



RESORT MUNICIPALITY OF WHISTLER

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STAFF REPORT TO COUNCIL

PRESENTED: September 10, 2024 **REPORT:** 24-084
FROM: Planning – Development **FILE:** 3090-20-1263
SUBJECT: DVP01263 - 3250 ARBUTUS DR - BUILDING HEIGHT AND FRONT SETBACK
VARIANCES

RECOMMENDATION FROM THE CHIEF ADMINISTRATIVE OFFICER

That the recommendation of the General Manager of Climate Action, Planning and Development Services be endorsed.

RECOMMENDATION

That Council approve the issuance of Development Variance Permit DVP01263, attached as Appendix A to Administrative Report No. 24-084, to vary the building height and front setback for a detached dwelling at 3250 Arbutus Drive.

PURPOSE OF REPORT

This report presents Development Variance Permit (DVP) DVP01263 for Council’s consideration. DVP01263 proposes two variances to “Zoning and Parking Bylaw No. 303, 2015” (Zoning Bylaw) to legitimize the existing development of an auxiliary residential dwelling unit (ADU) within the existing detached dwelling located at 3250 Arbutus Drive. The first variance is to reduce the front building setback from 7.6 metres to 5 metres and the second variance is to increase the building height from 7.6 metres to 8.5 metres.

This report provides Council with an analysis of the proposed variances and recommends that Council approve the issuance of DVP01263.

Information Report Administrative Report (Decision or Direction)

DISCUSSION

Key Ideas

The owner is seeking two non-delegated variances to the Zoning Bylaw to:

1. Decrease the minimum permitted front setback from 7.6 metres to 5 metres to legitimize an existing ADU within the existing detached dwelling; and
2. Increase the maximum permitted height of a detached dwelling from 7.6 metres to 8.5 metres.

While staff don't condone unlawful construction, based on the specific circumstances, staff consider the proposed variances to be consistent with all of the DVP evaluation criteria resulting in a preferable development outcome based on the following key points:

- Works with location of existing development on the parcel;
- Works with the steep 25 metre uphill slope from front to rear of the parcel;
- Optimizes the use of the existing development on the parcel and legitimizes/generates an ADU;
- Legitimizing the ADU on the lowest floor necessitates the height variance; and
- Variances are minor and have limited and reasonable impacts to adjacent properties.

Background

The subject property is in the Brio neighbourhood. The property is zoned Single Family Residential One (RS1) with a parcel area of 1199 square metres, typical of adjacent lots along Arbutus Drive. A location map for the subject parcel is attached to this report as Appendix B.

Proposed Development Variances

The requested variances are described in the table below:

Variance Request	Zoning Bylaw Regulation
1. Vary the minimum permitted front setback from 7.6 metres to 5 metres for an ADU within a detached dwelling.	Part 12 - Residential Zones, Section 1 RS1 Zone (Single Family Residential One), Subsection 13: (13) The minimum permitted front setback is 7.6 metres.
2. Vary the maximum permitted height of a building from 7.6 metres to 8.5 metres.	Part 12 - Residential Zones, Section 1 RS1 Zone (Single Family Residential One), Subsection 9: (9) The maximum permitted height of a building is 7.6 metres.

The requested variances are shown on the architectural plans attached to this report as Schedule A of Appendix A.

Analysis

The subject property is developed with an existing three-storey detached dwelling built on the property in 1980-1988 (Building Permit B-648-80). At some point after original construction, the previous owners enclosed area to create an ADU and establish a new lowest floor within the detached dwelling, without obtaining required municipal permits. Pursuant to section 57 of the *Community Charter* (Charter) and the Building Inspector's recommendation, Council passed a resolution on January 27, 2009 (Appendix E), to file a notice of bylaw contravention on title to encourage the owners to obtain the required municipal permits and bring the property into conformance with municipal bylaws (2009 Resolution).

Ownership of the property changed in 2023 and the new owner wishes to obtain the required municipal permits to legitimize the ADU.

Typical of the immediately adjacent properties along Arbutus Drive, the subject parcel is a challenging lot to develop due to the pronounced steep 25 metre upward slope from the front to rear of the parcel. As illustrated in the contour map (Appendix C), the existing dwelling was sited towards the front of the parcel in response to the challenging topography.

The owner is now requesting a front setback variance to legitimize the existing ADU, located 5 metres from the front parcel line. As described in their rationale letter (Appendix D), the ADU was developed by

enclosing an open area within the building footprint, below the existing lowest floor. Further, that removal of the dwelling unit would have considerable structural implications for the building.

Staff note that this parcel's RS1 Zoning permits an ADU to be located at 5 metres from the front parcel line, if it is located within an auxiliary or attached building for garage or carport use. Although there is no garage or carport use on the parcel, staff are of the opinion the location of the ADU is consistent with the intent of the Zoning Bylaw and a preferable development outcome over removal of the dwelling unit.

