

demonstrated, the accommodation of all these uses blurs the line between an accessory building and a second residence, and does not demonstrate a true hardship.

Further to this point, the building is set deep within the riparian area of Fascieux Creek. A new building in this area would not be permitted. Staff understand that the building is existing; however, the Official Community Plan (OCP) directs staff to seek cooperation with land owners to protect and restore the City's critical riparian areas. This direction is a priority in this instance, as the riparian area leads to the mouth of Fascieux Creek and is in very poor condition. Protection and enhancement may be done through the use of no-disturb covenants and/or riparian planting and restoration. Staff has attempted to work with the applicant to seek some form of creek protection and/or restoration in this case, but the applicant has been unwilling to accommodate staff recommendations.

Finally, the applicant previously applied for a secondary suite in this accessory building. The building already contains living space, a full bathroom and a wet bar area. The addition of this storage space may increase the likelihood of a suite being developed without appropriate approvals in place and building standards met. Initially, staff asked the applicant to reduce the size of the full bathroom to a 2-piece bathroom, in accordance with current zoning regulations. This action would discourage the use of the building for a suite. Again, on this point, the applicant has been unwilling to accommodate staff recommendations.

In summary, the applicant is seeking multiple variances to permit the expansion of a non-conforming accessory building that already exceeds size restrictions. While staff appreciate that the proposal is unlikely to result in significant negative impacts over existing conditions, the proposal would forego a significant opportunity to see improvements made to a critical part of the riparian area of Fascieux Creek, and the applicant has failed to demonstrate a hardship justifying the variances.

4.0 Proposal

4.1 Background

The subject property shares two property boundaries with Fascieux Creek and another with Lake Okanagan. As a result, the majority of the parcel is within the City's Natural Environment Development Permit Area. The parcel contains one principal dwelling and an accessory building. While the principal dwelling is recent, the accessory building was originally constructed prior to the incorporation of this area into the City of Kelowna, between 1960-1968. Based on this, the accessory building is seen to be lawfully non-conforming.

The subject property has been the focus of a total of nine (9) development applications since 2003. Several of these were associated with the demolition and replacement of the principal dwelling, which was completed in 2005. A further Rezoning and Development Variance Permit application was received in 2009 to permit a secondary suite within the existing accessory building. This application was withdrawn by the applicant.

The portion of Fascieux Creek abutting this parcel is in particularly poor condition and has been channelized, as adjoining properties have constructed retaining walls and riparian vegetation has been removed. The City has limited opportunities to seek restoration of riparian areas. Development applications present such a rare and valuable opportunity to seek cooperation with land owners in restoring and protecting the City's valuable riparian corridors.

4.2 Project Description

The applicant proposes to add a second storey to the northern half of the existing non-conforming accessory building. The accessory building is located on the western side of the

parcel, 3.4m from the boundary of Fascieux Creek. At present, the accessory building is a single storey and is divided between a garage and a “games room”. Adjacent to the “games room” is also a “bar” including plumbing and a full bathroom. The total footprint of the structure is 102m². The proposed addition above this area is to be used as a “storage room”. The plans for the second storey simply indicate an open room of approximately 46m².

The second storey as proposed brings the total height of the structure to 6.2m, which exceeds the maximum height of an accessory building, which is limited to 4.5m. The addition also triggers the requirement to legalize the siting and size of the non-conforming building. This necessitates two additional variances: one to the required minimum distance of an accessory building to the front parcel line from 18.0m required to 3.4m proposed, and a second to the maximum area of an accessory building from 90m² required to 102m² proposed.

Finally, the existing bathroom exceeds the maximum size of bathrooms permitted in accessory buildings. The Zoning Bylaw does not permit full bathrooms in accessory buildings, as a measure to reduce the likelihood of illegal secondary suites. However, a formal variance is not seen to be required here, as the bathroom is existing and enjoys non-conforming privileges.

4.3 Site Context

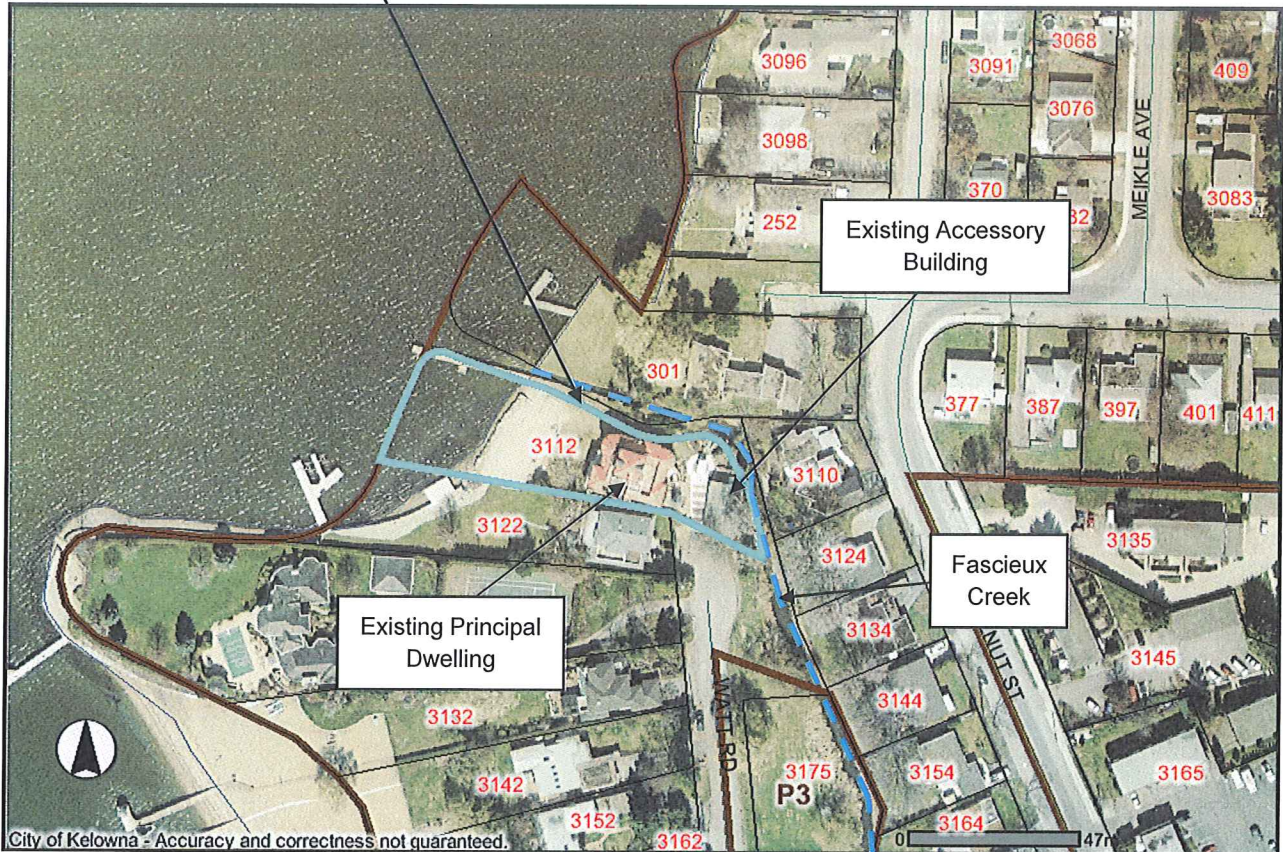
The subject property is approximately 0.25ha in area and is situated at the northern terminus of Watt Road. The parcel fronts Okanagan Lake at the south side of the mouth of Fascieux Creek. Development surrounding the parcel consists principally of low density single family residential.

