

SUNSHINE COAST REGIONAL DISTRICT STAFF REPORT

TO: Planning and Community Development Committee – November 12, 2020

AUTHOR: Dave Pady, Manager, Planning and Development

SUBJECT: Development Variance Permit Application DVP00054 (4355 Lake Road)

RECOMMENDATIONS

THAT the report titled Development Variance Permit Application DVP00054 (4355 Lake Road) be received;

AND THAT Development Variance Permit Application DVP00054 (4355 Lake Road) be denied.

BACKGROUND*Summary of Application*

In November 2019 a Development Variance Permit application (Attachment A) was received for a property located on Sakinaw Lake located at 4355 Lake Road, Pender Harbour.

The application as received seeks to vary the height and setback of a single family dwelling that is a reconstruction of a building (constructed circa 1970) that is non-conforming as to siting which encroached into the 20 metre natural boundary setback to a lake by 10.5 metres.

The intent of the application is to legalize construction that has occurred that is in contravention of development and building permits. A mismatch between permitted construction and what was being built was identified at the framing stage.

The applicant has stated to staff in the application and in subsequent communications that the variance is required to address a building error (height), geotechnical requirements that emerged during construction (deck post setback) and what might be described as design issues (rear west corner and kitchen area).

Staff have done extensive research on this building and had multiple meetings with the applicant and their contracted design professionals. Stop work orders have been in place since December 2019 (within the setback area) and February 2020 (entire property).

The purpose of this report is to provide information on the application and obtain a resolution from the Committee. The SCRD Board of Variance has authority to grant or deny the variance.

Figure 1 – Location of Subject Property (highlighted in yellow)



Table 1 – Application Summary

Owner / Applicant:	Lorna Vanderhaeghe
Legal Description:	Lot 2, DL 3921, Plan BCP23871
P.I.D.:	026-674-548
Electoral Area:	A – Pender Harbour / Egmont
Civic Address:	4355 Lake Road, Pender Harbour
Zoning Bylaw 337:	RU-1 (Rural Residential)
OCP Land Use:	Rural Residential A in the Egmont / Pender Harbour OCP
Parcel Area:	1 hectare
Proposed Variances:	<u>The following variance request was received through email correspondence after an initial application made November 12, 2019:</u> To vary the height of a single family dwelling which is non-conforming as to siting from 14.48 metres to 15.05 metres and to reduce the required setback to Sakinaw Lake from 20 metres to 9.4 metres. <u>Applicant's Original Stated Request:</u> <i>"We are requesting the rear west corner be squared off and reduce roof line resulting in better roof structure."</i> The application was updated and augmented through a letter received January 16, 2020: <i>"We are applying to have the rear west corner at the back of our building squared off which adds an additional 28 square feet. We have also discovered that our builder has built our house taller than our DP drawings. We are rebuilding a legal non-conforming house at Sakinaw Lake. Part of the rebuild is in the 15 meter set back, and the other part of the house sits in the 20 meter set back area. ... Our request is to square off the rear corner of the house and simplify the roof line above that area.... We have realized that the rear west corner of the building has such an irregular shape that it is causing roof line issues and a step back interior that is creating HVAC and kitchen layout issues."</i> The foregoing is what the applicant is seeking. See staff analysis below.

Development Permit DP000077 was issued on March 12, 2019 with the following conditions:

- No further encroachment of any building mass as it existed at the time of the development permit issuance;
- Adhere to the guidelines and recommendations in the report prepared by the appointed QEP, dated October 16, 2017. Specifically, an environmental monitoring program during the construction phase to ensure that the SPEA is understood and protected; and
- Strictly adhere to the design specified in the drawings prepared by the Residential Designer (Architect) on record, dated January 17, 2019.

The applicant received copies of the issued permits that clearly described the conditions described above.

