

Regular MeetingNovember 25, 2008

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, November 25th, 2008.

Council members in attendance: Mayor Sharon Shepherd, Councillors Andre. Blanleil*, Colin Day*, Brian Given, Robert Hobson, Norm Letnick*.

Council members absent: Councillors Barrie Clark, Carol Gran and Michele Rule.

Staff members in attendance were: City Manager, Ron Mattiussi; City Clerk, Stephen Fleming; Director, Land Use Management, Shelley Gambacort and Council Recording Secretary, Sandi Horning.

(* denotes partial attendance)

1. CALL TO ORDER

Mayor Shepherd called the meeting to order at 10:08 p.m.

2. A Prayer was offered by Councillor Given.

3. CONFIRMATION OF MINUTES

Regular Meeting A.M. – October 27, 2008
 Regular Meeting P.M. – October 27, 2008
 Public Hearing – October 28, 2008
 Regular Meeting – October 28, 2008
 Regular Meeting A.M. – November 3, 2008
 Regular Meeting P.M. – November 3, 2008
 Regular Meeting P.M. – November 10, 2008

Moved by Councillor Hobson/Seconded by Councillor Day

R1066/08/11/25 THAT the Minutes of the Regular Meetings of October 27th, 2008 and October 28th, 2008 and November 3rd, 2008 and November 10th, 2008 and the Minutes of the Public Hearings of October 28th, 2008 be confirmed as circulated.

Carried

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

5. BYLAWS CONSIDERED AT PUBLIC HEARING

(BYLAWS PRESENTED FOR SECOND AND THIRD READINGS)

5.01 Bylaw No. 10031 (Z07-0082) – Bruckal Developments Corp. – 443 Christleton Avenue

Councillor Letnick declared a conflict of interest as a family member has a personal relationship with the applicant and left the meeting at 10:09 p.m.

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Moved by Councillor Blanleil/Seconded by Councillor Hobson

R1067/08/11/25 THAT Bylaw No. 10031 be read a second and third time.

Carried

Moved by Councillor Blanleil/Seconded by Councillor Hobson

R1068/08/11/25 THAT final adoption of the Zone Amending Bylaw No. 10031 be considered subsequent to the City's receipt of a letter of undertaking regarding the voluntary building envelope coverage Section 219 covenant from the applicant's lawyer;

AND THAT the Memorandum of Understanding dated November 24, 2008 signed by the applicant and the surrounding neighbours be taken into account when Council deals with any development permit for the subject property;

AND FURTHER THAT final adoption of the Zone Amending Bylaw No. 10031 be considered in conjunction with Council's consideration of a Development Permit and Development Variance Permit on the subject property.

Carried

5.02 Bylaw No. 10103 (Z08-0085) – Lance Pilott – 2260 Wilkinson Street

Councillor Letnick returned to the meeting at 10:11 p.m.

Moved by Councillor Blanleil/Seconded by Councillor Hobson

R1069/08/11/25 THAT Bylaw No. 10103 be read a second and third time.

Carried

5.03 Bylaw No. 10104 (Z07-0062) – Kelly & Clayton Robinson (Peter Chataway) – 3432 Scott Road

Moved by Councillor Blanleil/Seconded by Councillor Hobson

R1070/08/11/25 THAT Bylaw No. 10104 be read a second and third time.

Carried

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- 5.04 Bylaw No. 10105 (Z08-0030) – Paul Warnock – 1220-1222 & 1230 Brookside Avenue

Moved by Councillor Blanleil/Seconded by Councillor Hobson

R1071/08/11/25 THAT Bylaw No. 10105 be read a second and third time.

Carried

- 5.05 Bylaw No. 10107 (Z08-0073) – Colin Day (Lone Pine Estates) – 685 Lone Pine Drive

Councillor Day declared a conflict of interest as he is the registered owner of the subject property and left the meeting at 10:14 p.m.

