

**TO:** Board of Directors  
**FROM:** J. Zaffino, Chief Administrative Officer  
**DATE:** September 5, 2024  
**RE:** Development Variance Permit Application — Electoral Area “E” (E2024.016-DVP)

---

## Administrative Recommendation:

**THAT Development Variance Permit No. E2024.016-DVP, to allow for the construction of an over-height fence and an over-height retaining wall at 6857 Indian Rock Road, be denied.**

---

**Legal:** Lot A, Plan EPP133220, District Lot 212 & 391, SDYD **Folio:** E-02329.037

**OCP:** Low Density Residential (LR) **Zone:** Low Density Residential Three (RS3)

**Variance Requests:** to increase the maximum height of a retaining wall in a required interior side setback from 1.2 metres to 2.8 metres;

to increase the maximum height of a fence to the rear of a required front parcel line setback from 1.8 metres to 6.2 metres; and

to increase the maximum combined height of a fence and retaining wall from 1.8 metres to 4.5 metres.

---

## Proposed Development:

This application is seeking a variance to the retaining wall and fence height regulations that apply to the subject property in order to undertake the construction of a privacy wall that is composed of a fence and a retaining wall.

Specifically, it is being proposed to:

- Increase the maximum height of a retaining wall in a required interior side parcel line setback from 1.2 metres to 2.8 metres;
- Increase the maximum height of a fence to the rear of a required front parcel line setback from 1.8 metres to 6.2 metres; and
- Increase the maximum combined height of a fence and retaining wall, in the case of a fence constructed on a retaining wall at or within 1.2 metres of a parcel line from 1.8 metres to 4.5 metres.

In support of this request, the applicant has stated (amongst other things) that:

- *The variance request is in response to a challenging development that has taken place to the south of the subject property. There have been issues with privacy, light pollution, and potential drainage problems, due to the construction that has taken place next door.*
- *The option of a taller than normal fence has been designed as an extension of the existing retaining wall on site that helps navigate a large transition in grade from the road level down to*

*the main level of the house. This topographical step makes it challenging to accommodate any level of privacy.*

- *Compliance with the zoning regulation is challenging given the size, height, and proximity of the neighbour to the south.*

### **Site Context:**

The subject property is approximately 1,418 m<sup>2</sup> in area and is situated on the south side of Indian Rock Road and is bounded by Okanagan Lake to the south. The property is currently developed with a single detached dwelling.

The surrounding pattern of development is characterised by similar lakefront residential development to the east and west, and larger rural holdings parcels to the north.

### **Background:**

The current boundaries of the subject property were created by a Plan of Subdivision deposited with the Land Titles Office in Kamloops on August 7, 1963, while available Regional District records indicate that building permits for a single detached dwelling (1977), a carport (1980), a wood stove (2002), foundation repairs (2004), interior renovations to the dwelling (2021), a retaining wall (2021) and an addition to the dwelling (2022).

Under the Electoral Area “E” Official Community Plan (OCP) Bylaw No. 3010, 2023, the subject property is currently designated Low Density Residential (LR), and is the subject of a Watercourse Development Permit (WDP) Area designation.

Under the Okanagan Valley Zoning Bylaw No. 2800, 2022, the property is currently zoned Low Density Residential Three (RS3) which lists “single detached dwelling” as a permitted principal use and “accessory building or structure” as a permitted accessory use.

The zoning bylaw defines a fence as “an artificially constructed barrier of any material or combination of materials erected to enclose or screen areas of land”, whereas a retaining wall is defined as a structure or series of interdependent structures... constructed to hold back, stabilize or support an earthen bank”.

At its meeting of August 15, 2024, the Regional District Board approved Temporary Use Permit No. E2024.006-TUP, which authorized the use of the adjacent dwelling for a 5-bedroom, 10-guest vacation rental use.

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

### **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 May 6, 2024. All comments received are included as a separate item on the Board’s Agenda.

### **Analysis:**

In considering this proposal, Administration notes that while fences can often enhance properties by defining ownership, creating privacy and providing security, they can also contribute to a loss of

amenity on adjacent properties through the creation of overshadowing, a visual intrusion, or a hazard (if poorly constructed).

Accordingly, the Zoning Bylaw limits the maximum height of a fence in most zones to 1.8 metres and, when sited within a front parcel line setback, 1.2 metres.

Similarly, the Zoning Bylaw's use of regulations limiting the maximum height of retaining walls is generally intended to mitigate adverse visual impacts to adjacent and downslope properties.

In this instance, Administration notes that multiple variances are required because the proposed privacy wall is constituted of a fence and a retaining wall and each of these components is subject to separate height regulations under the Zoning Bylaw.

In considering this proposal, Administration notes that the proposed structure represents significant increases above the zoning bylaw regulations. This increase is 133% above the retaining wall height regulation, 244% above the fence height regulation, and 150% above combined retaining wall and fence height regulation.

Administration also notes that the proposal involves the construction of a concrete wall at the property line measuring 4.4 m at its highest point, with a conventional 1.8m fence constructed on top.

For this reason, Administration considers that this proposal would likely result in adverse visual impacts to the adjacent property and *may* result in a loss of amenity on this property.

Administration considers that alternatives may be available to the property owner to mitigate nuisances resulting from development on the adjacent property (e.g. through the use of a retaining wall and fence in compliance with the zoning bylaw and the planting of privacy hedges).

The Regional District's land use bylaws do not regulate drainage of stormwater generated from the development of private properties and this is generally a civil issue between the property owners.

#### Alternative

Conversely, Administration recognises that the adjacent property contains a large dwelling that has been constructed in close proximity to the required interior side setback.

Administration also notes that the visual massing of the adjacent dwelling is exaggerated by the difference in grade between the two properties.

#### Summary

For these reasons, Administration does not support the requested variances and is recommending denial.

#### **Alternatives:**

1. That the Board approve Development Variance Permit No. E2024.016-DVP.

**Respectfully submitted**

*Ben Kent*

Ben Kent, Planner II

Attachments:

- No. 1 – Site Photo (Google Streetview)
- No.2 – Aerial Photo
- No. 3 – Applicant's Site Photos
- No. 4 – Applicant's Conceptual Drawing

Attachment No. 1 – Site Photo (Google Streetview – 2023)



Attachment No. 2 – Aerial Photo



Attachment No. 3 – Applicant’s Site Photos



Existing Site + Building Locations

Attachment No. 4 – Applicant’s Conceptual Drawing

