



North Pender Island Board of Variance Meeting Agenda

Date: June 13, 2023

Time: 2:00 p.m.

Location: Electronic Meeting

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- 1. CALL TO ORDER**
 - 2. APPROVAL OF AGENDA**
 - 3. MINUTES**
 - 3.1 March 23, 2022 (attached)**
 - 4. UPDATE FROM SECRETARY**
 - 5. APPLICATIONS**
 - 5.1 NP-BOV-2023.3 (McDonald) - Staff Report (attached)**
 - 6. ADJOURNMENT**



DRAFT

North Pender Island Board of Variance Minutes of a Hearing

Date: March 23, 2022
Location: Electronic Meeting (Zoom Webinar)

Members Present: Priscilla Zimmerman, BOV Chair
Andrew MacLean, BOV Member

Staff Present: Phil Testemale, Island Planner
Pat Todd, Recorder

Applicant Representatives: Scott Elliot

1. CALL TO ORDER

Chair Zimmerman called the meeting to order at 10:00 a.m. Chair Zimmerman acknowledged meeting was being held on the Treaty Lands of Tseycum First Nations and the lands and waters of the Salish Sea.

2. APPROVAL OF AGENDA

By general consensus the agenda was approved as presented.

3. MINUTES

4.1 January 19, 2022

By general consent the Board of Variance meeting minutes of January 19, 2022 were adopted as presented.

4. UPDATE FROM SECRETARY

5. APPLICATIONS

5.1 NP-BOV-2022.1 (Elliott)

Planner Testemale reviewed the application to vary set back for an existent “legal non-conforming” structure (built 1979). There were no responses to notification of hearing. Variance is minor and conform to set back would be a hardship for applicant.

NP-BOV-2022-02

It was Moved and Seconded

that, having considered the matters set out in s.542(1)(c) of the *Local Government Act*, and having found that undue hardship would be caused to the applicant if s.531 (1) of the *Local Government Act* is complied with, the North Pender Island Board of Variance approve application NP-BOV-2022.1 (Elliott) as presented and shown on Schedules A and B of the NP-BOV-2022.1 Notice of Hearing.

CARRIED

6. ADJOURNMENT

By general consent the meeting was adjourned at 10:10 a.m.

Recorder

Date

File No.: NP-BOV-2023.3 (McDonald)

NP-BP-2022.5 (McDonald)

DATE OF MEETING: June 13, 2023

TO: North Pender Island Board of Variance

FROM: Brad Smith, Island Planner
Southern Team

CC: Robert Kojima, Regional Planning Manager

SUBJECT: Board of Variance Application

Applicant: Michael McDonald and Gillian Reid McDonald
Location: 3722 Rum Road

REPORT SUMMARY

The purpose of this staff report is to present an appeal to the Board of Variance to vary the North Pender Island Land Use Bylaw No. 103, 1996 (LUB) for a proposed deck to be added to the dwelling that is currently under construction on the subject property.

The proposed variance is to Subsection 8.1.5 'Setbacks' in the 'Rural Residential (RR) Zone' of the LUB, and specifically clause 8.1.5 (1) (a) which states that no building or structure may be located within 7.6 metres of any front or rear lot line, is to be varied to permit a proposed deck within 5.64 metres of the front lot line.

This application is being made under Section 540 (a) (i) of the Local Government Act for a variance to a bylaw respecting the siting, size or dimensions of a building or other structure.

APPLICANT'S RATIONALE

- A significant portion of the subject property is allocated within Development Permit Area (DPA) 1 – Woodland, which limits the building footprint that is possible without encroaching within the DPA. Add to this the set backs on front, rear and sides of the lot leaves the applicant only 25-30 percent of the overall lot size to develop.
- A geotech assessment by Ryzuk engineering recommended that the house be built at the front of the lot, as far as possible from the existing steep slope rock outcrop to ensure minimal damage due to rock fall and seismic fall out activities. To be in compliance with the recommended distancing, the house was placed as close to the front setback lot line as possible.

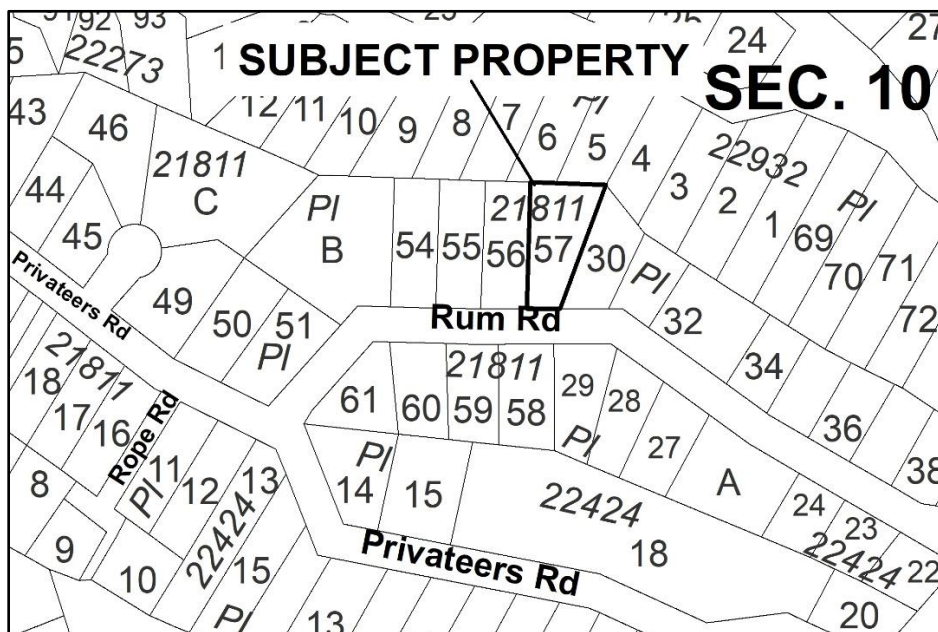
- The variance is minor and only impacts the front lot line, no variance is required in respect of side or rear lot lines.

