



Committee Report

Date of Report: September 23, 2024
Date & Type of Meeting: October 16, 2024 – Rural Affairs Committee
Author: Sadie Chezenko, Planner 1
Subject: DEVELOPMENT VARIANCE PERMIT
File: V2411A - May
Electoral Area/Municipality A

SECTION 1: EXECUTIVE SUMMARY

The purpose of this report is for the Rural Affairs Committee and Regional Board to consider a Development Variance Permit (DVP) in Electoral Area ‘A’. The applicant is seeking this variance to authorize the construction of a boathouse on their property near Kootenay Lake. The boathouse is proposed to be 0.2 meters from the rear lot line whereas the bylaw requires that all buildings be setback a minimum of 2.5 meters.

Staff recommend that the Board approve this DVP.

SECTION 2: BACKGROUND/ANALYSIS

GENERAL INFORMATION
Property Owner(s): Bevan and Rhonda May
Property Location: 10377 Highway 3A, Sanca, Electoral Area ‘A’
Legal Description: LOT A DISTRICT LOT 4595 KOOTENAY DISTRICT PLAN EPP129647 (PID: 032-204-451)
Property Size: 1.24 hectares (3.06 acres)
Current Zoning: Country Residential (R2)
Current Official Community Plan Designation: Country Residential (RC)

SURROUNDING LAND USES
North: Resource Area (RA)
East: Resource Area (RA)
South: Resource Area (RA)
West: Resource Area (RA)

Background Information and Development Proposal

The subject property is located in Electoral Area ‘A’ on the west side of Highway 3A between Sanca and Kuskanook. This property is zoned Country Residential (R2) under Electoral Area ‘A’ Comprehensive Land Use Bylaw No. 2315, 2013. The 1.24 hectare property is presently being used for residential purposes. An accretion was completed in August 2023 which confirmed the location of the natural boundary.

The applicants are requesting to vary Section 16.17 of Electoral Area ‘A’ Comprehensive Land Use Bylaw No. 2315, 2013 in order to reduce the setback at the rear lot line from 2.5m to 0.2m. This variance is being requested to permit the construction of a 57m², single-storey boathouse.

If this DVP is issued, an Environmentally Sensitive Development Permit (EDSP) would need to be issued prior to the issuance of a Building Permit and construction. Boathouses are exempt from both the Floodplain Setbacks and the Flood Construction Levels specified in Floodplain Management Bylaw No. 2080, 2009 provided that they are not used for Habitable Area and the land owner has registered a covenant in favour of the Province and the Regional District of Central Kootenay which states that the deck or boathouse will not be used as a Habitable Area.