Moved by Councillor Given/Seconded by Councillor Hobson

R1072/08/11/25 THAT Bylaw No. 10107 be read a second and third time.

Carried

Moved by Councillor Hobson/Seconded by Councillor Letnick

R1073/08/11/25 THAT staff report back to Council with respect to the amount of the current and future park needs for the entire area;

AND THAT staff report back to Council with respect to the upgrades and funding triggers with respect to Toovey Road.

Carried

- 5.06 Bylaw No. 10108 (Z08-0076) – Corey Knorr Construction Ltd. (Protech Consultants Ltd.) – 935 Gibson Road

Councillor Day returned to the meeting at 10:18 p.m.

Moved by Councillor Hobson/Seconded by Councillor Given

R1074/08/11/25 THAT Bylaw No. 10108 be read a second and third time.

Carried

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R1075/08/11/25 THAT staff ensures that a voluntary Restrictive Covenant, agreed to by the applicant, is registered on title to the subject properties that border Graf Road which restricts the building height to one-storey and mitigates any privacy concerns with respect to the abutting properties.

Carried

5.07 Bylaw No. 10110 (Z08-0083) – Jean Tinling – 560 Peck Court

Moved by Councillor Given/Seconded by Councillor Hobson

R1076/08/11/25 THAT Bylaw No. 10110 be read a second and third time.

Carried

5.08 Bylaw No. 10111 (Z08-0093) – Shelley Nicholl-Smith – 1441 Flemish Street

Moved by Councillor Blanleil/Seconded by Councillor Given

R1077/08/11/25 THAT Bylaw No. 10111 be read a second and third time.

Carried

5.09 Bylaw No. 10113 (Z08-0075) – Paula Craig (K. Kingston) – 1870 Maple Street

Moved by Councillor Given/Seconded by Councillor Blanleil

R1078/08/11/25 THAT Bylaw No. 10113 be read a second and third time.

Carried

5.10 Bylaw No. 10114 (OCP08-0023) – School District No. 23, Central Okanagan (MQN Architects) – 4534 Gordon Drive – **Requires a majority of all Members of Council (5)**

Moved by Councillor Blanleil/Seconded by Councillor Given

R1079/08/11/25 THAT Bylaw No. 10114 be read a second and third time.

Carried

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- 5.11 Bylaw No. 10115 (Z08-0089) – School District No. 23, Central Okanagan (MQN Architects) – 4534 Gordon Drive

Moved by Councillor Given/Seconded by Councillor Blanleil**R1080/08/11/25** THAT Bylaw No. 10115 be read a second and third time.CarriedMoved by Councillor Hobson/Seconded by Councillor Letnick

R1081/08/11/25 THAT Council directs staff to provide further information regarding the traffic implications of the entire school site and report back to Council.

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

- 5.12 Bylaw No. 10102 (OCP08-0024) – City of Kelowna – **Requires a majority of all Members of Council (5)**

Moved by Councillor Hobson/Seconded by Councillor Blanleil

R1082/08/11/25 THAT Bylaw No. 10102 be read a second and third time and be adopted.

Carried

- 5.13 Bylaw No. 10112 (Z08-0079) – Sherry & Michael Belanger – 4150 McClain Road

Moved by Councillor Hobson/Seconded by Councillor Blanleil

R1083/08/11/25 THAT Bylaw No. 10112 be read a second and third time and be adopted.

Carried**6. LIQUOR LICENSE APPLICATION REPORTS**

- 6.01 Land Use Management Department, dated October 31, 2008 re: Liquor Licensing Application No. LL08-0005 – 507 Bernard Joint Venture & Western Interior Financial Ltd. (The Grateful Fed) – 509 Bernard Avenue **Mayor to invite anyone in the public gallery who deems themselves affected by the liquor license application to come forward.**

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

- Letters of Opposition:

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- o Carl Maloney, 520 Bernard Avenue

Mayor Shepherd invited the applicant or anyone in the public gallery who deemed themselves affected to come forward, followed by comments of Council.

