

Regular MeetingDecember 2, 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, December 2,, 2003.

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

Council members absent: Councillor A.F. Blanleil.

Staff members in attendance were: City Manager, R.A. Born; Deputy City Clerk, S.C. Fleming; Director of Planning & Corporate Services, R.L. Mattiussi; Manager of Development Services, A.V. Bruce; 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 7:00 p.m.

2. PRAYER

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

3. CONFIRMATION OF MINUTES

Regular Meeting, October 27, 2003
 Public Hearing, October 28, 2003
 Regular Meeting, October 28, 2003
 Regular Meeting, November 3, 2003
 Regular Meeting, November 17, 2003
 Public Hearing, November 18, 2003
 Regular Meeting, November 18, 2003
 Regular Meeting, November 24, 2003

Moved by Councillor Hobson/Seconded by Councillor Day

R992/03/12/02 THAT the Minutes of the Regular Meetings of October 27, October 28, November 3, November 17, November 18 and November 24, 2003 and the Minutes of the Public Hearings of October 28 and November 18, 2003 be confirmed as circulated.

Carried

4. Councillor Given was requested to check the minutes of this meeting.

Regular MeetingDecember 2, 20035. PLANNING

- 5.1 Planning & Corporate Services Department, dated November 13, 2003 re: Development Variance Permit Application No. DVP03-0151 – Alan & Rita Clarke (D.E. Pilling & Associates) – 1980-1984 Union Road

Staff:

- The application is to subdivide the property into 2 parcels.
- There is a main residence and an RV Park and fruitstand/Tea House on the property.
- The applicant has been told that he cannot obtain insurance for the RV Park and Tea House businesses until they are on a parcel independent from the principal residence.
- The Land Reserve Commission has already granted their approval to subdivide the property within the Agricultural Land Reserve, provided that a covenant is registered to restrict the proposed parcels from being sold independently of each other.
- Waiving the road frontage improvement requirements can be supported because the land uses would not be changing; the subdivision is only required to obtain insurance for businesses already operating from the property.

The Deputy City Clerk stated that the following correspondence had been received:

- letter of support submitted from the applicant's legal counsel.

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

Dale Pilling, applicant:

- Indicated he had nothing to add at this time.

Moved by Councillor Cannan/Seconded by Councillor Day

R993/03/12/02 THAT Municipal Council authorize the issuance of Development Variance Permit No. DVP03-0151: D.E. Pilling & Associates for Alan and Rita Clarke; 1980-1984 Union Road, Lot 2, Plan KAP 60991, Sec. 4, Twp. 23, ODYD;

AND THAT variances to the following section of Subdivision, Development and Servicing Bylaw No. 7900 be granted, waiving the frontage improvement requirements for the Union Road and future Glenmore Road bypass frontages, as per the Planning and Corporate Services Department report dated November 13, 2003:

Part 5: OWNER TO PERFORM WORK:**Section 9.3 – Required Works and Services (1) (a) (i)**

- In the case of a Subdivision all onsite Works and Services and
- All offsite Works and Services on that portion of the highway(s) immediately adjacent to the site, up to the centre line of that adjacent highway(s), insofar as their requirement is directly attributable to the Subdivision.

Carried

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5.2 Planning & Corporate Services Department, dated November 10, 2003
 re: Development Variance Permit Application No. DVP03-0138 – Denise
 & Annie Heinrichs (Paul Heinrichs) – 3721 Mission Springs Drive

Staff:

- There is an existing single family residence and double wide double wide garage on the property.
- The applicant has submitted drawings showing a small addition to the front of one of the garage bays so that the garage can house a boat on a trailer.
- Staff recommend non-support for the required variance because there is no good planning rationale for support.

The Deputy City Clerk stated that no correspondence had been received.

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

Paul Heinrichs, applicant:

- The addition is needed in order to be able to park the boat inside the garage.
- The requested 13 inch variance is a relatively minor encroachment.
- Not asking for density changes and not impacting economic values or the aesthetic values of the neighbourhood.
- Has letters of support from the neighbours adjacent to the property.

