



# BOARD REPORT

**TO:** Chair and Directors

**File No:** DVP851-02  
PL20170000075

**SUBJECT:** Electoral Area B: Development Variance Permit 851-02 (Dickinson)

**DESCRIPTION:** Report from Christine LeFloch, Development Services Assistant, dated December 18, 2017.  
1617 Ferguson Road, Ferguson

**RECOMMENDATION #1:** THAT: in accordance with Section 498 of the Local Government Act Development Variance Permit No. 851-02 for Lot A, District Lot 1145, Kootenay District, Plan EPP56626, varying Electoral Area B Zoning Bylaw No. 851 as follows:

1. Section 5.5(3)(i): Minimum front parcel boundary setback from 5 m to 4.04 m for the existing single family dwelling only;

be approved for issuance this 18<sup>th</sup> day of January, 2018.

## SHORT SUMMARY:

The subject property is located at 1617 Ferguson Road in Electoral Area B. The owner made application for a Development Permit for a home recently constructed on the subject property. The survey submitted for this application indicates that the house is sited too close the front parcel boundary. The owner is applying for a Development Variance Permit to vary the required setback from the front parcel boundary to bring the property into compliance.

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**VOTING:** Unweighted  LGA Part 14  Weighted  Stakeholder   
Corporate (Unweighted) Corporate (*Weighted*)

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## BACKGROUND:

REGISTERED OWNER:  
Diana Dickinson

APPLICANT:  
Diana Dickinson

ELECTORAL AREA:  
B

LEGAL DESCRIPTION:  
Lot A, District Lot 1145, Kootenay District, Plan EPP56626  
PID: 029-704-405

CIVIC ADDRESS:  
1617 Ferguson Road

**SURROUNDING LAND USE PATTERN:**

North: Road allowance (Queen Ave), Small Holdings (vacant)  
South: Road allowance (Railway Street), Small Holdings (vacant)  
East: Crown Land (vacant)  
West: Crown Land (vacant)

**CURRENT USE:**

Single Family Dwelling

**PROPOSED USE:**

Single Family Dwelling and accessory building

**PARCEL SIZE:**

0.11 ha

**DESIGNATION:**

SH- Small Holdings

**ZONE:**

SH – Small Holdings

**AGRICULTURAL LAND RESERVE:**

0%

**SITE COMMENTS:** Development Services staff visited the site on May 8, 2017. This is a remote property located in the historic Ferguson townsite where roads and lots were surveyed but most have never been developed. Although the lot is located on Railway Street, this "street" is unconstructed and the property gains access from Ferguson Road as shown on the location map. The property is a consolidation of four original townsite lots. The consolidation was required to address use and siting issues related to construction of the house and servicing over multiple lot lines.

The subject property lies adjacent to Esbrella Brook/Pond and the house is located within 15 m of the pond. Development Permit DP850-10 was issued December 23, 2016 to address the works within the riparian area. An application for a Floodplain Exemption has also been submitted and is being processed by staff. This application for a Development Variance Permit addresses the siting of the single family dwelling which is located within the 5 m front parcel boundary setback.

The owner is also proposing to construct an accessory building for storage in the northwest corner of the subject property. The proposed building will meet all setback requirements as indicated on the site plan.

**POLICY:****Electoral Area 'B' Official Community Plan Bylaw No. 850**

The subject property is designated Small Holdings in accordance with Bylaw No. 850. Section 4.3.20 outlines the principal uses of properties designated Small Holdings which include residential or agricultural along with one primary dwelling and one secondary dwelling unit shall be permitted per lot. Secondary dwelling units are allowed pursuant to the conditions set out in Section 4.3.28 and as further

regulated through zoning. The property currently has one dwelling unit which meets the intent of the OCP.

### **Electoral Area 'B' Zoning Bylaw No. 851**

The subject property is zoned Small Holdings in accordance with Bylaw No. 851. The Small Holdings zone permits a number of principal uses including agriculture, day care, horticulture, single family dwelling, standalone residential campsite and timber harvesting. Secondary uses include accessory use, bed and breakfast, home occupation, small-scale sawmill, residential campsite, and secondary dwelling unit. One single family dwelling is permitted per parcel and one secondary dwelling unit is permitted subject to the regulations set out in Section 3.15.

