

DATE: April 24, 2019**FILE:** 3090-20/DV 3B 19**TO:** Chair and Directors
Electoral Areas Services Committee**FROM:** Russell Dyson
Chief Administrative OfficerSupported by Russell Dyson
Chief Administrative Officer**R. Dyson****RE: Development Variance Permit – van Ierland
5918 Aldergrove Drive, Lazo North (Electoral Area B)
Lot 28, Block 29, Comox District, Plan 11986, PID 000-642-703****Purpose**

To consider a Development Variance Permit (DVP) to reduce the side yard setbacks of a proposed accessory building (Appendix A).

Recommendation from the Chief Administrative Officer:

THAT the board approve the Development Variance Permit DV 3B 19 (van Ierland) to vary the following Zoning Bylaw regulations:

1. To reduce the side yard setback of a proposed accessory building from 4.5 metres to 2.2 metres; and
2. To reduce the side yard setback of the eaves of the proposed accessory building from 2.5 metres to 1.5 metres

on a property described as Lot 28, Block 29, Comox District, Plan 11986, PID 000-642-703 (5918 Aldergrove Drive);

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

Executive Summary

- The property is located at 5918 Aldergrove Drive in Electoral Area B. The applicant plans to build a single detached dwelling and an accessory building (i.e., garage).
- The applicant wishes to site the proposed accessory building closer to the north side yard due to the limited building envelope from the steep slopes and protection of trees in the front yard.
- The request is to reduce the minimum side yard setback from 4.5 metres to 2.2 metres for the building's foundation and from 2.5 to 1.5 metres for its eaves.
- As this side lot line abuts an unopened road, the applicant has obtained a Ministry of Transportation and Infrastructure (MoTI) permit to reduce their setback requirements.
- The intent of having sufficient setbacks from roads is to provide traffic safety, to ensure a uniform streetscape and to offer enough room for building maintenance.
- As this unopened road is steep and is unlikely to be used as a road in the future, the reduced setback maintains the intent of having the minimum setbacks from roads, and is unlikely to affect the neighbourhood's character. Staff recommends the issuance of the DVP.

Prepared by:

Concurrence:

Concurrence:

B. Chow***T. Trieu******S. Smith***

 Brian Chow, MCIP, RPP
 Rural Planner

 Ton Trieu, MCIP, RPP
 Manager of Planning Services

 Scott Smith, MCIP, RPP
 General Manager of Planning and
 Development Services Branch
Stakeholder Distribution (Upon Agenda Publication)

Applicant	✓
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Background/Current Situation

The subject property is located at 5918 Aldergrove Drive in the Lazo North Electoral Area (Electoral Area B) (Figures 1 and 2). The subject property is a waterfront lot that is approximately 0.26 hectares in area. The property is bound by country residential lots to the south, Aldergrove Drive to the west, Seabird Road (unopened road) to the north, and Strait of Georgia to the east.

The applicant is currently constructing a new single detached dwelling on the property. For the proposed detached accessory building (i.e., garage), the applicant would like to reduce the north side yard setback, which abuts Seabird Road, due to a limited building envelope from steep slopes and protection of existing trees in the front yard (Figures 3 and 4). The proposed side yard setbacks of this accessory building are 2.2 metres for its foundation and 1.5 metres for its eaves (Figures 5 and 6).

Official Community Plan Analysis

Bylaw No. 337, being the “Rural Comox Valley Official Community Plan Bylaw No. 337, 2014” (OCP), designates the subject property within Rural Settlement Area (RSA). The proposed accessory building does not conflict with residential policies in the OCP.

Zoning Bylaw Analysis

The subject property is zoned Country Residential One (CR-1). For the CR-1 zone, the minimum side yard setback for an accessory building that is less than 4.5 metres in building height is 1.0 metre. However, as the north side lot line abuts a road, there is a greater setback requirement as per Section 402(2)(ii)(a) of the Zoning Bylaw:

- “ii) Where a side lot line abuts a highway, the minimum yard setback shall be as follows:
- a) 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.”

The width of the lot at its front yard setback of 7.5 metres is less than 31.0 metres. Therefore, the minimum side yard setback for the north lot line is 4.5 metres.

For the eaves, Section 403(2) of the Zoning Bylaw states,

- “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 50% of such distance up to a maximum of 2.0 metres, provided that such reduction shall apply only to the projecting feature.”

