

**JUAN DE FUCA BOARD OF VARIANCE**

Notice of Meeting on Monday, **July 23, 2018 at 6:00 p.m.**

Juan de Fuca Local Area Services Building, #3 – 7450 Butler Road, Otter Point, BC

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**AGENDA**

1. Approval of Agenda
2. Approval of the Supplementary Agenda
3. Adoption of Minutes of June 25, 2018
4. Planner's Report
5. Application
  - a) BV000455 – Lot A, Section 133, Sooke District, Plan 19599 (6638 East Sooke Road)
6. Adjournment



Making a difference...together

**Minutes of a Meeting of the Juan de Fuca Board of Variance  
Held Monday, June 25, 2018, at the Juan de Fuca Local Area Services Building,  
#3 – 7450 Butler Road, Otter Point, BC**

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**PRESENT:** Paul Clarkston, Axel Joosting  
**Staff:** Emma Taylor, Planner; Wendy Miller, Recorder  
**ABSENT:** Greg Whincup (Chair)  
**PUBLIC:** 13

The meeting was called to order at 6:03 p.m.

**1. Elections**

Staff stated that elections are required for the Board of Variance (BOV) as this is the first meeting of the year. Staff reported that written confirmation has been received from Greg Whincup confirming that he will stand for either the position of Chair or Vice Chair.

Emma Taylor called for nominations for the position of Chair of the BOV for 2018 and Greg Whincup's name was put forward. Emma Taylor called two additional times for further nominations and, as there were none, Greg Whincup was acclaimed Chair.

Emma Taylor called for nominations for the position of Vice Chair of the BOV for 2018 and Axel Joosting's name was put forward. Emma Taylor called two additional times for further nominations and, as there were none, Axel Joosting was acclaimed Vice Chair.

**2. Agenda**

**MOVED** by Paul Clarkston, **SECONDED** by Axel Joosting that the agenda be approved.

**CARRIED**

**3. Approval of the Supplementary Agenda**

**MOVED** by Paul Clarkston, **SECONDED** by Axel Joosting that the supplementary agenda be approved.

**CARRIED**

**4. Adoption of the Minutes of December 11, 2017**

**MOVED** by Paul Clarkston, **SECONDED** by Axel Joosting that the minutes of December 11, 2017 be adopted.

**CARRIED**

**5. Planner's Report**

Emma Taylor reported that there has recently been staff changes at the Juan de Fuca Local Services office and that the addition of new staff is appreciated.

**6. Application**

**a) BV000454 – Strata Lot 27, Section 31, Otter District, Strata Plan 1239 (27-7871 West Coast Road)**

Emma Taylor outlined the staff report and advised that the applicant is requesting relief from the BOV in accordance with Section 540(a) of the *Local Government Act (LGA)* to decrease the setback requirement that no mobile home shall be located within 20' (6.1 m) of another mobile home or ancillary building specified by the CRD Mobile Home Parks

Bylaw No. 1, 1977, Bylaw No. 377, for the purpose of installing a new mobile home. It was confirmed that the variance being requested is to reduce the 6.1 m separation requirement to 1.5 m on the east side and 4 m on the west side.

Emma Taylor showed photos of the subject property, confirming that:

- the subject property is vacant
- there is an existing mobile home on the property to the west that is sited on the property boundary
- there is an existing mobile home on the property to the east
- the property to the east has a shed that is located on the property boundary

Emma Taylor reported that the applicant claims it is a hardship to achieve the 6.1 m separation between units as the adjacent properties are already developed.

Emma Taylor confirmed that in accordance with Bylaw No. 3839, "Juan de Fuca Board of Variance Bylaw No. 1, 2012" property owners within 50 m of the subject property were provided notice of the appeal to the BOV. Emma Taylor reported that three supplementary submissions were received stating concern with the proposal. It was advised that the owner and the agent were in attendance.

