

MEMORANDUM

DEVELOPMENT SERVICES DEPARTMENT



DATE: September 16, 2022

FILE NO.: A2022.039-DVP

TO: Christopher Garrish, Planning Manager

FROM: Ben Kent, Planner I

RE: Development Variance Permit (DVP) — Electoral Area "A"

Owners: Maurizio Montanari & Tresa Bethel

Agent: Rino Modicamore

Folio: A-05973.000

Civic: 14803 Highway 97

Legal: Lot 1, Plan KAP7269, District Lot 2450S, SDYD

Proposed Development:

This application is seeking a variance to the maximum retaining wall height that applies to the subject property in order to formalize an over-height retaining wall.

Specifically, it is being proposed to vary the maximum height of a retaining wall from 2.0 metres to 6.55 metres.

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

- The existing retaining wall was approved under BP22654 and was built over-height by the general contractor hired by the property owners.
- The proposed retaining wall in the backyard will help address the steep slope topographical features in this area & improve the structural integrity of the backyard adjacent the house.
- The proposed retaining wall location and wall height will not create a negative impact on the surrounding neighbourhood because it does not impede on neighbours views.
- Property owners have collected 8 signatures & addresses of support for the proposed retaining wall.

Site Context:

The subject property is approximately 1.9 ha in area and is situated on the west side of Highway 97 and on the north side of 148th Avenue, approximately 1km north from the boundary with Town of Osoyoos. The property is understood to contain one (1) singled detached dwelling and accessory structure.

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

Background:

The current boundaries of the subject property were created by a Plan of Subdivision deposited with the Land Titles Office in Kamloops on September 12, 1955, while available Regional District records indicate that a building permits for a carport (2002) and for a retaining wall (2021) have previously been issued for this property.

Under the Electoral Area “A” Official Community Plan (OCP) Bylaw No. 2905, 2021, the subject property is currently designated Agriculture (AG).

Under the Okanagan Valley Zoning Bylaw No. 2800, 2022, the property is currently zoned Agriculture One (AG1) and requires a maximum retaining wall height of 2.0 metres. When multiple retaining walls are erected on the same parcel, the Zoning Bylaw considers that retaining walls constructed closer than the height of the lowest retaining wall are a single retaining wall for the purpose of determining height. For this reason, the height of the retaining wall on the subject parcel is the sum of the heights of the upper wall and the lower wall, or 6.55 metres.

The property has been the subject of a Stop Work Notice for constructing a retaining wall “at variance to the approved plans”.

The property is within the Agricultural Land Reserve (ALR) and has been classified as part “Residential” (Class 01), part “Farm” (Class 09) by BC Assessment.

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 12, 2022, and provided 15 working days to submit comments electronically or in-person to the Regional District.

As of September 2, 2022, being 15 working days from the date of notification, no 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 225% increase in the maximum height of a retaining wall from 2.0 metres to 6.55 metres is not minor because it is more than three times higher than the bylaw standard.

With regard to the proximity of the proposed retaining wall to neighbouring properties, the nearest parcel lines is approximately 22 metres to the east. For this reason, the requested variance is minor

and unlikely to adversely impact the use of adjacent properties through loss of privacy or overshadowing.

With regard to the final criteria and the character of development in the vicinity of the subject property, the variance is minor because visibility of the retaining wall from adjacent parcels and from the roadway is minimal. Visibility of the retaining wall is minimal because the adjacent lots are large agricultural lots, the retaining wall is located to the rear of the house adjacent the vineyard on the subject parcel and the retaining wall is constructed below the grade of the highway.

For these reasons, the proposed variance is 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.*

In this instance the Zoning Bylaw’s use of regulations to govern the placement of retaining walls are generally to encourage retaining walls be integrated into the terrain and respect the natural character of the site in order to achieve environmentally sound and liveable hillside neighbourhoods.

Further, retaining walls should be aesthetically well integrated into a hillside to enhance the desirability and marketability of hillside developments, allowing flexibility and innovation in design while recognizing the importance of preserving natural features and hillside character.

For these reasons, the use of large concrete block retaining walls in residential areas that create a negative visual impact are discouraged, whereas, surface treatments that harmonize the natural texture and colours are encouraged.

In this instance, Administration notes that construction of a retaining wall is consistent with the purpose and intent of the AG1 zone, which permits retaining walls.

Administration notes that the retaining wall will not unduly impact the character of the streetscape or surrounding neighbourhood. The retaining wall is constructed below the grade of Highway 97 along the front parcel line and is situated to the rear of the house on the subject property, which limits potential visual impacts. Administration also notes that the subject parcel is in an agricultural area and is less likely to create an undue visual impact to the neighbourhood or streetscape.

For these reasons, strict compliance with the zoning regulations is unnecessary.

Conversely, it is recognised that the proposed variance does not address a physical or legal constraint associated with the site.

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

Recommendation:

THAT Development Variance Permit No. A2022.039-DVP, to formalize an over-height retaining wall at 35 Robinson Point Road), be approved.

Respectfully submitted:

Ben Kent

Ben Kent, Planner I

Attachments: No. 1 — Site Photos
No. 2 — Site Photos

Attachment No. 1 – Site Photos



Image 1 - Subject parcel from Highway 97 facing southeast.



Image 2 - Highest point of retaining wall from subject parcel facing south towards Highway 97.

Attachment No. 2 – Site Photos



Image 1 - Subject parcel from 148th Avenue facing west



Image 2 - Retaining wall from subject parcel facing west towards highway 97