



DEVELOPMENT SERVICES COUNCIL REPORT

To: Mayor and Council

Date: September 12, 2023

From: Paul Gipps, CAO

File No: A 21-08 w/ Variances

Subject: **A 21-08 w/ Variances, Subdivision and Non-Adhering Residential Use with Variances, 3716 and 3792 Carrall Road**

Report Prepared By: Holden Blue, Planner II

This report has been forwarded from the July 25, 2023 Regular Council Meeting and is now before Council for consideration.

RECOMMENDATION to Consider and Resolve:

THAT Council deny application (A 21-08) for a two-lot subdivision in the ALR; and

THAT Council deny application (A 21-08) for a Non-Adhering Residential Use; and

THAT Council deny the application for a variance to Zoning Bylaw No. 0265 S. 3.19.2 to increase the size of a Carriage House from 90m² to 131m² and to S.3.19.9 to include a patio greater than 0.6m in height for the dwelling at 3792 Carrall Road; and

THAT Council direct staff not to discharge the existing covenant LB386881 restricting the use of the accessory dwelling for agricultural purposes (Agricultural Worker Dwelling); and

THAT Council direct staff to close the file for application (A 21-08).

STRATEGIC AREA(S) OF FOCUS

Pursue Economic Growth and Prosperity – We will work with stakeholders throughout the region to advocate for and support efforts aimed at helping West Kelowna businesses prosper. With a focus on the future, we will advance opportunities to expand our economy, increase employment, and develop the community in ways that contribute towards prosperity for all.

BACKGROUND

The subject property is in the Goats Peak/Gellatly neighbourhood, is approximately 25 acres and contains a successful winery (Gallery Winery) and vineyard, single detached

dwelling, agricultural worker dwelling, a gazebo and a small washroom facility. The winery has been operating since 2021 and is a welcome addition to the Westside Wine Trail. The property is also used as a venue for weddings and events. This application is proposing a two-lot subdivision of the subject property, which is in the Agricultural Land Reserve (ALR). The subdivision application results in the need for each proposed parcel to be evaluated under current regulations, creating the need for an ALC Non-Adhering Residential Use application and Zoning Bylaw variance application.

PROPERTY DETAILS

Address	DL 5060, ODYD, Except Plan 10694, 15774 & 15878 and DL 5069, ODYD, Except Plan 15878, 19238 (3716 Carrall Road)		
PID	011-812-320 and 011-812-311		
Folio	36415471.990		
Lot Size	25.4 acres (10.3 hectares)		
Owner	Wakfam Investments Incorporated	Agent	Kirstin Wakal
Current Zoning	A1 - Agricultural	Proposed Zoning	N/A
Current OCP	AG - Agricultural	Proposed OCP	N/A
Current Use	Winery, vineyard, residential	Proposed Use	N/A
Development Permit Areas	Aquatic, Hillside, Sensitive Terrestrial		
Agricultural Land Reserve	YES		

ADJACENT ZONING & LAND USES

North, East	^	R1 – Single Detached Residential
West	<	R3 – Low Density Residential and A1 - Agricultural
South	v	Boucherie Road/Okanagan Lake

NEIGHBOURHOOD MAP



PROPERTY MAP



Legislative Requirements

Under S.21(2) of the *Agricultural Land Commission Act*, the owner may apply to the commission for permission under section 25 of the Act to subdivide agricultural land, and under S.20.1(2) an owner may apply to the commission for permission under section 25 for a non-adhering residential use. Under S.25(3) of the Act, an application may not proceed unless authorized by a resolution of the local government.

DISCUSSION

Proposal

The applicant has applied to subdivide their property into two separate parcels for estate purposes (Figure 1, Attachment 1). Lot A is proposed to be approximately 4.29 ha and contain the existing The Gallery winery and vineyard while Lot B is proposed to be approximately 5.99 ha and contain the existing 5,200 ft² (483 m²) single detached dwelling and a 1,411 ft² (131 m²) agricultural worker dwelling, gazebo and agricultural worker washroom. The primary agricultural operation of the vineyard and winery is located and proposed to remain on Lot A.

