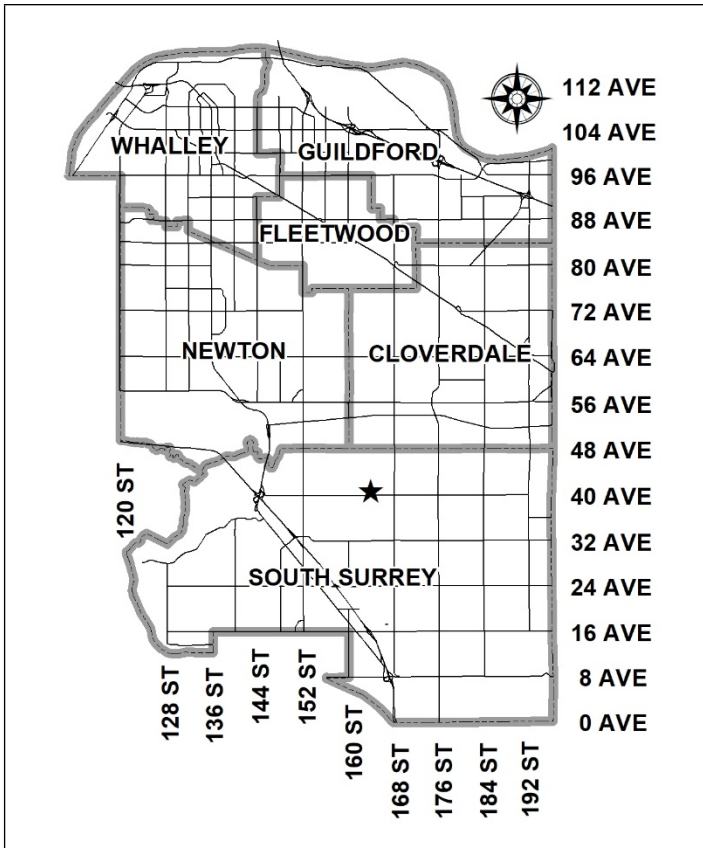


City of Surrey
PLANNING & DEVELOPMENT REPORT

Application No.: 7918-0010-00

Planning Report Date: March 9, 2020



PROPOSAL:

- **Development Permit** for Sensitive Ecosystems (Streamside Areas)
- **Non-adhering residential use** under Section 20.1 of the *ALC Act*.
- **Development Variance Permit**

to permit the development of a single family dwelling on a property within the ALR.

LOCATION: 16507 - 40 Avenue

ZONING: A-1

OCP DESIGNATION: Agricultural (within the ALR)



RECOMMENDATION SUMMARY

- Approval to draft Development Permit for Sensitive Ecosystems.
- Approval for Development Variance Permit to proceed to Public Notification.
- Refer the subject non-adhering residential use application to the Agricultural Land Commission (ALC) without comment.

DEVIATION FROM PLANS, POLICIES OR REGULATIONS

- Proposing to increase the maximum farm residential footprint requirements of the "General Agriculture Zone (A-1)".
- Proposing to increase the maximum floor area of a principal residence allowed by the *Agricultural Land Commission Act (ALCA)*.

RATIONALE OF RECOMMENDATION

- The proposal complies with the Development Permit requirements in the OCP for Sensitive Ecosystems (Streamside Areas).
- The proposed variance to the farm residential footprint is consistent with Development Variance Permit No. 7915-0071-00, which has expired. On January 14, 2020, the City's Agricultural and Food Policy Advisory Committee recommended support for the variance.
- The proposed farm residential footprint will be located on permitted pre-load, which is situated farther than the maximum permitted setback of 50 metres from 40 Avenue and is in a location that avoids conflicts with existing farm infrastructure.
- The applicant submitted their building permit application on January 10, 2018, prior to the adoption of the provincial legislation (Bill 52) on February 22, 2019, which introduced a cap on the floor area of principal dwellings located in the Agricultural Land Reserve to 500 square metres. However, the applicant was unable to complete Development Application No. 7918-0010-00 for the renewed variance and the required Ecosystem Development Permit before the enactment of the Provincial restriction on maximum floor area of their proposed dwelling.

RECOMMENDATION

The Planning & Development Department recommends that:

1. Council authorize staff to draft Development Permit No. 7918-0010-00 for Sensitive Ecosystems (Streamside Areas) generally in accordance with the Ecosystem Development Plan prepared by Marlim Ecological Consulting Ltd.
2. Council approve Development Variance Permit No. 7918-0010-00 (Appendix III) varying the following, to proceed to Public Notification:
 - (a) to increase the maximum setback of a single family dwelling from the front lot line of the "General Agriculture Zone (A-1)" from 50 metres to 84 metres; and
 - (b) to increase the maximum depth of the farm residential footprint from the front lot line of the "General Agriculture Zone (A-1)" from 60 metres to 92 metres.
3. Council authorize referral of the application to the Agricultural Land Commission without comment.
4. Council instruct staff to resolve the following issues prior to final approval:
 - (a) ensure that all engineering requirements and issues including restrictive covenants, dedications, and rights-of-way where necessary, are addressed to the satisfaction of the General Manager, Engineering;
 - (b) approval from the Agricultural Land Commission;
 - (c) submission of a finalized Ecosystem Development Plan to the satisfaction of City staff; and
 - (d) registration of a Section 219 Restrictive Covenant for environmental protection.

