



North Pender Island Board of Variance Meeting Agenda

Date: March 23, 2022

Time: 10:00 a.m.

Location: Electronic Meeting

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- 1. CALL TO ORDER**
 - 2. APPROVAL OF AGENDA**
 - 3. MINUTES**
 - 3.1 January 19, 2022 (attached)**
 - 4. UPDATE FROM SECRETARY**
 - 5. APPLICATIONS**
 - 5.1 NP-BOV-2022.1 (Elliott) - Staff Report (attached)**
 - 6. ADJOURNMENT**



DRAFT

North Pender Island Board of Variance Minutes of a Hearing

Date: January 19, 2022
Location: Electronic Meeting (Zoom Webinar)

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

Staff Present: Phil Testemale, Planner 2 – Secretary to the NPI Board of Variance
Robert Kojima, Regional Planning Manager
Shannon Brayford, Recorder
Robin Ellchuk, Planning Assistant (Host)

Applicant Representatives: Chelsea Grant (Applicant),
Charlie Keay (property owner)
Christian Flanagan (Ryzuk Geotechnical Engineering),
Lehna Malmkvist (Professional Biologist)

1. CALL TO ORDER

Chair Zimmerman called the meeting to order at 9:10 am. She acknowledged that the meeting was being held in traditional territory of the WSÁNEĆ people.

2. APPROVAL OF AGENDA

By general consensus the agenda was approved as presented.

4. MINUTES

4.1 August 19, 2021

By general consent the Board of Variance meeting minutes of August 19, 2021 were adopted as presented.

5. UPDATE FROM SCERETARY

Planner Testemale provided brief updates on board business. He reported that Michael Symons had resigned from the Board in December 2021. Planner Testemale also reported that current Board members will be invited to continue for another term, and a call for submissions from those interested in joining the board will be released early in the calendar year.

6. APPLICATIONS

5.1 NP-BOV-2021.2 (Grant) – Staff Report

Planner Testemale provided an overview of the application including the applicant's rationale for requesting the variance and the supporting professional reports. Planner Testemale also outlined letters of support from members of the community and reviewed the legislative requirements for granting the variance.

Chelsea Grant (applicant) provided an overview of the application, its rationale, and the project's compliance with the Green Shores principles. The applicant's presentation included input from the consulting geotechnical engineer and professional biologist, also present.

The Board requested and received information on the following points:

- Events leading to identification of foreshore concern.
- Rationale for applying for a variance.
- Rationale for identifying hardship.

Chair Zimmerman noted that no members of the public were in attendance to make comment.

A discussion was held regarding the height of the south portion of the shoreline protection and alternative options should the application be denied.

NP BOV-2022-001

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-2021.2 (Grant) as presented in Schedules 'A', 'B', 'C' and 'D' of the NP-BOV-2021.1 Notice of Hearing, with the exception that the boulder wall height as shown in 'Section A-A' on Schedule 'C' will be no higher than the neighbour's wall to the south.

CARRIED

6. ADJOURNMENT

By general consent the meeting was adjourned at 10:45 a.m.

Recorder

Date



DATE OF MEETING: March 23, 2022

TO: North Pender Island Board of Variance

FROM: Phil Testemale, Planner 2
Southern Team

CC: Kim Stockdill, Island Planner
Stephen Baugh, Planner 2

SUBJECT: Board of Variance Application
Applicant: Scott Elliott & Sarah Cotton-Elliott
Location: 37182 Schooner Way

REPORT SUMMARY

The purpose of the report is for an appeal to the Board of Variance to vary the North Pender Island Land Use Bylaw No. 103, 1996 (LUB) for the setback to a front lot line for an existing dwelling on the subject property.

The proposed variances are to **Subsection 8.1.5 'Setbacks'** in the '**Rural Residential (RR) Zone**' regulations of the LUB, as shown in Figure 1 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 an existing **Building (Dwelling)** within 7.0 metres (23 ft.) 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

- The encroaching portion (entrance foyer) of the dwelling has been in place since 1979.
- Removing the entrance to conform to the setback regulation would entail costly structural alterations to the front wall with functional implications, or shifting the building footprint back would be cost prohibitive and impractical.

