

Regular MeetingAugust 19, 2003

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, August 19, 2003.

Council members in attendance were: Mayor Walter Gray, Councillors A.F. Blanleil, R.D. Cannan, B.A. Clark, and C.B. Day*, B.D. Given, R.D. Hobson and E.A. Horning.

Council members absent: Councillor S.A. Shepherd.

Staff members in attendance were: Acting City Manager/Director of Planning & Corporate Services, R.L. Mattiussi; City Clerk, A.M. Flack; Subdivision Approving Officer, R.G. Shaughnessy; and Council Recording Secretary, B.L. Harder.

(* denotes partial attendance)

1. CALL TO ORDER

Mayor Gray called the meeting to order at 8:05 p.m.

2. PRAYER

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

3. CONFIRMATION OF MINUTES

Regular Meeting, July 21, 2003
Public Hearing, July 22, 2003
Regular Meeting, July 22, 2003
Public Hearing, August 5, 2003
Regular Meeting, August 5, 2003

Moved by Councillor Given/Seconded by Councillor Hobson

R750/03/08/19 THAT the Minutes of the Regular Meetings of July 21, July 22 and August 5, 2003 and the Minutes of the Public Hearings of July 22 and August 5, 2003 be confirmed as circulated.

Carried

4. Councillor Horning 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. 9066 (Z03-0020) – D.E. Pilling and Associates Ltd. (John & Sarina Weisbeck and Romesha Ventures Inc.) – 1494 and 1374 Highway 33 East

Councillor Day declared a conflict of interest because he owns property within the notification radius for this application and left the Council Chamber at 8:06 p.m.

The City Clerk noted that at the Public Hearing, residents within the notification area for this application had expressed concern that the locations maps they received had indicated there were two subject properties. The Clerk clarified that a portion of the adjacent property to the east is included in the application in order to rezone small triangular portions along the common boundary that are needed to facilitate the proposed lot configurations.

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Councillor Day returned to the Council Chamber at 8:13 p.m. and took his place at the Council Table.

(BYLAWS PRESENTED FOR SECOND & THIRD READINGS AND ADOPTION)

5.2 Bylaw No. 9065 (Z03-0032) – David & Karen Desjardins – 5399 Chute Lake Road

Moved by Councillor Blanleil/Seconded by Councillor Cannan**R752/03/08/19** THAT Bylaw No. 9065 be read a second and third time, and be adopted.Carried

5.3 Bylaw No. 9067 (OCP03-0006) – Gazelle Enterprises Inc., R265 Enterprises Ltd., Emil Anderson Construction Co. Ltd., Gilmar Management Ltd., Gillen Investments Inc. (Summit South Developments Joint Venture/Mike Jacobs) – 5198 South Ridge Drive

Moved by Councillor Hobson/Seconded by Councillor Day**R753/03/08/19** THAT Bylaw No. 9067 be read a second and third time, and be adopted.Carried

5.4 Bylaw No. 9068 (Z03-0025) – Gazelle Enterprises Inc., R265 Enterprises Ltd., Emil Anderson Construction Co. Ltd., Gilmar Management Ltd., Gillen Investments Inc. (Summit South Developments Joint Venture/Mike Jacobs) – 5198 South Ridge Drive

Moved by Councillor Day/Seconded by Councillor Hobson**R754/03/08/19** THAT Bylaw No. 9068 be read a second and third time, and be adopted.Carried**6. PUBLIC MEETING TO RECEIVE INPUT ON LIQUOR LICENCE APPLICATION:**

The City Clerk advised that the following correspondence had been received with comments that are not application-specific:

- letter from Alberta Bosshard, 1440 Springfield Road, expressing opposition to any extension of liquor service hours.

Mayor Gray invited anyone in the public gallery who wished to make comments of a general nature rather than comments that are application specific to come forward.

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John Gough, 1160 Sunset Drive:

- Asked if the decisions on the three applications tonight would be precedent-setting for similar applications.

Staff:

- The Task Force generally advised in support of the expanded hours but each application would be dealt with on its own merits.

David Habib, Mediterranean Grill:

- The wait for a cab when the nightclubs close can be up to 1½ hours on event nights in the downtown. There is a major lack of transportation at 2 a.m. The staggered hours of closing that are now in place seem to alleviate some of those problems. If all are closing at 2 a.m. people waiting for cabs will be out on the street or be forced to drive because they are unable to wait for a cab.
- Members of the Downtown Nightclub Association have been doing everything they can to make the downtown cleaner and better and to eliminate the dead zones during the daytime.

