

# Report

Date June 7, 2023

File: DVP00094 &  
DVP00095

Subject Development Variance Permit applications for 2019/2021 Otter Close and 6467/6469  
Marine Crescent

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## PURPOSE

To consider two development variance permit applications to decrease the minimum required side yard setbacks for two strata lots at 2019 and 2021 Otter Close and at 6467 and 6469 Marine Crescent to facilitate the creation of separate strata titles for the two existing duplexes.

## BACKGROUND

A bare land strata subdivision ("Genoa Reach") was created and registered in June 2022. Duplexes (two attached dwelling units) were subsequently constructed on two new strata lots (Strata Lots 4 & 13). Duplexes on fee simple lots are commonly stratified through registration of a strata plan following construction. However, as the *Strata Property Act* does not allow registration of a strata plan over an existing strata plan, the property owners have applied to cancel the existing strata plan and create a new one that would establish new bare land strata lots for both halves of the two duplex dwellings. They have also obtained approval from the Genoa Reach Strata Corporation to do this.

The proposed new strata lot lines run through the middle of each duplex and do not comply with the Zoning Bylaw requirement for a 3-metre side yard setback. To address this, the property owners have applied to reduce the required side yard setback between the duplex units from 3.0 metres to zero so the Subdivision Approving Officer can consider approval of the subdivision applications.

Attachments 1, 2 and 3 provide maps of the subject properties. The original strata subdivision plan for Genoa Reach is provided in Attachment 4. Attachments 5 and 6 include the proposed subdivision plans of Strata Lot 4 and Strata Lot 13.

## DISCUSSION

### Zoning and Servicing:

The subject properties are zoned Residential Rural (R1). Two-family dwellings (duplexes) are permitted in the R1 zone, so there was no issue regarding the use of the properties or the building permits that were granted. Moreover, the Building Department has no concerns with respect to now creating each half of the duplex on separate lots. Engineering Department and Island Health requirements for appropriate servicing will be addressed through the subdivision application process. Should the variances be granted and the strata subdivisions proceed, no further concerns are anticipated.

All the lots meet the minimum area and frontage requirements of Zoning Bylaw No. 2950.

**Official Community Plan (OCP):**

The subject properties are designated as "Rural Residential" in the OCP and are located well outside the Urban Containment Boundary (UCB). The OCP generally does not support growth that would further densify rural areas outside the UCB:

Section 3.1.2(d) "Strive to... Not approve bylaws, works or projects that would facilitate significant densification beyond the UCB."

Similar policies on growth in "Areas outside the UCB" (p.48) allow for added restrictions:

Section 3.2.19 (b) "Only allow subdivision approval, contingent on the applicant entering into a restrictive covenant to limit building sizes, locations and/or certain uses on the parcel."

Section 3.2.19 (c) "Configure zoning to maximize housing potential without further subdivision to permit detached accessory dwellings where servicing connections are available, or in the alternative, adequate on-site common septic treatment and water supply can be achieved."

While the OCP policies discourage subdivisions that would increase residential densities, they do not conflict with the requested setback relaxations, as they would facilitate the stratification of existing duplexes and would not increase the residential density beyond what currently exists.

**Summary and Conclusion:**

While the applicant does not intend to add secondary suites to the duplex units, that may be possible if the variance and subdivision applications are successful. To maintain the zoning density anticipated in the original subdivision of one residential building per parcel, a restriction (i.e., a restrictive covenant at the time of subdivision) is recommended.

Any future attempts to strata duplexes on other bare land strata lots would have to go through the process of cancelling the overall strata plan and obtaining a variance and new subdivision. This process is awkward and time-consuming for all properties but cannot be fully avoided because of how the *Strata Property Act* is written. North Cowichan can advise subdivision applicants of the restriction on further strata subdivision of bare land lots but cannot establish an easier process for secondary stratification of duplex properties without changes to the Province's strata subdivision legislation.

Approval is recommended as the requested variances do not increase density or change how the land is or can be developed.

Adjacent property owners within 60 metres of the subject properties have been notified (Attachments 7 and 8), and any responses received will be provided to Council prior to consideration of the applications. Copies of the draft permits are provided in Attachments 9 and 10.

