



REGIONAL DISTRICT OF CENTRAL KOOTENAY

Committee Report

Date of Report: June 2, 2020
Date & Type of Meeting: June 17, 2020 Rural Affairs Committee
Author: Tamara Dale, Planner
Subject: DEVELOPMENT VARIANCE PERMIT – ROMANO
File: V2001B-04607.200-ROMANO-DVP00183

SECTION 1: EXECUTIVE SUMMARY

The purpose of this report is for the Board to consider a Development Variance Permit for an existing building under construction located at 3760 Sunridge Rd, within Electoral Area B. The applicant seeks to vary the gross floor area of an accessory building constructed prior to a dwelling (Section 18.7) and the maximum gross floor area of an accessory building (Section 18.9) to 297 square metres.

Staff recommendation is to NOT APPROVE the Development Variance Permit due to prior non-compliance with the authoritative framework governing building and development within the RDCK. These actions brings into question the likelihood of the Applicant adhering to the requirements of any Restrictive Covenant on the land.

Should there be a desire to approve the application, Staff would recommend that it be done conditional upon the registration of a Land Title Act (LTA) Section 219 restrictive covenant requiring demolition of the accessory building if the principal use/building is not completed within 36 months of completion of the accessory building and that limits use of the accessory building. The use of the restrictive covenant here marks a change in how these applications have been considered in the past based on recent legal advice. It further marks a transition between this past process and a future process that Staff will develop to ensure alignment between existing bylaws and common law practice.

SECTION 2: BACKGROUND / ANALYSIS

GENERAL INFORMATION

Property Owners:	WMD Dustless Blasting Ltd
Property Location:	3760 Sunridge Rd, Erickson
Legal Description:	LOT A PLAN NEP20353 DISTRICT LOT 4592 KOOTENAY LAND DISTRICT EXCEPT PLAN NEP87731 (PID: 018-170-145)
Property Size:	4.6 hectares (11.59 acres)

SITE CONTEXT

The property comprises a total area of 4.6 hectares, and is designated as Country Residential (RC) and zoned Country Residential (R2) under Rural Creston Electoral Area B Comprehensive Land Use Bylaw No. 2316, 2013.

The property is an undeveloped panhandle lot to the north of Sunridge Rd, primarily in tree coverage. The property is located to the south-eastern corner of the property, and is bound by a number of lots, some of which have been developed with Single Family Dwellings.

Land uses adjoining the site are as follows:

ORIENTATION	ZONING	LAND USE
North	Country Residential (R2)	Undeveloped wooded land to far east of Residential Dwelling property
East	Suburban Residential (R1) to north-east Country Residential (R2) to south-east	Undeveloped wooded land
South	Country Residential (R2)	Undeveloped wooded buffer separating Single Family Dwellings and Accessory Buildings to far south
West	Community Services (CS) to north-west Country Residential (R2) to south-west	Church to north-west Single Family Dwelling and Accessory Buildings to south-west

