage (5960 Aldergrove Drive). The reduced setback is not expected to increase the visual impact. A large hedge and a fence exists between the two properties, however, according to the applicant, they have been in discussion with the neighbour about removing the hedge. Staff are recommending the permit contain a condition that either a fence or a hedge is maintained adjacent to the proposed accessory building to delineate the northwest property line. The proposed setback leaves sufficient space to maintain the accessory building and drainage is not expected to be an issue as rainwater harvesting will be utilized.

In terms of neighbourhood character, very similar variances have been approved in the vicinity through the Board of Variance. In 2016, a variance was approved to reduce the side yard setback from Seabird Road from 4.5 metres to 2.0 metres for a deck. The property to the northwest (5960 Aldergrove Drive) received a variance to reduce the (northwest) side yard setback from 1.75 metres to 1.38 metres for the dwelling with a further reduction for the stairs from 1.15 metres to 0.67 metres. The property to the southeast (5948 Aldergrove Drive) received a reduction to the front yard setback for the accessory building from 7.5 metres to 6.2 metres.

The lot is highly constrained by the floodplain and steep slope. As the expected impact of the variances is minimal and consistent with the neighbourhood character, staff support issuance of the DVP.

Policy Analysis

Section 498 of the *Local Government Act* (RSBC, 2015, c.1) (LGA) authorizes a local government to consider 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 designated floodplain or the development is not part of a phased development agreement.

Options

The Comox Valley Regional District (CVRD) Board could either approve or deny the requested variances. Based on the analysis above, staff recommend approving the variances.

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 CVRD bylaws. DVPs are permitted in certain circumstances under Section 498 of the LGA.

Regional Growth Strategy Implications

The subject property is designated Rural Settlement Area (RSA) in the Regional Growth Strategy, being the "Comox Valley Regional District Regional Growth Strategy Bylaw No. 120, 2010". All new development within Rural Settlement Areas must maintain the rural character of its surroundings.

Intergovernmental Factors

No intergovernmental factors.

Interdepartmental Involvement

This DVP application was circulated to relevant departments within the CVRD for comment. No concerns were identified.

Citizen/Public Relations

The Advisory Planning Commission (APC) reviewed the application at its July 23, 2019 meeting. The APC was in support of the application. The minutes from the meeting will be forwarded to the EASC.

Notice of the requested variances was mailed to adjacent property owners within 100 metres of the subject property at least 10 days prior to the EASC meeting. The notice informs these property owners/tenants as to the purpose of the permit, the land that is the subject of the permit and that further information of the proposed permit is available at the CVRD office. It also provides the date and time of the EASC meeting where the permit will be considered. Consultation with these property owners/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 7B 19”
Appendix B – “Copy of CR-1 Zone”
Appendix C – “Applicants’ Rationale Letter”