The owner stated that:

- the property was purchased approximately a year ago
- the proposal no longer includes a deck addition
- she sold her previous property to purchase the subject property
- she wants to purchase a mobile that will accommodate her family of four
- she has communicated her proposal to neighbours
- she feels she is being penalized for structures sited on the properties to the west and the east that are not in compliance with bylaw requirements
- due to the non-compliant structures located on the adjacent properties, a variance is required or the property will not be able to be developed

Emma Taylor responded to questions from the BOV confirming that

- sheds are required to meet the setback requirements of Bylaw No. 377 even if the shed size does not require a building permit
- there is no demolition permit record for removal of the single wide mobile home that was previously sited on the subject property
- there are no building permit records for placement of the structures on the adjacent properties

Emma Taylor confirmed that the fire separation calculation is determined through the Building division. The calculation will be determined once a mobile unit is purchased and is based on openings in the unit.

Richard Ashton, Olympic View Park, questioned when the subject property was purchased and requested clarification regarding the floodplain regulations affecting the subject property. Richard Ashton stated concern that the proposed double wide mobile unit will impact view corridors to the ocean. Richard Ashton stated that it was his understanding that the subject property could only support a single wide mobile when he purchased his property in 2017. Richard Ashton stated no support for the application as he considers it precedent setting for Olympic View Park.

The owner stated that the property was purchased in August 2017. The owner further stated that, as the property will not be fenced, views of the ocean will not be impacted.

Emma Taylor clarified that the property is subject to floodplain requirements set out in the CRD Mobile Home Parks Bylaw No. 1, 1977, Bylaw No. 377 and a covenant (J114406) in favour of the Ministry of Transportation & Infrastructure that requires a 13 m flood setback and a flood construction level above 3.41 m datum.

James White, Olympic View Park, stated support for maintaining the requirement that mobiles be located within 20' of another mobile home or ancillary building for safety reasons. James White stated that it was his understanding that the subject property could only support a single wide mobile and that it is easy to claim hardship for placement of a double wide mobile unit after a property has been purchased. James White stated no support for the application and that approval of the application would be precedent setting.

The owner stated that the requirement for a single wide mobile was not disclosed at the time of purchase. It was noted that the property to the east has a double wide mobile and that the property to the west has a single wide mobile with large extensions.

Neil Clark, president of Olympic View Park – Strata 1239, spoke to his supplementary submission stating that there is a discrepancy between the setbacks being considered by the BOV this evening and the setbacks presented by the owner in January 2018 to the strata council and approved by the strata council in February 2018. Neil Clark stated that the strata council will not approve the revised application. Neil Clark stated that the strata council does not have issue with siting of the existing shed.

Emma Taylor read aloud the letter from the owner to the strata council in January 2018 as submitted as part of the building permit process. It was confirmed that the strata council approved the proposal in February 2018. It was stated that owner's letter honours the intent of the variance.

The owner stated that she was not aware the shed was not in compliance.

Betty Poznansky, Olympic View Park, stated that she purchased the property to the east of the subject property in 2015 and that the mobile unit and addition have been in place since approximately 1980. Betty Poznansky stated that her addition provides a back door which acts as a second emergency exit from the unit.

Noting the supplementary submission received from Olympic View Park – Strata 1239, Emma Taylor stated that a building permit for the proposed mobile will not be issued without further approval by the strata council.

BOV comments included:

- application is a major variance and falls outside the scope of the BOV
- the BOV is not in the position to make recommendations on fire suppression
- property was laid out to support installation of a single wide mobile unit

Emma Taylor confirmed that the applicant can pursue approval of the proposal through a development variance permit. The development variance permit would be considered by the Juan de Fuca Land Use Committee (LUC).

**MOVED** by Paul Clarkston, **SECONDED** by Axel Joosting that application BV000454 to request permission from the Board of Variance in accordance with Section 540 of the *Local Government Act* to decrease the requirement that no mobile home shall be located within 20' (6.1 m) of another mobile home specified by the CRD Mobile Home Parks Bylaw No. 1, 1977, Bylaw No. 377, Section 4.9(1), from 6.1 m to 1.5 m on the east and from 6.1 m to 4 m on the west for the purpose of installing a 113.7 m<sup>2</sup> mobile home on Strata Lot 27, Section 31, Otter District, Strata Plan 1239, as shown on the Site Plan, be denied. **CARRIED**

The BOV responded to the owner stating that the owner can pursue siting of a single wide mobile unit in accordance with the survey plan. Should a siting of a single wide mobile unit require a variance, an appeal to the BOV can be submitted as the variance would be considered minor. If the owner wishes to pursue siting of a double wide mobile unit, a development variance permit can be submitted for consideration by the LUC as the variance would be considered major.

