

City of Kelowna

Regular Council Meeting

AGENDA



Tuesday, July 12, 2016
6:00 pm
Council Chamber
City Hall, 1435 Water Street

Pages

1. **Call to Order**
2. **Reaffirmation of Oath of Office**
The Oath of Office will be read by Mayor Basran.
3. **Confirmation of Minutes** 1 - 8
Public Hearing - June 28, 2016
Regular Meeting - June 28, 2016
4. **Bylaws Considered at Public Hearing**
 - 4.1 **5080 Lakeshore Road, BL11255 (Z16-0009 & LUC16-0001) - James Sharko** 9 - 9
To give Bylaw No. 11255 second and third readings in order to discharge the existing Land Use Contract and rezone the subject property to facilitate a carriage house.
 - 4.2 **815 Rose Avenue, BL11256 (Z16-0022) - Paul Neufeld & Douglas Kirk** 10 - 10
To give Bylaw No. 11256 second and third readings in order to rezone the subject property to facilitate the development of a duplex and the renovation of an existing dwelling.
 - 4.3 **1251 Ladner Road, BL11257 (Z16-0021) - John Hodges** 11 - 11
To give Bylaw No. 11257 second and third readings in order to rezone the subject property to facilitate a subdivision of the parcel into three lots.
5. **Notification of Meeting**
The City Clerk will provide information as to how the following items on the Agenda were publicized.

6. Development Permit and Development Variance Permit Reports

- 6.1 278 Leon Avenue and 1620 & 1630 Water Street, TUP13-0002 - Kelowna Motors Holdings Limited 12 - 24**

City Clerk to state for the record any correspondence received. Mayor to invite anyone in the public gallery who deems themselves affected by the requested temporary use to come forward.

To consider an extension of a Temporary Use Permit (TUC13-0002) that expires on July 16, 2016. The TUP extension would allow for the continued operation of an Automotive and Equipment Repair Shop use on the subject property for a maximum of three years.

- 6.2 1629-1649 KLO Road, TUP16-0001 - Western Global Enterprises Inc. 25 - 44**

City Clerk to state for the record any correspondence received. Mayor to invite anyone in the public gallery who deems themselves affected by the requested temporary use to come forward.

To temporarily allow a Non-Farm Use on the subject property as per Agricultural Land Commission Resolution #67/2015.

- 6.3 565 Coronation Avenue, BL11184 (Z15-0025) - Christian Lee Bond 45 - 45**

To adopt Bylaw No. 11184 in order to rezone the subject property to facilitate the development of a Carriage House.

- 6.4 565 Coronation Avenue, DP15-0112 & DVP15-0113 - Christian Lee Bond 46 - 70**

City Clerk to state for the record any correspondence received. Mayor to invite anyone in the public gallery who deems themselves affected by the requested temporary use to come forward.

To consider the form and character of a carriage house on the subject parcel and variances to the minimum side setbacks required for single family dwellings and carriage houses.

- 6.5 3077 Lowe Court, DVP15-0081 - Scott Grant 71 - 80**

City Clerk to state for the record any correspondence received. Mayor to invite anyone in the public gallery who deems themselves affected by the requested temporary use to come forward.

To vary the location and the number of parking stalls from 4 stalls required to 2 stalls provided to accommodate a secondary suite and a home based business on the subject parcel.

City Clerk to state for the record any correspondence received. Mayor to invite anyone in the public gallery who deems themselves affected by the requested temporary use to come forward.

To vary the maximum allowable height of an accessory structure on the subject property.

7. Reminders

8. Termination



City of Kelowna

Public Hearing

Minutes

Date: Tuesday, June 28, 2016
 Location: Council Chamber
 City Hall, 1435 Water Street

Members Present Mayor Colin Basran, Councillors Maxine DeHart, Ryan Donn, Gail Given, Tracy Gray, Charlie Hodge, Brad Sieben, Mohini Singh and Luke Stack

Staff Present Acting City Manager, Joe Creron; City Clerk, Stephen Fleming; Community Planning Department Manager, Ryan Smith; Urban Planning Manager, Terry Barton; Council Recording Secretary, Arlene McClelland

(* Denotes partial attendance)

1. Call to Order

Mayor Basran called the Hearing to order at 6:00 p.m.

Mayor Basran advised that the purpose of the Hearing is to consider certain bylaws which, if adopted, will amend "Kelowna 2030 - Official Community Plan Bylaw No. 10500" and Zoning Bylaw No. 8000", and all submissions received, either in writing or verbally, will be taken into consideration when the proposed bylaws are presented for reading at the Regular Council Meeting which follows this Public Hearing.

2. Notification of Meeting

The City Clerk advised that Notice of this Public Hearing was advertised by being posted on the Notice Board at City Hall on June 14, 2016 and by being placed in the Kelowna Capital News issues on Friday, June 17 and Wednesday, June 22, 2016 and by sending out or otherwise delivering 9 statutory notices to the owners and occupiers of surrounding properties between June 14, 2016 and June 17, 2016.

The correspondence and/or petitions received in response to advertising for the applications on tonight's agenda were arranged and circulated to Council in accordance with Council Policy No. 309.

3. Individual Bylaw Submissions

3.1 564 Coryell Road, Z16-0012 - Andrew Pilarski

Staff:

- Displayed a PowerPoint presentation summarizing the application.

The City Clerk advised that no correspondence or petitions had been received.

Mayor Basran invited the applicant or anyone in the public gallery who deemed themselves affected to come forward, followed by comments of Council.

Applicant

- Present and available to answer any questions.

Gallery:

Ron Hayward, Coryell Road

- Lives directly across from the Applicant.
- Raised concern with future densities being applied for above what is being requested.
- Raised concerns regarding increased traffic that the development will bring.
- Not opposed to the proposal that is being presented but is opposed to any future multi family development.
- Raised concern with the exterior building finishes being out of character with the neighbourhood.
- Responded to questions from Council.

There were no further comments.

4. Termination

The Hearing was declared terminated at 6:16 p.m.

Mayor

/acm

Steph Stearns
City Clerk



City of Kelowna Regular Meeting Minutes

Date: Tuesday, June 28, 2016

Location: Council Chamber
City Hall, 1435 Water Street

Members Present Mayor Colin Basran, Councillors Maxine DeHart*, Ryan Donn, Gail Given, Tracy Gray, Charlie Hodge, Brad Sieben, Mohini Singh and Luke Stack

Staff Present Acting City Manager, Joe Creron; City Clerk, Stephen Fleming; Community Planning Department Manager, Ryan Smith; Urban Planning Manager, Terry Barton; Council Recording Secretary, Arlene McClelland

(* Denotes partial attendance)

1. Call to Order

Mayor Basran called the meeting to order at 6:16 p.m.

2. Reaffirmation of Oath of Office

The Oath of Office was read by Councillor Stack.

3. Confirmation of Minutes

Moved By Councillor DeHart/Seconded By Councillor Singh

R530/16/06/28 THAT the Minutes of the Public Hearing and Regular Meeting of June 14, 2016 be confirmed as circulated.

Carried

4. Bylaws Considered at Public Hearing

4.1 564 Coryell Road, BL11254 (Z16-0012) - Andrew Pilarski

Moved By Councillor Gray/Seconded By Councillor Donn

R531/16/06/28 THAT Bylaw No. 11254 be read a second and third time.

Carried

5. Notification of Meeting

The City Clerk advised that Notice of Council's consideration of the Development Variance Permit Applications was given by sending out or otherwise delivering 121

statutory notices to the owners and occupiers of surrounding properties between June 14, 2016 and June 17, 2016.

The correspondence and/or petitions received in response to advertising for the applications on tonight's Agenda were arranged and circulated to Council in accordance with Council Policy No. 309.

6. Development Permit and Development Variance Permit Reports

6.1 1281 Highway 33 East, DP16-0071 & DVP16-0072 - Judston & Karen Wickwire

Staff:

- Displayed a PowerPoint presentation summarizing the application and responded to questions from Council.

The City Clerk advised that no correspondence or petitions had been received.

Mayor Basran invited the applicant or anyone in the public gallery who deemed themselves affected to come forward, followed by comments of Council.

Applicant Representative

- Present and available for questions.

No one from the gallery came forward.

There were no further comments.

Moved By Councillor Hodge/Seconded By Councillor Donn

R532/16/06/28 THAT Council authorizes the issuance of Development Variance Permit No. DVP16-0072 for Lot 2 Section 13 Township 26 ODYD Plan 15924 Except Plans 22851, H8383 and KAP88682, located at 1281 Highway 33 East, Kelowna, BC;

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

Section 9.5b.1(e): Specific Use Regulations - Carriage House Regulations

To vary the size of upper floor area of a carriage house from a maximum of 75% of the building footprint to the 100% of the building footprint as shown on Schedule "A."

AND THAT Council authorizes the issuance of Development Permit No. DP16-0071 for Lot 2 Section 13 Township 26 ODYD Plan 15924 Except Plans 22851, H8383 and KAP88682, located at 1281 Highway 33 East, Kelowna, BC, subject to the following:

1. The dimensions and siting of the building to be constructed on the land, be in accordance with Schedule "A";
2. The exterior design and finish of the building to be constructed on the land, be in accordance with Schedule "B";

AND THAT Council's consideration of this Development Variance Permit and Development Permit be considered subsequent to the outstanding conditions of approval as set out in Schedule "C" attached to the Report from the Community Planning Department dated June 28, 2016.

AND THAT Council's consideration of this Development Variance Permit and Development Permit be considered subsequent to the registration of a Right of Way for sewer connection with neighbouring property located at 1301 Lewis Road, Kelowna, BC, in favour of the subject property;

AND FURTHER THAT this Development Variance Permit and Development Permit is valid for two (2) years from the date of Council approval, with no opportunity to extend.

Carried

6.2 925 Leon Avenue, DP16-0074 & DVP16-0075 - Boardwalk Housing Corp.

Staff:

- Displayed a PowerPoint presentation summarizing the application and responded to questions from Council.

The City Clerk advised that the following correspondence or petitions had been received:

Informational Package received from the Applicant

Mayor Basran invited the applicant or anyone in the public gallery who deemed themselves affected to come forward, followed by comments of Council.

Jim Meiklejohn, Meiklejohn Architects, Ellis Street

- Displayed a PowerPoint presentation.
- Spoke to the history of the project and the reasons for the requested variances.
- Spoke to the parkade and issues with the high water table.
- Spoke to the high quality urban materials and colours of the façade and believes it provides more character; an enhancement to the neighbourhood.
- Spoke to the landscape requirements and size of trees being planted.
- Responded to questions from Council.

Kevin Bird, Owner, Boardwalk Housing Corporation

- Spoke to the ratio between rental and ownership of the units.
- Preference would be to have all units owned, however, believes the market will determine the breakdown.
- Believes there will be a high percentage of rental units; although, not willing to impose any owner/rental breakdowns.
- Advised that any unsold units will be rented.
- Responded to questions from Council.

Gallery

Robert Higger, Sales & Marketing Manager

- Noted involvement with rental units for students attending UBCO.
- Believes this project will be looked upon positively by students as there are many amenities and students want to be downtown.
- Believes there will be a high percentage of rentals.

There were no further comments.

Moved By Councillor DeHart/Seconded By Councillor Sieben

R533/16/06/28 THAT Council authorize the issuance of Development Permit DP16-0074 for Lot A, District Lot 138, ODYD, Plan EPP54864, located on 925 Leon Ave, Kelowna, BC, 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 to be in general accordance with Schedule "C";

4. That the applicant be required to post with the City, a Landscape Performance Security deposit in the form of a "Letter of Credit" in the amount of 125% of the estimated value of the landscaping, as determined by a professional landscaper;

AND THAT Council authorize the issuance of Development Variance Permit DVP16-0075 for Lot A, District Lot 138, ODYD, Plan EPP54864, located on 925 Leon Ave, Kelowna, BC;

AND THAT the variances to the following sections of Zoning Bylaw No. 8000 be granted subject to general conformance with the drawings (Schedule "A", "B", & "C") attached to DP16-0074:

Section 13.12.6 (b) Development Regulations

To vary the maximum site coverage of buildings, driveways, and parking areas from 50% to 83.4%.

Section 13.12.6 (d) Development Regulations

To vary the minimum front yard (west) setback from 6.0m to 2.9m.

Section 13.12.6 (e) Development Regulations

To vary the minimum flanking yard (south) setback from 6.0m to 3.3m.

Section 6.10 Setback from Provincial Highways

To vary the minimum setback from 4.5m to a Provincial Highway to 3.3m to a Provincial Highway.

Section 13.12.6 (f) Development Regulations

To vary the minimum rear yard (east) setback from 9.0m to 2.2m.

Section 8.1.14 Tandem Parking

To vary the number of parking spaces that may be configured in tandem from 0 to 8 parking stalls.

Section 8.1.11 (b) Size and Ratio Parking

To vary the minimum portion of full sized parking spaces from 50% to 45% and to vary the maximum portion of medium sized parking spaces from 40% to 46.5%.

AND THAT the applicant be required to complete the above noted conditions of Council's approval of the Development Permit/Development Variance Permit Applications in order for the permit to be issued;

AND FURTHER THAT this Development Permit and Development Variance Permit be valid for two (2) years from the date of Council approval, with no opportunity to extend.

Carried

6.3 2486 Hwy 97 N, DP16-0001 & DVP16-0002 - Kelowna Hwy 97/33 Holdings Ltd.

Councillor DeHart declared a conflict of interest as she is employed by a hotel in close proximity to the subject property and departed the meeting at 7:31 p.m.

Staff:

- Displayed a PowerPoint presentation summarizing the application and responded to questions from Council.

The City Clerk advised that no correspondence or petitions had been received.

Mayor Basran invited the applicant or anyone in the public gallery who deemed themselves affected to come forward, followed by comments of Council.

Jeff Crib, Applicant and Ed Calnitsky, Architect Inc.

- Intent of the proposal was to provide visual interest from the Highway with access contained to the inner courtyard.
- Spoke to the process of providing accessibility to the site; Ministry of Transportation have no issue at this time.
- Responded to questions from Council.

No one from the gallery came forward.

There were no further comments.

Moved By Councillor Hodge/Seconded By Councillor Donn

R534/16/06/28 THAT Council authorizes the issuance of Development Permit No. DP16-0001 for Lot 1 DL 125 ODYD Plan 18724 Except Plans KAP78413 and KAP80632 located at 2486 Hwy 97 North, Kelowna, BC subject to the following:

1. The dimensions and siting of the building to be constructed on the land be in accordance with Schedule "A,"
2. The exterior design and finish of the building to be constructed on the land, be in accordance with Schedule "B";
3. Landscaping to be provided on the land be in accordance with Schedule "C";
4. The applicant be required to post with the City a Landscape Performance Security deposit in the form of a "Letter of Credit" in the amount of 125% of the estimated value of the landscaping, as determined by a Registered Landscape Architect;

AND THAT Council authorizes the issuance of Development Variance Permit No. DVP16-0002 for Lot 1 DL 125 ODYD Plan 18724 Except Plans KAP78413 and KAP80632 located at 2486 Hwy 97 North, Kelowna, BC;

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

Section 14.9.5 (c)

To vary the required minimum front yard setback from 6.0 m to 3.0 m as shown on the attached Schedule "A"

Section 14.9.5 (d)

To vary the required minimum front yard setback from 4.5 m to 2.25 m along the southern property line as shown on the attached Schedule "A"

Section 14.9.5 (d)

To vary the required minimum front yard setback from 3.0 m to 0.00 m along the northern property line as shown on the attached Schedule "A"

Section 8.1.2

To vary the required minimum number of parking spaces from 206 as prescribed by Table 8.1 to 184.

AND FURTHER THAT the applicant be required to complete the above noted conditions of Council's approval of the Development Variance Permit Application in order for the permits to be issued.

Carried

Councillor DeHart rejoined the meeting at 7:52 p.m.

6.4 477 Christleton Avenue, DP16-0029/DVP16-0030 - Legault Enterprises Ltd.

Staff:

- Displayed a PowerPoint presentation summarizing the application.

The City Clerk advised that no correspondence or petitions had been received.

Mayor Basran invited the applicant or anyone in the public gallery who deemed themselves affected to come forward, followed by comments of Council.

Applicant

- Present and available for questions.

No one from the gallery came forward.

There were no further comments.

Moved By Councillor Sieben/Seconded By Councillor DeHart

R535/16/06/28 THAT Council authorizes the issuance of Development Permit No. DP16-0029 for Lot 1, District Lot 14, ODYD, Plan 8009 located at 477 Christleton Avenue, Kelowna, BC subject to the following:

1. The dimensions and siting of the building to be constructed on the land be in accordance with Schedule "A,"
2. The exterior design and finish of the building to be constructed on the land, be in accordance with Schedule "B";

AND THAT Council authorizes the issuance of Development Variance Permit No. DVP16-0030 for Lot 1, District Lot 14, ODYD, Plan 8009, located at 477 Christleton Avenue, Kelowna, BC;

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

Section [13.6.6(G)]: [RU6 - Two Dwelling Housing]

To vary the required minimum side yards from 2.3m required to 2.0m proposed for the second storey portion of the buildings.

AND FURTHER THAT this Development Variance Permit is valid for two (2) years from the date of Council approval, with no opportunity to extend.

Carried

7. **Reminders** - Nil.

8. **Termination**

The meeting was declared terminated at 7:57 p.m.

Mayor

/acm

City Clerk

CITY OF KELOWNA
BYLAW NO. 11255
Z16-0009 - James Sharko and Maureen Atrens-Sharko
5080 Lakeshore Road

A bylaw to amend the "City of Kelowna Zoning Bylaw No. 8000".

The Municipal Council of the City of Kelowna, in open meeting assembled, enacts as follows:

1. THAT City of Kelowna Zoning Bylaw No. 8000 be amended by changing the zoning classification of Lot C, Section 23, Township 28, SDYD, Plan 30063 located on Lakeshore Road, Kelowna, B.C., from the A1 - Agriculture zone to the RR2c-Rural Residential 2 with Carriage House zone.
2. AND THAT Bylaw No. 4602-78 being "James H. B. Browne and Barbara D.B. Browne, Land Use Contract Authorizing By-Law, Lakeshore Road, File LUC77-1012" and all amendments thereto, are hereby repealed.
3. This bylaw shall come into full force and effect and is binding on all persons as and from the date of adoption.

Read a first time by the Municipal Council this 20th day of June, 2016.

Considered at a Public Hearing on the

Read a second and third time by the Municipal Council this

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

CITY OF KELOWNA
BYLAW NO. 11256
Z16-0022 - Paul Neufeld and Douglas Kirk
815 Rose Avenue

A bylaw to amend the "City of Kelowna Zoning Bylaw No. 8000".

The Municipal Council of the City of Kelowna, in open meeting assembled, enacts as follows:

1. THAT City of Kelowna Zoning Bylaw No. 8000 be amended by changing the zoning classification of Lot 2, District Lot 1236, ODYD, Plan 8116 located on Rose Avenue, Kelowna, B.C., from the RU6 - Two Dwelling Housing zone to the RM1 - Four Dwelling Housing zone.
2. This bylaw shall come into full force and effect and is binding on all persons as and from the date of adoption.

Read a first time by the Municipal Council this 27th day of June, 2016.

Considered at a Public Hearing on the

Read a second and third time by the Municipal Council this

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

CITY OF KELOWNA
BYLAW NO. 11257
Z16-0021 - John Hodges
1251 Ladner Road

A bylaw to amend the "City of Kelowna Zoning Bylaw No. 8000".

The Municipal Council of the City of Kelowna, in open meeting assembled, enacts as follows:

1. THAT City of Kelowna Zoning Bylaw No. 8000 be amended by changing the zoning classification of Lot 13, District Lot 131, ODYD, Plan 14057 located on Ladner Road, Kelowna, B.C., from the RU1 - Large Lot Housing zone to the RU2 - Medium Lot Housing zone.
2. This bylaw shall come into full force and effect and is binding on all persons as and from the date of adoption.

Read a first time by the Municipal Council this 27th day of June, 2016.

Considered at a Public Hearing on the

Read a second and third time by the Municipal Council this

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

REPORT TO COUNCIL



Date: July 12, 2016

RIM No. 0940-93

To: City Manager

From: Community Planning Department (LK)

Application: TUP13-0002 **Owner:** Kelowna Motors Holdings Limited. Inc. No. 52192

Address: 278 Leon Avenue, 1620 & 1630 Water Street **Applicant:** Lynn Welder Consulting

Subject: Temporary Use Permit - Extension

Existing OCP Designation: MXR- Mixed Use Residential / Commercial

Existing Zone: C7 - Central Business Commercial

1.0 Recommendation

THAT Council authorizes an extension of Temporary Use Permit No. TUP13-0002 to allow 'Automotive and Equipment Repair Shop use for North ½ Lot 1 & 2, Block 10, District Lot 139, ODYD, Plan 462. And South ½ Lot 1 & 2, Block 10, District Lot 139 ODYD, Plan 462, and South ½ Lot 1 & 2, Block 10, District Lot 139, ODYD, Plan 462, and Lot 3 Block 10, District Lot 139, ODYD, Plan 462, located at 1620 & 1630 Water Street and 278 Leon Avenue, Kelowna, BC as shown on Map 'A' attached to the Report from Community Planning Department for a three (3) year period commencing from Council approval subject to the following conditions:

- a) No expansion of the existing facility (or any additional buildings/structures) or parking is permitted during the term of the Temporary Use Permit.
- b) The Temporary Use Permit will expire on July 12, 2019.

AND THAT Council direct staff to not accept any further extension requests.

2.0 Purpose

To consider an extension of a Temporary Use Permit (TUC13-0002) that expires on July 16, 2016. The TUP extension would allow for the continued operation of an Automotive and Equipment Repair Shop use on the subject property for a maximum of three years.

3.0 Community Planning

The proposed extension of the Temporary Use Permit is a means to facilitate the continued automotive use operation on the parcel and avoid having unoccupied buildings at a primary entrance to the Downtown Urban Centre. The property is zoned C7 - Central Business Commercial

and the Official Community Plan (OCP) Future Land Use is MXR - Mixed Use (Residential/Commercial). Automotive uses including 'Automotive and Equipment Repair Shop' are not permitted in the C7 zone and are inconsistent with the OCP's Future Land Use.

The premises have been used for automotive purposes since 1949, however there was a lapse in the use and therefore the non-conforming use privileges have lapsed. By allowing the 'Automotive & Equipment Repair Shop' use to continue for an additional three years, it will maintain activity on the parcels. If Council chooses to approve the TUP extension, it will expire in 2019. The property owner's intention is to sell the subject properties to investors who will determine the best use of these parcels for the long term.