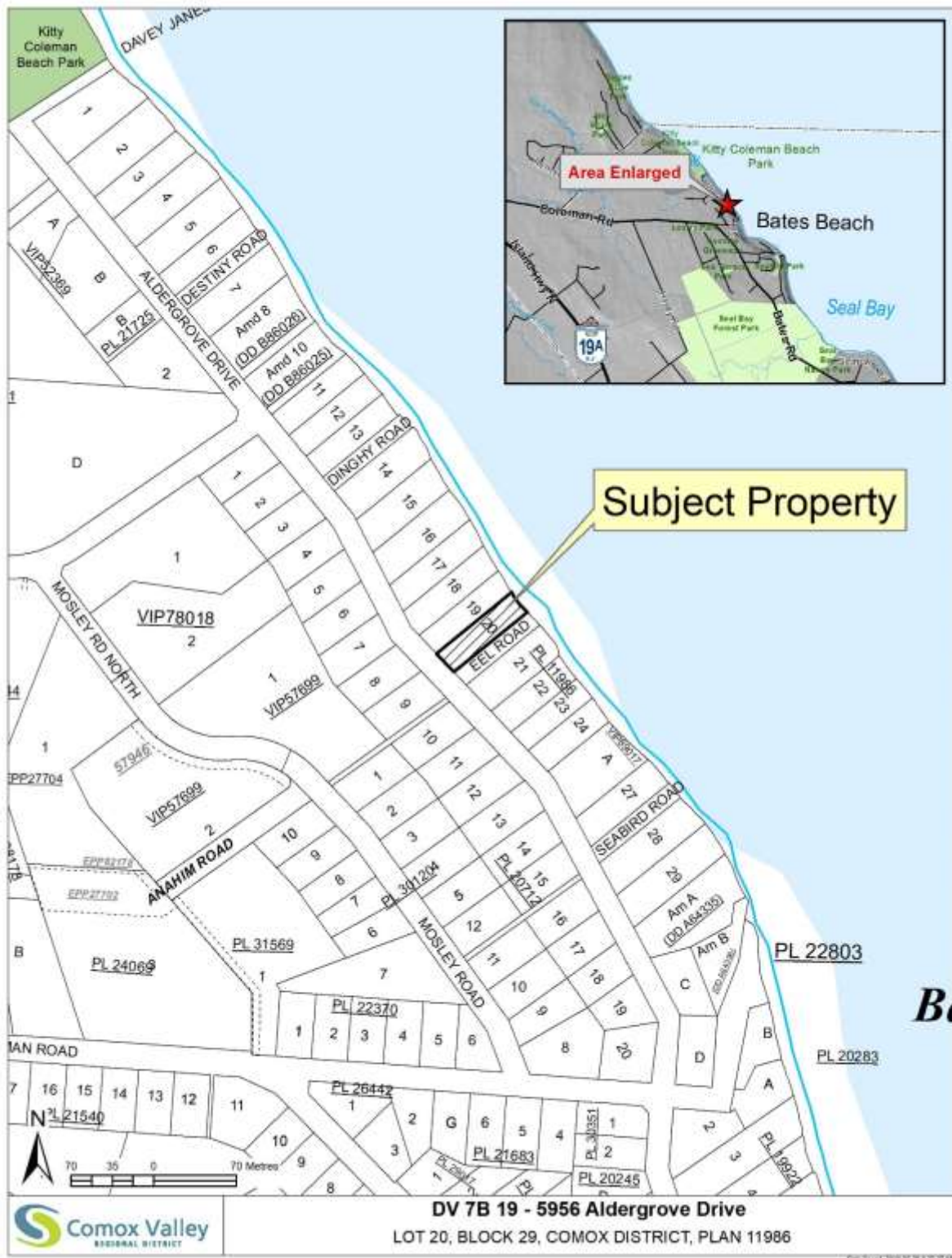
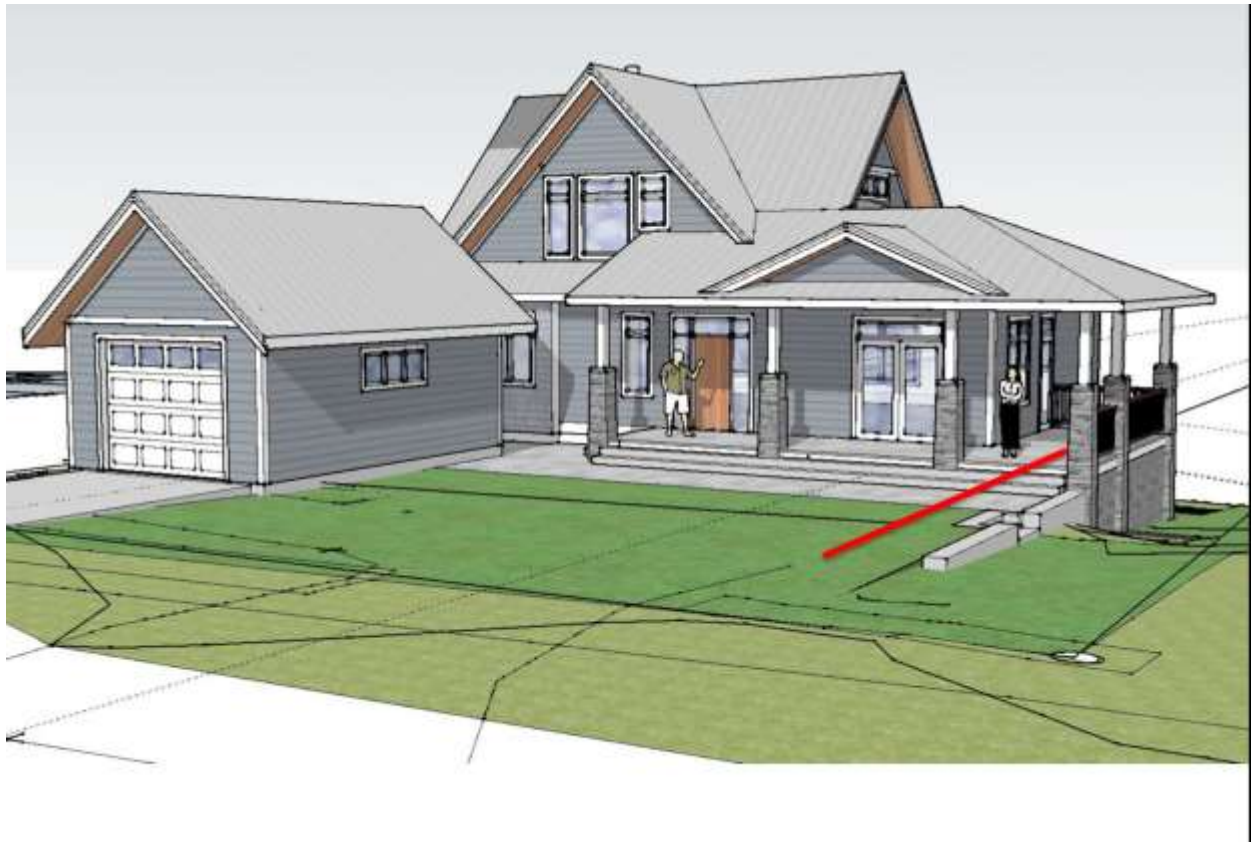


