



## North Pender Island Board of Variance Meeting Agenda

**Date:** September 13, 2023

**Time:** 10:00 a.m.

**Location:** Electronic Meeting

1. CALL TO ORDER
2. APPROVAL OF AGENDA
3. MINUTES
  - 3.1 July 26, 2023 (attached)
4. UPDATE FROM SECRETARY
5. APPLICATIONS
  - 5.1 NP-BOV-2023.4 (Jones) - Staff Report (attached)
6. ADJOURNMENT



# DRAFT

## North Pender Island Board of Variance Minutes of a Hearing

**Date:** July 26, 2023  
**Location:** Electronic Meeting (Zoom Webinar)

**Members Present:** Andrew MacLean, BOV Member (Acting Chair)  
Bert Hol, BOV Member

**Staff Present:** Brad Smith, Island Planner  
Sarah Shugar, Recorder

**Applicants:** Heather Cameron  
Kevin Zembik

These minutes follow the order of the agenda although the sequence may have varied. The electronic meeting was live streamed, recorded, and made available for public viewing.

### 1. CALL TO ORDER

Planner Smith called the meeting to order at 11:02 a.m.

**By general consent**, the Board of Variance delegated Member MacLean to be Acting Chair for the meeting.

### 2. APPROVAL OF AGENDA

**By general consent**, the agenda was approved as presented.

### 3. MINUTES

#### 3.1 North Pender Board of Variance Minutes Dated June 13, 2023 (for Adoption)

**By general consent**, the Board of Variance meeting minutes of June 13, 2023 were adopted as presented.

### 4. UPDATE FROM SECRETARY

Planner Smith reported the Board of Variance members attended a site visit at 1604 Chart Drive, Pender Island on July 24, 2023.

## 5. APPLICATIONS

### 5.1 NP-BOV-2023.1 (Cameron) - Staff Report

Planner Smith presented a summary of the staff report dated July 26, 2023 regarding an appeal to the Board of Variance to vary the North Pender Island Land Use Bylaw No. 224, 2023 (LUB) to permit the construction of a new dwelling and decks along with associated retaining walls within the 15 metre setback from the natural boundary of the sea, and to legalize two existing concrete septic tanks currently sited within this same 15 metre setback. 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.

Applicants Cameron and Zembik spoke to the application.

In discussion, the following items were noted:

- Concern was expressed regarding the siting of the septic tanks and the potential for impacts to the ocean. Concern was expressed whether a septic pump out truck could reach the septic tanks at the current proposed location. The applicant advised the septic tanks could potentially be moved and plastic tanks could be installed. The applicant advised the neighbor has offered to use their driveway to access the septic tanks. It was also added that the preferred design for septic tanks is to be downgrade from the house due to power outages etc. Concern was expressed regarding the age of the septic tanks.
- It was noted that retaining walls are used to hold back soil although would not provide protection from runoff into the ocean. The existing retaining wall looks like it may need to be raised to contain the sand in the disposal field. Planner Smith advised the applicant could ask Ryzuk Engineering to design an engineered retaining wall in between the engineered portions of the retaining wall.
- Concern was expressed that there are too many unknown variables in the application at this point including the deck design and whether the current house design is possible on this building site. The applicants advised the cantilevered deck section would be approximately 0.6 m wide
- Concern was expressed that the 15 metre setback is not drawn consistently on the site plan in respect of the current natural boundary of the sea and there may be more buildable area than is shown on the site plan. There was a question how the setback line was generated. The applicants advised if the setback mirrored the shape of the boundary of the sea it would not have much of an impact on the building site setbacks.
- Support was expressed to move the building site further from the boundary of the sea and closer to the road. The applicants advised they removed that option from the variance but will reconsider.
- There was a question regarding the overall height of the proposed building and that the drawing appears to be approximately 10-11 m tall. Planner Smith advised the average height as measured by the bylaw provision appears under the permitted height of 9 meters. The applicants reaffirmed the designer confirmed the height is allowed when the bylaw formula is applied.
- Planner Smith recommended the applicants seek input from the Capital Regional

- District regarding the building plans and requirements for the retaining walls
- The applicants asked if they should look into the option to reduce the setback from the road. A BOV member expressed support for considering reducing the setback from the road to allow more space from the boundary of the sea
  - There was a question regarding the storage shed. Planner Smith advised all 'permanent' structures are subject to zoning and are considered as a building and calculated in the total lot coverage.
  - Support was expressed that the applicants have done a lot of work to address the concerns. The BOV would like to work with the applicants and expressed that the requested variances are relatively minor although more certainty is needed regarding whether the proposed building design is feasible on the site.

**NP-BOV-2023-02**

**It was Moved and Seconded,**

That the North Pender Board of Variance defer a decision on application NP-BOV-2023.1 (Cameron) and seek the following additional information from the applicant:

- a) Clarity from the Capital Regional District Building Inspection department and Ryzuk Engineering on what is the best approach to dealing with the existing non-engineered portion of the retaining wall; and
- b) Clarity from the Capital Regional District Building Inspection department on whether the proposed building design and siting is generally feasible from a building inspection perspective.

