



THE CORPORATION OF THE CITY OF COURTENAY

STAFF REPORT

To: Council

File No.: 3090-20-2208/DVP00042

From: City Manager (CAO)

Date: April 12, 2023

Subject: Development Variance Permit No. 2208 –1130 5th Street

PURPOSE:

The purpose of this report is for Council to consider a Development Variance Permit to vary Zoning Bylaw 2500, 2007 to permit a home occupation to be carried out wholly within an accessory building at 1130 5th Street.

CAO RECOMMENDATIONS:

THAT based on the April 12, 2023 staff report “**Development Variance Permit No. 2208 –1130 5th Street**”, Council approve OPTION 1 and direct staff to provide public notice to adjacent property owners and occupants and request feedback regarding Development Variance Permit No. 2208; and

THAT Council, make a decision on Development Variance Permit No. 2208 at the April 26, 2023 Regular Council meeting.

Respectfully submitted,

Susie Saunders

Acting City Manager (CAO)

BACKGROUND:

The subject property is located at 1130 5th Street, is Zoned R-2 (Residential Two Zone) and is occupied by a single residential dwelling and accessory building. The property is approximately 882m² (9493ft²). The property is legally described as Amended Lot 8 (DD 54833N), District Lot 127, Comox District, Plan 5764 (**See Figure No. 1**).

The applicant is proposing to operate a Registered Massage Therapy (RMT) home occupation (home based business) within an existing accessory building on their property. The applicant is requesting a variance to



Figure No. 1: Context Map

allow for a Home Occupation to be wholly operated in an accessory building on the parcel. The existing accessory building area is 37.9m².

DISCUSSION:

The intent of home occupation regulations is to allow for limited business activity in zones which are otherwise restricted to residential land uses. Zoning Bylaw 2500, 2007 regulates home occupations within City boundaries, permitting them in most residential zones, and limiting them in scale and impacts to surrounding neighbourhood. The R-2 (Residential Two Zone) permits RMT activities as a “personal service” home occupation use. It does not however permit that the RMT activity occur within an accessory building.

Variance Request – Home Occupation in Accessory Building

As per Section 6.3.8, “The home occupation must be carried on wholly within the dwelling unit, except:

- (i) That in the case of day nurseries, schools and kindergartens, the rear yard of the property can be used as a play area;
- (ii) And in the case of home crafts, to a maximum floor area of 30.0 m², which may be located in an accessory building.”

The applicant is requesting the allowance of a home occupation, which is not a home craft, to be carried on wholly within an accessory building. No part of the home occupation is proposed to be conducted within the dwelling unit.

Staff Comments

It is staff’s assessment that the variance is supportable. Most home occupations, with the exceptions listed above, have been restricted to within the dwelling unit in order to limit their potential impact to surrounding properties. However, staff observe that home occupations are by definition limited in scale and that materially the impact to the neighbourhood of having an RMT service out of one’s dwelling unit, versus having it out of an accessory building, is likely negligible. As the applicant notes, the new accessory building is more universally and physically accessible than the older home on the property.

In the upcoming Zoning Bylaw comprehensive review, staff will be reviewing the home occupation regulations more fully and likely will propose some or all home occupations be permitted within accessory buildings in order to provide more flexibility to residents. The OCP supports a limited mix of uses more broadly across the City, while focusing larger destination-oriented commercial activities within transit and active transportation accessible growth centres. Accessibility and affordability are other important equity directions of the OCP. As such, it is consistent with the OCP to explore opportunities to allow residents to conduct limited home based businesses more cost-effectively, accessibly, and flexibly on their property.

The accessory building has the appropriate permitting and conforms to the zoning regulations related to size and siting. All parking requirements will be met for the proposed home occupation.

Staff support the variance request.

FINANCIAL IMPLICATIONS:

There are no direct financial implications related to the processing of this Development Variance Permit application. The fee for the Development Variance Permit to vary the Zoning Bylaw is \$1000.00.