Specifically, adjacent land uses are as follows:

Orientation	Zoning	Land Use
North	RU1 - Large Lot Housing	Fascieux Creek, Low Density Residential
East	RU1 - Large Lot Housing	Fascieux Creek, Low Density Residential
South	RU1 - Large Lot Housing	Low Density Residential
West	Okanagan Lake	Okanagan Lake

The property directly abuts Fascieux Creek, up to and including its confluence with Okanagan Lake. According to the Sensitive Habitat Inventory and Mapping (SHIM) information, this segment of Fascieux Creek has largely been channelized due in large part to adjacent retaining structures developed by private land owners. Riparian vegetation is limited, as adjacent land owners have in some cases planted urban landscapes such as turf in place of indigenous riparian vegetation.

Subject Property Map: 3112 Watt Road



4.4 Zoning Analysis Table

Zoning Analysis Table		
CRITERIA	RU1 ZONE REQUIREMENTS	PROPOSAL
Existing Lot/Subdivision Regulations		
Lot Area	550 m ²	2,547 m ²
Lot Width	16.5 m	Approx. 20.0 m
Lot Depth	30.0 m	Approx. 98.0 m
Development Regulations (accessory building)		
Height	4.5 m	6.2 m ^①
Front Yard (east)	18.0 m	3.4 m ^②
Side Yard (south)	1.0 m	1.08 m
Side Yard (north)	1.0 m	exceeds
Rear Yard (west)	1.5 m	exceeds
Site Coverage (bldgs)	40%	16%
Site Coverage (bldgs & parking)	50%	21%
Other Regulations		
Minimum Parking Requirements	2	exceeds
Lot Coverage	Lesser of 14% or 90 m ²	102 m ² ^③
^① Variance to the minimum front yard setback for an accessory building from 18.0 m required to 3.4 m proposed. ^② Variance to the maximum height of an accessory building from 4.5 m required to 6.2 m proposed. ^③ Variance to the maximum footprint of an accessory building from 90m ² required to 102m ² proposed.		

5.0 Current Development Policies

5.1 Kelowna Official Community Plan (OCP)

Development Process

No Net Loss of Aquatic Habitat Productivity.¹ Require “no net loss” with respect to land use decisions that affect aquatic habitat based on the “no net loss” principle of the Department of Fisheries and Oceans policy. No individual land use or development project should result in a net loss in habitat productivity as determined through environmental assessment in land use decisions and project approvals that affect aquatic habitats as identified on the Natural Environment DP Map 5.5. In the long term the City will strive for a net gain in overall productivity of the city’s aquatic habitats. “Tradeoffs” in the interest of land development will only be supported when longterm net gains in habitat productivity can be substantiated.

Environmentally Sensitive Area Linkages.² Ensure that development activity does not compromise the ecological function of environmentally sensitive areas and maintains the integrity of plant and wildlife corridors.

Habitat Management Hierarchy.³ Require that all City projects and private development proposals adhere to the following sequence of management actions, as identified in a Development Permit, to achieve the “no net loss/net gain” principle of ESA’s:

- AVOID impacts to habitat through appropriate project siting and design;
- MITIGATE minor or temporary impacts by minimizing impacts, and repairing and restoring damaged habitats to their former state or better;
- COMPENSATE only when residual, permanent loss of habitat is unavoidable, acceptable and compensable. Habitat compensation proposals will not be accepted as a trade-off for incomplete on-site mitigation where effective mitigation efforts are feasible. Development proponents are responsible for proving that all measures to avoid or mitigate potential habitat impacts have been exhausted prior to proposing habitat compensation measures on or off-site.

Habitat Protection.⁴ Ensure a proposed development footprint within an ESA is configured in such a way as to minimise the encroachment toward aquatic or terrestrial habitat. Consider zoning and/or subdivision variances where needed to prevent or minimize a relaxation of or encroachment into the RMA or to acquire greater RMA width for environmental protection or hazard avoidance.

Environment

Natural Ecosystem Management.⁵ Ensure the protection of biodiversity, the conservation of critical habitats and the sustainable use of biological resources through the incorporation of an integrated ecosystem management approach and the use of best available knowledge.

6.0 Technical Comments

6.1 Building & Permitting Department

Full Plan check for Building Code related issues will be done at time of Building Permit applications.

