

Regular MeetingNovember 30, 1999

A Regular Meeting of the Municipal Council of the City of Kelowna was held in the Council Chamber, 1435 Water Street, Kelowna, B.C., on Tuesday, November 30, 1999

Council members in attendance were: Mayor Walter Gray, Councillors A.F. Blanleil, M.I. Bremner, R.D. Cannan, C.B. Day*, R.D. Hobson, J.D. Leask* and J.D. Nelson.

Council members absent: Councillor S.A. Shepherd.

Staff members in attendance were: City Manager, R.A. Born; City Clerk, D.L. Shipclark; Director of Planning & Development Services, R.L. Mattiussi; Current Planning Manager, A.V. Bruce; and Council Recording Secretary, B.L. Harder.

(* denotes partial attendance)

1. CALL TO ORDER

Mayor Gray called the meeting to order at 7:19 p.m.

2. PRAYER

The meeting was opened with a prayer offered by Councillor Hobson.

3. CONFIRMATION OF MINUTES

3.1 Regular Meeting, November 15, 1999

Moved by Councillor Blanleil/Seconded by Councillor Day

R956/99/11/30 THAT the minutes of the Regular Meeting of November 15, 1999 be confirmed as circulated.

Carried

3.2 Public Hearing, November 16, 1999

Moved by Councillor Nelson/Seconded by Councillor Cannan

R957/99/11/30 THAT the minutes of the Public Hearing of November 16, 1999 be confirmed as circulated.

Carried

3.3 Regular Meeting November 16, 1999

Moved by Councillor Nelson/Seconded by Councillor Bremner

R958/99/11/30 THAT the minutes of the Regular Meeting of November 16, 1999 be confirmed as circulated.

Carried

3.4 Regular Meeting, November 22, 1999

Moved by Councillor Leask/Seconded by Councillor Cannan

R959/99/11/30 THAT the minutes of the Regular Meeting of November 22, 1999 be confirmed as circulated.

Carried

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4. Councillor Hobson was requested to check the minutes of this meeting.
5. PLANNING BYLAWS CONSIDERED AT PUBLIC HEARING

(BYLAWS PRESENTED FOR SECOND & THIRD READINGS)

- 5.1 Bylaw No. 8479 (Z99-1051) – R354 Enterprises Ltd. (Bob Callahan) – Part of 2455 Acland Road

Moved by Councillor Bremner/Seconded by Councillor Cannan**R960/99/11/30** THAT Bylaw No. 8479 be read a second and third time.Carried

- 5.2 Bylaw No. 8483 (Z99-1011) – Douglas and Alfred Appel (Tom Smithwick) – 3205 Highway 33 East, and City of Kelowna Official Community Plan Amendment No. OCP99-007 requires majority vote of full Council (5)

Moved by Councillor Nelson/Seconded by Councillor Leask**R961/99/11/30** THAT Bylaw No. 8483 be read a second and third time.Carried6. PLANNING

- 6.1 Planning & Development Services Department, dated November 4, 1999, re: Development Variance Permit Application No. DVP99-10,087 – Gordon & Norma Joyner – 5249 Thalia Street (3090-20)

The Current Planning Manager indicated the property on maps displayed on the overhead projector and outlined the report for Council. The requested variance would permit the garage to remain at its existing 2-storey height which is 1.25 m higher than permitted for an accessory building. The main floor of the garage would be used for a workshop and a craft studio is proposed in the upper floor. The same application was considered by Council in March 1999 and was denied.

The Current Planning Manager explained that although professionals were hired to obtain the permits and build the garage, and City staff issued the necessary building permit, it was not until construction was well underway that it was realized that the plans exceeded height restrictions. At that time, a stop work order was issued. The properties on either side of the subject property have now been developed giving a better perspective of the impact of the garage roof height. There now appears to be a higher level of support from the neighbourhood residents for the requested variance. The owners of the subject property have had no part in the error that has occurred and staff recommend favourable consideration of the application.

The Director of Planning & Development Services clarified that staff are recommending approval not to cover their error, but because the impact on the adjacent properties would be worse and create a whole different set of problems if the garage was moved back.

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Mayor Gray invited anyone in the public gallery who deemed themselves affected by the requested variance to come forward.

Gordon Joyner, applicant, asked that Council allow the garage/studio/workshop to remain in its present location so that they can get on with their lives. He explained the importance of the workshop/studio to the lifestyle of he and his wife and advised that they have had sleepless nights and considerable stress for the last 8 months wondering what the outcome of the situation would be.

Earl Prince, owner of the adjacent property to the south, spoke in support of the requested variance on behalf of himself and the other adjacent neighbour stating they would prefer to have the garage remain at its present location. He advised that they do not have a problem with the existing height of the building and both adjacent properties would be negatively impacted if the garage was moved ahead and attached to the house.

