

Regular MeetingJanuary 24, 2006

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 24, 2006.

Council members in attendance: Mayor Sharon Shepherd, Councillors A.F. Blanleil, B.A. Clark, C.B. Day, B.D. Given, C.M. Gran*, R.D. Hobson, N.J. Letnick and M.J. Rule.

Staff members in attendance were: Acting City Manager/Director of Works & Utilities, J. Vos*; Deputy City Clerk, S.C. Fleming; Manager of Development Services, A.V. Bruce; Parks Manager, J. Creron*; and Council Recording Secretary, B.L. Harder.

(* denotes partial attendance)

1. CALL TO ORDER

Mayor Shepherd called the meeting to order at 10:27 p.m.

2. PRAYER

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

3. CONFIRMATION OF MINUTES

Special Meeting, January 5, 2006
 Regular Meeting, January 9, 2006
 Public Hearing, January 10, 2006
 Regular Meeting, January 10, 2006
 Regular Meeting, January 16, 2006

Moved by Councillor Given/Seconded by Councillor Day

R088/06/01/24 THAT the Minutes of the Special Meeting of January 5, 2006 and the Minutes of the Regular Meetings of January 9, January 10 and 16, 2006 and the Minutes of the Public Hearing of January 10, 2006 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. 9533 (OCP05-0018) – City of Kelowna

Moved by Councillor Letnick/Seconded by Councillor Given

R089/06/01/24 THAT Bylaw No. 9533 be read a second and third time.

Carried

5.2 Bylaw No. 9534 (TA05-0011) – City of Kelowna

Moved by Councillor Letnick/Seconded by Councillor Given

R090/06/01/24 THAT Bylaw No. 9534 be read a second and third time.

Carried

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- 5.3 Bylaw No. 9537 (OCP05-0011) – Aberdeen Holdings Ltd. (Water Street Architecture) – 1102 Cameron Avenue and 1091 Guisachan Road **requires majority vote of Council (5)**

Councillor Gran declared a conflict because she lives adjacent to the property under application and left the Council Chamber at 10:31 p.m.

Moved by Councillor Day/Seconded by Councillor Rule

R091/06/01/24 THAT Bylaw No. 9537 be read a second and third time.

DEFEATED by tie vote

Mayor Shepherd and Councillors Given, Hobson and Letnick opposed.

- 5.4 Bylaw No. 9538 (Z05-0037) – Aberdeen Holdings Ltd. (Water Street Architecture) – 1102 Cameron Avenue and 1091 Guisachan Road

Was not considered because the current OCP amendment under No. 5.3 was defeated.

Councillor Gran returned to the Council Chamber at 10:44 p.m.

6. DEVELOPMENT PERMIT AND DEVELOPMENT VARIANCE PERMIT REPORTS

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

Bylaw No. 9507 (Z05-0053) - William Grover and Sing & Kayea Wong (J Herman Group Inc.) – 710 & 730 Martin Avenue and 1419 Richter Street

Moved by Councillor Clark/Seconded by Councillor Gran

R092/06/01/24 THAT Bylaw No. 9507 be adopted.

Carried

- (b) Planning & Corporate Services Department, dated December 23, 2005 re: Development Permit Application No. DP05-0125 and Development Variance Permit Application No. DVP05-0129 – Verlaan Investments Inc. (J. Herman Group Inc.) – 710 & 730 Martin Avenue and 1419 Richter Street

Staff:

- The applicant is proposing to develop the site with a 30-unit, 4-storey apartment building that would be constructed over a parking structure. The parking structure would be partly above ground and so a variance is required to allow 4.5 storeys.

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

Lynn Horricks, representing J. Herman Group:

- Introduced “Martin Place” with the aid of a power point presentation.
- Including an affordable housing component would not be feasible given today’s high cost of construction.

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Mayor Shepherd invited anyone in the public gallery who deemed themselves affected by the required variances to come forward. There was no response.

Moved by Councillor Blanleil/Seconded by Councillor Letnick

R093/06/01/24 THAT Council authorize the issuance of Development Permit No. DP05-00125 for Lots 2, 3 & 4, DL 138, ODYD, Plan 1346 located on Martin Avenue and Richter 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. 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. DVP05-00129 for Lots 2, 3 & 4, DL 138, ODYD, Plan 1346 located on Martin Avenue and Richter Street, Kelowna, B.C.;

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

Section 13.11.6(b) – RM5 – Medium Density Multiple Housing

A variance to allow site coverage of 52.8% (parkade) and 43.4% (building) where a site coverage of 40% is permitted;

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

A variance to allow the building to be 4 ½ storeys in height where a height of only 4 storeys is permitted;

Section 6.4.2 – RM5 – General Development Regulations – Projection into Yards

A variance to allow decks to project 2.6 m into a required side yard where a projection of only 0.6 m 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

EXTENSION OF MEETING

Moved by Councillor Blanleil/Seconded by Councillor Hobson

R094/06/01/24 THAT the meeting be continued past 11 p.m. in accordance with Section 5.5 of Council Procedure Bylaw No. 9200.

Carried

Councillor Clark opposed.

