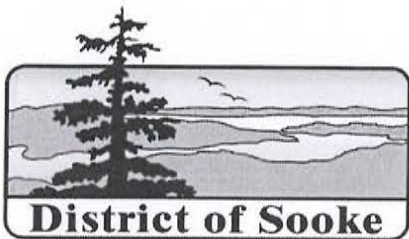


File No. 0540-20

Board of Variance
Wednesday, July 10, 2013 at 7:00 p.m.
District of Soke Council Chambers
2225 Otter Point Road, Sooke, B.C

AGENDA

1. **Call to Order**
2. **Applications:**
 - PLN01040
2363 Phillips Road
3. **Approval of Minutes:** September 20, 2012
4. **Adjournment**



STAFF REPORT – BOARD OF VARIANCE APPLICATION

MEETING

DATE: July 10, 2013 **FILE NO:** PLN01040

TO: Chair and Members
Board of Variance

FROM: Tara Johnson
Planner II

RE: **Board of Variance Application for 2363 Phillips Road**

LEGAL DESCRIPTION: Lot 1, Section 27, Sooke District, Plan VIP86227
PID 027-804-160

APPLICANT: Rodney Garson & Michelle Grenier

CIVIC ADDRESS: 2363 Phillips Road

OCP BYLAW: Bylaw No. 400, *Official Community Plan, 2010*

OCP DESIGNATION: Community Residential (CR)

ZONING BYLAW: Bylaw No. 600, *Sooke Zoning Bylaw, 2013*

ZONE: Sun River Estates CD Zone (CD2-E)

PURPOSE

To consider a Board of Variance (BoV) application to vary Section 802.8 of Bylaw No. 600, *Sooke Zoning Bylaw, 2013* (Zoning Bylaw) to allow a 6 x 10 foot storage shed to be setback 0.45 m (1.5 ft.) from the Side Lot Line. The setback requirement for an accessory structure is 1.5 m (5 ft). The variance request is from 5 ft to 1.5 ft.

As a result of the topography (river bank & steep slope) and a covenant requiring that trees and vegetation remain in their natural state, the applicant cannot comply with the setback requirement and is posing hardship to the Board of Variance.

POLICY ANALYSIS

Under Section 901, the property owner may apply to a BoV for an order if the property owner claims that compliance with the siting, dimensions or size of a buildings or structure would cause hardship and the request is considered minor in nature.

Section 901(2) of the *Local Government Act* (LGA) states that a BoV may order that a minor variance be permitted from the requirements of the bylaw if the BoV finds that undue hardship would be caused to the applicant and the variance does not result in inappropriate development of the site, adversely affect the natural environment, substantially affect the use and enjoyment

of adjacent land, vary permitted uses and densities under the applicable bylaw, or defeat the intent of the bylaw.

The proposed variance would not be in conflict or deal with any of the following that would affect the ability of the BoV to make an order as per section 901(3) of the LGA:

- A section 219 covenant registered to the subject property
- A development permit
- A phased development agreement
- A floodplain specification; or
- Heritage conservation area/heritage building.

APPLICATION SUMMARY

The property is zoned Sun River Estates Comprehensive Development Zone (CD2-E). The applicant/owner is requesting a variance from Section 802.8 of the Zoning Bylaw which states that an accessory building or structure is required to be setback 1.5 m (5 ft.) from the Side Lot Line. The applicant would like to vary this requirement to allow a proposed 6 x 10 foot storage shed to be setback 0.45 m (1.5 ft.) from the Side Lot Line.

Adjacent Land Uses	North: Residential South: Sun River Nature Trail Park East: Sun River Nature Trail Park West: Phillips Road
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As stated in the owner's letter, although the property is long east to west, the useable backyard is limited due to the presence of a steep river bank that is protected to remain in its natural state by a covenant. The size and slope of the upper portions of the back yard prevent the placement of a shed that would comply with the setbacks of the CD2 zone.

The shed will be hidden behind the fence and would have no visual impact from the neighbouring property.

Geotechnical will be addressed at time of Building Permit. The applicant has provided a email from a geotechnical engineer as information to the Board of Variance in order to show that the applicant is aware of the geotechnical covenant.