ADMINISTRATIVE IMPLICATIONS:

The processing of development applications is included in the current work plan as a statutory component. Staff have spent approximately 10 hours processing this application to date.

Should the proposed Development Variance Permit be approved, an additional two hours of staff time will be required to prepare the notice of permit, have it registered on title, and close the file. Additional staff time will also be required for processing and issuing a Business Licence for the proposed home occupation.

ASSET MANAGEMENT IMPLICATIONS:

There are no asset management implications related to this application.

2019-2022 STRATEGIC PRIORITIES:

- Communicate appropriately with our community in all decisions we make

OFFICIAL COMMUNITY PLAN REFERENCE:

General land use policies:

No. 3: Home occupations of a limited scale are permitted in all residential uses.

Local Economy chapter:

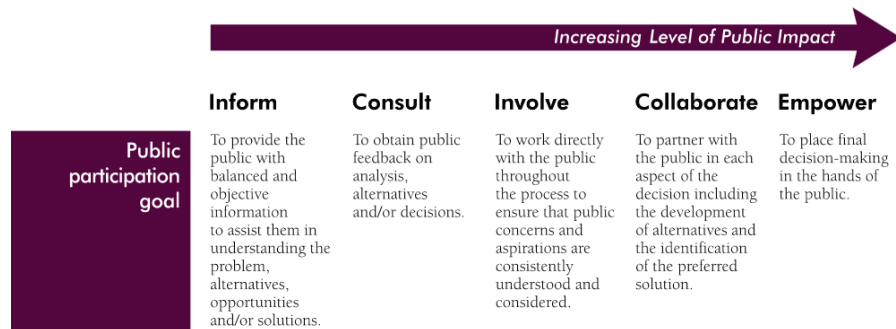
Objective No. 3: Municipal regulations and services are supportive of economic development within the long-term vision of environmental and social responsibility.

REGIONAL GROWTH STRATEGY REFERENCE:

4.4 (14) - Promote and support the overall economic viability of the municipal areas so that they can continue to provide primary base for residential, commercial and institutional activities.

CITIZEN/PUBLIC ENGAGEMENT:

Staff **consulted** the public based on the IAP2 Spectrum of Public Participation.



The applicant distributed an alternative public information package to property owners and occupiers within 30m of the property, as per the Alternative Development Information Meeting process.

The applicant received five comments as a result of the mail out. To date, the City has received no comments regarding the proposal. The applicant’s Public Information Meeting summary is included in **Attachment No. 3**.

OPTIONS:

OPTION 1 (Recommended):

THAT based on the April 12, 2023 staff report “**Development Variance Permit No. 2208 –1130 5th Street**”, Council approve OPTION 1 and direct staff to provide public notice to adjacent property owners and occupants and request feedback regarding Development Variance Permit No. 2208; and

THAT Council, make a decision on Development Variance Permit No. 2208 at the April 26, 2023 Regular Council meeting.

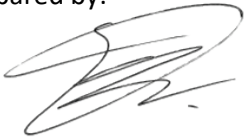
OPTION 2:

THAT based on the April 12, 2023 staff report “**Development Variance Permit No. 2208 –1130 5th Street**”, Council approve OPTION 2 and not approve the issuing of Development Variance Permit No. 2208.

OPTION 3:

Defer consideration of Development Variance Permit No. 2208 pending receipt of further information.