Kamel Abougoush, Applicant

- Doc Willoughby's patio is open until 1:00 a.m.
- Believes that Rose's is open past midnight as well.
- Currently has a food primary licence and would like a liquor primary licence in order to deal with staffing shortages. If the kitchen cannot open and offer a full menu, then the business has to close down.
- The Liquor Control Licencing Branch has recommended that they apply to stay open until 1:00 a.m., but he intends to close at midnight.
- If there is a situation where he would like to remain open until 1:00 a.m., he will request a special liquor licence.

There were no further comments.

Moved by Councillor Hobson/Seconded by Councillor Blanleil

R1084/08/11/25 THAT In accordance with Section 53 of the Liquor Control and Licensing Regulation and Council Policy 315 be it resolved THAT:

1. Council supports an application from The Grateful Fed located at 509 Bernard Avenue, Kelowna, BC and legally described as Lot A, District Lot 139, ODYD, Plan 36295 to obtain a new liquor primary license for their existing food primary establishment.
2. The Council's comments on the prescribed considerations are as follows:
 - a) The potential for noise if the application is approved remains relatively unchanged, except for the street-level patio space. The proposed closing time should remain midnight on the patio space, as opposed to the 1:00am proposed.
 - b) The impact on the community if the application is approved is considered minimal given that the facility is well established and is outside of the downtown's "yellow zone" as described in Kelowna's Downtown Plan.
 - c) The proposed start to the establishment's hours of sale should remain 10:00am, as opposed to the 9:00am proposed. While the establishment is currently located within a predominantly commercial area, it is anticipated that residential uses will become increasingly common as a component of re-development above the commercial street level. As such, there is concern that early morning liquor-only sales would be detrimental to the perceived character of the area; a perception which will tend to discourage the re-development of more intensive land uses;
3. The Council's comments on the views of residents are as contained within the staff report submitted for consideration and the minutes of the meeting at which the application was considered by Council.

Carried

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- (b) Land Use Management Department, dated October 28, 2008, re: Development Variance Permit Application No. DVP08-0217 – Frank & Carmen Prehofer – 2652 Woodland Crescent **City Clerk to state for the record any correspondence received. Mayor to invite anyone in the public gallery who deems themselves affected the required variance(s) to come forward.**

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

Mayor Shepherd invited the applicant or anyone in the public gallery who deemed themselves affected to come forward, followed by comments of Council. No one came forward.

Moved by Councillor Letnick/Seconded by Councillor Hobson**R1086/08/11/25** THAT Final Adoption of Zone Amending Bylaw No. 10109 be considered by Council;

AND THAT Council authorize the issuance of Development Variance Permit No. DVP08-0217 for Lot 6, Section 16, Township 26, Osoyoos Division Yale District Plan 23034, located at Woodland Crescent, Kelowna, B.C.;

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

Section 11.1.6(a) - Development Regulations – Site Coverage

To vary the maximum allowable site coverage of 10% for residential development to 13.7% proposed.

Carried

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- 7.02 Land Use Management Department, dated October 10, 2008 re: Development Permit Application No. DP08-0222 and Development Variance Permit Application No. DVP08-0223 – 3752 Investments Ltd. (Argus Properties Ltd.) – 1040 Manhattan Drive **City Clerk to state for the record any correspondence received. Mayor to invite anyone in the public gallery who deems themselves affected by the required variance(s) to come forward.**

Councillor Blanleil declared a conflict of interest as he lives across the street from this development and left the meeting at 10:50 p.m.

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

- Letters of Opposition:
 - Waterscapes Homes LP, S. McAllister, 800, 1199 West Hastings Street, Vancouver, BC

Mayor Shepherd invited the applicant or anyone in the public gallery who deemed themselves affected to come forward, followed by comments of Council.

