
CITY OF KELOWNA

MEMORANDUM

Date: June 2, 2006

File No.: DVP05-0073

To: City Manager

From: Planning and Corporate Services Department

Subject:

APPLICATION NO. DVP05-0073

OWNER: Kourosh Rahmanian

AT: 836 Manhattan Drive

APPLICANT: as above

PURPOSE: TO OBTAIN A DEVELOPMENT VARIANCE PERMIT TO ALLOW A SIDEYARD SETBACK OF 2.0 M WHERE 2.3 M IS REQUIRED.

TO OBTAIN A DEVELOPMENT VARIANCE PERMIT TO ALLOW A CANTILEVER LENGTH OF 3.4M WHERE ONLY 3.0M IS PERMITTED.

EXISTING ZONE: RU6 – TWO DWELLING HOUSING

REPORT PREPARED BY: KEIKO NITTEL

1.0 RECOMMENDATION

THAT Council authorize the issuance of Development Variance Permit No. DVP05-0073 for located on Manhattan Drive, 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";
4. Prior to issuance of an Occupancy Permit, the following items be addressed:
 - Remove all living space (e.g. kitchen, bathroom, bedrooms) that was developed in the basement of the building without permits;
 - Remove all decks (with associated roof structures) that were constructed in the west side yards setback;
 - Replace the western French door on the rear elevation with a window;
 - Recess the garage doors back into the building such that a 6.0 m driveway is achieved;
 - Reduce the front entry way such that a setback of 4.5 m to the front property line is achieved (at the closest point);
 - Construct a retaining wall to allow the finished grade to be raised at the front of the property (maximum 1.2 m in height, minimum setback of 15cm from property lines). The maximum permitted combined height of the fence on top of the

retaining wall is 2.0 m measure from the grade of lower property (i.e. Park property);

- Retaining wall and fencing materials are to be submitted for review by City Staff for review. Approval of Parks Department is required for all fencing/retaining wall materials and design along west property line;
- Raise the foundation wall of the garage to allow backfilling against it. The maximum permitted exposed wall height of the garage level is 2.0 m above finished grade;

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

Section 13.6.6 (d) – RU6 – Two Dwelling Housing

A variance to allow a side yard setback of 2.0 m to a 2.5 storey building where 2.3 m is required.

Section 6.4.1 - Projections into Yards

A variance to allow a cantilever that is 3.4 m in length where only 3.0 m is permitted.

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.

2.0 SUMMARY

The applicant previously obtained a development permit to allow for the construction of a secondary suite within a single detached dwelling. The additions, required to facilitate the secondary suite, however, were not built in accordance with the approved plans. A development variance permit is therefore required for the west side yard building setback as well as to allow an oversized cantilever.

3.0 ADVISORY PLANNING COMMISSION

The above-noted application was reviewed by the Advisory Planning Commission at the meeting of May 25, 2006 and the following recommendation was passed:

THAT the Advisory Planning Commission supports Development Variance Permit Application No. DVP05-0073, for 836 Manhattan Drive, Lot A, Plan 41107, Sec. 25, Twp. 25, ODYD, by Kourosh Rahmadian, to obtain a development variance permit to allow a side yard setback of 2.0 m where 2.3 m is required for a 2.5 storey house; and to allow a cantilever length of 3.4 m where 3.0 m is permitted, subject to the applicant addressing the following concerns:

- Remove all living space (e.g. kitchen, bathroom, bedrooms) that was developed in the basement of the building without permits.
- Remove all decks (with associated roof structures) that were constructed in the west side yards setback.
- Replace the western French door on the rear elevation with a window.
- Recess the garage doors back into the building such that a 6.0 m driveway is achieved.
- Reduce the front entry way such that a setback of 4.5 m to the front property line is achieved (at the closest point).
- Construct a retaining wall to allow the finished grade to be raised at the front of the property (maximum 1.2 m in height, minimum setback of 15cm from property lines). Retaining wall and fencing materials are to be submitted for review by City Staff for review (approval of

Parks Department required for fencing/wall along west property line). The maximum permitted combined height of the fence on top of the retaining wall is 2.0 m.