SITE CONTEXT & BACKGROUND

Direction	Existing Use	OCP Designation	Existing Zone
Subject Site	Agriculture (ALR)	Agricultural	A-1
North, East, South (Across 40 Ave), West:	Agriculture (ALR)	Agricultural	A-1

Context & Background

- The subject property is located at 16507 – 40 Avenue and is approximately 2 hectares in area.
- The property is designated "Agricultural" in the Official Community Plan (OCP), zoned "General Agriculture Zone (A-1)" and located within the Agricultural Land Reserve (ALR).

- The subject site is classified as farmland under the BC Assessment Act.
- The property is used for the production of blueberries and ground crops. The crops occupy approximately 75% of the property. Farm income on the property in 2018 totaled \$35,000, with \$30,000 of income coming from blueberries and \$5,000 coming from vegetables.
- The front (southern) 40 metre portion of the property is occupied by a barn and other farm infrastructure.
- On March 16, 2015, the former owner of the subject property submitted a Development Variance Permit (DVP) application to increase the maximum setback for the rear of the single family dwelling from 50 metres to 90 metres and to vary the maximum setback for the farm residential homeplate from 60 metres to 100 metres (Development Application No. 7915-0071-00). The applicant reasoned that a variance was warranted to allow for the construction of a single family dwelling without impacting the existing agricultural buildings and infrastructure located in the front portion of the property. The Agriculture and Food Policy Advisory Committee (AFPAC) and Council were supportive of this approach and Development Variance Permit (DVP) No. 7915-0071-00 was issued at the Special (Regular) Council Meeting on May 14, 2015.
- The applicant purchased the property following the issuance of DVP No. 7915-0071-00 and applied for a soil permit in October 2015 to allow structural fill to be placed on the property. The City issued the soil permit, which met the intent of the DVP.
- Following the placement of the structural fill, the applicant altered the design of their single family dwelling, which had a wider footprint than the original design. The new house design required the structural fill to be shifted, which was done without permit, however, no additional soil was brought onto the property. The shifted fill encroached into the streamside protection setback of the farm ditch that runs along the west property line.
- The applicant submitted their building permit application on January 10, 2018. While the building permit application was accepted by staff, the applicant was directed to apply for a new variance, as Development Variance Permit No. 7915-0071-00 had expired, and a Development Permit (DP) for Sensitive Ecosystem, due to the proximity of the proposed dwelling to protected watercourses (Development Application 7918-0010-00).
- On February 22, 2019, the Agricultural Land Reserve Use Regulation (ALR Use Regulation) was approved by B.C.'s Lieutenant Governor in Council, bringing into force changes to the *Agricultural Land Commission Act (ALCA)* under Bill 52 -2018, *Agricultural Land Commission Amendment Act, 2019*.
- One of the key changes of Bill 52 -2018 was providing the ALC with new oversight over residential uses and structures on ALR Land, including limiting the maximum floor area of a principal dwelling and generally limiting a property to one dwelling.
- Where a landowner seeks to exceed the maximum floor area allotment or construct more than one residence on a property, they must apply to the ALC for a Non-Adhering Residential Use.

- The application procedure functions in a similar manner to other ALC applications, where they are reviewed by the local government before the application is reviewed by the ALC. A resolution must be passed by Council to refer the application to the ALC for review.
- Bill 52 – 2018 provided a grandparenting provision that allowed principal dwellings to be considered an "unfinished pre-existing residence" if all local government approvals for construction had been granted before February 22, 2019 and if the construction of the foundation substantially began by November 5, 2019.
- The applicant was not able to complete Development Application No. 7918-0010-00 before the enactment of the ALR Use Regulation (February 22, 2019) and were therefore unable to be considered an "unfinished pre-existing residence", which necessitated the applicant to apply for a Non-Adhering Residential Use (NARU) to allow a dwelling that exceeds 500 square metres in size.

DEVELOPMENT PROPOSAL

Planning Considerations

- The applicant is proposing a Development Variance Permit to increase the depth of the farm residential footprint, a Development Permit for Sensitive Ecosystems (Streamside Areas), and a Non-Adhering Residential Use to allow the construction of a 934 square metre single family dwelling.

Referrals

Engineering: The Engineering Department has no objection to the project.

