

Report

Date	April 5, 2022	File:	ZB000126
Subject	Zoning Amendment Bylaw (Second Dwelling – 934 Khenipsen Road), 2020, No. 3798 for second reading		

PURPOSE

To review the additional information submitted by the applicant, as requested by Council, prior to considering second reading of Zoning Amendment Bylaw No. 3798 to permit the use of a second dwelling (converted accessory building) at 934 Khenipsen Road.

BACKGROUND

Council adopted the following resolution at its September 16, 2020 regular meeting:

THAT the application (Zoning Amendment Application - ZB000126) be referred back to staff to review the new information as submitted and that staff work with the applicant to identify whether an alternative location for the suite can occur and report back to Council.

The new information material submitted to staff by the applicant for review was provided in the November 18, 2020 Council Report on page 60 (Attachment 1 - see section **Additional submission items**).

Council adopted the following resolution, in response to the applicant's desire to proceed with the original location, at its November 18, 2020 regular meeting:

THAT Council give first reading to Zoning Amendment Bylaw (Second Dwelling – 934 Khenipsen Road), 2020, No. 3798;

AND THAT before Council considers second reading the applicants provide the municipality with the following information:

1. a plan for ensuring the adequate safety of the building in the event of a seismic event through a second geotechnical report.
2. a plan for adequately dealing with the wastewater problems which ensures the system meets environmental and health standards.
3. a statement about whether the applicants' intent is to: i) complete all the necessary steps to obtain a building permit and undertake required alterations or ii) undergo a basic life safety review and accept a notice on title.

The applicant submitted the following 4 items listed below (a – d) in response to Council's request:

- a) A report prepared by Ryzuk Geotechnical Engineering & Materials Testing which provides professional recommendations on mitigating "the risk of catastrophic failure for the building should the slope be subject to future instability" dated March 26, 2021 (Attachment 2);

- b) A sealed Schedule B Assurance of Professional Design and Commitment for Field Review statement (see Attachment 3) and Structural Design plan for grade beam and underpinned columns plan from Buepoint Consulting - Mark Buesink, the structural engineer dated May 21, 2021 (Attachment 4);
- c) A notarized letter from the property owner confirming intent to apply for a building permit and follow through with the necessary repairs (undertake required alterations) to the structure dated December 10, 2021 (Attachment 5); and
- d) A copy of a septic filing prepared by Henry Van Hell (Registered Onsite Wastewater Practitioner – ROWP) submitted to Island Health. A copy of this filing was received with the original application (Island Health accepted stamp September 8, 2020 is placed on filing – see Attachment 1, pages 70 – 84, numbering on bottom right) and prior to Council's November 18, 2020 request for the listed items above (a - c).

DISCUSSION

Building Permit

The Chief Building Inspector completed a review of the Buesink Structural repair plan, Schedule B of the Ryzuk Geotechnical report. This information provides a plan for the structural fix of the building to be incorporated into a building permit.

Further, additional review by a professional architect will not be required by the building inspector due to the small scale and simple design of the structure (a building permit was not issued for the conversion of the accessory building to a dwelling). Additional information may be required when the building permit application is received and processed.

Development Permit

Prior to issuance of a building permit, issuance of a development permit (informing the structural repair and wastewater treatment system fix) incorporating to be determined environmental protection measures, the geotechnical report and structural repair plan will be necessary.

Analysis

The four items (a – d) referenced above address the November 18, 2020 request by Council for additional information and provides a path for the applicant to complete conversion of the accessory structure to a dwelling unit.

Summarizing the circumstances which are relevant to this application, we considered the following:

- **Official Community Plan** – OCP policy does not support the disturbance of land or an increase in residential density in environmentally sensitive areas.
- **Geotechnical Engineering Report** (Ryzuk Geotechnical Engineering) – The Geotechnical Engineer retained by the homeowner confirms that local underpinning could be extended to bear atop dense

soils "in order to mitigate the risk of catastrophic failure of the building should the slope be subject to future instability". In the opinion of the Geotechnical Engineer this would provide time for occupants to egress the building safely despite the potential that the building may be rendered un-serviceable through such an event (Attachment 2).

