

# Report

Date August 17, 2022

File: 3080-20 22.05  
DVP00082

Subject Development Variance Permit Application No. DVP00082 for 6824 Stoney Hill Road

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## **PURPOSE**

To consider an application for a development variance permit for the construction of a single-family dwelling within 15 metres from a watercourse at 6824 Stoney Hill Road.

## **BACKGROUND**

The subject property is an undeveloped vegetated lot that slopes down from Stoney Hill Road to Bird's Eye Cove (Attachments 1, 2 & 4). It is designated "Rural" in the Official Community Plan and is 2.02 ha (5 ac) in area, 450 metres (1,476.4ft) in length, 30 metres (98.4ft) wide and zoned Rural Zone (A2) (Attachment 3).

## **PROPOSAL**

The applicant proposes to construct a 199.2m<sup>2</sup> (2,143ft<sup>2</sup>) single-family dwelling 4 metres from an ephemeral un-gazetted watercourse. Along with the dwelling, a driveway and 40m<sup>2</sup> (430.66ft<sup>2</sup>) accessory garage is proposed (Attachment 5).

In order to develop within 4 metres of the watercourse, a variance to Sec. 13(1)(c) of Zoning Bylaw No. 2950 (setbacks from a watercourse) is required. This section prohibits a building or part thereof from being constructed within 15 metres (49.21') of the natural boundary of a watercourse (Attachment 10). A letter of rationale from the applicant has been provided (Attachment 6), identifying that the proposed development and rationale for it.

A subsequent development permit is required prior to issuance of a building permit. The applicant has retained professionals to prepare a geotechnical assessment and two ecological assessment reports to demonstrate regulatory compliance.

## **DISCUSSION**

Two ecological assessment reports were submitted with the application that assessed the status of the watercourse and the surrounding lands with recommended protective measures identified for the application (Attachment 7 & 8). A Qualified Environmental Professional (QEP) determined that the adjacent watercourse is not subject to Provincial protections through the Riparian Area Protection Regulation, and that the proposed development will not harm any marine or terrestrial species and ecosystems if the recommendations of the Ecological Assessment report are followed.

A Geotechnical Assessment report (Attachment 9) provides assurances that the proposed construction is safe for the intended use.

Key points from both reports are highlighted below:

- *Watercourses*: The subject property contains a 50-75cm wide, non-fish-bearing, intermittent watercourse. The watercourse doesn't have a well-defined drainage channel and has little riparian vegetation typically found adjacent to watercourses. Furthermore, the watercourse disappears underground prior to the proposed construction site before it seeps into the beach. A vegetation protection area (buffer) of 4 metres is required to provide sufficient room for protective measures to be installed (Attachment 6, 7, & 8).
- *Terrestrial habitat*: Migratory bird species protected under the *Migratory Bird Convention Act* are known to visit and breed in terrestrial habitats within the subject property. The breeding season is documented to occur from March 25<sup>th</sup> to August 10<sup>th</sup> for the subject property's location. The proposed development is unlikely to disrupt bird nesting activity, but as a protective measure, no clearance of vegetation including ground cover is to be conducted during the nesting season.
- *Coastal areas*: A review of the Sensitive Ecosystem Inventory mapping for eastern Vancouver Island in addition to site visits performed by the QEP has not revealed any sensitive ecosystems on or near the subject property.
- *Endangered species*: The QEP identified a raptor's (expected hawk) nest approximately 12-15 metres north-east of the proposed construction site. To protect the viability of the raptor's nest and the adjacent watercourse, all vegetation north-east of the proposed dwelling is to be protected. Since hawks are adept to living in close proximity to humans, this vegetation protection area will appropriately protect the raptor's nest. No Federal or Provincially protected species were found on the subject property.
- *Erosion and sediment control*: Measures have been recommended to prevent potential sources of erosion, and include: Installation of a 2 metre sediment and orange snow fencing (buffer) along the watercourse and north and west extents of the construction site prior to works, conduct clearing activities during dry times of the year and outside of the bird nesting season, mulch exposed areas with straw, protect any piles of fill or soil generated during construction with a temporary polyethylene sheeting, and protect vegetation and avoid compaction of areas outside of the development site. Along with a pre and post construction monitoring report, these protective measures will fulfill the conditions of the subsequent development permit.
- *Vegetation enhancement*: Due to the abundance of vegetation on the subject property, replanting isn't required (Figure 2 and 7).
- *Stable and accessible building sites*: The June 10<sup>th</sup>, 2022 Geotechnical Assessment report prepared by Core Engineering Ltd (Attachment 9) addresses potential hazards that are associated with building near steep slopes. The report confirms that the proposed is safe for the intended use and that blasting will not be required.
- *Wildfire Protection in Rural Areas*: A Section 219 covenant will be registered on the property title prior to development occurs to address wildfire risk.

## Analysis

Section 14(2)(e) of Zoning Bylaw 2950 identifies flood control requirements in order to determine the minimum elevation of the underside of the floor system (Flood Construction Level, FCL). As per Attachment 5 & 6, the watercourse seeps into the ground at 21.5 metres geodetic, so the proposed single-family dwelling must be at or above 23 metres geodetic, to be confirmed prior to building permit issuance.

