

Regular MeetingOctober 16, 2012

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, October 16, 2012.

Council members in attendance: Mayor Walter Gray, Councillors Colin Basran, Andre Blanche, Maxine DeHart, Gail Given, Robert Hobson, Mohini Singh, Luke Stack and Gerry Zimmermann.

Staff members in attendance were: City Manager, Ron Mattiussi; Deputy City Clerk, Karen Needham; Director, Land Use Management, Shelley Gambacort*; Manager, Sport & Event Development, Don Backmeyer* and Council Recording Secretary, Sandi Horning.

(* denotes partial attendance)

1. CALL TO ORDER

Mayor Gray called the meeting to order at 6:02 p.m.

2. PRAYER

A Prayer will be offered by Councillor Singh.

3. CONFIRMATION OF MINUTES

Public Hearing - October 2, 2012
Regular Meeting - October 2, 2012

Moved by Councillor Basran/Seconded by Councillor Stack

R930/12/10/15 THAT the Minutes of the Public Hearing and Regular Meeting of October 2, 2012 be confirmed as circulated.

Carried

4. THE CITY CLERK WILL PROVIDE INFORMATION AS TO HOW THE FOLLOWING ITEMS ON THE AGENDA WERE PUBLICIZED.

The Deputy City Clerk advised that Notice of the amendments to the Liquor Primary Licences were advertised by being posted on the Notice Board at City Hall on October 3, 2012 and by being placed in the Kelowna Capital News issues on October 5, 2012 and October 9, 2012, and by sending out or otherwise delivering 1,631 letters to the owners and occupiers of surrounding properties between September 28, 2012 and October 5, 2012.

Notice of Council's consideration of these Development Variance Permit Applications was given by sending out or otherwise delivering 1,575 letters to the owners and occupiers of surrounding properties between September 28, 2012 and October 5, 2012.

The correspondence and/or petitions received in response to advertising for the applications on tonight's Agenda were arranged and circulated to Council in accordance with Council Policy No. 309.

5. LIQUOR LICENSE APPLICATION REPORTS

- 5.1 Land Use Management Department, dated September 27, 2012 re: Liquor Licensing Application No. LL11-0010 - City of Kelowna - 645 Dodd Road Mayor to invite anyone in the public gallery who deems themselves affected by the liquor license application to come forward.

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

- o Letters of Opposition:
 - Judy Shoemaker, School District No. 23
 - Colleen & Brian Elder, 690 Richards Road

Staff:

- Advised that he spoke with Judy Shoemaker at School District No. 23 regarding the School District's letter and confirmed with Mrs. Shoemaker that liquor service would not be available during school hours.
- Confirmed that the intention is to only have liquor available during the Kelowna Chief's hockey games and on select weekends when there are adult hockey games or tournament.
- Responded to questions from Council.

Mayor Gray 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 Basran/Seconded by Councillor Blanteil

R931/12/10/16 THAT in accordance with Section 53 of the *Liquor Control and Licensing Regulation* and Council Policy #359, be it resolved that:

Council's comments on the Liquor Control & Licensing Branch (LCLB)'s prescribed considerations for the application from at 645 Dodd Road, Kelowna BC, (legally described as Lot 1 Section 26 Township 26 Osoyoos Division Yale District Plan KAP91112) for a new Liquor Primary License, are as follows:

- a) **The proximity of the establishment to other social or recreational facilities and public buildings:**
The Rutland Arena is located within a 14.5 ha District Park.
- b) **The person capacity and hours of liquor service of the establishment:**
The total person capacity proposed for liquor primary service is 717 (Grandstands) and 224 (West Lobby). The proposed hours of liquor service of the establishment will be Sunday to Thursday, 11:00 am to 11:00 pm and Friday and Saturday, 12:00 pm - 12:00 am. The liquor service will be events driven and in accordance with LCLB and can only occur between the range of hours noted and the closing hours will be 20 minutes before the end of each Junior "B" game. This is deemed appropriate due to early end time and Junior "B" schedule.
- c) **The number and market focus or clientele of liquor primary license establishments within a reasonable distance of the proposed location:**
There are no other facilities with a similar focus in the area.

- d) **The impact of noise on the community in the immediate vicinity of the establishment:**
No increase in noise is expected given the current land uses.
- e) **The impact on the community if the application is approved:**
The potential for negative impacts is considered to be minimal given the current land uses.
- f) **The view of residents:**
The Council's comments on the view of residents (if applicable) are as contained within the minutes of the meeting at which the application was considered by Council. The methods used to gather views of residents were as per Council Policy No. 315 "Liquor Licensing Procedures - Liquor Primary and Retail Liquor Sales".
- g) **Recommendation:**
Council recommends that the application for a new liquor primary license for the Rutland Arena location at 645 Dodd Road be approved.