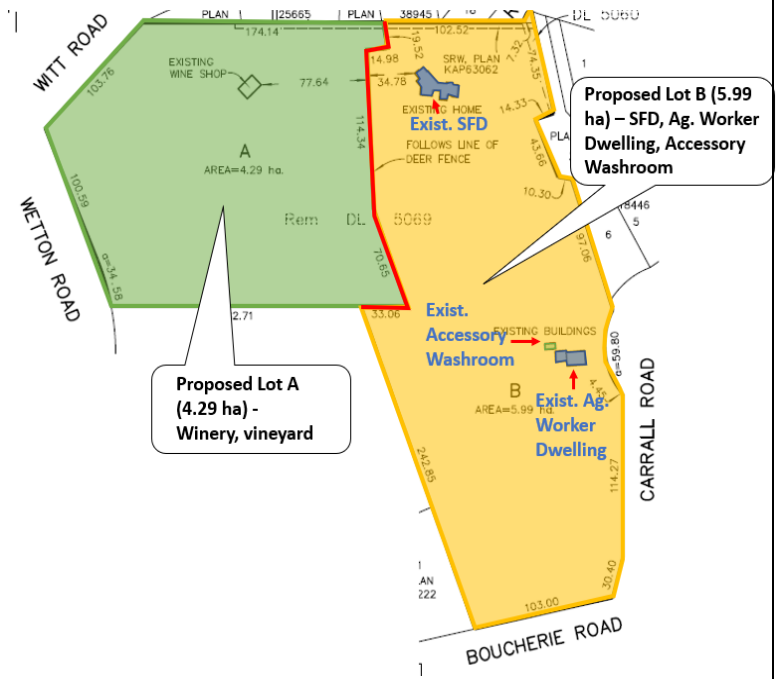


Figure 1: Site Plan showing proposed Subdivision.

The applicant has noted that a small garden plot is located on proposed Lot B known as “Sanctuary Gardens” where fruits and vegetables are grown for a line of preserves being sold online and in the winery (Attachment 2). The property also operates with a business license as a popular wedding venue and for hosting events, as indicated on the Sanctuary Gardens website. The east side of the parcel (Proposed Lot B), includes the intended agricultural worker dwelling, which has been used as part of the wedding venue operation (Figure 2).

