



# WHISTLER

## REPORT | ADMINISTRATIVE REPORT TO COUNCIL

**PRESENTED:** May 5, 2020  
**FROM:** Resort Experience - Planning  
**SUBJECT:** CM127 – 6431 BALSAM WAY– COVENANT MODIFICATION

**REPORT:** 20-040  
**FILE:** CM127

### COMMENT/RECOMMENDATION FROM THE CHIEF ADMINISTRATIVE OFFICER

**That** the recommendation of the General Manager of Resort Experience be endorsed.

### RECOMMENDATION

**That** Council approve the modification of Covenant J89733 for 6431 Balsam Way, to permit construction of an addition to a single family dwelling with the underside of the floor system to be not less than 1.5 metres above the high water mark of Alta Creek, in accordance with the report labelled Project No.: K-201132-00, prepared by Kontur Engineering, dated March 9, 2020; and

**That** Council authorize the Mayor and Municipal Clerk to execute the covenant modification attaching the engineer's report referenced above.

### REFERENCES

Agent: GNAR Inc.  
Location: 6431 Balsam Way  
Legal Description: Lot 27, DL 3862, Block A, Plan 19202  
Zoning: RS1 (Residential Single Family 1)  
Appendices: "A" – Site Location Map  
"B" – Project Rationale

### PURPOSE OF REPORT

This report presents Covenant Modification Application CM127, an application to amend covenant J89733, applicable to 6431 Balsam Way, to reduce the flood construction level from 3.0 metres above the high water level of Alta Creek to 1.5m metres, to facilitate the construction of a 540 square foot building addition with the floor elevation at the same level as the existing house. Covenant modifications require Council approval and the application is presented relative to considerations for relaxations to flood construction requirements as well as applicable municipal policies.

### DISCUSSION

#### Background

The subject property is located at 6431 Balsam Way in the Tapley's Farm neighbourhood (see Site Location Map attached as Appendix "A".) The lot is zoned RS1 (Residential Single Family One) and is

approximately 1130 square metres (m<sup>2</sup>) in size. The existing building is approximately 91 metres (m) away from the boundary of Alta Creek.

The subject parcel is governed by the floodproofing requirement under the Zoning and Parking Bylaw No. 303, 2015, which require, in this case, that no areas used for habitation or storage of goods damageable by floodwaters shall be less than 1.5m above the high water mark of any watercourse. The bylaw further requires that buildings must be set back a minimum of 30m from the high water mark of Alta Creek.

In addition to the floodproofing requirements under the zoning bylaw, the property is also subject to Covenant J89733 that was registered against the title of the parcel in 1981, and specifies that no area used for habitation shall be located with the underside of the floor system less than 3m above the high water level of Alta Creek. In cases such as this, when there are multiple provisions, the more restrictive requirement applies, thus the covenant requirement is applicable.

The construction of the existing house was authorized by a building permit in 1989. Records indicate that the building was constructed to comply with the floodproofing requirements contained in the zoning bylaw, rather than the covenant. Covenant Modification Application CM127 requests consideration to construct an addition at the same elevation as the previously approved dwelling.

### **CM114 Proposal**

Based on the engineer's report, the elevation of the existing underside of the floor system is in compliance with the flood construction level (FCL) requirements under the Zoning and Parking Bylaw, but does not meet the more restrictive FCL of the covenant. As noted above, the terms of the covenant must be applied, thus the applicant is seeking to modify those terms to be consistent with the requirement under the zoning bylaw. This would allow for the construction of an addition at the same elevation as the rest of the dwelling. The proposed addition has an area of approximately 520 square feet.

### **Analysis**

Section 524 of the *Local Government Act (LGA)*, provides the regulatory framework for consideration of exemptions to flood requirements contained in zoning bylaws. In this case, the applicant is proposing construction that is in compliance with the flood requirements under the zoning bylaw, but not in compliance with the more restrictive requirement under the specific covenant. Thus a Section 524 exemption is not needed, however, Section 524 provides a valid framework to apply to the covenant modification, and is the basis for the analysis of the proposed development.

To support this application for the proposed modification, the applicant has provided a report from a geotechnical engineer containing a rationale for the request. This report states that the land can be used safely for the intended residential use. This is the assurance that is required when considering an exemption under Section 524 of the LGA, and is consistent with Provincial recommendations for considering relaxations to flood construction requirements. The engineer's report will be attached to the covenant modification and works will be subject to the terms and conditions of the report.

It is noted that under the Provincial Flood Hazard Area Land Use Management Guidelines additions to existing buildings that are legally non-conforming are permitted at the original non-conforming floor elevation up to 25 percent of the floor area. In this case the applicant has indicated that the addition at the ground floor is 520 square feet, and RMOW building records show the original square footage of the house at approximately 2103 square feet, which means the proposed addition would fall within the guidelines.

## WHISTLER 2020 ANALYSIS

W2020 Strategy	TOWARD Descriptions of success that resolution moves us toward	Comments
Built Environment	Limits to growth are understood and respected	The proposed addition is at an elevation consistent with the flood construction level required under the zoning, and is consistent with Provincial guidelines. Further, a report has been received from a geotechnical engineer to state that the land may be used safely for the use intended.

The proposed covenant modification does not move our community away from the adopted Whistler 2020 descriptions of success.

## OTHER POLICY CONSIDERATIONS

### Zoning Analysis

The subject parcel is zoned RS1 (Single Family Residential One). The proposal is consistent with the regulations of the RS1 Zone. No variances to the Zoning Bylaw are requested.

## BUDGET CONSIDERATIONS

The costs of processing and reviewing this application are covered through the applicable application fees and billing structure.

## COMMUNITY ENGAGEMENT AND CONSULTATION

There are no consultation requirements for this type of application.

## SUMMARY

This Report recommends that Council approve Covenant Modification Application CM127 based on the regulatory framework provided under Section 524 of the LGA which is considered appropriate to apply, and the geotechnical engineers report that the development is safe for the use intended. This report recommends that the engineers report be registered on the title of the property as part of the modified covenant. The covenant would be modified to amend the minimum elevation of the underside of the floor system for the proposed 540 square foot building addition to the existing house from 3m to 1.5m above the high water level of Alta Creek. This is also consistent with the applicable floodproofing requirements in Zoning and Parking Bylaw 303, 2015 and is at the same level as the existing floor which was authorized by an approved building permit.

Respectfully submitted,

Tracy Napier  
PLANNER

for

Toni Metcalf  
GENERAL MANAGER OF RESORT EXPERIENCE