FRASER VALLEY REGIONAL DISTRICT

BOARD OF VARIANCE

OPEN MEETING AGENDA

Friday, January 24, 2020

10:00 am

FVRD Boardroom, 45950 Cheam Avenue, Chilliwack, BC

Pages

1. CALL TO ORDER

2. APPROVAL OF AGENDA, ADDENDA AND LATE ITEMS

   MOTION FOR CONSIDERATION
   THAT the Agenda, Addenda and Late Items for the Board of Variance Hearing of .January 24, 2020 be approved;

   AND THAT all correspondence and other information set to the Agenda be received for information.

3. COMMENTS BY SECRETARY TO BOARD OF VARIANCE AND STAFF

4. DELIBERATION BY BOARD OF VARIANCE - #31 - 9053 Shook Road, Electoral Area "G" — 2 - 35

   - Notice to Applicant
   - Notice of Adjacent Property Owners
   - Corporate report dated January 24, 2020 from Andrea Antifaeff, Planner I
   - Email dated January 13, 2020 from Dave Leask

5. PUBLIC QUESTION PERIOD FOR ITEMS RELEVANT TO THE AGENDA

6. DECISION OF BOARD OF VARIANCE

7. ADJOURNMENT

   MOTION FOR CONSIDERATION
   THAT the Board of Variance Hearing of January 24, 2020 be adjourned.

Fraser Valley Regional District

www.fvrd.bc.ca | info@fvrd.bc.ca

December 18, 2019

Stacey Mitchell
31-9053 Shook Road
Mission, BC V2V 7M7

Dear Ms. Mitchell,

RE: APPLICATION TO THE BOARD OF VARIANCE
#31-9053 Shook Road, Electoral Area "G"

Please take note that the Board of Variance will hear your application pursuant to Sections 540 and 531 of the *Local Government Act* requesting a structural alteration or addition to a non-conforming structure. The proposed alteration involves renovation and addition of deck.

The meeting has been scheduled for **Friday, January 24, 2020 @ 10:00 a.m.** at the FVRD Boardroom, 45950 Cheam Avenue, Chilliwack, BC.

If you have any questions or concerns or require further information, please feel free to call me at 604 702 5023 or email at jreilly@fvrd.ca.

Sincerely,

for Jaime Reilly
Secretary to Board of Variance
Acting Director of Corporate Affairs

c.c. Ann Harper,, SunDorn Holdings Ltd.
#19-9053 Shook Road, Mission, BC V2V 7M7
c.c. Graham Daneluz, Deputy Director of Planning and Development, FVRD
c.c. Andrea Antifaeff, Planner I, FVRD

Fraser Valley Regional District

www.fvrd.bc.ca | info@fvrd.bc.ca

File No. 0388-30-2019-775.02149.031

January 6, 2020

Re: Application to the Board of Variance

Notice in accordance to Section 541 of the *Local Government Act* to Property Owners and Tenants in occupation within the area adjacent to:

#31-9053 Shook Road, Electoral Area "G"

PLEASE TAKE NOTICE that the Board of Variance of the Fraser Valley Regional District will consider this application, pursuant to Sections 531 and 540 of the *Local Government Act*, requesting:

A structural alternation to a non-conforming structure

(Renovation and addition of deck)

A Board of Variance Hearing has been scheduled for **Friday, January 24, 2020 at 10 a.m.** at the Fraser Valley Regional District Boardroom located on the fourth floor at 45950 Cheam Avenue in Chilliwack, BC.

The intent of this notice is to allow the Members of the Board of Variance to receive input from all persons who believe their in property is affected by this proposed Board of Variance application.

Interested persons may attend the Board of Variance Hearing or may make a written submission regarding this application. Written submissions must be received not later than 4:00 p.m. on Friday, January 17, 2020 either by email (jreilly@fvrd.ca) or by regular mail addressed to the address below.

If you have any questions or require further information, please feel free to contact me at 604-702-5023.

Regards,

Jaime Reilly
Secretary to the Board of Variance/
Acting Director of Corporate Affairs

Fraser Valley Regional District | PLANNING & DEVELOPMENT

STAFF REPORT

To:	Board of Variance Chair and Members
From:	Andrea Antifaeff, Planner I
Date:	January 24, 2020
Subject:	Board of Variance Application for #31-9053 Shook Road, Sun Dorn Estates, Electoral Area G
File No.	0388-30 2019-775.02149.031

REPORT PURPOSE

On December 12, 2019, the attached application to the Board of Variance was submitted to permit an addition (deck extension) to a legally non-conforming structure, under Section 540(c) of the *Local Government Act*, for the property located at #31-9053 Shook Road, Electoral Area G.

The staff report summarizes the relevant Fraser Valley Regional District Bylaws, information and other regulations related to the application.

Appendix A:	Location Map
Appendix B:	User Lot Layout
Appendix C:	Site Plan
Appendix D:	Application
Appendix E:	Excerpts of the Dewdney-Alouette Regional District Bylaw No. 202-1980 for Electoral Area B, C, D & E (Rural 3 Zone)
Appendix F:	Excerpts of the Dewdney-Alouette Regional District Land Use and Subdivision Regulation Bylaw No. 559-1992
Appendix G:	Excerpts of the Fraser Valley Regional District Official Community Plan for Electoral Area "G" Bylaw No. 0866, 2008
Appendix H:	Excerpts from the Local Government Act Section 528-532 and Section 536-544
Appendix I:	Letters of Support

DECISION REQUESTED ON THE BOARD OF VARIANCE

The applicant has applied to the Board of Variance under Section 540(c) of the *Local Government Act* for an exemption from Section 531(1) of the *Local Government Act* to permit an addition (deck extension) to an existing legally non-conforming single family dwelling. A Bylaw Enforcement file was opened on the subject property in August of 2016 when FVRD Staff confirmed that the addition (deck

extension) to the single family dwelling was in-progress on the property without the benefit of obtaining a building permit.

S.531 of the *Local Government Act* states:

> **Restrictions on alteration or addition to building or other structure**
>
> **531** (1) Subject to this section, a structural alteration or addition must not be made in or to a building or other structure while a non-conforming use is continued in all or any part of it.
>
> (2) Subsection (1) does not prohibit a structural alteration or addition that is required by an enactment or is permitted by a board of variance under Section 542 (1) *[authority for variance or exemption to relieve hardship]*.

The applicant is asking for the Board of Variance to consider the addition (deck extension) to a single family dwelling. Please see pictures and drawing of the deck extension below.



August 30, 2018



Front Deck Extension
(12.42 ft x 13.77 ft)

