

March 4, 2021

Subject Property:

463 Upper Bench Rd N

Lot 1, District Lots 187, 203 and 204, Similkameen
Division Yale District, Plan 25087

Application:

Development Variance Permit PL2020-8876

The applicants are proposing to legalize an existing accessory suite, located within an accessory structure on the property. The applicants are intending to connect the accessory structure to the principal dwelling unit. By connecting the accessory structure to the principal residence, the setback requirements of the principal residence apply.



In order to proceed with the breezeway connection, the applicants require two variances to Zoning Bylaw No. 2017-08:

1. Section 9.3.2.7: to reduce the minimum rear yard setback from 6.0m to 3.0m, and
2. Section 8.1.4.2: to increase the maximum gross floor area of a secondary suite from 90m² or 40% of the habitable floor area of the building, to 164.5m² or 40% of the habitable floor area of the building,

Information:

You can find the staff report to Council and Development Variance Permit PL2020-8876 on the City's website at www.penticton.ca/publicnotice.

Please contact the Planning Department at planning@penticton.ca or (250) 490-2501 with any questions.

Council Consideration:

Council will consider the Development Variance Permit at its Regular Council Meeting scheduled for **1:00 pm, Tuesday, March 16, 2021** at Penticton City Hall, 171 Main St.

In response to COVID-19, Regular Council meetings will remain closed to the public. All meetings will be live streamed via the City's website at: www.penticton.ca/city-hall/city-council/council-meetings. Select the 'Watch Live' button.

Public Comments:

Any person whose interest may be affected by the proposed Development Variance Permit, may submit a petition or written comments by mail or email no later than **9:30 am, Tuesday, March 16, 2021** to:

Attention: Corporate Officer, City of Penticton

171 Main Street, Penticton, B.C. V2A 5A9

Email: corpadmin@penticton.ca

No letter, report or representation from the public will be received by Council after the conclusion of the March 16, 2021 Council Meeting.

Please note that all correspondence submitted to the City of Penticton in response to this Notice must include your name and address and will form part of the public record and will be published in a meeting agenda when this matter is before the Council or a Committee of Council. The City considers the author's name and address relevant to Council's consideration of this matter and will disclose this personal information. The author's phone number and email address is not relevant and should not be included in the correspondence if the author does not wish this personal information disclosed.

Audrey Tanguay
Planning Manager

Date: March 16, 2021
To: Donny van Dyk, Chief Administrative Officer
From: Nicole Capewell, Planner II
Address: 463 Upper Bench Road N

Subject: Development Variance Permit PL2020-8876

File No: RMS/463 Upper Bench Road N

Staff Recommendation

THAT Council approve "Development Variance Permit PL2020-8876" for Lot 1 District Lots 187, 203 and 204 Similkameen Division Yale District Plan 25087, located at 463 Upper Bench Road North, a permit to vary the following sections of Zoning Bylaw No. 2017-08:

1. Section 9.3.2.7: to reduce the minimum rear yard setback from 6.0m to 3.0m, and
2. Section 8.1.4.2: to increase the maximum gross floor area of a secondary suite from 90m² or 40% of the habitable floor area of the building, to 164.5m² or 40% of the habitable floor area of the building, whichever is less.

AND THAT staff be directed to issue "Development Variance Permit PL2020-8876".

Strategic Priority Objective

Community Vitality: The City of Penticton, guided by the Official Community Plan, will promote the economic wellbeing and vitality of the community.

Proposal

The applicants are proposing to legalize an existing accessory suite, located within an accessory structure on the property located at 463 Upper Bench Road North. The applicants are intending to connect the accessory structure to the principal dwelling unit. By connecting the accessory structure to the principal residence, the setback requirements of the principal residence apply. In order to proceed with the breezeway connection, the applicants require two variances to Zoning Bylaw No. 2017-08: 1) to reduce the minimum rear yard setback from 6.0m to 3.0m, and 2) to increase the size of a secondary suite from 90m² or 40% of the habitable floor area of the building, to 164.5m² or 40% of the habitable floor area of the building, whichever is less.

