
CITY OF KELOWNA
MEMORANDUM

Date: November 25, 2003
File No.: DVP03-0070

To: City Manager

From: Planning and Corporate Services Department

Subject:

APPLICATION NO. DVP03-0070

OWNER: Ian & Marguerite Sisett

AT: Watt Road, Kelowna, BC

APPLICANT: Ian & Marguerite Sisett

PURPOSE: TO OBTAIN A VARIANCE TO ALLOW A SIDE YARD SETBACK OF 7.32 METRES WHERE A 15.0 METRE RIPARIAN MANAGEMENT AREA SETBACK IS REQUIRED.

TO ALLOW A SINGLE DETACHED DWELLING TO BE 3 STOREYS IN HEIGHT WHERE ONLY 2 1/2 STOREYS ARE PERMITTED.

EXISTING ZONE: RU1 – LARGE LOT HOUSING

REPORT PREPARED BY: KEIKO NITTEL

SEE ATTACHED FACT SHEET FOR COMPLETE APPLICATION DETAILS

1.0 RECOMMENDATION

THAT Council authorize the issuance of Development Variance Permit No. DVP03-0070 for Lot 9, D.L 14, ODYD, Plan 6069 located on Watt Road, Kelowna, B.C. subject to the following:

1. The dimensions and siting of the building to be constructed on the land be in general accordance with Schedule "A"
2. The exterior design and finish of the building to be constructed on the land be in general accordance with Schedule "B";
3. The applicant register a Flooding Covenant on title of the subject property as a Section 219 Restrictive Covenant saving harmless the City and the Province from any flood damage.

AND THAT a variance to the following section of Zoning Bylaw No. 8000 be granted:

Section 6.14: Stream Protection Leave Strips

- Vary the setback from Fascieux Creek from the 15.0m required to 7.32m

Section 13.1.5 (b): RU1 – Large Lot Housing

- To vary the maximum permitted height for a single detached dwelling from the 2.5 stories permitted to allow for a height of 3 stories.

AND FURTHER THAT the applicant be required to complete the above-noted conditions within 180 days of Council approval of the development permit application in order for the permit to be issued.

2.0 SUMMARY

The applicants are proposing to demolish the existing dwelling and build a new single detached house. The subject property is bound by both Okanagan Lake to the west and Fascieux Creek to the north. The proposed house is to encroach into the required riparian management setbacks the creek. The applicants are therefore requesting variances to allow a side yard setback of 7.32 metres to Fascieux Creek. As the house also has a room located at the third storey level, the applicant is also applying to vary to maximum permitted height for the house to allow a third storey room where only 2.5 storeys are permitted.

3.0 ADVISORY PLANNING COMMISSION

THAT the Advisory Planning Commission supports Development Permit Application No. DVP03-0070, 3112 Watt Road, Lot 9, Plan 6069, Sec. 13, Twp. 25, ODYD by Ian & Marguerite Sisett to obtain a Development Variance Permit to allow for a side yard setback of 7.32 meters where at 15.0 metre riparian management area setback is required; and a single detached dwelling to be 3 storeys in height where only 2.5 storeys are permitted.

4.0 BACKGROUND

4.1 The Proposal

The subject property is located on the shore of Okanagan Lake and adjacent to Fascieux Creek. The applicants are proposing to demolish the existing single detached dwelling and construct a new larger house on the property. The subject property is bound by Fascieux Creek to the north and to the west by Okanagan Lake. In order to facilitate the construction of the new house at the proposed location, the applicants are requesting variances to the 15.0 metre riparian management area setbacks to the creek.

The proposed house has been designed to respect the existing side yard setback to Fascieux Creek of the existing house. As the existing setback is only 7.32 metres where under the current rules of the Zoning Bylaw the required riparian management setback is 15.0 metres, a variance is necessary. The proposed house meets the required 15.0 metres setback to the natural boundary of Okanagan Lake. The proposed house meets the required side yard setback of 2.3 metres on the opposite (south) side of the property. The applicants, however, will be required to ensure that projections, such as steps from the upper levels, do not project more than 0.6 metres into the required side yard.