**CARRIED**

**6. ADJOURNMENT**

**By general consent,** the meeting was adjourned at 12:25 p.m.

\_\_\_\_\_  
**Recorder**

\_\_\_\_\_  
**Date**



File No.: NP-BOV-2023.4 (Jones)

DATE OF MEETING: September 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: Colleen and Thomas Jones  
Location: 1205 Bridges Road, Pender Island

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## 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. 224, 2023 (LUB) to permit modifications to the existing legal non-conforming dwelling to enclose part of the covered deck that is within the house roofline and is located within 0.79 m of an interior side 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

As further described in the letter submitted by the applicant and included as Attachment 1, the rationale for the requested variance is summarized as follows:

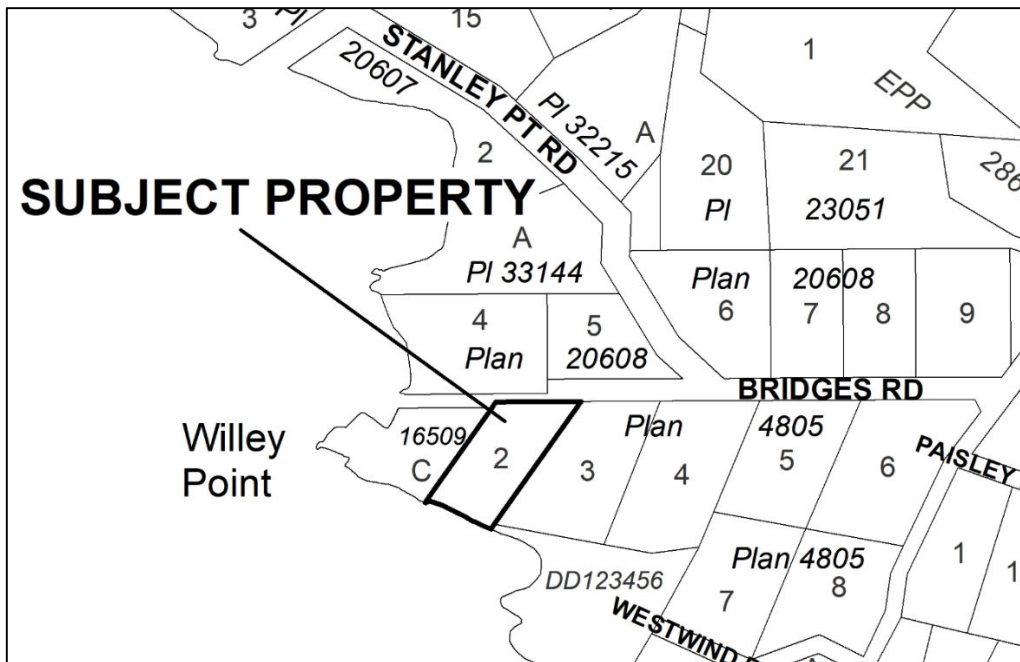
- Goal is to renovate home to age in place. Current hallways and doorway are not wide enough to enable accessibility. Current master bedroom and bathroom are too small for a walker;
- Renovation will improve energy efficiency and ensure safety and get away from use of fuel oil for heating;
- Parameters associated with property (topography and terrain, existing house siting, location of mature trees and herbaceous DPA, current floorplan) make the proposed renovation the best option;
- Need to keep limited machine access on south side of house intact to access septic system as required;
- Neighbours are supportive and sight lines will not be impacted.

## BACKGROUND

The house was built in 1949 prior to current bylaws. The northwest corner of the house is legally non-conforming. A BoV application was submitted by the applicants June 30, 2023 seeking variance to allow for modifications to the existing legal non-conforming portion of the dwelling to enclose part of the deck that is within the existing house roofline to allow for aging in place.

The property is located at 1205 Bridges Road, North Pender Island (Figure 1). There is the one legal dwelling located on the property and a few small accessory structures.

