

Municipality of North Cowichan

Board of Variance

AGENDA

Wednesday, October 30, 2019, 2:00 p.m.
Municipal Hall - Maple Bay Meeting Room

Pages

1. CALL TO ORDER

2. APPROVAL OF AGENDA

Recommendation:

That the Board of Variance approve the October 30, 2019 agenda as circulated.

3. ADOPTION OF MINUTES

2 - 4

Recommendation:

That the Board of Variance adopt the minutes of the meeting held June 26, 2019.

4. BUSINESS

4.1 Application to Accommodate a Stand-by Generator at 6130 Marsh Road

5 - 20

Purpose: To provide the Board of Variance with information and analysis regarding an application to vary the rear yard setback and south side yard setback at 6130 Marsh Road to accommodate a stand-by generator.

5. NEW BUSINESS

6. ADJOURNMENT

Municipality of North Cowichan Board of Variance MINUTES

**June 26, 2019, 2:00 p.m.
Municipal Hall - Maple Bay Meeting Room**

Members Present Shannon Roome, Chair
 Don Bruneski
 Peter Ordynec
 Daniel Robin
 David Wiebe

Staff Present Matt O'Halloran, Deputy Corporate Officer
 Rob Conway, Director, Planning
 Glenn Morris, Development Planning Coordinator
 Larissa Barry Thibodeau, Planning Technician

1. CALL TO ORDER

There being a quorum present, the Chair called the Board of Variance meeting to order at 2:00 p.m.

2. APPROVAL OF AGENDA

It was moved and seconded:

That the Board of Variance approve the June 26, 2019 agenda as circulated.

CARRIED

3. ADOPTION OF MINUTES

It was moved and seconded:

That the Board of Variance adopt the minutes of the meeting held April 24, 2019.

CARRIED

The Chair welcomed members of the public to the meeting, and introduced the members of the Board of Variance and staff in attendance.

4. BUSINESS

4.1 Application to Accommodate a Kennel at 3541 Mount Sicker Road

The Chair invited the applicant in attendance, Colin Page, to speak to the agenda item.

Mr. Page provided background on his use of the property for a residence with his wife, and for their dog kennel business. He outlined their business model to minimize crowding of animals. He noted that his property is zoned A2, and that kennel use is permitted within that zone. However, he noted that the typical defined size for A2 under the zoning bylaw is five acres, while his property is only two acres. This discrepancy has resulted in limited

space to meet the setback requirements for his proposed kennel building, which would normally apply to buildings on a five acre property.

The Board asked staff for clarification regarding the extent of similar variances elsewhere in the Municipality.

Staff noted that it is fairly typical for properties to be smaller than the defined size of their zoning, and that this property was subdivided in 1969 before the zoning bylaw was adopted, and before the creation of the Agricultural Land Reserve (ALR).

Staff commented that North Cowichan typically has more restrictive setbacks regarding farm uses than other jurisdictions.

The Board noted that there is extensive greenspace around the proposed location of the kennel, which likely exceeds the setback requirement.

The Board noted that regardless of setback requirements the noise from dogs can extend well beyond 30 metres.

The Chair noted receipt of correspondence from neighbouring property owners John Barry and Rosemary Quin which stated no objection to the application.

Board members noted that they had conducted a site visit to the property. Staff also provided a visual overview of the property.

It was moved and seconded:

That application BOV00001 to request permission from the Board of Variance in accordance with Section 540 of the Local Government Act to vary the requirement that all other principal buildings be located 30 m from any side yard setback, in Section 52 (6) (c) of Bylaw No. 2950, from 30 m to 29.4 m and 19.03 at 3541 Mount Sicker Road, for the purpose of accommodating a kennel, be approved.

CARRIED

4.2 Application to Accommodate a Generator at 6130 Marsh Road

The Chair invited the applicant in attendance, Alexander Neison, to speak to the agenda item.

Mr. Neison explained his need for a natural gas fixed-location stand-by generator to mitigate extended power outages on his residential property, occurring three-to-four times annually. He noted that he currently uses a portable generator, but that it is difficult to move outside his garage when the power is out, to operate in accordance with safety requirements. Mr. Neison also noted gas regulations, as well as cost considerations, which influenced the proposed placement of his generator in the south yard.

That Board noted that there is an air conditioner operating on the property with roughly the same decibel rating as the proposed generator.

The Board noted that a generator located in the rear yard may also cause noise concerns, due to the layout of the property.

The Chair invited comment from members of the public in attendance, Patti and Brian Micklewright of 6132 Marsh Road, who spoke in support of the application.

The Board asked staff for clarification as to whether a heat pump could be placed in the same location if the variance was approved. Staff noted that a heat pump would be required to meet different setback requirements.

The Board asked staff whether there are any municipal policies beyond zoning, regarding the placement of generators. Staff responded that there are no applicable policies, and that a fixed-location generator must meet setback requirements.

