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His Worship Sid Tobias, Mayor of View Royal
Councillors D. Brown, D. Kowalewich, G. Lemon, A. MacKenzie, R. Mattson, J. Rogers
c/o View Royal Town Hall
45 View Royal Avenue
Victoria BC V9B 1A6

January 25, 2025

APPLICATION FOR DEVELOPMENT PERMIT WITH VARIANCES

Address	49 Tovey Crescent
Legal Description	Lot 3, Section 92, Range 5, Plan Number VIP5895, Land District 21, Manual Class Code 0090, Neighbourhood Code 401012, Actual Use 000, Regional District 03
Property	ID 005-945-208

Valued Mayor and Councillors of View Royal,

On behalf of my clients, John and Jo-Anne Wilson of 49 Tovey Crescent, I am applying for a Development Permit with Variances for the above property.

We are seeking Council's approval of the following:

- a) Development Permit for Natural Watercourse and Shoreline Areas Development Permit Area (Marine Structure - Deck 3)
- b) Variance to Zoning Bylaw No. 900, 2014, Section 3.8.2 to reduce the minimum setback of structures within 15 meters from the present natural boundary of the sea from 15m to 0m (Marine Structure - Deck 3)

- c) Variance to Zoning Bylaw no. 900, 2014, Section 4.6.2b to reduce the setback of an accessory structure from 1.2m to 0.63m (Marine Structure -Deck 3 - southwest side)
- d) Variance to Zoning Bylaw no. 900, 2014, Section 4.6.2b to reduce the setback of an accessory structure from 1.2m to 0.8m (Marine Structure - Deck 3 - southeast side)
- e) Variance to Zoning Bylaw no.900, 2014, Section 4.6.6 by increasing the maximum permitted areas of accessory structures, increasing the allowed maximum from 60m² to 134.05m²
- f) Variance to Zoning Bylaw no. 900, 2014, Section 4.6.2b by reducing the setback of an accessory structure from 1.2m to 0.68m (mobile accessory building)
- g) Variance to Zoning Bylaw no. 900, 2014, Section 4.6.3 by reducing the distance of an accessory structure to the main residence from 2.4m to 1.54m (mobile accessory building)
- h) Variance to Zoning Bylaw no. 900, 2014, section 4.6.2b by reducing the setback of an accessory structure from 1.2m to 0m (bike storage)
- i) Variance to Zoning Bylaw no. 900, 2014, Section 4.6.3 by reducing the distance of an accessory structure to the main residence from 2.4m to 1.55m (bike storage)

View Royal planning staff requested that we explain the full extent of the planned project to council for clarification. Please also refer to attachments 1 to 11 for further details.

OVERVIEW

The homeowners purchased the modest single-family residence on the 1223 m² lot in 2017 and want to update the 1959 split-level structure to suit their aging-in-place lifestyle.

The existing house features a small deck and an aging unattached carport, both of which face Tovey Crescent. As part of the renovation of the existing home, those two structures are to be removed. The proposed addition includes an attached 2-car-garage, and the renovation of the existing two-level portion of the house includes the creation of a rooftop deck above a new guest bedroom in the basement. Additionally, an upstairs bedroom will be turned into a home office, and the single-level principal suite part of the home will be updated. The gross floor area is to be increased from 241 m² to 335 m².

The renovation process also sees the involvement of MSR Solutions to assist in improved rainwater management of the soggy, clay-based soil in the front yard. The curb appeal of the property will be greatly enhanced by the updates to the home and the planned landscaping.

On the Tovey Bay side, the property is fronted by a Marine Structure (seawall and platform, referred to as 'Deck 3') which spans almost the full width of the property. This structure straddles both municipal and Crown land.

What little information could be gathered from neighbours and previous owners, the original construction predates the 1980s, but neither the homeowners nor the municipality have any other documentation on the history of the structure.

Since their purchase of the property in 2017, the clients have been in regular communication with the DND. The Foreshore Lease Agreement with the DND for the Marine Structure was renewed in November 2024 until Nov 30, 2029.

