

REQUEST FOR DECISION

TO: Council **MEETING DATE:** February 19, 2025
FROM: Andrew Allen, Direct of Planning and Development
SUBJECT: Development Variance Permit for 4686 Sunshine Coast Highway
FILE NO: 3090-2024-14

RECOMMENDATION

That Development Variance Permit 2024-14 be approved subject to the landscaping plan attached to the permit.

PURPOSE

To consider approving a variance of 0.4 m on building height for a single-detached home under construction in Davis Bay.

SUMMARY

A stop work order was issued by the Building Department in May 2024 due to the discovery of the over-height issue, and subsequently a Development Variance Permit application (DVP) was requested to allow a height increase from 8.5 m to 8.9 m for the dwelling.

The owners of the property applied for a development variance permit to increase the allowable height for a single-detached dwelling that is under construction on the property. The building permit was approved with the condition that it complies with the height definition within Zoning Bylaw 580. During construction the plans were not specifically adhered to and both the sub-floor above the foundation and first storey are higher than the approved plans.

Efforts were made to reduce the second and third floors; however, the dwelling as constructed does not meet the 8.5 m height requirement with the zoning bylaw and is 0.4 m over height. A development variance permit issued by Council is one of the options to consider.

The application has been considered by Council in September and December. As a follow up on the Council resolution the applicant has met with members of the Davis Bay, Wilson Creek and Selma Park Community Association and a meeting was held with the applicant, Association members, staff, Mayor Henderson and Councillor Shepherd.

OPTIONS

1. Approve the application as proposed with the 0.4 m height increase with an attached landscaping plan.

2. Deny the application
 - a. Require compliance with the Zoning Bylaw.
 - b. Third storey of building would be cut down by ~40 cm converting space to non-habitable attic.
 - c. Removal of all bedrooms, washrooms, living areas etc., as the BC Building Code would not permit a liveable area in the reduced floor height.

DISCUSSION

Since this application was initially reviewed by Council, staff have implemented a new procedure to reduce the chances of these types of situations occurring, particularly where an applicant is designing to a maximum limit. A stop work order can be issued much sooner where a survey requirement has been imposed by the District to ensure construction does not proceed until zoning compliance is confirmed. This new procedure may slow construction development in some cases, and incur complaints from builders, but will likely reduce the possibility of non-compliant structures.

Staff are also considering an amendment to the definition of height that might provide additional measuring options and steps for the architect or designer to complete both in the application stage as well as through the construction stage. It is anticipated that an exemption for the flood construction level will be maintained. It is important to plan for the need to mitigate flood concerns from ocean level.

The applicant met with Wilson Creek Davis Bay Selma Park Community Association (The Association) for a preliminary meeting. Another meeting was held in late January at the District office with the applicant, Association members, Mayor Henderson, Councillor Shepherd and staff. Details relating to application approval and inspection process to date were discussed, as were how the District measures the grade and height and how this happened.

The Association is not seeking a tangible amenity contribution, nor the ability to make a decision on the application. However, the Association wanted clarity on the process and assurance that this application is not a precedence and is concerned about the future height of buildings along the highway between Bay Road and Whitaker Road. The Association also requests clarity on how flood construction level is determined.

Staff can potentially prepare an amendment to the Zoning Bylaw respecting the definition of height and clarity on how to measure height. Staff will also continue to participate in the Coastal Flooding study and determine if 2 m above sea level is an appropriate flood construction level and will report to Council on this in due time.

There is work to be done to clarify regulations and process and this work is larger than a singular application. The construction of the dwelling has been halted since May 2024, an application for site-specific allowance has been made, discussions have been held with the community association, staff and elected members of Council and it is understood this is a unique scenario. Staff have comfort to recommend issuance of a development variance permit along with the landscaping plan attached to the permit and proposed by the applicant.

Legislative Context

Local governments have the authority to consider applications by owners to vary provisions of a bylaw as outlined in Division 9 (Development Variance Permits) of the *Local Government Act*. A local government may vary land use regulations in accordance with applicable guidelines however, the level of density or use of the land may not be altered.

Analysis

Option 1

Approval of the Development Variance Permit (DVP) as proposed. This option will require the implementation of a landscape plan as a condition of the permit. A security payment to cover the cost of the fencing and planting would be taken as part of the DVP to ensure the work is completed.

Option 2

Denial of the DVP application. This would entail the owner having to reduce the height of the building to comply with the Zoning Bylaw height regulation. They would be able to reduce the height of the third storey. The third storey is currently ~2.39 m and reducing it by 0.4 m would put it below the 2.1 m minimum ceiling height required for a variety of habitable spaces. This would result in the removal of the three washrooms, four bedrooms, living room, and other habitable areas.

They would need to convert that storey into an attic space, and it is unlikely that there would be any areas that could meet the minimum ceiling height and minimum area requirements for habitable space. Table 9.5.3.1 (Room Ceiling Heights) in Part 9 Division B of the BC Building Code outlines the relevant requirements. The 8.5 m height is generally intended to allow for two full storeys with design flexibility rather than three storeys.

Landscape Plan

The applicant has prepared a landscape plan as an attempt to offset the perceived impacts of the increased height. The landscape plan proposes a fence around the entire property as well as planting trees and shrubs. Security would be required for the full cost of the fencing and planting as a condition of issuance of the DVP, if approved.

The security would ensure the implementation of the landscape plan with at least a 50% portion kept for three years after all planting is completed to ensure sufficient survival of all plantings.

Public Comments

Notification of the development variance permit was conducted by mailout in advance of the two previous Council considerations. Three new comments have been received from the most recent mail out (Attachment 2). All previous comments have been received by Council at earlier meetings and can be found at Attachment 3.

POLICY AND BYLAW IMPLICATIONS

The proposed development is generally consistent with OCP and Zoning Bylaws, with the exception of the minor increase in height. A variance would be required to bring the development into full compliance with the Zoning Bylaw.

SUSTAINABILITY PLAN IMPLICATIONS

None.

STRATEGIC PLAN IMPLICATIONS

None.

FINANCIAL IMPLICATIONS

None.

COMMUNICATIONS

Owners and occupiers within 100 m of the subject property were notified of the intention for Council to consider Development Variance Permit 2024-14 as required under Section 499 of the *Local Government Act* and Planning Procedures Bylaw No. 566, 2018.

Respectfully submitted,

Andrew Allen, MCIP, RPP

Director of Planning and Development

Attachments:

- 1 - Development Variance Permit 2024-14
- 2 - New Public Comments
- 3 - Previous Public Comments