Tim McLennan, CEI Architecture, Applicant's Representative

- The BC Building Code would not consider this building a "high-rise".
- Have provided parking on the site that meets the City's bylaw requirements.
- Due to the parking structure, there will be approximately 4 feet of exposed surface on the site.
- The building is designed for commercial office space with minor amenities on the first floor and on the rooftop.

Moved by Councillor Given/Seconded by Councillor Letnick

R1087/08/11/25 THAT pursuant to Section 5.5 of Council Procedure Bylaw No. 9200, this meeting be permitted to continue past 11:00 p.m.

Carried

Gallery:

Fred Pritchard, Waterscapes Homes Ltd.

- In favour of the concept of the development.
- Would like Council to defer consideration of the Development Permit & Development Variance Permit because:
 - The applicant should be referred to the Area Structure Plan; and
 - Believes that the view angles should be reconsidered.
- Believes that the building can be constructed differently.
- Not concerned with the height of the structure; Concerned with the linear aspect of the building and that the building should conform to the Area Structure Plan.
- The applicant did not consult with Waterscapes Homes Ltd. with respect to this application.
- Would prefer a narrower building.
- There was no contact with the application prior to the Advisory Planning Commission meeting on this matter.

Tim McLennan, CEI Architecture, Applicant's Representative

- On October 17th, prior to the APC meeting, the Neighbourhood Association was consulted and he also attempted to contact the Friends of Brandts Creek.

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Ted Callahan, Applicant

- Personally met with a representative from Ledingham McAllister in the past to discuss the possibility of this development.
- Did have discussions with Ledingham McAllister with respect to the height of the structure.

There were no further comments.

Moved by Councillor Letnick/Seconded by Councillor Given

R1088/08/11/25 THAT Council authorize the issuance of Development Permit No. DP08-0222, Lot B, District Lot 139, ODYD, Plan KAP71362 located at 1040 Manhattan Drive, Kelowna, B.C. subject to the following:

- a) The dimensions and siting of the building to be constructed on the land be in general accordance with Schedule "A";
- b) The exterior design and finish of the building to be constructed on the land be in general accordance with Schedule "B";
- c) Landscaping to be provided on the land be in general accordance with Schedule "C";
- d) 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 FURTHER THAT the applicant be required to complete the above-noted condition (d) within 180 days of Council approval of the development permit application in order for the permit to be issued.

THAT Council authorize the issuance of Development Variance Permit No. DVP08-0223 for Lot B, District Lot 139, ODYD, Plan KAP71362 located at 1040 Manhattan Drive, Kelowna, B.C, subject to:

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

Section 15.1.5 (b) Development Regulations - Height
Vary the height of the proposed office building from 16.0m / 3 storeys permitted to 38m / 8 storeys proposed.

Carried

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

Bylaw No. 10038 (TA07-0007) – P216 Enterprises Ltd. et al (Busby Perkins & Will) – 2970-2974, 2978, 3000, 3006 & 3010 Pandosy Street and 475 Groves Avenue

Councillor Blanleil returned to the meeting at 11:31 p.m.

Regular MeetingNovember 25, 2008Moved by Councillor Hobson/Seconded by Councillor BlanleilR1089/08/11/25 THAT Bylaw No. 10038 be adopted.Carried

- (b) Land Use Management Department, dated October 29, 2008, re: Development Permit Application No. DP07-0261 and Development Variance Permit Application No. DVP08-0212 – P216 Enterprises Ltd. et al (Busby Perkins & Will) - 2970-2974, 2978, 3000, 3006 & 3010 Pandosy Street and 475 Groves Avenue **City Clerk to state for the record any correspondence received. Mayor to invite anyone in the public gallery who deems themselves affected by the required variance(s) to come forward.**

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

- Letters of Support:
 - Dr. Terry & Linda O'Farrell, 2982 Abbott Street
 - Peter Robinson, 862 Montigny Road
 - Brenda Bachmann, 2901 Abbott Street

Mayor Shepherd invited the applicant or anyone in the public gallery who deemed themselves affected to come forward, followed by comments of Council.

