

JUAN DE FUCA BOARD OF VARIANCE

Notice of Meeting on Tuesday, **June 11, 2024, at 6:00 pm**

Juan de Fuca Local Area Services Building, #3 – 7450 Butler Road, Otter Point, BC

AGENDA

1. Election of Chair
2. Approval of Agenda
3. Adoption of Minutes of August 22, 2023
4. Planner's Report
5. Applications
 - a) BV000498 - Lot 1, District Lots 51 and 187, Malahat District, Plan 12268 (4215 Okotoks Drive)
 - b) BV000499 - Lot 8, Sections 42 and 38, Otter District, Plan EPP63580 (Clark Road)
6. Adjournment

PLEASE NOTE: The public may attend the meeting in-person or electronically through video or teleconference. To attend electronically, please contact us by email at jdfinfo@crd.bc.ca so that staff may forward meeting details.

**Minutes of a Meeting of the Juan de Fuca Board of Variance
Held Tuesday, August 22, 2023, at the Juan de Fuca Local Area Services Building,
#3 – 7450 Butler Road, Otter Point, BC**

PRESENT: Paul Clarkston (Chair), Axel Joosting (EP)
Staff: Iain Lawrence, Senior Manager, JdF Local Area Services;
Wendy Miller, Recorder
PUBLIC: 1 EP

EP – Electronic Participation

The meeting was called to order at 6:03 pm.

1. Approval of the Agenda

MOVED by Axel Joosting, **SECONDED** by Paul Clarkston that the agenda be approved.

CARRIED

2. Approval of the Supplementary Agenda

No supplementary items.

3. Adoption of the Minutes of June 28, 2023

MOVED by Axel Joosting, **SECONDED** by Paul Clarkston that the minutes of June 28, 2023, be adopted.

CARRIED

4. Planner's Report

No report.

5. Application

a) BV000497 - Lot 38, Sections 2 and 4, Renfrew District, Plan VIP83894 (3680 Cormorant Way)

Iain Lawrence outlined the staff report and advised that the applicant has requested a variance to reduce the required side yard setback from 6 m to 5 m for the purpose of authorizing the completion of a single-family dwelling that does not conform with the siting requirements of the Rural Residential 2A (RR-2A) zone.

The subject property, site plan, building plans and foundation survey were highlighted.

Attention was directed to the applicant's hardship statement as included in the staff report.

It was confirmed that no comments were received in response to the notice of intent mailed to adjacent property owners/occupiers within 50 m of the subject property.

The Chair confirmed that the applicant was present.

The BOV considered the requested variance and passed the following resolution:

MOVED by Axel Joosting, **SECONDED** by Paul Clarkston that having considered the matters set out in Section 542(1)(c) of the *Local Government Act*, and a having found that undue hardship would be caused to the applicant if Part 2, Section 6A.07 (b) of Bylaw No. 2040 were complied with, that application BV000497 requesting permission from the Board of Variance in accordance with Section 540 of the *Local Government Act* to grant a minor variance to Bylaw No. 2040 Part 2, Section 6A.07 (b) by reducing the required side yard setback from 6 m to 5 m on Lot 38, Sections 2 and 4, Renfrew District, Plan VIP83894, for a single-family dwelling, be approved and that if construction is not substantially started within 2 years after the date of this order, the order shall terminate.

CARRIED

6. Adjournment

The meeting was adjourned at 6:09 pm.

P. Clarkston, Chair



**REPORT TO THE JUAN DE FUCA BOARD OF VARIANCE
MEETING OF JUNE 11, 2024**

File No: BV000498
Location: 4215 Okotoks Drive – Malahat
Legal: Lot 1, District Lots 51 and 187, Malahat District, Plan 12268
Zoning: Greenbelt 3 (Gb3) – Bylaw No. 980
Land Use Designation: Settlement Area (SA) – Bylaw No. 3721
Adjacent Uses: N – Gb3 zoned parcel S – Gb3 zoned parcel
W – E&N Railway Corridor E – TCH/Okotoks Drive

REQUESTED VARIANCE

The applicant is requesting that the Board of Variance approve a minor variance to relieve hardship, in accordance with Section 540(a) of the *Local Government Act (LGA)*, by increasing the length of a manufactured or modular home used for a detached accessory suite specified by the Malahat Land Use Bylaw, 1981, Bylaw No. 980, Section 2.1.17(11) from 13 m to 20.1 m.

LEGISLATIVE IMPLICATIONS

Section 542(1) of the *LGA* outlines that the Board of Variance may order that a minor variance be permitted from the requirements of the applicable bylaw, if the Board of Variance:

- (a) has heard from the applicant and any person notified under Section 541;
- (b) finds that undue hardship would be caused to the applicant if the bylaw or Section 531(1) is complied with; and
- (c) is of the opinion that the variance or exemption does not do any of the following:
 - (i) result in inappropriate development of the site;
 - (ii) adversely affect the natural environment;
 - (iii) substantially affect the use and enjoyment of adjacent land;
 - (iv) vary permitted uses and densities under the applicable bylaw;
 - (v) defeat the intent of the bylaw;
 - (vi) vary the application of an applicable bylaw in relation to residential rental tenure.