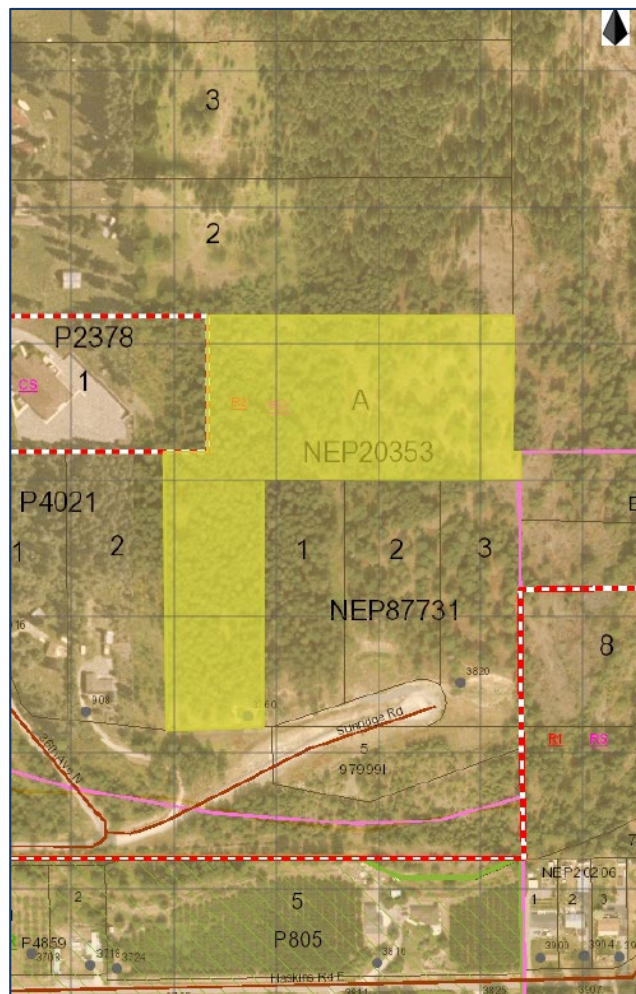


Figure 1: Location of Property

DEVELOPMENT PROPOSAL

The Applicant seeks a Development Variance Permit for the construction of a garage prior to the construction of a dwelling. The proposed garage would measure to a gross floor area of 297 square metres. The proposal therefore seeks to vary the follow Sections of Electoral Area B Comprehensive Land Use Bylaw No. 2316, 2013:

18.7 An accessory building may be constructed on a lot prior to construction of a dwelling subject to the maximum size of 57 square metres

18.9 The maximum gross floor area of an accessory building or structure shall not exceed 200 square metres

The Applicant outlines that the building would be used for the storage of cars, travel trailers, and household goods, and would provide a place to store belongings during the construction of the residential dwelling (which is suggested to occur within the next 2 years). A workshop space is also proposed within the building, with the Applicant outlining that this would be for personal use in the future, providing a space to repair private vehicles. These uses are considered to comply wit the zoning regulations within the Bylaw.

The foundation and footings of the subject building have already been laid, as shown in the accompanying site photos.

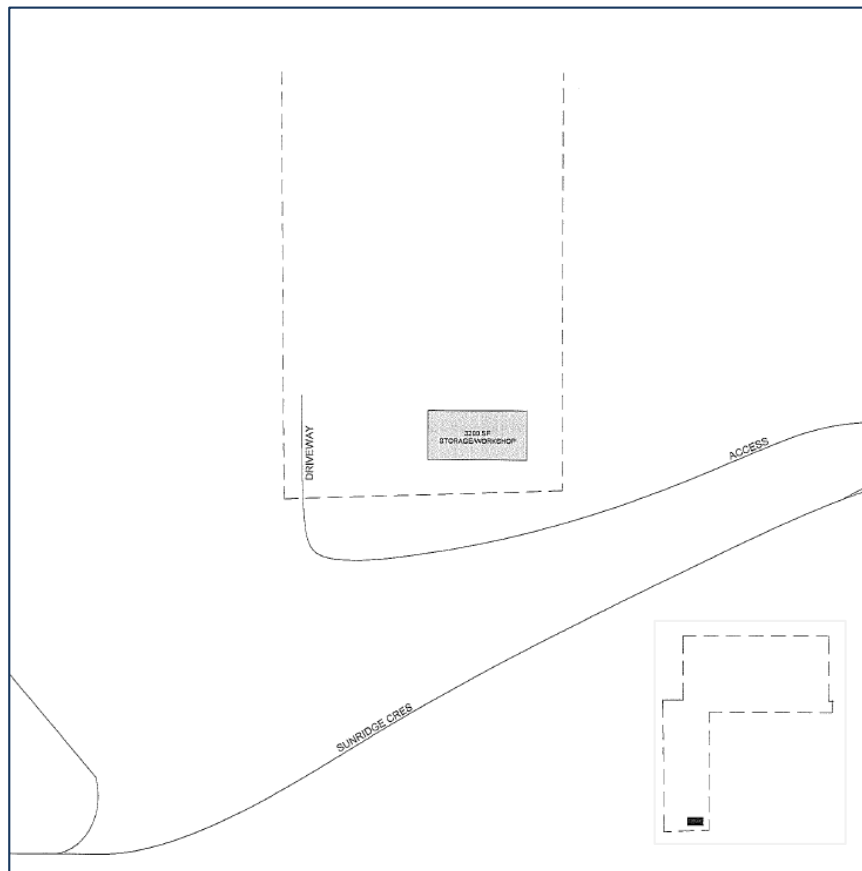


Figure 2: Site Plan and Context Plan

Development Requirements: Country Residential (R2)

The following table identifies the Development Regulations as outlined within Section 18 of the Electoral Area B Comprehensive Land Use Bylaw No. 2316, 2013.

