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## STAFF REPORT

**To:** Board of Variance Chair and Members  
**From:** Johannes Bendle, Planner I  
**Date:** April 5, 2018  
**Subject:** Board of Variance Application for #26-8985 Shook Road, Electoral Area "G"  
**File No.:** 0388-30 2018-775.02150.026

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### REPORT PURPOSE

On February 21, 2018 the attached application to the Board of Variance was submitted to permit a structural alternation and addition to a legally non-conforming structure, under Section 540(c) of the *Local Government Act*, for the property located at #26 – 8985 Shook Road, Electoral Area "G".

The staff report summarizes the relevant Fraser Valley Regional District Bylaws, information and other regulations related to the application, for the information of the Board of Variance Chair and Members.

### DECISION REQUESTED OF 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 a structural alteration and addition to an existing legally non-conforming single family dwelling.

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 renovation and addition to a single family house. The proposal is to renovate and add to the one story 511.5 sq. ft. house and construct a two story house with a 1,500 sq. ft. footprint. The new two story house will have one bedroom and den on the top floor and a garage and shop on the bottom floor. Additionally, the applicant is asking the Board of Variance to consider approval of the following structural alterations:

- to allow cement foundation to the existing house walls. This would replace the pier blocks that are currently in place; and
- to allow the removal of existing wood floor and replace with concrete floor to match new addition/renovation.

The Board of Variance must consider if the prohibition of a structural alteration and addition 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 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.

## 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 H. Details of the proposed structural alteration and addition are shown on the attached site plan in Appendix B and application in Appendix C.

<b>Address</b>	<b>26-8985 Shook Road</b>
<b>Legal Description</b>	Lot 1 Section 36 Township 17 New Westminster District Plan 18080
<b>PID</b>	010-326-081
<b>Folio</b>	775.02150.026
<b>Registered Property Owner</b>	Hatzic Lake Holdings Ltd.
<b>Applicant</b>	Nadine Fedyk
<b>Lot Area</b>	2.2 ha (5.5 ac)
<b>User Lot Area</b>	5,850 sq. ft.
<b>ALR</b>	Outside
<b>Floodplain</b>	Within; 9.3 m GSC FCL and 7.5 m setback from Hatzic Lake
<b>OCP</b>	Rural
<b>Zoning</b>	Rural 3 (R-3)
<b>Development Permit Area</b>	Within Riparian Areas Development Permit Area 2-G; exempted because 30 m > from Hatzic Lake
<b>Setbacks</b>	Proposal meets 6.0 m front property line setback
<b>Bylaw Enforcement</b>	None

<b>Direction</b>	<b>Use</b>	<b>OCP</b>	<b>Zoning</b>
<b>North</b>	Sundorn – unregistered subdivision	Rural	R-3
<b>South</b>	Kostur (Griffs) Mobile Home Park	Rural	R-3
<b>East</b>	Shook Road and single family dwelling beyond	Rural	R-3
<b>West</b>	Hatzic Lake	NA	R-4

## NON-CONFORMANCE

The subject property, referred to as Hatzic Lake Holdings Ltd. (Dogpatch), is zoned Rural 3 (R-3) which permits one dwelling unit per parcel. There are up to 28 dwelling units on the subject property which is one (1) legal lot. The existing use of the property is legally non-conforming ("grandfathered") pursuant to Section 540 of the *Local Government Act*.

The subject property is one of seven legally non-conforming recreational holdings/unregistered subdivisions on Hatzic Island, which pre-date zoning regulations. Hatzic Lake Holdings Ltd. was recognized and described in Zoning Bylaw No. 202-1980 as legally non-conforming. Zoning Bylaw No. 202, 1980 was repealed and replaced by the current Zoning Bylaw No. 559-1992.

Board of Variance approval is required prior to the FVRD's processing or issuance of building permits for structural alterations and/or additions in these legally non-conforming unregistered subdivisions.

## OWNERSHIP STRUCTURE

Hatzic Lake Holdings Ltd. is the registered owner of the property. The FVRD's understanding is that Hatzic Lake Holdings Ltd. is comprised of 28 co-owners who each purchased a share which entitles them to the full 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 m 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 applicant has submitted letters of support as shown in Appendix I.

### HARDSHIP

The applicant has provided reasons in support of their application, which are shown in Appendix C. The applicant notes that their intention is to renovate the existing one story two bedroom single family home. The proposal is to use approximately 75% of the original house to build a new two story house with one bedroom and den on the top floor and a garage and shop at the bottom floor. The reasons in support of the application as stated by the applicant:

- We are trying to bring the home up to current safety standards and in line with the FVRD building requirements
- With existing home this would be very difficult and in some cases impossible
- This type of renovation will help us meet the FVRD requirements and give us a home that is safe

The applicant recently acquired the site and do not live in the existing residence.

