

# MEMORANDUM

DEVELOPMENT SERVICES DEPARTMENT



**DATE:** November 3, 2023

**FILE NO.:** I2023.038-DVP

**TO:** Christopher Garrish, Senior Manager of Planning

**FROM:** Colin Martin, Planning Technician

**RE:** Development Variance Permit (DVP) — Electoral Area “I”

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**Owner:** Richard Staehli

**Agent:** NA

**Folio:** I-08044.000

**Civic:** 208 Highway 97

**Legal:** Plan KAP4841B, Section 23, Township 88, SDYD

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## **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 a carport for an accessory building.

Specifically, it is being proposed to reduce the exterior side parcel line setback from 7.5m to 4.8.

In support of this request, the applicant has stated that this is “to allow for an additional carport on a modular bundling that received a development Variance Permit.”

## **Site Context:**

The subject property is approximately 9.1 ha. in area and is situated on the southwest corner of Highway 97 and White Lake Road approximately 8.5 km south of the boundary of the City of Penticton. The property is understood to contain one (1) single detached dwelling, one (1) accessory storage shed, and one (1) accessory dwelling.

The surrounding pattern of development is generally characterised by agricultural and undeveloped resource area lands.

## **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 22, 1942, while available Regional District records indicate that a building permits for a single detached dwelling and garage (1987) the relocation of a mobile home (1991), the exchange of a mobile home (1993), the placement of a mobile home (1996), a steel storage shed (2017), and the placement of an A-277 manufactured home (2022).

A building permit and Development Variance Permit (DVP) were issued for the subject carport for the accessory dwelling; however the carport was placed in a different location than what was approved in the original DVP.

Under the Electoral Area “I” Official Community Plan (OCP) Bylaw No. 2683, 2016, the subject property is currently designated Agriculture (AG), and is the subject of a Watercourse Development Permit (WDP); however, the proposed location of the carport does not appear to fall within the WDP Area.

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Under the Okanagan Valley Zoning Bylaw No. 2800, 2022, the property is currently zoned Agriculture Three (AG3) which permits “accessory dwelling or mobile home, subject to Section 7.2”

The property is within the Agricultural Land Reserve (ALR) and BC Assessment has classified the property as “Residential” (Class 01).

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 October 11, 2023, and provided 15 working days to submit comments electronically or in-person to the Regional District.

As of November 1, 2023, being 15 working days from the date of notification, approximately XX representations have 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 scope of the requested variance it is considered that a reduction of the exterior side parcel line setback to 4.8 metres is minor, particularly in consideration of the Ministry of Transportation and Infrastructure’s requirement that structures be located at least 4.5 metres from a road reserve.

With regard to the proximity of the proposed carport to neighbouring properties, the nearest parcel lines is approximately is 45 metres to the west. 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, it is noted that a majority of the surrounding parcels are large in area and zoned Resource Area (RA) and Agriculture Three (AG3). While these parcels may not have existing accessory dwellings, it is not uncommon for parcels of this size and nature to contain accessory dwellings.

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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.

In the agricultural zones, setbacks are further used to mitigate the potential for conflict between land uses with the Ministry of Agriculture recommending that setbacks be used to “avoid farming right up to the back wall of [a] residence.”

In this instance, it is noted that the topographical characteristics of the parcel mitigate traffic-related concerns which would ordinarily be of concern with a reduction in an exterior side parcel line setback. In particular, Administration notes that the carport would be placed at the bottom of a slope, which would result in the home being below the grade of Highway 97.

Additionally, the placement of the carport in the proposed location is not seen to have any negative impacts on privacy of neighbouring properties due to the relatively large distance between the proposed site and adjacent parcels.

Conversely, it is recognised that the applicant had other options for siting the proposed carport on the property. File No. I2022.031-DVP was originally approved and permitted the carport to be built on the northwest side of the accessory dwelling. Despite this, it is noted that the carport would be sited in the location of a previous modular home and in this regard, the proposed siting would utilise an area which has already been previously disturbed.

For these reasons, it is recommended that the requested variances be approved.

**Recommendation:**

THAT Development Variance Permit No. I2023.038-DVP, allow for the construction of a carport on an accessory dwelling at 208 Highway 97, to be approved.

