

To: Electoral Area Services Committee
From: Gavin Luymes, Planning Technician

Date: 2020-11-10
File No: 3090-20 2020-21

Subject: Application for Development Variance Permit 2020-21 to reduce the required highway setback from 4.6 metres (15.1 feet) to 3.9 metres (12.8 feet) for the accessory building at 47840 Chilliwack Lake Road, Area E

RECOMMENDATION

THAT the Fraser Valley Regional District Board issue Development Variance Permit 2020-21 to reduce the required setback from 4.6 metres (15.1 feet) to 3.9 metres (12.8 feet) for the accessory building at 47840 Chilliwack Lake Road, Area E, subject to the consideration of any comments or concerns from the public.

STRATEGIC AREA(S) OF FOCUS

Provide Responsive & Effective Public Services

BACKGROUND

The property owner of 47840 Chilliwack Lake Road has applied for a Development Variance Permit to reduce the required highway setback for an accessory building from 4.6 metres (15.1 feet) to 3.9 metres (12.8 feet) (Appendix A: Site Plan). This variance will accommodate the eaves of the building (Appendix B: Building Plans).

This application was made after a Building Permit (BP014822) was issued for the structure. The permit for the structure was based on plans showing that all required setbacks were met. However, after receiving the Building Permit, the applicant began construction in a different location where the eaves of the building would encroach into the required setback. This was determined when the FVRD Building Department received a site survey of the building foundations under construction.

The foundations and walls of the building meet all required setbacks, but since setbacks for an accessory building are measured to the eaves, the highway setback will not be met if the eaves are built as designed. The property owner was provided with three options to resolve this issue:

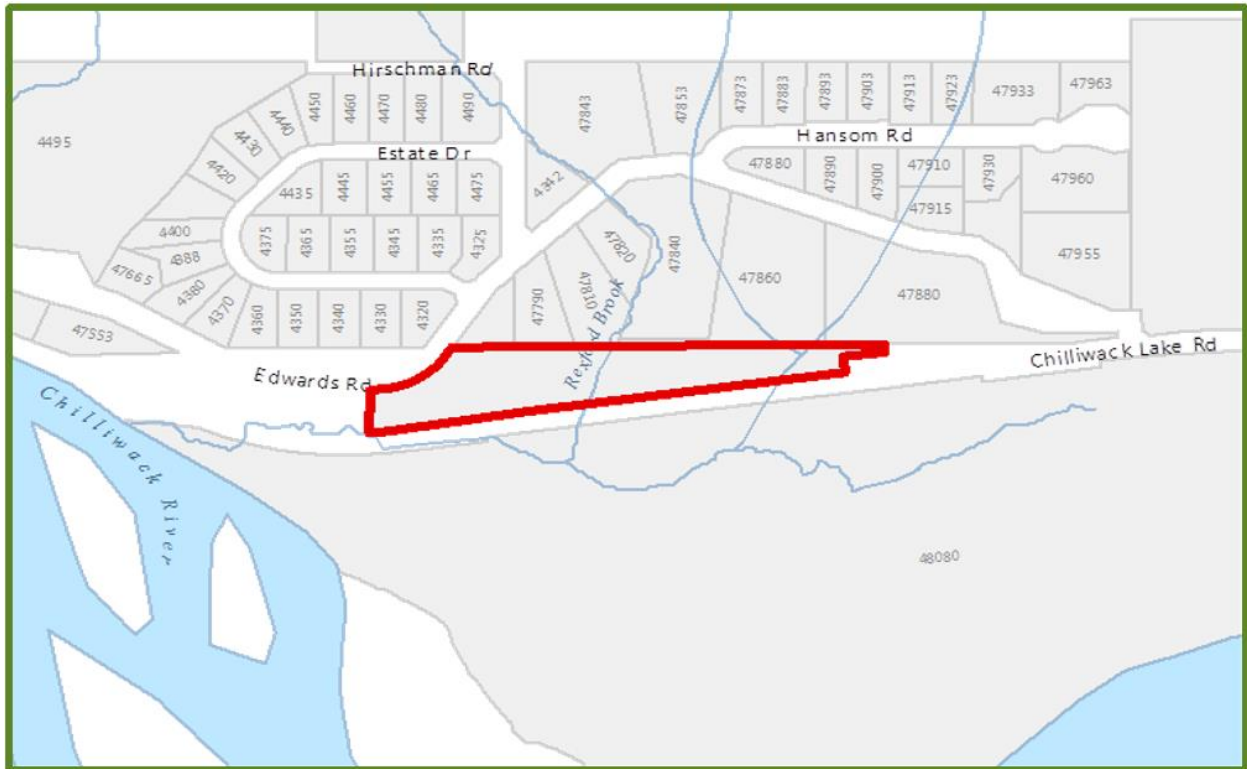
1. Move the constructed foundation to ensure the future eaves meet the required setback;
2. Redesign the building to include no eaves; or
3. Apply for a variance to permit the eave encroachment.

