



Board of Variance Report

Date of Report: October 04, 2023
Date & Type of Meeting: Thursday, October 12, 2023 - Board of Variance
Author: Sadie Chezenko, Planner
Subject: BOARD OF VARIANCE APPLICATION
File: B2302B – Demchuk and Karpa
Electoral Area/Municipality B

SECTION 1: EXECUTIVE SUMMARY

The purpose of this report is to provide information to the Board of Variance in their consideration of a minor variance from the requirements outlined in Section 24 (4) and Section 24 (5) of the Electoral Area B Comprehensive Land Use Bylaw No. 2316, 2013 in order to site a residence near the northwest corner of the subject property, which would otherwise not be permitted given the conflict of that siting with the regulation for the farm residential footprint.

SECTION 2: BACKGROUND/ANALYSIS

GENERAL INFORMATION

Property Owners: Mark Demchuk and Karen Karpa
Property Location: 2997 Airport Road, RDCK – Electoral Area ‘B’
Legal Description: DISTRICT LOT 15878 KOOTENAY DISTRICT (PID: 015-714-365)
Property Size: 48.97 Ha (121 Ac)
Current Zoning: Agriculture 2 (AG2)
Current Official Community Plan Designation: Agriculture (AG)

SURROUNDING LAND USES

North: Agriculture (AG 2) – within the Agricultural Land Reserve (ALR)
West: Agriculture (AG 2) – northern neighbour within the ALR, southern neighbour not within the ALR
South: Parks and Recreation (PR) – within the ALR
East: Agriculture (AG 2) – within the ALR

Background Information and Subject Property

The subject property is located in Electoral Area ‘B’ approximately 3 km south of the City of Creston. The property and adjacent neighbours are zoned Agriculture 2 (AG 2) with the exception of the neighbour to the south which is zoned Parks and Recreation (PR). The subject property is within the Agricultural Land Reserve, as are most of the neighbouring properties.

The property was purchased by the current owners in 2019. Other than approximately 8 hectares of cleared farmland, the property was undeveloped at that time. Since purchasing the property, the owners have begun development of some of the infrastructure for the residential use of the land, which includes the following elements:

- Constructing the driveway
- Land clearing of planned development area
- Construction of a farm building (shop/barn), the siting of which was intended to be proximate to the proposed future residence
- Installation of solar panel array
- Water well drilled
- Installation of private wastewater disposal system for proposed future residence and existing shop/barn

The purpose of this application is to allow the owners to cluster development on their property by building a residence near the existing servicing and shop/barn. This is not permitted in the zone due to the Farm Residential Footprint regulations outlined in Section 24 (4) and Section 24 (5) of Area B Comprehensive Land Use Bylaw No. 2316, 2013. These regulations require that the only area that can be developed for dwellings and other non-farm structures and improvements be within a 2000sqm footprint within 60m of the front or exterior side lot line.

An application may be made to the Board of Variance if it is minor in nature, and compliance with a bylaw respecting the siting, dimensions or size of a building would cause undue hardship. The applicants assert that these regulations are creating a hardship, given the investment in related onsite development that occurred lawfully prior to the farm residential footprint regulation coming into effect. For further details, see the applicants' Proposal Summary attached to this report as Attachment A which outlines their rationale further.

