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JUAN DE FUCA BOARD OF VARIANCE

Notice of Meeting on Tuesday, **October 29, 2019 at 6:00 pm**

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

AGENDA

1. Approval of Agenda

2. Approval of the Supplementary Agenda

3. Adoption of Minutes of September 12, 2019

4. Planner's Report

5. Applications
   a) BV000464 – Lot 10, Section 97, Sooke District, Plan 14282 (45 Seagirt Road)
   b) BV000465 – Lot B, Section 95, Sooke District, Plan EPP90670 (1041 Parkheights Drive)

6. Adjournment

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Minutes of a Meeting of the Juan de Fuca Board of Variance
Held Thursday, September 12, 2019, at the Juan de Fuca Local Area Services Building, #3 – 7450 Butler Road, Otter Point, BC

PRESENT: Greg Whincup (Chair), Axel Joosting
Staff: Iain Lawrence, Manager, Juan de Fuca Community Planning; Wendy Miller, Recorder
ABSENT: Paul Clarkston
PUBLIC: 4

The meeting was called to order at 6:00 pm.

1. Approval of the Agenda

MOVED by Axel Joosting, **SECONDED** by Greg Whincup that the agenda be approved.
CARRIED

2. Approval of the Supplementary Agenda
No supplementary items.

3. Adoption of the Minutes of June 17, 2019

MOVED by Axel Joosting, **SECONDED** by Greg Whincup that the minutes of June 17, 2019, be adopted. **CARRIED**

4. Planner's Report
Iain Lawrence introduced Regina Robinson, Planning Assistant.

5. Applications
a) BV000462 – Lot A, Section 1, Township 11, Renfrew District, Plan VIP85252 (6657 Klannanith Street)

Iain Lawrence outlined the staff report and advised that the applicant is requesting relief from the Board of Variance (BOV) by reducing the exterior side yard setback of an accessory building specified by the Comprehensive Community Development Plan for Port Renfrew, Bylaw No. 3109, Section Part IV, Section 22.1(g)(iii) from 4.6 m to 1.36 m.

Iain Lawrence identified the subject property on the web map and advised that the accessory building is a sea-can container that was used for temporary storage of construction materials and as a site office during construction of a single family dwelling. It was advised that, as a condition of final occupancy for the single family dwelling, the accessory building must be removed or approved under a building permit. It was further advised that the applicant has made an application to the Ministry of Transportation and Infrastructure for a setback permit as the sea-can is within 4.5 m of Harris Cove Road.

Iain Lawrence confirmed that the applicant was present.

The applicant responded to a question from the BOV confirming that improvements, including a shed and roof, have been made to the sea-can.

The BOV noted that Harris Cove Road has a wide ditch and is not likely to become a main road.

Iain Lawrence confirmed that:
- Harris Cove Road provides a secondary access to Pacheedaht First Nation and to Beach Camp
- Beach Camp is fully built out
- large ditches are required in Port Renfrew because of rainfall levels
- a development variance permit (VAR-05-13) was approved for an adjacent property, 16957 Tsonoqua Drive, to reduce the front yard setback, the rear yard setback and the exterior yard setback

The BOV acknowledged that no comments were received in response to the notice of intent mailed to adjacent property owners within 50 m of the subject property.

The BOV considered the matters set out in Section 542(1)(c) of the *Local Government Act*, and found that undue hardship would be caused to the applicant.

MOVED by Axel Joosting, **SECONDED** by Greg Whincup that application BV000462 to request permission from the Board of Variance in accordance with Section 540 of the *Local Government Act* to vary Bylaw No. 3109, Part IV, Section 22 1g) iii) by reducing the required exterior side yard setback from 4.6 m to 1.36 m on Lot A, Section 1, Township 11, Renfrew District, Plan VIP85252, as shown on the Survey Plan prepared by J.E. Anderson & Associates, dated July 11, 2019, be approved.

CARRIED

b) BV000463 – Lot 6, Section 27, Otter District, Plan 20955 (7750 West Coast Road)

Regina Robinson outlined the staff report and advised that the applicant is requesting relief from the BOV to vary the Juan de Fuca Land Use Bylaw, 1992, Bylaw No. 2040, Schedule A, Part I, Section 4.20(k), by increasing the maximum length of a manufactured or modular home used for a detached accessory suite from 13 m to 18.24 m.

Regina Robson stated that:
- the mobile home that is the subject of the variance request was approved as a single family dwelling in 1994
- at that time, a variance was granted to reduce the side yard setback from the western property line to 4.1 m
- the owners are in the process of building a new single family dwelling on the parcel and have applied to designate the mobile home as a detached accessory suite

Regina Robinson confirmed that the applicant and the owners were present.

BOV discussion ensued regarding the width of the existing mobile home as, should the request be approved, the width of the structure would be 2.9 m which may defeat the intent of the regulations for detached accessory suites.

At the request of the BOV, Iain Lawrence read aloud the purpose statement from Bylaw No. 2040.

Staff identified the subject property on the web map and confirmed that:

- the regulations for detached accessory suites (amendment Bylaw No. 3605) would not have applied to the single family dwelling
- the floor area of the structure falls within the range required for detached accessory suites
- no comments were received in response to the notice of intent mailed to adjacent property owners within 50 m of the subject property
- the property closely borders the District of Sooke
- detached accessory suites are not restricted from being rented
- Bylaw No. 2040 does not regulate rental length of stay
- the owner of the property must occupy either the detached accessory suite or the principal dwelling

The BOV considered the matters set out in Section 542(1)(c) of the *Local Government Act*, and found that undue hardship would be caused to the applicant.