According to this section, the minimum setback for the eaves is 2.5 metres. The setback reduction requests are summarized as follows (Figure 5):

Zoning Bylaw No. 2781	Zoning Bylaw Regulations	Required	Proposed	Difference
Section 402(2)(ii)(a)	Minimum side yard setback abutting a road	4.5 metres	2.2 metres	2.3 metres
Section 403 (2)	Minimum side yard setback of eaves	2.5 metres	1.5 metres	1.0 metre

As the proposed building is less than 4.5 metres from a road, an approval from the MoTI is also required. On March 28, 2019, MoTI issued a permit (Appendix B).

The intent of lot line setbacks from a road is to offer a uniform streetscape, to ensure adequate space for building maintenance, and to provide visibility around the corner at intersections for traffic safety.

As the unopened road is steep and it is unlikely to be opened as a road in the future, this variance maintains the intent of having the minimum setbacks from roads, and it is unlikely to affect the character of the neighbourhood. Therefore, staff recommends the 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 board could either approve or deny the requested variance. Based on the analysis above, staff recommend the variance be approved.

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 Comox Valley Regional District (CVRD) bylaws. DVPs are permitted in certain circumstances under Section 498 of the LGA.

Regional Growth Strategy Implications

Bylaw No. 120, being “Comox Valley Regional District Regional Growth Strategy Bylaw No. 120, 2010” (RGS) designates the subject property within RSA. The proposed accessory building does not conflict with the residential policies of the RGS.

Intergovernmental Factors

On March 28, 2019, the MoTI issued a permit (Appendix B) to allow the setback reductions of the proposed accessory building to be at 2.2 metres from the road.

Interdepartmental Involvement

This DVP application was referred to internal departments. No concerns were identified. The outcome of this application will determine next steps in the building permit process.

The Community Parks department provided additional information to inform the applicant that the CVRD may wish to build a trail within the Seabird Road allowance for the benefit of the surrounding community. This potential trail may be aligned very close to this building given the topography of the site. The Community Parks department will work with the applicant on an agreeable trail solution at some future date.

Citizen/Public Relations

The Advisory Planning Commission met on April 23, 2019, to review this application. The Commission supported the variance request.

Notice of the requested variance will be mailed to adjacent property owners within 100 metres of the subject property at least 10 days prior to the Electoral Areas Services Committee (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 3B 19”
Appendix B – “MoTI Permit”



