



COUNCIL REPORT  
Development Services  
For the March 10, 2020 Council Meeting

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DATE: March 4, 2020

TO: Paul Gipps, CAO

FROM: Jayden Riley, Planner II

RE: DVP 20-01, Development Variance Permit, 3651 Apple Way Boulevard  
Legal: Lot 4, District Lot 2405, ODYD, Plan KAP91598  
Address: 3651 Apple Way Boulevard  
Owner: Impact Demolition and Contracting Ltd. (No. A0097708)  
Agent: Chris Dennis

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**RECOMMENDED MOTION:**

**THAT** Council support the issuance of a Development Variance Permit (DVP 20-01) for 3651 Apple Way Boulevard to vary Zoning Bylaw No. 0154, S. 10.8.5 (g) to reduce the setback from the private access easement from 6.0 m to 5.0 m, in accordance with the attached Permit (*Attachment 1*).

**RATIONALE:**

The recommended motion is based on the following:

- The proposed variance to reduce the minimum setback from the garage to the private access easement will have limited impact to road access.
- Only a portion of the proposed driveway is under the required setback. Due to the curvature of the easement and laneway, the setback averages over the required 6 m.
- A Hillside Development Permit was issued in 2016 that considered the siting of future dwellings units on the subject and adjacent properties.
- Had a Building Permit been issued prior to March 13, 2019, a development variance permit would not be required.

**LEGISLATIVE REQUIREMENTS:**

Section 498 of the *Local Government Act* gives Council the authority to issue a Development Variance Permit that varies, in respect of the land covered in the permit, the provisions of the Zoning Bylaw.

**BACKGROUND**

The subject property is a steep sloped parcel that has remained vacant since it was subdivided in 2006. The applicant is proposing to construct a duplex with an attached garage on the subject property. Due to the steep topography and limited building envelope, the centre point of the proposed garage encroaches into the minimum 6 m setback from the private access easement by 1 m. The applicant is requesting a variance to maintain the proposed siting and avoid

geotechnical challenges should they be required to site the duplex closer to the existing retaining wall.

### Location and Surrounding Uses

The subject property is located at 3651 Apple Way Blvd. in the South Boucherie Neighbourhood. The parcel is surrounded by residential land uses to the north, east, and west, and Boucherie Road to the south – see context map (*Attachment 2*).

### Proposal

The proposal is to vary the minimum setback from the private access easement from 6.0 m to 5.0 m to support the construction of a duplex with attached garage.