The property owner decided to retain the building as designed and apply for the requested variance.

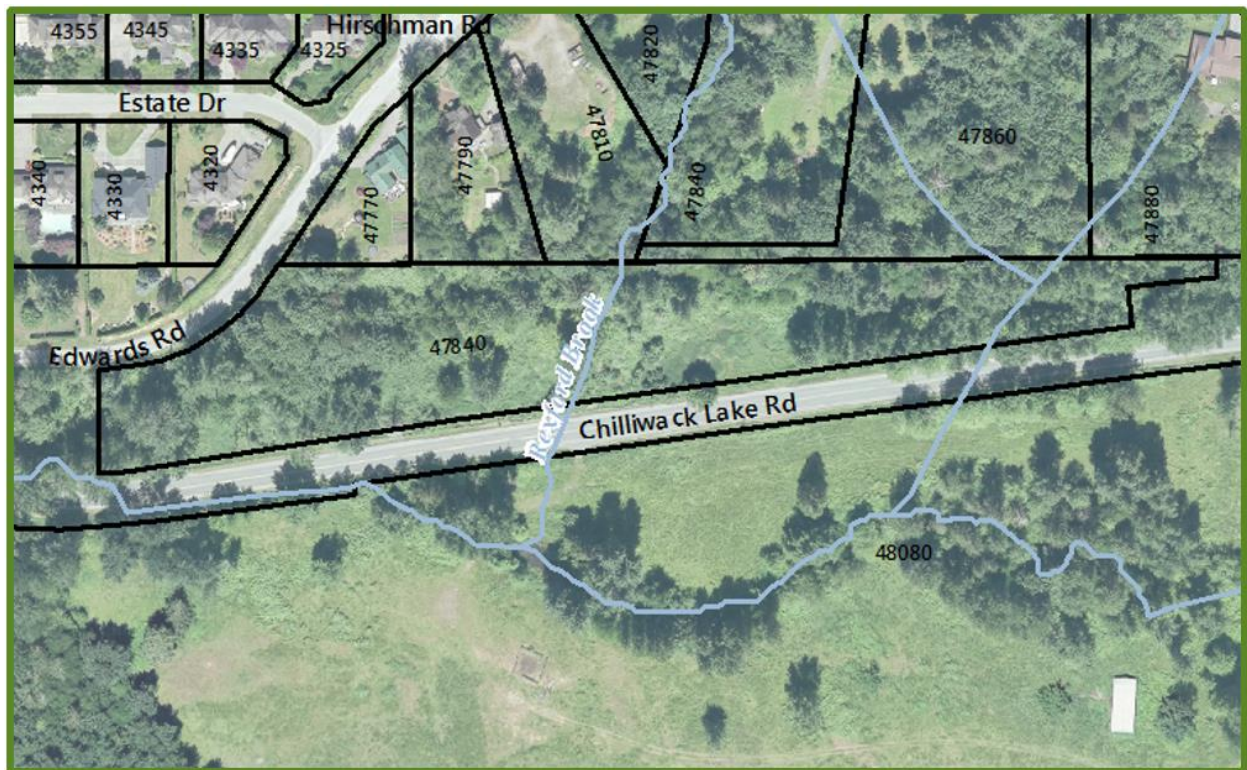
PROPERTY DETAILS			
Electoral Area	E		
Address	47840 Chilliwack Lake Road		
PID	007-578-237		
Folio	733.01269.000		
Lot Size	4.5 acres		
Owner	Cameron & Amanda Van Klei	Agent	Allan Tunbridge (Vector Geomatics)
Current Zoning	Rural (R)	Proposed Zoning	No change
Current OCP	Rural (R)	Proposed OCP	No change
Current Use	Residential	Proposed Use	No change
Development Permit Areas	DPA 2-E (River Hazards), DPA 3-E (Slope Hazards), & DPA 5-E (RAR)		
Hazards	Floodplain		
Agricultural Land Reserve	No		

ADJACENT ZONING & LAND USES		
North	^	Rural (R) & Rural Residential 2 (RS-2) & Country Residential (CR), Single Family Homes
East	>	Agricultural (A-1), Single Family Home
West	<	Rural (R), Single Family Homes
South	v	Rural (R), Single Family Homes

NEIGHBOURHOOD MAP



PROPERTY MAP



DISCUSSION

To evaluate the requested variance, staff considered the variance rationale, neighbourhood impact, context of the application, and implications for future development. Though the requested variance is relatively minor (0.7 metres or 2.3 feet), staff are concerned by the circumstances under which the application was made and the implications for future development. Staff note the following:

- At 0.7 metres or 2.3 feet, the requested variance is relatively minor. The requested variance is for the eaves and gutter of the building. The foundation and walls meet the required setback. As the eaves are not yet constructed, the structure currently meets all required setbacks;
- This variance would not be necessary if the applicant had built according to the plans that were approved. The applicant was again provided with the required setbacks when their Building Permit was issued and did not build according to these either;
- The property owner has not provided rationale for why the building was relocated beyond personal preference. The rationale for this variance is that the foundations were poured without the applicant verifying their setbacks and they wish to continue constructing the building as designed;
- This variance is to correct future encroachment into the required setback. Issuing this variance could signal that applicants can build or change their plans before receiving approval. This approach is bad practice and absolutely discouraged.

