

Regular MeetingJuly 11, 2000

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, July 11, 2000.

Council members in attendance were: Mayor Walter Gray, Councillors A.F. Blanleil, R.D. Cannan, B.A. Clark, C.B. Day, B.D. Given, J.D. Nelson and S.A. Shepherd.

Council members absent: Councillor R.D. Hobson.

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.

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 Nelson.

3. CONFIRMATION OF MINUTES

Regular Meeting, June 26, 2000

Moved by Councillor Given/Seconded by Councillor Nelson

**R615/00/07/11** THAT the minutes of the Regular Meetings of June 26 and June 27, 2000 and the Public Hearing of June 27, 2000 be confirmed as circulated.

Carried

4. Councillor Nelson was requested to check the minutes of the meeting.

5. PLANNING BYLAWS CONSIDERED AT PUBLIC HEARING

**(BYLAWS PRESENTED FOR SECOND & THIRD READINGS AND ADOPTION)**

5.1 Bylaw No. 8574 (Z00-1031) – Jeanette Mergens (Sherri Simson/Simson Construction Management & Design) – 1922 Abbott Street

Moved by Councillor Nelson/Seconded by Councillor Given

**R616/00/07/11** THAT Bylaw No. 8574 be read a second and third time, and be adopted.

Carried

Councillor Clark opposed.

5.2 Bylaw No. 8576 (Z00-1023) – B. Lawrence Contracting Ltd. (New Town Planning Services – 188 Penno Road

Moved by Councillor Shepherd/Seconded by Councillor Clark

**R617/00/07/11** THAT Bylaw No. 8576 be read a second and third time, and be adopted.

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Staff:

- The applicant is proposing to demolish an existing garage and construct a new 2-vehicle garage with a secondary suite above.
- The property is within the Abbott Street Heritage Conservation Area and the Heritage Alteration Permit (HAP) is required to address requested variances to the Zoning Bylaw to reduce the front and south side yard setbacks, reduce the separation requirements between the principal dwelling and the accessory building, and increase the height of the new accessory building.
- Three of the variances exist as the development stands now. Only the height variance is new.
- The application was reviewed and supported by the Advisory Planning Commission and by the Community Heritage Commission with the latter encouraging the applicant to include detail around the windows on the west elevation of the accessory building similar to that on the house. The applicant is of the opinion that the proposed design is adequate.

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

Sheri Simson, applicant:

- It appears that it may not be possible to have the exact same exterior finish on the accessory building as is on the principal dwelling, but every effort will be made to have the colour and texture look as similar as possible.

There were no further comments.

Moved by Councillor Nelson/Seconded by Councillor Blanleil

**R618/00/07/11** THAT Municipal Council authorize the issuance of Heritage Alteration Permit No. HAP00-005, for That Part of Lot 10 shown on Plan B4136, D.L.14, O.D.Y.D., Plan 1782, located on 1922 Abbott Street, Kelowna, B.C., subject to the following:

1. The dimensions and siting of the building to be constructed on the land be in general accordance with Schedule "A";
2. The exterior design and finish of the building to be constructed on the land be in general accordance with Schedule "B";

AND THAT variances to the following sections of Zoning Bylaw No. 8000 be granted:

Section 13.1.5 Development Regulations (b) be varied to increase the maximum height for an accessory building containing a suite from the 6.0 m permitted to the 6.2 m proposed;

Section 13.1.5 Development Regulations (c) be varied to reduce the front yard from the 4.5 m required to the 4.08 m existing;

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Section 13.1.5 Development Regulations (d) be varied to reduce the side yard (south) setback from a flanking street from the 4.5 m required to the 3.73 m existing;

Section 13.1.6 Other regulations (c), to reduce the distance between a principal and an accessory building with a suite from the 5.0 m required to the 2.62 metres proposed;

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

Carried

Councillor Clark opposed.

