
CITY OF KELOWNA

MEMORANDUM

Date: January 5, 2004
File No.: DP03-0143/DVP03-0106
To: City Manager
From: Planning & Corporate Services Department

Subject:

APPLICATION NO. DP03-0143/ **OWNER:** Brian and Judy Proskiw
DVP03-0106

AT: 398 Braeloch Road **APPLICANT:** Brian and Judy Proskiw

PURPOSE: TO CONSTRUCT A SINGLE FAMILY DWELLING ENCROACHING INTO
THE RIPARIAN MANAGEMENT AREA

TO VARY THE RIPARIAN MANAGEMENT AREA SETBACK ALONG
OKANAGAN LAKE FROM 15M REQUIRED TO 10.0M PROPOSED

EXISTING ZONE: RR2 – RURAL RESIDENTIAL 2

REPORT PREPARED BY: RYAN SMITH

SEE ATTACHED FACT SHEET FOR COMPLETE APPLICATION DETAILS

1.0 RECOMMENDATION

THAT Council not authorize the issuance of Development Permit No. DP03-0143 for Lot 1, Sec. 23, Twp. 28, Plan 9531 ODYD, located on Braeloch Road, Kelowna, B.C.;

AND THAT Council not authorize the issuance of Development Variance Permit No. DVP03-0143 for Lot 1, Sec. 23, Twp. 28, Plan 9531 ODYD, located on Braeloch Road, Kelowna, B.C.

2.0 SUMMARY

The applicant is proposing to demolish the existing house on the subject property and replace it with a new home. With a 10 m setback, the existing single family dwelling is legally non-conforming with regards to its setback from Okanagan Lake. The applicants would like to construct the new dwelling with the same setback from the lake as the existing dwelling.

3.0 BACKGROUND

A small single family dwelling with a 10.0 m lake setback currently exists on the site. A right of way for access to properties to the east bisects the south of the property.

3.1 The Proposal

The applicants are seeking a development variance permit to achieve a relaxation of the required 15m setback for new construction so as to maintain a setback for their proposed new home, which is similar to that of their neighbours to the west. The applicants are concerned that should they build their proposed dwelling to conform to the required setback, the house located on the Lot 2 (to the west) would impede their sightlines of Okanagan Lake.

The applicant is proposing to demolish the existing house on the subject property and replace it with a new home. With a 10m setback, the existing single family dwelling is legally non-conforming with regards to its setback from Okanagan Lake. The applicants would like to construct the new dwelling with the same setback from the lake as the existing dwelling.

The applicants are also seeking council approval of a development permit for the proposed mitigation of the environmental impacts of the proposed development on the lakefront. The applicants have submitted a landscape plan to illustrate the proposed landscaping works.

The application compares to the requirements the City of Kelowna Bylaw No. 8000 for RR2 – Rural Residential 2 zone as follows:

CRITERIA	PROPOSAL	RR2 ZONE REQUIREMENTS
Site Area (m ²)	2064m ²	4000m ²
Lot Width	36.58m	36.0m
Lot Depth	57.65m	30.0m
Setbacks		
Side Yard (east)	7.5m	3.0m
Side Yard (west)	3.0m	3.0m
Rear Yard	10.0m ❶	15.0m (leave strip for lake setback))
Front Yard	9.47m (to ROW)	6.0m

❶ Note: Applicant is seeking to vary the leave strip from 15m required to 10.0m proposed.

Site Context

The subject property is a lakefront lot that is located on the north-eastern end of Braeloch Road. An access right of way for properties to the east bisects the subject property.

Adjacent zoning and existing land uses are to the:

- North - Okanagan Lake
- East - A1 – Agriculture 1
- South - RR2 – Rural Residential 2
- West - RR2 – Rural Residential 2

Site Map

Subject Property: 398 Braeloch Road



4.0 TECHNICAL COMMENTS

4.1 Works and Utilities Department

a) Environment Section

It is evident there is sufficient space between the access road and the required 15-m setback from Okanagan Lake to easily allow for the placement of the house without the need for a variance. The applicant has failed to demonstrate a hardship that would necessitate this variance. Application should not be supported by the City.

4.2 Ministry of Water, Land and Air Protection

a) Flood Hazard Management Division

The above land was inspected on October 9, 2003. There is recently built concrete retaining wall near the natural boundary of Okanagan Lake. This retaining wall appears to be well constructed and will afford some degree of wave protection. It would be helpful to know the elevation of the top of the wall to compare with the Okanagan Lake flood elevations. Nonetheless following review, this Ministry is prepared to recommend a 10 metre setback from the natural boundary of Okanagan Lake provided the natural boundary is established at 343.0 metres GSC datum and subject to the subdivider entering into a covenant in favour of the Minister of Water, Land and Air Protection and the local government (City of Kelowna) registrable under Section 219 which shall run with the land and specifies the following conditions for the lot:

Lot 1, Plan 9531, Sec. 23, Tp. 28, ODYD

a) Hereafter, no building, mobile home or unit, modular home or structure shall be constructed, reconstructed, moved, extended or located within 10 metres of 343.0 metre GSC datum contour along Okanagan Lake.

b) Hereafter, no area used for habitation, business or storage of goods damageable by floodwaters shall be located within any building, modular home or structure at an elevation such that the underside of the floor system thereof is less than 343.66 metres GSC datum. In the case of a mobile home or unit, the ground level or top of concrete or asphalt pad on which it is located shall be no lower than the above-described elevation.

