

MEMORANDUM

DEVELOPMENT SERVICES DEPARTMENT



DATE: June 17, 2026 **FILE NO.:** C2026.009-DVP
TO: Christopher Garrish, Senior Manager of Planning
FROM: Jerritt Cloney, Planner I
RE: Development Variance Permit (DVP) — Electoral Area “C”

Owner: Michael Mulrooney, Deborah Day, Susan Shillitto

Agent: Michael Mulrooney Folio: C-05854.010

Civic: 3692 Fruitvale Way Legal: Lot 2, Plan KAP19063, District Lot 2405S, SDYD

Proposed Development:

This application is seeking a variance to the interior parcel line setback that applies to the subject property in order to undertake the construction of a greenhouse.

Specifically, it is being proposed to vary the interior parcel line setback for a greenhouse from 15.0 metres to 5.0 metres.

In support of this request, the applicant has stated that “the proposed variance is consistent with the AG1s zoning and addresses the lot shape. Strict compliance is unnecessary, and the variance will not impact the character of the surrounding neighborhood.”

Site Context:

The subject property is approximately 3,747 m² in area and is situated on the south-west side of Fruitvale Way, approximately 8.7 km from the boundary with the Town of Oliver. The property is understood to contain one (1) singled detached dwelling and accessory building.

The surrounding pattern of development is generally characterised by agricultural developments (farms) to the north and south, while bordering another low-density residential property to the west, and Fruitvale Way to the east.

Background:

The current boundaries of the subject property were created by a Plan of Subdivision deposited with the Land Titles Office in Kamloops on May 12, 1969, while BC Assessment has classified the property as “Residential” (Class 01).

Available Regional District records indicate that a building permits previously issued include an Addition (1974); Interior Renovations to Single Family Dwelling (2015).

Under the Electoral Area “C” Official Community Plan (OCP) Bylaw No. 2452, 2008, the subject property is currently designated Agriculture (AG), an objective of which is to “preserve agricultural land with continuing value for agriculture for current and future production...” Further, the subject property is not subject to any Development Permit Area designations.

Under the Okanagan Valley Zoning Bylaw No. 2800, 2022, the property is currently zoned Agriculture One Site Specific (AG1s) which lists “accessory building or structure” as a permitted accessory use.

The property has been the subject of a Stop Work Notice for constructing a patio pergola without a building permit.

While the subject property is located within the Agricultural Land Reserve (ALR), Section 23(1) (Exceptions) of the *Agricultural Land Commission Act*, states that restrictions on the use of agricultural land do not apply to land that, on December 21, 1972, was, by separate certificate of title issued under the *Land Registry Act* (1960), less than 2.0 acres (0.81 ha) in area.

Public Process:

In accordance with Section 2.4 of Schedule 4 (Application for a Development Variance Permit) of the Regional District’s Development Procedures Bylaw No. 2500, 2011, adjacent residents and property owners were notified of this DVP application on May 6, 2026, and provided 15 working days to submit comments electronically or in-person to the Regional District.

As of May 27, 2026, being 15 working days from the date of notification, no representations have been received electronically or by submission at the Regional District office.

Delegated Authority:

Under Section 498.1(2) of the *Local Government Act*, a local government that has delegated authority to an officer or employee to issue a development variance permit (DVP) must include “criteria for determining whether a proposed variance is minor.”

Under Section 3.21 of the Regional District’s *Chief Administrative Officer Delegation Bylaw No. 3033, 2023*, “the CAO or their designate shall ... be delegated authority to issue a development variance permit under Section 498.1 of the *Local Government Act* ...”

Under Section 3.22 of the Regional District’s *Chief Administrative Officer Delegation Bylaw No. 3033, 2023*, staff are to consider if the variance would be “minor and would have no significant negative impact on the use of immediately adjacent or nearby properties” through the use of the following criteria:

1. *degree or scope of the variance relative to the regulation from which a variance is sought;*
2. *proximity of the building or structure to neighbouring properties; and*
3. *character of development in the vicinity of the subject property.*

With regard to the degree of the requested variance, a 66% reduction to an exterior side parcel line setback for a greenhouse would normally be deemed to be “not minor”.

However, in this instance, it is recognized that the zoning regulations for greenhouses were drafted to address large-scale commercial operations (e.g. parcel coverage allowances for greenhouses can be 75% of a parcel), whereas the applicant is proposing to construct a greenhouse with a floor area of approximately 36.6 m² and that will be subordinate in size to both the principal dwelling as well as the detached garage.

