

**CITY OF VICTORIA
BOARD OF VARIANCE MINUTES
MARCH 22, 2018**

Present: Andrew Rushforth, Chair
Margaret Eckenfelder
Jaime Hall

Absent: Rus Collins
Trevor Moat

Staff: Nina Jokinen, Planning Technician
Katie Lauriston, Secretary

The meeting was called to order at 12:30 pm.

1. Appeals

**12:30 Board of Variance Appeal #00685
Lewis Horvat, Zebra Design, Applicant / Designer; Walter & Karen Madro, Owners
1980 Fairfield Place**

Present Zoning: R1-G – Single Family Dwelling (Gonzales) District
Present Use: Vacant

The proposal is to construct a new single family dwelling.

Bylaw Requirements

Relaxations Requested

Part 1.6.3 (c)	Increase the floor area of all floor levels combined from 300.00m ² to 371.46m ²
Part 1.6.5 (b)	Reduce the rear yard setback from 14.03m to 5.55m (to the covered patio) and 6.84m (to the building).

Lewis Horvat of Zebra Design, Applicant / Designer; Julie Budgen, Environmental Planner from Corvidae Environmental Consulting Inc.; Walt and Karen Madro, Owners; neighbours Scott Chapman and Janya Freer of 330 Denison Road, Brad Atchison and Cheryl Shoji of 1968 Fairfield Place, Philippe Doré of 1962 Fairfield Place, Jarek Swierczewski of 386 Denison Place, Arlene and Steve Lonergan of 388 Denison Place, Sheila Protti of 396 Denison Road, Virginia Errick of 615 Foul Bay Road, Karen Ayers of 613 Foul Bay Road, Mariam Cumming of 151 Sunny Lane, Shelley Saldat of 1270 Faithful Street, John and Adam Farquharson of 997 Wilmer Street, Mary Doody Jones of 435 Kipling Street, Lynn Thomson of 936 Fairfield Road, a resident of 1151 Roslyn Road and Margaret Dohan of 3006 Baynes Road were present.

Board

The Chair explained that the Board requested that the applicant have a surveyor mark the site; this was done and the Board members have seen the surveyor's stakes in place.

Correspondence regarding the application from the following was acknowledged: Brett Hudson of the CRD, Brad Atchison and Cheryl Shoji of 1962 Fairfield Place, Catherine and Philippe Doré of 1962 Fairfield Place, Danny Myers and Anita Gadzinska-Myers of 1956 Fairfield Place, Janya Freer and Scott Chapman of 330 Denison Road, Helen Rodney of 308 Denison Road, Paul Vincent of 198 Denison Road, David and Jane Siegel of 301 Denison Road, Iain McAuley and Christine McAuley of 319 Denison Road, Steve and Arlene Lonergan of 388 Denison Road, Terry and Franco Zava of 382 Denison Road, Sheila and Ray Protti of 396 Denison Place, Sybil P. Seitzinger and Jarek Swierczewski of 386 Denison Place, Lisa and Bill Zickmantel of 6 Sylvan Lane, Dionne and Steven Baker of 20 Sylvan Lane, Bill & Coline Neilson of 117 Barkley Terrace, Charles and Janet Simpson of 2125 Hall Road, Virginia & Jeff Errick of 615 Foul Bay Road, Susan Dulc of 758 Mountjoy Avenue, Hannah Mitchell and Paul Jorjorian of 188 A St. Charles Street, S. Bruce Vallance of 590 St. Patrick Street, Susanne Rautio of 359 Richmond Avenue, Charis Burke of 1509 Rockland Avenue, Steve Jones of 1541 Rockland Avenue, Mary Doody Jones of 435 Kipling Street, Margaret Sheehy and Tom Robertson of 549 St. Charles Street, Brenda Moysey of 937 Pemberton Road, Lynn Thomson of 936 Fairfield Road, Anthony Danda of 1075 Pentrelew Place, Kathy Jang of 3634 Gary Oak Road and a petition opposing the proposal.

The Chair clarified the mandate of the Board of Variance and determined that attendees who are not owners or occupants of properties adjacent to 1980 Fairfield Place would be given a limited time in which to speak. The Chair also determined that the neighbours of 1968 Fairfield Place would be considered 'adjacent' for this hearing.

