



COUNCIL REPORT  
Development Services  
For the January 14, 2020 Council Meeting

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DATE: December 20, 2019

TO: Paul Gipps, CAO

FROM: Jayden Riley, Planner II

RE: Application: Floodplain Exemption (FEX 17-01)  
Legal: Lot 38, DL 523, ODYD, Plan 11988  
Address: 1310 Green Bay Road  
Owners: R. & T. Anderson  
Agent: James Haasdyk, Oasis Design

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**RECOMMENDED MOTION:**

**THAT** Council authorize the Floodplain Exemption to S. 3.24(a) of Zoning Bylaw No. 0154 for Lot 38, DL 523, ODYD, Plan 11988 (1310 Green Bay Road) subject to the registration to title of an indemnity covenant and geotechnical report.

**RATIONALE:**

The recommended motion is based on the following:

- The applicant has submitted a report that the land may be used safely for the use intended by a professional engineer experienced in geotechnical engineering.
- Authorization of the Flood Plain Exemption will be subject to an indemnity covenant.
- The owner has taken measures to waterproof the basement by damp proofing and repurposing the area from a bedroom to a recreation room with floor covering, baseboards, and tile floor that will be tolerable of damage should flooding occur.
- The proposal is consistent with the Provincial Flood Hazard Area Land Use Management Guidelines.

**Previous Council Decisions**

On September 4, 2018, Council authorized the issuance of a Development Variance Permit (DP 17-22) and Aquatic Development Permit (DP 17-22) for the subject property to reduce the required front parcel boundary and for renovations and an addition to the existing single detached dwelling outside of the 15.0 m setback from the high water mark. Council also resolved to postpone consideration of the Floodplain Exemption pending an engineer report within one year. The applicant has since submitted an engineering report that states the land may be used safely for the use intended (*Attachment 1*).

## LEGISLATIVE REQUIREMENTS:

### **Community Charter**

S.56 of the *Community Charter* stipulates that where construction on lands subject to flooding are proposed, a Building Inspector may require reporting by a qualified professional stating that the land may be used safely for the use intended. The Inspector is required to withhold issuance of a Building Permit where a qualified professional determines the said use is not safe.

### **Local Government Act**

S.524 of the *Local Government Act* enables Council to exempt development from the requirements of a floodplain setback or flood construction elevation in relation to a specific parcel of land or a use, building or other structure on the parcel of land, if the local government considers it advisable.

Decisions on floodplain exemptions should include consideration on the following:

- a) That the exemption is consistent with Provincial Flood Hazard Area Land Use Management Guidelines (S.524(7)(a) of the *Local Government Act*); or
- b) The local government has received a report from a certified professional (in geotechnical engineering) that the land may be used safely for the use intended (S. 524(7)(b) of the *Local Government Act*).

Under this authority, local governments may also impose conditions considered necessary or advisable.

## BACKGROUND:

### **Location and Surrounding Uses**

The subject property is a triangular shaped waterfront parcel located within Green Bay with an area of approximately 1,141 m<sup>2</sup>. The property currently maintains a 1.5 storey rancher style single detached dwelling built before 1976 and a dock. The main floor elevation is 343.55m 0.10m below the flood construction level (FCL), with a basement, located on the east side of the house, sunken an additional ~4 ft. below the main floor elevation. Residence was damaged by flooding in 2017.

### **Proposal**

The applicant is proposing to alter the existing dwelling by extending the main floor entrance, add a side entrance to a proposed second storey suite, and extend the main floor and garage closer to the front parcel line (*Figure 1*). No additions to the main floor are proposed within 15 m from Okanagan Lake; however, the application is proposing to add a second storey over the west half of the dwelling (*Attachment 2*) over foundation with an elevation of 343.55 m, 0.11 m below the required FCL. More information regarding the proposal is outlined in the September 4, 2018 report (*Attachment 3*).

### **Geotechnical Report**

On July 12, 2019, a report was submitted by Interior Testing Services. The report was later revised and resubmitted on October 10, 2019. The report (*Attachment 1*) provides the following comments and recommendations:

- The site topography does not suggest that flooding at the proposed house location is a significant risk, especially given the main habitable floor elevations is close to the required FCL of 343.66.
- The owner is accepting that the sunken main floor area located at an elevation of 342.33

m is intended to be repurposed to a use that should experience less damage if flooding occurs, and the owner is understanding / accepting of the potential flooding of the basement.

