

MEMORANDUM

DEVELOPMENT SERVICES DEPARTMENT



DATE: September 21, 2022 **FILE NO.:** E2022.041-DVP
TO: Christopher Garrish, Planning Manager
FROM: Ben Kent, Planner I
RE: Development Variance Permit (DVP) — Electoral Area “E”

Owner: Daydreamer Wines Inc Agent: Dominic Unsworth Folio: E-01948.000
Civic: 1305 Smethurst Road Legal: Lot 209, Plan KAP706, District Lot 266, SDYD

Proposed Development:

This application is seeking a variance to the minimum front parcel line setback that applies to the subject property in order to undertake an addition to an existing wine tasting room building.

Specifically, it is being proposed to reduce the minimum front parcel line setback from 7.5 metres to 5.5 metres.

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

- Existing Tasting Room Frontyard Setback Reduced to 5.5m E2016.087-DVP.
- Storage Addition to Tasting Room requires Frontyard Setback Reduced to 5.5m.
- No Adverse impact

Site Context:

The subject property is approximately 2.1 ha in area and is situated on the north side of Smethurst Road, approximately 4.2 km north from the boundary with City of Penticton. The property is understood to contain one (1) singled detached dwelling, a wine tasting building and a wine production building.

The surrounding pattern of development is generally characterised by similar agricultural development and residential development on small holdings 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 November, 1909, while available Regional District records indicate that a building permits for a single detached dwelling (1980), additions to a single detached dwelling (1992, 1997), a garage conversion to a wine tasting room (2016) and a wine production building (2017) have previously been issued for this property.

Under the Electoral Area “E” Official Community Plan (OCP) Bylaw No. 2458, 2008, 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) which lists alcohol production facility as a permitted principle use. An “alcohol production facility” use includes a “winery”, which also includes a food and beverage lounge.

The property is within the Agricultural Land Reserve (ALR).

BC Assessment has classified the property as part “Residential” (Class 01), part “Light Industry” (Class 05) and part “Business and Other” (Class 06).

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 18, 2022, and provided 15 working days to submit comments electronically or in-person to the Regional District.

As of September 9, 2022, being 15 working days from the date of notification, approximately one (1) representation has 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 26% decrease in the required minimum front parcel line setback is minor because it will not significantly impact the streetscape.

With regard to the proximity of the proposed tasting room addition to neighbouring properties, the nearest parcel lines is approximately 27 metres to the east on the opposite side of Smethurst Road. 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, there is an existing tasting room building on the subject parcel that was approved through a variance and has been set back the same distance from the parcel line for the last 6 years. For this reason, an addition to the existing structure will not negatively impact the character of development in the vicinity.

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 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 the agricultural zones, setbacks are further used to mitigate the potential for conflict between land uses with the Ministry of Agriculture recommending that setbacks be used to “avoid farming right up to the back wall of [a] residence.”

The proposed variance to facilitate an addition to an existing wine tasting room building is consistent with the general purpose and intent of the AG1, which lists alcohol production facility as a permitted principle use, including a food and beverage service lounge.

The proposed variance would not unduly impact the character of the streetscape because there is an existing wine tasting room building on the subject parcel that is set back the same distance from the front parcel line. This building is located beside a slope below the grade of the roadway, which screens it from neighbouring properties.

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 variance be approved.

Recommendation:

THAT Development Variance Permit No. E2022.041-DVP, to allow for an addition to the wine tasting room building at 1305 Smethurst Road, be approved.

Respectfully submitted:

Ben Kent

Ben Kent, Planner I

Attachments: No. 1 — Site Photo (Street View)

Attachment No. 1 – Site Photo (Street View)

