



Committee Report

Date of Report: July 14, 2022
Date & Type of Meeting: July 20, 2022, Rural Affairs Committee Meeting
Author: Stephanie Johnson, Planner
Subject: DEVELOPMENT VARIANCE PERMIT
File: V2204F-03557.110-SIMS-DVP000225
Electoral Area/Municipality: Area 'F'

SECTION 1: EXECUTIVE SUMMARY

This report seeks the Board's consideration of a Development Variance Permit (DVP) for a residence at 2600 Six Mile Road in Electoral Area 'F'. The proponent has made this application to formally legalize the siting of an existing lawfully non-conforming building within exterior and interior side setbacks, and to reduce the interior side setback of a proposed new rear deck to be constructed off the above existing building.

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

SECTION 2: BACKGROUND/ANALYSIS

GENERAL INFORMATION	
Property Owners:	Norman Sims and Shelley Sims
Property Location:	2600 Six Mile Road, Six Mile
Legal Description:	LOT B DISTRICT LOT 787 KOOTENAY DISTRICT PLAN NEP91524 (PID: 028-366-875)
Property Size:	1, 299 m ²
Zoning Designation:	Country Residential (R2)
OCP Designation:	Country Residential One (CR)

ORIENTATION	ZONING	LAND USE
North	Country Residential (R2)	Residential land uses and Six Mile Road
East	Country Residential (R2)	Residential land uses
South	Country Residential (R2)	Residential land uses and Highway 3A
West	Country Residential (R2)	Residential land uses and Six Mile Road

Site Context

This 1,299.0 m² in size subject property is bounded by country residential uses and is in close proximity to the Six Mile neighbourhood commercial node. An existing former church building and a structure previously used as a community hall currently occupy this residential site.



Figure 2: Air Photo Subject Property Overview

Table 1: Relevant Development Regulations under the Country Residential (R2) Zone

Development Regulation	Maximum Allowable in R2 Zone	Proposed
Maximum site coverage	50%	<50%
Minimum setbacks:		
Front	4.5 m	2.1 m
Rear	2.5 m	30 m (approx.)
Exterior Side	4.5 m	25 m (approx.)
Interior Side	2.5 m	0.2 m

Electoral Area 'F' Official Community Plan Bylaw No. 2214, 2011

Relevant General Residential Objectives:

1. Protect the existing quality of life and character of existing neighbourhoods.
6. Encourage high quality design, building, development and landscaping standards that improve energy efficiency, and maintain and enhance rural character.

Relevant Rural, Country, and Suburban Residential Policies:

The Regional Board:

- 11.4.1 Considers that new Rural, Country, and Suburban Residential development may be created in the rural area, but that the development must respect the character of the rural area, and therefore, the Regional Board will use the following criteria, in addition to those listed under General Residential policies where appropriate, to assess future development:
- a. location near parks or community facilities, and connected by pedestrian circulation to these amenities;
 - b. exhibits an attractive and safe streetscape by providing for adequate off-street parking requirements, on-site landscaping and screening, and appropriate signage;
 - c. respects lake and mountain views, and access to sunlight of adjacent properties; and,
 - d. provides access without constructing new roads or utility corridors through Environmental Reserves, hazard areas, and without creating permanent scarring on slopes visible from major roads or residential areas.

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.

Under Section 529 of the LGA, buildings and structures the use and density of which conform to a bylaw but the siting, size or dimensions of which do not, may be maintained, extended or altered so long as there is no further contravention of the bylaw. A “further contravention” of the bylaw would include a greater or additional intrusion into a setback area and or an increase in building height if the building is already over height. The rear deck addition that extends if further toward the property line within a required setback area would be a further contravention, and is the reason for this DVP application.

3.3 Environmental Considerations

No negative environmental considerations are anticipated on this developed site.

3.4 Social Considerations:

No negative social considerations are anticipated from this DVP application.

3.5 Economic Considerations:

No economic considerations are anticipated from this DVP application.