Figure 1: Subject Property Map



Figure 2: Aerial Photo



Current Hedge to be removed



Figure 4: Building Drawings (red line shows required side yard setback from Eel Road)

DV 7B 19

TO: Dean and Deborah Clarke

1. This Development Variance Permit (DV 7B 19) 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 20, Block 29, Comox District, Plan 11986
Parcel Identifier (PID): 001-293-052 Folio: 771 04433.00
Civic Address: 5956 Aldergrove Drive
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 owners are required to obtain a setback permit from the Ministry of Transportation and Infrastructure to reduce the minimum road setback for the covered deck as shown on Schedule B;
 - iii. THAT the owners are required to maintain a fence or hedge adjacent to the proposed accessory building as shown on Schedule B to delineate the northwest property boundary for the life of the accessory building.
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 7B 19) 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 _____.

James Warren
Corporate Legislative Officer

Certified on _____

Attachments: Schedule A – “Resolution”
Schedule B – “Subject Property Map and Site Plan”

Draft

Schedule A

File: DV 7B 19

Applicants: Dean and Deborah Clarke

Legal Description: Lot 20, Block 29, Comox District, Plan 11986, PID 001-293-052

Specifications:

THAT WHEREAS pursuant to Section 402 (2) ii) a) of Bylaw No. 2781, being the “Comox Valley Zoning Bylaw, 2005”, where the width of the lot is 31.0 metres or less at the required front yard setback, the minimum side yard abutting the road shall be 4.5 metres;

WHEREAS pursuant to Section 707(4) of Bylaw No. 2781, being the “Comox Valley Zoning Bylaw, 2005,” the minimum front yard setback for an accessory building is 7.5 metres;

WHEREAS pursuant to Section 707(4) of Bylaw No. 2781, being the “Comox Valley Zoning Bylaw, 2005,” the minimum side yard setback for an accessory building between 4.5 metres and 6.0 metres in height is 1.75 metres;

WHEREAS pursuant to Section 403(2) of Bylaw No. 2781, being the “Comox Valley Zoning Bylaw, 2005,” the setback of the eaves of a building can be reduced by not more than 50 per cent of the minimum setback, up to a maximum of 2 metres;

AND WHEREAS the applicants, Dean and Deborah Clarke, wish to reduce the minimum side and front yard setback for the accessory building and reduce the minimum side yard road setback (from Eel Road) for the dwelling as shown on Schedule B;

THEREFORE BY A RESOLUTION of the Board of the Comox Valley Regional District on _____, 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:

- 707(4) The minimum front yard setback for the proposed accessory building as shown on Schedule B is 6.0 metres.
- 403 (2) The minimum front yard setback of the eaves of the proposed accessory building as shown on Schedule B is 5.37 metres.
- 707 (4) The minimum (northwest) side yard setback for the proposed accessory building as shown on Schedule B is 1.3 metres.
- 403 (2) The minimum (northwest) side yard setback of the eaves of the proposed accessory building as shown on Schedule B is 0.63 metres.
- 402 (2) The minimum side yard road setback (Eel Road) for the proposed covered deck as shown on Schedule B is 2.75 metres.
- 403 (2) The minimum side yard road setback (Eel Road) of the eaves of the proposed covered deck as shown on Schedule B is 2.15 metres.