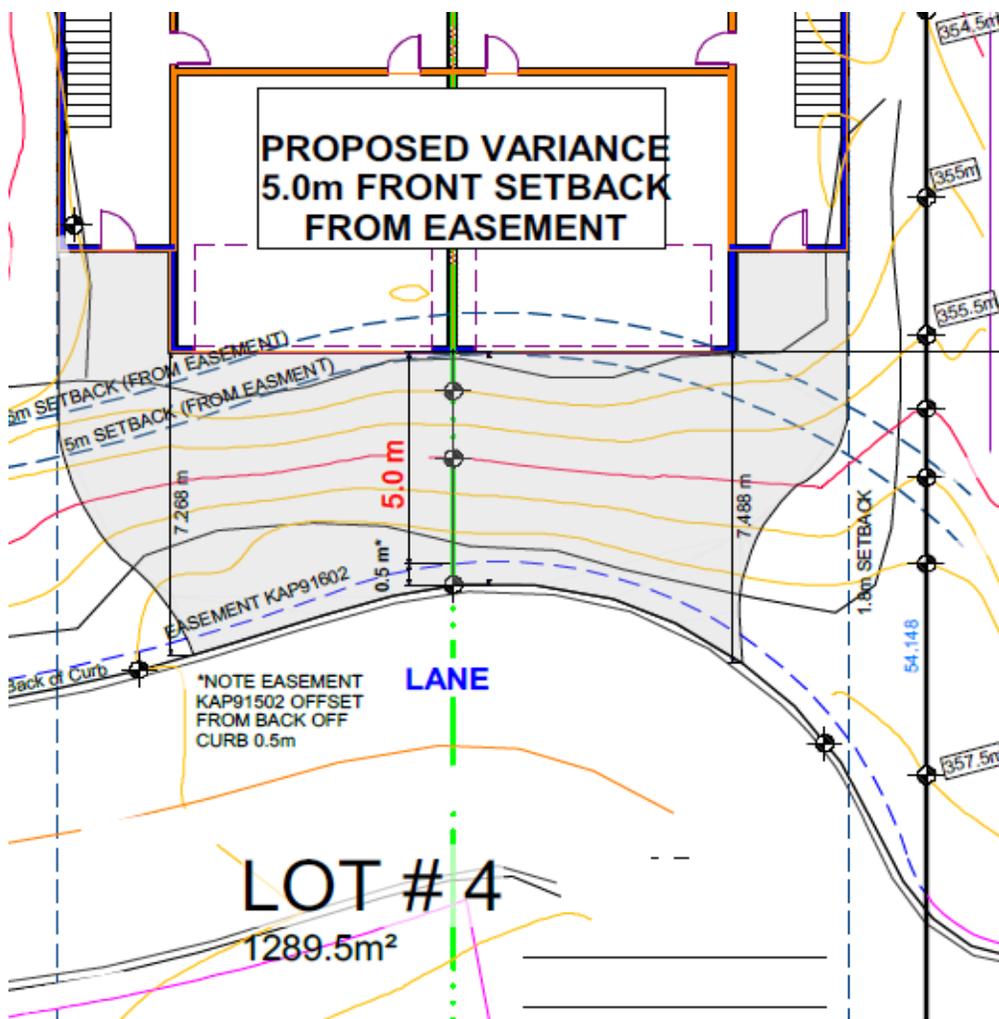


Figure 1: Site Plan

## POLICY, LEGISLATION AND BYLAW REVIEW

### Official Community Plan Bylaw No. 0100

The subject property falls within the City of West Kelowna's Single Family Residential (SFR) Land Use Designation, which is intended to support traditional single family housing opportunities and compact housing form for families.

The subject property is within a Hillside Development Permit (DP) area; however hillside hazards have been addressed through prior subdivision and development permit (DP 16-08). Further geotechnical work will be required at building permit.

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

The proposed duplex development conforms to the primary uses and regulations outlined in Zoning Bylaw No. 0154 for the Duplex Residential Zone (R2), with the exception of the setback from the private access easement.

S.10.8.6(c)6. of the R2 zone states that the regulations requiring a minimum distance between garages having vehicular entry from parcel boundaries or private access easement, and regulations requiring that the siting of a building or structure be determined in relation to the location of a private access easements, shall not apply to any parcel created by subdivision deposited in the Land Title Office before March 13, 2014, provided that the building permit authorizing the construction of the building is issued before March 13, 2019. Therefore, had a building permit been issued prior to March 13, 2019, a development variance permit would not have been required in this situation.

### TECHNICAL REVIEW

#### ***Roads and Access***

Apple Way Boulevard includes a laneway that provides access to the subject property by a private access easement. The lane within the easement area is 6.2 m wide and allows for two-way traffic. Being that the lane is 6.2 m wide, on-street parking is not available as it would affect emergency vehicle access. Reducing the setback to the private access easement may result in larger vehicles parking partially within the lane.

Setbacks are measured as the shortest distance from a structure to a parcel boundary or private access easement. The closest distance from the proposed garage to the easement boundary is 5 m; however, due to the curvature of the easement, a significant portion of the garage structure meets the 6 m setback distance. Also, as the easement boundary is closer to the garage than the end of the driveway or curb, there is additional 0.5 m from the centre point of the proposed garage to the laneway (see *Figure 1, Attachment 4*). Considering this information, the potential for vehicles to overhang into the private lane is not anticipated to be significant.

#### ***Geotechnical Considerations***

The subject property is steep sloped and includes a shallow buildable area. As a condition of a 2006 subdivision, a geotechnical covenant was registered on the property. A development permit was also approved in 2016 (DP 16-07) to permit the construction of a 2.5 m retaining wall along the southern property line, adjacent to Boucherie Road, with consideration given to the future siting of duplex units on the subject and adjacent properties (i.e. Lots 1-7). Due to the existing geotechnical covenant and the issuance of DP 16-07, development of the property is exempt from a Hillside DP, although further geotechnical review will be required at building permit.

### REFERRAL COMMENTS

The application was considered by internal and external agencies. The Fire Department provided comments stating the laneway must remain free and clear to allow for emergency vehicle access, with no on-street parking. Staff have advised the applicant that failure to maintain emergency access may result in municipal ticketing.

## PUBLIC NOTIFICATION

In accordance with the *Local Government Act*, 34 notification letters were sent to all property owners and their tenants within 100 metres of the subject property (*Attachment 5*) and a notice of application sign has been placed on the subject property in accordance with the Development Applications Procedures Bylaw No. 0260. At the time of writing this report, no submissions from the public had been received.

## ALTERNATE MOTION 1: POSTPONE

**THAT** Council postpone consideration of the issuance of a Development Variance Permit (DVP 20-01) for 3651 Apple Way Blvd. to vary Zoning Bylaw No. 0154, S. 10.8.5 (g) to reduce the minimum setback from the private access easement from 6.0 m to 5.0 m.

Should Council postpone consideration of the requested variance, further Council direction to staff is required.

## ALTERNATE MOTION 2: DENY

**THAT** Council deny consideration of the issuance of a Development Variance Permit (DVP 20-01) for 3651 Apple Way Blvd. to vary Zoning Bylaw No. 0154, S. 10.8.5 (g) to reduce the minimum setback from the private access easement from 6.0 m to 5.0 m.

Should Council deny the requested variance, the file will be closed. As per the City's Development Applications Procedures Bylaw No. 0260, the applicant could re-apply for a similar proposal 6 months after initial Council consideration.

## REVIEWED AND APPROVED BY:

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

Powerpoint: Yes  No

### Attachments:

- 1) Development Variance Permit (DVP 20-01)
- 2) Context Map
- 3) Subject Property Map
- 4) Site Plan
- 5) Public Notification Area Map

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