Moved by Councillor Hobson/Seconded by Councillor Cannan

R994/03/12/02 THAT Council authorize the issuance of Development Variance Permit No. DVP03-0137 for Lot 5, DL 134, ODYD, Plan 41844, located on Mission Springs Drive, Kelowna, B.C.

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

Section 13.2.5 (c) Front Yard Setback

- A variance to allow a front yard setback of 5.67 metres where 6.0 metres is required from a garage or carport having vehicular entry from the front;

AND THAT the issuance of the Development Variance Permit be 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 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

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- 5.3 (a) Planning & Corporate Services Department, dated November 5, 2003 re: Development Variance Permit Application No. DVP03-0122 – Simple Pursuits Inc. – 1007 Rutland Road North

Staff:

- The subject property is the former Greenery property at the corner of McCurdy/Rutland Roads and is the 'gateway' to the Tower Ranch development.
- The intent is to develop the site in two phases. This first phase is for development of a single storey convenience store, and probably a food partner, at the corner of the site. No drive-thru is proposed; the building is intended to be a walk-in service building.
- Architecture would be reminiscent of a railway heritage style of building and would be complementary to the next phase of construction.
- The property was subject to a building scheme covenant that stated there would be residential located on the second floor of any development on the site. However, there is more development potential on the property and the owner intends to comply with the covenant when he proceeds with the next phase. This is just the first phase.
- The site would be landscaped around the building and parking lot; the areas not currently being developed would be planted likely with a dryland grass mix.
- A pylon sign is proposed on Rutland Road North with fascia signage on the building.
- A variance is required for a roof overhang that projects into the yard.

The Deputy City Clerk stated that no correspondence had been received.

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

Shane Worman, applicant:

- Indicated he had nothing to add at this time.

Council:

- Enquired whether a gas bar is a permitted use and staff responded advising that a gas bar is a permitted use in the C2 zone; however, the covenant limits uses and gas bar would not be permitted and is not proposed as part of this application.

Moved by Councillor Hobson/Seconded by Councillor Shepherd

R995/03/12/02 THAT Municipal Council authorize the issuance of Development Variance Permit No. DVP03-0122; Simple Pursuits; Lot 1, Sec. 26, Twp. 26, O.D.Y.D., Plan KAP65904, located on Rutland Road North, Kelowna, B.C.;

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

Vary Section 6.4.1 Projections into Yards, from maximum projection of 0.6 m permitted to 1.5 m proposed for the roof overhangs.

Carried

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- (b) Planning & Corporate Services Department, dated November 26, 2003 re: Development Permit Application No. DP03-0121 – Simple Pursuits Inc. – 1007 Rutland Road North

See discussion under 5.3(a).

Moved by Councillor Hobson/Seconded by Councillor Shepherd

R996/03/12/02 THAT Council authorize the issuance of Development Permit No. DP03-0121 for Lot 1, Sec. 26, Twp. 26, O.D.Y.D., Plan KAP65904, located on Rutland Road North, 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 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

- 5.4 Planning & Corporate Services Department, dated November 12, 2003 re: Development Variance Permit Application No. DVP03-0144 and Development Permit Application No. DP03-0116 – Peter Becker (John Mailey) – 1125 Bernard Avenue

Staff:

- The site was formerly developed with a motor court motel which was demolished a few years ago and a Development Permit approved for a congregate housing facility that did not proceed.
- The applicant is now considering development of a mixed use building with ground floor commercial uses along Bernard Avenue and 3 floors of residential behind.
- The proposed architecture would be similar to the previous Development Permit that was approved for the site.
- Setback variances are required for the refuse/recycling bins and the parking stalls. There is an existing cedar hedge along the property line where the variances are requested for the parking stalls. The impact of the variances on adjacent properties would be minimal.
- The three floors of residential would consist of 6 units on the first and second floors and 5 units on the upper floor for a total of 17 units.
- The Advisory Planning Commission recommends support for the Development Permit but non-support for the variances.

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The Deputy City Clerk stated that no correspondence had been received.

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

Applicant:

- Indicated that he had nothing to add at this time.