Figure 1: Overview Map

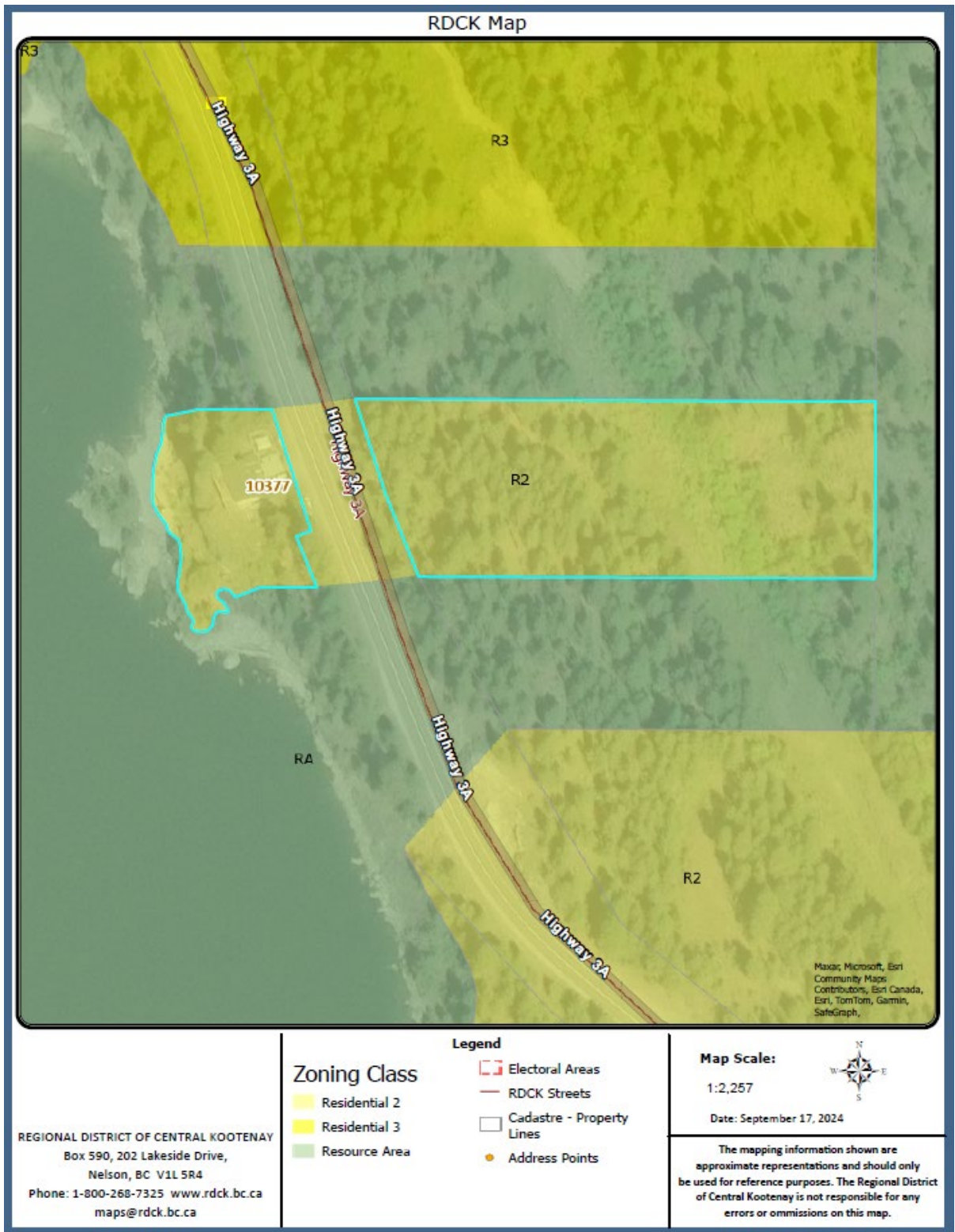


Figure 2: Zoning Map

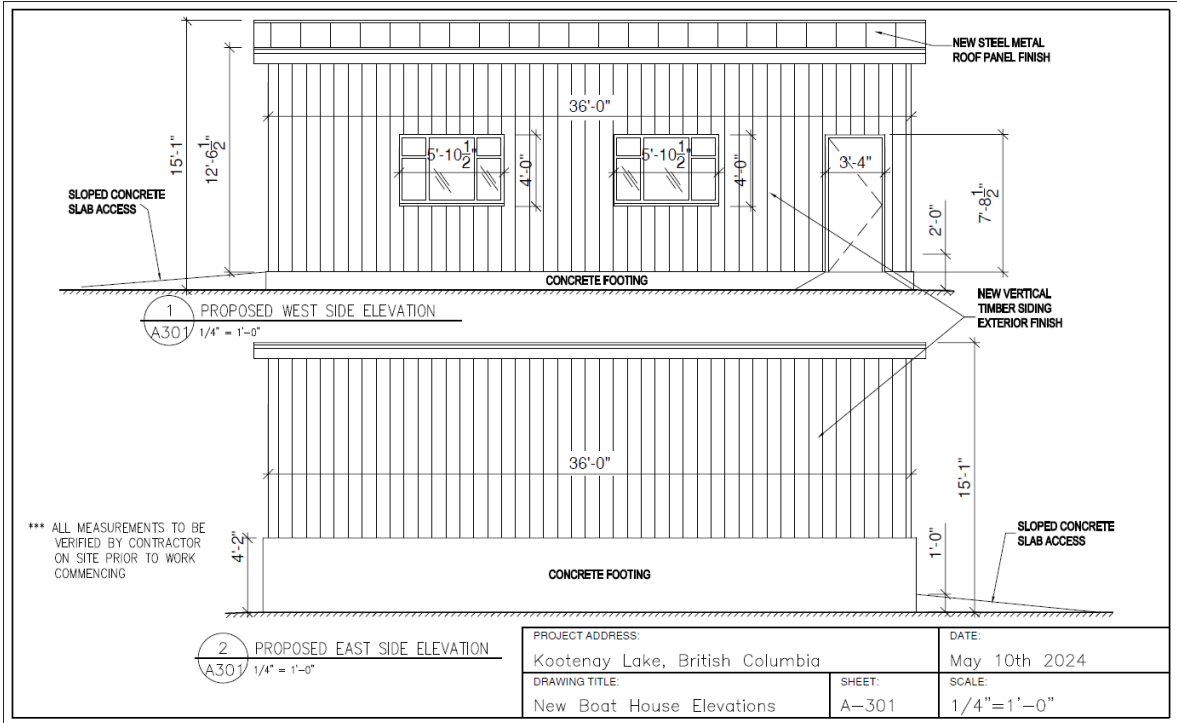


