



**REPORT TO THE JUAN DE FUCA LAND USE COMMITTEE
MEETING OF TUESDAY, JANUARY 15, 2019**

SUBJECT **Development Permit with Variance for Lot 2, Section 43, Highland District, Plan 14620 – 6890 Mark Lane**

ISSUE

A request has been made for a development permit with variance to decrease the rear yard setback requirements of the Community Residential One (CR-1) zone, and to address the Steep Slopes and the Foreshore, Wetlands and Riparian Areas Development Permit (DP) guidelines for the construction of a deck extension.

BACKGROUND

The 1.16 ha subject property is located at 6890 Mark Lane in Willis Point (Appendix 1) and is zoned CR-1 in the Comprehensive Community Plan for Willis Point, 2002, Bylaw No. 3027 (Willis Point CCP). The property is bounded by CR-1 zoned properties to the north and south, Mark Lane to the east, and Saanich Inlet to the west. The property is designated as a Steep Slopes and a Foreshore DP Area in Bylaw No. 3027.

In April 2016, the owner applied for a building permit for internal structural alterations to the home. During a site visit, the Building Inspector discovered that an addition to the previously approved deck had been constructed without a permit. Modifications to the deck occurred prior to the current owner taking possession; however, the property disclosure statement provided at the time of purchase did not include this information.

In 2014, the previous owner obtained a development permit with variance (DP-04-09) for a retaining wall, which was also constructed without a building permit. The variance allowed the retaining wall to be sited 0 m from the side property line.

The owner has now requested a development permit with variance in order for the expanded deck to be brought into compliance with the Willis Point CCP. A geotechnical report has been submitted to assess the deck construction and to identify any erosion or degradation (Appendix 2). A site survey has been submitted to identify the required rear yard setback variance. The survey indicates that closest part of the deck is located 2.3 m from the rear property rather 6 m, as required by the CR-1 zone (Appendix 3).

ALTERNATIVES

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

1. That Development Permit with Variance DV000063, for Lot 2, Section 43, Highland District, Plan 14620, to authorize the siting of an existing deck, and to vary the Willis Point Comprehensive Community Plan, 2003, Bylaw No. 3027, Schedule B, Part IV, Section 22.2(d)(iv), by reducing the rear yard setback from 6 m to 2.3 m, be approved.
2. That DV000063 be denied and require the development to comply with zoning requirements and that a Development Permit be obtained.
3. That the application be referred back to staff for more information.

LEGISLATIVE IMPLICATIONS

The Willis Point Comprehensive Community Plan, Bylaw No. 3027, Schedule A, Section 4.10, designates development permit areas and outlines development permit guidelines. The property is located within the Steep Slopes and the Foreshore, Wetlands and Watercourses DP areas; therefore, a development permit is required. CRD Delegation of Development Permit Approval Authority Bylaw, 2009, Bylaw No. 3462, gives the General Manager, Planning and Protective Services, the power to issue a development permit; however, the delegated authority does not include development permits that require a variance, as stated in Section 5(a) of the bylaw.

The Willis Point Comprehensive Community Plan, Bylaw No. 3027, Schedule B, Part IV, Section 22.2(d), specifies setback requirements for the CR-1 zone. A development variance permit is required in order to vary these requirements.

PUBLIC CONSULTATION IMPLICATIONS

Pursuant to Section 499 of the *Local Government Act (LGA)*, 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. Capital Regional District Bylaw No. 3110, 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 presented at the January 15, 2019, 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 a geotechnical report prepared by Lane Campbell, M.Eng., P.Eng., of Ryzuk Geotechnical, dated June 1, 2018, to assess the condition and construction of the deck. The report described the deck and supports in three principal areas: near the shoreline, at the midpoint and at the house footings.

The engineer stated that the deck appears to be about eight years old, that the column supports have been pinned to the bedrock and that the concrete is still in full contact. The DP guidelines specify that disturbed sites be revegetated using plant material indigenous to the site or other suitable non-invasive plants; and that development be designed to avoid storm water runoff that could destabilize slopes or cause damage to neighbouring properties. The Engineer's report stated that there was no evidence of past movement of the deck supports and that the foundations were adequate to support the deck. In light of the Engineer's statement and since construction was completed eight years ago, staff are not recommending additional site work related to the DP guidelines at this time.

Variance:

The owner has requested a variance to reduce the rear yard setback from 6 m to 2.3 m to allow the siting of a deck constructed without a building permit. Modifications to the deck occurred prior to the current owner taking possession. The deck has now been in use for eight years and does not appear to adversely affect the use and enjoyment of the adjacent land. A development variance permit is required in order to vary the setback requirement as a Board of Variance does not have authority to deal with matters that are covered in a development permit as per *LGA* Section 542(2)(b).

Development Permit with Variance DV000063 (Appendix 4) has been prepared for consideration to authorize the proposed development and bring the deck into compliance with the Bylaw.

Staff recommend approval of the development permit with variance, subject to public notification.

CONCLUSION

The applicant is requesting a development permit with variance in order for authorize a previously constructed deck and to bring the property into compliance with the CR-1 zone and the steep slopes and foreshore DP areas in the Willis Point Comprehensive Community Plan, Bylaw No. 3027. The applicant has provided a geotechnical engineer's report to assess the condition and construction of the deck. A site survey plan has also been submitted to indicate the requested variance to reduce the rear yard setback from 6 m to 2.3 m.

RECOMMENDATION

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

That Development Permit with Variance DV000063, for Lot 2, Section 43, Highland District, Plan 14620, to authorize the siting of an existing deck, and to vary the Willis Point Comprehensive Community Plan, 2003, Bylaw No. 3027, Schedule B, Part IV, Section 22.2(d)(iv), by reducing the rear yard setback from 6 m to 2.3 m, be approved.

Submitted by:	Regina Robinson, Planning Assistant
Concurrence:	Iain Lawrence, MCIP, RPP, Manager, Local Area Planning
Concurrence:	Kevin Lorette, P.Eng., MBA, Acting Chief Administrative Officer

RR: wm

Attachments:

- Appendix 1: Subject Property Map
- Appendix 2: Geotechnical Report
- Appendix 3: Site Plan
- Appendix 4: Development Permit with Variance DV000063