The subject property is a narrow but long lot, which inherently requires a long driveway to utilize the desirable ocean views. This proposed site development requires considerable vegetation removal for driveway construction. Since the Municipality constructed Stoney Hill Road, the provisions of the 1990 Plan of Subdivision (Plan VIP5112) for "access by water only" have been superseded, requiring the Municipality to provide highway access permits for all lots (Attachment 12).

The proposed single-family dwelling is on a bench 14 to 19 metres upland from the high-water mark of the ocean at the apex of Bird's Eye Cove. This locates the home behind both neighbouring houses, preserving views while providing ample space to protect the home from erosion and flooding caused by sea-level-rise and storm events. Furthermore, the watercourse seeps underground prior to entering the 30 metre shoreline assessment area, leaving plenty of space for a vegetated buffer for both the watercourse and the adjacent raptors nest. These factors combined provide a suitable site to build a home in compliance to provincial regulations and in compliance to development permit area guidelines.

Lastly, issues are regularly encountered with the applicability of Sec.13 (1)(c) along side the 'watercourse' definition as per Zoning Bylaw No. 2950:

**"watercourse"** means any natural or man-made channel through which water flows, serving to give direction to a current of water;

No quantifiable features are provided within the 'watercourse' definition, opening up the opportunity for interpretation to include any form of depression in the land where water might flow from time to time to be defined as a watercourse regardless of the size, tenure or characteristics of the watercourse in question. Since this definition is subjective, the regulation is difficult to understand and apply consistently:

### Watercourses

- 13** (1) Despite any other provisions of this Bylaw, other than section 80.2 (7) (d), no building or part thereof shall be constructed, altered, moved, or extended, nor shall any mobile unit, manufactured home, structure, or fill be located: [BL3323]
- (a) within 7.5 m (24.6') from the natural boundary of the sea, or
  - (b) within the riparian assessment area, unless the requirements of the *Riparian Areas Regulation* of the British Columbia Fish Protection Act have been met;
  - (c) within 15.0 m (49.21') from the natural boundary of any other watercourse or source of water supply, excluding wells.

In order to appropriately apply Sec.13 (1)(c) of Zoning Bylaw No. 2950 (Attachment 10), a natural boundary must be defined. *The Land Act* defines a Natural Boundary as per the following:

**"natural boundary"** means the visible high water mark of any lake, river, stream or other body of water where the presence and action of the water are so common and usual, and so long continued in all ordinary years, as to mark on the soil of the bed of the body of water a character distinct from that of its banks, in vegetation, as well as in the nature of the soil itself;

The subject watercourse (relevant to this application) is similar to many others found throughout the Municipality; ephemeral, poorly defined, and often located along other features or structures such as a road which was installed to mitigate flooding during a storm event (i.e. a ditch). Since a natural boundary is often not present at these types of 'watercourses', it may not be appropriate to require the same 15 metre setback restriction imposed on substantial streams and other bodies of water. Since the natural boundary of the subject watercourse is intermittent and non-contiguous, it is not clear that Sec. 13(1)(c) should be applied to all aspects of the proposed. In order to be as conservative as possible and to ensure protective measures are maintained, staff propose a variance to Sec. 13(1)(c) setbacks from a watercourse.

Summary:

- the watercourse does not support fish habitat and is not subject to Provincial protections
- protective measures will be installed to preserve vegetation and mitigate sediment and control erosion from impacting the watercourse and ocean
- minimal riparian vegetation was observed next to the watercourse
- the watercourse is poorly defined, small and ephemeral in nature

For the above reasons staff recommend approval of the proposed variance.

## **OPTIONS**

1. **(Recommended Option)** Authorize variance and issue permit.

THAT Council authorize the issuance of Development Variance Permit DVP00082 to vary section 13(1)(c) of Zoning Bylaw No. 2950, 1997 to reduce the required setback from a watercourse from 15 metres to 4 metres at 6824 Stoney Hill Road.

2. Deny variance.

THAT Council deny Development Variance Permit Application DVP00082 for a reduction in the required setback from a watercourse under section 13(1)(c) of Zoning Bylaw No. 2950, 1997, from 15 metres to 4 metres at 6824 Stoney Hill Road.

## **IMPLICATIONS**

Should the application be denied by Council, the applicant will have to relocate the proposed single-family dwelling in order to comply to Sec.13 (1)(c) of Zoning Bylaw No. 2950, which requires a minimum 15 metre setback from the watercourse. Siting the house in this manner will prohibit the property owner from utilizing the subject property's ocean views.

Should the recommended option be approved by Council, a development permit and building permit will be required before the owner commences construction.

**RECOMMENDATION**

THAT Council authorize the issuance of Development Variance Permit DVP00082 to vary section 13(1)(c) of Zoning Bylaw No. 2950, 1997 to reduce the required setback from a watercourse from 15 metres to 4 metres at 6824 Stoney Hill Road.

Report prepared by:

Report reviewed by:



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Anthony Price  
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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) Orthophoto
- (3) Zoning Map
- (4) Topographic Map
- (5) Development Rationale
- (6) Site Plan, July 17, 2022
- (7) Ecological Assessment Report, 2019-05-09
- (8) Ecological Assessment Report, 2022-06-10
- (9) Geotechnical Assessment Report, 2022-06-10
- (10) Section 13(1)(c) Watercourse
- (11) Plan of Subdivision VIP51112
- (12) Draft Development Variance Permit