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29-Dec-2023 (Revision 1)

To/ RMOW Planning Department
4325 Blackcomb Way
Whistler BC

Re/ Covenant Modification and DVP
4937 Horstman Lane
Whistler BC
(SL24; Plan VAS2482; DL 3903; LD 36 & DL4704)
PID 014-850-478

Planners –

The owner's (McNeill's) purchased the above captions property in September 2020 in its current state. In the summer of 2022, due to an aging roof and requests from the Owners' insurance company with respect to interface fire safety, a building permit was applied for to change the roofing material from the existing cedar shakes to fire resistant EcoShakes. The reply from the Building Department was that there were expired permits (BP 1386 and PLP 866) for some interior renovations, there was non-permitted construction at the rear of the property (hot tub cover roof) and developed crawl space area. In this respect, the permit for re-roofing was denied until the other issues have been dealt with satisfactorily. In order that the permit requirements be rectified, there are several planning issues to be resolved through both a development variance permit and a covenant modification – to be discussed in detail later in this report. The property is currently governed by the Blackcomb Land Use Contract which is in the process of being terminated and ceases to govern as of May 2023. Once terminated, the RS-3 Zoning noted in Bylaw 303 governs zoning, however, some aspects of the original Land Use Contract will still apply such as the design guidelines and building envelopes.

The original three storey single detached dwelling with attached garage was constructed under BP 3807-94 issued 4-May-1994 with an Occupancy Permit being issued in January 1996. The build included several crawl space areas with ceiling heights less than 1.5 m so were not included in the total gross floor area tabulation of 381.09 sq m (4,102 sf), which is just slightly less than the 384.34 sq m (4137 sf) permitted. There was an approval of the building location meeting the building envelope requirements noted in covenant GC125596 per Bunbury and Assoc. Surveys attached as Appendix B.

As can be seen on the attached survey by Doug Bush Survey Services Ltd. (DBSS) dated 13-Dec-2022, the original construction, in fact, encroaches into the rear portion of the

building envelope. It is unknown why the discrepancy exists but is likely related to mis-scaling of plans during the original build. Also, sometime in the past a flush hot tub was installed in the rear yard with a roof constructed above (see Appendix A for pictures) as well as a small deck extension and steps giving access to grade in the west side yard (see Appendix C for pictures). All three of the noted areas encroach into the original building envelope and the small deck extension and steps also encroach into the required RS-3 side setbacks. It should be noted that the house and the hot tub roof meet the RS-3 required front, side and rear setback minimums.

Within the building, the works completed under BP 1386 and PLP 866 were not inspected as is required in Building Bylaw 1617. This is straight forward enough and will be dealt with as part of the roofing permit, should the requested DVP and Covenant Modifications be approved. There has also been some previous crawl space area developed, prior to Mar 2012. This area, see attached plans dated 15-Dec-2022 by R. Diamond Building Design, could not be developed prior to a zoning bylaw change in 2012 as the home would be over the allowable gfa allowance of 0.35 of the lot area. The changes made to Bylaw 303 now permits that such basement area may be excluded from the total gfa tabulation and as such, can now be legalized, however; the wording within covenant GC125596 limits the definition of gfa to that of the original zoning bylaw as was adopted as Bylaw 303, 1983.

Requested Covenant Modifications

Based on the above, there are several modifications/approvals required to allow for the building to become compliant with land use regulations and building permits being able to be issued.

- 1) Modify Building Envelope Covenant GC125596 to allow the *existing and location approved* single detached dwelling to extend beyond the required building envelope as is illustrated on DBSS survey dated 13-Dec-2022;
- 2) Modify Building Envelope Covenant GC125596 to allow the hot tub and protective roof as illustrated on the DBSS survey, plans dated 15-Dec-2022 by R. Diamond Building Design and pictures (Appendix A) to be approved in its current location;
- 3) Modify GC125596 to allow that the small deck area and steps to grade along the west property line as illustrated on the survey and plans noted above be permitted to remain; and,
- 4) Modify Covenant GC1254596 to change the definition of gross floor area to be consistent with Zoning Bylaw 303 to allow for the exclusions in 5. 26. 1) to apply to the property.

The above three modifications have been reviewed and received approval from the Approving Architect, with comments and approval obtained from the immediate neighbours, in accordance with the approval/variance process noted within the covenant and design guidelines in the various covenants. The current owners feel the modifications are minor in nature and fit well into the overall character of the Horstman Estates area and have no effect on the neighbors. Also, the current build location has been previously approved by the RMOW Building Department through the building

permit and inspection process. Please note that other than the small steps at the west side, all works comply with the RS-3 zoning that will become effective in spring 2023.

With respect to the definition of gross floor area, a change to allow the current Zoning Bylaw definitions to apply, bring the restriction for the property in line with the bulk of other single family and duplex dwellings in Whistler. This also bring the property restrictions/exclusions in line with changes made by a previous council to the bylaw to deal with developed crawl space areas.

Requested Development Variance Permit

There is one area of the existing on-site works that do not comply with Bylaw 303, RS-3 zone, that being the west side setback. At some time in the past a small deck extension (landing) and steps to grade were constructed that have support within the required 3 m side setback. In this respect, the following variance is requested:

Vary section 12.5. (9) of Zoning Bylaw 303 to allow for the existing deck, steps, and support to have a side setback of 1.52 m, a reduction of 1.48 m.