The proposed house consists of a billiards room, a library, 2 bedrooms, a living room/lounge, a dining room, and three bathrooms on the main level. The second level will be comprised of 2 bedrooms, a living area, a dining area, a kitchen, and three bathrooms. The applicants are also proposing to construct a room to be located at the third storey level. This “observatory” room will be accessed via both stairs and an elevator. As only 2.5 storeys are permitted, a variance is also required to allow this room at the third storey level.

The application compares to the requirements the City of Kelowna Bylaw No. 8000 for RU1 zones as follows:

| CRITERIA | PROPOSAL | RU1 ZONE REQUIREMENTS |
|----------------------------|---|--|
| Lot Area (m ²) | 2562m ² | 400.0m ² |
| Lot Width (m) | 27.0m | 13.0m |
| Lot Depth (m) | 100.0m + | 30.0m |
| Site Coverage (%) | 16% 17% | 40% (buildings) 50% (with driveway and parking) |
| Height | 3 storeys ❶ | 2.5 storeys or 9.5m |
| Setbacks | | |
| -Front | 25.0m+ | 4.5m (6.0m driveway) |
| -Rear | 15.0+m | 15.0m |
| - Side (north) | 7.32m ❷ (to creek) / 3.32m (to property line) | 15.0m to Fascieux Creek |
| - Side (south) | 2.30m | 2.3m |
| Parking Spaces (Total) | 2+ | 2 |

Notes:

- ❶ The applicant is seeking a variance to allow a third storey where only 2.5 storeys are permitted.
- ❷ The applicant is seeking to vary the riparian management setback from the 15 metres riparian Management Area (RMA) setback to Fascieux Creek.

4.2 Site Context

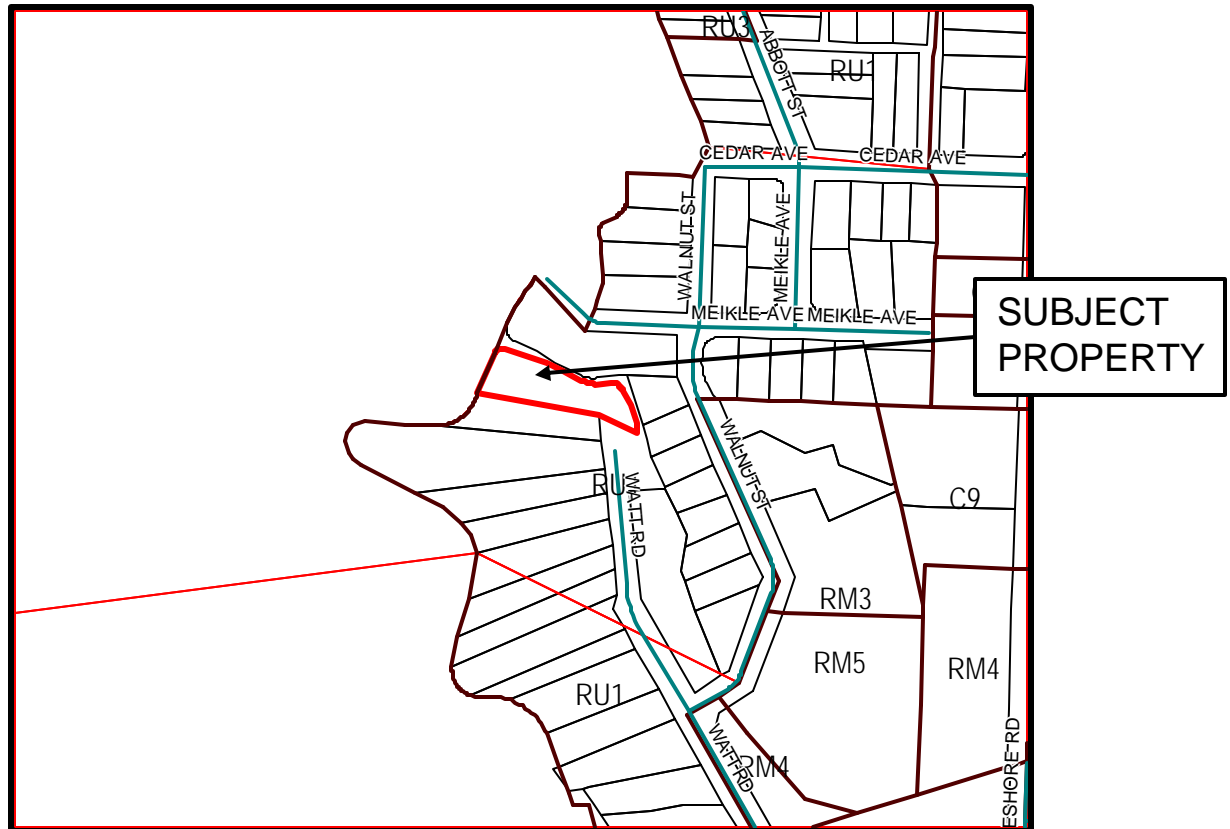
The subject property is located on Lakeshore Road between Lakeshore Place and Roepel Road.

