

To: Board of Variance Chair and Members  
From: Andrea Antifaeff, Planner I  
Date: July 16, 2019  
Subject: Board of Variance Application for #6-50801 O'Byrne Road, Slesse Park Mobile Home Park, Electoral Area "E"  
File No. 0388-30 2019-733.74506.002

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## REPORT PURPOSE

On June 13, 2019, the attached application to the Board of Variance was submitted to permit structural alterations and an addition (deck) to a legally non-conforming structure, under Section 540(c) of the *Local Government Act*, for the property located at #6-50801 O'Byrne Road, Electoral Area "E".

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 and Construction Drawings
- Appendix D: Application
- Appendix E: Excerpts of the Zoning Bylaw for Electoral Area "E", 1976 of the Regional District of Fraser-Cheam
- Appendix F: Excerpts of the Fraser Valley Regional District Official Community Plan for Electoral Area "E" Bylaw No. 1115, 2011
- Appendix G: Excerpts from the Local Government Act Section 528-532 and Section 536-544

## 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 (ramada over RV and deck) to an existing legally non-conforming structure.

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 structural alterations and addition of a deck to the existing mobile home. Please see pictures below.



March 7, 2019



May 23, 2019



May 23, 2019



May 28, 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 complies with the following:

- 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 proposed addition are shown on the attached construction drawings in Appendix C and application in Appendix D.

PROPERTY DETAILS	
<b>Electoral Area</b>	E
<b>Address</b>	#6 – 50801 O’Byrne Road
<b>PID</b>	013-159-275
<b>Legal Description</b>	Parcel “B” (J5855E) of the south half of the south east quarter section 33 township 1 range 29 west of the sixth meridian except: Firstly: Part subdivided by Plan 23367; Secondly: Part subdivided by Plan 24078; Thirdly: Part subdivided by Plan 25484; Fourthly: Part subdivided by Plan 26518; Fifthly: Part subdivided by Plan 27885, New Westminster District
<b>Folio</b>	733.74506.002
<b>Registered Property Owner</b>	682543 B.C. Ltd.
<b>Applicant</b>	Peter Martens
<b>Lot Size</b>	7.27 acres with 9 mobile home sites and campground
<b>User Lot Area</b>	2,739 square feet
<b>Agricultural Land Reserve</b>	No
<b>Floodplain</b>	Within; Approximately 137.2m GSC FCL and outside Erosion Setback Line
<b>OCP</b>	Suburban Residential (SR)
<b>Zoning</b>	Multi-Use Residential (RS-2)/Local Commercial (C-1)
<b>Development Permit Area</b>	Within Chilliwack River Valley Slope Hazard Development Permit Area 3-E; exempted because mobile home already exists and within Riparian Areas Development Permit Area 5-E; exempted because greater than 30m from a watercourse
<b>Setbacks</b>	Existing mobile home and proposed deck meet 4.5m front property line setback and 6.0 m rear setback
<b>Bylaw Enforcement</b>	Yes

ADJACENT ZONING & LAND USES			
Direction	Use	Zoning	OCP
North	Single Family Dwellings	Multi Use Residential (RS-2)	Residential Limited Use
East	Single Family Dwellings	Multi Use Residential (RS-2)	Suburban Residential/Residential Limited Use
West	Single Family Dwellings	Multi Use Residential (RS-2)	Suburban Residential
South	Campground	Residential & Recreational Assembly Use (L-4)	Limited Use

### NON-CONFORMANCE

The subject property, referred to as Slesse Mobile Home Park, is located on land split zoned Multi-Use Residential (RS-2) and Local Commercial (C-1) under *Zoning Bylaw for Electoral Area "E", 1976 of the Regional District of Fraser-Cheam* which permits one dwelling unit per lot. Neither of these zones permits a Mobile Home Park Use. The southern portion of the property consists of a campground and is zoned Residential and Recreational Assembly Use (L-4), which permits a campground. Our records indicate there are nine mobile homes and an office located on the northern portion of the lot. These uses are located on the subject property which is one (1) legal lot. The use of the property for up to 9 mobile homes and one office is legally non-conforming ("grandfathered") pursuant to Section 540 of the *Local Government Act*.

Notwithstanding the current zoning the mobile home park on the northern portion of the property existed prior to the adoption of the first zoning bylaw in the area which resulted in some non-conforming rights under the *Local Government Act*.

Board of Variance approval is required prior to the FVRD's issuance of building permits to alter or replace mobile homes in this legally non-conforming mobile home park.