- **Easement** - The subject property does not have direct access to a public road and instead relies on a private access easement over an adjacent property. Increasing the intensity of use on the property by authorizing a second dwelling may aggravate the existing conflict with the neighbouring property owner over the easement (Attachment 6).
- **Building Code** – The foundation repair plan (Attachment 4) and Schedule B (Attachment 3) provided by the Structural Engineer (Buepoint Consulting Ltd.) have been submitted and are attached to this report. As noted, the Chief Building Inspector has confirmed that he may issue a building permit on the basis of this information.
- **Wastewater Disposal System** –The ROWP hired by the applicant has submitted a septic filing to Island Health encompassing repair and upgrades to the existing wastewater treatment system within the Development Permit Area (which services the existing principal dwelling and the second dwelling under consideration through this application).

The location of the present wastewater treatment system is within 30 metres of the natural boundary of the ocean and contrary to applicable development permit guidelines for the protection of environmentally sensitive areas.

Staff in consultation with the ROWP considered relocating several main elements of the wastewater treatment system across Khenipsen Road and away from the natural boundary to the east (a portion of the applicant's property is separated by Khenipsen Road). The detrimental impact to the property in terms of removing mature trees and native vegetation on steep slopes in order to accommodate a new wastewater system site and access road is on balance a negative outcome as opposed to supporting repairs and upgrades to the existing wastewater system in its current location within the Development Permit Area.

Repair to the wastewater system will be necessary under a development permit regardless of whether the request for the use of a second dwelling is authorized by Council through this bylaw.

Adoption of this zoning amendment bylaw is not recommended for the reasons provided above and in previous staff reports (Attachment 1). Should Council ultimately approve the second dwelling use, a process to repair the building foundation and the wastewater treatment system servicing the principal and proposed second dwelling has been determined.

OPTIONS

1. **(Recommended Option)** THAT Zoning Bylaw Amendment Bylaw (Second Dwelling – 934 Khenipsen Road), 2020, No. 3798 be abandoned.
2. (Alternate Option)
 - a) THAT Council give second reading to Zoning Amendment Bylaw (Second Dwelling – 934 Khenipsen Road), 2020, No. 3798; and,
 - b) THAT a Public Hearing be scheduled for Zoning Amendment Bylaw (Second Dwelling – 934

Khenipsen Road), 2020, No. 3798 and notification be issued in accordance with requirements of the *Local Government Act*.

IMPLICATIONS

In deliberating support for second reading of this bylaw, Council may wish to consider the messaging, intended or not, to those contemplating a similar path to construct a second dwelling on their property contrary to development permit area guidelines and prior to obtaining permits necessary to ensure compliance with the British Columbia Building Code and Municipal bylaws.

A neighbouring property owner contends that the shared vehicle access driveway and supporting private easement registered on title does not extend to providing access to an additional dwelling unit on the applicant's property (Attachment 6). The applicant and the neighbour have both sought independent legal advice resulting in opposing views over the intent of the easement. Approval of this application may exacerbate the dispute between neighbours in this regard.

Should Council choose to deny the application, the accessory building must be decommissioned as a dwelling unit and application for a development permit made for repair of the existing wastewater treatment system which services the principal dwelling.

RECOMMENDATION

THAT Zoning Bylaw Amendment Bylaw (Second Dwelling – 934 Khenipsen Road), 2020, No. 3798 be abandoned.

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Report reviewed by:



Rob Conway
Director, Planning and Building

Approved to be forwarded to Council:



Ted Swabey
Chief Administrative Officer

Attachment(s):

1. Prior Council Reports
2. Ryzuk Geotechnical Report
3. Structural Schedule B
4. Structural Repair Plan
5. Notarized Letter

6. Access Easement Document and Legal Opinions
7. Bylaw No. 3798