The application is the result of a Preliminary Building Permit Review for additions and renovations to the existing 401 m² (1972 ft²) dwelling built in 1973 on the 0.28 ha (0.7 ac) property. The legal survey provided (2009) revealed that the front entrance foyer addition constructed in 1979 by a previous owner encroaches by 0.6 m (2.0 ft.) into

the front lot line setback (Figure 2). As such the dwelling is illegal non-conforming and any addition or alteration requires that it be legalized either by alteration or by an approved variance.

The proposed 190 m² (2047 ft²) additions add another floor and are primarily to the west and rear, and they do not add to the non-conformity (Attachments 2.6 to 2.8). The only structural alteration to the foyer portion of the building is for a canopy over the doorway on the west side which would be fully within the required setback.

The applicants provided an explanatory letter with further information and background that is Attachment 3. Therein, the above rationale of the cost and functional implications of removing the foyer to conform are further explained.

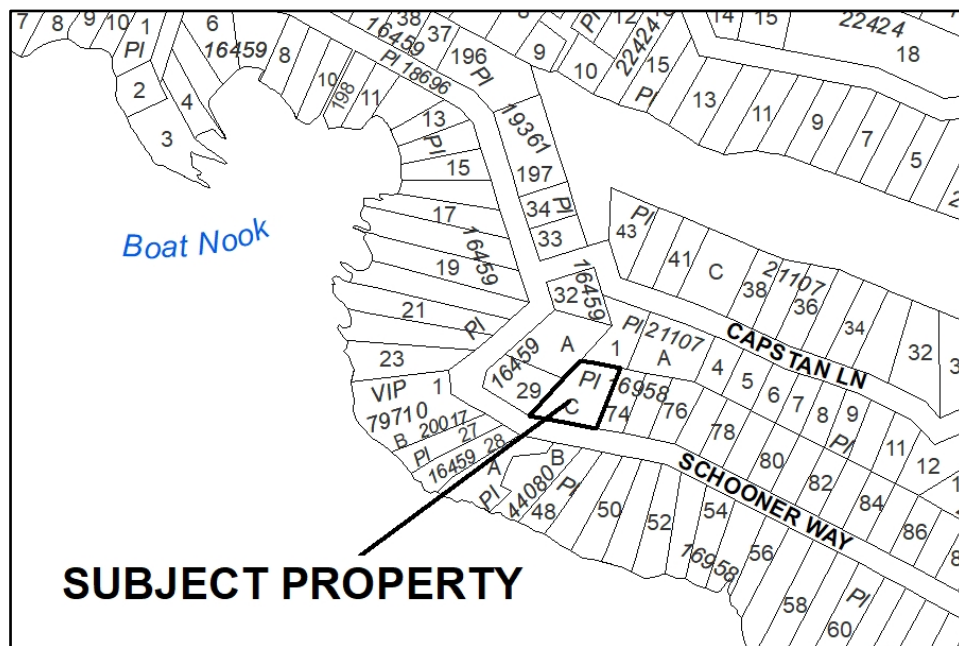
There are no sensitive ecosystems on, or in proximity to, the property. The property is within an identified local area for a federally protected Species at Risk (Sharp-tailed snake – Attachment 2.4). Further site context information is provided in Attachment 1.

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 building to conform.

The notice mailed to all adjacent neighbours and the applicant is Attachment 4.

Staff visited the property on February 15, 2022 (Attachment 2.9).

Figure 1 – Subject Property



ANALYSIS

Official Community Plan:

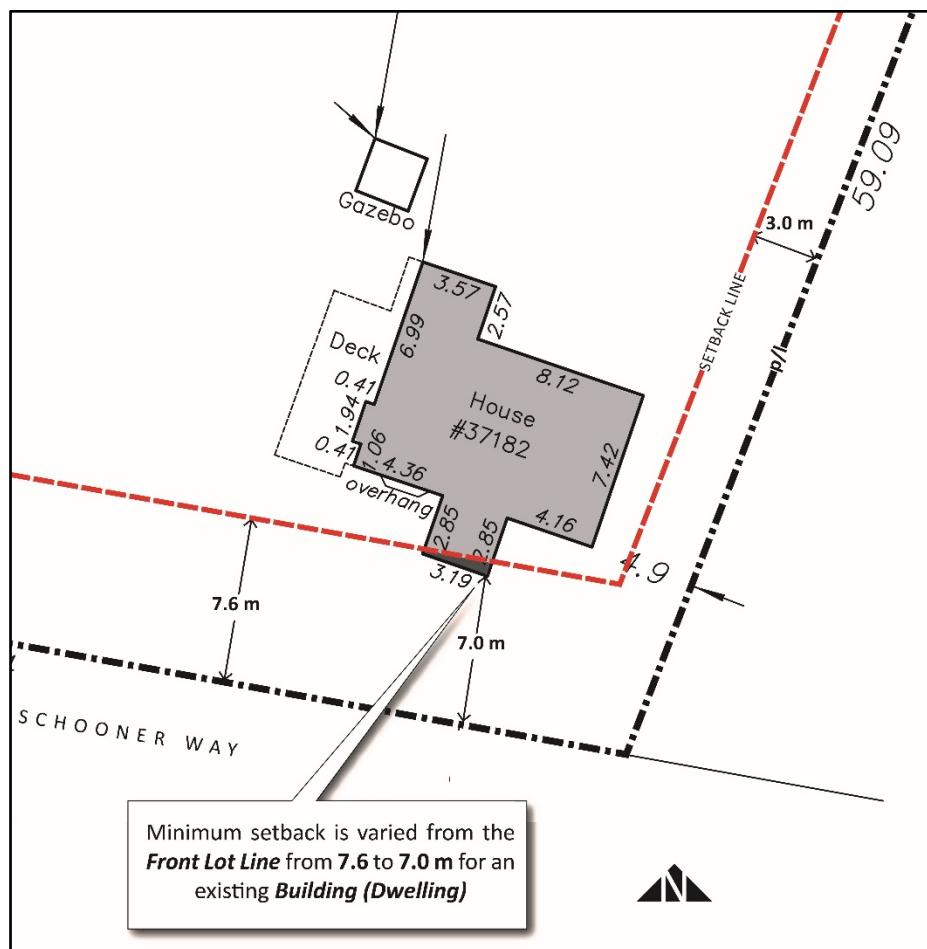
The property is designated as **RR (Rural Residential)** in the North Pender Island Official Community Plan No. 171, 2007 (OCP).

There are no **Development Permit Areas** designated on the subject property.

Land Use Bylaw

The property is zoned **Rural Residential (RR)** in the North Pender Island Land Use Bylaw No. 103, 1996. The zone permits the residential uses on the property.

Figure 2 – Site Plan



Issues and Opportunities

Impact in Neighbouring Properties

As the foyer addition has been in place since 1979 and the only alteration to that portion of the dwelling being the canopy roof within the setback, 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 Attachment 3.

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 natural boundary 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 4). 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.

The applicant reports that he has spoken to his immediate and other neighbours about the renovation plans and required variance.

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 small portion of the building that has been in place since 1979.

- The natural environment would not be impacted as the variance is for an existing structure in a previously 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.

Submitted By:	Phil Testemale, Planner 2	March 14, 2022
Concurrence:	Robert Kojima, Regional Planning Manager	March 14, 2022

ATTACHMENTS

1. Site Context
2. Maps, Plans, Photographs
3. Applicant Summary Letter
4. Notice

ATTACHMENT 1 – SITE CONTEXT

LOCATION

Legal Description	Lot C (DD J112122), Section 8, Pender Island, Cowichan District, Plan 16958.
PID	004-102-240
Civic Address	37182 Schooner Way

LAND USE

Current Land Use	Rural Residential
Surrounding Land Use	Rural Residential

HISTORICAL ACTIVITY

File No.	Purpose
NP-BP-2021.57	Renovation of dwelling (pending subject application)

POLICY/REGULATORY

Official Community Plan Designations	RR (Rural Residential) in the North Pender Island Official Community Plan No. 171, 2007 (OCP). There are no Development Permit Areas designated on the subject property (Attachment 2.2).
Land Use Bylaw	The property is zoned Rural Residential (RR) in the North Pender Island Land Use Bylaw No. 103, 1996 (Attachment 2.1)
Other Regulations	N/A
Covenants	N/A
Bylaw Enforcement	N/A