## OPTIONS

### Option 1 (Recommended Option):

1. THAT Council authorize issuance of Development Variance Permit DVP00094 and grant a variance to section 56(6)(a) of Zoning Bylaw No. 2950, 1997 by reducing the minimum side yard setbacks from 3.0m to 0.0m for 2019 and 2021 Otter Close (Strata Lot 4 Plan EPS5408); subject to registration of a covenant on each new strata lot limiting the density to one dwelling unit.
2. THAT Council authorize issuance of Development Variance Permit DVP00095 and grant a variance to section 56(6)(a) of Zoning Bylaw No. 2950, 1997, by reducing the minimum side yard setbacks from 3.0m to 0.0m for 6467 and 6469 Marine Crescent (Strata Lot 13 Plan ESP54080); subject to registration of a covenant on each new strata lot limiting the density to one dwelling unit.
  - Approval would allow separate ownership of the duplexes to be established through strata subdivision. The covenant would ensure compliance with the OCP by precluding increased density on the future strata lots.

### Option 2 (Alternative Option):

1. THAT Council authorize issuance of Development Variance Permit DVP00094 to section 56(6)(a) of Zoning Bylaw 2950 by reducing the minimum required side yard setbacks from 3.0m to 0.0m setbacks for 2019 and 2021 Otter Close (Strata Lot 4 Plan EPS5408).
2. THAT Council authorize the issuance of Development Variance Permits DVP00095 to section 56(6)(a) of Zoning Bylaw 2950 by reducing the minimum required side yard setbacks from 3.0m to 0.0m setbacks for 6467 and 6469 Marine Crescent (Strata Lot 13 Plan ESP54080).
  - This option does not require a covenant restricting the density to one dwelling unit per strata lot.

### Option 3 (Alternative Option):

1. THAT Council deny the Development Variance Permit application DVP00094 to reduce the minimum required side yard setbacks from 3.0m to 0.0m setbacks for 2019 and 2021 Otter Close (Strata Lot 4 Plan EPS5408).
2. THAT Council deny the Development Variance Permit application DVP00095 to reduce the minimum required side yard setbacks from 3.0m to 0.0m setbacks for 6467 and 6469 Marine Crescent (Strata Lot 13 Plan ESP54080).
  - Denying the applications would require the duplexes to be retained under the current titles, and they could not be stratified as proposed. Separate ownership of the duplex dwelling units would not be possible.

**IMPLICATIONS**

Approval by Council of the recommended option will allow the applicants to pursue strata subdivision of the two existing duplexes. It may also encourage other strata lot owners to pursue similar applications.

Denial of the applications would prevent the duplex lots from being stratified as the approving officer could not approve a subdivision that is non-compliant with applicable land use bylaws.

**RECOMMENDATIONS**

- (1) THAT Council authorize issuance of Development Variance Permit DVP00094 and grant a variance to section 56(6)(a) of Zoning Bylaw No. 2950, 1997 by reducing the minimum side yard setbacks from 3.0m to 0.0m for 2019 and 2021 Otter Close (Strata Lot 4 Plan EPS5408); subject to registration of a covenant on each new strata lot limiting the density to one dwelling unit.
- (2) THAT Council authorize issuance of Development Variance Permit DVP00095 and grant a variance to section 56(6)(a) of Zoning Bylaw No. 2950, 1997 by reducing the minimum side yard setbacks from 3.0m to 0.0m for 6467 and 6469 Marine Crescent (Strata Lot 13 Plan ESP54080); subject to registration of a covenant on each new strata lot limiting the density to one dwelling unit.

Report prepared by:

Report reviewed by:

*Chris Hall*



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Chris Hall  
Contract Planner

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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 Maps
- (2) Ortho Photos
- (3) Zoning Maps
- (4) Genoa Reach Subdivision Plan
- (5) Proposed Strata Lot 13 Subdivision Plan
- (6) Proposed Strata Lot 4 Subdivision Plan
- (7) Notice – 4019\_4021 Otters Close

- (8) Notice – 6467\_6469 Marine Crescent
- (9) Draft Permit -4019\_4021 Otters Close
- (10) Draft permit – 6467-6469 Marine Crescent