



# STAFF REPORT TO COMMITTEE

**DATE OF REPORT** October 31, 2023

**MEETING TYPE & DATE** Electoral Area Services Committee Meeting of November 15, 2023

**FROM:** Development Services Division  
Land Use Services Department

**SUBJECT:** Application No. DVP23H01 (11698 Fairtide Road/PID: 004-008-855)

**FILE:** DVP23H01

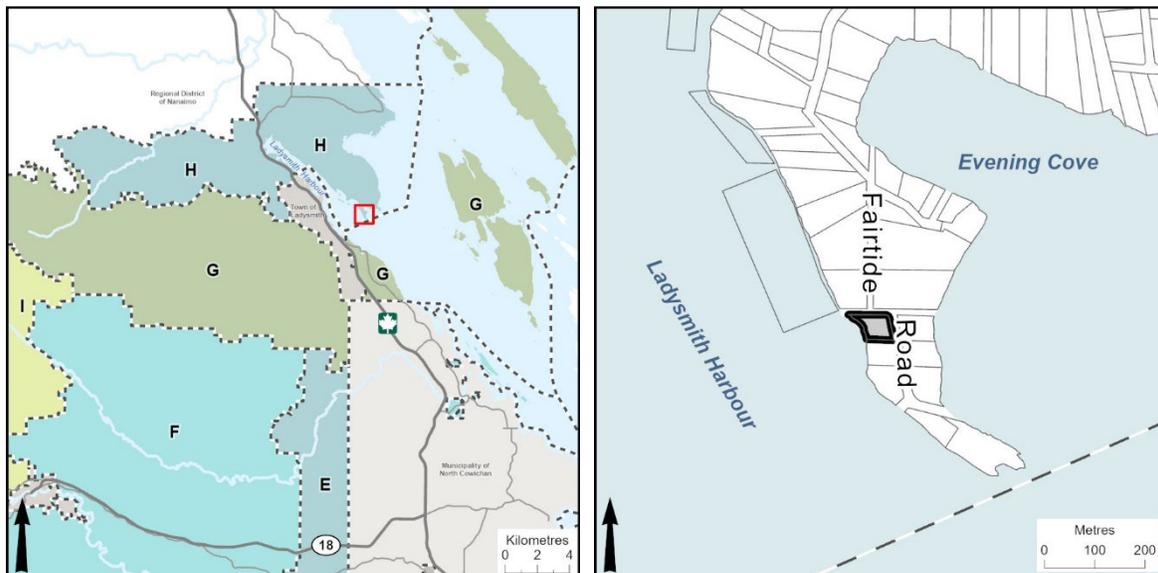
## **PURPOSE/INTRODUCTION**

The purpose of this report is to consider a Development Variance Permit (DVP) application to vary Section 5.13(a) of the Electoral Area H – North Oyster/Diamond Zoning Bylaw No. 1020, which requires a 15 m setback from the natural boundary of the sea. The proposed variance would permit completion of second-floor construction above the existing foundation of the original dwelling. The southwest corner of the dwelling encroaches 1.24 m into the setback, thus requiring a variance of Section 5.13(a).

## **RECOMMENDED RESOLUTION**

That it be recommended to the Board that Development Variance Permit No. DVP23H01 (11698 Fairtide Road, PID: 004-008-855), be issued.

## **LOCATION MAP**



## **BACKGROUND**

The subject property is an oceanfront parcel measured to be 0.298 hectares (ha) in area. The parcel slopes gently from Fairtide Road toward a treed bank that slopes steeply down to the foreshore. There is an existing single-family dwelling with an attached deck, 2-storey accessory building (garage and suite), accessory building (shop) and constructed gravel path to the foreshore. Neighbouring parcels include residential parcels.

A Building Permit was issued in January 2023 for a 178 m<sup>2</sup> addition attached to the southeast corner of the existing dwelling, sited outside of the 15 m setback from the natural boundary of the sea. During a site inspection for the addition, the Building Official found that the existing dwelling had been partially demolished to the foundation wall (with the floor system intact), which was never approved as part of the Building Permit. A “Stop Work” Order was posted; construction is on hold pending this DVP application. The applicant has since proposed to extend a new deck along the waterfront side of the addition connecting with the existing deck. The proposed construction also includes completing the second floor of the dwelling above the existing footprint.

The exact date of construction of the existing dwelling is unknown, as CVRD does not have a record of a building permit; BC Assessment lists the date of construction as 1973.

## **OFFICIAL COMMUNITY PLAN / POLICY CONSIDERATIONS**

### Official Community Plan for the Electoral Areas Bylaw No. 4270 (OCP):

The subject property is designated Residential in the OCP and Suburban Residential in the Area H Local Area Plan (LAP). The property is within Development Permit Area 1 (DPA 1) – Riparian Areas Protection, however, a Development Permit is not required since the proposed construction is not within 30 metres of a watercourse.