### OWNERSHIP STRUCTURE

682543 B.C. Ltd. is the registered owner of the property. The FVRD's understanding is that the mobile home user lots are leased and the lease entitles the leaseholder the exclusive use of a portion (user lot) of the property. The single un-subdivided northern portion of the property is separated into individual user lots (mobile homes) 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.

### 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 mobile home purchased was unliveable at the time;
- The roof was leaking and there was mold, rot and mice living in the walls; and,
- The applicant has been paying for electricity, gas and rent for the mobile home user lot for almost a year without being able to live in the mobile home.

### DEVELOPMENT OF THE SITE

The proposed development meets all setback requirements. Zoning Bylaw No. 66-1976 defines a lot line in relation to a lot, and further defines a lot as “a parcel of land occupied by or which may be occupied by a building and its accessory building or buildings and including the setbacks, yards, and other open spaces required by this Bylaw, or the land registered as a separate parcel in the Land Registry Office”. It is a reasonable interpretation that the legal lot be treated as the lot, 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 4.5 metre (15 foot) front setback and the 6 metre (20 foot) rear setback. As per site plan shown in Appendix C, the proposed development meets this requirement. The BC Building Code establishes requirements for spatial separation between structures.

### FLOODPLAIN

A portion of the subject site is within the Chilliwack River floodplain. The mobile home was placed prior to the regulations of the FVRD Floodplain Management Bylaw and the Floodplain Bylaw provides the following general exemptions from meeting flood construction levels:

- A renovation to an existing building or structure that does not involve an addition thereto; and,
- An addition to a building or structure, at the original non-conforming floor elevation, that would increase the size of the building or structure by less than 25 percent of the ground floor area, existing in July 1981, provided that the degree of nonconformity regarding watercourse setback is not increased.

### HAZARDS

The subject property is located in an area for potential slope, river and alluvial hazards. The proposal is for interior renovations (mobile home already exists) and the construction of a deck (with no enclosing walls) which may qualify for an exemption from requiring a site specific geo-hazard report.

### NATURAL ENVIRONMENT

The proposed development is unlikely to adversely affect the surrounding natural environment to a further degree than already present. As the mobile home footprint is not changing and the proposed deck is only increasing marginally in size.

## 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 Slesse Park Mobile Home Park, 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 Multi-Use Residential (RS-2) and Local Commercial (C-1) zones given by Zoning Bylaw No. 66-1976, states that "a One-Family Residential Use is used for only one dwelling unit." Therefore, the property is legally non-conforming in terms of density. The subject property 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 Community Plan recognizes that some parcels may be considered non-conforming under Section 911 of the *Local Government Act* and that most lawfully non-conforming uses are associated with development constructed before zoning bylaws were established. In many cases, the existing zone to establish conformity is not an acceptable option, although continuance of the use under certain restrictions may be acceptable.

The subject property is split zoned (in the northern portion where Slesse Mobile Home Park is located).

The permitted uses of the Multi Use Residential (RS-2) zone are:

- One-family residence, or mobile home or modular home.
- Accessory Personal care use
- Boarding, involving the keeping of not more than two (2) paying guests, boarders or lodgers
- Home occupation
- Civic
- The keeping of farm animals for the sole use of the resident, subject to compliance with pertinent regulations
- Accessory advertising, and limited to one sign not exceeding 0.27 square metres (3 square feet) in area for each street frontage upon which the lot or site abuts
- Bed and breakfast use [Byl #0772, 2006]

The permitted uses of the Local Commercial (C-1) zone are:

- Principal uses limited to:
  - Retail facilities limited to:
    - retail bake shop or confectionary
    - fresh fruit and vegetable market
    - florist
    - nursery
    - gift and souvenir shop
    - hobby shop
    - antique and/or flea market

- delicatessen and/or fish market
  - general store
- Restaurant, cafe, coffee shop or ice cream parlour with a seating capacity of 48 persons maximum.
- Personal service establishments limited to:
  - Barber or beauty shop
  - Dry cleaning shop
  - Shoe repair shop
- Service station or gas bar
- Tourist information booth
- Bank
- Professional office
- Club, meeting hall for membership organization, social building, day or child care centre [subject to Section 3.1.6(c)]
- Civic
- Parking lot
- One-family residence
- Accessory uses limited to:
  - Sports equipment
  - Sports equipment, fishing tackle supply store
  - Tobacconist
  - Post office
  - Taxi office
  - Newsagent
  - Retail propane sales for the traveling public