**Figure 1 – Subject Property**



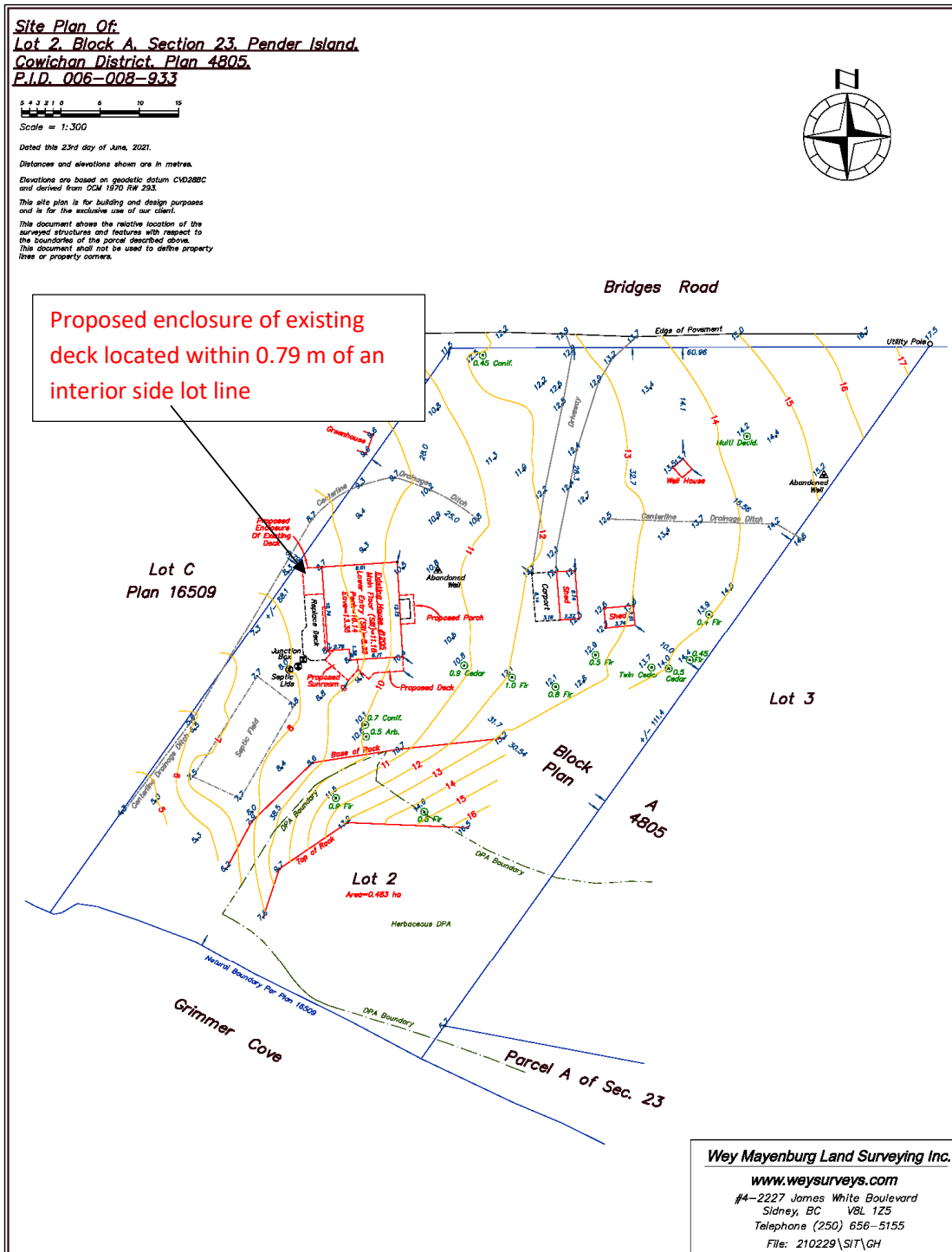
Staff visited the property on September 5, 2023. Additional site context is included in Attachment 2 and maps and design drawings are included in Attachment 3. Two letters of support from neighbours are included as Attachment 4.