## **7. Adjournment**

The meeting was adjourned at 6:51 p.m.

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A. Joosting, Vice Chair



**REPORT TO THE JUAN DE FUCA BOARD OF VARIANCE  
MEETING OF JULY 23, 2018**

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**File No:** BV000455  
**Location:** 6638 East Sooke Road  
**Legal:** Lot A, Section 133, Sooke District, Plan 19599  
**Zoning:** Rural Residential 3 (RR-3) – Bylaw No. 2040  
**Land Use Designation:** Settlement – East Sooke Community Plan – Bylaw No. 4000  
**Adjacent Uses:** N – Sooke Harbour                      S – East Sooke Road  
W – RR-3 zone    E – RR-3 zone

**REQUESTED VARIANCE**

The applicant is requesting relief from the Board of Variance in accordance with Section 540(a) of the *Local Government Act (LGA)* to relieve hardship resulting from the side yard setback requirement from 6 m to 3.4 m for the purpose of converting the existing single-family dwelling to a detached accessory suite.

**STAFF COMMENTS**

The 1 ha property is located at 6638 East Sooke Road and is zoned Rural Residential 3 (RR-3) in the Juan de Fuca Land Use Bylaw No. 2040 (Attachment 1). Portions of the property are designated within the steep slopes and the shoreline protection development permit areas in the East Sooke Official Community Plan, Bylaw No. 4000.

The owners are currently constructing a new house on the property and the building permit has been approved subject to converting the existing dwelling to an accessory structure. The structure would comply with the 1 m side yard setback requirement for accessory buildings; however, the owners wish to convert the building to a detached accessory suite pursuant to Part 1, Section 4.20 of Bylaw No. 2040. Section 4.20(h) states that “detached accessory suites must be located within the same side and rear yard setbacks as the principal dwelling.” The RR-3 zone requires a 6 m side yard setback and, as the existing structure is within the west side yard, a variance is being requested (Attachment 2).

The structure was originally permitted as an accessory building in 1992 and received approval from the Board of Variance (BVS-04-92) to increase the height to 6.7 m and the floor area to 195 m<sup>2</sup>. The accessory structure was converted to a single-family dwelling in 2000 when the original mobile home was removed from the property. Information provided at that time showed that the structure was sited 8 m from the west property line and in compliance with the setback regulations; however, the siting was not confirmed by survey at that time.

The building will require structural modifications to comply with the requirements for a detached accessory suite. The proposed design is to combine the detached accessory suite with an accessory building as permitted by Part 1, Section 4.20(c) of Bylaw No. 2040. The existing deck will be partially removed to increase the setback from the west property line from 3.2 m to the proposed 3.4 m. The proposed design includes 155 m<sup>2</sup> of accessory floor area and 89 m<sup>2</sup> of floor area for the suite on the second storey (Attachment 3). The proposed design meets the required 250 m<sup>2</sup> maximum floor area for accessory buildings and the 7 m height requirement for detached accessory suites.

The applicant states that the existing primary dwelling is suitable for conversion into a detached secondary suite and claims it would be a hardship to remove and rebuild it to meet setback requirements (Attachment 4).

Section 542 of the *LGA* outlines that the Board of Variance may order that a minor variance be permitted from the requirements of the applicable bylaw, if the Board of Variance:

- (a) has heard from the applicant and any person notified under Section 541;
- (b) finds that undue hardship would be caused to the applicant if the bylaw or Section 531(1) is complied with; and
- (c) is of the opinion that the variance or exemption does not do any of the following:
  - (i) result in inappropriate development of the site;
  - (ii) adversely affect the natural environment;
  - (iii) substantially affect the use and enjoyment of adjacent land;
  - (iv) vary permitted uses and densities under the applicable bylaw;
  - (v) defeat the intent of the bylaw.

Pursuant to the Juan de Fuca Board of Variance Bylaw, Bylaw No. 3839, notification letters have been sent to the applicant, as well as to owners and occupants within 50 m of the subject property. Any responses received will be presented at the July 23, 2018 Board of Variance hearing.

