



Committee Report

Date of Report: June 2, 2022
Date & Type of Meeting: June 15, 2022, Rural Affairs Committee Meeting
Author: Stephanie Johnson, Planner
Subject: DEVELOPMENT VARIANCE PERMIT
File: V2113B-02542.000-SMAGH-DVP000219
Electoral Area/Municipality: Area 'B'

SECTION 1: EXECUTIVE SUMMARY

This report seeks the Board's consideration of a Development Variance Permit (DVP) application to reduce the minimum side setback to the east and southern lot lines to permit an existing unauthorized agricultural building at 3020 Erickson Road in Erickson, Electoral Area 'B'.

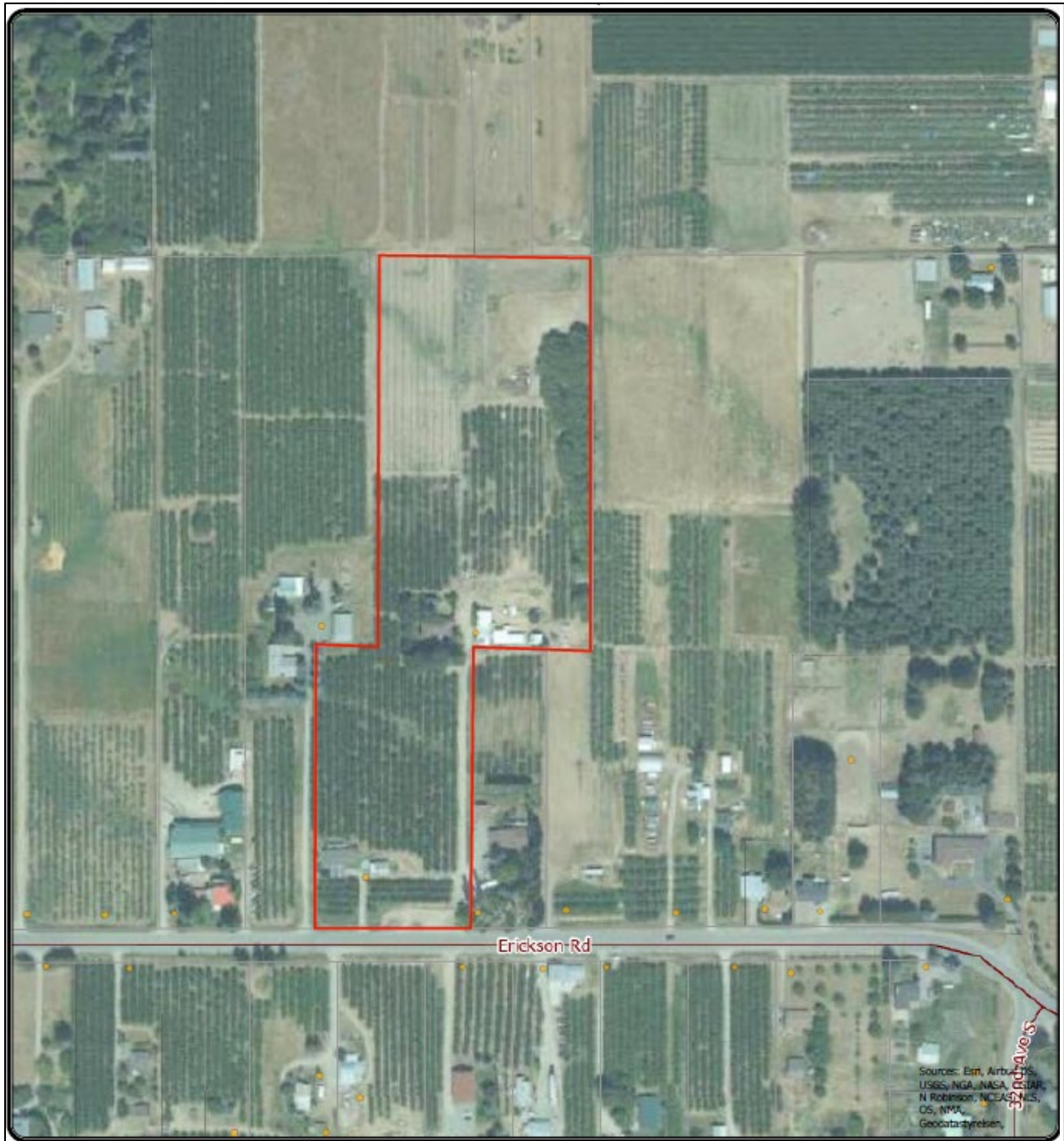
This existing structure, constructed without a building permit and currently under a stop work order includes a staff kitchen and washrooms, and is approximately 119 m² in size.