The owner is also requesting a building height variance to legitimize the existing building height of 8.5 metres. As described in their rationale letter, when the previous owners enclosed the area to create an ADU, by doing so they also established a new lowest floor within the detached dwelling. Staff note that the height of a building is measured from the lowest elevation and by creating a new lower floor, the building height consequently increased to 8.5 metres. In other words, although the peak roof height visible from Arbutus Drive remains unchanged, the building is now over-height due to the Zoning Bylaw method of measuring building height.

The location of existing development forward on the parcel and steep 25 metre change in grade from front to rear of the parcel limit the owners' ability to reasonably develop this property in an efficient and effective manner while strictly complying with the Zoning Bylaw requirements. Again, while staff don't condone unlawful construction, based on the specific circumstances, staff are of the opinion that these variances are minor and facilitate/legitimize an ADU, with limited and reasonable impacts to adjacent properties.

Staff's evaluation of the proposal relative to the established criteria is provided below under the Policy Considerations section of this report. The proposed variances are consistent with all the evaluation criteria resulting in a preferable development outcome.

POLICY CONSIDERATIONS

Relevant Council Authority/Previous Decisions

Council has the authority to vary the Zoning Bylaw through section 498 of the *Local Government Act* (LGA).

January 27, 2009: Administrative Report No. 09-001 and minutes (Appendix E): This report presented Council with the conditions that caused the Building Inspector to recommend that Council pass a resolution to file a notice in the land title office, pursuant to section 57(1)(b) of the Charter, that building regulations have been contravened.

Staff confirm that pursuant to section 57 of the Charter and the 2009 Resolution, a notice of contravention of building regulations was registered on title. As the current owner is working towards bringing the property into conformance with municipal Bylaws, staff further confirm that as per section 58 of the Charter, on receiving a report from a Building Inspector that the contravention has been rectified, the Corporate Officer must cancel the note against title.

This DVP application is before Council as the proposal does not meet the established criteria for a minor variance delegated to staff through the "Land Use Procedures and Fees Bylaw No. 2205, 2022" (Procedures Bylaw). As detailed in Schedule E of the Procedures Bylaw, a setback variance is considered minor if the required setback is not reduced by more than 25 per cent and a building height variance is considered minor if it is not increased by more than 10 per cent. As the requested front

setback is reduced by more than 25 per cent and the building height is increased by more than 10 per cent, these aspects of the application are not eligible for delegation to staff.

Development Variance Criteria

Staff have established criteria for consideration of DVPs. The proposed variances are consistent with these criteria as described in the tables below.

General guidelines to consider:	Staff comments
The variance should be consistent with the goals, objectives and policies in the Official Community Plan (OCP) and any other relevant Council-approved municipal policy documents.	As discussed below in the Community Vision and OCP section of this report, staff consider the proposal to be consistent with these guidelines.
The variance application should be supported by a sound justification based on the applicant’s inability to reasonably develop the site in an efficient and effective manner while complying with bylaw requirements, or on the provision of a benefit to the community or adjacent properties in the form of a preferable development outcome that is attributable to the variance.	<p>The steep 25 metre uphill slope of the lot from front to back, location of existing development forward on the lot and addition of a lower floor affecting the overall roof height calculation, all contribute to the sound justification as to why the owner is unable to reasonably develop the site in strict compliance with the Zoning Bylaw.</p> <p>Further, staff consider the proposal to legitimize the existing ADU a preferable development outcome over alternative permissible solutions to remove the ADU.</p>
The variance should not defeat the express or implicit intent of the bylaw requirement or restriction being varied.	<p>The proposal is not considered to defeat the intent of the Zoning Bylaw as the proposed setback variance and height variance are considered minor in nature.</p> <p>Specifically, it is the building being measured from the new lowest elevation that increases the overall roof height calculation without visually impacting the peak roof height visible from Arbutus Drive.</p> <p>Further, the RS1 Zone permits an ADU located at 5 metres from the front parcel line when it is located within an auxiliary or attached building for garage or carport use. Although there is no garage or carport use on the parcel, staff are of the opinion the location of the ADU is consistent with the intent of the Zoning Bylaw in this specific circumstance.</p>
The variance should not impose any additional costs on the RMOW such as additional cost to provide services to the development site or adjacent properties.	As discussed below in the Budget section of this report, staff confirm there are no additional costs to the RMOW associated with the proposal.
The variance should not create or exacerbate any risk to public safety.	<p>The proposal is not considered to create or exacerbate any risk to public safety on private property.</p> <p>Legitimizing the existing ADU will improve public safety as the dwelling unit will be brought up to current BC Building Code with respect to life safety requirements,</p>

	including fire separations. As such, the life safety conditions of the dwelling unit, building and neighborhood will be improved.
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The variance should enable the applicant’s development to do one or more of the following:

Potential positive impacts to consider:	Staff comments
Complement the streetscape or neighbourhood.	The proposal is considered to compliment the Brio neighbourhood streetscape as it works with the existing topography and development on the site.
Work with the topography of the site without major site preparation or earthworks.	The proposal is considered to respond to the steep sloping topography of the site as the original construction stepped uphill with the natural topography. Further, the proposal is partially integrated within the existing buildings footprint and legitimizing the existing construction does not result in any major site preparation or earthworks related to the variances.
Maintain or enhance desirable site features such as natural vegetation, trees and rock outcrops.	The proposal is considered to maintain desirable site features to the extent that the natural vegetation and mature trees are retained on the parcel in alignment with the high-risk area guidelines of the Wildfire Protection Development Permit Area (DPA).
Use superior building siting in relation to light access, reducing building energy requirements.	Not applicable.
Use superior building siting in relation to the privacy of occupants and neighbours.	The proposal is considered to have limited and reasonable impacts to privacy to the extent that the proposal maintains existing privacy for neighbouring properties.
Preserve or enhance views from neighbouring buildings and sites.	The proposal is considered to have limited and reasonable impacts to existing views and sight lines from neighbouring buildings and sites to the extent that the proposal maintains existing views for neighbouring properties.

The variance should not result in a significant negative impact on the streetscape or neighbourhood and should incorporate mitigation measures to reduce any identified negative impact.

Potential negative impacts to consider:	Staff comments
Inconsistency of the development with neighbourhood character.	The proposal is consistent with the Brio neighbourhood character as it works with the existing topography and development on the site.
Increased apparent building bulk as viewed from the street or surrounding neighbourhood.	The proposal does not increase the appearance of building bulk to the extent that the original construction stepped uphill with the natural topography. The proposal is partially integrated within the existing buildings footprint and only the ADU is sited at 5 metres

	from the front parcel line, consistent with RS1 Zone regulations, if the dwelling unit was located above an attached or detached garage or carport use.
Extensive additional site preparation or earthworks.	The proposal does not require any site preparation or earthworks.
Substantial impact on the use or enjoyment of adjacent land such as reduction of sunlight access or privacy or obstruction of views.	The proposal is considered to result in reasonable impacts to privacy and views to the extent that the original construction stepped uphill with the natural steep topography. Further, the proposal is partially integrated within the existing buildings footprint, and establishes a new lowest floor, with very limited visual impacts to adjacent properties.
Impact on services such as roads, utilities and snow clearing operations.	The proposal is not considered to impact Arbutus Drive, municipal services, or snow clearing to the extent that the detached dwelling is located 5 metres from the front parcel line, with an additional 5-metre-wide road right of way between the front parcel line and Arbutus Drive.

Guidelines for particular regulations to consider:	Staff comments
<p>Building Height Regulations</p> <p>The variance application should be supported with drawings and calculations illustrating shadow and view impacts of the proposed variance, including impacts on public spaces such as parks and green spaces.</p> <p>The application should be assessed in relation to compatibility with both existing adjacent uses and uses permitted or contemplated by the Zoning Bylaw and the OCP.</p>	<p>The proposal is not considered to impact public spaces as no public spaces are adjacent to these lands.</p> <p>Specifically, the original construction stepped uphill with the natural topography and the peak roof height remains visually unchanged from Arbutus Drive.</p> <p>Further, the proposal is considered to be compatible with the existing adjacent residential uses permitted by the Zoning Bylaw and the residential (low to medium detached multiple) land use contemplated by the OCP.</p>

Zoning and Parking Bylaw No. 303, 2015

The property is zoned Residential Single Family One (RS1). The non-delegated requested variances to the Zoning Bylaw for building height and front setback are described in the Discussion section of this report.

For Council’s information, as part of this DVP application there is also one variance request that has been approved by the Director of Planning as it meets the criteria for a minor variance delegated to staff through the Procedures Bylaw.

The owner is also seeking one delegated variance to the Zoning Bylaw to:

1. Vary Part 6, section 2(5) to permit two uncovered parking spaces sited lengthwise without provision of an unobstructed maneuvering aisle.

The requested parking configuration variance is shown on Architectural Plan V1 attached to this report as Schedule A of Appendix A.

As detailed in Schedule E of the Procedures Bylaw, a variance for siting and design standards for off street parking is considered minor. The Director of Planning has considered the general guidelines and is of the opinion that the requested variance is consistent with all the evaluation criteria, does not create or exacerbate any safety hazard related to the operation of motor vehicles or other forms of transportation, and results in a preferable development outcome.

2023-2026 Strategic Plan

The 2023-2026 Strategic Plan outlines the high-level direction of the RMOW to help shape community progress during this term of Council. The Strategic Plan contains four priority areas with various associated initiatives that support them. This section identifies how this report links to the Strategic Plan.

