

Rhiannon Chippett

To: Jim Sawatsky
Subject: RE: Variance Proposal of Lot 7 6324 Laurier Ave Wardner BC

Hello Rhiannon

I plan to be speaking in regards to my application and I wonder if my architect may say a few words as well as part of my delegation? His name is Alvin Fritz. He is also writing up a letter for me to present to you tomorrow for the same meeting. I hope that it is not too late at that time.

I will have pictures and if I can get it ready, as short video (or my architect will have the video) showing a true to life rendering of the deck and its relation to the community and neighbors. I will be speaking on the letter titled Parcel Coverage Variance to the point of summarizing it for those who have not read it as well as giving a broader personal statement of our issues and wishes for the variance to construct a deck to the rear of our house over the covenant area and set support pilings in the covenant area. I and my architect (if allowed) will be attending via zoom.

If you have any questions or need clarification (or I missed something) . please feel free to contact me via email or phone

Thank you,
Jim Sawatsky

Parcel Coverage Variance

For Lot #7 6324 Laurier Ave Wardner BC

This letter is a response to and a clarification of information dealt with in the Strata Council of Koocanusa Landing letter submitted to the Area C Planning Commission and the East Kootenay Regional Development Services Manager dated April 25, 2022.

At the front of this letter the council expresses a concern regarding present encroachment on the covenant area of any constructed buildings as well as geotechnical concerns regarding the placement of pilings on the covenant area. **Let me assure you that no construction has occurred to encroach on the said area nor go outside our building permit application request.** The purpose of this variance is to gain the appropriate permission to undertake construction of the structures requested in the locations specified in this proposal.

The Strata Council is concerned about and mentions that any sonotubes require further geotechnical study. Please see the attached geotechnical survey solicited by myself (dated March 23, 2022) with the **original geotech** involved in the set-up of the development (March 2007). Having been involved with the original development, he is intimately acquainted with the information gathered and used to develop this site. **Since he has direct access to the original data, all he needed to do was apply a desktop study with computer programs designed specifically for his field of technology to determine the viability of erecting a structure in the area requested.** Douglas Clapp writes that he sees no geotechnical based reason to disallow the placement of supporting structures (posts) in nor the cantilevering of a deck above the covenant area. His words are **"this site is safe for its intended use"** as long as his directions for placement and depth are adhered to. **The Strata's request to disregard the geotechnical report is unfounded. The desktop study described is applicable, viable and valuable since it was performed by the original geotechnician (Douglas Clapp) who still has all the relevant information from the original study, knows the area intimately and – far be it from me to dismiss his technical training – knows his trade fully and is governed by a provincial body and his peers which attests to the credibility of his work and practices. Of all persons involved regarding this issue, his recommendations should carry the heaviest weight.**

The Covenant LB339881 does allow the amendment of its description under the consideration and guidance of a certified geotechnical engineer's report performed for a specific location within the covenant boundaries. Such amendments can be made legally binding for a specific location and therefore not allowed to be replicated in other areas of the covenant keeping the permanence and spirit of the covenant. Within its own description the covenant may be amended (Clause 1c. and clause 6). The outline of the covenant document states that it may be amended according to the discretion of the parties named therein. **The Ministry of Transport and Infrastructure has already supplied a letter stating their acceptance of a variance and the only other party named in the agreement is the Regional District of East Kootenay who has the option to either concur or disallow such an application.** The argument that the whole agreement need be removed is invalid in that the agreement allows for alteration and, if desired, the production of a one-off agreement between them and other parties to vary the parameters of the document. This by no means opens a flood gate of indiscriminate variation to this legal document nor the need to abolish it.

The argument that a variance would negatively impact the environment of the area is also invalid. The make-up of the ground cover is rock, gravel and sand. There is no plant life in this specific area to be impacted and therefore no endangered species of flora to protect. **The covenant is strictly a geological protective measure to regulate any construction on potentially unsafe slopes** (something my geotechnical report deals with and

allows with guidance). **Wildlife corridor encumbrance issues are another moot point.** The wildlife utilizing the covenant area for movement is by and far consisting almost entirely of deer which as we all observe are not affected at all by human presence, construction of houses or decks. They still go their way where and when they want. The space allocated to wildlife movement between the deck and the edge of the slope to the lake will be approximately 18 feet – more than enough room for movement of animals if required. Evidence shows that the deer and other wildlife use the lower bank of the hill more regularly than any other pathway to move back and forth along the development.

The construction of this deck will in no way affect the openness of the neighbourhood. The deck will blend in with other decks and properties adjacent to it and it will have glass railings to further reduce any visual impact. Conversely, the lack of a full deck will make our home stick out from the neighborhood properties and create a negative slant on appearance of the water front. No views of other properties will be impacted by the deck. It will not extend past and will be lower than the deck to the north of it.