Prepared by:



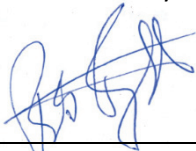
Devin Croin
Planner I – Development Planning

Reviewed by:



Nancy Gothard, RPP, MCIP
Acting Manager of Development Planning

Concurrence by:



Rob Roycroft, RPP, MCIP
Interim Director of Development Services

Concurrence by:



Susie Saunders
Acting City Manager (CAO)

Attachments:

- 1. Attachment No. 1: Draft Development Variance Permit No. 2208*
- 2. Attachment No. 2: Rationale for Variance Request and Site Plan*
- 3. Attachment No. 3: Public Information Meeting Documentation*

Attachment No. 1:
Draft Development
Variance Permit No. 2208

THE CORPORATION OF THE CITY OF COURTENAY

Permit No. 3090-20-2208

DEVELOPMENT VARIANCE PERMIT

To Issue a Development Variance Permit

To:

Name: Frances Eileen Cadigan
Address: 1130 5th Street
Courtenay, BC V9N 1L6

Property to which permit refers:

Legal: AMENDED LOT 8 (DD 54833N), DISTRICT LOT 127, COMOX DISTRICT,
PLAN 5764
Civic: 1130 5th Street

Conditions of Permit:

Permit issued to the property legally described as AMENDED LOT 8 (DD 54833N), DISTRICT LOT 127, COMOX DISTRICT, PLAN 5764 to permit the following variance for a Home Occupation on the parcel:

- *Zoning Bylaw No. 2500, 2007*
 - Section 6.3.8 – A home occupation may be carried on wholly within an accessory building.

Development Variance Permit No. 2208 is subject to the following conditions:

1. The home occupation shall be limited to personal service.
2. The home occupation will be required to obtain a valid City of Courtenay Business Licence prior to commencing business activities.

Time Schedule of Development and Lapse of Permit

That if the permit holder has not substantially completed the business licence authorized by this permit within (12) months after the date it was issued, the permit lapses.

Date

Corporate Officer

Attachment No. 2:
Rationale for Variance
Request and Site Plan
(1/2)

Frances Cadigan
1130 5th St
Courtenay BC
V9N 1L6
250-650-4294

City of Courtenay
Planning Services
830 Cliffe Avenue
Courtenay BC
V9N 2J7

December 14, 2022

Dear Councilors,

I have made an application to the City for a Development Variance, to allow a home based occupancy within an accessory building on my property.

I am a Registered Massage Therapist in good standing with the College of Massage Therapists of British Columbia. I have been practicing since 2002, and moved to the Comox Valley in 2011.

While I am allowed a home based business, working out of the existing accessory building on my property would be more suitable for my patients, many of whom face mobility issues and have complex needs.