David Dove, Busby Perkins & Will, Applicant's Representative

- Gave a presentation to Council regarding the sustainable development.
- Submitted conceptual drawings.
- The building will be LEED Gold certified.

Gallery:

Pete Robertson, 862 Montigny Road

- In favour of the development.

Dave Cullen

- In favour of the development.
- Has worked on the South Pandosy Sector Plan and this helps achieve that plan.
- The success of this building and the success of this neighbourhood is somewhat tied to this variance.
- The City's Transportation Department are requiring road reserves along Pandosy just in case it needs to be widened in the future.
- Believes that the 4-laning of Pandosy will destroy the viability of this neighbourhood.

Steven Bruckal, 446 West Avenue

- In favour of the development.
- Concerned that 4-laning Pandosy will actually run a "highway" through this town centre.

Myles Bruckal, 2420 Abbott Street

- In favour of the development
- Not in favour of 4-laning Pandosy Street.

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- In favour of the development.

Cory Werstuik, 3560 Casorso Road

- Grew up in the neighbourhood and is in favour of this development.

Stacey Fenwick

- Read aloud correspondence from Dr. Gord Lovegrove in support of the development.
- Read aloud correspondence from Tarynn Parker in support of the development.
- Read aloud correspondence from Manuella Farnsworth in support of the development.
- Read aloud correspondence from Jamie Maw in support of the development.
- Does plan on living in the development.
- Is opposed to 4-laning Pandosy Street.

Ed Fenwick

- Opposed to 4-laning Pandosy Street.

There were no further comments.

Moved by Councillor Letnick/Seconded by Councillor Given

R1090/08/11/25 THAT Final Adoption of Zone Text Amending Bylaw No. 10038 be considered by Council;

AND THAT Council authorize the issuance of Development Permit No. DP07-0261 for Lot A, DL 14, O.D.Y.D., Plan 4645 Exc. Plan KAP 59138; Lot B, DL 14, O.D.Y.D., Plan 4645 Exc. Plan KAP 59433; Lot C, DL 14, O.D.Y.D., Plan 4645; The N ½ Lot 19, DL 14, O.D.Y.D., Plan 2708 Exc. Plan KAP 59386; Lot 2, Sec. 13, Twp. 25, O.D.Y.D., Plan 4373 Exc. Plan KAP 59139; Strata Lots 1 & 2, Sec. 13, Twp. 25, O.D.Y.D., Strata Plan KAS2226 together with an interest in the common property in proportion to the unit entitlement of the strata lot as shown on Form 1; Lot 1, DL 14, O.D.Y.D., Plan 3226 Exc. Plan KAP 59400, located on Pandosy Street & 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;
5. The applicant be required to execute a suitable Housing Agreement for Affordable housing;
6. The applicant registering a plan of subdivision at the Land Titles Office for the consolidation of the subject properties and dedication of required road widenings

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.

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AND THAT Council authorize the issuance of Development Variance Permit No. DVP08-0212; Lot A, DL 14, O.D.Y.D., Plan 4645 Exc. Plan KAP 59138; Lot B, DL 14, O.D.Y.D., Plan 4645 Exc. Plan KAP 59433; Lot C, DL 14, O.D.Y.D., Plan 4645; The N ½ Lot 19, DL 14, O.D.Y.D., Plan 2708 Exc. Plan KAP 59386; Lot 2, Sec. 13, Twp. 25, O.D.Y.D., Plan 4373 Exc. Plan KAP 59139; Strata Lots 1 & 2, Sec. 13, Twp. 25, O.D.Y.D., Strata Plan KAS2226 together with an interest in the common property in proportion to the unit entitlement of the strata lot as shown on Form 1; Lot 1, DL 14, O.D.Y.D., Plan 3226 Exc. Plan KAP 59400, located on Pandosy Street & Groves Avenue, Kelowna, B.C.;

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

Section 14.4.5(b) Development Regulations – vary maximum site coverage from 75% permitted to 77% proposed,

Section 14.4.5(c) Development Regulations – vary maximum building height from 25.0m or 7 storeys permitted to 36.5 m or 11 storeys proposed.