Staff recommend that the Board approve the issuance of this DVP.

SECTION 2: BACKGROUND/ANALYSIS

| GENERAL INFORMATION | |
|----------------------------|---|
| Property Owner: | J&B Smagh Orchards Ltd., Inc. No. BC1030396 |
| Property Location: | 3020 Erickson Road, Erickson |
| Legal Description: | BLOCK 13 PLAN NEP730A DISTRICT LOT 812 KOOTENAY LAND DISTRICT PARCEL 1, EXCEPT PLAN SRW 13512, SEE REF PL 36260I OF PCL B SEE 6107I, MANUFACTURED HOME REG. # 87199. (PID: 006-219-446) |
| Property Size: | 4.3 hectares (ha) |
| Zoning Designation: | Agriculture One (AG1) |
| OCP Designation: | Agriculture (AG) |

| ORIENTATION | ZONING | LAND USE |
|-------------|-----------------------|----------------------------|
| North | Agriculture One (AG1) | Agriculture within the ALR |
| East | Agriculture One (AG1) | Agriculture within the ALR |
| South | Agriculture One (AG1) | Agriculture within the ALR |
| West | Agriculture One (AG1) | Agriculture within the ALR |



Sources: Esri, Airphoto, OS, USGS, NGA, NACA, CGIAF, N Robinson, NCEAST, NLS, OS, NMA, Geocatastraleken.

REGIONAL DISTRICT OF CENTRAL KOOTENAY
 Box 590, 202 Lakeside Drive,
 Nelson, BC V1L 5R4
 Phone: 1-800-268-7325 www.rdck.bc.ca
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Legend

- Electoral Areas
- RDCK Roads
- Cadastre
- Civic Address

Map Scale: 1:4,514

Date: January 4, 2022

The mapping information shown are approximate representations and should only be used for reference purposes. The Regional District of Central Kootenay is not responsible for any errors or omissions on this map.

Figure 2: Air Photo Overview



Figure 3: Photo of Existing Structure



Figure 4: Photo of Existing Structure

Development Proposal

This DVP application seeks to vary sub-section 16.17 of *Electoral Area 'B' Comprehensive Land Use Bylaw No. 2316, 2013*. The applicant is requesting to reduce the minimum side setback from 2.5 metres to 1.5 metres from the building to both the east and southern lot lines to permit the existing unauthorized agricultural building. This structure, constructed without a building permit and currently under a stop work order includes a staff kitchen and washrooms, and is approximately 119 m² in size.

Table 1: Relevant Development Regulations under the Agriculture One (AG1) Zone

| Development Regulation | Maximum Allowable in AG1 Zone | Proposed |
|------------------------|-------------------------------|----------------|
| Maximum site coverage | 35% | <15% |
| Minimum setbacks: | | |
| Front | 4.5 m | 80 m (approx.) |
| Rear | 2.5 m | >2.5 m |
| Exterior Side | 4.5 m | N/A |
| Interior Side | 2.5 m | 1.5 m |