Development Regulation	Maximum Permitted	Proposed
Maximum Site Coverage	50%	6.4%
Accessory Building Prior to Construction of Dwelling	56sqm	297sqm
Maximum Height of Accessory Building	8m	7.3m
Maximum Gross Floor Area of Accessory Building	200sqm	297sqm
Cumulative Gross Floor Area of all Accessory Buildings and Structures	400sqm	297sqm

Electoral Area B Comprehensive Land Use Bylaw No. 2316, 2013

General Residential Objectives:

4.1 To accommodate and direct residential development so its location, appearance and impact take into consideration the natural environment, community aesthetics, community resources, and existing land uses.

4.4 To manage residential growth in a manner that protects the rural character, environmental integrity, and the social and cultural diversity of the Plan Area.

General Residential Policies:

4.8 Will assess and evaluate proposed residential development based on criteria including, compatibility with adjacent land uses and designations, and how its form and character complements the surrounding rural area; and mitigation of visual impacts where development is proposed on hillsides and other visually sensitive areas.

4.10 Encourages the clustering of residential development to create separation between neighbouring developments, to protect ecologically sensitive areas, and to avoid continuous sprawl-like development.

Country Residential Policies:

The Regional Board:

4.18 Directs that the principal use shall be single-family or two-family dwellings.

SITE VISIT

Given the current situation, the Applicant was asked to send an array of photographs from requested view points.



Figure 3: View of the site from the public road. The site is raised above the access road and separated by mature vegetation

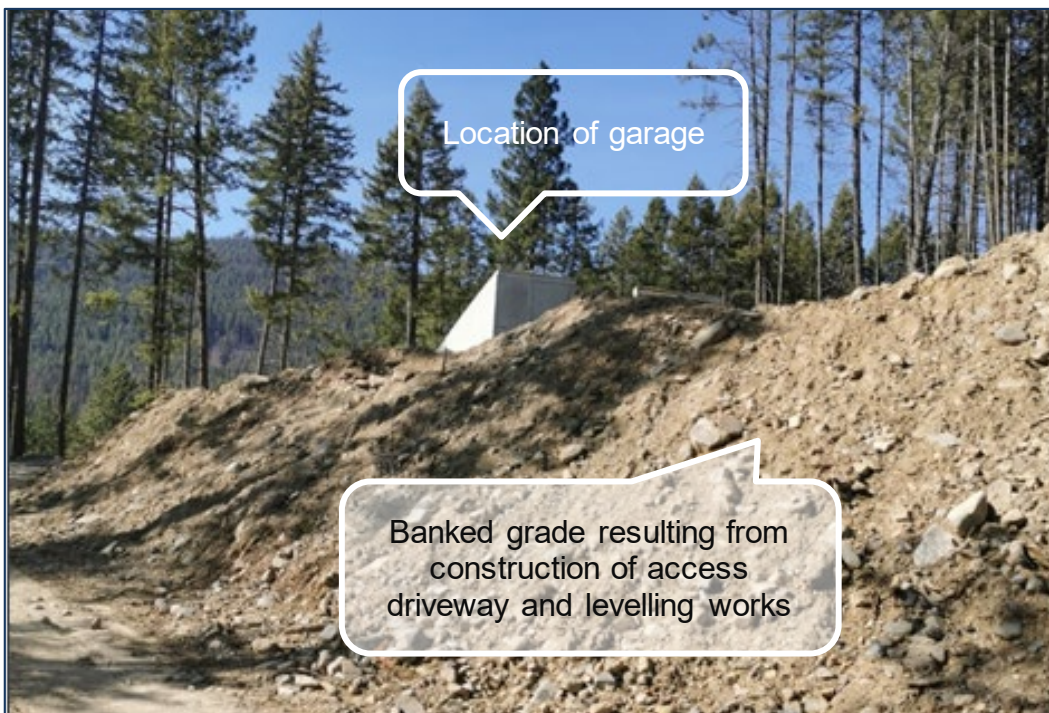


Figure 4: View of site seen from driveway and facing north-east. Given the topography, the garage is stepped above the driveway, with a banked grade up to site