Carried

- 7.04 (a) Land Use Management Department, dated November 14, 2008, re: Development Permit Application No. DP08-0215 – Springfield Plaza Inc. (Chances Gaming Entertainment) – 1585 Springfield Road
- (b) Land Use Management Department, dated October 31, 2008, re: Development Variance Permit Application No. DVP08-0216 – Springfield Plaza Inc. (Chances Gaming Entertainment) – 1585 Springfield Road **City Clerk to state for the record any correspondence received. Mayor to invite anyone in the public gallery who deems themselves affected by the required variance(s) to come forward.**

Councillor Day declared a conflict of interest as a direct family member owns an adjacent property and left the meeting at 12:17 a.m.

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

Mayor Shepherd invited the applicant or anyone in the public gallery who deemed themselves affected to come forward, followed by comments of Council. No one came forward.

Moved by Councillor Given/Seconded by Councillor Letnick

R1091/08/11/25 THAT Council authorize the issuance of Development Permit No. DP08-0215 for Lot A, District Lot 129, ODYD, Plan KAP70110, located 1585 Springfield 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";

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3. Landscaping to be provided on the land be in general accordance with Schedule "C";

AND THAT issuance of the Development Permit be considered in conjunction with Council's consideration of a Development Variance Permit on the subject property;

CarriedMoved by Councillor Given/Seconded by Councillor Letnick

R1092/08/11/25 THAT Council authorize the issuance of Development Variance Permit No. DVP08-0216, Lot A, District Lot 129, ODYD, Plan KAP70110, located at 1585 Springfield Road

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

Section 17 - Schedule 'B' - CD16 (Bingo and Gaming) - Section 1.4(e):
To vary the side yard setback from 15.0m required to 1.5m proposed.

Section 17 - Schedule 'B' - CD16 (Bingo and Gaming) - Section 1.4(f):
To vary the rear yard setback from 21.0m required to 1.0m proposed.

Carried

- 7.05 Land Use Management Department, dated October 31, 2008 re: Development Variance Permit Application No. DVP08-0102 – Juliana Wilgar (RLJ Homes Inc.) – 3909 Bluebird Road **City Clerk to state for the record any correspondence received. Mayor to invite anyone in the public gallery who deems themselves affected by the required variance(s) to come forward.**

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

Mayor Shepherd invited the applicant or anyone in the public gallery who deemed themselves affected to come forward, followed by comments of Council. No one came forward.

Councillor Day returned to the meeting at 12:20 a.m.

Moved by Councillor Hobson/Seconded by Councillor Given

R1093/08/11/25 THAT Council authorize the issuance of Development Variance Permit No. DVP08-0102 for Lot 1 Section 1 Township 25 Osoyoos Division Yale District Plan 3527 located at 3909 Bluebird Road, Kelowna, B.C.

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

Section 13.1.6 (c) Development Regulations - Front Yard Set Back
Vary the front yard setback from 6.0 m to 0.8 m proposed.

Section 13.1.6 (d) Development Regulations – Side Yard Set back

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Vary the side yard setback from 2.3 m required to 0.2 m proposed.

Section 13.1.6 (e) Development Regulations – Back Yard Setback

Vary the rear yard setback from the 4.5 m required to 1.0 m proposed.

Carried

8. REMINDERS

9. TERMINATION

The meeting was declared terminated at 12:21 a.m.

Certified Correct:

Mayor

City Clerk

SLH/sb