## REQUEST FOR VARIANCE

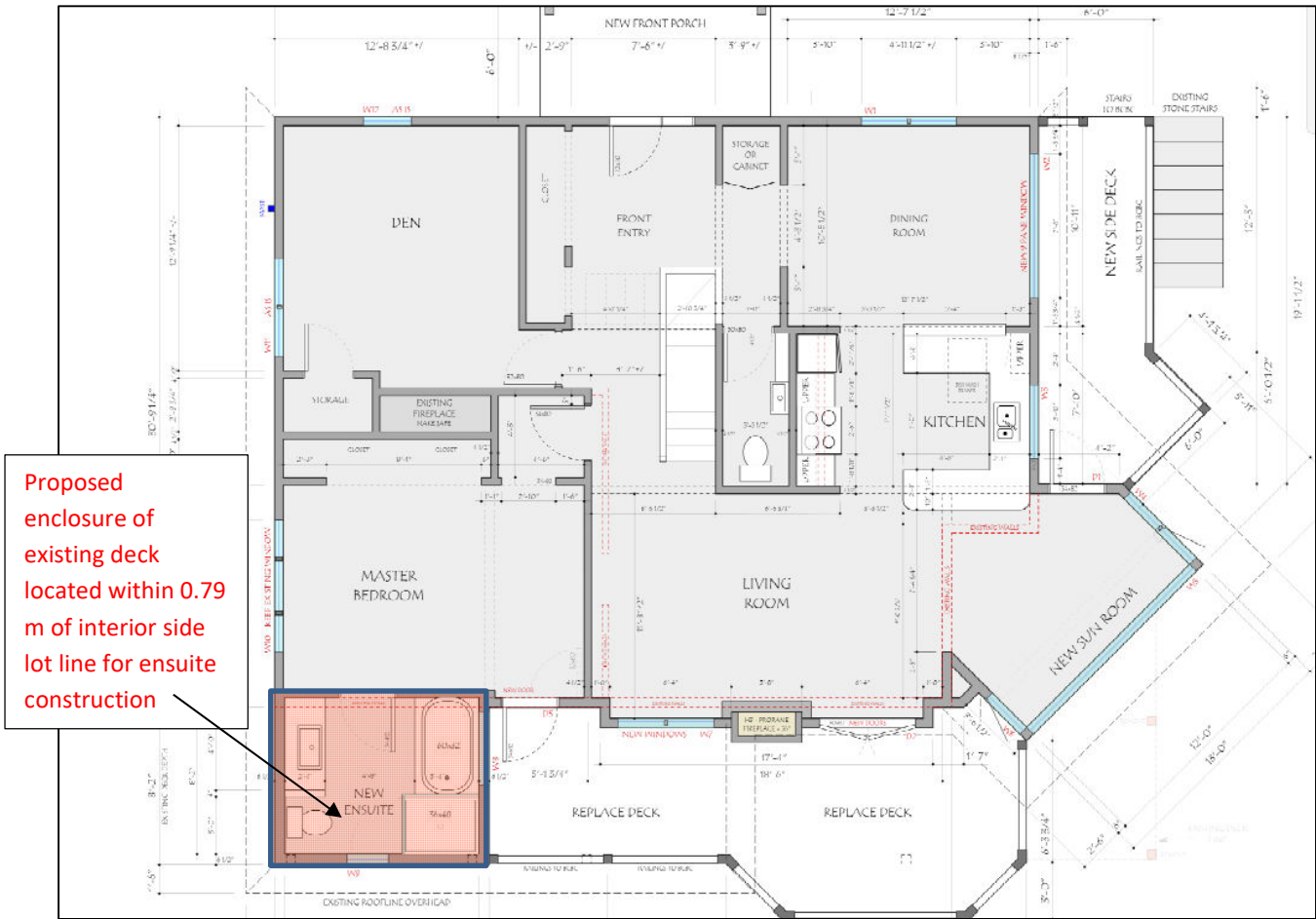
The proposed variance is to Subsection 5.2 in the ‘Rural Residential 2’ regulations of the LUB, specifically as follows:

- 1) Clause 5.2 (1)(b) which states that *the minimum setback for any building or structure shall be 3 metres from any interior side lot line* is varied to allow for modifications to the existing legal non-conforming structure to enclose part of the covered deck that is within the existing house roofline and is located within 0.79 m of an interior side lot line.

Figure 2. Site Plan showing Proposed Variance



**Figure 3. Design Plan showing Proposed New Layout and Area of Variance (in Red)**



Site photos are provided below for additional context.



**Photo 1. Broad view of back of House**



**Photo 2. Corner of Existing Deck to be Closed-in**



**Photo 3. Top of Deck**



**Photo 4. Deck from Front of House**



**Photo 5. House from Road**

## **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 is a small portion of the property within DPA 2 – Herbaceous – the proposed development is not located within or near the DPA.



### ***Land Use Bylaw***

The property is zoned **Rural Residential 2 (RR2)** in the LUB. The current zoning allows for the existing residential uses on the property and no siting issues were identified with existing accessory structures or buildings.

### ***Issues and Opportunities***

#### ***Impact in Neighbouring Properties***

As the proposed development is to enclose the already existing covered deck, and the area the deck is located in within the side lot setback is already well screened from the immediately adjacent neighbour, staff are of the view that the proposed variance would have minimal impacts to site lines or other enjoyment and use of the adjacent properties.

#### ***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 the letter included as Attachment 1.

### ***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 interior side lot setback 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, zero (0) letters have 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 September 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.

There is a registered archaeological site noted on the marine facing portion of the property. Although planned development is within the existing development footprint, the applicant has been provided with guidance on their obligations and procedures if archaeological material that is protected under the Heritage Conservation Act is encountered during development. The applicant has also been sent the Islands Trust Chance Find Protocol.

### **Statutory Requirements**

#### ***Legislative Context***

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 and all responses are provided to the BoV.
- The proposed variance is of a minor nature as it is for development to occur entirely within an already legally non-conforming covered deck space and no other variances are required.
- The natural environment would not be significantly impacted as the variance is for development 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	September 6, 2023
Concurrence:	Robert Kojima, Regional Planning Manager	September 6, 2023

**ATTACHMENTS**

1. Rationale Letter from Applicant
2. Site Context
3. Maps, Plans and Drawings
4. Applicant letters of Support
5. Notice

**Description of Required Variance and Hardship Reasons**  
**1205 Bridges Road Pender Island**

- Request to wall in a part of existing deck (a portion of which is legally nonconforming) under the existing house roofline

Our home was built in 1949 prior to current bylaws. The northwest corner of our home is legally non-conforming. It is located within the current bylaw setback. We are applying to the Board of Variance as we need to make a minor change to enclose a part of the deck that is within the house roofline.