Figure 5: Location of proposed garage looking south toward Sunridge Rd. Given the topography of the site, the garage would be stepped above the access driveway and public road, and separated by retained vegetation



Figure 6: Location of garage as seen from west and facing east. The ground has been levelled and cleared of trees to facilitate the development



Figure 7: View from western property line toward nearest neighbouring property. The existing trees are to be retained, separating the development from the neighbour



Figure 8: View of existing boundary trees along south-western property boundary, to be retained as part of the development

SECTION 3: DETAILED ANALYSIS	
a. Financial Considerations – Cost and Resource Allocations:	
Included in Financial Plan: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	Financial Plan Amendment: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
Debt Bylaw Required: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	Public/Gov't Approvals req'd: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
<p>The \$500 fee for a Development Variance Permit was paid pursuant to RDCK Planning Procedures and Fees Bylaw No. 2457, 2015.</p>	
b. Legislative Considerations (Applicable Policies and/or Bylaws):	
<p>Under Section 498 of the Local Government Act, the Board has the authority to vary provisions of a zoning bylaw (other than use or density) through a Development Variance Permit.</p>	
c. Environmental Considerations:	
<p>A number of trees have been cleared, with ground works to level the site also undertake. While this has resulted in the loss of vegetation, the Applicant has outlined an intent to plant shrubbery and other ground cover around the building. Therefore, no negative impacts are anticipated.</p>	
d. Social Considerations:	
<p>No negative social impacts are anticipated.</p>	
e. Economic Considerations:	
<p>None anticipated.</p>	
f. Communication Considerations:	
<p>As per the requirements of the Local Government Act and the Planning Procedures and Fees Bylaw No. 2457, 2015, notices were mailed to surrounding neighbours within a 100 metre radius of the subject property on March 23 2020.</p> <p>One written response was received from a neighbour, and these concerns can be summarised as follows:</p> <ul style="list-style-type: none"> - Removal of trees throughout property, and specifically around the subject building - Nature of building inspections <p>Verbal comments were received from a neighbouring property owner, and these can be summarized as follows:</p> <ul style="list-style-type: none"> - Intended use of building - Potential noise disturbance - Heavy machinery operation along the road - Increased traffic movements <p>A referral was sent to internal RDCK departments and external agencies. The following comments were received:</p>	

Ministry of Transportation and Infrastructure

MOTI does not have any concerns with the proposal as long as the 4.5m setback from the south property line is maintained.

Water System Town of Creston

Interests not affected by proposal

RDCK Building Services

“May 27, 2020 Stop Work Order was posted. Construction of foundation has proceeded without permit. Building permit application will now require the owner to retain an engineer to report on the foundation construction and also the remainder of the construction, as the as-built situation will require engineering for the entire structure.

In my opinion the owner has moved forward, as if the decision of the committee is irrelevant to the outcome.”

RDCK Utility Services

No response received.

Local Area Director

No response received.

Other Communication

A Bylaw Complaint was received in May 2020 regarding a commercial use of the property. Communication from the Bylaw Enforcement Officer can be summarized as follows:

As part of this Complaint it was suggested that the subject building was being used for sandblasting in association with the Applicant’s business. Following investigation, it was noted that there was no evidence to suggest that sandblasting was taking place on the site, however the Applicant did outline that the intention was to store the trailers associated with the business within the building. The Applicant also outlined that the associated machinery was tested on the property before heading out to a job. Such testing falls outside of the Country Residential (R2) zone and the Home Based Business regulations, and the Applicant was advised that this was not permitted, particularly due to the associated noise and disturbance and its impact on neighbouring properties. The Bylaw Enforcement Investigation confirmed that no sand-blasting was taking place on the property, with the Applicant reminded that operating machinery would be in contravention of the bylaw regulations. The Bylaw Complaint was subsequently closed.

g. Staffing/Departmental Workplan Considerations:

Should the Board grant the Variance, Staff would issue the Permit and register Notice of Permit on the Land Title.

h. Board Strategic Plan/Priorities Considerations:

The application falls under the operational role of Planning Services.

SECTION 4: OPTIONS

The property is designated as Country Residential (CR) under Electoral Area B Comprehensive Land Use Bylaw No. 2316, 2013.