Background

The subject property is approximately 0.2 hectares (0.5 acres) in size and is located on Upper Bench Road North, near the intersection of McMillan Avenue and Upper Bench Road North. The property is currently zoned A (Agriculture), but due to its lot area being less than 0.4 hectares, it is subject to the lot coverage, setbacks and height regulations of the RC (Country Residential Housing) zone. The Official Community Plan (OCP) Future Land Use Map designates the property as Agriculture. The surrounding area is made up of similar uses, being primarily agriculture with large lots. The subject property currently contains a single family home and an accessory structure (where the suite is currently located). The property is located within the Agricultural Land Reserve (ALR) and is subject to the Agricultural Land Commission (ALC) Legislation and Regulations.

The accessory structure was constructed with appropriate permits in 1997. In 2005, the property owners made concurrent applications with the City and the Agricultural Land Commission (ALC) to allow for a 'carriage house' within the accessory structure. The applicants eventually cancelled the applications in 2005 prior to proceeding to Council for consideration, and the use was never formally approved. Since this time, staff have become aware of works that occurred within the detached accessory building to construct a dwelling unit, without the benefit of building permits.

Since 2005, both the City and the Agricultural Land Commission (ALC) have changed regulations that relate to accessory suites. The ALC now requires any detached suite (i.e. carriage house) to be approved by the ALC prior to construction, where previously local governments were delegated this authority. The ALC does allow for secondary suites without special approval from the ALC. Secondary suites are required to be contained within a principal dwelling.

In order for the accessory suite on the property to be considered a 'secondary suite', it must be connected to the principal dwelling unit (main house) on the property. In order to move forward, staff have worked diligently with the applicants to prepare a proposal to legalize the suite, by creating a connection to the main house with a closed-in corridor (Attachment 'E'). The City's Zoning Bylaw considers a roofline or foundation as a means of connecting two structures together. However, the ALC requires a more significant connection (roof, walls, foundation, etc.) between an accessory building to a principal building.

As such, staff have worked with the applicant to create a proposal that connects the two structures with a corridor to satisfy the ALC Regulations. Lastly, in connecting the accessory building to the principal building, a variance is required to reduce the minimum rear yard setback from 6.0m to 3.0m, as the structure now must meet setback requirements of the principal building. The applicants also require an increase to the allowable size of the secondary suite from 90m² or 40% of the total habitable floor area, to 164.5m² or 40% of the total habitable floor area.

Technical Review



Figure 1 - Property Location Map

The application was reviewed by the City's Technical Planning Committee, where no significant items were identified. The property owners will be required to obtain a building permit to construct the proposed works, and to legalize the existing suite, should Council support the variance.

Development Statistics

The following table outlines the proposed development statistics on the plans submitted:

	Zone Requirement	Provided on Plans
Maximum Lot Coverage:	15 %	14%
Vehicle Parking:	3	3+
Required Setbacks		
Front Yard (east):	9.0 m	15.0 m
Side Yard (north):	4.0 m	4.5 m
Side Yard (south):	4.0 m	7.5 m
Rear Yard (west):	6.0 m	3.0 m (variance requested)
Secondary Suite Size	90 m ²	164.5 m ² (variance requested)

Analysis

Support Variance

When considering a variance to a City bylaw, staff encourages Council to consider if approval of the variance would cause a negative impact on neighbouring properties and if the variance request is reasonable. The applicant is requesting two variances related to legalizing the construction of a secondary suite. Staff have reviewed the application and are supporting the variances based on the following:

1. Section 9.3.2.7: to reduce the minimum rear yard setback from 6.0m to 3.0m.

- The applicants are proposing to legalize an existing suite on the property. Legalizing a suite ensures that the structure meets building code requirements, as well as health and safety requirements to help ensure the safety of the users of the suite, whether short or long term tenants.
- The property will continue to meet other provisions of the Zoning Bylaw (lot coverage, parking, secondary suite size, etc.)
- Given the location of the structure, being adjacent to a large agricultural property, without a residence located nearby, the anticipated impact is reduced.
- The proposal is aligned with both the City's Zoning Bylaw and the ALC Regulations for secondary suites.
- The Agricultural Land Commission does not permit carriage houses (i.e. suites in separate structures). Therefore, legalizing the suite in its current form is not possible.
- The Agriculture OCP Designation allows for 1-2 units per parcel.