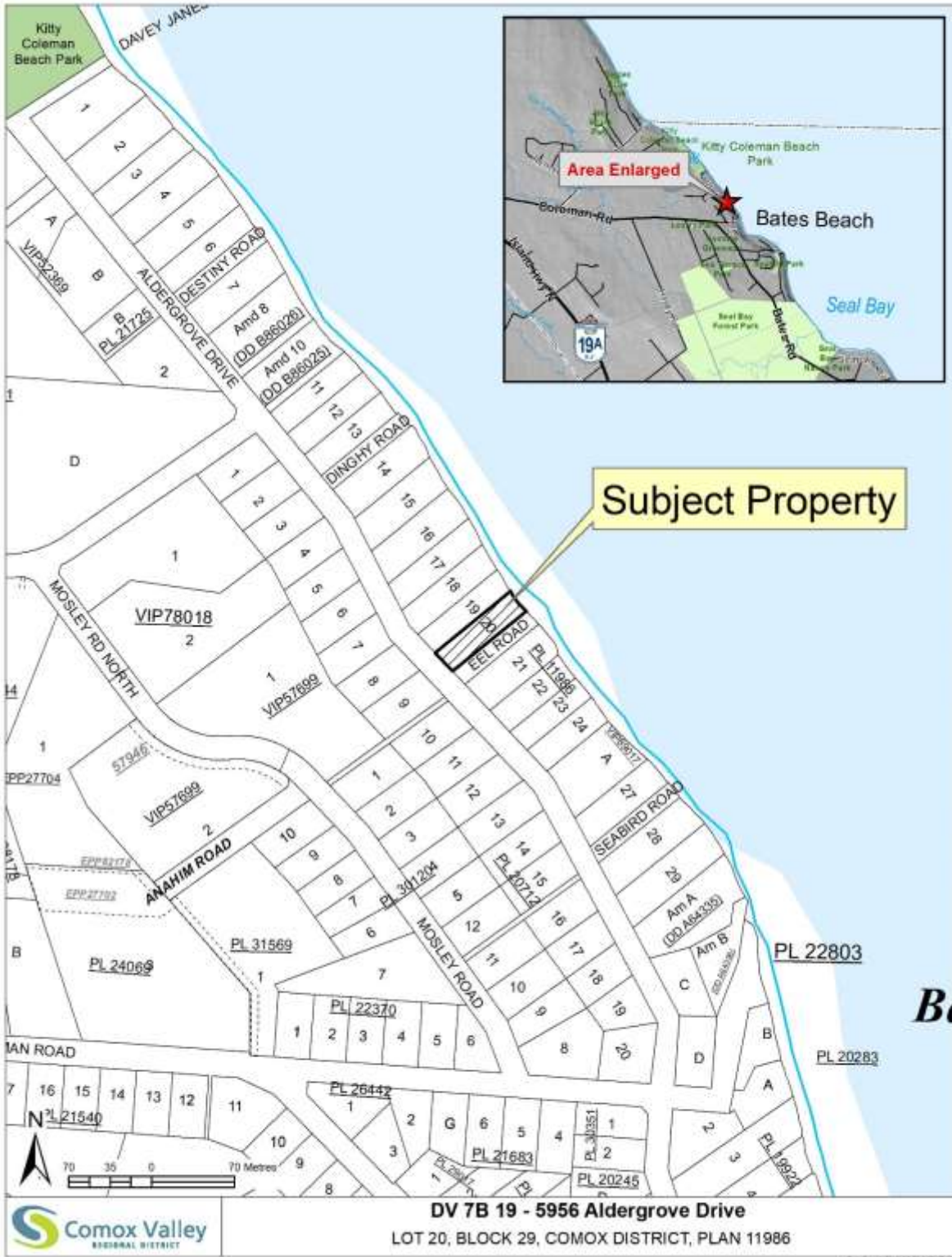
I HEREBY CERTIFY this copy to be a true
and correct copy of Schedule A being the
terms and conditions of Development
Variance Permit File DV 7B 19.

