

Memo



Date: August 12, 2011
To: City Manager
From: Land Use Management, Community Sustainability (LT)
Application: DVP11-0141 **Owner/Applicant:** Netzlaw, Thomas & Cindia
Address: 757 Cantina Ct
Subject: Development Variance Permit Application
Existing OCP Designation: Single/Two-Unit Residential
Existing Zone: RU1h - Large Lot Housing (Hillside Area)

1.0 Recommendation

THAT Council authorize the issuance of Development Variance Permit No. DVP11-0141 for Lot 28, District Lot 1688S, SDYD, Plan KAP71342, located at 757 Cantina Ct, Kelowna BC;

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

Section 13.1.6(d) - RU1 Development Regulations: To vary the minimum side yard (eastern) from 2.0m required to 1.87m proposed (as per Schedule 'A').

2.0 Purpose

This application seeks a Development Variance Permit to allow an existing encroachment into the required side (east) yard for a single-family dwelling already under-construction.

3.0 Land Use Management

Side yard setback requirements aim to protect neighbouring property owners, creating consistent expectations for neighbouring development. The setback ensures adequate spacing between dwellings, providing privacy, room for landscaping, and access between dwellings.

However, given the limited scale of the variance request (0.13m), the consent from adjacent property owners, and that the property with the greatest potential to be impacted by the variance (east) is zoned for natural open space, the Land Use Management Department is willing to support the variance.

4.0 Summary

A Building Permit for the subject property was issued on June 15, 2011. A footing & foundation inspection was completed on June 24, 2011. Due to an error by the land surveyor at the time of foundation construction, a small portion of the garage encroaches into the required side yard

setback by 0.13m (0.43ft). Upon inspection, a Stop Work Order was placed on the property, with the Building and Permitting Branch advising that the construction would need to be altered to conform to the setback requirement. Instead, the applicant has chosen to pursue the Development Variance Permit process to endorse the reduced setback as constructed. At this time, the Stop Work Order continues to apply to the garage in question, with the remainder of the dwelling cleared for construction.

The applicant has submitted consent for the variance from adjacent property owners to the east and west.

The proposal conforms to Zoning Bylaw No. 8000 (with variances noted) as follows:

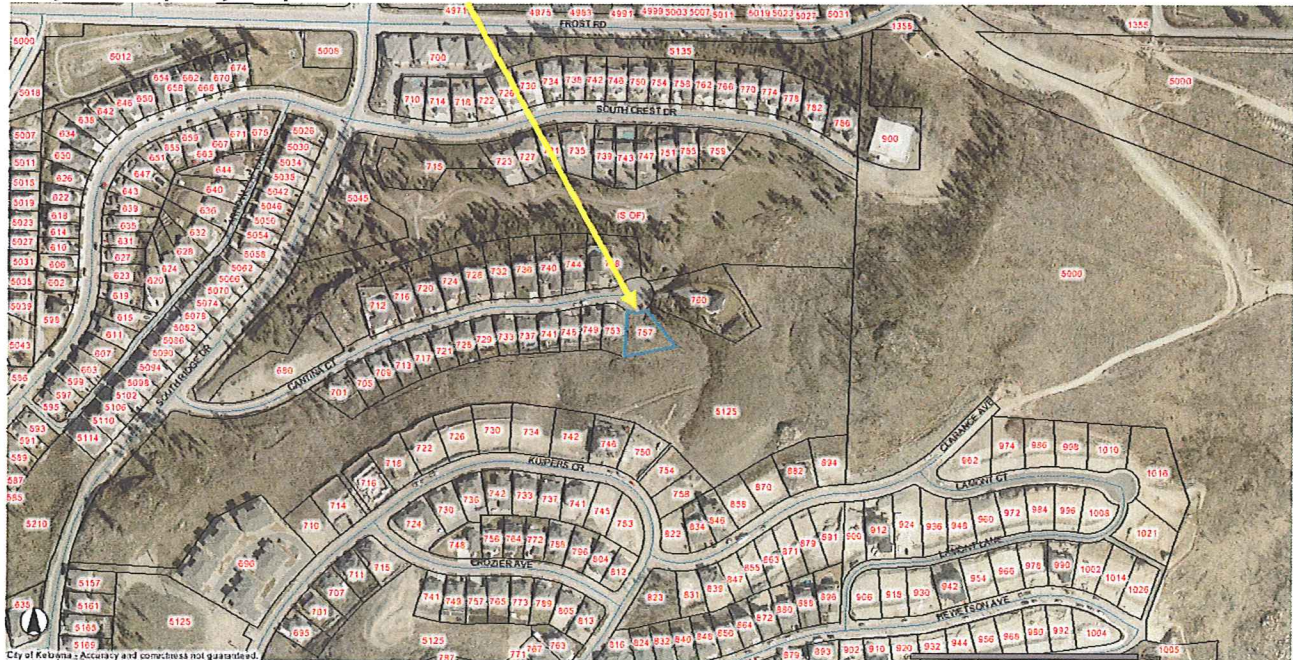
Criteria	Proposal	RU1h Zone Requirements
Development Regulations		
Side Yard Setback (east)❶	1.87m	2.0m (1 or 1.5 storey portion of a building)
❶ Indicates a requested variance.		