2. Section 8.1.4.2: to increase the maximum gross floor area of a secondary suite from 90m² or 40% of the habitable floor area of the building, to 164.5m² or 40% of the habitable floor area of the building, whichever is less.

- The requested 164.5m² size will be approximately 31% of the total habitable floor area of the building. This allows the suite to remain as a 'secondary' suite, but staying under 40% of the total size of the entire building.
- The layout of the existing suite would require significant redesign to stay within the maximum 90m² requirement.
- The proposed floor plans indicate three possible bedrooms. This suite would provide for a substantial space that could provide a family unit for either short or long-term rentals, as well as personal use by the owners.
- The subject property is a suitable location for a secondary suite. The property provides ample amenity space for the secondary suite, as well as sufficient room for parking.
- Staff consider that the health and safety of the users of the suite to be of priority. Should the variance be successful, the property owner will be required to obtain building permits to show conformance with the BC Building Code. This is an important step to ensure the safety of the end users of the suite.

Given the above items, staff conclude that the variances requested are appropriate and are not anticipated to unreasonably affect the adjacent area. Further, legalizing the suite will help to ensure the health and safety of future occupants. Staff consider that the applicant has shown a desire to legalize the suite. As such, staff are recommending that Council support the application and direct staff to issue the permit.

Alternate Recommendations

Deny/Refer Variance

Council may consider that the proposed variance will negatively affect the neighbourhood. If this is the case, Council should deny the variance. This would require the owners to decommission the suite, which would result in a large underutilized space on the property. Staff are not recommending this option, as staff consider the requested variances to be reasonable in this instance.

1. THAT Council deny "Development Variance Permit PL2020-8876".

Attachments

Attachment A – Zoning Map
 Attachment B – Official Community Plan Map
 Attachment C – Photos of Property
 Attachment D – Letter of Intent
 Attachment E – Draft Development Variance Permit PL2020-8876

Respectfully submitted,

Nicole Capewell
 Planner II

Concurrence

Director of Development Services	Chief Administrative Officer
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Draft

Attachment A – Zoning Map

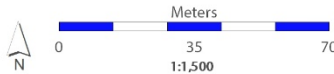


463 Upper Bench Road North

Zoning Map



Terms of Use: The City of Penticton is a depository of public information in both printed and digital form. The source, accuracy and completeness of this information varies. As a result, the City does not warrant in any way the mapping information including the accuracy or suitability thereof. The user of this information does so at their own risk and should not rely upon the information without independent verification as to the accuracy or suitability thereof.



November 3, 2020
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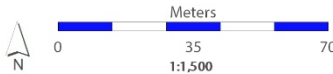


463 Upper Bench Road North

Official Community Plan Map



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November 3, 2020
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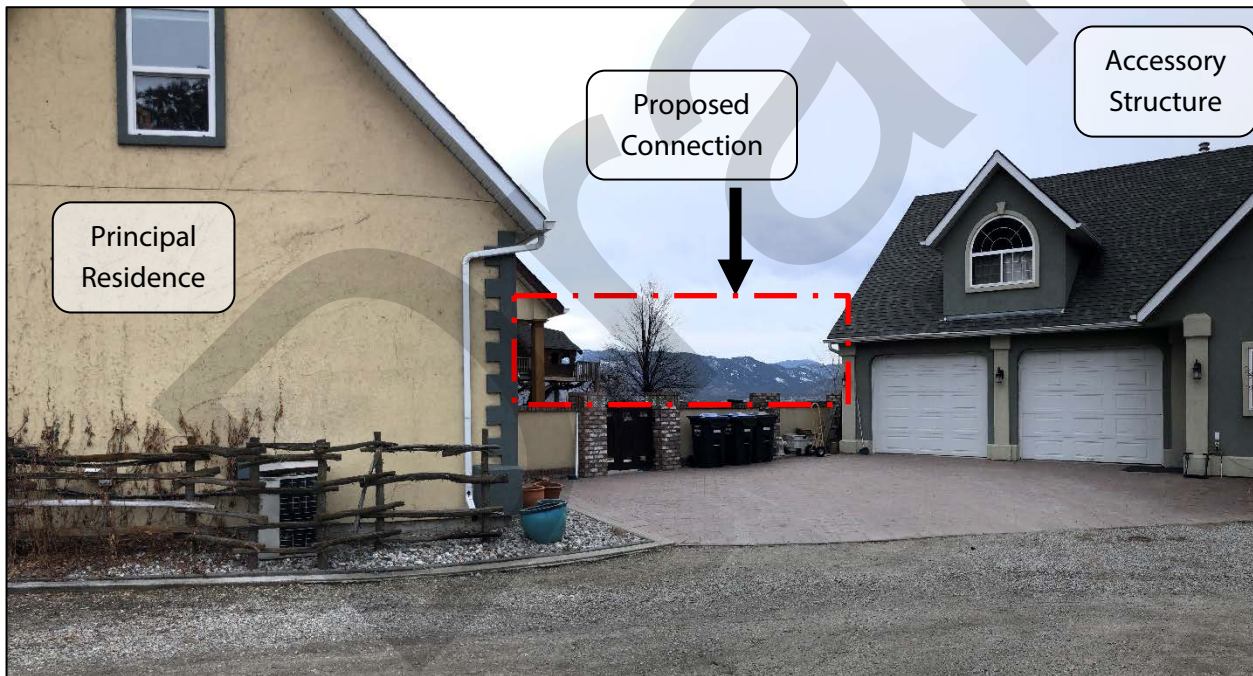