Owners

- The owners have lived at their current property on Salt Spring Island for 16 years, and this is the last house the owners intend on building.
- The owners met with Planning staff in fall 2016 and were encouraged to contact the CRD. From the beginning the owners have worked with professionals and have spent 17 months to arrive at the proposed, environmentally responsible design. There have been significant challenges for site and utility access. The irregular shape of the vacant lot on Fairfield Place has imposed a rear yard setback of 37.5% of the property, and the building site is further limited by the sensitive Gary Oak forest.
- The owners have sought to understand neighbourhood concerns and have made compromises where it was possible. The initial design was submitted to the Board on October 6, 2017 and was immediately shared with neighbours. The designers reached out to neighbours, but received few responses to the owners' invitations. Nevertheless, the owners have facilitated meetings with neighbours. The owners have been sensitive to Mr. Atchison's requests for the proposal by reducing the size of driveway and the square footage of the main and second floors. The balconies are a major design feature but have been screened to reduce overlook. The owners have been open and transparent, and changes requested by neighbours have been incorporated into the design.
- The house is positioned on the western portion of the lot, which was the best placement according to the Land Conservancy and the environmental consultant. The house has been moved away from the adjacent park's parking lot, bringing the proposed height into compliance with Zoning bylaws. The number of variances requested has been reduced from five to two, and these variances are necessary to protect the Gary Oaks and to reduce the blasting required. The house is not oversized; the proposal is for a two bedroom home with only 18.5% site coverage.

- Privacy screening and native plants have been incorporated to enhance privacy to both neighbours and owners. A shadow study has been conducted to ensure minimal shadowing for neighbours, and an environmental consultant was hired to minimize the proposal's environmental impact. The owners have also established a restrictive covenant to protect the property's Gary Oaks. The green space for the owners will be limited to the interior decks.
- False information has been spread about this application through posters in the Gonzales Park, including exaggerations to the estimate for the cost of blasting and claims that the proposal will cause significant environmental damage. These posters have played on the emotions of park visitors with gross exaggerations. Most homes in the area require blasting for construction, and modern techniques will be employed to minimize impact to neighbours and to the environment. The only close fault is the Leech River fault many kilometers away, but geotechnical experts will be consulted.
- It has been made by the immediate neighbours that they do not wish to have any development on the site. Neighbours have requested that the CRD acquire the land, but at a recent CRD meeting the majority of board members voted against adding the property to the parkland. Although Mr. Atchison seems to believe that placing the home in the centre of the lot would be preferable, this goes against the advice from the environmental consultant. There will be no impact on the enjoyment of the adjacent home at 330 Denison Road, as the houses will be a considerable distance apart. The shadow study clearly shows minimal shadowing issues with the proposal.
- The room sizes are not excessive; without variances the basement space would be unused crawl space. The proposal includes an elevator to allow the owners to age in place and to meet the daily support needs of an aging family member who would live in basement suite. The designer has provided a rendering to show what the house would look like without the requested variance, and the view for neighbours is exactly the same as is proposed. However, the difference would be substantial for the owners who would be able to care for their aging family member if the variance is allowed.

Environmental Consultant

- The environmental consultant has conducted an assessment of the property, looking at the connectivity in the environment with consideration to the situation of the single family dwelling. It is best to maintain as much of the well-established Gary Oak habitat on the western side of the property as possible. To this end, the house should be put higher up on the lot for a reduced environmental impact.
- Without variances, the house would have to be located closer to the west side of the property and 19 trees would have to be removed. More blasting would also be required if the house was situated further to the west. With variances, only 8 small, nutrient-deficient trees would have to be removed. The restrictive covenant on the remainder of the property will help compensate for the loss of the eight Oaks. Vibration-critical blasts would allow blasting only in the building's footprint.
- The habitat value must also be considered; generally, forest has a higher value than rock for mammals, so the house should minimize impact to the western portion of the lot. It is preferable to disturb rock and to preserve the habitat below. To the south there is a fence and lawn; this presents an opportunity to replace the lawn with Gary Oak habitat, which would compensate for the driveway's location in the urban forest area.
- The surface water flow will be unchanged; there will be the same amount of water whether or not the house is there, but it is preferable to save vegetation cover by limiting impact to the western side of the lot. Erosion sediment controls will also be in place.

Owner

- The rear yard setback is required to place the home in an optimal location, with the most spacing between adjacent houses and the least possible amount of shadowing and blasting.

Board

- Is it the owners' intent to preserve as much of the vegetation as possible?
 - Yes; we have hired an environmental consultant to help in this regard.
- Will there be sheer splitting blasting?
 - Yes.

The secretary read aloud the conclusion from the report "Proposed Zoning Variance for Residential Development Adjacent to Gonzales Hill Regional Park" submitted to the CRD Parks Committee at its meeting February 21, 2018.

- The plans label the basement room as a games room; has this changed?
 - Yes, now this is meant as a suite for an aging family member. The plans submitted did not include this correction.
- What is the hardship associated with the requested increase in floor area?
 - The owner's elderly father lives in small 1-bedroom apartment and needs care. For the present, the father will live in the basement suite. In time, the suite will become a suite for caregivers for the owners as they age.
- Is a secondary suite allowed in the Zone?
 - Nina Jokinen, Zoning Technician, confirmed that this is allowed.
- Are there any further changes required to the plans to change the games room to a suite?
 - It is early in the design process, but a 3-piece bathroom would be added for the owner's father. There is no intention of adding a stove, only a sitting area, bedroom and washroom.