The 'Automotive and Equipment Repair Shop' use is a permitted use in C10 - Service Commercial zone. The purpose of this zone is to designate and preserve land for a mix of commercial uses, including vehicular oriented areas, not provided for in other zones. As the preferred location for this zone is typically outside of the Urban Centre and on major roads, permanently approving this use on the subject property would run counter to the OCP's long range plans for the redevelopment of this key area. Staff would not be supportive of permanently rezoning this parcel, but are supportive of extending the Temporary Use Permit as an interim solution.

4.0 Proposal

4.1 Background

The 'Automotive & Equipment Repair Shop' use has been active on the properties since 1949, with one exception. In 2008, the automotive shop that was located on the parcel vacated the premises, as the property was for sale. The deal was not completed and another tenant which conformed to the C7 - Central Business Commercial uses relocated to the subject site. That business was unable to continue and vacated the site. The previous tenant then had the opportunity to return to the premises and through the TUP was able to temporarily legalize the use. The intention of applying for a three-year extension application was initially raised in the original TUP application.

4.2 Project Description

The applicant is seeking a three-year extension to the current Temporary Use Permit (TUP13-0002) in order to allow the 'Automotive & Equipment Repair Shop' use to remain on the subject parcels. As stipulated in the Local Government Act, Part 14, Division 8, Subsection 497 (2) *A person to whom a temporary use permit has been issued may apply to have the permit renewed, subject to the restriction that a temporary use permit may be renewed only once.*

No site changes are required for the extension and the building had received substantial upgrades by the previous tenants. The proposal does not show any alteration or improvements to the existing building. The business will continue to function as-is for the term of the TUP extension.

4.3 Site Context

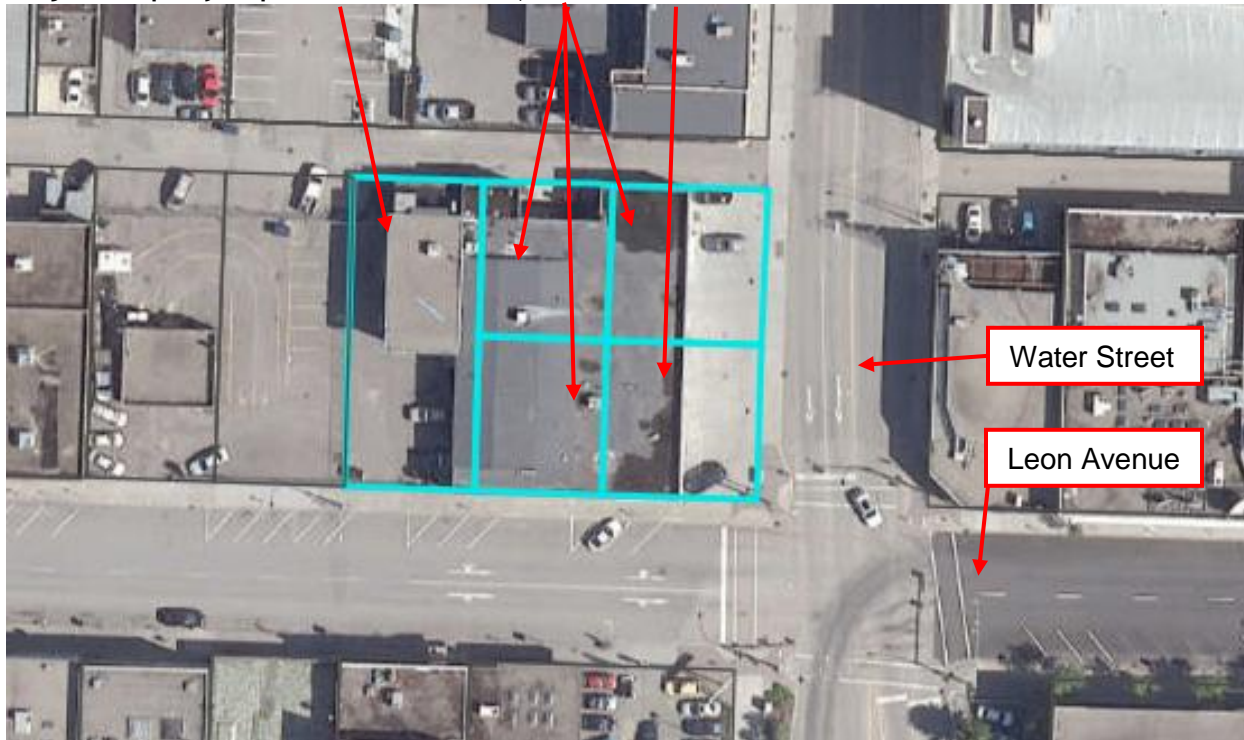
The subject properties are located on the west side of Water Street one block north of Harvey Avenue. Three of the five parcels front onto Leon Avenue.

Adjacent land uses are as follows:

Orientation	Zoning	Land Use
North	C7 - Central Business Commercial	Fire Department
East	C7 - Central Business Commercial	Office
South	C7 - Central Business Commercial	Auto Sales

West	C7 - Central Business Commercial	Auto Sales
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Subject Property Map: 278 Leon Avenue, 1630 & 1620 Water Street



4.4 Zoning Analysis Table

Zoning Analysis Table		
CRITERIA	C7 ZONE REQUIREMENTS	PROPOSAL
Existing Lot/Subdivision Regulations		
Minimum Lot Area	200 m ²	1783.15 m ²
Minimum Lot Width	6.0 m	36.57 m
Minimum Lot Depth	30 m	48.76 m
Development Regulations		
Maximum Height	44 m	10 m
Minimum Front Yard	0.0 m	9.2 m
Minimum Side Yard (south)	0.0 m	0.0 m
Minimum Side Yard (north)	0.0 m	0.0 m
Minimum Rear Yard	0.0 m	5.21 m
Other Regulations		
Floor Area Ratio	9.0	0.68
Minimum Parking Spaces	1.3 stalls / 100 m ² GFA = 16 spaces required	16 spaces provided

5.0 Current Development Policies

5.1 Kelowna Official Community Plan (OCP)

Development Process

Retention of Commercial Land¹ In order to ensure that the City's commercial land supply is not eroded, where the OCP Bylaw 10500 indicated a commercial land use designation for the property, the expectation would be that there be no net loss of commercial space on the site as a result of the redevelopment to include other uses.

Downtown.² Recognize that a unique, attractive, thriving and livable downtown is strategically important to Kelowna's overall prosperity and success. Towards this end, the City will plan and manage the Downtown as a single and special entity and will take a proactive, comprehensive, integrated and collaborative approach towards providing services and infrastructure, delivering programs, and developing a supportive regulatory and financial environment.

Temporary Use Permits.³ The temporary use designation is intended to apply to operations that are temporary in nature and the designation does not itself permit specific uses on the designated sites. Within these areas, Council may, by resolution, issue a TUP and specify the conditions under which the temporary use be carried on. Upon expiration of a TUP, the permitted uses revert to those outlined in the City of Kelowna Zoning Bylaw 8000.

6.0 Technical Comments

No technical concerns were raised.

7.0 Application Chronology

Date of Application Received:	April 18, 2013
Date TUP13-0002 Expires:	July 16, 2016
Date of Renewal Application Received:	February 11, 2016

Report prepared by:

Lydia Korolchuk, Planner

Reviewed by:

☐

Terry Barton, Urban Planning Manager

Approved for Inclusion:

☐

Ryan Smith, Community Planning Department Manager

Attachments:

Map 'A'

Site Plan

Context/Site Photos

¹ City of Kelowna Official Community Plan, Objective 5.25.2 (Development Process Chapter.)

² City of Kelowna Official Community Plan, Objective 8.9.2 Portray a positive image of Kelowna (Economic Development Chapter).

³ City of Kelowna Official Community Plan, Objective 4.9 (Future Land Use Chapter).

TEMPORARY USE PERMIT



APPROVED EXTENSION OF TEMPORARY USE PERMIT NO. TUP13-0002 (3 Years)

Issued To: Kelowna Motors Holdings Limited. Inc. No. 52192
Site Address: 278 Leon Avenue, 1620 & 1630 Water Street
Legal Description: North ½ Lot 1 & 2, Block 10, District Lot 139, ODYD, Plan 462. And South ½ Lot 1 & 2, Block 10, District Lot 139 ODYD, Plan 462, and South ½ Lot 1 & 2, Block 10, District Lot 139, ODYD, Plan 462, and Lot 3 Block 10, District Lot 139, ODYD, Plan 462
Zoning Classification: C7 - Central Business Commercial
Development Permit Area: Revitalization Development Permit Area

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.

The issuance of a Permit limits the Permit Holder to be in strict compliance with regulations of the Zoning Bylaw and all other Bylaws unless specific Variances have been authorized by the Permit. No implied Variances from bylaw provisions shall be granted by virtue of drawing notations that are inconsistent with bylaw provisions and that may not have been identified as required Variances by the applicant or Municipal staff.

1. TERMS AND CONDITIONS

THAT an extension of Temporary Use Permit No. TUP13-0002 for North ½ Lot 1 & 2, Block 10, District Lot 139, ODYD, Plan 462. And South ½ Lot 1 & 2, Block 10, District Lot 139 ODYD, Plan 462, and South ½ Lot 1 & 2, Block 10, District Lot 139, ODYD, Plan 462, and Lot 3 Block 10, District Lot 139, ODYD, Plan 462, located at 278 Leon Avenue, 1620 & 1630 Water Street, Kelowna, BC to allow the 'Automotive and Equipment Repair Shop' use be approved for a three (3) year period subject to the following:

- a) No expansion of the existing facility (or any additional buildings/structures) or parking is permitted during the term of the Temporary Use Permit;
- b) The Temporary Use Permit will expire on July 11, 2019.

AND THAT Council direct staff to not accept any further extension requests.

2. PERFORMANCE SECURITY

None required.

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 that shall form a part hereof.

If the Permit Holder does not commence the development permitted by this Permit within two years of the date of this Permit, this Permit shall lapse.

This Permit IS NOT a Building Permit.

4. APPLICANT'S AGREEMENT

I hereby declare that all of 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 and/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 Divisional Director of Community Planning & Real Estate.

Should there be any change in ownership or legal description of the property, I undertake to notify the Community Planning 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.

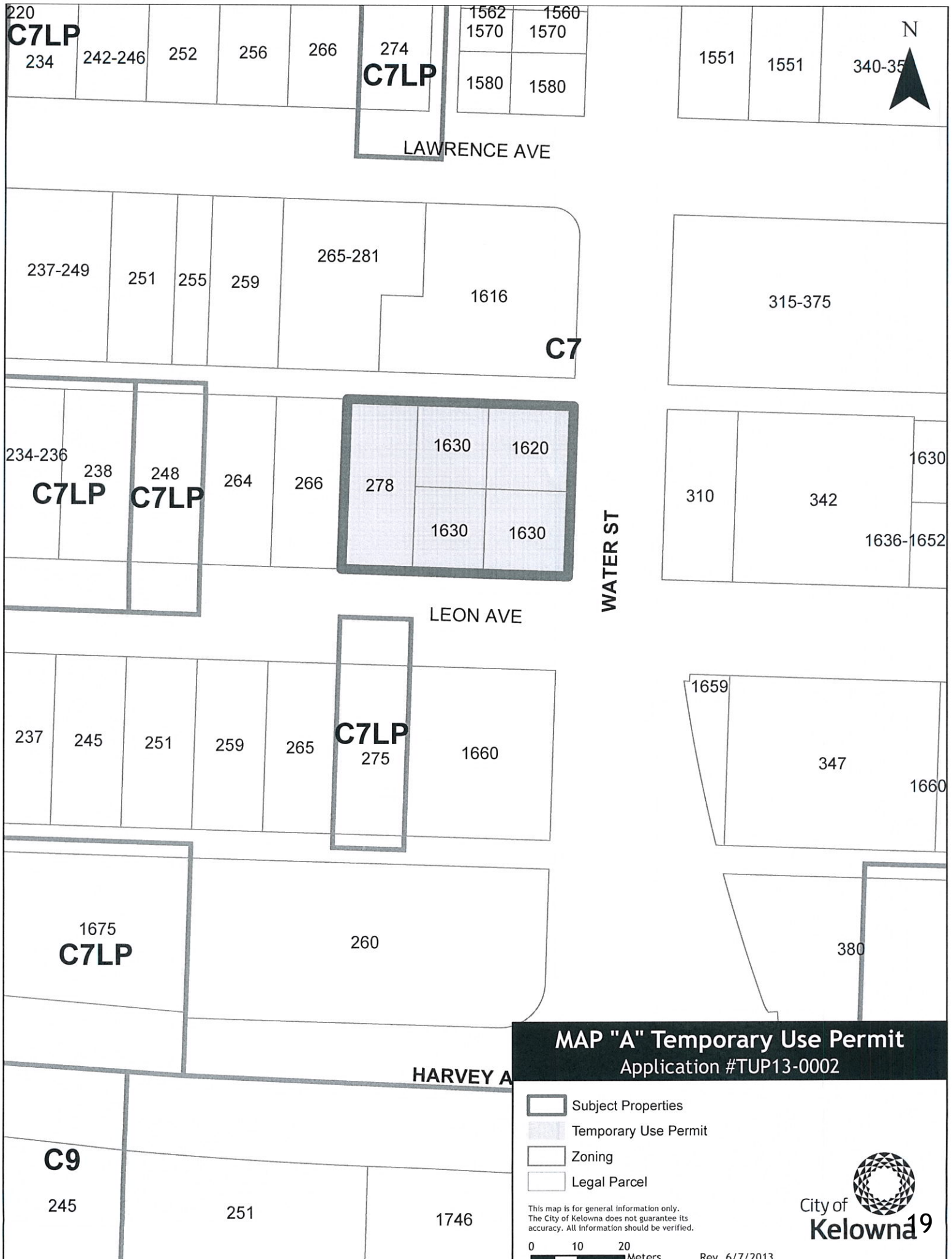
5. APPROVALS

Issued and approved by Council on the _____ day of _____, 2016.

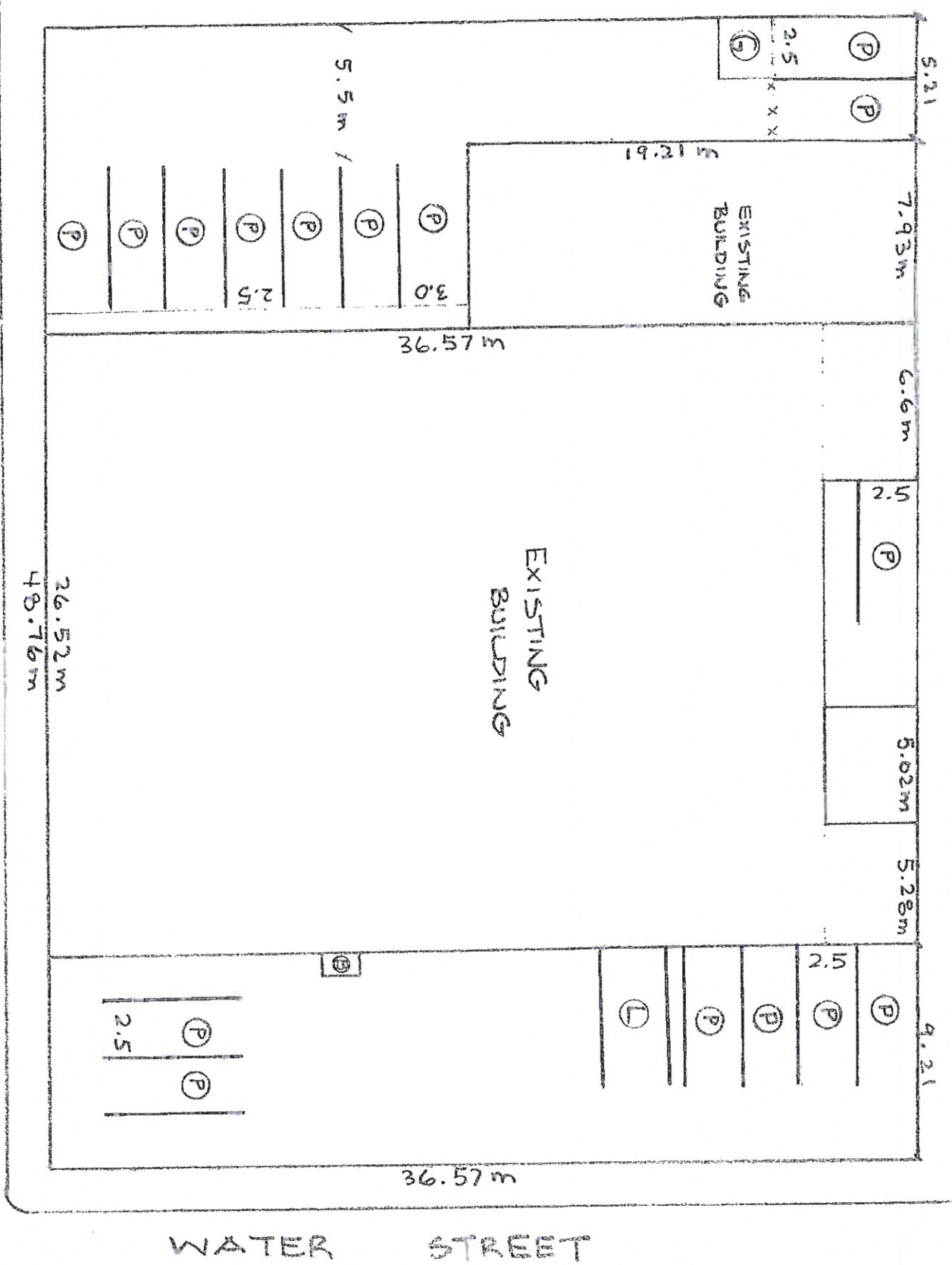
Ryan Smith, Community Planning Department Manager
Community Planning & Real Estate

Date

**The PERMIT HOLDER is the CURRENT LAND OWNER.
Security shall be returned to the PERMIT HOLDER.**



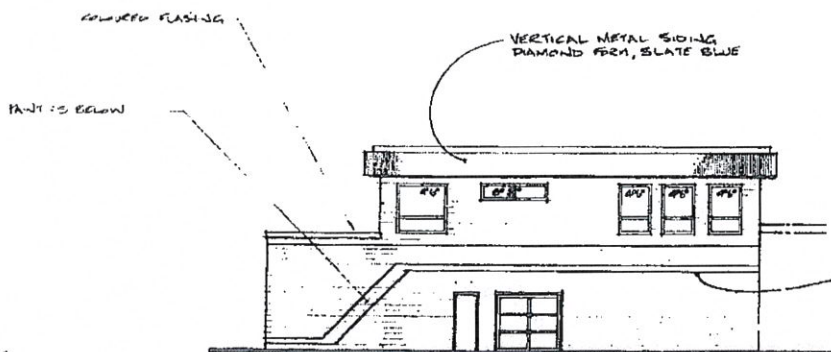
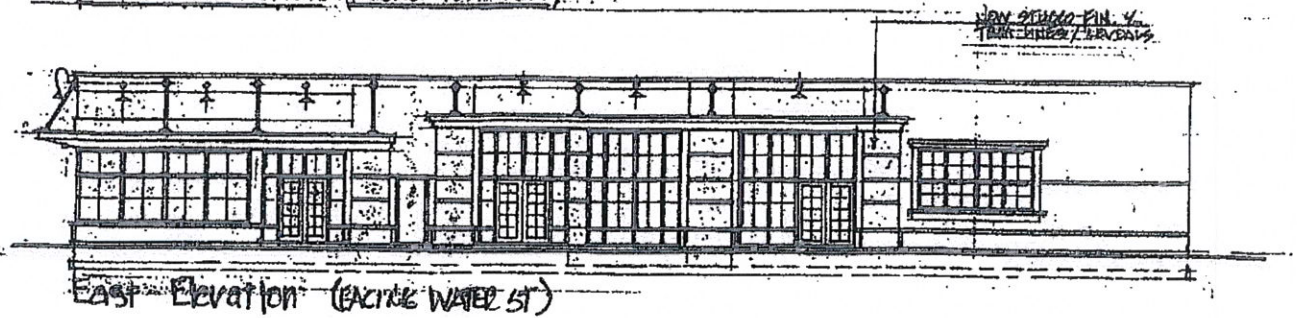
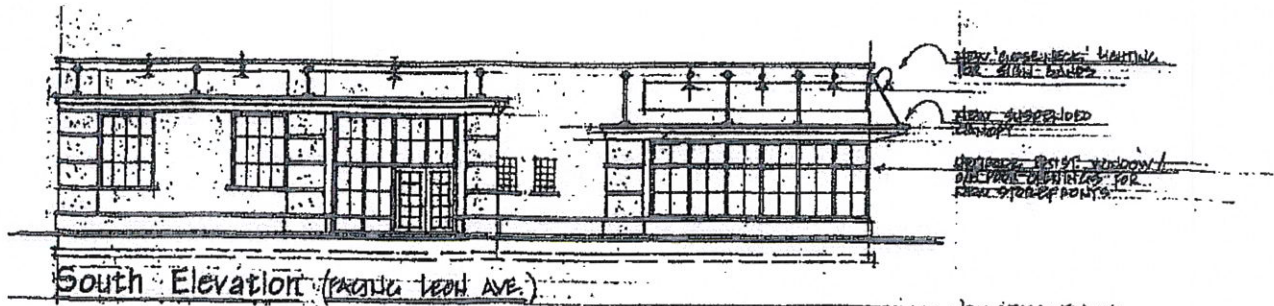
N 1/2 LOTS 1 and 2, S 1/2 LOTS 1 and 2, LOT 3
 PLAN 462, BLOCK 10, DL 139, 0071D



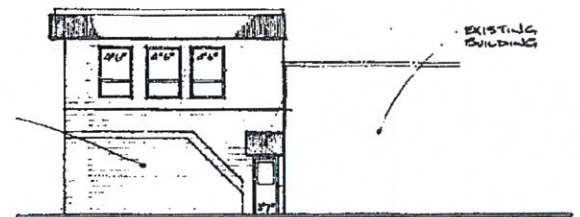
- ⑥ Garbage
- ⑦ Loading
- ⑧ Bicycle stall
- ⑨ Parking

LEON AVENUE

SCALE: 1:60



WEST
END ELEVATION



WEST
SIDE ELEVATION

ELEVATION PLANS

N 1/2 LOTS 1 and 2, S 1/2 LOTS 1 and 2,
LOT 3, PLAN 462

1630 WATER STREET and
278 LEON AVENUE



REAR



REAR (FACING WEST)

