



McElhanney



**3692 FRUITVALE WAY,
OLIVER, BC**

REZONING APPLICATION

May 4th, 2023

To: Regional District of Okanagan Similkameen
101 Martin Street, Penticton, B.C.

Contact

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Address

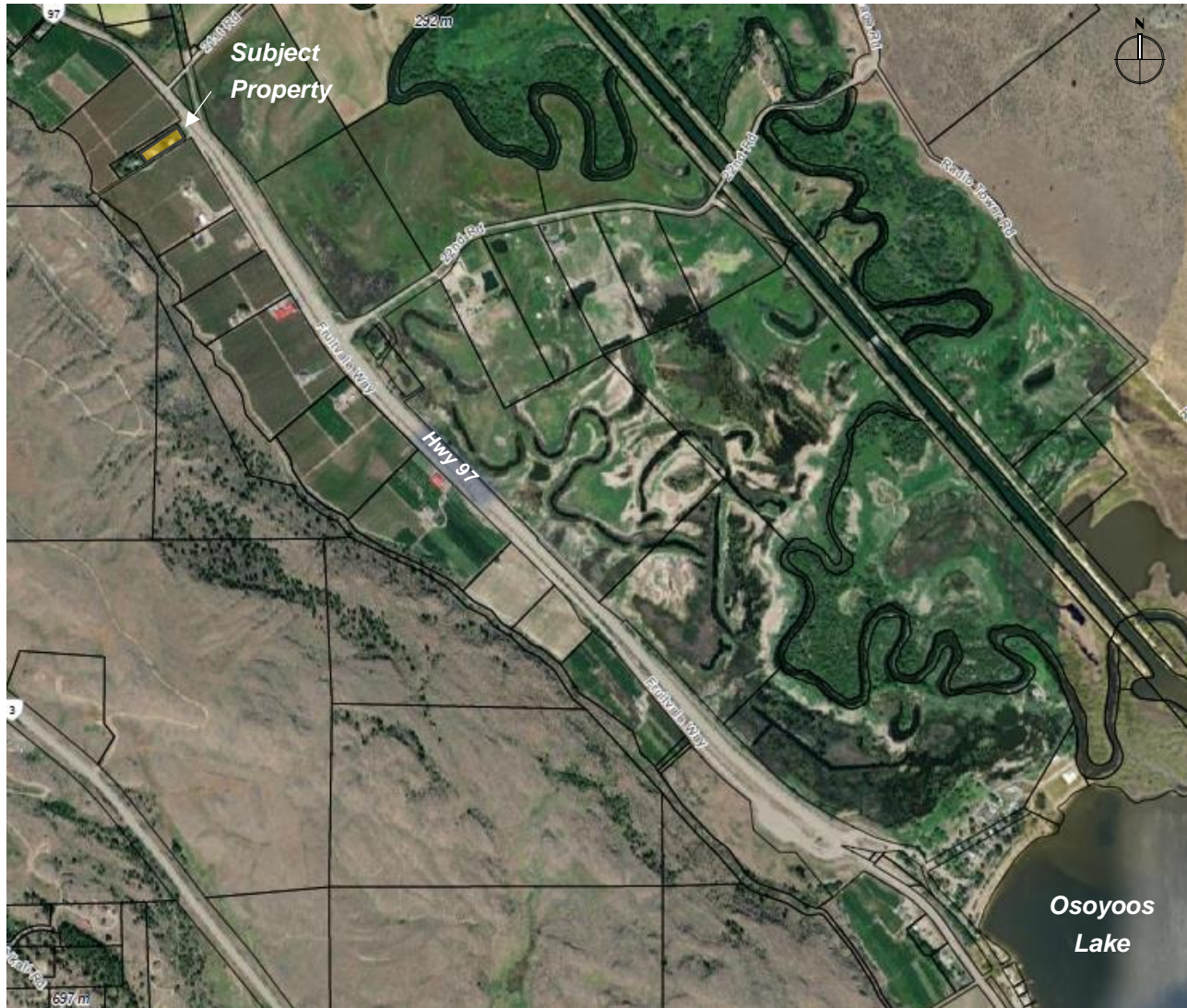
2281 Hunter Road,
Kelowna, BC Canada V1X
7C5

Our file: 2451-3009-011

1. Location of Subject Property

The subject property is located at 3692 Fruitvale Way, within Area 'C' of the Regional District of Okanagan Similkameen and is approximately 8 km north of the Town of Osoyoos and 2.7 north of the north end of Osoyoos Lake as shown in Illustration 1. The Subject property is entirely within the ALR.