6.2 Planning & Development Services Department, dated June 7, 2000 re: Development Variance Permit Application No. DVP00-10,024 – John & Bertha Bullock (Lynn Welder Consulting Ltd.) – 3002 Dunster Road (3090-20)

Staff:

- The Zoning Bylaw restricts the maximum floor area for off-farm sales in an agricultural zone to maximum 50<sup>2</sup> m. The applicant is asking to increase the floor area for non-farm product sales to 118 m<sup>2</sup>.
- The subject property forms part of Kelowna Land and Orchard Co. Ltd.
- The garage area is currently being used as a fruit stand and the intent is to expand into the first floor of the single family dwelling to provide a Teahouse. The upper floor of the house would still be used as a residence.
- The applicant has provided letters of support from the Ministry of Agriculture, Food & Fisheries and from B.C. Fruit Packers.
- The applicant has also submitted two letters responding to concerns about the Teahouse being in an active farming area and the impact of potential spray overdrift on the eating establishment.
- There appears to be no regulations governing the proposed use in an actively farmed area. The City would ensure that no more than the 118 m<sup>2</sup> area was used for non-farm product sales.
- The teahouse could potentially become a full restaurant.

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

John Bullock, applicant,

- There is demand for a teahouse and the intent is to sell pies, cakes, teas, light lunches, and whatever else it takes to service the bus tours and visitors who are asking for that.
- The letter from B.C. Fruit Packers outlines what Kelowna Land & Orchard Co. is doing to reduce the use of pesticides on their own lands but Kelowna Land & Orchard Co. cannot control what spraying practices neighbouring properties use.
- There is a 22 ft. high by 6 ft wide cedar hedge that separates the subject property from the farm operation to the south and mitigates the impact when the neighbour is spraying.
- The volume of the P.A. system can be turned down to address the noise concern.
- Kelowna Land & Orchard Co. is aware of the liability concerns and is appropriately insured.
- No road improvements are proposed to Dunster Road with this application.
- Hours of operation for the teahouse would be dictated by demand.

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Council:

- Expressed concern that a restaurant operating on farm land could have a tax advantage over a restaurant on commercial land.
- Staff to investigate the tax implications with B.C. Assessment and report back.

Moved by Councillor Cannan/Seconded by Councillor Day

**R619/00/07/11** THAT Municipal Council authorize the issuance of Development Variance Permit No. DVP00-10,024; Lynn Welder Consulting Ltd. (John & Bertha Bullock); Lot A, Sec. 16, Twp. 26, O.D.Y.D., Plan 1747, located on Dunster Road, Kelowna, B.C.;

AND THAT variances to the following sections of Zoning Bylaw No. 8000 be granted:

1. Section 11.1.6(d) A1 – Agriculture 1 – Other Regulations

The maximum gross floor area of stands selling produce that is produced off-site be varied by 68 m<sup>2</sup>, from the maximum allowed of 50 m<sup>2</sup> to 118 m<sup>2</sup> proposed.

Carried

6.3 Planning & Development Services Department, dated June 16, 2000 re: Development Variance Permit Application No. DVP00-10,041 – Sally Godsell – 2765 Arthur Road (3090-20)

Staff:

- B.C. Assets & Lands have granted a license for construction of a dock. The license did not include construction of a deck on the foreshore.
- Construction has already commenced; the rails and pilings are set for the dock and the deck is framed.
- Because the deck is above the high water mark a building permit is required.
- The applicant was made aware of the requirement for a building permit and has subsequently applied for that as well as the required variances. The applicant has also applied for accretion rights and is awaiting a decision on that issue.
- The variance deals with the leavestrip requirements which they are asking be reduced to zero since the deck exists right at the foreshore, and for reduced setbacks on the north and south sides.
- An environmental report obtained by the applicant from an environmental consultant indicates minimal impact to the environment.
- An existing covenant reserves a portion of the subject property for future public access to the lake. That covenant would have to be replaced by a new covenant acknowledging the deck and providing for the deck and dock to be dismantled at the owner's expense if the property is ever subdivided and the City exercises the option to take that dedication for public access.
- The applicant has revised the proposed dock design to include steps on either side so that public access along the foreshore would not be impeded.
- If Council approves the variance for encroachment of the deck into the leavestrip area, B.C. Assets & Lands have indicated they will likewise amend their dock permit to include that area.

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The City Clerk advised that the following correspondence has been received relevant to this application:

- Letter from Meg Hickling, co-owner of 2750 Arthur Road, opposing the application because the deck interferes with access along the beach.
- Letter from David Burtch, 2750 Arthur Road, opposing the application because the deck impedes public access along the foreshore.