4.1 Site Context

The subject property is located in the South Ridge neighborhood in the Upper Mission, at the eastern end of Cantina Ct. Specifically, adjacent land uses are as follows:

Orientation	Zoning	Land Use
North	RU1h - Large Lot Housing (Hillside Area)	Single Family Residential
East	P3 - Parks & Open Space	Natural Open Space
South	P3 - Parks & Open Space	Natural Open Space
West	RU1h - Large Lot Housing (Hillside Area)	Single Family Residential

Subject Property Map: 757 Cantina Ct



5.0 Technical Comments

5.1 Building & Permitting Branch

The survey certificate submitted indicated encroachment into the side yard. At that time, a Stop Work Order was placed on the project, with Building & Permitting's recommendation to remove the portion of the structure from the required side yard. Due to the survey error on initial placement, the survey company with the owners wanted to proceed with a Development Variance Permit.

5.2 Development Engineering Branch

Does not compromise municipal services.

6.0 Application Chronology

Date of Application Received: August 4, 2011
Advisory Planning Commission: n/a

Report prepared by:



Luke Turri, Land Use Planner

Reviewed by:



Danielle Noble, Manager, Urban Land Use

Approved for Inclusion:



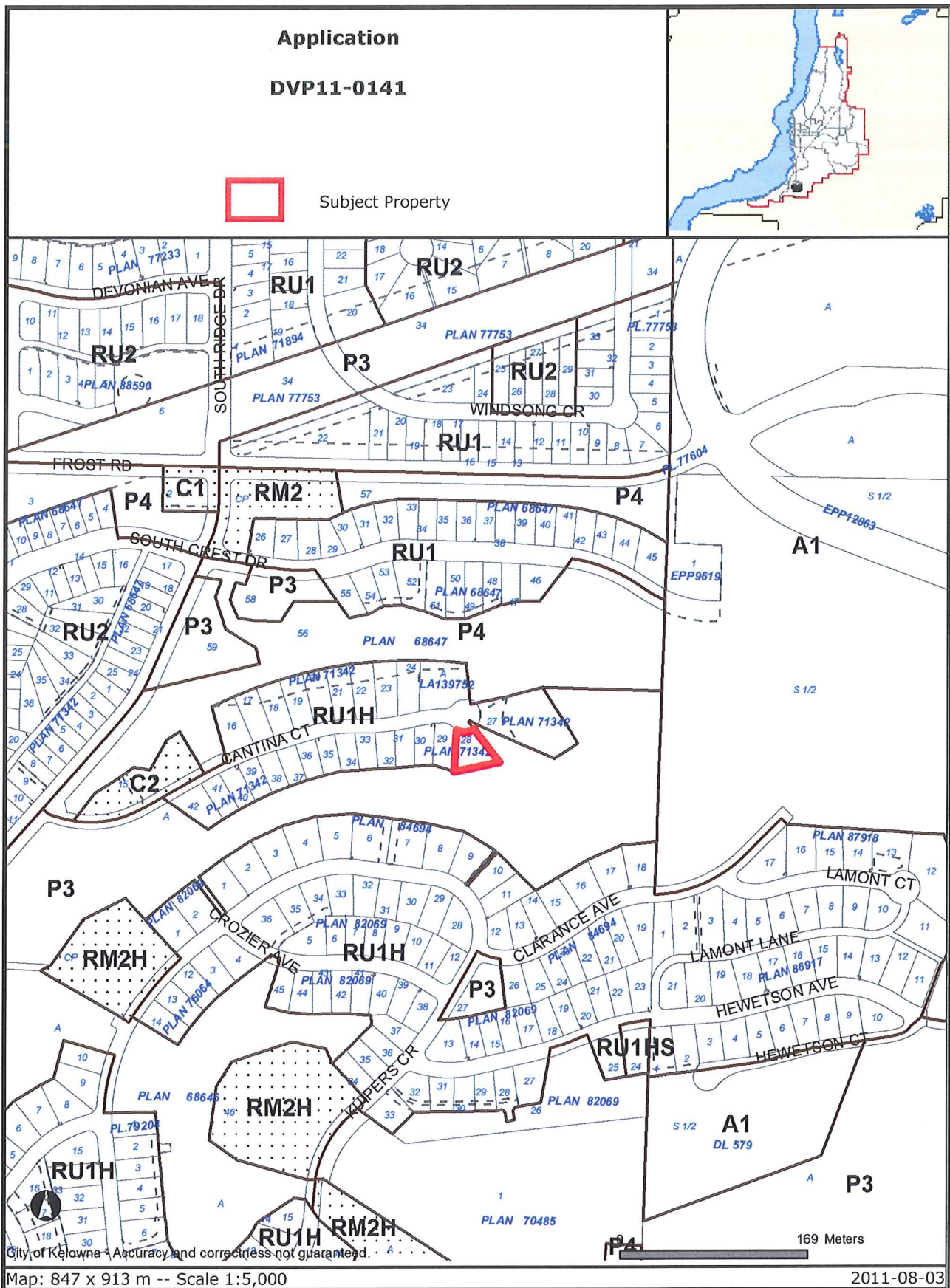
Shelley Gambacort, Director, Land Use Management

Attachments:

Subject Property Map
Copy of Survey Certificate
Draft Development Variance Permit (DVP11-0141)