The policies for land within this designation include ensuring that development is compatible with adjacent land uses and designations, and how its form and character complements the surrounding rural area; mitigating visual impact where development is proposed on hillsides and other visually sensitive areas; and encouraging the clustering of residential development to create separation between neighbouring developments to protect ecologically significant areas, and to avoid continuous sprawl-like development.

PLANNING DISCUSSION

The proposed accessory building would be located to the south-eastern corner of the property, adjacent to the access. Given the topography of the site, which slopes to the north, the proposed building would be located on higher ground than both the public road and driveway access, as well as the nearest neighbouring property to the west. The building would be oriented to face west, would measure to an overall height of 7.3m, and would be set back from the front lot line by 14.9m and the exterior side lot line by 8.8m. Mature vegetation surrounds the proposed site, and this is sought to be retained.

Visual Impact

While it is acknowledged that the building would be set back from the front lot line by approximately 14.9m, it would be positioned directly adjacent to the entrance into the site, and would extend across almost half the breadth of the frontage. The proposed building would therefore be visible from the approach, and when coupled with the overall height of the building, would have the potential to appear as a dominant addition within the context of the site; particularly given the immediate topography and elevated nature of the building. Furthermore, the proposed accessory building would appear relatively industrious in form and character, with the proportions and use of roller doors and high level windows considered to be more reflective of a light industrial building than a domestic accessory building. On this basis, there are some concerns that such an industrial form, located in a prominent position along the frontage of the property, would detract from the rural and residential character of the locality.

It is however noted that the existing boundary vegetation is sought to be retained, and this has the potential to mitigate some of the resulting visual impact. As seen from Figure 1, this boundary treatment provides some screening, with the Applicant outlining the intent to plant additional shrubbery on the bank in the future. The existing and proposed vegetation would help reduce the visual presence and impact of the building, however there is a need to balance this against any potential harm to the rural character of the property, particularly given the size and scale of the proposed building.

Size

It is recognized that the Country Residential (R2) zoning permits a cumulative gross floor area for all accessory buildings and structures of 400 square metres. There are currently no other accessory buildings or structures on the property, and while the proposed building would exceed the gross floor area for any single accessory building (200 square metres), it would be within the permitted cumulative gross floor area for all accessory buildings on the parcel.

While the individual building would be greater in size and scale than usually anticipated, the presence of one building rather than multiple separate buildings would limit the spread of development across the site, and would help to retain the overall rural character of the property. Furthermore, given the proposed

size and gross floor area of the building, any additional accessory buildings would likely be subject to a Development Variance Permit. As such, a degree of control would be in place to ensure that any further development does not detract from the rural character and ambience of the Country Residential property.

Given the size and context of the subject property, it is not therefore considered that the larger gross floor area as proposed would detract from the character and setting of the rural locality, and it is not considered that the larger footprint would result in adverse impacts. Therefore, it is considered that the enlarged footprint and gross floor area are acceptable in principle, subject to all other considerations.

Use

The greater cumulative floor area as proposed could however, have implications on the use of the building, and it's compliance with the permitted uses within the zoning regulations; and this is a material consideration which must be weighed in the assessment of the application.

The Applicant has outlined the intention to utilize the building for the storage of construction materials, personal belongings, and the storage of trailers associated with the Owner's mobile sandblasting business when not in use off site. A workshop is also proposed, where it is intended to provide space to repair the Owner's private vehicles. From further discussion with the Applicant it has been confirmed that it is not proposed or intended to operate the business from the site, with the main function of the building seeking to provide covered and secure storage for materials, vehicles, and trailers

While concerns have been raised by neighbours in respect of the intensity of the use, any subsequent use would be governed by the zoning regulations and the home based business regulations. While the concerns regarding the potential impact the storage of trailers associated with the sandblasting business could have on the amenity and ambience of the locality are reasonable, from the information available it is considered that this use would otherwise equate to accessory and incidental to any primary residential use once established.

However, in order to protect this further, the imposition of a Restrictive Covenant to specify the use of the building is considered reasonable, should the Board wish to approve the variance permit. This would provide greater clarity and control over the use, and any contravention could be enforced through legal proceedings.