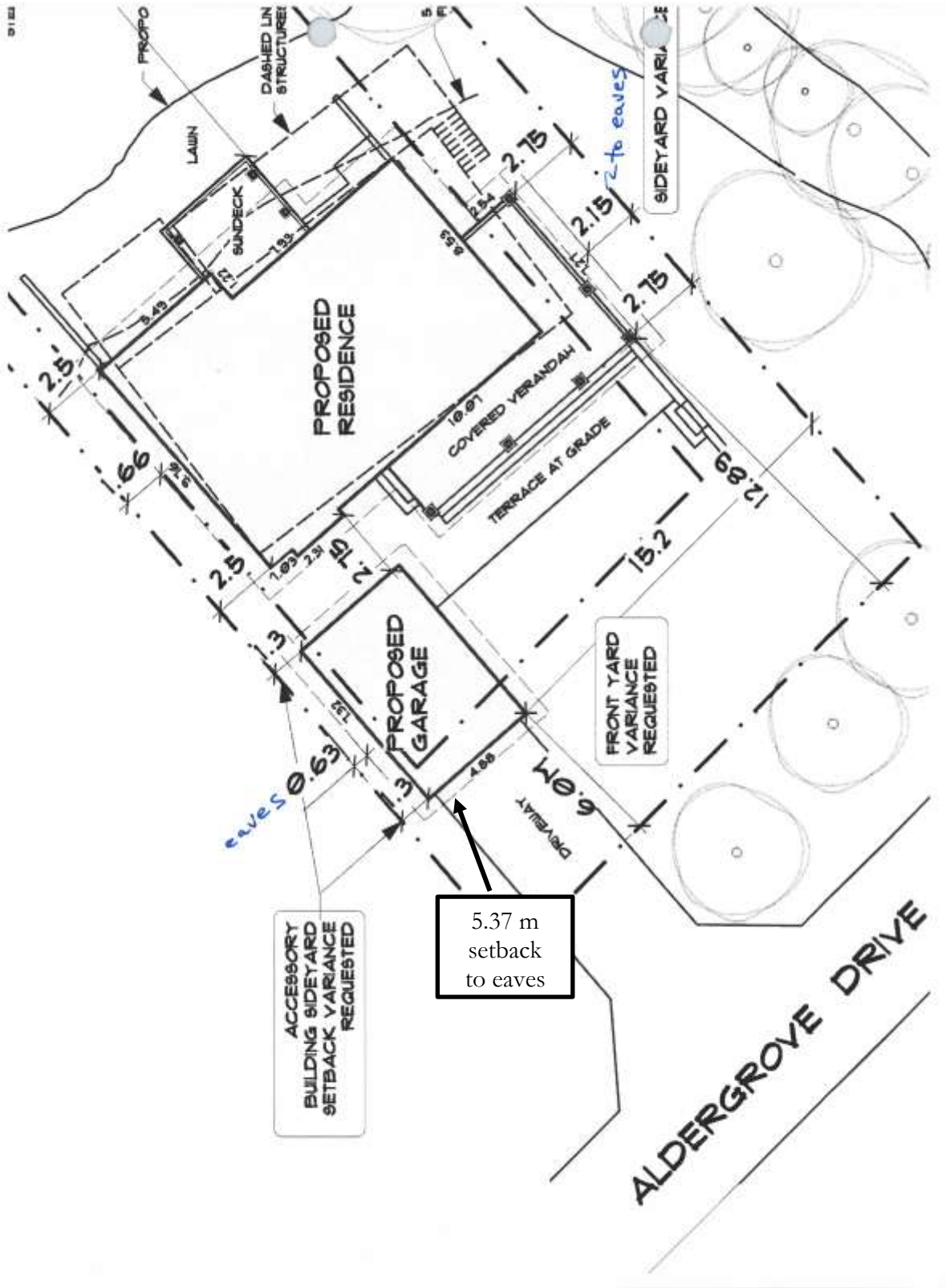
James Warren
Corporate Legislative Officer

Certified on _____

Draft

Schedule B Subject Property Map and Site Plan





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

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

2. ACCESSORY USES

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

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

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

#112

4. SITING AND HEIGHT OF BUILDINGS AND STRUCTURES

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

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

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

5. LOT COVERAGE

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

6. FLOOR AREA REQUIREMENTS

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

7. SUBDIVISION REQUIREMENTS

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

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

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

iii) **Lot Area**

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

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

End • CR-1

June 24, 2019

File:

JUN 24 2019

To: Brian Chow
Rural Planner
Planning and Development Services Branch, Comox Valley Regional District

To:

cc:

Development Variance Application – 5956 Aldergrove Drive (Electoral Area B)

Please accept this application in support of three development variances required for 5956 Aldergrove Drive in Electoral Area B.

