

ADDITION TO:

Regular Meeting of Council
Wednesday, May 1, 2019
Town of Drayton Valley Council Chambers

Pages

Addition:

Section 8.0 Decision Items

8.8 Variance for Height of Fence Constructed at 5504 39 Street (Lot 69; Block 63;
Plan 942 2552) - Development Permit Application DV19-009 2-14

TOWN OF DRAYTON VALLEY REQUEST FOR DECISION

SUBJECT:	Variance for Height of Fence Constructed at 5504 39 Street (Lot 69; Block 63; Plan 942 2552) - Development Permit Application DV19-009
MEETING:	May 01, 2019 Regular Meeting of Council
PRESENTED BY:	Keith Arndt Planning & Development Officer Matt Ellis Planner

1. PROPOSAL AND BACKGROUND:

The Town of Drayton Valley has received a Development Permit application which requires the approval of a variance for an "as built" yard fence constructed in 2018 at 5504 39 Street (**see Attachment 1- Site Location Map**). While the fence can be approved with respect to its construction, the height of the front yard fence requires a variance as the fence exceeds the allowable height of 1 meter as set out in the Town of Drayton Valley Land Use Bylaw 2007/24/D.

As per Section A14.2 (Fences in Residential Areas) under the Town of Drayton Valley Land Use Bylaw 2007/24/D, fences shall not be higher than 1.8 meters in side and rear yards and 1 meter in front yards. Height is measured from the ground to the highest point of the fence, including gates and posts.

The front yard of a property is defined in Section 3.0 (Definitions) under the Town of Drayton Valley Land Use Bylaw 2007/24/D, as "that portion of the site extending across the full width of the lot from the front property to the nearest portion of the exterior wall of the building and shall be measured at right angles to the front property boundary." In the case of the subject property, this area is highlighted in yellow in **Attachment 2 - Yards**.

The side yard of a property is defined in Section 3.0 (Definitions) under the Town of Drayton Valley Land Use Bylaw 2007/24/D, as "that portion of the site extending from the front yard to the rear yard and lying between the side property boundary of the lot and nearest portion of the exterior wall of the footings of the building, measured at right angles to the side of the property boundary." In the case of the subject property, this area is highlighted in red in **Attachment 2 - Yards**.

The subject fence that has been constructed in the front yard of the subject property consists of the following heights, with the percentage of the corresponding required variance for each height noted in brackets:

- 1.52 meters for the gate, as shown in Schedule B - Fence (requiring a variance of 68.9 %)
- 1.8 meters for the main portion, as shown in Schedule B - Fence (requiring a variance of 100%)
- 2.2 meters for the posts, as shown in Schedule B - Fence (requiring a variance of 144.4%) (**see Attachment 3- Photos**).

The subject fence that has been constructed in the side yard of the subject property also consists of the following height, with the percentage of the corresponding required variance noted in brackets:

- Height for the posts up to 2.2 meters, as shown in Schedule B - (requiring a variance of 22.2 %) (**see Attachment 3- Photos**).

Municipal Development Plan 2012/27/D

The subject property is located within the Residential Area of the Municipal Development Plan (See Attachment 3- Municipal Development Plan, Map Four).

The policies for Mature Residential Areas of the Municipal Development Plan, specifically Section 2.6.6 requires buildings, fences and other structures to be compatible in style with the character of existing buildings.

Although the neighbourhood (Aurora) where the subject property is located was a relatively new residential area when the current Municipal Development Plan was adopted by Council, the neighbourhood is a more mature neighbourhood today. Therefore, Section 2.6.6 also applies to the existing fence at the subject property. From Administration's perspective, the fence in the front yard of the property that blocks the view of the main door and front window of the dwelling from the street creates an unwelcoming impression of the overall property and is, therefore, incompatible with the character of nearby residential properties as well as the neighbourhood as a whole. As such, Administration is not supportive of the proposed variances for main portion of the fence, gate and posts in the front yard.

In regards to the side yard, Administration views the impact from the additional height of the posts in this area as marginal and, is therefore supportive of the required Variance.

Land Use Bylaw 2007/24/D

The subject property is located in the R1A-Low Density Residential District.

Section 12.1 requires that surrounding landowners within 60 meters of the subject property are sent a notice by mail and given an opportunity to comment at least two weeks (14 days) prior to Council making a decision on the application. A letter of objection to the subject fence was received on April 17, 2019 (**see Attachment 4- Letter of Objection**).

Section 13.6 outlines the criteria that must be considered when evaluating a Variance, in accordance with Section 640(6) of the *Municipal Government Act*. An application for a Development Permit that does not comply with the Land Use Bylaw (in this case, a Development Permit for a fence that exceeds the maximum permitted height), if in Council's opinion, the development with variance would not:

- Unduly interfere with the amenities of the neighbourhood, or;
- Materially interfere with or affect the use, enjoyment or value of neighbouring lots, and;
- The proposed development conforms with the use prescribed for the land or buildings in the Land Use Bylaw.

From Administration's perspective, the amenities of a given neighbourhood also extend to its overall character, more specifically, the impression that one gets when he/she first visits the neighbourhood. Residential neighbourhoods should generally feel welcoming and inviting, not isolating. Although privacy and security of individual properties is obviously a reasonable expectation, a proper balance must be created between contributing to the creation of a welcoming/inviting neighbourhood, and a reasonable degree of privacy and security of individual properties. Administration feels the height of the subject fence and posts in the front yard does not achieve this balance nor is it compatible with the character of the neighbourhood.

Similar to Administration's earlier comments for the height of the posts in the side yard, Administration does not have the same concerns regarding neighbourhood compatibility.