#### PREVIOUS BOARD OF VARIANCE APPROVALS

Address	Application	Decision
Sun Dorn – 37-9053 Shook Road	Structural alteration/addition to construct a roof over the existing 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	Construction of an extension to the existing single family	Approved 2013



Shook Road	dwelling to accommodate a bathroom.	
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
37198 McKamie Road	Vary side setback from 3m to 2.12m for bay window and roof overhang.	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
Cultus Lake CHP – 117-1436 Frost Road	Construction of a ramada 0.9m (3ft) from adjacent storage shed on Lot 116.	Approved 2005
Cedar Acres – 2-35584 Durieu Road	Replacement of covered deck (130ft <sup>2</sup> ).	Approved 2004
Cultus Lake CHP - 118-1436 Frost Rd.	Vary the setback for a ramada from 1.8 m to 1.2m.	Approved 2004
Cedar Acres - 1-35584 Durieu Rd	Placement of double-wide to replace existing single-wide.	Approved 2003
Gordania Estates - 29-52324 Yale Road	Setback for carport.	Denied 2003
Dogpatch – 1-8985 Shook Road	Replace flat roof with pitched roof and enlarge two existing bedrooms by constructing an addition and addition of a single car open sided carport.	Approved 2003
Sun Dorn – 11-9055 Shook Road	Addition of a family room or bedroom and carport.	Approved 2003
Dogpatch – 1-8985 Shook Road	Reconstruction of flat roof to pitched roof and addition of storage in the roof area.	Approved 2002
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
Baker Trail Village - 119-46511 Chilliwack Lake Road	Enclose existing carport and sundeck on mobile home with a separation distance of 15.2ft from the adjacent trailer of Lot #118.	Denied 1999
Liumchen Village - 3-45955 Sleepy Hollow Road	Variance allowing a 14' 5" separation between site #2 and #3, and 13' 6" separation between site #3 and the carport of site #4.	Approved 1999
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
Baker Trail Village 32-46511 Chilliwack Lake Road	Vary the setback by 1ft for existing roof line.	Approved 1998



40628 Lougheed Highway	Setback reduction from 30m to 8m to the western property line for a barn addition.	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 structural alterations and addition to the mobile home 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