The stated hardship for the owners is that the building is in a state of good habitable living space and the zoning supports a detached accessory suite. The proposal is not expected to adversely affect the natural environment as renovations are proposed to the existing structure and no additional site clearing is proposed. As the building has been used as a dwelling unit since 2000, the variance is not anticipated to substantially alter the use and enjoyment of adjacent land. The proposal complies with the use and density provisions of the RR-3 zone and suites are supported by the East Sooke Official Community Plan. The intent of Part 1, Section 4.20(h) is to promote privacy and separation of residences by requiring greater setback distances for detached accessory suites compared to the 1 m setback required for accessory buildings. The setback of 3.4 m is greater than the siting of the current structure.

If the Board of Variance finds undue hardship, considers the request to be a minor variance and meets the considerations of section 542(c), a variance order may be permitted.

**OUTLINE MOTION**

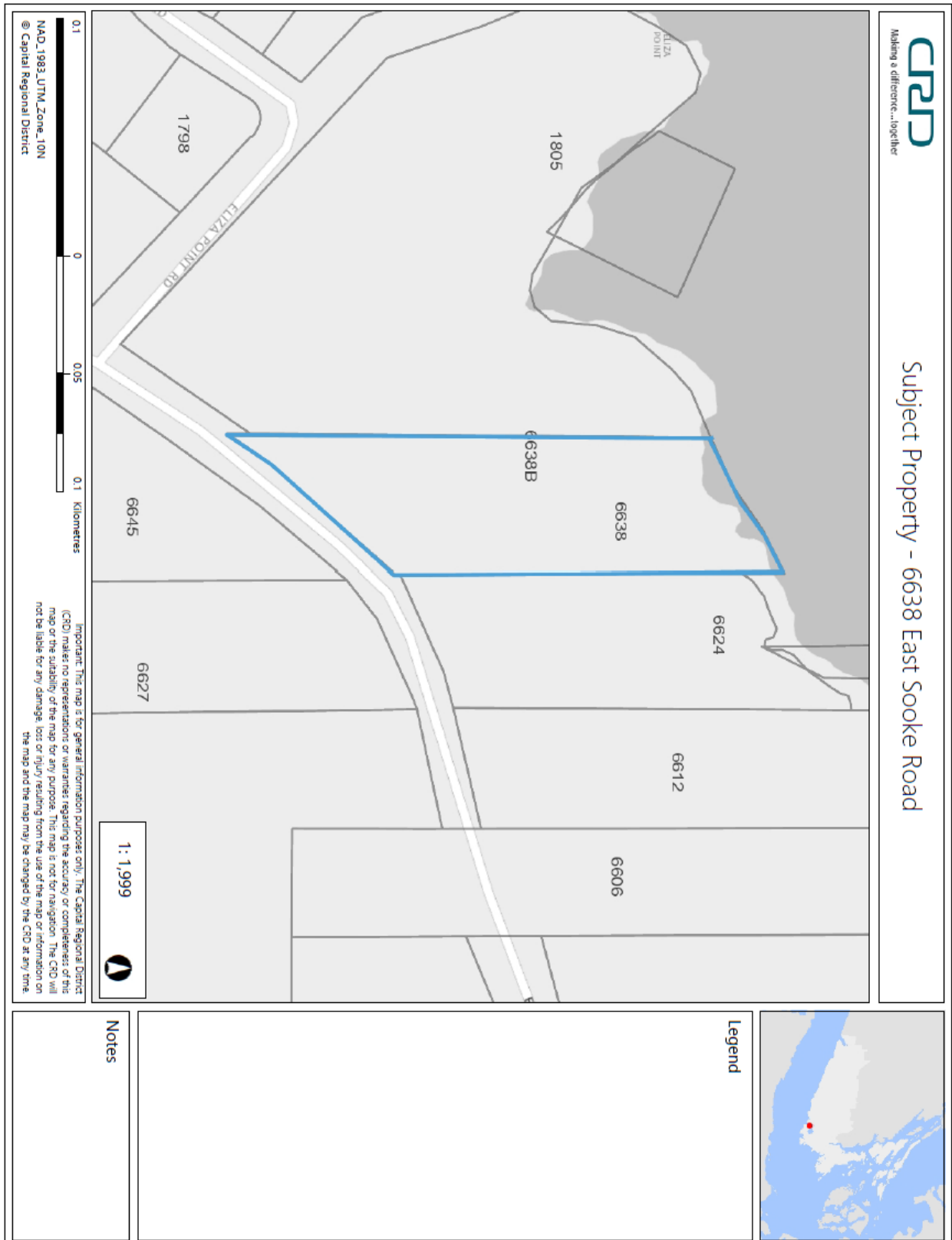
That application BV000455 to request permission from the Board of Variance in accordance with Section 540 of the *Local Government Act* to vary the requirement that detached accessory suites must be located within the same side yard setback as the principal dwelling, as stated in Part 1, Section 4.20 (h) of Bylaw No. 2040, from 6 m to 3.4 m on Lot A, Section 133, Sooke District, Plan 19599, as shown on the Building Plans prepared by Chris Supeene, dated July 3, 2018, be **<approved/denied>**.

