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**CITY OF KELOWNA**  
**MEMORANDUM**

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**Date:** January 10, 2005  
**File No.:** DVP04-0147

**To:** City Manager

**From:** Planning and Corporate Services Department

**Subject:**

**APPLICATION NO.** DVP04-0147      **OWNER:** Andrey & Graham Hoffman

**AT:** 5229 Benmore Court, Kelowna, BC      **APPLICANT:** Dilworth Homes Ltd.

**PURPOSE:** TO VARY THE REQUIRED SIDE YARD SETBACK TO ALLOW A  
SIDEYARD SETBACK OF 1.92 METRES ON THE NORTH ELEVATION  
WHERE 2.3 METRES IS REQUIRED.

**EXISTING ZONE:** RU1h- Large Lot Housing (Hillside)

**REPORT PREPARED BY:** KEIKO NITTEL

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**SEE ATTACHED FACT SHEET FOR COMPLETE APPLICATION DETAILS**

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**1.0**    **RECOMMENDATION**

THAT Council not authorize the issuance of Development Variance Permit No. DVP04-0147 for Lot 29, DL 1688S, SDYD, Plan KAP74275 located on Benmore Court, Kelowna, B.C.

**2.0**    **SUMMARY**

The applicant is seeking a variance to legalize an existing side yard setback of 1.92 m where 2.3m is required to a two storey portion of a building.

**7.0**    **BACKGROUND**

A single detached dwelling was constructed on the subject property with a side yard setback on the north elevation that does not conform to the requirement of the Zoning Bylaw. The applicant therefore requires a development variance permit to legalize the two storey portion of a single detached dwelling to have a side yard setback of 1.92 metres where 2.3 metres is required.

### 3.1 The Proposal

The application compares to the requirements the City of Kelowna Bylaw No. 8000 for RU1h zone as follows:

CRITERIA	PROPOSAL	RU1s ZONE REQUIREMENTS
Lot Area (m <sup>2</sup> )	635m <sup>2</sup>	400.0m <sup>2</sup>
Lot Width (m)	18.343m	13.0m
Lot Depth (m)	36.00	30.0m
Site Coverage (%)	29.6% 35.9%	40% (buildings) 50% (with driveway and parking)
Height	2.0 stories/7.72m	2.5 storeys or 9.5m
Setbacks		
-Front	3.31m	3.0m
-Rear	7.5m	7.5m
- Side (north)	1.92 m to 2 storey portion of building	2.3m to 2-2.5 storey
- Side (south)	2.13m to 1.5 storey portion	2.0m to 1-1.5 storey &
Parking Spaces (Total)	2	2

### 3.2 Site Context

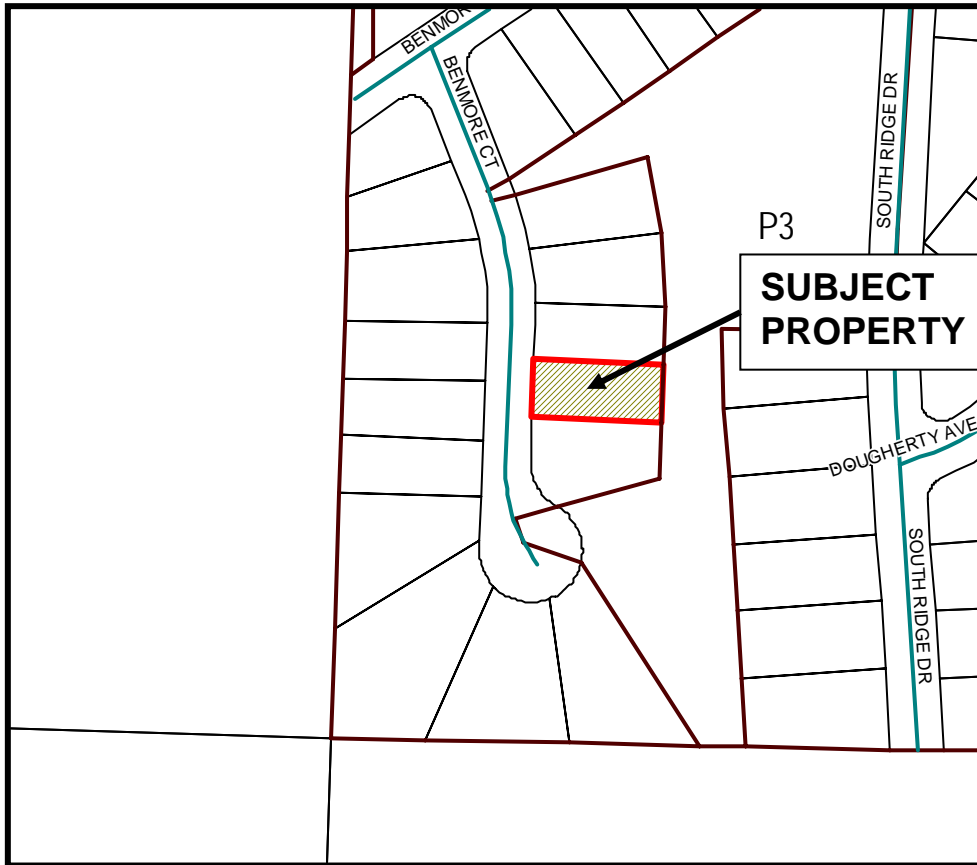
The subject property is located on Benmore Court south of Benmore Place.