A reduced setback that reflects the small-scale nature of the proposed greenhouse – even if it represents a 66% reduction to the zoning regulation – is not seen to be major in this context.

As an aside, Administration is aware that the Ministry of Agriculture has updated their guidance to local governments in relation to the setbacks to be applied to greenhouses and is recommending that this be 7.5 metres for front and exterior side setbacks and 4.5 metres for rear and interior side setbacks. In this context, if the zoning bylaw was reflective of the Ministry's guidance, the applicant requested variance would not be as great as the setback requirement would be 7.5 metres.

With regard to the proximity of the proposed greenhouse to neighbouring properties, it is noted that the intent of the Agricultural zones is not the protection of residential amenity but to ensure that agricultural land is protected for farming purposes and that farm operations can occur without any undue constraints from adjoining uses.

In this context, the proposed greenhouse is considered a farm use that will be wholly compatible with the agricultural use that is occurring on adjoining properties. With regard to the residential use occurring on the parcel to the west, this is occurring within an agricultural area and protecting the amenity of this property is not a priority. Regardless, given the small-scale nature of the proposed greenhouse it is unlikely to affect the use of adjoining parcels.

As an aside, the southern parcel line adjoins an approximately 6.1 metre wide road dedication, which results in the next closest property being 11 metres from the proposed greenhouse – which exceeds the Ministry's recommendation of a 7.5 metre setback.

While it is not uncommon to find accessory buildings and structures sited within prescribed setbacks in this area, these are not typically the types of structures that require greater setback distances, such as greenhouses, generator sheds or equestrian centres.

However, given the relatively small-size of the proposed greenhouse, its placement with a setback as is common with other accessory structures in this area is not seen to be unreasonable.

For these reasons, the proposed variance is deemed to be minor and consideration of the requested variances may be undertaken by the Regional District Board.

Analysis:

When considering a "minor" variance request, and in accordance with Section 498.1(2) of the *Local Government Act*, the Regional District Board requires that staff consider the following guidelines when deciding whether to issue a DVP:

- 1. is the proposed variance consistent with the general purpose and intent of the zone;*
- 2. is the proposed variance addressing a physical or legal constraint associated with the site (e.g. unusual parcel shape, topographical feature, statutory right-of-way, etc.);*
- 3. is strict compliance with the zoning regulation unreasonable or un-necessary; and*
- 4. Would the proposed variance unduly impact the character of the streetscape or surrounding neighbourhood.*

With regard to the first criteria, it is Administration's understanding that the zoning of the property allows for agriculture, residential and commercial (e.g. "eating and drinking establishment") as principal permitted uses. While the applicant has not indicated which of these uses the greenhouse is to serve, this is somewhat moot as it could serve all three and, for this reason, is seen to be consistent with the intent of the zone.

With regard to the second criteria, Administration notes that the subject parcel was created by subdivision prior to the implementation of the current setback regulation for greenhouses and, at 32.0 metres in total width, is not capable of accommodating a greenhouse and complying with the required 15.0-metre parcel line setbacks. Strict compliance with the bylaw would result in a buildable area approximately 2.0 metres in width.

With regard to the reasonableness of the zoning regulation, it is noted that setback regulations in the agricultural zones are generally to mitigate the potential for conflict between land uses with the Ministry of Agriculture recommending that setbacks be used to “avoid farming right up to the back wall of [a] residence.”

In this instance, the greenhouse will not be near any adjoining residences (e.g. the closest residence is approximately 30 metres to the west), while strict compliance with the regulation will result in a 2.0 metre building envelope (as outlined above), which is not seen to be reasonable.

Finally, the proposed greenhouse is unlikely to impact the character of the streetscape or the surrounding neighborhood as the subject property is situated within an agricultural zone.

In addition, being located as the rear of the property will minimize the visual impact of the structure while greenhouses are considered to be a common form of structure in an agricultural area.

Alternative:

Conversely, the large setbacks applied to greenhouses generally reflect the commercial nature of the structures and potential for conflict with adjoining uses due to light generation, noise (from heating and irrigation systems) and odour (e.g. generated by the crops and sprays that may be applied).

That a parcel may be zoned for a certain use does not mean that use is appropriate on all parcels, especially if the use requires a large land area and a parcel is sub-minimal. For instance, the OCP speaks to supporting parcel sizes of 4.0 ha or greater in the AG1 Zone, whereas the subject property is less than 10% of this requirement at 0.37 ha in area.