¹ City of Kelowna Official Community Plan, Policy 5.15.1 (Development Process Chapter).

² City of Kelowna Official Community Plan, Policy 5.15.3 (Development Process Chapter).

³ City of Kelowna Official Community Plan, Policy 5.15.4 (Development Process Chapter).

⁴ City of Kelowna Official Community Plan, Policy 5.15.11 (Development Process Chapter).

⁵ City of Kelowna Official Community Plan, Policy 6.1.1 (Environment Chapter).

6.2 Development Engineering Department

No objections.

6.3 Fire Department

No concerns.

6.4 Shaw Cable

No concerns.

6.5 Fortis BC Energy (Gas)

Upon review of the property referral referencing the above noted matter, please be advised that FortisBC facilities will not be adversely affected. FortisBC, therefore, has no objection to the proposed application. Should I be of further assistance do not hesitate to contact me directly.

6.6 Fortis BC (electric)

FortisBC has reviewed the attached referral. In conjunction with the expansion of the existing garage, if the existing electrical servicing requires an upgrade, the landowner is asked to contact FortisBC's contact center at 1-866-436-7847 quoting this referral number when speaking with the contact center agent.

6.7 Telus

No concerns.

7.0 Application Chronology

Date of Application Received: February 21, 2012

The above date refers to receipt of a complete application, including all applicable fees and application information. The applicant had previously submitted an incomplete application, which was placed on hold pending resolution of the outstanding issues with Staff.

8.0 Alternate Recommendation

THAT Council authorize the issuance of Development Variance Permit No. DVP12-0032, for Lot 9, District Lot 14, ODYD, plan 6069, located on 3112 Watt Road, Kelowna, BC;

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

Section 6.5.7 Accessory Development - lot coverage:

To vary the maximum allowable lot coverage for an accessory building from 90m² permitted to 102 m² proposed (as per Schedule "A");

Section 6.5.8(a) Accessory Development - siting:

To vary the minimum front yard setback for an accessory building in a residential zone from 18.0m required to 3.4m proposed (as per Schedule "B");

Section 13.1.6 (b) Development Regulations - building height:

To vary the maximum height permitted for an accessory building from 4.5m to 6.2m proposed (as per Schedule "C").

AND THAT the applicant be required to bring the existing bathroom facility into compliance with current zoning regulations prior to receiving final occupancy for the addition;

AND THAT the applicant be required to work with staff to develop a Habitat Restoration Plan, including monitoring, for that portion of Fascieux Creek most affected by the development within 180 days of Council's approval of the Development Variance Permit Application.

Report prepared by:



James Moore, Land Use Planner

Reviewed by:



Danielle Noble, Urban Land Use Manager

Approved for Inclusion:



Shelley Gambacort, Director, Land Use Management

Attachments:

Subject Property Map

"Schedule A" - Floor Plan

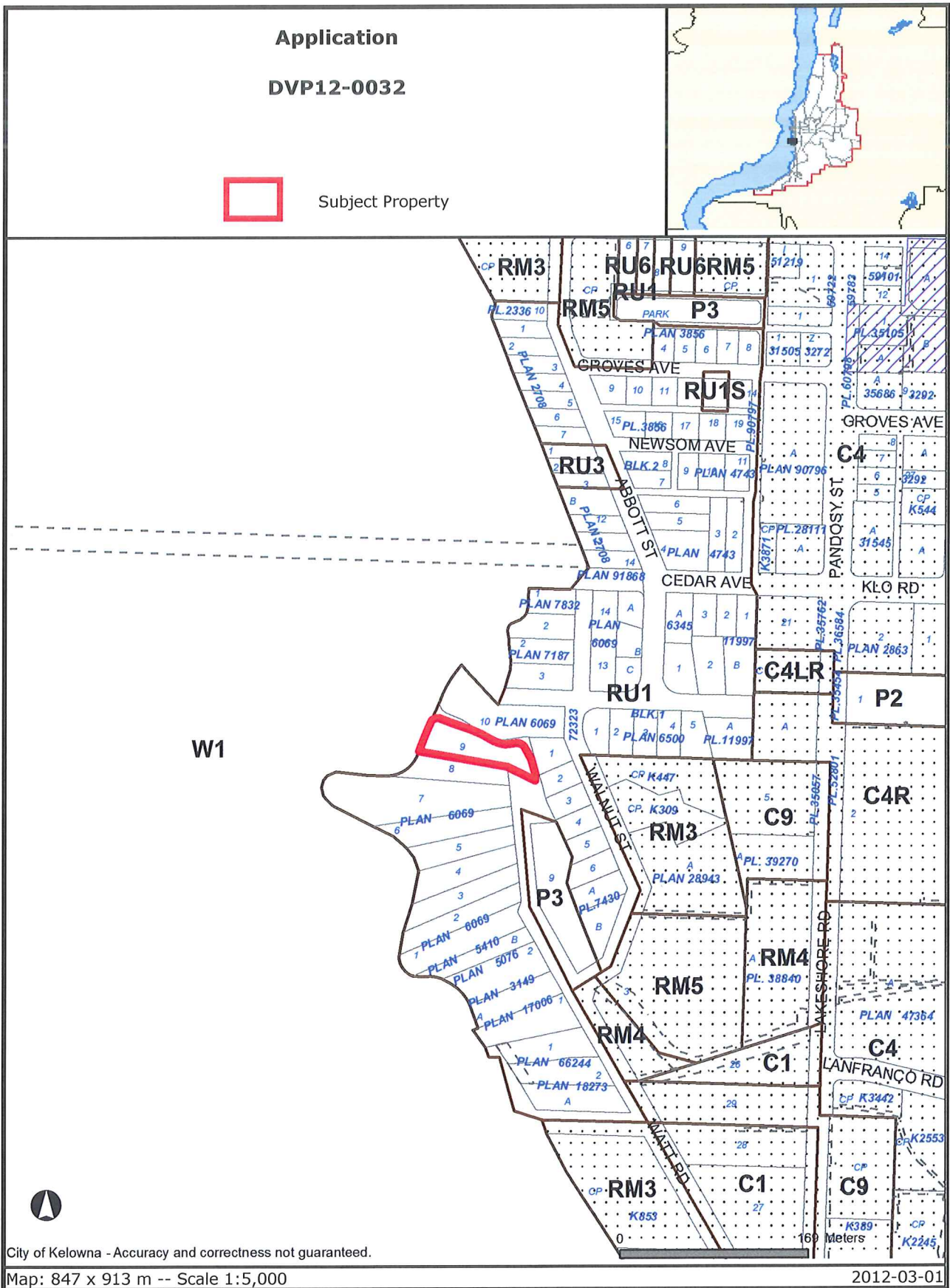
"Schedule B" - Site Plan

"Schedule C" - Building Elevations

Detailed site plan

Site Photos



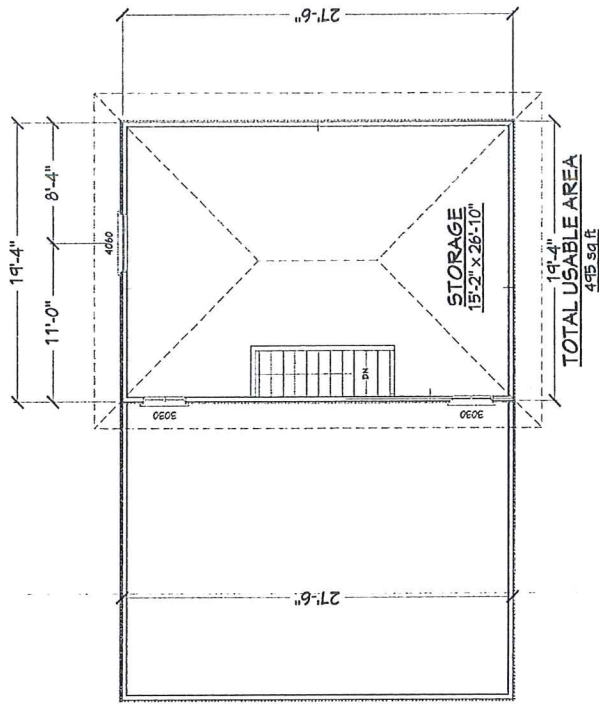


City of Kelowna - Accuracy and correctness not guaranteed.

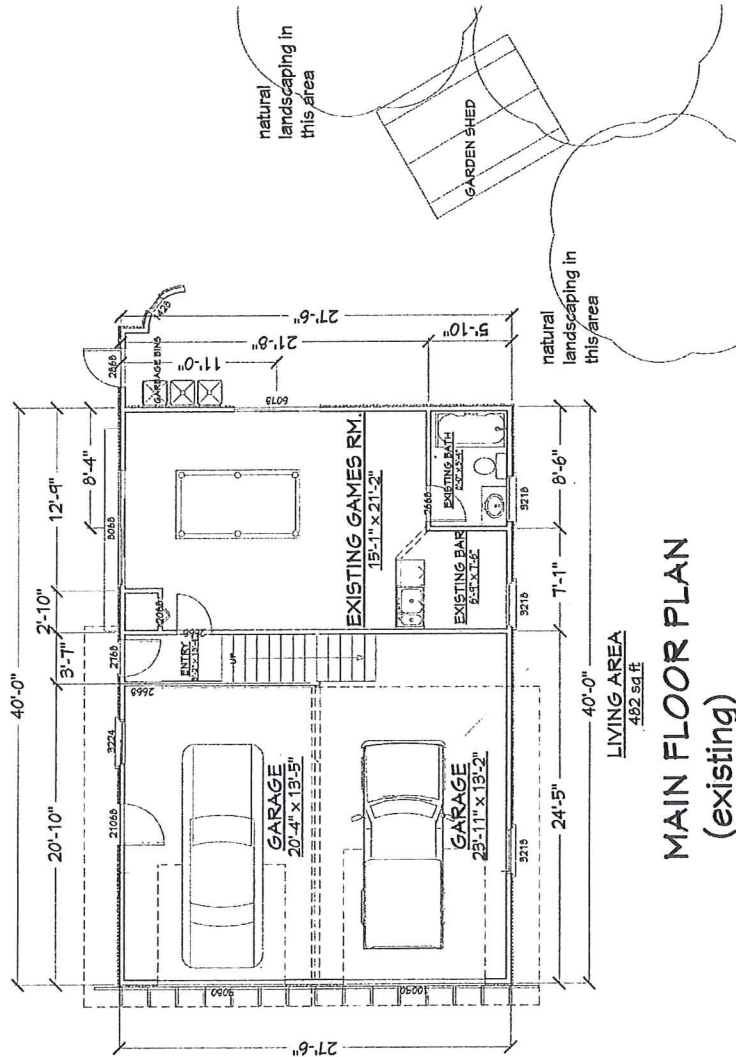
Map: 847 x 913 m -- Scale 1:5,000

2012-03-01

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.