Melody Clark, environmental consultant, speaking on behalf of the applicant:

- The majority of the site is in a natural state and the applicants have followed good stewardship of their land.
- The deck frame as it exists would be reduced in size and steps added.
- The owners have obtained letters of support from the abutting neighbours to the north, south and east.
- B.C. Assets & Lands have granted approval for the dock and the Ministry of Environment has no concerns.
- The owners are also proposing habitat enhancements including an Opsrey platform on a corner of the deck, a waterfowl nest box, some bat boxes and potential improvements to the area for salamander habitat.
- The owner is committed to apply for accretion upon approval of this application by Council.
- Now that the deck design is reduced in size, all of the deck would be above the high water mark with the steps below the high water mark and that is typical for the public route of access.
- Confident, as an environmental consultant, that this is the best solution for this property in terms of the environmental conditions.

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

Duncan Tough, 2750 Arthur Road:

- Strongly opposed to the variance as it would impede access along the foreshore.
- The property to the north is for sale and the new owner could decide to build a similar structure.
- The rebuilt wharf is okay but the proposed deck height is prohibitive for anyone walking along the beach and at high water the steps would be below water.
- People would not feel comfortable crossing over the deck when it was in use.
- Wildlife come down the draw along the edge of the applicant's property and the deck and dock would impede their access as there would be 2-3 steps over the dock and wildlife would not go up that many steps.
- The deck appears to be framed to house another structure on top.
- The owners were told they needed a building permit for the deck but continued to build until the stop work order was issued.
- Questioned whether accretion rights are being granted anymore.

Staff:

- Accretion rights are still being granted to waterfront property owners that apply provided certain conditions are met.
- The applicant has made no mention of other structures on top of the deck and City staff would be opposed if that was the intent.
- Public access to the foreshore legally is between the high and low water mark and so essentially there is no public access at high water.

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Bruce MacKenzie, 2760 Arthur Road:

- Speaking on behalf of the MacKenzie family. Although their mother signed a letter of support for this application, the family is reneging on that support because there were no permits in place prior to construction and there are precedent setting issues here.
- The subject property has limited water frontage (60 ft.). Once a structure is built on that entire stretch of waterfront, human nature would be to stay away from that portion of the beach because of the structure.
- The MacKenzie property is immediately adjacent and has almost 300 ft. of beach frontage and no obstructions to the beach and so the public would likely defer to that portion of the lakefront rather than the frontage that is occupied by a deck.
- Concerned about the requested side yard setback because it allows the applicant to build right up to the property line.
- Questioned whether the environmental consultant was retained by the applicant prior to or after the existing structure was built.
- Opsrey have natural areas to nest so question whether they would use the proposed nesting platform.
- The other buildings and structures along this stretch of foreshore were constructed in accordance with leavestrip requirements from the lake, and this applicant should be required to do likewise.

Staff:

- The leavestrip setback requirements will have changed since the existing structures along this stretch of foreshore were built.

Brad Britnell, 2715 Arthur Road:

- Totally opposed to the requested variances as they would set a precedent for others to apply to do similar.
- Access to walk along that stretch of beach would be impeded.
- 95% of the docks in McKinley Landing are at ground level.

Sally Godsell, applicant:

- Has a great deal of respect for the environment and encourages wildlife to go through the subject property. The dock and or deck would not impede wildlife movement.
- Sent letters to the neighbours in November 1999 and asked for feedback and gave them copies of drawings showing the revised deck design as well. The only feedback received was from Mrs. Hickling (co-owner of 2750 Arthur Road).
- The intent is not to impede access along the beach.
- The former dock was lost in the big windstorm a few years ago.
- Was not aware permits were required in order to rebuild or that the deck was being built within the 15 m leavestrip requirement. Work stopped when the stop work order was issued.
- Could have brought in a bulldozer to clear out the area for a retaining wall and constructed a deck on the property but chose not to.
- Have tried to be as accommodating to the neighbours as possible.
- The revised deck design is pulled back from the shore and the dock where it meets the high water mark is almost at gravel level so would be very easy to step over and traverse.
- If the deck was moved back so that it was outside the 15 m leavestrip, it would require taking out a mossy sloped area and several intermediate sized trees.
- Would be willing to further modify the deck design so as to provide unobstructed beach access.



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Council:

- Agreed to a friendly amendment to motion to add a final paragraph to require that the deck design be further revised to provide for unobstructed access at grade between the deck and the dock.