BACKGROUND

A building permit review was submitted and approved in (NP-BP-2022.5). The original plans did not require variance as the deck did not wrap around the front of the house and thus did not require variance. The property owner has now decided they would prefer a deck that wraps around the front of the house and are now seeking variance.

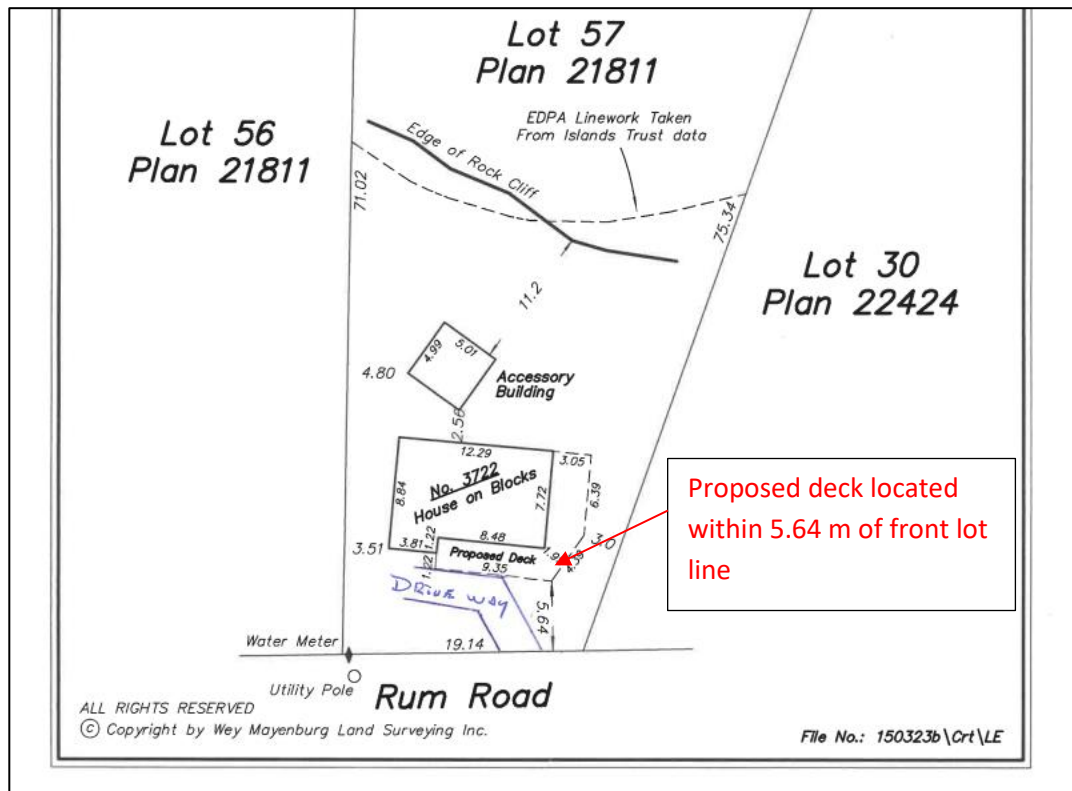
The property is located at 3722 Rum Road. The house is currently under construction and there is one other small accessory storage building located behind the house.

Figure 1 – Subject Property



The proposed variance is to Subsection 8.1.5 'Setbacks' in the 'Rural Residential (RR) Zone' of the LUB, and specifically clause 8.1.5 (1) (a) which states that no building or structure may be located within 7.6 metres of any front or rear lot line, is to be varied to permit a proposed deck within 5.64 metres of the front lot line.

Figure 2. Site Plan showing required variance to front lot line



As shown in the photos below, the proposed variance is to allow for the deck to wrap around the front of house utilizing the concrete footings shown in the picture that are located within 5.64 metres of the front lot line.



Staff visited the property and met with the applicant on May 25, 2023. Additional site context is included in Attachment 1 and maps and photos are included in Attachment 2. The Ryzuk geotech report for the subject property is included as Attachment 3.

ANALYSIS

Official Community Plan:

The property is designated as **RR (Rural Residential)** in the North Pender Island Official Community Plan No. 171, 2007 (OCP).

A significant portion of the subject property is located within DPA 1 – Woodland. The location of the dwelling under construction and the proposed deck requiring variance avoids the DPA.

Figure 3. Development Permit Areas on Subject Property



Land Use Bylaw

The property is zoned **Rural Residential (RR)** in the North Pender Island Land Use Bylaw No. 103, 1996. The current zoning allows for the planned residential uses on the property.

Issues and Opportunities

Impact in Neighbouring Properties

As the proposed deck encroaches less than 2 metres into the front lot setback, has no impacts to site lines or other enjoyment and use of the adjacent properties, and no other variances are required, if the proposed variance is granted staff assesses the impacts on neighbour as minimal or nil.

Undue Hardship

The *Local Government Act* (LGA) establishes that a Board of Variance may order that a *minor* variance be permitted provided that the Board finds that *undue hardship* would be caused to the applicant if the variance is not granted (see 'Legislative Context' – below).

The applicant's rationale with respect to hardship is explained in an email included as Attachment 4.

The Intent of the Regulation being Varied

Section 542 (c) (v) of the LGA states that the Board may grant a minor variance if the Board is of the opinion that the variance does not defeat the intent of the bylaw. Although the Board must form its own opinion, the following assessment of the intent of the front lot line setback regulation may assist:

- Limiting the visual impact of development on adjacent properties and the public realm.
- Establishing a consistent development pattern within a local area.
- Protection of views, scenic areas and distinctive features contributing to the overall visual quality and scenic value of the Trust Area.
- Maintaining a rural character.
- Establishing certainty with respect to residential development by maintaining consistent siting regulations.

Potential Impacts of Granting the Variance

Granting a variance can potentially create an expectation in the community with regard to future applications. As variances consider the unique circumstances pertaining to a particular situation that may warrant the relaxation of a specific zoning regulation each application should be evaluated on its own merits.

