

NOTES on Setbacks to South Pender LTC

Zoning/planning criteria are largely meaningless abstract concepts to most people that only become comprehensible when they can see the resulting built forms in person. Take setbacks, for example. The limitations these impose are typically less consequential on larger lots where siting options are plentiful, and more so on narrower and/or smaller lots where there are fewer. However, despite these long having been codified in the zoning bylaw applicable at the time, it is evident in the built form of many parts of South Pender that existing conditions including the siting of dwellings on adjacent properties were carefully considered.

To illustrate, the figure below shows the property boundaries and the footprints of existing completed buildings for the area bounded by Craddock, Higgs, Gowlland and the sea:



The image was generated using the Islands Trust *MapIt* application. Areas highlighted in dark brown represent cliffs, grey low rock/boulder, red high risk steep slopes, and orange moderate risk steep slopes. The elevational contours are shown at 10m/33' intervals.

The way the building footprints are clustered suggests topography, solar orientation, tree cover, existing clearings, exposure to the prevailing weather, and views to the sea were likely all factors considered. Anecdotally, many long-term residents have said discussion with their neighbours figured prominently in where they decided to build. Primarily this was to avoid blocking their views, but also to derive whatever benefit they could from the wisdom their neighbours had gained about siting from their own experience of building.

Siting of the dwellings on the waterfront properties in the image is particularly revealing. Based on inference from properties where the frontage setbacks are known (shown in white), with a couple of exceptions the primary buildings on these are sited at least 15m/50' from the natural boundary of the ocean. Some of the setbacks are as far back as 23m/75' to 30.5m/100', despite the prior codified requirement for a 7.6m/25' frontage setback.

Viewshed preservation was part of this, but the shoreline below many of these high bank properties is comprised of large boulders and rock slabs that have sheared off the cliff face. Clearly the cliff face is not static and will continue to evolve due to erosive forces as well as potential seismic activity given the location in an active earthquake zone. Depending on one's risk tolerance and the geology of the particular property, building further back no doubt seemed like the pragmatic thing to do. However, speaking from the personal experience of someone living in one of those properties where the setback is 15m/50', it also confers the added benefit of lessening the full brunt of the winter storms, even if only slightly, but more so where stands of Garry oak and conifers were left to grow between the dwellings and shoreline.

A different but similar pattern of siting can be observed on the low bank properties fronting Drummond Bay. Although these are on average larger lots, again with a couple of exceptions the dwellings are located considerably farther back than the 7.6m/25' frontage setback the then zoning required:



Taken together, siting on the Southlands, Drummond Bay and the many other properties that have long had dwellings on them comprise the dominant built form on South Pender as it evolved from the middle of the last century onward. However, the factors that influenced siting in the past no longer have the same bearing going forward.

Improvements in building technology like rainscreen exterior walls and better windows provide for the creation of more durable, weatherproof buildings. For owners able and willing to pay for expensive site alterations like drilling and blasting, and/or for more costly structural components and foundation systems, dwellings can now more easily be sited and constructed where doing so before would have either been more challenging or prohibitive. Clearcutting, although frowned upon, is not unheard of. In addition, needs and wants change. Dwelling sizes have grown considerably larger. The idea of a 51 square metre/550 square foot Panabode with one bathroom being adequate for a family of four in the 1960's seems laughable today when current expectations are that each bedroom has its own ensuite bathroom in addition to at least one powder room. As well, consulting with the neighbours before building and the potential for moral suasion no longer seem to hold the same sway they once did.