penticton.ca

Attachment C – Photos of Property



Looking towards subject property from Upper Bench Road N



Looking at location for proposed connection between structures

TO WHOM IT MAY CONCERN

RE: BREEZE WAY FROM MAIN HOUSE TO EXISTING BUILDING
OUR IMPACT ON THE NEIGHBORING PROPERTIES
AS A RESULT OF OUR DEVELOPMENT IS NIL,
AND IN NO WAY IS ABRECTING THEM
THIS BUILDING WILL BE BUILT CLEAN & TIDY
SO WON'T HAVE A NEGATIVE IMPACT ON THE
NEIGHBORING PROPERTIES

Yours
Colin Lauer



Development Variance Permit

Permit Number: DVP PL2020-8876

Owner Name
Owner Address

Conditions of Permit

1. This permit is issued subject to compliance with all of the bylaws of the City, except as specifically varied or supplemented by this Permit.
2. This permit applies to:
 - Legal: Lot 1 District Lots 187, 203 and 204 Similkameen Division Yale District Plan 25087
 - Civic: 463 Upper Bench Road North
 - PID: 005-674-328
3. This permit has been issued in accordance with Section 498 of the *Local Government Act*, to vary the following sections of Zoning Bylaw 2017-08 to allow for the construction of a secondary suite, as shown in the plans attached in Schedule 'A':
 - a. Section 9.3.2.7 of Zoning Bylaw No. 2017-08 to reduce the minimum rear yard setback from 6.0m to 3.0m.
 - b. Section 8.1.4.2: to increase the maximum gross floor area of a secondary suite from 90m² or 40% of the habitable floor area of the building, to 164.5m² or 40% of the habitable floor area of the building, whichever is less.

General Conditions

4. In accordance with Section 501 of the *Local Government Act*, the lands subject to this permit shall be developed in general accordance with this permit and the plans attached as Schedule 'A'.
5. In accordance with Section 504 of the *Local Government Act*, if the holder of this permit does not commence the development authorized by this permit within 2 years of the date of this permit, this permit shall lapse.
6. **This permit is not a building permit. In order to proceed with this development, the holder of this permit must hold a valid building permit issued by the Building Inspection Department.**
7. This permit does not constitute any other municipal, provincial or federal approval. The holder of this permit is responsible to obtain any additional municipal, federal, or provincial approvals prior to commencing the development authorized by this permit.