October 5, 2017

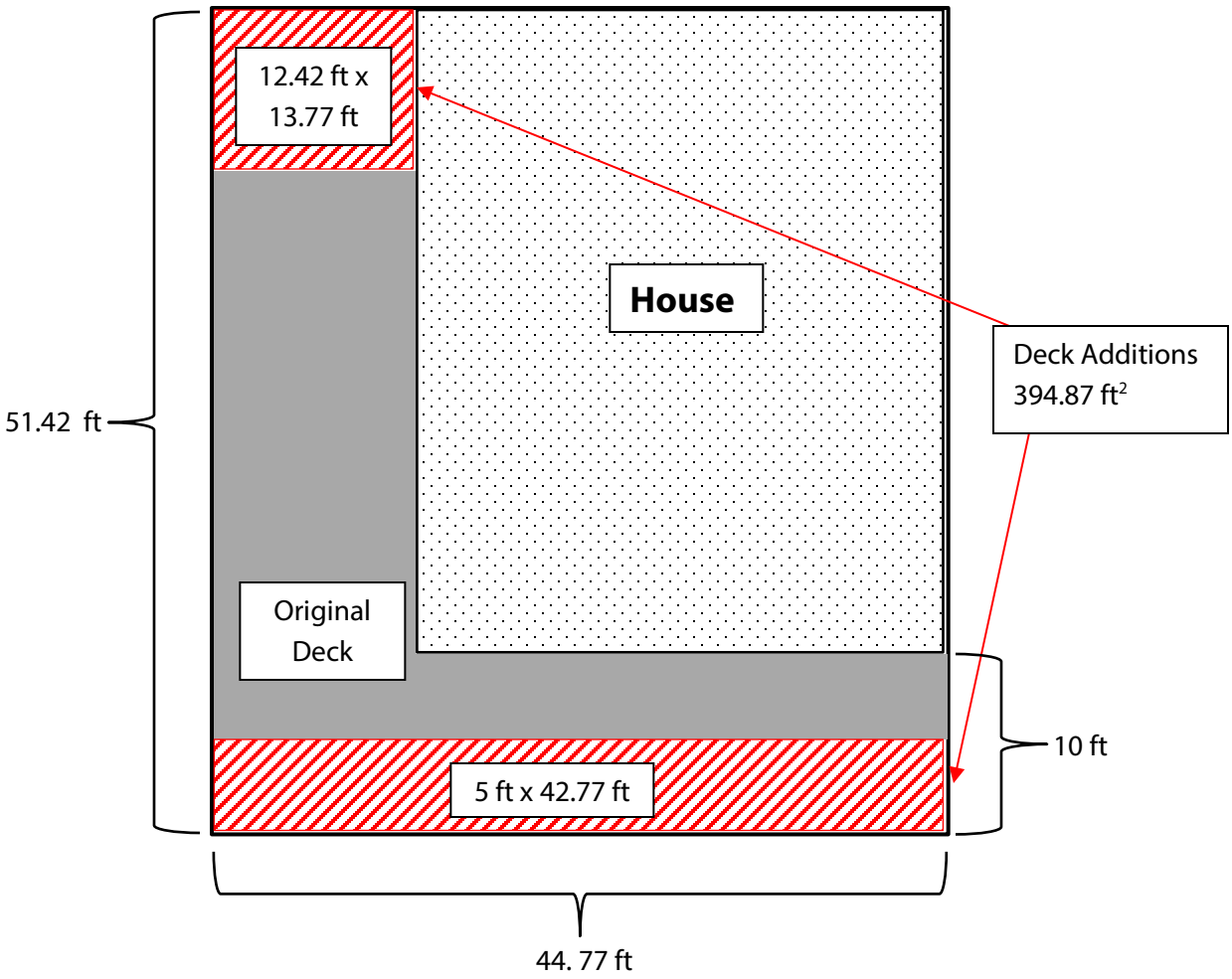


May 27, 2019



Rear Deck Extension
(5 ft x 42.77 ft)

May 27, 2019



The Board of Variance must consider if the prohibition of a structural alteration would cause the applicant hardship. If the Board of Variance finds that undue hardship would be caused to the applicant if Section 531(1) of the *Local Government Act* is complied with, the Board must state the exact nature of the hardship for the hearing's record.

The Board may order that the applicant be exempted from Section 531 (1) of the *Local Government Act*, if the Board:

a) has heard 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 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; and,
    v. defeat the intent of the bylaw.

BACKGROUND

The general location of the proposal is shown on the attached location map in Appendix A. Location of the specific user lot is shown on the attached user lot layout plan in Appendix B. Details on the addition are shown on the attached site plan in Appendix C and application in Appendix D.

PROPERTY DETAILS	
Electoral Area	G
Address	#31-9053 Shook Road
PID	010-666-842
Legal Description	Lot 16 Except: Part Subdivided by Plan 27831; Section 36 Township 17 New Westminster District Plan 2677
Folio	775.02149.031
Registered Property Owner	Sun-Dorn Holdings Ltd.
Applicant	Stacey Mitchell
Lot Size	10 acres with 43 home sites
User Lot Area	5,625 ft^2
Agricultural Land Reserve	No
Floodplain	Within; 9.3m GSC FCL and 7.5m setback from Hatzic Lake
OCP	Rural (R)
Zoning	Rural 3 (R-3)
Development Permit Area	Within Riparian Areas Development Permit Area 2-G; exempted because greater than 30m from Hatzic Lake
Setbacks	Existing deck addition meets 6.0m front property line setback
Bylaw Enforcement	None

ADJACENT ZONING & LAND USES			
Direction	**Use**	**Zoning**	**OCP**
North	Farm	Rural 3 (R-3)	Rural
East	Farm & Single Family Dwellings	Rural 3 (R-3)	Rural
West	Hatzic Lake	Rural 3 (R-3)	Rural
South	Single Family Dwellings	Rural 3 (R-3)	Rural

NON-CONFORMANCE

The subject property, referred to as Sun-Dorn Holdings Ltd., is zoned Rural 3 (R-3) which permits one dwelling unit per parcel. There are up to 43 dwelling units on the subject property which is one (1) legal lot. The use of the property for up to 43 dwelling units is legally non-conforming ("grandfathered") pursuant to Section 540 of the *Local Government Act*.

OWNERSHIP STRUCTURE

Sun-Dorn Holdings Limited is the registered owner of the property. The FVRD's understanding is that Sun-Dorn Holdings Ltd. is comprised of 43 co-owners who each purchased a share of the company which entitles them to the exclusive use of a portion (user lot) of the property. The single un-subdivided property is separated into individual user lots identified on site but is not a legally established subdivision.

DISCUSSION

NOTIFICATION AND HEARING

All neighbours within a 30 metre radius of the property have been notified via mail of this Board of Variance application. Neighbours have been invited to attend the Board of Variance Hearing or make a written submission by email or mail. The applicant will also have the opportunity to be heard at the meeting. The FVRD has received five letters of support as shown in Appendix I.

HARDSHIP

The applicant has provided reasons in support of their application, which are shown in Appendix D. The applicant has identified the following hardships:

- The existing deck was falling into disrepair (holes and rot);
- The existing deck also began to leak into the carport below;
- To prevent rot and flooding the front deck extension was added; and,
- The construction company that was hired advised that the deck extension was within the maximum allowable and built to the BC Building Code.

DEVELOPMENT OF THE SITE

The proposed development meets all setback requirements. Zoning Bylaw No. 559-1992 defines a lot line in relation to a parcel and further defines a parcel as "any lot, block or area in which land is held or into which it is subdivided". It is a reasonable interpretation that the legal lot be treated as the parcel as opposed to the unregistered user lots, and that the internal user lots are disregarded for siting requirements. Therefore, the only setback consideration for the user lot is the 6 metre (19 ft. 8 in.) front setback. As per the site plan shown in Appendix C, the proposed development meets this requirement. The BC Building Code establishes requirements for spatial separation between structures.

FLOODPLAIN

The subject site, as well as Hatzic Island, is within the Fraser River floodplain. The entire Island is well below the elevation of a 1:200 year Fraser River flood. Furthermore, locations on the Island are subject to frequent minor flooding from within the Hatzic watershed. Residents of Hatzic Island are dependent on the single access road to and from the Island; this access road and bridge are low lying and could be cut off during a major flood event.

Nevertheless, the proposal meets FVRD Floodplain Management Bylaw No. 0681, 2005 requirements, as the proposal is for an addition (deck extension). The portion of the deck addition that creates a larger carport area is not be used as habitable space.

NATURAL ENVIRONMENT

The proposed development is the addition of 394.87 square feet of deck space. This addition is unlikely to adversely affect the surrounding natural environment as it is a minor addition off of the second storey of the single family dwelling.