Section 542(3) of the *LGA* outlines that in relation to an order under Section 542(1),

- (a) if the order sets a time within which the construction of the building, structure or manufactured home park must be completed and the construction is not completed within that time, or
 - (b) if that construction is not substantially started within 2 years after the order was made, or within a longer or shorter time period established by the order,
- the permission or exemption terminates and the bylaw or section 531(1), as the case may be, applies.

STAFF COMMENTS

The 1.49 hectare subject property fronts onto the Trans-Canada Highway road right-of-way via Okotoks Drive to the east and is located adjacent to similar Greenbelt properties to the north and south; the E&N Railway corridor is located along the rear property boundary to the west (Appendix A). There is an existing non-conforming single-family dwelling located on the parcel immediately adjacent to the driveway entrance; land records indicate that it was constructed in 1979. The driveway roughly follows the northern parcel boundary and splits into three providing access by way of easement to each of the neighbouring parcels.

A detached accessory suite, in the form of a mobile home, was recently demolished on the subject property under Building Permit BP009939. The owners now wish to move-in a new manufactured home in the same location (Appendix B). Section 2.1.17(11) of the Malahat Land Use Bylaw specifies that a “detached accessory suite may be in the form of manufactured or modular home not exceeding a length of 13 m.” Building plans show that the manufactured home has a length of 20.1 m; therefore, a variance is required in order to authorize its use as a detached accessory suite (Appendix C).

The Gb3 zone permits a density of one single-family dwelling and either one secondary suite or one detached accessory suite. The structure has a floor area of 83.8 m² and complies with the 33.4 m² minimum and 90 m² maximum floor area specified by Section 2.1.17(6). The owners have provided a statement of hardship in support of the application (Appendix D).

Pursuant to the Juan de Fuca Board of Variance Bylaw, Bylaw No. 4288, notification letters have been sent to the applicant, as well as to owners and occupants within 50 m of the subject property. Any responses received will be presented at the June 11, 2024, Board of Variance hearing.

Staff are of the opinion that the proposed development would not adversely affect the natural environment and that the proposal is in keeping with the surrounding neighbourhood. Portions of the property are designated as a Steep Slope Development Permit Area under the Malahat Official Community Plan, 2014, Bylaw No. 3721; however, the proposed location of the mobile home and septic field are outside the development permit area.

The bylaw requirement that a manufactured home used as a detached accessory suite be 13 m was discussed during review of the amendment to Juan de Fuca Land Use Bylaw No. 2040 establishing the provision for detached suites in 2010. In 2013, the existing regulation in the JdF Land Use Bylaw was used for the detached accessory suite regulations in the Malahat Land Use Bylaw. The 13 m length provision was drafted in response to aesthetic concerns over the use of manufactured homes as detached suites; however, no such concerns have been raised in the Malahat community to date.

If the Board of Variance finds that not granting the variance would result in undue hardship, considers the requested variance to be a minor and finds that it meets the considerations of section 542(1)(c), an order granting a minor variance may be permitted.

