

ADMINISTRATIVE REPORT



TO: Board of Directors
FROM: J. Zaffino, Chief Administrative Officer
DATE: April 18, 2024
RE: Development Variance Permit Application — Electoral Area “E” (E2024.011-DVP)

Administrative Recommendation:

THAT Development Variance Permit No. E2024.011-DVP, to allow for the construction of a single detached dwelling at 4535 Mill Road, be approved.

Legal: Lot 21, Plan KAP3889, District Lot 211, SDYD Folio: E-02282.000

OCP: Low Density Residential (LR) Zone: Low Density Residential One (RS1)

Variance to reduce the minimum front parcel line setback from 6.0 metres to 1.98 metres; and

Requests: to reduce the minimum rear parcel line setback from 6.0 metres to 4.01 metres.

Proposed Development:

This application is seeking a variance to the front and rear parcel line setbacks that apply to the subject property in order to undertake construction of a new single detached dwelling.

Specifically, it is being proposed to vary the front parcel line setback from 6.0 metres to 1.98 metres and to vary the rear parcel line setback from 6.0 metres to 4.01 metres.

In support of this request, the applicant has stated (amongst other things) that:

On November 14th 2023 we attended and discussed the DVP with the Naramata APC. The outcome of the meeting was a supporting vote from the Committee for the proposed DVP, however comments were made encouraging us to reduce the overall height of the building.

During the RDOS Board meeting on December 7th 2023 additional comments from the Directors also suggested to reduce the height of the building and to push back the building further away from Mill Rd.

The outcome of the Board meeting was denial vote for the DVP. From these meeting we have actively reduced the building width, height and relocated the building further away from Mill Rd as suggested.

The proposed setback relaxations will allow for a proposed single family dwelling. Due to the existing lot configuration, size and proximity to Okanagan Lake the aforementioned Lot falls completely within the Riparian setback.

Our QEP is requesting Hardship status with the Province. In order to submit our application we need support from RDOS from approval to vary the building setbacks as requested.

Site Context:

The subject property is approximately 300m² in area and is situated on the south side of Mill Road, approximately 6 km north from the boundary with City of Penticton. The property is understood to contain one small accessory structure.

The surrounding pattern of development is generally characterised by similar residential development on larger lakefront parcels to west, large upland agricultural parcels on the opposite side of Mill Road to the north, and vacant parks and recreation land to the east.

Background:Official Community Plan

Under the Electoral Area “E” Official Community Plan (OCP) Bylaw No. 3010, 2023, the subject property is currently designated Low Density Residential (LR), and is located entirely within a Watercourse Development Permit (WDP) area.

Riparian Area Regulations

The protection of fish and fish habitat is provincially regulated under the *Riparian Areas Protection Regulation* (RAPR), which requires specified local governments to implement RAPR through their land use bylaws.

Accordingly, the Regional District has designated WDP areas “to regulate development activities within riparian assessment areas as a means to protect aquatic habitat, enhance, conserve and restore watercourses and their riparian areas”.

Under RAPR, there are provisions that allow for development within a riparian area, subject to conditions, where a parcel is the subject of “undue hardship”.

In order to apply to the Province for consideration under “undue hardship”, RAPR requires property owners to seek and receive “a decision on every variance that would reduce the legally restricted area of the site”.

Under this regulation, a “variance” may include approval of a development variance permit or zoning bylaw amendment application by a local government, or it may include approval of a hardship appeal by a board of variance.

Accordingly, the current development variance permit application to reduce the front and rear parcel line setbacks is being sought to reduce the legally restricted area of the site so that an application for development under “undue hardship” may be submitted to the Province.

Should the requested variances be approved and an Assessment Report be approved by the Province under the hardship provisions of RAPR, submission of a subsequent WDP application to the Regional District would be required.

Zoning Bylaw

Under the Okanagan Valley Zoning Bylaw No. 2800, 2022, the property is currently zoned Low Density Residential One (RS1) which lists single detached dwelling as a permitted principal use.

The RS1 zone further requires 6.0 metre front and rear parcel line setbacks, a maximum principal building height of 10 metres, and a maximum parcel coverage of 50%.

Floodplain Regulations

Under Section 524 of the *Local Government Act*, a local government may, by bylaw, designate as flood plain any land on which it considers flooding may occur.

