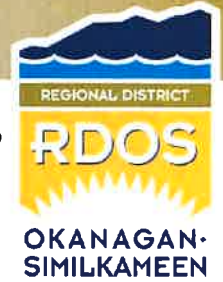


MEMORANDUM
DEVELOPMENT SERVICES DEPARTMENT



DATE: May 2, 2023 **FILE NO.:** E2023.016-DVP
TO: Christopher Garrish, Planning Manager
FROM: Shannon Duong, Planner II
RE: Development Variance Permit (DVP) — Electoral Area “E”

Owner: Gayl & Richard Grant **Folio:** E-00652.000
Civic: 3990 3rd Street **Legal:** Lot 9, Block 59, District Lot 210, SDYD, Plan 519

Proposed Development:

This application is seeking a variance to the exterior side parcel line setback that applies to the subject property in order to undertake the construction of an accessory building (i.e., a detached garage). Specifically, it is being proposed to reduce the minimum exterior side parcel line setback from 4.5 metres to 0.67 metres.

In support of this request, the applicant has stated:

- *No impact on traffic. Does not affect any adjacent properties.*
- *Neighbours stairs less -1 m from property line. Neighbours patio/deck – less than 2.4 m from property line. No affect on [sightlines] of roadway.*
- *No other place to build. Existing parking is and has been in this location since time we have lived at address. Closest access to the residence at alleyway.*
- *Addresses parking issue. Keeping cars off street. With extreme temperature & climate swings, offers protection & safety of vehicles.*
- *No environmental concerns & will not affect natural site character in any way.*

Site Context:

The subject property is approximately 836 m² in area and is situated on the corner of Gladys Ave and Third St, approximately 0.5 km from the boundaries of the City of Penticton. The property is understood to contain a single detached dwelling.

The surrounding pattern of development is generally characterised by similar small lot residential development.

Background:

The current boundaries of the subject property were created by a Plan of Subdivision deposited with the Land Titles Office in Kamloops on July 8, 1908, while available Regional District records indicate that building permits for a renovation to a garage (1978), renovation to a single family dwelling (2016) and an addition of a roof over a deck (2020) have been issued for the property.

The previous 1978 building permit was issued for the conversion of a garage which was located on the west side of the existing residence; more specifically, to “build bedrooms in garage area”.

Under the Electoral Area “E” Official Community Plan (OCP) Bylaw No. 2458, 2008, the subject property is currently designated Low Density Residential (LR).

Under the Okanagan Valley Bylaw No. 2800, 2022, the property is currently zoned Low Density Residential Two (RS2) which permits “accessory building or structure, subject to Section 7.1” as an accessory use.

The Ministry of Transportation and Infrastructure (MoTI) requires a minimum setback of 4.5 m from all highway right-of-ways or the issuance of a permit for the construction of structures within the minimum setback. The applicant has been issued a permit by the MoTI for the proposed construction.

The Regional District has received written complaints regarding vacation rental use of the subject property. Bylaw Enforcement staff advised the property owners that a Temporary Use Permit (TUP) is required for vacation rentals. The Regional District has not received a TUP application for vacation rental use to date.

BC Assessment has classified the property as “Residential” (Class 01).

Development Variance Permit No. E2022.007-DVP was previously issued to reduce the exterior side parcel line setback from 4.5 metres to 1.19 metres for the construction of the proposed detached garage.

Under Section 3.49 of the Regional District’s *Chief Administrative Officer Delegation Bylaw No. 2793, 2018*, “the CAO or his designate shall ... be delegated authority to issue a development variance permit under Section 498.1 of the *Local Government Act* ...”

Public Process:

In accordance with Section 2.4 of Schedule 4 (Application for a Development Variance Permit) of the Regional District’s Development Procedures Bylaw No. 2500, 2011, adjacent residents and property owners were notified of this DVP application on April 4, 2023, and provided 15 working days to submit comments electronically or in-person to the Regional District.

As of April 27, 2023, being 15 working days from the date of notification, one representation has been received electronically or by submission at the Regional District office.

Delegated Authority:

Under Section 498.1(2) of the *Local Government Act*, a local government that has delegated authority to an officer or employee to issue a development variance permit (DVP) must include “criteria for determining whether a proposed variance is minor.”