3.6 Communication Considerations:

In accordance with the LGA and the RDCK’s *Planning Procedures and Fees Bylaw No. 2457, 2015* a sign describing the proposal was posted on the subject property, and notices were mailed to surrounding neighbours within a 100 metre radius of the subject property on May 30, 2022. To date, no correspondence has been received in response to the above notification and or notice sign posted.

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

The Ministry of Transportation and Infrastructure (MOTI)

The “interests of the MOTI are unaffected by the proposed bylaw variance[s]”.

Interior Health

“The IH Healthy Community Development Team has received the above captioned referral from your agency. Typically we provide comments regarding potential health impacts of a proposal. More information about our program can be found at Healthy Built Environment. An initial review has been completed and no health impacts associated with this proposal have been identified. As such, our interests are unaffected by this proposal”.

RDCK Fire

“As the footprint has not changed for the structure adding in a large upper and lower deck will increase the fuel loading on the lot , not having a proper set back already is concerning for the traffic and arrival of emergency equipment on the corner of six mile lakes road which will hinder response and fire fighting activities if needed”.

BC Hydro

“BC Hydro have no opposition to the development variance permit as proposed”.

Ministry of Forest Lands Natural Resource Operations & Rural Development (FLNROD)

“Habitat Management’s legislated and professional responsibilities include, but are not limited to: the provincial Water Sustainability Act, the Wildlife Act, the Forest and Range Practices Act (FRPA) and the Government Actions Regulation under FRPA, as well as having provincial responsibility for the federal Species at Risk Act.

These are comments based on the information provided by the proponent in the referral package. They do not

represent a comprehensive evaluation, rather some advice on what to consider for mitigation of possible negative ecosystem impacts of the proposed works. They also do not remove the obligation of the proponent to comply with ALL applicable laws and statutes.

This project should not create significant adverse environmental impacts if the proponent follows Section 34 of the Wildlife Act regarding tree removal, implements measures to prevent introduction and/or reduce the spread or establishment of invasive plants on site, and adequately secures wildlife attractants on site”.

Concern	Details
Tree Removal	See Section 34 of the <i>Wildlife Act</i> regarding tree removal. Remove trees outside of the sensitive nesting period (generally April to August), and check for existing or active nests prior to tree removal. Avoid the removal of large diameter trees (dbh > 30 cm: live and dead), especially deciduous, and that are actively used by wildlife (e.g. contains visible nests and tree cavities).
Migratory Bird Window	If works will occur within the breeding bird window (generally April 15 to August 15) the applicant should be aware of requirements under the Migratory Bird Convention Act for addressing incidental take. More information can be found at https://www.canada.ca/en/environment-climate-change/services/avoiding-harm-migratory-birds.html
Human-wildlife conflicts	<p>The proponent should ensure appropriate security measures for wildlife attractants (ie. garbage, compost, gardens, pet food etc.) to avoid wildlife habituation.</p> <p>The BC <i>Wildlife Act</i> states that: (1) A person must not (a) intentionally feed or attempt to feed dangerous wildlife or, (b) provide, leave or place an attractant in, on or about any land or premises with the intent of attracting dangerous wildlife.</p>
Invasive Species	<p>To support ongoing treatment efforts in the vicinity, an invasive plant management strategy is necessary throughout activities and reclamation. Practices should prevent introduction and reduce spread/establishment of invasive plants on site. To control invasive plants:</p> <ul style="list-style-type: none"> • Treat invasive plants prior to any activities (preferably using a qualified professional). • Ensure that equipment brought onto site is free of soil and plant material to reduce the possibility of invasive plant species spread/establishment. <p>The proponent should maintain records of herbicide treatments, and should report invasive plants using the Report-A-Weed program (https://www.reportaweedbc.ca/)</p> <p>The primary risk of concern from the proposed activities is introduction and spread of invasive plants. Invasive plants are typically introduced to British Columbia through human activities. These invasive plants lack natural predators and pathogens that would otherwise keep their populations in check. Invasive plants often establish themselves in soils disturbed from development of roads, utility lines, trails, commercial recreation sites, agriculture, etc. Once established, invasive plants have a tremendous capacity to invade adjacent, undisturbed natural plant communities displace wildlife and disrupt natural ecosystem functions.</p>
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Building Services

The following comments were received from Building Services:

“Current occupancy on the structure is A2 – Church.