Figure 4: Boathouse Plan (1)

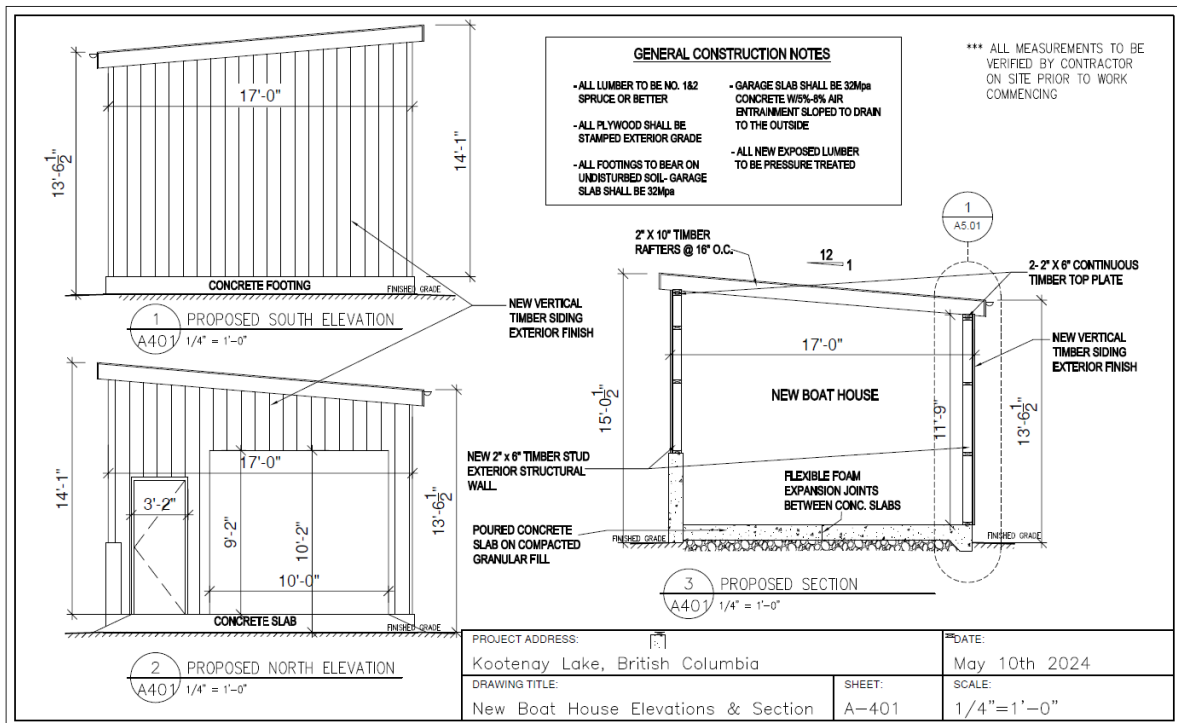


Figure 5: Boathouse Plan (2)