278 LEON AVE.

SIDE (FACING NORTH - LANE)



REAR / SIDE





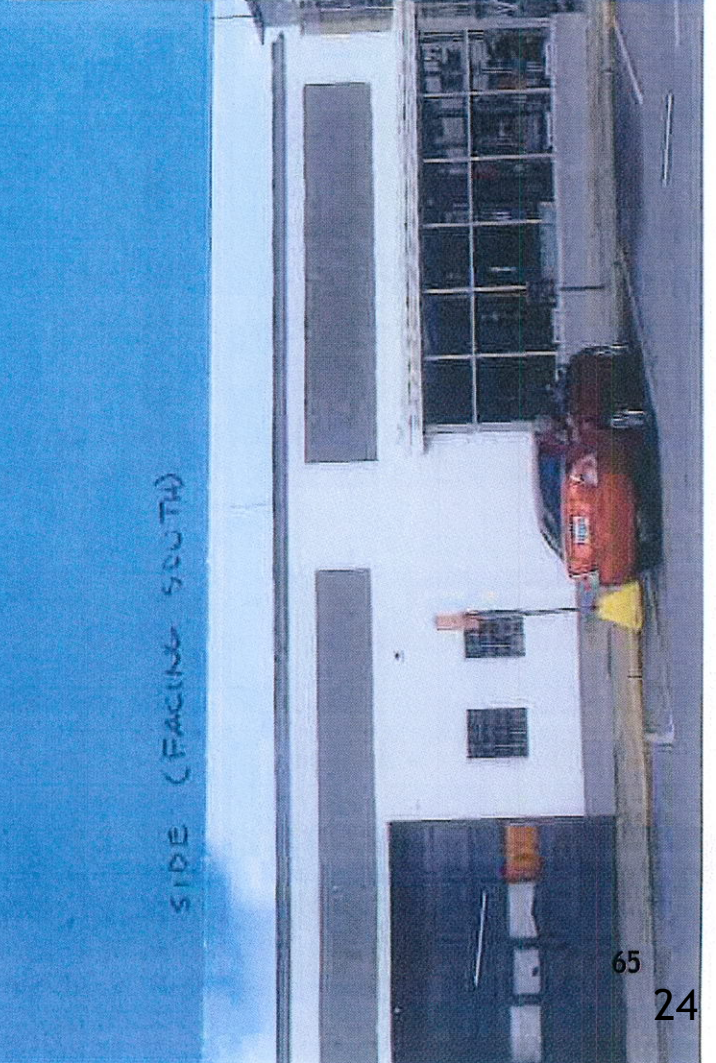
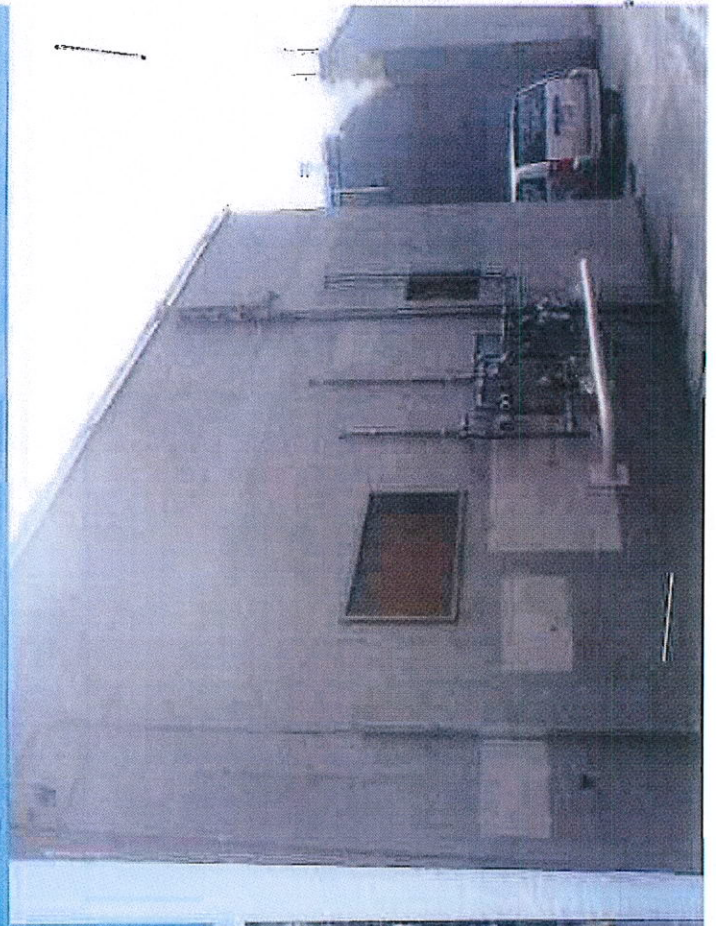
FRONT



FRONT (FACING EAST)

1630 WATER STREET

SIDE (FACING NORTH - LANE)



SIDE (FACING SOUTH)

REPORT TO COUNCIL



Date: July 12, 2016

RIM No. 0940-93

To: City Manager

From: Community Planning Department (TY)

Application: TUP16-0001 **Owner:** Western Global Enterprises Inc

Address: 1629 - 1649 KLO Road & 3350 Benvoulin Road **Applicant:** 0978221 BC Ltd. Better Earth Garden Centre (Krystal & Alex Luymes)

Subject: Temporary Use Permit Application

Existing OCP Designation: REP - Resource Protection Area

Existing Zone: A1 - Agriculture 1 (ALR)

1.0 Recommendation

THAT Council authorizes the issuance of Temporary Use Permit No. TUP16-0001 to allow a Non-Farm Use of agricultural land in the Agricultural Land Reserve as per ALC Resolution #67/2015 for Parcel A (Plan B1813) Of Lot 68, ODYD Plan 186, located at 1629 - 1649 KLO Road, Kelowna, BC, and Parcel A (DD146178F & PL B6796) of Block 58 District Lot 131 ODYD Plan 186, located at 3350 Benvoulin Road, Kelowna BC for a three (3) year period ending October 1, 2019 subject to the following condition:

- a) The use on the land be in accordance with Schedule "A" (Better Earth Garden Site Plan)
- b) The use on the land be in accordance with Schedule "B" (ALC File 54508, Resolution #67/2015)

AND FURTHER THAT any application to extend the permit must be approved by the Agricultural Land Commission and by Council prior to this permit expiring.

2.0 Purpose

To temporarily allow a Non-Farm Use on the subject property as per Agricultural Land Commission Resolution #67/2015.

3.0 Community Planning

Community Planning has worked with the applicant since 2014 to prepare an agricultural plan for a Non-Farm Use application (A15-0006) to the Agricultural Land Commission (ALC) in 2015. The purpose of the application was to bring the business Better Earth Garden Centre into compliance as the existing operation did not comply with the ALC Act or the City of Kelowna Bylaw No. 8000.

The non-compliance uses on the land included retail sales of non-farm products and the landscaping portion of the business operating on the land.

The ALC issued a resolution to allow the non-farm use as proposed in Schedule "A" under a Temporary Use Permit for a period of three (3) years. This TUP is to be granted to the "agent", Better Earth Garden Centre, and is non-transferable.

4.0 Proposal

4.1 Background

In 2012, the property had been farmed by Better Earth Products, who farmed the property in primarily corn and potatoes. Subsequently, the current owners, Better Earth Garden Centre, took over the lease and initiated a nursery and landscape supply centre. In addition, they sub-leased portions of the property to three other tenants, including other landscaping businesses and a soil screening operation (see attached submission).

Since 2014 the applicant has terminated two sub-leases of landscaping companies from the property and removed a significant amount of fill and debris, including wood and concrete waste from a previous tenant. In addition, a mobile home and a shed were removed from the property.

Approximately 2400 m² (0.6 acre) in area was cleared of debris and will be restored to alfalfa in the fall, and the tree and nursery shrub component of their business has increased. In addition, they have implemented a dust and weed control plan to address neighbours' concerns. The dust control plan includes:

- removal of dust producing activities at the center of the property (to be replaced with alfalfa);
- placement of concrete bins to contain soil products located near KLO Road; and
- posting of signs to slow traffic on site.

For weed control, a program of mowing the perimeter of the property to reduce weeds has been implemented.

In the spring of 2015, the applicants met with City staff to determine if their operation could comply completely within the ALC Act and Regulation. In terms of addressing the ALC Policy #2¹ - Farm Retail Sales in the ALR, the applicants determined that they required more area for non-farm product than was allowed under the Regulation. The policy restricts the area of non-farm retail product to 50% of 300 square metres (i.e. 150 square metres). The applicants were not able to fit their landscaping products into this area, and as such submitted a non-farm use application (A15-0006).

Note that all the above products would be brought in from off-site. No composting would be sold that is produced on site. The applicants produce a small amount of compost, of which 100% is used to amend their soil for alfalfa production.

4.2 Project Description

The application put forth to the ALC is detailed on the attached Schedule "A". The Non-Farm Use portion of the application is to permit non-farm retail sales of soil additives, mulch and landscape rock, in an area 700 m² in size. It is noted that these products are to be accessory to

¹ ALC, 2003. Activities Designated as Farm Use – Farm Retail Sales in the ALR.

http://www.alc.gov.bc.ca/alc/DownloadAsset?assetId=8CCC181D8D864EE1956A235F975B7C42&filename=policy_2_farm_retail_sales.pdf

the nursery business. The permitted area for non-farm retail sales is a maximum of 150 m² under the ALC Act.

The ALC panel will review the Garden Centre during the Spring of 2019 to determine whether it is prepared to support an extension of the TUP.

Under the *Local Government Act*, Section 492 - 497, A Temporary Use Permit may only be granted by Council for a period of up to three (3) years. One extension is permitted to be granted by Council for a maximum of up to three (3) years. After the end of the second extension period, the use is no longer permitted, no additional TUP may be granted for that use.

4.3 Site Context

The subject property is located in the South Pandosy / KLO Sector of the City and is within the Agricultural Land Reserve. The Future Land Use of the property is Resource Protection Area (REP). It is zoned A1 - Agriculture 1 (Maps 1 - 4, below) and is outside of the Permanent Growth Boundary.

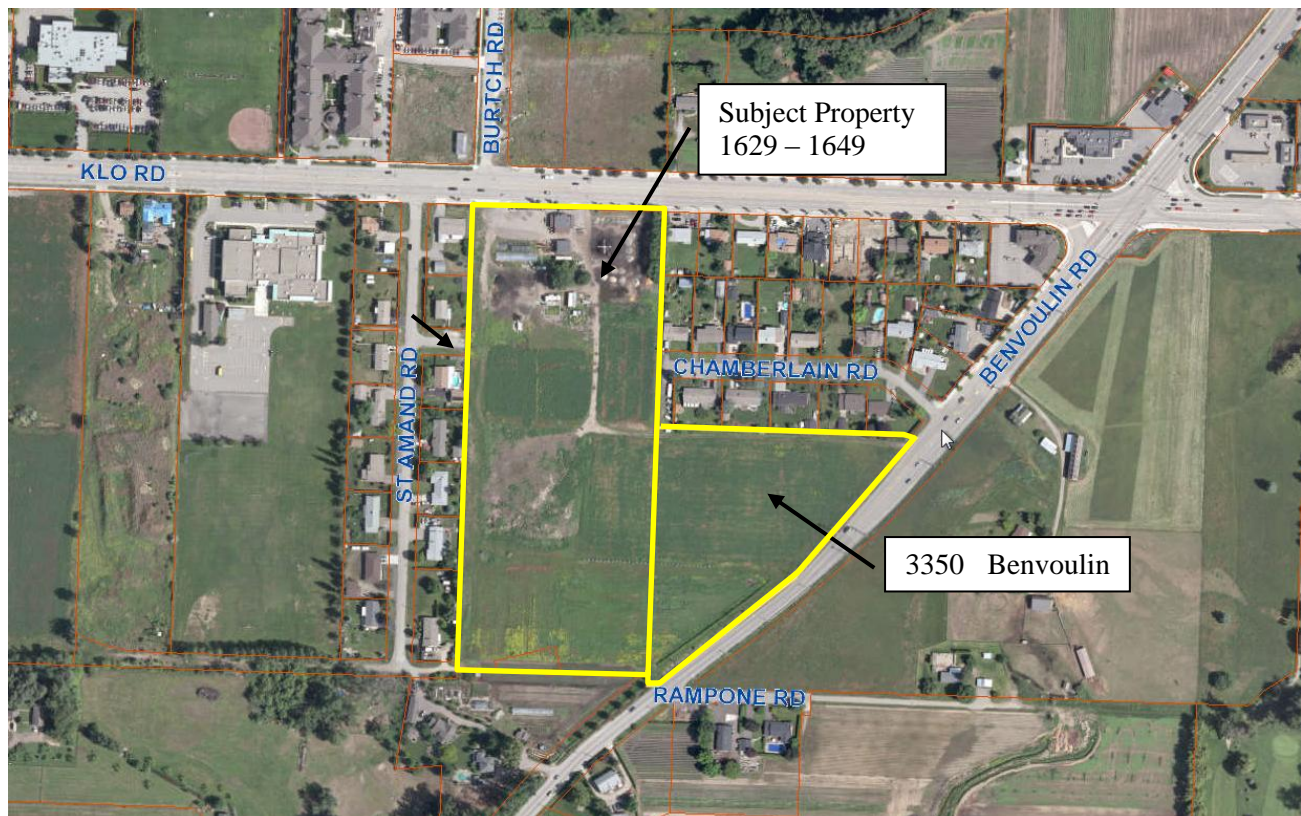
Note that the applicant leases two other properties that are contiguous to the subject property. These are 3350 Benvoulin Road and 3400 Benvoulin Road. These are also shown in the maps below.

Parcel Summary - 1629 - 1649 KLO Road:

Parcel Size: 5.03 ha (12.4 acres)

Elevation: 348.5 to 349.85 metres above sea level (masl)

Map 1 - Neighbourhood



Adjacent land uses are as follows:

Orientation	Zoning	ALR	Land Use
North	RU2 RR1	Yes	Vacant
East	A1	No Yes	Rural Residential Agriculture
South	A1	Yes	Agriculture Rural Residential
West	RU1	Yes	Urban Residential

5.0 Current Development Policies

5.1 Kelowna Official Community Plan (OCP)

Future Land Use²

With respect to lands outside the Permanent Growth Boundary, Chapter 4 of the OCP states:

- Lands outside the permanent growth boundary will not be supported for urban uses.

Farm Protection Development Permit Guidelines³

Farm Protection Development Permit Guidelines include:

- Protect farm land and farm operations;
- Minimize the impact of urban encroachment and land use conflicts on agricultural land;
- Minimize conflicts created by activities designated as farm use by ALC regulation and non-farm uses within agricultural areas.

The subject property has a future land use designation of Resource Protection Area and relevant policies are included below:

Objective 5.33 Protect and enhance local agriculture⁴.

Policy. 1 Protect Agricultural Land. Retain the agricultural land base by supporting the ALR and by protecting agricultural lands from development, except as otherwise noted in the City of Kelowna Agricultural Plan. Ensure that the primary use of agricultural land is agriculture, regardless of parcel size.

Policy .3 Urban Uses. Direct urban uses to lands within the urban portion of the Permanent Growth Boundary, in the interest of reducing development and speculative pressure on agricultural lands.

Policy .7 Non-farm Uses. Support non-farm use applications on agricultural lands only where approved by the ALC and where the proposed uses:

- are consistent with the Zoning Bylaw and OCP;
- provide significant benefits to local agriculture;
- can be accommodated using existing municipal infrastructure;
- minimize impacts on productive agricultural lands;
- will not preclude future use of the lands for agriculture;
- will not harm adjacent farm operations.

² City of Kelowna Official Community Plan, Chapter 4.7 (Future Land Use).

³ City of Kelowna Official Community Plan, Chapter 15.2 (Farm Protection DP Guidelines).

⁴ City of Kelowna 2030 Official Community Plan: Greening Our Future (2011), Development Process Chapter; p. 5.33.

Objective 5.34 Preserve productive agricultural land⁵.

5.2 City of Kelowna Agriculture Plan

ALR Application Criteria⁶

Exclusion, subdivision, or non-farm use of ALR lands will generally not be supported. General non-support for ALR applications is in the interest of protecting farmland through retention of larger parcels, protection of the land base from impacts of urban encroachment, reducing land speculation and the cost of entering the farm business, and encouraging increased farm capitalization.

5.3 Agricultural Land Commission Act (ALCA)

Purposes of the commission - Section 6 of the ALCA

The following are the purposes of the commission:

- (a) to preserve agricultural land;
- (b) to encourage farming on agricultural land in collaboration with other communities of interest;
- (c) to encourage local governments, first nations, the government and its agents to enable and accommodate farm use of agricultural land and uses compatible with agriculture in their plans, bylaws and policies.

Agricultural Land Reserve Use, Subdivision and Procedure Regulation - Farm Retail Sales

Section 2 (2) The following activities are designated as farm use for the purposes of the Act and may be regulated but must not be prohibited by any local government bylaw except a bylaw under section 917 of the Local Government Act:

- (a) farm retail sales if
 - (i) all of the farm product offered for sale is produced on the farm on which the retail sales are taking place, or
 - (ii) at least 50% of the retail sales area is limited to the sale of farm products produced on the farm on which the retail sales are taking place and the total area, both indoors and outdoors, used for the retail sales of all products does not exceed 300 m².

6.0 Technical Comments

6.1 Development Engineering Department

As there are no proposed changes to the access off of KLO Road, Development Engineering have no comments.

7.0 Application Chronology

Date of ALC Resolution:	February 24, 2016
Date of Application Received:	April 21, 2016
Date Public Consultation Completed:	June 8, 2016

⁵ City of Kelowna 2030 Official Community Plan: Greening Our Future (2011), Development Process Chapter; p. 5.34.

⁶ City of Kelowna Agriculture Plan (1998); p. 130.

Report prepared by:

Tracey Yuzik, Planner

Reviewed by: Todd Cashin, Subdivision, Suburban and Rural Planning Manager

Reviewed by: Ryan Smith, Community Planning Department Manager

Approved for Inclusion: Doug Gilchrist, Divisional Director, Community Planning & Real Estate

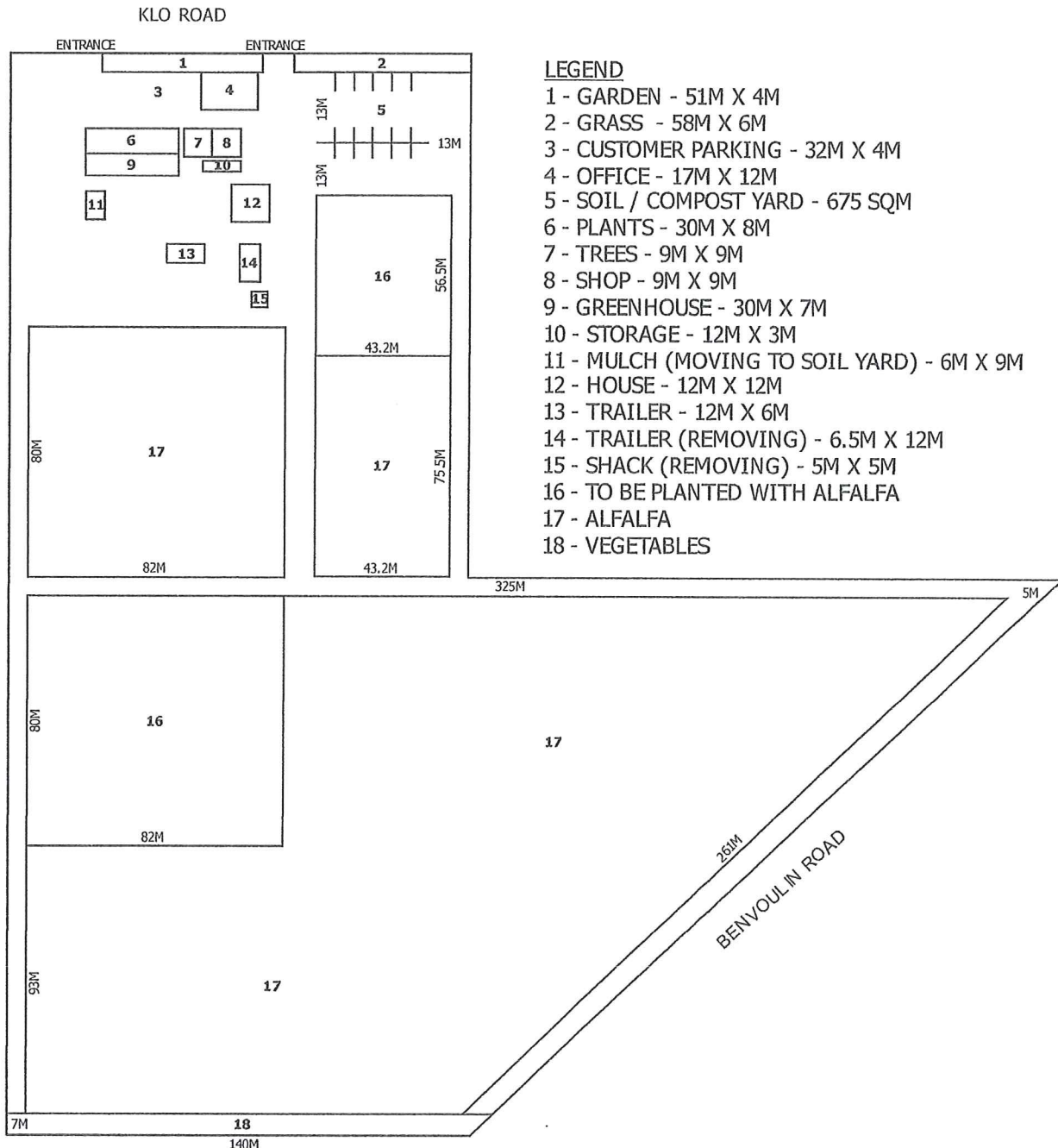
Attachments:

Schedule "A" - Agricultural & Non-Farm Use Site Plan

Schedule "B" - Agricultural Land Commission Resolution 67/2015

Site Plan 2015

BETTER EARTH GARDEN CENTRE SITE PLAN





Agricultural Land Commission
133-4940 Canada Way
Burnaby, British Columbia V5G 4K6
Tel: 604 660-7000
Fax: 604 660-7033
www.alc.gov.bc.ca

February 24, 2016

ALC File: 54508

Better Earth Garden Centre
1629 KLO Road
Kelowna, BC V1W 3P3

A15-0006

Attention: Krystal Luymes and Alex Luymes,

Re: Application Non-farm Use in the Agricultural Land Reserve (ALR)

Please find attached the Reasons for Decision of the Agricultural Land Commission (Resolution # 67/2015) as it relates to the above noted application. As agent, it is your responsibility to notify your client(s) accordingly. A sketch plan depicting the decision has been attached.