SITE INFLUENCES

Islands Trust Conservancy	The proposal has no implications for the Island Trust Conservancy.
Regional Conservation Strategy	The proposal has no implications for the Regional Conservation Strategy.
Species at Risk	Sharp-tailed snake (Public SAR) – Attachment 2.4
Sensitive Ecosystems	None on TAPIS – Attachment 2.3
Hazard Areas	There are no areas of steep slope hazard on the property – Attachment 2.5
Archaeological Sites	Remote Access to Archaeological Data (RAAD) information indicates there are no archaeological sites nor occurrences of high archaeological potential on the property. Notwithstanding, the applicant has been sent the Islands Trust Chance Find Protocol and provincial guidance on archaeological sites. By copy of this report, the owners and applicant should be aware that there unrecorded archaeological material that is protected under the <i>Heritage</i>

	<i>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. The applicant has also been sent the Islands Trust Chance Find Protocol and provincial guidance on archaeological sites.
Climate Change Adaptation and Mitigation	There would be no potential GHG emission changes resulting from approval as the encroaching portion is pre existing. The elevation above sea level and aspect of the property limit potential impacts on proposed development from anticipated or possible climate change induced hazards.

ATTACHMENT 2 – MAPS, PLANS, DRAWINGS, PHOTOGRAPHS

2.1 ORTHOPHOTO WITH ZONING



2.2 DPAs



2.3 SENSITIVE ECOSYSTEM MAPPING (TERRESTRIAL)



2.4 SAR (PUBLIC- SHARP-TAILED SNAKE)



2.5 STEEP SLOPE MAPPING



2.6 RENDERINGS (PROPOSED RENOVATION)

ADDITION & RENOVATION

37182 SCHOONER WAY, PENDER ISLAND BC

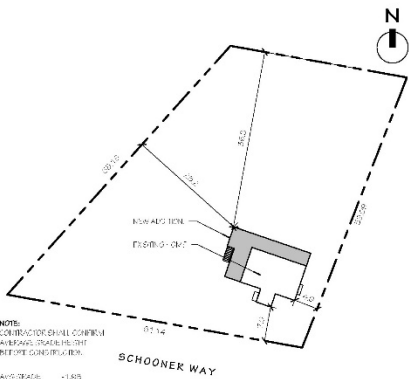


3 RENDERING 2
NOT TO SCALE



NOTE: RENOVATION SHOWN IN LIGHT GRAY. EXISTING STRUCTURE SHOWN IN DARK GRAY. NOT FOR CONSTRUCTION.

2 RENDERING 1
NOT TO SCALE



NOTE:
CONTRACTOR SHALL CONFIRM
AVERAGE GRADE HEIGHT
BEFORE CONSTRUCTION.

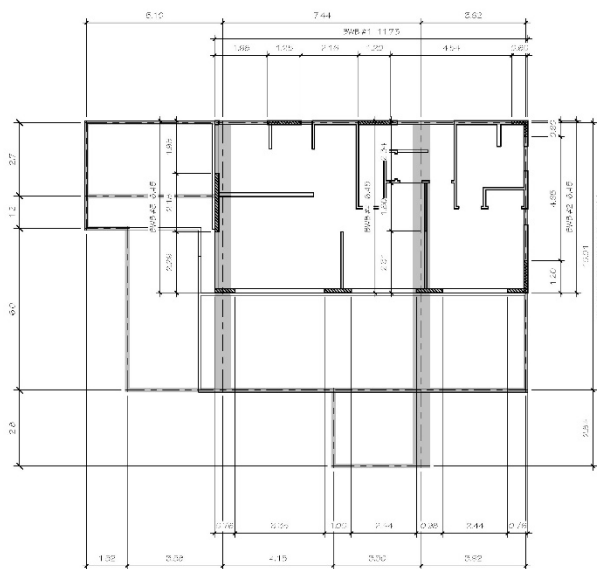
AVG. GRADE: +1.85
BASELINE: 0.00
TOP OF GRADE: +1.85
BUILDING HEIGHT: 8.00

