

# Report

Date June 7, 2023

File: DVP00084

Subject Development Variance Permit Application for 8100 Bertha Street

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## **PURPOSE**

To consider a development variance permit application to reduce the minimum side yard setback for a hot tub enclosure/storage room from 1.0 metre to 0.24 metres and a storage shed from 1.0 metre to 0.73 metres for purposes of legalizing two existing structures at 8100 Bertha Street.

## **BACKGROUND**

On March 27, 2022, the previous owner of the subject property received a letter from the Municipality of North Cowichan regarding two accessory buildings that were found to be non-compliant with municipal bylaws. The letter requested that a building permit be obtained, and portions of the unlawful buildings be removed in order to comply with zoning setbacks. Information from BC Assessment indicates that the home on the property was constructed in 1992. The property was sold in May 2022, and the new property owner submitted this variance application.

## **DISCUSSION**

Property and Policy Context:

The subject property (PID: 018-033-008) is half of a strata duplex lot at 8100 Bertha Street and is 76.8 square metres in size. It is located within the 'Residential Neighbourhood' land use designation of the Official Community Plan and the Crofton Growth Centre and is within the Urban Containment Boundary (UCB) (Attachment 1). It is also located within the Residential One and Two-family (R3) Zone (Attachment 3).

The subject property's dominant land use is residential, as are the surrounding properties, comprised mostly of single-family dwellings. An orthophoto showing the property is provided in Attachment 2.

Proposal:

The applicant, on behalf of the property owner, is requesting Council's authorization to vary Section 58(6)(b) of the Zoning Bylaw to reduce the required side yard setback of two accessory buildings - a storage shed located 0.73 metres from the property boundary and a hot tub enclosure/storage room, located at 0.24 metres from the property boundary. A site plan showing the location of the principal dwelling and accessory structures is provided in Attachment 4.

The applicant's letter regarding the application is provided in Attachment 5. The letter indicates that the storage shed was constructed prior to the previous owner's possession, and the previous owner constructed the hot tub enclosure/storage room.

The letter from the applicant further indicates that it is the wish of the current owner to retain these two accessory structures as the storage shed is much needed for their growing family, and the hot tub enclosure/storage room provides privacy and a shaded play area for the owner's children. Site photos are provided in Attachment 6. The applicant acknowledges that building permits may be required if this variance permit application is successful.

#### Land Use Impacts:

The subject property is in a residential neighbourhood in Crofton. The hot tub enclosure/storage room is within 0.24 metres of the side property boundary and adjacent to a wooden fence. The storage shed is closer to the required side yard of 1 metre, situated at 0.73 metres.

Side yard setback requirements are established in zoning bylaws for many reasons, one being safety separation between adjoining properties. Fire can spread quite readily if a source of combustible fuel is nearby. The wooden fence lies very close to the hot tub enclosure/storage room and could be a fuel source. As such, staff consulted with the municipality building inspection department, and we were advised that 'Because both these walls will be within 1.2 meters of the property line, they will need to be fire rated to 45 minutes and have non-combustible siding'. When asked what type of material could satisfy this requirement, the building inspector indicated that the existing siding would need to be removed and replaced with DensGlass sheathing and either fiber cement or metal siding. If the variance application is approved, the building inspector confirmed a building permit would be required for the hot tub enclosure/storage room but not the storage shed because it is less than 10 square metres in size and exempt from the permit requirement.

According to the site plan (Attachment 4), there is some 2.6 metres of space between the exterior wall of the house and the storage shed. As the side yard setback is only 0.27 metres short of the required 1-metre setback, it may be possible to move the shed at least 0.27 metres to comply with the minimum side yard setback.

The applicant asserts in the application that the structures at the subject property "are typical of many accessory buildings in size and location in the neighbourhood." Approval of this current development variance permit may bring other applications forward for properties in a similar circumstance.

#### Conclusion:

While it is understandable why the applicant wishes to retain the two structures, there is sufficient room on the property to accommodate accessory structures while still complying with zoning bylaw regulations. If the structures are to remain, alterations will be required to achieve compliance with the BC Building Code. However, even if the alterations are possible, there will be some impact on the adjacent property to the south if the structures remain as they are currently situated. As the applicant can remove or alter the structures to bring them into compliance with the Zoning and Building Bylaws, and there does not appear to be a compelling justification for the requested variances, denial of the application is recommended.

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## OPTIONS

1. **(Recommended Option)** THAT Council deny Development Variance Permit Application DVP00084 for a variance to Section 58.6 (b) of Zoning Bylaw No. 2950, 1997, to decrease the required side yard setback for (1) a hot tub enclosure/storage room from 1.0 metre to 0.24 metres and (2) a storage shed from 1.0 metre to 0.73 metres at 8100 Bertha Street.
2. THAT Council authorize the issuance of Development Variance Permit DVP00084 and grant a variance to Section 58.6 (b) of Zoning Bylaw No. 2950, 1997, to decrease the required side yard setback for (1) a hot tub enclosure/storage room from 1.0 metre to 0.24 metres and (2) a storage shed from 1.0 metre to 0.73 metres at 8100 Bertha Street.

## IMPLICATIONS

Should the application be denied by Council, the existing accessory structures would have to be removed, altered, or relocated to comply with the side yard setback and all applicable requirements of Zoning Bylaw No. 2950 and Building Bylaw No. 3172.

If the application is approved, the structures may remain as they are currently situated but would require alterations to bring them into compliance with the BC Building Code, and a building permit will be required for the hot tub enclosure/storage room.

## RECOMMENDATION

THAT Council deny Development Variance Permit Application DVP00084 for a variance to Section 58.6 (b) of Zoning Bylaw No. 2950, 1997, to decrease the required side yard setback for (1) a hot tub enclosure/storage room from 1.0 metre to 0.24 metres and (2) a storage shed from 1.0 metre to 0.73 metres at 8100 Bertha Street.

Report prepared by:

*Rick Brundrige*

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Rick Brundrige, BSc, MCP  
Contract Planner

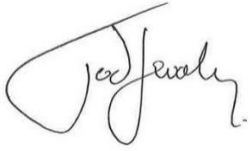
Report reviewed by:



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Rob Conway, MCIP, RPP  
Director, Planning and Building

**Approved to be forwarded to Council:**



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Ted Swabey  
Chief Administrative Officer

Attachments:

- (1) Location Map
- (2) Ortho Photo
- (3) Zoning Map
- (4) Site Plan
- (5) Letter of Rationale
- (6) Site Photos
- (7) Draft Permit
- (8) Notice