Adjacent zones and uses are:

North - RU1- Large Lot Housing Zone
 East - RU1- Large Lot Housing Zone
 South - RU1- Large Lot Housing Zone
 West - RU1- Large Lot Housing Zone

4.3 Location Map

Subject Property:



4.4 Existing Development Potential

The property is zoned RU1 – Large Lot Housing. The purpose of this zone is to provide for single detached housing as a principal use, and compatible secondary uses, such as bed and breakfast homes, minor care centres and group homes, as well as home based businesses. Secondary suites are permitted on lots with RU1s – Large Lot Housing with Secondary Suite zoning.

4.5 Current Development Policy

4.5.1 Kelowna Official Community Plan

4.4.1 Kelowna Official Community Plan

The OCP Riparian Management Area policies call for the retention, in a largely undisturbed state throughout and after the development process (unless there exists a hazardous condition which can only be addressed by disturbing the site), of an area of land immediately adjacent to the streams. This area to remain free of development is referred to as the “riparian management area.” The OCP also states that, as a general rule, Riparian Management Areas should be of sufficient

width to include any significant natural attribute and adjacent terrestrial ecosystem (i.e., vegetation, water features, fish and wildlife habitat, escarpments, terraces, steep valley sides and cliffs). In addition, the OCP calls for the prohibition of buildings, structures, and hard-surfacing, such as driveways and parking areas and limit soil deposition and some agricultural practices within the Riparian Reserve Zone.

The OCP guidelines for Riparian Management Areas, however, also states that relaxations may be considered, environmental mitigation and restoration will be a requirement of the development process. The Relaxation of the Riparian Management Area may also require habitat mitigation measures acceptable to the Ministry of Water, Land and Air Protection (e.g., planting, diversion of storm water, fencing, or restoration works), or compensation authorized by Department of Fisheries and Oceans. Any proposed relaxation of Riparian Management Area widths, storm water mitigation requirements, or erosion & sediment control requirements are to be referred to the Ministry of Water, Land and Air Protection for authorization prior to review by the City.

The guidelines also state that the City may consider zoning bylaw variances, where necessary, in order to prevent or minimize encroachment into the *Riparian Management Area*. The changes that may be considered include, but are not limited to:

- a) Reducing front and/or rear yard setbacks
- b) Increasing the maximum site coverage of buildings (provided density is not increased)
- c) Increasing maximum building height (provided density is not increased)
- d) Reducing parking space requirements.

