



STAFF REPORT TO BOARD OF VARIANCE

DATE OF REPORT May 9, 2024
MEETING TYPE & DATE Board of Variance Meeting of May 28, 2024
FROM: Development Services Division
Land Use Services Department
SUBJECT: Application No. BOV24I01 (9184 Meades Creek Rd/PID: 007-411-341)
FILE: BOV24I01

PURPOSE/INTRODUCTION

The purpose of the Board of Variance is to provide landowners an avenue to obtain relief where the strict application of a zoning bylaw makes it difficult or impossible to use the parcel as intended by that bylaw.

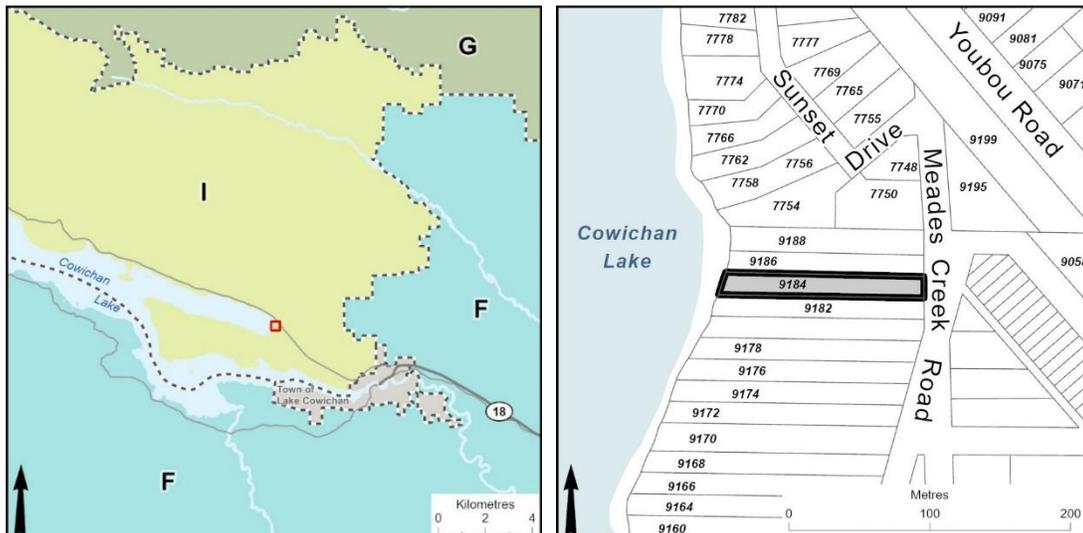
The property owner of 9184 Meades Creek Road (PID: 007-411-341) is applying to reduce the interior side parcel line setbacks for an existing single unit dwelling and accessory building.

RECOMMENDED RESOLUTION

That the Board of Variance consider approving, denying or deferring the applicant's request to vary Section 5.12.4 of the CVRD Zoning Bylaw No. 2465, 2004, Electoral Area I – Youbou/Meade Creek to allow a reduction in the interior side parcel line setback along the southern parcel line from 3 m to 2.4 m and 2.9 m from the northern parcel line for an existing single unit dwelling and from 3 m to 2.6 m for an existing accessory building.

[Decision options are detailed in the staff report.]

LOCATION MAP



BACKGROUND

The subject property is a long, narrow 0.247 hectare (ha) lakefront parcel on the east end of the north arm of Cowichan Lake. The property is bounded by the lake to the west, residential lots to north and south, and Meades Creek Road to the east. The subject property is zoned R-2 Suburban Residential, which requires a 3 m interior side parcel line setback for residential buildings (including accessory buildings and structures).

A Board of Variance (BOV) application has been made to request a reduction to the interior side parcel line setback on the subject property by varying the 3 m setback to 2.4 m for the existing dwelling and 2.6 m for the existing accessory building (garage).

A building permit application was submitted in 2010 for the dwelling and garage. The building plans that were submitted at the time were based on regulations under Electoral Area "F" and "I" Zoning By-law No. 1000, 1986, which permitted the following setbacks in the R-2 zone:

- Residential use – 10% of the parcel width or 3 metres whichever is less; and
- Accessory Residential use – 10% of the parcel width or 3 metres whichever is less, or 1.0 metres if the building is located in a rear yard.