Planning Policy

Relevant General Residential Objectives

1. To minimize conflict between housing and other adjacent non-residential land uses.
2. To encourage residential development that is compatible with neighbouring properties

Relevant Country Residential (RC) Policies

The Regional Board:

1. Directs that the principal use shall be one-family or two-family dwellings.

SECTION 3: DETAILED ANALYSIS

3.1 Financial Considerations – Cost and Resource Allocations:

Included in Financial Plan: Yes No Financial Plan Amendment: Yes No
Debt Bylaw Required: Yes No Public/Gov't Approvals Required: Yes No

The application fee has been paid in full pursuant to the Planning Fees and Procedures Bylaw No. 2457, 2015.

3.2 Legislative Considerations (Applicable Policies and/or Bylaws):

Section 18.17 of Electoral Area 'A' Comprehensive Land Use Bylaw No. 2315, 2013 indicates that no principal or accessory building or structure except a fence may be located within 7.5 metres of a front or exterior side lot line or within 2.5 metres of any other lot line.

Section 498 of the Local Government Act gives authority to vary provisions of a zoning bylaw provided that they do not affect use and density.

3.3 Environmental Considerations

None anticipated.

3.4 Social Considerations:

None anticipated.

3.5 Economic Considerations:

None anticipated.

3.6 Communication Considerations:

The application was referred to internal departments, the Area 'A' Advisory Planning and Heritage Commission, other government agencies and surrounding property owners. No responses were received from the surrounding property owners. The following responses were received from departments, agencies and the APHC:

Archaeology Branch

According to Provincial records, there are no known archaeological sites recorded on the subject property. However, given the lot's waterfront location and its proximity to a previously recorded archaeological site, there is high potential for a previously unidentified archaeological site to exist on the property.

Archaeology Branch Advice

If land-altering activities (e.g., home renovations, property redevelopment, landscaping, service installation) are planned for the subject property, a Provincial heritage permit is not required prior to commencement of those activities.

However, a Provincial heritage permit will be required if archaeological materials are exposed and/or impacted during land-altering activities. Unpermitted damage or alteration of a protected archaeological site is a contravention of the Heritage Conservation Act and requires that land-altering activities be halted until the contravention has been investigated and permit requirements have been established. This can result in significant project delays.

Therefore, the Archaeology Branch strongly recommends engaging an eligible consulting archaeologist prior to any land-altering activities. The archaeologist will review the proposed activities, verify archaeological records, and possibly conduct a walk-over and/or an archaeological impact assessment (AIA) of the project area to determine whether the proposed activities are likely to damage or alter any previously unidentified archaeological sites.

Please notify all individuals involved in land-altering activities (e.g., owners, developers, equipment operators) that if archaeological material is encountered during development, they must stop all activities immediately and contact the Archaeology Branch for direction at 250-953-3334.

If there are no plans for land altering activities on the property, no action is required at this time.

Rationale and Supplemental Information

- *There is high potential for previously unidentified archaeological deposits to exist on the property.*
- *Archaeological sites are protected under the Heritage Conservation Act and must not be damaged or altered without a Provincial heritage permit issued by the Archaeology Branch. This protection applies even when archaeological sites are previously unidentified or disturbed.*
- *If a permit is required, be advised that the permit application and issuance process takes approximately 20 to 40 weeks; the permit application process includes referral to First Nations and subsequent engagement.*
- *The Archaeology Branch must consider numerous factors (e.g., proposed activities and potential impacts to the archaeological site[s]) when determining whether to issue a permit and under what terms and conditions.*
- *The Archaeology Branch has the authority to require a person to obtain an archaeological impact assessment, at the person's expense, in certain circumstances, as set out in the Heritage Conservation Act.*
- *Occupying an existing dwelling or building without any land alteration does not require a Provincial heritage permit.*