## DEVELOPMENT OF THE SITE

The subject site or user lot contains an existing one story two bedroom 511.5 sq. ft. single family house. The proposed development is continuing the residential use of the property but is increasing the footprint of the single family house to 1,500 sq. ft. or a 193% increase. The applicant would be able to accomplish the desired building safety outcomes stated as reasons for support of the application without drastically increasing the size of the footprint as proposed. This proposal on its own may seem inconsequential but the increased footprint is significant and a much larger increase than previous applications to the Board of Variance. Of two applications considered in 2015 one was for a 23% footprint increase in habitable space and another was for a 418 sq. ft. footprint increase in habitable space. The concern from a planning perspective lies in the incremental impacts of the approval of significant increases in square footage of development over time. The long term result is that development on Hatzic Island intensifies even though the Island is not suited to accommodate that level of densification.

The proposed development meets all setback requirements. Zoning Bylaw No. 559-1992 defines a lot line in relation to a parcel, and further defines 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 site plan shown in Appendix B the proposed development meets this requirement.

## FLOODPLAIN

The subject site, as well as Hatzic Island, is within the Fraser Valley 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.

The proposed construction needs to conform to the *Fraser Valley Regional District Floodplain Management Bylaw 0681, 2005*. The proposal does not appear to meet the Floodplain Management Bylaw requirements. The proposed garage addition is less than 110 sq. m (1185 sq. ft.) and therefore the garage is exempted from meeting the Flood Construction Level. However, the proposed entrance foyer exceeds 12 sq. m (129 sq. ft.) and therefore must meet the Flood Construction Levels. The drawings in the application are concept drawings that may be amended to meet the Floodplain Management Bylaw. FVRD staff are unlikely to support a site specific exemption from the Floodplain Management Bylaw.

## NATURAL ENVIRONMENT

The proposed development is unlikely to adversely affect the surrounding natural environment to a further degree than already present. No further bedrooms or bathrooms are proposed, so further load on the water and septic are likely to be minimal if at all. If the Board of Variance approves the application, as a condition of the approval the FVRD will require an engineer to undertake a review of the on-site septic and well water of the site and provide a written report. The subject site is located approximately 160 metres (525 ft.) from the natural boundary of Hatzic Lake; therefore, it is unlikely to affect the riparian capabilities of the lake.

## 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 Hatzic Lake 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.

The applicant has forwarded eight written comments from Hatzic Island residents in support of the application, which are included in Appendix I.

The footprint of the proposed house renovation and addition is significantly larger, at 193% percent than the current house and will be two stories instead of one story.

## PERMITTED USE AND DENSITY

Hatzic Lake Holdings was recognized and described in Zoning Bylaw No. 202-1980. Since then Zoning Bylaw No. 202-1980 was repealed and replaced by the current Zoning Bylaw No. 559-1992. The R-3 Zone given by Zoning Bylaw No. 559-1992 lists Residential Use as permitted. However, Section 405 of 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 subject property will not increase the number legally non-conforming uses but will increase the size and scale of the 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) as it is 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 which zoned much of Hatzic Island Rural III (R-3) with a minimum parcel size of 20 ac (8 ha). 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 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 today's commonly accepted servicing standards, is not sustainable. There is potential for on-site sewage disposal fields 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".

However, the multiplicity of owners and the tenure structure of developments like Dogpatch 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 current owners are not likely to simply walk away from their investment.

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 F). 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 developments once connection to a community water or sewer system is available (Section 7.1.1).

The FVRD is planning on engaging in discussions on Hatzic Island to determine options for the Island.

#### PREVIOUS BOARD OF VARIANCE APPROVALS

Address	Application	Decision
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 story garage attached to existing single family dwelling.	Approved 2015
Dogpatch - 11-8985 Shook Road	Conversion of garage to habitable living space	Approved 2013
Dogpatch - 11-8985 Shook Road	Addition of garage to existing dwelling.	Approved 2009
Dogpatch - 3-8985 Shook Road	Internal structural alteration.	Approved 2009
Dogpatch - 1-8985 Shook Road	Replace flat roof with pitched roof and enlarge two existing bedrooms by constructing an addition and build a single car open sided carport.	Approved 2003
Dogpatch - 1-8985 Shook Road	Reconstruction of flat roof to pitched roof and addition of storage in 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 building.	Approved 2002

#### FURTHER FVRD APPROVALS REQUIRED

A decision by the Board of Variance to approve the structural alteration and addition 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 Floodplain Management Bylaw 0681, 2005* and FVRD Building Code. Other agency requirements must also be met, such as Fraser Health regulations; Fraser Health Authority approval for septic disposal may be required. The FVRD will require an engineer to undertake a review of the on-site septic and well water of the site and provide a written report.

**Submitted by:**

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