

Regular MeetingSeptember 28, 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, September 28, 2004.

Council members in attendance were: Mayor Walter Gray, Councillors A.F. Blaneil, 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: Acting City Manager/Director of Planning & Corporate Services, R.L. Mattiussi; Acting City Clerk, S.C. Fleming; Subdivision Approving Officer, R.G. Shaughnessy; Manager of Community Development & Real Estate, D.L. Shipclark*; and Council Recording Secretary, B.L. Harder.

(* denotes partial attendance)

1. CALL TO ORDER

Mayor Gray called the meeting to order at 7:22 p.m.

2. PRAYER

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

3. CONFIRMATION OF MINUTES

Regular Meeting, August 23, 2004
 Public Hearing, August 24, 2004
 Regular Meeting, August 24, 2004
 Regular Meeting, August 30, 2004
 Regular Meeting, September 13, 2004
 Public Hearing, September 14, 2004
 Regular Meeting, September 14, 2004

Moved by Councillor Hobson/Seconded by Councillor Day

R920/04/09/28 THAT the Minutes of the Regular Meetings of August 23, 2004, August 24, 2004, August 30, 2004, September 13, 2004 and September 14, 2004 and the Minutes of the Public Hearings of August 24, 2004 and September 14, 2004 be confirmed as circulated.

Carried

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

5. BYLAWS CONSIDERED AT PUBLIC HEARING

(BYLAWS PRESENTED FOR SECOND & THIRD READINGS)

5.1 Bylaw No. 9293 (Z03-0043) – City of Kelowna – 260 Franklyn Road

Moved by Councillor Given/Seconded by Councillor Horning

R921/04/09/28 THAT Bylaw No. 9293 be read a second and third time.

Carried

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- 5.2 Bylaw No. 9299 (LUC04-0001) – K. Kaminski Construction Ltd. – 2441-2453 Highway 97 North

Moved by Councillor Shepherd/Seconded by Councillor Clark**R922/04/09/28** THAT Bylaw No. 9299 be read a second and third time.Carried

- 5.3 Bylaw No. 9300 (Z04-0043) – K. Kaminski Construction Ltd. and City of Kelowna – 2441-2453 Highway 97 North and 2455 Highway 97 North

Moved by Councillor Clark/Seconded by Councillor Shepherd**R923/04/09/28** THAT Bylaw No. 9300 be read a second and third time.Carried

6. DEVELOPMENT PERMIT AND DEVELOPMENT VARIANCE PERMIT REPORTS

- 6.1 Planning & Corporate Services Department, dated August 26, 2004 re: Development Variance Permit Application No. DVP04-0081 – John & Evelyn Carr (Sherri Simson/Simson Construction Management & Design Ltd.) – 2160 Bennett Road

Staff:

- The applicant is proposing to construct an attached carport at the rear of the residence. Access is via a private access easement. The proposed one storey addition would be totally screened from the neighbouring property by existing cedar hedges.

The Acting 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.

Sherri Simpson, applicant:

- Indicated she had nothing to add at this time.

Moved by Councillor Hobson/Seconded by Councillor Blanleil

R924/04/09/28 THAT Council authorize the issuance of Development Variance Permit No. DVP04-0081 for Lot 16, Section 17, Township 23, ODYD, Plan 16573 located on Bennett Road, Kelowna, B.C.;

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

Section 12.3.6(e) - Rural Residential 3

- A variance to allow a rear yard setback of 2.06 metres where 7.5 metres is required;

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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";
3. The applicant be required to submit a Structural Engineer's assessment and certificate of the retaining wall at the time of Building Permit application;

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

- 6.2 Planning & Corporate Services Department, dated September 3, 2004 re: Development Variance Permit Application No. DVP04-0087 – Stephen & Jane May – 955 Clement Avenue

Staff:

- The applicant is proposing to renovate the dwelling by expanding the roof line to add a second storey on a portion of the house. The house is legally non-conforming for the side yard setback requirements.
- The applicant has the consent of the owner to the east who would be most impacted.

The Acting 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.

Stephen May, applicant:

- Indicated he had nothing to add at this time.