How to Find an Eligible Consulting Archaeologist

An eligible consulting archaeologist is one who can hold a Provincial heritage permit to conduct archaeological studies. To verify an archaeologist's eligibility, ask an archaeologist if he or she can hold a permit in your area, or contact the Archaeology Branch (250-953-3334) to verify an archaeologist's eligibility. Consulting archaeologists are listed on the BC Association of Professional Archaeologists website (www.bcapa.ca) and in local directories. Please note, the Archaeology Branch cannot provide specific recommendations for consultants or cost estimates for archaeological assessments. Please contact an eligible consulting archaeologist to obtain a quote.

Questions?

For questions about the archaeological permitting and assessment process, please contact the Archaeology Branch at 250-953-3334 or archaeology@gov.bc.ca. For more general information, visit the Archaeology Branch website at www.gov.bc.ca/archaeology.

Area 'A' Advisory Planning and Heritage Commission

That the Area A Advisory Planning Commission SUPPORT the Development Variance Permit Application to Bevan and Rhonda May for the property located 10377 Highway 3A, Sanca, and legally described as LOT A DISTRICT LOT 4595 KOOTENAY DISTRICT PLAN EPP129647

BC Hydro

This area is serviced by Fortis not BC Hydro. BC Hydro does not have any plant in the area so therefore no objection.

Fortis BC

Land Rights Comments

- *There are no immediate concerns or requests for additional land rights based on the plans provided.*

Operational & Design Comments

- *There are FortisBC Electric ("FBC(E)") primary distribution and transmission facilities bisecting the subject property. The existing FBC(E) facilities do not appear to be affected by the proposed subdivision.*
- *For any changes to the existing service, the applicant must contact an FBC(E) designer at 1-866-4FORTIS (1-866-436-7847) for more details regarding design, servicing solutions, and land right requirements.*

Ministry of Water, Land and Resource Stewardship (1)

The proposed boathouse will be on an environmentally sensitive riparian area, and we would like the opportunity to provide a more detailed review when the Environmentally Sensitive Development Permit is applied for. At that time, we would hope for more detailed design information to be provided. If you have any questions, please direct them to Steven.Arndt@gov.bc.ca.

Ministry of Water, Land and Resource Stewardship (2)

Thank you for the opportunity to review and comment on this referral. The site plan indicated an accretion survey boundary. It is unclear if the accretion survey has been approved and registered with the Land Title Office. The accretion survey should be registered prior to the approval of any development permits on the subject parcel. Additionally, the site plan indicated there will be boat rails on the foreshore which is untitled Crown Land. If the accretion survey is not approved and registered, the boathouse would also be on Crown Land. As of August 13, 2024, no application has been submitted to or received by FrontCounter BC and the Ministry of WLRS. Authorization is required prior to any construction on Crown Land. Any work, improvements or other forms of modification on Crown Land are prohibited and subject to Compliance and Enforcement action. There is currently no tenure on the foreshore of the subject property. If the boat rails, or any other improvements, are already in place, they are in trespass.

Staff note: The accretion has been completed and the applicant has noted that a schedule 11 application will address any concerns related to work around the water body for the marine rail system installation.

Ministry of Water, Land and Resource Stewardship (3)

Permitting Transformation Division (Water Authorizations) staff of the Ministry of Water, Land and Resource Stewardship (WLRS) have reviewed information provided in RDCK Referral V2411A and provide the following comments at this time.

1. It is understood that a 2023 survey (i.e., EPP129647) updated the location of the Natural Boundary of Kootenay Lake as shown on the 1961 survey plan (i.e., NEP4523) and the surveyed Natural Boundary is coincident with the rear property line. From a Water Sustainability Act (WSA) perspective, the boathouse must be placed on private land and above the Natural Boundary of Kootenay Lake and, should the requested variance (i.e., 0.2 metres from the rear property boundary) be approved, the proposed boathouse would be sited in compliance with the WSA. Given the short distance from the boathouse to the rear property line, it is recommended a BC Land Survey (BCLS) professional be retained to mark the rear property boundary to ensure correct siting.