There are also issues that will need to be addressed arising out of the Applicant's change to the building permit application involving the foundation. Under the Province of BC's *Riparian Areas Protection Regulation* (RAPR), local governments are only authorized to permit repairs to a non-conforming foundation in a riparian area under specific and very limited circumstances. The regulation does not support complete removal of an existing building and foundation as this is considered new construction.

In speaking with the Province, a Local Government may not issue a permit unless the proposed works is in compliance with the regulation. New construction, including the foundation and works within the SPEA were not covered by the riparian assessment provided as part of the Development Permit. Based on this, the RAPR assessment on file is not sufficient and this issue will have to be re-examined in consultation with the Province. Any new construction beyond the scope of the assessment requires either a revision to the riparian assessment or a new riparian assessment and new permit. This must be completed *prior* to any work occurring on site. For works already completed, a Local Government can require a condition and impact assessment report from the QEP which is provided to the province in advance of a RAPR assessment so that the province is fully apprised of the situation and can determine the assessment. The province and the local government work together through a professional reliance model to ensure remediation is consistent with best practices and provincial guidelines.

It should be further noted that while the *Local Government Act* differentiates between *uses* and *siting* with respect to legal non-conforming buildings and structures, the Provincial RAPR adheres to Section 532 as it relates to all non-conforming buildings (foundations and footprints) within a SPEA. In order to for a building to be eligible for reconstruction within a SPEA, Section 24 of the RAPR applies as follows:

24 (1) In this section:

"eligible structure" means a building or other structure damaged or destroyed to the extent described in section 532 (1) [*repair or reconstruction if damage or destruction $\geq$ 75% of value above foundation*] of the [Local Government Act](#);

Staff have sought advice from the Province on how to proceed in light of RAPR's position on foundation replacement and the current situation. To date, no clear direction has been provided. Provincial staff have stated that there are a large number of similar cases in the last year following introduction of RAPR. This is a somewhat tangential issue to whether the variance should be approved, and has been complicated by the other issues described in this report related to the applicant's construction in contravention of permits, changes to design and ongoing refusals to respect stop work orders.

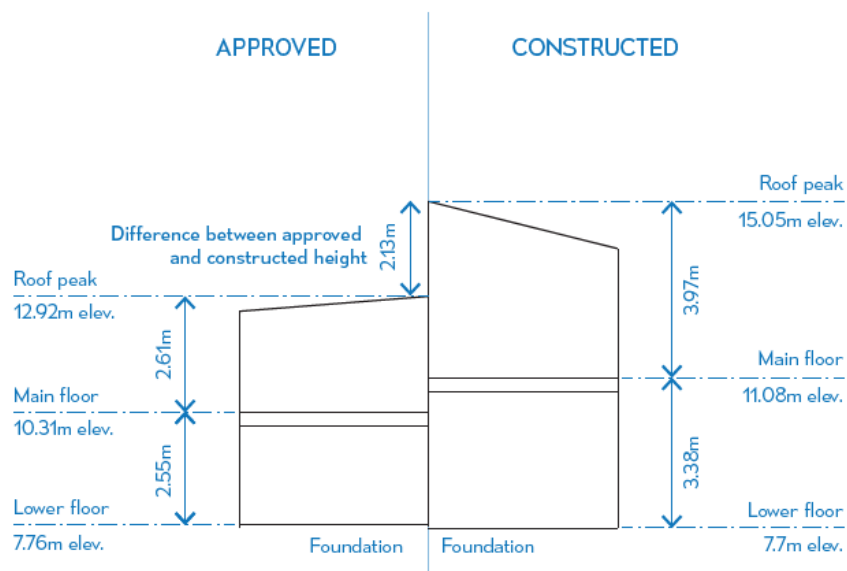
What Has Been Constructed

Building Height

With regard to height, an analysis of the building permit drawings issued for construction, and inspections by Building Inspection staff shows that the overall increase in height appears to be directly related to an increase in floor-to-ceiling heights. The floor-to-ceiling heights for both floors of the previous non-conforming structure were approximately 8 feet. The new structure has floor to ceiling heights for both floors of 10 feet resulting in a cumulative increase of 4 feet over both floors. The foundation is slightly lower than previously (0.06m). The overall decreased foundation elevation, increased floor to ceiling heights, and roof structure result in the overall increase in height.