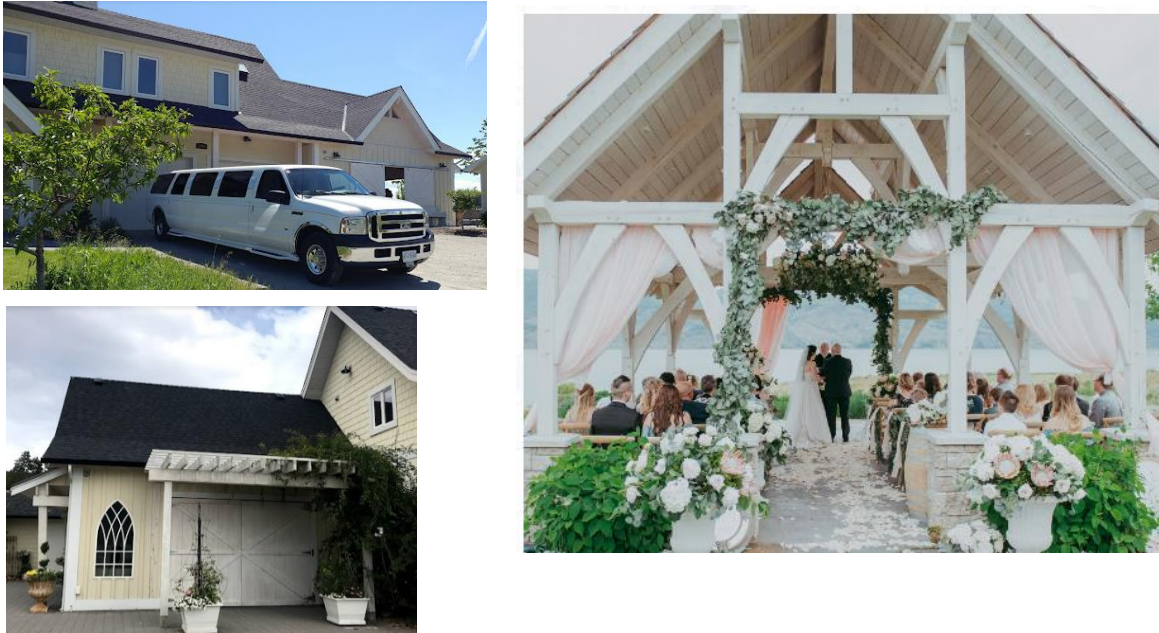


Figure 2: Sanctuary Garden Photos

ALC Non-Adhering Residential Use Application

The proposed subdivision also requires additional approval by the ALC for a Non-Adhering Residential Use application. By subdividing, Lot B would remain with two residential dwellings and no active agriculture. One of the two dwellings is the agricultural worker dwelling (3792 Carrall Road) which is intended to be an accessory use and be used only for the accommodation of an agricultural worker. A separate agricultural worker bathroom was also constructed adjacent to the worker dwelling.

At the time of construction, a covenant was registered to ensure the building would only be used as an agricultural worker dwelling. While the applicant has indicated the occupant of the dwelling works at the winery and intends to continue to do so for the time being, the subdivision would separate the agricultural use from the agricultural worker dwelling which is inconsistent with the covenant. In addition, the agricultural worker dwelling is being used as a wedding venue, and the building appears to not be used as intended.

The ALC regulations do permit a secondary dwelling on a property in the ALR to a maximum of 90m² floor area (ALC floor area includes measurement to the outer walls including corridors, hallways, landings, foyers, staircases, stairwells, enclosed balconies, enclosed porches or verandas, basements, attached garages and unenclosed car ports.)

The existing agricultural worker dwelling would be considered as a general “second dwelling” by ALC regulations, and the building exceeds the maximum permitted size (Figure 3).

A list of questions provided by the ALC for the Non-Adhering Residential Use application are included in Attachment 3.

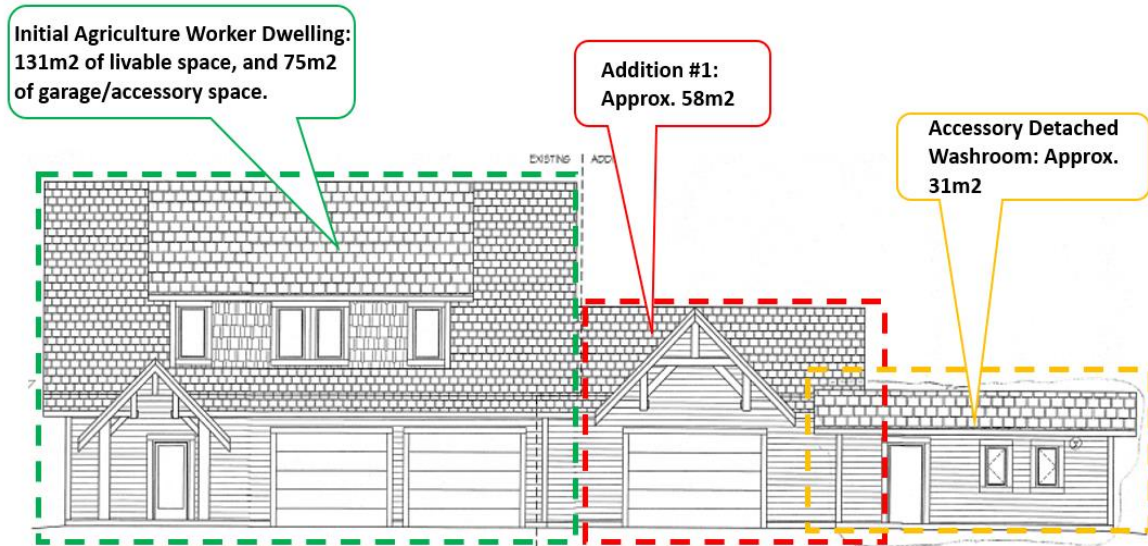


Figure 3: Existing Ag. Worker Dwelling and Detached Washroom

Bylaw and Policy Review

Official Community Plan Bylaw No.0100

The subject property has an Official Community Plan (OCP) land use designation of “Agricultural”. Policies and objectives in the OCP seek to preserve and enhance the agricultural land base through land use decisions consistent with identified agricultural policies, ALC policies and decisions where applicable.

