

# Report

Date May 3, 2023

File: 3080-20 21.10

Subject Development Variance Permit Application No. DVP00073 for 6159 Lakes Road.

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## PURPOSE

To consider a development variance permit application to decrease the minimum building front and side yard setbacks for the 'Italian Kitchen and Deli' located at 6159 Lakes Road, including a partially constructed cold storage addition.

## BACKGROUND

Grove Hall Farm, the subject property, is located at 6159 Lakes Road and is 7.23 hectares (17.86 acres) in size. The subject property is located within the Rural Restricted Zone (A3) (Attachments 1 & 2) and the Agricultural Land Reserve (ALR) and is designated as 'rural' in the Official Community Plan, i.e., outside the Urban Containment Boundary (Attachment 3).

The predominant land uses surrounding the subject property are as follows:

- North: Rural Restricted (A3), ALR
- East: Quamichan Lake
- South: Residential Rural (R1), Residential Neighbourhood
- West: Residential Rural (R1), ALR

The existing Italian Kitchen and Deli building was given a building permit in 2017 as an accessory building instead of as an "other principal building" as per Zoning Bylaw No. 2950. On May 27, 2021, Building Department staff issued a Stop Work Order for the construction of a cold storage building addition behind the existing Italian Kitchen and Deli without municipal permits. A building permit application was retroactively submitted to the Municipality for the proposed cold storage building addition, but upon planning review, it was identified that a variance to the minimum required side yard setback is required prior to building permit issuance.

## The Proposal

Agricultural or "any other principal" buildings in the Restricted Rural Zone (A3) must maintain a minimum 25-metre front and 15-metre side and rear yard setback from property lines. Since the existing Italian Kitchen and Deli also does not comply with the required setbacks, the applicant has agreed to include the existing building as part of the proposal to legalize the siting of the partially constructed cold storage building. Because a valid building permit was obtained for the existing building, it does not require a variance, but obtaining it would address the non-compliance issue. The variance is required for the proposed cold storage addition.

The owners are requesting Council's approval to relax the minimum required setbacks for "all other principal buildings" as outlined in **bold** in the Site Plan (Attachment 4).

A Letter of Rationale explaining the purpose of the application is provided in Attachment 5. Building

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elevations for the proposed cold storage building addition are provided in Attachment 6.

## **DISCUSSION**

### **ALR Use Regulations and Compliance**

The *Agricultural Land Reserve Use Regulation* designates the storing, packing, preparing, and/or processing of farm products and related activities as a farm use in the ALR, provided at least 50% of the farm product is produced (i.e. grown or raised) on the farm on which the activity takes place or on the farms of a (cooperative) association to which the owner of the farm belongs.

The farm may be comprised of one or several parcels of land owned or operated as a farm business by a farmer or by the co-op members of an association to which the member belongs. The 50% threshold is based on the quantity (measured by volume or weight) of processed farm products used, calculated over the full product line.

As per Section 11(3) of the ALR Use Regulation, farm retail sales are designated as farm use and may not be prohibited if the following conditions are met:

- (a) all of the farm products offered for sale are produced on that agricultural land, or
- (b) the area used for all retail sales meets both of the following conditions:
  - (i). the total area, both indoors and outdoors, does not exceed 300 m<sup>2</sup>;
  - (ii). at least 50% of that area is limited to the sale of farm products produced either on that agricultural land or by an association to which the owner of the agricultural land belongs.

Subject to local government bylaws and the ALR placement of fill thresholds, the construction of necessary structures used for a designated farm activity is permitted under Section 5(1) of the ALR Use Regulation. Agricultural Land Commission (ALC) staff confirmed they have no objection to the proposed variance as long as the use of the structure is consistent with the ALR Use Regulation (Attachment 7).

### **Potential impact on surrounding lands**

The partially constructed cold storage building is 14.3 metres from the north property line (requiring a side yard variance of 0.7 metres) and is proposed to have a maximum height of 9.7 metres. The land use impact on the closest neighbour, which is the residence to the north (6179 Lakes Road), is not considered significant for the following reasons:

- a) visual screening provided by mature vegetation along the northern property boundary;
- b) the siting avoids impacts on adjacent trees; and,
- c) the proposed is over 300 metres from the northern neighbour's house.