Agricultural and Food Policy Advisory Committee (AFPAC): At the January 14, 2020 meeting, AFPAC recommended that the Development Variance Permit be supported by Council.

AFPAC did not pass a motion regarding the Non-Adhering Residential Use component of the application, however, in their discussion the Committee noted that the property is actively farmed and that applications to allow the construction of the single family dwelling were in-stream prior to the enactment of Bill 52 - 2018.

POLICY & BYLAW CONSIDERATIONS

Agricultural Land Commission Act and Regulations

- Section 20.1(1)(b) of the *ALCA* restricts the maximum total floor area of a principal residence to 500 square metres.
- The applicant's proposed dwelling is 934 square metres in total floor area.

- The applicant submitted their building permit application on January 10, 2018, prior to the adoption of Bill 52 - 2018 on February 22, 2019, which introduced the cap on floor area of principal dwellings to 500 square metres. However, the applicant was unable to complete Development Application No. 7918-0010-00 for the renewed variance and Ecosystem Development Permit before February 22, 2019 when the restriction on maximum floor area came into effect.
- Given that the applicant had several applications in-stream with the City before the adoption of Bill 52 - 2018, staff is recommending that the Non-Adhering Residential Use application be forwarded to the ALC for consideration.

Applicant's Rationale

- The applicant submits that due to medical concerns in the family they were delayed in starting the building permit process for the proposed single family dwelling. The medical concerns, in conjunction with the applicant's decision to modify the location of the approved fill pad, resulted in the need for the applicant to reapply for a Development Variance Permit and to apply for a Development Permit for Sensitive Ecosystem (streamside areas), before the building permit could be issued.
- The applicant submitted Development Application No. 7918-0010-00 on January 11, 2018. However, the application was incomplete as it did not include the required Ecosystem Development Plan. The Ecosystem Development Plan was subsequently submitted on March 20, 2019, after Bill 52 - 2018 had come into effect.
- The applicant has indicated that the proposed dwelling will be a multi-generational farm house, which will be home to the applicant's family, the applicant's brother and his family, and the applicant's parents.
- The property is currently in agricultural production. The applicant is growing blueberries and various ground crops on site. The applicant has made some agricultural investments to the farm to increase production since purchasing the land in 2015. The applicant plans on making further agricultural investments to the farm when their housing situation is more secure.
- The applicant advises that it was their strong family bond that got them through their family medical concern. Furthermore, the applicant submits that cohabiting in the proposed multi-generational dwelling is critical for the continued emotional, physical and financial well-being of the family.

Zoning By-law

- The "General Agriculture Zone (A-1)" currently does not include any restrictions on density or house size, other than limiting the single family dwelling to one secondary suite. Therefore, a rezoning application is not required in conjunction with the ALC application for non-adhering residential use.
- Should the ALC be supportive of this application for the non-adhering residential use, staff will resume its review of the Building Permit application to ensure that the proposed dwelling complies with all provisions of the Zoning By-law.

Farm Residential Footprint Variances

- The applicant is requesting the following variances:
 - to increase the maximum setback of a single family dwelling from the front lot line of the A-1 Zone from 50 metres to 84 metres; and
 - to increase the maximum depth of the farm residential footprint from the front lot line of the A-1 Zone from 60 metres to 92 metres.
- Development Variance Permit No. 7915-0071-00 was issued at the Special (Regular) Council Meeting on May 14, 2015 to increase the maximum setback of the single family dwelling from 50 metres to 90 metres and to increase the depth of the farm residential homeplate from 60 metres to 100 metres.
- A fill permit was issued by the City on October 14, 2015 for preload on the subject property in the location permitted by Development Variance Permit No. 7915-0071-00. Due to an illness in the family, the applicant did not submit their building permit until January 10, 2018, after the DVP had expired.
- Based on current plans submitted to the City, the applicant is requesting smaller variances to the farm homeplate than previously approved under Development Variance Permit No. 7915-0071-00.
- The original rationale of Development Variance Permit No. 7915-0071-00 is still relevant to the subject application. The proposed homeplate location meets the intent of the farm homeplate policy, because the proposed dwelling is located to preserve the site's existing farm buildings, thereby minimizing the impacts of the residential use on the agricultural utility of the property.
- Staff support the request to renew the previously approved variances, with slight modifications, to proceed for consideration.

DEVELOPMENT PERMITS

Sensitive Ecosystems (Streamside Areas) Development Permit Requirement

- The subject property falls within the Sensitive Ecosystems Development Permit Area (DPA) for Streamside Areas in the OCP, given the location of existing Class A/O (red-coded) watercourses which flow along the north side of 40 Avenue and along the western property line. The Sensitive Ecosystems (Streamside Areas) Development Permit is required to protect aquatic and terrestrial ecosystems associated with streams from the impacts of development.
- In accordance with Part 7A Streamside Protection setbacks of the Zoning Bylaw, a Class A/O (red-coded) watercourse requires a minimum streamside setback of 10 metres, as measured from the top of bank. The proposed setbacks comply with the requirements outlined in the Zoning Bylaw.