INTERGOVERNMENTAL/REGIONAL IMPLICATIONS

There are no intergovernmental/regional implications associated with this Board of Variance application.

CITIZEN/PUBLIC RELATION IMPLICATIONS

Adjacent property owners were sent a letter of notification on June 27, 2013 regarding this variance request. The neighbours have been invited to attend the Board of Variance meeting to express any objections they may have to this variance request or to give support to the application. The neighbours have also been invited to submit a written submission provided it is received prior to the meeting.

INTERDEPARTMENTAL INVOLVEMENT/IMPLICATIONS

No concerns from the Engineering, Fire or Building Departments.

OPTIONS FOR BOARD OF VARIANCE'S CONSIDERATION

OPTION 1.

Having considered the matters set out in section 901(2)(c) of the Local Government Act, and having found that undue hardship would be caused to the applicant if section 802.8 of Bylaw No. 600, *Sooke Zoning Bylaw, 2013* is complied with, **the Board of Variance recommends approval to relax the side lot line setback from 1.5 meters to 0.45 meters for an accessory building (storage shed) at 2363 Phillips Road.**

OPTION 2.

That the Board of Variance not recommend approval of the variance.

Attached Documents:

1. Subject Property Map
2. Application submission from Owner
3. CD2-E zone
4. Email dated July 2 from owner and geotechnical engineer