The Board noted that a fixed-location generator could be sited in the rear yard of the property, in accordance with the setback requirements, rather than in the front yard.

Board members noted that they had conducted a site visit to the property. Staff also provided a visual overview of the property.

It was moved and seconded:

That application BOV00002 to request permission from the Board of Variance in accordance with Section 540 of the Local Government Act to vary the requirement that generators not be located within 4.5 m of any property line, in Section 35 (3) (c) of Bylaw No. 2950, from 4.5 m to 0.635 m at 6130 Marsh Road, for the purpose of accommodating a stand-by generator, be approved.

(Opposed: Bruniski; Ordynec; Roome; Wiebe)

DEFEATED

5. NEW BUSINESS

None.

6. ADJOURNMENT

It was moved and seconded:


That the Board of Variance adjourn the June 24, 2019 regular meeting at 3:02 p.m.

CARRIED

Signed by Chair

Certified by Recording Secretary

Report

Date	October 30, 2019	Folder No. BOV00003
To	Board of Variance	Folio No. 05684-002
From	Larissa Barry-Thibodeau, Development Planner	File No. 3730-30 19.03
		Endorsed 
Subject	BOV00003-6130 Marsh Road	

Purpose

The purpose of this report is to provide the Board of Variance with information and analysis regarding an application to vary the rear yard setback and south side yard setback at 6130 Marsh Road to accommodate a stand-by generator.

Background

Address: 6130 Marsh Road
Zone: Residential One and Two Family (R3) (ATTACHMENT 9)
Property Area: 0.06 Ha (0.15 Acres)
Agricultural Land Reserve: No

Land Use Context

North: Residential One and Two Family Zone, R3
South: Strata Road, Residential One and Two Family Zone, R3
East: Residential One and Two Family Zone, R3
West: Residential One and Two Family Zone, R3

Proposal

To vary Section 35 (3) of Zoning Bylaw 2950 from 4.5 m to 1.52 m for the rear yard setback, and from 4.5 m to 3.96 m for the south side yard setback to allow for the installation of a stand-by generator (ATTACHMENT 4).

Discussion

Zoning

Section 35 (3) of Zoning Bylaw 2950 regulates the placement of generators at 4.5 m from any property line. The intent of the bylaw is to reduce potential noise and fume impacts created by generators.

Analysis

The stated rationale for the applicants is that they require the use of a stand-by generator for power outages (ATTACHMENT 4). The applicants are requesting a relaxation of the 4.5 m setback requirement for all property lines to 1.52 m for the rear yard setback, and to 3.96 m for the south side yard setback (ATTACHMENT 5 and 8). The accessory building setbacks of the R3 zone for the rear yard are 1.5 m. As noted, the intent of the 4.5 m setbacks of Section 35 (3) is to reduce the potential noise and fume impacts created by generators. The proposed generator has a normal operating load of 66 Decibels (ATTACHMENT 7), Staff have been supportive of decibel ratings of 74 decibels and lower for heat pump installation in the past located at approximately 3 m from property lines, but there is no precedent for stand-by generators. In total distances, the proposed location of the generator is approximately 4 m away from the building footprint and driveway of the neighbour to the west, separated by a fence.

The generator could not easily be sited in compliance with Section 35 (3) of the Zoning Bylaw. There are constraints in the front of the house because of servicing infrastructure (water, sewer, and storm) which run from the north side of the front yard, and constraints on the south side of the front yard because of an existing driveway. The generator could not be sited in compliance with the required setbacks along the majority of the side yards, as the house is built to approximately 2.5 m setback, consistent with the principal building setbacks of the R3 Zones. This leaves a small area of permitted space to the rear of the home in and around an existing patio. ATTACHMENT 10 highlights the 4.5 m setback requirements, and indicates the servicing infrastructure at the front lot line. The size of the property, and location of the existing house, driveway, servicing infrastructure, and landscaping provides limited opportunity to site the permitted use of a generator in compliance with the bylaw.

The proposal complies with the use and density provisions of the Residential One and Two Family (R3) Zone.

Section 542 of the *Local Government Act (LGA)* outlines that the Board of Variance may order that a minor variance be permitted from the requirements of the applicable bylaw, if the Board of Variance:

- (a) has heard from the applicant and any person notified under Section 541;
- (b) finds that undue hardship would be caused to the applicant if the bylaw or Section 531(1) is complied with; and
- (c) is of the opinion that the variance or exemption does not do any of the following:
 - (i) result in inappropriate development of the site;
 - (ii) adversely affect the natural environment;
 - (iii) substantially affect the use and enjoyment of adjacent land;
 - (iv) vary permitted uses and densities under the applicable bylaw;
 - (v) defeat the intent of the bylaw.