Agricultural policies in Section 3.3.8 of the OCP (Bylaw No.0100, 2011) speak to supporting the ALC’s objectives of preservation of larger parcels to maintain their viability for agricultural use and do not support the further subdivision of agricultural lands to maintain existing larger agricultural parcels.

Draft Official Community Plan Bylaw No.0300

As the draft OCP Bylaw No.0300 received first and second readings, it is important to also highlight key policies which have been added and are relevant to the consideration of the application:

- 2.17.2.11. Support the ALC objective of retaining agricultural lands in larger parcels to maintain their viability for agricultural use, and further support consolidation of farmland where possible.

2.17.2.13. Discourage the proliferation of non-farm residential development or use, except as provided for by the Homesite Severance Policy within the ALR. Accessory homes and other housing will be limited according to Provincial ALR policies and regulations within the City's Zoning Bylaw.

Zoning Bylaw No.0265

The subject property is zoned A1 – Agricultural. The proposed subdivision meets the regulatory requirements for minimum parcel sizes and parcel coverage in the A1 zone, however, the subdivision creates other conflicts with Zoning Bylaw.

The proposed subdivision would create one lot with the existing winery and vineyard operations on it and the other with the residential dwelling and agricultural worker dwelling. Under Section 3.22 of Zoning Bylaw No.0265, an Agricultural Worker Dwelling is only permitted on parcels or farm units where all or part of the parcel or farm unit where the agricultural dwelling is located is classified as farm under the *Assessment Act* and the need for agricultural worker dwellings has been demonstrated to the City through documentation such as:

- (a) A contract with the Federal government through a migrant worker program such as the Seasonal Agricultural Worker Program or Agricultural Stream Program;
- (b) Farm receipts;
- (c) Previous employment records; and/or
- (d) A farm plan prepared by a professional agrologist.

While it is recognized the property owner who works at the winery lives in the agricultural worker dwelling, the documentation required by Zoning Bylaw No.0265 to justify an agricultural worker dwelling has not been provided. The agricultural worker dwelling would be considered a Carriage House and would be subject to applicable regulations. Under the Carriage House regulations, two variances were identified (outlined in the "Variance" sub-section below) that, if approved by Council, would still require Non-Adhering Residential Use approval from the ALC in conjunction with Subdivision approval.

Variances

While the dwelling is already constructed, the following variances to Zoning Bylaw No. 0265 would be required as part of the subdivision:

- To permit a carriage house with a deck or balcony exceeding 0.6m (Figure 4); and
- To increase the permitted size of a carriage house on an ALR property less than 40 ha from 90m² gross floor area to 131m² gross floor area.



Figure 2: Above ground patio facing south towards the lake.

Covenant (LB386881)

A S.219 Covenant was registered on the property in 2010, restricting the use of the accessory dwelling (agricultural worker dwelling) and ensuring that the dwelling is to only be used for the accommodation of an agricultural worker or caretaker. With the primary agricultural use occurring on proposed Lot A, the subdivision removes the active agriculture from the agricultural worker dwelling.

If the subdivision, non-adhering residential use were to be supported by Council and the ALC, and the variance supported by Council, the Covenant registered on title would need to be discharged to recognize the actual use of the dwelling. Should Council or the ALC reject the applications being considered, the conditions would remain currently as is on the subject property.

Referral

The application was referred to external agencies and internal departments.

Agricultural Advisory Committee (AAC)

The subdivision proposal was presented to the Agricultural Advisory Committee. The Committee passed the following resolution:

“**THAT** the Agricultural Advisory Committee **not recommend** support for file A 21-08, ALR Application, 3716 Carrall Road.”