Carried

6. DEVELOPMENT PERMIT AND DEVELOPMENT VARIANCE PERMIT REPORTS

- 6.1 Bylaw No. 10733 (Z12-0048) - 4G Developments Ltd. (Robert Gaspari) - 2463 and 2473 Pandosy Street

Staff:

- Confirmed that there was a Stop Work Order issued against the property on September 14, 2012. The purpose of the Stop Work Order is to prevent work on the property from continuing until such time as Council has granted the necessary approvals for rezoning or development.
- Confirmed that the construction commenced after third reading of the applicable Zone Amending Bylaw.
- Responded to questions from Council.

City Manager:

- Confirmed that if a property owner and/or applicant proceeds without the necessary approvals in place, they do so at their own risk.

Moved by Councillor Stack/Seconded by Councillor Given

R932/12/10/16 THAT Bylaw No. 10733 be adopted.

Carried
Councillor Singh - Opposed.

- 6.1.1 Bylaw No. 10732 - Housing Agreement Authorization Bylaw - 4G Developments Ltd. - 2463 and 2473 Pandosy Street

Moved by Councillor Hobson/Seconded by Councillor Singh

R933/12/10/16 THAT Bylaw No. 10732 be adopted.

Carried
Councillor Singh - Opposed.

- 6.1.2 Land Use Management Department, dated September 19, 2012 re: Development Permit Application No. DP12-0059 and Development Variance Permit Application No. DVP12-0124 - 4G Developments Ltd. (Robert Gaspari) - 2473 Pandosy Street 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 Deputy City Clerk advised that the following correspondence and/or petitions had been received:

- o Additional Information:
 - Package of additional information submitted by Matthew Barlow, Jose Corbo, Joon Kim, Jim Cooke, Horia Barbaza, Teresa Jackson and James Corkin including a letter of opposition, photos showing work that had started on the property and the associated stop work order and photographs of the existing neighbourhood.

Mayor Gray invited the applicant or anyone in the public gallery who deemed themselves affected to come forward, followed by comments of Council. The Applicant was not present in the gallery.

Gallery:

Jim Cooke, 548 Francis Avenue

- Advised that he is making the presentation on behalf of himself and the adjacent neighbours to 2463 Pandosy Street.
- Advised that he is opposed to the variance by way of a matter of procedure and protocol.
- Would prefer to see two (2) nice carriage homes on the site.
- Would prefer that the property owner/applicant abide by the City's Bylaws.
- Expressed a concern that a precedent is being set by Council by approving the rezoning and granting the requested variances.
- Expressed a concern with traffic and safety in the area.
- Commented on the Stop Work Order and the fact that the property owner/applicant commenced construction two (2) days following the Public Hearing.

Staff:

- Clarified the reason for the variance being requested. A side yard has become a rear yard with the consolidation of the two (2) lots.
- Confirmed that the new structure does not require any variances, just the existing structure.
- Confirmed that that the subject property does comply with the future land use designation, being Multiple Residential-Low Density.

There were no further comments.

Moved by Councillor Hobson/Seconded by Councillor Zimmermann

R934/12/10/16 THAT final adoption of Zone Amending Bylaw No. 10733 be considered by Council;

AND THAT Council authorize the issuance of Development Permit No. DP12-0059 for Lot 1, District Lot 14, ODYD Plan EPP23030, located on Pandosy Street, Kelowna, BC, 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 and the site Tree Protection Plan 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 the applicant be required to complete the above-noted condition No. 4 within 180 days of Council approval of the Development Permit application in order for the permit to be issued;

AND THAT Council authorizes the issuance of Development Variance Permit No. DVP12-0124, for Lot 1, District Lot 14, ODYD Plan EPP23030, located on Pandosy Street, Kelowna, BC;

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

Section 13.9.6(f) Development Regulations (RM3 - Low Density Multiple Housing):

To vary the required rear yard from 7.5m permitted to 3.5m proposed.

Carried

- 6.2 Land Use Management Department, dated September 20, 2012 re: Development Variance Permit Application No. DVP12-0139 - Kenneth Scott Hannan (Mullins Drafting and Design) - 4962 Lakeshore 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.

Deputy City Clerk:

- Advised that there was a clerical error on the Agenda, the address of the subject property is 4962 Lakeshore Road not 4963 Lakeshore Road.

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

Mayor Gray invited the applicant or anyone in the public gallery who deemed themselves affected to come forward, followed by comments of Council. The Applicant was present, but did not have anything further to add to staff's comments.

Gallery:

Shonna Fox, 4968 Lakeshore Road

- Displayed photos of the subject property from her property.
- Advised that she was surprised at the height of the structure and that there were no permits issued for the construction of the garage or retaining wall.
- Feels that the structure towers over her property.