The recent modifications to Bylaw 114 were made in recognition of these types of changes and to better align the zoning criteria with current thinking about climate change and the environmental impact of new construction. As they pertain to setbacks for new buildings and structures, the applicable modifications are shown in **red**:

PRIOR VERSION BYLAW 114	DISTANCE	CURRENT VERSION 114	DISTANCE
Front and rear yard setbacks	7.6m/25'	Front and rear yard setbacks	7.6m/25'
Interior sideyard setback	3.0m/10'	Interior sideyard setback	3.0m/10'
Exterior sideyard setback	4.5m/15'	Exterior sideyard setback	4.5m/15'
		Interior and exterior sideyard setback for any cottage or dwelling except for those legally constructed prior to adoption of Bylaw 122 changes	6.0m/20'
Natural boundary of any watercourse, lake, or body of freshwater	15.0m/50'	Natural boundary of any watercourse, lake, or body of freshwater	15.0m/50'
Natural boundary of any watercourse, lake, or body of freshwater used for potable water	30.0m/98'	Natural boundary of any watercourse, lake, or body of freshwater used for potable water	30.0m/98'
Natural boundary of the sea	7.6m/25'	Natural boundary of the sea except as noted below	15.0m/50'
		Natural boundary of the sea for buildings or structures legally constructed prior to adoption of Bylaw 122 changes	7.6m/25'

As demonstrated earlier, the front yard setback for the vast majority of the existing dwellings on South Pender is between 15.0m/50' and 30.5m/100' despite the prior zoning limitation being 7.6m/25'. Additionally, provisions were made for any legally constructed cottage, dwelling, building, or structure in place prior to adoption of the bylaw changes with a lesser setback remaining legally conforming. Given these considerations and (a) the moderate to steep slope areas considered to be ecological sensitive with their threatened flora and fauna, (b) empirical data and anecdotal experience substantiating the increasing negative impact of sea level rise and storm severity on shoreline erosion, (c) the data and research validating the negative long-term impact of foreshore "hardening" to mitigate the effects of (b), and (d) the broad acceptance of a minimum setback from the sea of 15.0m/50' in other coastal communities in the region, this change should have been viewed as an environmentally conscious thing to do. However, based on the comments made at the LTC meetings a number of residents do not support this change.

One can speculate on the reasons why this might be the case, but a few themes emerged from the many LTC meetings:

1. The changes are seen to cause dwellings that are set back less than 15.0m/50' from the front or rear yards (also applied to sideyard setbacks and dwelling size) to become "legally nonconforming".

2. The change is seen as more restrictive – to paraphrase, “before if I wanted I could build my dwelling 3.0m/10’ from the sideyard and 7.6m/25’ from the front or rear property line but now I can’t”.
3. Most of the subdivided properties have already been built on so any changes should only apply to those that are still vacant.

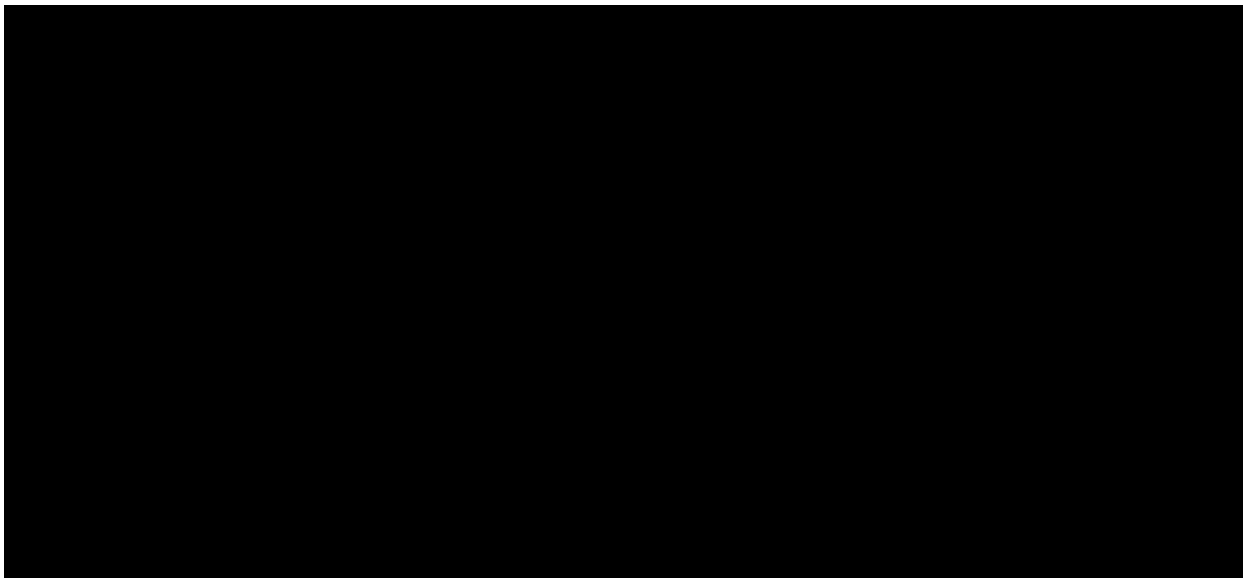
The concern about “legal nonconformity” persists despite professional opinions that the provisions made obviate this. The current LTC Trustees have discussed seeking a new legal opinion on this issue although the prior Trustees had already obtained one. Hopefully this course of action will finally put this concern to rest.