- The riparian area will be protected through the registration of a Restrictive Covenant against the property to ensure safeguarding and maintenance of the Protection Area in perpetuity, in compliance with the OCP.
- An Ecosystem Development Plan, prepared by Mark Gollner and Sonya Oetterich, *R.P. Bio.*, of Marlim Ecological Consulting Ltd. and dated October 2019 was reviewed by staff and found to be generally acceptable, with some modifications to content and format of the report still required. The finalized report and recommendations will be incorporated into the Development Permit.

INFORMATION ATTACHED TO THIS REPORT

The following information is attached to this Report:

Appendix I.	Proposed Site Plan
Appendix II.	Agricultural and Food Policy Advisory Committee Minutes
Appendix III.	Development Variance Permit No. 7918-0010-00

approved by Ron Hintsche

Jean Lamontagne
General Manager
Planning and Development

BD/cm

AGRICULTURE AND FOOD POLICY ADVISORY COMMITTEE
TUESDAY, JANUARY 14, 2020

C. NEW BUSINESS

3. **Proposed Development Variance Permit and Non-Adhering Residential Use**

Ben Daly, Planning Technician

File: 7918-0010-00

- The subject property is designated Agricultural in the Official Community Plan, zoned General Agricultural Zone (A-1), and located within the Agricultural Land Reserve (ALR). The site is classified as farmland under the *BC Assessment Act* and has a soil classification of O₄WL.
- The applicant is proposing to construct a 934 square metre single family dwelling and a Development Variance Permit (DVP) to increase the maximum setback for a single family dwelling setback from 50 metres to 83.1 metres and to increase the depth of the farm residential footprint from 60 metres to 91.1 metres.

It was noted that the farm buildings are pre-existing and have been in place for a number of years. It was noted by members that the property is actively farmed and that the applications were in stream prior to the new regulations.

It was

Moved by M. Bose

Seconded by S. VanKeulen

That the Agriculture and Food Policy

Advisory Committee recommend to the General Manager of Planning and Development to support Development Application 7918-0010-00 for the variance of the setbacks.

Carried

It was

Moved by D. Arnold

Seconded by S. VanKeulen

That the Agriculture and Food Policy

Advisory Committee recommend to the General Manager of Planning and Development that Development Application 7918-0010-00 be forwarded without comments to the *Agricultural Land Commission* to assess the proposed house size.

Defeated

With M. Bose, B. Sandhu, M. Hilmer, S. Rai, J. Werring, P. Harrison, and J. Gibeau opposed.

CITY OF SURREY

(the "City")

DEVELOPMENT VARIANCE PERMIT

NO.: 7918-0010-00

Issued To:

(the "Owner")

Address of Owner:

1. This development variance permit is issued subject to compliance by the Owner with all statutes, by-laws, orders, regulations or agreements, except as specifically varied by this development variance permit.
2. This development variance permit applies to that real property including land with or without improvements located within the City of Surrey, with the legal description and civic address as follows:

Parcel Identifier: 013-218-786

Parcel "J" (Plan with Fee Deposited 51910F) South East Quarter Section 36 Township 1 New Westminister District

16507 - 40 Avenue

(the "Land")

3. Surrey Zoning By-law, 1993, No. 12000, as amended is varied as follows:
 - (a) In Part 10, General Agriculture Zone (A-1), Section F.1.(b), Yards and Setbacks, is varied to increase the maximum setback of a single family dwelling from the front lot line of the A-1 Zone from 50 metres to 84 metres; and
 - (b) In Part 10, General Agriculture Zone (A-1), Section J.2, Special Regulations, is varied to increase the maximum footprint of the farm residential footprint from the front lot line from 60 metres to 92 metres; and
4. This development variance permit applies to only the that portion of the buildings and structures on the Land shown on Schedule A which is attached hereto and forms part of this development variance permit. This development variance permit does not apply to additions to, or replacement of, any of the existing buildings shown on attached Schedule A, which is attached hereto and forms part of this development variance permit.

5. The Land shall be developed strictly in accordance with the terms and conditions and provisions of this development variance permit.
6. This development variance permit shall lapse if the Owner does not substantially start any construction with respect to which this development variance permit is issued, within two (2) years after the date this development variance permit is issued.
7. The terms of this development variance permit or any amendment to it, are binding on all persons who acquire an interest in the Land.
8. This development variance permit is not a building permit.

AUTHORIZING RESOLUTION PASSED BY THE COUNCIL, THE DAY OF , 20 .
ISSUED THIS DAY OF , 20 .

Mayor – Doug McCallum

City Clerk – Jennifer Ficocelli