Consultation

Notices were circulated to all adjacent properties (Attachment 5). In addition, copies have been posted on island bulletin boards and the Islands Trust website under North Pender Island. At the time of writing no correspondence has been received in response to notification. Any submissions received after the agenda is published will be sent directly to BoV members and will be presented by staff at the June 13 meeting.

First Nations

The Islands Trust reviews all applications to ensure the preservation and protection of cultural heritage, archaeological sites, and ancestral places. As reviewed, the application is consistent with respect to LTC Standing Resolutions on reconciliation. Based on mapping of archaeological potential, the applicant proactively contacted the provincial Archaeological Branch and received guidance on compliance and obligations under the *Heritage Act*. Notwithstanding, staff has also forwarded the Islands Trust Chance Find Protocol to the applicant.

Statutory Requirements

Legislative Context

Section 536 of the LGA stipulates that any local government that has adopted a zoning bylaw must establish a Board of Variance. Each LTC has a Board of Variance.

A person may apply to the Board of Variance for an order to vary certain zoning bylaw provisions where an applicant can adequately demonstrate, to the satisfaction of the Board, that compliance with the bylaw provisions would cause the applicant undue hardship.

It is up to the Board of Variance to determine what constitutes a minor variance and whether or not undue hardship has been proven.

This application is being made under Section 540 (a) (i) of the LGA where:

A person may apply to a board of variance for an order under Section 542 if the person alleges that compliance with any of the following would cause the person hardship:

- (a) a bylaw respecting*
 - (i) the siting, dimensions or size of a building or structure*

Section 542 establishes that the board of variance may only order that a minor variance be permitted from the requirements of the bylaw, if the board of variance:

- (a) has heard from the applicant and any person notified any person notified under section 541,*
- (b) finds that undue hardship would be caused to the applicant if the bylaw or 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;*
 - vi. vary the application of an applicable bylaw in relation to residential rental tenure.*

Further, Section 542 (2) establishes that the board of variance must not make an order that would:

- (a) be in conflict with a covenant registered under section 219 of the Land Title Act or section 24A of the Land Registry Act, R.S.B.C., c. 208;*
- (b) deal with a matter that is covered in a land use permit or covered in a land use contract*
- (c) to (e) deal with matters covered by a phased development agreement; a floodplain specification; or apply to a property with heritage protection applies.*

Staff is satisfied that all other requirements set out in LGA section 542 (1) and (2) have been met. Specifically:

- The statutory notification has been undertaken with no responses.
- The proposed variance is of a minor nature as it is for a relatively small incursion into the front lot setback and no other variances are required.
- The natural environment would not be impacted as the variance is for addition to the house under construction in an already disturbed area.
- The variance would not impact the use and enjoyment of neighbouring properties.
- The variance would not vary permitted uses or densities.
- The variance would not defeat the intent of the bylaw.
- The variance would not be in conflict with any covenants or permits.

Lastly, in considering the appeal, the Board should be satisfied that the requirements under LGA Section 542 (1) and (2) are met:

1. That the owner would experience a hardship if the appeal is not granted; and,
2. That the proposed variance is of a minor nature.

If the appeal for variance is not granted, the applicants could make a subsequent Development Variance Permit application for consideration by the North Pender Island Local Trust Committee (LTC), or alter the proposed building plan to conform.

Submitted By:	Brad Smith	June 5, 2023
Concurrence:	Narissa Chadwick, Acting Regional Planning Manager	June 5, 2023

ATTACHMENTS

1. Site Context
2. Maps, Plans, Photographs
3. Ryzuk Geotech Report
4. Applicant Rationale Email
5. Notice

ATTACHMENT 1 – SITE CONTEXT

LOCATION

Legal Description	LOT 57, SECTION 10, PENDER ISLAND, COWICHAN DISTRICT, PLAN 21811
PID	003-360-491
Civic Address	3722 RUM RD

LAND USE

Current Land Use	Rural Residential
Surrounding Land Use	Rural Residential

HISTORICAL ACTIVITY

File No.	Purpose
NP-BP-2022.5	Building permit approval for construction of dwelling

POLICY/REGULATORY

Official Community Plan Designations	The property is designated as RR - Rural Residential in the North Pender Island Official Community Plan No. 171, 2007 (OCP). Woodland Ecosystems (DPA 1) – map in Attachment 2.
Land Use Bylaw	The subject property is zoned as Rural Residential in the North Pender Island Land Use Bylaw 103, 1996.
Other Regulations	None
Covenants	None
Bylaw Enforcement	None

SITE INFLUENCES

Islands Trust Conservancy	This application has no considerations for the Islands Trust Conservancy.
Regional Conservation Strategy	This application has no considerations for the Regional Conservation Plan.
Species at Risk	A portion of the property is identified as critical SAR habitat for woodland species – proposed siting of deck located outside of this area
Sensitive Ecosystems	Woodland: Conifer
Hazard Areas	None
Archaeological Sites	According to provincial records there are no known archaeological sites recorded on the subject property, but there is potential for arch site to exist on property. As such, by copy of this report, the owners and applicant should be aware that there is still a chance that the lot may contain previously unrecorded archaeological material that is protected under the <i>Heritage Conservation Act</i> . If such material is encountered during development, all work should cease and Archaeology Branch should be

	contacted immediately as a <i>Heritage Conservation Act</i> permit may be needed before further development is undertaken. This may involve the need to hire a qualified archaeologist to monitor the work.
Climate Change Adaptation and Mitigation	N/A

