

Regular MeetingDecember 16, 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 16, 2003.

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

Staff members in attendance were: City Manager, R.A. Born; City Clerk, A.M. Flack; Director of Planning & Corporate Services, R.L. Mattiussi; Manager of Development Services, A.V. Bruce; Subdivision Approving Officer, R.G. Shaughnessy*; and Acting Council Recording Secretary, I. Tilstra.

(* denotes partial attendance)

1. CALL TO ORDER

Mayor Gray called the meeting to order at 7:49 p.m.

2. PRAYER

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

3. CONFIRMATION OF MINUTES

Regular Meeting, December 1, 2003
Regular Meeting, December 2, 2003
Regular Meeting, December 8, 2003

Moved by Councillor Given/Seconded by Councillor Horning

R1039/03/12/16 THAT the Minutes of the Regular Meetings of December 1, December 2 and December 8, 2003 be confirmed as circulated.

Carried

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. 9116 (Z03-0042) – G. Toye Construction – 140 & 160 Woods Road

Moved by Councillor Blanleil /Seconded by Councillor Cannan

R1040/03/12/16 THAT Bylaw No. 9116 be read a second and third time.

Carried

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

Moved by Councillor Cannan/Seconded by Councillor Blanleil

R1041/03/12/16 THAT Bylaw No. 9118 be read a second and third time.

Carried

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- 5.3 Bylaw No. 9119 (TA03-0010) – City of Kelowna Zoning Bylaw Amendment – Secondary Suites in Accessory Buildings

Withdrawn from the Agenda.

(BYLAWS PRESENTED FOR SECOND & THIRD READINGS AND ADOPTION)

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

Moved by Councillor Day/Seconded by Councillor Cannan

R1042/03/12/16 THAT Bylaw No. 8952 be read a second and third time, and be adopted.

Carried

6. PUBLIC MEETING TO RECEIVE INPUT ON LIQUOR LICENCE APPLICATIONS

- 6.1 Planning & Corporate Services Department, dated November 19, 2003 re: Liquor Licensing Application No. LL03-0020 – M.S. Developments Inc. (Nicholas Sintichakis) – 1630 Ellis Street

Staff:

- This is an application from an existing establishment (Tonics Pub) to extend its operating hours.
- Current operating hours were granted under previous liquor regulations, which defined the establishment as a neighbourhood pub. The establishment is now defined as a liquor primary, and is eligible to apply for the same hours as other liquor primary establishments.
- The operator does not intend to be open at 9:00 a.m. every day, but would like flexibility around special events.
- The Mayor's Entertainment District Task Force recommended that similar establishments be encouraged to stay open until 2:00 a.m. to reduce migration between liquor primary establishments.
- A change in ownership would not require any input from the City, other than that involved in the normal course of issuing a business license. Any new owner would also have to meet certain provincial requirements to receive a liquor license.

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

- letter of opposition from the Kelowna Friendship Society expressing concern about an increase in alcohol-related problems in the downtown.

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

Moved by Councillor Hobson/Seconded by Councillor Day

R1043/03/12/16 THAT Council support a change to the permitted hours of operation from 11 a.m.-1 a.m. to 9 a.m.-2 a.m. (7 days per week) on Lot 1, Plan 462, Blk. 8, D.L. 139 and Lot 2, Plan 462, Blk. 8, D.L. 139 proposed by Nicholas Sintichakis for 1630 Ellis Street;

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

Carried

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- 7.1 Planning & Corporate Services Department, dated November 19, 2003
re: Development Variance Permit Application No. DVP03-0147 – Joyce & Don Patterson – 195 Keithley Road

Staff:

- There is an existing dwelling on the property; an additional lot is proposed.
- The configuration of the lot does not allow for the provision of a side yard.
- The applicant has solicited neighbourhood support for the project.

The City Clerk advised that no correspondence or petitions had been received.

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

Moved by Councillor Cannan/Seconded by Councillor Shepherd

R1044/03/12/16 THAT Council authorize the issuance of Development Variance Permit No. DVP03-0147; Lot 6, Plan 26609, Sec. 26, Twp. 26, O.D.Y.D.;

AND THAT variances to the following section of City of Kelowna Zoning Bylaw No. 8000 be granted:

Section 13: Specific Zone Regulations: RU1 – LARGE LOT HOUSING

Section 13.1.4 (b): Vary the lot depth from 30.00 m required to 20.46 m proposed;
Section 13.1.5 (e): Vary the rear yard setback from 7.50 m required to 4.82 m proposed.

Carried

- 7.2 Planning & Corporate Services Department, dated November 24, 2003
re: Development Variance Permit Application No. DVP03-0163 – Hilltop Sand & Gravel Co. Ltd. (Lloyd Nestman) – Almandine Court

Staff:

- This is a 170-lot, RU1 single-family residential subdivision development project.
- In the first development phase of 34 lots, the applicant is requesting that 14 of the 34 lots have a front yard variance in excess of that required. The applicant intends to access homes from the lane, effectively reversing the rear and front yard setback requirements.