- The basement is a pre-existing condition on the opposite side of the house where renovations are proposed and should therefore be considered “grand-fathered”.
- ITSL estimates the likelihood of flooding of the main floor elevations of 343.55 as having a probability of 10% in 50 years. It is reasonable to conclude that the land may be safely used for the proposed residential addition.
- Flooding risk does exist and tolerance / acceptance to flooding should be understood.

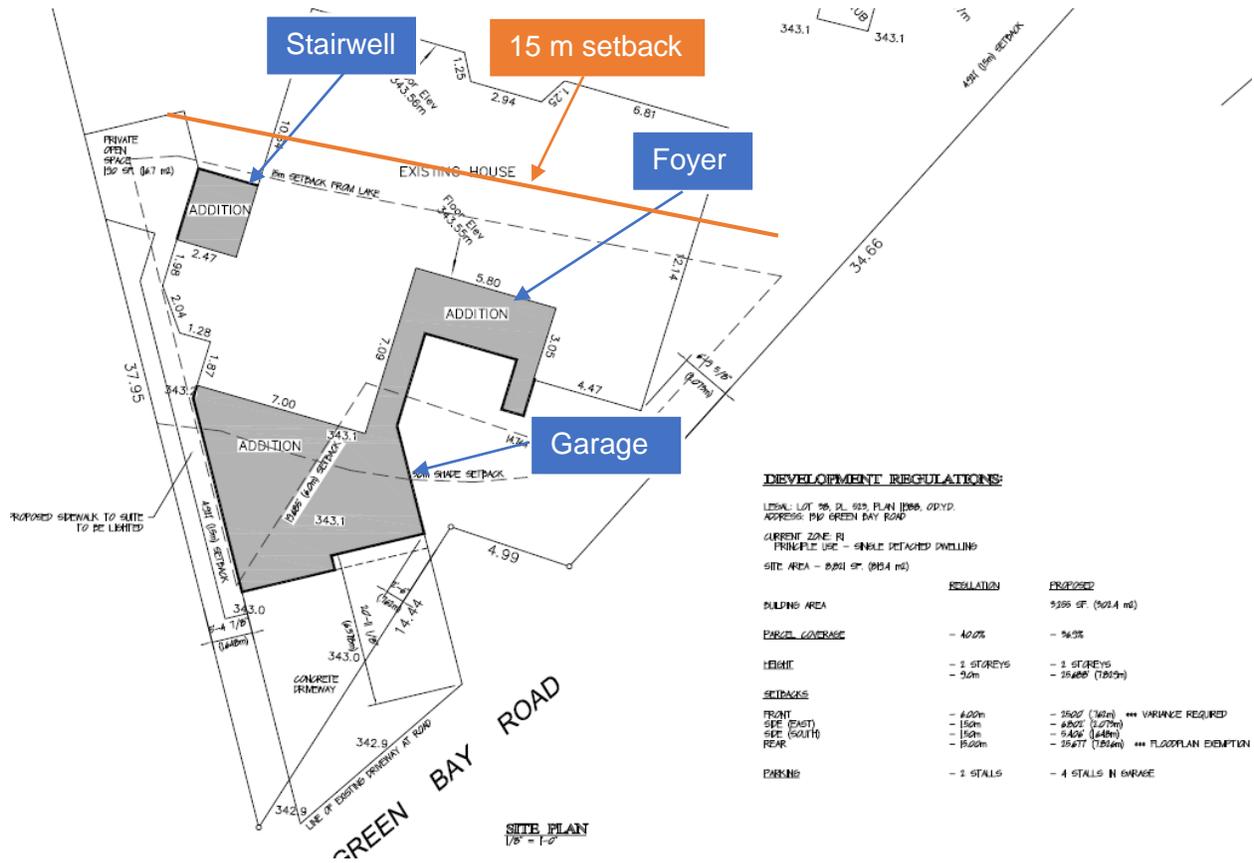


Figure 1: Proposed Additions to Building Footprint

### Provincial Flood Hazard Area Land Use Management Guidelines

The Province enables local governments to grant flood hazard area land development exemptions if the exemptions are consistent with the provincial guidelines. The guidelines are based on the policies and procedures established over the life of the provincial flood hazard management program and must be considered by local governments in making bylaws under S.524 of the *Local Government Act* and address the following:

- Permit the local government to require engineering reports assessing flood hazards and require restrictive covenants;
- Provide guidance on whom is deemed to be a qualified professional (must have geotechnical expertise) to report on flooding hazards;
- Provide the scope of work required for flood hazard assessment reporting; and,

- Stipulate acceptable parameters for conditions of hardship, which may warrant that a local government agrees to site-specific modifications to floodplain regulations. The hardship must be of a serious nature and cannot include economic circumstances or design and siting preferences.