Your attention is drawn to s. 33(1) of the *Agricultural Land Commission Act* which provides a person affected the opportunity to submit a request for reconsideration.

33(1) On the written request of a person affected or on the commission's own initiative, the commission may reconsider a decision of the commission under this Act and may confirm, reverse or vary it if the commission determines that:

- (a) evidence not available at the time of the original decision has become available,
- (b) all or part of the original decision was based on evidence that was in error or was false.

Please note that pursuant to s. 33.1 of the *Agricultural Land Commission Act*, the Chair may direct the executive committee to reconsider this panel decision if, within 60 days from the date of this decision, he considers that the decision "may not fulfill the purposes of the commission as set out in section 6 or does not adequately take into account the considerations set out in section 4.3". I can advise you that in this case, the Chair has already reviewed the decision and has instructed me to communicate to you that he does not intend to exercise that authority in this case.

Further correspondence with respect to this application is to be directed to Ron Wallace at (Ron.Wallace@gov.bc.ca).

Yours truly,

PROVINCIAL AGRICULTURAL LAND COMMISSION

Per:


Colin J. Fry, Chief Tribunal Officer

Page 2 of 2

Enclosures: Reasons for Decision (Resolution #67/2015)
Sketch plan

cc: City of Kelowna (File # A15-0006)

54508d1

Subject Property

700 m² landscape supply area – soil additives, rock mulch, topsoil products

Alfalfa


Area to be replanted in alfalfa


Alfalfa

Alfalfa

Alfalfa and Vegetables

Provincial Agricultural Land Commission
Application #54508
Resolution #67/2016

 Subject property

 ±700 m² area approved for landscape supply in the ALR



AGRICULTURAL LAND COMMISSION FILE 54508

REASONS FOR DECISION OF THE OKANAGAN PANEL

Application submitted pursuant to s. 20(3) of the *Agricultural Land Commission Act*

Applicant:

**Western Global
Enterprises Inc.
(the "Applicant")**

Agent:

**Better Earth Garden Centre
(the "Agent")**

Application before the Okanagan Regional Panel:

**Gerry Zimmermann, Panel Chair
Jim Johnson
Greg Norton**



THE APPLICATION

[1] The legal description of the property involved in the application is:

a. Parcel Identifier: 012-637-874

Parcel A (Plan B1813) of Lot 68, District Lot 131, Osoyoos Division Yale District, Plan 186

b. Parcel Identifier: 012-637-882

Parcel A (DD 146178F and Plan B6796) of Block 58, District Lot 131, Osoyoos Division Yale District, Plan 186

(the "Properties")

[2] The Properties are 7.2 ha in area.

[3] The Properties have the civic address 1629 – 1649 KLO Road, Kelowna, BC.

[4] The Properties are located within a designated agricultural land reserve ("ALR") as defined in s. 1 of the *Agricultural Land Commission Act* (the "ALCA").

[5] The Properties are located within Zone 1 as defined in s. 4.2 of the ALCA.

[6] Pursuant to s. 20(3) of the ALCA, the Applicants are applying to use a portion of the Properties to operate as a Garden Centre/Nursery. The proposal is to use 700 m² of the 7.2 ha farm to sell landscaping products to include: soil products, soil additives, mulches and landscape rock. It is noted that all of these products would be brought in from off-site. No composting would be sold that is produced on site. (the "Proposal").

[7] On January 28, 2016, the Chair of the Agricultural Land Commission (the "Commission") referred the Application to the Okanagan Regional Panel (the "Panel").

RELEVANT STATUTORY PROVISIONS



[8] The Application was made pursuant to s. 20(3) of the ALCA:

20(3) An owner of agricultural land or a person with a right of entry to agricultural land granted by any of the following may apply to the commission for permission for a non-farm use of agricultural land.

[9] The Panel considered the Application within the context of s. 6 of the ALCA:

6 The following are the purposes of the commission:

- (a) to preserve agricultural land;
- (b) to encourage farming on agricultural land in collaboration with other communities of interest; and
- (c) to encourage local governments, first nations, the government and its agents to enable and accommodate farm use of agricultural land and uses compatible with agriculture in their plans, bylaws and policies.

EVIDENTIARY RECORD BEFORE THE PANEL

[10] The Panel considered the following evidence:

1. The Application
2. Local government documents
3. Previous application history and compliance
4. Agricultural capability map, ALR context map, and satellite imagery

All documentation noted above was disclosed to the Agent in advance of this decision.

[11] The City of Kelowna Council has resolved to forward the application to the ALC with a recommendation of support.



The Agricultural Advisory Committee recommended that Council support the proposed non-farm use for a portion of the property to operate as a landscape business.

[12] The Panel reviewed a previous application and a compliance and enforcement issue involving the Properties:

Application ID: 5011
Legacy File: 30448
(Carncross, 1996)

To exclude 7.5 ha from the ALR in order to develop a Christian High School for 300-500 students. The organization needed to expand its operation. The Commission was not convinced that no non-ALR sites could be used for a school site. While a non-ALR location might not be the most desirable from the perspective of the Society, such a site should be given priority over an ALR location. The application, by Resolution #387/96, was refused.

Issue ID: 50118
(City of Kelowna, 2014)

On July 15, 2014, ALC's Compliance and Enforcement staff issued a letter to the owners of the Properties to alert the tenants to cease operations as a landscaping business and soil screening operation, as the non-farm use was unauthorized by the ALC.

The proponents of Better Earth Garden Centre (the Agent) met with the City of Kelowna's Community Planning staff in the summer of 2014 to better understand the requirements of the *ALC Act and Regulation*, and to establish a plan to undertake compliance. With this understanding, the Agent terminated the leases of the other tenants, and began to remove berms and debris that were brought in as part of these operations. The Agent removed 1944 m³ of material left on the Properties by previous tenants. They are currently rehabilitating the land to return it growing alfalfa.

On March 15, 2015, the ALC rescinded the stop work order due to the efforts of Better Earth Garden Centre to bring the Properties into compliance.

SITE VISIT

[13] On February 1, 2016, the Panel conducted a walk-around and meeting site visit in accordance with the *Policy Regarding Site Visits in Applications* (the "Site Visit").

[14] A site visit report was prepared in accordance with the *Policy Regarding Site Visits in Applications* and was provided to the applicant on February 11, 2016 (the "Site Visit Report"). The Agents, Krystal and Alex Luymes, reviewed the Site Visit Report and made the comment that they would like to turn Better Earth Garden Centre into more a Garden Centre/Nursery and would like the report to reflect that in the language used, as opposed to "Landscape Centre" or "Landscaping Business."

FINDINGS

[15] In assessing agricultural capability, the Panel referred in part to agricultural capability mapping and ratings. The ratings are identified using the BC Land Inventory (BCLI), 'Land Capability Classification for Agriculture in B.C.' system. The improved agricultural capability ratings identified on BCLI map sheet 82E.083 for the mapping units encompassing the Property are Class 2 and Class 3, more specifically (7:2 – 3:3WF).

Class 2 - land is capable of producing a wide range of crops. Minor restrictions of soil or climate may reduce capability but pose no major difficulties in management.

Class 3 - land is capable of producing a fairly wide range of crops under good management practices. Soil and/or climate limitations are somewhat restrictive.

The limiting subclasses associated with this parcel of land are W (excess water), and F (low fertility).

[16] The Panel reviewed the BCLI ratings and concurs that the Properties are comprised of prime agricultural land. It was noted the majority of the Properties are used to grow alfalfa

including the area previously used as a fill site by the previous tenants. The southern portions of the Properties are in the process of being planted with ornamental shrubs and trees as part of the proponents' proposed Garden Centre/Nursery business. Most of the structures are located on the north end of the Properties adjacent to KLO Road, including an office, greenhouse, house and trailer. The proposed 700 m² area to be used for selling landscaping products is located adjacent to KLO Road.

[17] The Panel acknowledges the efforts of Better Earth Garden Centre (the Agent) in working with both the City of Kelowna staff and the ALC's Compliance and Enforcement staff towards both rehabilitating and bringing the Properties into compliance with existing zoning and the *ALC Act*. However, the Panel is concerned about the potential for the site to become associated with unauthorized non-farm uses as has occurred previously. Therefore, the Panel is only prepared to support the Proposal as outlined, for a temporary three year period through the issuance of a Temporary Use Permit (TUP) with the City of Kelowna.

The Panel would be prepared to review the Garden Centre/Nursery operation during the spring or summer of 2019 (prior to the termination of the TUP) to determine whether it is prepared to support an extension of the Proposal.

DECISION

[18] For the reasons given above, the Panel allowed the Proposal (for a temporary three year period) to use ±700 m² of the 7.2 ha farm to sell landscaping products to include: soil products, soil additives, mulches and landscape rock as a complement to the nursery business.

[19] The approved Proposal is subject to the following conditions:

- a. the issuance of a Temporary Use Permit (TUP) (with the City of Kelowna) for a period of three years until the fall of 2019; and
- b. Approval for non-farm use is granted for the sole benefit of the Agent and is non-transferable.



[20] This decision does not relieve the owner or occupier of the responsibility to comply with applicable Acts, regulations, bylaws of the local government, and decisions and orders of any person or body having jurisdiction over the land under an enactment.

[21] Panel Chair **Gerry Zimmermann**, concurs with the decision.

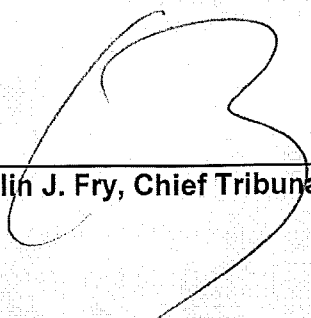
Commissioner **Jim Johnson**, concurs with the decision.

Commissioner **Greg Norton**, concurs with the decision.

[22] Decision recorded as Resolution #67/2015.

A decision of the Panel is a decision of the Commission pursuant to s. 11.1(5) of the Agricultural Land Commission Act.

Upon instruction of the Panel, I have been authorized to release the Reasons for Decision by Resolution #67/2015. The decision is effective upon release.



Colin J. Fry, Chief Tribunal Officer

February 24, 2016

Date Released

TEMPORARY USE PERMIT



APPROVED ISSUANCE OF TEMPORARY USE PERMIT NO. TUP16-0001

Issued To: Western Global Enterprises Inc
Site Address: 1629 - 1649 KLO Road & 3350 Benvoulin Road
Legal Description: Parcel A (Plan B1813) Of Lot 68, ODYD Plan 186 and Parcel A (DD146178F & PL B6796) of Block 58 District Lot 131 ODYD Plan 186
Zoning Classification: REP - Resource Protection Area
Development Permit Area: A1 - Agriculture 1 (ALR)

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.

The issuance of a Permit limits the Permit Holder to be in strict compliance with regulations of the Zoning Bylaw and all other Bylaws unless specific Variances have been authorized by the Permit. No implied Variances from bylaw provisions shall be granted by virtue of drawing notations that are inconsistent with bylaw provisions and that may not have been identified as required Variances by the applicant or Municipal staff.

1. TERMS AND CONDITIONS

THAT Development Permit No. TUP16-0001 for Parcel A (Plan B1813) Of Lot 68, ODYD Plan 186, located at 1629 - 1649 KLO Road, Kelowna, BC, and Parcel A (DD146178F & PL B6796) of Block 58 District Lot 131 ODYD Plan 186, located at 3350 Benvoulin Road, Kelowna BC to allow a Non-Farm Use on the subject property for a three (3) year period ending on October 1, 2019, subject to the following:

- a) The use on the land be in accordance with Schedule "A" (Better Earth Garden Site Plan)
- b) The use on the land be in accordance with Schedule "B" (ALC File 54508, Resolution #67/2015)

AND FURTHER THAT any application to extend the permit must be approved by the Agricultural Land Commission and by Council prior to this permit expiring.

2. PERFORMANCE SECURITY

None required.

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 that shall form a part hereof.

If the Permit Holder does not commence the development permitted by this Permit within two years of the date of this Permit, this Permit shall lapse.

This Permit IS NOT a Building Permit.

4. APPLICANT'S AGREEMENT

I hereby declare that all of 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 and/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 Divisional Director of Community Planning & Real Estate.

Should there be any change in ownership or legal description of the property, I undertake to notify the Community Planning 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

Issued and approved by Council on the _____ day of _____, 2016.

Ryan Smith, Community Planning Department Manager
Community Planning & Real Estate

Date

**The PERMIT HOLDER is the CURRENT LAND OWNER.
Security shall be returned to the PERMIT HOLDER.**

CITY OF KELOWNA
BYLAW NO. 11184
Z15-0025 - Christian Lee Bond
565 Coronation Avenue

A bylaw to amend the "City of Kelowna Zoning Bylaw No. 8000".

The Municipal Council of the City of Kelowna, in open meeting assembled, enacts as follows:

1. THAT City of Kelowna Zoning Bylaw No. 8000 be amended by changing the zoning classification of Lot 36, District Lot 139, ODYD, Plan 1303, located on Coronation Avenue, Kelowna, B.C., from the RU2 - Medium Lot Housing zone to the RU2c - Medium Lot Housing with Carriage House zone.
2. This bylaw shall come into full force and effect and is binding on all persons as and from the date of adoption.

Read a first time by the Municipal Council this 25th day of January, 2015.

Considered at a Public Hearing on the 16th day of February, 2016.

Read a second and third time by the Municipal Council this 16th day of February, 2016.

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

REPORT TO COUNCIL



Date: July 12, 2016

RIM No. 0940-50

To: City Manager

From: Community Planning Department (LK)

Application: DP15-0112 & DVP15-0113 **Owner:** (Christian) Lee Bond

Address: 565 Coronation Avenue **Applicant:** (Christian) Lee Bond

Subject: Development Permit & Development Variance Permit

Existing OCP Designation: MRM - Multiple Unit Residential (Medium Density)

Existing Zone: RU2 - Medium Lot Housing

Proposed Zone: RU2c - Medium Lot Housing with Carriage House

1.0 Recommendation

THAT final adoption of Rezoning Bylaw No. 11184 be considered by Council;

AND THAT Council authorizes the issuance of of Development Permit No. DP15-0112 for Lot 36 District Lot 139 ODYD Plan 1303, located at 565 Coronation Avenue, Kelowna, BC subject to the following:

1. The dimensions and siting of the building to be constructed on the land be in accordance with Schedule 'A',
2. The exterior design and finish of the building to be constructed on the land, be in accordance with Schedule 'B';

AND THAT Council authorizes the issuance of Development Variance Permit No. DVP15-0113 for Lot 36 District Lot 139 ODYD Plan 1303, located at 565 Coronation Avenue, Kelowna, BC;

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

Section 9.5b.14: Carriage House Regulations

To vary the required minimum side yard from 2.0 m permitted to 1.46 m and 1.81 m proposed.

Section 13.2.6(d): RU2 - Medium Lot Housing Development Regulations

To vary the required minimum side yard from 1.5 m permitted to 1.41 m proposed.

AND THAT Council's consideration of this Development Permit and Development Variance Permit be considered subsequent to the outstanding conditions of approval as set out in Schedule 'A' attached to the Report from Community Planning Department dated July 3, 2015;

AND THAT the applicant be required to complete the above noted conditions of Council's approval of the Development Permit and Development Variance Permit in order for the permits to be issued;

AND THAT the applicant be required to register on the subject property a section 219 no occupancy covenant to not allow the dwellings to be habitable until all building permit life safety requirements have been completed;

AND FURTHER THAT this Development Permit and Development Variance Permit is valid for two (2) years from the date of Council approval, with no opportunity to extend.

2.0 Purpose

To consider the form and character of a carriage house on the subject parcel and variances to the minimum side setbacks required for single family dwellings and carriage houses.

3.0 Community Planning

Community Planning staff supports the requested variances to allow the conversion of an existing Primary Dwelling to a Carriage House. This would allow for the existing primary dwelling at the rear of the parcel to become the secondary use of Carriage House. The existing accessory building at the front of the parcel would be converted to the primary Single Dwelling Housing use under the RU2c zone.

The parcel is located within the Permanent Growth Boundary. Policies within the Official Community Plan (OCP) support sensitive integration into existing neighbourhoods where services are already in place and densification can easily be accommodated.

4.0 Proposal

4.1 Background

The subject parcel was created in 1913. The principal dwelling was constructed on the parcel in 1948 and a building permit was issued in 1954 to allow for an addition to the east side of the dwelling. In 1986, a second building permit was issued for the construction of an accessory building to be located at the front of the parcel. At that time, accessory building location was not restricted to the rear of the parcel.

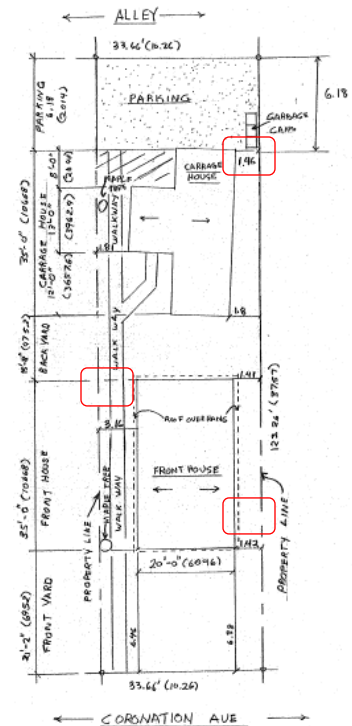
At some point after the construction was completed, the accessory building was converted to an illegal 'secondary suite' with enforcement action ensuing. In 2000, the applicant applied to rezone the parcel to RU2s - Medium Lot Housing with Secondary Suite zone to allow for the legalization of the 'secondary suite'. Council unanimously voted against the application (Z00-1005).

4.2 Project Description

The subject parcel is located within the Permanent Growth Boundary on the south side of Coronation Avenue, between St. Paul and Richter Street within the City Center Urban Center. If approved, the accessory building at the front of the parcel will be converted to become the primary dwelling. A Section 219 No Occupancy Covenant has been registered on title. This covenant provides Planning and Bylaw Enforcement with the assurance that the building cannot be occupied as a dwelling until all life safety and Building Code requirements of a habitable building are completed. Once approved, the covenant may be removed from title and the dwelling occupied.

The original proposal indicated a bedroom in the upper loft area. As this space did not provide sufficient floor to ceiling height to meet building code requirements, an 18.58 m² bedroom addition is proposed for the rear of the building. The proposed addition aligns the new exterior walls with the existing building exterior walls on both sides. This triggers a side setback variance from 2.0 m required to 1.41 m proposed. As there are no windows along the side façade of the addition, the impact to the adjacent parcel is minimal as this matches the existing building setback.

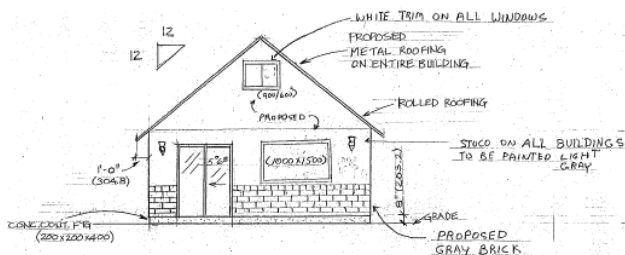
The second variance is to reduce both side setbacks of the Carriage House from 2.0 m required to 1.46 m provided on the west side and 1.81 m on the east side. The subject building was constructed on the parcel in 1948 and therefore, does not meet the current side setback requirements. The 2.0 m side setback requirement is the same for a Carriage House as it is for the one storey portion of a primary dwelling. As such, the non-conformity of the building will be reduced on the west side. This is achieved by the removal of a portion of the rear of the existing building to accommodate parking stalls which will be accessed from the rear lane. The current side setback is 1.35 m, and will increase to 1.46 m proposed.



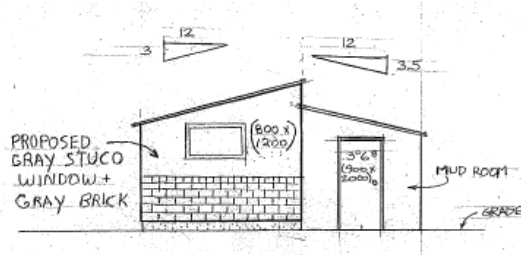
The remainder of the proposal is similar to the above referenced Z00-1005 rezoning application. Revisions have been provided to upgrade the facades of the existing buildings and to provide the three required parking stalls on the subject parcel. This is accomplished by a portion of the existing rear building being removed to provide adequate room for the parking stalls at the rear of the parcel.

The upgrades to the building exterior will improve the existing streetscape, lanescape and overall neglect of the parcel. Through the current Official Community Plan Guidelines, Zoning Bylaw and Building Permits building code requirements; Staff views this as an opportunity to address concerns which have existed for many years.

The Uses on the parcel will be amended. The primary dwelling is currently at the rear of the parcel. This use will now be for the building facing Coronation Avenue, which was originally constructed as an Accessory Building. The primary dwelling will have the use of Carriage House, as it is located off the rear lane.



Primary Dwelling - Front Elevation



Carriage House - Elevation from Lane

4.3 Site Context

Adjacent land uses are as follows:

Orientation	Zoning	Land Use
North	RU2 - Medium Lot Housing	Single Detached Dwelling

East	RU2 - Medium Lot Housing	Single Detached Dwelling
South	RU2 - Medium Lot Housing	Single Detached Dwelling
West	RU2 - Medium Lot Housing	Single Detached Dwelling

Subject Property Map: 565 Coronation Avenue



4.4 Zoning Analysis Table

Zoning Analysis Table		
CRITERIA	RU2c ZONE REQUIREMENTS	PROPOSAL
Existing Lot/Subdivision Regulations		
Minimum Lot Area	400 m ²	380.71 m ²
Minimum Lot Width	13 m	10.13 m
Minimum Lot Depth	30 m	37.57 m
Development Regulations		
Maximum Site Coverage (buildings)	40%	22.38%
Maximum Site Coverage (buildings, driveways and parking)	50%	39.04%
Maximum Height	9.5 m	4.87 m
Minimum Front Yard	4.5 m	6.38 m
Minimum Side Yard (east)	2.3 m	2.96 m
Minimum Side Yard (west)	2.3 m	1.41 m ●
Minimum Rear Yard	7.5 m	23.57 m
Carriage House Regulations		
Max. Height	4.8 m	3.35 m
Min. Side Yard (east)	2.0 m	1.81 m ●
Min. Side Yard (west)	2.0 m	1.46 m ●
Min. Rear Yard	0.9 m	6.18 m

Height (carriage house shall not be higher than existing primary dwelling unit)	1½ storey primary dwelling	1 storey carriage house
Other Regulations		
Minimum Parking Requirements	3 stalls	3 stalls
Minimum Private Open Space	60 m ²	60 m ²
<p>● Indicates a requested variance to the side setback of the single detached house.</p> <p>● Indicates a requested variance to the side setback of the carriage house.</p>		

5.0 Current Development Policies

5.1 Kelowna Official Community Plan (OCP)

Chapter 5: Development Process

Compact Urban Form.¹ Develop a compact urban form that maximizes the use of existing infrastructure and contributes to energy efficient settlement patterns. This will be done by increasing densities (approximately 75 - 100 people and/or jobs located within a 400 metre walking distance of transit stops is required to support the level of transit service) through development, conversion, and re-development within Urban Centres (see Map 5.3) in particular and existing areas as per the provisions of the Generalized Future Land Use Map 4.1.