1 SITE PLAN
1:500

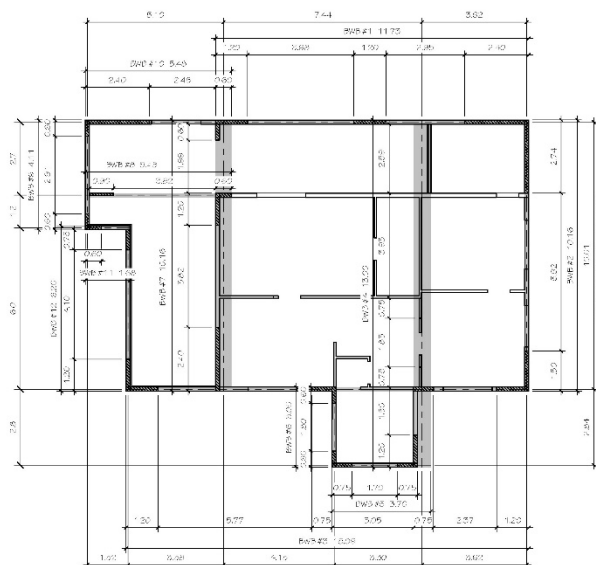
2.7 ELEVATIONS (PROPOSED RENOVATION)



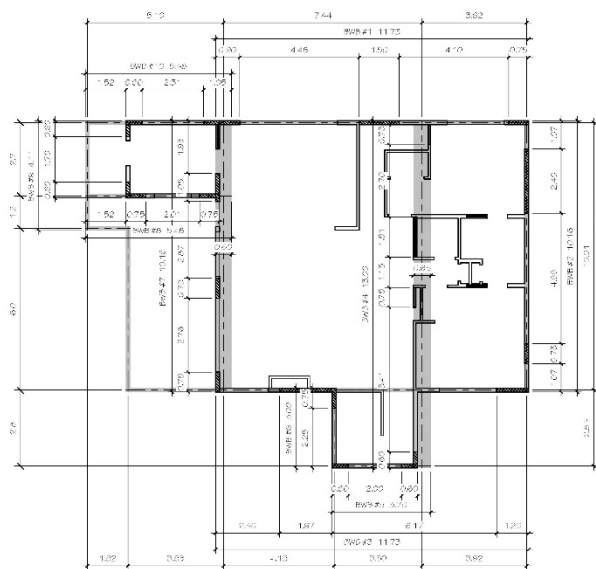
2.8 FLOOR PLANS (PROPOSED RENOVATION)



2 UPPER FLOOR PLAN
1/32" = 1'-0"



3 LOWER FLOOR PLAN
1/32" = 1'-0"



1 MAIN FLOOR PLAN
1/32" = 1'-0"

2.9 PHOTOGRAPHS

One: Front of subject dwelling from Schooner Way



Two: Entrance addition

2.6 PHOTOGRAPHS (CONT'D)



Three: Entrance addition from east lot line



Four: Entrance addition from west

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 **March 23, 2022, starting at 10:00 a.m.**

The Board will consider the following appeal: **NP-BOV-2022.1 (Elliott)**

Re: **37182 Schooner Way**

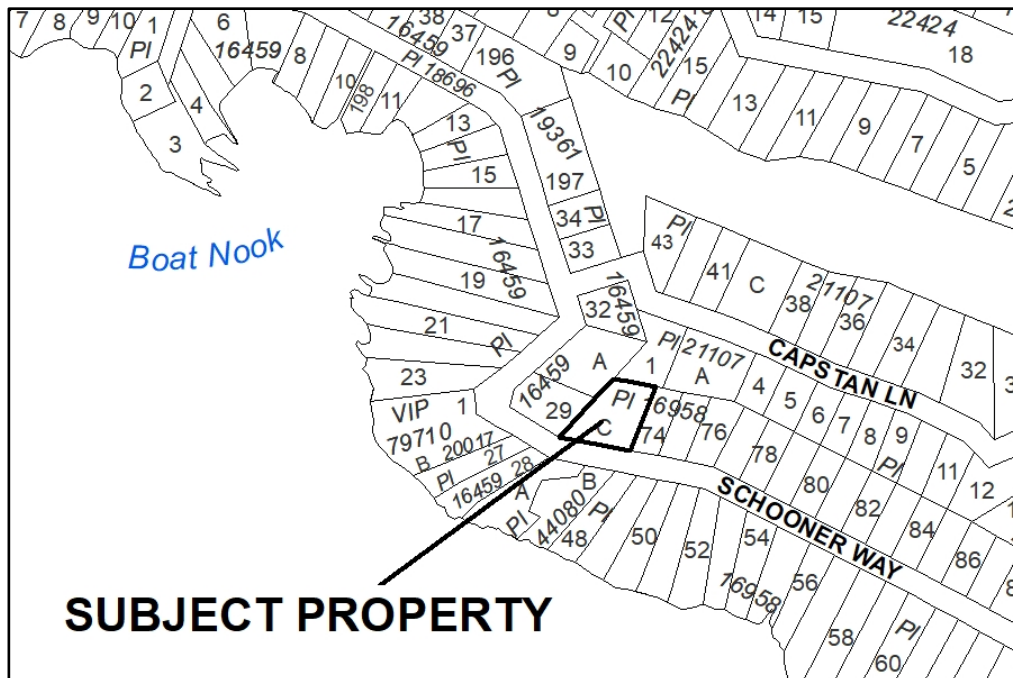
Legally described as: Lot C (DD J112122), Section 8, Pender Island, Cowichan District, Plan 16958.
(PID: 004-102-240)

