

Regular MeetingJanuary 27, 2004

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, January 27, 2004.

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.

Council members absent: Councillors B.A. Clark and R.D. Hobson.

Staff members in attendance were: Acting-City Manager/Director of Planning & Corporate Services, R.L. Mattiussi; City Clerk, A.M. Flack; Manager of Development Services, 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 8:02 p.m.

2. PRAYER

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

3. CONFIRMATION OF MINUTES

Regular Meeting, January 12, 2004  
 Public Hearing, January 13, 2004  
 Regular Meeting, January 13, 2004  
 Public Hearing (OCP), January 15, 2004  
 Public Hearing (OCP), January 19, 2004 (reconvened from January 15, 2004)  
 Regular Meeting, January 19, 2004

Moved by Councillor Given/Seconded by Councillor Day

**R090/04/01/27** THAT the Minutes of the Regular Meetings of January 12, January 13 and January 19, 2004 and the Minutes of the Public Hearings of January 13, 2004, January 15 and January 19, 2004 be confirmed as circulated.

Carried

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

5. PLANNING BYLAWS CONSIDERED AT PUBLIC HEARING

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

5.1 Bylaw No. 9106 (Z03-0051) – David & Joan Poole (Rob Richardson) –  
 464 Morrison Avenue

Moved by Councillor Given/Seconded by Councillor Horning

**R091/04/01/27** THAT Bylaw No. 9106 be read a second and third time, and be adopted.

**DEFEATED**

Councillors Blanleil, Day, Cannan, Given and Shepherd opposed.

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- 5.2 Bylaw No. 9144 (TA03-0011) – City of Kelowna Zoning Bylaw Amendment (Petro Canada Inc.) - 520 Cawston Avenue and 1265 Ellis Street

Moved by Councillor Given/Seconded by Councillor Shepherd

**R092/04/01/27** THAT Bylaw No. 9144 be read a second and third time, and be adopted.

Carried

- 5.3 Bylaw No. 9145 (Z03-0056) – Petro Canada Inc. (Ken Webster/R492 Enterprises Ltd.) – 520 Cawston Avenue and 1265 Ellis Street

Moved by Councillor Shepherd/Seconded by Councillor Given

**R093/04/01/27** THAT Bylaw No. 9145 be read a second and third time, and be adopted.

Carried

6. PLANNING

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

Bylaw No. 9103 (Z03-0048) – Janet Dommasch (Peter Chataway) – 124 Lake Avenue

Moved by Councillor Shepherd/Seconded by Councillor Given

**R094/04/01/27** THAT Bylaw No. 9103 be adopted.

Carried

- 6.1 (b) Planning & Corporate Services Department, dated December 17, 2003 re: Heritage Alteration Permit Application No. HAP03-0011 – Jan Dommasch (Peter Chataway) – 124 Lake Avenue

Staff:

- The property is between Lake Avenue and Mill Creek. The bridge and City Park are across the creek from the site. The property is difficult to redevelop being wider than it is deep and bounded by the creek on the north side.
- The plan of redevelopment indicates that the existing house would be retained on a portion of the site and become the secondary suite in an accessory building, and a new larger single family dwelling would be constructed. Both buildings would encroach into the creek setback requirement.
- The Community Heritage Commission supported the application with a suggested change to a dormer; the dormer has been changed as suggested.
- Staff recommend non-support because of concern that the applicant is proposing too much on too small a lot. Staff would prefer that the existing building be removed and the suite incorporated into a new building on the lot. Staff are willing to relax the leave strip but do not support the Heritage Alteration Permit for the plans as proposed.

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

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

Peter Chataway, agent for the applicant:

- The Ministry of Water, Land and Air Protection has provided a letter of support for the application as long as the plan for riparian vegetation is followed, and required covenants are registered.
- Do not want to demolish the house. It is a 1930's house and is in good condition. The owners plan to put a plaque near the sidewalk with some of the history of the site for public information, similar to the plaques on the Abbott Street recreational corridor.
- Moving the building closer to the street is not reasonable.
- Staff say the applicant is putting too much on too little but lot coverage is only 24% when 40% site coverage is allowed.
- There are many benefits to having the dwelling plus a suite facing the street (i.e. windows on streets reduce crime).

Council's representative on the Community Heritage Commission commented that when the CHC reviewed the application, the neighbourhood was excited that something positive would be occurring on this site.

Moved by Councillor Shepherd/Seconded by Councillor Given

**R095/04/01/27** THAT Council authorize the issuance of Heritage Alteration Permit No. HAP03-0011; for Lot 13, Section 24, Township 25, ODYD Plan 6424, located on Lake 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";

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

Section 6.14: Stream Protection Leave Strips: Subsection: 6.14.1:

- Vary the Mill Creek leave strip from 15.0 m required to 10.0 m proposed for the construction of a new single family dwelling;
- Vary the Mill Creek Leave strip from 15.0 m required to 5.9 m for the existing single family dwelling (will become a secondary suite);

AND THAT the applicant be required to enter into a Section 219 covenant to ensure riparian vegetation remains for the purpose of fish habitat, as designed, in perpetuity;

AND FURTHER THAT the applicant be required enter into a Section 219 covenant saving harmless the City of Kelowna and the Province from any flood damage for any buildings within 15 metres of Mill Creek.