Our goal is to renovate our home to plan for aging in place. This is extremely important as four immediate close family members have been affected by a neurological hereditary genetic condition that affects mobility so one of us is at high risk. Currently early symptoms are being observed.

Our main hallway does not meet the building code and most of the doorways in the home are 28" wide or less. This constrains the movement of people and limits the moving of furniture and appliances. The current master bedroom is too small for a walker, and the size of the bathroom is also too small. The bathroom opening is only 26 inches. The new design widens hallways and doorways to standard widths and turns the current living room into a larger master bedroom with its own ensuite attached. To make this work, we require that a portion of the existing covered deck be enclosed to become the ensuite.

Currently, we also need to improve overall energy efficiency and ensure safety in hot and cold weather. We have no insulation in the attic and about 75% of the exterior main floor walls are insulated with old newspapers. Our house uses 217% more energy to heat than the average similar sized home. We burn fuel oil which we will discontinue. While we reno, it makes sense to make our home accessible and energy efficient at the same time.

Due to the parameters associated with our property (i.e., topography and terrain, siting of the house, the location of mature trees, the DPA, and the current floorplan) the proposed enclosure under our existing roofline is the best way to make the necessary changes. Of note is that we need to keep the limited machine access on the south side of the house intact. This is to facilitate access to maintain and replace the septic system as required.

We have had numerous conversations with our neighbours as we have been formulating our plans. Our proposed change within the setback does not alter our footprint or our roofline and would not impact existing site lines or affect the use or enjoyment of either of our neighbors' properties. We are enclosing brief letters from our neighbours to the east and to the west. We have not had contact with owners of the house across the street as the house has not been occupied for over 7 years. Their sight lines will not be affected by our proposed plans.

The benefits of the proposed changes are numerous and will be helpful to us as well as to future owners of our property.

## ATTACHMENT # – SITE CONTEXT

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### LOCATION

Legal Description	Lot 2, Block A, Section 23, Pender Island, Cowichan District, Plan 4805
PID	006-008-933
Civic Address	1205 Bridges Road, North Pender Island BC

### LAND USE

Current Land Use	Rural Residential 2
Surrounding Land Use	Rural Residential 2, Water 1

### HISTORICAL ACTIVITY

File No.	Purpose
NP-BOV-1996.3	None

### POLICY/REGULATORY

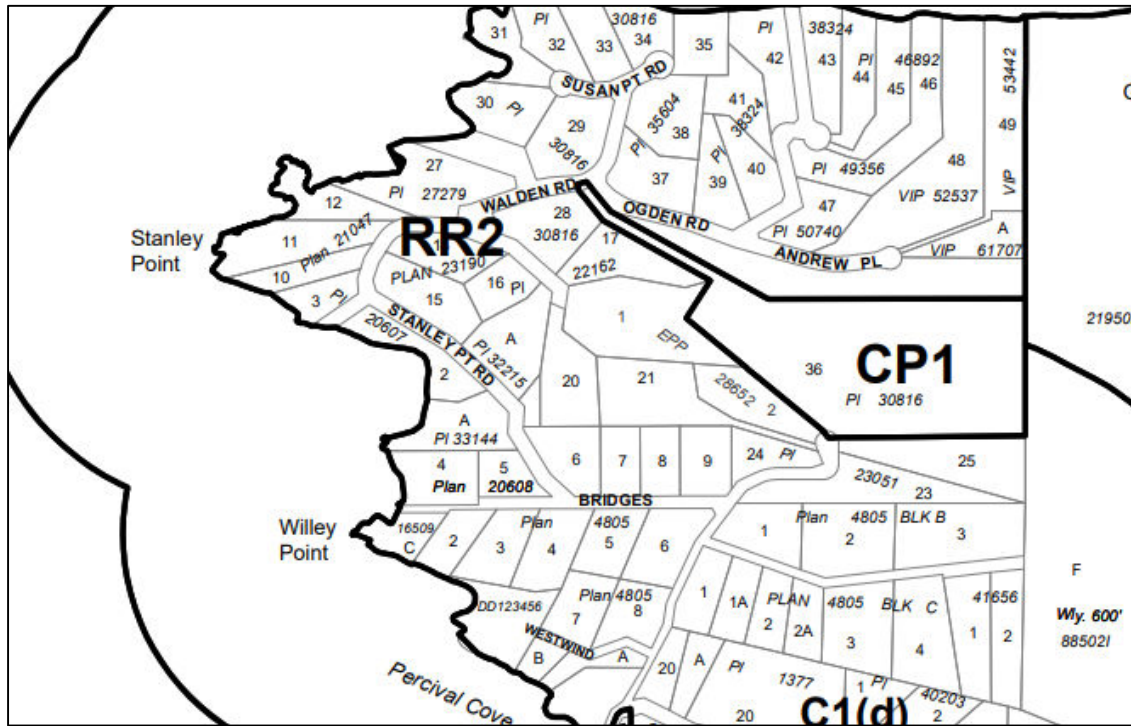
Official Community Plan Designations	The property is designated as Rural Residential 2 (RR2) There is a small portion of the property within DPA 2 – Herbaceous – the proposed development is not located within or near the DPA.
Land Use Bylaw	The property is zoned Rural Residential 2(RR2)
Other Regulations	None
Covenants	None
Bylaw Enforcement	None