If the Board of Variance finds undue hardship, considers the request to be a minor variance and meets the considerations of section 542(c) of the *LGA*, a variance order may be permitted.

Communications and Engagement

Pursuant to Section 6 of "Board of Variance Bylaw No. 3727, 2018", notification letters have been sent to the applicant, as well as to owners and occupants adjoining the subject property. Any responses received will be presented at the October 30, 2019 Board of Variance hearing. The notice of hearing includes subject matter of the appeal, the date, time and place where the appeal will be heard, and applicable North Cowichan staff contact information. The application for appeal to the Board is available for public inspection at the Municipal Hall during regular business hours.

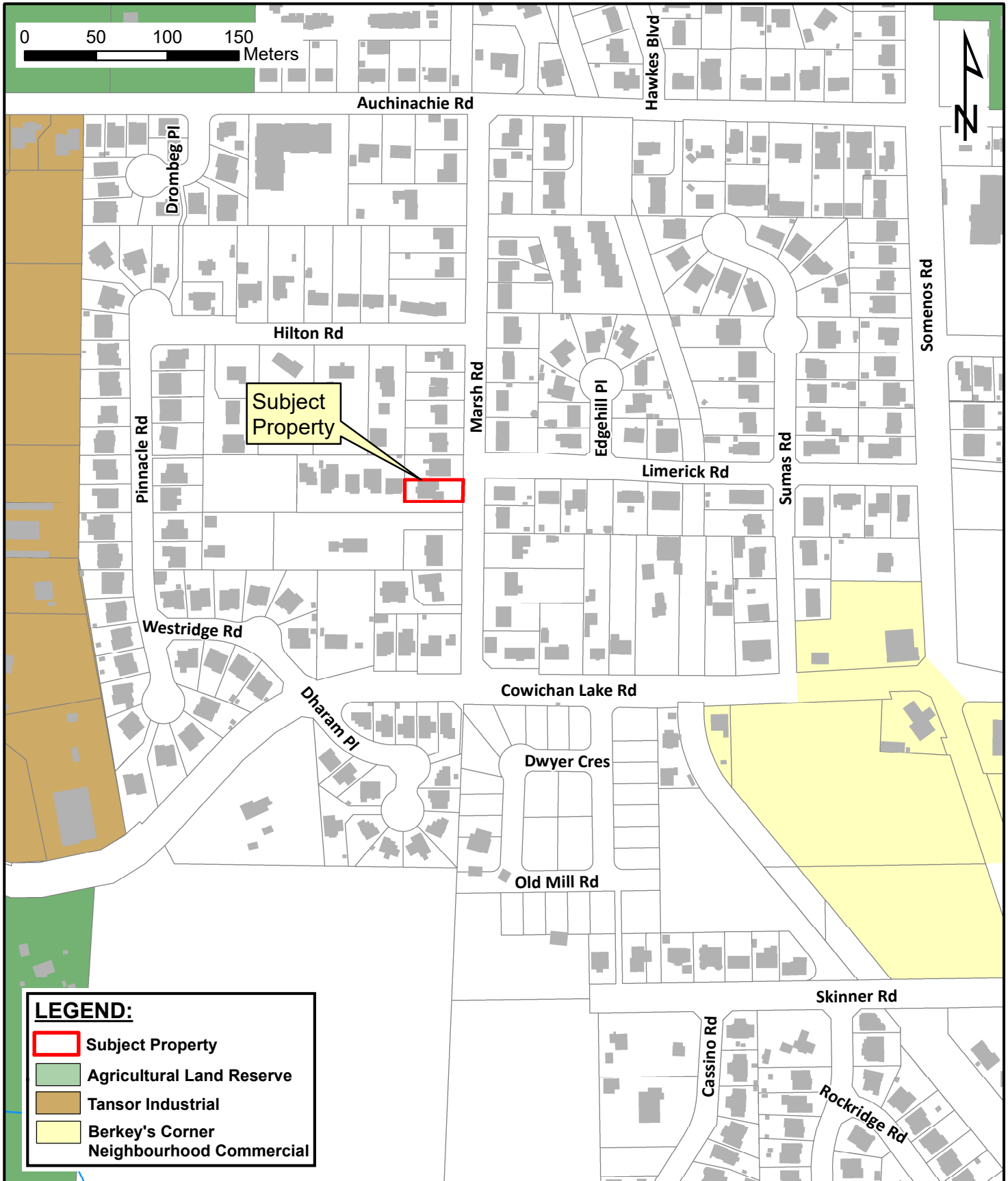
Example Motion

That the application to vary Section 35 (3) of "Zoning Bylaw No. 2950, 1997", from 4.5 m to 1.52 m for the rear yard setback, and from 4.5 m to 3.96 m for the south side yard setback at 6130 Marsh Road, for the purpose of accommodating a stand-by generator, be approved.