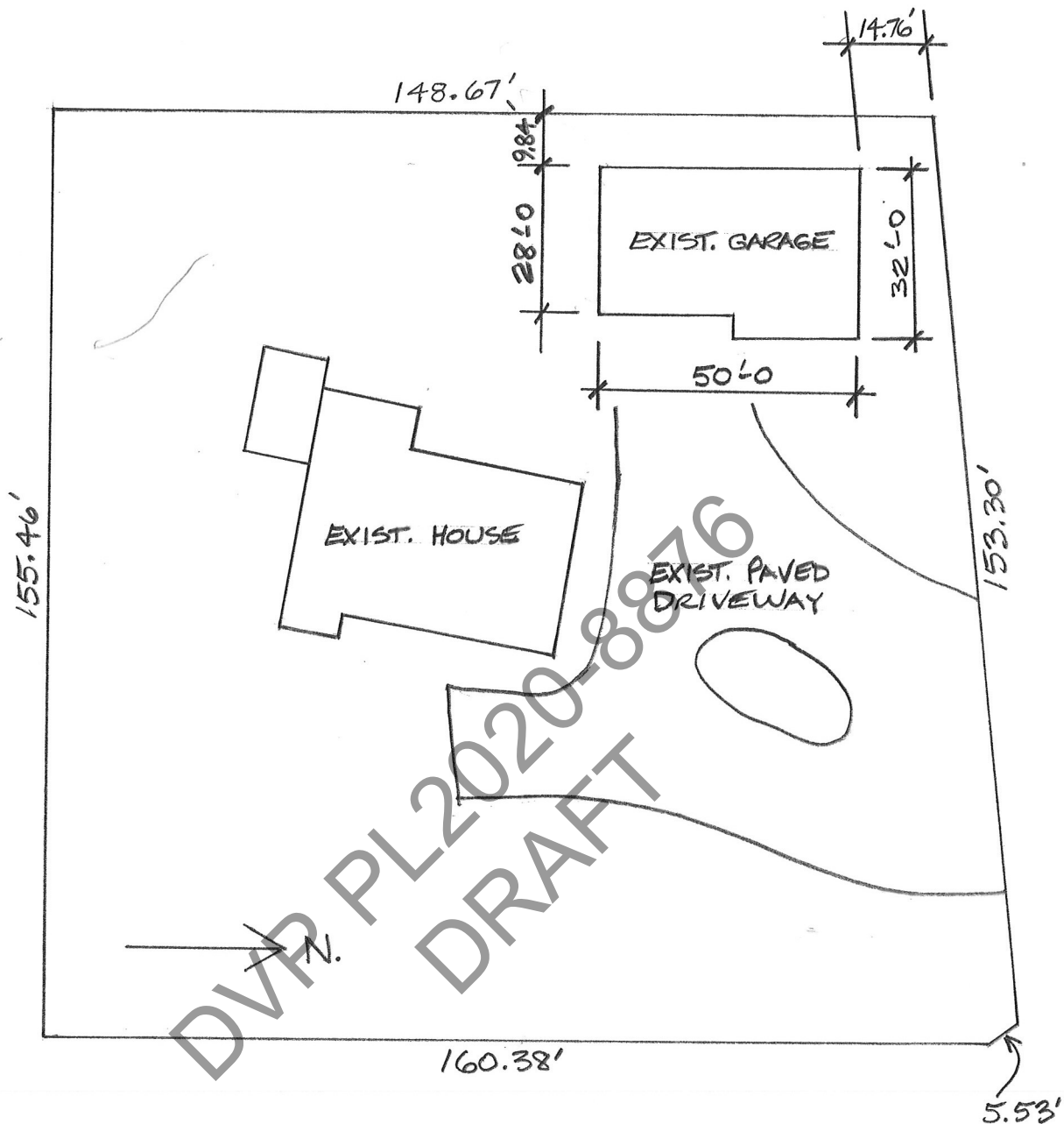
8. This permit does not include off-site infrastructure costs that may be required at the building permit stage, such as Development Cost Charges (DCC's), road improvements and electrical servicing. There may be substantial infrastructure and servicing costs payable at a later date. For more information on servicing and infrastructure requirements please contact the Development Engineering Department at (250) 490-2501. For more information on electrical servicing costs, please contact the Electric Utility at (250) 490-2535.

Authorized by City Council, the ____ day of March, 2021.

Issued this ____ day of March, 2021.

Angela Collison
Corporate Officer

DVP PL2020-8876
DRAFT



PROPOSED GRANNY SUITE

463 UPPER BENCH ROAD
PENTICTON BC V2A ~~8B6~~ 8TH

LEGAL DESCR. - LOT 1 D/L 187, 203 & 204, SDYD
- PLAN 25087

OWNER - COLIN & REGINA LAVER