- Raise the foundation wall of the garage to allow backfilling against it. The maximum permitted exposed wall height of the garage level is 2.0 m above finished grade.

4.0 BACKGROUND

The applicant originally obtained a building permit application to add a second storey to the existing bungalow, by placing a modular home on top of the existing structure, and to add an attached front carport. Subsequently, however, it was determined that the applicant intended on constructing a secondary suite within the new second storey of the house. A development permit addressing the form and character of the development was therefore required.

During the development permit process, the proposed building design evolved significantly different from that previously approved on the building permit. The final proposal included not only the addition of the modular home as a second storey but also the conversion of a main level porch at the rear of the property to living space as well as the replacement of the proposed carport with a double car garage with two storeys of living space above.

The approved development permit for the house with a secondary suite within was approved with a design that conformed to all of the Zoning Bylaw regulations. A second building permit was then issued for the revised proposal. However, once Inspections Services received the survey certificate during the construction process, it became apparent that the construction was not taking place in accordance with the approved plans. Multiple inconsistencies with the approved development permit drawings were discovered.

The applicant originally made application for a development variance permit to allow a second storey deck to be located within the required west side yard building setback. At the time of application, the applicant was advised that Staff would not support the proposed variance and that until such time that a development variance permit was issued, the deck may not be constructed. The deck was therefore not included as part of the development permit and building permit approvals. The deck, however, was constructed in advance of the review of the development variance permit. The applicant, however, has now agreed to remove the illegally erected decks.

4.1 The Proposal

The top floor of the building contains an 88.5m² secondary suite. The main level of the house contains the principal dwelling unit containing a living room, dining room, kitchen, and a bedroom with an additional storey, containing two bedrooms and a bathroom that will be located above the garage. An exterior door at the base of the stairs provides direct access leading to the two bedrooms. The connecting doorway at the base of the stairs, that leads to the bedrooms, and the kitchen must remain open (i.e. no door permitted) in order to maintain the connectivity of the bedrooms to the principal unit.

Some attempt has been made to provide architectural detailing to the building. The windows and doors are to have arching trim work with decorative details. The proposed deck posts are also finished with a decorative element at their tops. The proposed finish of the building is to be brown (desert spice) horizontal siding with dark brown (kodiak) trim. Trim boards are to provide a clear definition of each floor and break up the vertical height of the building.

Two small car parking spaces are to be provided within a double garage. Stairs in the garage, leading to the basement, were required to be removed so that they do not encroach into the required parking space area. An additional two parking spaces are to be provided in the driveway in front of the garage. The applicant will be required to landscape the remainder of the front yard, on either side of the driveway. With the exception of the removal of the fire pit, which is not permitted, the rear yard will remain untouched. As the entire rear yard is located in the

riparian management area, any future development/landscaping will require approval of the Environmental Division of the Works & Utilities Department.

Setbacks

The applicant is requesting a variance to allow a side yard setback of 2.0 m where 2.3 m is required. The west side yard building setback was originally shown and approved on the development permit with a setback of 2.8 m. The building, however, was constructed with a side yard setback of 2.0 m. The minimum required setback for a 2.5 storey building is 2.3m. The approved side yard building setback on the east elevation was 2.3 m (at front corner) and 3.5 m at the rear corner. The house was built with east side yard setbacks of 2.5 m (front) and 3.6 m (rear).

