
CITY OF KELOWNA
MEMORANDUM

Date: March 31, 2004
File No.: DVP03-0177

To: City Manager

From: Planning and Development Services Department

Subject:

APPLICATION NO. DVP03-0177 **OWNER:** Peter & Patricia Cook

AT: 2109 Capistrano Drive, Kelowna, BC **APPLICANT:** Sunshine Pools & Spas
(Tim Young)

PURPOSE: TO VARY THE MAXIMUM PERMITTED HEIGHT FOR RETAINING WALLS TO ALLOW A RETAINING WALL TO BE 2.9 METRES IN HEIGHT WHERE ONLY 1.2 METRES IS PERMITTED.

EXISTING ZONE: CD6 – Comprehensive Residential Golf Resort (Quail Ridge)

REPORT PREPARED BY: KEIKO NITTEL

SEE ATTACHED FACT SHEET FOR COMPLETE APPLICATION DETAILS

1.0 **RECOMMENDATION**

THAT Council not authorize the issuance of Development Variance Permit No. DVP03-0177 for Lot 2, Section 15, Township 23, ODYD, Plan KAP66966 located on Capistrano Drive, Kelowna, B.C.:

AND THAT a variance to the following section of Zoning Bylaw No. 8000 not be granted:

Section 7.5.8

- Vary the maximum permitted height of a retaining wall from 1.20 m permitted to allow a retaining wall that is 2.9 metres in height.

2.0 **SUMMARY**

The applicant requires a development variance permit to legalize an existing 2.9 m retaining wall located on the subject property. The retaining wall was constructed to facilitate the construction of a swimming pool.

3.0 BACKGROUND

3.1 The Proposal

The subject property is located in the Quail Ridge community fronting onto Capistrano Drive and backing onto Country Club Drive. The applicant is seeking a variance to the allowable height of an existing retaining wall located at the rear of the property. The retaining wall was constructed to create a level yard area to facilitate an in ground pool. The rear of the property slopes down from the back of the house and the pool is constructed surrounded by fill intended to raise the level of the rear yard and supported by the retaining wall. The balance of the rear yard is protected by a restrictive covenant. The proposed retaining wall does not encroach into the no build area established by the covenant. Tree cover in the covenanted area provides some screening of the retaining wall from Country Club Drive.

The application compares to the requirements the City of Kelowna Bylaw No. 8000 for RU2 zones as follows:

CRITERIA	PROPOSAL	REQUIREMENTS
Retaining Walls		
Height	2.9m ^❶	1.2m

❶ The applicant is seeking a variance to allow a retaining wall to be 2.9 metres is height where only 1.2 metres is permitted.

3.2 Site Context

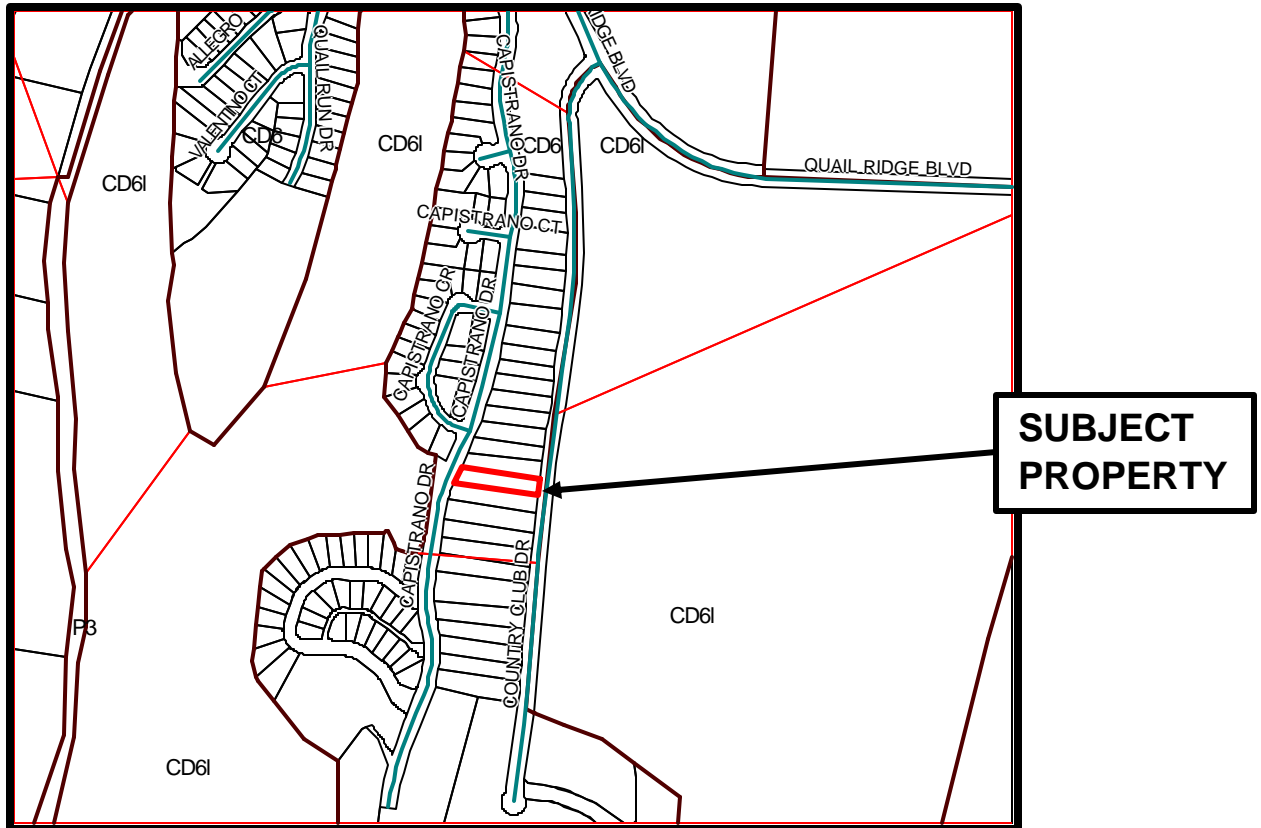
The subject property is located on Capistrano Drive, south of Capistrano Court.