TOP FLOOR PLAN
(proposed addition)



MAIN FLOOR PLAN
(existing)



Unit# 103-200
Dougal Road North, Kelowna, BC V1X 3K5
Tel: (250) 765-6898 Fax: (250) 765-6078

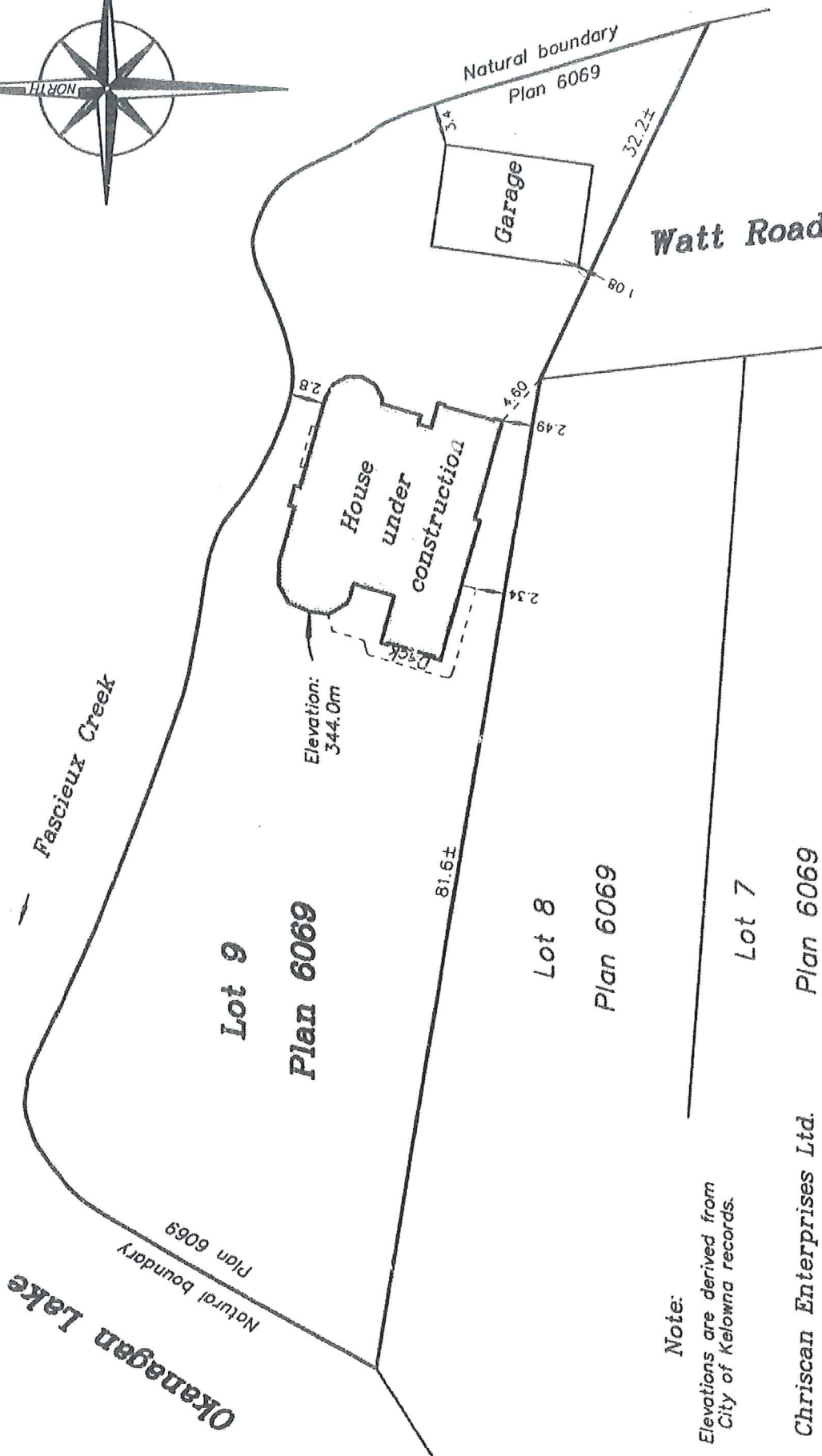
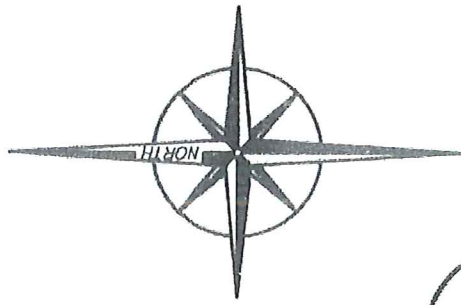
SCALE
1/4" = 1'-0"

Client: Martin Penhagar
Date: April 19, 2008
Sheet: 2

PROJECT: GARAGE RENO FOR IAN SIBETT

FLOOR PLANS

**B.C. LAND SURVEYOR'S CERTIFICATE OF LOCATION
ON LOT 9, PLAN 6069, D.L. 14, O.D.Y.D.**



Note:
Elevations are derived from
City of Kelowna records.

Chriscan Enterprises Ltd. Plan 6069

Scale: 1:500 All distances are in metres.

VAN GURP & COMPANY
land surveyors
2005 201-1470 St. Paul Street
Kelowna, B.C. Tel. (250) 763-5711

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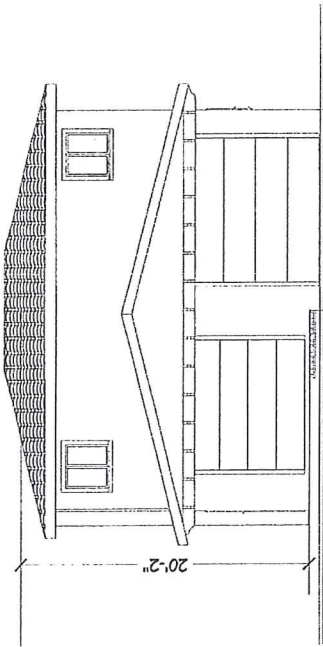
Certified correct as of February, 2005.

[Signature]
This document is not valid unless
originally signed and sealed.

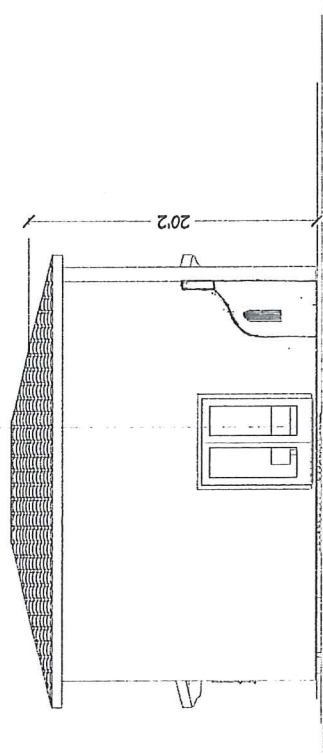
B.C.L.S.