Moved by Councillor Shepherd/Seconded by Councillor Given

R997/03/12/02 THAT Council authorize the issuance of Development Permit No. DP03-0116 for Lot B, Section 20, Township 26, ODYD Plan 5803 except Plan KAP46597, located on Bernard Avenue, 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;
5. The applicant be required complete dedications as required by the Works and Utilities Department;

AND THAT Council authorize the issuance of Development Variance Permit No. DVP03-0144; Lot B, Section 20, Township 26, ODYD Plan 5803 except Plan KAP46597, located on Bernard Avenue, Kelowna, B.C.;

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

Section 7: Refuse and Recycling Bins: Subsection: 7.3.6:

- Vary setback from residential zones for refuse/recycling bins from 3.0 m required to 0.0 m proposed (side yard east);

Section 8: Parking and Loading: Subsection: 8.1.10(d):

- Vary side yard setback for parking adjacent to residential zone from 1.5 m required to 0.0 m proposed (south side and east side);

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

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5.5 Planning & Corporate Services Department, dated October 28, 2003 re: Development Variance Permit Application No. DVP03-0114 – Doug Clark and Brian Johnston (Doug Clark) – 613 Sutherland Avenue

Staff:

- The applicant is proposing to develop the site with two residential units that would be linked by a garage.
- Mill creek runs along the rear of the property. The proposed development meets the 15 m setback requirement from the creek but with the irregular rear lot line, a variance is needed for the rear yard setback and site coverage.

The Deputy City Clerk stated that the following correspondence had been received:

- letter and attached petition bearing 34 signatures of residents of The Colonial, at 575 Sutherland Avenue, opposing the application because of the negative impact on their privacy and view of the creek and pointing out that the creek is an environmentally sensitive waterway.

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

Applicant:

- Indicated he had nothing to add at this time.

Moved by Councillor Given/Seconded by Councillor Cannan

R998/03/12/02 THAT Council authorize the issuance of Development Variance Permit No. DVP03-0114 for Lot 10, D.L. 14, Plan 814, ODYD, located on Sutherland Ave, Kelowna, B.C.;

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

Section 13.6.5 (a) – Two Dwelling Housing

- To allow a maximum site coverage of 52.3% including driveways and parking where only 50.0% is permitted;

Section 13.6.5 (e) – Two Dwelling Housing

- To allow a rear yard setback of 2.5 m where 6.0 m is required;

AND THAT issuance of the Development Variance Permit be 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 developer be required register a "No Build" Covenant on title of the subject property as a Section 219 Restrictive Covenant. The building permit must stipulate the 'no-build" setbacks for any building structure;

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

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- 5.6 Planning & Corporate Services Department, dated October 7, 2003 re: Development Variance Permit Application No. DVP03-0112 – David, Frank and Anita Peter (David Peter) – 1741 Little Avenue

Staff:

- The property is irregular in shape and developed with an existing single family residence.
- The applicant is proposing to construct a carport addition to the east side of the house.
- The neighbours have indicated no concerns.

The Deputy City Clerk stated that no correspondence had been received.

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

Applicant:

- Indicated he had nothing to add at this time.

Moved by Councillor Clark/Seconded by Councillor Shepherd

R999/03/12/02 THAT Council authorize the issuance of Development Variance Permit No. DVP03-0112; Lot 2, Section 29, Township 26, ODYD Plan 25465, located on Little Avenue, Kelowna, B.C.;

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

Section 13.1 – Large Lot Housing: Subsection: 13.1.5(e):

- Vary rear yard setback from 7.5 m required to 1.83 m proposed.

Carried

- 5.7 Planning & Corporate Services Department, dated October 29, 2003 re: Development Variance Permit Application No. DVP03-0115 – Ryan Peterson (Paul Warren/Homequest Construction) – 2184 Aberdeen Street

Staff:

- The applicant is requesting a variance to the side yard setback for an accessory building in the rear yard. The building is at the lock-up stage.
- The applicant had a surveyor on site to layout the building foundation but there was a mix-up in the plans the surveyor was working from and they did not show the required setback. It was not until the Surveyor's Certificate was required that the error was detected.
- The Advisory Planning Commission recommends support subject to an opaque window being used on the south elevation which faces the lot line that does not meet the setback requirement; relocating the neighbour's fence to the property line; and the applicant providing landscaping on the neighbour's side of the fence to help mitigate the impact of the variance.