ATTACHMENT 2 – MAPS, PLANS, DRAWINGS, PHOTOGRAPHS

2.1 ORTHOPHOTO

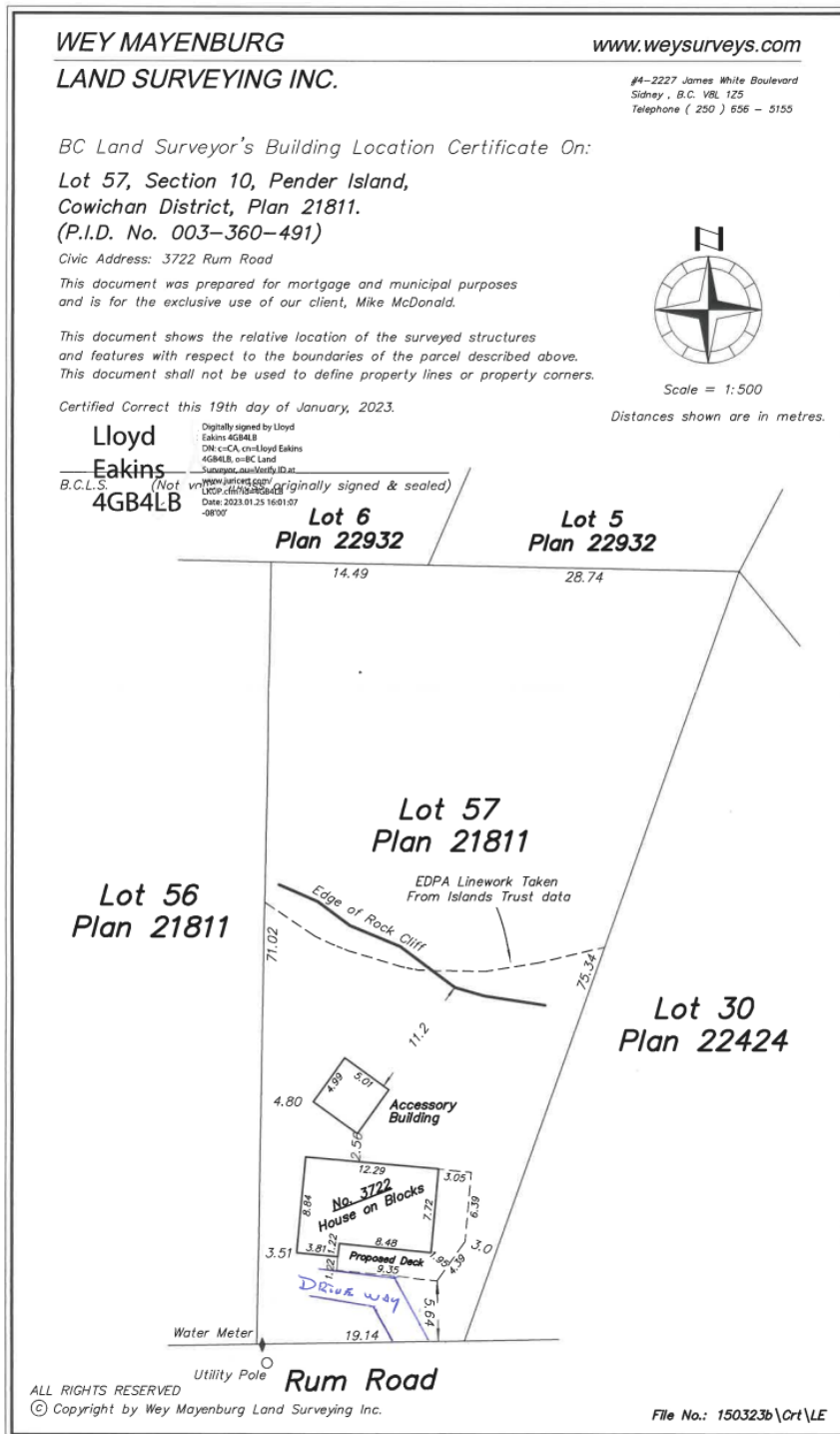


2.2 DPAs

Woodland Ecosystems (DPA 1 - Green)



2. PROPOSED SITE PLAN



2.3 PHOTOGRAPHS

VIEW FROM EAST CORNER OF HOUSE SHOWING FOOTINGS FOR PROPOSED DECK



VIEW FROM FRONT OF HOUSE



VIEW OF STEEP SLOPE BEHIND HOUSE



VIEW FROM WEST CORNER OF HOUSE SHOWING FOOTINGS





RYZUK GEOTECHNICAL

Engineering & Materials Testing

28 Crease Avenue, Victoria, BC, V8Z 1S3 Tel: 250-475-3131 Fax: 250-475-3611 www.ryzuk.com

November 17, 2020

File No: 10142-1

Mike McDonald
4 Bradley Farm Road
Kanata, ON
K2L 4B5

Attn: Mike McDonald (By Email: gbc mike@yahoo.com)

Re: Geotechnical Assessment
3722 Rum Road - Pender Island, BC

As requested, we recently attended the above referenced site to carry out a visual geotechnical assessment of the site. We understand that you wish to construct a single-family residence on the southern half of the property, offset from an existing bedrock bluff. Our assessment included observations on global stability and safe building areas, bearing conditions for the proposed building area, as well as comments on stormwater infiltration. Our associated observations, comments, and recommendations are contained herein. The work has been undertaken in accordance with, and is subject to, the attached Terms of Engagement.

The site is located within the southern end of North Pender Island, and consists of a rectangular lot bounded by Rum Road to the south and similar residential properties to the north, east and west. The southern half of the lot appears to have been flattened/graded out, and there is currently a gravel driveway, small existing single-family residence, and several medium to large trees interspersed throughout the site. The ground in the area is generally covered with tall grass and there are boulders/bedrock outcroppings visible on the surface. The northern half of the lot is undeveloped, and topography is bedrock controlled with bedrock bluffs, boulders, and several small to large trees with low-lying brush. The site slopes up from Rum Road at between 10 and 20 degrees from horizontal to a 4.0 to 6.5 m tall bedrock bluff that runs across the center of the lot, and then slopes up beyond the bluff at 30 degrees from horizontal to a flat bench located within the northern third of the lot, sloping up at 30 to 40 degrees beyond this bench to the northern property line.