Illustration 1: Location of Subject Property

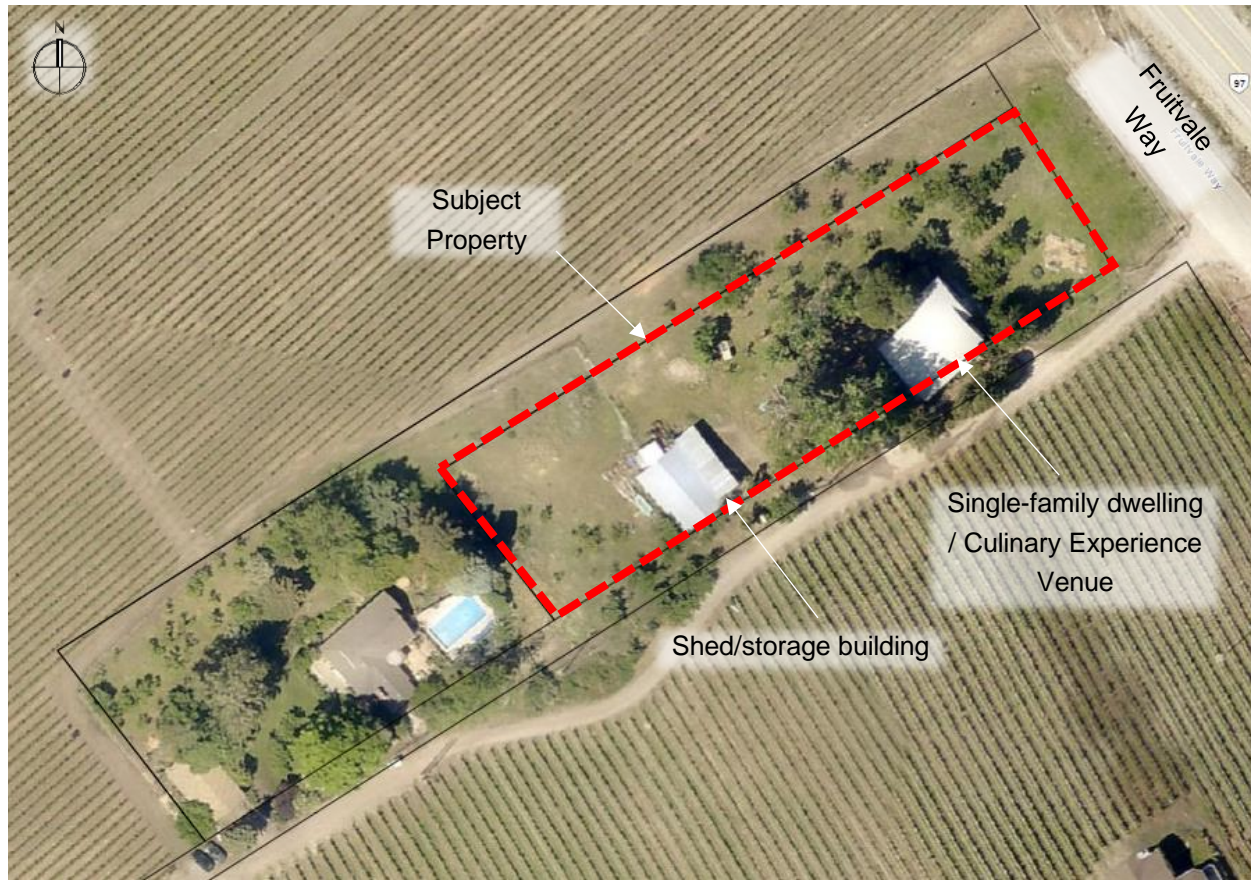


2. Site Context and History

The property is approximately 0.375 ha. (0.926 acres) in area and is denoted by the red dashed line shown in Illustration 2. The property slopes down gently from west to east and the property has legal and physical access to Fruitvale Way, located on the east side of the parcel.



