

# MEMORANDUM

DEVELOPMENT SERVICES DEPARTMENT



**DATE:** March 16, 2023  
**TO:** Christopher Garrish, Planning Manager  
**FROM:** Fiona Titley, Planner II  
**RE:** Development Variance Permit (DVP) — Electoral Area “C”

**FILE NO.:** C2023.005-DVP

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**Owner:** Paulo and Regina Goncalves      **Civic:** 5627 Yarrow Street      **Folio:** C-05520.000  
**Legal:** Lot 190, Plan KAP1862, District Lot 2450S, SDYD, Except Plan Parcel A (DD139837F) Plan B6394 , Also Plan 23946

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### **Proposed Development:**

This application is seeking a variance to the rear and interior side parcel line setback for a structure on a parcel greater that applies to the subject property in order to construct a barn.

Specifically, it is being proposed to vary the rear parcel line setback from 7.5 metres to 1.2 metres and vary the interior side parcel line setback from 4.5 metres to 2.8 metres.

In support of this request, the applicant has stated that “the proposed variance is consistent with the general purpose and intent of the zone, which is to provide more viable agriculture area on the parcel to plan and grow more crops/vineyards than what is allowed with the current bylaw”

### **Site Context:**

The subject property is approximately 1.9 ha in area and is situated on the southeast side of Yarrow Street, approximately 400 metres south from the boundary with the Town of Oliver. The property is understood to contain a single family dwelling and garage.

The surrounding pattern of development is generally characterised by similar agricultural properties with smaller small holdings parcels to the southwest.

### **Background:**

The current boundaries of the subject property were created by a Plan of Subdivision deposited with the Land department on November 14, 1922, while available Regional District records indicate that a building permit for a garage (1979) has previously been issued for this property.

Under the Electoral Area “C” Official Community Plan (OCP) Bylaw No. 2452, 2008, the subject property is currently designated Agriculture (AG).

Under the Okanagan Valley Zoning Bylaw No. 2800, 2022, the property is currently zoned Agriculture 1 (AG1) which permits agriculture and single detached dwelling as principal uses and accessory building or structures as secondary uses.

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

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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 February 10, 2023, and provided 15 working days to submit comments electronically or in-person to the Regional District.

As of March 6, 2023, being 15 working days from the date of notification, approximately two (2) 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 variance to the rear parcel line setback from 7.5 metres to 1.2 metres represents an 83% decrease in the minimum rear setback requirement is significant. However, only one corner of the proposed barn will be setback this distance from the rear parcel line due to an irregular cut to the parcel line in that location. The majority of the structure will be approximately 2.8 metres from the rear parcel line. While a decrease from 4.5 metres to 2.8 metres for the interior side setback line is a 37.8% decrease in setback which is minor.

With regard to the proximity of the proposed accessory structure (barn) to neighbouring properties, the adjacent land is active agriculture land and the closest structure on a neighbouring parcel is more than 50 metres away. The reduced setbacks and proposed location of the barn is seen to be 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 placement of an accessory building within the rear parcel line setback is not common in the area, however, structures within the interior side parcel line is common. As many of the surrounding properties are active agriculture land, a barn is consistent with the character of development in the area.

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For these reasons, the proposed variance(s) 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 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.”

In this instance, the applicant is seeking to site the structure on an already partially disturbed area of the property (a small shed was in the proposed location in the past). Accordingly, there will be no alienation of productive farmland and the barn will be used to support the use of the land for agriculture.

Additionally the structure will not block neighbouring views or sunlight as the neighbouring properties primarily consist of active farmland. The nearest building is approximately 90 metres away. The requested variance is not seen to significantly impact adjacent uses or the character of the surrounding area.

Conversely, it is recognised that there are no physical site constraints or other limiting features that appear to warrant a variance in this instance and other options are available to the applicant, to construct the structure in a manner that meets the side and rear setback requirement.

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

**Recommendation:**

THAT Development Variance Permit No. C2023.005-DVP, to allow for the construction of an accessory building at 5627 Yarrow Street, be approved.