The OCP also outlines Development Permit conditions which can be used as a means of satisfying of the above-noted guidelines. The City may issue a development permit that:

- imposes conditions respecting the sequence and timing of construction;
- varies or supplements a bylaw dealing with subdivision servicing requirements or land use designation (zoning) requirements (other than issues relating to use or density);
- includes requirements and conditions or sets standards for:
 - areas of land that must remain free of development, except in accordance with any conditions contained in the permit;
 - specified natural features or areas to be preserved, protected, restored or enhanced in accordance with the permit
 - creek beds to be returned to the Crown
 - Riparian Management Areas to be dedicated
 - works to be constructed to preserve, protect, restore or enhance natural water courses or other specified natural features of the environment
 - protection measures, including that vegetation or trees be planted or retained in order to:• conserve, protect, restore or enhance fish habitat or riparian areas, control drainage, control erosion or protect banks

In areas of flooding, the OCP calls for the referral of the application to the Ministry of Water, Land, and Air Protection as their floodplain management requirements call for a horizontal setback of 15 metres. Setback development on properties along streams and water bodies in accord with the MWLAP required floodplain management provisions require the registration of a Section 219 covenant to save the City of Kelowna harmless from any future flooding damage for relaxation of the required floodplain management setback. The flooding guidelines also call for the protection of the riparian management areas using restrictive covenants, dedications, park zoning, and statutory right-of-ways.

4.5.2 Lake Okanagan Shore Zone Plan

In order to protect the shore zone, a corridor of land along the lakefront should be left in its natural condition upon redevelopment of the upland parcel, or be landscaped in a manner that either enhances conditions for fish and wildlife or maintains conditions equivalent to those that would have existed had no development occurred.

The rehabilitation of natural areas that have been negatively affected by human activity, even on properties where no development initiatives are being proposed, is also encouraged. It should be ensured that the natural environment will not be negatively affected. The proposed action or development should have no significant impact on the environment, or which concludes that the land is not considered to be environmentally sensitive to development, nor subject to hazardous conditions.

5.0 TECHNICAL COMMENTS

5.1 Aquila
No response.

5.2 Environmental Division
We could support the new house construction, provided the new foot-print does not increase the existing non-conforming setback to the creek. That is, the variance is supported if the new house is no closer than the old house. The applicant would also need to get written approval for a floodplain setback reduction and register a restrictive covenant that saves the City harmless from damage due to flooding. Approval of the BC Ministry Water, Land, and Air Protection Habitat section would also be needed.

5.3 Fire Department
No comment

5.4 Inspection Services
No comment.

5.5 Ministry of Land, Water, and Air Protection

5.5.1 Environmental Stewardship Division
No concerns provided the house respect the existing setback to Fascieux Creek.

5.5.2 Flood Hazard Management
The proposed location of the new house is 23.12 metres from contour 342.140 metres GSC datum. The 343.0 metre contour is used for the natural boundary of

Okanagan Lake. The house appears well back from the 343.0 metre contour (over 15 metres).

No concerns here provided the underside of the floor system is constructed to the Okanagan Lake Flood Construction Level of 343.66 metres GSC datum. The ground elevation around the proposed house is around 343.4 to 343.8 metres therefore it should be easy for to meet the floodplain management setbacks.

It is recommend that the City of Kelowna require the proponent to enter into a Section 219 covenant saving harmless the City and the Province from any flood damage especially if the new structure is within 15 metres of Fascieux Creek.

5.6 Parks Department
No comments.

5.7 Interior Health
Subject to sewer and water.

5.8 RCMP
No comment.

5.9 School District No.23
No comment.

5.10 Shaw Cable
Owner/developer to supply and install an underground conduit system as per Shaw Cable drawings & specifications.

5.11 Telus
TELUS will provide underground facilities to this development. Developer will be required to supply and install conduit as per TELUS policy.

5.12 Terasen
No comment.

5.13 Works & Utilities
Development Variance & Site Related Issues - City may wish to establish a stream Statutory Right of Way for maintenance and drainage of Fascieux Creek along this property. This will be determined when the existing stream boundary lines are corrected.

