



TO: Board of Directors
FROM: B. Newell, Chief Administrative Officer
DATE: July 6, 2023
RE: Title Zoning Bylaw Amendment – Electoral Area “C” (C2023.006-ZONE)

Administrative Recommendation:

THAT Bylaw No. 2800.28, 2023, a bylaw to amend the Okanagan Valley Zoning Bylaw to allow for the continued operation of an eating and drinking establishment at 3692 Fruitvale Way be read a first and second time and proceed to public hearing; and,

THAT the holding of a public hearing be scheduled for the Regional District Board meeting of July 20, 2023; and,

THAT notice of the public hearing be given in accordance with the requirements of the Local Government Act.

Folio: C-05854.010 Legal: Lot 2, District Lot 2450S, SDYD, Plan 19063

OCP: Agriculture (AG) Zone: Agriculture One (AG1)

Proposed Development:

To amend the zoning of the subject property to allow for the continued operation of an eating and drinking establishment known as Backyard Farm Chef’s Table.

The applicant is proposing to amend the zoning of the property from Agriculture One (AG1) to Agriculture One Site Specific (AG1s), with the site specific regulation to permit an eating and drinking establishment as a principal use.

The applicant has stated, amongst other things, that “Back Yard Chef’s farm-to-table culinary experience business model supports agriculture. The ALC Okanagan Panel through its decision recognizes the value-added services are supportive of, and ancillary to, agriculture.”

Site Context:

The property is approximately 3,747 m² in area and is situated on the west side of Fruitvale Way. The surrounding pattern of development is generally characterised by agricultural and associated residential uses.

The dwelling was converted in 2015 into an eating and drinking establishment with the remainder of the dwelling used on an occasional basis by the property owners when they are visiting the Okanagan.

It is further understood that some food items used in the eating and drinking establishment are grown on-site, and that there is also an accessory building (i.e., a farm storage building).

Background:

The property was created on May 12, 1969, and available Regional District records indicate that building permits have been issued for an addition to a single detached dwelling (1974) and interior renovations to a single detached dwelling (2015).

Under the South Okanagan Regional Growth Strategy Bylaw No. 2770, 2017, the property is not within a Primary or Rural Growth Area.

Under the Electoral Area "C" Official Community Plan (OCP) Bylaw No. 2452, 2008, the property is currently designated Agriculture (AG), which seeks to "preserve and protect the existing agricultural land base in rural Oliver" and encourages secondary "value added" uses that diversify and enhancing farm income.

Under the Okanagan Valley Zoning Bylaw No. 2800, 2022, the property is zoned Agriculture One (AG1) which permits "agriculture" and "single detached dwelling" as principal uses, but excludes "eating and drinking establishment". An "eating and drinking establishment" is defined as meaning:

a development where prepared foods and beverages are offered for sale to the public for consumption within the premises or off the site...

The subject property has been classified by BC Assessment as "Residential" (Class 01) and is within a water service area operated by the Town of Oliver.

Enforcement:

The property has been the subject of a Stop Work Notice for constructing an accessory structure (i.e., a covered patio) without a building permit and which is intended to support an "eating and drinking establishment". A building permit cannot be issued until the property is brought into compliance with the Zoning Bylaw as "eating and drinking establishment" is not a permitted use.

Due to the property being in the Agricultural Land Reserve (ALR), the use of the property as an "eating and drinking establishment" required approval of the Agricultural Land Commission (ALC). At its meeting of August 18, 2022, the "the applicant's Non-Farm Use application was authorized to proceed to the ALC. On March 31, 2023, the ALC conditionally approved the use of the property for the purposes of a restaurant (e.g. "dining and catering services").

Referrals:

Approval from the Ministry of Transportation and Infrastructure (MoTI) is required prior to adoption as the proposed amendments involve lands within 800 metres of a controlled access highway (i.e. Highway 97).

Pursuant to Section 475 of the *Local Government Act*, the Regional District must consult with the Agricultural Land Commission (ALC) when proposing to amend an OCP which might affect agricultural land. Both the ALC and the Ministry of Agriculture have been made aware of the proposed amendment bylaw.

Public Process:

On June 14, 2023, a Public Information Meeting (PIM) was held electronically via Webex and was attended by approximately eight (8) members of the public.

At its meeting of June 21, 2023, the Electoral Area “C” Advisory Planning Commission (APC) resolved to recommend to the RDOS Board that the subject development application be approved.

All comments received to date in relation to this application are included as a separate item on the Board Agenda.

Analysis:

The Board previously authorized this application to proceed to the ALC and the application was subsequently approved, with conditions.

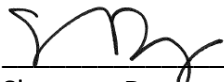
Concerns

- that the “eating and drinking establishment” use, being a value-added use which is meant to be secondary to a predominating agricultural use, is the prevailing land use on the subject property and the agricultural use appears to be secondary and supportive to the commercial use;
- that the eating and drinking establishment is a commercial use which should typically be directed towards commercially designated properties within a Primary Growth Area that has appropriate servicing to support commercial uses; and,
- that the cumulative impacts of the commercial use and its associated parking on the agricultural land base and the potential resultant land use conflicts between farming and non-farming interests in the vicinity.

Alternatives:

1. THAT the Okanagan Valley Zoning Amendment Bylaw No. 2800.28, 2023, be read a first and second time and proceed to public hearing;
AND THAT the holding of the public hearing be delegated to Director Knodel;
AND THAT staff schedule the date, time, and place of the public hearing in consultation with Director Knodel;
AND THAT staff give notice of the public hearing in accordance with the requirements of the *Local Government Act*.
2. THAT the Okanagan Valley Zoning Amendment Bylaw No. 2800.28, 2023, be denied.

Respectfully submitted:



Shannon Duong, Planner II

Endorsed By:



C. Garrish, Senior Manager of Planning

Attachments: No. 1 – Applicant’s Site Plan

No. 2 – Site Photo

Attachment No. 1 – Applicant’s Site Plan



Attachment No. 2 – Aerial Photo (2023)



Subject Property
(APPROX. BOUNDARIES)