Moved by Councillor Hobson/Seconded by Councillor Blanleil

R925/04/09/28 THAT Council authorize the issuance of Development Variance Permit No. DVP04-0087 for Lot 19, Sec. 30 Twp. 26 O.D.Y.D. Plan 1271, located at 955 Clement 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 variance granted shall apply to the existing dwelling only. Should the existing dwelling be demolished and a new dwelling constructed, the new dwelling shall meet all bylaw requirements;

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

Section 13.6.6(d) Two Dwelling Housing – Development Regulations:

- To vary the minimum side yard setback for a 2 storey portion from 2.3 m required to 1.35 m (east side) and 1.61 m (west side) proposed.

Carried

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6.3 Planning & Corporate Services Department, dated September 3, 2004 re: Development Variance Permit Application No. DVP04-0079 – Donald Robertson – 795 Elliot Avenue

Staff:

- The property is double fronting and there is currently one dwelling with detached garage on the site. The applicant proposes to demolish the garage and move a second dwelling onto the site.
- A Development Permit would be required to address the form and character of the two dwelling development.
- Staff do not have details of the home to be moved on and are assuming that bylaw requirements would be met
- Similar developments have already taken place on the two lots to the east.

The Acting City Clerk advised that no had been received.

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

Donald Roberson, applicant:

- Indicated he had nothing to add at this time.

Moved by Councillor Given/Seconded by Councillor Shepherd

R926/04/09/28 THAT Council authorize the issuance of Development Variance Permit No. DVP04-0079 for Lot 15, D.L. 138, ODYD Plan 3233, located at 795 Elliot 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";

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

Section 13.6.5: RU6 – Two Dwelling Housing – Subdivision Regulations

Vary the minimum lot width from 18.0 m required to 17.14 m proposed for a site with two principle dwelling units.

Carried

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

Bylaw No. 9291 (Z04-0044) – Charlene Madden – 335 Hardie Road

Moved by Councillor Blanleil/Seconded by Councillor Cannan

R927/04/09/28 THAT Bylaw No. 9291 be adopted.

Carried

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- (b) Planning & Corporate Services Department, dated August 27, 2004 re: Development Variance Permit Application No. DVP04-0072 – Charlene Madden (Charlene Madden or Rick Coyette) – 335 Hardie Road

Staff:

- The applicant intends to replace the existing garage with a secondary suite in a new accessory building.
- The home is approximately 81 m² in size. Secondary suites are not to exceed 75% of the floor area of the principal dwelling. In this case, the suite would exceed by 3 m².
- Staff are of the opinion that the proposed floor plan for the suite is supportable given its small size, and that the accessory building would fit better on the lot without a garage or covered carport.
- The 3 parking stalls can be provided on-site.
- The applicant has provided five letters from neighbours directly adjacent indicating support for this application.

The Acting 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.

Applicants:

- Indicated they had nothing to add at this time.

Moved by Councillor Hobson/Seconded by Councillor Given

R928/04/09/28 THAT Council authorize the issuance of Development Variance Permit No. DP04-0072 for Lot 10 Sec. 26 Twp. 26 O.D.Y.D. Plan 14462, located on Hardie 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";

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

Section 9.5.4 Secondary Suites – Maximum Floor Area

Vary the maximum floor area permitted for a secondary suite located in an accessory building from the lesser of 90 m² or 75% of the total floor area of the principal to allow a suite in an accessory building that is 64 m² and 79% of the total floor area of the principal building.

Section 9.5.10 Secondary Suites – Attached Garage or Carport

Vary the requirement to include a garage or carport for a minimum of one vehicle, such that no covered parking be required for the secondary suite.

Carried

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- 6.5 Planning & Corporate Services Department, dated August 26, 2004 re: Development Permit Application No. DP04-0064 and Development Variance Permit Application No. DVP04-0070 – Ladner Ventures Inc. (Mike Reibin) – 345-365 Mills Road

Staff:

- In 1995 the properties were rezoned to the R3a – Medium Density Multi-Family Transition zone under Zoning Bylaw 4500. A Development Permit was approved for a 3-storey 28-unit apartment building in 1995.
- In 1998 Zoning Bylaw 8000 was adopted and the property changed to the RM3 zone. The initial Development Permit was extended twice however has since lapsed.
- It has recently come to the attention of staff that there was an error during the transition from the old to new Zoning Bylaw. The subject property should have been zoned RM4 – Transitional Low Density Multi-Family housing and staff are in the process of rectifying the zoning.
- The subject development permit application is the same as the original concept that was submitted in 1995.
- The requested height variance is required to accommodate a parkade.