Illustration 4: RDOS Webmap showing current zoning



The property contains a single-story single-family residential dwelling with footprint of approximately 200 m². The property also contains a storage building that is approximately 100 m² in area that is used for storage of farm equipment and supplies.

The Backyard Farm Chefs Table has been offering culinary experiences tailored to the promotion of sustainable and organic farming for 9 years (est. June 1st, 2014).

As a result of Covid and the inability to meet / gather indoors, in 2021 the Backyard Chef's Table agri-culinary dining experience operation had to pivot to keep the business operational and an outdoor eating area gazebo was constructed. Upon inspection of the gazebo by the RDOS, the RDOS determined that the use of the property was not consistent with the zoning of the property and determined that the use may be inconsistent with the ALC Act and Regulations.

2.1. ALC APPLICATION

After considerable contemplation and discussion with the ALC staff and the RDOS staff about the appropriate type of applications to submit, it was determined that the first application process should be a non-farm application to the ALC. On April 5, 2022, the applicant submitted the "non-farm" use application to the ALC in order to formalize the use of the property. On August 18, 2022 the application proceeded to



the RDOS Board and the application received RDOS Board support to “authorize” the application proceed to the ALC.

On March 31st, 2023 the Okanagan Panel of the ALC released resolution #122/2023, approving the “non-farm” use of the property as a non-transferable decision, and indicated that any zoning amendments required to allow for the Dining and Catering Use, be site specific. In its decision, the ALC stated that the Back Yard Chef agri-culinary dining experience business model demonstrated that “the experience of the guests is predicated on the proximity and connection of the existing Dining Service with the Properties and the food produced on them.” The Commission further stated that “the small-scale nature of the Dining and Catering Services are commensurate with the equally small-scale agriculture taking place on the Properties, and the Dining Service is dependent on the continued intensive small-scale agricultural production of the property”. Intensive small-scale agriculture is commensurate with the seasonal small-scale dining and catering service, without overshadow agricultural production.

There were five conditions attached to the ALC decision to approve the non-farm use, one of which is specifically relevant to the rezoning of the property. This important ALC condition states “if rezoning of the Property is required by the local government, the Commission requires the zoning change to be specific to the Property and limit the type of non-farm use permitted to the Dining and Catering Services specified in the decision. No broad zoning changes are permitted and the draft amendment bylaw must be reviewed and approved by the ALC prior to first reading of the bylaw.”

3. Current Land Use Designations

3.1. ZONING

The zoning of the subject property is Agriculture One (AG1) within the Okanagan Valley Zoning Bylaw 2800, 2022 as noted in Illustration 4.

The AG1 zoning of the property permits various uses such as agriculture and associated uses, including a single-family dwelling, accessory buildings or structures, and other accessory uses relating to agricultural activities.

The current agri-culinary dining experience use that is occurring on the subject property is not a permitted use in the zoning bylaw, and the property will require a site specific zoning to allow the continued use on the property.

The property pre-dates the establishment of the ALR and has been historically used for residential and domestic agricultural purposes. The Dining and Catering Services are not removing land from active agricultural activities. Given the small size of the parcel (0.962 ac), there are few circumstances one could imagine where an organic and sustainable farming-based business could thrive as it has on the subject property. Should the use cease to occur, it is unlikely that its outsized contribution to agriculture and culinary experiences, education, and advocacy could be matched existing as a single-family dwelling.



Illustration 4: RDOS Webmap showing surrounding zoning

3.2. OFFICIAL COMMUNITY PLAN

The property is designated Agriculture (AG) within the Electoral Area “C” Official Community Plan Bylaw 2905, 2021 as noted in Illustration 5. The AG designation is intended for areas with potential for agricultural operation or activity generally including but not limited to the production of livestock, poultry, farmed game, fur bearing animals, crops, fruit, grain, vegetables, milk, eggs, honey, mushrooms, fibre crops and horticultural and aquacultural products, as well as activities associated with the production and processing of these items.

We understand an objective of the Agricultural OCP designation is to preserve agricultural land while also supporting the benefits of agriculture in the local economy, including agri-tourism activities which promote local agriculture. The ALC application that was supported by the RDOS Board and approved by the ALC explained many aspects of the agri-culinary experience that do not fit the conventional understanding of a food and beverage operation and how those aspects shape this property and business as an agritourism tailored culinary experience. In summary, these elements include:

- Intensely produced and diverse range of food produced on the subject property.
- Fostering a holistic approach, including using organic farming practices and water wise irrigation practices, and onsite biodynamic composting.
- The only non-agricultural use of the property is the original house and is the instrument to support the agricultural activities.
- As an ambassador for sustainable and organic farming, education is a keystone of the business.



