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**TO:** Electoral Area Services Committee      **DATE:** January 8, 2018

**FROM:** Stephen Boogaards  
Planner      **FILE:** PL2018-196

**SUBJECT:** Development Permit with Variance Application No. PL2018-196  
4647 Maple Guard Drive – Electoral Area H  
Lot 37, District Lot 40, Newcastle District, Plan 16121

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## **RECOMMENDATIONS**

1. That the Board approve Development Permit with Variance No. PL2018-196 to permit the construction of a dwelling unit subject to the terms and conditions outlined in Attachments 2 to 4.
2. That the Board direct staff to complete the required notification for Development Permit with Variance No. PL2018-196.

## **SUMMARY**

The applicant requests to vary the setback to the top of a slope 30% or greater for a parcel adjacent to a coastal watercourse from 8.0 metres to 5.0 metres to allow the construction of a dwelling unit on the subject property. The applicant has demonstrated a safe geotechnical setback to the top of slope and that the proposed dwelling cannot be accommodated elsewhere on the property. The applicant has also demonstrated that the proposed building location will not impact the view from neighbouring properties. Given the topographical constraints on the property and that the variance is unlikely to result in negative view implications, it is recommended that the Board approve the variance, pending the outcome of public notification and subject to the terms and conditions outlined in Attachments 2 to 4.

## **BACKGROUND**

The Regional District of Nanaimo (RDN) has received an application from Fern Road Consulting Ltd. on behalf of Catherine and Clinton Southurst to permit the construction of a dwelling unit on the subject property. The subject property is approximately 0.27 hectares in area and is zoned Residential 2 Zone (RS2), pursuant to "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987". The property is located to the southwest of the Strait of Georgia and adjacent to other residential properties (see Attachment 1 – Subject Property Map).

The property contains an existing cabin and is serviced by Deep Bay Improvement District and onsite sewage disposal. Any living facilities within the cabin will be decommissioned as part of the building permit, so that the building will be an accessory building. This is a common

occurrence in the RDN to have a lot with a small cabin where the owners then build a larger house and keep the existing cabin as an accessory building. The existing cabin is converted to an accessory building by removing the kitchen. As the zoning does not permit two dwellings the Occupancy permit for the new dwelling cannot be issued until conversion of the existing cabin is complete. The mechanism to ensure that the existing cabin is converted to an accessory building is through the building permit process. A condition of the Development Permit is to comply with the Building Bylaw regulations which requires that the cabin be converted to an accessory building prior to issuing the occupancy permit.

The property also contains a steep slope of approximately 34% which extends from the proposed building location to the natural boundary of the sea. Within the slope is an existing trail that provides access from the building site to the shoreline.

The proposed development is subject to the Hazard Lands Development Permit Area as per the “Regional District of Nanaimo Electoral Area H Official Community Plan Bylaw No. 1335, 2017”.

### ***Proposed Development and Variance***

The proposed development includes the construction of a dwelling unit and ancillary improvements outside of the building footprint, including the driveway and septic field. The applicant proposes to vary the following regulations from the “Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987”:

- **Section 3.3.9 – Setbacks – Sea** to reduce the minimum setback from the top of slope of 30 percent or greater from 8.0 metres to 5.0 metres for the proposed dwelling.

### ***Land Use Implications***

The applicants are proposing to construct a dwelling unit on the property and request a variance to the top of slope setback to accommodate the dwelling (see Attachment 3 – Proposed Site Plan and Variance). According to “Board Policy B1.5 Development Variance Permit, Development Permit with Variance and Floodplain Exemption Application Evaluation” the development variance permit application requires that there is an adequate demonstration of a land use justification prior to the Board’s consideration. The proposal must also comply with the Hazard Lands Development Permit Area (DPA) guidelines to mitigate the disturbance of the steep slope to ensure conditions are safe for the proposed development and neighbouring properties.