The three variances requested are to:

- Relax the south side yard setback against Eel Road from 4.5 metres to 2.75 metres to accommodate a covered deck attached to the house.
- Relax the front setback from 7.5 metres to 6.0 metres to accommodate a standard length garage
- Relax the north side yard setback from 1.75 metres to 1.3 metres to accommodate an architecturally consistent roof pitch to the garage and maintenance access to the side and back of the house.

The proposed development will involve the removal and relocation (to new property) of the existing single detached dwelling and the construction of a new replacement single detached dwelling and a new single detached garage. These variance requirements are all associated with the upper portion of the property above the steep slope and are driven primarily by the limited building space caused by the steep slope and the acute angle of the street relative to the side property lines.

The existing 1961 house with its attached deck are skewed to the side property lines and already encroach into the south side setback area against Eel Road. The new house with its covered deck will be in a similar location but will be built square to the property lines and actually infringe less on the setback than the existing structure. Renovation of the existing house was considered, but new greenfield construction allows for moisture issues in the existing basement to be rectified and will allow the most cost-effective means of achieving modern energy efficiencies. In addition, the new home will be designed for rainwater harvest, RWH, from the roof areas. This feature reduces demand on groundwater supplies and makes the new home more resilient. Given rainfall patterns in the Comox Valley however, sound RWH design principles require a sizeable cistern volume and that all practical means of maximizing roof area be incorporated in order to fill it by the end of the wet winter season.

We therefore ask for consideration of the requests and supply the following expanded reasoning:

The south side set back reduction against Eel Road from 4.5 metres to 2.75 metres (eaves from 2.5 metres to 2.15 metres):

- Is currently being approved by the Ministry of Transportation (permit to be provided)

- Is adjacent to a road allowance that is unlikely to ever contain an actual road due to the steep slope.
- Is consistent with other setback variances approved on other similar road allowances along the street.
- Still allows room for maintenance on the side and back of the house via the owner's property
- Infringes less into the setback than the existing 1961 single family dwelling and deck.
- Allows a practical and valuable means of maximizing roof area for rainwater harvest.
- Does not negatively impact on any neighbour's sight lines and improves the visual character of the neighbourhood.

The front set back reduction from 7.5 metres to 6.0 metres:

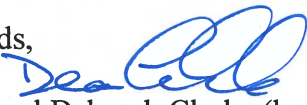
- Is driven by the limited building area between the street and the steep slope below
- Retains adequate distance for traffic safety as it remains greater than the 4.5 metres required by the Ministry of Transportation and Infrastructure. No MOTI approval is required.
- Retains room for parking for a full size vehicle on the driveway between the property line and the garage front.
- Is kept to a minimum by scaling the garage down to accommodate only one vehicle
- Aligns with the front of the neighbour's garage and therefore causes no adverse visual impact to the character of the neighbourhood.
- Allows for a standard length garage and thus helps maximize roof area for rainwater harvest.
- Allows access between the house and the garage for maintenance and access along the side and back of the property.

The north side setback reduction from 1.75 metres to 1.3 metres (eaves from 0.875 metres to 0.63 metres):

- Is necessary to maintain access between the house and garage for maintenance and access to the side and back of the property.
- Is influenced by an architectural desire to make the roof pitch match that of the house, improving the visual character of the property and therefore the neighbourhood and by the desire for a steep roof pitch for rainwater harvest (a steep pitch improves cleaning and harvest efficiencies).
- It is also notable that the intended garage design:
 - Keeps the overall scale of the accessory building structure scale to a minimum by building to accommodate only one vehicle
 - Keeps a peak height significantly lower than the peak height of the neighbouring house and garage.
 - Does not negatively impact views or site lines for any neighbours.
 - Keeps the roof peak of the garage lower than the proposed house.

Please feel free to contact us with any questions or concerns at 250-331-9121 or at clarkedt@hotmail.com.

