

Regular MeetingFebruary 22, 2005

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, February 22, 2005.

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: Acting City Manager/Director of Planning & Corporate Services, R.L. Mattiussi; Acting Deputy City Clerk, D.M. Fediuk; 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 8:28 p.m.

2. PRAYER

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

3. CONFIRMATION OF MINUTES

Regular Meeting, February 7, 2005  
Public Hearing, February 8, 2005  
Regular Meeting, February 8, 2005  
Regular Meeting, February 14, 2005

Moved by Councillor Blanleil/Seconded by Councillor Day

**R163/05/02/22** THAT the Minutes of the Regular Meetings of February 7, 2005, February 8, 2005 and February 14, 2005 and the Minutes of the Public Hearing of February 8, 2005 be confirmed as circulated.

Carried

4. Councillor Clark 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. 9353 (Z04-0080) - Jabs Development Ltd. (Cory Jmaeff/708011 BC Ltd.) – 1949-1989 Harvey Avenue

Councillor Blanleil declared a conflict of interest as owner of a retail store in the same complex and left the Council Chamber at 8:30 p.m.

Mayor Gray noted that Ministry of Transportation approval of the bylaw was received subsequent to preparation of the meeting agenda and the bylaw can now also be considered for adoption.

Moved by Councillor Given/Seconded by Councillor Horning

**R164/05/02/22** THAT Bylaw No. 9353 be read a second and third time and be adopted.

Carried

Councillor Cannan opposed.

Councillor Blanleil returned to the Council Chamber at 8:31 p.m.

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- 5.2 Bylaw No. 9354 (Z04-0048) – 218555 BC Ltd., et al (Advance Precast Ltd.) – 745, 765 & 793 Stremel Road

Moved by Councillor Shepherd/Seconded by Councillor ClarkR165/05/02/22 THAT Bylaw No. 9354 be read a second and third time.Carried**(BYLAWS PRESENTED FOR SECOND & THIRD READINGS AND ADOPTION)**

- 5.3 Bylaw No. 9310 (OCP04-0015) – Official Community Plan Text Amendment (Future Urban Reserve) **requires majority vote of Council (5)**

Staff:

- Committed to include wording in the next group of amendments to the OCP to indicate that there may still be an opportunity for the land use designation to be amended where the land is deemed not to have the potential to be used as part of a comprehensive urban development in the future; and to prepare a Council Policy to provide that clarity in the interim.

Moved by Councillor Day/Seconded by Councillor CannanR166/05/02/22 THAT Bylaw No. 9310 be read a second and third time and be adopted.Carried

Councillors Blanleil, Horning and Shepherd opposed.

**6. DEVELOPMENT PERMIT AND DEVELOPMENT VARIANCE PERMIT REPORTS**

- 6.1 Planning & Corporate Services Department, dated January 28, 2005 re: Development Permit Application No. DP04-0116 and Development Variance Permit Application No. DVP05-0006 – Glenpark Village Inc. (Ted Berg) – 385 Glenmore Road

Staff:

- The subject property is part of a Development Permit (DP) from 1996 for the Glenmore Plaza shopping centre. That DP indicated a single storey building in the location of the now proposed 2-storey commercial building.
- The setback variance would allow the building to be closer to Glenmore Road for better pedestrian orientation.
- The Advisory Planning Commission recommends support.

The Acting Deputy City Clerk advised that no correspondence and/or petitions had been received.

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

Toby Nollitt, representing the applicant:

- The site plan and landscape plan that are being shown by the Planner are not the more recent. There were minor changes that were delivered to City Hall on Friday and they are the plans to be attached to the permit.

Staff:

- The minor changes on the revised plans can be dealt with at the staff level.

Moved by Councillor Horning/Seconded by Councillor Blanleil

**R167/05/02/22** THAT Council authorize the issuance of Development Permit No. DP04-0116 for Lot B, Section 32, Township 26, ODYD, Plan 42842 located on Glenmore 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;

AND THAT Council authorize the issuance of Development Variance Permit No. DVP05-0006; Lot B, Section 32, Township 26, ODYD, Plan 42842, located on Glenmore Road, Kelowna, B.C.;

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

Vary Section 14.3.5.(d) **Development Regulations** from minimum required front yard setback of 3.0 m to the 2.0 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

6.2 Planning & Corporate Services Department, dated January 18, 2005 re: Development Variance Permit Application No. DVP04-0134 – Don & Cindy Maxson – 1859 Ethel Street

Staff:

- The applicant already has a permit to build a 1½ storey accessory building with an attached garage. However, they have changed their plans and would now prefer to build a single storey structure with no carport.
- Staff support the variance because a single storey building fits in better than the taller building with attached carport.
- Recommend proceeding with a text amendment to eliminate the requirement that an accessory building with a secondary suite must include a garage or carport.

