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REPORT TO THE JUAN DE FUCA LAND USE COMMITTEE MEETING OF TUESDAY, JULY 20, 2021

SUBJECT **Development Permit with Variance for Lot A, Section 7, Otter District, Plan VIP75055 – 8709 West Coast Road**

ISSUE SUMMARY

A request has been made for a development permit with variance to address the Marine Shoreline Development Permit (DP) Area guidelines for a seawall and single-family dwelling, and to vary Juan de Fuca Land Use Bylaw, 1992, Bylaw No. 2040, by allowing height to be measured from finished grade, by allowing the elevation of the lot to be increased and by decreasing the front yard setback.

BACKGROUND

The 1.9 ha subject property is located at 8645 – 8749 West Coast Road in Otter Point and is zoned Gordon's Beach Recreation Residential 4 (R-4) under the Juan de Fuca Land Use Bylaw, 1992, Bylaw No. 2040. The property is bounded by Rural Residential 3 (RR-3) zoned properties to the south, Rural Residential Orveas Bay (RR-OB) zoned properties to the north, West Coast Road and Agriculture (AG) zoned properties to the east, and the Strait of Juan de Fuca to the west (Appendix A). The R-4 zone allows existing dwellings shown on the proposed strata plan accompanying the zone (Appendix B) to be rebuilt in their present locations; however, the zone prohibits changes to the elevation of the lot and allows a maximum building height of 7.5 m as measured from average natural grade. The property is designated as a Marine Shoreline DP Area by the Otter Point Official Community Plan (OCP), Bylaw No. 3819.

The applicant has requested a development permit with variance to construct a seawall and to replace the existing dwelling located at 8709 West Coast Road (Appendices C and D). In order to establish a minimum flood construction level, address the Marine Shoreline DP guidelines and to allow the dwelling to be located within 7.5 m of the natural boundary of the sea, as per Juan de Fuca Land Use Bylaw No. 2040, Schedule D, Section 3.0, the applicant has submitted geotechnical reports (Appendix E), prepared by Scott Currie, P.Eng. (Ryzuk Geotechnical). Schedule D, Section 3.0, allows coastal development to be permitted a setback of 7.5 m from the natural boundary of the sea where the sea frontage is protected from erosion by a natural bedrock formation or by works designed by a Professional Engineer and maintained by the owner of the land. The report also specifies a minimum flood construction elevation.

In order to meet the flood construction elevation and maximum building height requirements, variances to permit an increase in the elevation of the lot and to allow height to be measured from average finished grade are required.

Development Permit with Variance DV000080 has been included as Appendix F for consideration.

ALTERNATIVES

Alternative 1

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

- 1) That Development Permit with Variance DV000080, for Lot A, Section 7, Otter District, Plan VIP75055, to authorize construction of a seawall and a single-family dwelling in a Marine

Shoreline Development Permit Area, and to vary the Juan de Fuca Land Use Bylaw, 1992, Bylaw No. 2040, Schedule A, as follows:

- a) Part 1, Section 2.0 by varying the definition of *height* as it applies to the proposed building to mean the average vertical distance from finished grade at the outermost corners of the building to the mean level of the highest roof plan between the eaves and the ridge of a sloping roof;
- b) Part 2, Section 13A.11(b) to allow that the elevation of the lot may be increased in accordance with the Building Design Drawings and the Geotechnical Reports; and
- c) Part 2, Section 13A.13(a) to reduce the front yard setback from 4.5 m to 2.3 m in accordance with the Site Plan;

be approved.

- 2) That a restrictive covenant be registered on the title of the lands securing the geotechnical reports for 8709 West Coast Road, certified by Scott Currie, P. Eng., dated March 23, 2021, and June 14, 2021, and saving the CRD harmless in accordance with Section 219 of the *Land Title Act* and Section 56 of the *Community Charter*.

Alternative 2

The Land Use Committee recommends to the Capital Regional District Board:
That Development Permit with Variance DV000080 be denied.

Alternative 3

That the application be referred back to staff for additional information.

IMPLICATIONS

Legislative Implications

The Otter Point OCP, Bylaw No. 3819, Schedule A, Section 6.4.4, designates development permit areas and outlines development permit guidelines. The property and proposed development is within the Marine Shoreline DP area; therefore, a development permit is required.

Juan de Fuca Land Use Bylaw, 1992, Bylaw No. 2040, Schedule A, Part 2, Section 13A.0 specifies that there be no increase in lot elevation, and that the maximum height of buildings and structures is 7.5 m. Part 1, Section 2 of the Bylaw defines height as being measured from average natural grade. To vary these requirements, a development variance permit is required.

Public Consultation Implications

Pursuant to Section 499 of the *Local Government Act*, if a local government proposes 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. Juan de Fuca Development Fees and Procedures Bylaw No. 3885, 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 presented at the July 20, 2021, Land Use Committee meeting. There is no requirement for public consultation if a local government is considering a development permit.

Land Use Implications

Development Permit:

The applicant has submitted geotechnical reports prepared by Scott Currie, P.Eng. (Ryzuk Geotechnical), dated March 23, 2021, and June 14, 2021, to establish a flood construction level (FCL), address the Marine Shoreline DP Area guidelines and to provide recommendations for

the development to be located within 7.5 m of the natural boundary of the sea in accordance with Bylaw No. 2040, Schedule D, Section 3.0.

