



Regional Board Report

Request for Decision

To: Regional Board

From: Director of Community Services

Date: March 16, 2023

Subject: Development Variance Permit Application (VP-22-05)
Maloney Construction Ltd. BC0463734 (owner) c/o Urban Options Planning Corp.
Lot 2, Plan KAP14249, District Lot 3745, ODYD, Except Plan KAP47451
2223 Westside Road (Central Okanagan West Electoral Area)

Voting Entitlement: *Custom Vote – Electoral Area West & West Kelowna Fringe & Kelowna Fringe Area – Electoral Area Directors, West Kelowna, Kelowna - 1 Director, 1 Vote*

Purpose: To consider the issuance of a Development Variance Permit to allow for a reduction to the minimum front yard building setback.

Executive Summary:

The Subject Property is a 1.34ha (3.3ac) parcel that is bisected by Westside Road. The lakeside portion of the lot has development constraints due to its small size and the riparian setback requirements, while the upland portion of the lot, west of Westside Road, is impacted by steep slopes and sensitive terrestrial ecosystems.

The applicant is seeking approval to reduce the minimum front setback in the RU3 Zone from 6m (19.7ft.) to 2.29m (7.5ft.). This reduction will allow for the construction of a single-family dwelling on the lakeside portion of the lot, while meeting the Riparian Area Protection Regulations and floodplain regulations. Appropriate permits for the proposed setback have been received from the Ministry of Transportation and Infrastructure, however RDCO Board approval is needed to permit a variance to the Zoning regulations.

In addition, this proposal also requires that RDCO staff approve a Development Permit for works within environmentally sensitive and hazardous Development Permit Areas. Several technical reports have been submitted to address Development Permit Guidelines, and at the time of writing this report no letters of opposition have been received in response to the public notification of the variance application.

Recommendations:

THAT the Regional Board receives the report from the Director of Community Services, dated March 16, 2023, with respect to RDCO file VP-22-05, for the property located at 2223 Westside Road, legally described as Lot 2, Plan KAP14249, District Lot 3745, ODYD, Except Plan KAP47451 (“the Subject Property”);

AND THAT Development Variance Permit application VP-22-05, to vary Section 6.3.4 of Zoning Bylaw No. 871, is approved to reduce the minimum front setback of the principal dwelling from 6.0m (19.7ft.) to 2.29m (7.5ft.), based on the designs prepared by Mullins Design Group dated September 29, 2022.

Respectfully submitted by: *Shaun O'Dea, Planner*

Approved by:



Todd Cashin,
Director of Community Services

- Attachments:
1. Location Map
 2. Site Plan and Building Designs
 3. Applicant Rationale
 4. Ministry of Transportation and Infrastructure Reduced Building Setback Permit
 5. RU3 Zoning
 6. Draft Development Permit (DP-22-08)
 7. Presentation Slides

Strategic Plan Alignment:

Priorities: Sustainable Communities

Values: Good Governance

Background:

The Subject Property is in the Wilson's Landing community, in the Central Okanagan West Electoral Area. The lot is bisected by Westside Road, and the portion of the property adjacent to Lake Okanagan is currently developed with retaining walls, a wooden shed, and a wooden patio. The patio was unlawfully constructed in 1989 without appropriate permits and a Notice of Bylaw Contravention (KJ89410) was registered against the property title in 1995 for the non-conforming structure.

Modifications along the foreshore of Okanagan Lake include an existing dock structure, a rock retaining wall, and a wooden staircase. A Section 11 Water Sustainability Act notification has also been approved for a boat lift for private moorage.

On April 26, 2021 the Regional Board considered an application for a single-family dwelling with a 209m² footprint, to be built on the eastern portion of the lot approximately 10m from the lake. The proposal required a Floodplain Exemption, a Development Variance Permit (Variance) and a Development Permit (DP), which were not approved by the Regional Board.

Proposal:

The outcome of the 2021 Board decision has prompted the applicants to redesign their proposal with a smaller building footprint and a greater setback from the natural boundary of Lake Okanagan. The current proposal is to demolish the existing development on the site and construct a house on the lakeside portion of the lot, and a septic field on the western portion of the property. The redesigned dwelling now has an 88m² footprint, it complies with a 15m Streamside Protection Enhancement Area (SPEA) setback, and it is largely within a previously disturbed area of the property.

The RU3 Zone normally requires a minimum front yard building setback of 6m. This setback and the required SPEA setback would significantly constrain the developable area, therefore the applicants have requested a variance to allow the home to be built within 2.29m of Westside Road. The Ministry of Transportation and Infrastructure (MOTI) has issued a permit to reduce their minimum setback requirement to 1.99m (including allowances for roof overhangs), and they have approved an access permit and a road crossing permit for wastewater infrastructure.

The property is situated on a relatively straight portion of Westside Road, which allows for approximately 200-300 metres of visibility when approaching the from the south, and 500-600 metres visibility when approaching from the north. The proposal features a 6m wide driveway which connects to an existing accessway onto Westside Road, helping residents to enter and exit the property safely.

