

June 3, 2021

Subject Property:

989 Kilwinning Street

Lot 60, District Lot 249, Similkameen Division Yale
District, Plan 1159

Application:

Development Variance Permit PL2021-8995

The applicant is proposing to legalize an unpermitted carriage house on the subject property. The City has no records of a building permit for the detached garage, which is located closer to property lines than the carriage house Zoning Bylaw regulations allow.



As such, the applicant is requesting to reduce the rear yard setback from 1.5m to 0m, and to reduce the interior side yard setback from 1.5m to 0.7m, in order to proceed with the necessary permits to legalize the structure as a carriage house.

Information:

You can find the staff report to Council and Development Variance Permit PL2021-8995 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, June 15, 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, June 15, 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 June 15, 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: June 15, 2021
To: Donny van Dyk, Chief Administrative Officer
From: Steven Collyer, Planner II
Address: 989 Kilwinning Street
Subject: Development Variance Permit PL2021-8995

File No: RMS/989 Kilwinning St

Staff Recommendation

THAT Council deny “Development Variance Permit PL2021-8995” for Lot 60 District Lot 249 Similkameen Division Yale District Plan 1159, located at 989 Kilwinning Street, a permit to vary Section 8.2.3.4 of Zoning Bylaw No. 2017-08 to reduce the rear yard setback for a carriage house from 1.5m to 0.0m and to reduce the interior side yard setback for a carriage house from 1.5m to 0.7m, in order to legalize an unpermitted carriage house on the subject property.

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 applicant is proposing to legalize an unpermitted carriage house on the subject property. The structure was built without a building permit and is located closer to property lines than the carriage house Zoning Bylaw regulations allow. As such, the applicant is requesting to a variance reducing the minimum rear yard from 1.5m to 0m, and to reducing the interior side yard from 1.5m to 0.7m, in order to proceed with the necessary permits to legalize the structure as a carriage house.

Background

The subject property is located on the west side of Kilwinning Street, near Forestbrook Drive (Figure 1). The subject property is designated ‘Detached Residential’ by the Official Community Plan, and is zoned R2 (Small Lot Residential) in the Zoning Bylaw.



Figure 1 - Property location map

The property contains a single detached dwelling and a detached garage. The detached garage was reconstructed on top of the footings of the previous detached garage in 2012, without a building permit. At that time, staff confirmed the existing setbacks, which did not conform to the setbacks contained in the current zoning bylaw of the day, could be grandfathered because the use of the rebuilt structure was as an accessory building, which the original detached garage was approved for. The property owner proceeded to rebuild the structure without first obtaining a building permit to do so. In 2019, the detached garage was illegally converted into a carriage house, as outlined by the applicant in their Letter of Intent (Attachment 'D'). Carriage houses are subject to different setback regulations than accessory structures.

On April 14, 2020, the City received a complaint regarding the conversion of the detached garage into a carriage house. Staff confirmed the unpermitted conversion through an inspection of the property in June 2020. In July 2020, the owner advised staff that they intended to legalize the carriage house with the appropriate permits. Staff reviewed the development permit application and provided comments to the applicant in December 2020. After a site inspection, staff questioned the accuracy of the submitted plans as the building appeared closer to the side and rear property lines (Attachment 'C') than shown on the proposed plans. Staff required the applicant to submit a survey of the property, prepared by a BC Land Surveyor, in order to verify the building location. The survey was submitted in February 2021 and it determined that the structure did not meet the setback requirements. As such, a development variance permit application is required to proceed with legalization. The plans were updated to reflect the surveyed setbacks and those updated plans were received in May 2021 (Attachment 'E').