### SITE INFLUENCES

Islands Trust Fund	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	Portion of parcel within larger sharp-tailed snake zone – adjacent marine zone designated Critical Habitat for Southern Resident Orca
Sensitive Ecosystems	Oregon grape ecological community
Hazard Areas	Moderate/risk steep slope on portion fronting ocean, no development proposed in vicinity of steep slope
Archaeological Sites	There is a registered archaeological site noted on the marine facing portion of the property. Although planned development is within the existing development footprint, The applicant has been provided with guidance on their obligations and procedures if archaeological material that is protected under the <i>Heritage Conservation Act</i> is encountered during development. The applicant has also been sent the Islands Trust Chance Find Protocol.
Climate Change Adaptation and Mitigation	None
Shoreline Classification	Rock Shoreline - Sea Cliff

# ATTACHMENT 2 – MAPS, PLANS, DRAWINGS, PHOTOGRAPHS

## 2.1 ZONING



## 2.2 DPA 2 - HERBACEOUS



### 2.3 SENSITIVE ECOSYSTEM MAPPING (TERRESTRIAL)



### 2.4 MARINE SENSITIVE ECOSYSTEM AND SHORELINE TYPES

Ecosystem Features

+  Terrestrial Species

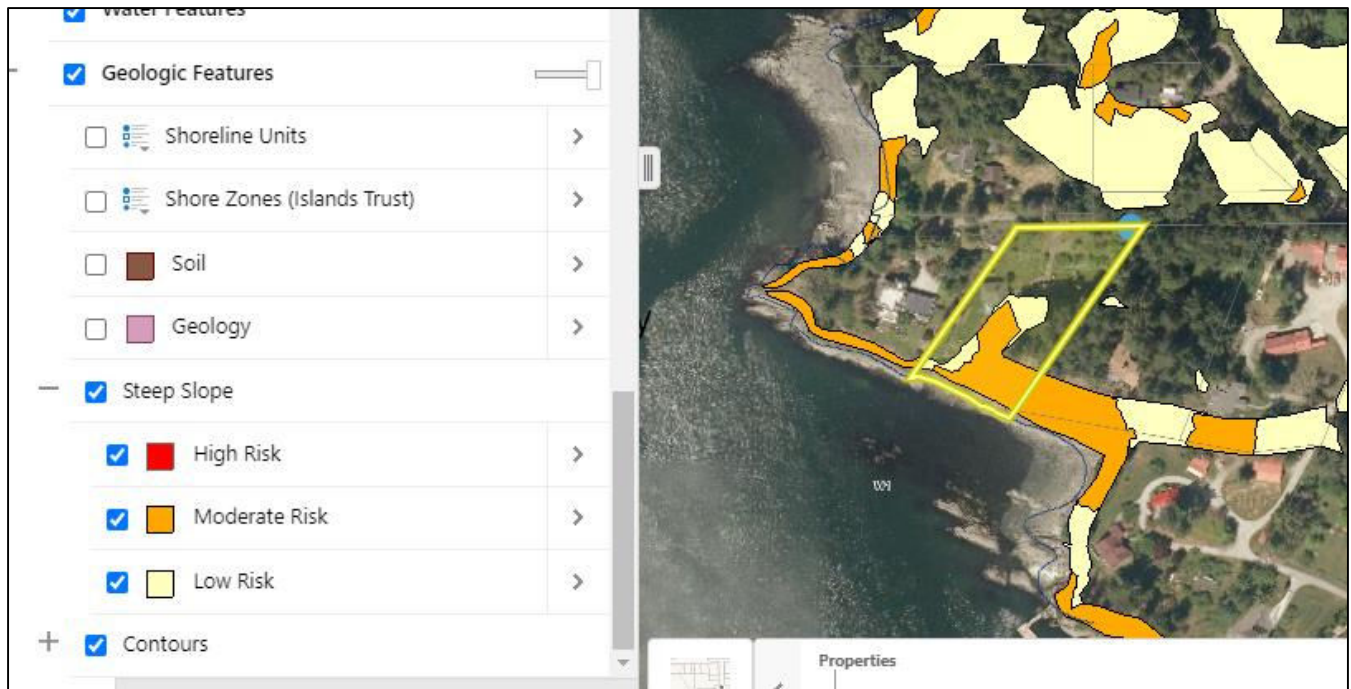
-  Marine Ecosystems

- Eelgrass 2014 >
- Eelgrass Meadows (2022) >
  - Dense
  - Moderate
  - Sparse
  - Undetermined
- Forage Fish Spawning Habitat >
- Bull Kelp Beds (2022) >
- Sea Duck – Key Habitat Atlas >