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6.2 Planning & Corporate Services Department, dated December 7, 2005 re: Heritage Alteration Permit Application No. HAP05-0014 – Kurt & Trudy Balkenhol – 1945 McDougall Street

Staff:

- The subject property is vacant and is within the Abbott and Marshall Street Heritage Conservation Area. It is an undersized lot and the Heritage Alteration Permit is required to deal with the variances.
- The Community Heritage Commission reviewed the application twice and both times recommended non-support on the basis that the building would not be consistent with heritage conservation area design guidelines.
- Staff feel the revised proposal is a good compromise from what was originally proposed.
- Displayed proposed elevation drawings and a photo of a similar designed house.
- The variances in the staff report were based on the previous design. The applicant would still need the requested front yard setback of 6.5 m and 2 m north side yard setback. The south side yard setback would no longer be required.

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

Trudy Balkenhol, applicant:

- This is their third plan to get a house on this lot.
- Before buying the lot they talked to someone in Planning to make sure it was actually possible to fit a house on the property. She also asked about the property being in a heritage conservation area and was told that new lots do not have to comply with the heritage guidelines. So, they designed a contemporary house which the Community Heritage Commission (CHC) denied. The second plan was bigger than what is proposed now and so required more setbacks and was denied again by the CHC. Then a neighbour showed them the photo of the building that is the design they now want to pursue. The CHC has not seen this photo.
- The first house was designed off the street because they were told they would have to pave the lane. Then found out access did not have to be off the street. It has cost a lot to have all these design changes.

Shirley Clarke, 1935 McDougall:

- The subject property is a long narrow lot 40 ft. x 100 ft. deep. The lane is between her house and theirs but the proposed house would come very close to the Fumerton House. The owners of the Fumerton House were unable to come tonight but they ask that the exterior of the proposed house be wooden instead of stucco and that the fence between their properties be wooden instead of wrought iron.

Valerie Hallford:

- She and two other board members of FRAHCAS have reviewed the plans and are supportive about how the CHC concerns have been resolved.
- Questioned the procedure for advertising and concerned about misinformation being given out at City Hall. Had the applicant's been told the right information, they would not have had to go to all the expense of changing the design.
- Does not believe it is Council's role to approve form and character for heritage conservation areas. That should be left to the Community Heritage Commission.
- Board'n batton siding would be more consistent with the architectural style of the house.

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

Moved by Councillor Blanleil/Seconded by Councillor Given

R095/06/01/24 THAT Council authorize the issuance of Heritage Alteration Permit No. HAP05-0014; for Lot 5, District Lot 14, ODYD, Plan 2069, located on McDougall 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";

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

Section 13.1 – RU1: Large Lot Housing: 13.1.6(c):

Vary the front yard setback from 4.5 m required to 3.65 m proposed;

Section 13.1 – RU1: Large Lot Housing: 13.1.6(d):

Vary the northern side yard setback from 2.3 m required to 1.52 m proposed.

Carried

- 6.3 Planning & Corporate Services Department, dated January 11, 2006 re: Development Permit Application No. DP05-0065 and Development Variance Permit Application No. DVP05-0173 – Rodger Hazard (Paul Nesbitt/Nesbitt Originals) – 208 Poplar Point Drive

Staff:

- Council denied a similar application by this applicant in June last year.
- Staff have tried to find some middle ground between the applicant and the property owner to the south. At the end of the day the applicant pulled the house back and is now requesting a variance of the sightline requirement from 60° to 40°.
- Staff recommended support for the initial application for a 30° sightline and recommend in support of this application. The difference in the impact on the view for the abutting property with the house that was demolished and the proposed new house would be negligible.

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The Deputy City Clerk advised that the subject application was advertised to the Regular Meeting agenda of December 13, 2005, then was subsequently withdrawn and rescheduled to this agenda. Submissions were received for both meeting dates, as follows:

December 13, 2005 (sightline variance was from 60° to 45°) – Withdrawn from Agenda:

- Petition bearing 43 signatures of residents of Poplar Point Drive and Herbert Heights Road
- two letters from Mike Banwell & Jan Fisher, 212 Poplar Point Drive
- letter from Leon & Mary Blumer, 360 Herbert Heights
- letter from Shirley Metcalfe, 216 Poplar Point Drive
- letter from Nancy & Murray Ramsden, 220 Poplar Point
- letter from James Tisdale, 370 Herbert Heights

January 24, 2006 (sightline variance from 60° to 40°):

- letter from Mary Toijonen, 254 Poplar Point Drive
- letter from Mike Banwell & Jan Fisher, 212 Poplar Point Drive
- letter from John & Nancy Woodworth, 228 Poplar Point Drive

Opposed generally on the basis that there would be a negative impact on the neighbour's view and privacy and on the character of the neighbourhood, and concern about safety on the roadway.