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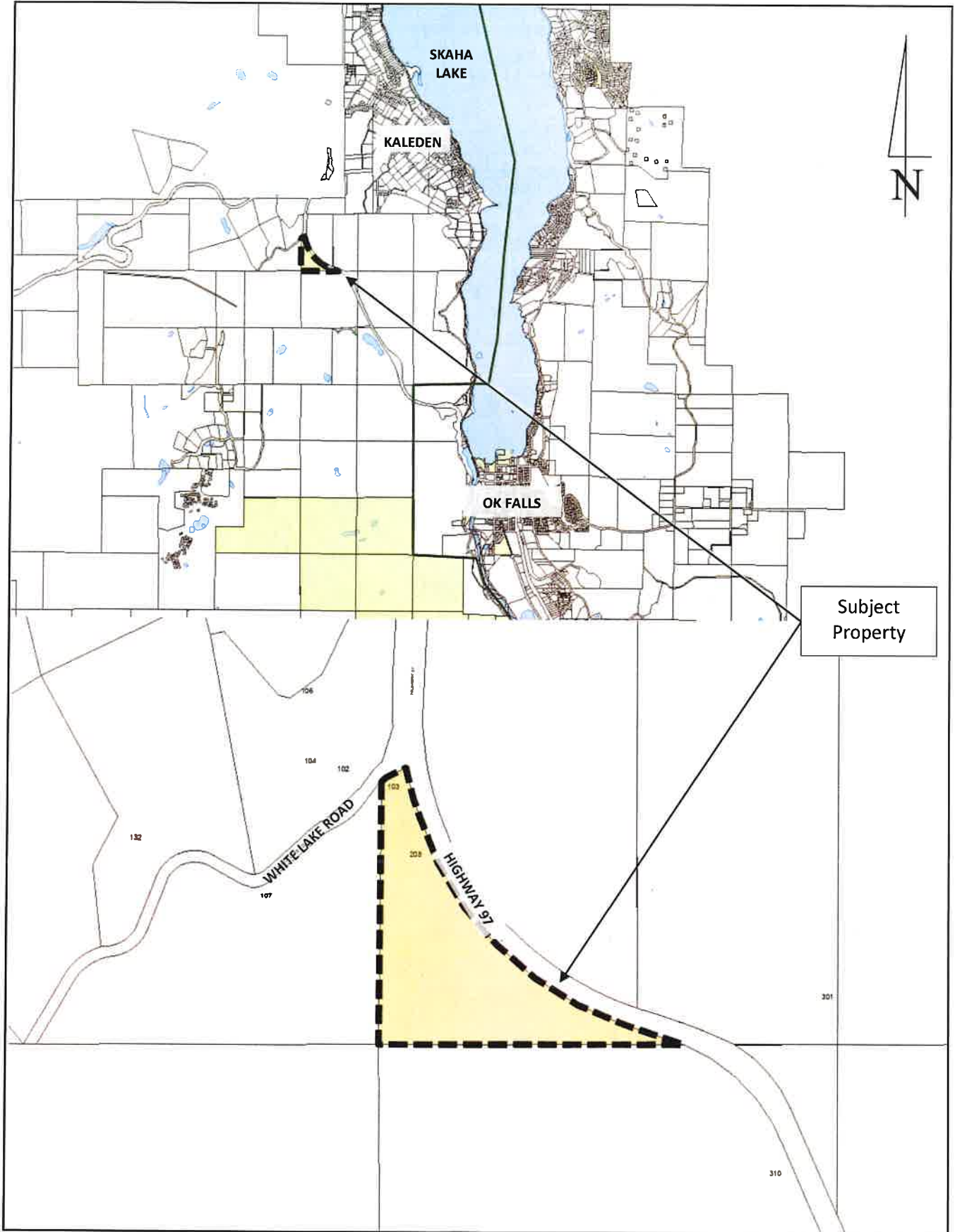
**Respectfully submitted:**