USE AND ENJOYMENT OF ADJACENT LAND

The applicant has been requested to collect feedback from the neighbourhood regarding the proposed Board of Variance application. Property owners and residents within 30 metres of the property, including the other user lot owners in Sun-Dorn Holdings, have been notified by the FVRD and have the opportunity to provide written comments or attend the Board of Variance meeting to state their comments.

PERMITTED USE AND DENSITY

The Rural 3 (R-3) zone given by Zoning Bylaw No. 559-1992, states that "a Residential Use shall be limited to one dwelling unit per parcel." Therefore, the property is legally non-conforming in terms of density. The addition (deck extension) will not increase the number of legally non-conforming uses or the size and scale of legally non-conformance.

INTENT OF THE OFFICIAL COMMUNITY PLAN AND ZONING BYLAWS

The Official Regional Plan adopted by the Lower Mainland Regional Planning Board in 1966, designated Hatzic Island as Lowland Rural (RRL-3) best suited to large rural holdings. Zoning was introduced on Hatzic Island in 1972 by the Dewdney-Alouette Regional District. Zoning Bylaw No. 28, 1972 zoned much of Hatzic Island Rural III (R-3) with a minimum parcel size of 20 acres (8 hectares). This direction has since been maintained in land use plans and zoning bylaws. In the opinion of staff, the intent of the zoning bylaws has been to prevent further urban density development on Hatzic Island while bringing pre-existing developments into compliance with the bylaws at the end of the useful life of the existing structures.

The average density of development on the Island is high for an un-serviced rural area and, by commonly accepted servicing standards, is not sustainable. There is potential for on-site sewage disposal to contaminate the groundwater and water supplies in these high density developments. The environment and human health are at risk. Development is also at risk from Fraser River and local watershed flooding due to the low elevations on the Island, and there is only one access to and from the Island.

The specific environmental, human health and safety issues summarized above have guided community plans and zoning bylaws since the late 1960's and have given rise to designating and zoning the Island for low density, large lot, rural-type uses. The application of these low density land use regulations rendered the existing developments legally non-conforming, with the expectation that the developments would eventually "fade away" over time.

However, the multiplicity of owners and the tenure structure of developments like Sun-Dorn present a major challenge to redevelopment of the property in accordance with the current Rural-3 zoning. The nature of the statute and case law, the land ownership structure and the form of development make it unlikely that conformance with the Zoning Bylaw will be achieved under the current circumstances.

The Official Community Plan for Electoral Area "G" (OCP Bylaw No. 866) includes local area policies for Hatzic Island that speak to the key issues for this neighbourhood (see Appendix G). The intent of the OCP is to continue the previous zoning and OCP bylaws' approach to limit development to existing levels. However, the OCP recognizes the tension created through this approach, and the potential negative impacts non-conforming status could have on these lands. Accordingly, the plan supports rezoning of the lawfully non-conforming development once connection to a community water or sewer system is available (Section 7.1.1).

PREVIOUS BOARD OF VARIANCE APPROVALS

Address	Application	Decision
Sun-Dorn – 37-9053 Shook Road	Addition of a roof over existing deck.	Approved 2019
6-50801 O'Byrne Road	Structural alteration to mobile home and replacement of existing deck.	Approved 2019
Sun-Dorn – 19-9053 Shook Road	Addition of a ramada over a RV and deck.	Approved 2019
Sun Dorn – 24-9053 Shook Road	Structural alteration to a fire-damaged existing single family dwelling.	Approved 2018
Dogpatch – 26-8985 Shook Road	Structural alteration and addition to an existing single family dwelling.	Approved 2018
Dogpatch - 4-8985 Shook Road	Structural alteration and addition to an existing single family dwelling to accommodate the replacement of current flat roof.	Approved 2015
Dogpatch – 3-8985 Shook Road	Removal and replacement of existing two storey garage attached to existing single family dwelling.	Approved 2015
Aqua Vista – 18-9201 Shook Road	Structural alteration and addition to an existing single family dwelling to accommodate the addition of a two car garage and deck.	Approved 2015
Dogpatch – 11-8985 Shook Road	Conversion of garage to habitable living space.	Approved 2013
Aqua Vista – 18-9201 Shook Road	Structural alteration and addition of a double wide mobile home to an existing single family dwelling.	Approved 2013
Aqua Vista – 3-9201 Shook Road	Construction of an extension to the existing single family dwelling to accommodate a bathroom.	Approved 2013
Aqua Vista – 4-9201 Shook Road	Structural alteration and addition to an existing double wide mobile home.	Approved 2009
Dogpatch – 11-8985 Shook Road	Addition of a garage to an existing dwelling.	Approved 2009
Dogpatch – 3-8985 Shook Road	Internal structural alterations to existing single family dwelling.	Approved 2009
Sun Dorn – 5-9055 Shook Road	BOV did not understand any undue hardship to the applicant to support an addition to the existing single family dwelling.	Denied 2006
Dogpatch – 1-8985 Shook Road	Reconstruction of flat roof to pitched roof and addition of storage in the roof area.	Approved 2002
Dogpatch – 1-8985	Replace flat roof with pitched roof and enlarge two existing	Approved 2003

Shook Road	bedrooms by constructing an addition and addition of a single car open sided carport.	
Sun Dorn – 11-9055 Shook Road	Addition of a family room or bedroom and carport.	Approved 2003
Dogpatch – 16-8985 Shook Road	Reconstruction and enlargement of two bedrooms, addition of covered deck, second parking spot and foyer in garage to dwelling.	Approved 2002
Sun Dorn – 10-9055 Shook Road	Reduction in setback to rear property line as long as the proposed picnic shelter not be within 1.5 m of the rear property line.	Approved 2001
Sun Dorn – 1-9055 Shook Road	Variance as applied for was denied but the second storey addition to a single family dwelling was approved.	Approved 1998
Aqua Vista – 16-9201 Shook Road	Renovate and repair old residence.	Approved 1997

FURTHER FVRD APPROVALS REQUIRED

A decision by the Board of Variance to approve the addition (roof over deck) to the dwelling does not constitute any further approvals in relation to the specific building permit application. The applicant must meet all requirements of the building permit process.

All proposed construction is required to comply with all other relevant Fraser Valley Regional District regulations and bylaws, including the *Fraser Valley Regional District Building Bylaw No. 1188, 2013.* Other agency requirements must also be met.

Submitted By:

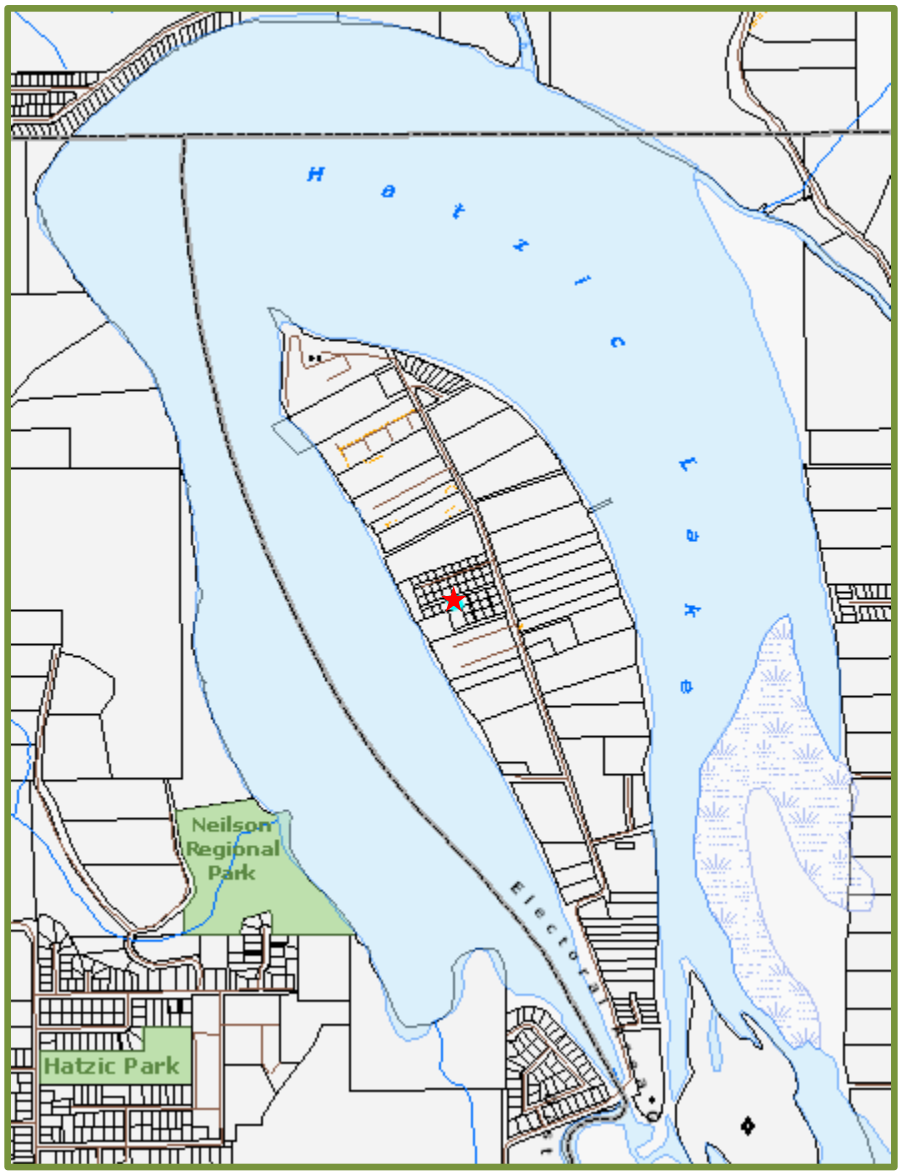
Andrea Antifaeff

Planner I

Electoral Area Planning, Fraser Valley Regional District

Appendix A

Location Map

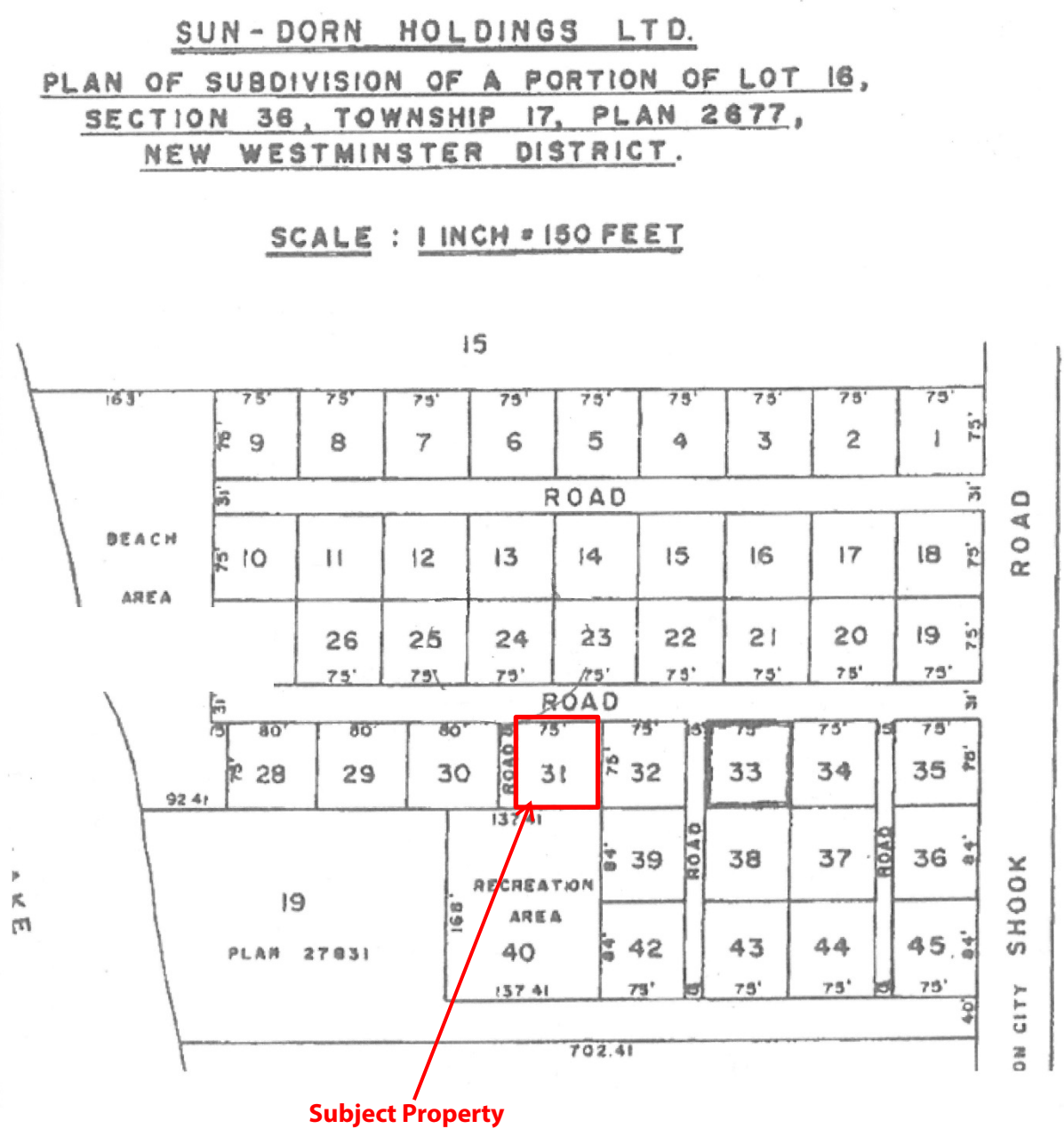


Air Photo



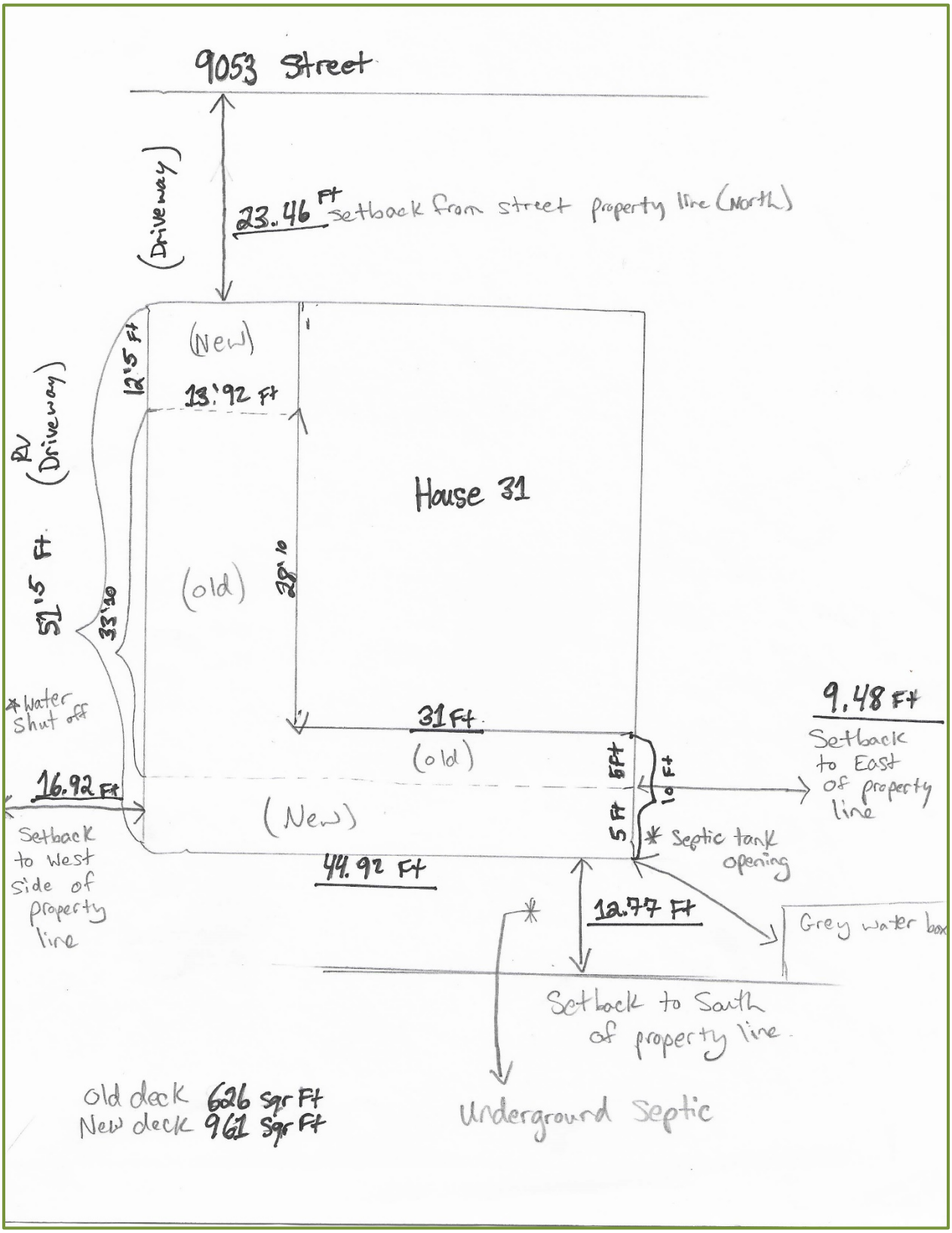
Appendix B

User Lot Layout



Appendix C

Site Plan



Appendix D

Application

Fraser Valley Regional District | PLANNING & DEVELOPMENT

www.fvrd.bc.ca | planning@fvrd.bc.ca

SCHEDULE A — Application to Board of Variance

I / We hereby apply to the Fraser Valley Regional District Board of Variance for:

☐ A minor variance from bylaw requirements due to hardship [Local Government Act, Section 540]

☑ Structural alteration or addition to non-conforming structure [Local Government Act 540 and 531]

☐ Other (describe)_____ LGA s._____

An Application Fee in the amount of $ 350.00 as stipulated in FVRD Board of Variance Establishment Bylaw No. 0903, 2008 must be paid upon submission of this application.

Civic Address: 31-9053 Shook Road, Mission, BC PID 010-666-842

Legal Description: Lot 16 Block ____ Section 36 Township 17 Range ____ Plan NWP2677

The property described above is the subject of this application and is referred to herein as the 'subject property.' This application is made with my full knowledge and consent. I declare that the information submitted in support of the application is true and correct in all respects.

Owner's Declaration

Name of Owner (print)	Signature of Owner	Date
SunDorn Holdings Ltd	Lynn Harper	Nov 5, 2019
Name of Owner (print)	Signature of Owner	Date

Owner's Contact Information

Office Use Only		
	Date 2019.12.12	File No. 0388-30 2019-775.02149.031
	Received By Andrea	Folio No. 775.02149.031
	Receipt No. 10210/9	Fees Paid: $ 300.00

45950 Cheam Avenue | Chilliwack, BC | V2P 1N6 Phone: 604-702-5000 | Toll Free: 1-800-528-0061 | Fax: 604-792-9684

October 10, 2019 – Application being sent to Sondorn

Agent — I hereby give permission to Stacey Mitchell to act on my behalf in all matters in relation to the application

Only complete this section if the applicant is NOT the owner

Signature of Owner — Date

Signature of Owner — Date

Agent's contact information and declaration

Name of Agent: Stacey Mitchell | Company: NA

Address: 31-9053 Shook Rd Mission | City: Mission

I declare that the information submitted in support of this application is true and correct in all respects

Signature of Agent: SM | Date: Sept. 2019

Variance Details

Property Size 6,881 Sqr Ft (m² or ha) Present Zoning Residential

Existing Use House and deck

Proposed Development Completed repair and extention

Proposed Variance Extention of repaired deck 12'5 x 13'92 in front and 5' x 44.92 in the back. See measurements in Site/ Construction drawing

(use separate sheet if necessary)

