



The Corporation of the City of Courtenay

Staff Report

To: Council

File No.: 3090-20-2304/DVP00046

From: Director of Development Services

Date: July 31, 2024

Subject: Development Variance Permit No. 2304 - 1640 12th Street East

PURPOSE:

For Council to consider approval of Development Variance Permit No. 2304 to vary Zoning Bylaw Section 6.5.3 (ii) from “15 metres” to “10.5 metres” in order to permit the construction of a deck on the property legal described as LOT 2, SECTION 46, COMOX DISTRICT, PLAN 30794 (1640 12th Street East).

BACKGROUND:

The property owners of 1640 12th Street East are seeking variances to Part 5, section 6.5.3 (ii), of the Zoning Bylaw’s General Regulations (Division 6). This section pertains to the siting of development adjacent to watercourses and a reduction from “15 metres” to “10.5 metres” is being requested to the existing watercourse (Glen Urquhart Creek) to permit a constructed deck off the rear of the home on the property. Figure 1 and 2 below show legal parcel and site context.

The review of an Environmental Development Permit application to allow for the construction of a shed elsewhere on the property made the City aware of the deck, which was non-permitted. Once aware, Staff instructed the property owners that before any other development was permitted on-site, a Building Permit would first be required for the deck which would include an environmental assessment of the deck in relation to the watercourse.

Figure 1 : Legal Parcel



Figure 2: Site Context (blueline is the creek)



The property is designated Urban Residential and falls squarely within an Urban Residential Neighbourhood consisting of primarily single detached homes. The subject property is bordered to the north-east by a private lot, to the north-west by a City owned park, to the south-west by a City owned right of way and to the south-east by 12th Street East. Glen Urquhart Creek is located along the east and north-east of the property, largely within the neighbouring yard except for a portion of the creek near 12th Street East, where a creek culvert is

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located on the property and where the City has registered a Statutory Right of Way on the property title that permits access to and maintenance of the culvert.

The property is sloped roughly from north to south toward the creek with the location of deck approximately 1 to 1.5m higher than the creek. Other than the primary residence, the property largely consists of landscaped lawn with mature trees along various property lines, including the eastern side where Glen Urquhart Creek is located.

DISCUSSION:

Section 6.5.3 (ii) of Courtenay’s Zoning Bylaw regulates the siting of development adjacent to watercourses by requiring a minimum 15-metre setback from the natural boundary of Morrison Creek, Piercy Creek, Milliard Creek and any other watercourse. Glen Urquhart Creek is defined as a watercourse. The home on the property was constructed in 1978 and is legally non-conforming. The deck however is newly constructed and the owner did not apply for a building permit with the City. The location of the existing deck is not in conformance with Section 6.5.3 (ii) of Courtenay’s Zoning Bylaw, which states any development must be setback 15 metres from a watercourse. The deck meets all other siting requirements of the zoning bylaw, primarily the property’s R-SSMUH (and formerly R-1) building side yard setback of 1.5 metres.

As part of the Environmental Development Permit application process, an Environmental Impact Assessment (EIA) and a Riparian Area Protection Regulation (RAPR) Assessment Report have both been conducted. The RAPR Assessment in particular uses a scientific methodology to determine a provincially required Streamside Protection and Enhancement Area (SPEA) for the protection of fish and fish habitat. The Assessment Report, which required acceptance by the Ministry of Water Lands and Resources, determined a 10 metre SPEA around the creek. Therefore, the deck falls outside the SPEA and the property’s Environmentally Sensitive Area.

Division 6- General Regulations Part 5 – Siting of Development Adjacent to or on Watercourses	Required	Proposed
Setback for Development Adjacent to a <i>watercourse</i>	15 metres	10.5 metres

POLICY ANALYSIS:

To bring the deck into conformance, the application requests a variance to Zoning Bylaw Section 6.5.3 (ii) from 15 metres to 10.5 metres. The deck is not regulated by Floodplain Management Bylaw No. 1743 and does not need to meet the Floodplain Bylaw’s setback. As a condition of the Building Permit, a geotechnical report by Qualified Professional must be submitted to the City where it will be appended to a Section 219 Covenant registered on the property title, indemnifying and saving harmless the City.

Based on the deck’s siting and reports authored by Registered Professional Biologists, Staff are confident that had the property owner had undertaken the proper procedure to obtain a Building Permit for the deck originally, the development would have met the environmental, planning and building regulations. Staff recommend approval of the variance.

Both the existing constructed deck and proposed new shed located elsewhere on the property are subject to an Environmental Development Permit (EDP), which is concurrently being processed, meets applicable EDP guidelines, and is delegated to the Director of Development Services for issuance. Should Council approve Development Variance Permit No. 2304 (Attachment No.1), the issuance of Environmental

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Development Permit No. 2321 will follow. Building permits have not yet been applied for at the time of writing this report, and are also required for both the existing deck and proposed shed.

FINANCIAL IMPLICATIONS:

There is no direct financial implication related to this bylaw.

ADMINISTRATIVE IMPLICATIONS:

Processing Development Variance Permit applications is a statutory component of the corporate work plan and a core duty of the Development Services Department. Work to date has primarily been carried out by Development Services staff, although other departments have provided referral comments.

PUBLIC ENGAGEMENT:

Per *Development Procedures Bylaw No. 2106, 2023*, no Community Information Meeting (CIM) is required for this Development Variance Permit Application.

In accordance with *Local Government Act Section 499*, Staff mailed a public notification to 11 property owners and occupants within a 30 metre area on July 19, 2024 (Attachment No. 2). There are no public comments received at the time of writing this report, and any comments received by 1:00 p.m. on July 31, 2024, will be presented to Council at the regular council meeting.

OPTIONS:

1. THAT Council vary *Zoning Bylaw No. 2500, 2007*, Section 6.5.3 (ii) as follows: from “15 metres” to “10.5 metres” from the natural boundary of Morrison Creek , Piercy Creek , Millard Creek, and any other watercourse to permit the construction of a deck; and
THAT Council approve “Development Variance Permit No. 2304 (1640 12th Street East)”; and
THAT Council direct the Director of Development Services to issue “Development Variance Permit No. 2304 (1640 12th Street East)”.
2. THAT Council Council defer and request additional information from staff for “*Development Variance Permit No. 2304*”.
3. THAT Council deny the the application for “*Development Variance Permit No. 2304 (1640 12th Street East)*” and provide a reason for denial

ATTACHMENTS:

1. *Draft Development Variance Permit No. 2304*
2. *Public Mailout Notice*

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