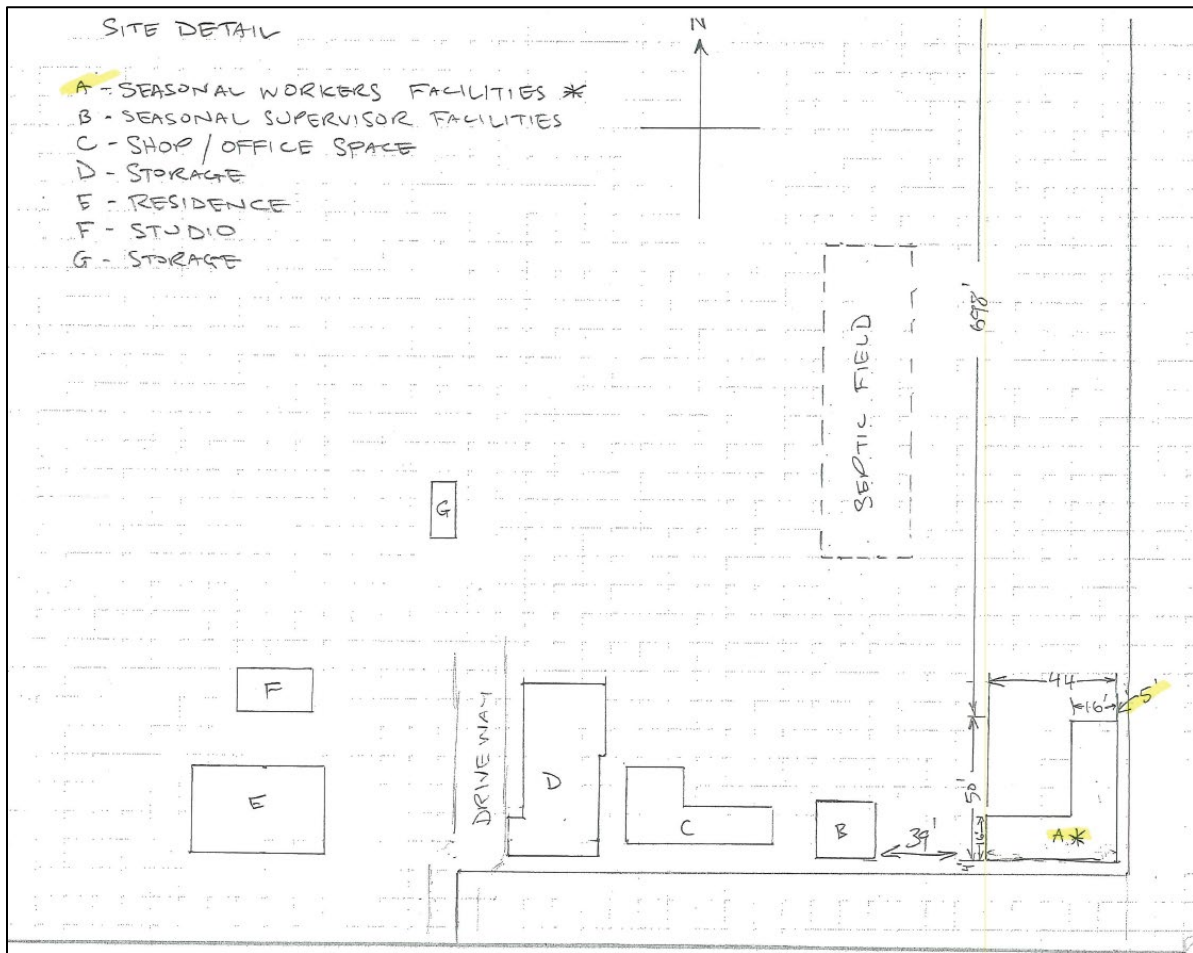


Figure 5: Site Plan

Electoral Area ‘B’ Comprehensive Land Use Bylaw No. 2316, 2013

Relevant Agricultural Objectives:

1. To preserve and promote the use of agricultural land for current and future agricultural production, and to protect this land from uses which are inconsistent with agricultural use or are incompatible with existing agricultural uses in the area.
3. To support agricultural land use practices that do not adversely affect the surrounding environment nor compromise the capability of the land for future food production.
4. To support agricultural land use practices within and adjacent to minimize conflicts between agriculture and other land uses.

Relevant Agricultural Policies:

The Regional Board:

9. Directs that the principal use of land designated ‘Agriculture’ shall be for agricultural use.
15. Supports directing intensive agricultural operations to larger lots or increasing building setbacks and other possible mitigation measures to prevent potential conflicts with adjacent land uses.
16. Supports the use of minimum and maximum setback distances for residential development and the clustering of built structures on agricultural lands to reduce the impact to agricultural potential and operations.
20. Supports the *Farm Practices Protection (Right to Farm) Act*.

SECTION 3: DETAILED ANALYSIS

3.1 Financial Considerations – Cost and Resource Allocations:

Included in Financial Plan: Yes No **Financial Plan Amendment:** Yes No
Debt Bylaw Required: Yes No **Public/Gov’t Approvals Required:** Yes No

The \$500 fee for a DVP was paid pursuant to *RDCK Planning Procedures and Fees Bylaw No. 2457, 2015*.