The March 23, 2021, report commented that the elevation of the lot was approximately 4 m geodetic and established an FCL for the underside of the floor system of 5.3 m when considering storm surge, estimated wave effect, regional tectonic uplift, sea level rise and free board factor. The Engineer noted that the most recent amendment to the Provincial Flood Hazard Area Land Use Management Guidelines indicates that for new building lots, a setback of 15 m for the Year 2100 FCL should be implemented. However, for existing lots, where meeting such a setback would render the lot sterile, the approving authority may agree to modify the setback requirement. Bylaw No. 2040 allows that for development adjacent to the sea, the setback may be reduced to 7.5 m from the natural boundary where the development is protected from erosion by bedrock formations or by works designed by an Engineer and maintained by the owner.

The June 14, 2021, report provided recommendations for the re-construction of the seawall in order to provide protection from active erosion of the shoreline frontage over the long-term and included a Seawall Construction Detail drawing. Installation of the seawall is not considered to increase the erosion of adjacent properties and the report included recommendations to prevent sediment ingress to the foreshore and for working close to the shoreline. Since the Engineer has recommended that the sea wall be replaced and provided specifications for its design, in accordance with Bylaw No. 2040, the flood plain setback may be reduced. Staff recommend that a covenant stipulating the hazard and building requirements, and saving the CRD harmless, in accordance with Section 219 of the *Land Title Act* and Section 56 of the *Community Charter*.

Variances:

The Engineer's report commented that the existing elevation of the lot is approximately 4 m geodetic. In order to meet the 5.3 m flood construction elevation specified by the geotechnical engineer, the elevation of the lot must be increased by approximately 1.3 m. However, the R-4 zone regulations do not permit the elevation of the lot to be increased or decreased. Therefore, a variance is required.

Bylaw No. 2040 defines the height of a building as being measured from average *natural grade* and the R-4 zone specifies a maximum height of 7.5 m. Based on the building drawings dated May 13, 2021, the maximum height of the building should be between 8.23 m and 8.53 m above average *natural grade*. However, given the nature of the grade across the site, the final height above *natural grade* cannot be specified with certainty. It is known, however, that the final building height will be less than 7.5 m above average *finished grade*. Therefore, staff recommend that a variance to the definition of height be considered rather than a variance to the maximum height specification of the R-4 zone.

The R-4 zone specifies a minimum front yard setback for residential buildings and structures of 4.5 m. In order to move the building away from the natural boundary of the sea and meet the 7.5 m flood plain setback, a variance to reduce the front yard setback to 2.3 m is required. It is noted that the building drawings refer to the structure that is closest to the front lot line as an "accessory building"; however, the structure is attached to the dwelling by a common roofline; therefore, the "accessory building" is considered part of the residential building.

CONCLUSION

The applicant has requested a Marine Shoreline development permit with variance to allow the elevation of the lot to be increased in order to meet the required flood construction level, to allow height to be measured from finished grade, and to decrease the front yard setback from 4.5 m to 2.3 m in order to move the dwelling away from the natural boundary of the sea and meet the 7.5 m flood plain setback where development is protected from erosion by works designed by a qualified

professional. Based on the regulations of the R-4 zone that permit the reconstruction of existing dwellings, and the reports from the qualified professionals that provide recommendations for development of the dwelling and seawall that consider the Otter Point OCP DP guidelines, Provincial sea level rise guidelines and flood construction requirements, staff recommend approval of the development permit with variance subject to public notification. If the Permit is approved by the Board, 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:

- 1) That Development Permit with Variance DV000080, for Lot A, Section 7, Otter District, Plan VIP75055, to authorize construction of a seawall and a single-family dwelling in a Marine Shoreline Development Permit Area, and to vary the Juan de Fuca Land Use Bylaw, 1992, Bylaw No. 2040, Schedule A, as follows:
 - a) Part 1, Section 2.0 by varying the definition of *height* as it applies to the proposed building to mean the average vertical distance from finished grade at the outermost corners of the building to the mean level of the highest roof plan between the eaves and the ridge of a sloping roof;
 - b) Part 2, Section 13A.11(b) to allow that the elevation of the lot may be increased in accordance with the Building Design Drawings and Geotechnical Reports; and
 - c) Part 2, Section 13A.13(a) to reduce the front yard setback from 4.5 m to 2.3 m in accordance with the Site Plan;

be approved.

- 2) That a restrictive covenant be registered on the title of the lands securing the geotechnical reports for 8709 West Coast Road, certified by Scott Currie, P. Eng., dated March 23, 2021, and June 14, 2021, and saving the CRD harmless in accordance with Section 219 of the *Land Title Act* and Section 56 of the *Community Charter*.

Submitted by:	Iain Lawrence, MCIP, RPP, Manager, Local Area Planning
Concurrence:	Kevin Lorette, P. Eng., MBA, General Manager, Planning & Protective Services
Concurrence:	Ted Robbins, B. Sc., C. Tech., Acting Chief Administrative Officer

ATTACHMENT(S)

- Appendix A: Subject Property Maps
- Appendix B: Proposed Strata Plan for Gordon’s Beach Recreation Residential 4 (R-4) Zone
- Appendix C: Site Plan
- Appendix D: Building Design Drawings
- Appendix E: Geotechnical Reports
- Appendix F: Development Permit with Variance DV000080