Tara Johnson, Planner II

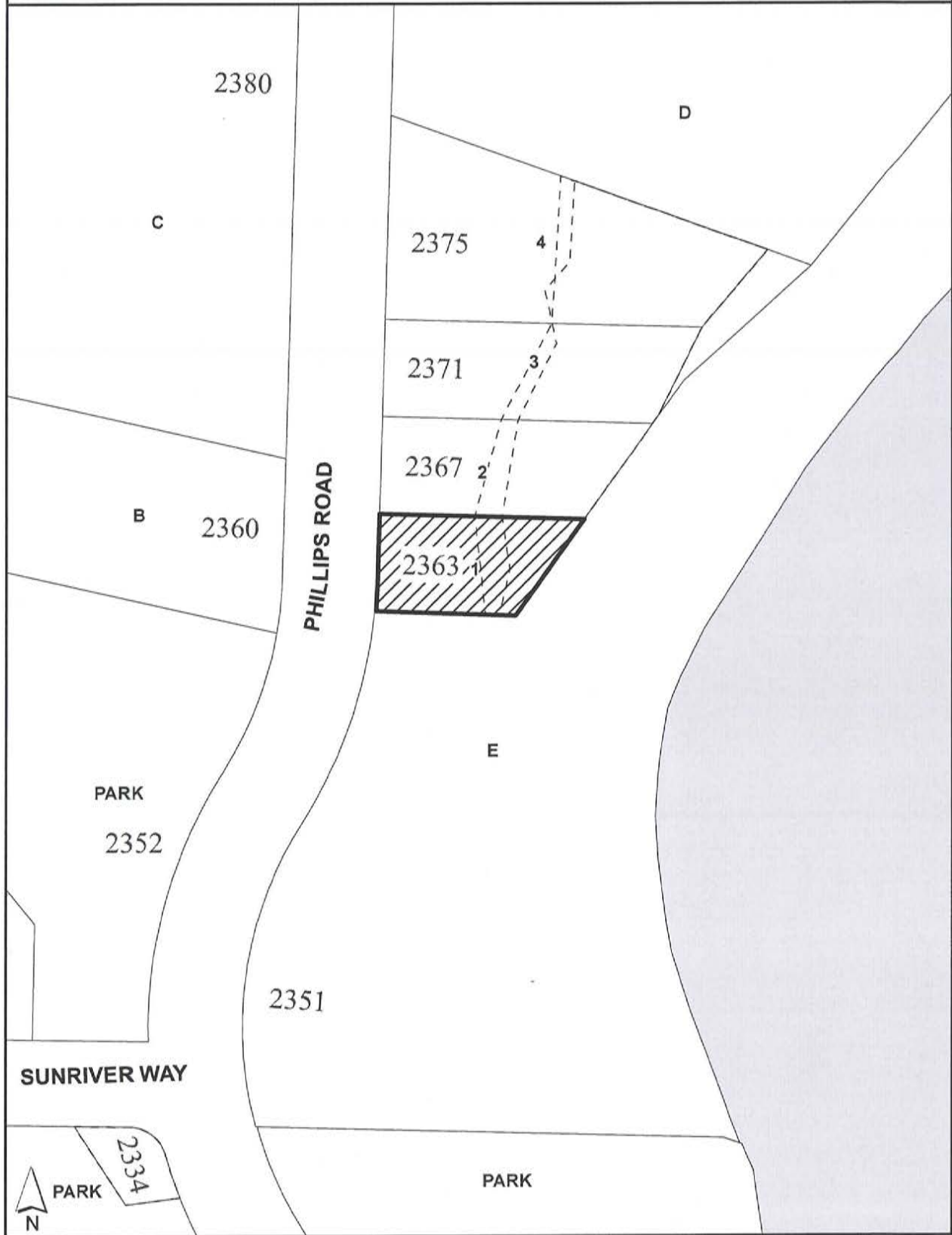
Application Facts

Address	2363 Phillips Road
Legal	Lot 1, Section 27, Sooke District, Plan VIP86227
Existing Zoning	CD2 (Sun River Estates CD zone)
Existing OCP	Community Residential
Parcel Size	741 m ² (7976 ft ²).
Env Sensitive	Variance not within an Env. Sensitive area
Services	Water: CRD Water Sewer: municipal sewer Drainage: On-site
Adjacent Land Uses	North: Residential South: Sun River Nature Trail Park East: Sun River Nature Trail Park West: Phillips Road



SUBJECT PROPERTY MAP

File: PLN01040



 Subject Property

0 15 30 45 60 Metres

Appendix "A"

Description of Variance Request:

We are asking for a variance that exempts us from compliance with the minimum setback requirement for an accessory building of 1.5 meters from the side lot line as set out in s. 802.8 of Schedule 802 – Sun River Estates CD Zone (CD2), which is located in BYLAW NO. 600, SOOKE ZONING BYLAW, 2013 (Adopted: January 28, 2013).

This variance is to allow us to place a 6x10 foot storage shed (9 feet high) in the northeast corner of our back yard fenced property, against our fence and within the side lot line 1.5 meter setback requirement. Compliance with the rear lot line setback is not an issue.

Rationale:

Compliance with this setback requirement poses a hardship for us due to the very unique and unusual features of the lot. As can be seen from the building location certificate and photographs, although our property is long in an east to west orientation, the usable back yard is extremely small. This is owing to the fact that the river bank begins about 12-13 feet (3.6–3.9 meters) from the back of our house, and constitutes a fairly steep drop that is in its natural state and is subject to a covenant further down the slope that requires that the trees and vegetation remain in their natural state.

While our back yard is therefore very long, most of it cannot be used in the way traditional yards are used because of the slope, dense forest and covenants. The view is tremendous, but useable space is non-existent. We explain to our family and friends that our new house has a backyard that is both huge and very small at the same time!

The entire property is not large – it is easily the smallest of the 4 residential lots that are together on this part of Phillips Rd.

The result of this is that the modest 6x10 foot storage shed we need to store recreational and yard equipment simply cannot be realistically situated in the back yard unless the 1.5 meter setback requirement is not applied. To do otherwise means that we have no way of placing the shed in our back yard

that does not completely encumber both the view of the riverbank, and more importantly, movement in the back yard and access to our house. Moreover, the size and slope of the upper portions of our back yard effectively preclude placement of a shed.

Impact on Adjacent Property

There would be negligible, if any, impact on this property, which is currently a vacant residential lot. The shed would largely be hidden behind our fence. It would have no impact on the use of the adjacent property and no meaningful impact on the view of the riverbank from that property.

Photographs

Photographs are enclosed with the application to assist in understanding the location of the proposed shed and the nature of our property. The following descriptions will hopefully assist.