Figure 1: Subject Property Map



Figure 2: Air Photo

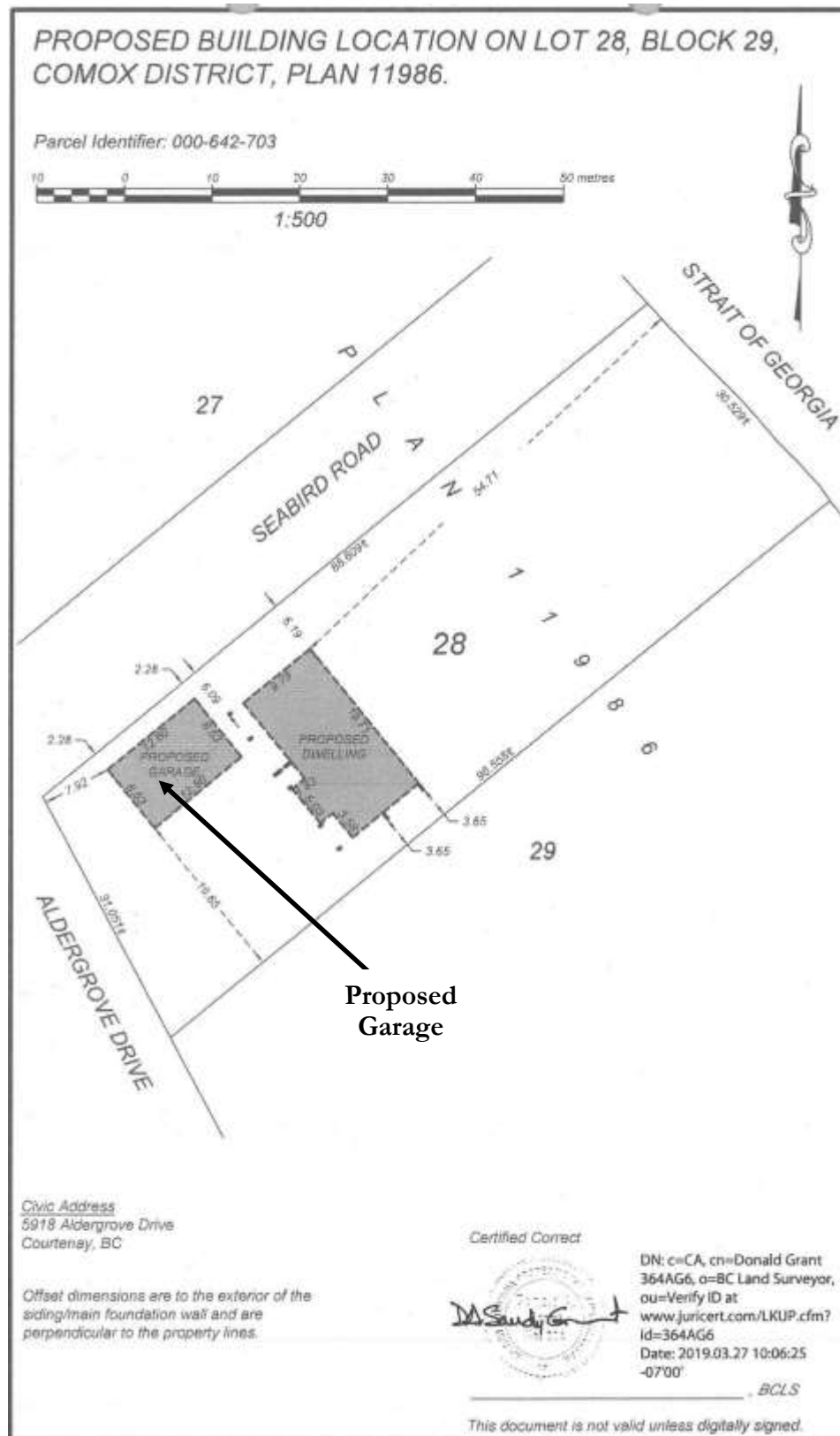


Figure 3: Survey Plan

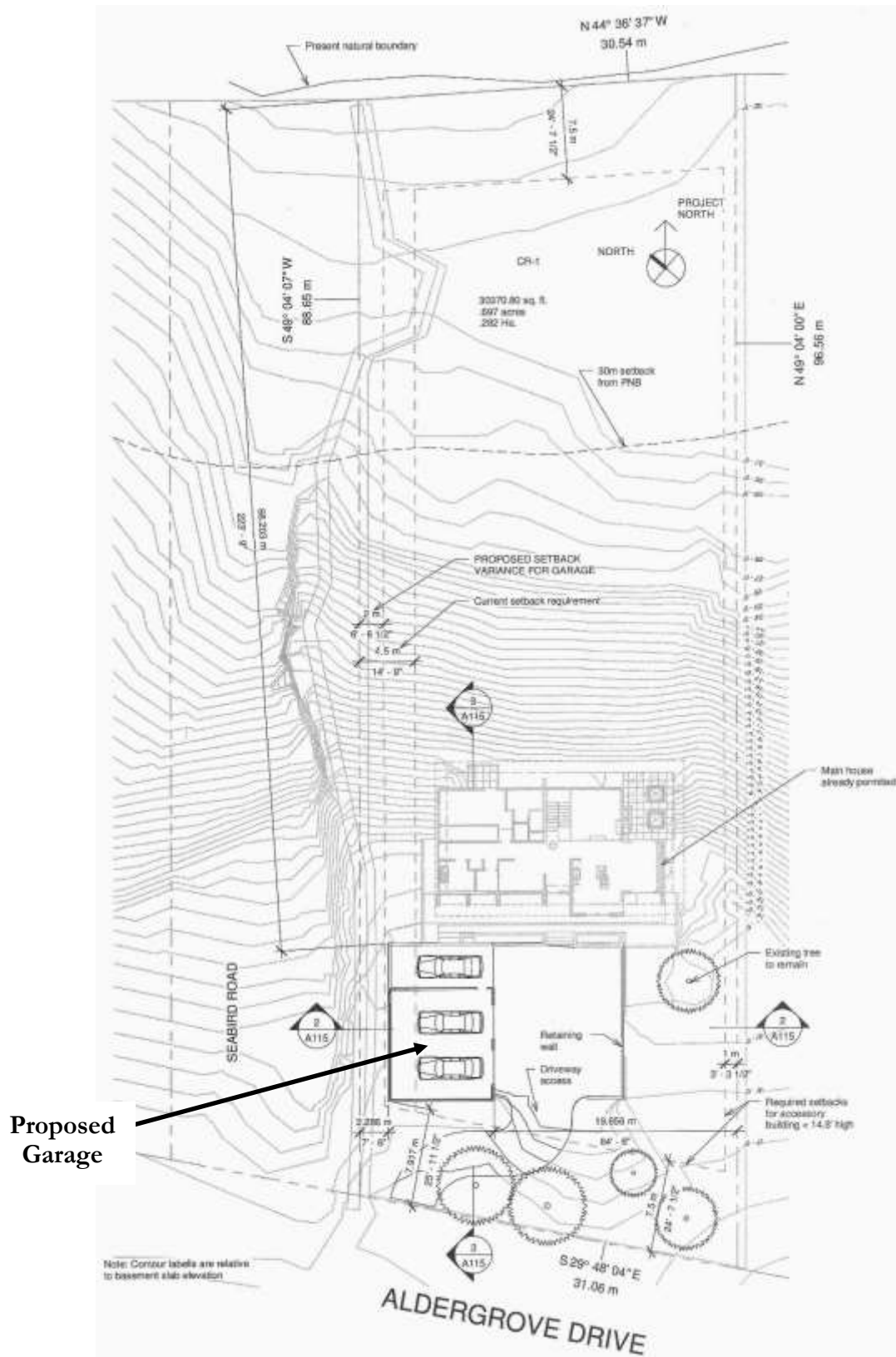


Figure 4: Site Plan with Contour Lines and Trees

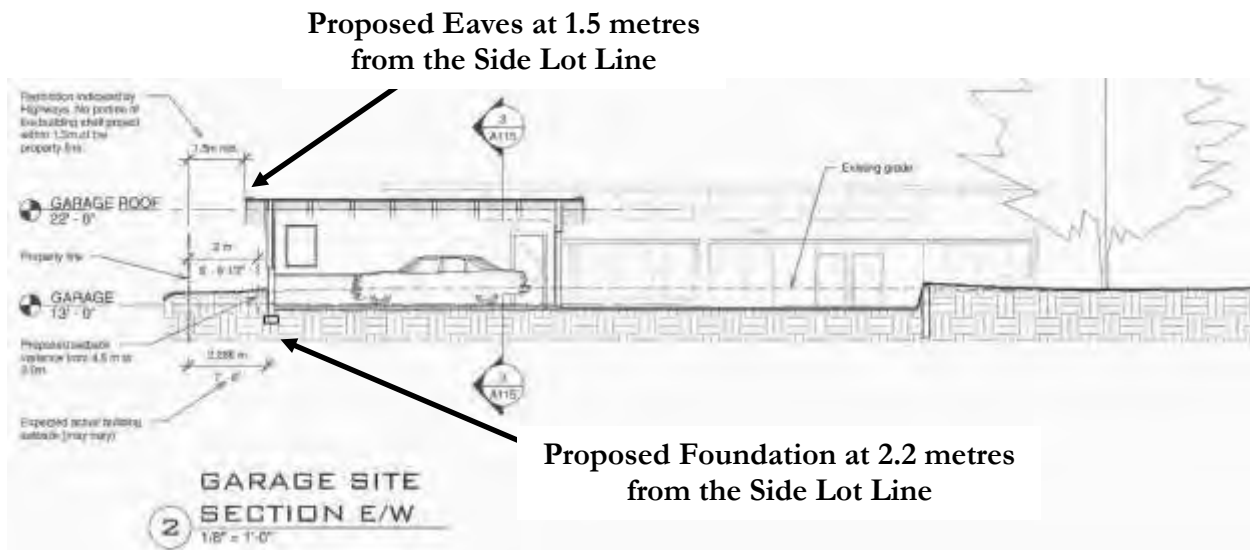


Figure 5: East-West Section View of the Proposed Garage

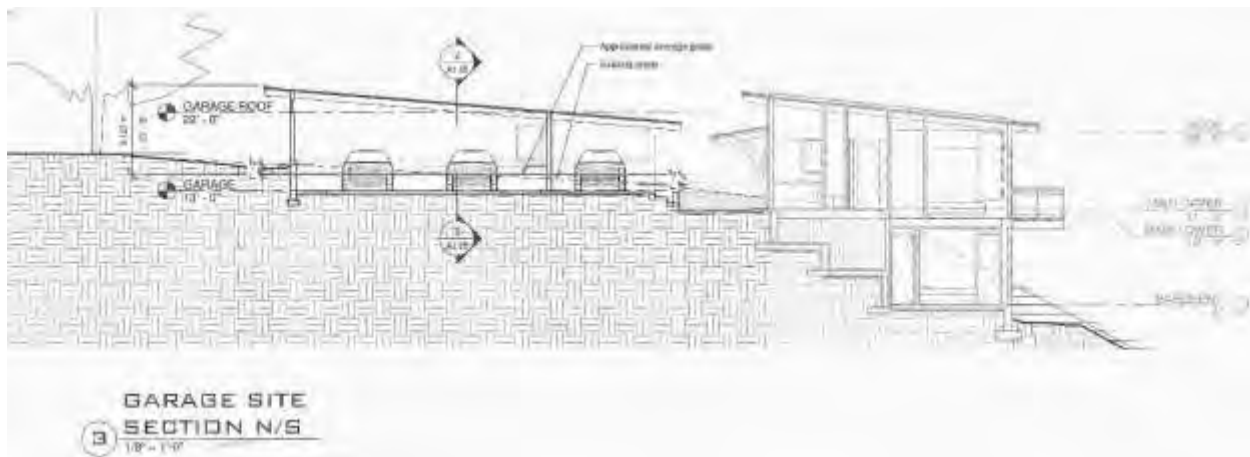


Figure 6: North-South Section View of the Proposed Garage

DV 3B 19**TO: Judy-Lynn van Ierland**

1. This Development Variance Permit (DV 3B 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 28, Block 29, Comox District, Plan 11986
Parcel Identifier (PID): 000-642-703 Folio: 771 04441.000
Civic Address: 5918 Aldergrove Drive
3. The land described herein shall be developed in accordance with the following term and provision 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.
4. This Development Variance Permit (DV 3B 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.
5. 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, Survey Plan, Site Plan and Elevation Drawings”

Schedule A

File: DV 3B 19

Applicant: Judy-Lynn van Ierland

Legal Description: Lot 28, Block 29, Comox District, Plan 11986, PID 000-642-703

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 metres or less at the required front yard setback, the minimum side yard of a building abutting the road shall be 4.5 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 structure can be reduced by not more than 50 per cent of the minimum setback, up to a maximum of 2 metres;

AND WHEREAS the applicant, Judy-Lynn van Ierland, wishes to reduce the side yard setback abutting a road for the proposed accessory building shown on Schedule B from 4.5 metres to 2.2 metres for its foundation and 2.5 metres to 1.5 metres for its eaves;

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:

- 402(2)(ii)(a) The minimum side yard setback of the foundation of the proposed accessory building shown on Schedule B is reduced from 4.5 metres to 2.2 metres; and
- 403(2) The minimum side yard setback of the eaves of the proposed accessory building shown on Schedule B is reduced from 2.5 metres to 1.5 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 3B 19.