Reasons in Support of Application The former deck had holes and rot throughout and needed to be repaired asap as it was leaking into my garage. A construction company was able to fix the damage & add to the front and back of the deck in the timeframe between large condo development jobs. I was advised by them that the additional Sqr Ft was within the maximum allowable and to code. The front carport was added to prevent further flood input to the front of the garage from rain. The deck passed inspection by FVRD.

Supporting Information

(check all applicable boxes)

- [x] Location Map
- [x] Site Plan showing dimensions of property, easements and locations of existing buildings
- [x] Location of proposed buildings, alterations or additions, including any proposed variances
- [ ] Location of any watercourses, streams, or ponds
- [ ] Location of existing or proposed water supplies, septic systems or other services
- [x] Letters of support if applicable x 5
- [ ] Other supporting information or reports (describe) _____

_____

_____

_____

The personal information on this form is being collected in accordance with Section 27 of the *Freedom of Information and Protection of Privacy Act, RSBC 1996 Ch. 165* and the *Local Government Act, RSBC 2015 Ch. 1.* It will only be collected, used and disclosed for the purpose of administering matters with respect to planning, land use management and related services delivered, or proposed to be delivered, by the FVRD. Questions about the use of personal information and the protection of privacy may be directed to the FVRD Privacy Officer at 45950 Cheam Avenue, Chilliwack, BC V2P 1N6, Tel: 1-800-528-0061 FOI@fvrd.ca.

Appendix E

Excerpts of the Dewdney-Alouette Regional District Bylaw No. 202-1980 for Electoral Area B, C, D & E (Rural 3 Zone)

(6) Notwithstanding the provisions of Section 5.06, 8.01 (1) and 14.01,

a. Each of the following legally described properties is recognized as a leased-lot development lawfully existing at the time of adoption of this By-law, and this use shall be permitted to continue as a legally non-conforming use, provided that that a maximum of one (1) dwelling unit is located on each leased-lot, and that the total number of dwelling units in the leased-lot development does not exceed the maximum number specified for it below:

Block 16 Section 36 Township 17 Plan 2677 (Sun-Dorn Holdings Ltd.); maximum of 43 dwelling units.

b. Within a leased-lot development, replacement of any dwelling unit that is removed, demolished or accidentally destroyed shall be permitted within the same leased lot in conformity with siting and all other application regulations and legislation.

Appendix F

Excerpts of the Dewdney-Alouette Regional District Land Use and Subdivision Regulation Bylaw No. 559-1992

603 Rural 3 (R-3)

Permitted Uses

(1) Subject to the provisions of this Bylaw, the following uses and no other are permitted in the R-3 zone:

Permitted Uses: Residential Use

References: Section 405

405 Residential Uses

Residential Use

(1) A residential use shall be limited to one dwelling unit per parcel and accessory buildings, except as specifically provided for in the RST-2 zone. Accessory buildings specifically exclude a dwelling unit.