OUTLINE MOTION

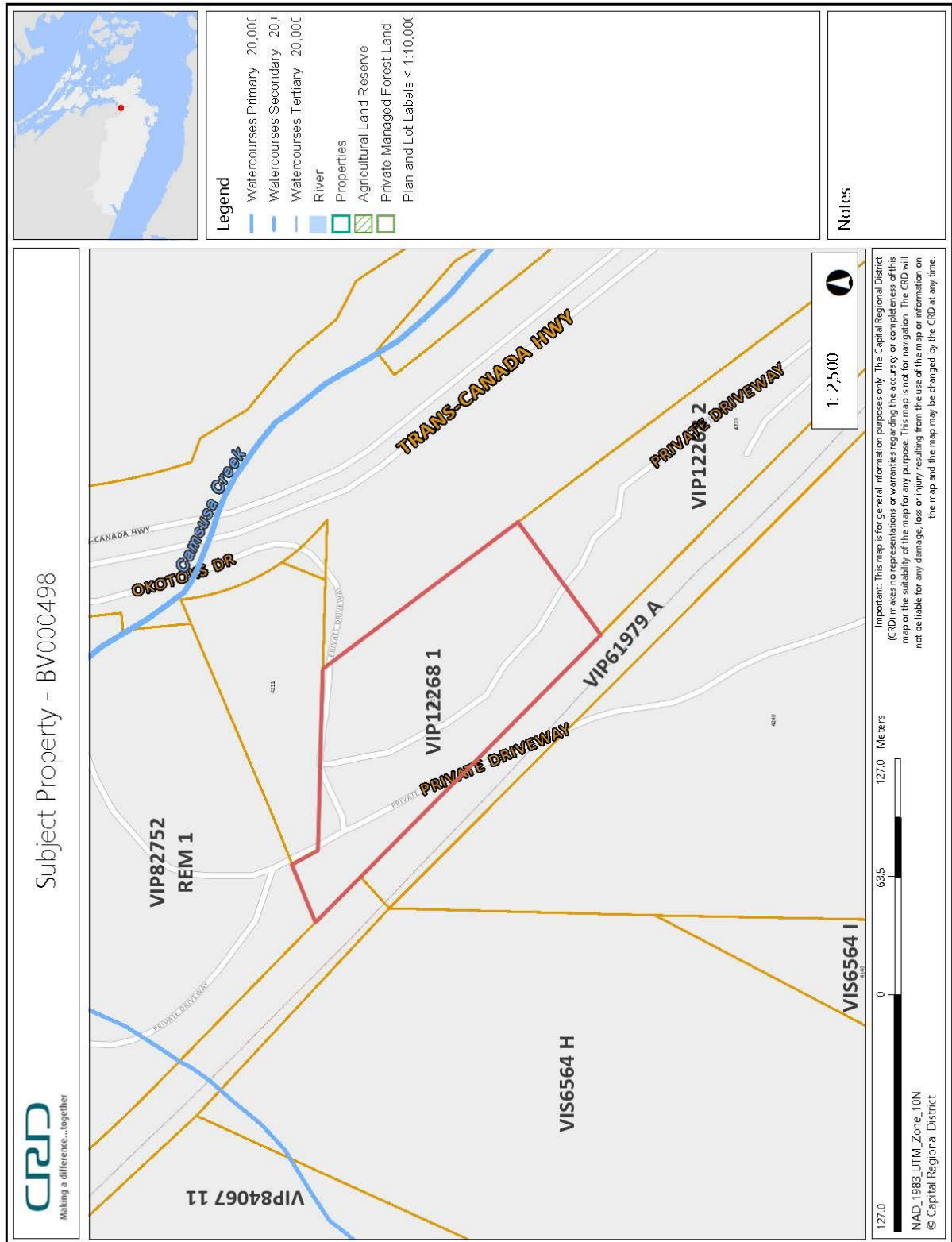
Having considered the matters set out in Section 542(1)(c) of the *Local Government Act*, and having found that undue hardship **<would/would not>** be caused to the applicant if Section 2.1.17(11) of Bylaw No. 980 were complied with, that application BV000498 requesting permission from the Board of Variance in accordance with Section 540 of the *Local Government Act* to grant a minor variance to Bylaw No. 980, Section 2.1.17(11) by increasing the length of a manufactured or modular home used for a detached accessory suite from 13 m to 20.1 m on Lot 1, District Lots 51 and 187, Malahat District, Plan 12268, as shown on the Plans prepared by Modern Home Design, dated April 15, 2024, be **<approved/denied>**.

Submitted by:	Regina Robinson, Planning Assistant, JdF Community Planning
Concurrence:	Iain Lawrence, MCIP, RPP, Secretary to the Board of Variance