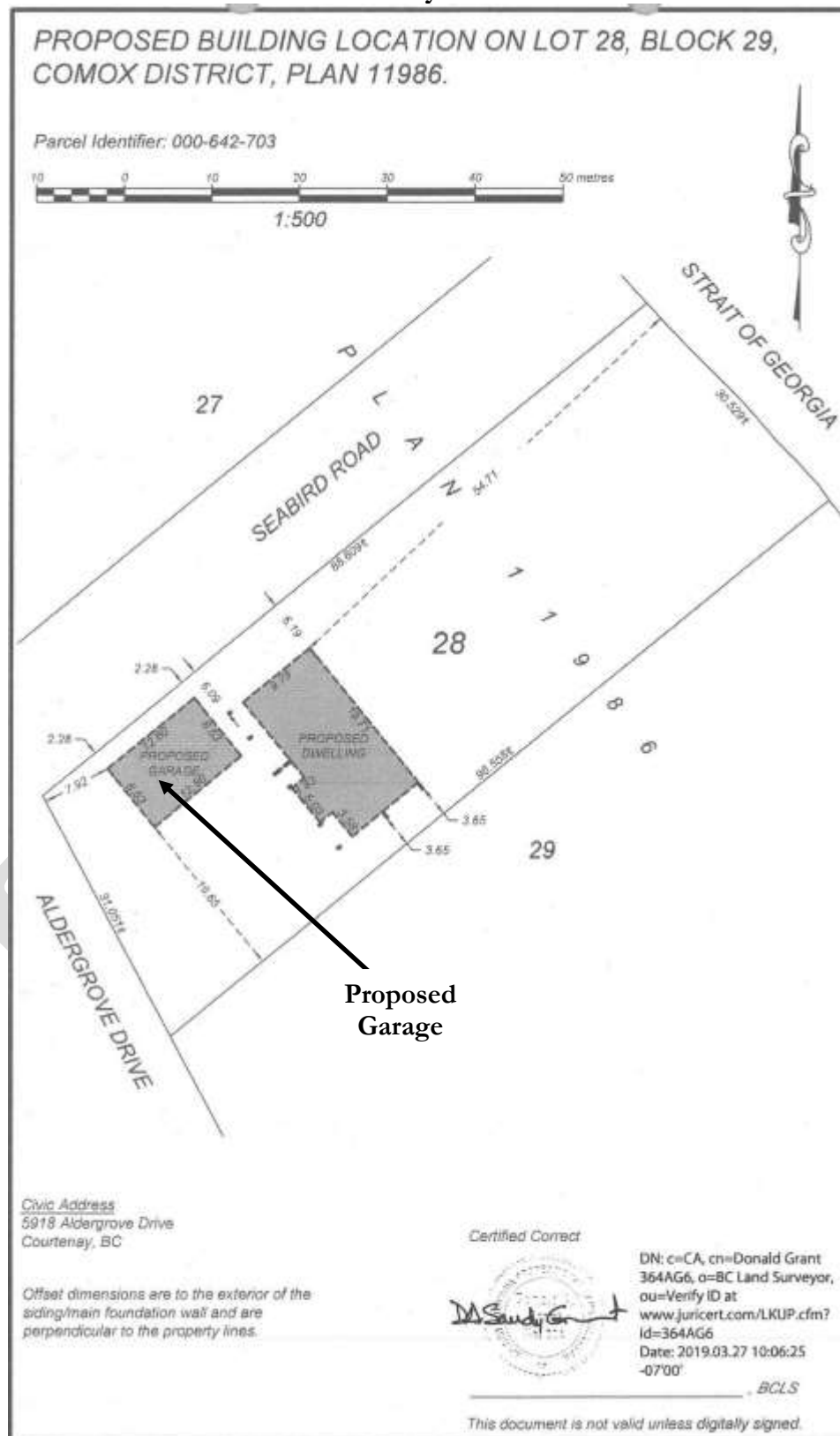
James Warren
Corporate Legislative Officer