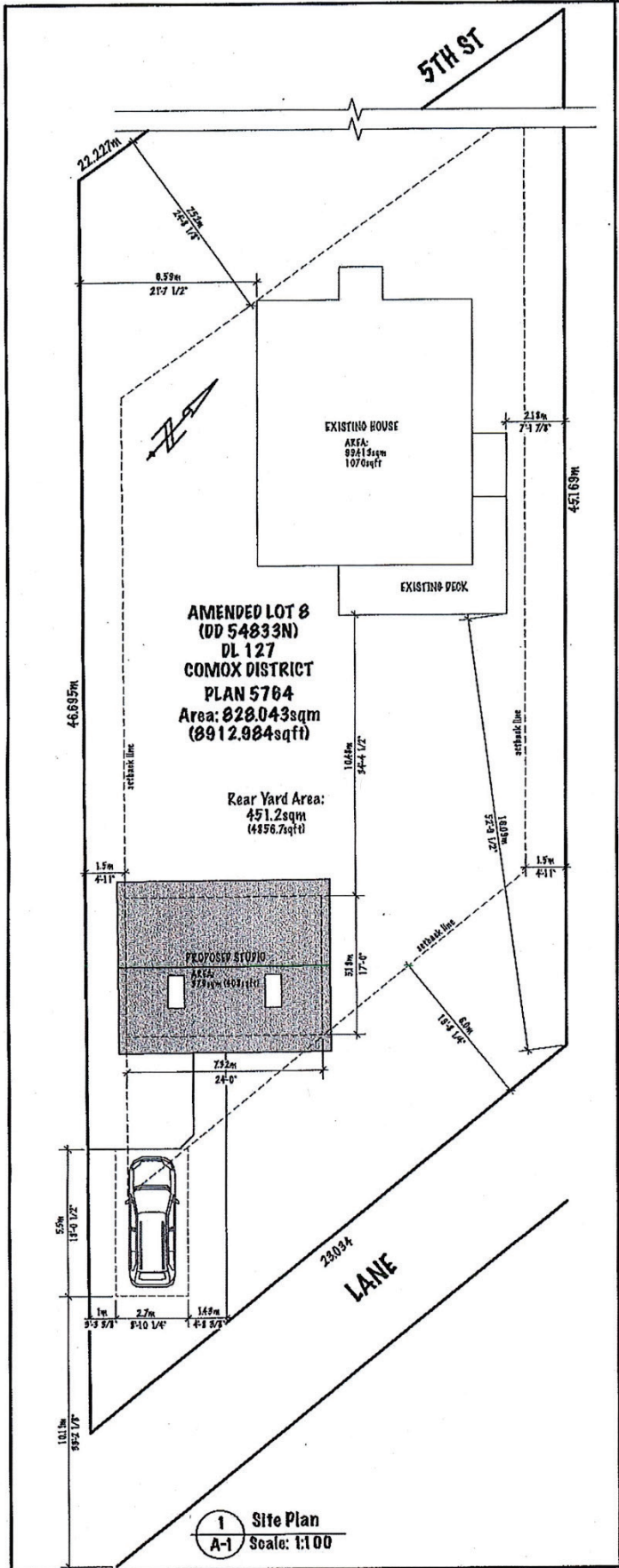
Providing access to the existing building presents significant design challenges. The house is small, and is approximately 5 feet above grade to any entrance. There is no available space for a dedicated treatment room. Any addition to the house and the required wheelchair ramp necessary to access the house would have considerable negative impact on the existing landscaping, lot coverage, and the architectural character of the home.

Alternatively, my existing permitted accessory building has level entry and parking immediately adjacent to the entry and as such, is very suitable for purposes of my work. My business model is intentionally low traffic, with a maximum of 5 clients per day during normal business hours. In addition, having a separate building meets the CMTBC standards for COVID and privacy protocols.

Thank you for your consideration,

Frances Cadigan
Registered Massage Therapist
Courtenay, BC

Attachment No. 2:
Rationale for Variance
Request and Site Plan
(2/2)



Attachment No. 3:
Public Information Meeting
Documentation (1/6)

Frances Cadigan
1130 5th St
Courtenay BC
V9N 1L6
250-650-4294
francescadigan@gmail.com

City of Courtenay
Planning Services
830 Cliffe Avenue
Courtenay BC
V9N 2J7
dcroin@courtenay.ca

March 16, 2023

Dear Councilors

RE: DVP2208 Public Notification Materials

On Feb. 16, I mailed a notice to 17 owners and tenants of my property regarding the pending variance application.

I received responses via email from four of them. All were positive, with the main concern being about keeping the laneway free of obstructions, and supportive of my intended use. There were a few additional questions about variance processes and timelines, which were kindly answered by Devin Croin, who has been involved in the process. These emails with their comments, questions, and answers that Mr. Croin and myself are available for your perusal.

Thank you,

Frances Cadigan
Registered Massage Therapist

Staff Note: Applicant has clarified that they have received five (5) responses from neighbours.

January 31, 2023

Attachment No. 3:
Public Information Meeting
Documentation (2/6)

Hello Neighbour,

My name is Frances Cadigan, resident of 1130 5th St in Courtenay. I am a Registered Massage Therapist and member in good standing with the CMTBC since 2003.

I have recently built an accessory building on my property, which fronts the laneway that runs behind the house. The building has been completed in accordance with all permits issued by the City of Courtenay. While a Registered Massage Therapy practice is permitted on the property, the current bylaw is such that the business must be run out of my actual dwelling, vs. the accessory building.

