

# Report

Date June 19, 2024

File: 3360-20 23.22

Subject Zoning Amendment Bylaw No. 3965, 2024, for first three readings

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## **PURPOSE**

To introduce Zoning Amendment Bylaw No. 3965, 2024, which proposes to amend Zoning Bylaw No. 2950, 1997, to permit a detached accessory dwelling unit at 6531 Bird's Eye Drive.

## **BACKGROUND**

### Property Details

The subject property is located at 6531 Bird's Eye Drive and is 0.413 hectares in size (Attachments 1 & 2). The property is located within the Rural Residential (A5) Zone, designated Rural Residential within the Official Community Plan (OCP), and is outside the Urban Containment Boundary (UCB) (Attachment 3). The property contains one single-family dwelling serviced by municipal water and a private wastewater treatment (septic) system.

The subject property is surrounded by A5 zoned lands, which also share the OCP land use designation Rural Residential.

### Proposal

The applicant requests a text amendment to the A5 Zone (Attachment 4) to permit one additional accessory dwelling unit (ADU) limited to 90m<sup>2</sup> in gross floor area. While the A5 zone allows for an ADU on properties 2 hectares or larger, the subject property is less than 2 hectares in area, hence the need for a site-specific Zoning Amendment. A letter of rationale has been provided in Attachment 5.

A professional B.C. land surveyor prepared a site plan that references the locations of the existing single-family dwelling and proposed detached garage with ADU (Attachment 6). The ADU will be situated on top of the proposed garage, entirely within the building footprint.

## **DISCUSSION**

### Second Dwelling Rural Lands Policy

On December 4, 2019, Council adopted the Second Dwelling Rural Lands (SDRL) Policy (Attachment 7), which established criteria for staff and Council to consider site-specific zoning amendment applications for second dwellings (now referred to as ADUs) outside the UCB. This proposal complies with the SDRL Policy, which provides that the ADU constructed is 90m<sup>2</sup> in gross floor area or less. As per the Policy, it is recommended that a section 219 restrictive covenant be registered on the property, which will limit the gross floor area of the dwelling and prohibit subdivision prior to Council's consideration of adoption of this zoning amendment bylaw.

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## **Official Community Plan No. 3900 (OCP) Designation and Policies**

The following OCP policies apply to the proposal:

### **Rural Residential Designation**

Policy 3.2.19 The Municipality will strive to:

- c. Configure zoning to maximize housing potential without further subdivision to permit detached accessory dwellings where servicing connections are available, or in the alternative, adequate on-site common septic treatment and water supply can be achieved.

### **Diverse Housing Mix**

Policy 5.1.2 The Municipality will strive to:

- b. Assess and consider how proposals for new housing meet the needs identified in the most recent Housing Needs Assessment Report.
- h. Explore and encourage different housing types that are suitable to aging in place...

### **Development Permit Area 4 (Steep Slopes)**

The subject lands fall under Development Permit Area 4 (Natural Hazard Lands - steep slopes) (DPA-4) due to land sloping greater than 20% gradient as measured over 10 metres on the property. A geotechnical report is registered on title by covenant document (Attachment 8). However, it confirms the site is safe for the intended use of a single-family dwelling and does not reference the intended ADU. The applicant will be required to amend the geotechnical report to include the ADU and register the amended report (confirming the site is safe and suitable for the intended use) by covenant on the property title prior to building permit issuance.

### **Items Registered on Title**

The subject property was created over 40 years ago as part of a 52-lot subdivision. As part of the subdivision process, a restrictive covenant (M1484) was registered on the title of each lot (including the subject property), which prohibited further subdivision and seemingly restricted the number of dwellings in the entire subdivision to 52 dwellings for each of the 52 lots. This covenant was registered as part of an agreement to amend the zoning of the parcels to Residential Rural (R1).

Staff have received a legal opinion that covenant M1484 is obsolete as the 52 lots subject to the covenant have since been rezoned to the Rural Residential (A5) Zone. In addition, the A5 zone permits a higher density than is prescribed under the covenant in the form of a two-family dwelling. Considered another way, Council made the decision at an earlier date through the zoning to permit a two-family dwelling for each of the 52 lots, irrespective of the covenant language. Given these circumstances and the confusion, the covenant on each title generates for staff and property owners, staff will release the covenant on each of the 52 properties, in accordance with section 18(b) of the Delegation of Authority Bylaw, which allows the Director of Planning and Building to discharge obsolete charges from the property title.

## ANALYSIS & CONCLUSION

This application is largely compliant with OCP policy as maximizing housing potential without subdivision is encouraged (section 3.2.19 c.). The proposed zoning amendment adheres to land uses and densities compatible with the OCP Rural Residential designation. The (SDRL) policy supports an ADU on the subject property provided that the area limitation of 90m<sup>2</sup> in gross floor area is observed. Approval of this application is recommended.

Staff will discharge covenant M1484 from all 52 lots within the subdivision, as a legal opinion has determined that it is obsolete.

Should Council wish to proceed with consideration of Zoning Amendment Bylaw No. 3965, a public hearing cannot be held due to recent amendments to the *Local Government Act*. Statutory notice has been given in advance of first, second, and third reading, in accordance with sections 464(3) and 467 of the *Local Government Act* (Attachment 8).

## OPTIONS

1. **(Recommended Option)** THAT Council:
  - (1) Gives first, second, and third readings to Zoning Amendment Bylaw No. 3965, 2024; and,
  - (2) Require the registration of a section 219 covenant to restrict the size of an accessory dwelling unit at 6531 Bird's Eye Drive to 90m<sup>2</sup> gross floor area prior to Council's consideration of adoption of Zoning Amendment Bylaw No. 3965, 2024.
2. THAT Council deny zoning amendment application ZB000223 to permit a detached accessory dwelling unit at 6531 Bird's Eye Drive.

## IMPLICATIONS

If the application is denied, the property owner will not be permitted to construct a detached ADU, notwithstanding any future broad zoning changes made in response to the *Housing Statutes (Amendment) Act*, which may or may not subsequently permit such development on A5 lots.

Should Council choose to give the bylaw third reading, registration of a section 219 Land Title Act covenant restricting the size of the ADU to 90m<sup>2</sup> will be required prior to adoption.

Prior to the issuance of a building permit for an ADU, the following will be required:

- a septic filing from a Registered On-site Wastewater Practitioner (ROWP);
- the geotechnical report registered on title through a covenant must be amended to include the ADU (confirming the site is safe and suitable for the intended use); and,
- compliance with any other applicable bylaws and regulations will be required.

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**RECOMMENDATION**

THAT Council:

- (1) Gives first, second, and third readings to Zoning Amendment Bylaw No. 3965, 2024; and,
- (2) Require the registration of a section 219 covenant to restrict the size of an accessory dwelling unit at 6531 Bird's Eye Drive to 90m<sup>2</sup> gross floor area prior to Council's consideration of adoption of Zoning Amendment Bylaw No. 3965, 2024.

Report prepared by:

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Report reviewed by:



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Amanda J. Young, RPP, MCIP  
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 Map
- (3) Zoning Map
- (4) Draft Zoning Amendment Bylaw No. 3965, 2024
- (5) Letter of Rationale
- (6) Site Plan
- (7) Second Dwelling Rural Lands Policy
- (8) Geotechnical Assessment