

REPORT TO COUNCIL



Date: May 8th 2023
To: Council
From: City Manager
Subject: Delegation of Authority for Minor Development Variance Permits
Department: Development Planning

Recommendation:

THAT Council receives, for information, the report from the Development Planning Department dated May 8, 2023 regarding delegation of authority for minor Development Variance Permits;

AND THAT Bylaw No. 12527 being Amendment No. 3 to Development Application and Heritage Procedures Bylaw No. 12310 be forwarded for reading consideration;

AND THAT Bylaw No. 12528 being Amendment No. 14 to Development Applications Fees Bylaw no. 10560 be forwarded for reading consideration;

AND FURTHER THAT Council Policy No. 367, being Public Notification & Consultation for Development Applications, be revised as outlined in the report from the Development Planning Department dated May 8, 2023.

Purpose:

To introduce delegated authority for minor variances and amend the bylaws and policies necessary to implement the change.

Background:

On January 23rd 2023, Council reviewed a report on the options for delegating minor variances to Staff. In that discussion, Council provided direction to implement delegating minor variances. This report outlines amendments to the Development Application and Heritage Procedures Bylaw No. 12310, the Development Applications Fees Bylaw No. 10560, and the Public Notification and Consultation for Development Applications Council Policy No. 367 in order for delegated authority for minor variances to be implemented as directed by Council.

Section 498.1 of the Local Government Act limits the 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

Previous Council Resolution

Resolution	Date
<p>THAT Council receive, for information, the report from the Divisional Director of Planning and Development Services dated January 23rd, 2023, with respect to options for the Development Variance Permit process;</p> <p>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 Divisional Director, Planning and Development Services dated January 23rd, 2023.</p>	January 23, 2023

Discussion:

There are four components to the amendments recommended by Staff:

1. Content Changes to the Procedures Bylaw to implement delegated authority for minor variances;
2. Content Changes to the Development Application Fee Bylaw to implement delegated authority for minor variances;
3. Content Changes to the Council Policy #367 regarding Development Notification and Consultation with the neighbourhood; and
4. Improvements to formatting and consistent language throughout the Procedures Bylaw.

Content Changes to the Procedures Bylaw to implement delegated authority for minor variances

The Local Government Act requires two conditions to set up delegated authority for minor variances. The first condition is to define the criteria for what is a minor variance, and the second condition is to set up guidelines the delegate must consider in deciding whether to issue the Development Variance Permit. The notification and consultation process for minor variances is also proposed to be amended.

Improvements to formatting and consistent language throughout the Procedures Bylaw

Items 4 through 23 within Schedule 'A' identify various formatting, spelling, grammar, and language consistency improvements throughout the Procedures Bylaw. For example, the term "Direct Landscape Plan" and "Council Landscape Plan" are used in a few instances within the bylaw. However, the only defined term within the bylaw is "Landscape Plan". Therefore, the proposed fix is to have a single term used through the bylaw "Landscape Plan".

The proposal to determine minor variances is:

Minor variances only apply to Zoning Bylaw No. 12375 (except Section 9 of Zoning Bylaw No. 12375) and not to other bylaws (such as the Sign Bylaw); AND

- a) A Development Variance Permit application is submitted when an associated Form and Character Development Permit application is not required; OR
- b) A Development Variance Permit application is submitted for any commercial or industrial development for which the authority for an associated Form and Character Development Permit has been delegated to the Department Manager, Development Planning; OR

- c) A Heritage Alteration Permit application is submitted with variances for which the authority for the Heritage Alteration Permit has been delegated to the Department Manager, Development Planning.

The proposal for guidelines whether to issue the Development Variance Permit is:

1. Scope and scale of variances.
 - a. For example, if a significant parking variance is proposed then the delegate could deny the permit and the applicant can apply to have the permit reconsidered by Council.
2. Use and enjoyment of neighbouring lands.
 - a. A variance could negatively impact or affect adjacent buildings and uses. For example, a setback variance that would result in a primary window of neighbouring property staring at a large blank wall, then the delegate could deny the permit and the applicant can apply to have the permit reconsidered by Council.
3. Effects on the natural environment.
 - a. For example, if a variance would have a detrimental effect on the environment as determined through the Natural Environment Development Permit approval process, then the delegate could deny the permit and the applicant can apply to have the permit reconsidered by Council.
4. Appropriateness of the development.
 - a. A variance could decrease the appropriateness of the development if certain Official Community Plan policies and guidelines were not followed due to the variance. For example, if a setback variance increases the area of the home within a 30% steep slope area, then this would decrease the appropriateness of the development and then the delegate could deny the permit and the applicant can apply to have the permit reconsidered by Council.
5. Intent of the Zoning Bylaw
 - a. A variance could undermine the purpose of a regulation. For example, the purpose of the 70% maximum upper floor area limit on carriage houses relative to the carriage house footprint is to prevent carriage house 'box' designs and a variance to this regulation could undermine the purpose of this regulation. Then the delegate could deny the permit and the applicant can apply to have the permit reconsidered by Council.
6. Public interest in variances
 - a. For example, if a variance triggers a significant public response to the Development Planning Department Manager during the public consultation period, then the delegate could deny the permit and the applicant can apply to have the permit reconsidered by Council.

The proposal for giving Public Notification and Consultation for Minor Variances:

Minor Development Variance Permits must complete public notification and consultation. Due to the minor nature of variances it is not recommended a sign be posted on the property. Applicants will be required to notify the neighbourhood of the deadline for feedback, which will be provided to the delegate. The deadline must be set a minimum of 10 business days after the date of neighbourhood notification.

Content Changes to the Development Application Fee Bylaw to implement delegated authority for minor variances

The Development Application Fee Bylaw No. 10560 is proposed to be amended to include the minor variance category charged at 55% of the rate of a Council Development Variance Permit application. This is the same ratio difference between Delegated Development Permits versus Council Development Permits.

Content Changes to the Council Policy #367 regarding Development Notification and Consultation with the neighbourhood

Amendments are proposed to the Council Policy to include minor variances within the same notification and consultation category of a regular Council Development Variance Permit. The evidence of neighbour consultation must be submitted to the delegate prior to the decision of the delegate. The current policy for variances is to engage in neighbourhood consultation with the objective to promote, where possible, direct, face-to-face conversations between an applicant and their immediate neighbours. Both tenants & owners must be contacted. The current policy states the neighbourhood consultation must occur with all parcels within 50 metres if the subject property is within the Permanent Growth boundary and 300 metres if the subject property is not within the Permanent Growth boundary.

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 deny issuance of 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 report back to Council with a summary review of all variances issued at a Staff level on a biannual basis as directed by Council.

Report prepared by: Adam Cseke, Planner Specialist
Reviewed by: Jocelyn Black, Urban Planning Manager
Reviewed by: Terry Barton, Development Planning Department Manager
Approved for Inclusion: Ryan Smith, Divisional Director, Planning & Development Services

Attachments:

- Schedule A - Procedures Bylaw Amendments
- Schedule B - Fee Bylaw Amendments
- Schedule C - Notification Policy 367 Amendments