

MINUTES of a regular meeting of COMMITTEE OF THE WHOLE of the Municipal Council of The Corporation of the District of Oak Bay, held in the Council Chambers, Oak Bay Municipal Hall, 2167 Oak Bay Avenue, Oak Bay, B.C., on Monday, May 2, 2011 following a Special Council meeting at 7:30 p.m.

PRESENT: Acting Mayor, H. Braithwaite, Chairman  
Councillor A. R. Cassidy  
Councillor J. D. Herbert  
Councillor N. B. Jensen  
Councillor T. Ney  
STAFF: Municipal Administrator, M. Brennan  
Municipal Clerk, L. Hilton  
Confidential Secretary, K. Green  
Director of Building and Planning, R. Thomassen  
Director of Engineering Services, D. Marshall

Acting Mayor Braithwaite called the meeting to order at 7:39 p.m.

LAND USE SECTION: (Chairman – Councillor Cassidy)

1. 2011-155 DIRECTOR OF BUILDING AND PLANNING, April 7, 2011  
Re Development Variance Permit Application – 2573 Epworth Street

The Director of Building and Planning provided an overview of the proposed variances being requested as detailed in correspondence item no. 2011-155.

Responding to a comment from the Committee that there appears to be enough space on the property to create a second parking space, Harris Gilmore, applicant, said that although it would be possible to provide a second parking space, doing so would affect the extensive gardens that have been created.

Although the view was expressed by a member of the Committee that creating more green space was desirable, the view was also expressed that granting the variance when there was no physical limitation on the property to meet the regulations was not supportable.

MOVED by Councillor Jensen

Seconded by Councillor Ney, That a resolution authorizing the Director of Building and Planning to issue a development variance permit with respect to 2573 Epworth Street, as outlined in correspondence item no. 2011-155, be prepared and brought forward to Council for consideration.

DEFEATED

*(Acting Mayor Braithwaite, Councillors Cassidy and Herbert against the motion)*

2. 2011-156 DIRECTOR OF BUILDING AND PLANNING, April 13, 2011  
Re Development Variance Permit Application – 1534 Hampshire Road

As requested, the Director of Building and Planning provided an overview of the proposed variances being requested as outlined in correspondence item no. 2011-156.

MOVED by Councillor Jensen

Seconded by Councillor Herbert, That a resolution authorizing the Director of Building and Planning to issue a development variance permit with respect to 1534 Hampshire Road, as outlined in correspondence item no. 2011-156, be prepared and brought forward to Council for consideration.

CARRIED

3. 2011-157 DIRECTOR OF BUILDING AND PLANNING, April 8, 2011  
Re Uplands Building Permit and Development Variance Permit  
Amendment Application – 3205 Exeter Road

The Director of Building and Planning provided an overview of the proposed modifications to the previously approved plans for renovations at 3205 Exeter Road as detailed in correspondence item no. 2011-157.

MOVED by Councillor Herbert

Seconded by Councillor Jensen, That it be recommended to Council that the plans for the additions to the existing dwelling at 3205 Exeter Road be approved as to siting and architectural design, subject to the issuance of a development variance permit to amend DVP #49-2009, and further that a resolution authorizing the issuance of a development variance permit as outlined in correspondence item no. 2011-157, be prepared and brought forward to the next meeting of Council for consideration.

CARRIED

4. 2011-158 DIRECTOR OF BUILDING AND PLANNING, April 13, 2011  
Re Uplands Building Permit and Development Variance Permit  
Application – 3140 Beach Drive

The Director of Building and Planning provided an overview of the proposed construction of a new single family dwelling, as detailed in correspondence item no. 2011-158, noting that four Garry Oak trees, within the building envelope, would be removed to accommodate a parkade and the sunken patio and water feature would involve an additional two Garry Oak trees being removed.

Various aspects of the proposed development were discussed including siting of the proposed house compared to the neighbouring properties and privacy issues. Concerns were expressed that six Garry Oak trees would be removed to accommodate the project, which is not in keeping with Council's mandate to maintain a park like setting in the Uplands neighbourhood. The height of the retaining wall was also questioned.

Responding to some of the concerns raised, David Yamamoto, Designer, explained that the development is actually about 3,000 square feet less than what is permitted to be built on a lot of this size, adding that the design, the detail of the building, the siting of the development, and the underground parking will maximize the southerly exposure and the privacy for the owners and the neighbours, as well as being aesthetically pleasing from the street view.

Mr. Yamamoto commented that without the underground parking garage Garry Oak trees would still need to be removed to accommodate the two car garage above ground.