Strategic Priorities

Housing

Expedite the delivery of and longer-term planning for employee housing

Climate Action

Mobilize municipal resources toward the implementation of the Big Moves Climate Action Plan

Community Engagement

Strive to connect locals to each other and to the RMOW

Smart Tourism

Preserve and protect Whistler's unique culture, natural assets and infrastructure

Not Applicable

Aligns with core municipal work that falls outside the strategic priorities but improves, maintains, updates and/or protects existing and essential community infrastructure or programs

Community Vision and Official Community Plan

The OCP is the RMOW's most important guiding document that sets the community vision and long-term community direction. This section identifies how this report applies to the OCP. The recommended resolution included within this report is consistent with the goals, objectives and policies included within the OCP, specifically:

Policy 4.1.1.3(i) Maintain a high quality of urban design, architecture and landscape architecture that are complementary to the mountain environment.

Policy 4.1.2.11 Optimize the use and function of existing and approved development. Support flexibility, diversity, adaptability and efficiency in land use and development, so the resort community can derive the greatest benefit from existing development and minimize the conversion of natural areas to development.

Policy 7.1.1.7. During development or significant redevelopment, the preferred outcome is avoidance of negative environmental impacts, followed by minimization or mitigation, thirdly, by restoration, and lastly, by compensation for impacts.

The proposal avoids environmental impacts by not requiring any major site preparation or earthworks associated with the variances on the steeply sloping site. Further, this proposal will optimize the use of the existing development on the parcel and generate a legitimate ADU, benefiting the community's current housing needs.

Development Permit Areas

The land is designated for Protection of Riparian Ecosystems and Wildfire Protection (high risk area); however, a development permit (DP) is not required.

The owner retained a Qualified Environmental Professional (QEP) to provide the required Riparian Areas Protection assessment. However, upon assessment the QEP concluded that the parcel is incorrectly identified in the Protection of Riparian Ecosystems DPA due to an incorrect alignment of Crabapple Creek on Schedule J to the OCP. Staff have reviewed the QEP assessment and agree with the recommendation that, as the site does not lie within 30 metres of any watercourse, there are no applicable Protection of Riparian Ecosystems DPA requirements. Staff note that Schedule J will be updated to reflect this new detailed watercourse alignment information in a future OCP amendment.

Although a development permit is not required, the owner has demonstrated that the proposal will meet the high-risk area guidelines of the Wildfire Protection DPA. Specifically, coniferous vegetation located within 10 metres of the principal building will be removed or limbed, dead branches or standing dead trees will be removed on the property and no new coniferous vegetation is proposed. Further, the proposed building materials are non-flammable cladding (fiber-cement), roofing (metal and torch on roofing for low slope roofs), windows (triple-paned glass) and the minimum 15 cm of non-combustible (concrete) ground to siding clearance is provided.

BUDGET CONSIDERATIONS

There are no significant budget considerations with this proposal. DVP application fees provide a recovery of costs associated with processing this application.

LÍŁWAT NATION & SQUAMISH NATION CONSIDERATIONS

The RMOW is committed to working with the LÍŁwat People, known in their language as *L'il'wat7úl* and the Squamish People, known in their language as the *Skwxwú7mesh Úxwumixw* to: create an enduring relationship; establish collaborative processes for Crown land planning; achieve mutual objectives; and enable participation in Whistler's resort economy.

There are no specific considerations to include in this report.

COMMUNITY ENGAGEMENT

Level of community engagement commitment for this project:

Inform Consult Involve Collaborate Empower

A sign describing DVP01263 is posted on the property.

Notices were sent to surrounding property owners and tenants in August 2024 as required by the LGA for DVPs. At the time of writing this report, no correspondence has been received. Any correspondence received following the preparation of this report will be presented to Council at the time of consideration of this application.

REFERENCES

Location: 3250 Arbutus Drive
Legal: PID: 007-286-414, LOT 21 BLOCK I DISTRICT LOT 4750 PLAN 17377
Owner: SL SHIELD CORPORATION, INC. NO. BC0609315
Zoning: RS1 (Single Family Residential One)

Appendix A – DVP01263 Permit
Appendix B – Location Map
Appendix C – Contour Map
Appendix D – Rationale Letter
Appendix E – January 27, 2009, Administrative Report No. 09-001 and corresponding Council Minutes

SUMMARY

This report presents DVP01263 for Council's consideration to vary the building height and front setback to legitimize an existing ADU within the existing detached dwelling at 3250 Arbutus Drive.

This report recommends that Council approve the issuance of DVP01263.

SIGN-OFFS

Written by:

Lindsay Clarke,
Planner

Reviewed by:

Melissa Laidlaw,
Director of Planning

Dale Mikkelsen,
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Virginia Cullen,
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