We understand that the proposed single-family residence would be constructed approximately 6.0 to 7.5 m south of the bluff located near the center of the lot. Further to this, we understand that a pool may be constructed between the proposed residence and the bluff.

The bluff in this area varies from approximately 4.0 m tall near the east side and continues east-west across the property and to the west, and is approximately 6.5 m tall on the west side of the

property. The face of this bluff dips at 95 to 100 degrees (sub-vertically) to the south. As well, joints were noted dipping at approximately 30 degrees to the east. The bedrock was comprised of sandstone and conglomerate, and generally was moderately fractured and jointed. One apparently loose rock slab was located near the eastern edge of the bluff, where a large open joint was observed at the back of the slab. As well, the bedrock was noted to be more fractured on the west side, where several mobilizable slabs were noted near the crest of the bluff. In this area, several boulders were observed directly below the bluff, likely deposited from previous rock falls from the face/crest. No loose boulders or slabs were noted north of the mid lot bluff that would be at risk of impacting the area south of the mid lot bluff. There were also several medium sized trees were noted on the crest which may need to be removed to prevent them from overturning during wind events, which could impact the house and/or mobilize rocks at the crest.

Based on our assessment, we expect that the proposed residence location is at risk of being impacted by rock fall debris. This rock fall would likely be the result of an earthquake, freeze/thaw on the bluff loosening slabs, or from trees located at the slope crest overturning and mobilizing rock. As such, mitigation measures will need to be undertaken on the slope to reduce this risk, which could include:

- Machine scaling the rock bluff with a large excavator to remove loose rock/boulders/slab, and also completing hand scaling smaller detached rock. Note this must be completed under the supervision of a geotechnical professional, or
- buttressing the slope with a wall or fill slope, or
- installing rock anchors to retain loose slabs.

Alternatively, a catchment area could be established between the proposed residence and the bluff, the house could be moved further away from the slope, or the building footings could be designed to withstand potential impacts from falling rock. If either of these options is selected, then we would recommend not installing a pool in the rear yard, or relocating the pool away from the rock slope.

We can provide further information on the above noted options as requested, once building locations, grades and orientations are known. Any permanent rock faces will need to be reviewed by a geotechnical professional prior to occupancy. We do not expect that any rock fall on the bluffs located within the property will pose a threat to neighboring properties.

Building foundations should bear on undisturbed native mineral soils, sound bedrock or engineered fill placed atop such, and should be reviewed by a geotechnical professional at the time of construction. Any footings bearing on bedrock with a slope of 6H : 1V (horizontal : vertical) will require rebar dowels drilled and grouted into the rock to provide shear resistance to

footings. Foundation elements can be designed with regard to limit state design (LSD). A bearing resistance factor (SLS) of 145 kPa and 220 kPa (ULS) may be used for sizing of strip footings, and 175 kPa (SLS) and 265 kPa (ULS) may be used for sizing pad footings. This uses a geotechnical resistance factor of 0.5 as per the current Canadian Foundation Engineering Manual.

We recommend minimum footing widths of 400 and 600 mm for strip and pad footings, respectively. For frost protection, the base of all footings should extend to a depth of at least 450 mm below adjacent finished grades. Care should be taken to not overly disturb the granular subgrades during forming and placement of reinforcement.

Rainfall runoff from the building and driveway areas should be collected and directed to an in-ground filtration system downslope of the residence. Any infiltration/discharge should be done away from proposed septic areas. We can provide further recommendations in this regard if requested.

Provided that the above recommendations are incorporated into the design for the new residence, we consider the proposed residence to be feasible from a geotechnical standpoint, considering global stability and overall foundation support. Based on the above, we expect that the property could be made safe for the use intended, that being single family residential use, considering a 2% in 50-year probability of exceedance. This is pursuant to Section 56 of the Community Charter.

We hope the preceding is suitable for your purposes at present. Please don't hesitate to contact our office if we can be of further assistance.

Sincerely,
Ryzuk Geotechnical



Christian J. Flanagan, P.Eng.
Project Manager
Partner

TERMS OF ENGAGEMENT

1 GENERAL

- 1.1 Ryzuk Geotechnical (the Consultant) shall render the Services, as specified in the agreed Scope of Services, to the Client for this Project in accordance with the following terms of engagement. The Services, and any other associated documents, records or data, shall be carried out and/or prepared in accordance with generally accepted engineering practices in the location where the Services were performed. No other warranty, expressed or implied, is made. The Consultant may, at its discretion and at any stage, engage sub-consultants to perform all or any part of the Services.
- 1.2 Ryzuk Geotechnical is a wholly owned subsidiary of C. N. Ryzuk & Associates Ltd.

2 COMPENSATION

- 2.1 All charges will be payable in Canadian Dollars. Invoices are issued on a monthly basis. Payment is due within 30 days of invoice without hold back. Interest on overdue accounts is 24% per annum. Collection action will commence if invoices are not settled within 90 days.
- 2.2 Our Services may be engaged on a Fixed Fee basis or hourly rate as per our Fee Schedule. When Services are provided in accordance with our Fee Schedule, the rates for our Services will be marginally adjusted annually in January and the Client agrees to the adjusted rate.

3 REPRESENTATIVES

- 3.1 Each party shall designate a representative who is authorized to act on behalf of that party and receive notices under this Agreement.

4 TERMINATION

- 4.1 Either party may terminate this engagement without cause upon thirty (30) days' notice in writing. On termination by either party under this paragraph, the Client shall forthwith pay to the Consultant its Charges for the Services performed, including all expenses and other charges incurred by the Consultant for this Project.
- 4.2 If either party breaches this engagement, the non-defaulting party may terminate this engagement after giving seven (7) days' notice to remedy the breach. On termination by the Consultant under this paragraph, the Client shall forthwith pay to the Consultant its Charges for the Services performed to the date of termination, including all fees and charges for this Project.