With respect to the retaining wall, Mr. Yamamoto agreed it is high, but noted that in this case it would be situated adjacent to the sunken patio and would be mitigated by the curvature of the wall and stairs, adding that it would be seen only by the homeowners.

On the topic of trees, Mr. Yamamoto said that the landscape design includes significant plantings above the underground garage and that replacement trees would be planted elsewhere on the property to replace the Garry Oaks slated for removal.

Following further discussion and varying views with respect to the plans being noted, it emerged that some members of the Committee felt the design and the siting of the proposed development was supportable, while others expressed concern regarding certain aspects of the

proposal, saying they would prefer to see the Garry Oak trees protected and it was suggested that there may be different siting options to accomplish this, such as moving the parkade under the house.

MOVED by Councillor Ney

Seconded by Councillor Herbert, That it be recommended to Council that the plans to construct a new residential dwelling at 3140 Beach Drive be approved as to siting and architectural design, subject to the issuance of a development variance permit, and further that a resolution authorizing the issuance of a development variance permit as outlined in correspondence item no. 2011-158, be prepared and brought forward to the next meeting of Council for consideration.

There was additional discussion on the removal of trees required in relation to the proposed siting of the buildings, and it was noted that there is no requirement under the Tree Protection Bylaw to replace trees removed from within the building envelope, although Mr. Yamamoto indicated those removals could be replaced with Garry Oak trees elsewhere on the property.

There was further discussion on the visual impact of the retaining wall with the view being expressed that it could be further softened.

The question was then called.

DEFEATED

*(Acting Mayor Braithwaite, Councillors Cassidy and Jensen against the motion)*

5. 2011-159 DIRECTOR OF BUILDING AND PLANNING, April 12, 2011  
Re Uplands Building Permit Application – 3175 Ripon Road

The Director of Building and Planning advised that the applicants wished to allow more light into the home by adding five new windows.

MOVED by Councillor Herbert

Seconded by Councillor Jensen, That it be recommended to Council that the plans for the addition of five new windows at 3175 Ripon Road be approved as to siting and architectural design.

CARRIED

6. 2011-160 DIRECTOR OF BUILDING AND PLANNING, April 12, 2011  
Re Uplands Building Permit Application – 3165 Sherringham Place

Will Peereboom, Designer, and Illarian Gallant, Landscape Designer, were in attendance to speak to the application and Mr. Peereboom provided an overview of the plans to construct a new residential dwelling. Referring to the professional Arborist's report and landscape plan (attached to correspondence item no. 2011-160), Mr. Gallant identified the five Garry Oak trees that would need to be removed to accommodate the construction, noting the trees are in decline.

Responding to a comment on the significant amount of paved surface around the north side of the property to access the shop, Mr. Peereboom noted that although the paved surface could be reduced, the homeowner requested the hard surfacing to accommodate bringing supplies around to the shop for large woodworking projects, and he agreed that a permeable material could be used to satisfy potential drainage concerns.

During a site visit to the property, a member of the Committee said he observed that the proposed paved surface would be visible only to the homeowners and would be considered a working space for the homeowner's woodworking projects. He added that it would be easy enough to use a permeable surface should that be considered.

MOVED by Councillor Herbert

Seconded by Councillor Jensen, That it be recommended to Council that the plans to construct a new residential dwelling at 3165 Sherringham Place be approved as to siting and architectural design.

CARRIED

7. 2011-161 DIRECTOR OF BUILDING AND PLANNING, April 14, 2011  
Re Uplands Building Permit Application – 3025 Cadboro Bay Road

Don McCarthy, applicant, advised that he has altered the previously approved design of the garage to allow more sun into his yard. Mr. McCarthy confirmed that the neighbour who had previously expressed concern about the development has been made aware of the proposed change to the plans being requested.

MOVED by Councillor Herbert

Seconded by Councillor Ney, That it be recommended to Council that the revised plans to construct a new garage at 3025 Cadboro Bay Road be approved as to siting and architectural design.

CARRIED

8. 2011-168 DIRECTOR OF BUILDING AND PLANNING, April 26, 2011  
Re Development Variance Permit Application – 2061 Cedar Hill Cross Road

Carl Gustafson, applicant, provided an overview of the variances being requested to accommodate a greenhouse being built on the second level on the flat roof above the family room of his house. Mr. Gustafson said he would consider the addition more as an accessory structure than increased floor area, as it is defined by the Zoning Bylaw, in that it would not be used as liveable space. He noted there is no suitable area in the backyard for gardening due to the shade and poor drainage.

MOVED by Councillor Jensen

Seconded by Councillor Ney, That a resolution authorizing the Director of Building and Planning to issue a development variance permit with respect to 2061 Cedar Hill Cross Road, as outlined in correspondence item no. 2011-168, be prepared and brought forward to Council for consideration.