Photo number:

1. Looking north in our back yard. This is where we propose to place the shed. The 6 foot width of the shed would be running from the rear [wire] fence forward along the side [wood] fence. The 10 foot length of the shed would run along the rear [wire] fence.
2. Looking west from our backyard toward the front of the residence.
3. Looking east from the side of our house. As indicated, the 10 foot length of the shed would run along the rear [wire] fence, while the 6 foot width of the shed would run from the easternmost portion of the side [wood] fence.
4. Looking east along outside of side [wood] fence.
5. Looking southeast.
6. Looking east, but showing southern portion of back yard.
7. Same view as photo number 1, but from a higher vantage point [our northern edge of our raised deck that is above walk-out basement].

8. Same view as photos numbered 1 and 7, but further back [i.e. south] along our deck.
9. Same view as photo 6, but from raised deck, looking south.
10. Same view as photos numbered 6 and 9, but looking northeast.
- 11 & 12. Same views as photos numbered 1, 7 and 8, but showing a better view of the bank drop off that effectively marks the practical end of our back yard that can be used for practical, as opposed to aesthetic, purposes

Covenants

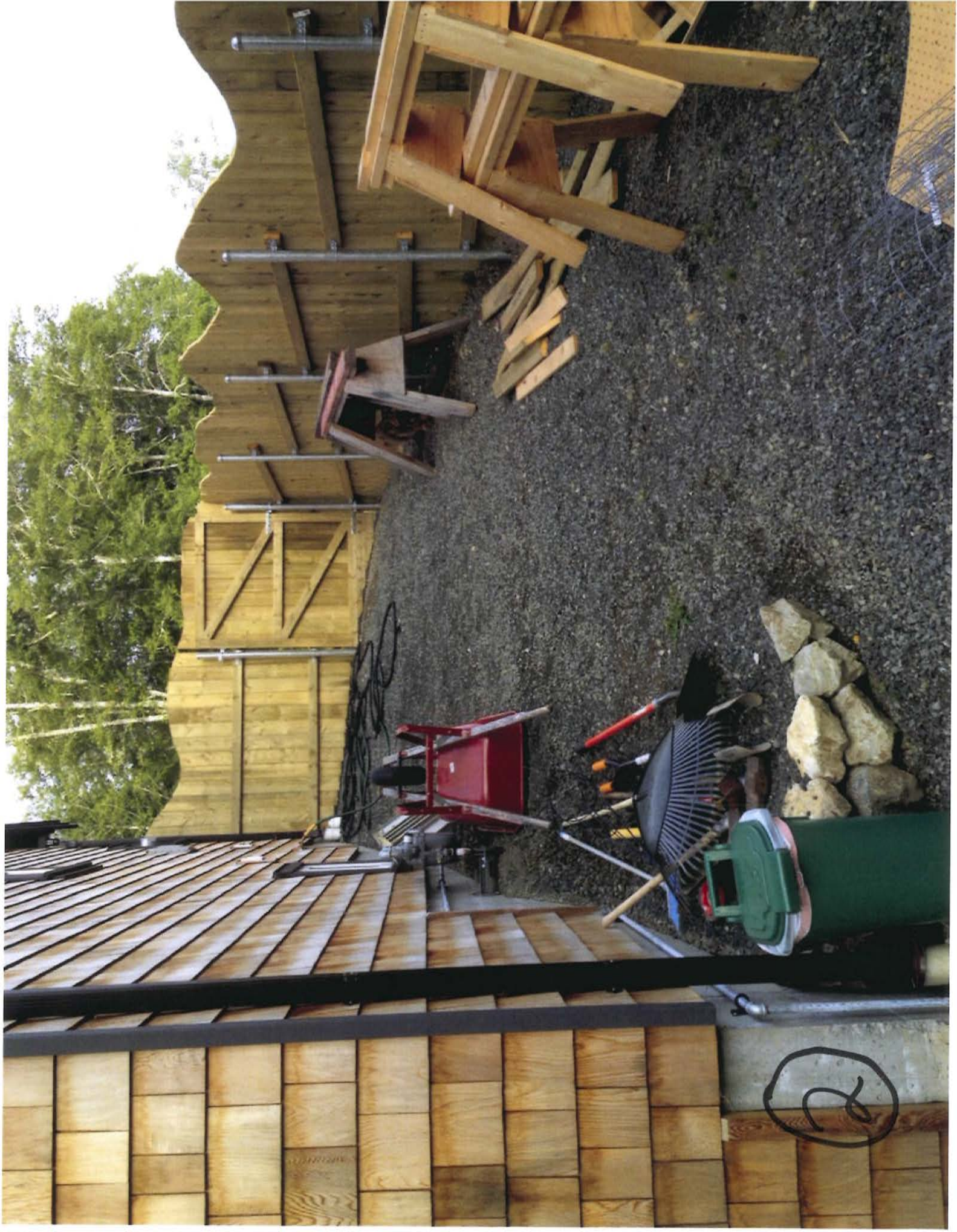
Copies of all non-financial charges are enclosed with this variance application. Only 2 of them appear to be of potential relevance to this application: FB244970 and FB244972.