To accommodate the two parking spaces (required by Zoning Bylaw #871 and the MOTI access permit), the home features a one car garage and a second space on a parking pad, supported by a stepped retaining wall near the northern property boundary. As the exposed faces of the retaining walls are less than 2m high, they may be built within the side-yard setback area in accordance with section 3.17.6 of Zoning Bylaw No. 871.

Additional Information:

Owner/Applicant:	Maloney Construction Ltd. BC0463734 (owner) c/o Urban Options Planning Corp. (agent)
Address:	2223 Westside Road (Central Okanagan West Electoral Area)
Legal Descriptions:	Lot 2, Plan KAP14249, District Lot 3745, ODYD, Except Plan KAP47451
Lot Size:	1.34ha (3.3ac)
OCP Designation:	Residential – Low Density / Rural Residential
Existing Use:	Vacant
Surrounding Uses:	North: Residential – Low Density / Rural Residential South: Large Holding East: Large Holding / Parks and Recreation West: Lake Okanagan
ALR:	No
Fire Protection:	Wilsons Landing Fire Protection Area
Water Supply:	Private water source
Wastewater Disposal:	Onsite wastewater system

Development Permit Requirements:

Portions of the Subject Property are impacted by the Rural Westside Official Community Plan's (OCP's) Sensitive Aquatic Ecosystem, Sensitive Terrestrial Ecosystem, Hillside, and Wildfire Interface Development Permit Areas (DPAs). Application and notification requirements for DPs are defined within the RDCO's Development Applications Procedures Bylaw No. 944 (the Procedures Bylaw). For development within DPAs for the protection of the natural environment, or the protection of development from hazardous conditions, approval authority is delegated to the Director of Development Services (Section 6.8.a.ii).

The applicant has submitted technical reports as summarized below, in accordance with the OCP's Development Permit Guidelines and the RDCO's Terms of Reference for Professional Reports. If the Regional Board approves the Variance for the Subject Property, RDCO staff will process the draft DP associated with this application (Attachment 6. Draft DP-22-08).

Environmental Assessment

An Environmental Assessment (EA) was conducted by Ecoscape Environmental Consultants Ltd. to summarize the site's environmental conditions and consider the OCP's Sensitive Aquatic and Sensitive Terrestrial Ecosystem Development Permit Guidelines.

The EA notes that the western portion of the property is very steep, and that it provides high value terrestrial habitats as it is within the Ungulate Winter Range established for the protection of mule deer. To meet the Sensitive Terrestrial Ecosystems DPA objectives, the EA recommends that a no build/no disturb covenant is established on areas of the western portion of the property (excluding the previously disturbed area intended for the septic field).

The EA anticipates that by developing the home on the lakeside portion of the lot, and with environmental monitoring of the recommended management and mitigation practices, impacts on terrestrial and aquatic resource values will be negligible. The assessment includes a riparian area restoration plan which proposes planting 226 trees and shrubs within the SPEA. Performance bonding of \$14,588 has been recommended to ensure the completion of the restoration plan and survival of the plantings.

Geotechnical Hazard Assessment

A Geotechnical Report was conducted by Geopacific Consultants to identify potential slope hazards and provide recommendations for the development of the site. The report notes that the western portion of the property contains average slopes of approximately 50% grade, with a shallow ravine running through the middle of the parcel. While no overland flows are evident in the gully, it is likely to be the preferential drainage path for groundwater in the area.

No evidence of recent slope instability was noted, and the report concludes that there is little risk to the proposed house location, and that development is feasible from a geotechnical perspective provided that the report's recommendations are followed, and that geotechnical field reviews are undertaken during construction.

RELEVANT POLICY AND REGULATIONS:

Regional Growth Strategy (RGS) Bylaw No. 1336

The proposal aligns with the direction of the RGS as it relates to the management of water resources and protection of the natural environment:

- Policy No. 3.2.3.1 - Consider water resources in land use planning decisions.
- Policy No. 3.2.8.3 - Manage growth to minimize disturbance to habitat, watershed and natural drainage areas and systems.

Rural Westside Official Community Plan (OCP) Bylaw No. 1274

The proposal adheres to the following policies and guidelines of the OCP:

Chapter 3 Natural Environment

- Policy No. 3.2.1.2 - Provide and protect vegetated leave areas to water courses, control soil erosion and sediment in run-off water, control the rates of run-off to minimize impacts on the lake, prevent the discharge of deleterious substances into the lake.

Chapter 13 – Development Permit Areas

- Policy No. 13.1.1 - Development within designated Development Permit Areas will be reviewed by the Regional District in consideration of the objectives and guidelines identified in this Section. Conditions or restrictions may be imposed on the development accordingly.

Appendix 2 – Aquatic Ecosystem Development Permit Objectives and Design Guidelines

- A leavestrip for the protection and restoration of the riparian ecosystem is to remain undisturbed near watercourses. The intention is that the leavestrip will be untouched by development and left in its natural condition, or, if damaged by previous use or construction, the ecosystem restored or enhanced. Active floodplains require leavestrips that start at the outer edge of the feature.