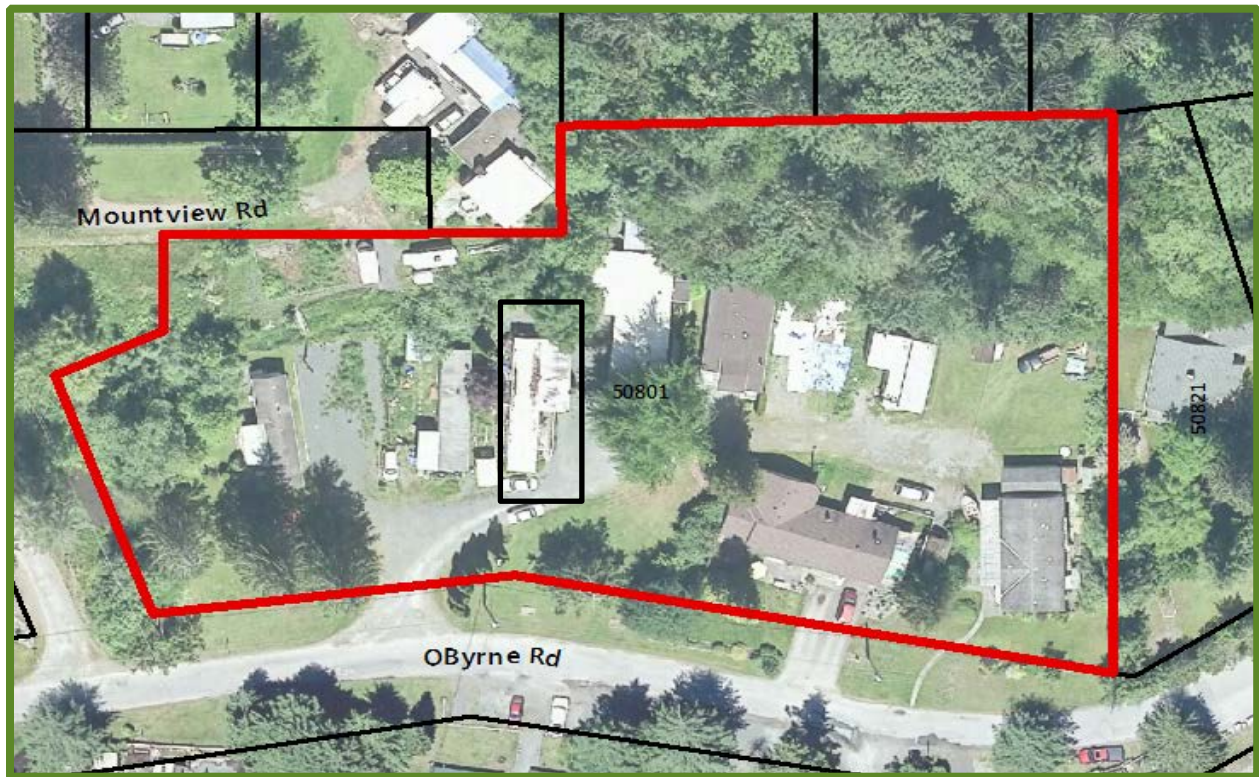
Planner I

Electoral Area Planning, Fraser Valley Regional District

### Location Map

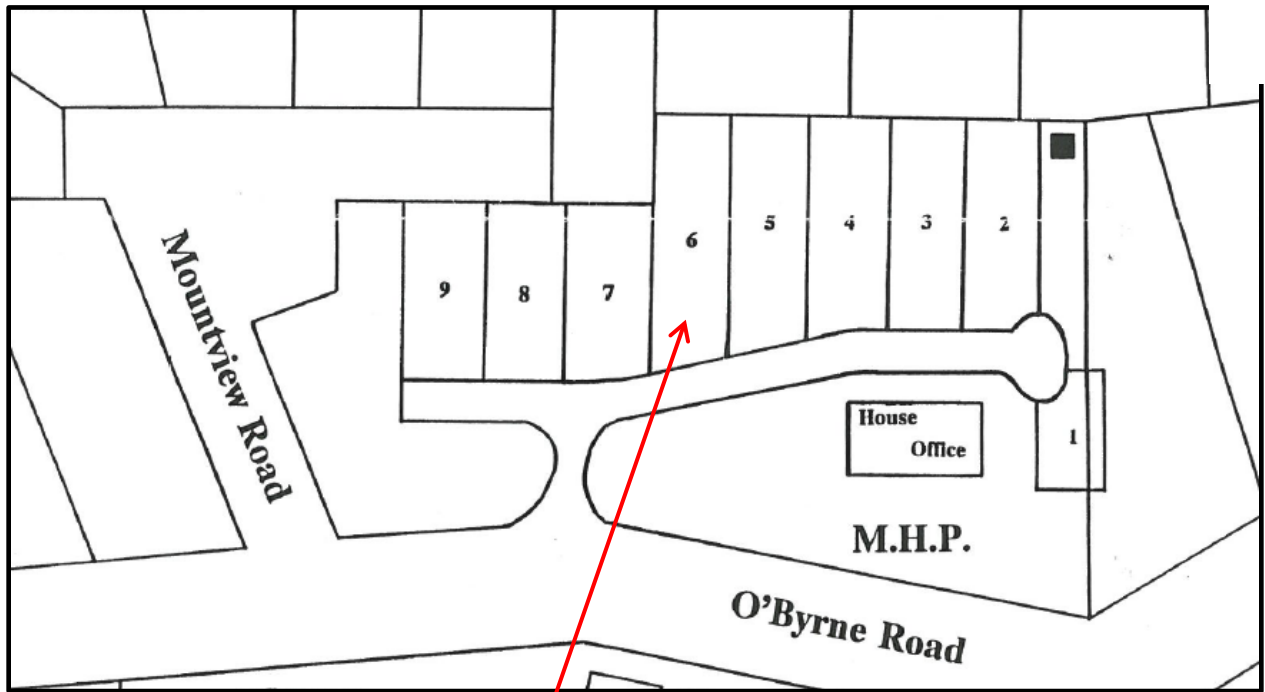


Air Photo



## Appendix B

### User Lot Layout



**Subject Property**

01  
O'BYRNE RD  
PROPOSED  
SITE PLAN

Proposed Site Plan  
and floor plan for  
6-50801 O'byrne Rd.

Jul 9 2019

POWER POLE  
PWR

Master bedroom  
12'  
16'  
9'  
9'  
60'  
Dining room  
Kitchen  
Porch  
bedroom  
Proposed deck  
6'  
6'  
5'  
23'  
O'BYRNE RD

PRIVACY

2' 24"

## Appendix D

### Application



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 \$ \_\_\_\_\_ as stipulated in FVRD Board of Variance Establishment Bylaw No. 0903, 2008 must be paid upon submission of this application.