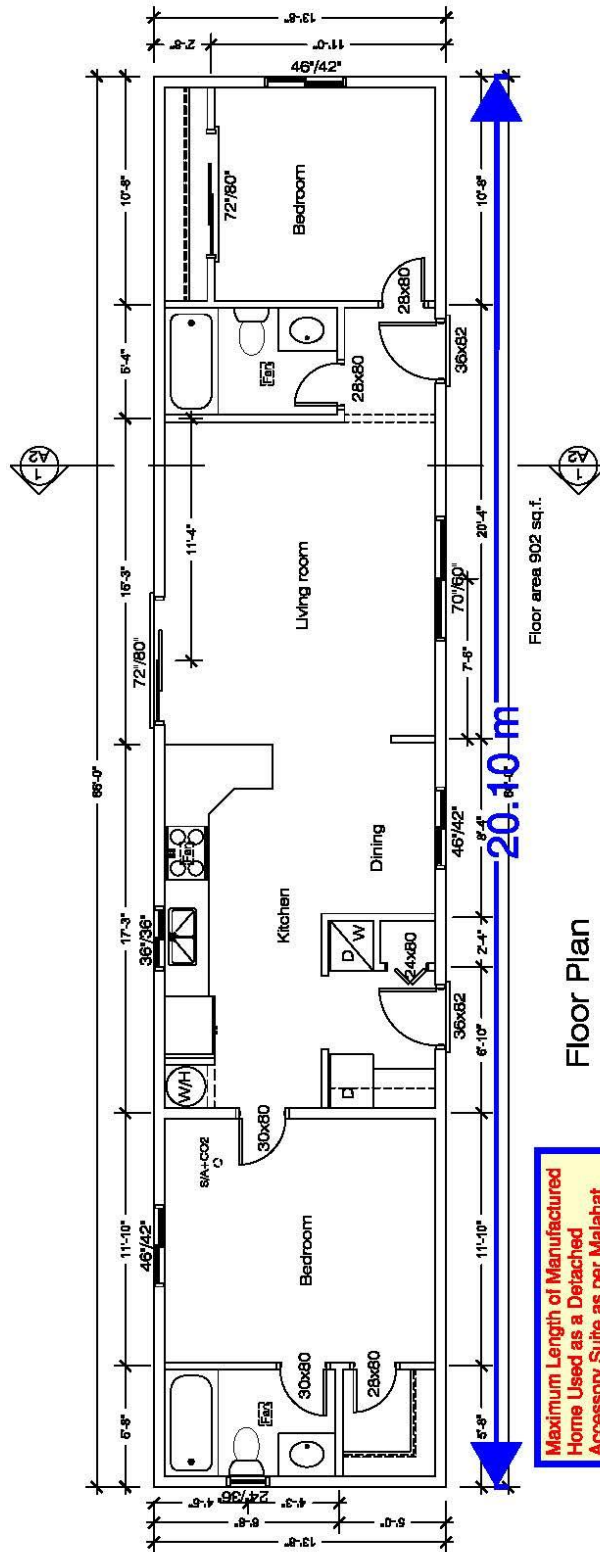
ATTACHMENTS

- Appendix A: Subject Property Map
- Appendix B: Site Plan and Building Plans/Elevations
- Appendix C: Requested Variance
- Appendix D: Statement of Hardship

Appendix A: Subject Property Map



Appendix C: Requested Variance



Floor Plan

Maximum Length of Manufactured Home Used as a Detached Accessory Suite as per Malahat Land Use Bylaw No. 980 is 13 m.
Requested Variance - 20.1 m

Appendix D: Statement of Hardship

March 26, 2024

Juan de Fuca Community Planning
Board of Variance

This letter is to support our variance application. We would like to replace a mobile home with a new modular home. The new home does meet the requirements for square footage (85m²) and we do have the required lot size (1.49 ha). Unfortunately the length being 20m is above the 13m allowable.

When my son and family became homeless last year our plan was for him to move into our tenants place on the property. I work fulltime and am the care giver for my husband who is on a small disability pension since having a stroke in 2018 which has left him with semi paralysis. Currently I also have my aging mother in law with us due to her health issues.

We have lived on our property for 34 years and really want to remain in our home. The property has become too much for me to maintain myself, so it was a blessing when my son was going to move to our rental on the property. Having him on the property will give us the ability to remain in our home. He is a work horse and a huge help.

Sadly we had to give our tenants 3 months notice to vacate. Our friendly relationship with the tenants deteriorated very quickly after that. They did vacate one month late refusing to pay any rent for the last 2 months. My son with his moving truck was ready to move in realize the damage these tenants had caused. The place was trashed and after investigation black mold was discovered. The home is now inhabitable and does require demolition.

This is not the setback we were expecting. Currently my son, his fiancé and daughter are living in a small trailer in our front yard sharing our small house with for cooking and bathing. They arrived in October 2023 and were only expecting to be in the trailer until February 1st. We are coping with this situation but it has been difficult. They really need there own place and this modular home will give them a stable home and I will get stability knowing he is once again my right hand.

Thank you,

[REDACTED]
4215 Okotoks Drive Malahat BC
[REDACTED]



**REPORT TO THE JUAN DE FUCA BOARD OF VARIANCE
MEETING OF JUNE 11, 2024**

File No: BV000499
Location: Clark Road
Legal: Lot 8, Sections 42 and 38, Otter District, Plan EPP63580
Zoning: Forestry (AF) – JdF Land Use Bylaw No. 2040
Land Use Designation: Rural (RUR) – Bylaw No. 3819
Adjacent Uses: N – Clark Road
E – Forestry (AF) parcel
S – Forestry (AF) parcels
W – Clark Road

REQUESTED VARIANCE

The applicant has requested that the Board of Variance approve a minor variance to relieve hardship, in accordance with Section 540(a) of the *Local Government Act (LGA)*, by increasing the maximum floor area allowed for a detached accessory suite from 90 m² to 149 m² for the purpose of constructing a detached accessory suite.

LEGISLATIVE IMPLICATIONS

Section 542(1) of the *LGA* outlines that the Board of Variance may order that a minor variance be permitted from the requirements of the applicable bylaw, if the Board of Variance:

- (a) has heard from the applicant and any person notified under Section 541;
- (b) finds that undue hardship would be caused to the applicant if the bylaw or Section 531(1) is complied with; and
- (c) is of the opinion that the variance or exemption does not do any of the following:
 - (i) result in inappropriate development of the site;
 - (ii) adversely affect the natural environment;
 - (iii) substantially affect the use and enjoyment of adjacent land;
 - (iv) vary permitted uses and densities under the applicable bylaw;
 - (v) defeat the intent of the bylaw;
 - (vi) vary the application of an applicable bylaw in relation to residential rental tenure.