Lot dimensions are from registered records.
This plan prepared for Municipal and/or mortgage
purposes only and it is not to be used for the
establishment of property boundaries.

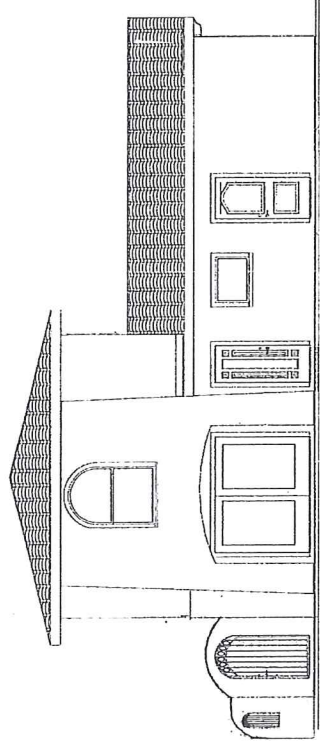
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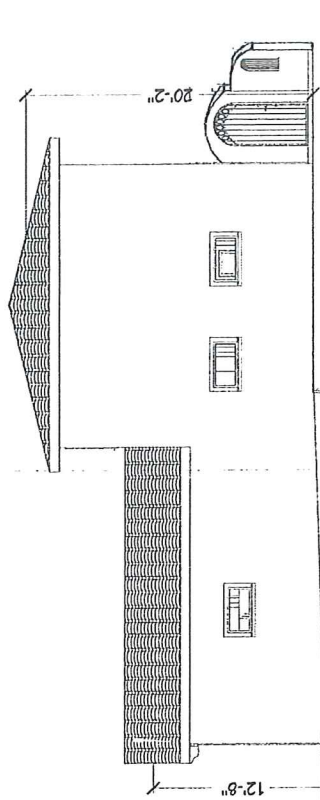
FRONT ELEVATION



REAR ELEVATION



LEFT SIDE ELEVATION



RIGHT SIDE ELEVATION



Unit# 103-200
Dougal Road North, Kelowna, BC V1X 3K5
Tel: (250) 765-6698 Fax: (250) 765-6078

SCALE
1/4" = 1'-0"
Martin Kuchner
Architect
April 15, 2003
Sheet No. 1

GARAGE RENO FOR
IAN SISETT
ELEVATIONS

Site Photos - 3112 Watt Road



West elevation of accessory building.



South elevation of accessory building.



North elevation of accessory building.



East elevation of existing principal dwelling.

CITY OF KELOWNA

APPROVED ISSUANCE OF A:

Development Variance Permit No .: DVP12-0032

EXISTING ZONING DESIGNATION:	RU1 - Large Lot Housing
WITHIN DEVELOPMENT PERMIT AREA:	N/A

ISSUED TO: Ian & Marguerite Sisett
LOCATION OF SUBJECT SITE: 3112 Watt Road

	LOT	D.L.	PLAN	SECTION	TOWNSHIP	DISTRICT
LEGAL DESCRIPTION:	9	14	6069	-	-	ODYD

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:

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

Section 6.5.7 Accessory Development - lot coverage:

To vary the maximum allowable lot coverage for an accessory building from 90m² permitted to 102 m² proposed (as per Schedule "A");

Section 6.5.8(a) Accessory Development - siting:

To vary the minimum front yard setback for an accessory building in a residential zone from 18.0m required to 3.4m proposed (as per Schedule "B");

Section 13.1.6 (b) Development Regulations - building height:

To vary the maximum height permitted for an accessory building from 4.5m to 6.2m proposed (as per Schedule "C").

2. The development shall commence by and in accordance with an approved Building Permit within ONE YEAR of the date of the Municipal Council authorization resolution.

3. 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.

4. 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 transferable 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.

5. 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 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.

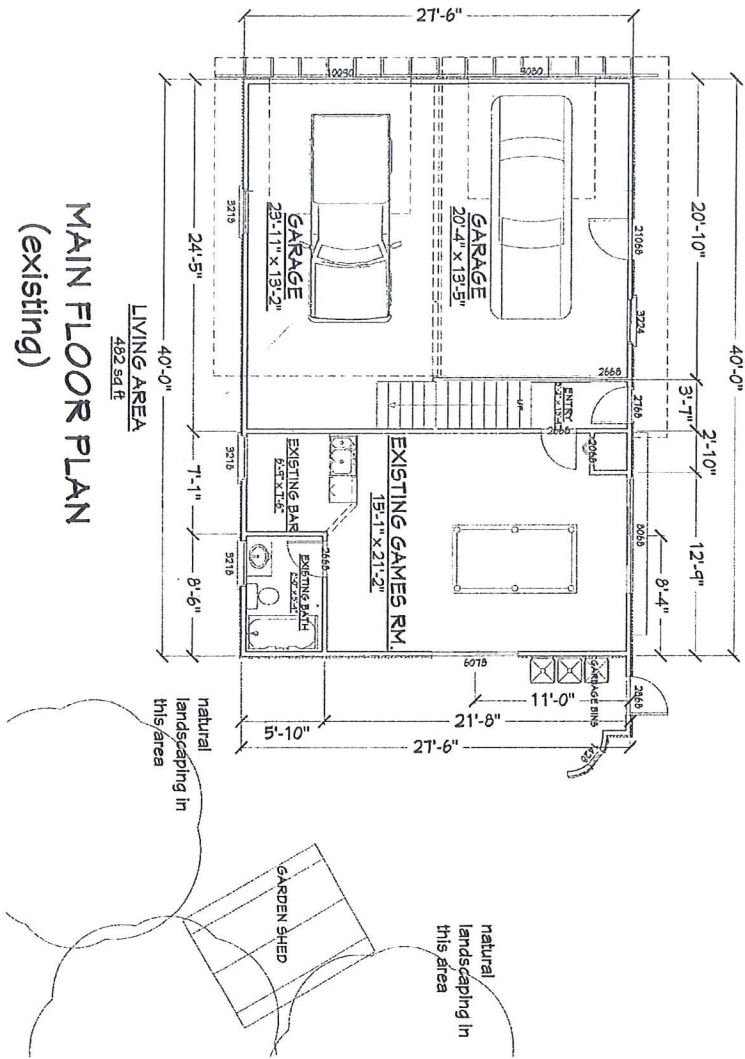
6. APPROVALS:

DEVELOPMENT VARIANCE PERMIT AUTHORIZED BY COUNCIL ON THE ____ DAY OF _____, 2012.