The owner's feel that this is a small ask as it does not affect the neighboring property, allows direct access to grade, is a small area and has existed without issue for some years already. Also, it is important to note that the area would be allowed, if cantilevered, up to 1 m into the required setback, and while it is possible to re-build the area to comply, it would take significant works and materials to achieve compliance and the overall appearance would be the same. We understand that RMOW staff do not support this variance as there are other design solutions available. There is no disagreement with the staff position, there are other solutions, however as noted the area is small and removing the works that have existed for some time would end up in the land fill and new materials supplied to rebuild. There has also been no opposition to the existing works that we are aware of (to obtain the Approving Architects approval the neighbors were directly consulted per the design guidelines). Please note that should this variance not be approved, the owner's commit to removing the encroaching parts of the construction as part of the building permit process.

Evaluation Criteria for NON-Delegated Development Variance Permits

The Variance Request:

Compliments a particular streetscape or neighbourhood: The works are not visible from the street and the design is in keeping with the 'flavor' of the existing building and complies with design guidelines, as has been confirmed by the Approving Architect.

Works with the topography on a site, reducing the need for major site preparation or earth work: Other than small excavations for pad footings, now earthworks or grade changes were, or will be required for the existing works.

Maintains or enhances desirable site feature, such as natural vegetation, trees and rock outcrops: No natural features were disturbed for construction of the works. The existing approved site grading and landscaping were not affected or changed.

Results in superior siting with respect to light access resulting in decreased building energy requirements: The works are attached to an existing building and lighting is not affected by either the side stairs/deck area nor the hot tub roof.

Results in superior siting with respect to privacy: The hot tub roof is in the center area of the rear setback and is flush to the ground level, creating as much privacy as is possible and is in a similar location as other properties in the area. The side steps do reduce the privacy in the side yard, however both the owner's residence and the residence to the south are orientated for view lines to the west (street side) and rear (mountainside) with little fenestration on the sides. Moreover, the affected neighbour has not raised any concerns (the steps are used for access rather than outdoor living as the side setback are limited).

Enhances views from neighbouring buildings and sites: The works do not particularly enhance any views, but also do not detract from any views as the works are predominantly in the rear setback.

Potential Negative Impacts on Neighbours or the Streetscape Include a Variance Request that:

Is inconsistent with neighborhood character: The works are not visible from the street and match with the existing building design, design guidelines and has been reviewed and approved as such by the Approving Architect.

Increases the appearance of building bulk from the street or surrounding neighborhood: The works are not visible from the street and as the hot tub roof is open and located in the rear yard, the appearance of bulk or massing does not change and actually helps to break up the mass of the rear wall. The side steps do not affect the massing as they are located close to the ground, are in a landscape area and are not roofed.

Requires extensive site preparation: Little preparation was required to construct the works; the existing grade remains and will remain unchanged.

Substantially affects the use and enjoyment of adjacent lands (eg. reduces light access, privacy, views): The hot tub roof does not affect light or views and helps makes the flush hot tub slightly more private that if fully open. Regardless of the roof, the hot tub is permitted in its current location. The side steps are close to the ground and uncovered, and as such do not affect views or light access but do slightly reduce privacy. It should be noted, however that the steps only provide access around the building as the setback is small and no outdoor living is possible along the side. Moreover, the affected neighbour has no concerns, per the required process for the Approving Architect to sign the approval.

Requires a frontage variance to permit greater gross floor area, with the exception of a parcel fronting a cul-de-sac: Not applicable to this project/property.

Requires a height variance to facilitate gross floor area exclusions: Not applicable to this project.

Results in unacceptable impacts on services (eg. roads, utilities, snow clearing operations): Not applicable to this project.

Wildfire Protection (High Risk Area) Development Permit Area

- (a) There is no proposed new landscaping at this time and the owner commits to not introduce any coniferous plants in the future. Currently the rear yard is clear of conifers to the rear property line, there is a row along the front street and some along the sides that are shared across property lines. These trees were existing at time of the original development or planting as part of the original approved landscape design. **Note:** The owners will commit to completing a Firesmart Assessment and abiding by any recommendations therein within 1 year of approval.
- (b) As part of regular landscape maintenance, dead branches and debris are removed from the property.
- (c) The rear yard landscaping consists of deciduous and other waterborne plantings as part of the original landscape plan approval.
- (d) Not applicable
- (e) No bark mulch is used on the property.
- (f) The very small new deck area is consistent with the existing works and is of open (drip thru) preserved wood on torch on roofing. No conifers are directly above the works. The main residence roofing has already been changed from wood shakes to fire resistant Eco-Shakes and should this application be approved; the hot tub roof will also be changed to Eco-Shakes. The building itself is of log construction and the new roof is supported by more fire-resistant heavy timber.
- (g) Windows and door are existing – no changes proposed.
- (h) There are no aux. buildings or fuel tanks on the property.
- (i) The chimney is existing – spark arrestors will be added if not present.
- (j) Gutters are metal.
- (k) The ground floor level is constructed of logs and clear of the ground by approx. 6 inches per the BC Building Code

In summary, the owner's feel the building envelope encroachments were either previously approved by the RMOW Building Department (original works BP 3807094) or have existed for several years without issue and have received approval by the

Approving Architect for the development. With respect to the basement exclusion, per the current zoning bylaw the are is permitted per the changes made to Bylaw 303 by a previous Council. Should the requests be approved, the Owner will move immediate to obtain the required building permits and inspections required to complete and close all files and be able to install fire-resistant roofing materials.

Thank you for your time and please be in touch with any questions or clarifications required.

Richard Diamond

On behalf of the Owners of 4937 Horstman Drive, the McNeill's

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