Regards,



Dean and Deborah Clarke (home owners)
5956 Aldergrove Drive
250-331-9121

John Gower, President
Gower Design Group
Courtenay, BC
250-871-8765

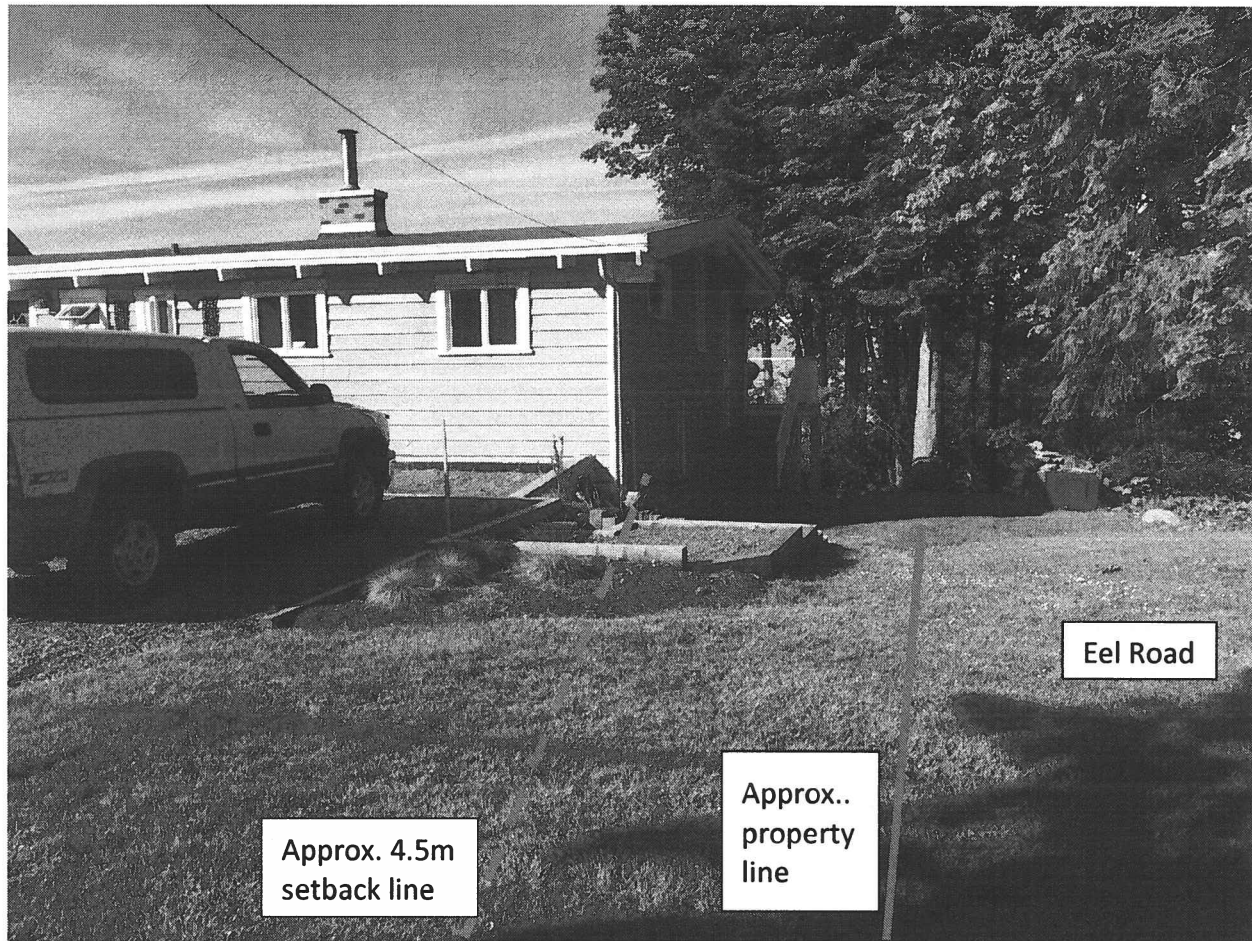


Photo 1. This photo of the south side of the property illustrating the rear corner and deck of the existing 1961 house extending into the setback area against Eel Road. The new house will be kept out to the setback area and the new deck/veranda will extend into the 4.5m setback space by only 1.75m, less than the current deck.