While our rear property line extends a considerable distance down the slope/riverbank, most of this land (after several feet of slope drop off) is subject to two significant covenants, copies of which are enclosed with this variance application. Covenant FB244970 essentially requires that no vegetation or trees be removed or disturbed from within the covenanted property without the prior written consent of the District of Sooke Municipal Engineer. Covenant FB244972 requires that "the placement of a building or structure, or any part of the building or structure,... must be made in accordance with the recommendations of a report prepared by a Geotechnical Engineer. This requirement will be addressed by the applicant at the hearing of this variance application.

Rod Garson & Michelle Grenier

SCANNED
3









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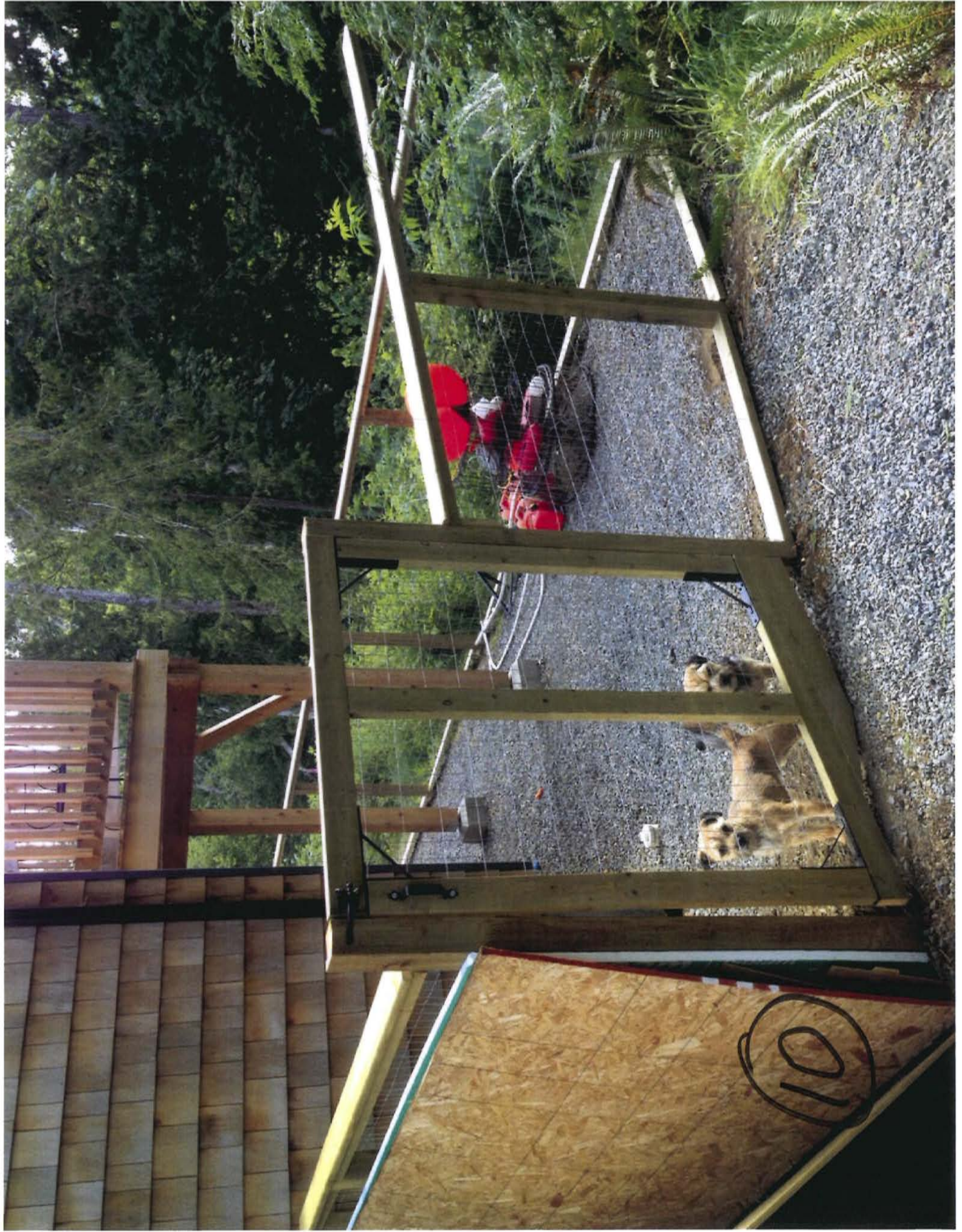