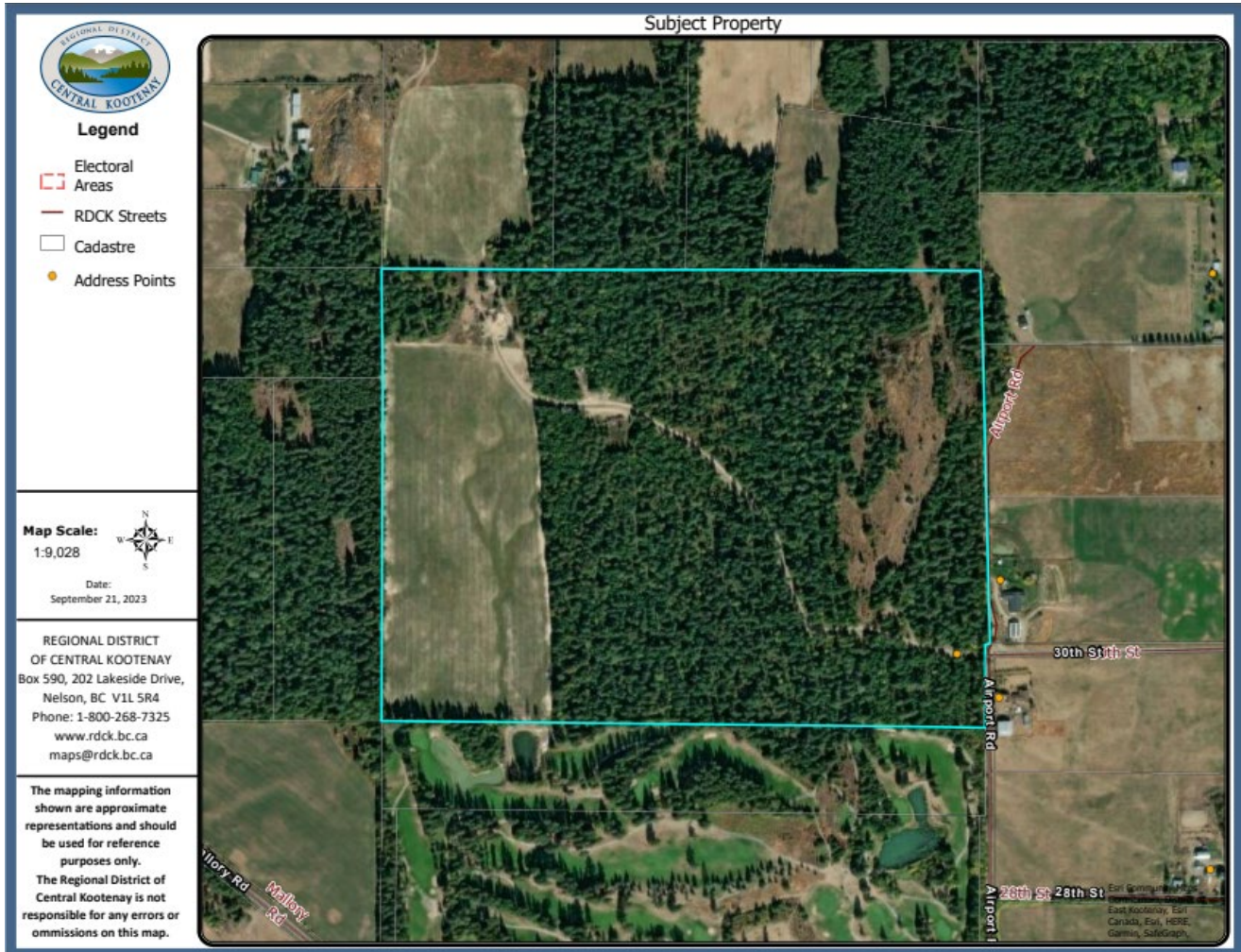


Figure 1- Subject Property

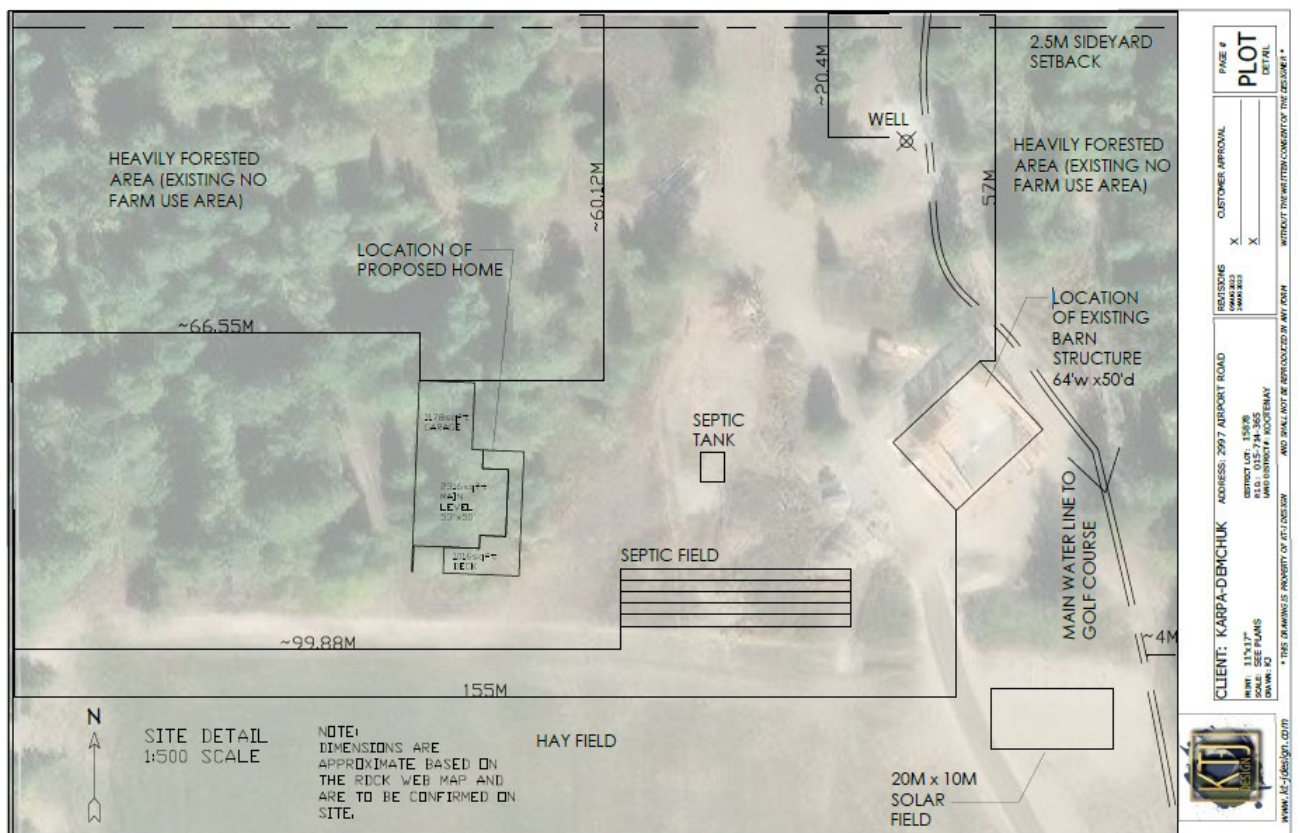


Figure 3 - Site Plan showing proposed location of residence

Considerations for Decision

Section 540 of the *Local Government Act* enables a Board of Variance to order a minor variance from siting requirements of a bylaw, if the board of variance:

- a. has heard the applicant and any person notified
- b. finds that undue hardship would be caused to the applicant if the bylaw is complied with, and
- c. is of the opinion that the variance or exemption does not do any of the following:
 - i. result in inappropriate development of the site,
 - ii. adversely affect the natural environment,
 - iii. substantially affect the use and enjoyment of adjacent land,
 - iv. vary permitted uses and densities under the applicable bylaw, or
 - v. defeat the intent of the bylaw.

SECTION 3: DETAILED ANALYSIS

3.1 Financial Considerations – Cost and Resource Allocations:

Included in Financial Plan:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	Financial Plan Amendment:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Debt Bylaw Required:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	Public/Gov't Approvals Required:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

The application fee has been paid in full pursuant to the Planning Fees and Procedures Bylaw No. 2457, 2015.

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

Division 15 of the *Local Government Act* requires the establishment of a Board of Variance for a local government when a zoning bylaw has been adopted.