Section 542(3) of the *LGA* outlines that in relation to an order under Section 542(1),

- (a) if the order sets a time within which the construction of the building, structure or manufactured home park must be completed and the construction is not completed within that time, or
- (b) if that construction is not substantially started within 2 years after the order was made, or within a longer or shorter time established by the order,

the permission or exemption terminates and the bylaw or section 531(1), as the case may be, applies.

STAFF COMMENTS

The 4.39 ha property is located on Clark Road and is zoned Forestry (AF) in the Juan de Fuca Land Use Bylaw, 1992, Bylaw No. 2040 (Appendix A). A driveway enters the property along the northern boundary of the lot and forks towards the east to access CRD fire protection infrastructure secured by Statutory Right of Way CA6074842, and towards the south to the home site. The lot slopes generally uphill where the driveway ends at a high point. The parcel is currently otherwise undeveloped. Portions of the subject property are designated as a Steep Slope Development Permit Area (DPA) by the Otter Point Official Community Plan, Bylaw No. 3819. A preliminary site plan shows a single-family dwelling (SFD) and a detached accessory suite proposed on the lot. The SFD will be located near the top of the outcrop and the detached accessory suite will be located to the west (Appendix B).

The applicants submitted a preliminary proposed floor plan and concept building designs for the detached accessory suite (Appendix C). The proposed floor plan indicates that the floor area for the detached accessory suite will be approximately 137 m²; however, since the applicants wish to have a variance request considered prior to finalizing plans for a Building Permit application they have requested that the maximum minimum floor area for a detached accessory suite be increased to 149 m² to provide a buffer. Section 4.20 of Bylaw No. 2040 permits a maximum floor area of 90 m² for detached accessory suites; as such, a variance approval is required. The owners have provided a statement of hardship outlining the challenges of planning for multi-generational living under the existing regulations (Appendix D).

Pursuant to the Juan de Fuca Board of Variance Bylaw, Bylaw No. 4288, notification letters have been sent to the applicant, as well as to owners and occupants within 50 m of the subject property. Any responses received will be presented at the June 11, 2024, Board of Variance hearing.

Staff are of the opinion that the proposed development would not adversely affect the natural environment and that the proposal is in keeping with the surrounding neighbourhood. The preliminary plans show that the structures will be located outside of any designated Development Permit Areas. Should the variance be approved, the extent of all proposed works will be reviewed during the building permit referral process by JdF Planning staff to confirm compliance with the requirements of the zone and other applicable land use regulations.

Pertinent land use regulations the Board may wish to consider as a part of their deliberations include:

- That the development of two separate dwelling units on one parcel, each potentially greater than 90 m², is possible on Rural Residential zoned parcels as a two-family dwelling (duplex); however, a two-family dwelling is not a permitted use in the AF zone, and use cannot be varied.
- The AF zone allows for a 10% lot coverage allowance; this equates to a maximum of 4,390 m² for a SFD and all accessory buildings and structures proposed on a parcel this size.
- The Province amended the BC Building Code to remove the floor area limits on secondary suites as one of the early measures to address housing affordability.

If the Board of Variance finds that not granting the variance would result in undue hardship, considers the requested variance to be a minor and finds that it meets the considerations of section 542(1)(c), an order granting a minor variance may be permitted.