Central Okanagan Lake Foreshore Plan

The Central Okanagan Lake Foreshore Plan outlines the objectives and policies for the management, development, and use of Okanagan Lake shoreline, including:

- Within development areas, shorelines shall be maintained in a predominantly natural state with natural riparian tree cover and ground vegetation.

Riparian Areas Protection Regulation

The Riparian Areas Protection Regulation (RAPR) directs local governments riparian protection efforts by ensuring that a Qualified Environmental Professional (QEP) conducts a science-based assessment of proposed development activities. Under Section 10 of the RAPR, a proposed development meets the riparian protection standard if the development:

- Will not occur in the SPEA, and
- Will not result in any harmful alteration, disruption or destruction of natural features, functions, and conditions in the SPEA that support the life processes of protected fish.

RDCO TECHNICAL COMMENTS:

Inspection Services

Staff advise that, should the Variance and DP applications be approved, a Building Permit application for the removal of the Notice of Bylaw Contravention on title would be required. Furthermore, a Building Permit would be required for the construction of the single detached house and, as the property is within a Wildfire Interface Construction DPA, a restrictive covenant must be registered on the title of the property prior to final inspection to ensure that property owners adhere to wildfire hazard reduction measures.

AGENCY REFERRAL COMMENTS:

Ministry of Transportation and Infrastructure

The Ministry has previously issued the following permits;

- Highway Setback Reduction (File 2020-04152)
- Construction Permit for sanitary sewer pipeline crossing (File 2020-04257)
- Controlled Access Permit (File 2020-04268)

Interior Health

RDCO staff have advised Interior Health that, in addition to the current development proposal, a separate proposal has been received from 2235 Westside Road which includes the placement of an additional septic disposal field on the Subject Property (DP-20-09, currently on-hold pending the Board's review of the application for 2223 Westside Road).

Interior Health has not raised any concerns in relation to the Subject Property and the current proposal. However, in consideration of the potential for an additional disposal field on the upland portion of lot, they recommend that a legal mechanism be established to designate the parties responsible for the operation and maintenance of the independent system, and for allocation of costs should a failure or health hazard be identified in the future.

BC Hydro

BC Hydro has existing overhead infrastructure within the vicinity of the proposed project, which may be impacted by the construction. Any earthworks or grade changes within the vicinity of the existing power pole will need to be reviewed by a BC Hydro designer and it may need to be relocated at the applicant's cost.

BC Hydro also wishes to ensure there are no building encroachments into the safety clearance zones required around existing conductors. The following comments are for the property owner's information:

- It is the responsibility of the owner's Architect and Electrical Engineer of Record (EEOR) to ensure compliance with the Canadian Electrical Code (CEC), Canadian Safety Association (CSA) and WorkSafe BC (WSBC). The CEC, CSA and WSBC stipulate minimum clearances of powerlines and equipment from buildings for safety and safe working clearances (Limits of Approach).
- If the developer or property owner wishes to relocate BC Hydro's existing powerline and/or works, BC Hydro will work with the developer or property owner to find a solution satisfactory to all parties involved.

Should there be a requirement for a right of way on the property, BC Hydro will confirm this with the applicant once they apply for services to the lot.

Considerations:

External:	<p>In accordance with the Local Government Act (LGA) and the RDCO Procedures Bylaw, a Notice of Application sign was posted at the property and written notices were mailed to all registered property owners within 100 metres of the Subject Property. A total of seven letters were mailed to neighbouring property owners on January 23, 2023.</p> <p>At time of writing this report, no letters of opposition, and one letter of support was received in response to the public notification.</p>
Organizational:	<p>Section 488 of the LGA provides the legislative authority for a local government to designate DPAs within an OCP, and the Subject Property is impacted by several DPAs. Section 6.8.a.ii of the RDCO Procedures Bylaw delegates approval authority for DPs respecting the protection of the natural environment, and the protection of development from hazardous conditions to the Director of Development Services. The DP application for this proposal will be processed by staff, following the Board's consideration of the Variance application.</p>
Financial:	<p>Under section 502 of the LGA, a local government may, as a condition of a land use permit, require that the applicant provide security. For the DP that is associated with this proposal, section 6.7 of the Procedures Bylaw will apply. The owner or agent shall provide a security deposit in the amount of \$14,588 (125% of the estimated cost of the restoration plan proposed in the EA).</p>
Legal/Statutory Authority:	<p>The application was submitted and processed in accordance with RDCO Procedures Bylaw. Section 498 of the LGA states that, on application by an owner of land, a local government may, by resolution, issue a Variance permit that varies, in respect of the land covered in the permit, the provisions of a bylaw. A Variance permit must not vary the use or density of land from that specified in the bylaw and a local government may not</p>

delegate the issuance of a permit, except by bylaw in accordance with section 498.1 of the Act.

In consideration of the Variance application, the Regional Board may approve the permit, not approve the permit or defer a decision pending more information or clarification.

Considerations not applicable:

- Alternate Recommendation

Approved for Agenda



Brian Reardon, CAO