With respect to justification and development permit area guidelines, the applicant has provided a Geotechnical Hazard Assessment by Lewkowich Engineering Associates Ltd., dated October 7, 2017 to confirm the recommendations for the safe development of the property. Based on the average slope of 34%, the report identifies that the slope is considered to be in a stable condition and the slope will not be subject to regression during a seismic event. The report recommends a safe setback of 5.0 metres from the crest of slope to any footings of permanent buildings or residences. As a condition of the development variance permit, the report will be registered on the property title as a covenant, saving the RDN harmless from all losses or damages to life or property as a result of the hazardous condition (see Attachment 2 – Terms and Conditions of Permit). As for the terms of the covenant, the 5.0 metre setback will apply to any land alteration, vegetation removal or structures, excluding existing conditions such as maintaining the existing trail through the slope. Any work within this setback will require a new development permit or variance as applicable.

For the purposes of the variance, the applicant has also provided further justification for the proposed location of the building. The applicant has identified that in order to retain the existing accessory building and septic field on the property, the proposed dwelling will not be able to move closer to Maple Guard Drive without affecting the side yard setback. For potential impact, the proposed construction will not obstruct neighbouring views to the west as the slope is currently densely treed which already obscures any views. To the west, the neighboring dwelling unit is situated closer to the Strait of Georgia than the subject property. Given that the applicant has provided sufficient rationale and that the variance is not anticipated to result in negative view implications for adjacent properties, the applicants have made reasonable efforts to address Policy B1.5 guidelines.

### ***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 Permit with Variance No. PL2018-196 subject to the terms and conditions outlined in Attachments 2 to 4.
2. To deny Development Permit with Variance No. PL2018-196.

### **FINANCIAL IMPLICATIONS**

The proposed development has no implications related to the Board 2018 – 2022 Financial Plan.

### **STRATEGIC PLAN IMPLICATIONS**

The proposed development has been reviewed and has no implications for the 2016 – 2020 Board Strategic Plan.



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Stephen Boogaards  
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December 11, 2018

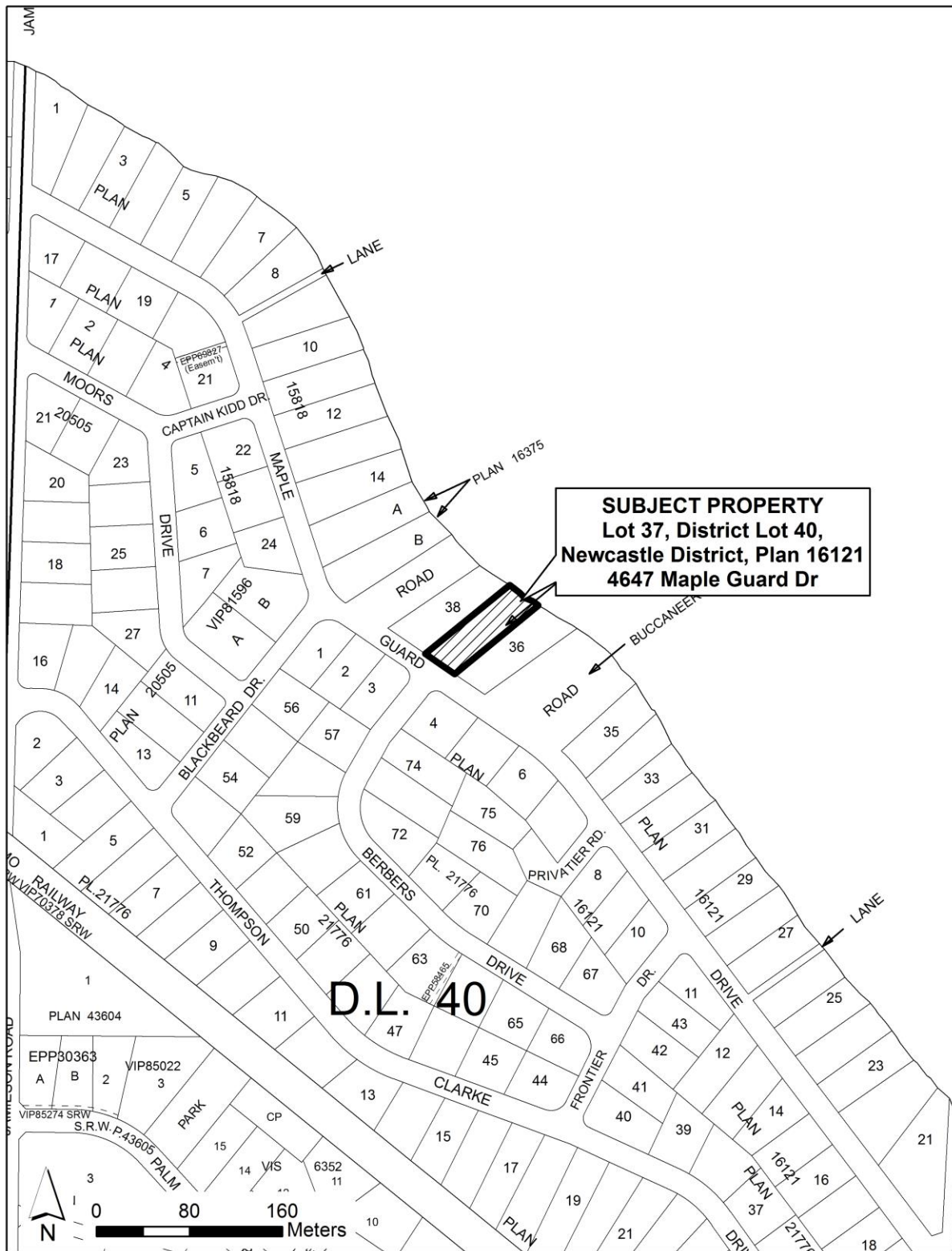
Reviewed by:

- P. Thompson, Manager, Current Planning
- P. Carlyle, Chief Administrative Officer

Attachments

1. Subject Property Map
2. Terms and Conditions of Permit
3. Proposed Site Plan and Variance
4. Building Elevations and Plans

**Attachment 1**  
**Subject Property Map**



## **Attachment 2**

### **Terms and Conditions of Permit**

The following sets out the terms and conditions of Development Permit with Variance No. PL2018-196:

#### Bylaw No. 500, 1987 Variances

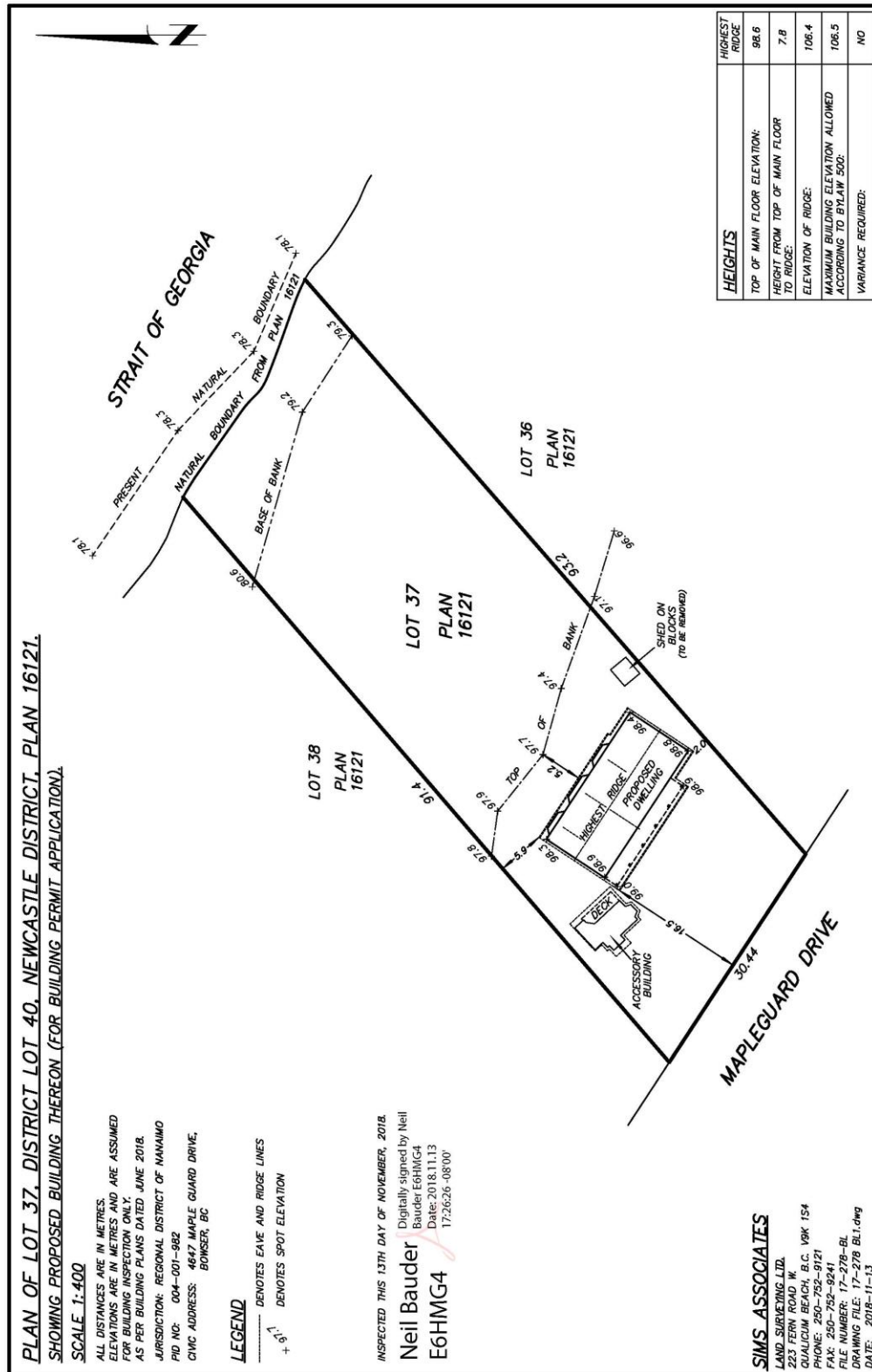
With respect to the lands, “Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987” is varied as follows:

**Section 3.3.9 – Setbacks – Sea** to reduce the minimum setback from the top of slope of 30 percent or greater from 8.0 metres to 5.0 metres for the proposed dwelling.