OUTLINE MOTION

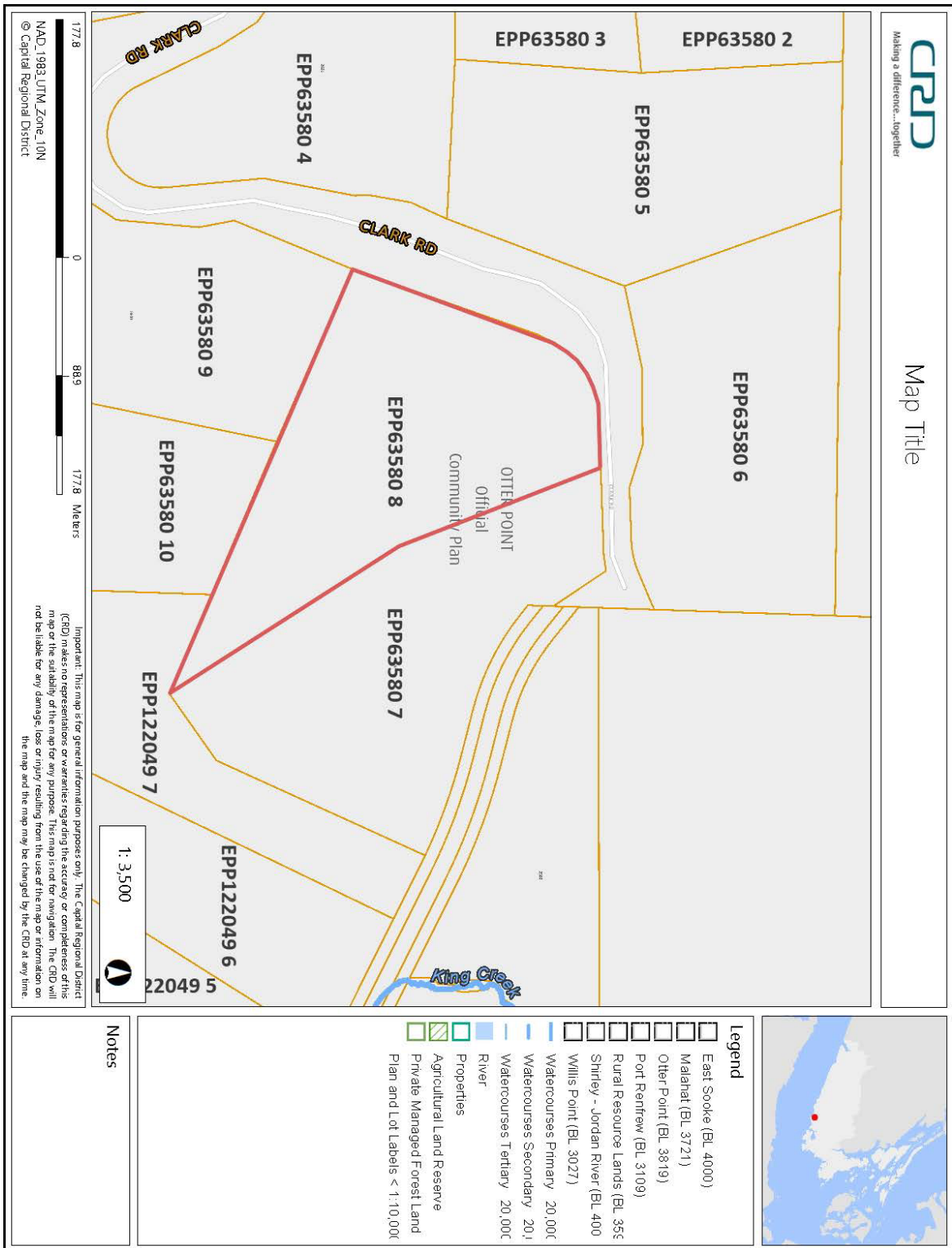
Having considered the matters set out in Section 542(1)(c) of the *Local Government Act*, and having found that undue hardship **<would/would not>** be caused to the applicant if Part 1, Section 4.20 of Bylaw No. 2040 were complied with, that application BV000499 requesting permission from the Board of Variance in accordance with Section 540 of the *Local Government Act* to grant a minor variance to Bylaw No. 2040, Part 1, Section 4.20(f) by increasing the maximum floor area allowed for a detached accessory suite from 90 m² to 149 m² on Lot 8, Sections 42 and 38, Otter District, Plan EPP63580 to permit construction of a detached accessory suite, be **<approved/denied>**, and that if construction is not substantially started within 2 years after the date of this order, the order shall terminate.

Submitted by:	Regina Robinson, Planning Assistant, JdF Community Planning
Concurrence:	Iain Lawrence, MCIP, RPP, Secretary to the Board of Variance

