



# Regional Board Report

**TO:** Regional Board

**FROM:** Todd Cashin  
Director of Community Services

**DATE:** March 25, 2019

**SUBJECT:** Development Variance Permit (VP-19-02)  
P. & S. Eisenhut (owner/applicant)  
3985N Westside Road - Central Okanagan West Electoral Area

**Voting Entitlement:** *Custom Vote – Electoral Areas, West Kelowna Fringe Area – 1 Director, 1 Vote*

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**Purpose:** To consider issuance of a Development Variance Permit to allow an increase in the maximum height of two retaining walls.

## Executive Summary:

At time of designing the site layout for the addition to the existing house, a Development Variance application was submitted to allow an increase in the maximum height of two retaining walls proposed as part of the overall design plan. The current maximum allowable height for retaining walls would not achieve the desired grade necessary to accommodate the addition, and would not address the constraints of the site appropriately. No objections have been received from agencies or neighbouring property owners.

Although not directly related to the variances, additional concerns have also been identified relating to prior landscaping works within the riparian area completed without development permit approval.

## RECOMMENDATION:

**THAT** Development Variance Permit Application VP-19-02, located at 3985N Westside Road, to vary Section 3.10.5 of Zoning Bylaw No. 871 by allowing an increase in height for Retaining Wall #1 from 2.5 m (8.2 ft.) to 3.99 m (13.1 ft.) and Retaining Wall #2 from 2.5 m (8.2 ft.) to 3.99 m (13.1 ft.), based on the Site Plan dated February 21, 2019, by Custom Drafting & Design by Grant be approved.

Respectfully Submitted:

Todd Cashin  
Director of Community Services

Approved for Board's Consideration

Brian Reardon, CAO

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**Implications of Recommendation:**

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|----------------------------|--|
| Strategic Plan:            | Development Variance Permits provide options/solutions to address building/location issues provided there are no negative impacts (visual, health and safety) to neighbouring residents.   |
| Policy:                    | The application was submitted and processed in accordance with Requirements of RDCO Development Applications Procedures Bylaw No. 944.   |
| Legal/Statutory Authority: | In accord with Section 498 of the <i>Local Government Act</i> , on application by an owner of land, a local government may, by resolution, issue a development variance permit that varies, in respect of the land covered in the permit, the provisions of a bylaw. A development variance permit must not vary the use or density of land from that specified in the bylaw and a local government may not delegate the Issuance of a permit. |

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**Background:****Project Description:**

The subject property consists of one single detached house constructed in 1991. At time of designing the site layout for the addition to the existing house, the design plan was contingent on two retaining walls. The owners' rationalize that the proposed increase in height for the retaining walls will maximize the availability to level the driveway and parking area for improved access, and to minimize the impact on the hillside. The current maximum allowable height for retaining walls would not achieve the desired grade necessary to accommodate the addition.

The existing concrete retaining wall referenced on the site plan is 2.34 m (7.67 ft.) in height and has been faced with decorative finishing. The proposed retaining walls are planned to be 3.99 m (13.1 ft) and will match the finishing of the existing wall.

The proposed addition including the two retaining walls have been designed and certified by a structural engineer; however, given that each of the walls exceed the maximum allowable height of 2.5 m, a Development Variance Permit is required.

Similar variance applications have been approved by the Regional Board in the past primarily based on topographic considerations. In 2011 and 2008, the Regional Board approved two Development Variance Permits to allow an increase in the maximum height of constructed retaining walls in the Central Okanagan West Electoral Area (Files: VP-11-05 & VP-08-11). The most recent approval allowed an increase in the maximum height of five constructed retaining walls at Sunset Ranch development (File: VP-19-01) within Central Okanagan East Electoral Area.

**History:**

The subject property experienced flooding in 2017. Subsequently, the owners applied for and received the appropriate approvals through the Province to construct a new dock.

However, RDCO historic mapping inventories and flood mapping records indicate that alterations have occurred within the riparian area. Landscaping including earth works and the construction of retaining walls have previously occurred without development permit approval. It is understood by planning staff that the owners were informed by the contractor that a permit was not required to complete the proposed landscape works.