The City Clerk advised that no correspondence or petitions had been received.

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

Regular MeetingDecember 16, 2003Moved by Councillor Shepherd/Seconded by Councillor Given

R1045/03/12/16 THAT Municipal Council authorize the issuance of Development Variance Permit No. DVP03-0163, Hilltop Sand & Gravel Co. Ltd.; Lots 1 - 14, D.L. 357, SDYD, Plan KAP74312 located on Almandine Court, Kelowna, B.C.;

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

- a) Section 13.1.5(c) – minimum front yard setback requirement for RU1 – Large Lot Housing: To vary the required minimum front yard setback of 4.5 m (6.0 m for a garage or carport that has vehicular entry from the front) to be 7.5 m;
- b) Section 13.1.5(e) – minimum rear yard setback requirement for RU1 – Large Lot Housing: To vary the required minimum rear yard setback of 7.5 m to be 4.5 m, or a minimum 6.0 m for a garage or carport that has vehicular entry from the front.

Carried

- 7.3 Planning & Corporate Services Department, dated November 25, 2003 re: Development Permit Application No. DP03-0079 and Development Variance Permit Application No. DVP03-0060 – Pacific Sun Enterprises Ltd. (David Kornell) – 1450 Sutherland Avenue

Staff:

- The current location of the Joseph Benjamin Residence predates the 15-metre creek setback required by the OCP and the Ministry of Water, Land and Air Protection.
- Legal non-conforming status has been lost with the demolition of the building, and the new four-story proposed replacement building to be located on the existing foundation requires a setback variance.
- A creek impact analysis provided by an independent consultant indicates that the building itself will not affect the creek environment, and development could proceed with appropriate mitigation efforts.
- Staff have worked with the applicant on enhanced landscaping designed to minimize disturbances to the riparian environment.
- The applicant will enter into a covenant accepting responsibility for the retaining wall on the west bank of Mill Creek, stating that when correction to the wall is required, in-stream habitat enhancement will be undertaken at the same time.
- An engineer's report indicates that the wall is not in imminent danger of collapse, but the applicant understands that he is accepting responsibility for the state of the wall.
- The applicant will also enter into a flooding covenant.
- The City's environmental staff have reviewed the suggested approach and agree that it is an acceptable way to proceed.
- Upcoming text amendments will resolve front and rear yard definitions and setback requirements, currently recognized by the other variance request.

The City Clerk advised that no correspondence or petitions had been received.

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

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Moved by Councillor Hobson/Seconded by Councillor Day

R1046/03/12/16 THAT Council authorize the issuance of Development Permit No. DP03-0079, located on Sutherland Avenue, Lot 1, D.L. 137, ODYD, Plan KAP69816, 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. Mitigation/Restoration to be provided on the land be in general accordance with Schedule "B";
3. 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 mitigation/restoration outlined in the I.C. Ramsay & Associates report dated September 2003, as determined by a professional landscaper;
4. The applicant register a Flooding Covenant on title of the subject property as a Section 219 Restrictive Covenant saving harmless the City and the Province from any flood damage and clearly identifies maintenance and liability for the retaining wall is tied to the owner of the land;

AND THAT Council authorize the issuance of Development Variance Permit No. DVP03-0060, located on Sutherland Avenue, Lot 1, D.L. 137, ODYD, Plan KAP69816, Kelowna, B.C.;

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

Section 16.1.5 (d): Front Yard Setback

- Vary the required front yard setback to allow a setback of 4.5 metres where 6.0 metres is required;

Section 16.1.5 (f): Rear Yard Setback

- Vary the required rear yard setback to allow a setback of 2.6 metres where 7.5 metres is required;

Section 6.14: Stream Protection Leave Strips

- Vary the setback from Mill Creek from the 15.0 m required to the 2.6 m 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

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- 7.4 Planning & Corporate Services Department, dated November 14, 2003
re: Development Variance Permit Application No. DVP03-0132 – Canadian Imperial Bank of Commerce (Best Canadian Signs & Lighting) – 310-328 Bernard Avenue

Staff:

- The applicant is seeking to increase the number of signs and the maximum area of total sign coverage on the subject property.
- The proposal is to replace two current signs with two representations of the new corporate image logo and an additional sign box on the second-level fascia. This total of three signs exceeds permissible levels.
- Staff do not recommend that Council support this variance application, as the sign bylaw provides for adequate pedestrian-level exposure to signage.

Councillor Clark declared a conflict of interest as a long-time customer of the CIBC and left the Council Chamber at 8:15 p.m.

The City Clerk advised that no correspondence or petitions had been received.