The figure below contains measurements provided by legal survey and building permit drawings and is provided for illustrative and explanatory purposes only and is not intended to be an accurate representation of the west side elevation.

Figure 3 – Elevation comparison for illustration purposes



Although the applicant has indicated a height variance of 0.57 metres is required, based on staff's review of plans and survey submitted, and corroborated by the design professionals involved (by email, May 29, 2020 and September 28, 2020), in order to legalize the building as actually constructed the variances required would be:

- To vary the height of portions of a single family dwelling which is legally non-conforming as to siting from 12.92 metres to 15.05 metres, as measured from the assumed datum being the natural boundary of Sakinaw Lake. This represents a variance of 2.13 metres.

On October 2, 2020, the applicant advised staff:

- "This is not representative of what we are requesting. ... We have applied for a variance for height from 14.48 to 15.05 (which is less than a meter). No we are not asking for a variance from 12.92 to 15.05 that would NOT be representative of the legal non-conforming issue."

The discrepancy between what the applicant is seeking and what staff have assessed to be required represents a height difference of 1.56 metres.

Setback

A variance from what is stated in the Zoning Bylaw is required. The prior position of the non-conforming as to siting deck post was 9.5m from the lake, however the variance must be stated as "from" the zoning bylaw's requirement (20 metres).

The variance required is:

- To reduce the required natural boundary setback to a lake from 20 metres as stated in Section 516.1 (c) of Zoning Bylaw No. 337 to 9.4 metres.

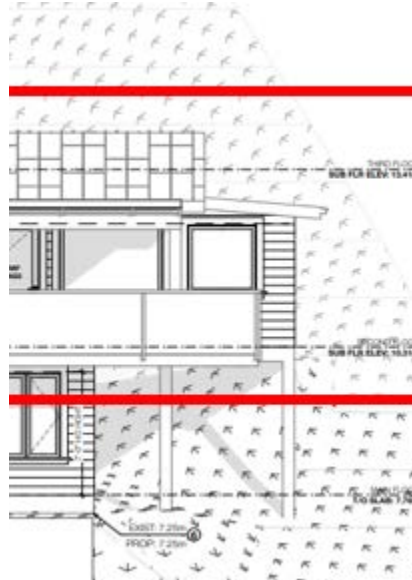
While the position of the post has only moved from 9.5 metres to 9.4 metres the foundation and works necessary to support the new post resulted in encroachment into the SPEA.

Volume

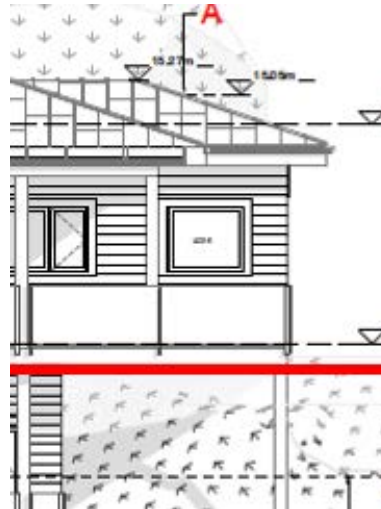
In assessing the previous building prior to demolition, staff captured criteria such as height and setback to be used as proxies for volume. The building as constructed contains changes to volume not reflected in these proxies. For example, the western roofline is changed and the deck configuration is extended westward.

Figure 4 – Drawing detail (west end of building) – not to scale/elevation; for illustration only

APPROVED:



BUILT:



As continued construction has occurred without inspections and SCRD does not have complete drawings for what has been built, staff are unable to assess what type of variance might be required for volume.

