PLEASE NOTE: The recommendation was varied (item 2 was withdrawn by the applicant)

RECOMMENDATIONS

1. That the Board approve Development Variance Permit No. PL2019-113 to reduce the interior lot line setback from 2.0 m to 1.6 m for a proposed garage, subject to the terms and conditions of Attachment 2.

2. That the Board deny Development Variance Permit No. PL2019-113 to reduce the interior lot line setback from 2.0 m to 0.0 m for a portion of the existing shop.

3. That the Board direct staff to complete the required notification for Development Variance Permit No. PL2019-113.

SUMMARY

The applicants have made a request for two variances. The first is for a new garage, the second is a request to recognize the siting of an addition to an existing shop that was built without the required building permit. The addition to the shop would be attached to the proposed garage (See Schedule 2 - Site Plan with Variance (page 2 of 2).

Regarding the first variance, the applicants propose to develop a garage utilizing the roof structure of an existing carport, located partially within the interior lot line setback. The applicant proposes to significantly alter the roof structure to avoid the need for and to reduce the extent of, the requested variance. Given that the applicant has made a reasonable effort to reduce the need for a variance for the proposed garage in accordance with Board Policy B1.5 and no negative impacts are anticipated as a result of the proposed variance, it is recommended that the Board approve the development variance permit for the proposed garage, pending the outcome of public notification and subject to the terms and conditions outlined in Schedules 1 to 3 of the draft development variance permit included as Attachment 2.

Regarding the second variance, the applicants propose to recognize the siting of an unlawful addition to the existing shop, a portion of which was built within the interior lot line setback without the required permits. As the shop is attached to the proposed garage, the requirement for fire separation under the BC Building Code must be addressed whether the variance is approved or denied. The applicants propose to obtain a building permit in support of retaining the long-standing...
addition. The neighbour directly impacted by the proposal supports the requested variances. It is recommended that the requested variance for the shop addition be denied.

BACKGROUND

The Regional District of Nanaimo (RDN) has received an application from Margaret and Lorne Johnson to permit the construction of a garage utilizing the roof structure of an existing carport and to recognize the siting of a previous addition to a shop. The shop is attached to the carport (see Schedule 2 of Attachment 2). The subject property is legally described as Lot 27, District Lot 52, Nanoose District, Plan 15921 and is approximately 1,375 square metres in area. It is zoned Residential 1 (RS1), Subdivision District ‘N’, pursuant to “Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987”. The property is located to the north of Claudet Road in a coast residential land use area (see Attachment 1 – Subject Property Map).

The property contains a dwelling unit, carport with attached shop, and a boathouse. It is serviced by Community Water and a new septic system (2017). The applicants purchased the property in November of 2017.

Proposed Development and Variance

Variance 1: Proposed Garage

The proposed garage includes the demolition of the pad and support structures of an existing, non-conforming carport, as well as alteration to the existing roof structure to significantly reduce the area existing within the interior lot line setback. Construction of a foundation, exterior walls and an addition are proposed, to create a new garage for the storage and maintenance of the applicants’ vehicles. The applicants are asking for a variance to allow the new building to minimally encroach on the interior lot line setback, within the existing footprint of the carport. Access to the rear of the dwelling unit, deck, and yard area is via a passage between the dwelling unit and accessory buildings.

Variance 2: Existing Shop Addition

The applicants also propose to recognize the siting of an existing shop, a portion of which was built without the required building permit. The shop is attached to the carport and predates their ownership of the subject property. A building permit was issued for a shop in 1979 which met the required interior lot line setback at that time. Subsequent to that building permit, an addition to the shop was constructed within the interior lot line setback without the required building permit and variance. Should this variance be approved along with Variance 1, the applicants are still required to go through a building permit application process to address fire separation issues associated with that portion of the shop located within the setback. This will involve partial to complete demolition of that portion of the shop within the setback. The extent of the demolition is not known at this time as it will depend on how the shop addition was constructed. The extent of the demolition will be determined at the time of building permit application review.

The applicant proposes to vary the following regulations from the “Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987”:

- **Section 3.4.61 – Maximum Number and Size of Buildings and Structures** to reduce the minimum interior lot line setback from 2.0 metres to 1.6 metres for a proposed garage, as shown on Schedule 2 of Attachment 2.
- **Section 3.4.61 – Maximum Number and Size of Buildings and Structures** to reduce the minimum interior lot line setback from 2.0 metres to 0.0 metres for the existing shop, as shown on Schedule 2 of Attachment 2.