CARRIED

9. 2011-169 DIRECTOR OF BUILDING AND PLANNING, April 27, 2011  
Re Development Variance Permit Application – 388 King George Terrace

With respect to the development variance permit application, the Director of Building and Planning gave a brief overview of the variance being requested, noting that the homeowners wish to construct an addition to the rear of the existing dwelling to accommodate a new master bedroom, ensuite and exterior storage space beneath the proposed addition, as outlined in correspondence item no. 2011-169.

MOVED by Councillor Jensen

Seconded by Councillor Herbert, That a resolution authorizing the Director of Building and Planning to issue a development variance permit with respect to 388 King George Terrace, as outlined in correspondence item no. 2011-169, be prepared and brought forward to Council for consideration.

CARRIED

10. 2011-99 MUNICIPAL ADMINISTRATOR, April 14, 2011
  - 2011-170 ALAN LUPIN, April 21, 2011
  - 2011-170-1 EWA LUPIN, April 21, 2011
  - 2011-170-2 BARBARA JULIAN, April 26, 2011
  - 2011-170-3 BRONWYN TAYLOR, April 27, 2011
  - 2011-170-4 JOAN HEAGLE, April 27, 2011
  - 2011-170-5 JEAN SPARKS, April 28, 2011
  - 2011-170-6 MARION CUMMING, April 28, 2011
  - 2011-170-7 MARGARET PALMER, April 28, 2011
- Re Proposed Heritage Revitalization Agreement – 2031 Runnymede Avenue

Attention was drawn to various pieces of correspondence received regarding the proposed Heritage Revitalization Agreement that questioned the ability of Council to enter into a Heritage Revitalization Agreement, and the Municipal Administrator confirmed Council's authority to enter such an agreement, noting that the template used for the currently proposed agreement is one well accepted by other local governments. The agreement, he said, was reviewed by the District's solicitors.

It was noted that not everyone who wished to had a chance to speak when the issue was last before the Committee and there was consensus to continue on with public input on the application at this time.

Michael Velletta, Oak Bay resident and lawyer, noted he was in attendance to speak on behalf of himself and his neighbours. He noted his concern that the proposed agreement did not prohibit further future subdivision, which should not be an onerous condition for the applicants, and said that, as written, the agreement provides modest benefit to the community but financial gain to the applicants. Mr. Velletta noted that the terms of the agreement have to be agreed to by both parties, urging Council to ensure that appropriate conditions are included.

Mr. Velletta turned his comments to the proposed garden building, saying that in his view, the plans for any future buildings should be included at this point in the process as part of the agreement.

Staff answered questions from Council in respect to comments made by Mr. Velletta.

Susan Hyatt, Oak Bay resident, noted her opposition to the Heritage Revitalization Agreement, saying that the property should not be subdivided. Ms. Hyatt drew attention to how landscaping of a heritage property provides context and adds to the grace, balance and space around a house, such as is the case with 2031 Runnymede. Ms. Hyatt warned Council that once the property is subdivided, the opportunity to restore the original property is forever eliminated.

Ms. Hyatt voiced her disappointment that the proposed agreement does not address interior features, saying that Council should ensure there are not special interior elements that should be preserved.

Ms. Hyatt went on to say that Council has not fulfilled its obligation to ensure there are no other alternatives to the Heritage Revitalization Agreement, and raised concerns about the enforcement of the terms of the agreement along with concerns about the precedent entering into the agreement would set within the community.

In closing, Ms. Hyatt said she would prefer to see the applicants love the house enough to buy it without subdivision or have the owners list the house and sell it to someone willing to restore it without subdivision.

Pat Wilson, Oak Bay resident, said she understands that the proposed agreement is intended to ensure protection of the house, noting that such agreements are wonderful protection tools and that she would support the use of a Heritage Revitalization Agreement in a different situation. In the case at hand, she said, the land itself is also designated heritage and it provides green space and openness around the house. Subdivision is, in essence, heritage designation removal, she said.

Ms. Wilson drew attention to the recent Town Hall meeting, saying there was a clear message that the Official Community Plan needs to be reviewed, saying that a decision on this Heritage Revitalization Agreement should be delayed until there has been community discussion on the issue of the subdivision of large heritage properties in general.

Michael McGhee, Oak Bay resident, said he agreed with many of the points made by previous speakers. He raised concerns about the variances included in the agreement which did not seem to be tied to specific plans for a new garden building, and also reiterated concerns regarding ensuring the ongoing maintenance of the house.

The heritage designation of the land and building should be preserved, he said, saying the proposed agreement does not do that, although it was confirmed by staff that the proposal would see the heritage designation remain on the new lot.