Moved by Councillor Blanleil/Seconded by Councillor Nelson

**R620/00/07/11** THAT Municipal Council authorize the issuance of Development Variance Permit No. DVP00-10,041; Sally Godsell; Lot 1, Sec. 20, Twp. 23, O.D.Y.D., Plan 34448, located on 2765 Arthur Road, Kelowna, B.C.;

AND THAT variances to the following sections of Zoning Bylaw No. 8000 be granted:

Section 11.1.5(d) **Development Regulations** – The minimum side yard setback be reduced from the required 3.0 metres to no setback on the north side, and 1.8 metres on the south side;

Section 6.14.1 **Stream Protection Leave Strips** – The minimum leave strip requirement for single-detached housing, where there has been no previous land disturbance, be reduced from the required 15.0 metres to no leave strip requirement;

AND THAT the applicant attain approval from British Columbia Assets and Lands for a claim to accretion and for the proposed construction of the dock and deck prior to issuance of the Development Variance Permit;

AND THAT the applicant attain approval from the Mayor and City Clerk to discharge Covenant Agreement V81613 and to attain approval of a new Covenant Agreement prior to issuance of the Development Variance Permit;

AND THAT the applicant attain approval from the Mayor and City Clerk to discharge Statutory Right of Way V81614 and to attain approval of a new Statutory Right of Way prior to issuance of the Development Variance Permit;

AND 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;

AND FURTHER THAT the deck design be further revised to allow for a 3 m access at grade between the deck and the dock, as per Schedule "A" attached to the permit.

Carried

Councillor Clark opposed.

6.4 (a) **BYLAW PRESENTED FOR ADOPTION**

Bylaw No. 8511 (Z99-1056) – R383 Enterprises Ltd. (Ralf Rohrlack/Greystoke Design Ltd.) – 1894 Ambrosi Road

Moved by Councillor Blanleil/Seconded by Councillor Day

**R621/00/07/11** THAT Bylaw No. 8511 be adopted.

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- (b) Planning & Development Services Department, dated June 16, 2000 re: Development Permit Application No. DP99-10,084 and Development Variance Permit Application No. DVP99-10,081 – R383 Enterprises Ltd. (Greystoke Design Ltd.) – 1894 Ambrosi Road (3060-20; 3090-20)

Staff:

- The applicant is proposing to construct a martial arts instructional facility on the site with areas for training, administration, and dormitory accommodation for visiting students or competitors.
- A variance is requested to reduce the lot width requirement.
- Outlined the minor revisions made to the design since the Public Hearing for the rezoning application.
- Landscaping is proposed at ground level as well as at the roof-top garden level.

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

Moved by Councillor Blanleil/Seconded by Councillor Cannan

**R622/00/07/11** THAT Municipal Council authorize the issuance of Development Permit No. DP99-10,084; for Lot 2, D.L. 129, O.D.Y.D., Plan 10140, located on 1894 Ambrosi Road, Kelowna, B.C., subject to the following:

1. The dimensions and siting of the building to be constructed on the land be in general accordance with Schedule "A";
2. The exterior design and finish of the building to be constructed on the land be in general accordance with Schedule "B";
3. Landscaping to be provided on the land be in general accordance with Schedule "C";
4. The applicant be required to post with the City a Landscape Performance Security deposit in the form of a "Letter of Credit" in the amount of 125% of the estimated value of the landscaping, as determined by a professional landscaper;

AND THAT prior to issuance of the Development Permit the applicant be required to register a reciprocal access agreement to provide access through the subject property to the adjacent properties to the north and to the south;

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

AND THAT Municipal Council authorize the issuance of Development Variance Permit No. DVP99-10,081; for Lot 2, D.L. 129, O.D.Y.D., Plan 10140, located on 1894 Ambrosi Road, Kelowna, B.C.;

AND FURTHER THAT variances to the following sections of Zoning Bylaw No. 8000 be granted:

**Section 14.5.4 (a) Subdivision Regulations** - The minimum lot width be varied from the 40 metre requirement where there is no abutting lane, to the existing lot width of 36.36 metres.

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Carried

7. REMINDERS

- An individual has been hired to catalogue the class "c" heritage properties on behalf of the City. She is out and about in the community taking pictures of those properties and so if people see her, no need to worry, she is legitimate.

8. TERMINATION

The meeting was declared terminated at 9:38 p.m.

Certified Correct:

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Mayor

City Clerk

BLH/am