The Acting 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.

Mike Reibin, applicant:

- Indicated he had nothing to add at this time.

Moved by Councillor Shepherd/Seconded by Councillor Horning

R929/04/09/28 THAT Council authorize the issuance of Development Permit No. DP04-0064 for Lots 1 and 2, District Lot 125, ODYD Plan 9504, located on Mills 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;
5. The applicant be required to consolidate the subject properties;

AND THAT Council authorize the issuance of Development Variance Permit No. DVP04-0070; Lots 1 and 2, District Lot 125, ODYD Plan 9504, located on Mills Road, Kelowna, B.C.;

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

Section 13.10.6: Development Regulations: (a)

Vary the height from 3 storeys permitted to 3.5 storeys 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

- 6.6 Planning & Corporate Services Department, dated September 1, 2004 re: Development Variance Permit Application No. DVP04-0098 – Lisa Stewart and Vernon Nielsen (Vernon Nielsen) – 5460 & 5462 Lakeshore Road

Councillor Hobson declared a conflict of interest as a political financial supporter of this applicant and left the meeting at 7:43 p.m.

Staff:

- The owners of the property authorized the removal of several large trees and the construction of concrete retaining walls on the west side of the site. This work was carried out without the required building permit. As a result, the steeply sloping land which is located within an Environmental & Hazardous Conditions Development Permit Area, was significantly altered.
- The applicant has applied for a development permit to address the environmental and slope stability concerns; that DP will be dealt with by the Director of Planning & Corporate Services. The requested variance is needed to legalize the over height retaining walls.
- Showed photos of the retaining walls.
- The applicant has submitted letters of support from his adjacent neighbours.
- Staff are satisfied that the applicant and his consultants have adequately addressed safety and mitigation measures. However, because the retaining walls were built without permits, staff cannot recommend support.

Council:

- A member of Council expressed concern about dealing with this application in advance of the conclusion of a court action by the City of Kelowna against this applicant.

Staff:

- Clarified that the court action was taken through Bylaw Enforcement but the applicant has been working with staff to undertake the environmental works to bring the development into conformity.
- The bylaw enforcement file would remain open until the matter is concluded but it is unlikely that the City would proceed with the court action when the applicant is taking the necessary steps to comply with requirements.

Moved by Councillor Blanleil/Seconded by Councillor Day

R930/04/09/28 THAT Council proceed with consideration of Development Variance Permit Application No. DVP04-0098.

Carried

Councillor Clark opposed.

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The Acting City Clerk advised that correspondence had been received and it was attached to the report in Council's agenda package.

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

Vernon Nielsen, applicant:

- Referred to a letter dated March 2004 from Lidstone saying that unless further advised there was no need for him to appear in court.
- Was not aware that a Development Permit (DP) was needed to do landscaping. Hired major contractors and they never said anything. The contractors cut down trees with Pine Beetle infestation and to cut in a path down to the beach and again there was no mention of needing a DP. The retaining walls are actually bedding boxes with planting over the top of them. They do not retain the cliff itself. It was necessary to jack hammer out the cliff because it was not possible to dig into them to do the walls. The bedding boxes were also built by a major contractor.
- Some months later in the fall he came home to find a Stop Work notice posted on the door at which point no further work was done other than planting the flowers and shrubs until the Spring when he met with City staff to find out what had to be done to comply.
- Geotechnical engineers were engaged to make sure stability of the slope was good and that the retaining walls/planting beds were done correctly. The slope will be re-vegetated better than it was before.
- The only thing that cannot be reversed is the height of the retaining walls. Everything else is being rectified.
- The adjacent property owners on either side are in support.

Moved by Councillor Cannan/Seconded by Councillor Clark

R931/04/09/28 THAT further consideration of Development Variance Permit Application No. DVP04-0098 (Vernon Nielsen – 5460/5462 Lakeshore Road) be deferred to the Regular Meeting of Monday, October 4, 2004 for staff to clarify the status of a court action by the City of Kelowna against the applicant.

Carried

Councillor Blanleil opposed.

Councillor Hobson returned to the Council Chamber at 8:02 p.m.