3.2 Legislative Considerations (Applicable Policies and/or Bylaws):

Under Section 498 of the *Local Government Act (LGA)*, the Board has the authority to vary provisions of a Zoning Bylaw (other than use or density) through a DVP.

3.3 Environmental Considerations

Since construction of the accessory structure occurred prior to obtaining the necessary Planning and Building Permits, the site has already been disturbed and any opportunity for staff to observe pre-construction conditions were not available.

3.4 Social Considerations:

No negative social considerations are anticipated from this DVP application. Staff outline, however, that the negative community feedback received would indicate that there are some property management issues related to the overall farm operation, which are civil matters and unrelated to the variance being requested.

3.5 Economic Considerations:

No economic considerations are anticipated from this DVP application. Should the Board not support this variance request the costs of scaling back or demolishing the building would be borne by the applicant.

3.6 Communication Considerations:

In accordance with the LGA and the RDCK's *Planning Procedures and Fees Bylaw No. 2457, 2015* a notice sign was posted on the subject property, and notices were mailed to surrounding neighbours within a 100 metre radius of the subject property on January 10, 2022.

To date, Planning staff have received two letters of concern and opposition (Attachment 'C') to this unauthorized accessory building and variance requested. Staff outline that the concerns relate to constructing without the required RDCK Planning and Building approvals, and neighbourly matters associated with the farm operation ranging from noise and nuisance disturbances to alleged property damage.

Planning staff referred the application to all relevant government agencies, First Nations, internal RDCK departments and the Director for Electoral Area 'B' for review. The following comments were received:

Ministry of Agriculture, Food and Fisheries (MAFF)

"The unauthorized agricultural building is adjacent to an approximately 5 ha property within the Agricultural Land Reserve that appears to be a mixed use farm that includes orchards and hay/forage production. The land directly adjacent to the unauthorized agricultural building also appears to be under orchard/hay production.

Ministry staff note that the unauthorized agricultural building was constructed on a portion of the subject property that was not used for agricultural production and that it is clustered with other residential/agricultural structures.

Ultimately, it is unlikely that the one metre reduction in the unauthorized agricultural buildings setback from the adjacent property's lot line will have an impact on either the adjacent agricultural operation or on the greater agricultural community in Erickson/Creston".

FortisBC Inc.

"There are FortisBC Inc (Electric) ("FBC(E)") primary distribution facilities within Erikson Road and within the boundary of the subject property.

FBC(E) requests appropriate land rights to protect the existing infrastructure to ensure proper delivery and maintenance of the service.

For any changes to the existing service, the applicant must contact an FBC(E) designer as noted below for more details regarding design, servicing solutions, and land right requirements. All costs and land right requirements associated with changes to the subject property's existing service are the responsibility of the applicant. Furthermore, the applicant and/or property owner are responsible for maintaining safe limits of approach around all existing electrical facilities within and outside the property boundaries.

Otherwise, FBC(E) has no concerns with this circulation".

Fire Services

"There are no fire related issues with this referral".

Building Services

"When [reviewing] spatial separation requirements in 9.10.14 of the BC Building Code it is possible that non – combustible construction and cladding could be required, an accurate determination can be done once a survey is

provided. Being that this structure was built without a building permit and no inspections have been completed it will be challenging for the applicant to provide assurance that the structure and the plumbing that has been installed will meet the requirements of Part 9 of the BC Building Code, the assurance required will more than likely require qualified professionals to be involved (i.e. architect / engineer).

The Building Inspector for the area conducted a site visit on the structure on March 1, 2022, and it was “noted that the applicant has continued working on the structure while under a Stop Work Order as staff noticed more roof strapping completed and metal roofing installed since the last visit to site”.

Water Services

In response to the referral received, Water Services highlights that “during a recent property audit, it was determined that this parcel has five (5) water services. As a condition of this [DVP], only one Regional District water connection is allowed per Water Bylaw 2766. In addition, all redevelopments servicing agricultural land shall have an approved meter in a meter pit installed by the owner at property boundary. As this property may also implement agricultural practices that could create a cross-connection hazard, a double-check valve assembly is required to be installed within the meter pit.

The Water Services team requests that this Permit not be issued until the issues with water services is resolved”.

3.7 Staffing/Departmental Workplace Considerations:

Should the Board support the requested variance, staff would issue the Permit and register a Notice of Permit on the property’s Title. A Building Permit would then be required for the construction of the building.