Adjacent zones and uses are:

- North - RU1h- Large Lot Housing (Hillside)
- East - RU1h- Large Lot Housing (Hillside)
- South - RU1h- Large Lot Housing (Hillside)
- West - RU1h- Large Lot Housing (Hillside)

### 3.3 Location Map

Subject Property: 5229 Benmore Ct



### 3.4 Existing Development Potential

The property is zoned RU1h – Large Lot Housing (Hillside). 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.

### 3.5 Current Development Policy

#### 3.5.1 Kelowna Official Community Plan

The proposal is consistent with the designation of Single/Two Family Residential in the Official Community Plan future land use designation. The Single/Two Family Residential designation covers single detached homes for occupancy by one family, single detached homes with a secondary suite, semi-detached buildings used for two dwelling units, and complementary uses (OCP, Chapter 15).

## 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 No comments.

### 5.2 Inspections Services There are two windows on left elevation. The percentage of the openings in relation to limiting distance from property line (1.92 m) complies with the requirements of BC Building Code and it does not represent any unsafe condition to spread of fire to adjacent property.

### 5.3 Fire Department No concerns.

## 6.0 PLANNING AND DEVELOPMENT SERVICES DEPARTMENT

In general, the Planning and Development Services Department has no concerns regarding the proposed setback as the majority of the building is less than 2 storeys in height, making the setback closer to the requirement for a 1.5 story building. In addition, the side elevations of the proposed building have few windows therefore the privacy of the adjacent properties is maintained. In addition, the applicant has submitted a letter of support from the affected neighbour to the north. Staff, however, is unable to support a variance where, despite the directions of Inspection Services to address the setback issue at both the building permit and inspection stages, the builder continued to construct the building contrary to the setback regulations of the Zoning Bylaw.

As a condition of the building permit, the applicant was required to reduce the size of the upper level bedroom, thus pulling it back to meet the side yard setback requirement. At the construction stage, however, the builder continued as per the original plans. When this was discovered by the Building Inspector at the framing stage, the Builder was instructed to obtain a development variance, or amend the building to meet the setback requirement, prior to proceeding. Despite these instructions, the Builder continued work on the building. When discovered by the Inspector at the insulation stage of the construction, the Builder advised the Inspector that the development variance application had been taken care when in fact an application had yet to be submitted. The Builder subsequently continued to finish of the building. At the end of November 2004, the development variance permit was submitted. An occupancy permit will be withheld until this issue is resolved. If the development variance permit is not approved, the building will have to be amended to meet the regulations of the Zoning Bylaw.

7.0 RECOMMENDATION

THAT Council authorize the issuance of Development Variance Permit No. DVP04-0147 for Lot 29, DL 1688S, SDYD, Plan KAP74275 located on Benmore Court, 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";

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

Section 13.1.6 (d) – RU1: Large Lot Housing

A variance to allow a side yard setback of 1.92 metres where 2.3 metres is required.

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.

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Andrew Bruce  
Development Services Manager

Approved for inclusion ☐

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

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Attach.

**ATTACHMENTS**  
**(not attached to the electronic version of the report)**

- Location of subject property
- Site Plan
- Floor Plans
- Elevations