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- Expressed a concern with the height of retaining wall and the fact that the applicant is asking for a variance for a structure that has already been constructed.
- Expressed a concern with the fencing and the retaining wall as debris has been falling into her property.
- Advised that she was not approached by the property owner, contractor, or applicant, regarding the construction of the garage and/or retaining wall.
- Advised that she did question the contractor regarding the construction and was advised that a garage was being constructed, but there was no mention of the height or the retaining wall.
- Advised that, to her knowledge, the owner of the property only resides in the property during the summer months.
- Advised that her husband had already painted the concrete wall to help soften the "ugliness".
- Would like to see some landscaping or "something" to mitigate the look of the retaining wall and fence.

Staff:

- Confirmed that there would still be a variance required for the fence, whether or not it was on top of the retaining wall.
- It is staff's understanding that the second structure is strictly a garage, with some work space, and is not a carriage house.
- Clarified the Development Engineering Branch's comments as contained in the Report to Council.

Lee Mullins, Applicant's Representative

- Explained the reason why there is now a second storey on the garage when the permit was only for a single-storey garage.
- Advised that the property owner was completely unaware of the infractions with respect to the necessary permitting required for the structure.
- Advised that he did canvas the neighbourhood, unfortunately neither Mr. nor Mrs. Fox were home at the time.
- Confirmed that he designed the structure.
- Believes that the homeowner would be willing to do whatever it takes to mitigate the look of the retaining wall and fence abutting Mrs. Fox's property.

There were no further comments.

Moved by Councillor Given/Seconded by Councillor Basran

R935/12/10/16 THAT Council authorizes the issuance of Development Variance Permit No. DVP12-0139, for Lot 3, Section 26, Township 28, SDYD Plan 4493, Except Plan 13503 located on Lakeshore Road, Kelowna, BC;

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

Section 12.2.6(b) Development Regulations:

To vary the height of an accessory building from 4.5m permitted to 6.65m proposed.

Section 7.5.9 Fencing and Retaining Walls:

To vary the total height of a retaining wall 1.2m permitted to 2.4 m proposed.

Section 7.5.12 Fencing and Retaining Walls:

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To vary the maximum height of a retaining wall with a fence from 3.0m permitted to 4.2m proposed.

AND FURTHER THAT the issuance of the Development Variance Permit be withheld pending the requirements of the Environmental Land Use branch being satisfied, a submission of a Building Permit application, and an agreement between the property owner of 4962 Lakeshore Road and the property owner of 4968 Lakeshore Road with respect to a plan to mitigate the impact of the fence and retaining wall.

Carried

- 6.3 Land Use Management Department, dated September 20, 2012 re: Development Variance Permit Application No. DVP12-0161 - Denis Roger Bertrand & Louise Lucille Georget (Denis & Louise Bertrand) - 1019 Guisachan 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 Deputy City Clerk advised that no correspondence and/or petitions had been received.

Mayor Gray invited the applicant or anyone in the public gallery who deemed themselves affected to come forward, followed by comments of Council. The Applicant was present, but did not have anything further to add to staff's comments. No one came forward.

Moved by Councillor Zimmermann/Seconded by Councillor Blanleil

R936/12/10/16 THAT Council authorizes the issuance of Development Variance Permit No. DVP12-0161, for Lot B, District Lot 136, ODYD Plan 38183, located on Guisachan Road, Kelowna, BC;

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

Section 13.1.6(d) Development Regulations:

To vary the required west side yard setback from 2.0m required to 1.2m proposed, as per schedule "A".

Carried

- 6.4 Land Use Management Department, dated September 20, 2012 re: Development Variance Permit Application No. DVP12-0166 - Palin Developments Ltd. (Gary Lupul) - 681 Burne 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 Deputy City Clerk advised that no correspondence and/or petitions had been received.

Mayor Gray invited the applicant or anyone in the public gallery who deemed themselves affected to come forward, followed by comments of Council. The Applicant was not present in the gallery. No one came forward.

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Moved by Councillor Stack/Seconded by Councillor Given

R937/12/10/16 THAT Council authorizes the issuance of Development Variance Permit No. DVP12-0166 for Lot 8, District Lot 14, ODYD, Plan 635, located at 681 Burne Avenue, Kelowna, BC;

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

Section 6.4.1: Projections into Yards

To vary the maximum permitted projection into a required yard from 0.6 m permitted to 1.52 m proposed. (See Schedule A).

Section 8.1.11(a): Off-Street Vehicle Parking - Parking Space Size

To vary the number of required parking spaces that may be of a shorter length from 40% permitted to 50% proposed. (See Schedule A).

Carried

7. REMINDERS - Nil.

8. TERMINATION

The meeting was declared terminated at 7:18 p.m.

Certified Correct:

Mayor

SLH/dld

K. Sedham

Deputy City Clerk