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The Acting Deputy City Clerk advised that the following correspondence and/or petitions had been received:

- letter of opposition from Robert Melle, 1869 Ethel Street, opposed because of concerns about parking and there are already two rentals in the house and this could become a third.

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

Don Maxson, applicant:

- Mr. Melle (1869 Ethel Street) has sold his house and is moving.
- Other than Mr. Melle, everyone else who this proposal has been discussed with also prefers a single storey building and none had any concerns about parking.
- The building would be setback 30 ft. from the alley allowing plenty of room for on-site parking.
- By eliminating the carport, there is room in the building to have a 2 bedroom suite with 2 bathrooms making it easier to rent. With a carport there could only be one bedroom in the suite.
- There is a suite that is currently being rented in the basement of the house but that will be eliminated and the house rented out as one unit when this is approved.

Moved by Councillor Shepherd/Seconded by Councillor Given

**R168/05/02/22** THAT Council authorize the issuance of Development Variance Permit No. DVP04-0134 for Lot 1, D.L. 138, ODYD Plan 3189, located on Ethel 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. The landscaping be in general accordance with Schedule "C";
4. The owner be required to ensure that the existing basement suite is decommissioned to the satisfaction of the Inspection Services Manager;

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

**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;

AND FURTHER THAT Council provide direction to staff to initiate a text amendment application that would seek to remove Section 9.5.10 of Zoning Bylaw No. 8000, which requires an accessory building containing a secondary suite to include a garage or carport for a minimum of one vehicle.

Carried

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6.3 Planning & Corporate Services Department, dated January 20, 2005 re: Heritage Alteration Permit Application No. HAP04-0005 – Marlene Fipke (Carl Scholl Design) – 2150 Abbott Street

Staff:

- The property is within the Abbott Street Heritage Conservation Area.
- There is an existing single family home and swimming pool on the property along with an existing dock.
- The Heritage Alteration Permit (HAP) would allow the applicant to replace the existing house with a new house with pool and solarium facing the lake.
- The application respects all zoning bylaw requirements other than the requirement for a 60 degree sightline for adjacent properties.
- Displayed a drawing showing the impacts on the view angles of the adjacent properties.
- The Advisory Planning Commission and the Community Heritage Commission (CHC) recommend non-support of the variance. The applicant responded to the concerns raised by the CHC by making changes to the overall architecture and structural projections and pulling the building back by approximately 2 m from the minimum setback from the lake. However, the proposal still encroaches into the neighbours' view angle.
- Displayed a rendering of the proposed house from the street, the existing landscaping, etc.
- Staff recommend support for the HAP which is the tool to grant the variance to the Okanagan Lake sightlines. The property size could accommodate an even larger house than is proposed. Staff looked at whether the house could be moved further toward the street but wanted to preserve the landscaping and orientation in the front of the property. Fences and landscaping are not included in the sight line regulations, just buildings/structures.
- There is a typographical error on page 3 of the staff report. It should read RU1 zone requirements rather than RU1s zone requirements.
- Clarified that Okanagan Lake sight line requirements did not exist when the original house was built or when the building additions were constructed.

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

- Brian Woinoski, 2228 Abbott Street, opposed on basis of the negative impact on the neighbour's view.

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

Carl Scholl, applicant:

- The sight line variances now required are 2.3 degrees to the south and 11.43 degrees to the north.
- The existing pool house on the subject property encroaches on the sightline for the property to the south; with this proposal, the pool house will be removed dramatically increasing their view angle. The owner of the subject property has also agreed to maintain the hedge height at 2.0 m for the property to the south to ensure the sightline is maintained.
- For the neighbour to the north, the pump house will be deleted which improves their lake view. Removing the pool house benefits this property as well as property to the south.
- Showed the effect of the proposed sight lines on the two neighbouring properties.
- The proposed design accommodates the requests of the neighbours with the exception of removing a couple of Willow trees that are within the 15 m riparian zone and so cannot be removed.