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**Respectfully submitted:**

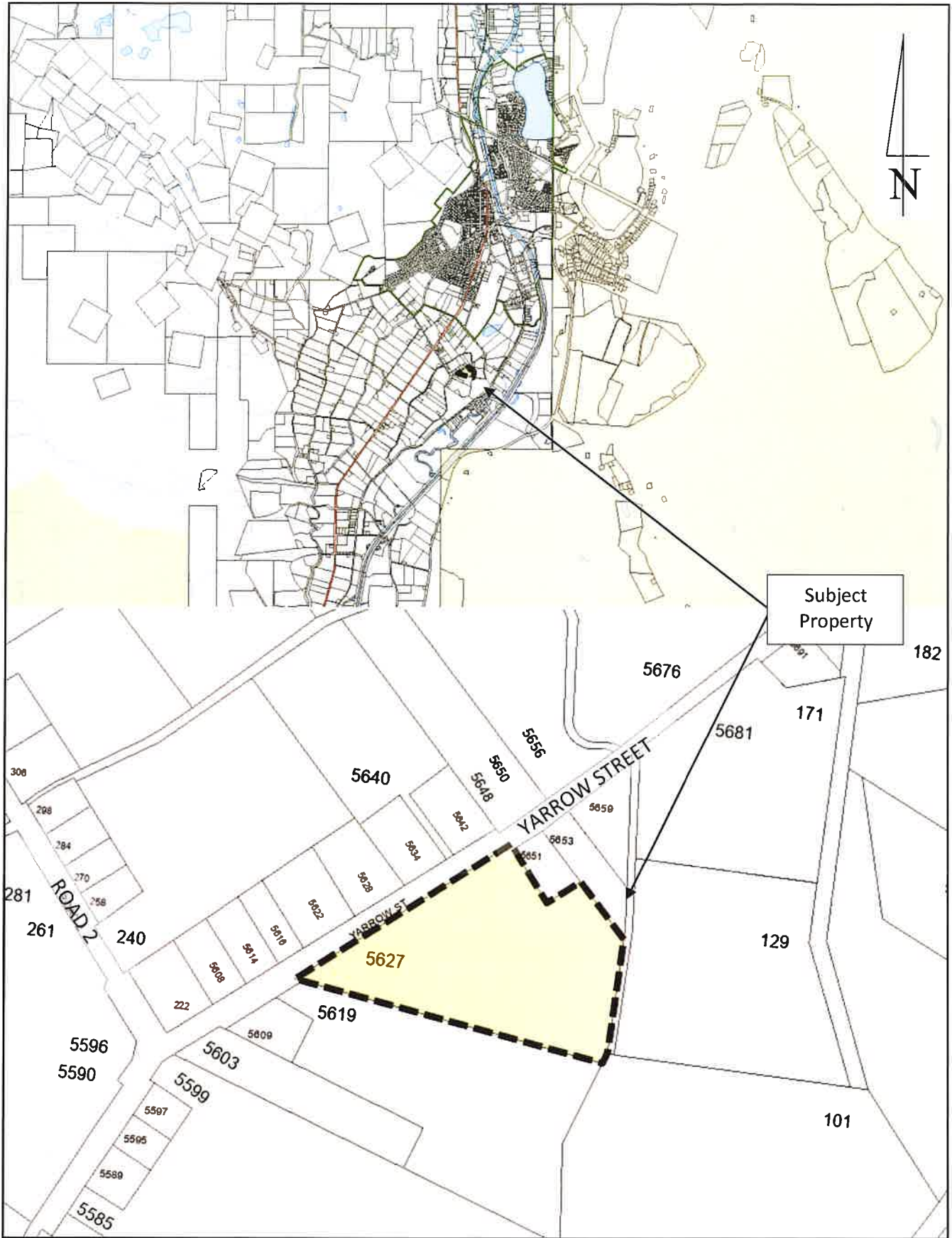
*Fiona Titley*

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Fiona Titley, Planner II

Attachments:    No. 1 — Context Maps  
                          No. 2 — Applicant's Site Plan  
                          No. 3 — Site Photo

Attachment No. 1 – Context Maps





Attachment No. 3 – Site Photo (Google Maps 2012)