5 ENVIRONMENTAL

- 5.1 The Consultant's field investigation, laboratory testing and engineering recommendations will not address or evaluate pollution of soil or pollution of groundwater. The Consultant will cooperate with the Client's environmental consultant during the field work phase of the investigation.

6 PROFESSIONAL RESPONSIBILITY

- 6.1 In performing the Services, the Consultant will provide and exercise the standard of care, skill and diligence required by customarily accepted professional practices and procedures normally provided in the performance of the Services contemplated in this engagement at the time when and the location in which the Services were performed.

7 INSURANCE

7.1 Ryzuk Geotechnical is covered by Professional Indemnity Insurance as follows:

1. \$ 3,000,000 each and every claim
2. \$ 5,000,000 aggregate
3. \$ 5,000,000 commercial/general liability coverage

7.2 Notwithstanding the provision of insurance coverage by the Client, the Engineer hereby agrees to indemnify and save harmless the Client, its successor(s), assign(s) and authorizes representative(s) and each of them from and against losses, claims, damages, actions, and causes of action, (collectively referred to as "Claims") that the Client may sustain, incur, suffer or be put to at any time either before or after the expiration or termination of this Agreement, that arise out of errors, omissions or negligent acts of the Engineer or their Subconsultant(s), servant(s), agent(s) or employee(s) under this Agreement, excepting always that this indemnity does not apply to the extent, if any, to which the Claims are caused by errors, omissions or the negligent acts of the Client, its other consultant(s), assign(s) and authorized representative(s) or any other persons.

8 LIMITATION OF LIABILITY

8.1 The Consultant shall not be responsible for:

1. the failure of a contractor, retained by the Client, to perform the work required for the Project in accordance with the applicable contract documents;
2. the design of or defects in equipment supplied or provided by the Client for incorporation into the Project;
3. any cross-contamination resulting from subsurface investigations;
4. any Project decisions made by the Client if the decisions were made without the advice of the Consultant or contrary to or inconsistent with the Consultant's advice;
5. any consequential loss, injury or damages suffered by the Client, including but not limited to loss of use, earnings and business interruption;
6. the unauthorized distribution of any confidential document or report prepared by or on behalf of the consultant for the exclusive use of the Client
7. Subsurface structures and utilities

8.2 The Consultant will make all reasonable efforts prior to and during subsurface site investigations to minimize the risk of damaging any subsurface utilities/mains. If, in the unlikely event that damage is incurred where utilities were unmarked and/or undetected, the Consultant will not be held responsible for damages to the site or surrounding areas, utilities/mains or drilling equipment or the cost of any repairs.

8.3 The total amount of all claims the Client may have against the Consultant or any present or former partner, executive officer, director, stockholder or employee thereof under this engagement, including but not limited to claims for negligence, negligent misrepresentation and breach of contract, shall be strictly limited to the amount of any professional liability insurance the Consultant may have available for such claims. Where the Engineer is a corporation or partnership, the Client and Consultants of the Client will limit any claim they may have to the corporation or partnership, without liability on the part of any officer, director, member, employee, or agent of such corporation or partnership.

8.4 No claim may be brought against the Consultant in contract or tort more than two (2) years after the date of discovery of such defect.

9 INDEMNIFICATION FOR KNOWN RISKS

9.1 In the course of our work, we will advise Client of Project risks including vibration, settlement, dewatering, damages associated with construction activity involving earthworks, heavy equipment, excavation, drilling, blasting, trucking and those actions associated with construction of the Project.

9.2 To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, the Consultant and Consultant's officers, directors, partners, employees, agents, or any of them, shall not be liable to the Client or

anyone claiming by, through, or under the Client for any special, incidental, indirect, or consequential damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract, or warranties, express or implied, of the Consultant or Consultant's officers, directors, partners, employees, agents, or any of them, provided that such described risks are within the tolerances that we advise.

10 DOCUMENTS AND REPORTING

- 10.1 All of the documents prepared by the Consultant or on behalf of the Consultant in connection with the Project are instruments of service for the execution of the Project. The Consultant retains the property and copyright in these documents, whether the Project is executed or not. These documents may not be used on any other project without the prior written agreement of the Consultant.
- 10.2 The documents have been prepared specifically for the Project, and are applicable only in the case where there has been no physical alteration to, or deviation from any of the information provided to the Consultant by the Client or agents of the Client. The Client may, in light of such alterations or deviations, request that the Consultant review and revise these documents.
- 10.3 The identification and classification as to the extent, properties or type of soils or other materials at the Project site has been based upon investigation and interpretation consistent with the accepted standard of care in the engineering consulting practice in the location where the Services were performed. Due to the nature of geotechnical engineering, there is an inherent risk that some conditions will not be detected at the Project site, and that actual subsurface conditions may vary considerably from investigation points. The Client must be aware of, and accept this risk, as must any other party making use of any documents prepared by the Consultant regarding the Project.
- 10.4 Any conclusions and recommendations provided within any document prepared by the Consultant for the Client has been based on the investigative information undertaken by the Consultant, and any additional information provided to the Consultant by the Client or agents of the Client. The Consultant accepts no responsibility for any associated deficiency or inaccuracy as the result of a miss-statement or receipt of fraudulent information.

11 JOBSITE SAFETY AND CONTROL

- 11.1 The Client acknowledges that control of the jobsite lies solely with the Client, his agents or contractors. The presence of the Consultant's personnel on the site does not relieve the Client, his agents or contractors from their responsibilities for site safety. Accordingly, the Client must endeavor to inform the Consultant of all hazardous or otherwise dangerous conditions at the Project site of which the Client is aware.
- 11.2 The client must acknowledge that during the course of a geotechnical investigation, it is possible that a previously unknown hazard may be discovered. In this event, the Client recognizes that such a hazard may result in the necessity to undertake procedures which ensure the safety and protection of personnel and/or the environment. The Client shall be responsible for payment of any additional expenses incurred as a result of such discoveries, and recognizes that under certain circumstances, discovery of hazardous conditions or elements requires that regulatory agencies must be informed. The Client shall not bring about any action or dispute against the Consultant as a result of such notification.

