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REPORT TO THE JUAN DE FUCA LAND USE COMMITTEE MEETING OF TUESDAY, MARCH 17, 2020

SUBJECT **Development Permit with Variance for Lot A, Section 53, Renfrew District, Plan EPP20739**

ISSUE SUMMARY

A request has been made for a development permit with variance to address the Steep Slopes and Sensitive Ecosystem Development Permit (DP) guidelines, and to decrease the side yard setback requirement for the purpose of constructing a single family dwelling and septic field.

BACKGROUND

The 0.32 ha property is located at 9908 West Coast Road in Shirley and is zoned Forestry (AF) (Appendix A). The property is bounded by a Rural A zoned property to the west and a large AF zoned property to the north, east, and south; West Coast Road is undedicated at this location and lies to the south of the subject property.

There are currently no structures on the parcel. An existing graded driveway pull out skirts the southern edge of the property and continues through the adjacent property to the east as a separate access to West Coast Road. The property boundaries were unclear to the applicant at the time of sale, and resolution of the issue is ongoing.

Records from the Ministry of Transportation and Infrastructure (MoTI) indicate the parcel was created in 1939, but that a vague legal description on title necessitated the creation of a new survey plan and title when converted to electronic records in 2015 (Appendix B). No legal plan for the parcel existed with the Land Title Office prior to this date. The legal description indicated that the parcel begins where the southwest parcel line meets the government highway. The 2015 survey and legal plan was created from this description, but the possibility exists that the location of Highway 14 is different from in 1939. There is currently no road dedication where West Coast Road passes through the parcels that form part of Section 53.

The owner now wishes to construct a single family dwelling and services on the parcel (Appendix C). The property is designated as a Steep Slopes and a Sensitive Ecosystem development permit area; therefore, a development permit is required. The plans propose a reduction of the side yard setback from 15 m to 3 m, therefore, a variance is required.

In response to the posting of a Notice of Development Application sign on the property, JdF Community Planning was advised by a member of the public that a gas or service station had historically operated at this location. The BC Ministry of Environment and Climate Change Strategy (BC ENV) has reporting and investigation requirements for sites that may have had previous industrial activities and are the subject of current applications for development. Upon receipt of this information from JdF Community Planning, the applicant engaged in the site profile process as required by the *Environmental Management Act*. Based on the location of the proposed development in relation to the potentially contaminated site, the Province approved a release request on January 28, 2020, and confirmed that the CRD may consider the Development Permit with Variance to authorize construction of a single family dwelling and related services.

ALTERNATIVES

Alternative 1

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

That Development Permit with Variance DV000069 for Lot A, Section 53, Renfrew District, Plan EPP20739 to authorize construction in a Steep Slopes and a Sensitive Ecosystems Development Permit Area, and to vary Juan de Fuca Land Use Bylaw No. 2040, Part 2, Section 3.07 by reducing the side yard setback 15 m to 3 m for the purpose of constructing a single family dwelling and septic field, be approved.

Alternative 2

That Development Permit with Variance DV000069 be denied.

Alternative 3

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

IMPLICATIONS

Legislative Implications

Section 40 of the *Environmental Management Act* requires that a person must provide a site profile in accordance with the *Contaminated Sites Regulation* to local government when that person applies for a development permit or a development variance permit for land that the person knows was used for industrial activity. Further review of the site may be required by the Province based on the information provided in the site profile. Where further review by the Province is required, local government may not approve an application until the conditions under Section 557 of the *Act* have been satisfied or a release has been granted from the Province. A release was issued by the Province in relation to this development permit with variance request on January 28, 2020.

The Shirley – Jordan River Official Community Plan, Bylaw No. 4001, designates development permit areas (DPAs) and outlines development permit guidelines (Appendix D). The property is located within the Steep Slopes and Sensitive Ecosystem DPAs; therefore, a development permit is required to construct a single family dwelling and septic field. 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 Juan de Fuca Land Use Bylaw No. 2040, Part 2, Section 3.07, specifies front, side, rear and flanking yards shall be a minimum of 15 m. A variance is required in order to permit the development to be located within this setback.