*Colin Martin*

Colin Martin, Planning Technician

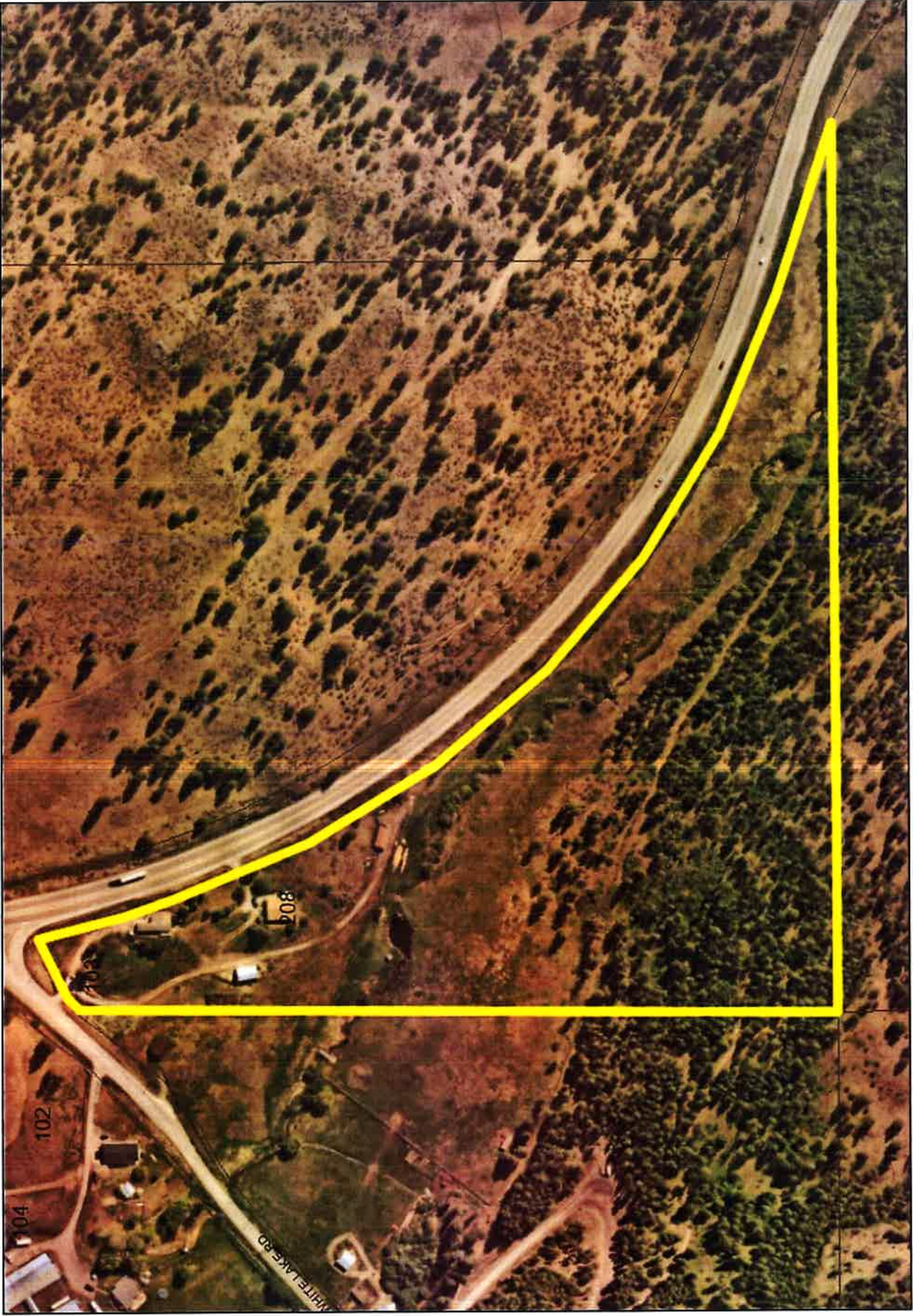
Attachments:    No. 1 — Context Maps  
                          No. 2 — Aerial Photo  
                          No. 3 — Site Photo (Google Earth)

Attachment No. 1 – Context Maps



Subject  
Property

Attachment No. 2 – Aerial Photo



Attachment No. 3 -- Site Photo (Google Earth)