12 FIELD SERVICES

- 12.1 Where applicable, field services recommended for the Project are the minimum necessary, in the sole discretion of the Consultant, to observe whether the work or a contractor retained by the Client is being carried out in general conformity with the intent of the Services. Any reduction from the level of services recommended will result in the Consultant providing qualified certifications for the work.

13 DISPUTE RESOLUTION

- 13.1 If requested in writing by either the Client or the Consultant, the Client and the Consultant shall attempt to resolve any dispute between them arising out of or in connection with this Agreement by entering into structured non-binding negotiations with the assistance of a mediator on a without prejudice basis. The mediator shall be appointed by agreement of the parties. If a dispute cannot be settled within a period of thirty (30) calendar days with the mediator, the dispute shall be referred to and finally resolved by arbitration under the rules of the arbitrator appointed by agreement of the parties or by reference to a Judge of the British Columbia Court.

14 CONFIDENTIALITY

- 14.1 During the period of this Agreement, the Consultant shall not use or disclose any Confidential Information to any third parties. The Consultant will only use Confidential Information for the sole purpose of carrying out the service(s) agreed upon unless withholding such information would present a risk to the safety, health and welfare of the public, the protection of the environment, or health and safety within the workplace. Access to the Client's Confidential Information will be restricted to employees who need the information to perform work duties. The Consultant may share photos of the project without disclosing any information not already made public unless the Client refuses consent of photos shared on social media. Unless already made public, the Consultant will not share owner or site address information on social media or with outside parties.

From: Mike M [REDACTED]
Sent: Friday, May 26, 2023 6:16 PM
To: Brad Smith
Subject: Re: NP-BoV-2023.3 (McDonald)

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Brad

Does this work

Justification for Variance 3722 Rum Rd. Pender Island.

I met Brad Smith on Friday May 26, in the morning, on-site at 3722 Rum Rd. Brad suggested that I draft a short description on the relevant deck variance being requested to assist in the justification.

The lot in question is currently 60 percent allocated by the EDPA which limits our building footprint by over half. Add to this the set backs on front, rear and sides of the lot leaves us apx 25-30 percent of the overall lot size to develop. I would consider this a major restriction on lot building, design and hardship, but there more.

As a required process, when putting in a request to build a house on a lot like 3722 Rum Rd., CRD requested that we do a site structural evaluation as part of the build process. We hired Ryzek Geoteck, to complete the building site evaluation.

The Ryzek survey was completed in 2022 as part of the building process required. It was suggested "by Ryzek" that the house be built at the front of the lot, far from the existing rock wall to ensure minimal damage due to rock fall and seismic fall out activities.

To be in compliance with the recommended distancing, the house was placed as close to the front setback lot line as possible.

As a result, the foundation/house was located on the lot in its optimal position. The original design of the house had a wrap around deck on all three sides of the house front facing. That was changed due to the requirements and current location. The house design was changed to accommodate a more temperate design dropping the south facing deck all together and only having a deck on the front and north side of the house.

The issue outstanding is the front portion only which is why we're asking for a minor variance on the front deck only. The deck size would be 2.4 meters total from the house side. The home is currently apx .4 of a meter behind the property line of the house. With the existing location, the encroachment would be minimal in nature.

Hope this helps

Mike

NORTH PENDER ISLAND BOARD OF VARIANCE

NOTICE OF HEARING

NOTICE is hereby given pursuant to Section 541 of the *Local Government Act* to the persons who deem that their interest in property is affected that there will be an ***electronic hearing*** of the North Pender Island Board of Variance held on **June 13, 2023 starting at 2:00 p.m.**

The Board will consider the following appeal: **NP-BOV-2023.3 (McDonald)**

Re: **3722 Rum Road**

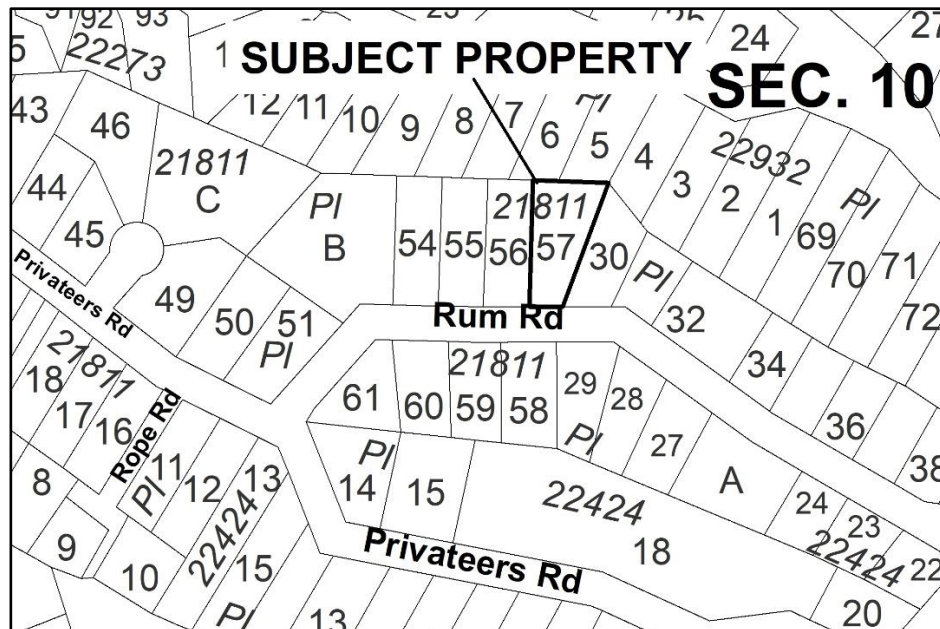
Legally described as: Lot 57, Section 10, Pender Island, Cowichan District, Plan 21811
(PID: 003-360-491)

The purpose of the appeal is to:

Allow for variance to North Pender Island Land Use Bylaw 103 (LUB) respecting the siting, size or dimensions of a building or other structure. The proposed variance is to **Subsection 8.1.5 'Setbacks'** in the **'Rural Residential (RR) Zone'** regulations of the LUB, as shown on the attached Schedule 'A' and specifically as follows:

1. Clause 8.1.5 (1) (a) which states that no building or structure may be located within 7.6 metres of any front or rear lot line, is varied to permit the construction of a new deck within 5.64 metres of the front lot line.