See attachment #6

Due to substantial damage during unforeseen extreme weather events, repair/construction work on this structure commenced in 2023 without a permit. The View Royal Planning Department advised that the homeowners need to apply retroactively for a Development Permit for the structure, along with respective Variances regarding other existing Accessory Structures, before the Municipality will be able to process a Building Permit for the proposed addition and renovation of the residence.

PROPERTY

The property is situated on Tovey Bay and faces southwest. The backyard is very steeply sloped – within the 22-meter setback from the natural boundary/sea level to the back façade of the house, the land rises 10 meters – a 45% incline.

Historically, a series of terraces with retaining walls made from rock have been created by previous owners. An adjustment to the required setback to the Natural Boundary from 15 m to 10.35 m was approved by the municipality in 2019, which allowed the construction of another retaining stone wall.

There is a cover of mostly Douglas fir with interspersed Arbutus and Red Cedar trees, and limited shrub undergrowth. The homeowners have been very involved in controlling the infestation of English Ivy and Broom and are continuing to plant native plants to stabilize the bank.

A municipal stormwater channel is running along the length of the property on its West side, for which there is an SRW of 1.51m. As per View Royal Planning staff, the Right-of-way does not contain language that prohibits the siting of a building or structure on the surface or within the SRW (this information will relate to Variance requests F and G).

Originally, the SRW related to an overland drainage ditch, however, the present condition shows an underground concrete drainpipe of about 21" diameter, which is connected to the underground services on Tovey Crescent. A manhole is in place at this connection point. While the municipality has no documentation regarding the installation of these underground pipes, it is to be surmised that this work has been executed by the municipality.

The concrete pipe changes direction away from the SRW, and a public outfall is located in the homeowners' backyard, about 2 meters towards the east, outside of the designated easement area. It surfaces in a retaining stone wall at about 6.7m above sea level; the resulting water masses are contained within an open channel made from stone boulders placed on top of a swimming pool-type membrane and runs along the surface down the slope to the ocean.

This is to emphasize that an uncontrolled municipal outflow is trespassing on the property and has been doing so for decades. The channel takes up about 20 m² of the clients' backyard.

It could not be ascertained when and by whom the outfall was re-directed, or if it was ever contained within the Easement. Several attempts by the municipality to scope the angled underground section of the drainpipe have been unsuccessful.

Water gushing out of this outflow during the increasingly intense weather events has eroded the bank over the past years. The homeowners have just recently substantially and ecologically sensibly reconfigured and reinforced the overland drainage channel for this outflow at a cost of about **\$25,000, -** to them, to ensure the channel is stable, clear of debris, and does not erode the shoreline any further.

Recommendations from Municipal staff had been sought beforehand as to the best method to build such a channel without disturbing the cliff. The large stone boulders needed to withstand the water masses were brought in without the use of machinery. The finished channel flows under the Marine Structure /Deck 3 and discharges into the ocean on the outer edge of the deck.

Neither the legal status of the location of the municipal water outflow nor a compensation from the municipality for the necessary work to secure the slope on the above ground section of the channel have ever been discussed.

See attachments #1 (survey) and #2 (photos)

DEFINITIONS

The Residence

The residence is a modest split-level home. The on-grade portion of the house sits on a crawlspace and includes a great room and kitchen facing the ocean, along with the principal bedroom, where a small closet leads to a 3-piece ensuite. Two average-sized guest bedrooms, a media room, and a guest bathroom are situated on the upper level of the two-storey portion of the house, which fronts Tovey Crescent. A laundry facility and storage are located underneath in the 7' high basement. The basement is prone to flooding due to insufficient water management on the sloped property with unfavourable loamy soil condition.

The proposed addition would see the Gross Floor Area increased from 241m² to 335m².