### **FINANCIAL:**

This application is the result of bylaw enforcement action. If the Board does not approve the requested variance, 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. Cost of staff involvement in legal action is not recoverable.

### **KEY ISSUES/CONCEPTS:**

#### **Servicing**

The property is serviced by an onsite septic system and a water intake from Esbrella Brook.

#### **Access**

The property is accessed from a driveway originating on Ferguson Road which follows the unconstructed Ferguson Street and Railway Street rights of way to the property.

#### **Development Variance Permit**

This application proposes to vary the minimum front parcel boundary setback required pursuant to Section 5.5(3)(i) of Electoral Area from 5 m to 4.04 m for the existing single family dwelling only.

The subject property is located in a remote area where historically there was very little land use regulation. The applicant proceeded with development of the property without consultation with Development Services staff, and prior to obtaining the services of a surveyor. The house was located over top of the original property boundaries and was also located within the floodplain setback, and within the front parcel boundary setback. The applicant has consolidated the four original lots and has made the required applications to bring the property into compliance with zoning regulations and the Official Community Plan.

Staff note that Railway Avenue, which abuts the front parcel boundary is unconstructed at this time. The property is surrounded by unconstructed road rights of way, Crown land and other lands owned by the applicant. As such, there is little effect on the adjacent properties.

There is also a 4.5 m Provincial setback from the Railway Avenue road right of way. A referral was sent to the Ministry of Transportation and Infrastructure regarding this application. The Ministry response advised that they have no concerns with the proposed variance and are not requiring the owner to obtain a setback permit.

**SUMMARY:**

Development Services staff are recommending that Development Variance Permit 851-02 be approved for the following reasons:

- The subject property fronts Railway Avenue which is an unconstructed road right of way;
- The Ministry of Transportation and Infrastructure has indicated that they do not have any concerns regarding the proposed variance and will not be requiring the owner to obtain a setback permit;
- The subject property is in a remote location surrounded primarily by Crown lands and other parcels owned by the owner of the subject property. Thus, the proposed variance will have little to no effect on the surrounding neighbourhood.

**IMPLEMENTATION:**

If the Board approves the requested variance, the owner will be notified and a Development Variance Permit will be registered on the title of the property. No further bylaw enforcement action will be required for the existing improvements.

**COMMUNICATIONS:**

Property owners within 100 m of the subject property will be sent notification of the requested variance a minimum of 10 days prior to the CSRD Board meeting at which the variances will be considered. All interested parties will have the opportunity to provide comments regarding this application prior to the Board meeting.

Referrals have been sent to the following agencies:

- Electoral Area B Advisory Planning Commission
- Ministry of Transportation and Infrastructure

The Electoral Area B Advisory Planning Commission supported the proposed variance and advised that the Board accept the Development Variance Permit as written. The Ministry of Transportation and Infrastructure advised that their interests are unaffected, and that due to the remote location of the property they would not be requiring the owner to apply for a setback permit.

**DESIRED OUTCOMES:**

That the Board endorse the staff recommendation.

**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 B Official Community Plan Bylaw No. 850

2. Electoral Area B Zoning Bylaw No. 851
3. Minutes from a meeting of the Electoral Area B Advisory Planning Commission held December 6, 2017.

**Report Approval Details**

Document Title:	2018-01-18_Board_DS_DVP851-02_Dickinson.docx
Attachments:	- DVP851-02.pdf - Agency_referral_responses_DVP851-02.pdf - Maps_Plans_Photos_DVP851-02.pdf
Final Approval Date:	Jan 4, 2018

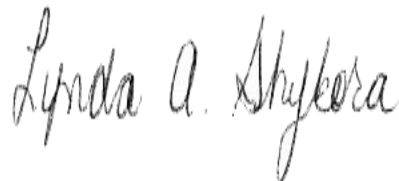
This report and all of its attachments were approved and signed as outlined below:



**Corey Paiement - Jan 2, 2018 - 3:03 PM**



**Gerald Christie - Jan 3, 2018 - 9:19 PM**



**Lynda Shykora - Jan 4, 2018 - 10:40 AM**



**Charles Hamilton - Jan 4, 2018 - 1:54 PM**