The purpose of the appeal is to:

Allow for variances to North Pender Island Land Use Bylaw 103 (LUB) respecting the siting, size or dimensions of a building or other structure. The proposed variances are to **Subsection 8.1.5 'Setbacks'** in the **'Rural Residential (RR) Zone'** regulations of the LUB, as shown on the attached Schedule 'A' and 'B', 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 an existing **Building (Dwelling)** within 7.0 metres (23 ft.) 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:

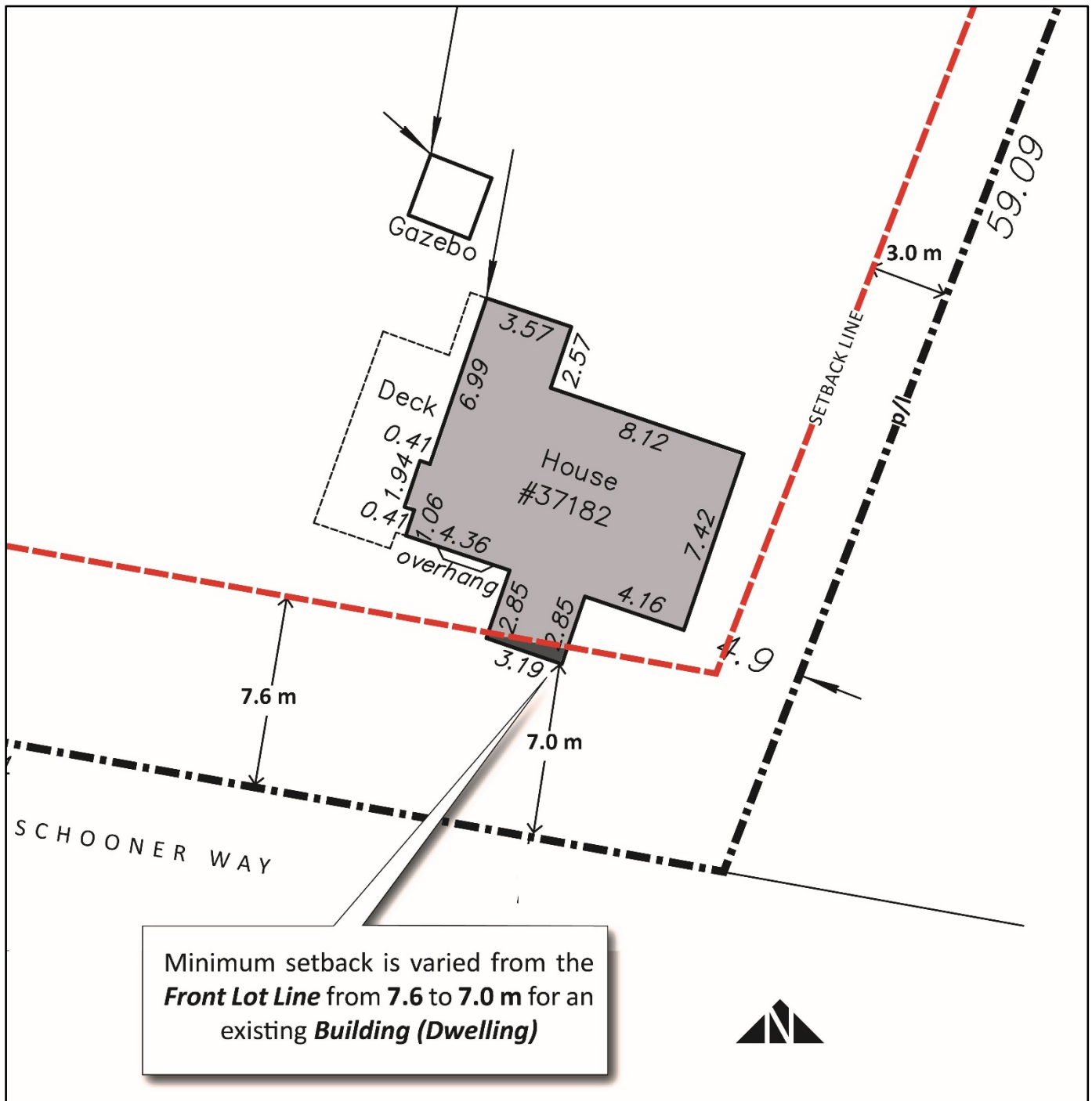
1. To the Secretary to the North Pender Island Board of Variance, at the office of Islands Trust #200 - 1627 Fort Street, Victoria, BC, V8R 1H8, telephone (250) 405-5170, fax (250) 405-5155, or by email to southinfo@islandstrust.bc.ca, prior to **4:30 p.m., March 15, 2022**.
2. After **4:30 p.m., March 15, 2022**, 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: Phil Testemale, Planner 2 at (250) 405-5170, 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: ptestemale@islandstrust.bc.ca.