Accessory Use Prior to Principal Use

The RDCK has identified that enabling an accessory use prior to a principal use may not be lawful. Section 15 of Comprehensive Land Use Bylaw No. 2316, 2013 defines of an accessory building as follows:

Accessory Building or Structure: means a detached building or structure located on the same parcel as the principal building, the use of which is subordinate, customarily incidental, and exclusively devoted to that of the principal building;

An accessory use should not be required if it does not directly serve the principal use. Further, the accessory use should be a less intensive use than the principal use. The risk in approving an accessory building prior to a dwelling is that the RDCK currently has no mechanism to ensure that the dwelling is ever built. This presents a risk because the accessory building may become a dwelling which would not align with the requirements of the BC Building Code. The accessory building might also become an industrial or commercial use, which could lead to a bylaw infraction.

To address the above concerns, Staff will be investigating possible changes to past practice and amendments to various bylaws, which would come to the RAC and Board for consideration in the future.

In recognition that this application was in stream when the above noted information was received, an alternate approach may be considered by the RAC and Board here using a Section 219 Restrictive Covenant. That is, should it be desired to approve the variances, the RDCK could condition this approval subject to the owner entering into a Section 219 Restrictive Covenant requiring demolition of the accessory building if the single family home is not completed within 36 months. However, Staff are not recommending doing that in this case, but instead are recommending the DVP not be approved. Should the Board not approve the DVP, and should the applicant wish to continue in their quest to construct the accessory building prior to a residence they would have two options:

1. Apply simultaneously for a building permit for the garage and houseⁱ
2. Apply for a temporary use permit

Non-Compliance with RDCK Bylaws

As outlined within the comments from Building Services, and as evidenced by the recent Bylaw Complaint, the Applicant has demonstrated non-compliance with the authoritative framework governing building and development within the RDCK. This brings into question the likelihood of the Applicant adhering to the requirements of any Restrictive Covenant on the land. On this basis, there are concerns that the available mechanism to overcome the concerns would be unlikely to function as required, and would not therefore provide the protection needed to ensure compliance with the zoning bylaw.

Given these concerns, it is not considered that a Restrictive Covenant could be imposed to overcome the concerns summarised above. For this reason, Staff recommend that the application is not approved, as per Option 1.

OPTION 1

That the Board NOT APPROVE the issuance of a Development Variance Permit V2001B-04607.200-Romano-DVP00183 to Wayne Romano for the property at 3760 Sunridge Rd and legally described as LOT A PLAN NEP20353 DISTRICT LOT 4592 KOOTENAY LAND DISTRICT EXCEPT PLAN NEP87731 (PID: 018-170-145) to vary Sections 18.7 and 18.9 of *Electoral Area B Comprehensive Land Use Bylaw No. 2316, 2013*.

OPTION 2

That the Board APPROVE the issuance of a Development Variance Permit V2001B-04607.200-Romano-DVP00183 to Wayne Romano for the property at 3760 Sunridge Rd and legally described as LOT A PLAN NEP20353 DISTRICT LOT 4592 KOOTENAY LAND DISTRICT EXCEPT PLAN NEP87731 (PID: 018-170-145) to vary Section 18.7 of *Electoral Area B Comprehensive Land Use Bylaw No. 2316, 2013*

FROM: 56 square metres

TO: 297 square metres

and to vary Section 18.9 of *Electoral Area B Comprehensive Land Use Bylaw No. 2316, 2013*

FROM: 200sqm

TO: 297sqm

And Further That: the land owners be required to register a Land Title Act Section 219 covenant requiring demolition of the accessory building if the principal use/building is not completed within 36 months of completion of the accessory building and that limits use of the accessory building.

SECTION 5: RECOMMENDATION(S)

That the Board NOT APPROVE the issuance of a Development Variance Permit V2001B-04607.200-Romano-DVP00183 to Wayne Romano for the property at 3760 Sunridge Rd and legally described as LOT A PLAN NEP20353 DISTRICT LOT 4592 KOOTENAY LAND DISTRICT EXCEPT PLAN NEP87731 (PID: 018-170-145) to vary Sections 18.7 and 18.9 of *Electoral Area B Comprehensive Land Use Bylaw No. 2316, 2013*.

Respectfully submitted,



Tamara Dale
Planner

CONCURRENCE

Initials:

Chief Administrative Officer
General Manager of Development Services
Planning Manager

ATTACHMENTS:

Attachment A – Building Plans

ⁱ It should be noted that the proponent would need to comply with the regulations of the zone or seek approval under a development variance permit.