#### Site Context:

The subject property is located within the Rural Westside Official Community Plan (OCP) Bylaw No. 1274 and is affected by a number of Development Permit Areas (including Aquatic Ecosystems, Hillside and Wildfire Interface Construction). The landowners will be required to address all Development Permit provisions of the OCP in conjunction with the building permit process. A development permit application (DP-19-01) has been submitted to address the objectives and design guidelines of both the Hillside and Aquatic Ecosystem Development Permit Areas.

#### Additional Information:

|                              |  |
|------------------------------|--|
| <b>Owner/Applicant:</b>      | P. & S. Eisenhut   |
| <b>Legal Description:</b>    | Strata Lot 5, Plan KAS899, District Lot 4499, ODYD Together with an interest in the common property in proportion to the unit entitlement of the Strata Lot as shown in Form 1 |
| <b>Address:</b>              | 3985N Westside Road  |
| <b>Lot Size:</b>             | +/- 0.27 ha (0.66 acres)   |
| <b>Zoning:</b>               | RU5 Small Lot Country Residential  |
| <b>OCP Designation:</b>      | Rural Residential  |
| <b>Sewage Disposal:</b>      | Septic System  |
| <b>Water Supply:</b>         | Okanagan Lake – private water utility through Strata   |
| <b>Existing Use:</b>         | Residential  |
| <b>Surrounding Uses:</b>     | <b>North:</b> Rural Residential<br><b>South:</b> Rural Residential<br><b>East:</b> Okanagan Lake<br><b>West:</b> Road Easement / Rural Residential                             |
| <b>A.L.R.:</b>               | Not within the A.L.R.  |
| <b>Fire Protection Area:</b> | Wilsons Landing  |

#### RDCO TECHNICAL COMMENTS:

**Inspection Services** staff advises that the proposed retaining walls have full engineering including Schedule B requirements and design. Should a Development Variance Permit be approved, a building permit can be applied for and issued for the retaining walls.

**Central Okanagan West Advisory Planning Commission (APC)** recommends that the application be deferred until additional information requested is made available.

#### Anecdotal Comments:

- Concerns with the impact of the two tiers of retaining walls (existing and proposed);
- Concerns with the overall impact on drainage and slope stability; and
- Engineering details/drawings required.

**Planning Services** staff notes that the variance (if approved) should not have any adverse impacts on neighbours, and the walls would be at an elevation significantly below Westside Road. Further, landscaping has been proposed to offset the height of the retaining walls to address any visual impacts from Okanagan Lake.

Staff further advises that the owners have been working cooperatively to address the Development Permit provisions of Bylaw No. 1274. Further, the owners obtained the services of Qualified Professionals for assessing the proposed works.

The geotechnical report that was prepared as part of the hazard assessment concluded that construction activities on site should use best practices to limit disturbances and that construction be in accordance with the report recommendations including excavation, drainage, and erosion protection measures. In order to address the earthworks (that was previously completed adjacent to Okanagan Lake without permits), the owners have obtained the services of a Qualified Environmental Professional to develop a landscape plan in accordance with the Aquatic Ecosystems Development Design Guidelines of the OCP.

Staff further notes that all concerns expressed by the APC will be addressed through the development permit and building permit application processes.

#### **AGENCY REFERRAL COMMENTS:**

**Unaffected Agencies** include Ministry of Transportation and Infrastructure, B.C. Hydro, Interior Health Authority, Telus, Shaw, and Fortis B.C.

**Unaffected RDCO Departments** include Parks Services, Fire Services, and Environmental Services.

#### **External Implications:**

In accord with Development Applications Procedures Bylaw No. 944, a Notice of Application sign was posted on the property and written notices were mailed to all registered property owners of land situated within 100 metres of the subject property. Further to the notification process, at time of writing this report, there has been no opposition letters received for this application.

#### **Alternative Recommendation:**

**THAT** Development Variance Permit Application VP-19-02, located at 3985N Westside Road, to vary Section 3.10.5 of Zoning Bylaw No. 871 be deferred until such time that the identified concerns relating to previously unauthorized development have been addressed by the owner/applicant.

#### **Considerations not applicable to this report:**

- *General*
- *Organizational*
- *Financial*

#### **Attachment(s):**

- Subject Property and Orthophoto Maps
- Site Plan and Variance Application Drawings (February 21, 2019)