Submitted by:	Emma Taylor, MA, MCIP, RPP, Planner
Concurrence:	Iain Lawrence, MCIP, RPP, Secretary to the Board of Variance

Attachments:

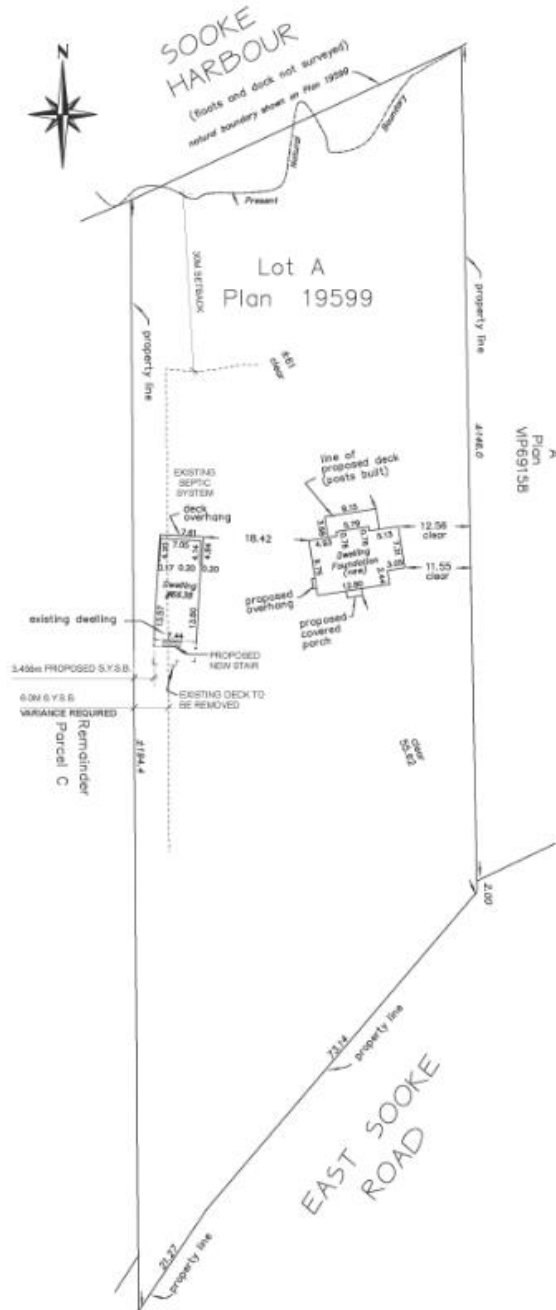
- 1. Subject Property Map
- 2. Survey Plan
- 3. Building Plans
- 4. Statement of Hardship