Public Consultation Implications

Pursuant to Section 499 of the *LGA*, 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. 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 500 metres of the subject property. Any responses received from the public will be presented at the March 17, 2020, Land Use Committee meeting. There is no legislative requirement for public consultation if a local government is considering the issuance of a development permit.

Land Use Implications

Development Permit:

The owner has submitted a geotechnical report prepared by Richard Brimmell, P.Eng., of Brimmell Engineering Ltd., dated September 7, 2018, that describes the terrain and confirms that the slopes are

approximately 20 degrees on the front half of the parcel and up to 35 degrees towards the rear (Appendix E). The proposed dwelling is to be located in the less steepened areas of the property. The report states that the land may be used safely for the use intended with respect to slope stability and rock fall hazard and recommends that an arborist be consulted regarding windthrow hazard. Staff note that the report prepared to address the Sensitive Ecosystem DP guidelines discussed tree removal to create a building site.

A report was prepared by Jessica Harvey, RP.Bio., of Corvidae Environmental Consulting Inc. in October 2018 to address the Sensitive Ecosystem DP guidelines for the proposed development (Appendix F). The report provided an assessment of the environmental conditions found at the site, described potential impacts of the proposed development and provided recommendations on the suitability of the site for the proposed development.

The Biologist confirmed that the south-east corner of the property, which has been selected as the location for the proposed development, is the only feasible building site due to the steep terrain and rocky outcrops outside that area. The proposed site uses the existing access road and minimizes intrusion into the sensitive ecosystem DP area.

The report noted that the small footprint and location of the development near the road corridor minimizes the intrusion into the sensitive ecosystem and potential environmental effects. Up to 19 mature trees will need to be removed in order to create a building site. Of the trees to be removed, nine are located within the sensitive ecosystem DP area. The Biologist recommended mitigation measures for erosion and sediment control, invasive plant species control, and minimizing the impact on wildlife and wildlife habitat.

Variance:

The owner has requested a variance to reduce the side yard setback from 15 m to 3 m for the proposed single family dwelling and septic field.

The Forestry (AF) zone regulations specify that front, side, rear and flanking yards shall be a minimum of 15 m. The minimum lot size is 4 ha in the Forestry zone; however the subject property is only 0.3 ha. The small parcel area combined with the 15 m setbacks of the zone, the steep bedrock outcrops and the sensitive ecosystem areas severely restricts the buildable area.

Development Permit with Variance DV000069 has been prepared for consideration to authorize construction of a single family dwelling and septic field and to grant a variance to reduce the side yard setback requirement from 15 m to 3 m (Appendix G). Any residents that may be affected by the proposal will have an opportunity to come forward with their comments through the public notification process. Staff recommend approval of the development permit with variance subject to public notification.

CONCLUSION

The applicant has requested a development permit with variance for the purpose of constructing a single-family dwelling. The proposed variance is to reduce the eastern side yard setback from 15 m to 3 m. Since feasible building locations are restricted by the topography of the site and the predominance of the sensitive development permit area, 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

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

That Development Permit with Variance DV000069 for Lot A, Section 53, Renfrew District, Plan EPP20739 to authorize construction in a Steep Slopes and a Sensitive Ecosystems Development Permit Area, and to vary Juan de Fuca Land Use Bylaw No. 2040, Part 2, Section 3.07 by reducing the side yard setback 15 m to 3 m for the purpose of constructing a single family dwelling and septic field, be approved.

Submitted by:	Iain Lawrence, MCIP, RPP, Manager, Juan de Fuca Community Planning
Concurrence:	Kevin Lorette, P.Eng., MBA, General Manager, Planning & Protective Services
Concurrence:	Robert Lapham, MCIP, RPP, Chief Administrative Officer

ATTACHMENTS

Appendix A: Subject Property Map
Appendix B: Survey Plans
Appendix C: Site Plan Concept and Requested Variance
Appendix D: Development Permit Guidelines
Appendix E: Geotechnical Report
Appendix F: Environmental Assessment
Appendix G: Permit DV000069