Rod Hazard, 208 Poplar Point Drive:

- Initially Council was asked to grant a variance for a 30° sightline. At that meeting the neighbour indicated that a 45° sightline would be acceptable and the design for the proposed home was downsized to achieve that sightline. Then the neighbour wanted a say in where the lighting would go, where the trees would be planted and how tall they would grow, and basically what was going to be done with the whole property.
- Had his landscape architect visit the neighbour to go through his concerns.
- Took issue to the neighbour's demands when he wanted him to give free land for the easement road.
- Confirmed that City staff mediated some meetings with the neighbour and the house was redesigned for a 45° sightline but that changed to 40° when the garage entrance was pulled back from the easement road in order to make it easier for the neighbour to access the easement.
- The sightline requirements in the Zoning Bylaw do not take into consideration skewed lot lines and uneven lakeshore.
- If the subject property and the adjacent vacant lot to the north both had to be developed respecting the 60° sightline requirement, the building envelope would be so restrictive for the neighbour that he would pretty much have to put a mobile home on his property.

Paul Nesbitt, Nesbitt Originals:

- Explained the design changes that have been made in an attempt to satisfy the neighbour noting his client has said yes to every requirement except to sell the neighbour more easement land.

Staff:

- Clarified that there is no legal requirement for a setback from the private easement road, however, but City staff who visited the site encouraged the applicant not to build at a zero setback.

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

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Murray Ramsden, 220 Poplar Point:

- He also shares the easement road. The corner is very sharp turning off Poplar Point Drive onto the easement road and through the turn the grade goes downhill. In winter conditions, vehicles slide so building right up to the easement would be dangerous.
- This is an older neighbourhood. The residents know that as more houses are sold more will be demolished and new homes built.
- Sightlines are a valuable asset that they need to be able to protect.
- Need to ensure other properties are not negatively impacted as the neighbourhood redevelops.

Mike Banwell, 212 Poplar Point Drive:

- Has lived there for 18 years and it is his sightline that would be impacted. His home was situated in 1955 to take advantage of the view looking up the lake toward Vernon and it is that view that would be impacted.
- No other homes obstruct the neighbours' sightlines so there is no precedent in this neighbourhood.
- Sightline requirements were written into the bylaw to protect old homes in established neighbourhoods.
- The lake foreshore is actually quite straight along the two properties in question and therefore is not pertinent to this discussion.
- The variance is required because the proposed home is such a massive structure; three storeys 66 ft. x 80 ft - roughly twice the size of the existing homes in the neighbourhood.
- Trees have been removed to accommodate this structure and his views of trees and water would be replaced with a wall.
- Suggest the applicant create a more reasonable design to fit within the restrictions.
- The older houses were built before sightline requirements were set.
- He offered to support a 45° variance with a modest reduction in the size of the structure. Instead of reducing the size it was pulled back closer to the easement. The compromise offer was conditional on receiving a written agreement on the restoration of the lands.
- He never asked for free land; he wanted the easement document changed to say that an extra 2 ft. was needed.
- Upholding the sightline requirement in the bylaw would not impose a hardship. The design is too big.
- He backs out onto the easement road and a zero setback from the easement would not be safe.

Duncan Kippan, 334 Poplar Point Drive:

- Do not support the 40° sightline. The proposed house is larger than a normal family residence. A smaller house would satisfy the sightlines and the setback on the easement.

Diane Doyle, 315 Poplar Point Drive:

- Has lived there for over 20 years; they are all long-term residents.
- Denying this variance would hopefully persuade the applicant to reduce the size of the home to something more in keeping with the size and character of other houses in the neighbourhood.

Mike Ertel, 330 Poplar Point Drive:

- His house is on the up-slope as well and his sight line is everything.
- There is no good parking on Poplar Point Drive – nobody moves there for parking. Does not know of anyone on the up-slope with a 4-car garage so the proposed garage seems overly large.
- He demolished and rebuilt 2 years ago and at that time met with the neighbours and made changes to the design to address their concerns.
- It is important to get along with the neighbours.

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Valerie Hallford, 429 Lake Avenue:

- Variances destroy sightlines and quality of life for the neighbours affected.
- Consider the precedent setting aspects of this and deny the variance.

Rod Hazard, applicant:

- The impact on the neighbour's view would not be reduced as a result of the new house.
- The design for the house has already been reduced by about 10%. The house is now 2,700 sq. ft. per floor and only a small office is on the third floor. The house would not be a 3-storey monster.
- Will definitely be planting big trees again.

Moved by Councillor Blanleil/Seconded by Councillor Hobson

R096/06/01/24 THAT further consideration of Development Variance Permit Application No. DVP05-0173; Lot 2, District Lot 219 ODYD Plan 4561 located on Poplar Point Drive, Kelowna, B.C.; be deferred to allow the applicant more time to attempt to reach a compromise with the adjacent neighbour to the south with respect to the variance to the Okanagan Lake Sightline requirement;

AND THAT further consideration of Development Permit No. DP05-0065; Lot 2, District Lot 219 ODYD Plan 4561 located on Poplar Point Drive, Kelowna, B.C.; be concurrent with Council's further consideration of DVP05-0173.

Carried

Mayor Shepherd opposed.

7. REMINDERS – Nil.8. TERMINATION

The meeting was declared terminated at 12:42 a.m.

Certified Correct:_____
Mayor_____
Deputy City Clerk

BLH/am