

## STAFF REPORT TO COUNCIL

**Report Prepared By:** Christina Hovey  
**Meeting Date:** June 16, 2020  
**File No:** 3090-20-03 & 3360-20-15  
**RE:** DVP & DP for Oceanfront Residential Development at 373 Chemainus Road

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### RECOMMENDATION:

That Council:

1. Issue Development Variance Permit 3090-20-03 to vary the setback from the sea and the maximum height to allow for a single unit dwelling at 373 Chemainus Road;
2. Issue Development Permit 3090-20-15 to allow for a single unit dwelling at 373 Chemainus Road; and
3. Authorize the Mayor and Corporate Officer to sign Development Variance Permit 3090-20-03 and Development Permit 3090-20-15.

### EXECUTIVE SUMMARY:

The applicant is proposing to construct a two-storey single unit dwelling at 373 Chemainus Road. The applicant has applied for a Development Permit (DP) and a Development Variance Permit (DVP). The subject property is within DPA 7 – Hazard Lands, and a variance to the zoning bylaw has been requested to allow for:

- A raised deck and second storey overhang within the required setback from the sea, and,
- For the building to be over the maximum allowable height by 0.2 metres.



*Figure 1: Proposed Dwelling*

Staff is recommending approval of the DP based on the geotechnical report provided by the applicant. Staff is recommending approval of the DVP based on an analysis of the impacts of the proposal.

### PREVIOUS COUNCIL DIRECTION:

None.

## **INTRODUCTION/BACKGROUND:**

The applicant is proposing to construct a single unit dwelling at 373 Chemainus Road. The subject property is located on the waterfront, approximately 800 metres southeast of the intersection between Davis Road and the Trans-Canada Highway.



Figure 2: 373 Chemainus Road

The subject property previously had a single unit dwelling, a boathouse, and three sheds (including one small utility shed). The dwelling unit and two of the sheds have been removed. The existing boathouse and utility shed are proposed to be retained. The applicant is proposing to construct a two-storey single unit dwelling in the approximate location of the former dwelling.

The subject property slopes steeply from Chemainus Road towards a flat area adjacent to the shoreline where the house is

proposed to be located. The subject property has frontage on Chemainus Road, but is accessed via an existing gravel driveway that crosses a neighbouring property and an unconstructed road right-of-way.

The proposed two-storey dwelling has a unique design with the main living space on the large second-storey overhanging a smaller first-storey. The benefits of the proposed design are:

- To provide a large, accessible (single-storey) living area;
- To improve the driveway access by allowing for a turn-around large enough to accommodate an ambulance (though it would not accommodate a fire truck);
- To avoid extensive grading or vegetation removal on the slope adjacent to Chemainus Road; and
- To minimize the encroachment into the required setback from the sea at ground level.

## **ANALYSIS:**

The subject property is designated Single Family Residential in the OCP (Bylaw No. 1488), and is within the Single Dwelling Residential (R-1) zone in the Zoning Bylaw (Bylaw No. 1860). The proposal is consistent with the OCP designation and the permitted uses within the Zoning Bylaw. The subject property is within Development Permit Area 7 – Hazard Lands (DPA 7), therefore a Development Permit is required to authorize the proposed dwelling. The proposed dwelling is taller than the maximum permitted height and encroaches into the required setback from the sea, therefore a Development Variance Permit is required.

**Development Permit Area 7 – Hazard Lands:**

DPA 7 applies to areas of the Town with steep slopes. The purposes of DPA 7 are to prevent land slippage and sloughing, safeguard private property from potential damage, minimize disruption to slope stability and prevent development in areas where slope instability hazards exist.

The issuance of development permits within DPA 7 is delegated to the Director of Development Services. In this case, since there is also a DVP required for the proposed development, both permits are presented to Council so they can be considered simultaneously.

The proposed development has been reviewed for consistency with DPA 7 and is generally consistent with the DPA 7 guidelines. Table 1 provides observations about the proposal's consistency with the DPA 7 guidelines.

The applicant provided a geotechnical report in support of the application. The report identifies two potential hazards associated with the property:

- The steep slope in the front yard between Chemainus Road and the proposed location of the dwelling; and
- The proximity of the proposed dwelling to the sea.

The geotechnical report made a number of recommendations for minimizing the risks associated with the potential hazards. The draft Development Permit includes the recommendations from the geotechnical report and the report is attached to the permit.

The proposed design and location of the home avoids building on the sloped area of the property. At this time, the property owner is not proposing any modifications to the area adjacent to the shoreline. Any future modifications to the area adjacent to the shoreline would require a new development permit, and likely review from the Department of Fisheries and Oceans.