Appendix G

Excerpts of the Fraser Valley Regional District Official Community Plan for Electoral Area "G" Bylaw No. 0866, 2008

7.1 Hatzic Island

The recreational amenities and rural atmosphere of Hatzic Island have made it a popular recreation and residential location for many decades. However, the attraction of the area, combined with its particular development history and environmental attributes, have created a number of difficult challenges for the community:

- The average density of development on Hatzic Island is high for an unserviced rural area due to the presence of non-conforming urban-type residential developments, mobile home parks and recreational resorts. By most standards, unserviced development at the density found on Hatzic Island is not sustainable. Redevelopment of several non-conforming developments is unlikely due to legislation, land ownership structures and form of the development currently existing.
- On-site sewage disposal fields may be contaminating groundwater and water supplies in some locations.
- Hatzic Island is within the Fraser River floodplain. Even high points on the Island are two metres below the elevation of a 1:200 Fraser River flood. Locations on the Island are also subject to frequent minor flooding from within the Hatzic watershed which cause the most disruption and damage in low lying areas such as Everglades Resort.
- Residents of the Island are dependent on one access road and bridge; access may be cut off during major Hatzic floods.

For these and other reasons, the land use plans and zoning bylaws since the late 1960's have generally designated the Island for low density rural uses. In doing so, they rendered a number of existing developments "non-conforming".[1]

This plan continues the objective of these previous plans to generally limit development to existing levels. However, it includes important new directions that may improve the situation in meaningful ways. This plan contains new policies regarding:

a. legitimization of some non-conforming uses if current servicing, site development and flood mitigation standard can be met;
b. investigation of public sewer and water services to address environmental and human health risks;
c. the prospect of limited 'country residential' –type subdivision if community water or sewer infrastructure is achieved; and,
d. advocacy for infrastructure improvements to reduce flood hazards and enhance recreational values.

[1] The 1968 Official Regional Plan for the Lower Mainland Planning Area designated the Island as a lowland rural area best suited to large rural holdings. Zoning was introduced to the community in 1972 by the Dewdney-Alouette Regional District. DARD Bylaw No. 28-1972 zoned much of the Island Rural 3 with a minimum site area of 20 acres. This direction has since been maintained in land use plans and zoning bylaws.

Non-Conforming Uses

Occasionally, the adoption or amendment of a zoning bylaw will prohibit uses that were previously permitted. In these cases, lawfully existing uses established before the prohibiting bylaw are considered to be non-conforming, or 'grandfathered'. Rights surrounding lawfully non-conforming uses are set out in Section 911 of the Local Government Act (LGA). Section 911 allows lawfully established non-conforming uses to continue while eventually facilitating their elimination. The tension inherent in this purpose is obvious. Not surprisingly, a large and complex body of case law dealing with statutory non-conforming use has evolved which, from time to time, changes how the legislation is understood. It is essential to consider this case law when applying Section 911 in a particular instance.

Generally, Section 911 actively works towards conformance by preventing an increase in the scale of the use and limiting the duration of the use to the 'natural' life of the structure. In addition, non-conformance with zoning may depress the value of a property and increase difficulty in obtaining insurance, mortgages and financing. The net effect is to encourage replacement of the non-conforming use with one that conforms to the zoning bylaw.

However, in some instances the legal framework combined with practical considerations such as ownership structure and the nature of the use, leaves little or no expectation that conformity will be achieved, even in the long term. The result may be that a non-conforming use is permitted, and expected, to continue indefinitely but is still subject to the depressing affects of non-conforming status. In these instances, non-conforming status may create uncertainty and stifle investment necessary for the maintenance of safe and healthy residences or neighbourhoods. It can become difficult to sell or transfer interests, achieve market value, and obtain mortgages or financing necessary for upgrades and repairs. As a result, developments may steadily degrade over time without any clear mechanism for renewal and replacement. Some of the lawfully non-conforming development on Hatzic Island may fall into this category.

It is the policy of the Regional Board that:

7.1.11 Where the Regional Board considers that there is low likelihood of achieving conformity with zoning over time, the Board may treat lawfully non-conforming uses on Hatzic Island as Class II non-conformities under Section 5.7 of this Plan and rezone to reflect actual existing uses subject to:

a. connection to a community water or sewer system, or where no public system is available, upgrade of on-site systems to meet acceptable standards;
b. implementation of appropriate site development standards;
c. no increase in density, scale or intensity of development;
d. no increase in hazard or exposure risk;
e. ability to meet flood construction levels and setbacks; and,
f. adequate access.

Appendix H

Excerpts of the Local Government Act Sections 528-532 and 536-544

Division 14 – Non-conforming Use and Other Continuations

Non-conforming uses: authority to continue use

528 (1) Subject to this section, if, at the time a land use regulation bylaw is adopted,

(a) land, or a building or other structure, to which that bylaw applies is lawfully used, and

(b) the use does not conform to the bylaw,

the use may be continued as a non-conforming use.

(2) If a non-conforming use authorized under subsection (1) is discontinued for a continuous period of 6 months, any subsequent use of the land, building or other structure becomes subject to the land use regulation bylaw.

(3) The use of land, a building or other structure, for seasonal uses or for agricultural purposes, is not discontinued as a result of normal seasonal or agricultural practices, including

(a) seasonal, market or production cycles,

(b) the control of disease or pests, or

(c) the repair, replacement or installation of equipment to meet standards for the health or safety of people or animals.

(4) A building or other structure that is lawfully under construction at the time of the adoption of a land use regulation bylaw is deemed, for the purpose of this section,

(a) to be a building or other structure existing at that time, and

(b) to be then in use for its intended purpose as determined from the building permit authorizing its construction.

(5) If subsection (1) authorizes a non-conforming use of part of a building or other structure to continue, the whole of that building or other structure may be used for that non-conforming use.

Non-conforming structures: restrictions on maintenance, extension and alterations

529 (1) If the use and density of buildings and other structures conform to a land use regulation bylaw but

(a) the siting, size or dimensions of a building or other structure constructed before the bylaw was adopted does not confirm with the bylaw, or

(b) the siting, size, dimensions or number of off-street parking or loading spaces constructed or provided before the bylaw was adopted does not conform with the bylaw,

the building or other structure or spaces may be maintained, extended or altered to the extent authorized by subsection (2).

(2) A building or other structure or spaces to which subsection (1) applies may be maintained, extended or altered only to the extent that

(a) the repair, extension or alteration would, when completed, involve no further contravention of the bylaw than that existing at the time of the repair, extension or alteration was started, and

(b) in the case of protected heritage property, the repair, extension or alteration is permitted or authorized in accordance with the provisions governing the heritage protection of the property.

Restrictions on increasing non-conforming use of land

530 In relation to land, section 528 *[non-conforming uses]* does not authorize the non-conforming use of land to be continued on a scale or to an extent or degree greater than that at the time of the adoption of the land use regulation bylaw.

Restrictions on alteration or addition to building or other structure

531 (1) Subject to this section, a structural alteration or addition must not be made in or to a building or other structure while a non-conforming use is continued in all or any part of it.

(2) Subsection (1) does not prohibit a structural alteration or addition that is required by an enactment or is permitted by a board of variance under section 542 (1) *[authority for variance or exemption to relieve hardship]*.

(3) Subsection (1) does not apply to alterations or additions in or to a protected heritage property if the alteration is authorized by a heritage alteration permit under section 617.

Restrictions on repair or reconstruction of non-conforming structures

532 (1) If a building or other structure, the use of which does not conform to the provisions of a land use regulation bylaw, is damaged or destroyed to the extent of 75% or more of its value above its foundations, as determined by the building inspector, the structure must not be repaired or reconstructed except for a conforming use in accordance with the bylaw.