2. A marine rail is proposed to be constructed between the boathouse and lake. A portion of the marine rail is located below the Natural Boundary of Kootenay Lake and, as such, a Change Approval application in accordance with section 11 of the WSA is required. The proponent should place an application with FrontCounterBC as soon as possible as Water Authorizations in the Kootenay Boundary Region has a significant backlog and processing of the application may take considerable time.

3. A portion of the marine rail is located on Crown Land and placement of the marine rail on Crown Land requires an Authorization in accordance with Land Act. It is noted that a "general permission" may be granted for ocean, lake and river docks located on aquatic Crown land. As long as a person constructs and uses their dock in accordance with the terms and conditions contained in the General Permission (https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/natural-resource-use/land-water-use/crown-land/general_permission_checklist_and_interpretive_guide.pdf) the dock is deemed to be authorized and Crown land application is not required. The applicant should review the above noted information to determine if the proposed marine rail is considered a dock and, if so, it meets the general permission requirements. If the marine rail is considered a dock, but the general permission requirements are not met then an application for a Specific Permission (or possibly a lease) will be required to be submitted to the Authorizing Agency before the dock can be authorized. If the marine rail is not considered a dock, then an application for Crown Tenure for placement of the marine rail would be required. (Note the above is provided for information purposes only and Water Stewardship staff are not familiar with details of the Land Act. It is the applicant's responsibility to ensure proposed works meet all regulatory requirements and it is recommended the applicant explore all regulatory requirements, including the provincial Land Act, to further inform the proposal.) Should you wish to discuss further, please contact Rod Shead, Licensed Authorizations Officer, WLRS at 778-463-5601.

Ministry of Transportation and Infrastructure

Thank you for the opportunity to comment on this variance. MoTI has no concerns with proposed setback revision on the lake side of the property. The property must still adhere to MoTI's 4.5m setback where they front MoTI right of way.

RDCK Building Department

1- The proposed building location could require a Geotechnical Engineer

2- Accessory buildings greater than 55 sqm in size require a frost protected foundation unless the entire building location is on solid bedrock. A part 4 engineered design for frost protection measures can also be provided if the building is over 55sqm and not on solid bedrock

3- Survey required

RDCK Emergency Management

No concerns from the Emergency Management point of view.

3.7 Staffing/Departmental Workplace Considerations:

Should the Board approve the requested variance, staff would issue the Permit and register a Notice of Permit on the property's Title. An Environmentally Sensitive Development Permit and Building Permit would then be required prior to constructing the accessory structure. Single-storey boathouses are exempt from both the Floodplain Setbacks and the Flood Construction Levels specified in Floodplain Management Bylaw No. 2080, 2009 provided that they are not used for Habitable Area and the land owner has registered a covenant in favour of the Province and the Regional District of Central Kootenay which states that the deck or boathouse will not be used as a Habitable Area.

3.8 Board Strategic Plan/Priorities Considerations:

Not applicable.

SECTION 4: OPTIONS & PROS / CONS

Planning Discussion

Planning staff support the issuance of this DVP since:

- The site's topography constrains other possible sites for a boathouse
- The proposed site is a previously disturbed area without vegetation thereby ensuring minimal environmental impact
- There has been no opposition or feedback from surrounding landowners in response to the notice of proposal sign posted on the subject property or the notice of application that was sent by mail.
- The form and character of the surrounding residential area will not be impacted by the request to reduce the setback
- The proposal is consistent with all other applicable zoning regulations in Electoral Area 'A' Comprehensive Land Use Bylaw No. 2315, 2013

Based on the above, staff recommend that the Board approve the issuance of the Development Variance Permit Application.