Neighbours

- Brad Atchison made a detailed presentation regarding his opposition to the application, including the following points:
 - opposed to the application since fall 2017 on the basis of broader considerations
 - the house has moved 66 feet closer to their house
 - the site is not an urban forest, it is a bona fide ecosystem
 - the environmental consultant's report makes no mention of the endangered moss on the site
 - the CRD has ignored scientific evidence
 - owners of 1980 Fairfield Place did not conduct adequate due diligence before purchasing property
 - the owners have shown a lack of meaningful consultation, and there has been little follow-up from the designer regarding reconciling the house blueprints and design
 - the City's height calculation ignores the elevation difference and steep land contours; the proposal will have a visual impact of five storeys
 - the proposal will cast shadows over the only food-growing area of Atchison's property

- the driveway placement breaks the continuity of movement for small mammals
- this is the wrong house for the site and there is no house siting that is a good ecological choice
- there is no orchestrated neighbourhood campaign; all the neighbours have independent, heartfelt opposition to the proposal
- Board of Variance process lacks transparency, requires insufficient notification and approves too many requests
- there is an actual conflict of interest with this appeal
- hydrogeological concerns
- the proposal will desecrate an archeological land form.

The meeting recessed at 2:05 p.m. and reconvened at 2:12 p.m.

- Brad Atchison continued:
 - there are many legitimate concerns from the neighbourhood at large.

Designer

- The designer has made an archeological data request for the property and have confirmed that there are no archeological sites on the property.

Owners

- Propaganda has been disseminated against this application.

Neighbours

- Janya Freer provided the Board with renderings illustrating the visual impact of the proposal and explained her and her husband's reasons for opposing the appeal, including:
 - an irregular lot shape does not constitute hardship; the lot's size would accommodate a normal house without variances
 - the requested variances are not minor, and variances are not a right
 - there should be strict definitions of hardship
 - personal preference drives the house's location on the hill with ocean views
 - the bylaws would be relaxed at the expense of neighbours and park users; these bylaws are in place to protect people from the privacy invasion that would occur
 - the proposal would have a significant impact on Ms. Freer's use and enjoyment of her property, especially as most of her windows face the proposal, and would reduce her property's value
 - doubting the accuracy of the shadow studies conducted by the applicant
 - the rear setback variance would effectively increase the house height and bring it closer to her home
 - the third party environmental report takes too narrow a view of the ecological circumstances and is biased because it was paid for by the owners
 - consultation with neighbours has been inadequate and the owners and designer have been insensitive to concerns raised about blasting
 - signs warning neighbours of the proposal are necessary; otherwise, the neighbourhood is helpless.

Owners

- The owners have made repeated attempts for face-to-face meetings with neighbours. It is frustrating to hear these allegations when the owners have been open and transparent.

Designer

- The shadow study was professionally done and the designer stands by what was produced.

Owners

- It's simply not true that the rare Gary Oak ecosystem would disappear, or that the house would cover most of the property.

Neighbours

- Brad Atchison stated that virtually all the trees would disappear and that there would be a significant shading impact.

Designer

- Regarding the renderings provided by the Freers, it is difficult to ascertain whether this model is done to scale.

Owners

- The owners feel that the proposal creates enough privacy while causing the least amount of shadowing, and is environmentally responsible. The proposal reduces the cost of blasting and creates a buffer between adjacent homes. It is not the owners' aim to overlook any neighbours, and screening and natural vegetation have been implemented to accommodate the need for privacy.
- To obtain an environmental study the owners had to hire someone; this does not constitute bias.

Neighbours

- Brad Atchison clarified that the issue is the intrusiveness of the house. There have been many opportunities to minimize intrusion, and the owners have been asked to revisit the design.

Owners

- The owners have consulted many architects and design firms, and have hired a preeminent design firm to deal with the challenges of this property.
- The owners plan to grow their own vegetables. Their garden space will be limited to the balconies so as to preserve the natural habitat as much as possible.

Designer

- The north elevation on the plans shows the front deck, which is the closest one to overlooking a neighbouring property. The railing will have frosted glass to alleviate overlook and privacy concerns.

Environmental Consultant

- The consultant clarified that they are a third-party environmental consultant, ethically required to provide accurate information on the biological conditions of the site.