As no intended change in use is indicated on the application, current occupancy is considered as A2

A2 Occupancy will require the services of Architect and the detailed code analysis from the Architect will cover the building code requirements.

The unpermitted work done to the structure prior to this application, pouring the ICF foundation wall will require signing off from a registered professional.

If a change in occupancy is proposed, building department comments can be re-addressed.”

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

Planning staff support the issuance of this DVP since:

- The proposal is consistent with the relevant country residential objectives and policies in *Electoral Area 'F' Official Community Plan Bylaw No. 1157, 1996*, and all other zoning regulations within the *RDCK's Zoning Bylaw No. 1675, 2004*.
- If approved this DVP and related variances would bring this existing building into compliance with the *RDCK's Zoning Bylaw No. 1675, 2004*.
- Extending this non-conforming setback to 0.2 metres, which would include the width of the proposed deck will have a negligible effect on the appearance and use of the affected area, including the adjacent property as the existing lawfully non-conforming building is currently setback at 0.6 metres from the internal eastern side setback.
- The rationale is reasonable, and staff highlight that this is a unique existing situation and would not set a setback precedence recognizing that generally, new construction should be built to ensure a consistent development pattern of an area by maintaining consistent siting regulations.
- Although the variances for the existing structure and proposed deck are substantial, the impacts on neighbouring property are relatively minimal recognizing that the existing lawfully non-conforming structure has been in existence with no recorded issues for many years.
- No neighbourhood feedback in response to the development notice sign posted on the subject property and or notices mailed to adjacent property residents about the proposed variances has been received.

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 V2204F-03557.110 to Norman Sims and Shelley Sims for the property located at 2600 Six Mile Road and legally described as LOT B DISTRICT LOT 787 KOOTENAY DISTRICT PLAN NEP91524 (PID: 028-366-875) to vary Sections 605.5 of *Regional District of Central Kootenay Zoning Bylaw No. 1675, 2004* as follows:

1. Reduce the exterior front setback from 4.5 metres to 2.1 metres, and interior side setback from 2.5 metres to 0.6 metres to formally recognize the existing lawfully non-conforming “church” structure; AND,

2. Reduce the internal side setback from 2.5 metres to 0.2 metres (the measurement taken to a proposed underground footing) to support a new deck (approximately 29 m² in size) to be constructed at the rear of the existing building.

Option 2: That the Board NOT APPROVE the issuance of Development Variance Permit V2204F-03557.110 to Norman Sims and Shelley Sims for the property located at 2600 Six Mile Road and legally described as LOT B DISTRICT LOT 787 KOOTENAY DISTRICT PLAN NEP91524 (PID: 028-366-875) to vary Sections 605.5 of *Regional District of Central Kootenay Zoning Bylaw No. 1675, 2004* as follows:

1. Reduce the exterior front setback from 4.5 metres to 2.1 metres, and interior side setback from 2.5 metres to 0.6 metres to formally recognize the existing lawfully non-conforming “church” structure; AND,
2. Reduce the internal side setback from 2.5 metres to 0.2 metres (the measurement taken to a proposed underground footing) to support a new deck (approximately 29 m² in size) to be constructed at the rear of the existing building.

SECTION 5: RECOMMENDATION

That the Board APPROVE the issuance of Development Variance Permit V2204F-03557.110 to Norman Sims and Shelley Sims for the property located at 2600 Six Mile Road and legally described as LOT B DISTRICT LOT 787 KOOTENAY DISTRICT PLAN NEP91524 (PID: 028-366-875) to vary Sections 605.5 of *Regional District of Central Kootenay Zoning Bylaw No. 1675, 2004* as follows:

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Respectfully submitted,

“Submitted electronically”

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