Civic

Address 50801 OBYRNE RD. CHILLIWACK PID \_\_\_\_\_

Legal Lot 6 Block \_\_\_\_\_ Section \_\_\_\_\_ Township \_\_\_\_\_ Range \_\_\_\_\_ Plan \_\_\_\_\_  
Description

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
PETER MARTENS		MAY 8 2019
Name of Owner (print)	Signature of Owner	Date

Owner's  
Contact  
Information

Address <u>50801 OBYRNE RD.</u>		City <u>CHILLIWACK</u>
Email _____		Postal Code <u>V4Z 1B6</u>
Phone _____	Cell _____	Fax _____

Office Use Only	Date	File No.
	Received By	Folio No.
	Receipt No.	Fees Paid: \$



Agent

I hereby give permission to \_\_\_\_\_ to act as my/our agent in all matters relating to this 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	Company
Address	
City	

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

Signature of Agent	Date
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X Variance Details

Property Size 84ft x 33ft (m<sup>2</sup> or ha) Present Zoning \_\_\_\_\_

Existing Use \_\_\_\_\_

X Proposed Development fix what needs to be fixed to make it liveable. Replace rotten deck and repair mobile.

Proposed Variance \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(use separate sheet if necessary)

X Reasons in Support of Application The mobile home I purchased was unliveable. I thought I could live in it at first by fixing a leaky roof problem. But the more I researched the mobile the worse it got. I found mold and rot in the walls. The more I took off the worse it got. Mice were living in it as well. I've been paying for rent, power and gas for almost a year and still can't move into it or fix it properly. Tired of couch surfing.



### Supporting Information

(check all applicable boxes)

- ☐ Location Map
- ☐ Site Plan showing dimensions of property, easements and locations of existing buildings
- ☒ 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
- ☐ Letters of support if applicable
- ☐ 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@fvr.ca](mailto:FOI@fvr.ca).

## **Appendix E**

### **Excerpts of the Zoning Bylaw for Electoral Area "E", 1976 of the Regional District of Fraser-Cheam**

#### Division Nine – Multi-Use Residential – RS-2

##### Permitted Uses

All uses in this Division are subject to Division Three – General Regulations. The following uses and no others are permitted

Permitted Uses: One-family residence, or mobile home or modular home

#### Division Eleven – Local Commercial – C-1

##### Permitted Uses

All uses in this Division are subject to Division Three – General Regulations. The following uses and no others are permitted

Permitted Uses: One-family residence

#### Division One - Definitions

##### One-Family Residential Use

Means a residential use in a detached building which is used for only one dwelling unit; a mobile home or modular home or travel trailer as defined in this Bylaw shall not be considered a one-family residential use within the meaning of this definition.

##### Mobile Home

Means a structure manufactured and assembled as a unit, which is intended to be drawn or moved along a highway or road from time to time to serve as a residence for its occupants or owners, and which contains one dwelling unit with complete bathroom and cooking facilities, and plumbing and electrical connections for attachment to existing outside systems, specifically excludes any trailer not having a water closet and bath or shower cabinet.

##### Modular Home

Means a structure manufactured and assembled as a unit, which is intended to serve as a residence for its occupants or owners, and which contains one dwelling unit with complete bathroom and cooking facilities, and plumbing and electrical connections for attachment to existing outside systems; specifically excludes any trailer not having a water closet and bath or shower cabinet.

## **Appendix F**

### **Excerpts of the Fraser Valley Regional District Official Community Plan for Electoral Area "E" Bylaw No. 1115, 2011**

#### 4.5 Lawfully Non-Conforming Use & Siting

Legally established existing land uses which are not permitted uses in the zone within which they are located, are considered to be non-conforming under Section 911 of the *Local Government Act*. Most lawfully non-conforming uses are associated with development constructed before zoning bylaws were established. In many cases, the existing zone to establish conformity is not an acceptable option, although continuance of the use under certain restrictions may be acceptable. The siting and dimensions of buildings may also be lawfully non-conforming under the *Local Government Act*.

It is the policy of the Regional Board that:

- 4.5.1 Where the continuance of a lawfully non-conforming land use would not be hazardous or conflict with the surrounding land uses – and where the applicant indicates a desire to negotiate a covenant with the Regional Board limiting future uses, buildings and structures to those legally established at present – the Board may rezone the property to reflect the actual use.
- 4.5.2 The Regional Board may consider the issuance of a development variance permit to vary siting regulations to address so as to render the siting or dimensions of a building or structure conforming.

## **Appendix G**

### **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 conform 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 Act* 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 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.

(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.