Section 540 of the *Local Government Act* enables a Board of Variance to order a minor variance from siting requirements of a bylaw.

3.3 Communication Considerations:

The application was referred to internal departments, other government agencies and adjacent property owners.

The following responses were received from agencies:

Agricultural Land Commission

ALC staff have no comment to provide pertaining to the referral, as the variance seeks to amend local government bylaw limits on farm building footprints. That said, should the proposed homesite requires fill in excess of 1,000 sq meters for access (driveway) and construction a Notice of Intent application must be submitted to the ALC.

Interior Health

Thank you for the opportunity to provide comments. Interior Health's interests are not affected by this variance application.

Ministry of Forests

We are currently unable to provide a detailed review of the referral but provide the following standard requirements, recommendations and/or comments:

- 1. All activities are to follow and comply with all higher-level plans, planning initiatives, agreements, Memorandums of Understanding, etc. that local governments are parties to.*
- 2. Changes in and about a "stream" [as defined in the [Water Sustainability Act \(WSA\)](#)] must only be done under a license, use approval or change approval; or be in compliance with an order, or in accordance with Part 3 of the [Water Sustainability Regulation](#). Authorized changes must also be compliant with the [Kootenay-Boundary Terms and Conditions and Timing Windows](#) documents. Applications to conduct works in and about streams can be submitted through [FrontCounter BC](#).*
- 3. No "development" should occur within 15 m of the "stream boundary" of any "stream" [all as defined in the [Riparian Areas Protection Regulation \(RAPR\)](#)] in the absence of an acceptable assessment, completed by a Qualified Professional (QP), to determine if a reduced riparian setback would adversely affect the natural features, functions and conditions of the stream. Submit the QP assessment to the appropriate Ministry of Water, Land and Resource Stewardship office for potential review. Local governments listed in Section 2(1) of [RAPR](#) are required to ensure that all development is compliant with [RAPR](#).*
- 4. The federal [Species at Risk Act \(SARA\)](#) protects Endangered, Extirpated or Threatened species listed under Schedule 1 of SARA. Developers are responsible to ensure that no species or ecosystems at risk (SEAR), or Critical Habitat for Federally listed species, are adversely affected by the proposed activities. The [BC Species and Ecosystem Explorer](#) website provides information on known SEAR occurrences within BC,*

although the absence of an observation record does not confirm that a species is not present. Detailed site-specific assessments and field surveys should be conducted by a QP according to [Resource Inventory Standard Committee \(RISC\)](#) standards to ensure all SEAR have been identified and that developments are consistent with any species or ecosystem specific [Recovery Strategy or Management Plan](#) documents, and to ensure proposed activities will not adversely affect SEAR or their [Critical Habitat for Federally-listed Species at Risk \(Posted\)](#).

