

# Report to Council



**Date:** January 23<sup>rd</sup>, 2023  
**To:** Council  
**From:** City Manager  
**Subject:** Opportunities to Streamline Development Variance Permit Process  
**Department:** Development Planning

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## **Recommendation:**

THAT Council receive, for information, the report from the Development Planning Department dated January 23<sup>rd</sup>, 2023, with respect to options for the Development Variance Permit process;

AND THAT Council direct Staff to prepare the necessary policies and bylaws to implement changes to approval process for Development Variance Permits as described in the report from the Development Planning Department dated January 23<sup>rd</sup>, 2023.

## **Purpose:**

To consider delegation of authority options for Development Variance Permits.

## **Background:**

High levels of development activity have been occurring for several years and will likely continue over the next decade. The Province has encouraged local governments in British Columbia to find ways to streamline development processes to be more efficient and timelier especially with the provision of housing. As a result, additional legislative tools were provided. In 2019, the Province considered the Development Approvals Process Report (DAPR) and introduced the Municipal Affairs Statutes Amendments Act (No. 2) in late 2021. The amendments enable municipalities to delegate decisions on minor Development Variance Permits to local government Staff with the goal of decreasing the amount of time it takes for approvals. Section 498.1 of the Local Government Act allows delegation of power to issue Development Variance Permits only when the variance is considered minor and only to the following provisions:

- i. Development regulations specifying the siting, size, and dimensions of buildings, structures, and permitted uses;
- ii. Off-street parking and loading space requirements;
- iii. Regulations of signs;
- iv. Regulations for screening and landscaping provisions

To implement delegation of authority, Staff would bring forth a future set of bylaw amendments to both the City's Development Application and Heritage Procedures Bylaw No. 12310 and Council Policy 367 Public Notification. This bylaw establishes the process for development applications and their associated approvals. Staff have been considering options for improvements to the development approvals process to achieve several objectives:

1. Streamline approvals by reducing unnecessary and low-value processes for both Council and Staff;
  - a. Quicker processes for minor variance requests.
  - b. Planning reports requirement can be streamlined.
  - c. Reduced workload in the Office of the City Clerk.
  - d. More Staff time (Planning Department and Office of the City Clerk) can be re-directed to processing more complex development applications for housing supply.
2. Ensure Council and the public have relevant information early in the decision-making and input process;
3. Maintain accountability for 'minor' variance review;
4. Maintain applicant accountability for notifying adjacent neighbours; and
5. To focus Council's time and the Tuesday Regular Council meetings on major variances which are more significant and typically generate public input.

Currently, Development Variance Permits are considered by Council at the Tuesday PM regular meeting. In that meeting there is opportunity for the applicant to present to Council and the public to address Council. All properties within 50 metres are mailed a notice of the application and a sign is posted on the property. This process is the same regardless of the number of variances under application. Many variances that are 'minor' in nature draw very little public correspondence/interest. There are approximately 70 Development Variance Permit applications per year (See Table 'A' below) with approximately 40% of those applications not linked to a larger Development Permit application or to a permit already delegated to Staff. Staff consider these factors as an opportunity for process improvement for variances that are considered 'minor' in nature.

**Table A – Development Variance Permits (DVPs) by Type**

Year	DVPs without DP	DVP with Commercial / Industrial DP	Sign DVPs	Subdivision DVPs	DVPs with Residential DP	Total DVP applications
	(Typically Minor)				(Typically Major)	
2018	33	5	3	5	39	85
2019	21	9	3	3	41	77
2020	21	6	3	4	38	72
2021	25	2	1	4	42	74
2022	23	5	2	2	17	49

**Table B – Regular Meeting Correspondence related to variance applications**

	2018	2019	2020	2021	2022
DVP Applications (#)	57	67	49	39	47
Regular Meeting Correspondence (#)	270	122	156	510	487
Applications with Correspondence (#)	n/a	n/a	n/a	36	32

## **Jurisdictional Research:**

A jurisdictional analysis of municipalities and cities throughout British Columbia, Alberta, Oregon, and Nova Scotia were analyzed regarding how they define a minor variance, and the parameters they set for delegating variances to Staff.

New Westminster allows the Planning Director to consider variances to:

- siting, size, and dimensions of buildings;
- off street parking and loading for development with less than 5 dwelling units;
- landscaping and natural environmental requirements; and
- signs.

Halifax Regional Municipal Charter delegates minor variances to Staff for:

- size of lots;
- percentage of buildable land;
- ground area and height; and
- height and area of a sign.

Wheatland County, Alberta considers a variance minor when the variance is less than 10 percent of any numerical rules and regulations within their Bylaw. In Edmonton, Alberta, variances are delegated to the Development Officer, except for height and density. Oregon City, Oregon includes development regulations such as setbacks, lot area, lot coverage, floor area, height, and parking up to specific percentages as minor variances, then all variances outside those ranges are considered major variances.

## **Policy Discussion – Minor Variance Criteria:**

Roughly 40% of Development Variance Permit applications represent a minimal departure from the bylaw requirement and often do not generate written correspondence or in-person representation at a Tuesday Council meeting.

To streamline the approval process while continuing to provide opportunity for public input, Staff are recommending using the new legislative framework to create two categories for Development Variance Permit applications (major and minor) with different approval processes for each. Major Development Variance Permits would continue to be considered at Tuesday PM Council meetings, with opportunity for applicant and public participation. The applicant and the public could submit written correspondence in advance of Council's consideration of major Development Variance Permits. Whereas minor Development Variance Permits would be considered and reviewed by Staff and then issued by the Development Planning Department Manager.