The Municipal Administrator confirmed that the variances included in the agreement are in relation to the plans attached to the agreement and that optional future work is set out in the agreement as well.

Frank D'Ambrosio, Oak Bay resident and Architect, said he could provide an objective view as he is used to being flexible in his line of work. The proposed agreement would alter the fabric of the community, he said, noting that the garden provides an important void to the area, and is just as important or even more important than the house, as the house could be rebuilt in the original style, but the void the garden provides could not be replaced.

Mr. D'Ambrosio commented that the consideration of heritage issues in the community demonstrates the community's passion in this regard, noting that Council is responsible for respecting, honouring and preserving history, urging Council not to let this one go.

Terry Sherwood, Oak Bay resident, said he owns a house in the cluster of other heritage properties along with Blair Gowie. He drew attention to the development in the City of Victoria at the border with Oak Bay, citing it as an undesirable example of what can happen in Oak Bay as well. The proposal before the Committee is highly problematical, he said, noting that no concern seems to be shown for the garden. The applicant, he noted, bought the house across the street from Blair Gowie, subdividing it into three lots.

Mr. Sherwood urged the Committee to look at the broader history of the area when considering the application before it.

Valerie Murray, Oak Bay resident, noted that Ms. Ellis went to a lot of trouble to have the house and land designated in the first place. The garden, she said, is more than empty space, although it is not as beautiful as it once was, and it was given as a gift with the house. Ms. Murray said that once new houses are built you cannot go back. Those that offered designation of both the land and house felt that it was about more than just the house, she said.

John Simson, representative of the Ellis family, provided an overview of the history of events that led to the submission of an application for subdivision of the land through the proposed Heritage Revitalization Agreement, noting that there has been a lot of misinformation circulating in the community that he wanted to clear up.

Mr. Simson noted that prior to Ms. Ellis passing away, she was involved with the family discussions on what action to take with the property, which led to meetings with realtors with respect to selling the house. Mr. Simson confirmed that Ms. Ellis was well aware of the costs of maintaining the house and having it restored, and that she entered into the agreement with Mr. Wilkin and Ms. Hillyer.

With respect to the other offer to purchase that had been referred to in various letters to Council from the public, Mr. Simson acknowledged that there had been some communication with a potential purchaser, however, the Ellis family was already bound by an agreement with the current applicants.

Mr. Simson reviewed the size of the various buildings on the property that are not designated heritage and would be removed through the proposed agreement, noting that any new buildings would require Council approval for design and siting prior to construction. The idea of converting the main house into suites, he said, was never proposed by the applicants, but by the Oak Bay Heritage Committee. Suites, said Mr. Simson, would add further to traffic congestion, parking issues and noise versus the two single family homes that would result from the proposed subdivision.

Various components of the proposed agreement were outlined, and Mr. Simson, in closing, said that Ms. Ellis's daughters supported their mother and feel that her desires could be achieved through the current proposal.

Stephan Opalski, Oak Bay resident, indicated he had made the offer to purchase Blair Gowie based on information he had at the time, and had been advised by Mr. Simson that the family could not consider any new offers at that time as they had an accepted offer already.

Bruce Wilkin, applicant, provided an overview of the plans included in the proposed Heritage Revitalization Agreement, as well as various photographs of the existing buildings on the property. He drew attention to conceptual plans he had provided showing the potential siting of a new house on the proposed new lot. A member of the Committee expressed the view that the size and siting of the new house should be included in the agreement. Mr. Wilkin indicated that while he was willing to be flexible regarding the size of the new house, he did not feel that it should be included in the agreement as it would be subject to Council approval of siting and design prior to construction in any event.

Mr. Wilkin went on to explain the illustrations showing the proposed upgrades to the exterior of the house, noting the process he undertook to obtain quotes from trades people on the cost of the upgrades, which were used to determine the amount of security proposed in the agreement.

Mr. Wilkin responded to various questions from members of the Committee in respect to the plans for restoring the house.

Given the late hour, it was agreed by members of the Committee that the discussion should be continued at the next Committee of the Whole meeting. The Committee also agreed that the plan boards that Mr. Wilkin had brought to the meeting were very helpful, and asked him to make them available for public viewing at the Municipal Hall as soon as possible, and to arrive in advance of the next Committee of the Whole meeting to be available to answer questions from the public prior to the meeting commencing.

**ADJOURNMENT:**

MOVED by Councillor Cassidy

Seconded by Councillor Herbert, That the Committee of the Whole meeting be adjourned.

CARRIED

The meeting adjourned at 11:00 p.m.

Certified Correct:

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Municipal Clerk

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Chairman, Land Use Section