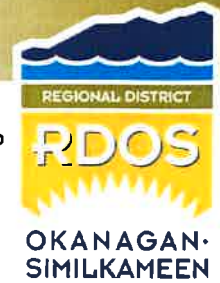


**MEMORANDUM**  
DEVELOPMENT SERVICES DEPARTMENT



**DATE:** October 05, 2023  
**TO:** Christopher Garrish, Senior Manager of Planning  
**FROM:** Ben Kent, Planner I  
**RE:** Development Variance Permit (DVP) — Electoral Area “I”

**FILE NO.:** I2023.034-DVP

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**Owner:** John & Sandra Psiurski      **Agent:** NA      **Folio:** I-01154.005  
**Civic:** 1767 Green Lake Road      **Legal:** Lot 1, Plan KAP21048, District Lot 30S, SDYD

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**Proposed Development:**

This application is seeking a variance to the front and interior side parcel line setbacks that apply to the subject property in order to undertake construction of an accessory building.

Specifically, it is being proposed to vary the front parcel line setback from 7.5 metres to 5.0 metres and to vary the interior side parcel line setback from 7.5 metres to 3.0 metres.

In support of this request, the applicant has stated that:

- *Due to the irregular lot size and slope of the driveway more space is required to the south and west.*
- *All other permits to address Riparian Area, BC Provincial permission, Water Development waiver have been submitted and approved. There is no where else on the property to relocate this shed that would not infringe on the Riparian Area.*

**Site Context:**

The subject property is approximately 2219 m<sup>2</sup> in area and is situated on the east side of Green Lake Road, approximately 1 km southeast of Okanagan Falls. The property is understood to contain one (1) singled detached dwelling and one (1) accessory building.

The surrounding pattern of development is generally characterised by similar residential development.

**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 16, 1970, while available Regional District records indicate that a building permit for an accessory building (a workshop) (1981) has previously been issued for this property.

Under the Electoral Area “I” Official Community Plan (OCP) Bylaw No. 2683, 2016, the subject property is currently designated Resource Area (RA), and is the subject of two Watercourse Development Permit (WDP) Area designations.

A report from a Qualified Environmental Professional has been submitted indicating that the WDP area in the location of the proposed accessory building is associated with a subsurface watercourse

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that does not constitute a “stream” as defined by the *Riparian Areas Protection Regulation*. For this reason, the proposed accessory building is exempt from the requirement to obtain a WDP.

Under the Okanagan Valley Zoning Bylaw No. 2800, 2022, the property is currently zoned Resource Area (RA) which lists single detached dwelling as a principal permitted use and accessory building or structure as a permitted accessory use. The Resource Area zone also requires a 7.5 metre setback from all parcel lines for buildings and structures.

Under Section 8.0 (Floodplain Regulations) of the Zoning Bylaw, the subject property is within the floodplain associated with Okanagan River Channel and requires a flood construction level of 3.0 metres above the natural boundary of the channel.

Additionally, no building or structure is permitted within 7.5 metres of the landside toe of the dyke or 30.0 metres of the natural boundary of the Okanagan River, whichever is greater. In this instance, the proposed accessory structure will be located approximately 45 metres from the natural boundary of the river.

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 August 22, 2023, and provided 15 working days to submit comments electronically or in-person to the Regional District.

As of September 13, 2023, being 15 working days from the date of notification, approximately zero (0) 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 degree of the requested variance it is considered that a 33% reduction in the front parcel line setback and a 60% reduction in the interior side parcel line setback is not minor because it is a significant departure from the bylaw regulation.

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With regard to the proximity of the proposed accessory building to neighbouring properties, the nearest parcel lines is approximately 3 metres to the south. For this reason, the requested variance is seen minor and unlikely to adversely impact the use of adjacent properties.

With regard to the final criteria and the character of development in the vicinity of the subject property, the placement of an accessory building within 3.0 metres of the interior side parcel line and within 5.0 metres of the front parcel line setback appears common in this area.

For these reasons, the proposed variances are 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 this instance, the requested variances address physical and legal constraints that are associated with the subject parcel.

The subject parcel is significantly under-sized given its RA zoning, which requires a minimum parcel size of 20.0 ha for subdivision. Accordingly, the prescribed 7.5 metre setbacks of the RA zone limit the buildable envelope of the parcel to an area measuring approximately 13 metres deep by 69 metres wide.

The property is also subject to WDP and floodplain areas, which further constrain the useable area of the parcel. Accordingly, the Electoral Area “I” OCP includes policies supporting the issuance of variances to reduce parcel line setbacks in order to protect riparian areas.

In considering the intent of the zoning bylaw’s setback regulations, a 5.0m front parcel line setback will not compromise sightlines for vehicle traffic movements and a 3.0m interior side parcel line setback for an accessory building is unlikely to adversely impact neighbouring properties.

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

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**Recommendation:**

THAT Development Variance Permit No. I2023.034-DVP, to allow for the construction of an accessory building at 1767 Green Lake Road, be approved.

**Respectfully submitted:**

*Ben Kent*

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Ben Kent, Planner I

Attachments:    No. 1 — Site Photo  
                          No. 2 — Aerial Photo

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



Attachment No. 2 – Aerial Photo