Staff are recommending that the 'minor' Development Variance Permit criteria be established whenever:

1. A variance application is submitted without an accompanying form and character Development Permit application. This would only apply to the Zoning Bylaw and not variances to other bylaws (such as the Sign Bylaw). This is to reinforce the bylaw minimums within other bylaws such as the Sign Bylaw and that there is relatively low volume per year for these application types. This would limit the scope to development regulations (not subdivision regulations) for agricultural, rural residential regulations, and single-family zones. Any variance to Section 9 Specific Uses would be considered a major variance.
2. A variance application is submitted for any commercial or industrial development in which the authority for the Development Permit has been delegated to Staff. Any variance to Section 9 Specific Uses would be considered a major variance.

3. A variance application is submitted for any Heritage Alteration Permit in which the authority for the Heritage Alteration Permit has been delegated to Staff. Any variance to Section 9 Specific Uses would be considered a major variance.

Staff would provide an annual report to Council outlining the number of variances administered at a Staff level and provide an opportunity for Council to consider further delegation of authority on larger mixed-use and multi-family housing applications.

#### **Policy Discussion – Council Reconsideration of Refused Permits:**

If Council chooses to delegate the power to issue a Development Variance Permit under the Local Government Act (Section 498.1), then a procedure must be established for an owner of land that is subject to the delegate's decision to have that decision reconsidered by Council.

Staff would propose to establish the same rules as the current Staff approved Development Permits, as identified within the City's Development Application and Heritage Procedures Bylaw No. 12310 (Section 2.5 Council Reconsideration). That rule states "within ten business days of being notified in writing of the decision of the Development Planning Department Manager; to issue, amend, or refuse a permit, or to require Development Approval Information, the applicant may, and at no charge, request Council to reconsider the decision."

Applications that do not meet the criteria or guidelines for staff issuance of a minor variance would be considered by Council at a Tuesday Council meeting.

#### **Policy Discussion – Public Notification:**

Currently, Council Policy #367 Public Notification & Consultation for Development Applications states for all variance applications that "evidence of neighbour consultation must be provided to City Staff a minimum of 20 days prior to Council Initial Consideration of the application for inclusion in the report to Council." Therefore, updates to that Council Policy will be necessary to account for the delegated authority of 'minor' variances. Staff have provided two options to this update:

1. Update the Council Policy to remove any requirement for applicant to notify neighbours and erect a sign on the subject property for minor variances.
2. Update the Council Policy maintain a notification period for applicants to notify neighbours and /or erect a sign on the subject property for minor variances. This option would need to update Council Policy to redirect the public to send correspondence to the Development Planning Department Manager instead of to Council.

Each option has its pros and cons. There is a tension between streamlining development applications while engaging the public on a Staff issued permits.

#### **Policy Discussion – Guidelines for Staff to Consider Permit Issuance:**

Council must establish guidelines for staff to consider when deciding whether to issue a minor variance. Staff would analyze the guidelines with every application to decide on whether or not to issue the permit. The proposed guidelines are:

1. Scope and scale of variances.
  - a. Consider the degree of variance from bylaw regulations.
2. Use and enjoyment of neighbouring lands.
  - a. Consider the impact of requested variances on adjacent properties.
3. Effects on the natural environment.

- a. Consider, as applicable through the Natural Environment Development Permit process, the impact of requested variances on the natural environment.
4. Maintain required health and safety standards.
  - a. Consider safety implications such as traffic sightlines and septic requirements.
5. Meet the intent of City policies.
  - a. Consider how the proposed development meets relevant City policies and objectives.

These guidelines will be evaluated as a whole to assess the appropriateness of requested minor variances and inform staff's decision of whether or not to issue the permit.

**Conclusion:**

Kelowna is seen as a provincial leader in process improvements that lead to faster and more efficient development approvals for housing. This has been achieved through a long-term approach to incremental business improvements throughout the development process that was originally put in motion by the City's 2013 – Development Application Process Review Report. Since that time, the City of Kelowna has continued to make improvements both big and small with positive results.

The changes recommended by this report are expected to streamline the 40 (on average) Development Variance Permit requests per year that generally trigger lower levels of public engagement. Minor variances would be reviewed by Staff and if Staff refuses to issue the permit, then the applicant has the opportunity to request Council reconsideration. The public would still have access to information about Development Variance Permit applications through the City's Current Development Application system. Staff will provide an opportunity for an annual review of all variances administered at a Staff level and provide an opportunity for Council to consider further delegation of authority on larger mixed-use and multi-family housing applications.

Should Council support this approach, amendments to the Development Application and Heritage Procedures Bylaw No. 12310, as well as the Council Policy #367 Public Notification & Consultation for Development Applications would be required to implement these changes. These items would be brought forward for Council consideration at a future Council meeting.

**Internal Circulation:**

Office of the City Clerk

**Considerations applicable to this report:**

***Legal/Statutory Authority:***

Local Government Act s. 498 – Development Variance Permits

***Legal/Statutory Procedural Requirements:***

Local Government Act s. 499 – Development Variance Permits notice to affected property owners and tenants

Submitted by: Adam Cseke, Planner

Review By and Approved by:

Lydia Korolchuk, Urban Planning Manager

Terry Barton, Development Planning Manager

Ryan Smith, Divisional Director of Planning & Development Services

**Approved for inclusion:**



Doug Gilchrist, City Manager

cc: Director, Development Services