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11



21

J.E. ANDERSON & ASSOCIATES
 B.C. Land Surveyors - Consulting Engineers
 Victoria, Nanaimo and Parksville, B.C.
 Phone: 250-727-2214 Fax: 250-727-3395

B.C. LAND SURVEYORS BUILDING LOCATION CERTIFICATE

File: 27443

Civic: 2363 Phillips Rd. Sooke, B.C.

Legal: Lot 1, Section 27, Sooke District, Plan VIP86227
 Dimensions are in metres and are derived from Plan VIP86227

This sketch does not constitute a redefinition of the legal boundaries hereon described and is not to be used in any manner which would assume same.

This sketch was prepared for confirmation of the CRD building bylaw and is for the exclusive use of our client: Mr. Clinton Galloway

This building location certificate has been prepared in accordance with the Manual of Standard Practice and is Certified Correct this 30th day of January 2012

[Signature]

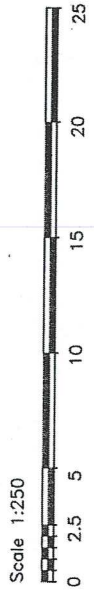
D.R. Carrier, B.C.L.S.

This document is not valid unless originally signed and sealed

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The signatory accepts no responsibility or liability for any damages that may be suffered by a third party as a result of any decisions made, or actions taken based on this document.

Subject to charges, legal notations, and interests shown on: Title No. CA2180904 (PID 027-804-160)



NOTE : OFFSETS ARE SHOWN TO EXTERIOR OF CONCRETE FOUNDATION UNLESS NOTED OTHERWISE

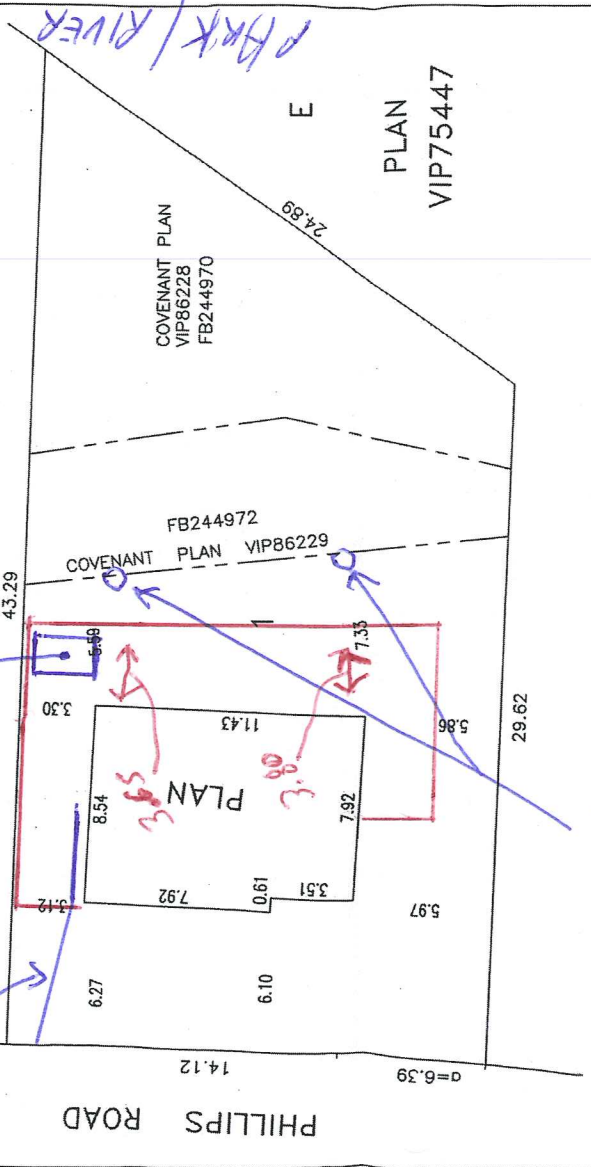
MFE = 23.04m { Geodetic }
 GFE = 22.56m { Geodetic }
 BFE = 20.33m { Geodetic }