Subsequent to the issuance of the development permit, the applicant advised Staff that he wished to add several feet onto the front of the house. At that time, Staff advised that they would be unable to support the proposed variance as it would result in the potential overhang of vehicles onto the street when parked in the driveway. The applicant was advised that if he wished to proceed with the proposal to Council, with a recommendation of non-support, revised drawings would first be required and the expansion of the garage would not be permitted without an issued development variance permit and building permit. However, upon the receipt of the survey certificate, required as part of the building inspection, it was discovered that the applicant had proceeded with the expansion at the front of the house. As a result, the building no longer complied with the front yard setback of 6.0 m to a garage door, having been reduced to 5.0 m at the closest point. In addition, the front entry, leading to the stairs up to the suite, was also moved forward resulting in a front yard setback of 4.25 m where 4.5 m is required. As Staff will not support a variance to the front yard building setback, the applicant has agreed to recess the garage doors back into the building. As a result the garage door portion of the building will comply with the required 6.0 m setback. The applicant has also agreed that the front entry portion of the building must be cut back an additional 0.25m to achieve a 4.5 m building setback from the front property line measured to the closest point (not at an angle).

With regard to the rear yard, the development permit approved a rear yard building setback of 15.3 m, noting that no encroachments into the 15.0 m riparian management area were permitted. The applicant, however, constructed the building with a rear yard setback of 14.9 m. In addition, a deck is now to be located within the 15.0 m riparian management area. The applicant has indicated that the original setback of the previously existing deck was 14.9m and therefore the setback is legal non-conforming (i.e. no increased encroachment into the riparian management area setback). The applicant has indicated that the rear yard setback originally proposed was the result of errors by his designer. Staff notes, however, that the existing deck may not be expanded the length of the building as originally proposed (when shown to be outside the riparian management area on the development permit). One of the set of french doors, originally proposed on the rear elevation (west) opening onto the new deck, must therefore now be removed and replaced with a window.

Building Height

The existing grade of the property was originally sloped slightly below the grade of both the adjacent park property, north of the site, as well as the street. A legal non-conforming detached garage at the front of the site was recessed below grade with a sloped driveway facilitated by a retaining wall. This garage was demolished prior to commencement of construction of the additions. The new proposed garage was supposed to have maintained this same grade and thus be slightly recessed below street level (facilitated by an existing retaining wall at the front of the property). The front of the property, previously all parking, was to be graded such that driveways were only permitted in front of the garage doors. The resulting height of the building was then to be only 2.5 storeys with a localized depression allowing for garage doors (i.e. only the garage doors would be exposed more than 2.0m above grade).

The grade of the subject property was originally several feet lower than the abutting Park property with a small retaining wall facilitating this difference in grade (see attached photo). The

previously existing detached garage, located in the front of the site, was therefore slightly lower than the street level. The development permit called for the applicant to maintain the existing grade of the property (including the retaining wall). The garage level, in accordance with the approved development permit, would therefore have been partially below grade with no more than 2.0 m of the wall to be located above the finished grade (same grade as the abutting Park property). During the construction process, however, the applicant filled the front of the subject property such that it is now level with the adjacent Park property. The garage, with two levels of living space above, was built on top of the new finished grade. The addition, therefore, currently consists of three storeys above grade at the front and sides of the building. In order to maintain a height of only 2.5 storeys the applicant will be required to construct retaining walls on both sides of the building and fill the areas between the retaining walls and the house. On all elevations of the building, the basement level may not exceed 2.0 m above the new finished grade. The foundation walls will need to be raised such that fill may be deposited against the building in accordance with BC Building Code regulations.

Retaining Wall and Fencing

The original development permit called for the retention of the existing retaining wall, located at the front of the property, and the existing fencing. The applicant will now be required to construct new retaining wall in order to meet the building height restrictions. The existing fencing will therefore require removal. The new retaining walls and fencing will be required to conform to the Zoning Bylaw regulations. The maximum permitted height for retaining wall is 1.2 m with a maximum fence height of 0.8 m above (for a maximum total height of 2.0m). The applicant will be required to construct the retaining wall structure a minimum of 15 cm from the park property (west side) and provide confirmation of the setback with a survey certificate. Also, the retaining wall structure may not encroach within the riparian management area setback.