I have applied for a variance to allow my business to operate from the existing, permitted, accessory building. It is much more suitable, as it's accessible, with off street parking, low traffic flow, and a business that produces no noise, therefore no effect on the quiet enjoyment of adjacent dwellings.

According to conversations with City councillors and planning staff, the long term plan is to amend the bylaws to allow home based businesses like mine, to operate out of accessory buildings.

This letter is to inform you of my application. Please feel free to contact me for further information. If you have comments for the City, please address them to dcroin@courtenay.ca.

Thank you for your time and consideration,

Frances Cadigan

Registered Massage Therapist

1130 5th Street

Courtenay BC V9N 1L6

Attachment No. 3:
Public Information Meeting
Documentation (3/6)

tom baxter [REDACTED]
To: francescadigan@gmail.com
Cc: dcroin@courtenay.ca

Wed, Feb 15, 2023 at 11:09 AM

Hi Frances,

You have our full support in operating your RMT business out of the accessory building on your property. It will be an excellent use of space.

From your neighbours,

Tom and Rose
[REDACTED] Urquhart

Rebecca Rowe [REDACTED]
To: "francescadigan@gmail.com" <francescadigan@gmail.com>, "dcroin@courtenay.ca" <dcroin@courtenay.ca>

Fri, Feb 17, 2023 at 9:46 AM

Good morning, Frances

Thank you for sending me the information regarding the Development Variance you have submitted for your property at 1130 5th Street.

I do have some questions about this application and potential impacts for my property at [REDACTED] 5th Avenue, which is adjacent to your property. I request that these be answered prior to granting the Variance.

1. The access to the accessory building appears to be from the rear alley. This is a very narrow alley, and there isn't enough space to allow for parking adjacent to your property. I am concerned that overflow vehicles waiting for the single parking spot to become available would block the driveway to my property. How will overflow parking be managed?
2. What are the conditions of the Development Variance? Is the Variance restricted to Massage Therapy services provided by you, specifically? Can the business services be changed without my notice? (for example, could the accessory building be used for any other purpose, which could subsequently add additional traffic or other impacts to my property?)
3. Will this Variance still be valid for any subsequent owners of your property should you sell it at some point? What would be the conditions of the variance for subsequent owners of your property?
4. There is a proposed parking spot indicated in the drawings. Will the construction of this parking spot have any impact on my property? For example, will any excavation impact the roots or the health of the mature conifer on the corner of my property and the alley?

Thank you for your consideration,

Rebecca
Sent from Outlook

Attachment No. 3:
Public Information Meeting
Documentation (4/6)

Frances Cadigan <francescadigan@gmail.com>
To: Rebecca Rowe [REDACTED]
Cc: "dcroin@courtenay.ca" <dcroin@courtenay.ca>

Fri, Feb 17, 2023 at 6:32 PM

Good afternoon, Rebecca

Many thanks for your email and attached questions.

1. I intend to manage parking by scheduling appointment times far enough apart (by a half hour) that there is only one vehicle needing the space at a time. While only one parking spot is required, there is actually room for two vehicles in front of the studio whilst not blocking the laneway. I appreciate the importance of keeping the laneway clear, to allow access for residents and, emergency vehicles if needed.
2. The variance is specifically for my business. A change of business/use of building would have to meet bylaws requirements and be reviewed before issuing a new business permit/license. The property is currently zoned live/work (R2 zoning).
3. I will direct this question to Devin Croin at the City of Courtenay for confirmation. I have applied and paid for this variance for my own use, and would assume any new owner would have to make their own application.
4. The parking spot indicated on the site plan already exists. There has been no excavation or disturbance of the soil or root structure around the mature conifer that stands on the corner of your property and the laneway.

I appreciate your engagement and understand your concerns. Please feel free to reach out if you need any further clarification.

Kindly,

Frances Cadigan

Staff Note: The variance is registered on title and runs with the land. Future owners will have the ability to benefit from an approved variance. The variance adds only personal services home occupation to the accessory building.