Technical Review

This application was reviewed by the Technical Planning Committee (TPC), a group of City staff in various departments who review planning applications. Due to the close proximity of the building to the property lines, the Building Department had several comments for the applicant. Fire resistant cladding is required within 0.6m of a property line, and solids soffits are prohibited within 0.45m of a property line. The applicant is required to meet all BC Building Code requirements when legalizing the building as a carriage house, should Council choose to approve the variance. The unpermitted plumbing and electrical work will require reviews by trade qualified professionals to confirm conformance with the applicable plumbing and electrical codes. It is possible to legalize the structure; however, it will be more costly to do so while meeting the Building Code requirements rather than if the structure met the appropriate setbacks.

Development Statistics

The following table outlines how the proposed carriage house conversion meets the applicable Zoning Bylaw regulations:

	Carriage House Requirement (Section 8.2)	Provided on Plans
Minimum Lot Area for Carriage House:	370 m ²	557 m ²
Maximum Building Footprint:	90 m ²	49.5 m ²
Maximum Carriage House Floor Area (CHFA):	135 m ²	49.5 m ²

Maximum Lot Coverage:	15%	8.9%
Vehicle Parking:	1 space for carriage house	1 space provided
Required Setbacks		
Front Yard (Kilwinning St):	4.5 m	30.3 m
Interior Side Yard (north):	1.5 m	0.7 m – Variance Requested
Interior Side Yard (south):	1.5 m	6.9 m
Rear Yard (lane):	1.5 m	0 m – Variance Requested
Maximum Building Height	7 m and 2 storeys	3.7 m and 1 storey
Minimum Amenity Space	15 m ²	22.8 m ²

Analysis

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 has requested the following variances from the Zoning Bylaw regulations for a carriage house within the R2 (Small Lot Residential) zone:

- Section 8.2.3.4: to reduce the rear yard setback for a carriage house from 1.5m to 0.0m; and
- Section 8.2.3.4: to reduce the interior side yard setback for a carriage house from 1.5m to 0.7m.

Staff have reviewed the requested variances required to proceed with legalizing the structure as a carriage house and are recommending that Council deny the Development Variance Permit for the following reasons:

1. The intent of the Zoning Bylaw is not maintained through this proposal.

The intent of the setback regulations in the Zoning Bylaw is to ensure that buildings and structures are compatible with the surrounding neighbourhood. Maintaining physical distance between buildings, and between buildings and property lines, has a number of advantages. The minimum requirements for building setbacks help to ensure that an accessory structure does not impose on adjacent neighbours and is kept within an appropriate scale for the lot. The Zoning Bylaw requires carriage houses to be a minimum of 1.5m (5 feet) from both the side and rear property lines. These requirements allow sufficient room for access around the entire building from within the private property for maintenance. In addition, the minimum setback requirements reduce the clustering of structures on adjacent properties in an effort to reduce the likelihood of a possible fire spreading between properties. Although the unpermitted building has existed in its current form since around 2012, staff do not consider that the building setbacks of 0.0m and 0.7m meet the intent of the Zoning Bylaw regulations for carriage houses.

2. The unpermitted carriage house was initiated as a Bylaw Enforcement complaint, indicating there may be a negative impact on neighbouring properties.

When considering a request to vary the regulations of the Zoning Bylaw, Council must consider potential impacts on neighbouring property owners should the variance(s) be approved. In this

instance, the unpermitted carriage house was brought to the City's attention through the Bylaw Enforcement process. This indicates that there may be negative impacts from the unpermitted carriage house use, which could continue should the requested variances be approved and the applicant continue with the necessary permits to legalize the structure.

Staff consider that the proposed legalization of the unpermitted carriage house does not meet the intent of the Zoning Bylaw regulations, and that approval of the requested variances could set a precedent for future applications for carriage houses located closer to property lines than normally permitted. Given the reasons above, staff are recommending that Council deny "Development Variance Permit PL2020-8995". Should Council choose to deny the Development Variance Permit, the applicant would be required to decommission the carriage house use in this building and revert it back to an accessory storage building, with the necessary building permit(s) to do so.

Should Council choose to approve the Development Variance Permit for the reduced setbacks, a Development Permit and Building Permit are required to complete the legalization of the structure as a carriage house.

