

A “Setback” is used in zoning regulations to separate a structure and a property line and/or a public right of way. They have different purposes in an urban area than they would in a rural area. South Pender is designated a “rural” area by the Islands Trust, the CRD and the Provincial Assessment Authority.

Why Setbacks?

Setbacks are used to for practical reasons as well as aesthetic purposes. They can provide open areas for services and access for emergency personnel, but they also provide lifestyle benefits such as privacy, air movement, natural lighting, and noise abatement.

Rural vs urban.

Rural areas have characteristics and needs that urban areas do not necessarily require. Setbacks provide areas for natural growth to provide cover and food for wildlife, particularly birds. Larger lot sizes, more common in rural areas, allow for these areas on private properties whereas in urban areas these are more often created on public land. Given that the protection and preservation of our rural character is one of the important considerations of trustees, setbacks in rural areas are more likely to be wider than in urban areas.

Side Lot setbacks.

Perhaps the greatest advantage for increasing side lot line setbacks is to safeguard the character of our rural neighbourhoods differentiating them from urban neighbourhoods. Given the reluctance to pursue form and character policies to maintain the rural character, wider setbacks are the only viable strategy.

However, recognizing the topography of some properties may make a single setback impractical for construction, a Variance is a reasonable means to assess properties on a site specific basis.

Front and rear setbacks.

BC Ministry of Highways has a minimum 15 M setback from a public highway which supersedes local authority.

Setbacks from coastal areas and foreshore must recognize that these are the most ecologically sensitive areas on our island, (trustees can confirm this with Trust Conservancy biologists.) In contradiction to that fact, we have zoned the highest use, the highest density, and associated development, on our waterfront. Climate related events due to climate change are exacerbating the threats not only to the environment but to private properties as well. In view of these considerations, the setback from the natural boundary of the sea was increased to 15 M. This was for aesthetic and well as precautionary reasons, and affects new construction only. The current trend is to increase setbacks, not decrease them, as the elevation of high tide lines will be increasing over time, and coastal areas need natural vegetation for bank stability and wildlife habitat.

The Trust Area.

The Islands Trust was established for the specific reason outlined in Sec 3, the Object, in the Trust Act. The Trust is not a “local government” but a trust, the beneficiaries being all residents of BC. That places a fiduciary duty upon trustees to consider the interests of all British Columbians not just the residents of South Pender. As Justice Southin of the BC Supreme Court stated in *Galiano Island Trust Committee vs MacMillan Bloedel* appeal, the “mandate is no mere piety”. Trustees can not place

property owners' concerns or objections over and above the mandate. Secondly, any amendments to bylaws must comply with the South Pender OCP. If trustees believe an amendment is needed they must show how the amendment achieves the objectives and policies in the OCP, otherwise they must amend the OCP as well. With respect to setbacks, the following objectives and policies apply:

- To maintain a rural island living environment that is safe, visually attractive, and free from disturbance and the sense of overcrowding.
- To protect the health of the coastal environment and marine ecosystems in the local trust area.
- To preserve the aesthetic quality of the natural shoreline as viewed from the water and adjacent lands.
- siting development sufficiently back from the natural boundary of the sea that protective structures are not needed to forestall damage from natural coastline erosion.

LTCs must also base their decisions on the relevant policies of the Trust Policy Statement, which are:

4.5.10 Local trust committees and island municipalities shall, in their official community plans and regulatory bylaws, address the location of buildings and structures so as to protect public access to, from and along the marine shoreline and minimize impacts on sensitive coastal environments.

5.2.1 Trust Council holds that growth and development in the Trust Area should be compatible with preservation and protection of the environment, natural amenities, resources and community character.

5.2.3 Local trust committees and island municipalities shall, in their official community plans and regulatory bylaws, address policies related to the aesthetic, environmental and social impacts of development.

5.2.4 Local trust committees and island municipalities shall, in their official community plans and regulatory bylaws, address any potential growth rate and strategies for growth management that ensure that land use is compatible with preservation and protection of the environment, natural amenities, resources and community character.

5.2.5 Local trust committees and island municipalities shall, in their official community plans and regulatory bylaws, address means for achieving efficient use of the land base without exceeding any density limits defined in their official community plans.

5.2.6 Local trust committees and island municipalities shall, in their official community plans and regulatory bylaws, address the identification of areas hazardous to development, including areas subject to flooding, erosion or slope instability, and strategies to direct development away from such hazards.

In closing;

I understand trustees political motivation for their insistence in amending Bylaw 114, particularly the changes adopted by the previous LTC. What is missing in their discussions is the rationale, within the confines of the Trust Act, our OCP, and the Trust Policy Statement, for wanting to make these changes. Most of the objections voiced in the community about Bylaw 112, were focused on concerns about "legal non-conforming". Those concerns are not valid. Other complaints were the amendments interfered with "private property rights" of which do not exist in Canada. Stating one's opposition because they "don't like them", is not germane because the Trust Act and the Trust Policy Statement are the basis of land use in the Trust Area. Not liking the Canadian Constitution does not make it immaterial. With these irrelevant objections aside, how widespread, and exactly what, is the

disagreement with having this bylaw remain as is? I ask because in advertising these meetings you state that setbacks and house size “require some adjustments... to be more broadly accepted...”. This leads to the conclusion that trustees have already decided the matter without providing any evidence that this is the case. If decisions at these meetings are going to be based upon scientific data, as Trustee Falck has rightly said they must be, then personal concerns (particularly errant ones), should have no bearing upon those decisions. It is unfortunately becoming all too common that science is dismissed when it interferes or conflicts with personal interests or becomes inconvenient to accept. I urge trustees to do their own research into these subjects so they will be able to differentiate between fact and fiction, and understand the policies which must ultimately guide their decisions.

Respectfully submitted by,

Steve Wright,
[REDACTED]

For reference:

<https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/best-management-practices/develop-with-care/dwc-section-4.pdf>

https://www2.gov.bc.ca/assets/gov/environment/air-land-water/water/integrated-flood-hazard-mgmt/guidelines_for_mgr_coastal_flood_land_use-2012.pdf