Sensitive Infill² Encourage new development or redevelopment in existing residential areas to be sensitive to or reflect the character of the neighborhood with respect to building design, height and siting.

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.
- Please indicate how the requirements of Radon mitigation and NAFS are being applied to this structure at time of permit application.

6.2 Development Engineering Department

- See attachment 'A'

6.3 Bylaw Services

- Numerous bylaw issues relating to this property; presently a court file summons for 3-cts, Unsightly Premises Bylaw, Zoning Bylaw and Fire and Life Safety Bylaw.

6.4 Fire Department

- Requirements of section 9.10.19 Smoke Alarms of the BCBC 2012 are to be met. If a fence is ever constructed between the dwellings a gate with a clear width of 1100mm is required. Any gate is to open without special knowledge. Additional visible address is required from Coronation. Emergency access is NOT from the lane to the south but form Coronation Ave.

¹ City of Kelowna Official Community Plan, Policy 5.2.3 (Development Process Chapter).

² City of Kelowna Official Community Plan, Policy 5.22.6 (Development Process Chapter).

7.0 Application Chronology

Date of Application Received:	May 21, 2015
Date Public Consultation Completed:	July 15, 2015
Date of latest Drawing Revisions Received:	November 16, 2015
Date of Rezoning Public Hearing	February 16, 2016

Report prepared by:

Lydia Korolchuk, Planner

Reviewed by: ☐ Terry Barton, Urban Planning Manager

Approved for Inclusion: ☐ Ryan Smith, Community Planning Department Manager

Attachments:

Schedule A: Site Plan & Landscape Plan
Schedule A: Floor Plans
Schedule B: Conceptual Elevations
Attachment 'A': Development Engineering Memorandum
Attachment 'B': Section 219 No Occupancy Covenant

CITY OF KELOWNA

MEMORANDUM

Date: July 3, 2015
File No.: Z15-0025

To: Community Planning (PM)

From: Development Engineering Manager(SM)

Subject: 565 Coronation Ave Carriage House

Development Engineering has the following comments and requirements associated with this application. The utility upgrading requirements/fees outlined in this report will be a requirement of this development.

1. Domestic Water and Fire Protection

The existing lot is serviced with a small diameter (13-mm) copper water service, which is substandard. Adequate metered water service must be provided to meet current by-law requirements. **The disconnection of the existing small diameter water service and the tie-in of a larger new service can be provided by City forces at the developer's expense. The applicant will be required to sign a Third Party Work Order for the cost of the water service upgrades.** For estimate inquiry's please contact Sergio Sartori, by email ssartori@kelowna.ca or phone, 250-469-8589.

2. Sanitary Sewer

Our records indicate that this property is currently serviced with a 100mm-diameter sanitary sewer service. An inspection chamber (IC) complete with brooks box should be installed on the service at the owner's cost. Service upgrades can be provided by the City at the applicant's cost. **The applicant will be required to sign a Third Party Work Order for the cost of the service upgrade.** For estimate inquiry's please contact Sergio Sartori, by email ssartori@kelowna.ca or phone, 250-469-8589.

3. Development Permit and Site Related Issues

Direct the roof drains into on-site rock pits.

Access to this site is permitted from the lane only.

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.

Steve Muenz, P. Eng.
Development Engineering Manager

SS

CITY OF KELOWNA
MEMORANDUM

Date: July 3, 2015
File No.: DP15-0112
To: Community Planning (PM)
From: Development Engineering Manager (SM)
Subject: 565 Coronation Ave

Development Engineering comments and requirements regarding this development permit application are as follows:

All the offsite infrastructure and services upgrades are addressed in the Rezoning Engineering Report under file Z15-0025.

Steve Muenz, P. Eng.
Development Engineering Manager

SS

CITY OF KELOWNA
MEMORANDUM

Date: July 3, 2015
File No.: DVP15-0113
To: Community Planning (PM)
From: Development Engineering Manager (SM)
Subject: 565 Coronation Ave

Development Engineering comments and requirements regarding this development permit application are as follows:

This development variance permit application to vary the side yard setback does not compromise any municipal services.

The parking stall variance does put pressure on the on street parking which is already difficult in the inner city communities.

Steve Muenz, P. Eng.
Development Engineering Manager

SS

LAND TITLE ACT
FORM C (Section 233) CHARGE
GENERAL INSTRUMENT - PART 1 Province of British Columbia

1460672754 PAGE 1 OF 7 PAGES

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.

1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

Benson Law LLP

Barristers and Solicitors

270 Highway 33 W

Kelowna

BC V1X 1X7

Phone: 250-491-0206

File Ref. No. JMB/53594/sp

LTO Client No. 11951

Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
 [PID] [LEGAL DESCRIPTION]

011-653-591

LOT 36 DISTRICT LOT 139 OSOYOOS DIVISION YALE DISTRICT PLAN 1303

STC? YES ☐

3. NATURE OF INTEREST

Covenant

CHARGE NO.

ADDITIONAL INFORMATION

4. TERMS: Part 2 of this instrument consists of (select one only)

(a) ☐ Filed Standard Charge Terms D.F. No.

(b) ☒ Express Charge Terms Annexed as Part 2

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):

CHRISTIAN LEE BOND

6. TRANSFEREE(S): (including postal address(es) and postal code(s))

CITY OF KELOWNA

1435 WATER STREET

KELOWNA

V1Y 1J4

BRITISH COLUMBIA

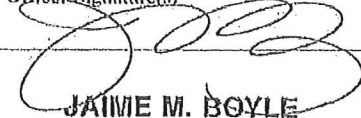
CANADA

7. ADDITIONAL OR MODIFIED TERMS:

N/A

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)



JAIME M. BOYLE
 Barrister & Solicitor
 Benson Law LLP
 270 Highway 33 W
 Kelowna, B.C. V1X 1X7

Execution Date

Y	M	D
16	04	22

Transferor(s) Signature(s)



CHRISTIAN LEE BOND

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

LAND TITLE ACT
FORM D

EXECUTIONS CONTINUED

PAGE 2 of 7 PAGES

Officer Signature(s)



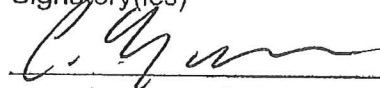
CAROL-ANN MARY MARQUARDT
A COMMISSIONER FOR TAKING
AFFIDAVITS FOR BRITISH COLUMBIA
1435 WATER STREET, KELOWNA, BC V1Y 1J4
Order No. 2014-0917
Expiry Date: 2017-08-31

Execution Date

Y	M	D
16	04	28

Transferor / Borrower / Party Signature(s)

City of Kelowna by its Authorized Signatory(ies)



Colin Basran, MAYOR

Stephen Fleming,
City Clerk

(as to all signatures)

16	04	25
----	----	----

Ryan Smith
Subdivision Approving Officer

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

TERMS OF INSTRUMENT – PART 2

SECTION 219 COVENANT

THIS AGREEMENT dated for reference April 22, 2016 is

BETWEEN:

CHRISTIAN LEE BOND, Electrician
565 Coronation Avenue
Kelowna, BC V1Y 5Z9

(the "Owner")

AND:

CITY OF KELOWNA
1435 Water Street
Kelowna, BC V1Y 1J4

(the "City")

GIVEN THAT:

- A. The Owner is the registered owner in fee simple of the lands and improvements at 565 Coronation Avenue, Kelowna, BC V1Y 5Z9, which land is legally described as:

PID: 011-653-591
LOT 36 DISTRICT LOT 139 OSOYOOS DIVISION YALE DISTRICT PLAN 1303

(the "Land")
- B. Section 219 of the *Land Title Act* permits the registration of a covenant of a positive or negative nature in favour of the City in respect of the use of land or building or construction on land.
- C. The Owner has made application to the City to rezone the Land to RU2c to allow the Owner to construct and/or modify the existing building on the Land fronting the street and to allow the modified building to be used as a single family dwelling.
- D. The Owner is unable to secure financing for the proposed construction/modification unless the City adopts a bylaw rezoning the Land to RU2c.
- E. The City considers it would not be in the public interest to rezone the Land to RU2c, except on condition that the Owner enter into this Agreement.

THIS AGREEMENT IS EVIDENCE that in consideration of \$1.00 paid by the City to the Owner (the receipt of which is acknowledged by the Owner), the Owner covenants and agrees with the City, in accordance with section 219 of the *Land Title Act*, as follows:

1. As soon as practicable after the adoption by the Council of the City of a bylaw rezoning the Land to RU2c, and in any event no later than 30 days after the date of adoption of the rezoning bylaw, the Owner must submit a complete application for a building permit to the City, together with all required fees and charges, for the new or modified building on the Land intended to be used in conformance with the RU2c zoning.

Owner to Diligently Prosecute Construction

2. Forthwith upon the issuance of the building permit and any other associated permits required to enable the construction, (collectively the "Building Permit") contemplated by the application referred to in section 1, the Owner must diligently and without delay undertake the construction authorized by the building permit and pursue it continuously until an occupancy permit for the building has been issued by the City.

No Use of Occupancy Without Completion by Specified Date

3. The Land and any buildings thereon may not be used or occupied unless and until an occupancy permit has been issued by the City for the building and construction specified in the Building Permit. The occupancy permit must be obtained by the Owner no later than 240 days after the issuance of the Building Permit.

Discharge of Covenant Upon Completion

4. The City agrees to execute the release of this Agreement, at the Owners expense, from the title to the Land upon the Owner complying with sections 1 to 3 of this Agreement.

Runs with the Land

5. Every obligation and covenant of the Owner in this Agreement constitutes both a contractual obligation and a covenant granted under section 219 of the *Land Title Act* in respect of the Land. This Agreement burdens and runs with, and binds the successors in title to, the Land and each and every part into which the Land may be subdivided or consolidated by any means.

Compliance with Laws

6. The Owner must, in performing its obligations under this Agreement, at all times comply with all enactments applicable to the Land or the Building, including City bylaws, the *Community Charter* and the *Local Government Act* and must obtain all permits, licences and authorizations required by law to enable the Owner to perform any work contemplated by this Agreement and any other obligations under this Agreement, including those required by City bylaws.

Owner's Expense

7. The Owner will perform all of its obligations under this Agreement at its own expense.

Specific Relief

8. Because of the public interest in ensuring that all of the matters described in this Agreement, and the provisions of all applicable laws, are complied with, the public interest strongly favours the award of a prohibitory or mandatory injunction, or an order for specific performance or other specific relief, by the British Columbia Supreme Court at the instance of the City, in the event of an actual or threatened breach of this Agreement.

No Effect on Powers

9. Except as expressly provided under the *Community Charter or Local Government Act*, this Agreement does not:
 - a. affect or limit the discretion, rights or powers of the City under any enactment;
 - b. affect or limit any enactment applying to the Land; or
 - c. relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Land.

Discretion

10. Wherever in this Agreement the approval of the City is required, some act or thing is to be done to the City's satisfaction, the City is entitled to form an opinion, or the City is given a sole discretion:
 - a. the relevant provision is not to be considered fulfilled or waived unless the approval, opinion or expression of satisfaction is in writing signed by the City's Urban Planning Manager (the "City Representative");
 - b. the approval, opinion or satisfaction is in the discretion of the City Representative acting reasonably in accordance with municipal engineering practice; and
 - c. any discretion of the City is deemed to be the sole, absolute and unfettered discretion of the City.

No Public Law Duty

11. Where the City is required or permitted by this Agreement to form an opinion, exercise its discretion, express satisfaction, make a determination or give its consent, the City is under no public law duty of fairness or natural justice in that regard and the City may do any of those things in the same manner as if it were a private entity and not a public body.

Indemnity

12. The Owner hereby releases the City, and indemnifies and saves the City harmless, from and against any and all actions, causes of actions, suits, claims, expenses (including legal fees and disbursements), losses (including economic loss), debts, demands and liabilities of whatsoever kind that the City is or may become liable for, incur or suffer arising out of or in any way

connected or related to the granting or existence of this Agreement, the restrictions or obligations contained in this Agreement or the performance or non-performance by the Owner of this Agreement.

Joint and Several

13. If at any time more than one person (as defined in the *Interpretation Act* (British Columbia)) owns the Land, each of those persons will be jointly and severally liable for all of the obligations of the Owner under this Agreement.

Notice

14. Any notice to be given pursuant to this Agreement must be in writing and must be delivered personally or sent by registered or express mail. The addresses of the parties for the purpose of notice are the addresses on the first page of this Agreement and in the case of any subsequent owner of the Land, the address will be the address shown on the title to the Land in the land title office. If notice is delivered personally, it may be left at the relevant address in the same manner as ordinary mail is left by Canada Post and is deemed given when delivered. If notice is sent by registered or express mail, it is to be deemed given 3 days after mailing by deposit at a Canada Post office. In the case of any strike or other event causing disruption of ordinary Canada Post operations, notices must be delivered personally. A party may change its address for delivery by giving notice of the new address in accordance with this section.

Waiver

15. An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach in respect of which the waiver is asserted. A waiver of a breach of this Agreement does not operate as a waiver of any other breach or continuing breach of this Agreement.

Priority

16. The Owner will, at the Owner's expense, do or cause to be done all acts reasonably necessary to obtain priority for this Agreement over all financial charges, liens and encumbrances registered, or pending registration, at the time of application for filing of a notice of this Agreement against the title to the Land in the appropriate land title office.

Interpretation

17. In this Agreement:
- a. reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
 - b. article and section headings have been inserted for ease of reference only and are not to be used in interpreting this agreement;
 - c. the term "enactment" has the meaning given to it under the *Interpretation Act* (British Columbia) on the reference date of this agreement;

- d. reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
- e. reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
- f. reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement and any Schedules to this Agreement form part of this agreement; and
- g. time is of the essence.

Further Assurances

- 18. The Owner must do and cause to be done all things and execute all documents necessary to give effect to the intention of this Agreement.

Severance

- 19. If any part of this Agreement is for any reason held to be invalid by a decision of a court with the jurisdiction to do so, the invalid portion is to be considered severed from the rest of this Agreement and the decision that it is invalid does not affect the validity of the remainder of this Agreement.

Governing Law

- 20. This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia which is deemed to be the proper law thereof.

Enurement

- 21. This Agreement and each and every provision hereof shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns, as the case may be.

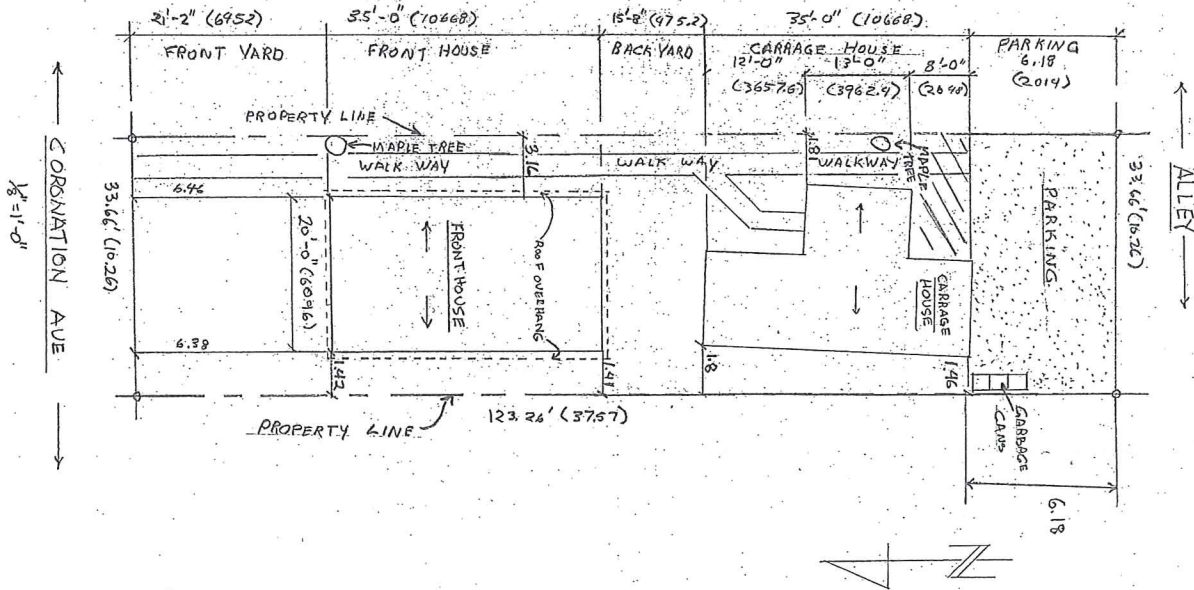
Entire Agreement

- 22. This Agreement is the entire agreement between the parties regarding its subject.

Contract and Deed

- 23. By executing and delivering this Agreement, each of the parties intends to create both a contract and a deed executed and delivered under seal.

As evidence of their agreement to be bound by the terms of this instrument, the parties hereto have executed the Land Title Office Form C which is attached hereto and forms part of this Agreement.



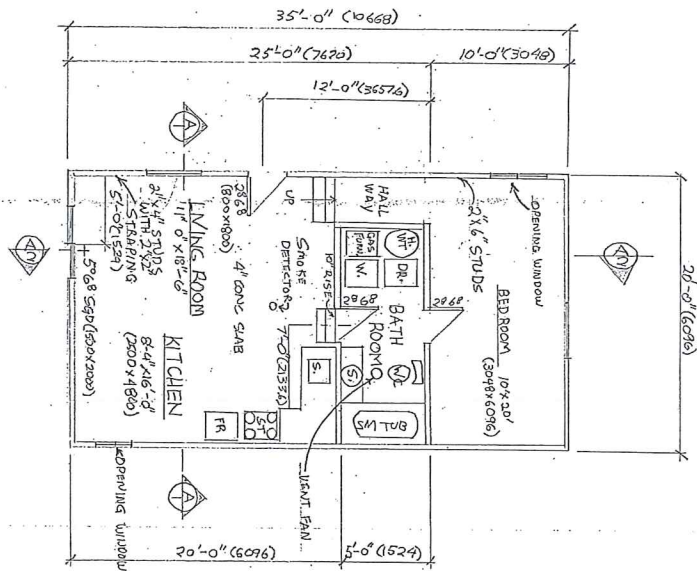
LEGAL DESCRIPTION
 PLAN: KAP1303 LOT: 36
 D.L.: 139
 REFERENCE NO.
 ZONING
 R1P 01653571

CNIC ADDRESS
 565 CORONATION AV
 KILGUNA B.C.

CALCULATIONS
 LOT AREA 4224 SQ FT (392.6096m²)
 SITE COVERAGE ALLOWED 25% 1056
 FSR ALLOWED
 PARKING REQ'D PERIOD 3

SCHEDULE A
 This forms part of development
 Permit # D015-0112, D015-0113

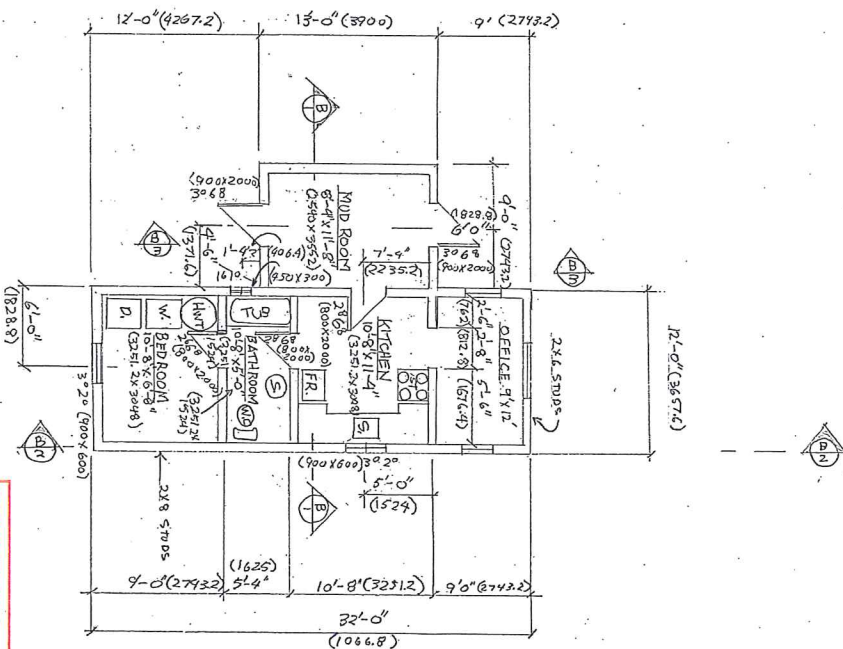
*NOTE: 1/8" = 1'-0" WITH ALSO WITH
 CARRIAGE HOUSE & HOUSE



MAIN FLOOR PLAN

700 SQ FT
(65.03 M²)

PAVILION HOUSE



FLOOR PLAN

501 SQ FT
(46.43 M²)

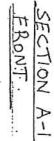
CARRAGE HOUSE

SCHEDULE A

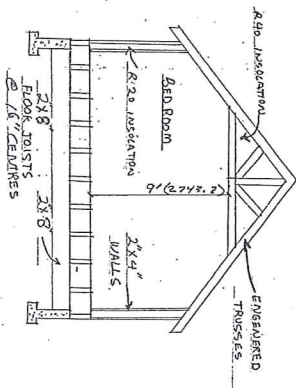
This forms part of development
Permit # 0815-012, 0815-013

* NOTE 1/2"=1'-0" WITH ALSO METRIC

RELOCATED FRONT & REAR HOUSES	DATE	BY	FOR
FLOOR PLANS	11/10/2010	W. T. G.	ARCHITECT



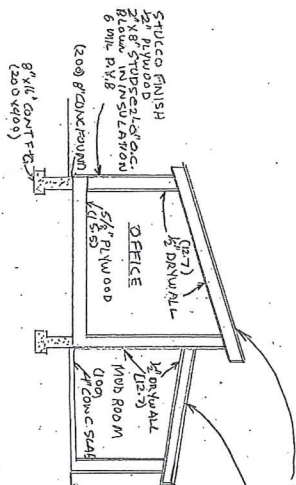
REAR HOUSE



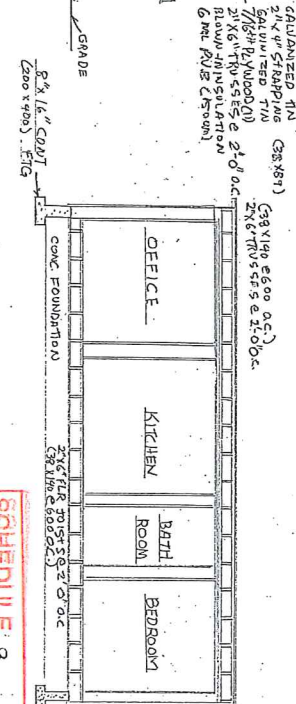
SECTION A-1

REAR

FRONT HOUSE



Section B-1



SECTION B-2

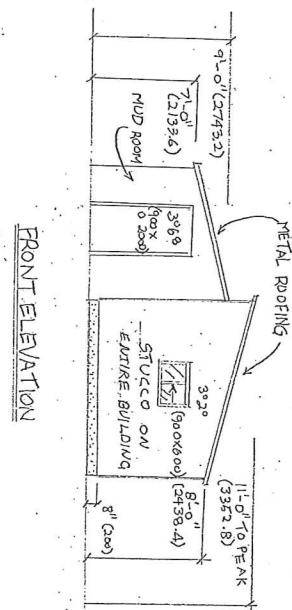
SCHEDULE: B

This forms part of development

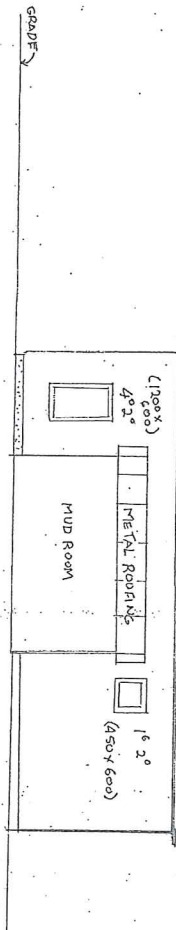
Permit # DL15-0112, DL15-0113

* NOTE: $1/4'' = 1'-0''$ WITH ALSO METR. K.