-  Terrestrial Ecosystems

An aerial photograph of the same coastal area as in the previous image. A legend is overlaid on the left side of the image. The legend lists various ecosystem features with checkboxes and expandable arrows. The map shows colored overlays on the coastline corresponding to these features: a dark green area for 'Eelgrass Meadows (2022) - Dense', a light green area for 'Eelgrass Meadows (2022) - Moderate', and a brown area for 'Sea Duck - Key Habitat Atlas'. A yellow polygon highlights the same parcel of land as in the previous image.

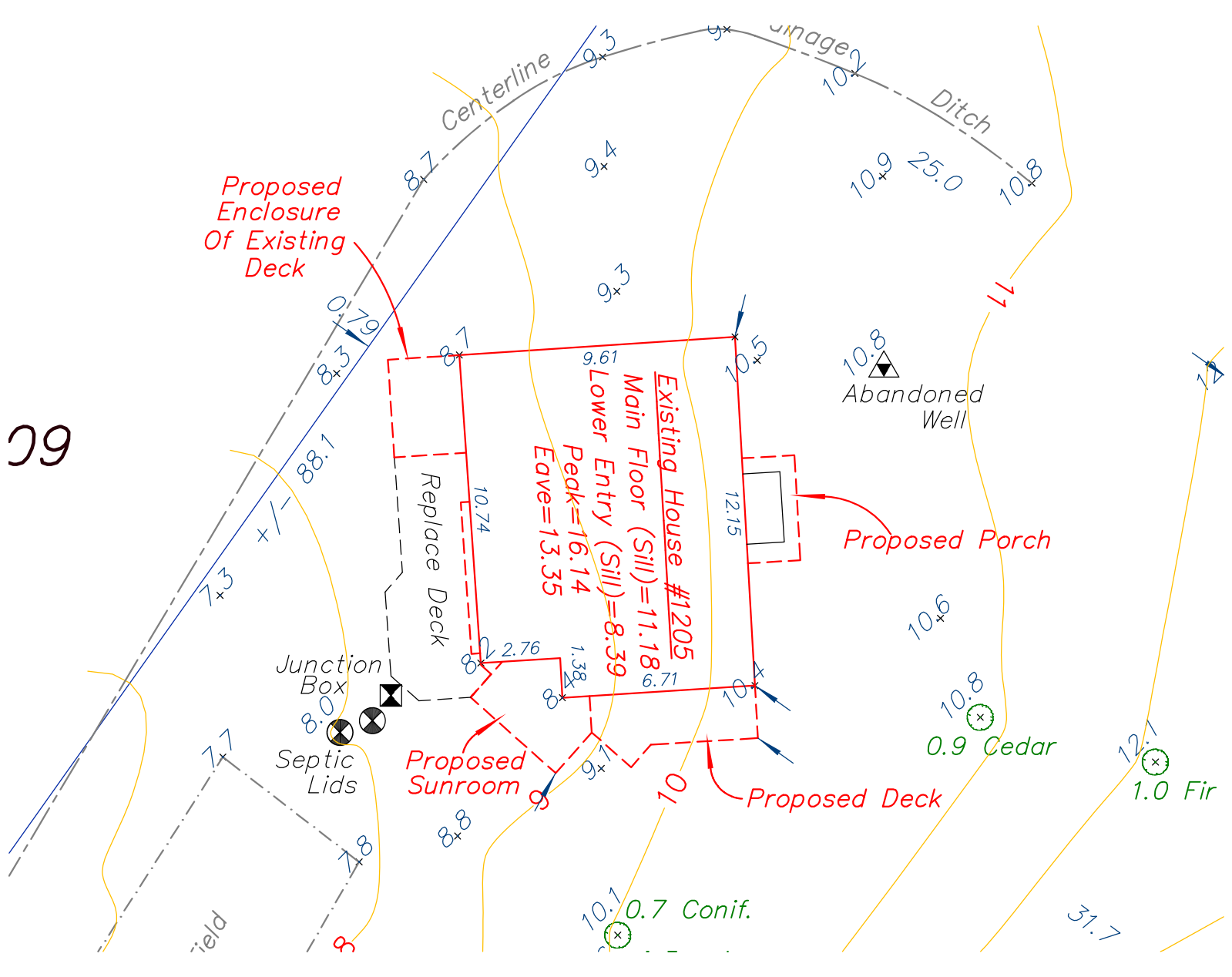
## 2.5 STEEP SLOPE MAPPING

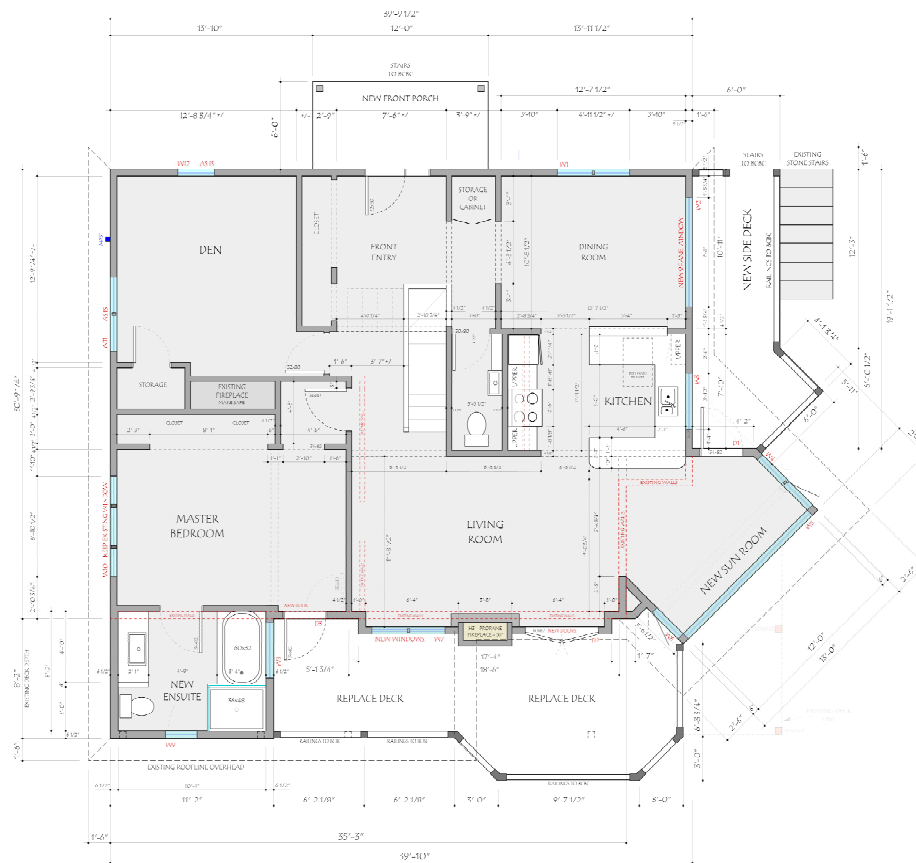






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**CONSTRUCTION NOTES:**

ALL CONSTRUCTION SHALL CONFORM TO ALL LOCAL APPLICABLE BUILDING CODES AND BYLAWS.  
 OWNER IS RESPONSIBLE FOR VERIFICATION OF SOIL ALLOWABLE LOAD BEARING CAPACITY.  
 DO NOT SCALE DRAWINGS.  
 WRITTEN DIMENSIONS TAKE PRECEDENCE.  
 CONTRACTOR TO VERIFY ALL MEASUREMENTS PRIOR TO BEGINNING CONSTRUCTION.

**THERMAL PERFORMANCE:**

**DESIGN NOTES:**

PROJECT ENGINEER: Ritchie Smith  
 GEOTECH:

**LEGAL ADDRESS:**

LOT 2  
 BLOCK A  
 SECTION 23  
 PENDER ISLAND  
 COWICHAN DISTRICT  
 PLAN 4805

(PID 006-008-933)

**CLIENT DRAWING APPROVAL:**

SIGNATURE(S): \_\_\_\_\_  
 DATE: \_\_\_\_\_

