

# ADMINISTRATIVE REPORT



**TO:** Board of Variance  
**FROM:** B. Newell, Chief Administrative Officer  
**DATE:** January 6, 2023  
**RE:** Board of Variance Appeal — Electoral Area “C”

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## **Administrative Recommendation:**

**THAT the Board of Variance deny the requested variance under Section 542(1) of the *Local Government Act*.**

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Purpose: To reduce the front setback to facilitate construction of a new garage Folio: C-01131.280

Civic: 573 Johnson Crescent Legal: Lot 56, Plan KAP23124, District Lot 26, SDYD

OCP: Small Holdings (SH) Zoning: Small Holdings Three (SH3) Zone

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## **Proposed Development:**

The applicant is seeking approval to reduce the front parcel line setback to facilitate construction of a new garage.

Specifically, it is being proposed to vary the front parcel line setback from 7.5 metres to 2.98 metres to the outermost projection.

In support of the proposal, the applicants have stated that:

- complying with the SH3 minimum setback requirements of 7.5m from the front parcel line clashes with the existing septic drain field serving our house.
- any damage to the septic drain field would compromise the proper function of the sewage septic disposal system serving our house.
- shifting the siting of the garage as per the attached BC Land surveyor’s certified drawing is necessary to avoid the clash with and damage to the existing septic field.
- MoTI measures the setback distance to the closest point of the vertical foundation wall which is the 4.18m distance.
- the difference [between 4.18m and the requested 2.98m setback] is only to accommodate the horizontal projection of the roof overhang...to provide adequate rain protection for the log walls of the garage.

## **Site Context:**

The subject property is approximately 0.82 ha in area and is on the west side of Johnson Crescent. The property is currently developed with a single detached dwelling and a pool.

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The surrounding pattern of development is characterised by similar residential development and farms on small holdings parcels to the east and undeveloped resource area parcels to the west.

**Statutory Requirements:**

Under Section 540(a)(i) of the *Local Government Act*, a person may apply to the Board of Variance (BoV) if the person alleges that compliance with a bylaw respecting the siting, size or dimensions of a building or other structure would cause the person hardship.

In this instance, the applicants are alleging that compliance with section 15.3(b)(i) of the Okanagan Valley Zoning Bylaw No. 2800, 2022, would damage the existing septic field and compromise the proper function of the sewage disposal system servicing the single detached dwelling.

In considering this application, the BoV may order that a minor variance be permitted from the requirements of the applicable Bylaw. The BoV must be satisfied that it has heard the applicant and any notified person, undue hardship would be caused to the applicant if the Zoning Bylaw is complied with, and the proposed variances do not:

1. result in inappropriate development of the site;
2. adversely affect the natural environment;
3. substantially affect the use and enjoyment of adjacent land;
4. vary permitted uses and densities under the Zoning Bylaw;
5. defeat the intent of the bylaw; or
6. vary the application of an applicable bylaw in relation to residential rental tenure.

Under the Regional District's Board of Variance Bylaw No. 2494, 2009, written notice of a Board of Variance appeal shall be mailed or otherwise delivered at least 10 days before the date of the meeting. Owners and tenants of adjacent lands will have been notified of this application and will have the opportunity to comment prior to or during the Board of Variance meeting.

In accordance with Section 5 of Bylaw No. 2494, the Decision of the Board "to either grant or deny an order must be made in the presence of the applicant, and any other persons notified in connection with that application [emphasis added], if in attendance at the meeting."

**Background:**

The current boundaries of the subject property were created by a Plan of Subdivision deposited with the Land Titles Office in Kamloops on October 3, 1972, while available Regional District records indicate that building permits for a single detached dwelling (1976) and a pool (1981) have previously been issued for this property.

Under the Electoral Area "C" Official Community Plan (OCP) Bylaw No. 2452, 2008, the subject property is currently designated Small Holdings (SH), and is the subject of Watercourse Development Permit (WDP) and Environmentally Sensitive Development Permit (ESDP) Area designations.