The impact of the proposed cold storage building on the surrounding neighbourhood is low because it is sited directly behind the existing Italian Kitchen and Deli and designed in such a way as to minimize land alterations required for construction.

Site photos are provided in Attachment 8.

While it is regrettable that the existing Italian Kitchen and Deli was authorized in contravention of zoning provisions and that the cold storage building was partially constructed prior to permit approvals, it is the opinion of staff that the requested decrease in the minimum setbacks as outlined in **bold** in Attachment 4 for the purposes of building an agricultural cold storage building an addition to the existing farm sales and processing building (Italian Kitchen and Deli) be approved because:

- The cold storage building will allow for the expanded operations of a designated farm operation and local business;
- The land use impact of the addition on the neighbour to the north (6179 Lakes Road) is not considered significant; and,
- The land use impact on the surrounding neighbourhood is considered low.

The draft development variance permit is provided in Attachment 9.

### Communications and Engagement

Pursuant to section 499 of the *Local Government Act* and section 5(3)(d) of the Delegation of Authority Bylaw, notification letters have been sent to all owners and occupants within a 60-metre radius of the subject property. Any responses will be presented to Council at the May 3, 2023 Council meeting. The notice includes the subject matter of the application, the date and time when the application will be heard and will contain applicable North Cowichan staff contact information. The application is available for public inspection by contacting municipal staff during regular business hours.

The Notice is provided as Attachment 10.

### OPTIONS

1. **(Recommended Option)** THAT Council authorize the issuance of Development Variance Permit DVP00073 and grant a variance to section 53(6)(b) of Zoning Bylaw No. 2950, 1997 by reducing the front yard setback from 25 metres to 8.7 metres and the side yard setback from 15 metres to 14.3 metres for an existing building and proposed addition at 6159 Lakes Road, as outlined in **bold** in Attachment 4 appended to the May 3, 2023 report from the Development Planner.
  - *Reducing the front yard setback to 8.7 metres will regularize the siting of the existing farm sales and processing (Italian Kitchen and Deli) building and allow for the partially constructed new (cold storage building) addition, along with the minor reduction to the side yard setback for the new addition, to be completed once the building permit is issued.*
2. THAT Council deny Development Variance Permit Application DVP00073 to decrease the front and side yard setbacks for all other principal buildings at 6159 Lakes Road.
  - *If Council chooses this option, the applicant will be required to remove the work completed for the new addition, and the existing (Italian Kitchen and Deli) building will be considered non-conforming.*

**IMPLICATIONS**

Should the application be denied by Council, the partially constructed cold storage building addition must be removed or altered and brought into compliance with the setback provisions of the Restricted Rural Zone (A3) and all applicable provisions of Zoning Bylaw No. 2950, 1997.

**RECOMMENDATION**

THAT Council authorize the issuance of Development Variance Permit DVP00073 and grant a variance to section 53(6)(b) of Zoning Bylaw No. 2950, 1997, by reducing the front yard setback from 25 metres to 8.7 metres and the side yard setback from 15 metres to 14.3 metres for an existing building and proposed addition at 6159 Lakes Road, as outlined in bold in Attachment 4 appended to the May 3, 2023 report from the Development Planner.

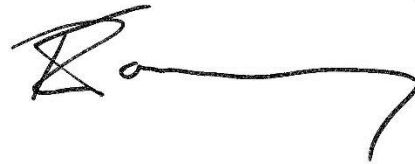
Report prepared by:



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Anthony Price, BURPI  
Development Planner

Report reviewed by:



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Rob Conway, MCIP, RPP  
Director, Planning and Building

**Approved to be forwarded to Council:**



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Ted Swabey  
Chief Administrative Officer

Attachments:

- (1) Location Map
- (2) Orthophoto
- (3) Zoning Map
- (4) Site Plan
- (5) Letter of Rationale
- (6) Cold Storage Building Elevation Drawings
- (7) ALC Referral Response
- (8) Site Photos
- (9) Draft Development Variance Permit
- (10) Notice of Proposed Development Variance Permit