5. Development specific Best Management Practices (BMPs) should be applied to help meet necessary legislation, regulations, and policies. Current BC BMPs can be found at: [Natural Resource Best Management Practices - Province of British Columbia \(gov.bc.ca\)](#) and [Develop with Care 2014 - Province of British Columbia](#).
6. Vegetation clearing, if required, should adhere to the least risk timing windows for nesting birds (i.e., development activities should only occur during the least risk timing window). Nesting birds and some nests are protected by Section 34 of the provincial [Wildlife Act](#) and the federal [Migratory Birds Convention Act](#). Guidelines to avoid harm to migratory birds can be found at: [Guidelines to avoid harm to migratory birds -Canada.ca](#). If vegetation clearing is required during the bird nesting period (i.e., outside of the least risk timing window) a pre-clearing bird nest survey should be completed by a QP. The following least risk windows for birds are designed to avoid the bird nesting period:
 - Bird Species Least Risk Timing Windows*
 - Raptors (eagles, hawks, falcons, & owls) Aug 15 – Jan 30*
 - Hérons Aug 15 – Jan 30*
 - Other Birds Aug 1 – March 31*
7. The introduction and spread of invasive species is a concern with all developments. The provincial [Weed Control Act](#) requires that an occupier must control noxious weeds growing or located on land and premises, and on any other property located on land and premises, occupied by that person. Information on invasive species can be found at: [Invasive species - Province of British Columbia](#). The [Invasive Species Council of BC](#) provides BMPs that should be followed, along with factsheets, reports, field guides, and other useful references. For example, all equipment, including personal equipment such as footwear, should be inspected prior to arrival at the site and prior to each daily use and any vegetative materials removed and disposed of accordingly. If noxious weeds are established as a result of this project or approval, it is the tenure holder's responsibility to manage the site to the extent that the invasive, or noxious plants are contained or removed.
8. Section 33.1 of the provincial [Wildlife Act](#) prohibits feeding or attracting dangerous wildlife. Measures should be employed to reduce dangerous human-wildlife conflicts. Any food, garbage or organic waste that could attract bears or other dangerous wildlife should be removed from the work area. If this is not feasible and waste is not removed, it should be stored in a bear-proof container to avoid drawing wildlife into the area and increasing the threat of human/wildlife conflict.
9. If this referral is in relation to a potential environmental violation it should be reported online at [Report All Poachers & Polluters](#) (RAPP) or by phone at 1-877-952-RAPP (7277).
10. Developments must be compliant with all other applicable statutes, bylaws, and regulations.

If the references above do not address your concerns, please do not hesitate to reach out to me for further investigation into your concerns.

Fortis BC

Land Rights Comments

FBC(E) requests appropriate land rights to protect the existing infrastructure to ensure proper delivery and maintenance of the service. The applicant should contact the undersigned at 250-469-7927 or

chelsea.stringer@fortisbc.com for further instruction regarding land rights and servicing requirements. Bringing electrical service to the proposed lots will require significant extension work, which may be costly.

Operational & Design Comments

There are FortisBC Electric ("FBC(E)") primary distribution facilities along Airport Rd.

To date, arrangements have not been made to initiate the design process and complete the servicing requirements.

All costs and land right requirements associated with changes to the existing servicing are the responsibility of the applicant.

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.

To proceed, the applicant should contact an FBC(E) designer as noted below for more details regarding design, servicing solutions, and land right requirements.

In order to initiate the design process, the customer must call 1-866-4FORTIS (1-866-436-7847). Please have the following information available in order for FBC(E) to set up the file when you call.

Electrician's Name and Phone number

FortisBC Total Connected Load Form

Other technical information relative to electrical servicing

For more information, please refer to FBC(E)'s overhead and underground design requirements:

FortisBC Overhead Design Requirements

<http://fortisbc.com/ServiceMeterGuide>

FortisBC Underground Design Specification

<http://www.fortisbc.com/InstallGuide>

If you have any questions or comments, please contact us at your convenience.

RDCK Fire Services

Standard Response provided as Attachment B

Ministry of Transportation and Infrastructure

The Ministry has no concerns with the requested variance for construction of a dwelling.

The subject property is located off a side road, which does not typically require issuance of an access permit. Dependent on the extent of agricultural operations, the owners may require issuance of an agricultural access permit. Should it be determined by our office that an agricultural access permit is required, we will reach out to the owners directly.

Ministry of Agriculture

Thank you for providing Ministry of Agriculture and Food (Ministry) staff the opportunity to comment on File B2302B that proposes to vary the Farm Residential Footprint regulations as outlined in Section 24 (5) of Area B Comprehensive Land Use Bylaw No. 2316, 2013. From an agricultural planning perspective, Ministry staff offer the following comments:

- From the perspective of the Subject Property's owners, Ministry staff recognize the unfortunate timing of RDCK implementing the Farm Residential Footprint regulations. It is evident that since purchasing the Subject Property in 2019, the owners have invested a significant amount of time and money into developing portions of the Subject Property for both residential and agricultural uses.*
- Ministry staff recognize the unique geographical features and historical use of the Subject Property. Specifically: the agricultural use of the most westerly 8 ha, the historical access from the neighbouring property to the north, the topographical challenges/limitations associated with the forested eastern*

portion and the pre-existing logging skid trail through the interior. Given these features/uses, Ministry staff understand the applicant's desire for wanting to locate their residence in the northwest corner of the Subject Property.