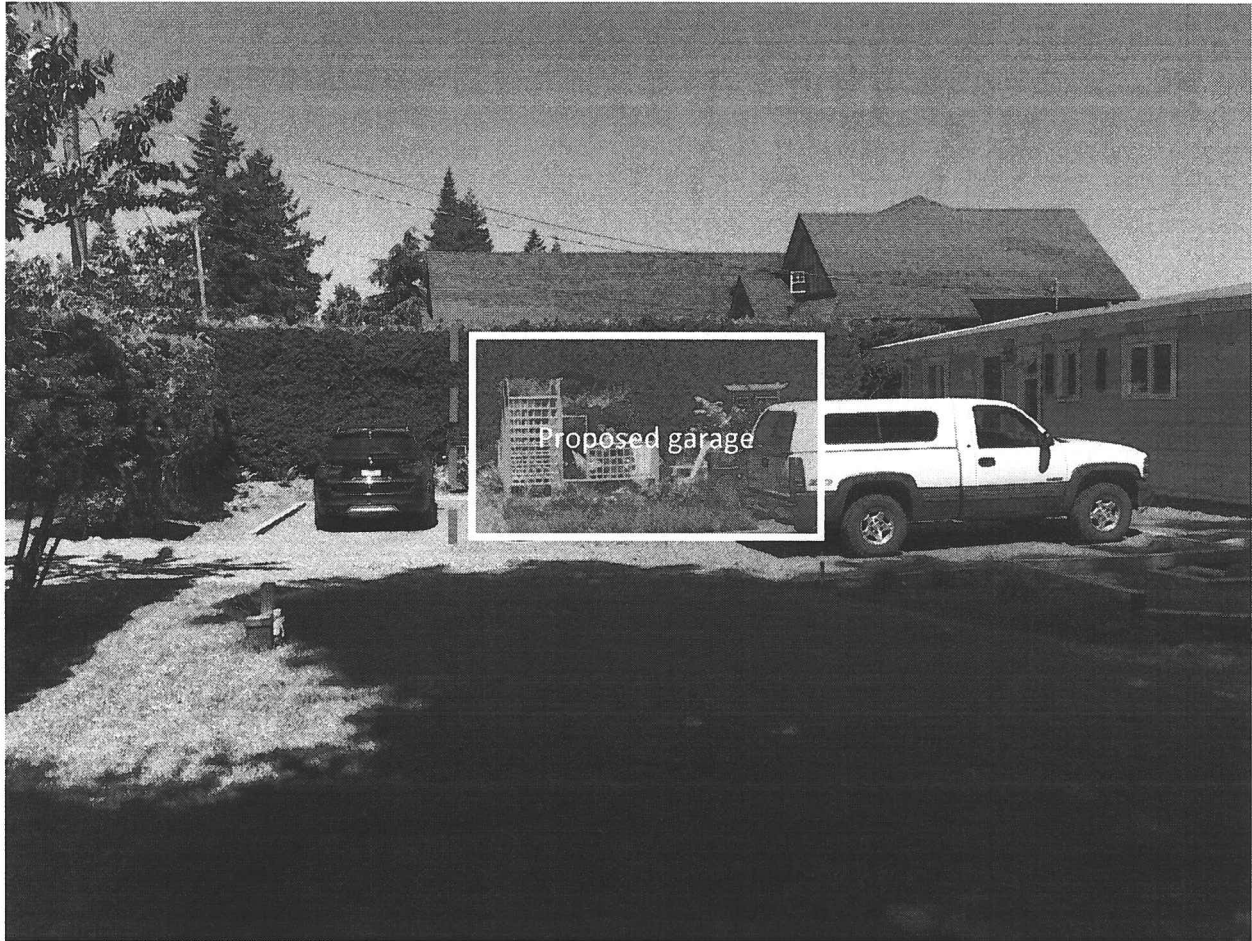


Photo 2. This photo facing north towards the neighbour's house and garage roofline (behind the hedge). The dashed line indicates the proposed position of the front of the garage, 6.0m from the front property line or 1.5 metres into the 7.5m front setback space. Please note that the new garage will be essentially even with the front of the neighbour's garage seen over the hedge, and only encroaches on the setback space because of the angle of the street relative to the side property line. There will remain space for a full size vehicle on the new driveway in front of the garage and inside the front property line. Pulling the garage forward allows for a standard length garage and retains room between the house and garage for maintenance access.



This photo is taken from the neighbour's side of the hedge to illustrate the height of the neighbouring garage and to emphasize that the 5.72 m height of the proposed garage will be several metres shorter than the one next door.