Elements of proposed Renovation and Addition:

- New attached 2 car garage
- Updated Principal suite
 - Addition of 4-piece bathroom
 - Renovation of existing bathroom turned into walk-through closet
- Underpinning of 2-level part of house to raise basement from 7' to 9' height
 - New 3-piece bathroom, laundry, family room, guest bedroom
- Renovation upper level
 - Guest bedroom and media room to remain
 - New home office
 - Work-out space and rooftop deck located in the transition to the garage

See attachment #9 (project data)

Accessory Structures - Buildings

A - Carport – to be demolished

The unattached carport is located in the front yard. It does not add to the curb appeal of the home. The clients hope to be able to recycle the materials it's made of.

Area: 21.9 m² – existing

Area: 0.00 m² – new

See attachment #2 (photos)

B - Mobile Accessory Building

The before-mentioned patio with the pavers was the base for a rickety shed that has long since been replaced by a new outbuilding in the design of a Caboose. This Mobile Accessory Building sits in the exact same location as the demolished shed. While it sits on the SRW, it can be moved out of the way, should Municipal work on the underground drainage channel need to commence.

By maintaining the same location, size, and height of the old shed, the Mobile Accessory Building has no negative impact on the South-Westerly neighbour. Due to the difference in grade between the two properties, its roofline would be more visible to that neighbour than in its current position, if this structure were to be moved within the required setback. It would also move in front of the principal bedroom window and substantially minimize the quiet enjoyment of this space, as it would block natural light and much of the view of Tovey Bay.

The Mobile Accessory Building is currently being used as a home office but will be reverted to a shed once the proposed addition with a dedicated home office is completed.

Area: 13.75 m² – to remain as is

*Regarding the Mobile Accessory building, we are applying for a Variance to **Zoning Bylaw no. 900, 2014, Section 4.6.2b** by reducing the setback of an accessory structure from 1.2m to 0.68m (Request f), and for a **Variance to Zoning Bylaw no. 900, 2014, Section 4.6.3** by reducing the distance between an accessory structure and the main residence from 2.4m to 1.54m (Request g)*

See attachment #2 (Photos) and 11 (Letters of Support)

C - Toolshed

A small toolshed has historically been situated along the south-westerly fence line, sitting right on the SRW. It holds garden tools.

Area: 0.8 m² – to remain as is

Municipal staff considers this structure 'legal non-conforming'.

D - Bicycle storage

Along the south-easterly property line, a lockable bicycle storage shed has been installed. It holds 4 bikes and sits right against the fence line with zero setback, where it creates a privacy barrier between the eating area of the homeowners' deck and the downstairs bedroom/patio area of the neighbours, minimizing visual contact and noise transfer.

It has been positioned within a secured section of the backyard (locked gate) in a space that did not require the removal of bushes or trees to accommodate its installation.

The neighbours have no reservations against the location of the structure.

Area: 3.8 m² – to remain as is

*Regarding the Bicycle Storage, we are applying for a **Variance to Zoning Bylaw no. 900, 2014, section 4.6.2b** by reducing the setback of an accessory structure from 1.2m to 0m (Request h), and for a **Variance to Zoning Bylaw no. 900, 2014, section 4.6.3** by reducing the distance of an accessory structure to the main residence from 2.4m to 1.55m (Request i)*

See Attachment #2 (Photos) and 11 (Letters of Support)

Accessory Structures – Decks

To make reasonably good use of the afore-mentioned steep slope (45%) of the backyard, the area has to be terraced, or deck building techniques need to be employed to create level areas that allow the placement of outdoor furniture. To avoid disturbing the ground and moving substantial amounts of substrate to create a level surface at the transition from the living space to the backyard, the homeowners opted for a 2-level deck design. This reasonable approach, however, impacts the calculation for accessory structures negatively.

Along the SRW, a 'historical' path leads from the front door of the residence to the backyard and terminates in a patio area, which is covered in small pavers laid in sand. This patio has been in place and remained untouched by the current owners.