The general location of the subject property is shown on the sketch below:



Any person whose property may be affected by an appeal to a Board of Variance has the right to be heard and give evidence at the hearing, or to be represented by some other person authorized by them in writing to do so.

Written submissions may be delivered as follows:

1. To the Secretary to the North Pender Island Board of Variance, at the office of Islands Trust #200 - 1627 Fort Street, Victoria, BC, V8R 1H8, telephone (250) 405-5194, fax (250) 405-5155, or by email to southinfo@islandstrust.bc.ca, prior to **4:30 p.m., June 6, 2023**.
2. After **4:30 p.m., June 6, 2023**, to the Chair of the North Pender Island Board of Variance at the hearing by emailing to southinfo@islandstrust.bc.ca.

Enquiries or questions should be directed to: Brad Smith, Island Planner at (778) 679-5185, for Toll Free Access, request a transfer via Enquiry BC: In Vancouver 660-2421 and elsewhere in BC 1-800-663-7867; or by fax (250) 405-5155; or by email to: bsmith@islandstrust.bc.ca.

All applications are available for review by the public. Written comments made in response to this notice will also be available for public review. A copy of the notice and additional information including how to connect to the **electronic hearing** can also be viewed on the Islands Trust webpage: <https://islandstrust.bc.ca/event/north-pender-board-of-variance-meeting/>

Brad Smith
Secretary to the North Pender Island Board of Variance

NP-BOV-2023.3 (McDonald)

Schedule A

Site Plan

WEY MAYENBURG

www.weysurveys.com

LAND SURVEYING INC.

#4-2227 James White Boulevard
Sidney, B.C. V8L 1Z5
Telephone (250) 656-5155

BC Land Surveyor's Building Location Certificate On:

Lot 57, Section 10, Pender Island,
Cowichan District, Plan 21811.
(P.I.D. No. 003-360-491)

Civic Address: 3722 Rum Road

This document was prepared for mortgage and municipal purposes
and is for the exclusive use of our client, Mike McDonald.

This document shows the relative location of the surveyed structures
and features with respect to the boundaries of the parcel described above.
This document shall not be used to define property lines or property corners.

Certified Correct this 19th day of January, 2023.



Scale = 1:500

Distances shown are in metres.

Lloyd Eakins
4GB4LB
(Not valid for original signed & sealed)
B.C.L.S.
Digitally signed by Lloyd Eakins 4GB4LB
DN: c=CA, cn=Lloyd Eakins
4GB4LB, o=BC Land
Surveying Inc., email=L.Eakins@weysurveys.com
Date: 2023.01.25 16:01:07
+08'00'

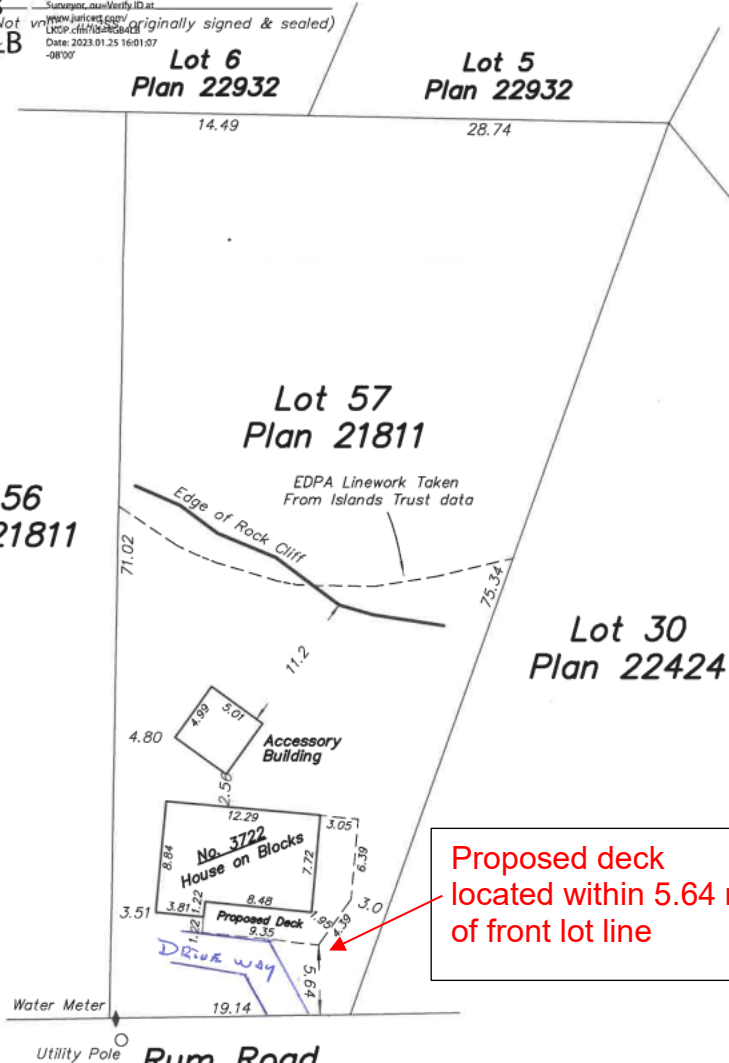
Lot 56
Plan 21811

Lot 6
Plan 22932

Lot 5
Plan 22932

Lot 57
Plan 21811

Lot 30
Plan 22424



Proposed deck
located within 5.64 m
of front lot line

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File No.: 150323b\Crt\LE