However, the building permit application in 2010 would have been subject to Bylaw No. 2465, which was adopted in 2004. Bylaw No. 2465 included an amendment to the interior side parcel line setback in the R-2 zone that requires a 3 m setback for residential buildings and structures (including accessory buildings and structures). Construction began in 2015, including the construction of the foundation. Construction paused until April 2023, when a new building permit application was submitted (the previous permit had expired). Upon submission of a new survey plan, it was determined the dwelling and garage did not meet the 3 m setback required in Bylaw No. 2465.

OFFICIAL COMMUNITY PLAN / POLICY CONSIDERATIONS

Official Community Plan for the Electoral Areas Bylaw No. 4270:

The subject property is designated Residential regionally and Suburban Residential locally. Lands designated Residential are intended to provide a wide range of housing and lifestyle options for various stages of life and different community lifestyles, as community demographics continue to change.

The use land is consistent with the current land use designation.

Electoral Area I Zoning Bylaw No. 2465:

The subject property is zoned R-2 Suburban Residential within Bylaw No. 2465. Residential buildings and structures (including accessory buildings and structures) are subject to the setbacks outlined in Section 5.12.4, including an interior side parcel line setback of 3 m.

With exception given to the interior side parcel line setback which is the subject of this application, the development complies with relevant zoning regulations.

Local Government Act (LGA):

Division 15, Section 540 of the LGA states that a person may apply to a Board of Variance if that person alleges that compliance with a bylaw respecting the siting, size, dimensions of a building or other structure would cause a hardship.

In order to approve a variance, the Board of Variance must find (in their opinion):

1. That the proposed variance is minor;
2. That the bylaw being varied is causing the applicant an undue hardship;
3. That the proposed variance will not result in inappropriate development of the site;
4. That the proposed variance will not adversely affect the natural environment;
5. That the proposed variance will not substantially affect the use and enjoyment of adjacent land;
6. That the proposed variance will not vary permitted uses and densities under the applicable bylaw;
7. That the proposed variance will not defeat the intent of the bylaw; and,
8. That the proposed variance will not vary the application of an applicable bylaw in relation to residential rental tenure.

Section 542(2) of the LGA further limits the Board of Variance's jurisdiction. The Board of Variance cannot:

- a. Make an order that is in conflict with a charge against the property title registered under Section 219 of the Land Title Act or Section 24A of the *Land Registry Act*;
- b. Deal with a matter that is covered in a land use permit or covered in a land use contract;
- c. Deal with a flood plain specification; or,
- d. Deal with a matter that is covered by a phased development agreement.

Public Notice:

Notice was sent to owners and occupants within 100 m of the variance request on May 16, 2024. Any submissions to the Board of Variance in response to the notice will be provided to the Board prior to the Board's hearing on this matter, in accordance with CVRD Board of Variance Bylaw No. 4391.

COMMISSION / AGENCY / DEPARTMENTAL CONSIDERATIONS

Land Use Services Department:

No land use permits (Development Permit, Development Variance Permit, etc.) have been issued on the subject property or are registered on Title.

Building Inspection Comments:

It would appear that both the house and the garage were sited incorrectly. The house also has a narrow, covered deck built on the south side that was not part of the original permit which explains the encroachment on that side. Building Inspection can see no building code related safety concerns with granting a variance.

Bylaw Enforcement Comments:

There is no outstanding Bylaw Enforcement activity noted at 9184 Meades Creek Road.

PLANNING ANALYSIS

The zoning bylaw regulates the use, density and siting of buildings to allow for a coherent pattern of development within a community, and ensure compatibility between adjacent land uses and environmental features. As the zoning regulations do not necessarily account for unique conditions, strict adherence is not always possible. The legislation provides for the ability for a Board of Variance to issue minor variances in the case of hardship situations.

Board of Variance Independence:

The Board of Variance’s status as an independent tribunal provides independence from the local government, including the right to determine what is, or is not, a minor variance; and what does, or does not, constitute an undue hardship.