Certified on _____

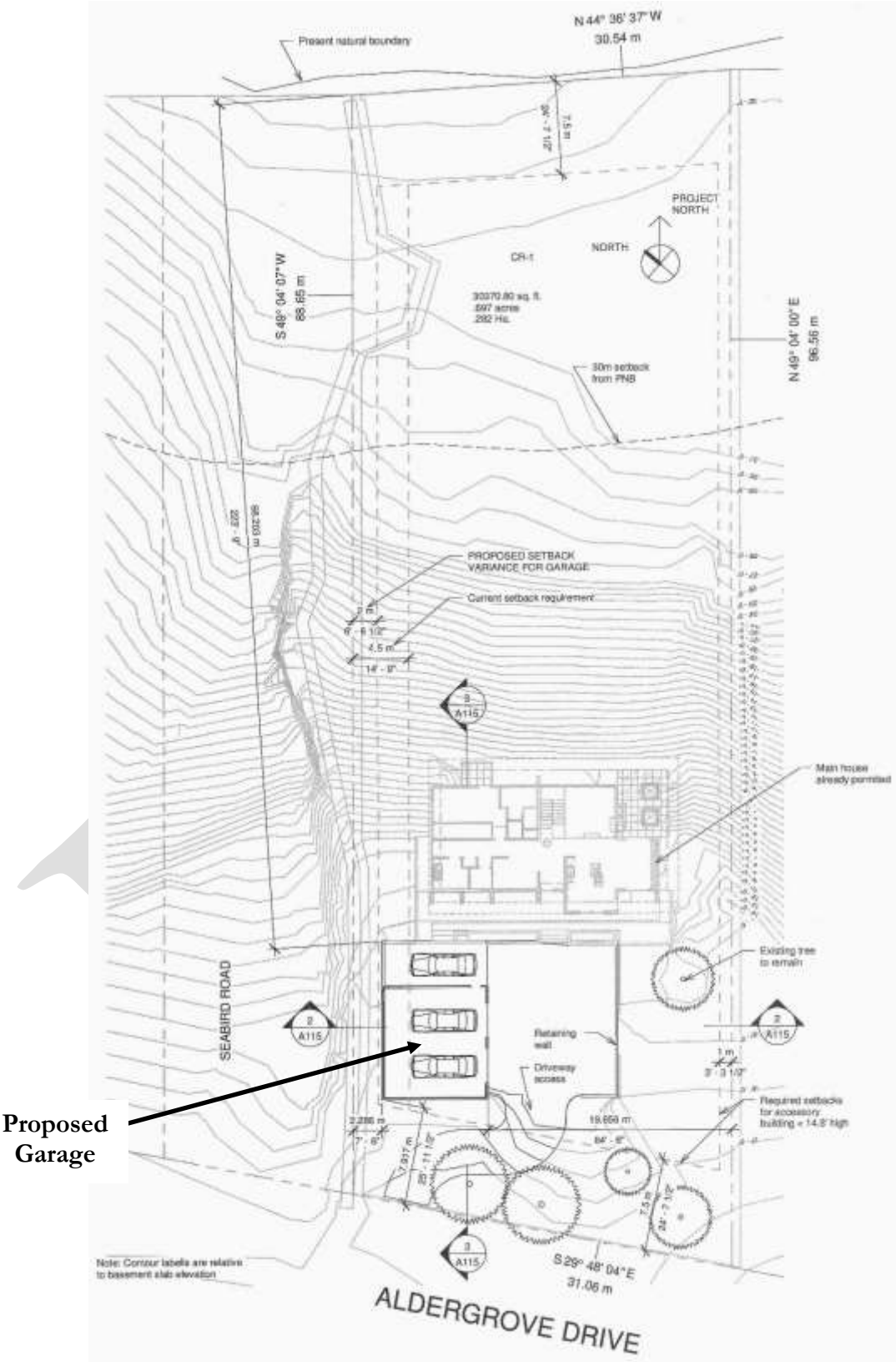
Schedule B Subject Property



Survey Plan

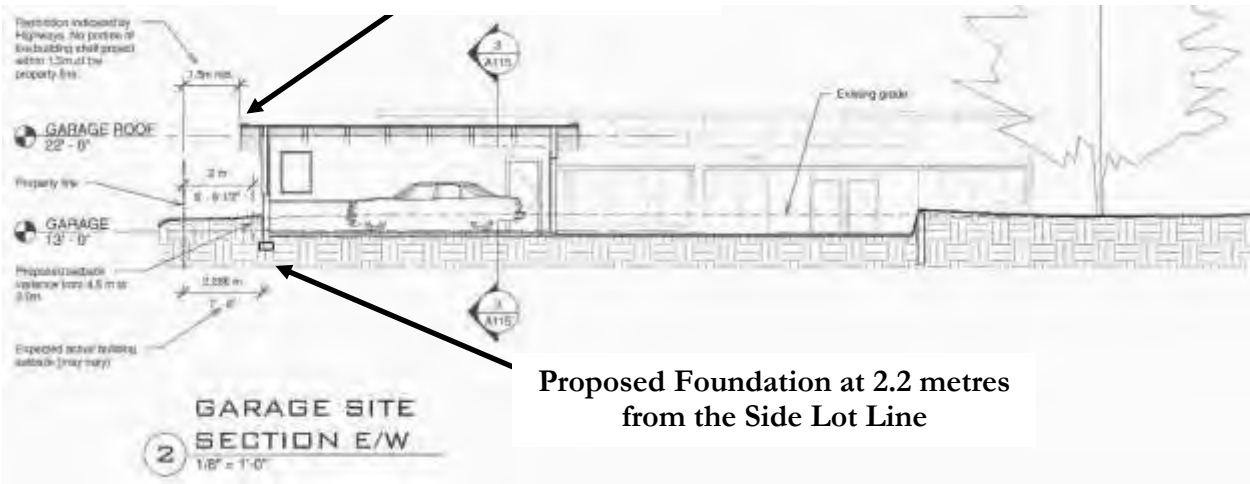


Site Plan

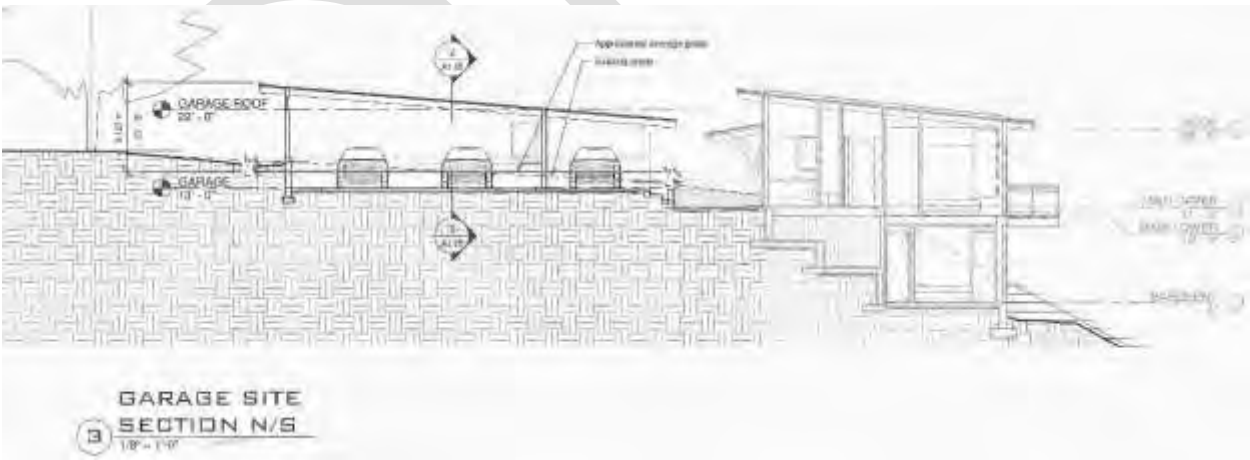


Elevation Drawings

Proposed Eaves at 1.5 metres
from the Side Lot Line



East-West Section View of the Proposed Garage



North-South Section View of the Proposed Garage



**BRITISH
COLUMBIA**

Ministry of Transportation
and Infrastructure

Permit/File Number: 2019-00475

Office: Courtenay Area Office

PERMIT TO REDUCE BUILDING SETBACK LESS THAN 4.5 METRES FROM THE PROPERTY LINE FRONTING A PROVINCIAL PUBLIC HIGHWAY

PURSUANT TO TRANSPORTATION ACT AND/OR THE INDUSTRIAL ROADS ACT AND/OR THE MOTOR VEHICLE ACT AND/OR AS DEFINED IN THE NISGA'A FINAL AGREEMENT AND THE NISGA'A FINAL AGREEMENT ACT.

BETWEEN:

The Minister of Transportation and Infrastructure

Courtenay Area Office
550 Comox Road
Courtenay, British Columbia V9N 3P6
Canada

("The Minister")

AND:

Judy-Lynn Van Ierland
1561 Galerno Road
Campbell River, British Columbia V9W 5N6
Canada

("The Permittee")

WHEREAS:

A. The Minister has the authority to grant permits for the auxiliary use of highway right of way, which authority is pursuant to both the Transportation Act and the Industrial Roads Act, the Motor Vehicle Act, as defined in the Nisga'a Final Agreement and the Nisga'a Final Agreement Act;

B. The Permittee has requested the Minister to issue a permit pursuant to this authority for the following purpose:

The construction of a building, the location of which does not conform with British Columbia Regulation 513/04 made pursuant to section 90 of the Transportation Act, S.B.C. 2004, namely; to allow 2.2 meter setback from Seabird Road, located at Lot 28, Block 29, Comox District, Plan 11986, as shown on Proposed Building Location Plan dated March 27, 2019, prepared by Sandy Grant, BCLS.