Carried

- 6.2 Planning & Corporate Services Department, dated January 6, 2004 re: Development Permit Application No. DP03-0111 and Development Variance Permit Application No. DVP04-0002 – Petro-Canada (Ken Webster/R492 Enterprises Ltd.) – 520 Cawston Avenue and 1265 Ellis Street

Staff:

- The applicant is proposing to develop a mixed use commercial/residential building at the northeast corner of the site. The form and character is compatible with the emerging theme for the area and the applicant has indicated some additional landscaping. Parking meets bylaw requirements for the residential units.
- A variance is required to the commercial parking requirements. Staff cannot recommend support because it is City policy to take cash in lieu where parking cannot be accommodated on-site.
- If Council approves the variance, then need to direct staff to come up with a policy for waiving parking as an incentive for mixed use residential/commercial development in the town centres. The parking requirement has already been significantly reduced by bylaw for the C7 zone as an incentive for multi-family development in the downtown.

The City Clerk advised 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.

Ken Webster, agent for the applicant:

- The parking variance is a result of a desire to provide a continuation of commercial along Cawston Avenue. The building covers the whole site and to provide the parking, the amount of commercial space would have to be reduced.
- The actual parking variance being asked for is a 7 stall variance rather than 8 stalls as indicated in the staff report.
- The commercial parking stalls are not required from a marketing or business perspective. The proposal is to provide 60 parking stalls in the grade level parking and some of those stalls will be available to commercial staff during weekday business hours. If an agreement can be reached with some of the homeowners to rent out their parking spaces during business hours, there could be far more spaces available than the 7 required.
- Should it turn out that spaces are required for a loading zone, City staff would be advised before altering the plan to create the spaces.
- The City has the cash in lieu of parking policy so it would seem the City does not need the 8 stalls either.
- The City has indicated desire for this type of development in the downtown and the applicant is taking a risk at pioneering this type of development in this area of the City.
- Trying to do something new. Anticipate that the average age of people in the residential units will be around 30 years of age.

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Moved by Councillor Blanleil/Seconded by Councillor Horning

**R096/04/01/27** THAT Council authorize the issuance of Development Permit No. DP03-0111 for Lot 2, ODYD Plan 3585 and Lots 10, 11 and 12, ODYD Plan 1303, Ellis Street and Cawston 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;

AND THAT Council authorize the issuance of Development Variance Permit No. DVP04-0002; Lot 2, ODYD Plan 3585 and Lots 10, 11 and 12, ODYD Plan 1303, located on Ellis Street and Cawston Avenue, Kelowna, B.C.;

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

**Table 8.1: Parking Schedule: Commercial Uses in the C7 Zone:**

- Vary the commercial parking from 8 stalls required (562.6 m<sup>2</sup> Commercial at 1.3 stalls per 100 m<sup>2</sup> GFA) to 0 stalls proposed;

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 FURTHER THAT staff be directed to prepare a policy to deal with parking at less than current bylaw rates for mixed-use residential/commercial development within the town centres.

Carried

6.3 Planning & Corporate Services Department, dated January 7, 2004 re: Development Variance Permit Application No. DVP03-0128 – Distinctive Developments – 576 Denali Drive

Staff:

- The variances are required as a result of an error made during construction.

The City Clerk advised 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.

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Terry Heinrich, applicant:

- This is the first time he has had to come to Council as a result of a mistake in his 25 years as a contractor.
- A cantilever on the other side of the house was downsized at the City's request and he could have cut down on the size of the cantilevers that now require a variance had he known that was required.
- Takes issue with how the City calculates percentages for cantilevers.
- Visually, the side yard looks no different than any other side yard on the street.
- Both neighbours have indicated no concerns with the requested variances.

Moved by Councillor Given/Seconded by Councillor Horning

**R097/04/01/27** THAT Council authorize the issuance of Development Variance Permit No. DVP03-0128 for Lot 18, Section 33, Township 26, ODYD, Plan KAP72143, located on Denali Drive, 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 a variance to the following section of Zoning Bylaw No. 8000 be granted:

Section 13.1.5 (d) Side Yard Setbacks

- A variance to allow a side yard setback of 2.02 metres to the north elevation of the single detached house where 2.30 metres is required;
- A variance to allow a side yard setback of 2.03 metres to the south elevation of the single detached house where setbacks of 2.3 metres is required;

Section 6.4.1 Projections Into Yards

- A variance to allow a cantilevered section of a building to comprise of 34.6% of the wall in which it is located where only 20% is permitted;

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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- 6.4 Planning & Corporate Services Department, dated January 5, 2004 re: Development Permit Application No. DP03-0143 and Development Variance Permit Application No. DVP03-0106 – Brian & Judy Proskiw – 398 Braeloch Road

Staff:

- The applicant proposes to remove the existing cabin and build a new house within the required riparian setback from Okanagan Lake.
- Recommend non-support because with some very minor changes to the design, the site could be developed respecting the 15 m setback requirement.