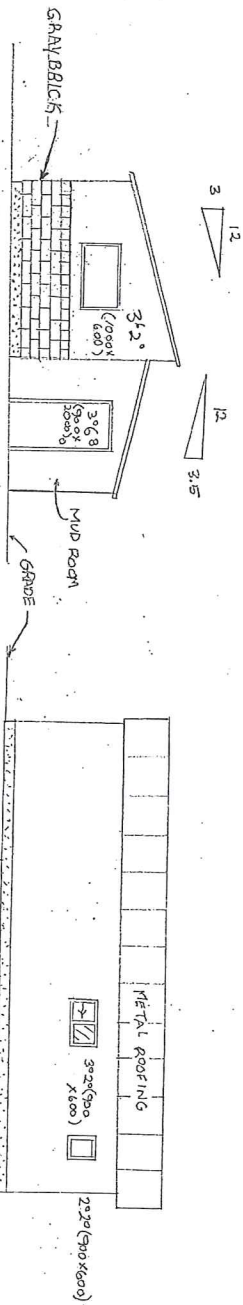
DATE	1/21/2011	APPROVED BY	
TIME	MMR 7		
CROSS SECTIONS			
		NO. LOCATIONS	18
		TIME	1:10
1 (Probe Locations)			



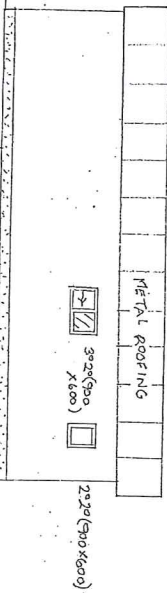
FRONT ELEVATION



LEFT ELEVATION



REAR ELEVATION



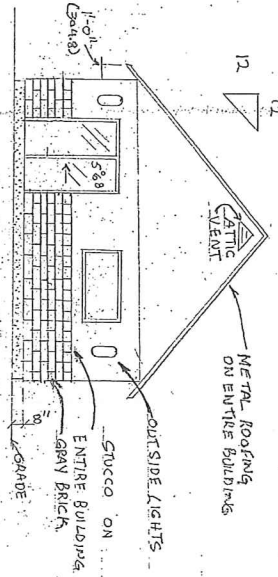
RIGHT ELEVATION

SCHEDULE B
This forms part of development
Permit # 2015-012, 2015-013

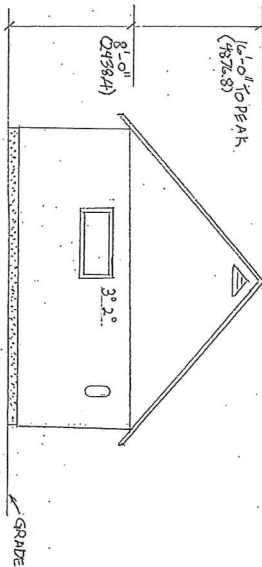
NOTE: 1/4" = 1'-0" WITH ALSO METRIC

REMODELED - CARRIAGE HOUSE

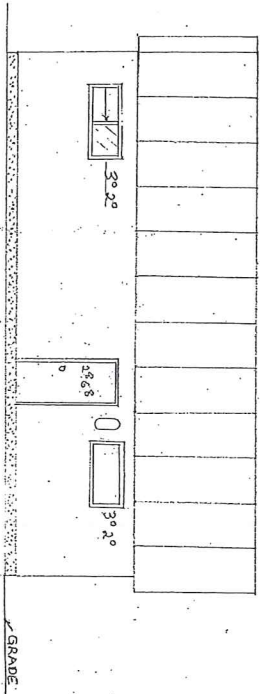
ELEVATIONS



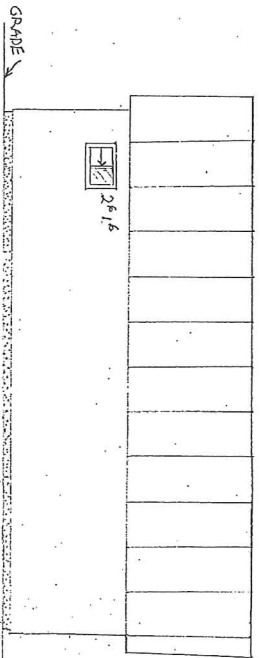
FRONT ELEVATION



REAR ELEVATION



LEFT ELEVATION



RIGHT ELEVATION

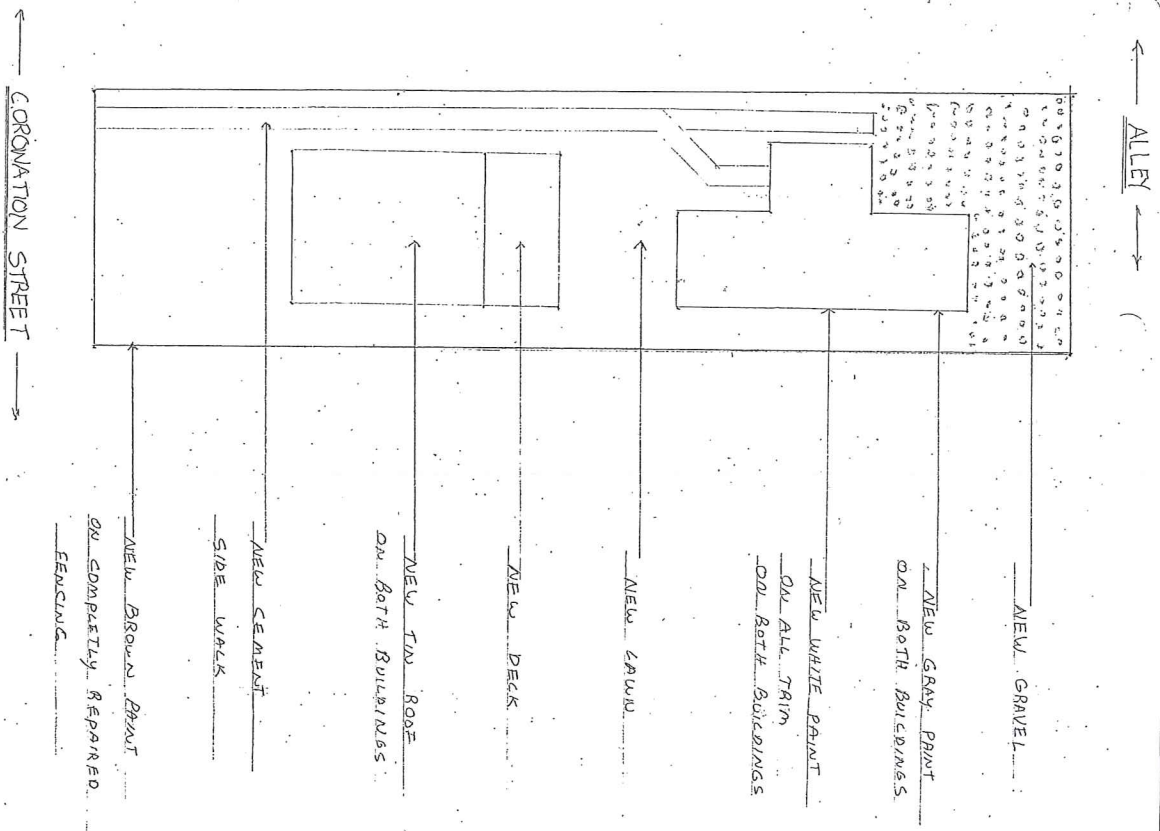
SCHEDULE 6
This forms part of development
Permit # D015-012-D015-013

* NOTE: 1/2" WITH ALSO METRIC

REMODELED FRONT HOUSE

ELEVATIONS

DATE: 10/10/2010
DRAWN BY: [blank]
CHECKED BY: [blank]
APPROVED BY: [blank]



SCHEDULE A
 This forms part of development
 Permit # D015-0112a D015-0113

DATE	APPROVED BY	DATE	APPROVED BY
SITE PLAN		REVIEWED	
PROPOSAL FOR PERMIT			

DEVELOPMENT PERMIT / DEVELOPMENT VARIANCE PERMIT



APPROVED ISSUANCE OF DEVELOPMENT PERMIT / DEVELOPMENT VARIANCE PERMIT NO. DP15-0112/DVP15-0113

Issued To: (Christian) Lee Bond
Site Address: 565 Coronation Avenue
Legal Description: Lot 36 District Lot 139 ODYD Plan 1303
Zoning Classification: RU2c - Medium Lot Housing with Carriage House
Development Permit Area: Revitalization

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.

The issuance of a Permit limits the Permit Holder to be in strict compliance with regulations of the Zoning Bylaw and all other Bylaws unless specific Variances have been authorized by the Permit. No implied Variances from bylaw provisions shall be granted by virtue of drawing notations that are inconsistent with bylaw provisions and that may not have been identified as required Variances by the applicant or Municipal staff.

1. TERMS AND CONDITIONS

THAT Development Permit No. DP15-0112 and Development Variance Permit No. DVP15-0113 for Lot 36 District Lot 139 ODYD Plan 1303, located at 565 Coronation Avenue, Kelowna, BC to allow the construction of a Carriage House to be approved subject to the following:

- a) The dimensions and siting of the building to be constructed on the land be in accordance with Schedule "A";
- b) The exterior design and finish of the building to be constructed on the land be in accordance with Schedule "B";

AND THAT variances to the following sections of Zoning Bylaw No. 8000 be granted, as shown on Schedule "A":

Section 9.5b.14: Carriage House Regulations

To vary the required minimum side yard from 2.0 m permitted to 1.46 m and 1.81 m proposed.

Section 13.2.6(d): RU2 - Medium Lot Housing Development Regulations

To vary the required minimum side yard from 1.5 m permitted to 1.41 m proposed.

AND FURTHER THAT this Development Permit & Development Variance Permit is valid for two (2) years from the date of Council approval, with no opportunity to extend.

2. PERFORMANCE SECURITY

None required.

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 that shall form a part hereof.

If the Permit Holder does not commence the development permitted by this Permit within two years of the date of this Permit, this Permit shall lapse.

This Permit IS NOT a Building Permit.

4. APPLICANT'S AGREEMENT

I hereby declare that all of 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 and/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 Divisional Director of Community Planning & Real Estate.

Should there be any change in ownership or legal description of the property, I undertake to notify the Community Planning 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

Issued and approved by Council on the _____ day of _____, 2016.

Ryan Smith, Community Planning Department Manager
Community Planning & Real Estate

Date

**The PERMIT HOLDER is the CURRENT LAND OWNER.
Security shall be returned to the PERMIT HOLDER.**

REPORT TO COUNCIL



Date: July 12, 2016
RIM No. 0940-40
To: City Manager
From: Community Planning Department (LK)
Application: DVP15-0081 **Owner:** Scott Grant, Judith Grant
Address: 3077 Lowe Ct **Applicant:** Scott Grant
Subject: Development Variance Permit
Existing OCP Designation: S2RES - Single / Two Unit Residential
Existing Zone: RU6 - Two Dwelling Housing

1.0 Recommendation

THAT Council authorizes the issuance of Development Variance Permit No. DVP15-0081 for Lot 6 District Lot 135 ODYD Plan 30518, located at 3077 Lowe Court, Kelowna, BC;

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

Section 8.1.2: Parking and Loading - Number of Spaces

To vary the minimum number of parking spaces required from 4 stalls required to 2 stalls proposed.

Section 8.1.9(b): Parking and Loading - Location

To allow required off-street parking to be located within the required front yard.

AND FURTHER THAT this Development Variance Permit is valid for two (2) years from the date of Council Approval, with no opportunity to extend.

2.0 Purpose

To vary the location and the number of parking stalls from 4 stalls required to 2 stalls provided to accommodate a secondary suite and a home based business on the subject parcel.

3.0 Urban Planning

Community Planning staff supports the requested variances to the location and the number of parking spaces provided on the subject parcel to accommodate a secondary suite and a home based business. The 50% reduction to the amount of parking stalls required is being supported by Planning due to the unique nature of the home-based business and the unique circumstances with the property owner and resident of the secondary suite having a low vehicle requirement.

The secondary suite and home based business is consistent with the existing RU6 - Two Dwelling Housing Zone and the OCP Future Land Use Designation of S2RES - Single / Two Unit Residential. Furthermore, the proposed use of the property is reflective of OCP urban infill policies that support a compact urban form in order to maximize the use of existing infrastructure through increasing densities and re-development within the urban core areas.

In fulfillment of Council Policy No. 367 respecting public consultation, the applicant undertook neighbour consultation for parcels within 50m of the subject parcel and provided proposal application packages.

4.0 Proposal

4.1 Background

The existing single family dwelling was constructed in 1980 and included a single car attached garage. The secondary suite was constructed in 1988 under BP0579 and the existing accessory building was constructed in 1990 under BP7197.

The secondary suite has not been utilized for a few years and was partially decommissioned as the owner had intended to convert the existing accessory building to a carriage house. Due to the numerous requirements to upgrade the structure to meet building code for a carriage house, the owner has decided not to pursue that option. Instead, the owner would like to re-establish the secondary suite within the primary dwelling and the accessory building will remain as storage.

In 2012, the existing single car garage was converted to a studio space which is used for a home based business - minor (The Modern Drum Room), which provides private drum lessons. This was completed without building permits and the owner is currently going through the building permit process to ensure the conversion is legalized and completed to current building code requirements.

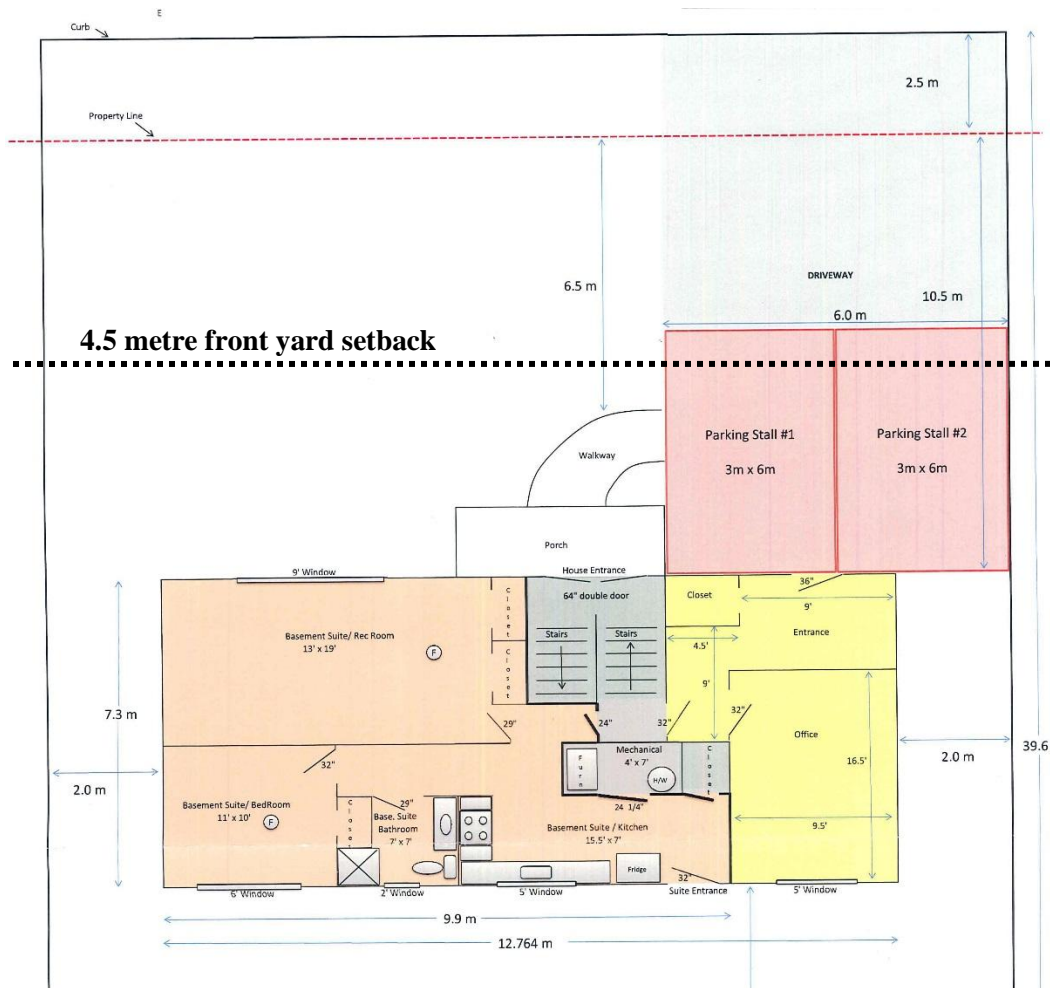
4.2 Project Description

As a result of the above noted changes, two variances would be required to allow the uses to remain. The first variance is to reduce the number of parking stalls from four stalls required to two stalls provided. The total number of stalls is established through the following Zoning Bylaw parking requirements: a single detached dwelling requires two parking stalls, a secondary suite and a home based business each require one parking stall.

Staff is supportive of this variance as the majority of the students walk over from KSS and KLO schools or are dropped off and picked up by their parents. Additionally, the applicant has a single vehicle and the occupant arranged for the secondary suite does not drive. This arrangement helps reduce the amount of vehicle traffic generated by the uses on this parcel. OCP objectives promote reduced vehicle ownership and ensures opportunities are available for the greater use of active transportation and transit. The subject parcel is centrally located with easy access to bus routes and bike networks on both KLO Road and Gordon Drive. The parcel's proximity to Okanagan College makes the area a prime location for increased density.

The second variance is to allow the provided parking stalls to be within the required front setback area. The Zoning Bylaw parking and loading regulations stipulate that 'no parking shall be located in the required front yard except that a maximum of two required spaces may be located on a driveway which provides access to a required off-street parking space that is not located in the front yard'. If the parking can be accommodated on the driveway, beyond the

required 4.5m front yard area, it would meet the regulations. While the driveway can easily accommodate two parking spaces, this cannot be accomplished without the vehicles being within this setback area, therefore, a variance is required to allow it.



The red shaded area indicates the two provided parking stalls. Vehicles may be located in front of these stalls, but will cross into the road ROW and not be fully contained on the parcel.

The parcel is able to accommodate two stalls within the driveway area which meet the Zoning Bylaw location requirements. Two additional parking spaces could be accommodated behind these two stalls. As they would be located in tandem and within the front setback area, they do not meet the Zoning Bylaw regulations and are not counted as provided parking stalls.

4.3 Site Context

The subject property is located on the east side of Lowe Court in the South Pandosy area of Kelowna.

Specifically, adjacent land uses are as follows:

Orientation	Zoning	Land Use
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

Subject Property Map: 3077 Lowe Court



4.4 Zoning Analysis Table

Zoning Analysis Table		
CRITERIA	RU6 ZONE REQUIREMENTS	PROPOSAL
Existing Lot/Subdivision Regulations		
Lot Area	400m ²	664.03m ²
Lot Width	13m	15.24m
Lot Depth	30m	33.53m
Development Regulations		
Site Coverage	40%	24.57%

Site Coverage (incl. Driveway & parking)	50%	35.61%
Other Regulations		
Minimum Parking Requirements	4 stalls	2 stalls ^❶
❶ Indicates a requested variance to the number of required parking stalls.		

5.0 Current Development Policies

5.1 Kelowna Official Community Plan (OCP)

Chapter 5: Development Process

Compact Urban Form.¹ Develop a compact urban form that maximizes the use of existing infrastructure and contributes to energy efficient settlement patterns. This will be done by increasing densities (approximately 75 - 100 people and/or jobs located within a 400 metre walking distance of transit stops is required to support the level of transit service) through development, conversion, and re-development within Urban Centres (see Map 5.3) in particular and existing areas as per the provisions of the Generalized Future Land Use Map 4.1.

6.0 Technical Comments

6.1 Development Engineering Department

See attached Memorandum dated May 5, 2016.