5/11/11 11:00 AM
5/11/11 11:00 AM
5/11/11 11:00 AM





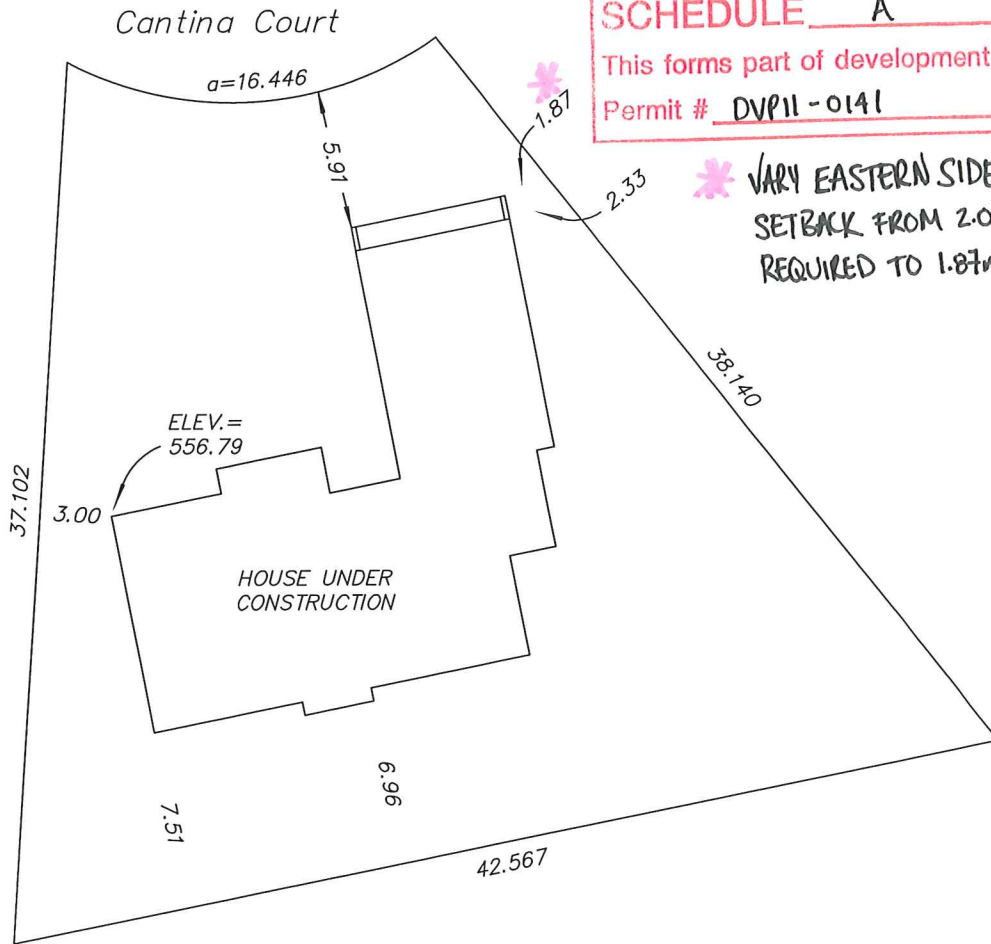
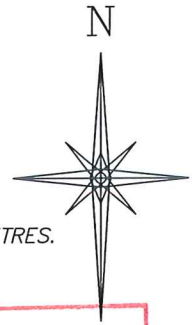
Certain layers such as lots, zoning and dp areas are updated bi-weekly. This map is for general information only. The City of Kelowna does not guarantee its accuracy. All information should be verified.

**B.C. LAND SURVEYOR'S CERTIFICATE OF
LOCATION OF BUILDING ON LOT 28
D.L. 1688s S.D.Y.D. PLAN KAP71342**

Civic Address:
757 Cantina Court
Kelowna, BC

SCALE 1:300

DISTANCES ARE IN METRES.



SCHEDULE "A"
This forms part of development
Permit # DVP11-0141

* VARY EASTERN SIDE YARD
SETBACK FROM 2.0M
REQUIRED TO 1.87M PROPOSED

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© This document is not valid unless originally signed and sealed.

CERTIFIED CORRECT
this 26th day of July, 2011.

This plan was prepared for municipal purposes and is for the exclusive use of our client.

This document shows the relative location of the surveyed structures and features with respect to the boundaries of the parcel described above. This document shall not be used to define property lines or property corners.

The signatory accepts no responsibility or liability for any damages that may be suffered by a third party as a result of any decisions made, or actions taken based on this document.

D.A. Goddard BCLS

FILE 15647 FB 352