MOVED Axel Joosting, **SECONDED** by Greg Whincup that in accordance with Section 540 of the *Local Government Act*, that the Juan de Fuca Board of Variance application BV000463 to vary the Juan de Fuca Land Use Bylaw, 1992, Bylaw No. 2040, Schedule A, Part 1, Section 4.20(k), by increasing the maximum length of a manufactured or modular home used for a detached accessory suite from 13 m to 18.24 m on Lot 6, Section 27, Otter District, Plan 20955, as shown on the Survey Plan prepared by Island Land Surveying, dated May 1, 2019, be approved.

CARRIED

6. Adjournment

The meeting was adjourned at 6:27 pm.

_____
G. Whincup, Chair

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REPORT TO THE JUAN DE FUCA BOARD OF VARIANCE
MEETING OF OCTOBER 29, 2019

File No:	**BV000464**
Location:	45 Seagirt Road
Legal:	Lot 10, Section 97, Sooke District, Plan 14282
Zoning:	Rural Residential 6 (RR-6) – Bylaw No. 2040
Land Use Designation:	Settlement (S) – Bylaw No. 4000
Adjacent Uses:	N – Public Access to Water S – RR-6 parcel W – Seagirt Road E – Sooke Basin

REQUESTED VARIANCE

The applicant has requested that the Board of Variance approve a minor variance to relieve hardship, in accordance with Section 540(a) of the *Local Government Act (LGA)*, by reducing the front yard setback of an accessory building specified by the Juan de Fuca Land Use Bylaw, 1992, Bylaw No. 2040, Part 1, Section 4.01(d) from 15 m to 2 m for the purpose of constructing a detached garage.

LEGISLATIVE IMPLICATIONS

Section 542 (1) 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.

Section 542 (3) of the *LGA* outlines that the Board of Variance, in relation to an order under subsection (1),

(a) if the order sets a time within which the construction of the building, structure or manufactured home park must be completed and the construction is not completed within that time, or

(b) if that construction is not substantially started within 2 years after the order was made, or within a longer or shorter time period established by the order,

the permission or exemption terminates and the bylaw or section 531 (1), as the case may be, applies.

STAFF COMMENTS

The 0.1 ha property is located at 45 Seagirt Road and is zoned Rural Residential 6 (RR-6) in the Juan de Fuca Land Use Bylaw No. 2040 (Appendix 1). Records indicate that the house on the property was built in 1967. There is an existing shed at the proposed location of the detached garage that is to be removed (Appendix 2). The Board of Variance granted approval to reduce the front yard setback from 45 feet to 7 feet for a detached garage in 1982 (BV-09-82). The Board of Variance specified a completion date of January 31, 1983. Since the garage was never constructed, the approval lapsed.

The property is partially designated as a steep slope and a marine shoreline development permit area in the East Sooke Official Community Plan, Bylaw No. 4000. The Floodplain Specifications in Part 5 of Bylaw No. 2040 also apply to land within 15 m of the natural boundary of the sea.

Bylaw No. 2040, Section 4.01(d) –Accessory Building and Structures– specifies that, "No accessory building shall be located closer to the front lot line than the principal building, except that where the distance between the principal building and the front lot line is greater than 15 m, the accessory building shall be not less than 15 m from the front lot line." Since the principal dwelling is located greater than 15 m from the front lot line, the 15 m setback applies to the proposed garage.

The owners propose to construct a 60 m^2 detached garage with storage area within 2 m of the front lot line (Appendix 3). The proposed garage would be located outside any development permit area and outside the flood plain setback. However, since the structure is proposed to be located within the required 15 m front yard setback specified by the Accessory Buildings and Structures regulations, a variance is being requested (Appendix 4).

The Ministry of Transportation and Infrastructure (MOTI) establishes permit requirements for structures within 4.5 m of a highway right-of-way for safety concerns, planned road improvements and transportation objectives. A setback permit (2019-04542) for construction of a garage within the 4.5 m setback from Seagirt Road was approved by MOTI on August 13, 2019 (Appendix 5).

The stated hardship for the owner is that the application of a 15 m front setback on a 0.1 ha lot results in a substantial reduction in available building area. This zone generally consists of larger properties and has a minimum lot size of 1 ha. The proposal is considered appropriate for the site and complies with the use of the RR-6 zone and the accessory building regulations. The development is not expected to adversely affect the natural environment and is outside of the steep slope development permit area. The variance is not anticipated to substantially alter the use and enjoyment of adjacent land.

Pursuant to the Juan de Fuca Board of Variance Bylaw, Bylaw No. 4288, 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 October 29, 2019 Board of Variance hearing.

If the Board of Variance finds that not granting the variance would result in undue hardship, considers the requested variance to be a minor and finds that it meets the considerations of section 542(1)(c), an order granting a minor variance may be permitted.