The Committee cited the following reasons for recommending non-support of the subdivision at this time:

- No concrete indication that active farming would be occurring on the newly created parcel; and
- Business case, including agreements, and/or plans were not provided to prove the intent of farming the land on the proposed parcel long term.

Ministry of Agriculture

The Ministry of Agriculture provided comments (Attachment 4) based on the initial application referral and noted the following:

- The application does not provide a plan or rationale for how agriculture will be enhanced by subdivision;
- Provincial Agricultural Land Use Inventory (ALUI) data consistently shows that smaller parcels are less likely to be farmed than larger parcels;
- Soil classification and suitable topography on the subject parcel are well suited to support a multitude of agriculture crops, and if chosen to be put into production could produce a viable operation on 25 acres; and
- Based on the information provided, the proposed subdivision could be detrimental insofar as it will split the agricultural worker dwelling from the vineyard and winery.

The configuration of the subdivision is likely to trigger an application in the future for a house on the vineyard parcel which will further limit productive area of this proposed parcel.

Furthermore the Ministry recommends that if the subdivision proceeds, the secondary residence should be removed or decommissioned until there is a viable agricultural operation on the property that would require additional farm labour to live on site.

PUBLIC NOTIFICATION

The introduction of Variances triggers the requirements for public notification under the *Local Government Act*. A total of 248 notification letters were sent to property owners and their tenants within 100m of the subject property. A Notice of Application sign has also been installed on the property in accordance with the City's Development Application Procedures Bylaw No.0260. At the time of writing the report, no submissions from the public have been received.

CONCLUSION

Staff recommend Council deny the application based on:

- The proposed subdivision does not align with the policies and objectives in the existing OCP or ongoing OCP Update related to agricultural land and land within the ALR;
- The subdivision would separate the agricultural worker dwelling and agricultural worker washrooms from the agricultural operation and create a conflict with the existing covenant;
- The subdivision creates the potential for additional dwellings to be constructed;
- If subdivided, the agricultural worker dwelling would not comply with the Zoning Bylaw regulations or the ALC's regulations for a conversion to a Carriage House (second dwelling); and
- The proposed subdivision has the potential to increase non-farm uses on an otherwise agriculturally viable property (e.g. holding weddings and events).
- The application is not supported by the City's Agricultural Advisory Committee or the Ministry of Agriculture.

Alternate Recommendation to Consider and Resolve:

1. This motion represents support for the application as requested by the applicant.

THAT Council provide support for the Subdivision and Non-Adhering Residential Use in the Agricultural Land Reserve and forward the application to the Agricultural Land Commission for consideration; and

THAT Council approve and authorize issuance of a Development Variance Permit to Zoning Bylaw No. 0265 S.3.19.2 to increase the size of a Carriage House (located at 3792 Carrall Road) from 90m² to 131m² and to S.3.19.9 to include a patio greater than 0.6m in height on an A1 – Agricultural zoned property, subject to Agricultural Land Commission approval of the Subdivision and Non-Adhering Residential Use application; and

THAT Covenant LB386881 be discharged subject to Agricultural Land Commission approval of the Subdivision and Non-Adhering Residential Use; and

THAT the applicant apply for a Subdivision application with the City's Development Engineering department subject to Agricultural Land Commission approval of the Subdivision and Non-Adhering Residential Use.

2. This motion provides an opportunity for Council to request additional information.

THAT Council postpone consideration of the application (A 21-08).

REVIEWED BY

Chris Oliver, Planning Manager

Brent Magnan, Director of Development Approvals

Corinne Boback, Legislative Services Manager / Corporate Officer

Trevor Seibel, Deputy CAO

APPROVED FOR THE AGENDA BY

Paul Gipps, CAO

Powerpoint: Yes No

Attachments:

1. Subdivision Application and Site Plan
2. Applicants Rationale
3. ALC Non-Adhering Residential Use Application Questions
4. Ministry of Agriculture Referral Comments
5. Draft Development Variance Permit
6. Submission