Crown Property Developments

D.A. Goddard Land Surveying Inc.
103-1358 St. Paul Street, Kelowna
Phone (250) 763-3733

CITY OF KELOWNA

APPROVED ISSUANCE OF A:

Development Variance Permit No.: DVP11-0141

EXISTING ZONING DESIGNATION:	RU1h - Large Lot Housing (Hillside Area)
DEVELOPMENT VARIANCE:	To vary minimum side yard setback.

ISSUED TO:	Tom & Cindy Netzlaw
LOCATION OF SUBJECT SITE:	757 Cantina Ct

	LOT	D.L.	DIV & DIST	PLAN
LEGAL DESCRIPTION:	28	16885	SDYD	KAP71342

SCOPE OF APPROVAL

- This Permit applies to and only to those lands within the Municipality as described above, and any and all buildings, structures and other development thereon.
- This Permit is issued subject to compliance with all of the Bylaws of the Municipality applicable thereto, except as specifically varied or supplemented by this Permit, noted in the Terms and Conditions below.
- Applicants for Development and Development Variance Permit should be aware that the issuance of a Permit limits the applicant to be in strict compliance with regulations of the Zoning Bylaw or Subdivision Control Bylaw unless specific Variances have been authorized by the Permit. No implied Variances from bylaw provisions shall be granted by virtue of drawing notations which are inconsistent with bylaw provisions and which may not have been identified as required Variances by the applicant or City staff.