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- The majority of the existing trees in the front yard would be retained; the trees in the middle of the existing turnaround would be removed.
- None of the five homes along this stretch of foreshore can achieve the 60 degree sightline provisions.

## Margot Sentes, 2166 Abbott Street:

- She and her husband are the neighbours to the south and they object to the sight line variance and recommend it be denied.
- Before building their house in 1999, it was deemed that a pool house was a building and the sightline was measured from this structure. The wood fence obstructs the applicant's own view.
- During construction of their home, they posted the required sign on the lot and went through the HAP process. They were the first to apply for an HAP and their plans were approved with no variances requested. The sightlines did not obstruct the view because of the neighbours having the pool house and fence.
- The fence steps down as it goes to the lake. Their view would not be improved by removing the pool house unless the cedars on the subject property are kept to the height of the fence.
- With the removal of the pool house, the proposed outdoor balconies will also infringe on their privacy and natural light during the summer when they are on their patio.
- The driveway could be reconfigured so that sightline requirements could be met. The proposed house is 14,000 sq. ft. with an indoor pool, two garages, circular driveway – there must be room for compromise.
- The house should be moved closer to Abbott Street.

## Carey Lewandoski, 2175 Abbott Street:

- Sympathizes with the adjacent home owners and the impact on their sight lines.
- Does not think the proposed structure would fit into the neighbourhood; it is too massive and would dwarf the others and set a precedent for monster home development.
- Read excerpts of an article in the Vancouver Sun newspaper re monster homes in established neighbourhoods.

## Terry Campbell, 2136 Abbott Street:

- Opposes the variance because of the impact on the view from his property.
- The trees are deciduous and so do not block his view year round.
- Removing the pump house would improve his view at ground level but not at the second floor level. The 60 degree view line is from both levels.
- Displayed photos and talked about sightlines.
- Concerned that any reduction in his sight view would impact on the value of his property so he would be losing aesthetically and monetarily.
- The proposed house would be 4½ times larger than his house.
- Concerned about noise and light from the pool during the summer when the doors are open.
- Would prefer the house be moved back 20 ft. so the view angle requirements can be met.
- Not enough attention has been paid to alternate solutions.
- Objects to any encroachment into the sight line.

## Milton Wilson, 3330 Packers Court:

- When buying a home, one assumes that the homes next to it will remain unless there is good reason for them being torn down. Distressed because that is not the case and that views, etc. can change.

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Michael Neill, 3132 Watt Road:

- Purchased his waterfront home 10 years ago and was aware when he bought that his neighbour's house encroached into his sightlines. A couple of years ago his other neighbour wanted to put on an addition that encroached on his sight line; he agreed to that happening and they are good neighbours today. But, that is totally different than demolishing a house and building a new house that blocks the neighbour's view.
- It should be between the neighbours to come up with some sort of an agreement and not up to Council to over-ride the regulations that are in place.

Wayne Roth, 2124 Pandosy Street:

- When the Abbott Street Heritage Conservation Area came into place the intent was to demolish houses that had no heritage value and replace them with houses that fit into the neighbourhood.
- Read an excerpt of a newspaper article from the Vancouver Sun talking about the value of retaining vintage homes.
- The existing house could be considered to have heritage value in 35 or 40 years.

Joan Campbell, 2136 Abbott Street:

- The proposed house will diminish her view to the south and impact on the natural light on her property.

Shirley Clarke, 1935 McDougall Street:

- Is a member of FRAHCAS.
- The neighbourhood opposed the 'Briex' house when it was built because it was so large and the proposed house is larger.
- Concerned that other homes that now fit within the neighbourhood could be torn down and replaced with oversize homes.
- The proposed home would mass the property and not be appropriate to the area.
- Is opposed to the variance.

Daphne Moore, 178 Mathison Place:

- Lives beside the 'Briex' house and when the heritage conservation area was established hoped that would prevent such a large house from being built in the area again.
- Ignoring the regulations will cause problems. The owner knew the size of the property and what the requirements were when buying the site.