Although there appear to be very few dwellings constructed as close as 7.6m/25’ from their lot frontage – i.e., very few property owners have taken advantage of this – remaining focused on the reductive aspect likely reflects a failure to understand the broader community and environmental benefits of an increased setback distance. The ecological and environmental benefits are mentioned above. However, one of the most immediately perceptible is negating the impact this can have on adjacent properties and the built form of the broader community, particularly when the existing dwellings are nearly all set further back. Since there are so few local examples for people to have experienced, they will tend to underestimate this until a new dwelling sited 7.6m/25’ from the front yard goes up next to them. This is even more impactful in areas where the lots are narrower and/or there is a mature built environment.

That said, there is a recently constructed dwelling on Southlands approved under the prior version of Bylaw 114 that can be used for illustrative purposes as it an actual building in the public realm. It was built to a 7.6m/25’ front yard setback and has a cantilevered deck that extends about 3.0m/10’ over the setback area. It appears to have at least a 3.0m/10’ setback from the west sideyard and a more generous one to the east.

In all due regard to the owner and whatever siting challenges their designer may have had to contend with (some four or more months of drilling, blasting, and scraping were involved to prepare the site), what was built was fully allowable under the existing zoning. Using it as an example is absolutely not intended to be taken as a passing of judgement on the suitability of the design, its aesthetics, or anything else other than it reflects a dwelling built to the allowable front and side yard setbacks that detractors of the changes to Bylaw 114 want to revert to. It is also not intended as an endorsement.

Viewed from the water:



Viewed from the east:



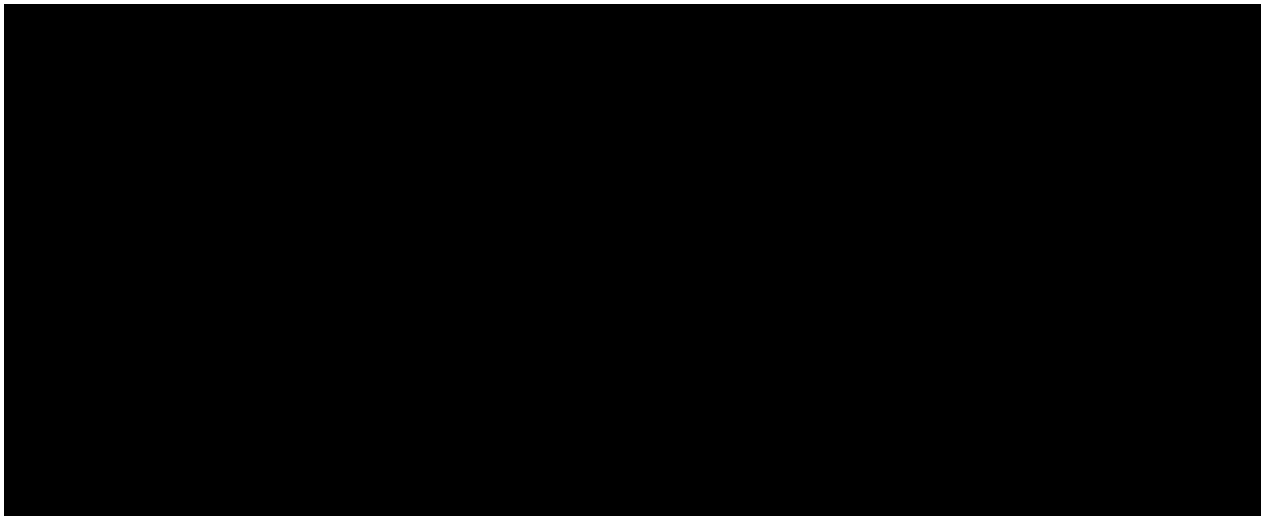
Approximating the footprint of the dwelling with its deck area and overlaying that onto the vacant properties along Southlands Drive would look somewhat like what is shown below (without altering the size of the footprints relative to the sizes of the property):