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

Moved by Councillor Shepherd/Seconded by Councillor Blanleil

R1047/03/12/16 THAT Council authorize the issuance of Development Variance Permit No. DVP03-0132; Lot 1, D.L. 139, ODYD Plan 36251, located on Bernard Avenue, Kelowna, B.C.;

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

Section 6.1: Fascia Signage: Number of Signs:

- Vary the maximum permitted number of signs per business frontage for fascia signs (both South and West façades) from 2 permitted to 3 proposed;

Section 6.1: Fascia Signage: Regulation: Subsection (a):

- Vary the maximum permitted sign area per lineal metre of building frontage from 15.8 m² permitted to 16.45 m² proposed.

Carried

Councillor Hobson opposed.

Councillor Clark returned to the Council Chamber at 8:23 p.m. and took his place at the Council Table.

- 7.5 Planning & Corporate Services Department, dated November 13, 2003
re: Development Variance Permit Application No. DVP03-0110 – Callahan Construction Co. Ltd. and 3723 Investments Ltd. (Argus Properties Ltd.) – 2007-2031 Harvey Avenue

Staff:

- The applicant has pursued significant façade improvements to rejuvenate the commercial appearance of the project.
- There had been a pylon sign on the northwest corner of the property, which has been removed by the applicant. Following removal, the applicant submitted the development variance permit application. The sign is currently in storage.

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- Staff do not recommend approval of the variance permit due to safety/sight line concerns.
- Staff are prepared to recommend in favour of a variance that preserves the option to put up a sign that conforms to bylaw; the reinstallation of the sign in the current location is not supported by staff.

The City Clerk advised that no correspondence or petitions had been received.

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

Council:

- Suggested that relocating the sign or removing the bottom portion could alleviate the sight line issue.
- Future corner rounding would go through the sign, incurring moving costs for the sign, base and electrical system.
- Encouraged the applicant to put an address/street number on any signage to make it easier for motorists to find the businesses located in the building.

Applicant:

- Has no problem with removing the bottom section of the sign, perhaps leaving two structural columns.
- At this point there is no intent to reinstall the sign; the purpose of the variance application is to preserve future ability to put it back up.

Staff

- The base of the sign is right at the property line; a setback variance would still be needed.
- Corner rounding is not in the works in the near future.
- In cases where the City triggers development, the City is usually responsible for the cost. Where a development is owner-triggered, the applicant would be responsible for the cost.

Moved by Councillor Cannan/Seconded by Councillor Hobson

R1048/03/12/16 THAT Council authorize the issuance of Development Variance Permit No. DVP03-0110; Lot A, District Lot 129, ODYD Plan KAP72683, located on Harvey Avenue, Kelowna, B.C., subject to the removal of the lower two-metres of the existing sign to address line of vision concerns;

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

Section 5.6: Free Standing Signs: Subsection: 5.6.1(b):

- Vary required 8m setback at property lines where streets intersect to 0.0 m proposed (as shown on schedule "A");

Section 5.6: Free Standing Signs: Subsection: 5.6.1(d):

- Vary the minimum distance to a lot line from 1.5 m permitted to 0.0 m proposed;

Section 6.1: Major Commercial: Free Standing Signs (b):

- Vary maximum area from 12 m² permitted to 18.58 m² proposed for an existing sign on the subject property as shown on schedule "A".

Carried

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Bylaw No. 9101 (Z03-0035) – Zodiac (Steve Berezan) – 200-210 Highway 33 West

Moved by Councillor Shepherd/Seconded by Councillor Given

R1049/03/12/16 THAT Bylaw No. 9101 be adopted.

Carried

- (b) Planning & Corporate Services Department, dated November 17, 2003 re: Development Permit Application No. DP03-0123 and Development Variance Permit Application No. DVP03-0124 – Terry Gold Realty (Steve Berezan/Zodiac Pub Beer and Wine Store) – 200-210 Highway 33

Staff:

- The subject property is located on the north side of Highway 33, with the existing building at the front of the property, and built out to the property lines.
- The property next door is a City-owned parking lot. The process of dedicating Roxby Road through the lot to the rear has begun. The applicant has committed to their share of improving that road to upgrade it to the urban standard.
- The development variance permit application deals with the renovations of the front of the building where the proposed retail liquor store will be located, the creation of a parking lot, the extension of Roxby Road and an additional building.
- It is now the case that a retail liquor store can be moved separately from the liquor primary designation. The applicant has not pursued the liquor primary designation, and would be reduced to less than 100 seats in the proposed new location if he moved his existing liquor primary (Zodiac).

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

- four letters as well as a 45-minute video submission, all in favour, stating that a retail liquor store needs to be large enough to be able to compete and house a greater selection of product.
- letter from Tony Markoff, on behalf of the Zodiac's current landlord, opposed on the basis that the requested variance is too large.