Alternate Recommendations

Council may consider the requested variances are appropriate in this instance in order to legalize an existing carriage house. If this is the case, Council may approve the Development Variance Permit. If this decision is made, the applicant will continue to work with City staff to obtain the required building permits to legalize the building as a carriage house.

1. THAT Council approve "Development Variance Permit PL2020-8995".

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 PL2021-8995

Respectfully submitted,

Steven Collyer, RPP, MCIP
Planner II

Concurrence

Director of Development Services <i>BL</i>	Chief Administrative Officer
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Attachment A – Zoning Map



989 Kilwinning Street

Zoning Map



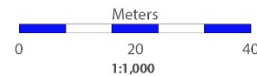
Legend

- Subject Parcel
- Parcel

Zoning

- R2 - Small Lot Residential
- RD1 - Duplex Housing
- RM2 - Low Density Multiple Housing
- RM3 - Medium Density Multiple Housing
- P2 - Parks and Recreation

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April 16, 2021
9:58:36 AM

penticton.ca

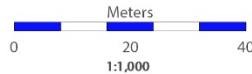


989 Kilwinning Street

Official Community Plan Map



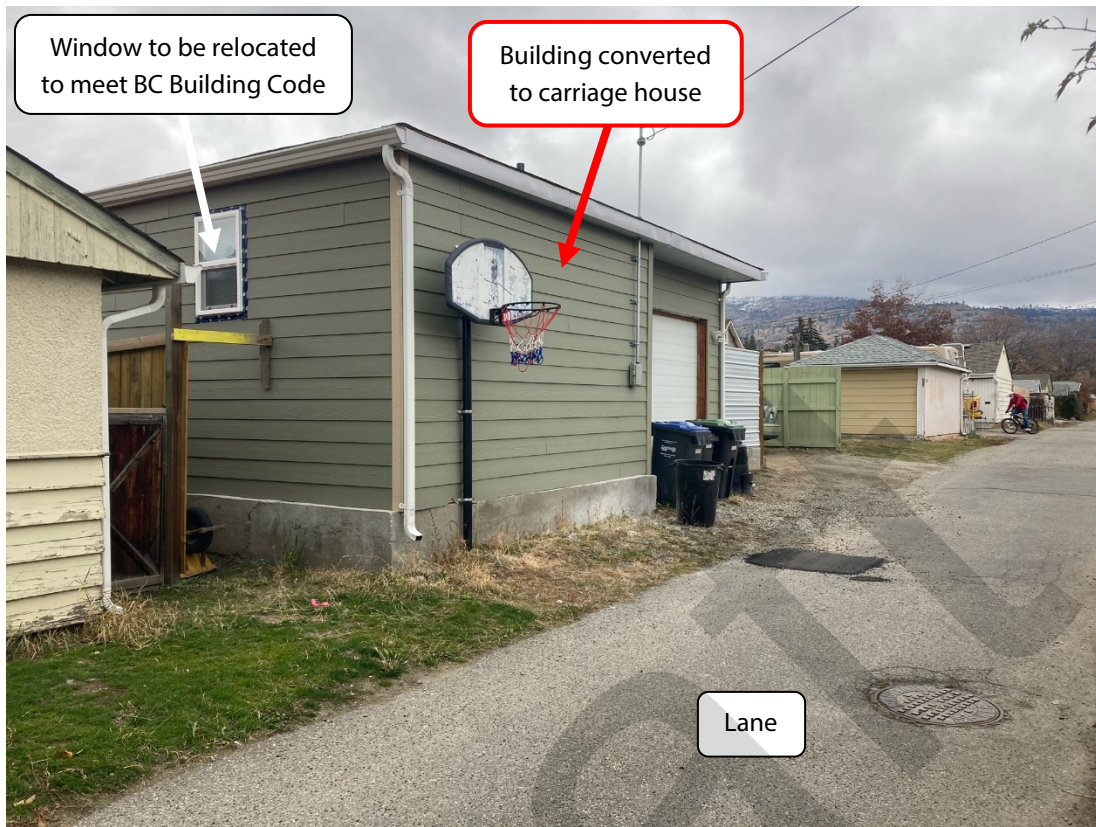
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Attachment C – Photos of Property





