



BOARD REPORT

TO:

Chair and Directors

File No: DVP701-77
PL20170182

SUBJECT:

Electoral Area C: Development Variance Permit 701-77

DESCRIPTION:

Report from Christine LeFloch, Planner II, dated July 2, 2019.
1585 Blind Bay Road, Sorrento

**RECOMMENDATION
#1:**

THAT: in accordance with Section 498 of the Local Government Act Development Variance Permit No. 701-77 for Lot 1, Section 15, Township 22, Range 11, West of the 6th Meridian, Kamloops Division Yale District, Plan EPP19912, varying South Shuswap Zoning Bylaw No. 701 as follows:

1. Section 8.2.5 Minimum setback from a front parcel line from 5 m to 0 m for an existing garage;
2. Section 8.2.5 Minimum setback from a rear parcel line from 5 m to 4.4 m for an existing deck attached to an existing cabin;

be approved for issuance this 18th day of July, 2019;

AND THAT: the variances requested to:

3. Section 8.2.5 Minimum setback from an interior side parcel line from 2 m to 0.6 m for an existing boathouse;
4. Section 8.2.5 Minimum setback from a rear parcel line from 5 m to 0 m for an existing boathouse; and
5. Section 3.5.8 Minimum setback from an interior side parcel line from 1 m to 0 m for the eaves of an existing boathouse;

be denied, this 18th day of July, 2019.

SHORT SUMMARY:

The subject property is located at 1585 Blind Bay Road, and is subject to South Shuswap Zoning Bylaw No. 701 and Electoral Area 'C' Official Community Plan Bylaw No. 725. The owner would like to regularize the setbacks for an existing boathouse, an existing deck attached to an existing cabin and an existing detached garage located on the property. This requires variances to the front, rear and interior side parcel line setbacks.

VOTING:

Unweighted
Corporate

☐

LGA Part 14
(Unweighted)

☒

Weighted
Corporate

☐

Stakeholder
(Weighted)

☐**BACKGROUND:**

PROPERTY OWNER:
LeClair Holdings Inc.

APPLICANT:

Bill LeClair (Deceased), Leclair Holdings Inc.

AGENT:

Sharon LeClair

ELECTORAL AREA:

C

LEGAL DESCRIPTION:

Lot 1, Section 15, Township 22, Range 11, W6M, KDYD, Plan EPP19912

PID:

028-875-851

CIVIC ADDRESS:

1585 Blind Bay Road, Sorrento

SURROUNDING LAND USE PATTERN:

North = Shuswap Lake

South = Blind Bay Road, Rural Residential

East = Rural Residential

West = Rural Residential

CURRENT USE:

Single Family Dwelling, detached garage, cabin, boathouse

PROPOSED USE:

Regularize setbacks for existing garage and existing boathouse

PARCEL SIZE:

3.26 ha (8.06 ac.)

PROPOSED PARCEL SIZE:

N/A

DESIGNATION:

Electoral Area C Official Community Plan Bylaw No. 725

RR2 Rural Residential

ZONE:

South Shuswap Zoning Bylaw No. 701

Land = RR2 Rural Residential (area north of the TCH), RR4 Rural Residential (area south of the TCH)

Lakes Zoning No. 900

FM1 Foreshore Multi Family 1

PROPOSED DESIGNATION:

N/A

PROPOSED ZONE:

N/A

AGRICULTURAL LAND RESERVE:

0 %

SITE COMMENTS:

A site visit took place on September 20, 2017. The subject parcel was purchased by the current owner in 2011 along with the property on the south side of Blind Bay Road. These two lots were then consolidated under the current title. The property is divided by both Blind Bay Road and the Trans-Canada Hwy, however all of the development is located adjacent to Blind Bay Road. At the time of redevelopment of the property in 2012 a new septic system was installed on the south side of the road to move it further away from the lake.

Existing buildings on the north side of Blind Bay Road include a single family dwelling which was reconstructed on its existing footprint in 2012, a boathouse reconstructed on its existing foundation between 2012-14 which contains a bar area and storage, a smaller single family dwelling (labeled cabin on the Building Location Certificate and will be referred to in this report as cabin) which was renovated in 2011-12, and a detached garage which was re-sided in 2012. There is also an accessory building located on the portion of the property south of Blind Bay Road. This building is used for boat and vehicle storage. A retaining wall and portions of the boathouse are located on the foreshore. The wall is sited approximately at the northerly wall of the boathouse and runs the length of the property. The wall continues along the foreshore of the adjacent parcels as well. The owner stated that the wall was in place when the property was purchased. An application was made to the Surveyor General for accretion in order to adjust the property line to include the area up to the retaining wall and the portions of the boathouse that are located on Crown foreshore, but was denied. This DVP application has been referred to the Province for their comments. Please see Communications section below for a summary of referral comments.