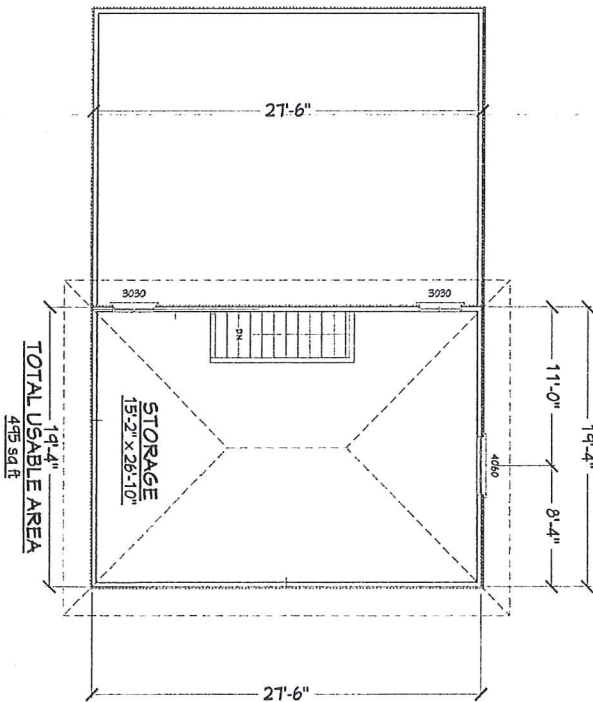
ISSUED BY THE LAND USE MANAGEMENT DEPT. OF THE CITY OF KELOWNA THE _____ DAY OF _____, 2012.

Shelley Gambacort
Director of Land Use Management

MAIN FLOOR PLAN
(existing)



TOP FLOOR PLAN
(proposed addition)



SCHEDULE A
This forms part of development
Permit # **DVR 12-0032**



Unit# 103-200
Dougal Road North, Kelowna, BC V1X 3K5
Tel: (250) 765-6898 Fax: (250) 765-6078

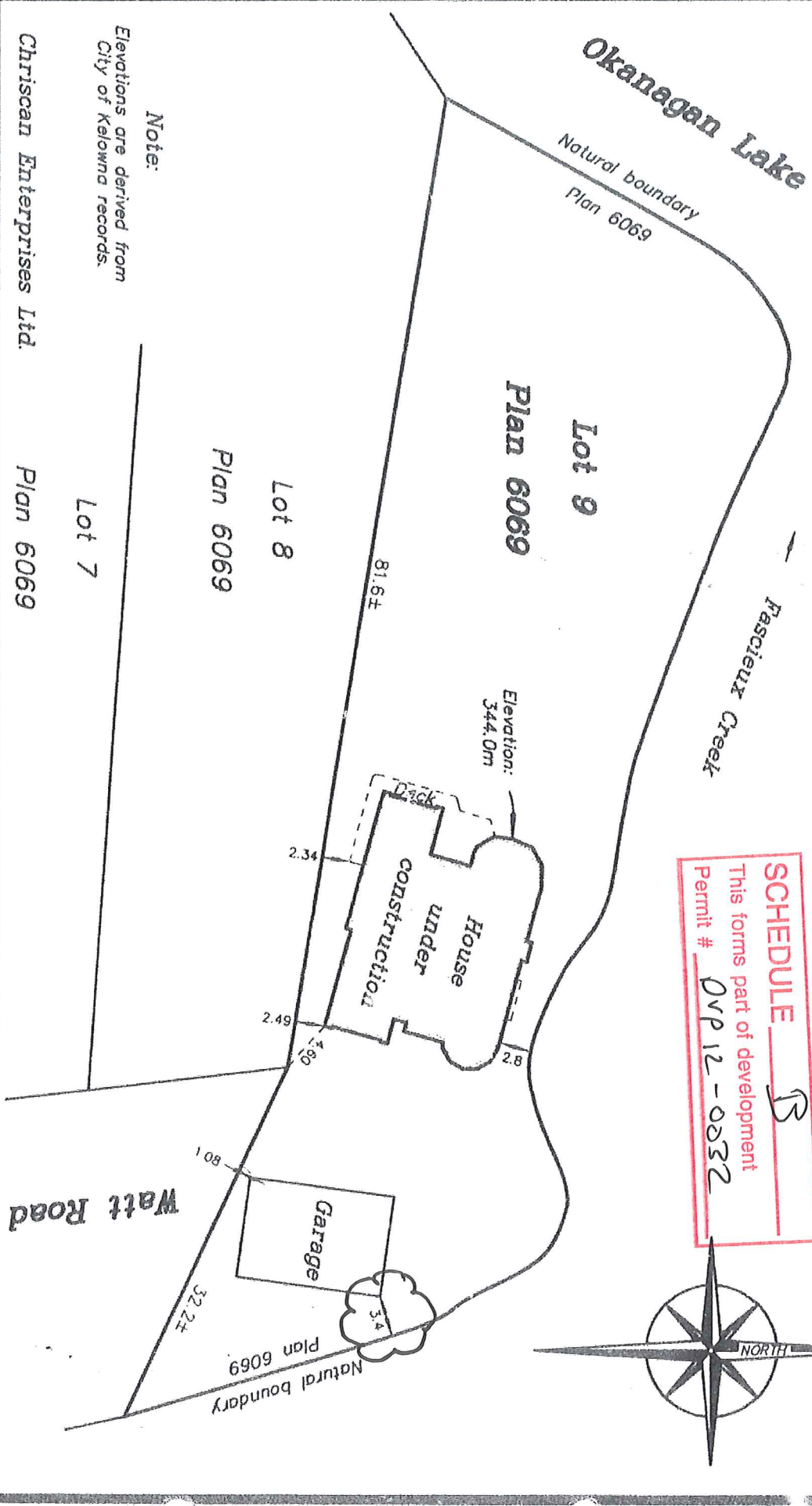
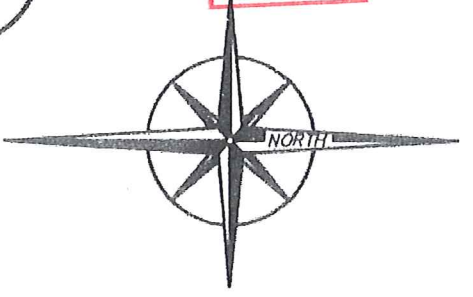
SCALE
1/4" = 1'-0"