OWNERS: Tom & Colleen Jones

NEW MAIN FLOOR PLAN

1205 - BRIDGES RD, NORTH PENDER ISLAND, BC

DESIGNED BY: DRAYTON P. Koo-Kemp  
 DATE: June 22, 2024  
 SCALE: 3/4" = 1' - 0"

June 12, 2023

RE support letter for Tom and Colleen's application for adding walls to covered deck which is in a legally nonconforming area

To whom it may concern

Tom and Colleen Jones have been my neighbor since 2016. I acknowledge that their house is legally non-conforming, within the current set back regulations. Over the years we have discussed and managed the areas around the property boundary.

Colleen and Tom have had conversations with me and reviewed their plans about their renovations to support their aging in place.

Their intention for the reno closest to me is to enclose a portion of their covered deck to construct an ensuite. I support this plan as it will not impact site lines or affect the enjoyment or use of my property. It will actually improve the privacy of my property in some areas of my gardens.

Sincerely

A large black rectangular redaction box covering the signature of Al Bloomenthal.

Al Bloomenthal

A black rectangular redaction box covering the address of Al Bloomenthal.

To whom it may concern

We are totally aware of Colleen and Tom Jones's reno plans at 1205 Bridges and they will not affect us in any way detrimentally.

Sincerely

Sue and Dennis Hurd