Historical Applications:

BV701-01 - The Board of Variance approved a variance to the maximum height of the single family dwelling from 10 m to 11.1 m on August 20, 2012. A Riparian Areas Regulation (RAR) assessment was completed as part of the Board of Variance approval. The owner was also required to obtain an encroachment permit from the Ministry of Transportation and Infrastructure for the garage as a condition of approval. A Development Permit was not required as redevelopment of the property was completed prior to adoption of Electoral Area C Official Community Plan Bylaw No. 725.

2012-04159 – As noted above a permit from the Ministry of Transportation and Infrastructure to allow a small encroachment into the road right of way for the existing garage was issued October 16, 2014.

EX701-23 – A floodplain exemption was issued on June 10, 2016. The exemption covered reconstruction of portions of the house and cabin which are located within 15 m of the high water mark, along with the boathouse. This exemption was supported by a flood hazard assessment by Onsite Engineering certifying that the buildings may safely be used for the intended use. A condition of the approval was registration of a Section 219 covenant saving harmless the CSRD and the Crown in the event of flood

damage and referencing the report by Onsite Engineering as supplemental information for future owners.

POLICY:

Please see attached BL701_BL725_Excerpts_DVP701-77.pdf.

It is noted that Special Regulation 8.3.5 applies to this property and allows 2 single family dwellings to be located on the property.

DEVELOPMENT VARIANCE PERMIT:

The applicant is proposing to vary:

Section 8.2.5 Minimum setback from a front parcel line from 5 m to 0 m for an existing garage;

Section 8.2.5 Minimum setback from a rear parcel line from 5 m to 4.4 m for an existing deck attached to an existing cabin;

Section 8.2.5 Minimum setback from an interior side parcel line from 2 m to 0.6 m for an existing boathouse;

Section 8.2.5 Minimum setback from a rear parcel line from 5 m to 0 m for an existing boathouse;

Section 3.5.8 Minimum setback from the interior side parcel line from 1 m to 0 m for the eaves of an existing boathouse.

SERVICING:

The property is serviced by a water intake from Shuswap Lake and a Type 1 onsite septic system which is sited on the south side of Blind Bay Road.

ACCESS:

The property is accessed directly from Blind Bay Road.

FINANCIAL:

This application is the result of issues discovered through the original Board of Variance application and bylaw enforcement follow up on a complaint received in 2014 regarding redevelopment of the property. If the Development Variance Permit application is not approved, and the owner does not bring the property into compliance by removing or relocating the offending boathouse, the Board may then wish to direct staff to seek a legal opinion regarding possible court action. Costs for the legal opinion and possible court action, although partially recoverable through Court, could nonetheless be substantial. Staff involvement in legal action is not recoverable.

KEY ISSUES/CONCEPTS:

A Development Variance Permit can only vary those portions of the buildings located on the subject property. It is noted that portions of the boathouse, along with a concrete pad and a retaining wall are located north of the parcel line on the Crown foreshore and a portion of the garage is located in the Blind Bay Road right of way.

Garage

The applicant has obtained an encroachment permit from the Ministry of Transportation and Infrastructure for the portions of the existing garage that encroach onto Blind Bay Road. Also, it is noted that the building is sited a few metres back from the travelled road. As such, staff do not have any objections to the proposed variance to allow the structure to be sited at the lot front parcel boundary.

Cabin

The existing cabin was renovated and portions of the attached deck were reconstructed as part of the redevelopment of the subject property. Floodplain Exemption EX701-23 was issued in 2016 to recognize the portions of the building that are sited within 15 m of Shuswap Lake, and a Section 219 floodplain covenant was registered on title to alert future owners and save harmless the Regional District. Staff do not have any objections to the proposed variance to the rear parcel boundary. It is noted that the steps to the deck are located closer to the property line than the deck, however Section 3.5.1 of Bylaw No. 701 allows a setback exception for steps provided they are not closer than 1 m to a property line.

Boathouse

The applicant's surveyor applied to the Surveyor General for accretion to adjust the property boundary to the Present Natural Boundary as shown on the Building Location Certificate (See Maps_Plans_Photos_DVP701-77.pdf). If approved this would mean that structures currently sited on the Crown foreshore would then be sited mostly on the subject property. This application was denied. As such, the structures sited below the property line (Natural Boundary as shown on Plan EPP19912) are in trespass. This is a Provincial issue and to date there has been no action by Provincial Compliance and Enforcement. It is noted that the neighbouring properties also have retaining walls sited below the natural boundary.