***Table 1: Summary of Proposal's Consistency with DPA 7 Guidelines***

<b>Guidelines</b>	<b>Observations</b>
<b>No significant excavation or filling; and no buildings on areas subject to bank instability or subject to potential damage from bank instability</b>	<ul style="list-style-type: none"><li>• The proposal reuses the building site of the previous dwelling to minimize the need to excavate or fill.</li><li>• According to the geotechnical report, the slope in the front yard shows no signs of global instability.</li></ul>

<b>Guidelines</b>	<b>Observations</b>
<b>Avoid areas subject to unstable slopes and site buildings in accordance with setbacks and other requirements determined by a geotechnical engineer</b>	<ul style="list-style-type: none"> <li>• The geotechnical engineer recommends a 4.0 metre setback from the toe of the slope, to be created by minor filling.</li> <li>• The geotechnical engineer recommends a flood construction level of 4.89 metres geodetic datum.</li> <li>• The geotechnical report recommends that the property owner either: <ul style="list-style-type: none"> <li>○ Conduct additional study of foreshore erosion and implement erosion control measures, or</li> <li>○ Conduct annual monitoring of the foreshore and conduct reassessment following any notable regression of the foreshore.</li> </ul> </li> </ul>
<b>Provide for disposal of surface run off/storm water; divert drainage away from areas subject to sloughing.</b>	<ul style="list-style-type: none"> <li>• The geotechnical engineer recommends directing runoff from the yard areas and the hillside towards the foreshore.</li> </ul>
<b>Avoid disturbance of steep slopes.</b>	<ul style="list-style-type: none"> <li>• The building is proposed to be located at the base of the slope.</li> </ul>
<b>Retaining walls should be terraced. Plant material should be incorporated into the retaining wall design.</b>	<ul style="list-style-type: none"> <li>• A low retaining wall is proposed to separate the base of the hill from the driveway and parking area.</li> <li>• The height of the proposed retaining wall varies, with the maximum height being less than 1 metre, therefore, terracing is not required.</li> </ul>
<b>Maintain existing trees and vegetation to control erosion.</b>	<ul style="list-style-type: none"> <li>• The trees on slope behind the building will be retained.</li> <li>• The vegetation along the shoreline will be retained.</li> </ul>
<b>Access/pathways constructed so as not to disturb the slope or other natural drainage.</b>	<ul style="list-style-type: none"> <li>• There is an existing narrow pathway down to the shoreline.</li> <li>• The applicant is not proposing any new pathways nor to modify the existing pathway.</li> </ul>
<b>Provide a geotechnical report.</b>	<ul style="list-style-type: none"> <li>• A geotechnical report, dated April 15, 2020 and prepared by Lewkowich Engineering Associates Ltd. was provided in support of the application.</li> </ul>
<b>Timing of development.</b>	<ul style="list-style-type: none"> <li>• Not applicable.</li> </ul>

#### **Zoning Bylaw Variances:**

The proposed dwelling is taller than the maximum permitted height and encroaches into the required setback from the sea, therefore a Development Variance Permit is required to authorize the development. Table 2: Zoning Requirements and Proposed Variances outlines the proposed variances. The proposal is otherwise consistent with the Zoning Bylaw requirements. The existing boathouse on the property does not meet the Zoning Bylaw requirements; however, the boathouse is not proposed to change as part of this development and may have protection under Section 529 of the *Local Government Act (LGA)*.

Staff is recommending that the requested variances be approved, based on the following assessment of the potential impacts.

**Table 2: Zoning Requirements and Proposed Variances**

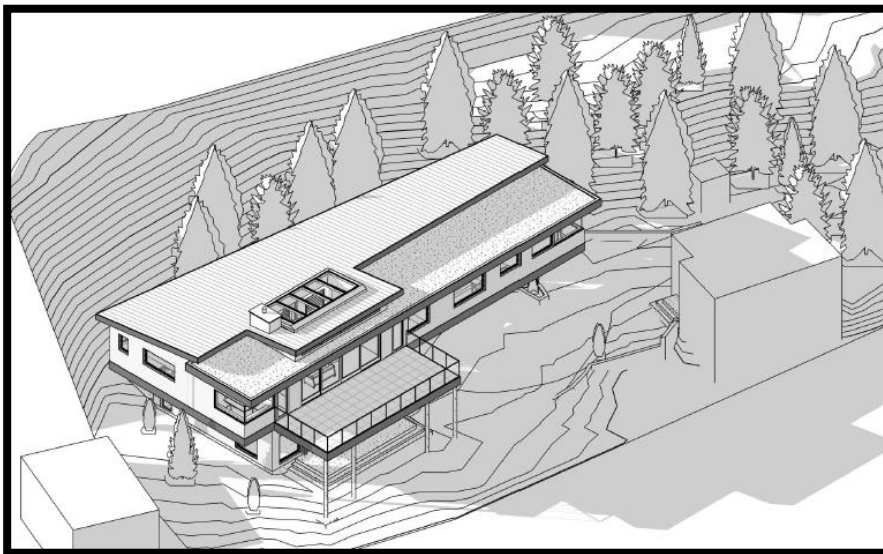
Zoning Provision	Zoning Requirement	Proposed Variance
Maximum height	7.5 metres	• 7.64 metres
Setback from the sea	8.0 metres	• Deck: 4.47 metres • Second storey overhang: 6.33 metres

***Variance Request for Height:***

The maximum height for a principal building within the R-1 zone is 7.5 metres when the roof pitch is 4:12 or less. The height of the proposed building at the tallest point is 7.64 metres. The roof has variation to add visual interest and most of the roof is lower than the 7.64 metre height.