Doug McMinniman, General Manager of Gotcha and Club Oasis Nightclubs:

- The staggered hours are working well and should not be changed.
- Nightclubs have only 3 to 4 hours a day in which to generate enough revenue to survive. Pubs have 14 hours a day to make their income. Nightclub owners rely on patrons of pubs moving to their nightclubs when the pubs close. If the pubs were closing at the same time as the nightclubs, there would be little reason for patrons of the pubs to move to the nightclubs.
- Closing at the same time would result in patrons of the downtown nightclubs and pubs spilling into the streets at once.

Andrew Mercer, Manager of Splash's Nightclub:

- Reiterated the comments of the previous speaker.
- If the pubs are going to get to stay open the extra hour then the nightclubs should also be able to stay open an additional hour in order to maintain a level playing field competitively and be fair.
- The extended hours in Penticton have already made it more difficult for Kelowna nightclubs to compete.

Michael Heins, doorman at Club Oasis and Gotcha Nightclubs:

- Is supporting himself through school, and his job as doorman is his only income.
- Needs the nightclubs to stay open an hour later than pubs or his job will be at risk.

Mike Gotre, OK Corral:

- Reiterated comments of previous speakers.

Daniel Schenkeveld, nightclub employee:

- Is a full time student at OUC and his only source of income is working at a cabaret.
- Reiterated comments of previous speakers.

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Mayor Gray invited anyone in the public gallery wishing to make comments that are application specific to come forward.

LL03-0014 - DOC WILLOUGHBY'S PUB:

David Willoughby, Doc Willoughby's Pub, 353 Bernard Avenue:

- At present, Doc Willoughby's usually only stays open until 1 a.m. on Fridays, Saturdays and Sundays and otherwise closes at midnight.
- Applying for the change in hours in order to be open for brunch and to have the flexibility to be open later at night on event nights and on holidays. The 2 a.m. closing would allow more time to clear out their patrons on busy nights.
- The Provincial Liquor Inspector has indicated that he would like everyone on the same hours.
- Will step up security and enforcement of noise on the outdoor patio and would be willing to close the patio earlier if that was important to Council. Would also be willing to talk to the Royal Anne about their concerns about noise from the patio.
- The only opposition he has heard until tonight was from neighbouring businesses not wanting him to open earlier for breakfast.

LL03-0012 - ROSE'S WATERFRONT PUB:

The City Clerk advised that the following correspondence had been received relevant to the Rose's Pub application:

- letter from Roger Baekeland, owner of a unit at 1320 Water Street, opposed unless steps are taken to mitigate or eliminate the loud music, drunken revelry and sleep-disturbing noise emanating from the patio.
- Letter from Sue Sykes, owner of two units at 1320 Water Street, opposed to allowing any activity at the pub past 1 a.m.
- Letter from G.E. Jacobsen, owner of 4 vacation homes at The Grand Okanagan Resort, relating bad experiences they and their guests have had as a result of the continuation of drunken behaviour on boats after Rose's closes and suggesting that they only be permitted to open at 9 a.m. if they serve breakfast with no alcohol service until 11 a.m. and that the closing time be changed from 1 a.m. to midnight.

Rose Sexsmith, owner of Rose's Pub, 1352 Water Street:

- Rose's changes through the day; it is a great lunch place that turns into a pub in the afternoon and a cabaret with dancing and a DJ or live entertainment at night. The pub is generally full when the doors are closed at 1 a.m.
- The Provincial Liquor Inspector advised her to apply for the 2 a.m. extended hour for closing.
- The extended hours are in accordance with liquor regulations.
- Has speakers on her outdoor patio and could turn the music down earlier but has never heard one complaint about noise in the 10 years she has been in operation at this location.

Doug McMinniman, General Manager of Gotcha and Club Oasis Nightclubs:

- If nightclubs could have outdoor patios maybe people would come to the clubs earlier in the evening.
- The pubs offer what nightclubs offer plus having outdoor patios and a kitchen for food.

Mark Gotre, 1978 Kirschner Road (OK Corral):

- As far as the layman is concerned, Rose's is a nightclub. If Rose's stays open until 2 a.m., the patrons there will stay and not move to the nightclubs.
- There is nothing stopping other pubs from turning into a nightclub too.
- Pubs operate 14 hours per day compared to the 5 hours of operating time for nightclubs of which only 1½ hours to 2 hours are busy.
- It hardly seems fair to give the pubs the extra hour when that takes away the flow to the nightclubs after the pubs close.

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The owner of Gotcha and Club Oasis Nightclubs:

- Concerned about policing if these applications are approved and three additional establishments are open until 2 a.m.
- Would prefer to see the hours of the pubs and nightclubs as they are now.