Under Section 3.49 of the Regional District’s *Chief Administrative Officer Delegation Bylaw No. 2793, 2018*, staff are to consider if the variance would be “minor and would have no significant negative impact on the use of immediately adjacent or nearby properties” through the use of the following criteria:

1. *degree or scope of the variance relative to the regulation from which a variance is sought;*
2. *proximity of the building or structure to neighbouring properties; and*

3. *character of development in the vicinity of the subject property.*

With regard to the degree of the requested variance it is considered that an approximately 85% reduction in an exterior side parcel line setback is substantial in nature, and generally would not be considered to be “minor”.

Despite this, it is noted that the establishment of a 4.5 metre exterior side parcel line setback reflects the MoTI’s requirement that buildings and structures be located no closer than 4.5 metres to a highway without an approved setback permit. In this case, it is noted that the applicant was issued a setback permit for the proposal on March 28, 2023.

With regard to the proximity of the proposed detached garage to neighbouring properties, the nearest parcel line is approximately 9 metres to the south. For this reason, the requested variance is seen minor and unlikely to adversely impact the use of adjacent properties through loss of privacy or overshadowing.

With regard to the final criteria and the character of development in the vicinity of the subject property, the placement of an accessory building/structure within a setback fronting the road (i.e., a front parcel line setback or exterior side parcel line setback) is not uncommon in the surrounding area. In this regard, the construction of the proposed detached garage within the exterior side parcel line setback is not seen to substantially differ from the existing character of development in the area.

For these reasons, the proposed variance is deemed to be minor, and consideration by staff of whether to issue a development variance permit (DVP) under delegation may proceed.

Analysis:

When considering a “minor” variance request, and in accordance with Section 498.1(2) of the *Local Government Act*, the Regional District Board requires that staff consider the following guidelines when deciding whether to issue a DVP:

1. *is the proposed variance consistent with the general purpose and intent of the zone;*
2. *is the proposed variance addressing a physical or legal constraint associated with the site (e.g. unusual parcel shape, topographical feature, statutory right-of-way, etc.);*
3. *is strict compliance with the zoning regulation unreasonable or un-necessary; and*
4. *Would the proposed variance unduly impact the character of the streetscape or surrounding neighbourhood.*

The Zoning Bylaw’s use of setback regulations is generally to provide physical separation between neighbouring properties in order to protect privacy and prevent the appearance of overcrowding. When a parcel is also adjacent a roadway, setbacks are further employed to maintain adequate sightlines for vehicle traffic movements.

Minimum setbacks from parcel lines are used to maintain a minimum space between houses in a residential neighbourhood to allow access to sunlight, to provide separation for fire safety or to mitigate nuisances (like noise) that might come from an adjacent building.

The Ministry of Transportation and Infrastructure (MoTI) requires that all buildings/structures be located at least 4.5 metres from a public highway, except where a setback permit is otherwise issued.

The Zoning Bylaw imposes an exterior side parcel line setback of *at least* 4.5 metres from public highways in recognition of the Ministry's setback requirement.

As the applicant was issued a setback permit from the MoTI allowing for the proposed exterior side parcel line setback reduction, Administration trusts that potential impacts of the proposed development on vehicular sightlines and traffic movements are negligible and therefore in keeping with the intent of the setback provision.

It is understood that the Naramata Village area comprises of small residential lots which can be somewhat limited in terms of developable area, especially when considering the presence of septic systems.

In reviewing previous Development Variance Permit Application No. E2022.016-DVP, Administration had considered the location of the septic system in the southeastern portion of the property and noted that its location limited siting options on the property, but that other options were available to the applicant such as restoring the original garage or siting the garage in the northern portion of the property.

In this regard, while some siting constraints do exist, the applicant has other options to pursue the proposed development which may negate the need for a variance.

Lastly, in reviewing the available aerial imagery of the properties located along the laneway to the rear of the parcel, it is noted that several parcels contain accessory structures which are sited a short distance from the lane. It is further noted that several parcels along Third Street also contain structures sited a short distance from the associated exterior side parcel lines.

In this regard, the proposal would be in keeping with the currently established character of the streetscape along both the laneway and on Third St. and would not impact the established streetscape or the use of other properties as the requested variance is not adjacent to other lots.

In light of these reasons, Administration finds that strict compliance with the setback provision to be unnecessary in this case and recommends that the requested variance be approved.