Attachments

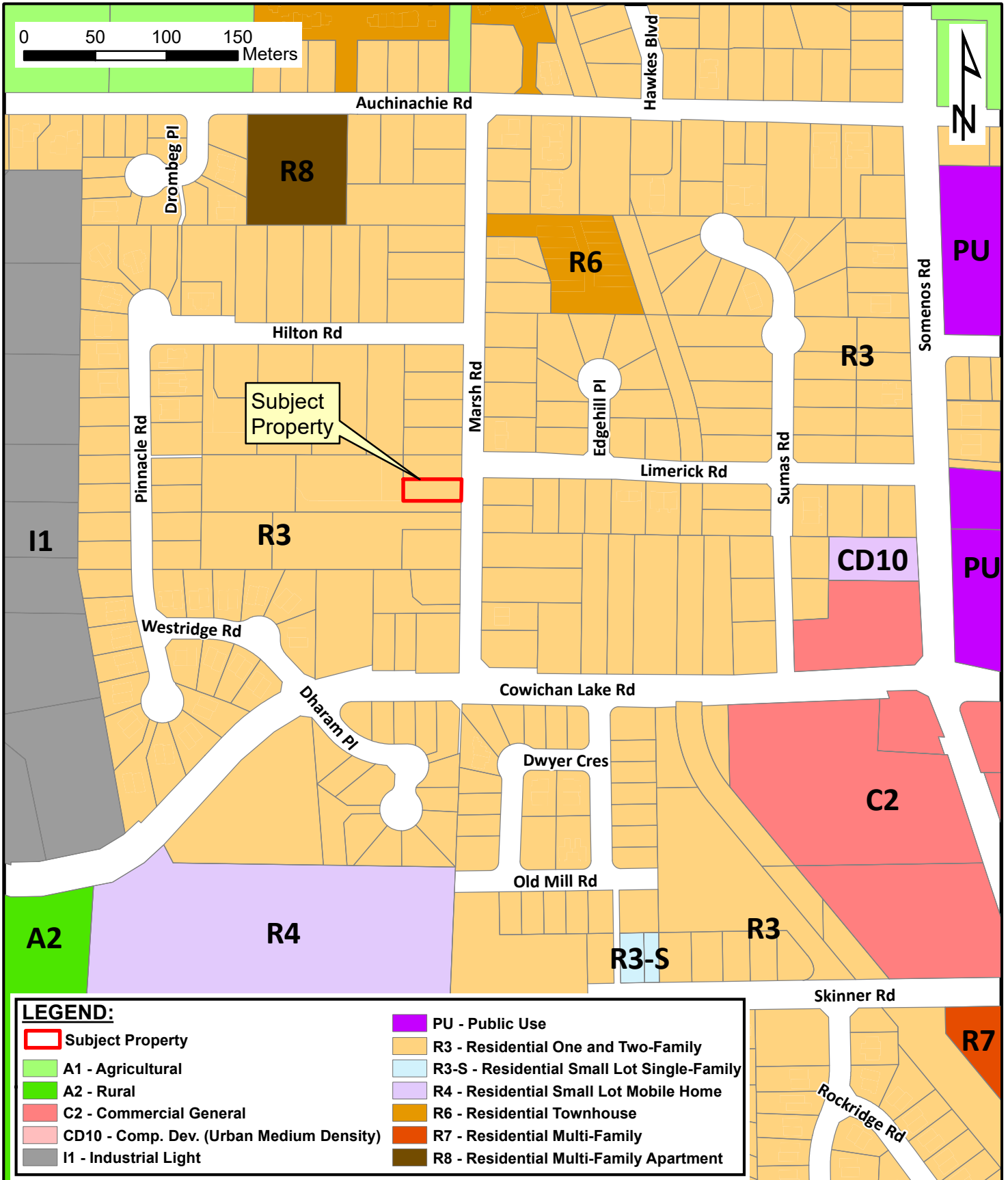
1. Zoning Map
2. Orthophoto
3. Location Map
4. Statement of Hardship
5. Site Plan
6. Applicant Site Photo
7. Generator Model
8. Section 35 (3) Bylaw
9. R3 Zone
10. Property with 4.5 m Setbacks

Larissa Barry-Thibodeau
Development Planner





	ORTHOPHOTO MAP (Orthophoto is from 2017 aerial photography)	DATE: October 15, 2019
	6130 Marsh Road	TYPE: Board of Variance
		FILE#: BOV00003



LEGEND:	
 Subject Property	 PU - Public Use
 A1 - Agricultural	 R3 - Residential One and Two-Family
 A2 - Rural	 R3-S - Residential Small Lot Single-Family
 C2 - Commercial General	 R4 - Residential Small Lot Mobile Home
 CD10 - Comp. Dev. (Urban Medium Density)	 R6 - Residential Townhouse
 I1 - Industrial Light	 R7 - Residential Multi-Family
	 R8 - Residential Multi-Family Apartment

	ZONING MAP	DATE:	October 15, 2019
	6130 Marsh Road	TYPE:	Board of Variance
		FILE#:	BOV00003

A. E. Neison
6130 Marsh Rd.
Duncan, B.C.
V9L 4E6

North Cowichan

Re: Stand-by Generator

Rationality of Stand-by Generator
is to supply power to the house when
there is a power outage.