2. BUDGET / GRANT / RESOURCE IMPLICATIONS:

All registered land owners within 60 meters of the subject property that were subject to this application were mailed a notification advisory letter as per Section 13.7 of the Town of Drayton Valley Land Use Bylaw 2007/24/D.

3. ALIGNMENT WITH LEGISLATION AND TOWN PLANS:

Type of Document	Yes ~ N/A ~ Partial	Comments
Provincial Acts / Regulations	Yes	<i>Municipal Government Act</i> , Section 640(6).
Municipal Bylaws	Yes	Town of Drayton Valley Land Use Bylaw 2007/24/D, Sections 13, 13.7, A14.2 & 3.0
Municipal Development Plan	Yes	Depicts that subject property is intended for residential development. Fences are permitted uses within all residential districts.
Sustainability Vision 2019-2021	N/A	None
Town of Drayton Valley Strategic Plan 2019-2021	N/A	None
Other Plans or Policies	Yes	The Area Structure Plan was adopted in 2003 for the community of Aurora. Existing development on the site is comprised of primarily single-family residential development. The subject property is located within the low density residential district of this community (R1A).

4. POTENTIAL MOTIONS:

A. That Council approve Development Permit DV19-009 with the requested variances for the posts of an "as built" fence in the Side Yard, but refuses the requested variances for the fence and posts in the Front Yard.

B. That Council approve Development Permit DV19-009 with requested variances for an "as built" front yard fence and posts in both Front and Side Yards.

C. That Council refuse Development Permit DV19-009 with requested variances for an "as built" fence and posts in both Front and Side Yards

5. RECOMMENDATION



Administration recommends Council approve Development Permit DV19-009 (**see Attachment 5- Draft Development Permit DV19-009**) with requested variance for the "as-built" fence posts in the side yard because the impact from the additional height of the posts is marginal.

Administration recommends Council refuse Development Permit DV19-009 (**see Attachment 5- Draft Development Permit DV19-009**) with variances for the height of the fence and gate in the front yard based on the following reasons:

- The fence, posts and gate that block the view of the front door and window of the dwelling from the street creates an unwelcoming/uninviting impression of the overall property and is, therefore, incompatible with the character of nearby residential properties as well as the neighbourhood as a whole.
- The fence, posts and gate that block the view of the front door and window of the dwelling from the street does not achieve an acceptable balance between contributing to the creation of a welcoming/inviting neighbourhood and a reasonable degree of security and privacy.

6. ATTACHMENTS:

- 1. Site Location Map**
- 2. Yards**
- 3. Photos**
- 4. Letter of Objection**
- 5. Draft Development Permit DV19-009**

REPORT PREPARED BY:		REVIEWED BY:	<i>Richard Wheatly</i>
APPROVED BY:			

Attachment 1- Site Location Map



Attachment 2- Yards



Attachment 3- Photos







Attachment 4- Letter of Objection

Response to Height of Fence at 5504 39 Street, Fence Permit Application DV 19-009

Name: FOIP Act; RSA 2000, Chapter F-25; Section 17(1)(4)

Address: FOIP Act; RSA 2000, Chapter F-25; Section 17(1)(4)

Date: April 17, 2019

I support the Fence Permit Application DV 19-009 and am in agreement that the fence be left as built.

I do not support the Fence Permit Application DV 19-009. I feel the fence should be removed and replaced with a fence whose height does not exceed Bylaw 2007/24/D.

Comments: I feel very strongly that the fence mentioned above needs to be removed and replaced with a fence whose height meets the town bylaw. There are a number of reasons to support this request.

- 1) This is the bylaw. It was created to ensure our town has an environment that is pleasing to live in. The bylaw protects citizens and ensure we live together peacefully. Allowing this fence breaks the trust between the town and the people.

- 2) It seems that there was no building permit when the fence was built. Had the owner/tenant secured a building permit, another bylaw broken, prior to construction this would not have occurred because they would have been aware of the regulations. Ignorance of the law is not an excuse to break the law.
- 3) The building permit needs to be secured first. If people are allowed to build and then seek a variance to the bylaw, the entire town can go rogue and literally build whatever they like, knowing they will not be required to meet bylaws post construction.
- 4) The fence makes the front yard look like the back alley. There are a number of other things that makes this yard look bad, including old tires laying around, the lawn has been dug up and the tenants park their cars where the lawn used to be. I'm not sure if there is anything the town can do to improve that stuff but they can at least get the fence lowered so the area is open and looks like a front yard.
- 5) We have tried reaching out to the owners of the house previously, when the tenants were digging up the front yard, the owner's response was 'if they are breaking a bylaw call the town', so we did. The owner obviously does not care about the house he does not live in, but we do. This is our home, our street, our neighborhood and we don't want it looking like a back alley. It is not fair that the town would consider allowing this one house permission to downgrade our street.
- 6) I think it is hard to argue that this fence devalues our homes but it definitely decreases the curb appeal. It is embarrassing to have this house and its fence on our street, when my family visits from the city it gives the impression that Drayton Valley is back woods and red neck and that is not the image we want to leave with people.

Response to Height of Fence at 5504 39 Street, Fence Permit Application DV 19-009

Name: FOIP Act; RSA 2000, Chapter F-25; Section 17(1)(4)

Address: FOIP Act; RSA 2000, Chapter F-25; Section 17(1)(4)

Drayton Valley

Date: 20 April 19

FOIP Act; RSA 2000, Chapter F-25; Section 17(1)(4)

I support the Fence Permit Application DV 19-009 and am in agreement that the fence be left as built.

I do not support the Fence Permit Application DV 19-009. I feel the fence should be removed and replaced with a fence whose height does not exceed Bylaw 2007/24/D.

Comments: This fence and the yard in general is an eyesore on our street. We wholeheartedly do not support/approve this fence permit application.