S.4.6 of the guidelines states that where a building or structure is legally non-conforming with the flood proofing requirements set out in any pertinent bylaw or covenant, it is acceptable to allow an addition, at the original non-conforming floor elevation, that would increase the size of the building or structure by less than 25 percent of the floor area existing at the time of enactment of such flood proofing requirements, provided that the degree of nonconformity regarding setback is not increased. The additions proposed by the applicant would include an increase of the building footprint by under 25%.

## POLICY AND BYLAW REVIEW

### **Zoning Bylaw No. 0154**

The subject property is zoned Single Detached Residential Zone (R1). All parcels abutting a body of water are subject to the City's Floodplain Regulations. With respect to the subject property, the following regulations apply:

- All site preparation and construction activities shall be consistent with the floodplain regulations in S.3.24 of Zoning Bylaw No. 0154, specifically that:
  - a) the underside of any floor system used for dwelling purposes shall be above 343.66m (1127.5ft) Geodetic Survey of Canada elevation, and
  - b) any fill used to elevate a floor system or pad to achieve a 343.66m elevation shall be sited at least 15.0m from the natural boundary of Okanagan Lake.

The subject property maintains an existing single detached dwelling. The construction of this structure predates City records; however, historic air photos show this dwelling as far back as 1976. This structure does not meet the City's current floodplain regulations and is therefore considered legally non-conforming.

## TECHNICAL REVIEW

### **Indemnities**

Where a local government wishes to permit a floodplain exemption, a covenant may be registered to title and contain an "indemnity" clause to protect the local government from the financial consequences of a special event (e.g. flood damage to an approved structure within the floodplain)<sup>1</sup>. It is advisable that the said covenant is registered against the title of the property under S.219 of the *Land Titles Act* specifies the following:

- The condition(s) that would enable the land to be safely used for the use intended; and
- Granting indemnity to the local government.

However, this indemnity tool may only protect the local government from a legal ruling of full liability.

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<sup>1</sup> <sup>1</sup> S12.14, Buholzer, William (February 2018). *British Columbia Planning Law and Practice* (Markham: Butterworths, looseleaf)

COUNCIL REPORT/RESOLUTION HISTORY:

Date	Report Topic/Resolution	Resolution No.
September 4, 2018	<p><b>THAT</b> Council postpone consideration of the Floodplain Exemption to s. 3.24 of Zoning Bylaw No. 0154 for Lot 38, DL 523, ODYD, Plan 11988 (1310 Green Bay Road) pending an engineering report within one year; and</p> <p><b>THAT</b> Council support the issuance of a Development Variance Permit (DP 17-22) for Lot 38, DL 523, ODYD, Plan 11988 (1310 Green Bay Road) to reduce the required front parcel boundary setback from 6.0 m to 0.762 m, in accordance with the attached permit; and</p> <p><b>THAT</b> Council support the issuance of an Aquatic Development Permit (DP 17-22) for Lot 38, DL 523, ODYD, Plan 11988 (1310 Green Bay Road) to renovation and addition to the existing single detached dwelling outside of the 15.0 m setback form the high water mark, in accordance with the attached permit.</p>	C351/18

ALTERNATE MOTION #1:

**THAT** Council deny the Floodplain Exemption to S. 3.24(a) of Zoning Bylaw No. 0154 for Lot 38, DL 523, ODYD, Plan 11988 (1310 Green Bay Road).

This option recognizes the considerable expense and resources required to protect Green Bay during flood events and is consistent with the long-term interest of eliminating non-compliant structures within the floodplain of Okanagan Lake.

REVIEWED AND APPROVED BY:

Brent Magnan, Planning Manager  
Mark Koch, Director of Development Services  
Tracey Batten, Deputy CAO/Corporate Officer  
Paul Gipps, CAO

PowerPoint:  X  Yes   No

Attachments:

1. ITSL Geotechnical Report
2. Floor Plans
3. Sept 4, 2018 Council Report

