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## REPORT TO THE JUAN DE FUCA LAND USE COMMITTEE MEETING OF TUESDAY, AUGUST 20, 2024

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**SUBJECT**      **Development Variance Permit for Parcel A (DD 80053I) of Section 86, Sooke District – 315 Becher Bay Road**

### **ISSUE SUMMARY**

A request has been made for a development variance permit to increase the maximum combined total floor area allowance for accessory buildings and structures from 250 m<sup>2</sup> to 314 m<sup>2</sup> on a lot with an area of more than 5,000 m<sup>2</sup>, for the purpose of constructing a garage and two-storey accessory building with a detached accessory suite; and increase the maximum height of a detached accessory suite from 7 m to the peak of the roof to 8.37 m, and to increase the maximum allowable floor area of a detached accessory suite from 90 m<sup>2</sup> to 103 m<sup>2</sup> for the purpose of constructing a detached accessory suite.

### **BACKGROUND**

The 4 ha property is located at 315 Becher Bay Road (Appendix A) in East Sooke and is within the Agricultural Land Reserve (ALR). The parcel is zoned Agricultural (AG) under the Juan de Fuca Land Use Bylaw, 1992, Bylaw No. 2040 and is adjacent to AG zoned parcels to the north and south, Becher Bay Road to the west, and to Becher Bay to the east. The parcel is partially designated as several Development Permit Areas by the East Sooke Official Community Plan (OCP), Bylaw No. 4000; however, the applicable Development Permit guidelines for recent land clearing completed on the subject property are being addressed separately under Development Permit application DP000416.

A 290 m<sup>2</sup> single-family dwelling constructed in 1977 and a 14 m<sup>2</sup> wellhouse are located on the central eastern portion of the property and are accessed from Becher Bay Road by an existing driveway.

The applicant recently commenced construction of a 114 m<sup>2</sup> steel frame garage and a 186 m<sup>2</sup> accessory building containing a 103 m<sup>2</sup> detached accessory suite without the necessary building permits. Plans provided as part of the building permit applications (Appendices B, C and D) indicated that the total combined accessory building floor area on the parcel exceeds 250 m<sup>2</sup>, that the two-storey accessory building with detached accessory suite on the second floor exceeds 7 m, and that the floor area for the suite is greater than 90 m<sup>2</sup>. Plans detail that the accessory building with suite is 8.37 m in height and that, while each storey of the accessory building has a floor area of 93 m<sup>2</sup>, approximately 10 m<sup>2</sup> of the main floor provides an entrance and laundry area to the suite on the second floor, which means that the overall suite floor area is approximately 103 m<sup>2</sup>. Staff note that the floor area measurement demonstrated on the plans is greater than the requested variance since the floor area of suites is calculated on the inside of exterior walls.

The landowner has requested a variance to the regulations of the Juan de Fuca Land Use Bylaw, 1992, Bylaw No. 2040 (Appendix E). Since the proposed garage building is not for farm use and the floor area of the suite does not meet the conditions listed in Section 20.1 of the *Agricultural Land Reserve Use Regulation*, a non-adhering residential use approval from the Agricultural Land Commission (ALC) is also required.

## **ALTERNATIVES**

### *Alternative 1*

The Land Use Committee recommends to the Capital Regional District Board:

That Development Variance Permit VA000162 to authorize the construction of a garage and accessory building with a detached accessory suite on Parcel A (DD 800531) of Section 86, Sooke District, to vary Juan de Fuca Land Use Bylaw, 1992, Bylaw No. 2040:

1. Part 1, Section 4.01 2(c) by increasing the maximum combined total floor area allowance for accessory buildings and structures on a lot with an area of more than 5,000 m<sup>2</sup> from 250 m<sup>2</sup> to 314 m<sup>2</sup>;
2. Part 1, Section 4.20(f) by increasing the maximum floor area permitted for a detached accessory suite from 90 m<sup>2</sup> to 103 m<sup>2</sup>; and
3. Part 1, Section 4.20(g) by increasing the maximum height of an accessory building used for a detached accessory suite from 7 m to the peak of the roof to 8.37 m;

be approved and that issuance of the permit be withheld pending approval by the Agricultural Land Commission for a non-adhering residential use in accordance with the *Agricultural Land Reserve Use Regulation*.

### *Alternative 2*

That the development variance permit be denied.

## **IMPLICATIONS**

### *Legislative Implications*

The Juan de Fuca Land Use Bylaw 1992, Bylaw No. 2040, Part 1, Section 4.01 2(c) specifies that the combined total floor area of all accessory buildings and structures on parcels with a lot size greater than 5,000 m<sup>2</sup> shall not exceed 250 m<sup>2</sup>. Since the combined floor area of the well house, garage, and accessory building with detached accessory suite exceeds this requirement, a variance is requested.

The Juan de Fuca Land Use Bylaw 1992, Bylaw No. 2040, Part 1, Section 4.20(f) specifies that the floor area of a detached accessory suite shall not be smaller than 33.4 m<sup>2</sup> and not exceed 90 m<sup>2</sup>. Part 1, Section 4.20(g) of the Bylaw specifies that the maximum height of an accessory building used for a detached accessory suite shall be 7 m to the peak of the roof. Since the detached accessory suite does not meet these requirements, a variance is required.