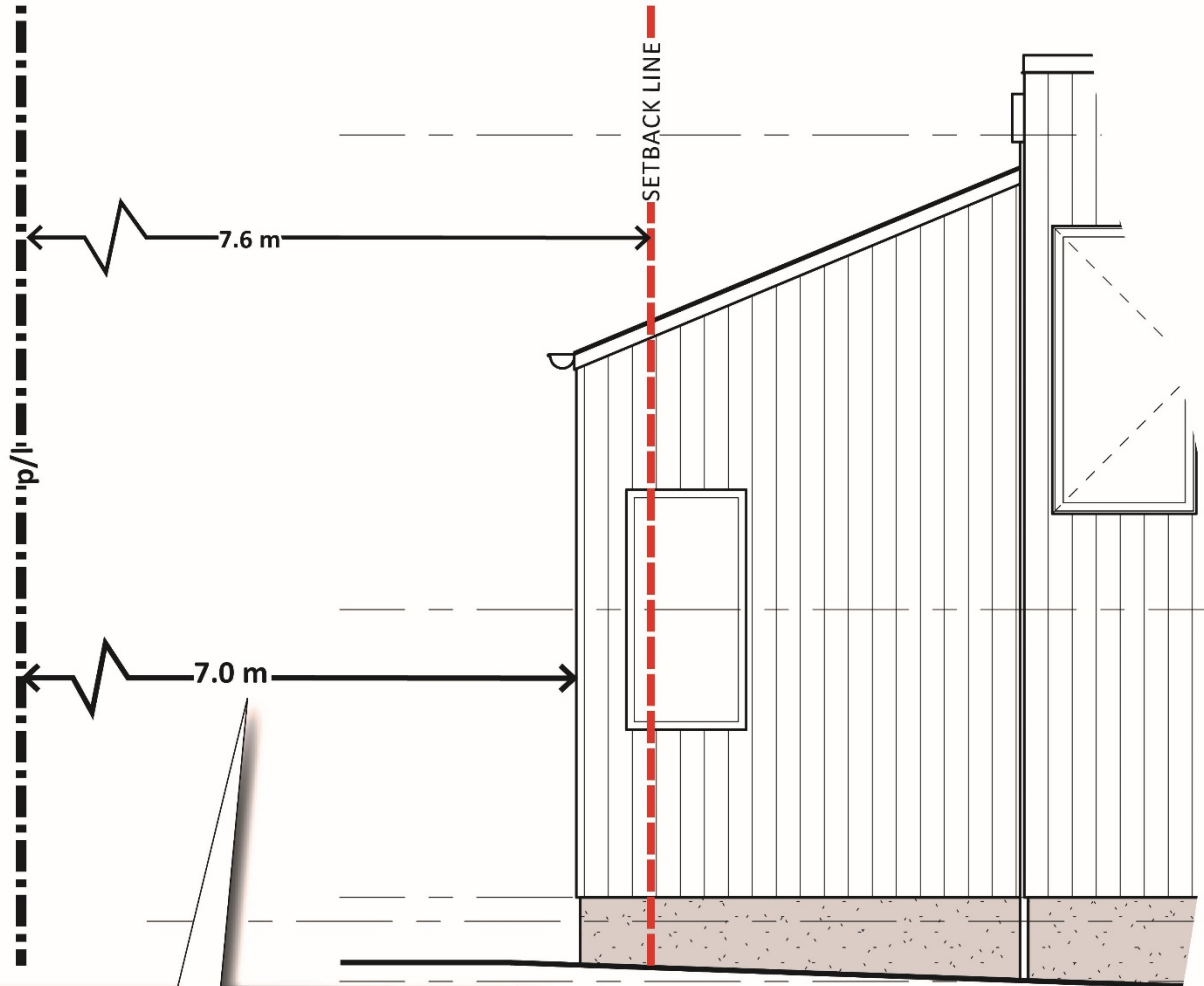
All applications are available for review by the public. Written comments made in response to this notice will also be available for public review. A copy of the notice and additional information including how to connect to the **electronic hearing** can also be viewed on the Islands Trust webpage: 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