7.0 Application Chronology

Date of Application Received: January 12, 2015
Date Public Consultation Completed: April 17, 2016

Report prepared by:

Lydia Korolchuk, Planner

Reviewed by:

☐

Terry Barton, Urban Planning Manager

Approved for Inclusion:

☐

Ryan Smith, Community Planning Department Manager

Attachments:

Site Context Plan

Site Plan

Attachment A: Development Engineering Memorandum


¹ City of Kelowna Official Community Plan, Policy 5.2.3 (Development Process Chapter).

CITY OF KELOWNA
MEMORANDUM

Date: May 5, 2016
File No.: DVP15-0081
To: Community Planning (LK)
From: Development Engineering Manager (SM)
Subject: 3077 Lowe Court

Development Engineering comments and requirements regarding this development variance permit application are as follows:

This development variance permit application to vary the parking requirement does not compromise any municipal services. Street parking is limited to 1 hour parking from 9am-5pm Monday thru Friday on Lowe Court.



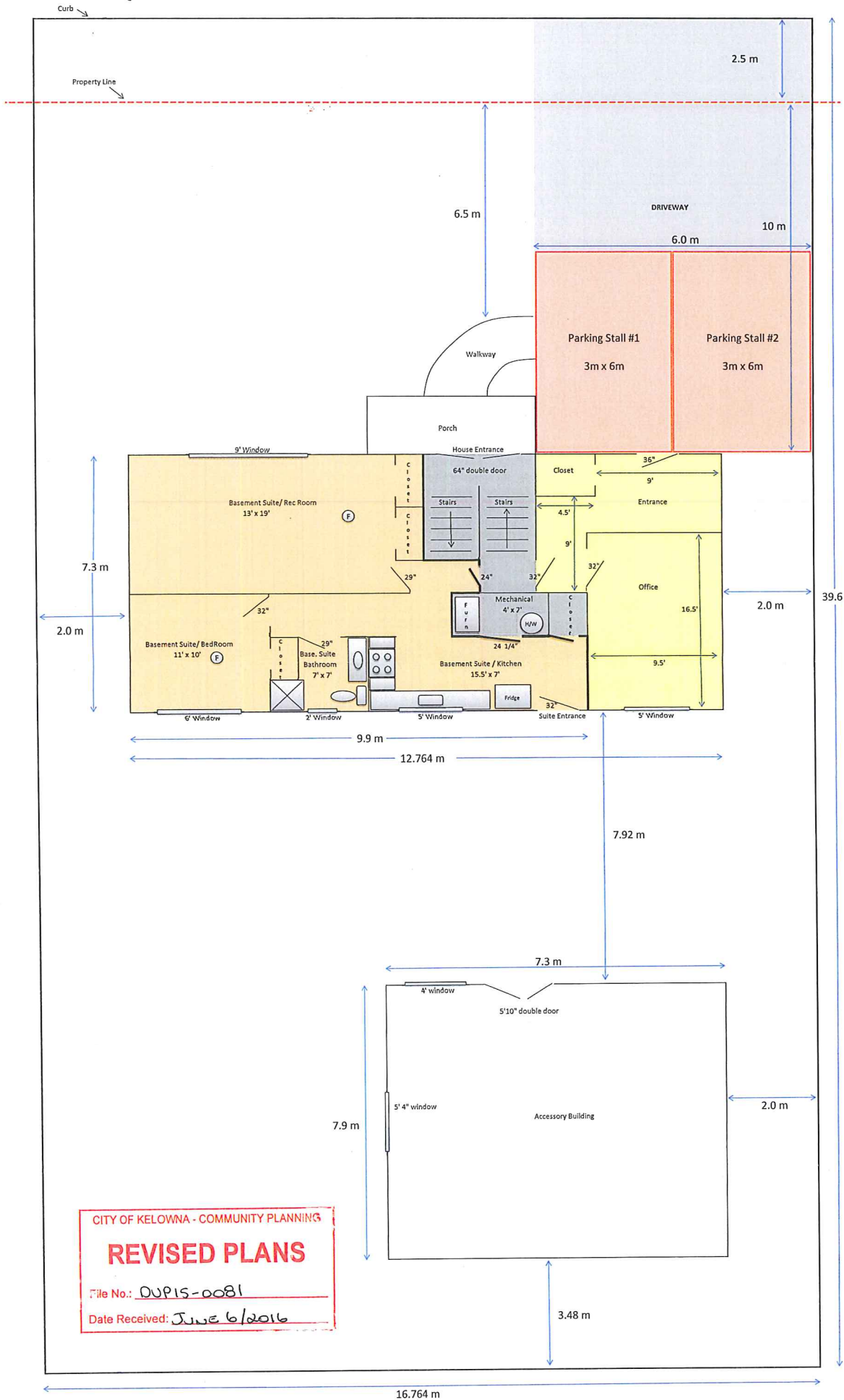
Steve Muenz, P. Eng.
Development Engineering Manager

SS

3077 Lowe Court



Legend
 (F) = Smoke Alarms connected to upstairs alarms
 — = Fire separation. All doors on this line are solid core
 Note - Suite pre-existed carbon monoxide alarm requirements



CITY OF KELOWNA - COMMUNITY PLANNING

REVISED PLANS

File No.: DUP15-0081

Date Received: June 6/2016

DEVELOPMENT VARIANCE PERMIT



APPROVED ISSUANCE OF DEVELOPMENT VARIANCE PERMIT NO. DVP15-0081

Issued To: Scott Grant & Judith Grant
Site Address: 3077 Lowe Court
Legal Description: Lot 6 District Lot 135 ODYD Plan 30518
Zoning Classification: RU6 - Two Dwelling Housing
Development Permit Area: N/A

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.

The issuance of a Permit limits the Permit Holder to be in strict compliance with regulations of the Zoning Bylaw and all other Bylaws unless specific Variances have been authorized by the Permit. No implied Variances from bylaw provisions shall be granted by virtue of drawing notations that are inconsistent with bylaw provisions and that may not have been identified as required Variances by the applicant or Municipal staff.

1. TERMS AND CONDITIONS

THAT Council Authorizes the issuance of Development Variance Permit No. DVP15-0081 for Lot 6 District Lot 135 ODYD Plan 30518, located at 3077 Lowe Court, Kelowna, BC;

AND THAT variances to the following sections of Zoning Bylaw No. 8000 be granted, as shown on Schedule "A":

Section 8.1.2: Parking and Loading - Number of Spaces

To vary the minimum number of parking spaces required from 4 stalls required to 2 stalls proposed.

Section 8.1.9(b): Parking and Loading - Location

To allow required off-street parking to be located within the required front yard.

AND THAT this Development Variance Permit is valid for two (2) years from the date of Council approval, with no opportunity to extend.

2. PERFORMANCE SECURITY

None required.

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 that shall form a part hereof.

If the Permit Holder does not commence the development permitted by this Permit within two years of the date of this Permit, this Permit shall lapse.

This Permit IS NOT a Building Permit.

4. APPLICANT'S AGREEMENT

I hereby declare that all of 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 and/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 Divisional Director of Community Planning & Real Estate.

Should there be any change in ownership or legal description of the property, I undertake to notify the Community Planning 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

Issued and approved by Council on the _____ day of _____, 2016.

Ryan Smith, Community Planning Department Manager
Community Planning & Real Estate

Date

**The PERMIT HOLDER is the CURRENT LAND OWNER.
Security shall be returned to the PERMIT HOLDER.**

REPORT TO COUNCIL



Date: July 12, 2016

RIM No. 0940-50

To: City Manager

From: Community Planning Department (TY)

Application: DVP16-0049

Owner: Arthur & Una Mak

Address: 1800 Gallagher Road

Applicant: Una Mak

Subject: Development Variance Permit

Existing OCP Designation: PARK - Major Park / Open Space (Public)
REP - Resource Protection Area

Existing Zone: RR2 - Rural Residential 2

1.0 Recommendation

THAT Council authorizes the issuance of Development Variance Permit No. DVP16-0049 for Lot B Section 18 Township 27 ODYD Plan KAP46685, located at 1800 Gallagher Road, Kelowna, BC;

AND THAT a variance to the following section of Zoning Bylaw No. 8000 be granted, as shown on Schedule "A":

Section 12.2.6(b) RR2 - Rural Residential 2, Development Regulations

To vary the maximum allowable height of an accessory structure from 4.5 m permitted to 6.0 m proposed.

AND THAT Council's consideration of this Development Variance Permit be considered subsequent to compliance with Subdivision, Development and Servicing Bylaw No. 7900, Section 4.6 with respect to "the restriction of one (1) driveway access per road frontage" on the subject property;

AND THAT the applicant be required to complete the above noted condition of Council's approval of this Development Variance Permit Application in order for the permits to be issued;

AND THAT Council's consideration of this Development Variance Permit be considered subsequent to the issuance of a demolition permit with a bond amount of \$12,000 for the removal of the unpermitted storage structures on the subject parcel;

AND THAT the applicant will have 30 days from partial occupancy of the proposed structure to fulfil the demolition permit;

AND FURTHER THAT this Development Variance Permit is valid for two (2) years from the date of Council approval, with no opportunity to extend.

2.0 Purpose

To vary the maximum allowable height of an accessory structure on the subject property.

3.0 Community Planning

Community Planning supports the proposed variance to the height of an accessory structure on the subject parcel. The subject property is a rural residential parcel (RR2) with one single family dwelling. Three driveways and a number of un-permitted storage structures also exist on the property. The applicant is proposing to construct an accessory building which requires one variance to the maximum allowable height. As part of an approved Development Variance Permit allowing the accessory building, the non-compliant uses on the subject parcel will be required to comply with current City of Kelowna Bylaws.

4.0 Proposal

4.1 Background

The subject parcel currently has three vehicular driveways accessing Gallagher Road. Subdivision, Development and Servicing Bylaw No. 7900 limits a property to one driveway per road frontage. As such, this DVP will require the applicant to remove two of the driveways accessing Gallagher Road.

The second non-conforming use on the property are the six storage structures erected within the past ten years. These structures are not permitted within the City of Kelowna. The applicant will be moving all materials currently contained in these structures into the proposed accessory structure. As part of this DVP the applicant will be required to remove the storage structures within 30 days of receiving partial occupancy for the proposed accessory building. A Demolition Permit and bond in the amount of \$12,000 (\$2,000 per structure) is required to ensure the removal of the non-permitted structures. Upon fulfilment of the demolition permit, funds will be returned to the applicant.

4.2 Project Description

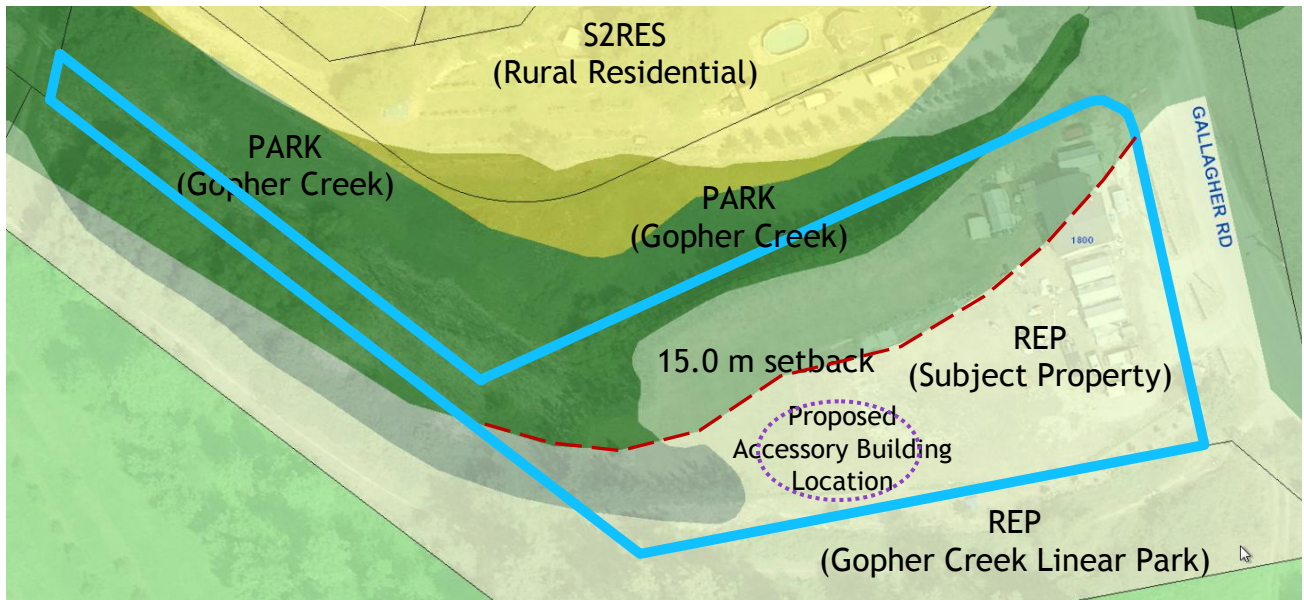
The applicant is proposing an accessory structure, 200 m² in size. The structure is designed with three garage doors, two garage doors accommodate regular size vehicles with the third door oversized, accommodating large vehicles such as semi-trailer trucks. The requested variance will allow the portion of the building with the oversized garage doors (approximately half of the structure), to be a total of 6.0 m in height, the remainder of the building meets the required height maximum of 4.5 m.

The structure is proposed with stucco exterior, and minimal windows. No water or sewer is proposed within the accessory building.

The subject parcel is adjacent to Gopher Creek, Gopher Creek linear park and Black Mountain Park. Approximately half of the parcel is within the riparian area setback of Gopher Creek as shown in Map 1. The location of the building is proposed on the southern side of the property, outside of this setback area.

The applicant will not be using the accessory structure for commercial purposes. Should this accessory building be used for a rural home based business which is permitted in Zoning Bylaw No. 8000, a number of restrictions are applied to the business including a maximum floor area use of 100 m² as well as prohibition of outdoor storage of home based business materials or equipment.

Map 1 Future Land Use: 1800 Gallagher Road



Map 2 Existing Conditions: 1800 Gallagher Road



4.3 Neighbourhood Consultation

The applicant completed neighbourhood consultation as per Council Policy No. 367, Public Notification & Consultation for Development Applications. Staff have not received any correspondence to date with regards to this application.

4.4 Site Context

The subject parcel is located on the west side of Gallagher Road, south of Joe Riche Road. The parcel is located adjacent to Black Mountain Park, Gopher Creek Linear Park and Gopher Creek. Future land use is Resource Protection Area and Park, and is zoned RR2 - Rural Residential 2. This property also straddles the Permanent Growth Boundary.

Specifically, adjacent land uses are as follows:

Orientation	Zoning	Future Land Use	Land Use
North	RR2	S2RES PARK	Rural Residential Gopher Creek
East	P3	PARK	Black Mountain Park
South	A1	REP	Gopher Creek Linear Park
West	A1	PARK REP	Gopher Creek Agricultural land

Map 3 Neighbourhood Context: 1800 Gallagher Road



4.5 Zoning Analysis Table

Zoning Analysis Table		
CRITERIA	RR2 ZONE REQUIREMENTS	PROPOSAL
Existing Lot/Subdivision Regulations		
Lot Area	4,000 m ²	5,164 m ²
Lot Width	36.0 m	55.5 m
Lot Depth	30.0 m	103.0 m
Development Regulations		
Site Coverage	20%	6 %
Site Coverage of accessory buildings	14%	4 %
Height (principal dwelling)	9.5 m	5.0 m
Height for accessory buildings	4.5 m	6.0 m ❶
Front Yard	6.0 m	+ 10.0 m
Side Yard (north)	3.0 m	+ 10.0 m
Side Yard (south)	3.0 m	3.0 m
Rear Yard	9.0 m	+ 10.0 m
❶ Indicates a requested variance to accessory building height.		

5.0 Current Development Policies

5.1 Kelowna Official Community Plan (OCP)

Although within a Natural Environment Development Permit Area, the proposed application meets the following exemptions:

Natural Environment¹ A Natural Environment Development Permit will not be required when: c) the proposed development will have no significant negative impacts to the environmentally sensitive areas identified on the property and/or the environmentally sensitive area is permanently protected.

Riparian Management Areas.² Require that all development meets or beats the requirements of the provincial Fish Protection Act (Riparian Areas Regulation). Projects must comply with Riparian Management Area Setbacks in Table 12.1 subject to section 12.3.

- Table 12.1 identifies the setback from Gopher Creek to be 15.0 m.
- The proposed accessory structure is proposed outside of this area (approx. 16.0 m from current Top of Bank).

6.0 Technical Comments

6.1 Building & Permitting Department

- A Structural Engineer will be required for the building permit at time of BP application.
- A Geotechnical report may be required to address the sub soil conditions and site drainage at time of BP application.
- Full Plan check for Building Code related issues will be done at time of BP applications. Please note that the plan check will review how Radon mitigation are being applied to this structure.
- The existing storage structures on the subject parcel are not permitted in Kelowna. The City of Kelowna does not permit these structures as the structural ability for wind and

¹ City of Kelowna Official Community Plan, Development Permit Exemptions (Natural Environment DP Chapter).

² City of Kelowna Official Community Plan, Policy 12.1 (Natural Environment DP Chapter).

snow is not proven to be sufficient. These will need to be removed as per BCBC and City of Kelowna Bylaws.

6.2 Development Engineering Department

- The existing three driveways on the subject property are in contravention of City Bylaw.
- Should the driveway access to Gallaher Road be reduced to one single driveway, maximum 6.0 m in width, Development Engineering notes the proposed variance does not effect the property.

7.0 Application Chronology

Date of Application Received: March 7, 2016

Date of Site Visit: April 20, 2016

Date Public Consultation Completed: May 17, 2016

Report prepared by: Tracey Yuzik, Planner

Reviewed by: Todd Cashin, Subdivision, Suburban and Rural Planning Manager

Reviewed by: Ryan Smith, Community Planning Department Manager

Approved for Inclusion: Doug Gilchrist, Divisional Director, Community Planning & Real Estate

Attachments:

Draft Development Permit Variance DVP16-0049

Schedule "A" - Accessory Structure Site Plan & Architectural Plan

Development Engineering Memo

DEVELOPMENT VARIANCE PERMIT



APPROVED ISSUANCE OF DEVELOPMENT VARIANCE PERMIT NO. DVP16-0049

Issued To: Arthur & Una Mak
Site Address: 1800 Gallagher Road
Legal Description: Lot B Section 18 Township 27 ODYD Plan KAP46685
Zoning Classification: RR2 - Rural Residential 2
Development Permit Area: Natural Environment

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.

The issuance of a Permit limits the Permit Holder to be in strict compliance with regulations of the Zoning Bylaw and all other Bylaws unless specific Variances have been authorized by the Permit. No implied Variances from bylaw provisions shall be granted by virtue of drawing notations that are inconsistent with bylaw provisions and that may not have been identified as required Variances by the applicant or Municipal staff.

1. TERMS AND CONDITIONS

THAT Development Variance Permit No. DVP16-0049 for Lot B Section 18 Township 27 ODYD Plan KAP46685, located at 1800 Gallagher Road, Kelowna, BC to allow the construction of an accessory building;

AND THAT variances to the following sections of Zoning Bylaw No. 8000 be granted, as shown on Schedule "A":

Section 12.2.6 (b) RR2 - Rural Residential 2, Development Regulations

To vary the maximum allowable height of an accessory structure from 4.5 m permitted to 6.0 m proposed.

AND THAT this Development Variance Permit be considered subsequent to compliance with Subdivision, Development and Servicing Bylaw No. 7900, Section 4.6 with respect to "one (1) driveway access per road frontage" on the subject property.

AND THAT this Development Variance Permit be considered subsequent to the issuance of a demolition permit with a bond amount of \$12,000 for the removal of the un-permitted storage structures on the subject parcel. The applicant will have 30 days from partial occupancy of the proposed structure to fulfil the demolition permit.

AND FURTHER THAT this Development Variance Permit is valid for two (2) years from the date of Council approval, with no opportunity to extend.

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 Permit Holder and be paid to the Permit Holder if the security is returned. The condition of the posting of the security is that should the Permit Holder 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 Permit Holder, or should the Permit Holder carry out the development permitted by this Permit within the time set out above, the security shall be returned to the Permit Holder. There is filed accordingly:

- a) A Certified Cheque in the amount of \$12,000.00 OR
- b) An Irrevocable Letter of Credit in the amount of \$12,000.00

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 that shall form a part hereof.

If the Permit Holder does not commence the development permitted by this Permit within two years of the date of this Permit, this Permit shall lapse.

This Permit IS NOT a Building Permit.

4. APPLICANT'S AGREEMENT

I hereby declare that all of 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 and/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 Divisional Director of Community Planning & Real Estate.

Should there be any change in ownership or legal description of the property, I undertake to notify the Community Planning 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.