The Deputy City Clerk stated that the following correspondence had been received:

- Letter of opposition from Kevin Craig, 2192 Aberdeen Street, asking that approval be granted only if the conditions recommended by the APC are met.

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

Kevin Craig, 2192 Aberdeen Street:

- The surveyor should have been aware of the bylaw setback requirements and informed the builder.
- The City needs to require a Surveyor's Certificate prior to construction.
- His fence is situated 18" from the property line; this was done by the previous owner.
- Agrees with the suggestion made at the APC meeting for the opaque window.
- The applicant offered at the APC meeting to move the fence.

Paul Warren, applicant:

- Agreed at the APC to compromise and move the fence to its proper location at his cost and to install the opaque window. Landscaping the neighbour's side of the fence would have no impact on his privacy unless he planted 20 ft. hedge trees.

Staff:

- The existing process normally works. This was just a case where inadvertently information proved by a professional ended up not being correct.

Moved by Councillor Shepherd/Seconded by Councillor Given

R1000/03/12/02 THAT Council authorize the issuance of Development Variance Permit No. DVP03-0115; Lot 34, Section 29, Township 26, ODYD Plan 1172, located on Aberdeen Street, Kelowna, B.C., subject to the following:

- o the window on the south elevation of the accessory building being opaque;
- o relocation of the neighbour's fence along the south property line;

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

Section 13.6: RU6 – Two Dwelling Housing: Subsection 13.6.5(d):

- Vary the side yard setback from 2.0 m required to 1.5 m proposed (existing).

Carried

6. BYLAWS

(BYLAWS PRESENTED FOR FIRST READING)

Mayor Gray asked if Council wished to deal with the next 6 bylaws in one resolution. Councillor Shepherd asked that the bylaws under agenda item No. 6.3 and 6.6 be separated out.

- 6.1 Bylaw No. 8952 (Z03-0054) – Robert & LeeAnne Ursel – 4684 Fordham Road

Moved by Councillor Given/Seconded by Councillor Horning

R1001/03/12/02 THAT Bylaws No. 8952, 9096, 9116 and 9118 be read a first time.

Carried

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See resolution adopted under item No. 6.1.

6.3 Bylaw No. 9106 (Z03-0051) – David & Joan Poole (Rob Richardson) – 464 Morrison AvenueMoved by Councillor Given/Seconded by Councillor Horning**R1002/03/12/02** THAT Bylaws No. 9106 and 9119 be read a first time.Carried

Councillors Cannan, Hobson and Shepherd opposed

6.4 Bylaw No. 9116 (Z03-0042) – G. Toye Construction – 140 & 160 Woods Road

See resolution adopted under item No. 6.1.

6.5 Bylaw No. 9118 (Z03-0024) – Jack Scherle and 481124 B.C. Ltd. (Don Green) – 1430, 1440, 1460 and 1480 Highway 33 West

See resolution adopted under item No. 6.1.

6.6 Bylaw No. 9119 (TA03-0010) – City of Kelowna Zoning Bylaw Amendments

See resolution adopted under item No. 6.3.

(BYLAWS PRESENTED FOR FIRST THREE READINGS)6.7 Bylaw No. 9122 – Amendment No. 1 to City of Kelowna Advisory Planning Commission Bylaw No. 8546Moved by Councillor Shepherd/Seconded by Councillor Given**R1003/03/12/02** THAT Bylaw No. 9122 be read a first, second and third time.Carried7. REMINDERS

- Staff to check status of the Pettigrew House and report back to Council.
- Strategic Plan workshop with Council – Monday, February 9, 2004 in a.m.

8. TERMINATION

The meeting was declared terminated at 8:14 p.m.

Certified Correct:_____
Mayor_____
Deputy City Clerk

BLH/am