### Electoral Area H – North Oyster/Diamond Zoning Bylaw No. 1020:

The subject property is zoned R-2 – Suburban Residential in Zoning Bylaw No. 1020.

Section 5.13(a) provides, “Notwithstanding any other provisions of this bylaw, no habitable building shall be located within 15 metres of the highwater mark of a watercourse, lake or the sea.”

The following definitions are provided in Bylaw No. 1020:

***“building”*** means any structure with a gross floor area exceeding 8 square metres used or intended for supporting or sheltering any use or occupancy;

***“floor area”*** means the space on any storey of a building between exterior walls and required firewalls, measured from the outside walls, including the space occupied by interior walls and partitions, but not including exits, vertical service spaces and their enclosing assemblies;

***“gross floor area”*** means the total floor area of all buildings on a parcel measured to the outer limits of the building including all areas giving access thereto such as corridors, hallways, landings, foyers, staircase, stairwells, enclosed balconies and mezzanines, enclosed porches or verandas and excluding auxiliary parking, unenclosed swimming pools, balconies or sundecks, elevators or ventilating machinery and building features referred to in Section 5.3 of this bylaw;

*"structure" means any construction fixed to, supported by or sunk into land or water but not concrete or asphalt paving or similar surfacing of a parcel.*

#### **COMMISSION / AGENCY / DEPARTMENTAL CONSIDERATIONS**

##### CVRD Building Inspection:

CVRD Building Inspection may exercise its authority under s. 56 of the *Community Charter* and require a report by a qualified professional with experience or training in geotechnical study and geohazard assessments to be provided in advance of Building Permit issuance.

##### Advisory Planning Commission (APC):

Under the [Development Application Referrals Policy](#), minor applications will proceed directly to the EASC unless first referred to an APC by the Electoral Area Director. DVP applications are generally considered to be minor applications under the Policy.

##### Public Notice:

In accordance with Section 36(e) of the [CVRD Bylaw No. 4483 – Development Application Procedures Bylaw](#), applicants are required to post a sign on the parcel subject of the application not less than 10 days prior to a Committee meeting to consider issuance of a DVP. A sign was posted at the driveway entrance to the subject property to comply with Bylaw No. 4483.

Letters were mailed out or hand delivered to owners and occupants of parcels located within 100 metres of the subject property, on November 2, 2023. The notification letter provides a description of the application and instructions for submitting written comments.

To date, staff have received nine responses from neighbours in support of the proposed variance. Correspondence received prior to the agenda being published are attached to the staff report. Any correspondence received after the agenda is published will be forwarded to the EASC.

#### **PLANNING ANALYSIS**

Setback requirements as they pertain to watercourses and the sea are intended to protect sensitive shoreline areas and the aquatic environment, protect development from hazardous conditions (flooding, erosion), account for sea level rise, increase privacy and maintain viewscales. Setbacks also reduce the need for structural stabilization measures by maintaining spatial separation between buildings and steep slopes and the sea.

The applicant proposes to complete construction of a second floor above the existing footprint of the original dwelling and extend a new deck along the front of the addition to connect with the existing deck. The southwest corner of the existing dwelling encroaches 1.24 m into the 15 m setback from the natural boundary of the sea. No further encroachment into the setback area from the dwelling is proposed.

The existing and proposed new deck also encroach into the setback area; however, Section 5.13(a) addresses the siting of "habitable buildings". Bylaw No. 1020 does not provide a definition of "habitable building" but does define "building" and "gross floor area", and based on those definitions, "unenclosed balconies or sun decks" are not considered a "habitable building" and are not subject to the setback from the natural boundary of the sea.

Staff consider the proposed reduction to the setback from the natural boundary of the sea to be minor, as the encroachment is existing and is not proposed to be increased beyond the existing

building footprint. The proposed construction does not appear to impact neighbouring properties, nor the adjacent slope and foreshore. Staff are recommending Option 1.

**OPTIONS**

Option 1:

That it be recommended to the Board that Development Variance Permit No. DVP23H01 (11698 Fairtide Road, PID: 004-008-855), be issued.

Option 2:

That it be recommended to the Board that Development Variance Permit No. DVP23H01 (11698 Fairtide Road, PID: 004-008-855), be denied.

**GENERAL MANAGER COMMENTS**

Prepared by:

  
\_\_\_\_\_  
Jaime Dubyna  
Planner III

Reviewed by:

  
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Michelle Pressman, RPP, MCIP, MPlan  
Manager

  
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Ann Kjerulf, MCP, RPP, MCIP  
General Manager

Reviewed for form and content and approved for submission to the Committee:

Resolution:

Corporate Officer

Financial Considerations:

Chief Financial Officer

**ATTACHMENTS:**

Attachment A – Background Table

Attachment B – Context Maps

Attachment C – Plans

Attachment D – Site Photos

Attachment E – Applicant Rationale

Attachment F – Public Correspondence

Attachment G – Draft Development Variance Permit (With Attachments)