The history of how we got here is that **we hired an architectural firm that does work in BC** and is familiar with the Province's construction practices and regulations. Long story short – **they made a major error in developing the plans regarding plot coverage.** We submitted the Developer's regulations and they misinterpreted the regulation #6 and #7 to mean that coverage was not inclusive of decks and porches. (#6 "No building or portion of a building (excluding decks and porches) may be closer than 1.5 meters from the lot boundary at the sides, 5 meters from the front and 6 meters from the rear." #7 "No building shall be constructed on any lot with a building footprint (ie. Ground coverage), including garage that exceeds 35% of the total lot area."). **They wrongly assumed the exclusion of decks and porches mentioned in rule #6 transferred to rule #7. The plans had been in the hands of the RDEK planning department a year prior and according to the architect no red flags were raised from then till the time of the building permit application.** The Koocanusa Landing Developer had gone into receivership prior and we therefore had no direct contact to submit plans to. The Strata had in previous times requested residents to submit plans for review for a fee of \$250 which they later mused to raise to \$900. This viewing of the plans seemed arbitrary as some residents (including board members) indicated that they did not submit plans and since the rules of the Strata mimicked the RDEK regulations, we felt it an unnecessary expense to continue along that path. Development rules #14 and #21 require the submission of plans to the "Developer" and rule **#57 differentiates the Developer from the RDEK and the Community Association thereby not equating one with the other and not implying the Developer's authority being transferred to the Community Association.** I felt this verified my decision not to submit plans to a board without authority. Since our endeavour to start construction, we have noticed numerous violations of "Strata Code" amongst existing homes that seem to have had a blind eye turned toward them (another reason we chose not to pursue a costly mere exercise of process). **Our infringement of the parcel coverage direction was an error and by no means an intentional act to gain a larger footprint.**

To date, our home construction follows **all** Strata setbacks and requirements. We are only asking to have a deck larger than 2'-8" deep in the rear and a small deck at our front entry. This increased deck size will not impede any views whatsoever nor will we be looking down on other residents. **We are only interested in looking out onto the view of the lake and mountains available to us and having an outside place to gather as a family on summer afternoons and evenings.** The construction of this deck will have absolutely no impact on the roadside visibility and safety since it is nowhere near the street and our home again meets all front setbacks required of all residents. In fact, our home will be safer since it will be able to accommodate, if necessary, double the required number of parked vehicles off street. Two as required (clause #67 of the Strata Rules) on the driveway and another two in the garage. **Where is the safety issue and vehicle impedence they referenced in this situation? Snow clearing and first responder access is no different if not better than any**

other lot along the lake since we have the ability to keep our vehicles well out of the way of the street traffic. As for access to the rear of the houses, no good vehicle access exists between any two properties and the covenant denies random access to any vehicle traffic anyway. Therefore, **there is no need to allow for any emergency vehicle access as it would be unsafe to drive a vehicle in that area. The rear is more than accessible by foot traffic as well.**

Approving this variance would in no way promote indiscriminatory applications of variance and roadblocks to enforcement of area requirements. Our application required many hours of leg work, thousands of dollars in professional fees to deal with a very specific error. Our application can be rejected by the RDEK at their discretion. This is not a light matter and we do not consider it such, but because of our extenuating circumstances, we are compelled to try and ask for grace in this one instance. Who in their right mind would pay so much in time, effort, and money on merely a whim at such a high chance of failure? I think most, if not all, unwarranted applications would be deterred by these odds.

Up to the time of the APC meeting of April 27, 2022 we were unaware of the Strata Council's concerns and have since been trying to gain an audience with them to educate them on our situation and alleviate any fears of malice. **To date they have not responded and we feel they are unwilling to see any constructive outcome to this situation.** Our efforts to contact them are as follows:

April 13, 2022 Email to Strata Manager (Stephen Starling) in which he stated would talk to the Strata Council and get back to me. --- no reply

April 27 Request for a meeting via Strata Manager (Stephen Starling) --- no reply

April 28 Request for a meeting via Strata Council email (sent from me to their email listed on the correspondence to the APC.)--- no reply

May 2 Another request for a meeting via the Strata Manager. (a formal request for an audience with the Strata Council as per Strata regulations). --- no reply.

I am unaware of the Strata Council having any public meetings to get responses from the residents of Koocanusa Landing and feel they are not acting in the interests of the Developments but rather in a strict and unbending adherence to written policy as a punitive action to us not including them in the development of our lot. **To date other variances have been submitted, supported by the Strata Council and passed by the RDEK (some even submitted by council members) yet they refuse to hear ours.** Had I to do it again, I would have supplied them with our plans but refused to pay for any fees instead. Just to not create the hard feelings that seem to have sprouted now. I feel at this juncture they are only speaking for themselves and not the community as a whole. **The only exception they can take with our application is that it contravenes a written number on a rule which if allowed will not have any negative consequence to the development nor neighbors at all.** I think we have proved that point and will continue to present more evidence as to why you should consider this application favorably at the meeting on May 12, 2022.

Thank you for your time and attention, we would greatly appreciate your favorable consideration of our request.

Sincerely, Jim and Cindy Sawatsky