

TECHNICAL MEMO

To City of Kelowna Council	From Lisa Schumacher, Planner, McElhanney Ltd.
Re Reconsideration of DVP24-0200 – 154 Applebrooke Cres	Date February 18, 2025

Our client is seeking a variance for the reduction in Lot Width from the required 13.0 m to 9.9 m, to facilitate a two-lot subdivision. The 9.9 m Lot Width is a current condition due to the irregular shape of the lot, and no actual changes are being proposed to the Lot Width on the site.

McElhanney Ltd. received a Letter of Decision on December 18th 2024 from the City of Kelowna's Development Planning Department indicating that variance DVP24-0200 has been refused due to concerns regarding the intent of the Zoning Bylaw and concerns from the neighbouring property owners. On behalf of our client, Isaac Smit, McElhanney formally requests that Council reconsiders the refusal, and approves the Development Variance Permit based on the following grounds.

As required by the Local Government Act and the City of Kelowna Development Application Procedures Bylaw No. 12310, the Staff report within the Letter of Decision had considered the following:

1. Scope and scale of variance
2. Use and enjoyment of neighbouring lands
3. Effects on the natural environment
4. Appropriateness of the development
5. **Intent of the Zoning Bylaw** (*bolded for emphasis*)
6. **Public interest in variances** (*bolded for emphasis*)

No issues were flagged by Staff as they related to items 1 through 4, and a **refusal was issued based on items 5 and 6**. As such, we would like to focus on these two items.

Intent of the Zoning Bylaw

Staff Concerns from Report: "The intent of the minimum 13.0 m lot width is to ensure that there is legal lot frontage and access to the site. The property meets the minimum lot area, however, there are concerns with the shared access, and limited frontage. The existing driveway is around 3.0 m in width, and with the subdivision, it is required to be extended to be 6.5 m, which is the minimum two-way drive

aisle width. This would result in much of the frontage being paved at the entrance to the property and may be contrary to the landscaping requirements in the Zoning Bylaw”.

Summary of Concerns: Shared access, Limited frontage, Landscaping Requirements.

Response to Concerns:

- **Driveway Width:** The requirement for a 6.5-meter two-way driveway was cited incorrectly by Staff, as the Zoning By-law specifies a 4.5-meter driveway width, which is what was initially proposed. Concerns regarding paving were based on the 6.5-meter width, which is neither required nor part of the current proposal. The application is in full compliance with the Zoning Bylaw in regard to driveway width and landscaping.
- **Shared Access:** The City’s Subdivision, Development & Servicing Bylaw No. 7900 prefers a shared driveway. Section 4.14 states that “Opportunities to consolidate driveways with shared access easements should be considered where possible” and 4.14.2 states that “When two or more new lots are created through Subdivision, lots with frontages less than 14m shall share a common driveway...”
- **Intent of Lot Width:** The only variance sought to allow for the subdivision of the property to create one additional parcel is for Lot Width, which is intended to ensure legal lot frontage and access. Both parcels maintain legal frontage and access, fulfilling the Zoning By-law’s intent. Currently, the property’s frontage is technically along Applecrest Court, but upon subdivision, the frontage will be redefined as Applebrooke Crescent, based on the bylaw’s definition. This is a purely technical change, with no impact on the access or legal lot frontage of the property.
- **Landscaping Concerns:** Staff have expressed concerns regarding landscaping; however, the Development Variance Permit and Subdivision application fully complies with all Zoning requirements (except lot width), and the concerns raised are based on hypothetical scenarios. The landscaping issues are only relevant if three or more units are developed on the new lot, and since there are no immediate plans for this lot—those decisions will be made by future property owners—any concerns about landscaping remain speculative. The applications are fully in compliance with the Zoning Bylaw regarding landscaping.
- **Context of Zoning:** The current zoning (MF1) allows for up to six ground-oriented dwelling units. The property owner could rebuild six units on the property without changes to the lot frontage or driveway. The property owner could also maximize the density and add four more units on the property, without the approval of a variance or subdivision. The subdivision of the property could actually reduce the likelihood of reaching the maximum density permitted, and the owner is prepared to place a covenant restricting density.
- **Previous Staff Support:** Planning Staff previously supported a similar DVP application for this property (DVP20-0172) in 2021, despite requesting 3 variances (Lot Width, Site Coverage and Setbacks). In a Staff report dated January 12th 2021 Staff acknowledge that “Staff support the requested variances [...] The variances are being requested due to the irregular shape of the lot and topographic constraints for access to Applecrest Court which has created an extended driveway length and increased site coverage. Staff do not anticipate any impacts of the variances outside the subject subdivision.” The application then got refused by Council largely due to public

complaints about the tenants. If staff supported the variance application with other variances also requested, there appears to be no rationale for staff not supporting the single variance now.