The proposed works are within the regulated 15 m and will require an approval from BC Ministry of Water, Land, and Air Protection. The Development Engineer will defer comments to the City Environmental Manager and the Provincial Government on the environmental ramifications of additions to existing structures and setbacks of new buildings from Fascieux Creek.

6.0 PLANNING AND DEVELOPMENT SERVICES DEPARTMENT

The Planning and Development Services Department is supportive the proposal to construct a new single detached dwelling on the subject property. Staff acknowledge that, with 15.0 metre setbacks required from both lake and creek, the development of the property is therefore considerably limited without consideration of some variances. Staff, however, are supportive of the proposed variance to the riparian management setback provided that the new house respect the existing side yard setback to Fascieux Creek. The applicant will be required to register a Flooding Covenant (Section 219 Restrictive Covenant) on title of the subject property saving harmless the City and the Province from any flood damage. Staff also note that the creek is not the legal boundary of the subject property. The proposed house therefore is to be setback 3.32 metres to the north property line. The opposite side yard meets the setback requirement of 2.3 metres as outlined in the Zoning Bylaw. The applicant, however, will be required to ensure that projections, such as the steps, do not project more than 0.6 metres into the required side yard setback as per the regulations of the Zoning Bylaw. This development variance permit addresses only the proposal for the variance to the riparian management setback and height of the proposed building. Staff are satisfied that the applicant has made significant effort to incorporate the proposed third storey portion of the house into the roof design of the building. The third storey is therefore not highly visible to the adjacent neighbours.

Andrew Bruce
Development Services Manager

Approved for inclusion ☐

R.L. (Ron) Mattiussi, ACP, MCIP
Director of Planning & Corporate Services
KN
Attach.

FACT SHEET

- | | |
|--|---|
| 1. APPLICATION NO.: | DVP03-0070 |
| 2. APPLICATION TYPE: | Development Variance Permit |
| 3. OWNER: | Ian & M. Bev Sisett |
| . ADDRESS | 3112 Watt Road |
| . CITY | Kelowna, B.C |
| . POSTAL CODE | V1W 3C8 |
| 4. APPLICANT/CONTACT PERSON: | Ian & M. Bev Sisett |
| . ADDRESS | 3112 Watt Road |
| . CITY | Kelowna, B.C |
| . POSTAL CODE | V1W 3C8 |
| . TELEPHONE/FAX NO.: | 762-3211 |
| 5. APPLICATION PROGRESS: | |
| Date of Application: | June 24, 2003 |
| Date Application Complete: | September 2, 2003 |
| Servicing Agreement Forwarded to Applicant: | n/a |
| Servicing Agreement Concluded: | n/a |
| Staff Report to APC: | September 17, 2003 |
| 6. LEGAL DESCRIPTION: | Lot 9, DL 14, ODYD, Plan 6069 |
| 7. SITE LOCATION: | at the north end of Watt Road |
| 8. CIVIC ADDRESS: | 3112 Watt Road |
| 9. AREA OF SUBJECT PROPERTY: | 2562m ² |
| 10. EXISTING ZONE CATEGORY: | RU1- Large Lot Housing |
| 11. PURPOSE OF THE APPLICATION: | <p>TO OBTAIN A VARIANCE TO ALLOW A SIDE YARD SETBACK OF 7.32 METRES WHERE A 15.0 METRE RIPARIAN MANAGEMENT AREA SETBACK IS REQUIRED.</p> <p>TO ALLOW A SINGLE DETACHED DWELLING TO BE 3 STOREYS IN HEIGHT WHERE ONLY 2 1/2 STOREYS ARE PERMITTED.</p> |
| 12. MIN. OF TRANS./HIGHWAYS FILES NO.: | n/a |
| NOTE: IF LANDS ARE WITHIN 800 m OF A CONTROLLED ACCESS HIGHWAY | |
| 13. DEVELOPMENT PERMIT MAP 13.2 IMPLICATIONS | n/a |

ATTACHMENTS

(not attached to the electronic version of the report)

- Location of subject property
- Survey of Property (Existing)
- Elevations
- Site Plan
- Floor Plans