Although some of the policies in the Agricultural section of the Area 'C' OCP may not be relevant to the property given the size, farm business model or the uses on the subject property, but without exception, the Back Yard Chef's farm-to-table culinary experience aligns with every other agricultural policy in the Agricultural section of the OCP. The Agricultural policies in the OCP which align with the proposed use of the property include the following:

- Promote public education and awareness of sensitivity to agricultural operations through farming practices.
- Support agri-tourism activities which promote local agriculture and are secondary and incidental to the areas farming production.
- Preserve and protect the existing agricultural land base in rural Oliver.
- Encourages maximizing productive farm activity and minimizes non-farm use on the farmland by limiting the footprint of the non-farm uses.
- Encourages farm operations and practices that are sustainable and environmentally sound, including best practices for waste disposal, and protection and enhancement of wildlife habitat and ecosystems.
- On existing parcels, encourage agricultural use of all farm parcels regardless of size.

Illustration 5: RDOS Webmap showing adjacent OCP designations



4. Proposed Zoning Change

In their decision, the ALC Okanagan Panel approved the proposal to continue operation of the existing Dining and Catering Service with several conditions. The ALC approval will restrict the Dining and Catering Service to:

- (a) siting of the non-farm use in accordance with Schedule A;
- (b) a maximum of 20 guests per evening;
- (c) no expansion of the footprint of the Business within the ~200 m² residence. The Commission understands that the Business utilizes 45% of the existing residence;
- (d) approval for non-farm use is only for the existing Dining and Catering Services (The Backyard Farm Chef's Table) in accordance with its existing business model as identified;

The ALC Panel has provided the specific condition in regard to zoning:

- (e) if rezoning of the Property is required by the local government, the Commission requires the zoning change to be specific to the Property and limit the type of non-farm use permitted to the Dining and Catering Services specified in this decision. No broad zoning changes are permitted and the draft amendment bylaw must be reviewed and approved by the ALC prior to first reading of the bylaw.

This application requests that the Agriculture One (AG1) zone is amended to include a site specific zone for the property that encompasses and meets the directive of the ALC.

The ALC used the words "Dining and Catering Services" in their decision to describe the site specific uses that they would allow on the property, and we find these words vague and broad and not very indicative of the farm-to-table culinary experience that the business provides. We understand Staff's interest in using existing definitions rather than adding a new specific use to the zoning bylaw.

Therefore we propose that a site-specific amendment is added to section 13.1.18 Agriculture One Site Specific Regulations to permit an "Eating and Drinking Establishment" that will allow the business to continue its operations, understanding that the ALC will be responsible to enforce the ALC approval.

5. Rationale for Requested Site Specific Zoning Change

The following rationale is provided in support of the zoning changes proposed for the subject property:

- The RDOS Board, at the April 5th 2022 meeting, passed a resolution to advance the application for the non farm use to the ALC to allow the existing farm-to-table culinary experience business to operate on the property.



- The Agricultural Land Commission Okanagan Panel approved the application for the requested non-farm use to continue operation.
- Back Yard Chef's farm-to-table culinary experience business model supports agriculture. The ALC Panel through its decision recognizes the value-added services are supportive of, and ancillary to, agriculture.
- The Back Yard Chef's Dining and Catering use is aligned with all the relevant agricultural policies in the Area 'C' Official Community Plan.
- Agriculture has been substantially improved on the small parcel and will continue to be enhanced as the production of food in a sustainable manner using organic practices is cornerstone to the Backyard Chef's farm-to-table business.
- The farm-to-table culinary experience is seasonal in operation and only offers the culinary experiences a maximum of 3 evenings a week during the spring, summer and fall with only one sitting occurring per day. In addition, the culinary experiences are only offered by reservation, or a pre-booking basis.
- The Back Yard Chef's farm-to-table culinary experiences do not negatively impact or impede agriculture on adjacent or surrounding properties in any way.
- The site-specific amendment will legalize the farm-to-table culinary experience under the "eating and drinking establishment" under the zoning bylaw regulations.