The local government may further specify the flood level for the flood plain and the required setback from a watercourse for any structural support required to elevate a floor system or pad above the flood level.

A local government may exempt a specific parcel or building from flood plain regulations it has adopted if it considers it advisable and a report from a qualified professional engineer or geoscientist has been received indicating that the land may be used safely for the use intended.

Accordingly, under Section 10.0 (Floodplain Regulations) of the Zoning Bylaw, the subject property is within the floodplain associated with Okanagan Lake, which requires a flood construction level of 343.66 metres Geodetic Survey of Canada (GSC) datum and a floodplain setback of 7.5 metres from the natural boundary of the lake.

The proposed development contemplates the construction of a principal dwelling within 7.5 metres of the natural boundary of Okanagan Lake. For this reason, should the subject variance be approved, approval of a subsequent floodplain exemption application would be required.

Application History

On December 16, 2022 the Regional District Board approved Development Variance Permit E2022.058-DVP, which authorized the use of a holding tank as a method of on-site sewage disposal on the subject property.

At its meeting of November 14, 2023, the Electoral Area “E” APC considered Development Variance Permit application E2023.033-DVP, which proposed to reduce the front and rear setbacks on the property to allow for a single detached dwelling.

At this meeting, the APC moved to recommend that the Regional District Board approve the requested variances subject to the condition that the height of the proposed dwelling be reduced.

In response, administration advised that by tying its recommendation of support to a re-design of the dwelling, the APC did not support the application as submitted and that the proper course of action would have been to recommend denial of the variance and encourage the applicant to re-submit a revised design for consideration by the Board.

Consequently, at its meeting of December 7, 2023, the Regional District Board moved to deny Development Variance Permit E2023.033-DVP.

In response, the applicant has submitted a new proposal that proposes a larger front parcel line setback and a reduced building height.

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 March 1, 2024, and provided 15 working days to submit comments electronically or in-person to the Regional District.

As of March 22, 2024, being 15 working days from the date of notification, approximately three (3) representations have been received electronically or by submission at the Regional District office.

Analysis:

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 this instance, the Electoral Area "E" OCP includes policies that speak to encouraging variance applications for the relaxation of parcel line setbacks on existing small lots in order to reduce impacts to the riparian area.

Any new development on this property would require the developer to seek approval for variances under the RAPR "undue hardship" process because the entire property is within the riparian area.

Administration notes that the current setback regulations limit the buildable area of the property to an approximately 46 m² area measuring 18 metres wide by 2.5 metres deep.

Regarding impacts to adjacent properties, a similar proposal has been submitted by the same agent for the property at 4545 Mill Road, whereas the lands to the east comprise vacant land.. For this reason, these properties are unlikely to be affected by reductions to the front or rear parcel line setbacks.

The nearest dwelling on the opposite side of Mill Road is approximately 30 metres from the location of the proposed dwelling and is located on top of a steep, vegetated embankment. For this reason, this property is also unlikely to be affected by the requested variances.

Regarding the character of the streetscape, a single detached dwelling constructed within 1.98 metres of the front parcel line will likely change the appearance of the roadway, however nearby dwellings along the lakefront appear to have also been constructed within the front parcel line setback.

With regards to vehicle traffic safety, the Ministry of Transportation and Infrastructure has jurisdiction over the road network and a Highway Use Permit authorizing the reduced setback has been issued by the Ministry.

Alternative:

Conversely, front parcel line setback reductions are seen to be more likely to create visual impacts and for this reason are generally discouraged.

While the requested rear parcel line setback will facilitate a structure in close proximity to Okanagan Lake that may be susceptible to flooding, it is noted that a subsequent floodplain exemption application would be required to facilitate the proposed development.

Floodplain exemption applications must be accompanied by a report from a qualified professional engineer or geoscientist indicating that the land may be used safely for the use intended.

For these reasons, Administration supports the requested variances and is recommending approval.

Financial Implications:

Financial implications have been considered and none were found.

Alternative:

1. That the Board deny Development Variance Permit No. E2024.011-DVP.

Respectfully submitted

Ben Kent
Ben Kent, Planner II

Endorsed by:


C. Garrish, Senior Manager of Planning

Attachments: No. 1 – Site Photo (Google Streetview)
No. 2 – Aerial Photo

Attachment No. 1 – Site Photo (Google Streetview – July 2023)



Attachment No. 2 – Aerial Photo