Together the change in floor to ceiling heights and the deck configuration have the effect of placing the deck approximately 0.6m higher and very approximately 0.6m more westerly, toward the neighbouring property.

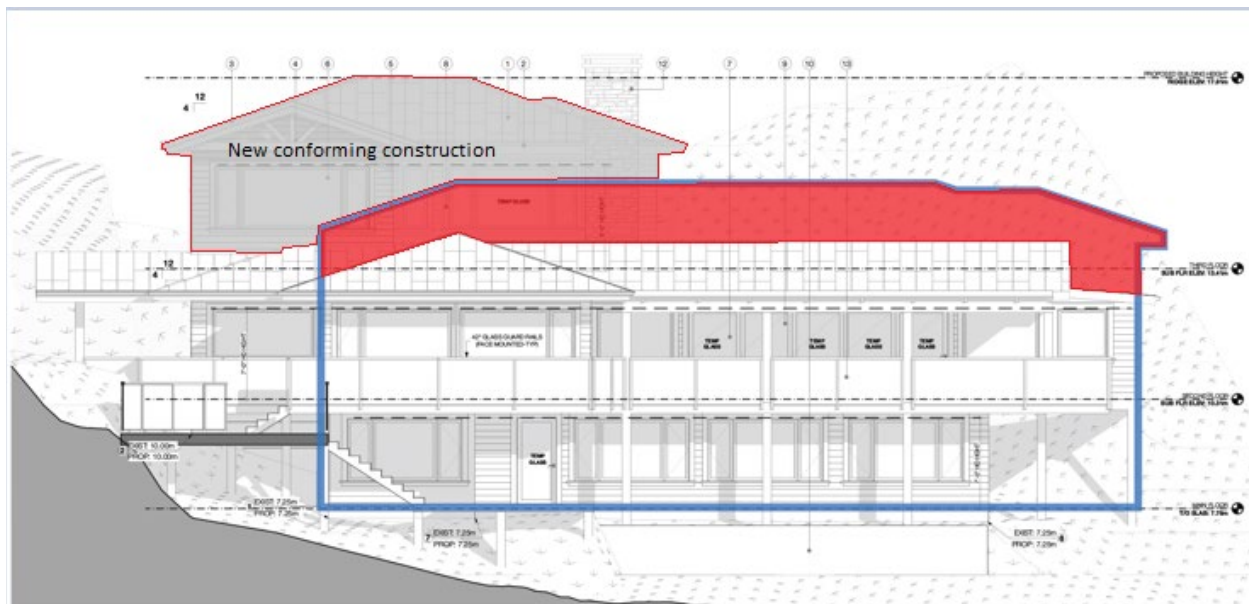
To illustrate the increase in massing/volume the following images show the elevations of the existing constructed building and an outline (in blue), based on known measurements, superimposed over an elevation of the previous building. It should be noted that the blue outline focusses on the western portion of the building since this is the area known to impact the neighbouring property. The roofline of the entire second storey has increased to create a linear profile. Staff have worked hard to ensure the scale of both buildings is as accurate as possible.

These illustrations are again provided for illustrative and explanatory purposes only and are not intended to be an accurate representation of the increased massing.

Architectural elevation drawing of a two-story house. The drawing includes various dimensions and labels for windows and doors. A dashed line indicates the "LINE OF MAX. BUILDING HEIGHT 9'11" FROM AVG. DISTING. PROPOSED GRADE". A note specifies "ORIGINAL AVERAGE PROPOSED GRADE (FROM FEB. 5, 2019 SP SET)". A scale bar at the bottom right shows 1/4" = 1'-0".

The architectural section drawing illustrates a building with a new conforming construction (red outline) and an existing structure (blue outline). The new construction is a two-story addition with a gabled roof, labeled "New conforming construction". The existing structure is a three-story building with a flat roof. The drawing shows the internal structure, including walls, floors, and stairs. Annotations include floor levels (e.g., "FINISH FLOOR", "FINISH CEILING"), structural details (e.g., "CONCRETE", "STEEL", "WOOD"), and a note "New conforming construction". The drawing is a technical representation of a building's internal structure and layout.