OUTLINE MOTION

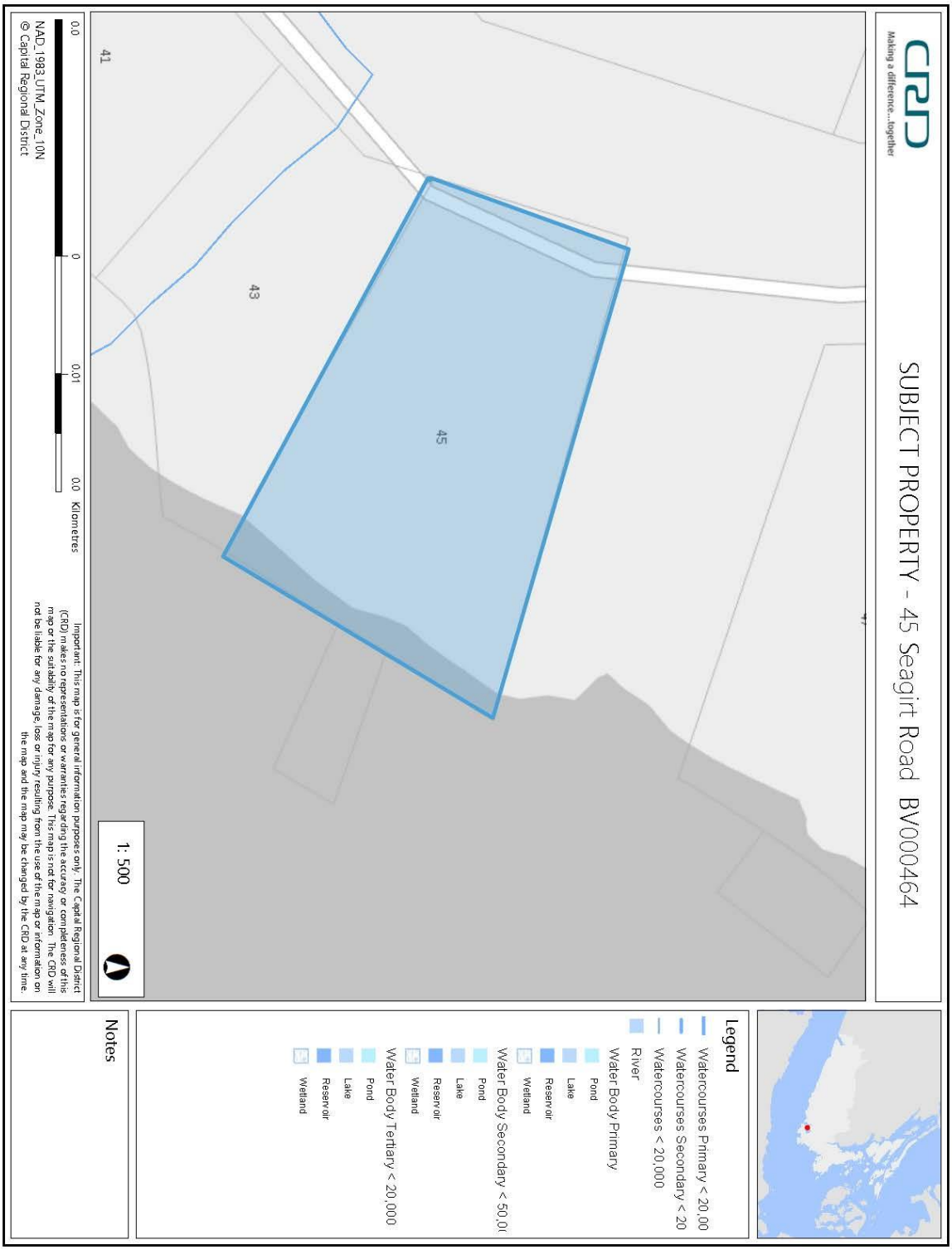
Having considered the matters set out in Section 542(1)(c) of the *Local Government Act*, and having found that undue hardship <**would/would not**> be caused to the applicant if Part 1, Section 4.01(d) of Bylaw No. 2040 were complied with, that application BV000464 requesting permission from the Board of Variance in accordance with Section 540 of the *Local Government Act* to vary Bylaw No. 2040, Part 1, Section 4.01(d) by reducing the required front yard setback from 15 m to 2 m on Lot 10, Section 97, Sooke District, Plan 14282, for a proposed garage, as shown on the Site Plan prepared by Vivi Curutchet, be <**approved/denied**> and that if construction is not substantially started within 2 years after the date of this order, the order shall terminate.

Submitted by:	Regina Robinson, Planning Assistant
Concurrence:	Iain Lawrence, MCIP, RPP, Secretary to the Board of Variance

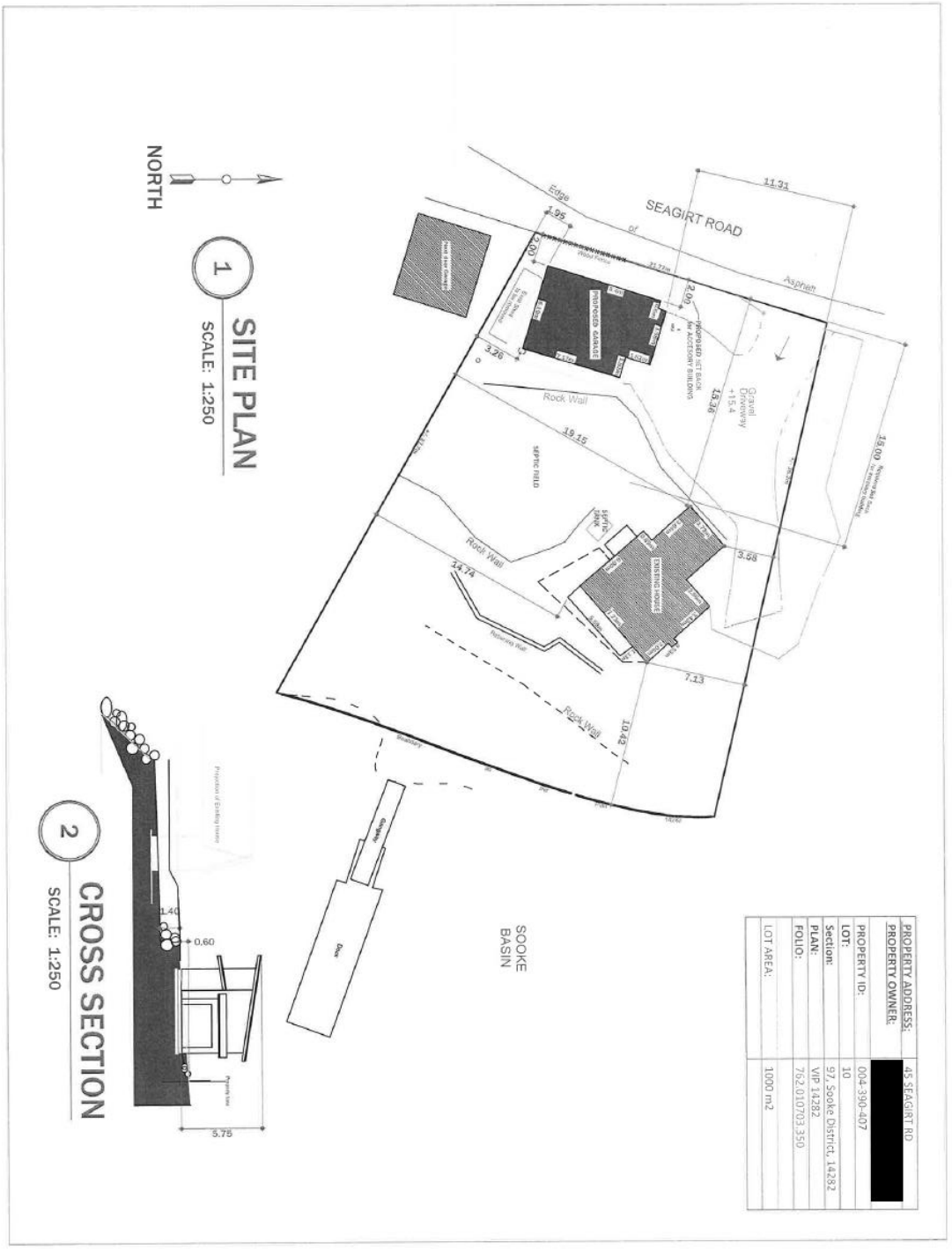
Attachments:

Appendix 1: Subject Property Map
Appendix 2: Site Plan
Appendix 3: Conceptual Floor Plan
Appendix 4: Statement of Hardship
Appendix 5: MOTI Setback Permit (2019-04542)

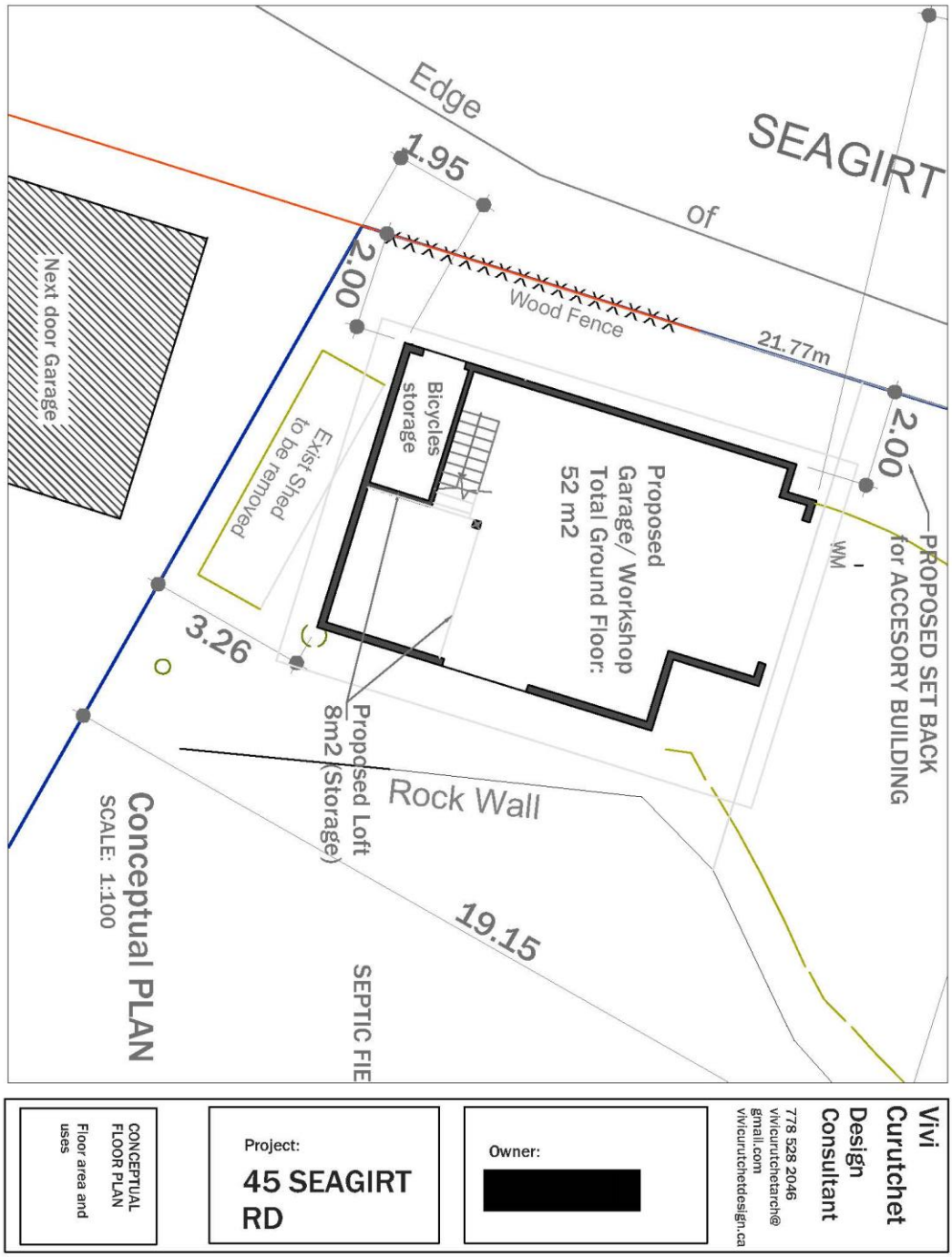
Appendix 1: Subject Property Map



Appendix 2: Site Plan



Appendix 3: Conceptual Floor Plan



Appendix 4: Statement of Hardship

To: CRD
#3 - 7 450 Butler Road
Sooke, BC, V9Z 1N1

September 23, 2019

Att: Regina

From: [redacted]
45, sea
V9Z 1A2

To whom it may concern,

I am applying for a Garage for 45 Seagirt Road, the particular spot we would like to build on is Unfortunately the only spot on the lot we can build on; its the only flat spot on the lot that is accessible with the Car, also due to the location of the septic field right besides the proposed Garage, we also wanted to make sure that we can keep most of the Trees around the property so it is the only spot available for the Garage!
I hope the plans will give you enough information for our request but you are also welcome to have a onsite inspection at any time that is convenient for you!, for any further information please don't hesitate to call me at [redacted],

Sincerely [redacted]

Appendix 5: MOTI Setback Permit

BRITISH COLUMBIA | Ministry of Transportation and Infrastructure

Permit/File Number: 2019-04542
Office: Saanich Area Office

PERMIT TO REDUCE BUILDING SETBACK LESS THAN 4.5 METRES FROM THE PROPERTY LINE FRONTING A PROVINCIAL PUBLIC HIGHWAY

PURSUANT TO TRANSPORTATION ACT AND/OR THE INDUSTRIAL ROADS ACT AND/OR THE MOTOR VEHICLE ACT AND/OR AS DEFINED IN THE NISGA'A FINAL AGREEMENT AND THE NISGA'A FINAL AGREEMENT ACT.

BETWEEN:

The Minister of Transportation and Infrastructure

Saanich Area Office
240-4460 Chatterton Way
Victoria, British Columbia V8X 5J2
Canada

("The Minister")

AND:

[redacted]
45- Seagirt Road
Sooke, British Columbia V9Z 1A2
Canada

("The Permittee")

WHEREAS:

A. The Minister has the authority to grant permits for the auxiliary use of highway right of way, which authority is pursuant to both the Transportation Act and the Industrial Roads Act, the Motor Vehicle Act, as defined in the Nisga'a Final Agreement and the Nisga'a Final Agreement Act;

B. The Permittee has requested the Minister to issue a permit pursuant to this authority for the following purpose:

The construction of a building, the location of which does not conform with British Columbia Regulation 513/04 made pursuant to section 90 of the Transportation Act, S.B.C. 2004, namely; to allow a 6.10 metre by 9 metre garage to be constructed within the 4.5 metre setback from Seagirt Road, located at 45 Seagirt Road being Lot 10, Section 97, Sooke District, Plan 14282, in accordance with permit application submitted August 8, 2019 and design drawing