Attachment 1: Subject Property Map





Attachment 2: Survey Plan



Lot A, Section 133, Sooke  
 District, Plan 19599

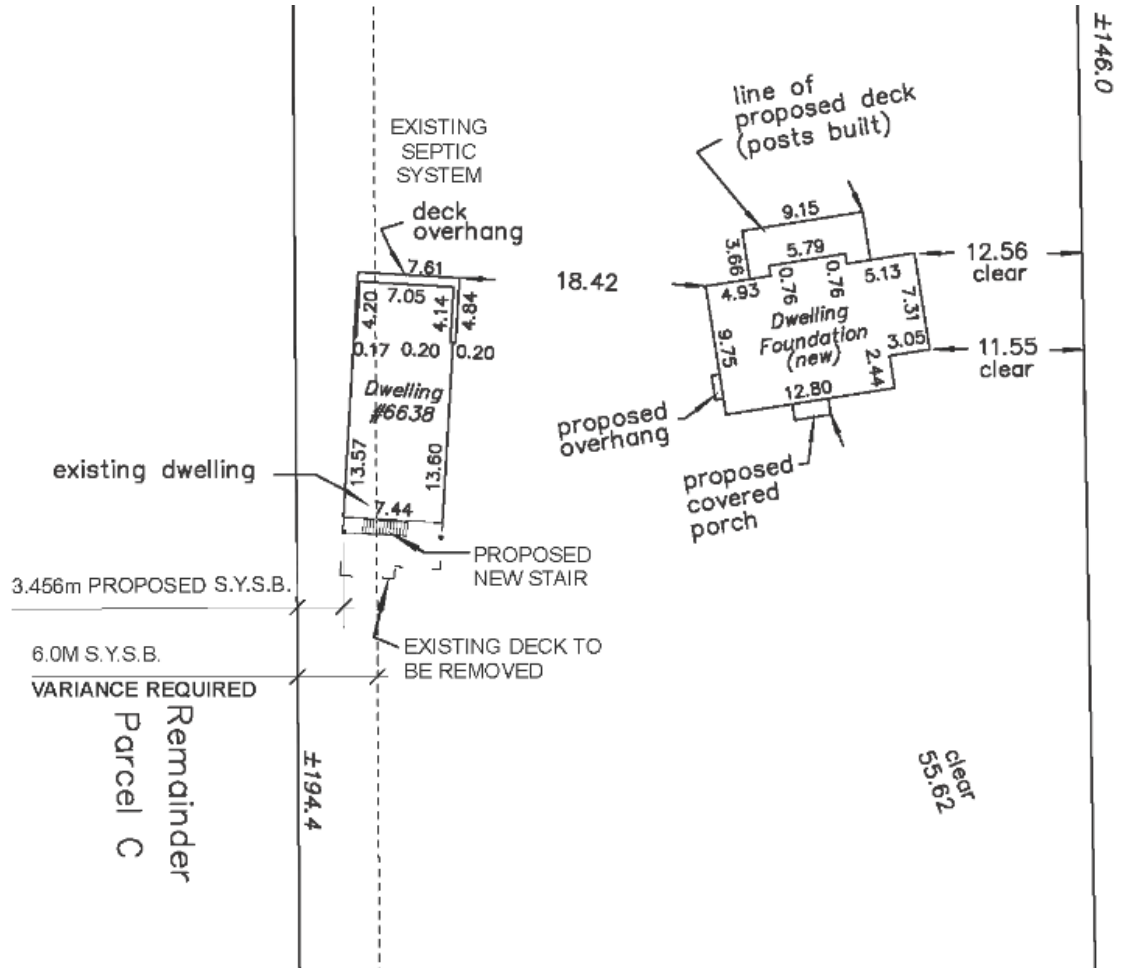


Civic address: 6638 East Sooke Road  
 Sooke, B.C.  
 Parcel Identifier Number 003-741-664