Section 20.1 of the *Agricultural Land Commission Act (ALC Act)* limits residential use of agricultural land to one residence per parcel and a total floor area of 500 m<sup>2</sup> or less. Section 34.3 of the *Agricultural Land Reserve Use Regulation* allows for an additional residence to be constructed if conditions in the regulation are met. If a parcel is 40 ha or less, the secondary residence must have a floor area of 90 m<sup>2</sup> or less. An owner may apply to the ALC for a non-adhering residential use for permission to construct a non-farm building or alter the condition limiting the size of an additional residence under section 25 of the *ALC Act*. The ALC has referred a non-adhering residential use application to JdF Community Planning (CRD file: AG000085; ALC application ID: 100902), which has been considered by the Juan de Fuca Agricultural Advisory Planning Commission (JdF AAPC) and the Land Use Committee. If the non-adhering residential use is approved, a variance is required prior to the issuance of a building permit. If the Regional Board or the ALC denies the application, a variance would not be required.

### *Public Consultation Implications*

Pursuant to Section 499 of the *Local Government Act*, if a local government is proposing to pass a resolution to issue a development variance permit, it must give notice to each resident/tenant

within a given distance as specified by bylaw. Capital Regional District Bylaw No. 3885, Fees and Procedures Bylaw, states that the Board, at any time, may refer an application to an agency or organization for their comment. In addition, it states that a notice of intent must be mailed to adjacent property owners within a distance of not more than 500 m. Any responses received from the public will be forwarded to the Land Use Committee in advance of the August 20, 2024, Land Use Committee meeting.

#### *Land Use Implications*

The East Sooke OCP Bylaw No. 4000 designates land in the ALR as Agriculture to protect these lands for current and future agricultural activities. This designation supports farming activities and other land uses as permitted by the ALC. Policy 464F states that the ALC *Act and Regulations* will be taken into account in the review of any land use or building application on lands in the ALR.

In order to construct a garage and an additional residence with a floor area greater than 90 m<sup>2</sup>, approval by CRD Board to vary Section 4.01 2(c) and Section 4.20(f) and (g) of the JdF Land Use Bylaw is required. In addition, the ALC must grant approval for the non-adhering residential uses to which the variances directly apply.

Staff are of the opinion that the proposal, as shown in the building plans, is considered appropriate for the site and complies with the use of the AG zone. The development is not expected to adversely affect the natural environment or substantially alter the use and enjoyment of adjacent land. The JdF AAPC considered the application at its meeting on July 23, 2024, and passed a resolution recommending that their comments be forwarded to the Agricultural Land Commission for consideration of the proposed non-adhering residential uses noting that the applicant intends to use the land and garage for farm use in the future, and that the two-storey accessory building with detached accessory suite has a smaller building footprint on the land than a detached accessory suite with a side-by-side garage.

Should the garage be used for farm purposes in the future, as is the landowners' stated intention, the building would meet the height, setback and lot coverage requirements for agricultural buildings specified by the AG zone. At that time, the building would be considered a principal building under the agriculture use and would not be counted as accessory building floor area.

Staff recommend approval of VA000162 (Appendix F) subject to public notification and the condition that the ALC approve the non-adhering residential use application prior to issuance of the permit.

#### **CONCLUSION**

The applicant has requested a development variance to increase the maximum combined total floor area allowance of all accessory buildings and structures on a lot greater than 5,000 m<sup>2</sup> for the purpose of constructing a garage and accessory building with a detached accessory suite, and to increase the maximum height and maximum floor area of a detached accessory suite. In addition to the requested variances, approval from the Agricultural Land Commission to allow the non-adhering residential use on an ALR parcel is required. If the CRD Board approves the variances and the ALC approves the non-adhering residential use application, the Corporate Officer will proceed to issue the Permit and register a Notice of Permit on Title.

## **RECOMMENDATION**

The Land Use Committee recommends to the Capital Regional District Board:

That Development Variance Permit VA000162 to authorize the construction of a garage and accessory building with a detached accessory suite on Parcel A (DD 800531) of Section 86, Sooke District, to vary Juan de Fuca Land Use Bylaw, 1992, Bylaw No. 2040:

1. Part 1, Section 4.01 2(c) by increasing the maximum combined total floor area allowance for accessory buildings and structures on a lot with an area of more than 5,000 m<sup>2</sup> from 250 m<sup>2</sup> to 314 m<sup>2</sup>;
2. Part 1, Section 4.20(f) by increasing the maximum floor area permitted for a detached accessory suite from 90 m<sup>2</sup> to 103 m<sup>2</sup>; and
3. Part 1, Section 4.20(g) by increasing the maximum height of an accessory building used for a detached accessory suite from 7 m to the peak of the roof to 8.37 m;

be approved and that issuance of the permit be withheld pending approval by the Agricultural Land Commission for a non-adhering residential use in accordance with the *Agricultural Land Reserve Use Regulation*.

Submitted by:	Iain Lawrence, RPP, MCIP, Senior Manager, Juan de Fuca Local Area Services
Concurrence:	Shawn Carby, CD, MAL, Acting General Manager, Planning & Protective Services
Concurrence:	Shawn Carby, CD, MAL, Chief Administrative Officer

## **ATTACHMENTS**

- Appendix A: Subject Property Map  
Appendix B: Site Plan  
Appendix C: Building Plans - Garage  
Appendix D: Building Plans – Detached Accessory Suite  
Appendix E: Requested Variances  
Appendix F: Permit VA000162