Basement Level

Staff also notes that the applicant is currently residing in the basement of the existing building. No building permits, however, have been issued allowing for the development of living space (including bedrooms, kitchen, and washroom facilities). Prior to issuance of an Occupancy Permit, all development in the basement must therefore be fully removed. Direct access to the basement will be limited to the internal staircase on the main level of the house. Staff notes that no direct access is shown on the drawings nor would it be supported to prevent future illegal conversion to a basement suite. Staff also notes that the existing ceiling height of the basement prohibits legal development of living space therefore the area may only be used as unfinished storage. The approved building permit and development permit plans show the area as unfinished. The revised plans for the development variance permit also indicate that the basement is unfinished.

Projections

In error, the original building permit approved the existing cantilever length of 3.4 m (11'0") where only 3.0m is permitted. The subsequent development permit and building permit, however, noted the error and required that the cantilever be reduced to the maximum permitted length of 3.0 m (9'10"). The original cantilever, however, was part of the original modular home (pre-fabricated) and the applicant had already proceeded with its erection. The applicant therefore subsequently chose not to reduce the cantilever length. As a result, the oversized cantilever was discovered once a survey certificate was required. As the original building permit approved the cantilever in error, Staff is willing to support the proposed variance to the cantilever length.

Staff notes that at the time of application for the development permit, the applicant also submitted a development variance permit application to seek permission to allow the upper level covered decks to project in the required side yard building setback. The applicant was told numerous times, however, that he may not construct the deck ahead of the development variance approval. If attached to the modular home, the applicant was advised that the decks would need to be removed until such time that the variance was approved. Staff also noted that

we were not supportive of the proposed variance therefore the application to allow the deck in the side yard building setback would proceed to Council with a negative recommendation. The applicant, however, proceeded with the erection of the deck. As the deck was part of the pre-fabricated modular, the applicant decided not to cut it off. The applicant has agreed to remove the non-conforming deck and roof structure. Staff also notes that all of the second storey decking will be required to have screening along their sides in order to protect the privacy of the adjacent properties.

CRITERIA	PROPOSAL	RU6 ZONE REGULATIONS
Site Area (m ²)	617m ²	n/a if existing lot
Site Width (m)	13.7m	n/a if existing lot
Site Depth (m)	43.5m	n/a if existing lot
Site Coverage (%)	34%	40%
Site Coverage including bldg, parking (%)	39%	50%
Parking Stalls (#)	4 spaces	3 spaces
Parking Stall Size	5.0/6.0 x 3.0	Width of 2.5 m (2.7 m /3.0 m/3.3m) Length of 6.0m or 5.0m small car
Secondary Suite Area (m ²)	88.5m ²	90m ²
Total Floor Area (m ²)	209m ²	Total Floor Area of Developed Living Space
Setbacks (m):		
- Front	4.5m/5.0m 6.0 m (garage door)	4.5m or 6.0m if to a garage/carport
- Rear	14.9 m (existing non-conforming setback)	15.0 m riparian management area setback
- Side	2.0m*	2.3 m (2-2.5 storeys)
- Side	2.4m	2.0m (1.5 storeys) or 2.3 m (2-2.5 storeys) m from flanking street
Private open space (m ²)	60.0m ² +	Min. 30.0 m ² per unit
Height (m)	9.5m/2.5 storeys	9.5m/ 2.5 storeys
Projections	3.4m**	Max. 3.0 m in length

*variance to allow a side yard setback of 2.0 m where 2.3 m is required

** variance to allow a cantilever length of 3.4 m where only 3.0 m is permitted.

4.2 Site Context

Adjacent zones and uses are:

- North - RU6 – Two Dwelling Housing – Single Family Dwelling
- East - RU6 – Two Dwelling Housing – Single Family Dwelling
- South - RU6 – Two Dwelling Housing – Single Family Dwelling
- West - RU6 – Two Dwelling Housing – Single Family Dwelling

4.3 Site Location Map

See attached Subject Property Map

4.4 Current Development Policy

4.4.1 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).