Both proposals meet all other zoning regulations, including maximum floor area for accessory buildings. It is noted that garages are exempt from the floodplain bylaw and that the shop predates the floodplain bylaw and its predecessor.

*Land Use Implications*

In support of the application, the applicant has submitted correspondence from surrounding property owners supporting the requested variance, as well as building plans prepared by Jorgensen/Osmond dated October 1, 2019. They have also provided a written rationale and photographs.

**Variance 1: Proposed Garage**

The applicants’ rationale is to allow for a minimum floor area to accommodate tools for the maintenance of the applicants’ vehicles stored in the garage. This is an additional 0.46 metres (18 inches) of floor area that would intrude into the interior lot line setback. In addition, the applicants are seeking to re-use the existing carport structure as much as possible to reduce construction waste and maintain functionality of the site. The existing location of the carport is the best location to maintain efficient use of the site. Siting the proposed garage further forward on the lot to accommodate a traditional side-by-side two car garage, or accommodating tools on the other side of the building, would impact access to the dwelling unit, and/or rear yard and deck, and would require extensive alterations to existing buildings and structures to establish new accesses. While not ideal for the applicants, a stacked (front to back) two car garage makes the best use of the available building envelope and ensures space to accommodate parking exclusive of the front lot line setback and septic field.

“Board Policy B1.5 Development Variance Permit, Development Permit with Variance and Floodplain Exemption Application Evaluation” for evaluation of Development Variance Permit Applications requires that there is an adequate demonstration of an acceptable land use justification prior to the Board’s consideration. In this case, the applicant has made a reasonable effort to reduce the requested variance given their goal to re-use the existing roof structure. The encroachment into the interior lot line setback has been substantially reduced.

Given that there is a sound rationale for the location of the proposed garage and that the requested variance will not result in negative implications for adjacent properties, the applicants addressed Policy B1.5 guidelines. It is recommended that the requested variance for the proposed garage be approved subject to the conditions of permit outlined in Attachment 2. Please note that construction of the garage will require modifications to the existing shop to meet BC Building Code requirements for fire protection and building separation.

**Variance 2: Existing Shop Addition**

With respect to the second requested variance to legalize the existing shop addition, it is noted that the applicants have extensively renovated the existing structure including upgrading windows, insulation, wiring, vapor barrier, and drywall. Building permits are not required for this type of work. The applicant advises that the construction of the addition to the shop appeared to have been completed at the same time as the shop. The majority of the shop was constructed in 1979 under
building permit. However, the addition to the shop that encroaches into the setback was constructed without a building permit or an approved variance.

A large portion of the shop addition is located within the interior lot line setback and extends to the lot line. As the neighbor directly affected, located at 1536 Haida Way, has no objection to vary the lot line setback to zero and the addition predates their ownership of the parcel, the applicants respectfully request that the variance be approved to recognize this long-standing addition. Given the lack of compliance with zoning setback requirements and the challenge of upgrading the structure to meet the BC Building Code requirements for limiting distance and fire protection for the accessory building, it is recommended that the requested variance for the shop addition be denied. At least a portion of the shop within the setback must be demolished whether the variance is approved or not, to address requirements under the BC Building Code.

If the variance is denied as recommended, Building Services advises that a building permit for the proposed garage cannot be issued without the shop addition being addressed, as the shop is attached to the proposed garage. This means that a portion of the addition within the setback will need to be demolished for the applicant to move forward with the project. Should the Board resolve to approve the requested Variance 2, fire separation requirements in the BC Building Code must be addressed. Approving the variance will require that a portion of the shop addition be demolished and reconstructed in accordance with the current BC Building Code. It is recommended that no further alterations or modifications beyond maintenance be permitted within the setback once reconstruction is completed, as outlined in Attachment 2.

**Intergovernmental Implications**

There are no intergovernmental implications associated with this proposal.

**Public Consultation Implications**

Pending the Electoral Area Services Committee’s recommendation and pursuant to the *Local Government Act* and the "Regional District of Nanaimo Development Application and Notification Procedures Bylaw No. 1776, 2018", property owners and tenants of parcels located within a 50.0 metre radius of the subject property will receive a direct notice of the proposal and will have an opportunity to comment on the proposed variance prior to the Board’s consideration of the application.

**ALTERNATIVES**

1. To approve Development Variance Permit No. PL2019-113 for the proposed garage only, subject to the conditions outlined in Attachment 2.

2. To approve Development Variance Permit No. PL2019-113 for the proposed garage and existing shop addition, subject to the conditions outlined in Attachment 2.