A. E. Neison
09/09/2019

PLAN OF SUBDIVISION OF LOT 1, SECTION 1,
RANGE 3, SOMENOS DISTRICT, PLAN 6982,
EXCEPT THAT PART IN PLAN 33205.

BCGS 928.072
Scale = 1:500



The applicant is requesting to vary Section 35 (3) of Zoning Bylaw 2950 from 4.5 m to 1.52 m for the rear yard setback, and from 4.5 m to 3.96 m for the south side yard setback to allow for the installation of a stand-by generator.

Grid bearings are derived from observations between control monuments 8027 and 3679 Integrated Survey Area No. 10, The Corporation of the District of North Cowichan N4083 (CSRS).

All distances are in metres and decimals thereof unless otherwise noted.

denotes control monument found.

● denotes standard iron post found.
○ denotes standard iron post placed.

This plan shows ground level measured distances.
Prior to computation of U.T.M. co-ordinates multiply
by combined factor of 0.9996290.

Registered Owners:
The Corporation of the District of North Cowichan

PLAN VIP 78241

Deposited in the Land Title Office at Victoria, B.C.,
this 27 day of June, 2005

EX 9179 J

Approved pursuant to the Land Title Act
this 12th day of January, 2002.

Approving Officer for the
The Corporation of the District of North Cowichan.

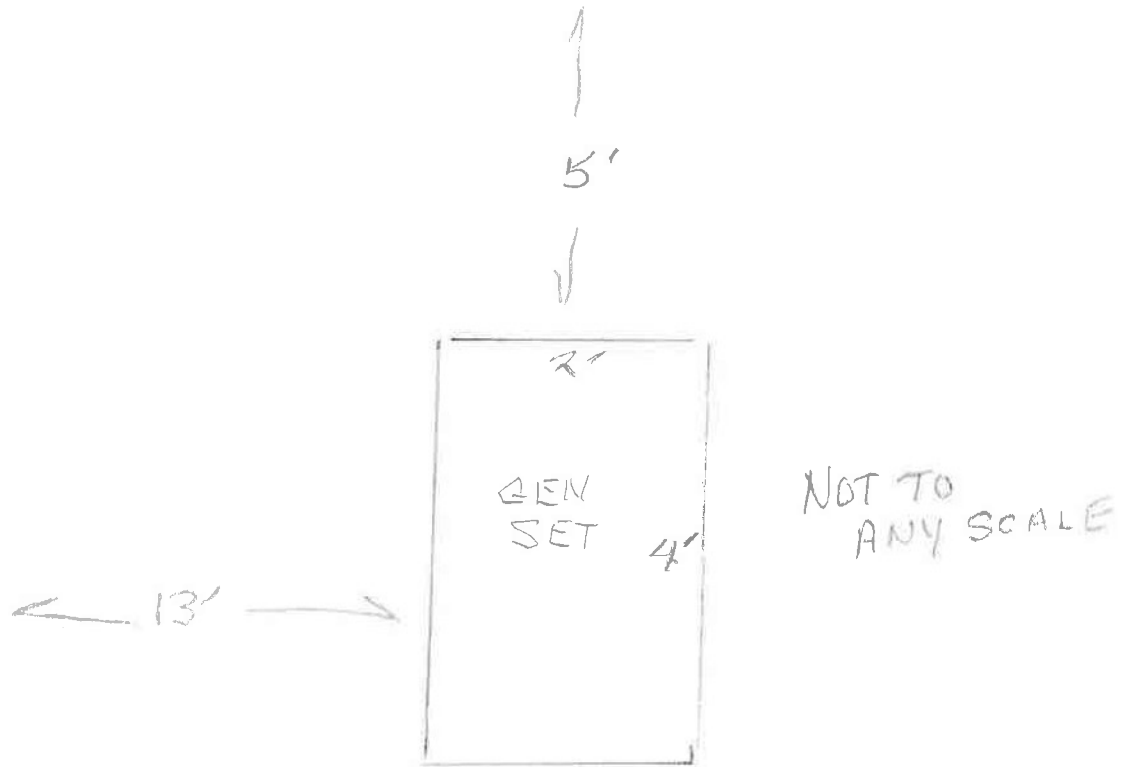
This plan lies within the Cowichan Valley Regional District.