Given the above, staff have concerns about the requested variance. However, the variance is relatively minor and not anticipated to negatively impact surrounding properties. Staff are satisfied that the applicant is working to resolve the setback issue. For these reasons, staff recommend the requested variance be granted.

This said, the Board should note the following in evaluating the application:

- Variance approvals are discretionary and the Board is perfectly able to refuse this request. There is legitimate concern that issuing this variance could signal tacit acceptance of seeking development approval after the fact. The Board should refuse the variance if this concern outweighs other rationale for issuing the variance;
- If this variance is refused, the applicant will be required to relocate the building or redesign the roof such that the eaves do not encroach into the required setback. If the applicant constructs the roof as designed without approval, they will be subject to bylaw enforcement;
- As the building currently meets all required setbacks and the applicant has obtained a Building Permit, there is no bylaw enforcement on the property. However, if the variance is granted, the applicant will be required to submit a new plan check fee of \$86.40.

If the variance is refused, the applicant could:

- Redesign the building so that the eaves and gutters do not encroach within the required setback; or
- Relocate the building so that the eaves can be accommodated within the required setback.

Ministry of Transportation and Infrastructure (MOTI)

If the requested variance is granted, the proposed eaves will be within 4.5 metres of Chilliwack Lake Road. The Ministry of Transportation and Infrastructure (MOTI) requires a Highway Setback Permit for new construction within 4.5 metres of a provincially maintained highway like Chilliwack Lake Road. MOTI staff confirmed this requirement also applies to eaves.

The applicant received a Highway Setback from MOTI on October 29, 2020. Based on this permit, MOTI has approved the requested setback. The requested setback will not negatively affect or impede the Chilliwack Valley Road right-of-way.

Internal Referrals

As part of the variance review process, the application was shared with FVRD departments of Building, Bylaw Enforcement, Emergency Services, and Engineering for comment. No comments or concerns were received from Emergency Services or Engineering.

The Manager of Inspection Services stated that the applicant is responsible for ensuring their structure is compliant with the BC Building Code. This variance does not relieve the applicant of their responsibility to meet all relevant requirements of the BC Building Code. The applicant must submit new plans for the building in the current location. This includes a new plan check fee of \$86.40.

The Bylaw Enforcement & Compliance Officer outlined previous bylaw enforcement against the property. On March 8, 2019, staff commenced bylaw enforcement against the current property owner for land and stream bank works and alterations to a watercourse (Rexford Brook). The Ministry of Environment & Climate Change Strategy issued a restoration order under the *Water Sustainability Act* that requires all restoration to be complete by November 1, 2020. Staff issued Development Permit 2019-08 to allow restoration works that would resolve the bylaw enforcement file. This infraction does not affect the requested variance but the Board should note that staff are aware of and working to resolve prior bylaw enforcement on the property.

Neighbourhood Notification and Input

All property owners within 30 metres (100 feet) of the property will be notified by FVRD of the variance application and given the opportunity to provide written comments or attend the Board meeting to state their comments. Staff have encouraged the applicant to advise neighbouring property owners and residents of the requested variance in advance of the mail-out application. To date no letters of support or objection have been received.

COST

The application fee of \$1,300 has been received.

CONCLUSION

The requested variance of 0.7 metres or 2.3 feet is relatively minor and not expected to negatively impact surrounding properties. This variance applies to the eaves of a garage and not the wall or foundations. The requested variance will enable the proposed garage to be constructed as designed and avoid bylaw enforcement. MOTI has issued a Highway Setback Permit for the structure. For these reasons, staff recommend the requested variance be issued subject to the consideration of any comments or concerns from the public.

However, the Board should consider that the variance is intended to accommodate future setback encroachment because the applicant is constructing the building in a location that is inconsistent with the approved permit. If the Board judges this concern to outweigh rationale in support of the variance, it would be appropriate for the variance to be refused.

If the requested variance is not granted, the applicant will be required to relocate or redesign the building.

Option 1 – Issue (Staff Recommendation)

Staff recommend that the Fraser Valley Regional District Board issue Development Variance Permit 2020-21 to reduce the required setback from 4.6 metres (15.1 feet) to 3.9 metres (12.8 feet) for the accessory building at 47840 Chilliwack Lake Road, Area E, subject to the consideration of any comments or concerns from the public.