3. To deny Development Variance Permit No. PL2019-113 for the proposed garage and existing shop addition.

**FINANCIAL IMPLICATIONS**

The proposed development has been reviewed and has no implications related to the Board 2019 – 2023 Financial Plan.
STRATEGIC PLAN IMPLICATIONS

The proposed development has no implications for the 2019 – 2022 Board Strategic Plan.

Sarah Martin
smartin@rdn.bc.ca
December 19, 2019

Reviewed by:

- P. Thompson, Manager, Current Planning
- G. Garbutt, General Manager, Strategic & Community Development
- P. Carlyle, Chief Administrative Officer

Attachments:

1. Subject Property Map
2. Draft Development Variance Permit PL2019-113
Attachment 1
Subject Property Map
Attachment 2
Draft Development Variance Permit

To: ("Permittee") Margaret Johnson and Lorne Fredrick Johnson
Mailing Address: 1540 Haida Way, Nanoose BC V9P 9B5

1. Except as varied or supplemented by this permit, the development variance permit is issued subject to compliance with all applicable bylaws and provincial and federal statutes and regulations.

2. This development variance permit applies only to those lands within the Regional District of Nanaimo described below, and all buildings, structures and other development thereon:

   Legal Description: Lot 27, District Lot 52, Nanoose District, Plan 15921 ("Lands")
   Civic Address: 1540 Haida Way
   P.I.D.: 004-560-680

3. The Lands shall be developed strictly in accordance with the terms and conditions of this permit.

4. The Permittee, as a condition of issuance of this permit, agrees to comply with the conditions of Schedule 1, which is attached to and forms part of this permit.

5. The Permittee, as a condition of issuance of this permit, agrees to develop the Lands in substantial compliance with the plans and specifications included in Schedules 2 and 3, which are attached to and form part of this permit.

6. With respect to the Lands, "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987" is varied as outlined in Schedules 1, 2 and 3, which are attached to and form part of this permit.

7. Subject to the terms of the permit, if the Permittee does not substantially start construction with respect to which the permit was issued within two years after the date it is issued, the permit shall lapse in accordance with Section 504 of the Local Government Act.

8. This permit prevails over the provisions of the bylaw in the event of conflict.

9. The RDN shall file the notice in the Land Title Office at Victoria under Section 503 of the Local Government Act, and upon such filing the terms of this permit or any amendment hereto shall be binding upon all persons who acquire an interest in the Lands affected by this permit.

10. This permit is not a building permit.

Authorizing Resolution to issue passed by the Board this XXth day of January, 2020.
Schedule 1
Terms and Conditions of Permit

The following sets out the terms and conditions of Development Variance Permit No. PL2019-113:

Bylaw No. 500, 1987 Variance

With respect to the Lands, “Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987” is varied as follows:

1. **Section 3.4.61 – Maximum Number and Size of Buildings and Structures** to reduce the minimum interior lot line setback from 2.0 metres to 1.6 metres for a portion of the proposed garage, as shown on Schedule 2 of Attachment 2.

2. **(Section 3.4.61 – Maximum Number and Size of Buildings and Structures** to reduce the minimum interior lot line setback from 2.0 metres to 0.0 metres for a portion of the existing shop, as shown on Schedule 2 of Attachment 2.) – Not Recommended for Approval

Conditions of Approval

1. The Lands are developed:
   a. In accordance with the Site Plan prepared by Jorgensen/Osmond, dated October 1, 2019, and attached as Schedule 2.
   b. In general compliance with the plans and elevations prepared by Jorgensen/Osmond, dated October 1, 2019, and attached as Schedule 3.

2. No further additions or modifications beyond regular maintenance shall be permitted for the shop addition within the interior lot line setback without a further variance. (only required should Variance 2 be approved)

3. The permittee shall obtain the necessary permits for construction in accordance with Regional District of Nanaimo Building Regulations. For clarity, where the variance for the existing shop addition is denied, this means that the addition must be demolished.
Schedule 2
Site Plan with Variance (1 of 2)

Johnson
Garage Addition
1540 Haida Way
Nanoose Bay, B.C.
Proposed variance to reduce the interior side lot line setback from 2.0 m to 0.0 m.

Proposed variance to reduce the interior side lot line setback from 2.0 m to 1.6 m.

Interior lot line setback – 2.0 m.
Schedule 3
Site Plan with Variance – enlarged for convenience

FRONT
NORTH

RIGHT
WEST

LEFT
EAST

ELEVATIONS 1/4" = 1'-0"