Under the Okanagan Valley Zoning Bylaw No. 2800, 2022, the property is currently zoned Small Holdings Three (SH3) which requires a minimum front parcel line setback of 7.5 metres.

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

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An Environmentally Sensitive Development Permit (File No. C2022.020-ESDP) has previously been issued and a building permit application (Permit No. 23192) has been submitted for the garage subject to the current appeal.

The Ministry of Transportation and Infrastructure has issued a Highway Use Permit for the subject garage to allow reduction of the front parcel line setback to 4.18metres, measured from the outermost wall of the structure.

**Public Process:**

Adjacent property owners and residents will have received notification of this application in accordance with the requirements of the Regional District’s Board of Variance Bylaw No. 2494, 2009.

**Analysis:**

In considering this proposal, administration notes that Section 542(1)(b) of the *Local Government Act* requires that the Board of Variance must find that undue hardship would be caused to the applicant if the bylaw is complied with in order to permit a minor variance.

In this case, there do not appear to be any physical or other constraints that would preclude the proposed structure from being located elsewhere on the property and outside of the prescribed setbacks.

Although the location of the existing septic system may conflict with the garage location proposed in the original building permit, the applicant has not demonstrated an inability to locate the structure elsewhere on the property and in compliance with the zoning regulations. As such, compliance with the bylaw would not result in undue hardship.

Administration is also concerned that the principal mitigating factor in support of this requested variance is the presence of mature vegetation along the property line with Johnson Crescent. There is no requirement that the current or future property owners maintain this vegetation, therefore there is concern that its possible removal in future – for aesthetic or plant health considerations – would undo the merits of this variance.

Alternative:

Conversely, administration notes that 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.

With respect to providing adequate separation between neighbouring properties, the nearest parcel line is approximately 10 metres to the north and appears to contain a small horse ring. The nearest residence is approximately 50 metres west of the proposed location of the garage. For these reasons, the requested variance is seen to not affect privacy or the appearance of overcrowding.

With respect to maintaining vehicle sightlines, the proposed garage would be setback 4.18 metres from the front parcel line to the outermost wall. Only the roofline of the garage would project to 2.98 metres. Additionally, MoTI has issued a highway use permit for the variance. For these reasons, the requested variance is seen to maintain adequate vehicle sightlines.

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In support of the two preceding considerations, the parcel frontage is also currently lined by a row of trees, which would screen the proposed development and reduce potential impacts to vehicle sightlines or visual impacts to adjacent properties.

Summary:

For these reasons, Administration does not support the requested variance and is recommending denial.

**Alternative:**

THAT the Board of Variance approve the requested variance under Section 542(1) of the *Local Government Act*.