As a 'thought experiment', applying that same footprint to the three properties lying to the east of Southlands that have existing stands of Garry oak and conifers between the dwellings and the sea would look somewhat like this:



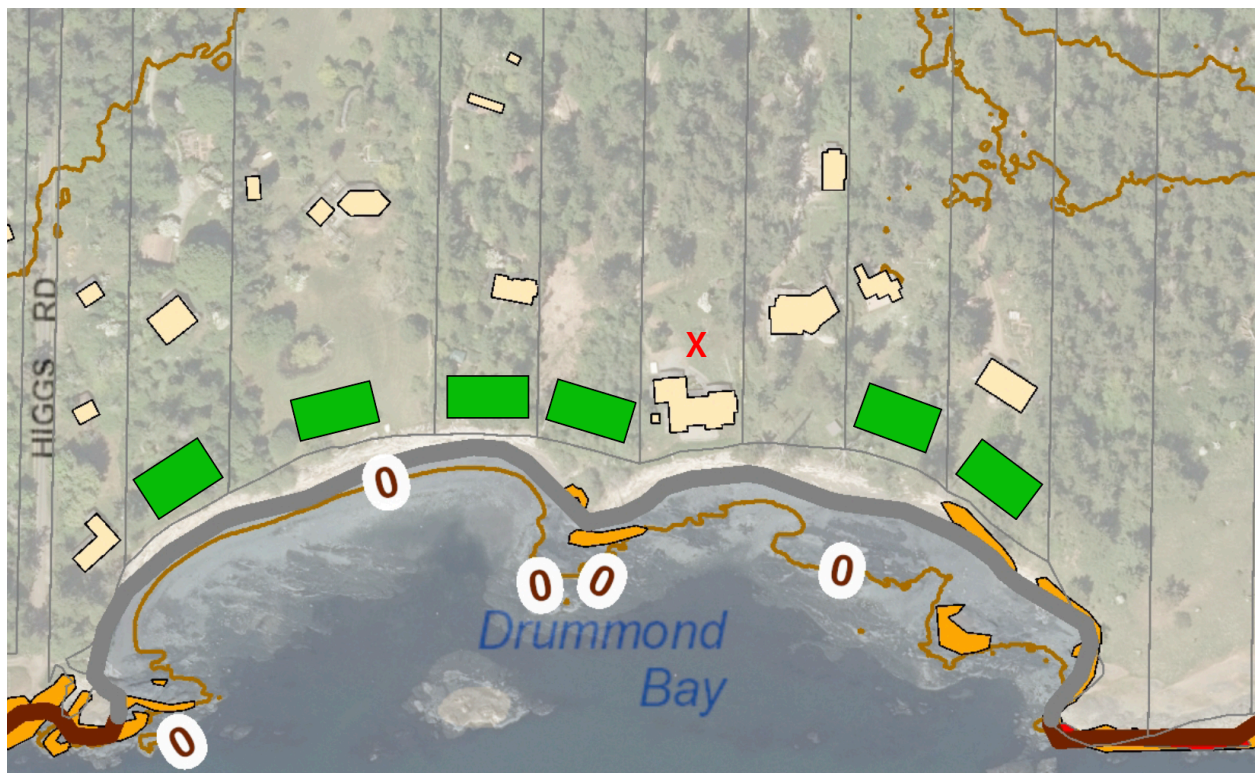
dwelling of approximately 167m²/1,800 ft² shown in the image below is sited roughly 7.9m/85' back from the small cove at the southwest corner of the property, but on the order of 12.0m/130' or more from the next closest portion of shoreline:



If a new dwelling were to be constructed to the maximum square footage (418m²/4,500ft² based on the lot area of 0.77ha/1.91 acres), maximum height (9.15m/30'), and minimum front yard setback (7.6m/25') allowable under the prior version of Bylaw 114, the resulting building envelope would approximate the red rectangle overlaid in the image that follows – but without a representation of 3.0m/10' of cantilevered deck out in front of it:



Continuing this exercise to the waterfront properties along Drummond Bay, the larger average lot size between 0.8ha/2ac and 1.59ha/4ac would permit a maximum dwelling size of 520m²/5,600ft² based on the prior zoning. For the sake of this exercise, 9932 Gowlland Point Road (marked with an “X”) is 1ha/2.48ac in area and according to BC Assessment Authority records the main floor of the dwelling is 250²/2,689ft². Assuming a two-story format and siting the footprints at approximately 7.6m/25’ from the natural boundary of the sea, the built form of the Drummond Bay fronting properties would become:



To address the other theme in support of reverting the recent modifications to Bylaw 114 to the prior version – namely, that most of the subdivided properties have already been built on so any changes should only apply to those that are still vacant – as commented previously, today’s needs, wants, building technology, and capacity/willingness to spend more is not the same as it was over the timeframe that created the dominant built form on South Pender. To paraphrase the local building inspector, “I grew up here and never thought I’d be working on 7,000 plus square foot homes, but here we are. Things change”.

Building costs of \$500 to \$700 per square foot for a custom dwelling are not atypical. Ask the builders, tradespeople, courier company owners, excavator operators, etc., and they will tell you they are running at maximum capacity because of all the new construction on both North and South Pender. New dwellings are of course being constructed on vacant properties, but existing dwellings considered subpar or that don't measure up to today's expectations are also being replaced or rebuilt to a different footprint. Long-term residents are selling to move closer to services that will support the later stages of their lives and younger affluent owners are replacing them.

The ownership turnover of the twenty-six subdivided lots lying between Craddock, Gowlland and Higgs demonstrates this and is likely comparable to other parts of South Pender. Over the last six years, the following properties have changed hands (in chronological order):

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- Unknown sub-one acre lot on Gowlland

Ten of twenty-six properties have changed hands, or 39% of the total. Three of these already have newly constructed buildings on them, two of which were approved under the prior zoning bylaw.

Not to be alarmist but Albertans, Lower Mainlanders and others recreating and retiring to waterfront properties on Lake Okanagan resulted in cottages and small bungalows being replaced with these:



That image is what a community of large houses with setbacks that are similar to the prior version of Bylaw 114 could look like. Admittedly not three stories, but the dwelling footprints and two-story volumes could probably be dropped into the majority of the green rectangles shown on the maps

above. Also, admittedly, the development pressures on Lake Okanagan are not the same as on the Penders. However, it would be naïve to think that the construction of dwellings like these will never happen here because they already are and sadly, for some, it will not be until one goes up next door to them that they will come to that realization.

Built form change only happens all at once in new subdivisions or when groups of existing structures are demolished and their properties consolidated to make way for new, much larger ones. Think rows of houses being replaced with apartment buildings. Rather, more typically, it happens in small increments, one property at a time. In the words of Joni Mitchell, "...don't it always seem to go that you don't know what've you got 'til it's gone".

Rural character and the natural setting are frequently cited as what people value the most about South Pender. Reverting to the prior zoning parameters would be antithetical to those.

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