4.4.2 City of Kelowna Strategic Plan (1992)

One of the objectives of the Strategic Plan is “to develop a more compact urban form by increasing densities through infill and re-development within existing urban areas and to provide for higher densities within future urban areas” (Objective 1.1). The proposal is consistent with these objectives and with their accompanying strategies.

5.0 TECHNICAL COMMENTS

5.1 Inspection Services

Applicant must address all conditions of the development variance permit prior to issuance of an Occupancy Permit. A new survey certificate will be required confirming that all approved setbacks are in compliance with the development variance permit. All setback measurements are to be taken to the closest distance to the property lines. The revised building permit plans are to be in accordance with the approved development variance permit and supersede all previous building permit approvals. All construction must comply with BCBC.

5.2 Works & Utilities

The Works & Utilities Department have the following requirements associated with this Development Permit application.

1. Domestic Water and Fire Protection

This property is currently serviced with a 19mm-diameter copper water service. The Inspection Services Department must determine if the existing service is of sufficient size to provide adequate water for the existing dwelling and the suite in the proposed accessory building. A larger service, if required, can be provided by the City at the owner's cost.

Should the existing meter be installed in a pit, the meter shall be removed and relocated within the existing dwelling.

2. Sanitary Sewer

Our records indicate that this property is serviced with a 100mm-diameter sanitary sewer service that should be adequate for the proposed application.

3. Development Permit and Site Related Issues

The requested side yard setback variance for the covered deck does not compromise Works and Utilities servicing requirements. Direct the roof drains into on-site rock pits.

4. Electric Power and Telecommunication Services

It is the applicant's responsibility to make a servicing application with the respective electric power, telephone and cable transmission companies to arrange for service upgrades to these services which would be at the applicant's cost.

6.0 PLANNING AND CORPORATE SERVICES DEPARTMENT

The applicant has committed to correcting many of the elements of the building that were constructed in contravention of the approved development permit. The applicant, however, will be required to ensure that all other elements of the building comply with the Zoning Bylaw regulations and are in accordance with the approved plans. A new retaining wall structure will be required along the west property line adjacent to the City Park in order to facilitate the new grade of the subject property. The applicant will be responsible for the construction of the new retaining wall and/or fence along the property line. The retaining wall and fence design, indicating the location and proposed materials for the structures, will require written City approval prior to construction. The overall height of the structure may not exceed a total of 2.0 metres in height from the grade of the park property. The retaining wall structure may not encroach within the 15.0 m riparian management area.

As a condition of the development variance permit, the applicant will therefore be required to complete the following:

- Remove all living space (e.g. kitchen, bathroom, bedrooms) that was developed in the basement of the building without permits.
- Remove all decks (with associated roof structures) that were constructed in the west side yards setback.
- Replace the western French door on the rear elevation with a window.
- Recess the garage doors back into the building such that a 6.0 m driveway is achieved.
- Reduce the front entry way such that a setback of 4.5 m to the front property line is achieved (at the closest point).
- Construct a retaining wall to allow the finished grade to be raised at the front of the property (maximum 1.2 m in height, minimum setback of 15cm from property lines).
- Retaining wall and fencing materials are to be submitted for review by City Staff for review (approval of Parks Department required for fencing/wall along west property line). The maximum permitted combined height of the fence on top of the retaining wall is 2.0 m.
- Raise the foundation wall of the garage to allow backfilling against it. The maximum permitted exposed wall height of the garage level is 2.0 m above finished grade.

The applicant will not obtain issuance of an Occupancy Permit unless the entire development is developed strictly in accordance with the plans approved as part of the development variance permit and all items listed above are addressed. A new survey certificate and inspections will be required to confirm the correction of the various deficiencies. The development variance permit also replaces the previous approvals granted for the development previously authorized under DP05-007.

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

- Location of subject property
- Photographs
- Site plan
- Floor plans
- Elevations