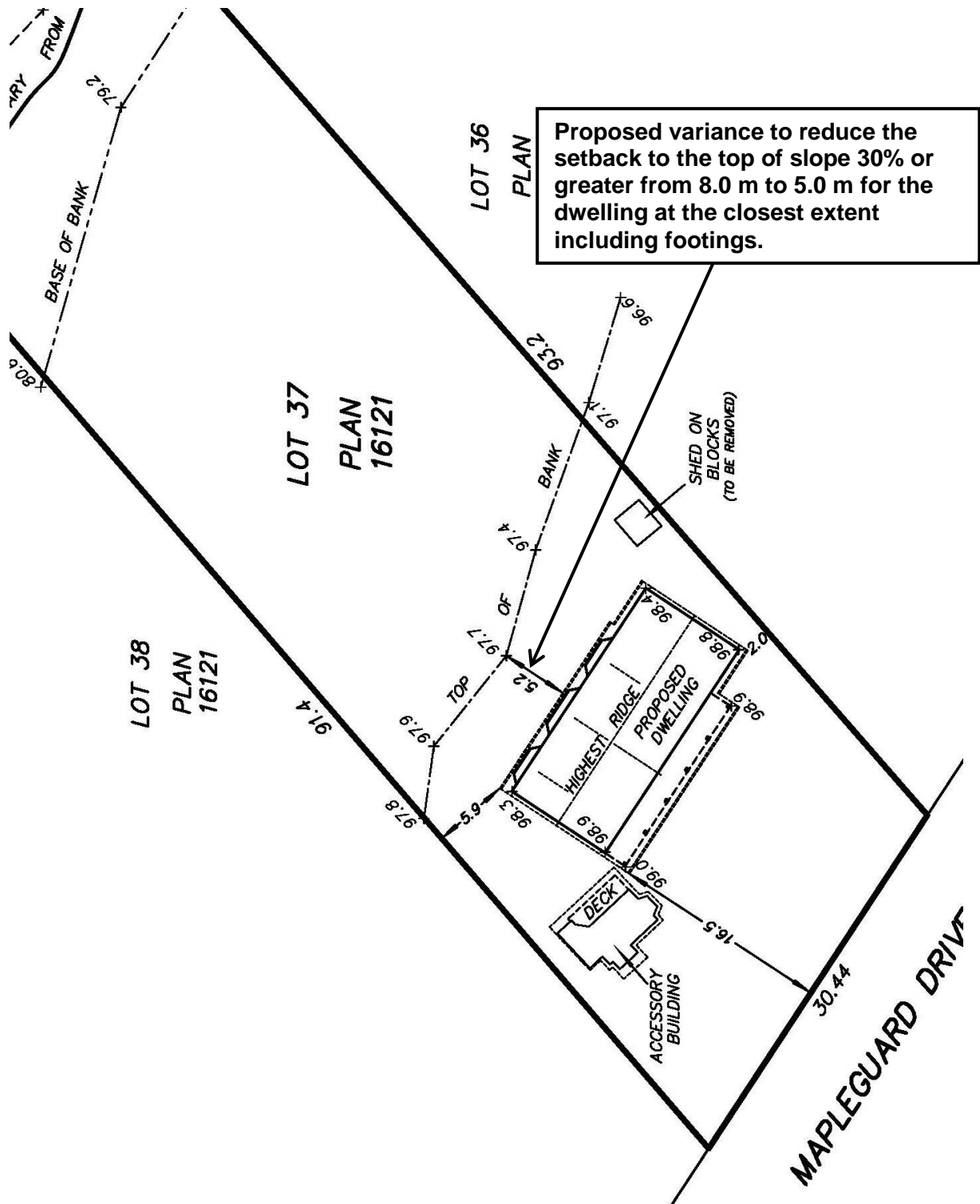
#### Conditions of Approval

1. The site is developed generally in accordance with the Survey Plan prepared by Sims Associates Land Surveying Ltd., dated November 13, 2018 and attached as Attachment 3.
2. The proposed development is in general compliance with the plans and elevations prepared by Rina Knoesen, dated June 2018 and attached as Attachment 4.
3. The subject property shall be developed in accordance with the recommendations contained in the Geotechnical Hazard Assessment prepared by Lewkowich Engineering Associates Ltd. dated October 7, 2017.
4. The issuance of this Permit shall be withheld until the applicant, at the applicant's expense, registers a Section 219 Covenant on the property title containing the Geotechnical Hazard Assessment prepared by Lewkowich Engineering Associates Ltd. dated October 7, 2017, and includes a save harmless clause that releases the Regional District of Nanaimo from all losses and damages as a result of the potential hazard. The covenant is to restrict any vegetation removal, land alteration or structures within the 5.0 metre geotechnical setback, except for maintenance of existing conditions and unless otherwise approved by the RDN.
5. Prior to construction, the geotechnical setback shall be marked with temporary fencing or flagged stakes to avoid disturbance.
6. The property owner shall obtain the necessary permits for construction in accordance with Regional District of Nanaimo Building Regulations.