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

- (i) **Bylaw No. 9283 (OCP04-0004)** – James & Linda Knight, Gerald & Delores Dignan, Daryl, Johnny, Danny & Lynette McLean, Jamie Davies and David & Charles Ross (Coast Architectural Group/Kevin Ryan) – 2901-2975 Abbott Street and 408-416 Groves Avenue **Requires majority vote of Council (5)**

Moved by Councillor Day/Seconded by Councillor Cannan

R932/04/09/28 THAT Bylaw No. 9283 be adopted.

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- (ii) Bylaw No. 9284 (Z04-0010) – James & Linda Knight, Gerald & Delores Dignan, Daryl, Johnny, Danny & Lynette McLean, Jamie Davies and David & Charles Ross (Coast Architectural Group/Kevin Ryan) – 2901-2975 Abbott Street and 408-416 Groves Avenue

Moved by Councillor Day/Seconded by Councillor CannanR933/04/09/28 THAT Bylaw No. 9284 be adopted.Carried

- (b) Planning & Corporate Services Department, dated August 18, 2004 re: Development Permit Application No. DP04-0016 and Development Variance Permit Application No. DVP04-0017 – James & Linda Knight; Gerald & Delores Dignan; Daryl, Johnny, Danny & Lynette McLean; Jamie Davies; and David & Charles Ross (Kevin Ryan/Coast Architectural Group) – 2901-2975 Abbott Street and 408-416 Groves Avenue

Staff:

- The applicant is proposing to build a 48-unit apartment building on the two subject properties.
- The required variances are to address the 4.5 storey building height and site coverage.
- As part of the proposal the applicant is also seeking to eliminate the existing lane access in favour of an access easement through the centre of the development to measure 2.5 storeys in height by 10 metres in width. The third and fourth storeys of the building would span the archway allowing pedestrian access through to the park and for emergency vehicle access. The City will begin a process of closing the lane network that encloses the park site.
- Displayed elevations showing the archway through the building and of other portions of the proposed building.
- The applicant has worked with staff to achieve the development and park related goals of the OCP and has worked with the neighbours to resolve interface issues with the surrounding neighbourhood.

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

Letters of Opposition

- Cathy Richards, 424 Groves Avenue
- Dawn Mitchell, 447 Groves Avenue

Opposed generally on the basis that an addition in height was already granted in the rezoning and the water table cannot support the underground parking.

Letter of Support with Conditions

- KLO Central Neighbourhood Association

Stating that they are in favour on the condition that the City establishes a procedure that will ensure conformity to these design and quality standards for future developments

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

Keith Funk, applicant:

- Ms. Richards is concerned about the building being raised as a result of the water table and the developer has determined that will not be necessary and that no variance will be requested beyond the application variance.
- Ms. Richards' concerns regarding landscaping have been resolved.

Moved by Councillor Hobson/Seconded by Councillor Day

R934/04/09/28 THAT Council authorize the issuance of Development Permit No. DP04-0016 for Lots 2, 3, 4 and 5, Block 1, D.L. 14, ODYD Plan 4743 and Lots 1, 2 and 3, D.L. 14, ODYD Plan 3856 located on Abbott Street and Groves 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. DVP04-0017; Lots 2, 3, 4 and 5, Block 1, D.L. 14, ODYD Plan 4743 and Lots 1, 2 and 3, D.L. 14, ODYD Plan 3856 located on Abbott Street and Groves Avenue, B.C.;

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

Section 13.11 RM5 – Medium Density Multiple Housing: 13.11.6(c):

- Vary the maximum height from 4 storeys permitted to 4.5 storeys proposed.

Carried

Councillor Cannan opposed.

7. REMINDERS

- The Acting City Clerk advised that under normal scheduling, Bylaw 9310 (amends the OCP to restrict development on lands within the Future Urban Reserve) would be scheduled to the October 19 Public Hearing. However, Council instructed staff to notify the affected land owners in writing and staff have identified 217 properties in the Future Urban Reserve. Staff propose to defer the date of the Public Hearing in order to identify for Council the number of lots that are less than 10 acres and would not be affected by the OCP amendment and which are on slopes over 30%. It may be that only one-third of the properties would be impacted.

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8. TERMINATION

The meeting was declared terminated at 8:25 p.m.

Certified Correct:

Mayor

Acting City Clerk

BLH/