Norma Joyner, applicant, advised that the studio/workshop is essential to their lifestyle and that both neighbours expressed deep concern at the impact on them if the garage was to be moved 12 feet ahead to connect to the house. She advised that they cannot install the heating or build workspace or shelves until this matter is resolved and urged Council to allow them to leave the building where it is so they can get on with their lives.

Edward Jones, 422 Providence Avenue, asked a question of the Current Planning Manager who clarified that the exterior of the building is virtually completed but there has been no work done to the interior since the spring of this year.

Mr. Jones commented that he had not seen the petition. The Current Planning Manager showed him a copy and Mayor Gray read the petition for the benefit of Council and the viewing audience.

Mr. Jones pointed out that the petition does not say the people want the variance to be allowed, but rather it says they do not want the garage moved forward 12 feet. He agreed that it is not viable to move the garage but insisted that there are other options for fixing the height problem that obviously have not been explored well enough. Allowing the variance affects everyone because a precedent would be set; once the variance has been allowed for the first time, it will be allowed again.

The City Clerk advised that the following correspondence and petitions had been received in response to advertising for this application:

- letter from the applicant advising they had canvassed the neighbourhood and the general consensus was to leave the accessory building at its present location.
- petition of support bearing 61 signatures.
- letter of support from Earle & Barbara Prince, 5253 Thalia Street
- letter of support from Penny & Tim Dufour, 5245 Thalia Street
- letter of opposition from Blair Staples, 427 Providence Avenue, expressing concern that approval of the variance would set a precedence in the neighbourhood.

Mr. Jones commented that most of the people who signed the petition of support are new in the area and have not had it explained to them what could happen if the variance is passed.

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Shane Herrington, 431 Providence Avenue, expressed opposition to the requested variance. He suggested that the developer found an option that everyone would not like in order to get people to sign the petition of support, that the City needs to enforce the building height requirement in the zoning bylaw, and that the problem could be solved by replacing the trusses on the roof. Mr. Herrington also expressed concern that while the current owners intend to use the upper level of the building as a studio, the next owner would most likely turn it into a suite and then the neighbourhood would be signing petitions about the illegal suite.

Councillor Leask left the Council Chamber at 7:58 p.m.

Mr. Herrington advised that adjusting the roof would take away the liveable space. He expressed concern that the petition presented tonight just addresses moving the building forward or not moving it forward and skirts the issue of allowing or not allowing the variance. The original petition, when the initial application was denied by Council, specifically stated that the people wanted the roof lowered. He also suggested that work continued on the subject building after the Stop Work order was issued.

Norma Joyner questioned how Mr. Herrington could know that work continued in the garage when he has never been in the building. She clarified that the interior of the building has not been changed since they moved in. There is still no heat in the building; a chimney is installed but the free standing stove is still in the box; the drywall that was sitting on the floor has been moved and piled against the walls;; and the workbench has not been attached to the walls. She commented that she and her husband have spent considerable time at City Hall over the past few months and that City staff have assured them that each request for a variance is judged on its own merit by the Council of the day. She also advised that if the variance is not approved, they have already signed a paper authorizing the developer to move the building.

Ed Jones reiterated that most signatures on this petition are from people new to the subdivision that do not know the full story or that there are other options. He insisted that moving the garage is not the only option.

Earl Prince re-addressed Council to advise that he and his wife canvassed the neighbourhood and they ensured that the people they spoke to knew the issues involved. There was a small sector of the community that felt that approval of the requested variance would set a precedent.

At the request of Council, the Current Planning Manager advised that a number of options were considered but all resulted in significant loss of usable space on the second floor of the garage. As for moving the building, two different professional adjusters looked for construction fixes and all involved significant amount of work and cost. As a result, the Joyner's viewed moving the garage as the only option. He also confirmed that the Kettle Valley Comprehensive Development Zone does not allow secondary suites.

Regular MeetingNovember 30, 1999Moved by Councillor Blanleil/Seconded by Councillor Cannan

R962/99/11/30 THAT Municipal Council authorize the issuance of Development Variance Permit No. DVP99-10,087; (Gordon and Norma Joyner); for Lot 5, Sec. 23, Twp. 28, S.D.Y.D. Plan 60948, located at 5249 Thalia Street in Kettle Valley, Kelowna, B.C.;

AND THAT a variance to the following section of Zoning Bylaw No. 8000 be granted:

Schedule "B", CD2 – Kettle Valley Comprehensive Residential Development, Section 1.4 (d) – Development Regulations: be varied from a maximum height of 4.5 m for accessory buildings to 5.75 m proposed.