Attachment 3  
Proposed Site Plan and Variance (Page 1 of 2)

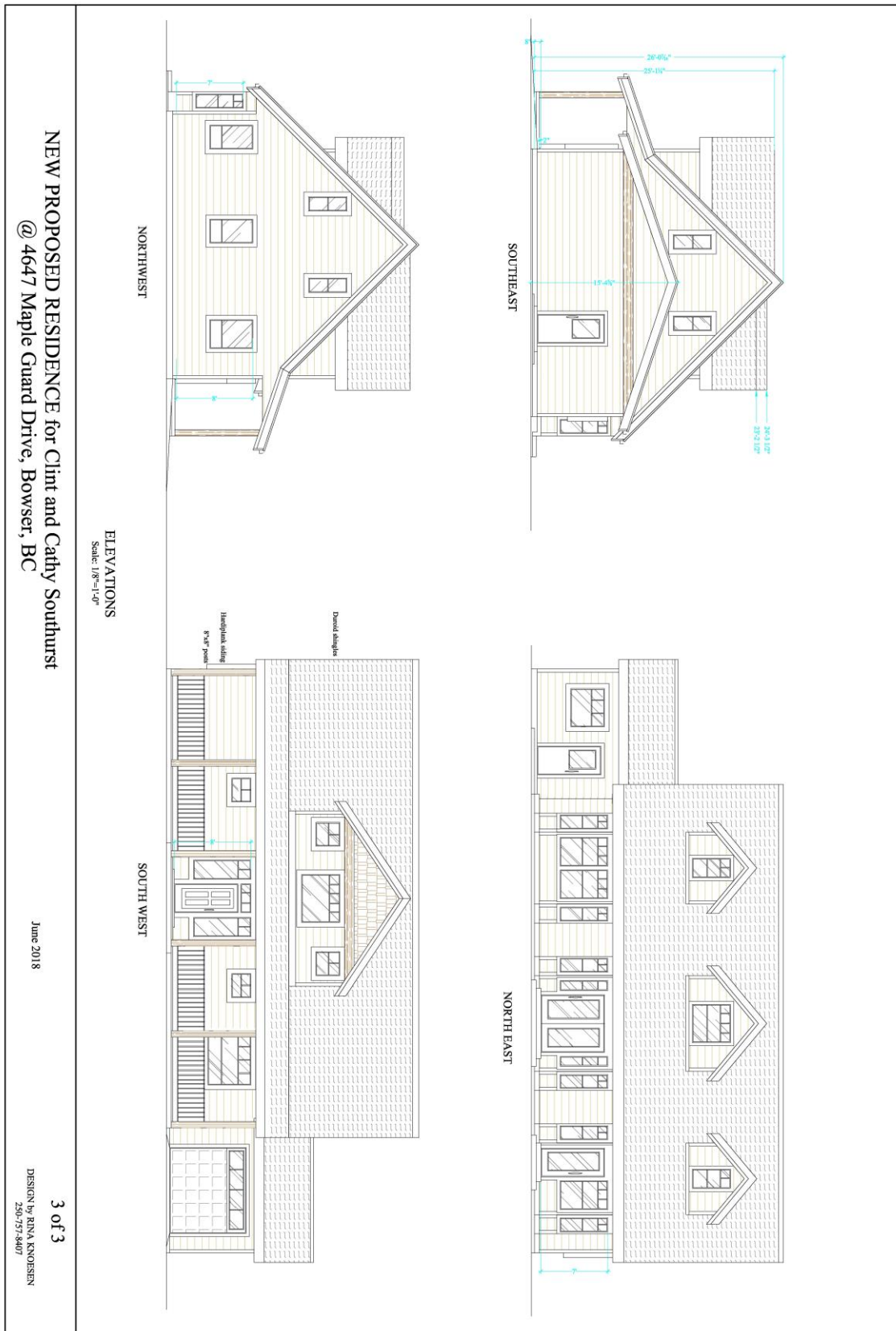


Attachment 3  
Proposed Site Plan and Variance (Page 2 of 2)





**Attachment 4**  
**Building Elevations and Plans (Page 1 of 2)**



## Attachment 4 Building Elevations and Plans (Page 2 of 2)