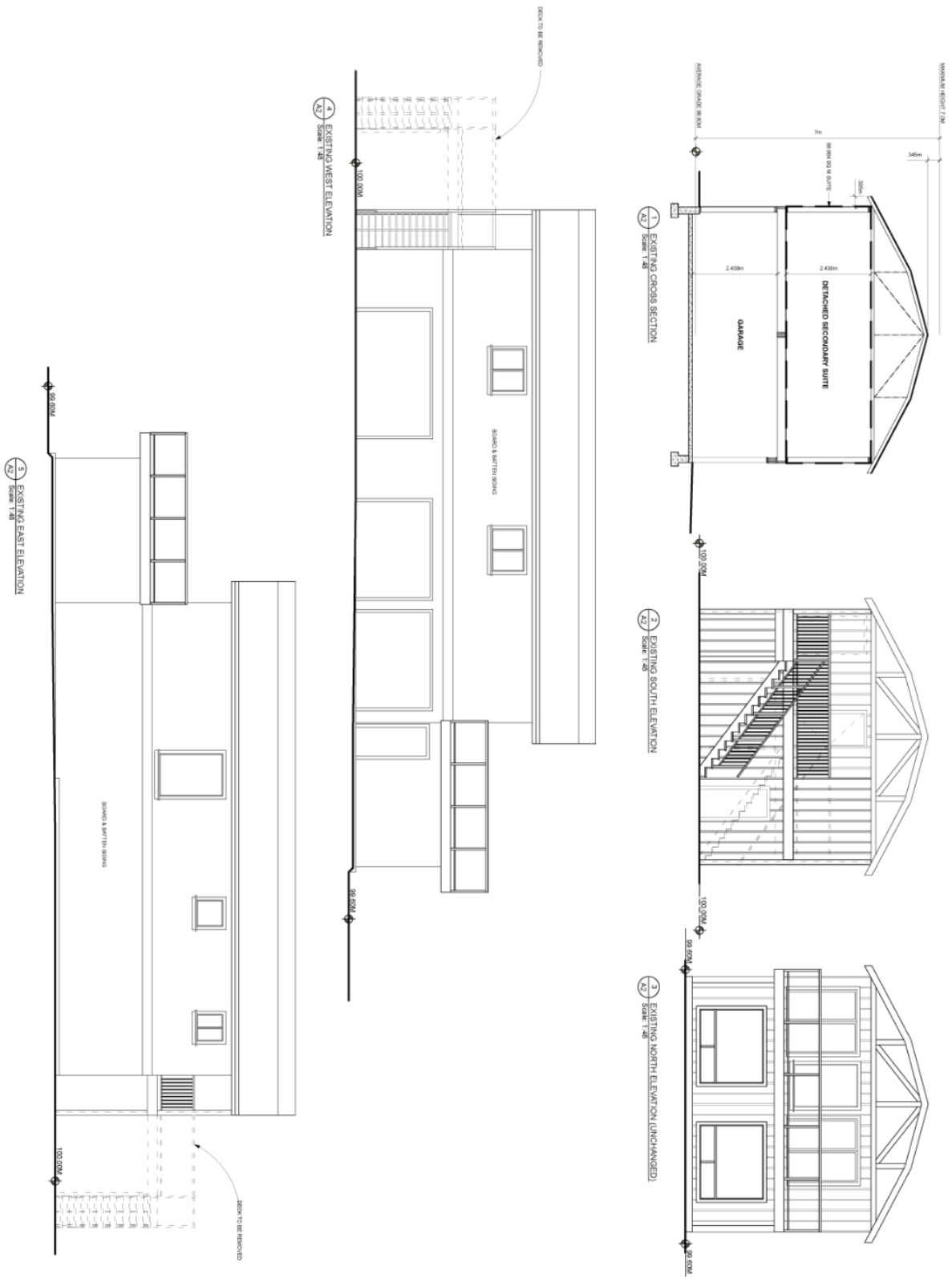
SURVEY DATA PROVIDED BY GLEN MITCHELL LAND SURVEYING INC.

1 SITE PLAN  
 A1 Scale: 1:500

RR-5 RURAL RESIDENTIAL ZONE  
 LOT AREA = 0.08 HECTARES BY NATURAL BOUNDARY  
 (1.024 HECTARES PER NATURAL BOUNDARY SHOWN ON PLAN 19599)







Attachment 4: Statement of Hardship

The subject dwelling unit which is currently occupied as the primary residence on the property is sited 2.78m within the required side yard setback and has been this way since the [REDACTED] have owned the property. As the Owner's have constructed their new home on the property, they are forced to deal with the conversion of the existing primary dwelling by reducing its floor area to conform with the requirements of a detached secondary suite and seek variance to relax the existing non conforming side yard setback, or to tear the building down prior to being granted occupancy on their new home. Since the subject dwelling currently functions as the Owner's residence, storage, and garage, demolishing the building would be an undue hardship to the Owner's. The building is also in a state of good habitable living space and as the zoning supports a detached secondary suite, the Owner's wish to maintain a caretaker's residence for property security as they spend extended periods of time away from the property. It would be both wasteful and an unnecessary financial hardship to tear the building down in its entirety and rebuild it to conform to the side yard setback when a perfectly good building is already in place, hence the application to seek relaxation for the encroaching side yard set back. It is also worth noting that the existing deck is proposed for removal which will reduce the encroachment from 2.78m to 2.55.