Option 1

That the Board APPROVE the issuance of Development Variance Permit V2411A to Bevan and Rhonda May for the property located at 10377 Highway 3A and legally described as LOT A DISTRICT LOT 4595 KOOTENAY DISTRICT PLAN EPP129647 (PID: 032-204-451) to vary Section 18.17 of Electoral Area 'A' Comprehensive Land Use Bylaw No. 2315, 2013 in order to permit a 0.2 metre setback from the western interior lot line whereas the bylaw requires a 2.5 metre setback from an interior lot line.

Option 2

That the Board NOT APPROVE the issuance of Development Variance Permit V2411A to Bevan and Rhonda May for the property located at 10377 Highway 3A and legally described as LOT A DISTRICT LOT 4595 KOOTENAY DISTRICT PLAN EPP129647 (PID: 032-204-451) to vary Section 18.17 of Electoral Area 'A' Comprehensive Land Use Bylaw No. 2315, 2013 in order to permit a 0.2 metre setback from the western interior lot line whereas the bylaw requires a 2.5 metre setback from an interior lot line.

SECTION 5: RECOMMENDATIONS

That the Board APPROVE the issuance of Development Variance Permit V2411A to Bevan and Rhonda May for the property located at 10377 Highway 3A and legally described as LOT A DISTRICT LOT 4595 KOOTENAY DISTRICT PLAN EPP129647 (PID: 032-204-451) to vary Section 18.17 of Electoral Area 'A' Comprehensive Land Use Bylaw No. 2315, 2013 in order to permit a 0.2 metre setback from the western interior lot line whereas the bylaw requires a 2.5 metre setback from an interior lot line.

Respectfully submitted,



Sadie Chezenko, Planner 1

CONCURRENCE

Planning Manager – Nelson Wight **Digitally Approved**

General Manager Development & Sustainability – Sangita Sudan **Digitally approved**

Chief Administrative Officer – Stuart Horn **Digitally Approved**

ATTACHMENTS:

Attachment A – Development Variance Permit

Attachment B – Excerpt from *Electoral Area 'A' Comprehensive Land Use Bylaw No. 2315, 2013*



Development Variance Permit

V2411A (May)

Date: September 16, 2024

Issued pursuant to Section 498 of the *Local Government Act*

TO: Bevan and Rhonda May

ADMINISTRATION

1. This Development Variance Permit (DVP) is issued subject to compliance with all of the bylaws of the Regional District of Central Kootenay (RDCK) applicable thereto, except as specifically varied or supplemented by this Permit.
2. The land described shall be developed strictly in accordance with the terms and conditions and provisions of this DVP, and any plans and specifications attached to this Permit that shall form a part thereof.
3. This DVP is not a Building Permit.

APPLICABILITY

4. This DVP applies to and only to those lands within the RDCK described below, and any and all buildings, structures and other development thereon, substantially in accordance with Schedules '1' and '2':

Address: 10377 Highway 3A, Sanca, Electoral Area 'A'

Legal: LOT A DISTRICT LOT 4595 KOOTENAY DISTRICT PLAN EPP129647 (PID: 032-204-451)

CONDITIONS

5. Development Variance

Electoral Area 'A' Comprehensive Land Use Bylaw No. 2315, 2013, Section 18.17 is varied as follows:

From:

Unless otherwise stated, no principal or accessory building or structure except a fence may be located within 7.5 metres of a front or exterior side lot line or within 2.5 metres of any other lot line.

To:

Unless otherwise stated, no principal or accessory building or structure except a fence may be located within 7.5 metres of a front or exterior side lot line or within 2.5 metres of any other lot line except the rear lot line which is reduced to 0.2 meters to permit a boathouse

As shown on Schedule '1', and '2'.

6. Schedule

If the holder of the DVP does not substantially start any construction or does not register the subdivision with respect to which the permit was issued within two years after the date it is issued, the permit lapses.

7. Other

Authorized resolution ---/24 passed by the RDCK Board on the 17th day of October, 2024.

The Corporate Seal of
THE REGIONAL DISTRICT OF CENTRAL KOOTENAY
was hereunto affixed in the presence of:

Aimee Watson, Board Chair

Mike Morrison, Corporate Officer