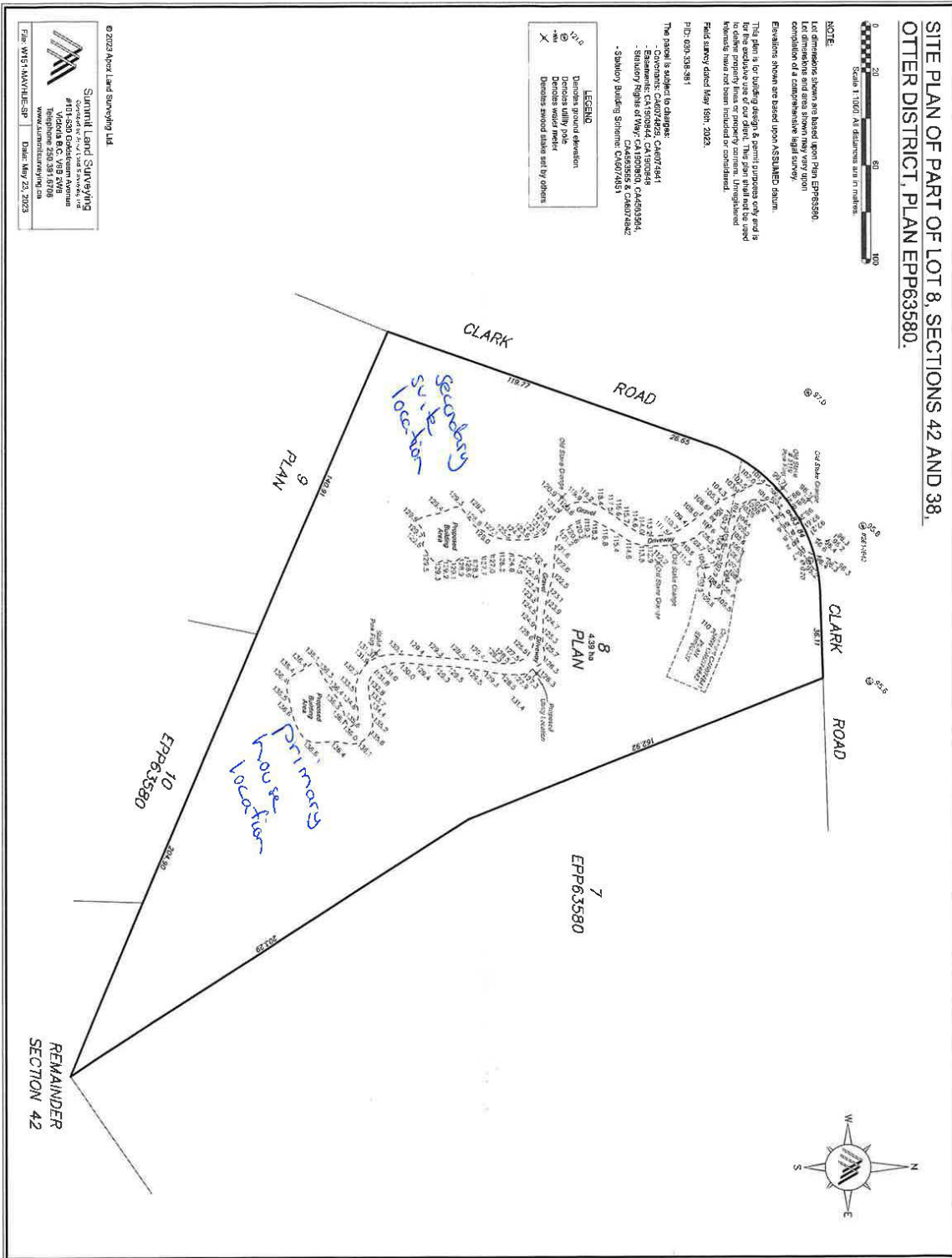
ATTACHMENTS

- Appendix A: Subject Property Map
- Appendix B: Site Plan
- Appendix C: Floor Plan, Requested Variance, and Concept Building Designs
- Appendix D: Hardship Letter