c) The required elevation may be achieved by structural elevation of the said habitable, business, or storage area or by adequately compacted landfill on which any building is to be constructed or mobile home or unit located, or by a combination of both structural elevation and landfill. No area below the required elevation shall be used for the installation of furnaces or other or other fixed equipment susceptible to damage by floodwater. Where landfill is used to raise the natural ground elevation, the toe of the landfill shall be no closer to the natural boundary than the setback requirement given in condition (1) above. The face of the landfill slope shall be adequately protected against erosion from the flood flows (wave action, ice or other debris).

d) The owner acknowledges that the Province of British Columbia does not represent to the owner or any other person that any building constructed or mobile home located in accordance with paragraphs (1) and (2) herein will not be damaged by flooding or erosion, and the owner covenants and agrees not to claim damages from the Province of British Columbia or the City of Kelowna or hold the Province or the City responsible for damages caused by flooding or erosion to the land or to any building, improvement, or other structure built, constructed or placed upon the said lands and to any contents thereof.

These covenant conditions should be registered with priority over any financial charges registered against the property.

b) Ecosystem Section

No Comments.

4.3 Inspection Services

No concerns.

5.0 PLANNING AND CORPORATE SERVICES COMMENTS

The Planning and Corporate Services Department has concerns with the proposed Development Permit and Development Variance Permit. Staff feels that the applicant could revise the proposal so as to remove the house from the required 15m setback, however, the applicant has elected to proceed with the plans as originally presented. It appears that there is sufficient space between the access road and the 15 m setback line to allow for the placement of the house without the need for a variance. Without any net-benefit, the City has no reason to support this application. Although the beach is far from the City Center, beach access in this area in the future could become an important recreational/environmental issue and having the 15m setback would ensure adequate space.

6.0 ALTERNATE RECOMMENDATION

THAT Council authorize the issuance of Development Permit No. DP03-0143 for Lot 1, Sec. 23, Twp. 28, Plan 9531 ODYD, located on Braeloch 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. Landscaping to be provided on the land be in general accordance with Schedule "C";

AND THAT Council authorize the issuance of Development Variance Permit No. DP03-0143 for Lot 1, Sec. 23, Twp. 28, Plan 9531 ODYD, located on Braeloch Road, Kelowna, B.C.:

AND THAT variances to the following sections of Zoning Bylaw No. 8000 be granted:

- Vary the Okanagan lake leave strip setback from 15.0m required to 10.0m proposed.

AND THAT the applicants register a Section 219 covenant for flooding at the Land Titles Office in Kamloops.

Andrew Bruce
Development Services Manager

Approved for inclusion

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

RM/AB/rs
Attach.

FACT SHEET

- | | |
|---|--|
| 15. APPLICATION NO.: | DP03-0143 |
| 15. APPLICATION TYPE: | DVP03-0106
Development Permit
Development Variance Permit |
| 3. OWNER: | Brian and Judy Proskiw |
| . ADDRESS | 4561 Walker Road |
| . CITY | Kelowna, BC |
| . POSTAL CODE | V1W 3C7 |
| 4. APPLICANT/CONTACT PERSON: | Brian and Judy Proskiw |
| . ADDRESS | 4561 Walker Road |
| . CITY | Kelowna, BC |
| . POSTAL CODE | V1W 3C7 |
| . TELEPHONE/FAX NO.: | 764-2588 |
| 5. APPLICATION PROGRESS: | |
| Date of Application: | September 11, 2003 |
| Date Application Complete: | October 30, 2003 |
| Servicing Agreement Forwarded to Applicant: | N/A |
| Servicing Agreement Concluded: | N/A |
| Staff Report to APC: | N/A |
| Staff Report to Council: | January 5, 2004 |
| 15. LEGAL DESCRIPTION: | Lot 1, Sec. 23, Twp. 28, Plan 9531
ODYD |
| 15. SITE LOCATION: | The subject property is a lakefront lot that is located on the north-eastern end of Braeloch Road. An access right of way for properties to the east bisects the subject property. |
| 15. CIVIC ADDRESS: | 398 Braeloch Road |
| 15. AREA OF SUBJECT PROPERTY: | 2064m ² |
| 15. EXISTING ZONE CATEGORY: | RR2 – Rural Residential 2 |
| 15. TYPE OF DEVELOPMENT PERMIT AREA: | Natural Environment DP Area (Lake) |
| 15. PURPOSE OF THE APPLICATION: | TO CONSTRUCT A SINGLE FAMILY DWELLING
ENCROACHING INTO THE RIPARIAN
MANAGEMENT AREA

VARY THE RIPARIAN MANAGEMENT AREA
SETBACK ALONG OKANAGAN LAKE FROM 15M
REQUIRED TO 10.0M PROPOSED |
| 15. MIN. OF TRANS./HIGHWAYS FILES NO.: | N/A |
| NOTE: IF LANDS ARE WITHIN 800 m OF A CONTROLLED ACCESS HIGHWAY | |

**15. DEVELOPMENT PERMIT MAP 13.2
IMPLICATIONS**

N/A

ATTACHMENTS

(not attached to the electronic version of the report)

- Subject Property Map
- Site Plan Showing Proposed Variance
- Survey Plan
- House Plan