1. Anthony A. de Brynis, a British Columbia Land Surveyor, of the City of Victoria, in British Columbia, certify that I was present at and personally supervised the survey represented by this plan, and that the survey and plan are correct. The field survey was completed on the 10th day of May, 2004. The plan was completed and checked, and the checklist filed under F15359 on the 17th day of May, 2004.

Anthony A. de Almeida

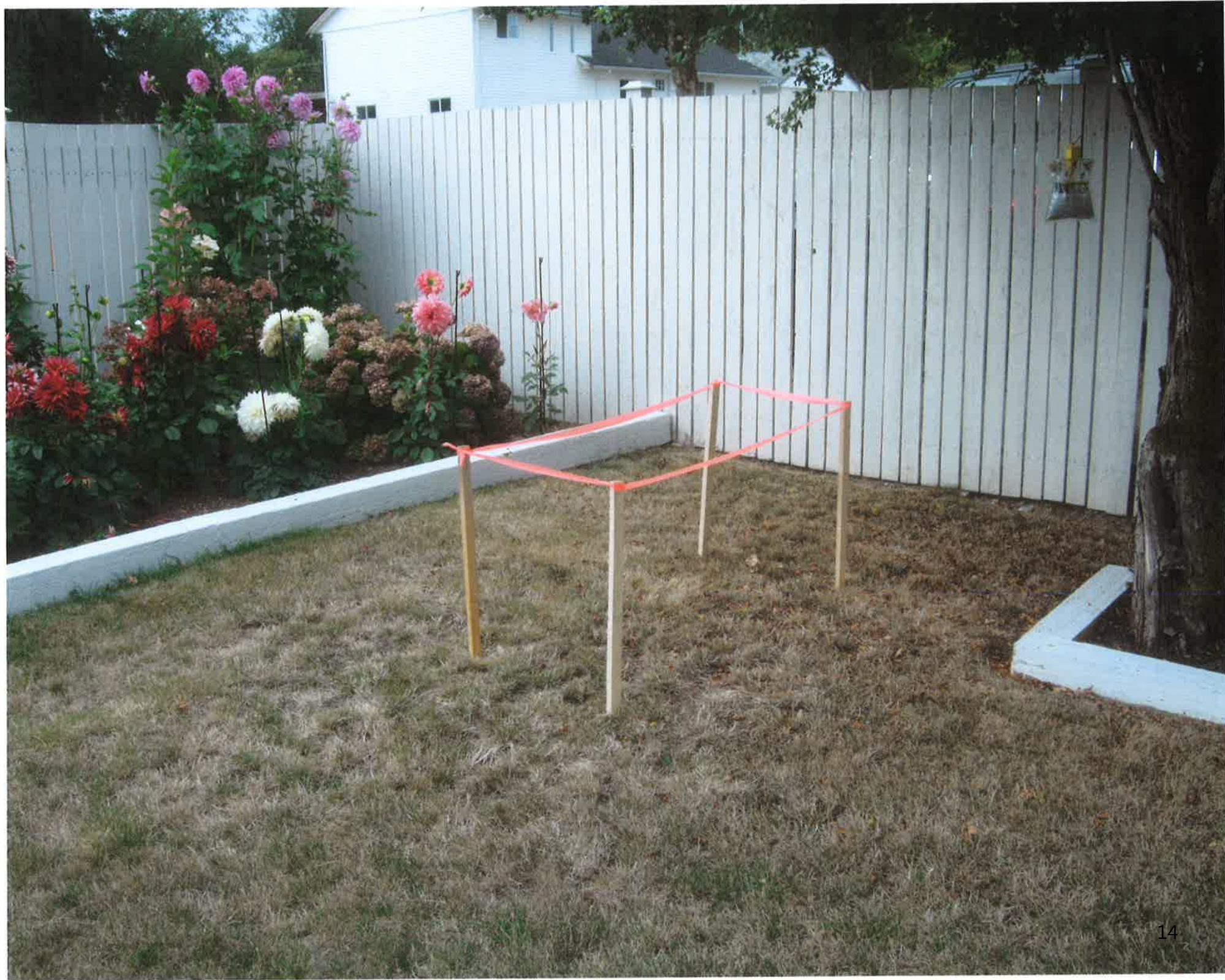
The registered owners shown hereon declare that they have entered into a statutory right of way agreement under section 318, Land Title Act, in favor of the Corporation of the District of North Cowichan.

Red Dot Shows
Approval location



29 INCH IN HEIGHT
ON TOP OF CEMENT SLAB of 4" APPROX.

SITE PLAN:
FOR GENERATOR



-  Free Parcel Shipping Over \$49*
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-  Reserve Online. Pick Up In-store.