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

Bianca lafrancesco, Landlord of the Zodiac at its Existing Location:

- Read the letter written by Tony Markoff, strongly objecting to the proposed variance, as the area is 338% over the maximum allowed under the bylaw.
- Should the variance be granted, there should then be a bylaw amendment to allow all other retail liquor stores the same floor area for equal competition.
- The number of liquor stores in the Rutland area seems excessive.
- Trusts that Council will support the recommendations of staff and the Advisory Planning Commission and reject the application.

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Staff:

- A private liquor store operates in the former government liquor store site and has between 4,500-5,300 sq. ft. of retail space.
- Rascals is a liquor primary establishment with offsales, but no retail sales.
- There is a retail liquor store at the Packing House Pub at Findlay and Fitzpatrick.
- The Orchard Park liquor store is in the 10,000 sq. ft. range.
- The province no longer has any size limitations on retail liquor stores (lifted in 2002).
- Should the retail liquor store move from its current location, the remaining pub could have offsales, but would not be licenced to operate a retail liquor store at the current location.

Applicant:

- Distributed and referred to an information package.
- Moving the liquor store to the front of the current building is not possible, as the layout would not conform to provincial regulations.
- Compared his proposal to the Orchard Park liquor store and other new approvals and new applications in terms of square footage.
- The removal of the province's maximum size restriction allows for a level playing field between private and government liquor stores.
- A larger retail and storage area would allow the retail liquor store to better support local wineries. Local wineries have issued letters of support for the redevelopment proposal.
- The applicant has no plans to move the pub before 2008.
- Wheelchair accessibility, as well as access for shopping carts, will be possible in the new location.
- Kelowna is the only municipality with restrictions on the size of liquor stores.
- There is no reason for size restrictions; hopes that Council will consider removing size restrictions altogether.
- Retail liquor stores create full-time employment.
- The applicant has purchased property and would like to create a beautiful showpiece for Rutland.
- The cost of a 10,000 sq. ft. footprint retail liquor store would be around \$500,000, with an additional \$250,000 of inventory required.
- The purchased property offers the potential for a 10,000 sq. ft. retail liquor store; the applicant's original plans were amended to meet size restrictions but otherwise he would have applied for approval of 10,000 sq. ft.

Staff:

- Size restrictions were proposed as a way to allow some municipal control over private retail liquor stores.
- The successful incorporation of land use definitions under the Zoning Bylaw has proven to be an effective control mechanism; size is not as great a concern any longer.
- Cooler and storage space will no longer be included in size restrictions.
- Any future expansion would be dependent on regulations and would require an additional development variance permit if the City's restrictions remain the same.
- There is a second building at the rear of the property where McGrath's could relocate, with room for another commercial tenancy.

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Council:

- The size limitation should be examined.
- Many local wineries are not supported by government liquor stores.
- Larger stores, which require larger investments, may result in better quality establishments and more professional management.

Moved by Councillor Hobson/Seconded by Councillor Blanleil

R1050/03/12/16 THAT Council authorize the issuance of Development Permit No. DP03-0123 for Lot 1, Section 26, Township 26, ODYD Plan 511, located on Highway 33 West, 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. DVP03-0124; Lot 1, Section 26, Township 26, ODYD Plan 511, located on Highway 33 West, Kelowna, B.C.;

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

Section 14: C4-Town Centre Commercial: Subsection: 14.4.6(e):

- Vary the size for a retail liquor store from 186 m² permitted to 630 m² proposed;

Section 14: C4-Town Centre Commercial: Subsection: 14.4.5(e)

- Vary flanking side yard setback from 2.0 m required to 0.0 m provided;

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

- Vary required parking setback from abutting streets from 2.0 m required to 1.9 m permitted;

AND THAT the applicant registers an access easement in favour of Lot B, Plan B1019 as per schedule "D";

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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8. BYLAWS

(BYLAWS PRESENTED FOR FIRST READING)

- 8.1 Bylaw No. 9128 (Z03-0059) – 641300 BC Ltd (Steve Berezan – Black Mountain Pub) – 2040 Joe Riche Road

Moved by Councillor Shepherd /Seconded by Councillor Clark

R1051/03/12/16 THAT Bylaw Nos. 9128, 9135 and 9136 be read a first time.

Carried

- 8.2 Bylaw No. 9135 (OCP03-0011) – LCC Holdings Inc. – 1094 Lawson Avenue

See resolution adopted under agenda item No. 8.1.

- 8.3 Bylaw No. 9136 (Z03-0047) – LCC Holdings Inc. – 1094 Lawson Avenue

See resolution adopted under agenda item No. 8.1.

9. REMINDERS – Nil.

10. TERMINATION

The meeting was declared terminated at 9:35 p.m.

Certified Correct:

Mayor

City Clerk

IT/am