Neil Campbell, resident of Vancouver:

- Is one of Mrs. Campbell's five sons all of whom grew up at 2136 Abbott Street and who now vacation there with their families.
- The designer should have designed the home so that it did not disregard the regulations. Now the onus seems to be on the neighbours to prove the negative impact on their views.
- Sight lines should be important. It would not be right to be deprived of the view they have enjoyed for the past 34 years.
- His family house has significant heritage value. Concerned about the impact of this applicant's dream home on his family's dream home and that this could be starting a process that leads to erosion of the heritage area.

Moved by Councillor Blanleil/Seconded by Councillor Given

**R169/05/02/22** THAT the meeting be continued past 11 p.m. in accordance with Section 5.5 of Council Procedure Bylaw No. 9200.

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Councillor Clark opposed.

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Marietta Lightbody, 2302 Abbott Street:

- The proposed house is a monster house and would change the character of the area.
- The existing house is a heritage house, by a fine Scandinavian architect who also designed another house down the street.
- Read an excerpt of a newspaper article about the size of the 'Briex' house.
- The integrity of heritage conservation areas means nothing if a beautiful heritage home is torn down in favour of a monster house that will change the neighbourhood.

Valerie Hallford, 429 Park Avenue:

- Is president of FRAHCAS.
- The setback between the house and the lot line is part of the reason for having heritage conservation area guidelines – to protect the spacious character of the area and avoid having big houses built at minimum setbacks or with setback variances.
- Heritage Conservation Areas that protect the buildings are successful.
- The form and character, design and architecture of the proposed house does not fit in with the area.
- Reiterated comments of other speakers and asked that this application be rejected.

Marlene Fipke, 2150 Abbott Street:

- Has resided in Kelowna since the 1950s and raised 5 children in Kelowna.
- The condition of the present home is deteriorating. It makes more economic sense to rebuild than repair.
- When the Sentes family built their house, she did not object to them removing a large tree from their property in order to improve their view.
- Taking out the pool and pump houses will improve their view.
- The proposed house design would be an asset to the area.
- Two neighbours down the street have indicated verbally that they support the project.

Carl Scholl, applicant - continued:

- Committed to change the proposed design to ensure the privacy of the Sentes's and maintain a view from their second floor window.
- The house would be 11,870 sq. ft. in total and that includes the pool area in the glass atrium, but does not include the garages. The new house would be about 7.5 ft. higher than the existing house and about double in size.
- The shadowing effect on Mrs. Campbell's house would be at the rear of the house where the shrubs and trees are.
- The schematic plans were discussed with both neighbours. The drawings were then completed with the house further back to approximately 17 m from the waterfront and City Planning staff said they could support that. Has worked with City staff all through the process.



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Staff:

- Clarified that if the architect came back with a similar design without the need for a variance, staff would recommend to the Director of Planning & Corporate Services that he approve the HAP and the application would be dealt with at the staff level.

Moved by Councillor Blanleil/Seconded by Councillor Clark

THAT Council authorize the issuance of Heritage Alteration Permit No. HAP04-0007; Carl Scholl Design (Carl Scholl), Lot A, DL 14, ODYD, Plan 39250, located on Abbott 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. Existing Landscaping to be preserved on the land in general accordance with Schedule "C";
5. A maximum of two kitchens are permitted in accordance with the regulations for second kitchens as outlined in Zoning Bylaw No. 8000;
6. No structures, including pathways & patios with impermeable surfaces, are permitted within the 15.0 m Riparian Management Area setback from Okanagan Lake;

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

**Section 6.11.1 Okanagan Lake Sight Lines**

- A variance to allow the proposed single detached dwelling to have a 48.57° sightline from the property to the north and a 57.7° sightline from the property to the south where the required Okanagan Lake Sightline angle of the adjacent properties is 60° on each side (total 120°);

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.

Moved by Councillor Shepherd/Seconded by Councillor Given

**R170/05/02/22** THAT further Council consideration of Heritage Alteration Permit No. HAP04-0007 (Carl Scholl Design for Marlene Fipke – 2150 Abbott Street) be deferred to a future Monday Regular Meeting to allow for dialogue between the applicant and the neighbours.

Carried

Councillors Blanleil, Cannan and Clark opposed.

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7. REMINDERS – Nil.

8. TERMINATION

The meeting was declared terminated at 12:11 a.m.

Certified Correct:

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Mayor

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Acting Deputy City Clerk

/blh