3.8 Board Strategic Plan/Priorities Considerations:

This application falls under the operational role of Planning Services.

SECTION 4: OPTIONS & PROS / CONS

Planning Discussion

From a local government perspective, while it is always disappointing when building occurs prior to the land use approvals process, planning staff support the issuance of this DVP since:

- Other than the requested reduction to the internal side setback requested, the proposal is consistent with the relevant Agriculture objectives, policies and land use regulations including height and parcel coverage under the *Electoral Area ‘B’ Comprehensive Land Use Bylaw No. 2316, 2013*.
- The siting of the unauthorized accessory structure is clustered on the existing agricultural and residential building farm plate not being used for any agricultural production.
- Planning staff concur with the referral comments submitted from the MAFF.
- Staff are recommending, as a condition, that all Water Services matters be resolved with the Regional District prior to DVP issuance.
- The civil matters of concerns outlined in the two letters of opposition received relate to matters outside of the scope of this variance request.

It is for the above reasons that staff recommend that the Board proceed with the issuance of the DVP.

Options

Option 1: That the Board APPROVE the issuance of Development Variance Permit V2113B-02542.000 to J&B Smagh Orchards Ltd., Inc. No. BC1030396 for the property located at 3020 Erickson Road and legally described as BLOCK 13 PLAN NEP730A DISTRICT LOT 812 KOOTENAY LAND DISTRICT PARCEL 1, EXCEPT PLAN SRW 13512, SEE REF PL 36260I OF PCL B SEE 6107I, MANUFACTURED HOME REG. # 87199. (PID: 006-219-446) to vary sub-section 16.17 of *Electoral Area 'B' Comprehensive Land Use Bylaw No. 2316, 2013* as follows:

1. reduce the minimum side setback for the east and southern lots lines from 2.5 metres to 1.5 metres to permit the existing unauthorized agricultural building.

And that as a condition of Development Variance Permit V2113B-02542.000 all outstanding water requirements be satisfied with the Regional District of Central Kootenay's Water Services division.

And further that Development Variance Permit V2113B-02542.000 be issued upon compliance with the above mentioned condition.

Option 2: That the Board NOT APPROVE the issuance of Development Variance Permit V2113B-02542.000 to J&B Smagh Orchards Ltd., Inc. No. BC1030396 for the property located at 3020 Erickson Road and legally described as BLOCK 13 PLAN NEP730A DISTRICT LOT 812 KOOTENAY LAND DISTRICT PARCEL 1, EXCEPT PLAN SRW 13512, SEE REF PL 36260I OF PCL B SEE 6107I, MANUFACTURED HOME REG. # 87199. (PID: 006-219-446) to vary sub-section 16.17 of *Electoral Area 'B' Comprehensive Land Use Bylaw No. 2316, 2013* as follows:

1. reduce the minimum side setback for the east and southern lots lines from 2.5 metres to 1.5 metres to permit the existing unauthorized agricultural building.

SECTION 5: RECOMMENDATION

That the Board APPROVE the issuance of Development Variance Permit V2113B-02542.000 to J&B Smagh Orchards Ltd., Inc. No. BC1030396 for the property located at 3020 Erickson Road and legally described as BLOCK 13 PLAN NEP730A DISTRICT LOT 812 KOOTENAY LAND DISTRICT PARCEL 1, EXCEPT PLAN SRW 13512, SEE REF PL 36260I OF PCL B SEE 6107I, MANUFACTURED HOME REG. # 87199. (PID: 006-219-446) to vary sub-section 16.17 of *Electoral Area 'B' Comprehensive Land Use Bylaw No. 2316, 2013* as follows:

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And that as a condition of Development Variance Permit V2113B-02542.000 all outstanding water requirements be satisfied with the Regional District of Central Kootenay's Water Services division.

And further that Development Variance Permit V2113B-02542.000 be issued upon compliance with the above mentioned condition.

Respectfully submitted,
Stephanie Johnson

CONCURRENCE

Planning Manager – Nelson Wight

General Manager of Development and Community Sustainability – Sangita Sudan

Chief Administrative Officer – Stuart Horn

ATTACHMENTS:

Attachment A – Draft Development Variance Permit

Attachment B – Excerpt from *RDCK Zoning Bylaw No. 1675, 2004*

Attachment C – Community Correspondence