Figure 7 - Massing increase difference shown in red – illustrative only



Riparian Area

The property is located within Development Permit Area #4 – Riparian Assessment Area.

As part of the DP requirements, the applicant submitted a *Riparian Areas Protection Regulation* Assessment Report prepared by a QEP. Under the section “encroachment”, the QEP report listed measures to protect the SPEA within the 15 metre RVPA setback:

- *In order to maintain the effectiveness of the riparian protection area, vegetation and trees, tree rooting zones should be protected from foot traffic and any further clearing; and*
- *Property owners shall avoid additional trails, refuse dumping, soil disturbance, vegetation conversion or tree clearing in the existing riparian zone of Sakinaw Lake.*

Extensive work within the SPEA has occurred. Work within a SPEA is not permitted and is a contravention of the Development Permit Area.

The owner advised SCRD that a landslide occurred on or about May 11, 2020 which required substantial earthworks completed within the SPEA by heavy machinery. No report from a geotechnical engineer detailing the issue and prescription for resolution has been provided to SCRD.

A new Development Permit application must be submitted and must include all works performed on Lot 2 and propose remediation to provincial standards (the province will confirm acceptability). As the construction is not what was contemplated at the time the QEP RAPR assessment was prepared and submitted to the province, an acceptable condition and impact assessment must be provided to the SCRD prior to preparation of a new RAPR assessment report which must be accepted and approved by the Province. According to the Province, the existing RAPR assessment is not valid for the work that has been completed.

Figure 8 – Photo from RAPR assessment showing previous cottage.



Photo 2: Existing legal non-conforming cottage. No new disturbance in the front (lake side) of property.

Figure 9 – Photo of current building



The interface of the setback variance request with possible remediation works within the SPEA is unknown. Work by a QEP and Provincial involvement will be required to resolve this question.

Consultation

The application has been referred to the following groups and agencies for comment.

Table 2 – Consultation Summary

Group / Agency	Comments
shíshálh Nation	On March 3rd, 2020, shíshálh Nation provided the SCRD with the following comment: Our data shows that Sakinaw Lake and the surrounding areas as being critical habitat for Western Painted Turtle, which is a red-listed species in BC. Sakinaw Lake is listed as critical habitat in the federal addition to the Recovery Program for Painted Turtles in BC (2018) under Environment and Climate Change Canada. This same report lists recreational activities among the risks to Turtle habitat as “pervasive”, meaning it affects 70-100% of the species over a 10 year period. Turtles rely on sandy beaches and other open level areas within 150 m of resident water bodies for terrestrial activities such as nesting. The Nation supports the retention of a minimum 15 metre setback between developments and all shorelines (taken from the high water mark). This proposed setback reduction would be less than 10m from the lake shore (change of 0.1m).
Building Division	The Building Division will require amended drawings which identify exactly what has been constructed to date. If the variance is denied the Building Division will oversee the partial deconstruction of the portions of the single family dwelling that were constructed beyond the building permit that was issued on March 22nd, 2019.
Infrastructure Services Department	The Infrastructure Services Department has no comments.
Protective Services Division	The Pender Harbour Volunteer Fire Department has no comments.