It is important to note that the boathouse was reconstructed on an existing foundation. It is not known when the original boathouse and its foundation were constructed. The South Shuswap Zoning Bylaw No. 701, including the setback requirements, was adopted in 1997. At the time of reconstruction of the boathouse there was no Building Inspection service in Electoral Area C, so there was no oversight regarding the siting of buildings and structures. If the requested variances are approved and the building were to later be destroyed, reconstruction would require a building permit and would only be permitted up to the current property boundary (Natural Boundary as shown on Plan EPP19912).

This Development Variance Permit application was referred to the Ministry of Forests Lands Natural Resource Operations and Rural Development. Comments received from the Ministry indicate that they do not support regularization of the existing siting of the boathouse and recommended that the requested variance not be approved. They also indicated that the infraction would be sent to their compliance and enforcement staff for follow up as a low priority item.

The property most impacted by the proposed variances to the siting of the boathouse would be the one located immediately to the west of the subject property. It is noted that there is a cabin sited close to the common lot boundary on that property as well.

SUMMARY:

Staff are recommending that the Board consider approval of Development Variance Permit No. 701-77 to include the proposed variances for the siting of the existing garage and existing cabin and attached deck only, for the following reasons:

- The siting of the garage within the Blind Bay Road right of way has been permitted by the Ministry of Transportation and Infrastructure through an encroachment permit;
- Floodplain Exemption EX701-23 has been issued by the CSRD for the cabin and attached deck and a Section 219 flood covenant has been registered on title.

Staff are further recommending that the Board consider denying the proposed variances for the siting of the existing boathouse for the following reasons:

- The Ministry of Forests Lands Natural Resource Operations and Rural Development recommended that the proposed variance not be approved;
- The siting of the boathouse would only be permitted up to the property boundary. The portions of the building located on Crown Land require authorization by the Province which has been denied;
- Approval of the proposed variances would set a precedent with regard to allowing the siting of boathouses at or below the natural boundary.

IMPLEMENTATION:

If the Board approves the staff recommendations, staff will notify the applicant of the decision. Staff will prepare a notice to be sent to the Land Titles and Survey Authority for registration of the DVP on title. Further direction from the Board will be required with regard to bylaw enforcement if siting of the existing boathouse is not permitted. This would be addressed in a future Board report.

COMMUNICATIONS:

Notice of the proposed Development Variance Permit has been sent to all owners of property lying within 100 m of the subject property in accordance with Section 499 of the Local Government Act advising of the opportunity to comment on the proposed variances. Staff will provide a verbal update to the Board with regard to any submissions which may be received.

This application has been referred to the Electoral Area 'C' Advisory Planning Commission (APC) and the Ministry of Forests Lands Natural Resource Operations and Rural Development – Lands Branch (FLNRORD).

FLNRORD staff noted that the Surveyor General must approve the application for accretion before they can consider improvements made on Crown Land without authorization, and that as the accretion application was not approved these improvements are considered to be in trespass on Crown Land. They recommended that the Development Variance Permit not be approved.

The Area C APC recommended approval of the application.

DESIRED OUTCOMES:

That the Board endorse staff recommendation and authorize issuance of DVP701-77 to include the variances for the existing garage and existing deck attached to the existing cabin only.

BOARD'S OPTIONS:

1. *Endorse the Recommendation.*
2. *Deny the Recommendation.*
3. *Defer.*
4. *Any other action deemed appropriate by the Board.*


LIST NAME OF REPORT(S) / DOCUMENT(S) AVAILABLE FROM STAFF:

1. Electoral Area C Official Community Plan Bylaw No. 725
2. South Shuswap Zoning Bylaw No. 725

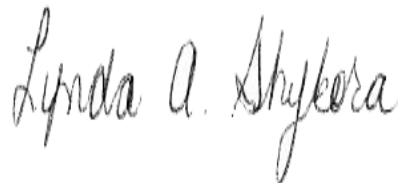
Report Approval Details

Document Title:	2019-07-18_Board_DS_DVP701-77_LeClair.docx
Attachments:	<ul style="list-style-type: none">- DVP 701-77.pdf- BL701_BL725_Excerpts_DVP701-77.pdf- Encroachment_Permit_MoTI_DVP701-77.pdf- EX701-23.pdf- CA5483835_Floodplain_Covenant_DVP701-77.pdf- RAR_Report_2257_DVP701-77.pdf- Agency_referral_responses_DVP701-77.pdf- Maps_Plans_Photos_DVP701-77.pdf
Final Approval Date:	Jul 5, 2019

This report and all of its attachments were approved and signed as outlined below:



Corey Paiement - Jul 5, 2019 - 8:41 AM



Lynda Shykora - Jul 5, 2019 - 9:37 AM

No Signature - Task assigned to Charles Hamilton was completed by assistant Lynda Shykora

Charles Hamilton - Jul 5, 2019 - 9:38 AM