C. The Minister is prepared to issue a permit on certain terms and conditions;

ACCORDINGLY, the Minister hereby grants to the Permittee a permit for the Use (as hereinafter defined) of highway right of way on the following terms and conditions:

1. This permit may be terminated at any time at the discretion of the Minister of Transportation and Infrastructure, and that the termination of this permit shall not give rise to any cause of action or claim of any nature whatsoever.
2. This permit in no way relieves the owner or occupier of the responsibility of adhering to all other legislation, including zoning, and other land use bylaws of a municipality or regional district.
3. The Permittee shall indemnify and save harmless the Ministry, its agents and employees, from and against all claims, liabilities, demands, losses, damages, costs and expenses, fines, penalties, assessments and levies made against or incurred, suffered or sustained by the Ministry, its agents and employees, or any of them at any time or times, whether before or after the expiration or termination of this permit, where the same or any of them are based upon or arise out of or from anything done or omitted to be done by the Permittee, its employees, agents or Subcontractors, in connection with the permit.

BRITISH COLUMBIA | Ministry of Transportation and Infrastructure

Permit/File Number: 2019-04542
Office: Saanich Area Office

The rights granted to the Permittee in this permit are to be exercised only for the purpose as defined in Recital B on page 1.

Dated at Victoria, British Columbia, this 13 day of August, 2019

On Behalf of the Minister

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REPORT TO THE JUAN DE FUCA BOARD OF VARIANCE
MEETING OF OCTOBER 29, 2019

File No:	**BV000465**	
Location:	Parkheights Drive	
Legal:	Lot B, Section 95, Sooke District, Plan EPP90670	
Zoning:	Rural Residential 6A (RR-6A) – Bylaw No. 2040	
Land Use Designation:	Settlement (S) – Bylaw No. 4000	
Adjacent Uses:	N – RR-6 parcel W – East Sooke Regional Park	S – RR-6 parcel E – Parkheights Drive

REQUESTED VARIANCE

The applicant has requested that the Board of Variance approve a minor variance to relieve hardship, in accordance with Section 540(a) of the *Local Government Act (LGA)*, by reducing the front yard setback of an accessory building specified by the Juan de Fuca Land Use Bylaw, 1992, Bylaw No. 2040, Part 1, Section 4.01(d) from 15 m to 10 m for the purpose of constructing a 60 m^2 garage/storage building.

LEGISLATIVE IMPLICATIONS

Section 542(1) 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.