Adjacent zones and uses are:

- North - CD6 – Comprehensive Residential Golf Resort – Single Detached Dwelling
- East - CD6 – Comprehensive Residential Golf Resort – Golf Course
- South - CD6 – Comprehensive Residential Golf Resort – Single Detached Dwelling
- West - CD6 – Comprehensive Residential Golf Resort – Single Detached Dwelling
- CD6 – Comprehensive Residential Golf Resort – Single Detached Dwelling

3.3 Location Map

Subject Property: 2109 Capistrano Drive



3.4 Existing Development Potential

The site is located in the CD6- Comprehensive Golf Resort Zone. The purpose of this zone is to provide for the development of a residential golf resort, which includes one or more land use designations as an integrated development unit based on an Area Structure Plan. Density is based on an averaging of all lands within the development.

3.5 Current Development Policy

3.5.1 Official Community Plan

The City of Kelowna's Official Community Plan (OCP) objectives and policies outline a clear course of direction for hillside development. The intent to minimize the effects of development on the natural environment of hillside areas, defined as lands in their natural state that have a slope angle of 10% and greater for a minimum height of 6 metres while preserving areas with slopes of 30% and greater. Effects to be minimized may include cuts and fills, tree cutting, re-grading and the visual impact in general of urban development of hillsides. Development should be directed to appropriate areas with slopes averaging less than 30%. Where it can be demonstrated that the proposed development will be sensitively integrated with the natural environment and will present no hazards to

persons of property, development may be permitted on land with a natural slope that averages greater than 30%.

3.5.2 Quail Ridge Community Concept Development Plan

The Quail Ridge Community Concept Development Plan (CDP) specifies the location as multi-family. The proposed project is generally consistent with the Quail Ridge Community Concept Development Plan. The proposed development follows the general form and character for the village mixed use and multiple-family buildings as outlined in the CDP.

At Quail Ridge, the natural topography and mature Ponderosa Pine tree cover embodies a distinctive character for the community. The development will protect 30% major sloped areas by restrictive covenants. Minor and site specific slope conditions within development areas will be dealt with during the development permit or subdivision approval process. Strict construction access and control will protect these areas. Sensitive development and landscaping will enhance and maintain the site for sustainable and effective use.

3.5.3 Kelowna Hillside Development Guidelines (2001)

Kelowna's guidelines for development on hillsides are to be used to supplement the existing Kelowna Zoning Bylaw and the City of Kelowna Subdivision, Development and Servicing Manual. The guidelines include the following suggestions:

- Areas with significant trees and vegetation are to be identified, protected and incorporated onto the overall subdivision plan where environmental concerns, soil stability and buffers between development cells will enhance neighbourhood character and sustainability.
- Retain trees, and, or other vegetation on ridgelines so that the ridgeline is seen predominantly as a continuous line of natural terrain or vegetation.
- When developing on exposed slope areas, it is important that development patterns do not dominate the hillside landscape. Curvilinear roads, irregular lot shapes, retention of vegetation, maximization of open space and significant landscaping should be incorporated in designs to reduce the visual impact of development in exposed slope areas.
- Scenic features such as rock outcrops, cliffs, unique vegetation, water bodies, wetlands and streams should be protected. Development around these features should complement the character of the feature rather than compete with it.
- Site planning should emphasize the opportunity to provide views from hillside advantage points. This can be done staggering buildings, articulating rooflines, and by controlling building heights in a manner that will provide views to residences located on the upslope side of streets.
- The form and character of roads and structures are to complement the terrain and features associated with the surrounding hillsides, by balancing the need for cuts and fills in a way that will reduce overall visual impacts.