LL03-0013 - MEDITERRANEAN GRILL:

The City Clerk advised that the following correspondence had been received relevant to the Mediterranean Grill application:

- Letter from Richard Sharpe, 1585 Abbott Street, opposing the extension of drinking hours because it would discourage implementation of the Downtown Plan and would set a precedent.

David Habib, owner of Mediterranean Grill, 274 Lawrence Avenue:

- The earlier hours would allow him to be open during the day to alleviate daytime dead zones which was a concern of Council with a previous application of his.
- In addition to requesting the earlier opening time, his application to the Liquor Distribution Branch (LDB) is to extend the hours for liquor sales to 2 a.m. and to stay open until 3 a.m. to allow extra time for dispersal of patrons. Asked that Council support his application and include in their resolution that they also support the 3 a.m. closing for his establishment.

Andrew Mercer, Manager of Splash's Nightclub:

- Any changes that affect one establishment should be made across the board for all.

Doug McMinniman, General Manager of Gotcha and Club Oasis Nightclubs:

- Gotcha and Club Oasis were built without kitchens and incorporating kitchens now is not an option.

- 6.1 Planning & Corporate Services Department, dated July 28, 2003 re: Liquor Licensing Application No. LL03-0014 – Schultco Holdings Ltd. (David Willoughby) – 353 Bernard Avenue

Moved by Councillor Blanleil/Seconded by Councillor Given

R755/03/08/19 THAT Council support an extension to the permitted hours of liquor sales of Doc Willoughby's Downtown Grill from 11:00 a.m. to 12:00 a.m. Monday through Sunday to 9:00 a.m. to 2:00 a.m. Monday through Sunday on Lot 9, Blk. 14, District Lot 139, ODYD, Plan 462 except the east 15 feet thereof for 353 Bernard Avenue;

AND THAT Council direct staff to forward the appropriate resolution to the Liquor Control and Licensing Branch in Victoria.

Carried

Councillor Cannan opposed

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- 6.2 Planning & Corporate Services Department, dated July 25, 2003 re: Liquor Licensing Application No. LL03-0012 – Rose's Waterfront Pub (Rose Sexsmith) – 1310-1352 Water Street

Moved by Councillor Given/Seconded by Councillor Clark

R756/03/08/19 THAT Council support an extension to the permitted hours of liquor sales for Rose's Waterfront Pub from 11:00 a.m. to 1:00 a.m. Monday through Sunday to 9:00 a.m. to 2:00 a.m. Monday through Sunday on Lot 1, Plan 73542, ODYD, for #1310-1352 Water Street;

AND THAT Council direct staff to forward the appropriate resolution to the Liquor Control and Licensing Branch in Victoria.

Carried

Councillor Cannan opposed.

- 6.3 Planning & Corporate Services Department, dated July 25, 2003 re: Liquor Licensing Application No. LL03-0013 – 614030 BC Ltd. (David Habib) – 274 Lawrence Avenue

Moved by Councillor Blanleil/Seconded by Councillor Hobson

R757/03/08/19 THAT Council support an extension to the permitted hours of liquor sales for the Mediterranean Grill from 8:00 p.m. to 2:00 a.m. Monday through Sunday to 9:00 a.m. to 2:00 a.m. Monday through Sunday on Lot 3, Blk. 13, DL 139, ODYD, Plan 462, for 274 Lawrence Avenue;

AND THAT Council support extending the period to clear out patrons from 2:30 a.m. to 3:00 a.m. subject to the applicant entering into the City's Good Neighbour Agreement;

AND FURTHER THAT Council direct staff to forward the appropriate resolution to the Liquor Control and Licensing Branch in Victoria.

Carried

Moved by Councillor Blanleil/Seconded by Councillor Cannan

R758/03/08/19 THAT Council's support of applications from Liquor Primary licence holders to extend their hours for closing will be subject to the applicant signing the City of Kelowna's Good Neighbour Agreement to ensure that issues such as the impact of noise from patios on neighbouring properties are addressed.

Carried

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- 7.1 Planning & Corporate Services Department, dated July 3, 2003 re: Development Permit Application No. DP00-10,067 and Development Variance Permit Application No. DVP03-0049 – Rose Enterprises (Doug Clark) – 1939-1945 Richter Street

Staff:

- The applicant is proposing to develop six units of 2-storey row housing configured in a U-shape with courtyard access to each unit from the parking lot and individual ground level patios for private open space.
- Variances are required to address setback deficiencies and lot coverage requirements of the Zoning Bylaw. Additional landscaping will be provided to mitigate the increased site coverage.