Rebecca Rowe [REDACTED]
To: Frances Cadigan <francescadigan@gmail.com>
Cc: "dcroin@courtenay.ca" <dcroin@courtenay.ca>

Mon, Feb 20, 2023 at 7:04 AM

Good morning, Francis

Thank you for answering my questions and directing the remaining questions to Devin.

Happy Family Day. :)

Rebecca
Sent from Outlook

Frances Cadigan <francescadigan@gmail.com>
To: Rebecca Rowe [REDACTED]
Cc: "dcroin@courtenay.ca" <dcroin@courtenay.ca>

Mon, Feb 20, 2023 at 11:44 AM

Good morning Rebecca,

My pleasure. Thank you for your input and the opportunity to answer your questions.

Kindly,

Frances Cadigan
[Quoted text hidden]

Attachment No. 3:
Public Information Meeting
Documentation (5/6)

Rebecca Rowe [REDACTED]
To: Frances Cadigan <francescadigan@gmail.com>
Cc: "dcroin@courtenay.ca" <dcroin@courtenay.ca>

Tue, Feb 21, 2023 at 6:51 AM

Good morning

What is the timetable for this variance, and what is the process to getting it granted?

Cheers

Rebecca
Sent from Outlook

Frances Cadigan <francescadigan@gmail.com>
To: "Croin, Devin" <dcroin@courtenay.ca>, Rebecca Rowe [REDACTED]

Tue, Feb 21, 2023 at 12:27 PM

Good morning Rebecca,

This variance's next stage is to go to council for a reading and approval. I'm hoping my variance process will be completed by April.

If you are interested in learning about variance processes in detail, the City of Courtenay has a very comprehensive information package on its website. Questions can be addressed to the planning department at the City for the most accurate answers.

Kindly,

Frances Cadigan
(Quoted text hidden)

Ken Rodonets [REDACTED]
To: dcron@courtenay.ca, francescadigan@gmail.com

Mon, Feb 20, 2023 at 9:11 PM

Good Morning : Thank you for the letter to the neighborhood, to let everyone know what is going on. We have only one main concern with this.

The current alley is a single vehicle use one way at a time. We have noticed over the 2 years that there is more traffic going thru the alley way during the day. Sometimes we come home from our work and there is already a car or truck parked in the alley way, making it hard to get by, and to park in our driveway.

People must remember to give room for emergency vehicles at all times !. If you (Frances) can assure us that none of your patients will be parking in the alley way, and blocking access, then we will not have a problem with you running your business out of the home.

Thank You,
Ken Rodonets
Urquhart Ave.(use the back alley way to access our parking).

Attachment No. 3:
Public Information Meeting
Documentation (6/6)

Frances Cadigan <francescadigan@gmail.com>
To: "Croin, Devin" <dcroin@courtenay.ca>, Ken Rodonets [REDACTED]

Tue, Feb 21, 2023 at 12:39 PM

Good morning Ken,

Thank you so much for your response.

Yes, keeping the laneway clear is necessary for residents and emergency vehicles.

There is an existing parking spot in front of the studio to keep the laneway clear. In fact I encourage most clients to walk or bike if possible. Also, client's appointments are booked a half hour apart to avoid any congestion.

Thank you for your engagement and I appreciate your support.

Warm regards,

Frances Cadigan
[Quoted text hidden]

Hollis Linschoten [REDACTED]
To: dcroin@courtenay.ca, francescadigan@gmail.com

Thu, Feb 23, 2023 at 2:58 PM

Hello Frances,

Thank you for filling me in.

I'm fully supportive of you running your business out of your accessory building, and comfortable living next door to it.

I think this is a good practice in general from a city planning perspective for fostering healthy neighbourhoods and I hope the city will support other similar efforts.

Good luck with your variance process and please let me know how it goes.

Hollis, [REDACTED] 5th St