The City Clerk advised 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.

Richard Hewitt, applicant's designer:

- It would be possible to respect the 15 m setback requirement but not without compromising the building design and owner's investment.
- The existing dock would remain as is.

Moved by Councillor Blanleil/Seconded by Councillor Shepherd

**R098/04/01/27** THAT Council authorize the issuance of Development Permit No. DP03-0143 for Lot 1, Sec. 23, Twp. 28, Plan 9531 ODYD, located on Braeloch 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";

AND THAT Council authorize the issuance of Development Variance Permit No. DVP03-0106 for Lot 1, Sec. 23, Twp. 28, Plan 9531 ODYD, located on Braeloch Road, Kelowna, B.C.:

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

**Section 6.14: Stream Protection Leave Strips: Subsection 6.14.1:**

- Vary the Okanagan lake leave strip setback from 15.0 m required to 10.0 m proposed;

AND FURTHER THAT the applicants register a Section 219 covenant for flooding at the Land Titles Office in Kamloops.

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- 6.5 Planning & Corporate Services Department, dated December 16, 2003 re: Development Permit Application No. DP03-0130 and Development Variance Permit Application No. DVP03-0131 – Kenneth Dickson, Gebhard Wager and Cynthia Willison (Ernie Rempel/City Square Holdings) – 1451 Bertram Street

Staff:

- The property is a challenging lot for redevelopment given its configuration. The applicant proposes a long narrow building with parking under a portion of the building and at grade at the rear of the site. A significant number of variances would be required to achieve the desired density on the site, including a variance from 4 storeys maximum to 4.5 storeys.
- Staff recommend non-support as long as a height variance is required and would prefer to see a design with better articulation and that is more sensitive to adjacent properties.

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

Ernie Rempel, agent for the applicant:

- Only just received copies of the correspondence from neighbouring properties today. Asked that the application be deferred to February 24<sup>th</sup> so that he can discuss the proposal with the neighbours.

Harvey Benson, representing the residents of Carmel Court, 1450 Bertram Street:

- The residents' concern is building height. Willing to meet with the applicant to discuss his proposal.

Ruth Benedict:

- Owns the adjacent property on the south side.
- Will discuss her concerns at the meeting with the applicant.

Moved by Councillor Blanleil/Seconded by Councillor Shepherd

**R099/04/01/27** THAT further consideration of Development Permit Application No. DP03-0130 and Development Variance Permit Application No. DVP03-0131; for Lot 3, Block E, District Lot 139, ODYD Plan 2345, located on Bertram Street, Kelowna, B.C.; be adjourned to the Regular Meeting of Tuesday, February 24, 2004.

Carried

## 7. BYLAWS

### **(BYLAWS PRESENTED FOR FIRST READING)**

- 7.1 Bylaw No. 9148 (Z03-0062) – Robtree Enterprises Ltd. (Robert Gaspari) – 2629 Richter Street

Moved by Councillor Cannan/Seconded by Councillor Blanleil

**R100/04/01/27** THAT Bylaw No. 9148, 9149, 9150, 9157, 9158, 9159 and 9160 be read a first time.

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7.2 Bylaw No. 9149 (Z03-0068) – Patricia Veitch – 1336 Mountainview Street

See resolution adopted under agenda item No. 7.1.

7.3 Bylaw No. 9150 (Z03-0057) – Professional Diving Technology Ltd. (Vern Johnston/Diving Dynamics) – 1884 Ambrosi Road

See resolution adopted under agenda item No. 7.1.

7.4 Bylaw No. 9157 (Z03-0058) – Victor Projects Ltd. (Pelman Architecture Inc.) – 1835 Leckie Road

See resolution adopted under agenda item No. 7.1.

7.5 Bylaw No. 9158 (TA03-0012) – City of Kelowna Zoning Bylaw Amendment

See resolution adopted under agenda item No. 7.1.

7.6 Bylaw No. 9159 (OCP99-009) – 454979 BC Ltd. (FWS Construction Ltd.) – 1570 KLO Road **Requires majority vote of Council (5)**

See resolution adopted under agenda item No. 7.1.

7.7 Bylaw No. 9160 (Z99-1025) – 454979 BC Ltd. (FWS Construction Ltd.) – 1570 KLO Road

See resolution adopted under agenda item No. 7.1.

7.8 Bylaw No. 9161 (Z03-0052) – Bell Mountain Estates Ltd. – Swainson Road

Councillor Day declared a conflict of interest because he owns adjoining property and left the Council Chamber at 9:57 p.m.

Moved by Councillor Cannan/Seconded by Councillor Blanleil

**R101/04/01/27** THAT Bylaw No. 9161 be read a first time.

Carried

Councillor Day returned to the Council Chamber at 9:58 p.m. and took his place at the Council Table.

8. REMINDERS – Nil.

9. TERMINATION

The meeting was declared terminated at 10:00 p.m.

Certified Correct:

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Mayor

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City Clerk

BLH/am