Advisory Planning Commission	The Egmont / Pender Harbour Advisory Planning Commission met on April 29th, 2020, and considered an earlier version of the variance request with different dimensions (specifically: less height change and no awareness of change in floor heights), based on survey and drawing information available at that time. Based on the information provided at that time, the Advisory Planning Commission recommended approval of Development Variance Permit Application DVP00054, but with conditions and concerns. The Area A APC expressed serious concerns with a variance being granted in the face of daily continued construction where two stop-work orders have been issued, setting a dangerous precedent.
Neighbouring Property Owners / Occupiers	Notifications were sent on Friday, October 30th, 2020. Notification to surrounding properties was provided in accordance with Section 499 of the <i>Local Government Act</i> and Sunshine Coast Regional District Bylaw No. 522. Comments received as of agenda publication, Friday, November 6th, are attached (Attachment F)

Options

1. Deny the Development Variance Permit Application (recommended)

Staff are unable to come to agreement with the applicant about the dimension of the required variance. Volumetric changes to the building have been made that are not addressed by height or setback variances and also have an impact on neighbouring property.

Approving the variance could be seen as validating unauthorized construction and retroactively approving construction that may not have received approval before the fact.

In addition, there are unresolved questions related to the foundation replacement and to what remedial works in the SPEA would also be required by a QEP and the Province (and how those works would interface with the requested variance).

While an applicant is free to apply for any variance they so choose (i.e. no undue hardship is required as part of a DVP), staff do not see a planning rationale to support the application. Although it is difficult to understand how a building error by an experienced builder could have occurred that increased floor to ceiling heights by 2 feet on both floors, if such an error did occur, it can be remedied between the applicant and the contracted (and insured) builder.

If the variance is denied, the applicant may apply to the Board of Variance who will judge if undue hardship exists and, if so, may consider an application.

If the variance is denied and either not considered by Board of Variance or denied by Board of Variance, the applicant would need to partially deconstruct the building with oversight from the Building Inspection Division.

2. Hold the Development Variance Permit in Abeyance

There are unresolved questions related to the foundation replacement and to what remedial works in the SPEA would also be required by a QEP and the Province (and how those works will interface would the requested variance).

Consideration of any variance at this time could complicate or frustrate resolving these questions.

If this option is selected, the applicant should update the variance application to confirm dimensional variance sought for height before the matter is given any further consideration.

3. Approve the Development Variance Permit

Based on staff's calculations, approving the height variance as requested will not legalize the building as constructed. Volumetric changes such as the western roofline and deck projection would still need to be addressed. Works with the SPEA will still need to be remediated. Issuing a Development Variance Permit will not, in staff's analysis, meet the owner's intent to legalize the building.

Staff expect that the applicant will state that they were advised by SCRD to seek a variance and so it is not reasonable to conclude, now, that a variance will not solve the issue. It is true that staff provided information about how a development variance permit could be used to address a building height construction error. However, this information was provided at a time when staff's understanding was that a foundation height error had been made and that the building would otherwise match the approved drawings. What has been constructed is an entirely new and different building.

If the Board proposes to grant the variance requested, an amendment to the existing Development Permit will be required to authorize the current construction.

In addition to whichever decision is made by the Board on the development variance permit, a remediation plan for the SPEA that is acceptable to the Province and the issuance of a Development Permit for that remediation work will be required to bring the property into compliance.

CONCLUSION

Staff are unable to come to agreement with the applicant about the dimension of the required variance. Volumetric changes to the building have been made that are not addressed by height or setback variances and also have an impact on neighbouring property.

Approving the variance could be seen as validating unauthorized construction and retroactively approving construction that may not have received approval before the fact.

In addition, there are unresolved questions related to the foundation replacement and to what remedial works in the SPEA would also be required by a QEP and the Province (and how those works would interface with the requested variance).

Staff recommend denial of the variance.

ATTACHMENTS

Attachment A – Application as Received

Attachment B – Letter from Applicant (January 16, 2020)

Attachment C – 2020 Site Survey

Attachment D – QEP memos and Riparian Areas Assessment

Attachment E – Covenant BA175970 for the RVPA

Attachment F – Comments received by Nov 6th, 2020 from neighbouring properties

Reviewed by:			
Manager	X – D. Pady	Finance	
GM	X – I. Hall	Legislative	
CAO	X – D. McKinley	Risk Management	X - V. Cropp
		Building	X – A. Whittleton