Attachment D – Letter of Intent

Shannon & Aaron Yazlovasky
989 Kilwinning Street
Penticton, BC V2A 4N8

April 12, 2021

Penticton City Council
171 Main Street
Penticton, BC V2A 5A9

Subject: Variance application for building setbacks – Letter of Intent by Property Owners

Dear City Council,

We will start off with some background of the property, Shannon and I bought the property back in 2010. The property had the existing home and an existing garage at that time. We were told that the garage was built in 1960 and had a small addition added back in the 1980. The garage structure had slowly been brought up to code as walls and roof were rotting and in need of repair. This work was done by me over a period of several years. The garage was always used as a garage for vehicle repairs and as a shop. The garage always had a full electrical service, natural gas and wash basin.

In September 2019 we decided to turn the existing garage into a carriage house. This decision came about after seeing other carriage houses in our area, talking with neighbours and being able to provide an affordable housing option for future tenants down the road.

To make the garage livable all that was needed was interior finishing's, the structure was in place and the exterior was finished. We utilized cement board siding (Hardy Board) on the exterior and 5/8" fireguard type X drywall on the interior. Also Roxul brand fire retardant insulation was used in the wall that borders so close to the property line. These measures were done to ensure that the structure had at least a 2 hour burn rating on the north facing wall.

Neighbors in the area are ok with the garage being a carriage house. Our neighbors to the north also have a garage built less than 1.5 meters from the property line. Both of the garages have been in place for many years and it has never been an issue.

Sincerely,



Aaron Yazlovasky

Development Variance Permit

Permit Number: DVP PL2021-8995

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 60 District Lot 249 Similkameen Division Yale District Plan 1159
 - Civic: 989 Kilwinning Street
 - PID: 004-288-939
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 conversion of an existing accessory building into a carriage house, as shown in the plans attached in Schedule 'A':
 - a. Section 8.2.3.4: to reduce the rear yard setback from 1.5m to 0.0m
 - b. Section 8.2.3.4: to reduce the interior side yard setback (north) from 1.5m to 0.7m