Because the house is located at the bottom of the treed slope, the house is unlikely to be visible from Chemainus Road, even with the increased height. The nearest house is located higher up the slope on the neighbouring property and so will not be overshadowed by the proposed dwelling. The additional height will be visible from the shoreline, however the proposed

dwelling is consistent with the scale of other homes along the shoreline in the area.



*Figure 3: Proposed dwelling*

***Variance Request for Setback from the Sea:***

No building or structure is permitted to be located closer than 8.0 metres horizontally from the natural boundary of the sea (Bylaw 1860, Section 5.2.e.). The proposed building has a second level deck that is 4.47 metres

from the natural boundary at the nearest point. As a safety precaution, the deck will be constructed so as not to be structurally attached to the main building. Part of the second storey (the part furthest from the driveway and existing boathouse) overhangs the first storey to within 6.33 metres of the natural boundary of the sea.

The first level of the dwelling meets the 8.0 metre setback, with only the support beams of the deck within the setback area at ground level. At ground level there is currently a lawn and

concrete base from a previous patio, so the deck encroachment will not lead to alteration or disturbance of a natural shoreline area. Based on the slope and the orientation of the property, the encroaching deck is unlikely to cast regular shade on the foreshore. The geotechnical report concludes that the proposed development will not result in a detrimental impact on the environment, the subject property, or the adjoining properties.

**ALTERNATIVES:**

Council can choose to refuse the Development Variance Permit (and the Development Permit).

- The proponent could attempt to meet the zoning requirements, for example, by constructing a smaller dwelling.

**FINANCIAL IMPLICATIONS:**

None.

**LEGAL IMPLICATIONS:**

The *Local Government Act* allows Council to vary zoning regulations excluding regulations of use, density, and rental tenure through issuance of a Development Variance Permit (DVP). Council may permit exceptions to the setback provisions as is proposed in this application.

If the DP is refused, reasons must be given based on the DPA 7 guidelines, since the issuance of a DP is not a completely discretionary decision of Council. However, the current draft DP cannot be approved unless the DVP is also approved since the DP cannot authorize a development that is inconsistent with the Zoning Bylaw.

**CITIZEN/PUBLIC RELATIONS IMPLICATIONS:**

Notice of the proposed variance was issued in accordance with the requirements of the *Local Government Act* and Development Procedures Bylaw No. 1667. On June 5, 2020, a letter was delivered to the property owners/residents within 60 metres of the subject property. At the time of writing, one submission has been received (attached). The submission states they have no issue with the proposal.

**INTERDEPARTMENTAL INVOLVEMENT/IMPLICATIONS:**

The applications have been referred to Infrastructure Services (Engineering), the Building Inspector, and the Fire Chief. Their comments have been incorporated into the draft permits and/or will be addressed through the Building Permit. See analysis section for additional discussion.

**ALIGNMENT WITH SUSTAINABILITY VISIONING REPORT:**

- |  |  |
|--|--|
| <input type="checkbox"/> Complete Community Land Use | <input type="checkbox"/> Low Impact Transportation |
| <input type="checkbox"/> Green Buildings             | <input type="checkbox"/> Multi-Use Landscapes      |
| <input type="checkbox"/> Innovative Infrastructure   | <input type="checkbox"/> Local Food Systems        |
| <input type="checkbox"/> Healthy Community           | <input type="checkbox"/> Local, Diverse Economy    |
| <input checked="" type="checkbox"/> Not Applicable   |  |

**ALIGNMENT WITH STRATEGIC PRIORITIES:**

- |   |  |
|---|--|
| <input type="checkbox"/> Infrastructure | <input type="checkbox"/> Economy                   |
| <input type="checkbox"/> Community      | <input checked="" type="checkbox"/> Not Applicable |
| <input type="checkbox"/> Waterfront     |  |

***I approve the report and recommendation(s).***

**Erin Anderson, Acting Chief Administrative Officer**

**ATTACHMENT(S):**

DRAFT DP 3360-20-15

DRAFT DVP 3360-20-03

SUBMISSION FROM ADJACENT PROPERTY OWNER