Recommendation:

THAT Development Variance Permit No. E2023.016-DVP, to allow for the construction of a detached garage at 3990 3rd Street, be approved.

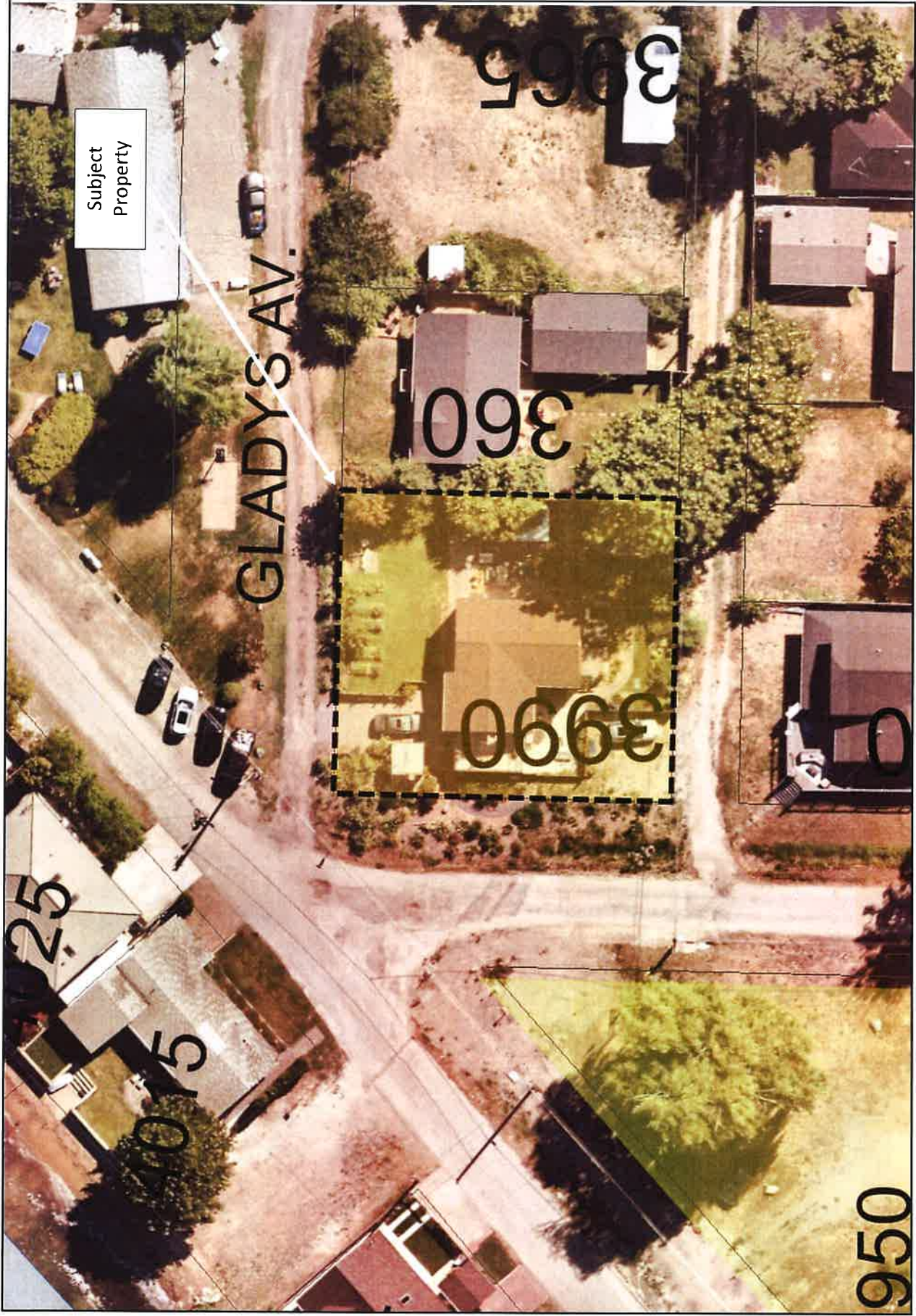
Respectfully submitted:



Shannon Duong, Planner II

Attachments: No. 1 — Aerial Photo

Attachment No. 1 – Aerial Photo



Attachment No. 2 – Site Photo (Google Streetview)