- Ministry staff also recognize the importance of clustering buildings and understand that a barn was recently constructed in the northwest corner of the Subject Property. Given this and despite the proposed residence being located approximately 800 metres from the front lot line along Airport Road, Ministry staff concur with the agricultural rationale presented by the owners' for locating the new residence in the northwest corner.
- Ultimately, Ministry staff support the proposed location for the new residence and view this location as beneficial for the current agricultural use of the Subject Property.

The following responses were received from the public:

Letter from Terence and Annabelle Moore provided as Attachment C

Letter from Kathleen Weare provided as Attachment E

Clayton and Dianna Bruce - 2990 Airport Road

On the basis of the information provided to us we support the application by Mark Demchuck and Karen Karpa. We believe that the building location as shown at the North West corner of their property is good. This location for their residence is in keeping with that of our small community. We enjoy a peaceful and quiet lifestyle.

This lifestyle however has been interrupted by dust, noise, and safety issues due to increased traffic and construction.

We acknowledge that the heavy truck traffic is necessary for construction, however road damage has occurred to 30th st on the hill between Airport Rd and Phillips Rd. Also the workers at times are forgetting that they are exiting Demchuk's and Karpa's driveway failing to stop and look for traffic. Temporarily installing a stop sign at their driveway gate may help increase safety for us and also other people driving, walking, horseback riding, and bike riding up and down the hill. Also the site lines on this steep hill increase the danger. There is a portion on 30st hill which can not be seen when looking Eastward from the Airport road 30th st intersection. We are concerned with this safety issue.

If the recent changes to regulations require that Mark Demchuk and Karen Karpa build their residence on Airport Road it would be right across the road from our property and considering that Airport Road in front of our property is reduced to 6.1 meters (20 feet) their residence and the following disturbance of the forest on their property would severely alter the peaceful lifestyle we have been accustomed to since 2006 or the past 17 years that we have resided here at 2990 Airport Rd.

3.4 Staffing/Departmental Workplace Considerations:

Should the Board of Variance order be approved, Planning Staff would notify Building Staff.

3.5 Board Strategic Plan/Priorities Considerations:

Not Applicable.

SECTION 4: OPTIONS

In considering this application, the Board of Variance (BOV) has two options:

1. Approve the minor variance for the structures
2. Refuse the minor variance for the structures

Option 1:

That the Board of Variance APPROVE a minor variance from the requirements of the Comprehensive Land Use Bylaw No. 2316, 2013 Section 24 (4) and Section 24 (5) to enable the construction of a residence in the location shown on the site plan to Mark Demchuk and Karen Karpa at 2997 Airport Road, RDCK and legally described as DISTRICT LOT 15878 KOOTENAY DISTRICT (PID: 015-714-365)

Option 2:

That the Board of Variance REFUSE a minor variance from the requirements of the Comprehensive Land Use Bylaw No. 2316, 2013 Section 24 (4) and Section 24 (5) to enable the construction of a residence in the location shown on the attached site plan to Mark Demchuk and Karen Karpa at 2997 Airport Road, RDCK and legally described as DISTRICT LOT 15878 KOOTENAY DISTRICT (PID: 015-714-365)

Respectfully submitted,



Sadie Chezenko, MCP
Planner

CONCURRENCE

Planning Manager – Nelson Wight
General Manager Development & Sustainability – Sangita Sudan

ATTACHMENTS:

- Attachment A – Applicant’s Proposal Summary
- Attachment B – RDCK Fire Service Response
- Attachment C – Letter from Terence and Annabelle Moore
- Attachment D - Site Plan
- Attachment E - Letter from Kathleen Weare

