

DATE OF MEETING [June 7, 2021]

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SUBJECT [DEVELOPMENT PERMIT APPLICATION NO. DP1151 –
3532 STEPHENSON POINT ROAD]

OVERVIEW

Purpose of Report

To present for Council's consideration an aquatic development permit application for a proposed single residential dwelling at 3532 Stephenson Point Road.

Recommendation

That Council deny Development Permit Application No. DP1151 as proposed at 3532 Stephenson Point Road.

BACKGROUND

A development permit application, DP1151, was received from Rob Turgeon to reduce the watercourse setback to facilitate the construction of a single residential dwelling at 3532 Stephenson Point Road.

Subject Property and Site Context

<i>Zoning</i>	R1 – Single Dwelling Residential
<i>Location</i>	The subject property is located at the end of Stephenson Point Road, adjacent to the ocean.
<i>Lot Area</i>	0.23ha
<i>Official Community Plan (OCP)</i>	Map 1 – Future Land Use – Neighbourhood Map 3 – Development Permit Area No. 2 – Environmentally Sensitive Areas

The subject property is presently undeveloped and is largely forested. Though a separate legal lot, the property previously functioned as a single parcel with the neighbouring property to the south at 3522 Stephenson Point Road. The single residential dwelling at 3522 Stephenson Point Road encroaches onto the subject property within a private easement. There is an active building permit application on the subject property (BP127238) for a 90m² single residential dwelling that meets the bylaw requirements to function as a carriage house (an accessory secondary suite) should a larger principal dwelling be constructed on the site.

The property slopes downhill from west to east, and drops significantly towards the ocean along the east property line. An unnamed creek flows through a ravine across the neighbouring property to the north. Surrounding land uses are low-density single residential dwellings, and Planta Park is located across Stephenson Point Road to the southwest.

DISCUSSION

Proposed Development

The applicant is proposing to construct a single residential dwelling with a gross floor area of approximately 707m² and a building footprint of approximately 450m². The proposed dwelling is sited centrally on the lot at the crest of the slope facing the sea to the east. No setback variance from the sea is required. A portion of the proposed dwelling also approaches the crest of the slope for the unnamed creek to the north.

The subject property falls within 'Regime VI' of the "North Slope Development Policy" area where a geotechnical assessment is required prior to any development approvals. The geotechnical assessment submitted in support of the application determined that no geotechnical setback would be required from the top of slope and that the lot was safe and suitable for the intended use as proposed.

Proposed Variance

Minimum Watercourse Setback

The minimum required watercourse setback from top-of-bank above the unnamed creek is 7.5m, as identified in 'Schedule C' of the "City of Nanaimo Zoning Bylaw 2011 No. 4500" (the "Zoning Bylaw"). The proposed watercourse setback is 0.8m; a requested variance of 6.7m.

The creek is located approximately 20m north of the subject property within a ravine with a depth of approximately 9m. Watercourse setbacks are measured in the Zoning Bylaw as from top-of-bank above a watercourse rather than from the watercourse itself. These setbacks, also known as a leavestrips, allow for not only functional riparian habitats, but also wildlife corridors across the city where there are existing watercourses.

The subject creek is non-fish-bearing and Provincial Riparian Area Protection Regulations (RAPR) do not apply to such creeks. The creek is subject to the Environmentally Sensitive Areas Development Permit Area (DPA2) as per the City of Nanaimo Official Community Plan (OCP). DPA2 applies to watercourses that do not support fish or fish habitat and the OCP recognizes that these features "have high biodiversity and maintain natural hydrology". Where an encroachment into the riparian leavestrip is proposed, the OCP provides guidelines that include requiring an environmental assessment, minimizing negative impacts, completing riparian restoration, and committing to vegetation management. In particular, DPA2 Policy #7 states that in order to minimize impacts in the Environmentally Sensitive Area (ESA), the following types of development should be avoided:

- Removal / modification of native vegetation;
- Introduction of non-native invasive vegetation;
- Impacts to the protected root zones of trees within the ESA;
- Use of fill;
- Disturbance of native soil;
- Blasting;
- Changes to hydrology; and
- Run off of sediments and construction-related contaminants into the ESA.

An environmental assessment prepared by a Qualified Environmental Professional (QEP) has been submitted in support of the application, as well as a vegetation management plan (Attachment F) that will be implemented should the development proceed.