**Respectfully submitted**

*Ben Kent*

Ben Kent, Planner I

**Endorsed by:**

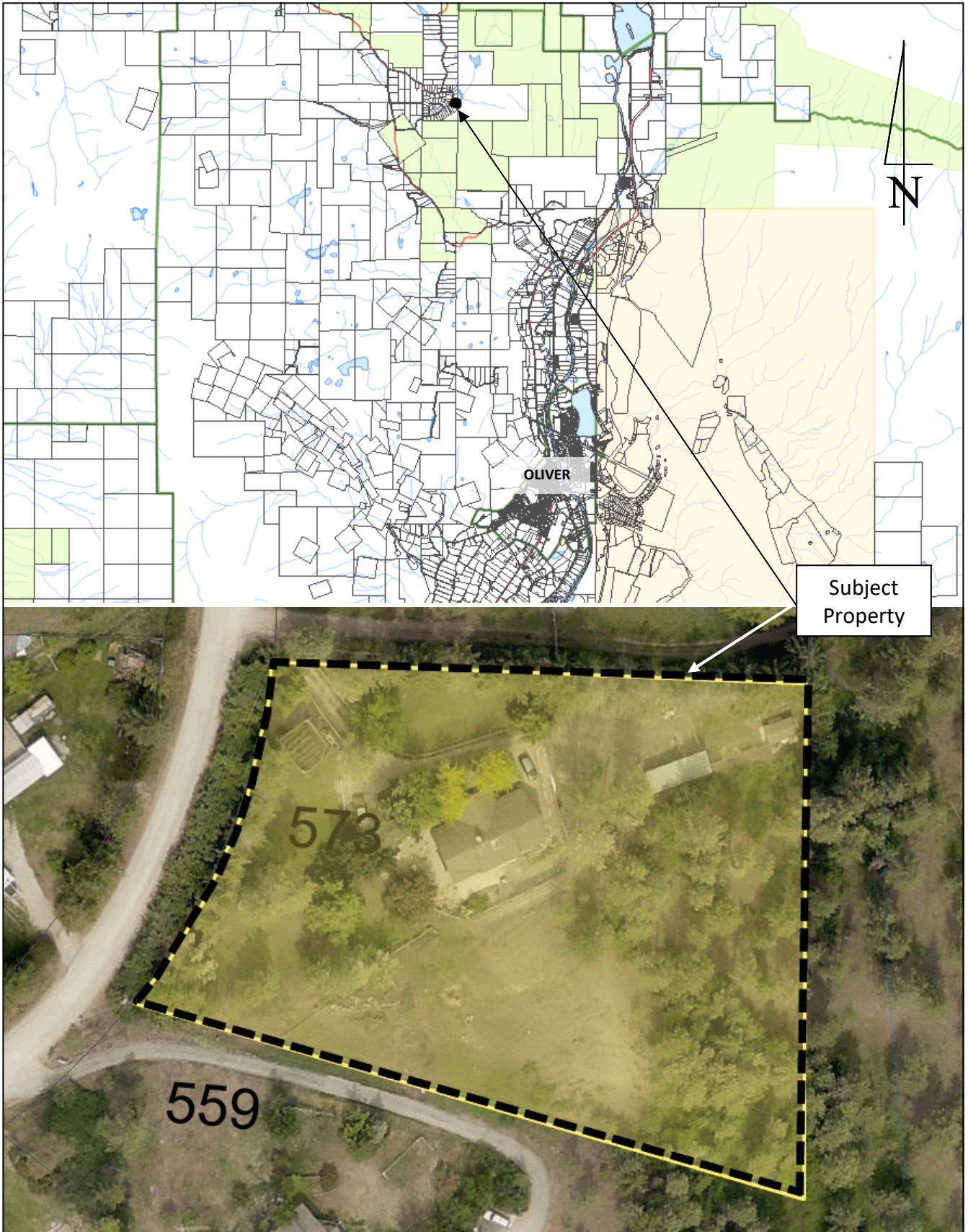


C. Garrish, Planning Manager

Attachments:

- No. 1 – Context Maps
- No. 2 – Applicant’s Site Plan
- No. 3 – Applicant’s Building Elevations
- No. 4 – Site Photo

Attachment No. 1 – Context Maps



Attachment No. 2 – Applicant’s Site Plan





Attachment No. 3 – Applicant’s Building Elevations



Rear Elevation

SCALE: 1/4" = 1'-0"



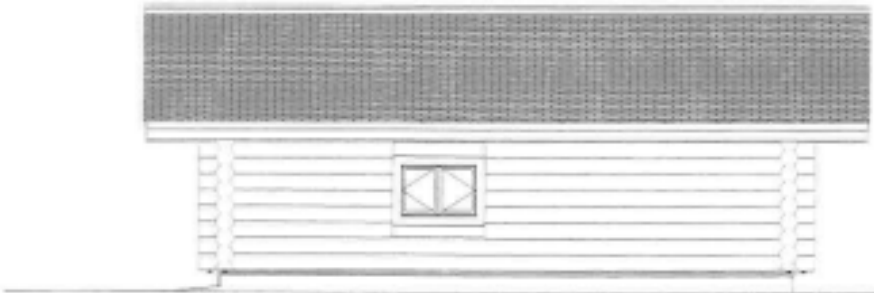
Left Elevation

SCALE: 1/4" = 1'-0"



Front Elevation

SCALE: 1/4" = 1'-0"



Right Elevation

SCALE: 1/4" = 1'-0"

Attachment No. 4 – Site Photo (Google Streetview - 2012)

