

October 7, 2014

Address:
973 WOLLASTON ST

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Date:
Oct 7, 2014

DELIVERED BY HAND

Project:

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DVP00031

Mayor and Council
Township of Esquimalt
1229 Esquimalt Road
Esquimalt, B.C. V9A 3P1

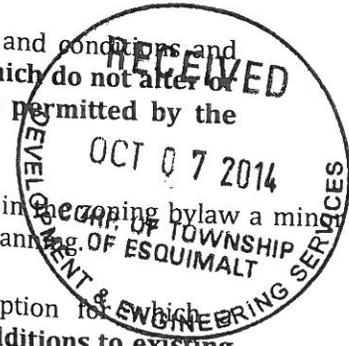
Type / Subject:
DEVELOPMENT VARIANCE PERMIT -
Development Variance Permit - 973 Wollaston Street

We are reapplying today for an application which began in August 2012 and appeared before you in July 2013 resulting from my construction of an extension to a deck at the rear of my house, without first obtaining a building permit. When the building inspector investigated, it was determined that the extended deck contravened a rear yard setback approved in a development permit (DP 65). The extension also increased site coverage by 1% from 22 to 23% (permitted to 30%). Because of this I was advised I needed a development variance permit then I was advised a development variance for me was not correct and I needed a development permit.

Council denied the original application, but approved my revising the application and returning to Council for approval.

I have spent the past year attempting to sort this out with the planning department because the encroachment was a minor variation and under clause 4 of the original development permit

"The lands shall be developed in accordance with the terms and conditions and provisions of this Permit, **provided that minor variations, which do not alter or affect the overall building and landscape design may be permitted by the Director of Development Services**".



In addition in the OCP and in development permit conditions set out in the accompanying bylaw a minor variation in a development permit can be approved by the Director of Planning & Engineering Services.

For all five Development Permit Areas, there is an exception to which development permit is not required, and that is for **"minor additions to existing dwellings where the floor area of the addition does not exceed 10 percent of the ground floor area of the dwelling"**.

The Director of Development Services' position is that he does not have the authority to approve a change and only Council can give approval.

"Section 922(8) of the Local Government Act states: "As a restriction on section 176(1)(e) of this Act and section 154 of the Community Charter, a local government may not delegate the issuance of a development variance permit". Therefore, you must reapply for a development variance permit and Council must render a decision. By law, I cannot issue a development variance permit.

We have not asked him to approve a change, and take no issue with Council having the final authority to approve, but because it is a minor variance, we believe the Director of Development Services, in keeping with the above references, **could report this variation as being minor, acceptable and Council could be requested to approve a variation.**

The Senior Planner in 2013 told the Advisory Planning Commission, "that when Comprehensive Development zones are approved, the zoning is written to accommodate a specific scheme, there is no avenue to deal with variances; and **therefore there is no "wobble space"**.

He also says that, "An underlying tenet of Comprehensive Development District [CD] zoning...has been that once development is achieved consistent with the approved zoning and Development Permit the site offers no further development potential".

And further, "Council was assured at the time of adoption of the zoning that the proposed plan represented the maximum development that would occur on the site", and "**Staff will not support an application** for rezoning of the property as, similar to a DVP application, **the integrity of the CD process would be brought into question**".

And again, "As there is an expectation from community and Council, at the time of rezoning, that the proposal will result in the site being "built out" there is no expectation of having to deal with variances in the future".

In reality, all CD's move into the Zoning Bylaw as one type of zoning along with residential zones, commercial zones, light industrial zones and so forth. As such they are subject to amendment and variation as any other zone in the bylaw. They have different constraints as noted above, but subject to Council approval, they can be amended, even if staff takes the position that they will not support an application.

In this application we are seeking Council approval for the following changes to the development permit and to the zoning bylaw.

To Zoning Bylaw Section 67.52 (7)(a)(iii) Rear Setback:

No Principal Building shall be located within 7.9 metres of any Rear Lot Line, to add the words "**with the exception of the deck for a length of 5.28 metres to be within 5.65 metres;**

And an amendment to Section 67.52(5) Lot Coverage:

Increasing the limit to **23% from 22%** to accommodate the extension to the deck and the associated stairs.

Attached is a development application as advised by the Director of Development Services. All supporting documentation is already on file with the planning department.

We would appreciate your early consideration of this application, which has taken over two years from its initiation.

Sincerely

A handwritten signature in black ink, appearing to read 'Roman Olariu', written in a cursive style.

Roman Olariu