Section 542(3) of the *LGA* outlines that in relation to an order under Section 542(1),

(a) if the order sets a time within which the construction of the building, structure or manufactured home park must be completed and the construction is not completed within that time, or
(b) if that construction is not substantially started within 2 years after the order was made, or within a longer or shorter time period established by the order,

the permission or exemption terminates and the bylaw or section 531(1), as the case may be, applies

STAFF COMMENTS

The 1.53 ha property is located on Parkheights Drive and is zoned Rural Residential 6A (RR-6A) in the Juan de Fuca Land Use Bylaw No. 2040 (Appendix 1). The parcel was part of a recent rezoning application (RZ000258) to allow subdivision (SU000708). Newly created plan EPP90670 comprises of Lot A (which is 0.5 ha and includes an existing single-family dwelling and accessory

buildings), and the subject property, Lot B (Appendix 2). Access to Lot B, from Parkheights Drive, is by way of an existing driveway easement through the parcel to the north.

The property is partially within the steep slopes, sensitive ecosystems, and riparian development permit areas in the East Sooke Official Community Plan, Bylaw No. 4000. A development permit (DV000066) was completed as a part of the subdivision application with a variance for frontage. The Riparian Areas Regulation (RAR) Assessment Report prepared for the development permit application identified a Streamside Protection and Enhancement Area (SPEA) that further limits development within the setbacks of a creek and wetland on the parcel, and also identified a pond that is a non-RAR applicable waterbody (Appendix 3). An existing driveway is located within the wetland SPEA, but was deemed legal non-confirming since it was constructed prior to the enactment of RAR.

In order to avoid the riparian development permit areas or the removal of further vegetation on the property, the owners propose to construct the accessory building within 10 m of the front lot line (Appendix 4).

Bylaw No. 2040, Section 4.01(d) –Accessory Building and Structures– specifies that, "No accessory building shall be located closer to the front lot line than the principal building, except that where the distance between the principal building and the front lot line is greater than 15 m, the accessory building shall be not less than 15 m from the front lot line." Since the proposed principal dwelling is to be located greater than 15 m from the front lot line, the 15 m setback applies to the proposed garage.

Since the structure is proposed to be located within the required 15 m front yard setback specified by the Accessory Buildings and Structures regulations, a variance is being requested.

The stated hardship provided by the applicants is that the terrain limits the available building sites and that the proposed location is cleared, level, easily accessible from the existing driveway, and outside the established riparian areas. The owners wish to retain as much undisturbed land as possible to protect the wildlife corridor between East Sooke Regional Park and Anderson Cove (Appendix 5).

Covenant CA7400196, registered as a part of the subdivision, limits any disturbance within 10 metres of the rear lot line, prohibits landscape modifications that inhibit drainage, and prohibits development of access into East Sooke Regional Park from the parcel. The covenant is not affected by the proposed building location.

Staff are of the opinion that the proposal is considered appropriate for the site and complies with the use of the RR-6A zone and the accessory building regulations. The development is not expected to adversely affect the natural environment and is outside of the development permit areas. The variance is not anticipated to substantially alter the use and enjoyment of adjacent land.

Pursuant to the Juan de Fuca Board of Variance Bylaw, Bylaw No. 4288, 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 October 29, 2019 Board of Variance hearing.

If the Board of Variance finds that not granting the variance would result in undue hardship, considers the requested variance to be a minor and finds that it meets the considerations of section 542(1)(c), an order granting a minor variance may be permitted.

OUTLINE MOTION

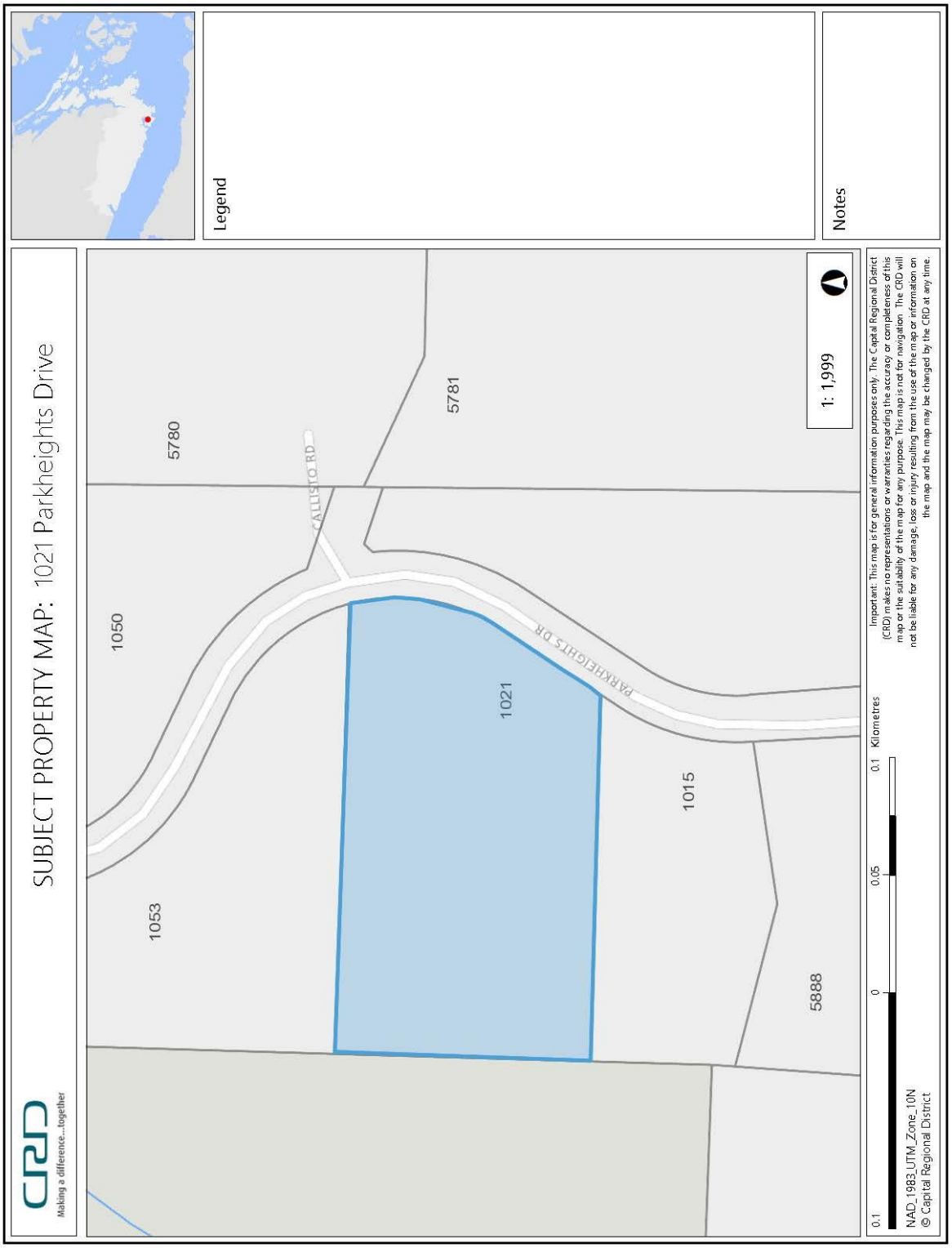
Having considered the matters set out in Section 542(1)(c) of the *Local Government Act*, and having found that undue hardship <**would/would not**> be caused to the applicant if Part 1, Section 4.01(d) of Bylaw No. 2040 were complied with, that application BV000465 requesting permission from the Board of Variance in accordance with Section 540 of the *Local Government Act* to vary Bylaw No. 2040, Part 1, Section 4.01(d) by reducing the required front yard setback from 15 m to 10 m on Lot B, Section 95, Sooke District, Plan EPP90670, for a proposed garage, be <**approved/denied**> and that if construction is not substantially started within 2 years after the date of this order, the order shall terminate.