FENCE = RED

PROPOSED
5' x 10' HEAVY
6' x 3' DIRT M.
1.83 x 3.048 M.

APPROX. LOCATION OF UTILITY LINES

VACANT LOT (RESIDENTIAL)



APPROX. LOCATION OF PERIMETER DRAINS



Tara Johnson

From: Rod Garson [REDACTED]
Sent: Tuesday, July 02, 2013 3:34 PM
To: Tara Johnson
Subject: Fwd: Setback Variance - 2363 Phillips Rd., Sooke, BC

Hi Tara. The e-mail immediately below is from Alec Morse, the Geotechnical Engineer whose work formed the basis of the covenants attached to our property.

To the extent that the Board of Variance feels that one of the covenants requires the report of a Geotechnical Engineer before approving our variance application, Michelle and I submit his e-mail below as the report.

My e-mail inquiry of him (also set out below) may provide explanatory context for his report and our application, so I would ask you to provide copies of both e-mails to the Board.

Also, I would ask you to make one additional change to our application. Although it is obvious from the description of the rationale for our application, we say the side lot setback requirement poses undue hardship to us, rather than mere hardship. (It may be arguable that the use of the term "hardship" in s. 901(1) of the Local Government Act and the use of the terms "undue hardship" in s. 901(2) means that there is no meaningful distinction between the two expressions. If there is any debate about this issue, let me know and I can prepare to have it addressed at the hearing.)

Michelle will bring you a cheque sometime this week for the additional \$200 meeting fee.

If you have any other questions, please let me know.

Rod

Begin forwarded message:

From: Alec Morse <amorse@levelton.com>
Date: 2 July, 2013 12:06:04 PM PDT
To: Rodney Garson [REDACTED]
Subject: RE: Setback Variance - 2363 Phillips Rd., Sooke, BC


Hi Rodney,

I've had a look through the information you've provided and reviewed our file on this portion of the Sun River subdivision. The covenant was applied due to some of the slope stability concerns we have for the long term condition of the slope down to the river. With potential erosion at the toe of the slope and localized oversteepened portions on the slope immediately below the backyard, it can be expected that slope movement does occur over the next several decades. That being said, the setback we established as part of the covenant was developed within the current guidelines of the Building Code, including seismic design. The shed you're proposing to construct in the rear yard would be considered an uninhabited structure and may be considered differently in terms of the Building Code. If potential damage to the shed due to displaced ground is acceptable, placement of the shed inside the setback line is considered appropriate.

We do agree that further excavation into the slope at the crest is unwanted and placement of the shed on the existing gravels is acceptable. If rainwater from the roof of the shed is to be collected, it is recommended that it is directed into the perimeter drain dispersal pipes that travel down to the base of the slope.

I hope this clarifies your questions regarding the geotechnical setback covenant. Please let me know if you have any further queries.

Thanks, Alec

 <image001.jpg>

The information in this e-mail is confidential and privileged, and intended solely for the addressee. If you are not the intended recipient of this message, access the information it contains is unauthorized by Levelton Consultants Ltd. and disclosure, copying, distribution or any action taken as a result of this e-mail is prohibited and may be unlawful. When addressed to a client of Levelton Consultants Ltd. any opinions or advice contained in this e-mail are subject to the terms and conditions in the governing engagement agreement.