The onus falls to the applicant to demonstrate to the satisfaction of the Board of Variance, that the variance is minor in nature and resolves a bona fide hardship. If the Board of Variance is convinced by the applicant’s submission, it may order a *Minor Variance* to address the *Undue Hardship*. The Board of Variance does not have jurisdiction to order a variance that is not minor, or to order a variance in the absence of a finding of undue hardship.

If the Board is not satisfied that undue hardship would be caused to the applicant if compliance with the bylaw is required, the Board must deny the application. An applicant must typically demonstrate more than mere financial hardship.

Planner Summary:

In accordance with Section 542(1)(c) of the LGA, the applicants must demonstrate the following to the Board’s satisfaction:

<i>Factors</i>	<i>Planning Staff Observations</i>
1. That the variance will not result in the inappropriate development of the site.	The existing dwelling and accessory building (garage) are permitted within the R-2 zone. The subject property is adjacent to other R-2 zoned properties of similar size and shape to the north and south.
2. That the variance will not adversely impact the natural environment.	The property has historically been used for residential purposes, and no additional vegetation removal is proposed.
3. That the variance will not substantially affect the use and enjoyment of adjacent land.	Staff do not consider the requested variance and addition construction to impede adjacent properties from using and enjoying their property as permitted. Public correspondence will be provided to the Board.
4. That the variance will not vary permitted uses or densities.	The variance will not vary the permitted use nor density.
5. That the variance will not defeat the intent of the bylaw.	Setbacks for buildings and structures are prescribed in zoning bylaws to ensure the use of the property does not infringe on neighboring lands, and maintain separation for fire protection and privacy. The subject property, along with neighbouring properties, are long narrow properties, measured to be approx. 15 m wide. Staff are of the opinion that the 2.4 m setback for the existing dwelling and 2.6 m setback for the existing garage along the southern parcel line do not defeat the intent of the bylaw regulation.
6. That the variance will not vary a bylaw in relation to residential tenure.	Not applicable.

OPTIONS

Option 1: Undue hardship determined to exist, approve the variance

That the Board finds that hardship exists in the case of Application No. BOV24I01 (9184 Meades Creek Road/PID: 007-411-341) due to [reasons to be provided by the BOV].

That the Board of Variance consider approving, denying or deferring the applicant's request to vary Section 5.12.4 of the CVRD Zoning Bylaw No. 2465, 2004, Electoral Area I – Youbou/Meade Creek to allow a reduction in the interior side parcel line setback along the southern parcel line from 3 m to 2.4 m and 2.9 m from the northern parcel line for an existing single unit dwelling and from 3 m to 2.6 m for an existing accessory building.

Should the Board of Variance approve the application it may, by majority vote, impose a shorter time limit for the commencement of construction other than that contained in Section 542(3)(b) of the Local Government Act (2 years).

Option 2: Defer a Decision

That a decision regarding the requested variance to Section 5.12.4 of CVRD Zoning Bylaw No. 2465, 2004, Electoral Area I – Youbou/Meade Creek, for the siting of the existing single unit dwelling and accessory building (9184 Meades Creek Road/PID: 007-411-341), be deferred for additional information.

Should the Board of Variance wish to defer a decision it should either direct the applicant to amend their application by either providing additional information or by reducing the extent of the requested variance and adjourn the application to another meeting.

Option 3: Deny

That the Board deny Application No. BOV24I01 (9184 Meades Creek Road/PID: 007-411-341) to vary Section 5.12.4 of CVRD Zoning Bylaw No. 2465, 2004, Electoral Area I – Youbou/Meade Creek, for the siting of the existing single unit dwelling and accessory building, because undue hardship has not been demonstrated.

If the Board of Variance denies the application the applicants may be entitled to apply to the Regional District Board of Directors with a different layout for consideration of a Development Variance Permit.

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ATTACHMENTS:

Attachment A – Site Plan

Attachment B – Rationale

Attachment C – Site Photos

Attachment D – Letter, Kenyon Wilson Professional Land Surveyors, May 3, 2023