1. TERMS AND CONDITIONS:

- a) THAT variances to the following section of Zoning Bylaw No. 8000 be granted as per Schedule "A":

Section 13.1.6(d) - RU1 Development Regulations: To vary the minimum side yard from 2.0m required to 1.87m proposed.

2. PERFORMANCE SECURITY:

As a condition of the issuance of this Permit, Council is holding the security set out below to ensure that development is carried out in accordance with the terms and conditions of this Permit. Should any interest be earned upon the security, it shall accrue to the Permittee and be paid to the Permittee if the security is returned. The condition of the posting of the security is that should the Permittee fail to carry out the development hereby authorized, according to the terms and conditions of this Permit within the time provided, the Municipality may use the security to carry out the work by its servants, agents or contractors, and any surplus shall be paid over to the Permittee, or should the Permittee carry out the development Permitted by

this Permit within the time set out above, the security shall be returned to the Permittee. There is filed accordingly:

- (a) Cash in the amount of \$ N/A .
- (b) A Certified Cheque in the amount of \$ N/A .
- (c) An Irrevocable Letter of Credit in the amount of \$ N/A .

Before any bond or security required under this Permit is reduced or released, the Developer will provide the City with a statutory declaration certifying that all labour, material, workers' compensation and other taxes and costs have been paid.

3. DEVELOPMENT:

The land described herein shall be developed strictly in accordance with the terms and conditions and provisions of this Permit and any plans and specifications attached to this Permit which shall form a part hereof.

If the Permittee does not commence the development Permitted by this Permit within one year of the date of this Permit, this Permit shall lapse.

This Permit is not transferrable unless specifically Permitted by the Municipality. The authorization to transfer the Permit shall, if deemed acceptable, be granted by Council resolution.

THIS Permit IS NOT A BUILDING Permit.

4. APPLICANT'S AGREEMENT:

I hereby declare that all the above statements and the information contained in the material submitted in support of this Permit are to the best of my belief, true and correct in all respects. Upon issuance of the Permit for me by the Municipality, then in such case, I covenant and agree to save harmless and effectually indemnify the Municipality against:

- (a) All actions and proceedings, costs, damages, expenses, claims, and demands whatsoever and by whomsoever brought, by reason of the Municipality granting to me the said Permit.
- (b) All costs, expenses, claims that may be incurred by the Municipality if the construction by me of engineering or other types of works as called for by the Permit results in damages to any property owned in whole or in part by the Municipality or which the Municipality by duty or custom is obliged, directly or indirectly in any way or to any degree, to construct, repair, or maintain.

I further covenant and agree that should I be granted a Development Permit or Development Variance Permit, the Municipality may withhold the granting of any occupancy Permit for the occupancy and/or use of any building or part thereof constructed upon the hereinbefore referred to land until all of the engineering works or other works called for by the Permit have been completed to the satisfaction of the Municipal Engineer and the Director of Land Use Management.

Should there be any change in ownership or legal description of the property, I undertake to notify the Land Use Management Department immediately to avoid any unnecessary delay in processing the application.

I HEREBY UNDERSTAND AND AGREE TO ALL THE TERMS AND CONDITIONS SPECIFIED IN THIS PERMIT.

Signature of Owner/Authorized Agent

Date

Print Name in Bold Letters

Telephone No.

5. APPROVALS:

AUTHORIZING RESOLUTION PASSED BY MUNICIPAL COUNCIL THE @ DAY OF @, 20@@.

ISSUED BY THE LAND USE MANAGEMENT DEPARTMENT OF THE CITY OF KELOWNA THE @ DAY OF @, 20@@, BY THE DIRECTOR OF LAND USE MANAGEMENT.

Shelley Gambacort
Director of Land Use Management