(2) If the use of a building or other structure that is on land identified in a phased development agreement under Division 12 *[Phased Development Agreements]* complies with a zoning bylaw provision specified under section 516 (2) *[zoning rules for land subject to the agreement]* for the phased development agreement, subsection (1) of this section does not apply to the building or other structure while the phased development agreement is in effect, unless

(a) the provision has been repealed or amended, and

(b) either

(i) the developer has agreed in writing under section 516 (5) that the changes to the zoning bylaw apply, or

(ii) the changes to the zoning bylaw apply under section 516 (6) without the written agreement of the developer.

(3) Subsection (1) does not apply to repair or reconstruction of a protected heritage property if the repair or reconstruction is authorized by a heritage alteration permit under section 617.

Division 15 – Board of Variance

Requirement for board of variance

536 (1) A local government that has adopted a zoning bylaw must, by bylaw, establish a board of variance.

(2) A person is not eligible to be appointed to a board of variance if the person is

(a) a member of the local government or the advisory planning commission, or

(b) an officer or employee of the local government.

(3) Subject to subsections (4) and (5) and to the rules established under section 538 (2) (b) (i) *[rules for joint board of variance]*, an appointment to a board for variance is for a 3 year period.

(4) If no successor has been appointed at the end of the 3 year period referred to in subsection (3), the appointment continues until the time that a successor is appointed.

(5) A local government may rescind an appointment to a board of variance at any time.

(6) If a member of a board of variance ceases to hold office, the person's successor is to be appointed in the same manner as the member who ceased to hold office, and, until the appointment of the successor, the remaining members constitute the board of variance.

(7) Members of a board of variance must not receive compensation for their services as members, but must be paid reasonable and necessary expenses that arise directly out of the performance of their duties.

(8) A local government must provide in its annual budget for the necessary funds to pay for the costs of the board of variance.

Board of variance for municipality or regional district

537 (1) If the population of a municipality is 25,000 or less, the municipal board of variance is to consist of 3 persons appointed by the council.

(2) If the population of a municipality is more than 25,000, the municipal board of variance is to consist of 5 persons appointed by the council.

(3) A regional district board of variance is to consist of 3 persons appointed by the board.

(4) The board of a regional district may establish one or more boards of variance for the regional district, but, if more than one board of variance is established, the bylaw establishing them must specify the area of the regional district over which each board of variance has jurisdiction and those areas must not overlap.

Joint board of variance

538 (1) Two or more local governments may satisfy the obligation under section 536 (1) *[requirement for board of variance]* by jointly establishing a board of variance by bylaw adopted by all participating local governments.

(2) A bylaw under subsection (1) must

(a) specify the area of jurisdiction for the board of variance, which may be all or part of the participating local governments, but must not overlap with the area of jurisdiction of any other board of variance, and

(b) establish rules for the following that apply in place of those established by section 536 *[requirement for board of variance]* and 539 *[chair and procedures]*:

(i) appointment and removal of members of the board of variance;

(ii) appointment and removal of a chair of the board of variance.

(3) As exceptions to section 537 *[local board of variance]*, the following apply to a board of variance established under this section:

(a) if a municipality is one of the participating local governments, the board of variance is to consist of

(i) 3 persons, if the population of the area of the jurisdiction of the board of variance is 25, 000 or less, and

(ii) 5 persons, if the population of the area of the jurisdiction of the board of variance is more than 25,000;

(b) if a municipality is not one of the participating local governments, the board of variance is to consist of 3 persons.

Chair and procedures for board of variance

539 (1) The members of a board of variance must elect one of their number as chair.

(2) The chair may appoint a member of the board of variance as acting chair to preside in the absence of the chair.

(3) A bylaw establishing a board of variance must set out the procedures to be followed by the board of variance, including the manner in which appeals are to be brought and notices under section 541 *[notice of application for variance]* or 543 (2) *[notice of application in relation to early termination of land use contract]* are to be given.

(4) A board of variance must maintain a record of all its decisions and must ensure that the record is available for public inspection during regular office hours.

Application for variance or exemption to relieve hardship

540 A person may apply to a board of variance for an order under section 542 *[board powers on application]* if the person alleges that compliance with any of the following would cause the person hardship:

(a) a bylaw respecting

(i) the siting, size or dimensions of a building or other structure, or

(ii) the siting of a manufactured home in a manufactured home park;

(b) a subdivision servicing requirement under section 506 (1) (c) *[provision of water, sewer and other systems]* in an area zoned for agricultural or industrial use;

(c) the prohibition of a structural alteration or addition under section 531 (1) *[restrictions on alteration or addition while non-conforming use continued]*;

(d) a bylaw under section 8 (3) (c) *[fundamental powers – trees]* of the *Community Charter*, other than a bylaw that has an effect referred to in section 50 (2) *[restrictions on authority – preventing all uses]* of that Act if the council has taken action under

subsection (3) of that section to compensate or mitigate the hardship that is caused to the person.

Notice of application for variance

541 (1) If a person makes an application under section 540, the board of variance must notify all owners and tenants in occupation of

(a) the land that is subject to the application, and

(b) the land that is adjacent to the land that is subject to the application.

(2) A notice under subsection (1) must state the subject matter of the application and the time and place where the application will be heard.

(3) The obligation to give notice under subsection (1) is satisfied if the board of variance made a reasonable effort to mail or otherwise deliver the notice.

Board powers on application

542 (1) On an application under section 540, the board of variance may order that a minor variance be permitted from the requirements of the applicable bylaw, or that the applicant be exempted from section 531 (1) *[alteration or addition while non-conforming use continued]*, if the board of variance

(a) has heard 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.

(2) The board of variance must not make an order under subsection (1) that would do any of the following:

(a) be in conflict with a covenant registered under section 219 of the *Land Title Ac*t or section 24A of the *Land Registry Act*, R.S.B.C. 1960, c. 208;

(b) deal with a matter that is covered in a land use permit or covered in a land use contract;

(c) deal with a matter that is covered by a phased development agreement under Division 12 *[Phased Development Agreements]*;

(d) deal with a floodplain specification under section 524 (3);

(e) apply to a property

(i) for which an authorization for alterations is required under Part 15 *[Heritage Conservation]*,

(ii) for which a heritage revitalization agreement under section 610 is in effect, or

(iii) that is scheduled under section 614 (3) (b) *[protected heritage property]* or contains a feature or characteristic identified under section 614 (3) (c) *[heritage value or character]*.

(3) In relation to an order under subsection (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 withn 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.

(4) A decision of the board of variance under subsection (1) is final.

Exemption to relieve hardship from early termination of land use contract

543 (1) The owner of land subject to a land use contract that will be terminated by a bylaw adopted under section 548 *[early termination of land use contracts]* may apply to a board of variance for an order under subsection (5) of this section if

(a)the owner alleges that the timing of the termination of the land use contract by the bylaw would cause the owner hardship, and

(b) the application is received by the board of variance within 6 months after the adoption of the bylaw.

(2) If an application is made under subsection (1), the board of variance must notify all owners and tenants in occupation of

(a) the land that is subject of the application, and

(b) the land that is adjacent to land that is the subject of the application.

(3) A notice under subsection (2) must state the subject matter of the application and the time and place where the application will be heard.

(4) The obligation to give notice under subsection (2) must be considered satisfied if the board of variance made a reasonable effort to mail or otherwise deliver the notice.

(5) On an application under subsection (1), the board of variance may order that, despite the termination of the land use contract and despite any zoning bylaw, the provisions of that land use contract continue to apply in relation to the applicant for a specified period of time ending no later than June 30, 2024, if the board of variance

(a) has heard the applicant, and

(b) finds that the timing of the termination of the land use contract by the bylaw would cause undue hardship to the applicant.