The City Clerk advised that the following correspondence had been received:

- letter of support from Debra Pender, 1965 Richter Street
- letter of support from Daniel Spelliscy, 715 Sutherland Avenue

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

Doug Clark, applicant:

- The application is actually for a 1½ storey development.
- The increased lot coverage is required because of the long driveway off Elliot Avenue to the parking spaces.

Moved by Councillor Horning/Seconded by Councillor Blanleil

R759/03/08/19 THAT Council authorize the issuance of Development Permit No. DP00-10,067 for Lots 1 & 2, DL 138, ODYD, Plan 3366 located on Richter 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";
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 Council authorize the issuance of Development Variance Permit No. DVP03-0049; Lots 1 & 2, DL 138, ODYD, Plan 3366 located on Richter Street, Kelowna, B.C.;

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

Section 13.10.5 (b) – Transitional Low Density Housing

- A variance to allow a site coverage of 75.62% including building, driveway, and parking areas where only 60% is permitted.;

Section 13.10.5 (d) – Transitional Low Density Housing

- A variance to allow a front yard setback of 4.30 metres where 4.50 metres is required;

Section 13.10.5 (e) – Transitional Low Density Housing

- A variance to allow a side yard setback of 1.14 metres where 1.50 metres is required;

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

- 7.2 Planning & Corporate Services Department, dated July 15, 2003 re: Development Variance Permit Application No. DVP03-0068 – Matthew Longman and Shari McDowell – 1879 Ethel Street

Staff:

- Proposing to construct an accessory building at the rear of the property with a suite above a 2-car garage.
- The applicant is proposing to use the suite for elderly relatives.
- Neighbours of the applicant have provided written support for the proposed height variance. Indicated the location of the properties in support on a map.
- Recommend non-support for the variance on the basis that a design more accessible to the elderly should be pursued and because the 4.5 m maximum height limit for secondary suites in accessory buildings was only just imposed in September 2002 and should be maintained.

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

Shari McDowell and Matthew Longman, applicants:

- Aware that the height restriction was imposed because of people abusing the privilege of having a carriage house.
- Asking for the variance in order to have a similar character for the accessory building to that of the existing house. Could build the barn style roof, which would be allowed without a variance, but it would not blend in with the neighbourhood. The proposed roof pitch matches the roof pitch of the existing house and the siding would also be matched.
- The suite will be wheelchair accessible; the stairway will be of sufficient width to accommodate installation of a lift in future.
- They live in the main dwelling and are not moving. It is her parents who are in failing health that would be moving into the suite.
- The rear yard would be completely landscaped.
- Spoke to all of the people on the block and all were in support.
- The existing garage would be removed from the site.

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Oskar Reinholz, 2262 Aberdeen Avenue:

- Is also thinking of building a carriage house that would exceed the permitted maximum height.
- Thought that the reason why the height restriction was imposed was so that the neighbours could be heard. Questioned why staff would be opposed when the neighbourhood has no objections.
- Hope Council will consider these applications on a case by case basis.

Moved by Councillor Blanleil/Seconded by Councillor Cannan

R760/03/08/19 THAT Council authorize the issuance of Development Variance Permit No. DVP03-0068 for Lot 4, District Lot 138, ODYD, Plan 3189, located on Ethel Street, Kelowna, B.C.;

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

Section 13: RU1-Large Lot Housing: Subsection 13.1.5 (b):

- Vary the maximum height for an accessory building from 4.5 m permitted to 6.0 m proposed.

Carried

7.3 Planning & Corporate Services Department, dated July 16, 2003 re: Development Variance Permit Application No. DVP02-0107 – City of Kelowna – 345 Lawrence Avenue

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

Moved by Councillor Hobson/Seconded by Councillor Blanleil

R761/03/08/19 THAT Council authorize the issuance of Development Variance Permit No. DVP02-0107, Lot A, District Lot 139, ODYD, Plan 39412, located on Lawrence Avenue, Kelowna, B.C.;

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

2.3.1 (i) On-Site Signs: Vary the maximum size of on-site directional from 1.0 m² permitted to 5.4 m² proposed;

5.8.1 (a) Maximum Height: Vary the height of a projecting sign from 7.5 m maximum above grade to 9.08 m requested;

Section 6.1 Major Commercial – Size of the Projecting Sign: Vary the area of a projecting sign from 2.5 m² permitted to 11.4 m² requested;

Section 6.1 Major Commercial – Number of signs per business frontage: Vary the number of projecting signs permitted per business frontage from 2 to 3 for the Lawrence Avenue frontage of the parkade.

Carried

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8. REMINDERS - Nil.

9. TERMINATION

The meeting was declared terminated at 10:14 p.m.

Certified Correct:

Mayor

City Clerk

BLH/am