Public Interest in Variances

Public Concerns: Six letters of opposition were received, mainly expressing concerns about the retention of the existing dwelling, the lot's limited frontage, and the driveway's narrowness and visibility. These concerns were also raised during the 2021 Council meeting, though the scale of the project has changed since then.

Summary of Public Concerns: Property management and oversight issues, Property layout and suitability for subdivision, Traffic safety and driveway concerns, Legal and regulatory concerns

Background

- Our client, Isaac Smit, purchased the property in 2020, which included existing tenants.
- One of these tenants was particularly problematic and disruptive to the neighborhood. Our client acknowledges this issue and made efforts to resolve it. Although he worked diligently behind the scenes with the tenant to facilitate their removal, the eviction process is prolonged and regulated, which significantly limited his options. Consequently, it took over a year to remove the tenant, creating challenges for the neighborhood.
- The tenant who caused the majority of the disturbances is no longer residing on the property and hasn't been since September 2023.
- The property currently houses two main tenants: One tenant is a family of six residing in the main dwelling, while the other tenant, is an individual living in the legal secondary suite.
- Upon receiving feedback from staff regarding concern with open building permits, our client took immediate action to address the issues, making appointments with City Building Inspectors, and closing all outstanding building permits, including the one for the secondary suite.
- There are currently no outstanding Building Permits on the property.
- There have been no bylaw infractions on the property since October 2023 which is when the bad tenant was removed (confirmed by City of Kelowna Bylaw Services on February 14, 2025).

Response to Concerns:

- **Property Management:** The majority of neighborhood issues stem from previous tenants, which have now been addressed. Our client is committed to managing the property responsibly. There have been no bylaw infractions on the property since October 2023, demonstrating that the neighbourhood concerns are based on history.
- **Layout and Suitability:** The irregular lot shape, while unconventional, may be better suited for subdivision as it reduces visibility of the property from the street. This preserves the neighborhood character while accommodating more housing.
- **“Tear Down the House” Request:** This suggestion is not feasible. The existing house is fully compliant with development regulations and represents a responsible use of resources. Tearing it down for a higher-density development would conflict with the neighborhood's desire to maintain single-family character.

- **Traffic and Safety:** While concerns about traffic safety are noted, the property owner has taken steps to address tenant behavior. Efforts to mitigate neighborhood concerns will continue as the property owner is made aware of them.
- **Legal and Regulatory Compliance:** The property is being legally rented, with the secondary suite now fully legalized following the closure of all relevant permits.

Rationale for Support

- To minimize impact on the neighbourhood and mitigate concerns, a covenant can be placed on the property to limit both lots to a maximum of 6 units, which is in line with what is permitted today. This would still give flexibility for future development while ensuring that the subdivision does not exceed the density presently allowed on the lot.
- Any concerns regarding the shared access driveway can be captured in the easement agreement which will be subject to approval by the Approving Officer at the Subdivision stage.
- The Planning Department has established processes in place to ensure compliance with zoning and development standards and to help mitigate any concerns they may have on the future functionality of the lot. If three or more units (3+) are contemplated, a Development Permit would be required, and the application would be thoroughly reviewed for zoning compliance. This should add comfort to Council and the public that development will occur consistent with the City's requirements and regulations.
- Increasing the supply of infill housing is consistent with many of the housing goals established in the 2040 Official Community Plan as well as residents' desire to curb sprawl and focus growth near existing infrastructure, services, and amenities.
- Currently, the property owner has the ability to add up to 4 additional units, bringing the total to 6 units, without the need for a variance or subdivision approval, or public consultation.

In conclusion, McElhanney respectfully requests that the City of Kelowna Council reconsider the refusal of Development Variance Permit DVP24-0200 and approve the variance for a reduction in Lot Width. The concerns raised by staff and the public have been thoroughly addressed, and the proposed subdivision complies with all other relevant zoning requirements. The irregular lot shape and technical nature of the variance, along with the proposed mitigation measures, ensure minimal impact on the neighborhood.

Additionally, the provision of a covenant to limit density and the requirement for a future Development Permit (if 3+ units) will provide further assurances regarding the development's compliance with city standards. The proposal aligns with the City's goals for sustainable growth and infill housing and will contribute to enhancing housing availability in the area.

Sincerely,

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