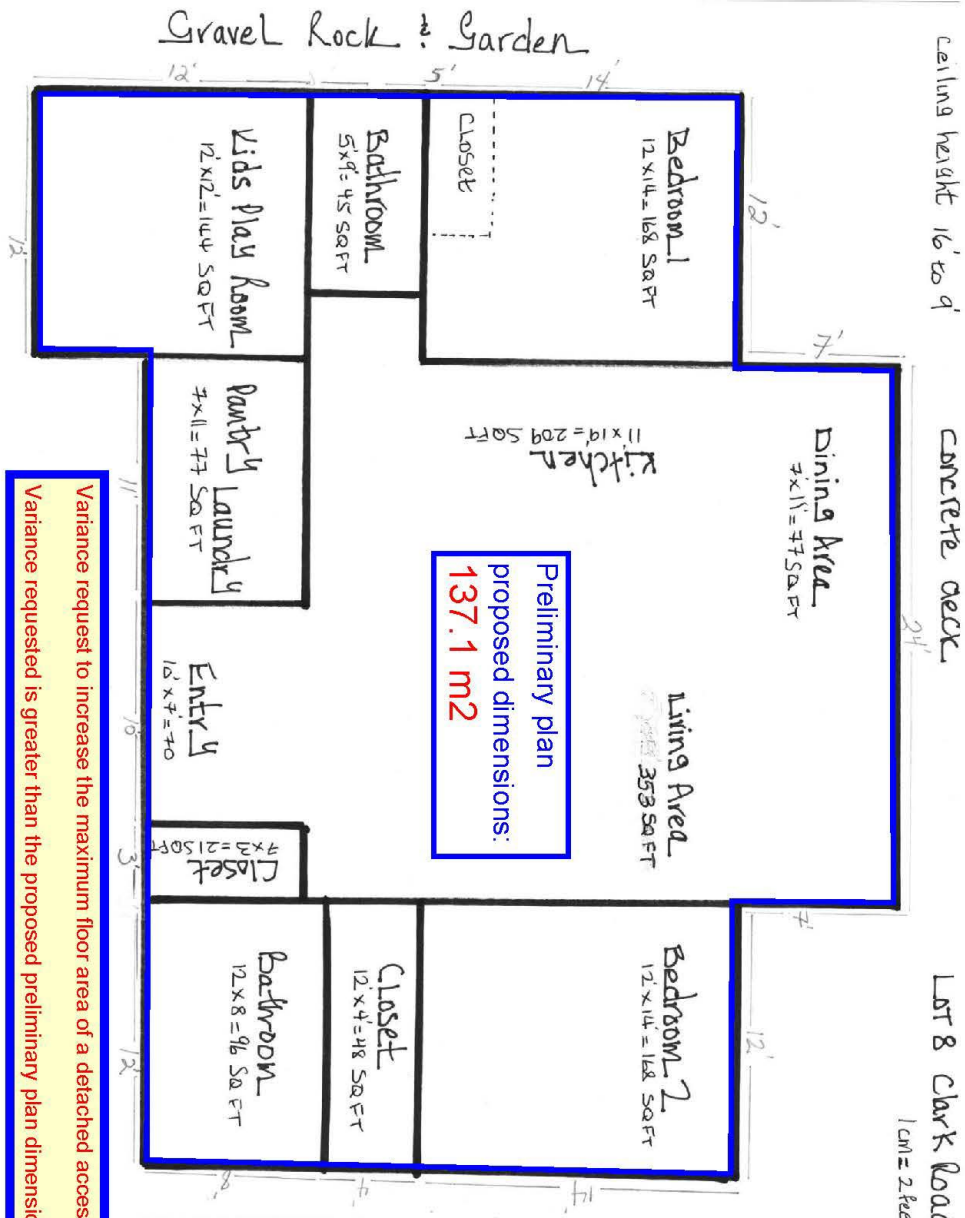
Appendix A: Subject Property Map



Appendix B: Site Plan



Appendix C: Floor Plan, Requested Variance, and Concept Building Designs



Variance request to increase the maximum floor area of a detached accessory suite from 90 m2 to 149 m2.
 Variance requested is greater than the proposed preliminary plan dimensions to provide a buffer.

SPACE	DIMENSIONS-ft	SQ FT
Dining Room	7 x 11	77
Living Room	22 x 15	353
Kitchen	11 x 19	209
Pantry/ Laundry	7 x 11	77
Entry	10 x 7	70
Clasoset	7 x 3	21
Bedroom 1	12 x 14	168
Bathroom	5 x 9	45
Bedroom 2	12 x 14	168
Clasoset	12 x 4	48
Bathroom	12 x 8	96
Children's Play Room	12 x 12	144
TOTAL SQ FT		1476





Appendix D: Hardship Letter

STATEMENT IN SUPPORT OF BOARD OF VARIANCE APPLICATION

We are applying to vary the maximum floor area requirement per Bylaw 2040 from 968 sq. ft. to 1,600 sq. ft for a secondary suite.

UNDUE HARDSHIP

The subject property is owned by our son [REDACTED]. Subsequent to his purchase of the property in October, 2018 he began to suggest to us that it might be best in the longer run that we live on the property as well. He wants us closer to him as we age. Given that the primary dwelling will be for his family building a secondary suite became the route to go.

It is traditional in his South Asian mom's culture that a member of the extended family live with the matriarch and patriarch of the family as they age. This member provides the daily care giving as required. Clearly this allows the parents to live a higher quality of life than would be available should they have to move to a more traditional care home. Not only will the care be of high quality the parents are also allowed to maintain their strong family relationships. We did this with [REDACTED] maternal grandmother for ten years, to the benefit of everyone involved. The existing limit does not allow us sufficient space to carry forward this responsibility. Additional bedroom and living space will be required for the care giver. The requested additional 632 sq. ft. of floor area will allow us to provide the necessary accommodations. We are hoping that care giving for us is not necessary for some years but preparations for that event should take place now.

Having retired from our careers, we find that we are now in the position of providing daily day care services for three of our grandchildren. This was unexpected but welcome. This allows the parents to work without being saddled with the costs (and concerns) associated with third party day care. Again the current limit of 968 sq. feet does not provide enough space to adequately look after the grandchildren. We need additional rooms.

The reality is that we cannot continue to live in our current residence forever. There are both financial and physical considerations. We will need to move. A secondary suite on the property that meets both our current and future needs is the affordable option we have.

In short, without the variance, our family's quality of life is affected now (day care) and in the future (senior care).

OTHER CONSIDERATIONS

This is a neighbourhood of 10+ acre lots. The building site for the secondary suite is located just to the west of a large rock which obscures any view of the suite that the neighbours to the east may have. Neighbours to the west are in the distance.

Pursuant to the Local Government Act, Sec. 542(1)(c) we believe that allowing the requested relaxation of the floor area requirement **WILL NOT**:

1. result in in appropriate development of the site;
2. adversely affect the natural environment;
3. substantially affect the use and enjoyment of adjacent land;
4. vary permitted uses and densities under any bylaw;
5. defeat the intent of the bylaw; and
6. vary the application of any bylaw in relation to residual rental tenure.

PUBLIC POLICY

As well we believe that the requested variance is in keeping with modern provincial government policy. The BC Building Code was amended on December 12, 2019, being after our son's purchase of the property, to remove the 968 sq. feet floor area limit on secondary suites. There now is no limit on floor area.

The provincial government's paper on "Local government planning for sustainability and resilience" dated January 9, 2023 indicates that local government should encourage, amongst other things, housing affordability, aging in place and cultural diversity.

Societal norms have changed whereby it is increasingly common for adult children to care for their elderly parents in their own home.

The Otter Point Official Community Plan (2014), section 3.2.3, under Obligations, supports rural form of affordable housing, including secondary suites and detached accessory suites.

In conclusion this is a minor variation in which we are asking for an additional 632 square feet on a 10.88 acre property.