Neighbours

- Virginia Errick stated her opposition to the proposal, including the following points:
 - the owners have not mentioned hardship
 - the desire for a larger house does not constitute hardship
 - the significant impact that the proposal will have on the park, especially from the wilderness trail
 - the remaining trees will be affected by construction.
- Arlene Lonergan stated her opposition to the proposal, including the following points:
 - the property's zoning does not pose undue hardship; these bylaws are put in place to deter property owners from operating entirely from self-interest
 - granting the variances would substantially affect the use and enjoyment of the park
 - any construction will have a significant environmental impact; the rock component of the property is also important.
- Steve Lonergan stated his opposition to the proposal, including the following points:
 - the offer to create an easement through the park is not genuine; if the owners were truly concerned about park access, they would not have requested an egress.
 - the owners simply desire water views and a larger house.
- Lynn Thompson stated her opposition to the proposal, including the following points:
 - the importance of unobstructed views from the park and access from the west
 - the Board may only grant minor variances
 - blasting will destroy natural species.
- Mary Doody Jones stated her opposition to the proposal, including the following points:
 - experts agree that the Gary Oak system is the most endangered ecosystem in Canada
 - removing trees increases climate change and causes a wide swath of damage around removal area; allowing variances will increase the impact and change the ambience of the park
 - the driveway will eliminate an escape route for animals
 - the need to consider birds' habitat and their nesting seasons.
- A resident of 1151 Roslyn Road stated their opposition to the proposal, including the following points:
 - concern for setting a precedent with this decision
 - the need to avoid substantial over-building
 - the designers often build on non-conforming sites.
- Mariam Cumming stated her opposition to the proposal, including the following points:
 - concerned about effects of blasting and overdevelopment
 - the existence of burial sites and culturally modified Gary Oaks on the site
 - the removal of soil and rock will adversely affect the park and neighbours.

Designer

- The hardship for the rear yard setback is the significant challenge in accessing the property. The driveway size has been reduced to minimize the impact.

Neighbours

- Janya Freer asked whether the rocky outcropping was considered as habitat.

Environmental Consultant

- The environmental consultant clarified that the rocky outcropping and the urban forest were compared in terms of habitat value, and that there was a significantly higher density of vegetation species in the urban forest.

Neighbours

- Brad Atchison noted that many endangered or rare species were being ignored.

Environmental Consultant

- The environmental consultant clarified that there is no requirement for a detailed environmental assessment.

Board

- What are the hardships associated with complying with zoning requirements?
 - Shifting the house's location into the rear yard setback allows for a far greater number of trees to be retained and for driveway access. The need for retaining walls will also be significantly reduced.
 - Less blasting will be required, and the Gary Oak ecosystem will be much better preserved.
- Is the rear yard setback variance just to allow for a driveway?
 - It is to allow for a driveway and to alleviate the impact on the Gary Oak ecosystem as much as possible.
- Does drawing 14 depict the house if it met the setback requirements without variances?
 - Yes.
- Is it not possible to build a driveway without the variance?
 - This portion of the property would have to be filled in, and retaining walls would have to be constructed.
- Could a garage be built straight into the site?
 - This would be possible, but any building in that location would require the same setback.
- What blasting has to be done to avoid looking at a rock wall, as mentioned in the applicant's letter?
 - This is a hardship; the hill would have to be blasted back and tapered off to make the main and second floor liveable.
- Will there be less blasting with the variances requested?
 - Yes; there will still be blasting but it will be reduced.

- What is the hardship associated with the variance for floor space?
 - The added square footage increases the liveability of the house and allows for ageing in place.
 - Under other zones this floor space ratio would not be applicable.
- Is the excess square footage mostly for the basement area?
 - Drawing 4 indicates the permitted floor space. Even a four- car garage would be permitted; the extra floor area allows for the basement suite for the owner's elderly father.
 - The owners want their elderly family member to live with them, but this is not possible at their current house due to the number of stairs. The suite in the basement would significantly improve the elderly father's end of life and would allow for in-home care for the owners as they age.
- What is the hardship associated with the third garage?
 - A third garage is permitted; no variance is being requested to allow for this.
- Can the driveway area be made smaller?
 - The issue in moving the driveway has to do with the distance required for vehicles to back up. The height of the retaining wall has been minimized as much as possible.

Public portion of the meeting closed.

Board

- There have been concerns of a perceived or actual conflict of interest. The Board has known from the beginning that the member whose firm is associated with the project would recuse himself.
- The Board commends the applicants for communicating the proposal with their neighbours.
- The Board appreciates the applicants' efforts to reduce the environmental impact of the project.
- The site presents unique challenges, but there does not seem to be a need for the floor space as a result of the site itself.

Motion:

Moved: Jaime Hall

Seconded: Margaret Eckenfelder

That the following variances be declined:

Part 1.6.3 (c)

Increase the floor area of all floor levels combined from 300.00m² to 371.46m²

Part 1.6.5 (b)

Reduce the rear yard setback from 14.03m to 5.55m (to the covered patio) and 6.84m (to the building).

Carried

(2 in favour; 1 against)

Meeting adjourned at 3:50 pm.