(6) An order under subsection (5) does not run with the land.

(7) The board of variance must make a decision on an application under subsection (1) within 6 months after the application is received by the board of variance.

(8) A decision of the board of variance under subsection (5) is final.

Extent of damage to non-conforming use property

544 (1) A person may apply to a board of variance for an order under subsection (2) if the person alleges that the determination by a building inspector of the amount of damage under section 532 (1) *[end of non-conforming use protection if other building of other structure is seriously damaged]* is in error.

(2) On an application under subsection (1), the board of variance may set aside the determination of the building inspector and make the determination under section 532 (1) in its place.

(3) The applicant or the local government may appeal a decision of the board of variance under subsection (2) to the Supreme Court.

Appendix I

Letters of Support

September, 2019

To: Fraser Valley Regional District

Planning and Development

Re: Application to the Board of Variance, Letter of Support

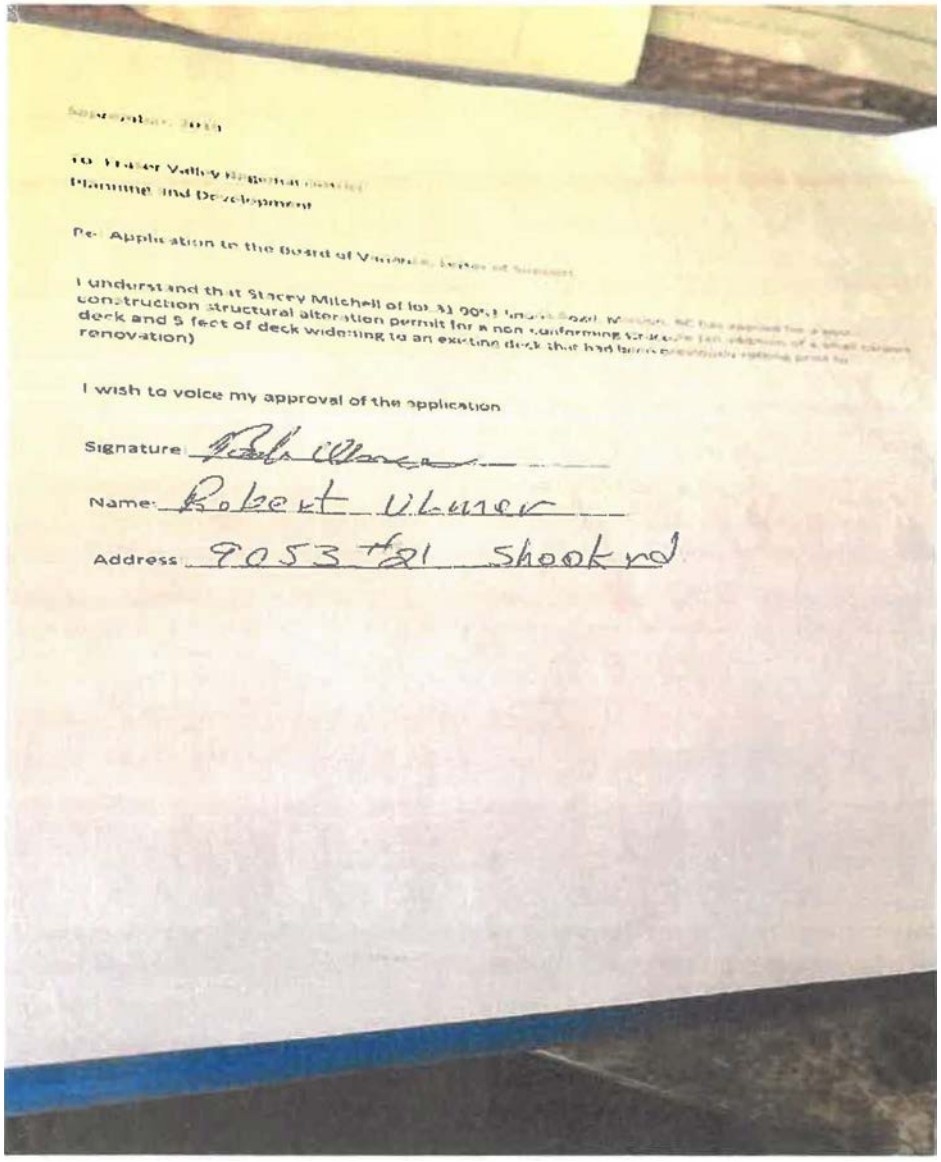
I understand that Stacey Mitchell of lot 31 9053 Shook Road, Mission, BC has applied for a post-construction structural alteration permit for a non-conforming structure (an addition of a small carport deck and 5 feet of deck widening to an existing deck that had been previously rotting prior to renovation)

I wish to voice my approval of the application.

Signature:

Name: Dolly Whittle

Address: 1-9055 rd Sudord [redacted]



To: Fraser Valley Regional District
Planning and Development

Re: Application to the Board of Variance, Letter of Support

I understand that Stacey Mitchell of lot 31 90[illegible] Unwin Road, [illegible] has applied for a [illegible] construction structural alteration permit for a non conforming [illegible] for [illegible] of a small carport deck and 5 feet of deck widening to an existing deck that had been previously [illegible] prior to renovation)

I wish to voice my approval of the application

Signature: Robert Ulmer

Name: Robert Ulmer

Address: 9053 #21 Shook rd

September, 2019

To: Fraser Valley Regional District

Planning and Development

Re: Application to the Board of Variance, Letter of Support

I understand that Stacey Mitchell of lot 31 9053 Shook Road, Mission, BC has applied for a post-construction structural alteration permit for a non-conforming structure (an addition of a small carport deck and 5 feet of deck widening to an existing deck that had been previously rotting prior to renovation)

I wish to voice my approval of the application.

Signature: W. Ervin

Name: Wayne Ervin

Address: 10 - 9058 SHOOK RD.

September, 2019

To: Fraser Valley Regional District

Planning and Development

Re: Application to the Board of Variance, Letter of Support

I understand that Stacey Mitchell of lot 31 9053 Shook Road, Mission, BC has applied for a post-construction structural alteration permit for a non-conforming structure (an addition of a small carport deck and 5 feet of deck widening to an existing deck that had been previously rotting prior to renovation)

I wish to voice my approval of the application.

Signature: Betty Lee Cummings

Name: BETTY LEE CUMMINGS

Address: 39-9053 SHOOK RD
MISSION BC V2V7M7

September, 2019

To: Fraser Valley Regional District

Planning and Development

Re: Application to the Board of Variance, Letter of Support

I understand that Stacey Mitchell of lot 31 9053 Shook Road, Mission, BC has applied for a post-construction structural alteration permit for a non-conforming structure (an addition of a small carport deck and 5 feet of deck widening to an existing deck that had been previously rotting prior to renovation)

I wish to voice my approval of the application.

Signature: E. V

Name: ERIKA VERBOOM

Address: 43-9053 SHOOK RD

From: Dave Leask [redacted]
Sent: Monday, January 13, 2020 8:01 AM
To: Jaime Reilly
Subject: # 31 - 9053 Shook rd

My concerns of the work done on lot 31 - 9053 shook rd in Sun-Dorn

- There has been no Geo technical Inspections on deck footings or column .
- No Engendered drawings
- Were is the septic field / tank in relation to deck footings
- There has been issues with septic field issues (pumping waste into the play ground in the past)
- The deck has been there for years and still no hand rails
- She has no regards for neighbors
- Continually disregards Sun-Dorn Policy's

I have been through this process my self and i had to build my deck roof by the book and im ok with that . As FVRD said to me these bylaws and building codes are here for the safety and well being of the people around here also for home insurance

Thank you
Dave Leask
Lot 37- 9053 shook rd