E - Deck 1

The 2-level natural wood deck off the back of the house consists of a covered eating area and a lounge area with small hot tub. A wide walkway and comfortable steps connect those two outdoor living spaces and allow access from the principal bedroom patio door and the great room patio doors.

Area: 70 m² – to remain as is

F - Deck 2 – midlevel deck

Another natural wood deck, just big enough for 2 chairs, so that one can catch a breath when climbing the steep slope from the house down to the water. This deck has been in place when the homeowners bought the property. It went unchanged but was recently equipped with a guardrail.

Based on communication with city staff, this deck is considered grandfathered but needs to be updated with railings complying to BCBC 2024.

Area: 12.6 m² – to remain as is

G - Deck 3 – Marine Structure/ Seawall and Platform

Historically, this structure was originally set on wood pilings, which are now deteriorated. Deck 3 straddles the natural boundary along the water's edge and has been in place for more than 5 decades. A water-lot licence with the DND is in place and has been recently extended to November 30, 2029. DFO has approved the siting in the fall of 2024, and an ecological assessment and an arborist report have been attached to this application.

Area: 55.6 m² – before high tide event in the winter of 2022/2023

Area: 60.2 m² – after re-furbishing in spring 2023

- ➔ Above natural boundary – 33.1 m²
- ➔ Below natural boundary – 27.1 m² Crown Property/DND

Note:

The 4.6 m² increase in size results from straightening-out the front edge overhang of the deck and therefore is on the Crown land portion of the structure.

See attachments #1 to 8

H - Deck 4 – front yard deck

Currently, a small deck faces Tovey Crescent. This deck is to be demolished to make room for the planned addition.

Area: 8 m² – existing

The re-design proposes a rooftop-terrace over inhabitable space in the basement, therefore this area will be accounted for in the gross floor area of the main residence, not in the calculation for Accessory Structures.

Area: 0.00 m² - new

REFURBISHMENT OF THE MARINE STRUCTURE/ DECK 3

As a result of a major king tide event on December 27th, 2022, combined with forceful winds and torrential rains resulting from additional atmospheric river events throughout the winter of 2022/2023, the entire deck structure was lifted off its original anchor points (cement Sono tube and cinder block posts, and wood pilings) and the materials underneath were eroded. The original deck became a safety hazard to both family members and the trespassing public (Tovey Bay has public beach access).

Time was of the essence. Weather permitting, refurbishment of the structure commenced in early 2023, right at the end of the storm season. The damage was too great for the structure to just be spot repaired. Parts of the under-structure and the decking had to be removed. Re-usable material was identified and set aside to be recycled.

Throughout this process, a staff member from the DND sailed regularly into Tovey Bay to watch the process, take notes, and talk with the homeowners. Between the two parties, the understanding was that this work was considered a renovation.

Municipal staff deems the work done to be new construction, hence the requirement for a Development Permit with Variances.

Construction

The old wood pilings remained in place and new concrete posts were installed behind them to follow the shape of the original structure.

There were three changes made that deviated from the original footprint of the deck.

1. Historically, the deck had two levels. To keep the surface clear of water in the event of another extreme tide, the lower deck (about 30% of the area) was lifted by about 0.20 meters (8") to be level with the higher deck.
2. The 4 steps down to the beach were turned 90 degrees to make the steps less vulnerable to a forceful incoming tide.
3. The previously angled front edge of the deck overhang was straightened out, which results in a footprint increase of about 4.6 m² over the historical structure. This increase is on Crown land, not Municipal land.

No machinery was used throughout the process; all work was done by hand during favorable low tides and completed from the landward side. The beach area outside the project footprint except for the 1 m² pad for the new stair landing was not disturbed. This refurbishment provides a structure with an expected life span of 50 years, with minor manual maintenance and repairs required during that time.

See attachment #2 (photos)

Ecological Assessment

As per request by municipal staff, a report by Aqua-Tex Scientific Consulting about the impact on the environment was prepared for submission to DND and DFO. Aqua-Tex is familiar with the property as their biologists were involved in assessments in previous years.