Option 2 – Refuse

If the Board wishes to refuse the application, the following motion would be appropriate:

MOTION: THAT the Fraser Valley Regional District Board refuse Development Variance Permit 2020-21.

Option 3 – Refer to Staff

If the Board wishes to refer the application back to staff to address outstanding issues, the following motion would be appropriate:

MOTION: THAT the Fraser Valley Regional District Board refer the application for Development Variance Permit 2020-21 to staff.

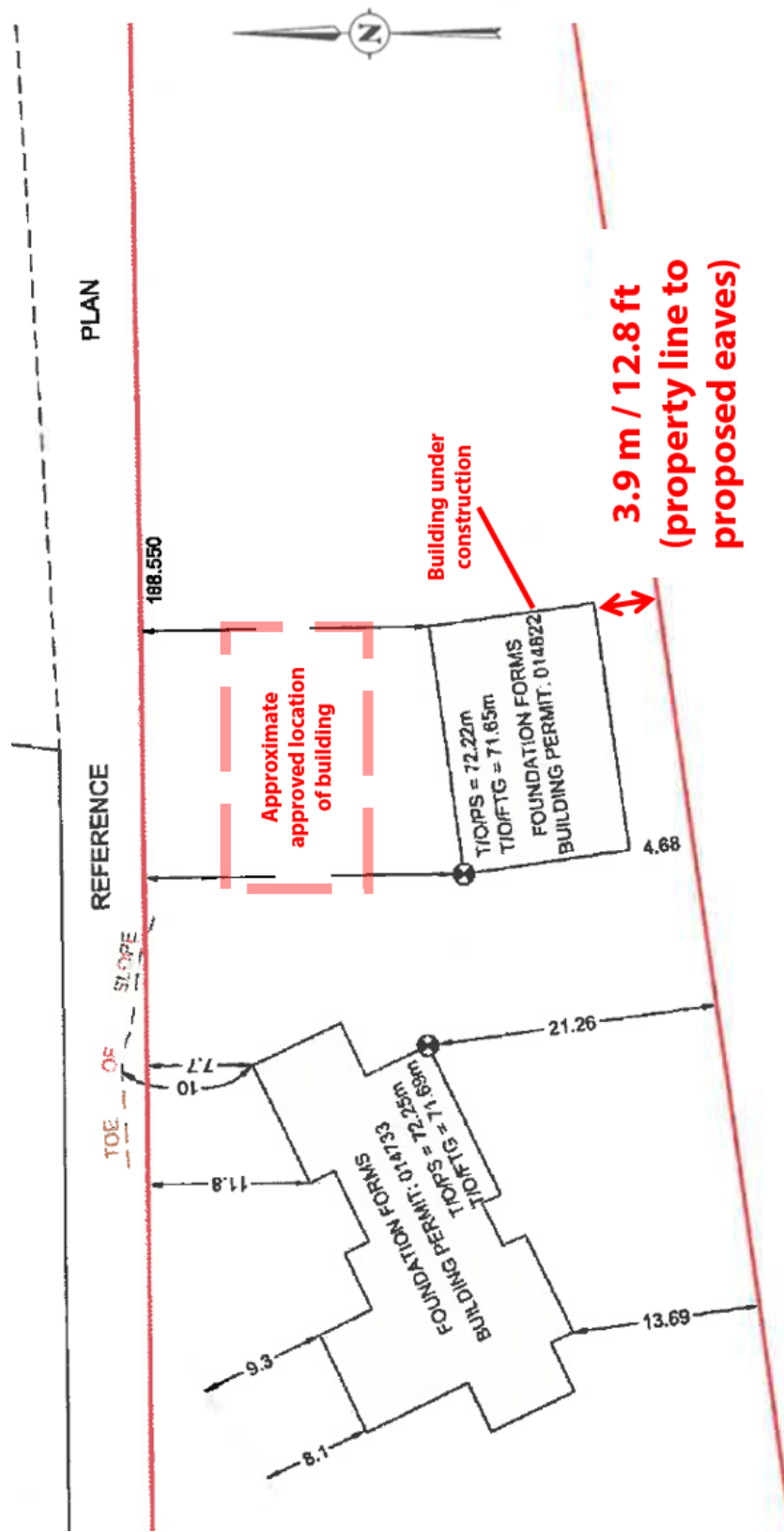
COMMENTS BY:

Graham Daneluz, Director of Planning & Development: Reviewed & Supported

Kelly Lownsbrough, Chief Financial Officer/ Director of Finance: Reviewed & Supported

Jennifer Kinneman, Chief Administrative Officer: Reviewed and supported.

APPENDIX A: SITE PLAN



APPENDIX B: BUILDING PLANS