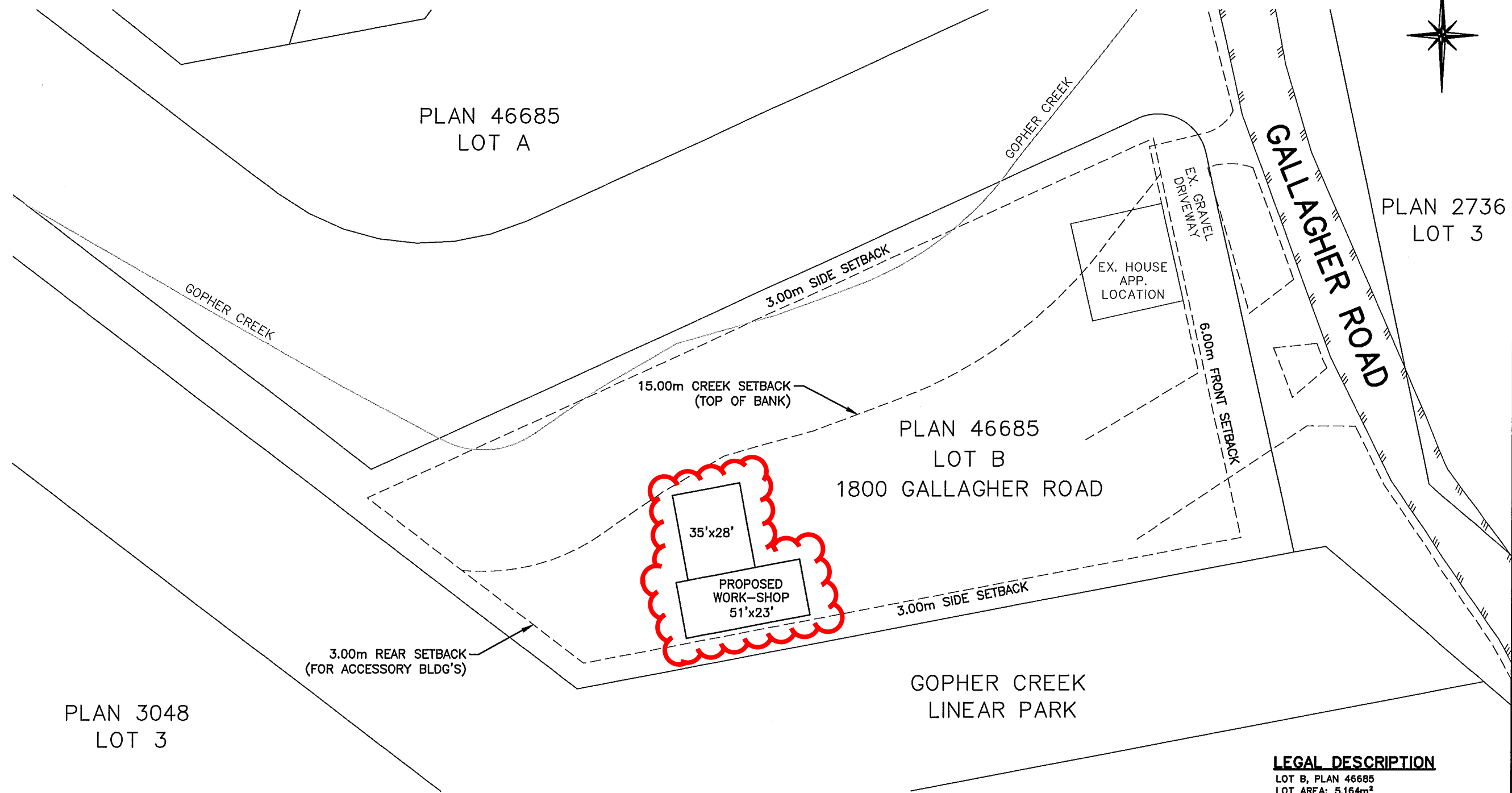
5. APPROVALS

Issued and approved by Council on the _____ day of _____, 2016.

Ryan Smith, Community Planning Department Manager
Community Planning & Real Estate

Date

The PERMIT HOLDER is the CURRENT LAND OWNER.
Security shall be returned to the PERMIT HOLDER.



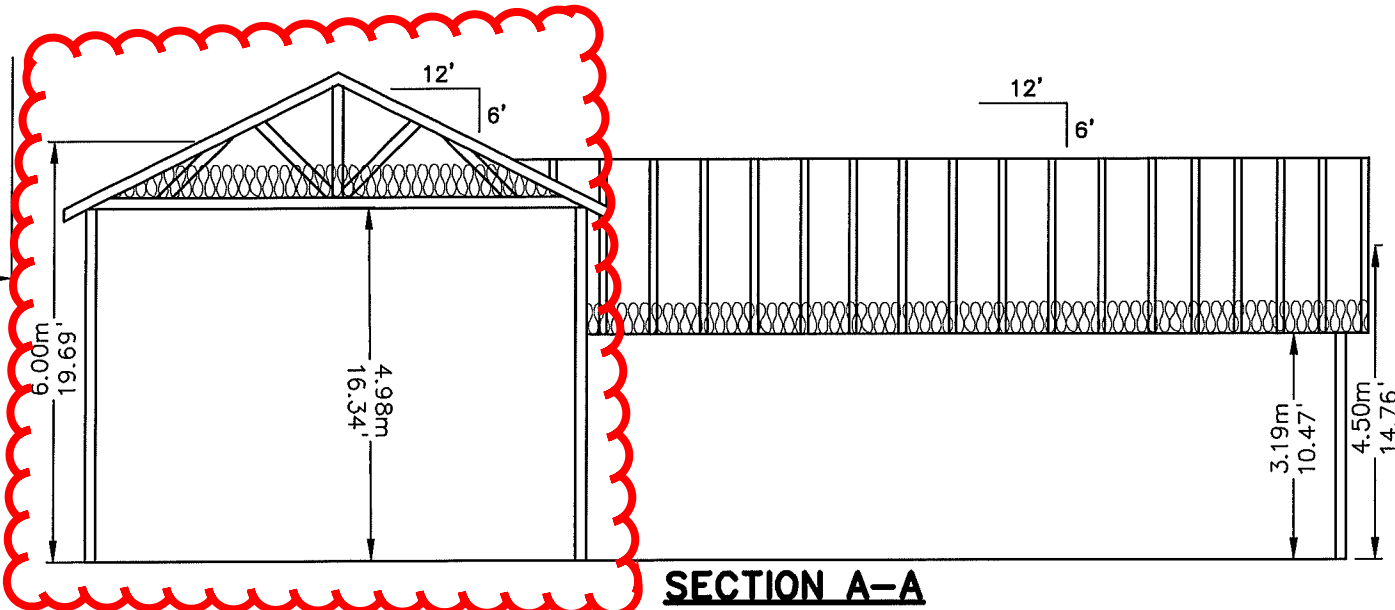
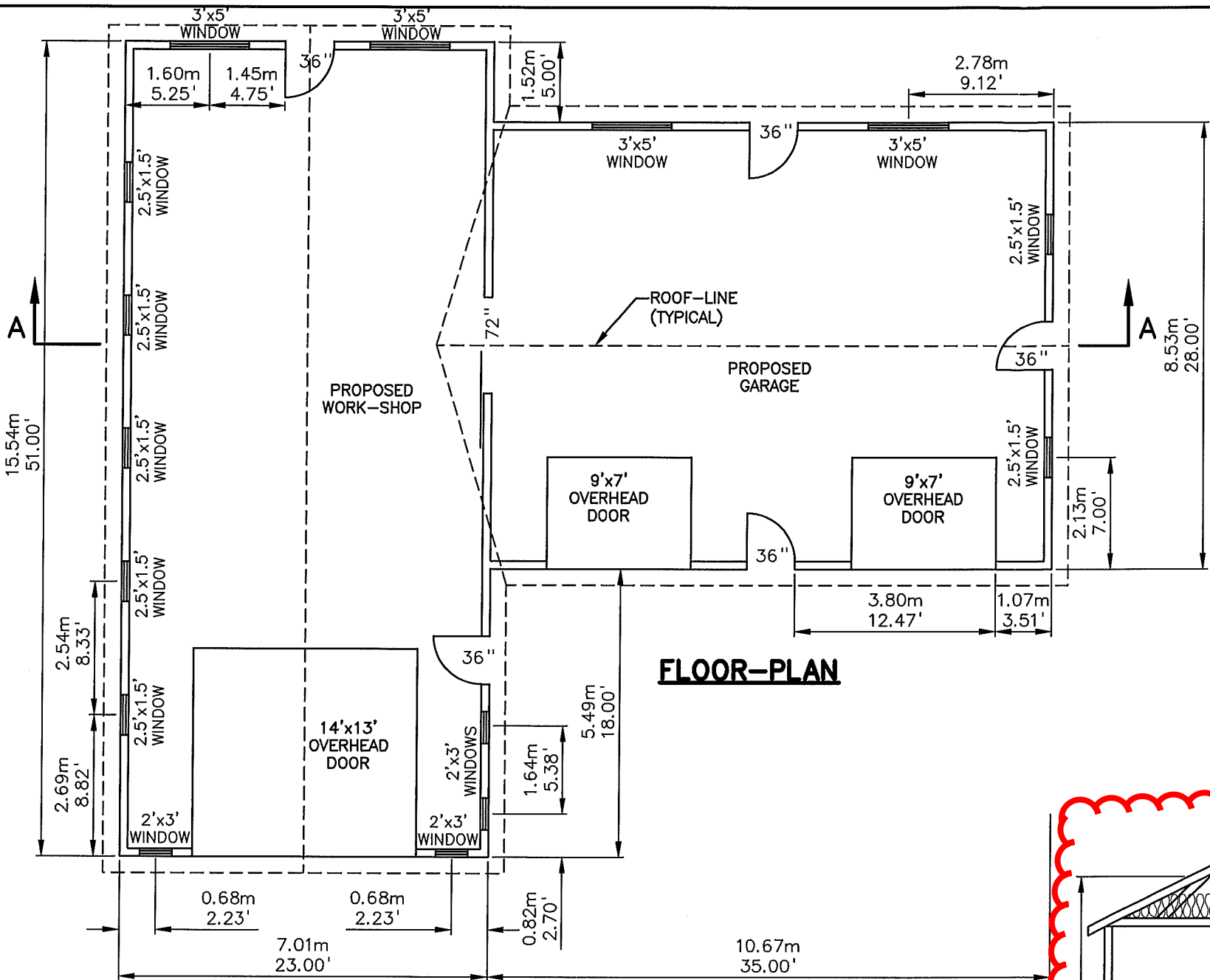
LEGAL DESCRIPTION
LOT B, PLAN 46685
LOT AREA: 5,164m²
ZONING: RR2

					DRAWN	A.W.	CITY OF KELOWNA BUILDING DEPARTMENT	DRAWING NO.
					DESIGN			AM-01
					APPROVED			
					DATE	JULY, 2015		
					SCALE	1: 500		REV. NO.
No.	MM/DD/YY DATE	BY	REVISION	Chk'd	WORK SHOP – SITE PLAN			0

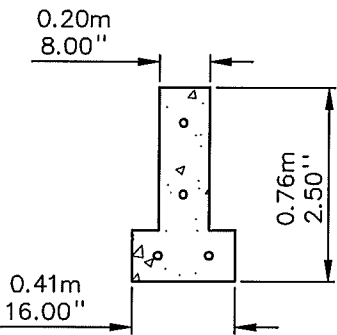
SPECIFICATIONS

- SLOPED ROOF SYSTEM
 - ASPHALT SHINGLES
 - BUILDING PAPER
 - 7/16 OSB W/ H-CLIPS AS REQ'D.
 - ENGINEERED TRUSSES @ 24" O.C.
 - 6 MIL POLY V.B.
 - 1/2" DRYWALL
 - PAINTED FINISH
- EXTERIOR WALL
 - CEMENT STUCCO
 - METAL LATH
 - BUILDING PAPER
 - 3/8" OSB SHEATHING
 - 2x6 STUD WALL - STUDS @ 16" O.C.
 - 6 MIL POLY V.B.
 - 1/2" DRYWALL
 - PAINTED FINISH
- INTERIOR NON-LOAD BEARING WALL
 - 1/2" DRYWALL
 - 2x4 STUD WALL - STUDS @ 24" O.C.
 - 1/2" DRYWALL
- CONCRETE FOUNDATION
 - 8" CONCRETE FOUNDATION WALL
 - 16"x8" CONCRETE STRIP FOOTING
 - COMPACTED BASE
- WORK-SHOP CONCRETE SLAB
 - 4" CONCRETE SLAB
 - 6" COMPACTED BASE

FLOOR-PLAN

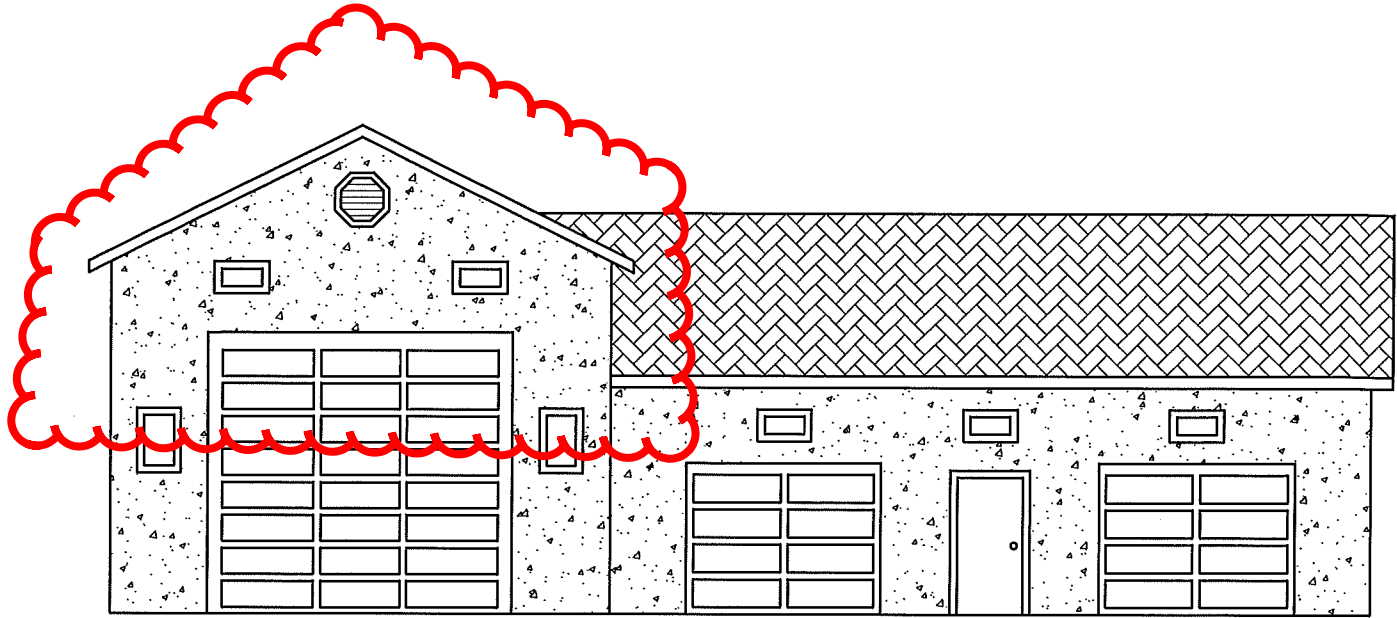


SECTION A-A

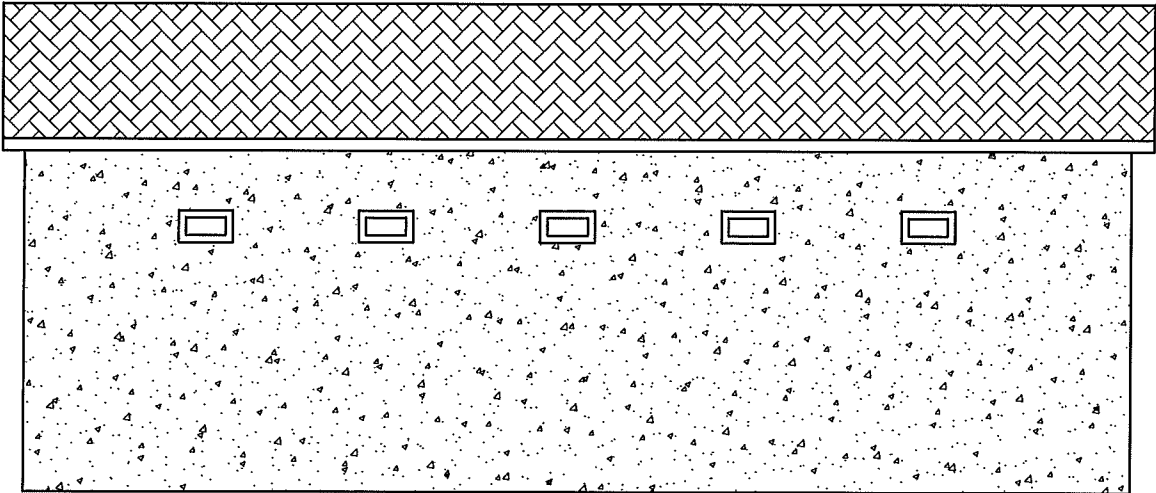


FOOTING DETAIL
N.T.S.

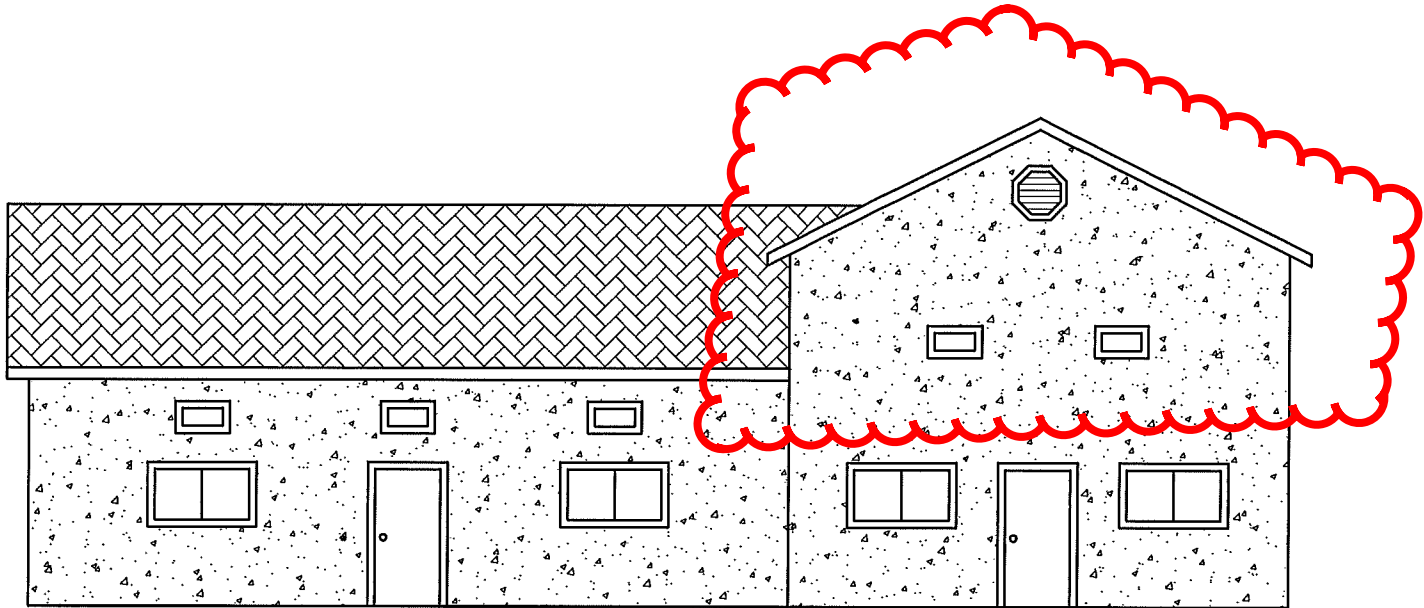
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					DESIGN			AM-02
					APPROVED			
					DATE	JULY, 2015		REV. NO.
					SCALE	1:100	1800 GALLAGHER ROAD UNA & ARTHUR MAK	0
No.	MM/DD/YY DATE	BY	REVISION	Chk'd	WORK SHOP – FLOOR PLAN & SECTION			



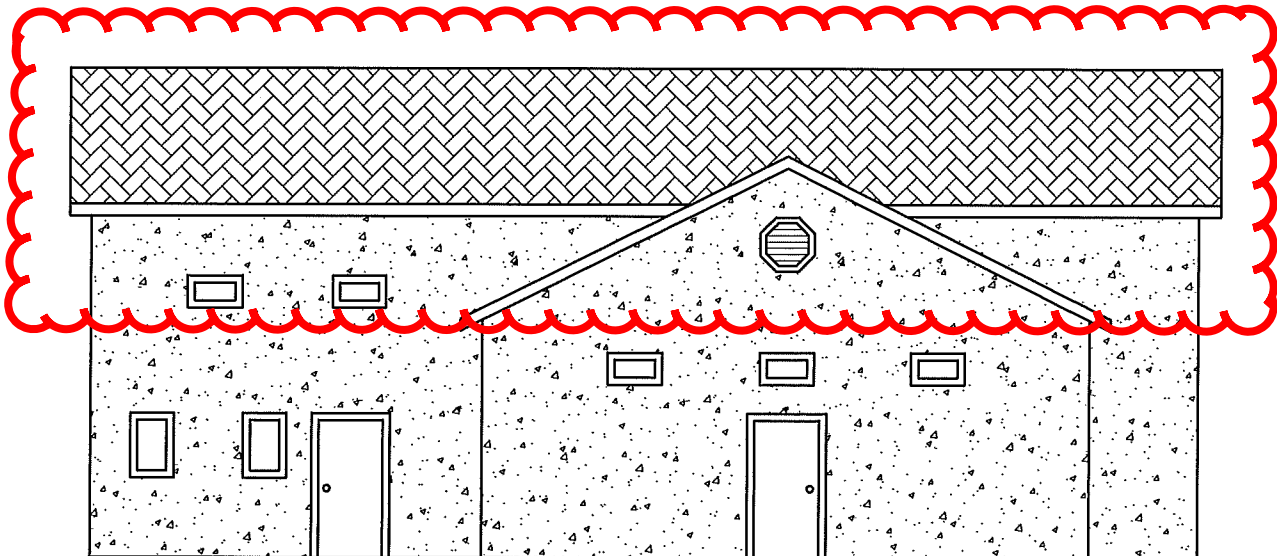
EAST-ELEVATION



SOUTH-ELEVATION



WEST-ELEVATION



NORTH-ELEVATION

					DRAWN	A.W.	CITY OF KELOWNA BUILDING DEPARTMENT	DRAWING NO.
					DESIGN			AM-03
					APPROVED			
					DATE	JULY, 2015		REV. NO.
					SCALE	1:100	1800 GALLAGHER ROAD UNA & ARTHUR MAK WORK SHOP – ELEVATION VIEWS	0
No.	MM/DD/YY DATE	BY	REVISION	Chk'd				

CITY OF KELOWNA

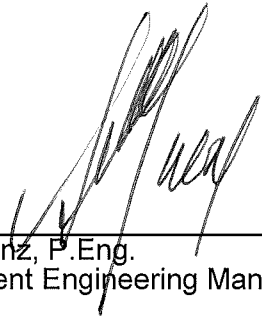
MEMORANDUM

Date: April 28, 2016
File No.: DVP16-0049
To: Suburban and Rural Planning (TY)
From: Development Engineer Manager (SM)
Subject: 1800 Gallagher Road Lot B Plan 46685

The Development Engineering comments and requirements regarding this Development Variance Permit are as follows:

1. This Development Variance Permit to vary the maximum height of an accessory building from 4.5m to 6.0m does not compromise any municipal services.
2. Subdivision, Development and Servicing Bylaw No. 7900 states that: "Each property shall only have one (1) driveway access per road frontage. All residential driveway accesses shall have a minimum width of 4 m and a maximum width of 6 m."

It is noted that the subject property currently does not conform to these requirements as three existing driveways are accessed from Gallagher Road.



Steve Muenz, P.Eng.
Development Engineering Manager

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