

ADMINISTRATIVE REPORT



TO: Board of Directors
FROM: J. Zaffino, Interim Chief Administrative Officer
DATE: December 7, 2023
RE: Development Variance Permit Application — Electoral Area “E” (E2023.033-DVP)

Administrative Recommendation:

THAT Development Variance Permit No. E2023.033-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: Residential Single Family One (RS1)

Variance to reduce the minimum front parcel line setback from 6.0 metres to 1.2 metres; and
Requests: to reduce the minimum rear side parcel line setback from 6.0 metres to 3.98 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 1.2 metres and to vary the rear parcel line setback from 6.0 metres to 3.98 metres.

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

Due to the existing lot configuration, size and proximity to Okanagan Lake the aforementioned lot falls completely within the Riparian setback. The proposed...setback variances will allow for a new single family dwelling. Proposed dwelling is two stories with a 33'x28' footprint. Main floor is 838ft² & top floor 560ft² or a total of 1398ft². Please see rationale letter for additional comments.

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 cabin.

The surrounding pattern of development is generally characterised by similar residential development on larger lakefront parcels to west and large upland agricultural parcels on the opposite side of Mill Road.

Background:

The current boundaries of the subject property were created by a Plan of Subdivision deposited with the Land Titles Office in Kamloops on June 28, 1947, while available Regional District records indicate that building permits have not 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 Low Density Residential (LR), and is located entirely within a Watercourse Development Permit (WDP) area.

The Riparian Areas Protection Regulation (RAPR), includes 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 a developer to seek and receive “a decision on every variance that would reduce the legally restricted area of the site”. In this case, a “variance” includes a hardship appeal to a board of variance as well as a development variance permit or a zoning bylaw amendment application to a local government.

Accordingly, the current 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.

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 and requires 6.0 metre front and rear parcel line setbacks.

Under Section 8.0 (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.

For this reason, should the subject variance be approved, issuance of a subsequent floodplain exemption would be required.

BC Assessment has classified the property as “Residential” (Class 01).

Board Consideration:

At its meeting of October 5, 2023, the Regional District Board moved to defer consideration of this application and refer it to the Electoral Area “E” APC for a recommendation.

APC Consideration

At its meeting of November 14, 2023, the Electoral Area “E” APC considered this application and 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 (see Analysis below).

Public Process:

Adjacent property owners will have received notification of this application with written comments regarding the proposal being accepted, in accordance with Section 2.10 of Schedule ‘4’ of the Regional District’s Development Procedures Bylaw No. 2500, 2011, until 4:30 p.m. on September 13, 2023. All comments received are included as a separate item on the Board’s Agenda.

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 1.2 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.

APC Recommendation:

When reviewing a land use application, an APC is required to consider the request that has been submitted by an applicant and put forward a recommendation in support of, or opposed to that request.

In doing so, a Commission cannot draft a recommendation of support with conditions that will result in a different form of development than what the applicant has requested as this is seen to be a *de facto* refusal.

In this instance, by tying its recommendation of support to a re-design of the dwelling that requires of the applicant that they reduce the height to an unspecified level within the front setback area, the Electoral Area “E” APC has not supported the application as submitted. The proper course of action would have been for the APC to recommend denial of the variance and encourage the applicant to re-submit a revised design for consideration by the Board.

Summary:

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

Alternative:

1. That the Board deny Development Variance Permit No. E2023.033-DVP.

Respectfully submitted

Ben Kent

Ben Kent, Planner I

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