Phil Testemale
Secretary to the North Pender Island Board of Variance

NP-BOV-2022.1 (Elliott)
Schedule A
Site Plan



NP-BOV-2022.1 (Elliott)
Schedule B
East Elevation



Minimum setback is varied from the
Front Lot Line from **7.6 to 7.0 m** for an
existing **Building (Dwelling)**

East Elevation

Attachment 4

GORDON SCOTT ELLIOTT

FEBRUARY 3, 2022

37182 SCHOONER WAY, PENDER ISLAND BC, V0N 2M2

RE: ORDER-BOARD OF VARIANCE

Folio NP-BP-2021.57

Thank you for considering our application for a variance related to our front setback non-conformity. Our home at 37182 Schooner Way, Pender Island, was built circa 1973, with an addition in 1979. The addition provided an entryway into the front of the house but encroached into the front setback by 0.6 meters. We are currently 7.0 meters from the setback as shown on the site survey included.

We are applying for a building permit application for an addition to the rear of the house. We have 3 children and are looking to create a more functional living space. I run a small contracting business and require more shop and storage space. My wife Sarah works from home in-part as a communications consultant and requires an office.

Our plans and structural engineering do not have any provision for the alteration of the entrance or front wall (save the bay window removal.) I am asking for a variance based upon the hardship of:

- If we are to remove the existing structure to conform, we will be without a functional front entry. To accommodate an entry, we would have to push the footprint back or make large-scale changes to the front wall and foundation of the existing house, at great expense and additional time.
- We are currently renting another home in order to facilitate the renovation and the time lost in additional work, redesign and engineering could extend beyond our rental agreement.
- As of now, the reno does not require us to remove any trees or clear any more of the lot. If we are to push the footprint back or change the shape, we are looking at removing trees or clearing green space.

ADDITIONAL INFORMATION

- Existing and proposed uses are primarily residential. My wife works in communications from home in-part, and I own a small plumbing and gas business which I operate from my home. Tools and materials are stored here, and I keep an office.
- There is a single residence on the property, and a small gazebo on a pad. The gazebo is to be removed. These are shown on the included site plan.
- We are planning an addition at the rear of the house and have been speaking to a planner (Stephen Baugh) Folio NP-BP-2021.57. Apart from the front setback non-conformity, we have no zoning or covenant conflicts.
- The area of the subject property is .68 acres as per BC Assessment.

I have included a floorplan and elevation drawing of the existing home, a site survey, and the proposed addition building plans which include:

1. Location, dimensions and floor area of existing and proposed buildings/structures.
2. Setbacks of existing and proposed buildings.
3. Elevation drawings.
4. Deck is shown in site survey.
5. Magic Lake Water and Sewer connection (CRD) and service lines on property, driveway and existing parking, and deck area shown on site survey and plans.

There are no:

1. Watercourses: ditches, lakes, or wetlands on the property.
2. Covenant areas, easements, or utility corridors (BC Hydro pole is outside of setback.)
3. Cliff areas or ocean adjacent.

Thank you again for your consideration,

Scott Elliott & Sarah Cotton-Elliott