As per the conclusion of the consultant, "there are no conflicts with aquatic species at risk or critical habitat for species at risk. Since this project is replacing a pre-existing structure, "new" impacts to the fish habitat associated with the replacement works are minimal.

There have been some new impacts to fish habitat with the installation of a new concrete pad on the beach to support the stairs and new concrete footings. The new concrete work has permanently buried a small area (<5 m² in size) of beach habitat in the upper inter tidal area. The small increase in the footprint of the deck (4.6 m²) shades out some of the beach area, but this may be beneficial to some species - *i.e.*, shelter for fish, or shading forage fish spawning areas in the absence of overhanging vegetation."

See attachment #5

Government agencies

DND and DFO have both provided their approvals of this project. DND has recently renewed the foreshore lease until Nov 30, 2029.

The homeowners are retroactively seeking council's approval of a Development Permit, as municipal staff is requiring a Building Permit for the work done to the foreshore deck.

See attachments #6 (DND) and #7 (DFO)

Other Consultants

Structural

Wade Griffin from Skyline Engineering assessed at the structure and prepared the necessary structural engineering drawings.

See attachment #3

Geotechnical

A geotechnical analysis has been provided by Ryzuk Geotechnical Engineering consultants.

See attachment #4

Arborist Report

TalMack Urban Forestry has provided a tree assessment and the post construction report.

See attachment #8

Other

The owners obtained Letters of Support from immediate neighbours on either side of the property regarding the siting of the Mobile Accessory Structure and the Bike Storage, as well as a letter of general support from the neighbour across the street.

See attachment # 11

Regarding the Marine Structure /Deck 3, we are applying for the following:

(a) Development Permit for Natural Watercourse and Shoreline Areas Development Permit Area

(b) Variance to Zoning Bylaw No. 900, 2014, Section 3.8.2 to reduce the minimum setback of structure within 15 meters from the present natural boundary of the sea from 15m to 0m

(c) Variance to Zoning Bylaw no. 900, 2014, Section 4.6.2b to reduce the setback of an accessory structure from 1.2m to 0.63m (southwest side)

(d) Variance to Zoning Bylaw no. 900, 2014, Section 4.6.2b to reduce the setback of an accessory structure from 1.2m to 0.8m (southeast side)

Lastly, for the purpose of the application of a Building Permit for the residence as outlined above, we are applying for the following:

(e) Variance to Zoning Bylaw no.900, 2014, Section 4.6.6 by increasing the maximum permitted areas of Accessory Structures, increasing the allowed maximum from 60 m² to 134.05 m²

While this increase might sound substantial, I would like to emphasize that the homeowners are not requesting a variance to add new Accessory Structures but rather are asking for the legalisation of the ones that have been on the property for decades. Their personal effort and financial expense regarding the maintenance of the trespassing public water outflow should also be acknowledged.

Accessory Structure area overrun aside, the proposed addition will stay within the limits of the zoning bylaw in regard to lot coverage, backyard lot coverage, and floor area ratio. The amount of accessory structure coverage will in fact decrease with the proposed design.

See attachment #9 (Calculations)

The homeowners are focussing their enjoyment of this property on quality outdoor living spaces rather than on the creation of a multi-family structure that would not befit the character of the neighbourhood.

We sincerely hope that council will decide judiciously on the above requests.

Thank you to the Mayor, Council, and municipal staff for your attention in this matter.

Best regards,

Ines Hanl

THE SKY IS THE LIMIT DESIGN

info@theskyisthelimitdesign.com

on behalf of Jo-Anne and John Wilson, 49 Tovey Crescent, View Royal

Attachments

- 1 Survey - existing and proposed, original easement document
- 2 Photos
- 3 Structural Engineer
- 4 Geotechnical Engineer
- 5 Ecological Assessment
- 6 DND - Foreshore Lease
- 7 DFO - Communication
- 8 Arborist Report
- 9 Stormwater
- 10 Project Data
- 11 Letters of Support