Client/Designer
April 15, 2008
2

Project/Contractor
GARAGE RENO FOR
IAN SIBETT
FLOOR PLANS

**B.C. LAND SURVEYOR'S CERTIFICATE OF LOCATION
ON LOT 9, PLAN 6069, D.L. 14, O.D.Y.D.**

SCHEDULE B
This forms part of development
Permit # DVP 12-0032



Note:
Elevations are derived from
City of Kelowna records.

Chriscan Enterprises Ltd. Plan 6069

Scale: 1:500 All distances are in metres.

VAN GURP & COMPANY
Land surveyors

2005 201-1470 St. Paul Street
Kelowna, B.C. Tel. (250) 763-5711

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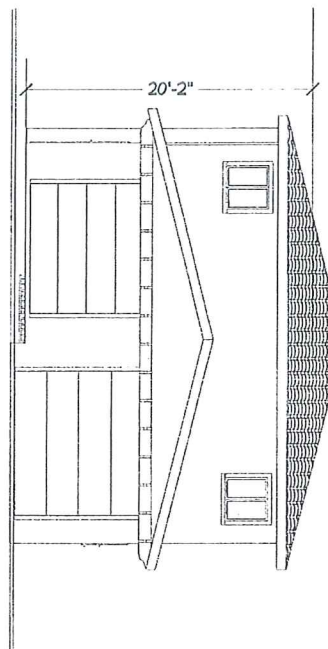
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originally signed and sealed.

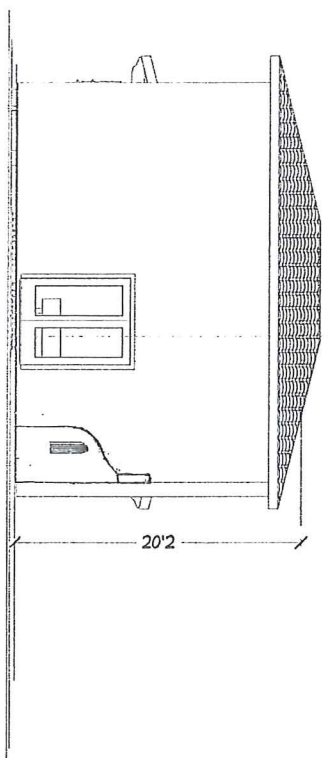
B.C.L.S.

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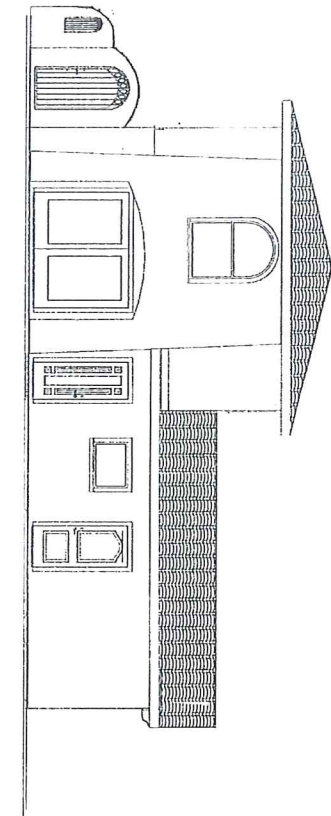
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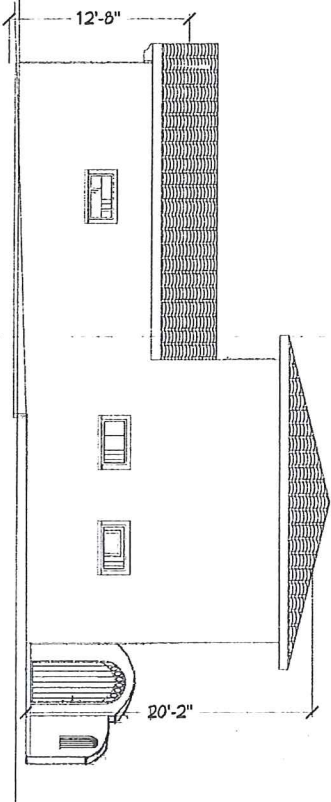
FRONT ELEVATION



REAR ELEVATION



LEFT SIDE ELEVATION



RIGHT SIDE ELEVATION

SCHEDULE C
 This forms part of development
 Permit # 00P12-0832

Weninger
 CONSULTING ARCHITECTS

Unit# 103-200
 Douglas Road North, Kelowna, BC V1X 3K5
 Tel: (250) 765-6898 Fax: (250) 765-6078

SCALE
 1/4" = 1'-0"

Project No. 13, 2000
 1

DATE: 01/13/2000
 DRAWN BY: IAN SISETT
 CHECKED BY: IAN SISETT

ELEVATIONS