Submitted by:	Regina Robinson, Planning Assistant
Concurrence:	Iain Lawrence, MCIP, RPP, Secretary to the Board of Variance

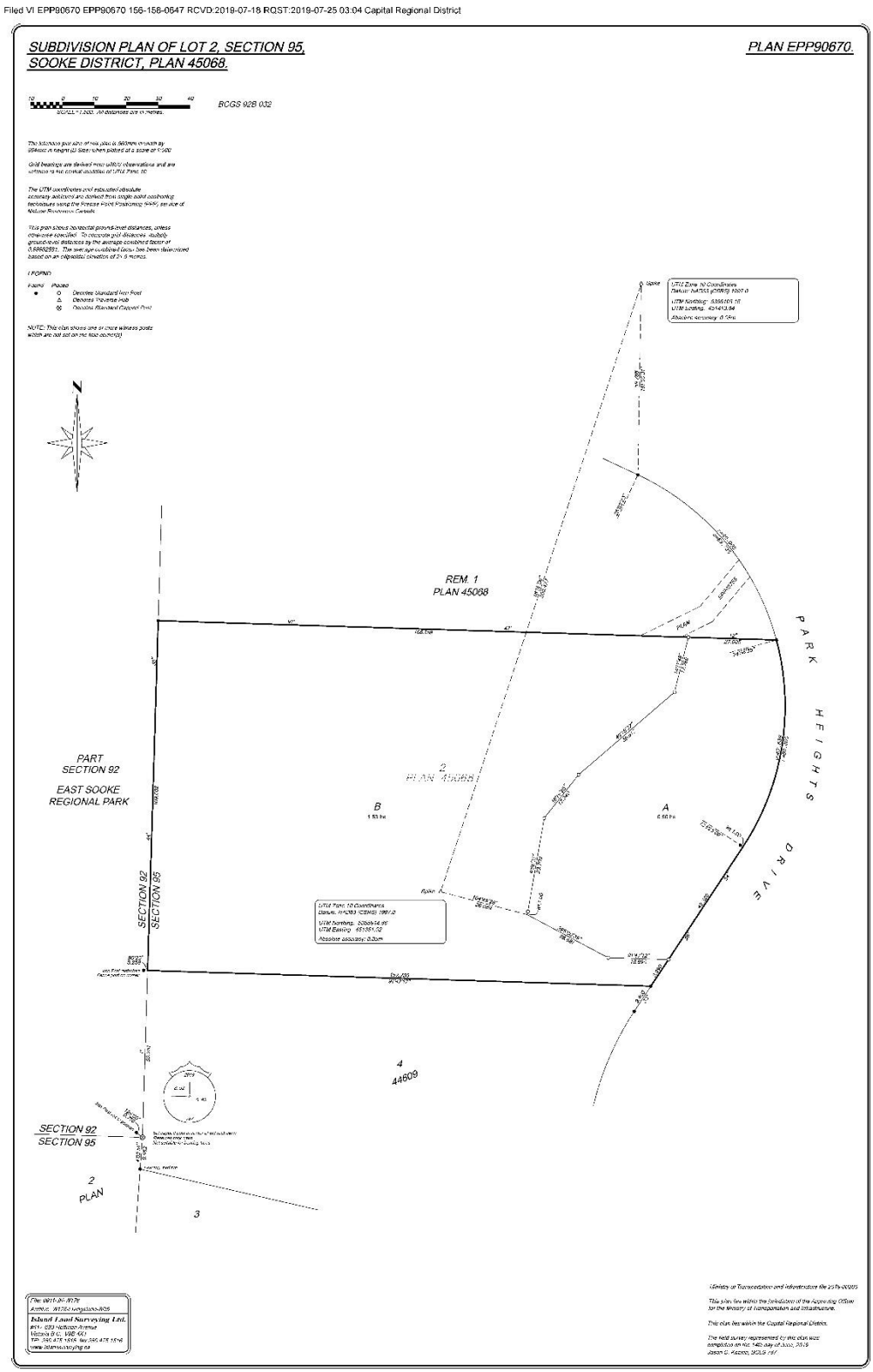
Attachments:

Appendix 1: Subject Property Map
Appendix 2: Subdivision Plan
Appendix 3: RAR Assessment Map
Appendix 4: Proposed Site Plan
Appendix 5: Hardship Letter

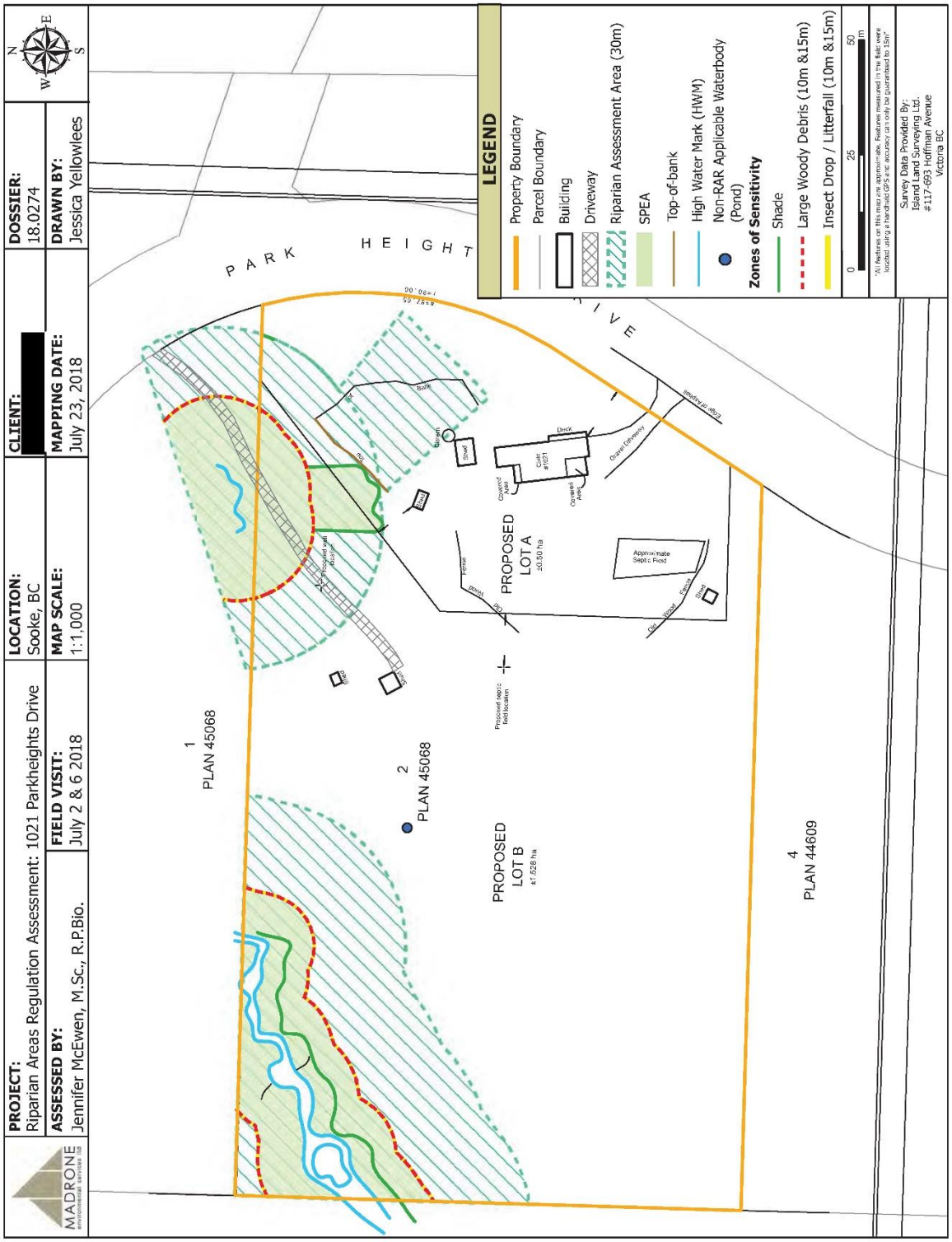
Appendix 1: Subject Property Map



Appendix 2: Subdivision Plan



Appendix 3: RAR Assessment Map



Appendix 4: Proposed Site Plan

Appendix 5: Statement of Hardship

From: [redacted]
To: Regina Robinson
Subject: variance request [redacted]
Date: Wednesday, October 16, 2019 11:54:38 AM

To the members with CRD

Hello CRD Members

We have requested a variance to build a
12 '× 24 ' acccessory building for storage on our build site.

Our 968 sq ft home is on slab so no crawl space for storage or space within the home for storage.
.
Pump house for well will be in accessory building.

The rest of the property is to wet and hard to get into without causing damage and extra expense that we can not afford.

We do not want to destroy the natural wildlife corridor on our property used by many deer and local black bear. It goes into Anderson Cove from our property.

We wish not to distrub our neighbours as well.

The accessory building will be easily accessible as it will be right off the driveway to the left and 20 ft from the house and positioned in front of house off driveway.

Other areas that were flat and accessible were in riparian assessment area which is not allowed.

There is no other location available to build this on and we appreciate CRD's support to grant a variance to us to move on with our build.

We appreciate all the planning dept has helped us with....Great people who have guided us through smoothly and we thank Iain and his staff.

Much Appreciation
[redacted]