

ADMINISTRATIVE REPORT



TO: Board of Directors
FROM: J. Zaffino, Chief Administrative Officer
DATE: December 21, 2023
RE: Development Variance Permit Application — Electoral Area “F” (F2023.037-DVP)

Administrative Recommendation:

THAT Development Variance Permit No. F2023.037-DVP, to formalize an existing swimming pool within a front parcel line setback at 2636 Forsyth Drive, be approved.

Legal: Lot 1, District Lot 4947, ODYD, Plan 31947 Folio: F-07298.205

OCP: Small Holdings (SH) Zone: Small Holdings West Bench (SH5)

Variance to permit a swimming pool in the SH5 Zone; and

Requests: to permit the siting of a swimming pool within a front parcel line setback.

Proposed Development:

This application is seeking variances in order to formalize an existing in-ground swimming pool.

Specifically, it is being proposed to vary the following zoning regulations in the Okanagan Valley Zoning Bylaw No. 2800, 2022:

- Section 6.10.5 and the prohibition on swimming pools in the Small Holdings West Bench (SH5) Zone; and
- Section 6.14.3(a) to allow an unenclosed swimming pool constructed at finished grade within a front parcel line setback, and located 4.3 metres from the front parcel line.

In support of this request, the applicant has stated that “the location of the pool is the only space on the property that makes sense as far as use and accessibility. The location does not impact the area or any neighbouring properties”.

Site Context:

The subject property is approximately 7,183 m² in area and is situated on the north side of Forsyth Drive, approximately 2.2 km west from the boundary of the City of Penticton. The property is understood to contain a single detached dwelling, the subject swimming pool, and an accessory building (a workshop).

The surrounding pattern of development is generally characterised by similar rural residential development.

Background:

The current boundaries of the subject property were created by a Plan of Subdivision deposited with the Land Titles Office in Kamloops on May 20, 1981, and BC Assessment has classified the property as “Residential” (Class 01).

Available Regional District records indicate that a building permits have been issued for a single detached dwelling (1981) and a workshop (2021).

Under the Electoral Area “F” Official Community Plan (OCP) Bylaw No. 2790, 2018, the subject property is currently designated Small Holdings (SH).

Under the Okanagan Valley Zoning Bylaw No. 2800, 2022, the property is currently zoned Small Holdings West Bench (SH5). Section 6.10.5 of the Zoning Bylaw prohibits the construction of a swimming pool in the SH5 Zone.

A Development Variance Permit (RDOS DVP No. F2021.031-DVP) was issued to the property owners in 2021 to facilitate the construction of a workshop.

Bylaw Enforcement:

The property has been the subject of Stop Work Notices for undertaking renovations to a single detached dwelling without a building permit, and constructing the subject swimming pool without a permit.

The subject Development Variance Permit application is required in order to formalize the existing pool which was constructed without a permit. If approved, the applicant will also need to apply for a building permit.

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 September 19, 2023 and provided 15 working days to submit comments electronically or in-person to the Regional District.

As of October 12, 2023, being 15 working days from the date of notification, no representations have been received electronically or by submission at the Regional District office.

Analysis:

Proposed Variance to Section 6.10.5

The Greater West Bench Geotechnical Review indicates that “development-induced trigger mechanisms such as broken pipes, leaking swimming pools and ornamental ponds, and uncontrolled concentration of precipitation runoff are also known to increase the likelihood of subsurface erosion and sinkhole development”.

The report also indicates that the construction of swimming pools has a “potential impact on slope stability and sinkhole development due to introduction of water to soils by leaks and/or overland draining”.

Subsequently, the Regional District adopted an amendment to the Zoning Bylaw to prohibit swimming pools in the West Bench Small Holdings (SH5) and West Bench Low Density Residential (RS5) zones.

In support of their application, the applicant has provided a geotechnical assessment from Ground FX Geotechnical Inc. which indicates that “the primary geohazard of note near the swimming pool is

potential rockfall. The bedrock cut slope below the existing swimming pool is only approximately 8 feet high at the most and is presently stable...in the event of a swimming pool leak, the ditch along Forsyth Drive would convey the pool water as shown on the attached *Figure 3 – Drainage Route*. Any pool runoff or leakage would eventually infiltrate into the soils or make its way to Madeline Lake”. The report concludes that “the existing swimming pool on the property...will not adversely impact the subject property or neighbouring down slope properties” and that “the existing swimming pool ‘*may be used safely for the uses intended*’ as required by the BC Land Title Act (Section 86)”.

Proposed Variance to Section 6.14.3

The prohibition of in-ground swimming pools within front parcel line setbacks, in conjunction with limitations on fence heights, is to protect rural streetscape characteristics and prevent streets from becoming “walled, inactive and uninviting spaces”.

In general, where pools are permitted in a front setback area, they are typically accompanied by requests to construct over-height fencing to ensure privacy, amenity space and safety (NOTE: no request has been made for over-height fencing in association with this application).

Additionally, Administration is generally concerned regarding the siting of an in-ground swimming pool within the front parcel line setback as it relates to potential impacts on both vehicle sight lines and the established character and streetscape of the community.

Applications which request the siting of a building or structure within 4.5 metres of a road reserve generally require the approval of a setback permit from the Ministry of Transportation and Infrastructure.

In this case, Ministry staff have indicated that a setback permit is not required and that there is not seen to be significant potential for impacts to the adjacent right of way.

As it relates to the impacts of the proposal on the established character of the community and streetscape, a desktop review indicates that there are no properties in the general vicinity which have an in-ground swimming pool located within a front parcel line setback. In this regard, the proposal is seen to deviate from the existing character and streetscape of the community.

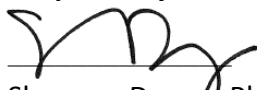
In this case, Administration recognizes that a swimming pool was formerly sited in the location of the existing swimming pool. Furthermore, it is noted that, due to the topography of the site, the swimming pool is located at a higher elevation from the road, which mitigates some visual impacts from the development. In this regard, the proposal is not seen a significant deviation from the previous property layout and is unlikely to result in substantial negative impacts on the overall character and streetscape.

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

Alternative:

1. That the Board deny Development Variance Permit No. F2023.037-DVP.

Respectfully submitted



Shannon Duong, Planner II

Endorsed by:



C. Garrish, Senior Manager of Planning

Attachments:

- No. 1 — Aerial Photo (2023)
- No. 2 — Site Photo

Attachment No. 2 – Aerial Photo (2023)



Attachment No. 2 – Site Photo (Google Streetview)