Prior to considering the impacts of a proposed aquatic development permit, an applicant is expected to provide a rationale and demonstrate the need to encroach into any riparian leavestrip. Where no functional building envelope exists outside of the leavestrip, an encroachment can be considered. The proposed single residential dwelling will encroach into the riparian leavestrip by 6.7m, and the applicant has identified the following factors as limiting the building footprint opportunities onsite:

1. *Riparian leavestrip.* The riparian leavestrip (watercourse setback) extends nearly 10m into a portion of the subject property from the north property line.
2. *Encroachment of existing house.* A private easement for the house on the neighbouring property at 3522 Stephenson Point Road extends approximately 5m into the property from the south property line, and is approximately 13m wide.
3. *Setback from the sea.* The Zoning Bylaw requires a 15m setback from the natural boundary of the sea.
4. *Septic field siting.* As the subject property is not connected to the City's sanitary sewer service, a septic field will be required on site. A Registered Onsite Wastewater Practitioner (ROWP) determined that the optimal siting for a septic field would be in the southwest portion of the lot with a total area of approximately 111m².

In addition to the above, the applicant has proposed to register a tree protection covenant as a condition of the development permit for existing in the western portion of the property (identified in Attachment H). Staff have noted that the identified trees are currently protected under the definition of "Significant Tree" in the City of Nanaimo "Management and Protection of Trees Bylaw 2013 No. 7126".

Staff have reviewed the DPA2 guidelines and the factors identified by the applicant and determined that a viable building envelope is available outside of the riparian leavestrip. The subject property is approximately 29m wide, nearly double the width of the typical R1 lot, and the lot area of approximately 2,300m² is more than four times the minimum R1 lot size. Taking into account the site constraints, a functional building envelope with an area of at least 500m² has been identified by Staff as shown in Attachment G. A building envelope of this size could accommodate the size of the proposed single residential dwelling and would not require tree removal beyond what is currently proposed.

If a structure were built within the functional building envelope, no watercourse setback variance or development permit would be required and there would be opportunity to maintain the riparian leavestrip as a wildlife habitat. Given that a functional building envelope is achievable on the subject property without encroaching into the riparian leavestrip, Staff do not support the watercourse setback variance.

Should Council approve Development Permit Application No. DP1151, the development will be subject to the Terms and Conditions outlined in Attachment A.

OPTIONS

1. That Council deny Development Permit Application No. DP1151 at 3532 Stephenson Point Road.
 - Advantages: No encroachment into the riparian leavestrip and associated wildlife habitat will occur as the single residential dwelling can be accommodated elsewhere onsite.
 - Disadvantages: The applicant will be required to revise the proposed building plans to construct a dwelling outside of the riparian leavestrip and development permit area.
 - Financial Implications: None identified.

2. The Council approve Development Permit Application No. DP1151 at 3532 Stephenson Point Road.
 - Advantages: The applicant will be able to proceed with the current design with the condition that the property be developed as per the Vegetation Management Plan as shown in Attachment F, and a vegetation maintenance bond be secured for a period of three years; and
 - Disadvantages: The proposed siting of the single residential dwelling will result in a reduction of wildlife habitat identified under the Environmentally Sensitive Areas Development Permit Area (DPA2) in the Official Community Plan.
 - Financial Implications: None identified.

SUMMARY POINTS

- Development Permit Application No. DP1151 proposes to reduce the minimum required watercourse setback from 7.5m to 0.8m, as measured from top-of-bank above an unnamed creek, to facilitate the construction of a single residential dwelling.
- Provincial Riparian Area Protection Regulations (RAPR) do not apply to the subject creek.
- A functional building envelope is achievable on the subject property without encroaching into the watercourse leavestrip.
- Staff recommend that Council deny Development Permit Application No. DP1151.

ATTACHMENTS

ATTACHMENT A: Permit Terms and Conditions
ATTACHMENT B: Context Map
ATTACHMENT C: Location Plan
ATTACHMENT D: Proposed Site Plan
ATTACHMENT E: Proposed Building Renderings
ATTACHMENT F: Vegetation Management Plan
ATTACHMENT G: Functional Building Envelope
ATTACHMENT H: Tree Protection Plan
ATTACHMENT I: Aerial Photo

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