Home > Outdoor > Outdoor Power Equipment > Generators > Generac Guardian Series 16kW Air-Cooled

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Description

Dimensions

Reviews

Questions

Product Description

This item is special order and may not be available for sale in all stores. Please contact your local store directly for availability and purchase.

- 5-Year Limited Warranty for automatic standby generators
- Mobile Link Remote Monitoring allows you to monitor the status of your generator from anywhere in the world using a smartphone, tablet, or PC, for FREE by accessing information such as the current operating status and maintenance alerts
- True Power Technology delivers best-in-class power quality with less than 5 percent total harmonic distortion for clean, smooth operation of sensitive electronics and appliances
- Generac generators and engines are engineered and built in the USA using domestic and foreign parts
- 5 year limited warranty for automatic standby generators
- Amperage at 240 Volts (Diesel): 0
- Amperage at 240 Volts (Liquid Propane): 0
- Amperage at 240 Volts (Natural Gas): 0
- Automatic Transfer Switch Included: Yes
- Automatic Voltage Regulation: Yes
- CA Residents: Prop 65 Warning(s): No
- Circuits Protected: 16
- Color/Finish Family: Off-white
- Diesel Rated Wattage: 0
- Engine Brand: Generac
- Engine Displacement (Cu. Centimeters): 999

- Full Load Fuel Consumption (GPH): 0
- Hour Meter: Yes
- Liquid Propane Rated Wattage: 16000
- Low Oil Shut Down: Yes
- Marketing Copy: As the #1 selling home standby generator brand, Generac's Guardian Series®174; generators provide the automatic backup power you need to protect your home and family during a power outage. Now coming with FREE Mobile Link, allowing you to monitor the st
- Natural Gas Rated Wattage: 16000
- Normal Operating Load dB Noise Level: 68
- Number of Circuits: 16
- Overload Protection: Yes
- Response Time (Seconds): 30
- Running Watt Range: 15100 to 17000
- Series Name: Guardian Series WIFI Enabled
- Total Harmonic Distortion: <5%
- Transfer Switch Amps: 100
- Transfer Switch Rating: 100 amp
- Warranty: 5-year limited
- Wattage Range (Liquid Propane): 15100 to 20000
- Wattage Range (Natural Gas): 15100 to 20000
- Weight (lbs.): 458

Materials: Aluminum

Listing:  CSA Listed

Dimensions & Weights

Height:	29 inches
Length:	4 feet
Width:	25 inches
Box Dimensions:	4 feet x 2 feet 1 inch x 2 feet 5 inches
Ship Weight:	458lbs

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- (f) the creation of on-street traffic or parking congestion,
- (g) pressure spray-painting, or
- (h) welding. [BL3323]

31 Home-based businesses which discharge or emit the following will not be permitted:

- (1) odorous, toxic, or noxious vapours and/or matters;
- (2) heat, glare, electrical interference, or radiation; and/or
- (3) recurring ground vibration.

32 The "Automobile Repair" facet of home-based business shall not:

- (1) involve bodywork;
- (2) involve repair to any type of motor vehicle other than private passenger motor vehicles; or
- (3) be conducted on a lot less than 4,000 m² (0.988 acres) in area.

32.1 Any home-based business or retail store that is an adult novelty business or drug paraphernalia business must not be located within 1 km of a school. [BL3323]

Projections into Required Yards/Setbacks

- 33** (1) All required setback areas must be kept free of buildings and structures, excluding permitted projections.
- (2) Where a principal or accessory building, or any portion thereof, is situated wholly below ground, no setbacks are required in the yards, side, or the yard, rear, to that building or portion of that building situated wholly below ground.

34 A swimming pool shall not be located within 1.5 m (4.92') of any lot line.

35 (1) The following may project not more than 0.6 m (1.97') into a required yard:

- (a) a step;
- (b) an eave;
- (c) an awning;
- (d) a canopy;
- (e) an open, cantilevered balcony without a roof;
- (f) a porch;
- (g) a chimney;
- (h) a cornice;
- (i) a gutter;
- (j) a pilaster;
- (k) a sill; and
- (l) a bay window without any habitable floor area. [BL3457]

- (2) Despite the previous subsection, a step, canopy, or cantilevered balcony may project not more than 1.2 m (3.93') into a required front or rear yard of an apartment or townhouse.

- (3) Despite the previous two subsections, land within 4.5 m (14.76') from a property line must not be used for the placement of a generator, a heat pump or an air conditioner. [BL3754, BL3764]

- (4) For certainty, a projection designed to accommodate furniture (e.g. a dining room hutch) must meet every yard requirement.