C. The Minister is prepared to issue a permit on certain terms and conditions;

ACCORDINGLY, the Minister hereby grants to the Permittee a permit for the Use (as hereinafter defined) of highway right of way on the following terms and conditions:

1. This permit may be terminated at any time at the discretion of the Minister of Transportation and Infrastructure, and that the termination of this permit shall not give rise to any cause of action or claim of any nature whatsoever.
2. This permit in no way relieves the owner or occupier of the responsibility of adhering to all other legislation, including zoning, and other land use bylaws of a municipality or regional district.
3. The Permittee shall indemnify and save harmless the Ministry, its agents and employees, from and against all claims, liabilities, demands, losses, damages, costs and expenses, fines, penalties, assessments and levies made against or incurred, suffered or sustained by the Ministry, its agents and employees, or any of them at any time or times, whether before or after the expiration or termination of this permit, where the same or any of them are based upon or arise out of or from anything done or omitted to be done by the Permittee, its employees, agents or Subcontractors, in connection with the permit.



BRITISH
COLUMBIA

Ministry of Transportation
and Infrastructure

Permit/File Number: 2019-00475

Office: Courtenay Area Office

The rights granted to the Permittee in this permit are to be exercised only for the purpose as defined in Recital B on page 1.

Dated at Courtenay, British Columbia, this 28 day of March, 2019

A handwritten signature in black ink, appearing to be 'S. Hogg', written over a horizontal line.

On Behalf of the Minister