In this context, the subject property may not be suitable for a commercial greenhouse operations.

Summary:

For these reasons outlined above, it is recommended that the requested variance be approved under delegated authority.

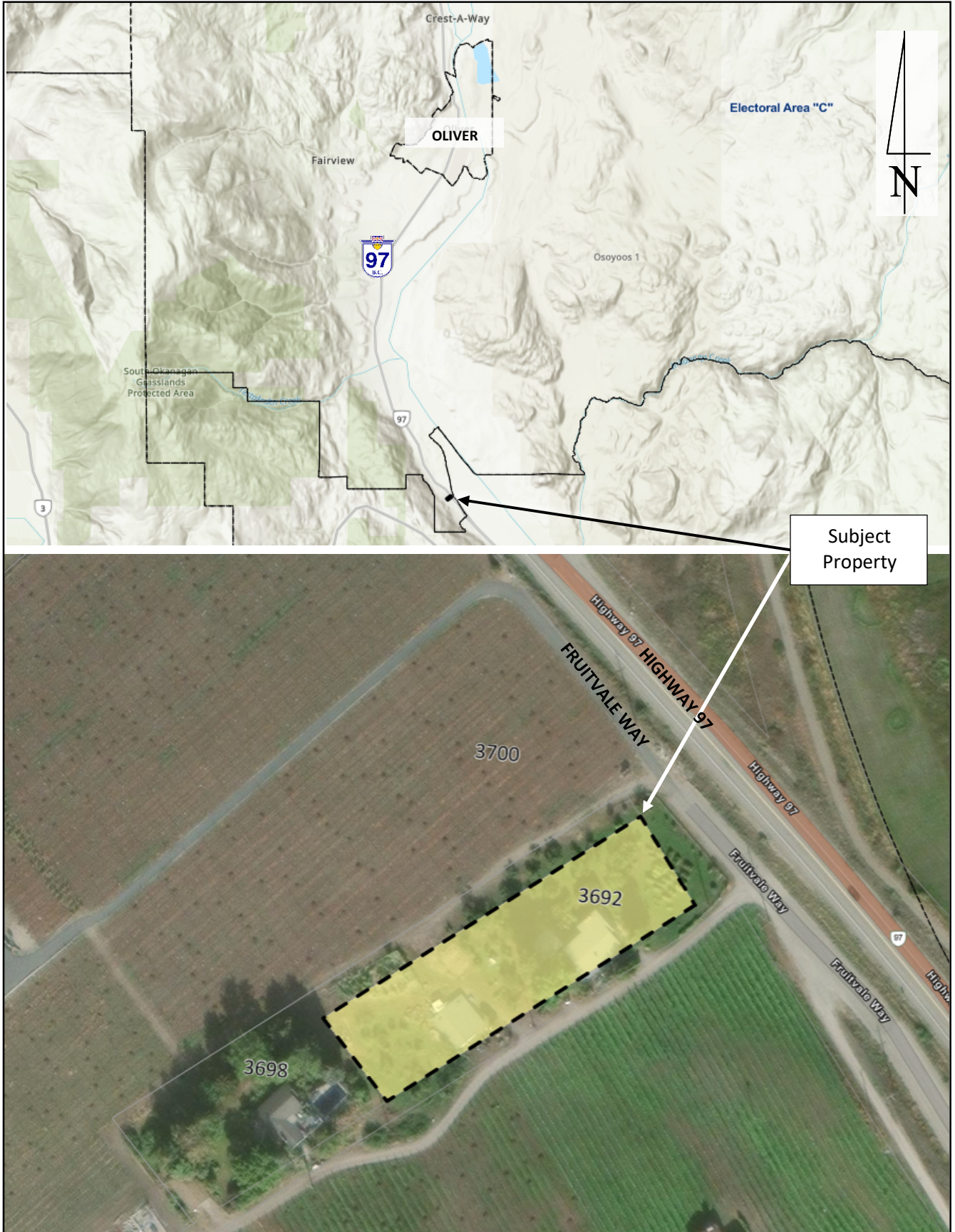
Respectfully submitted:

Jerritt Cloney

Jerritt Cloney, Planner I

Attachments: No. 1 — Context Maps
 No. 2 — Applicant’s Site Plan
 No. 3 — Aerial Photo (Nearmap – 2025)

Attachment No. 1 – Context Maps



Attachment No. 3 – Aerial Photo (Nearmap – 2025)