Residential One and Two-Family Zone (R3)

Permitted Uses

58 (1) The permitted uses for the R3 zone are as follows:

Agriculture
 Assisted Living
 Bed and Breakfast
 Community Care Facility
 Home-based Business
 Secondary Suite
 Single-Family Dwelling
 Supportive Housing
 Two-Family Dwelling [BL3302]

Minimum Lot Size

- (2) A lot in the R3 zone must meet the minimum area requirements for the purposes of subdivision and use of the lot for permitted uses as follows:
- (a) Single-family dwelling, 450 m² (4,844 sq. ft.)
 - (b) Single-family dwelling with a secondary suite, 450 m² (4,844 sq. ft.)
 - (c) Two-family dwelling, 700 m² (7,535 sq. ft.) [BL3647, BL3674]
- (2.1) Despite section 58 (2) (b), a single-family dwelling with a secondary suite is permitted on 3133 Cook Street (Parcel Identifier: 027-873-200) with a lot area of 510 m² (5,490 sq. ft.). [BL3663]
- (2.2) Despite section 58 (2) (c), a two-family dwelling is permitted on Lot 15 of Plan 5756, on Sayward Road (PID: 001-503-120) with a lot area of 669 m² (7,201 sq. ft.). [BL3684]

Minimum Frontage

- (3) The minimum permitted frontage in the R3 zone is as follows:
- (a) Single-family dwelling, 15 m (49.21'),
 - (b) Single-family dwelling with a secondary suite, 15 m (49.21'),
 - (c) Two-family dwelling, 23.0 m (75.46'). [BL3083, BL3674]

Density

- (4) The maximum permitted density for the R3 zone is as follows:
- (a) The number of residential buildings shall not exceed one.
 - (b) The maximum permitted floor space ratio is 0.5:1.
 - (c) The number of residential units per building shall not exceed two. For strata buildings/lots, each strata unit constitutes one residential unit.
 - (d) Despite the foregoing, the placement of a temporary trailer may also be permitted subject to "Temporary Trailer Permit Bylaw 1976", No. 1685.
 - (e) Despite the foregoing, a maximum of 2 residential buildings, with a total combined maximum of 2 residential dwelling units, is permitted on 3340 Cowichan Lake Road (PID: 001-375-482). [BL3668]

Maximum Lot Coverage

- (5) The maximum permitted lot coverage for the R3 zone is as follows:
- (a) 30% of the lot area for lots of 650 m² (7,000 sq. ft.) or larger; and
 - (b) 35% of the lot area for lots less than 650 m² (7,000 sq. ft.).

Minimum Setbacks

- (6) The minimum permitted setbacks for the R3 zone are as follows:
- (a) Principal Buildings
 Yard, Front, 5.0 m (16.40')
 Yard, Side, 2.0 m (6.56')

- Yard, Side when adjacent to a lane or street, 3.0 (9.8')
- Yard, Rear, 7.5 m (24.6') [BL3323]
- (b) Accessory Buildings and Structures (Excluding Fences)
 - Yard, Front, 5.0 m (16.40')
 - Yard, Side, 1.0 m (3.28')
 - Yard, Rear, 1.5 m (4.92') [BL3323]

- (6.1) The minimum permitted setback from the vehicle entrance of a principal or accessory building to a public road other than a lane is 5.8 m (19.03'). [BL3150]

Maximum Building Height

- (7) The maximum permitted building heights for the R3 zone are as follows:
- (a) Principal Building, 9.0 m (29.53')
 - (b) Accessory Building, 5.0 m (16.40')

Conditions of Use

- (8) The conditions of use for the R3 zone are as follows:
- (a) No fences over 1.2 m (4.00') in height are permitted in the required yards, front.
 - (b) No fences over 2.0 m (6.56') in height are permitted in the required yards, side or rear.
 - (c) In no situation shall a fence be greater than 2.0 m (6.56') in height.
 - (d) Bed and breakfast uses may have no more than three sleeping units.
 - (e) Bed and breakfast uses in a single-family dwelling must be an accessory use and shall not be the principal use.
 - (f) Agriculture use shall be subject to the "Animal Control Bylaw, 1995", No. 2856.
 - (g) [Repealed, BL3674]
 - (h) For a lot created prior to March 31, 2000, a single-family dwelling, two-family dwelling, or secondary suite is permitted on any lot. [BL3323, BL3418]
 - (i) Limited farm sale of agricultural products may be sold directly to the public provided that:
 - (i) a minimum of 50% of the agricultural products offered for sale are produced on the land;
 - (ii) the covered retail sales area does not exceed 100 m² (1076.4 sq. ft.); and
 - (iii) the retail sales are clearly ancillary to the farm use. [BL3083]
 - (j) Assisted Living, Supportive Housing, and Community Care Facilities may be permitted provided that
 - (i) the number of residents does not exceed three, and
 - (ii) the use is within a single-family dwelling unit only, which for clarity does not include a two-family dwelling. [BL3083; BL3302; BL3323; BL3418]

Driveway Width

- (9) Individual driveway widths shall not exceed 6.0 m (19.68') of the lot frontage for each dwelling.