Carried

- 6.2 Planning & Development Services Department, dated November 9, 1999 re: Development Variance Permit Application No. DVP99-10,083 – Okanagan University College (Blaine Germaniuk) – 3333 College Way (3090-20)

The Current Planning Manager indicated the property on maps displayed on the overhead projector and outlined the report for Council. The variance is to allow increased sign height and sign area for a new identification sign for OUC. Given the location of the sign, the speed limit on the highway, staff are of the opinion that the variance is in keeping with the scale of the property and the traffic going by. But because the sign would be located within a road reserve, and there are to be no structures within the road reserve, OUC and the Works & Utilities Dept. need to enter into an indemnification agreement for the costs of removing the sign when the ultimate road alignments get constructed.

Mayor Gray invited anyone in the public gallery who deemed themselves affected by the requested variance to come forward. There was no response.

Moved by Councillor Hobson/Seconded by Councillor Blanleil

R963/99/11/30 THAT Municipal Council authorize the issuance of Development Variance Permit No. DVP99-10,083; Okanagan University College; Lot A, Sec. 10 & 11, Twp. 23, O.D.Y.D., Plan KAP57788, located on Highway 97 North, Kelowna, B.C.;

AND THAT variances to the following sections of Sign Bylaw No. 8235 be granted:

1. Section 6.1 Specific Zone Regulations – Agricultural Zones (A1 and A2) – maximum sign height for a free-standing sign be varied from the 2.5 m permitted to 6.10 m proposed;
2. Section 6.1 Specific Zone Regulations – Agricultural Zones (A1 and A2) – maximum sign area for a free-standing sign be varied from the 3.0 m² permitted to 18.75 m² proposed;

AND THAT Council's approval of the above sign variances be subject to the applicant making appropriate arrangements with the Works & Utilities Department for any structures that are proposed to be located within the City of Kelowna road reserve area;

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AND FURTHER THAT the applicant be required to complete the above-noted conditions within 180 days of Council approval of the development variance permit application in order for the permit to be issued.

CarriedMoved by Councillor Bremner/Seconded by Councillor Blanleil

THAT staff review the Sign Bylaw taking into consideration the many variances that have been approved since its adoption and report back with recommendations for amendments to bring the bylaw more in keeping with the needs of the community.

The Director of Planning & Development Services advised that most of the variances have been institutional and because institutional zones cover such a broad range of uses, variances are to be expected. It is better for institutional signs to be evaluated on an individual basis based on the use proposed.

Moved by Councillor Hobson/Seconded by Councillor Nelson

R964/99/11/30 THAT the motion for staff to review the Sign Bylaw be tabled indefinitely.

Carried

6.3 Planning & Development Services Department, dated November 24, 1999 re: Rezoning Application No. Z97-1021 (TA99-009; OCP97-024) – Marona Estates Ltd. (Warren Neufeld) – 720 Valley Road and 780 Glenmore Road

Councillor Day declared a conflict of interest because the application involves direct members of his family and left the Council Chamber at 8:30 p.m.

The City Clerk advised that this report and the three bylaws under agenda items 7.3, 7.4 and 7.5 have been withdrawn at the request of the applicant.

Councillor Day returned to the Council Chamber at 8:31 p.m. and took his place at the Council Table.

7. BYLAWS

BYLAWS PRESENTED FOR FIRST READING)

7.1 Bylaw No. 8484 (Z99-1054) – Fred & Dianna Behrner – 119 McTavish Avenue

Moved by Councillor Cannan/Seconded by Councillor Nelson

R965/99/11/30 THAT Bylaw No. 8484 be read a first time.

Carried

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- 7.2 Bylaw No. 8485 (Z99-1046) – Johnannes & Irma Schepp, Jacob & Eleonore Jahner, and Peter & Ludmilla Becker (John Schepp) – 1125 Bernard Avenue

Moved by Councillor Cannan/Seconded by Councillor Bremner

R966/99/11/30 THAT Bylaw No. 8485 be read a first time.

Carried

(BYLAWS PRESENTED FOR ADOPTION)

- 7.3 Bylaw No. 8448 – City of Kelowna Official Community Plan Amendment No. OCP97-024 – Marona Estates Ltd. (The Conservatory) **requires majority vote of full Council (5)**

Withdrawn.

- 7.4 Bylaw No. 8449 – City of Kelowna Zoning Bylaw Text Amendment No. TA99-009 to Add the CD3 – Comprehensive Development Three Zone (Marona Estates – The Conservatory)

Withdrawn.

- 7.5 Bylaw No. 8450 (Z97-1021) – Marona Estates Ltd. (Warren Neufeld) – 780 Glenmore Road

Withdrawn.

8. REMINDERS

Monday, December 6th – Council's Inaugural Meeting - 7:00 p.m. in the Council Chamber.

9. TERMINATION

The meeting was declared terminated at 8:39 p.m.

Certified Correct:

Mayor

City Clerk

BLH/am