5.0 TECHNICAL COMMENTS

The application has been submitted to various technical agencies and City departments and the following comments or concerns were expressed:

5.1 Works and Utilities

Existing retaining wall does not compromise W & U servicing requirements.
Existing drain pipe (Big O) must be terminated into a suitably sized and correctly located rock pit.

5.2 Inspections

No Concerns with the construction of the retaining wall. The wall is engineered. It is barely visible from Country Club Drive 30 m below. The drain pipe shown in the pictures, however, should be investigated. It should not drain freely over the bank.

6.0 PLANNING AND DEVELOPMENT SERVICES DEPARTMENT

The Planning and Development Services Department is not supportive of the proposed variances. While a building permit application for the pool was issued, information with regards to an over height retaining wall was not submitted as part of the application. The construction of over height retaining walls was therefore not discovered by Inspection Services until the retaining walls and pool were completed. Inspection Services then required the submission of an Engineers report on the retaining wall. At that time, the applicant was also instructed to apply for the development variance permit. As Staff is concerned with this pattern of development, support of variances requested after construction is discouraged.

In addition, the proposed development is not consistent with the City's Hillside Development Guidelines which state that development should complement the character of the feature rather than compete with it. Staff, however, acknowledges that existing trees mitigate the visual impact of the retaining wall from Country Club Drive. The applicant has also relocated the drainpipes from the base of the retaining and provided confirmation from an engineer that drainage will not impact the structural integrity of the wall. Should Council decide to support the variance, Staff recommend that the drainage of the pool via the street be a condition of approval as drainage down the slope may both impact the slope stability as well as result in runoff onto Country Club Drive located at the base of the slope. The planting of climber would further mitigate the visual impact of the retaining wall. The adjacent neighbours have provided letters of support for the proposed variances.

6.1 ALTERNATE RECOMMENDATION

THAT Council authorize the issuance of Development Variance Permit No. DVP03-0177 for Lot 2, Section 15, Township 23, ODYD, Plan KAP66966 located on Capistrano Drive, Kelowna, B.C. subject to the following;

1. The dimensions and siting of the building to be on the land be in general accordance with Schedule "A";
2. The exterior design and finish of the building to be on the land be in general accordance with Schedule "B";
3. The pool is not to be drained down the slope into the no build area. Pool water discharged must be drained into storm drain in accordance with the regulations of the City of Kelowna Wastewater Division;

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

Section 7.5.8

- Vary the maximum permitted height of a retaining wall from 1.20 m permitted to allow a retaining wall that is 2.9 metres in height.

Andrew Bruce
Development Services Manager

Approved for inclusion

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

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Attach.

1. **APPLICATION NO.:** DVP03-0177
2. **APPLICATION TYPE:** Development Variance Permit
3. **OWNER:** Peter & Patricia Cook
· **ADDRESS** 2109 Capistrano Dr
· **CITY** Kelowna, BC
· **POSTAL CODE** V1V 2N1
4. **APPLICANT/CONTACT PERSON:** Sunshine Pools & Spas (Tim Young)
· **ADDRESS** 1940 Kirschner Road
· **CITY** Kelowna, BC
· **POSTAL CODE** V1Y 4N6
· **TELEPHONE/FAX NO.:** 717-8681
5. **APPLICATION PROGRESS:**
Date of Application: December 18 , 2003
Date Application Complete: March 29, 2004
Servicing Agreement Forwarded to Applicant: n/a
Servicing Agreement Concluded: n/a
Staff Report to APC: n/a
6. **LEGAL DESCRIPTION:** Lot 2, Section 15, Township 23, ODYD, Plan KAP 66966
7. **SITE LOCATION:** On Capistrano Drive south of Capistrano Crescent
8. **CIVIC ADDRESS:** 2109 Capistrano Drive
9. **AREA OF SUBJECT PROPERTY:** 1944m²
10. **EXISTING ZONE CATEGORY:** CD6- Comprehensive Residential Golf Resort
11. **PURPOSE OF THE APPLICATION:** TO VARY THE MAXIMUM PERMITTED HEIGHT FOR RETAINING WALLS TO ALLOW A RETAINING WALL TO BE 2.9 IN HEIGHT WHERE ONLY 1.2 METRES IS PERMITTED.
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
- Photographs
- Site Plan
- Elevations