From: Rodney Garson [REDACTED]
Sent: June-26-13 12:40 PM
To: Alec Morse
Subject: Setback Variance - 2363 Phillips Rd., Sooke, BC

Good afternoon Alec and my apologies for not getting this material to you sooner. Things have just been very busy here at work and I have not had an opportunity to get the material together.

Once again, many thanks for agreeing to assist me and my family.

As I explained over the phone, we are applying for a very simple variance from the zoning bylaw that requires a 1.5 meter setback from the side property line. This is so we can put a 6' x 10' shed essentially up against the fence. The setback from the rear property line is not an issue, as it is quite a distance away from the fence at the rear of our property.

As I mentioned, and as you know, there are covenants attached to the property to ensure riverbank slope stability. Copies of the two relevant covenants are attached and within those covenants, you will see your reports that set out the basis and rationale for the covenants. I have also attached a copy of the document setting out our variance request and its rationale, as well as a scale drawing of the proposed shed location and photographs of our yard from different vantage points, which will assist you in understanding where we propose to place the shed.

The area in which we need your assistance is as follows. Covenant FB244972 requires that "[p]lacement of a building or structure, or any part of a building or structure, must be made in accordance with the recommendations of a report prepared by a Geotechnical Engineer." This

language is broad enough to capture placement of a shed on the property, as it is at least arguable that a shed constitutes a "structure".

Most importantly, as I understand your reports and the purposes of the covenants that flowed from your reports, the principal geotechnical concerns surrounding the property are to ensure that the river slope forest is not significantly disturbed, and that any foundation for any structure is properly situated such that slope stability and the structure's stability are not compromised.

If my understanding of your reports and the purposes of the covenants is correct, the placement of a 6' x 10' shed [which involves no excavated foundation] in the area proposed on our drawing would in no way seem to compromise slope stability or anything else related to the concerns addressed by your reports and the covenants.

If that is in fact the case, an e-mail from you confirming this will hopefully suffice as a "report" for the purpose of our variance application that we will be presenting before the Sooke board of variance. Thank you once again for your assistance. Should you have any questions or concerns, please do not hesitate to contact me.

Rod Garson

DISTRICT OF SOOKE
BOARD OF VARIANCE
Meeting held September 20, 2012 at 5:00 pm
2205 Otter Point Road

BOARD MEMBERS PRESENT:

Ellen Lewers, Chair
Marilyn Andreychuk

PUBLIC IN ATTENDANCE:

Keith Van Eyk (Applicant)
Michael Derbach

Staff Present: Tara Johnson, Planner

1. The meeting began at 5:05 pm.
2. Application:

PLN00974 – 2217 Ayum Road

Tara Johnson provided an overview of the application, explaining that a variance is required to allow a proposed accessory building (garage) to be located 2 meters from the front property line and further noted that the applicants were in attendance.

Tara Johnson noted that a letter was received from Lynn Wilson, a Parks Planner at Capital Regional District (CRD) stating that the variance does not affect Regional Parks interests and have no objections.

The applicant explained that the proposed location for the garage is perfect and that there is really no other place to build a garage. To meet the setback of 7.5 m would place the garage in the middle of the driveway and it would be an eyesore for the neighbours. The applicant explained how the house never came with a garage and that he really needs one.

Board Member Ellen Lewers asked the size of the proposed garage. The applicant confirmed it would be approximately 26 ft x 38 ft.

Michael Derbach, a neighbour next door at 2215 Ayum Road, spoke in favour of the variance.

MOVED and seconded that the Board of Variance application (PLN00974) be approved to relax the front lot line setback from 7.5 m to 2 m for an accessory building at 2217 Ayum Road, legally described as Lot 8, Sections 52, 53 and 64, Sooke District, Plan 50550 provided that the accessory building does not locate within the restricted area of Covenant EM35359 and the accessory building is constructed within one year.

CARRIED

3. Minutes – March 22, 2012

Minutes cannot be approved until Board Member, Travis Butler is present at a meeting.

4. The meeting adjourned at 5:40 pm.

Certified Correct:

Ellen Lewers, Chair

Bonnie Sprinkling, Corporate Officer