General Conditions

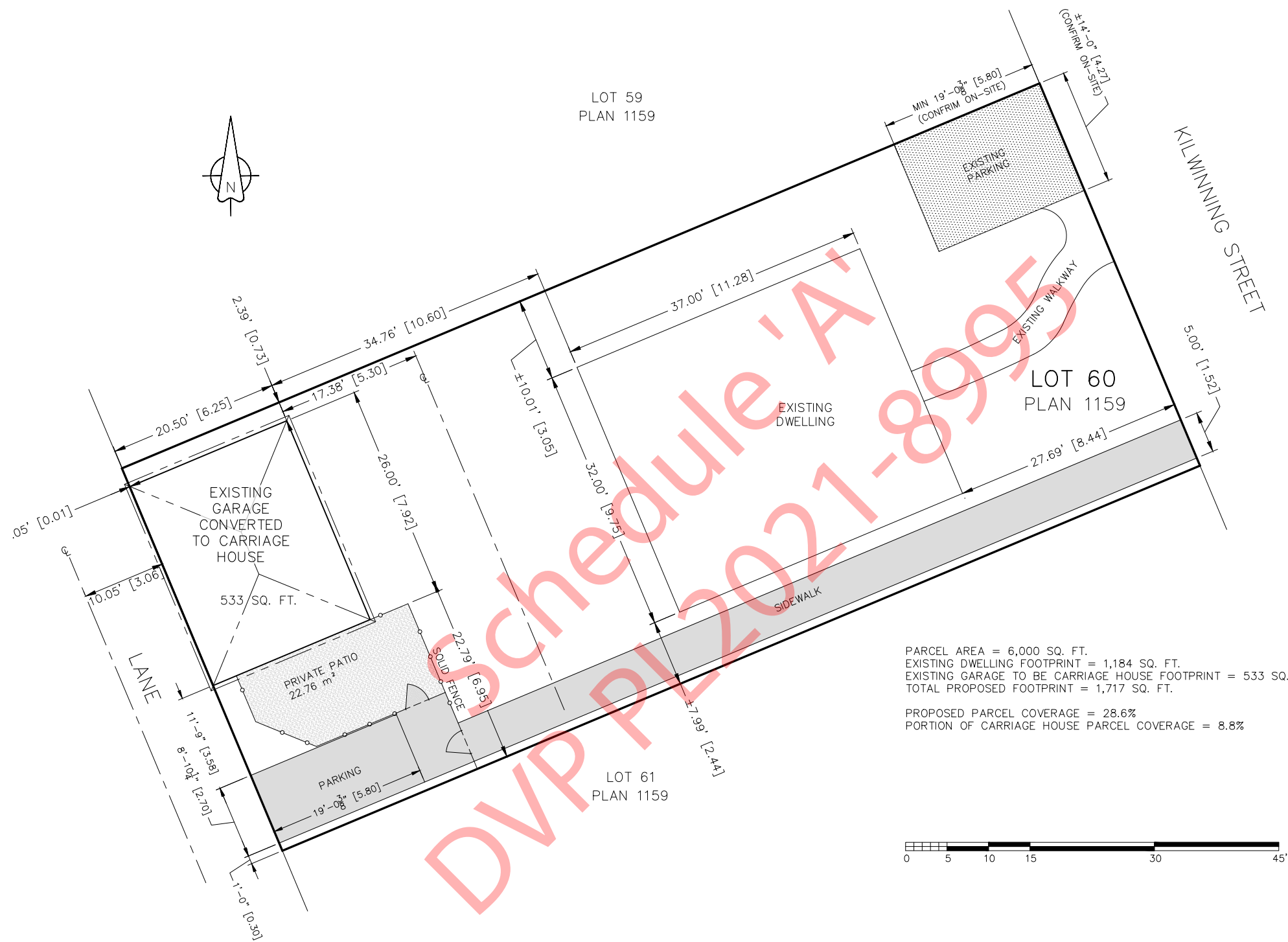
4. In accordance with Section 501 of the *Local Government Act*, the lands subject to this permit shall be developed in general accordance with this permit and the plans attached as Schedule 'A'.
5. In accordance with Section 504 of the *Local Government Act*, if the holder of this permit does not commence 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 15th day of June, 2021.

Issued this ____ day of _____, 2021.

Angela Collison
Corporate Officer

DRAFT



PARCEL AREA = 6,000 SQ. FT.
EXISTING DWELLING FOOTPRINT = 1,184 SQ. FT.
EXISTING GARAGE TO BE CARRIAGE HOUSE FOOTPRINT = 533 SQ. FT.
TOTAL PROPOSED FOOTPRINT = 1,717 SQ. FT.

PROPOSED PARCEL COVERAGE = 28.6%
PORTION OF CARRIAGE HOUSE PARCEL COVERAGE = 8.8%



ISSUED FOR BUILDING PERMIT

REV 1: SHOW PARKING AND PRIVATE SPACE FOR CARRIAGE HOUSE
REV 2: SHOW EXISTING PARKING SPACE
REV 3: ADJUST BUILDING LOCATION AS PER SITE SURVEY

AZTECH DRAFTING SERVICES
496 Van Horne St. Penticton, B.C.
Phone: 250-492-3344 e-mail: service@aztechdrafting.com

PROPOSED SITE PLAN	
YAZLOVSKY CARRIAGE HOUSE	
989 KILWINNING STREET PENTICTON BC	
DRAWN BY: MBW	DATE: JAN 31/21
DESIGN BY:	PROJECT No.: 201936
CHK'D BY:	FILE No.:
SCALE: 1"=15'	SHEET Page 3 of 3 1