

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, July 13, 2009 at 7:30 p.m.

PRESENT: Mayor C. M. Causton, Chairman
Councillor H. Braithwaite
Councillor A. R. Cassidy
Councillor P. Copley
Councillor J. D. Herbert
Councillor T. Ney
STAFF: Municipal Administrator, W. E. Cochrane
Confidential Secretary, K. Green
Director of Building and Planning, R. Thomassen
Director of Engineering Services, D. Marshall

Mayor Causton called the meeting to order at 7:30 p.m.

LAND USE SECTION: (Chairman – Councillor Cassidy)

1. 2009-237 DIRECTOR OF BUILDING AND PLANNING, June 29 , 2009
Re Development Variance Permit Application – 2304 Epworth Street

David Bayne, applicant, explained the rationale for his proposed second storey addition and the minor height and siting variances that it would entail. He noted that although small variances were required for the height of the highest occupiable floor and the highest occupiable wall, the actual roof height was within the bylaw limits.

MOVED by Councillor Ney

Seconded by Councillor Braithwaite, That a resolution authorizing the Director of Building and Planning to issue a development variance permit with respect to 2304 Epworth Street, as outlined in correspondence item no. 2009-237, be prepared and brought forward to Council for consideration.

CARRIED

2. 2009-238 DIRECTOR OF BUILDING AND PLANNING, June 29, 2009
Re Development Variance Permit Application – 2022 Haultain Street

Adrian D'Silva, applicant, explained how his pergola and patio had been constructed in contravention of regulations regarding the setback of a structure and the amount of the front yard that was allowed to be paved. The work, he said, had been undertaken while he was living out of town, and he had assumed that his contractors would be aware of the applicable regulations.

Responding to comments from the Committee that the variance of the limit on the amount of hard-surfaced area in the front yard was quite large, Mr. D'Silva noted that the new patio was contained within the pergola structure and did not adversely affect the streetscape.

MOVED by Councillor Herbert

Seconded by Councillor Ney, That a resolution authorizing the Director of Building and Planning to issue a development variance permit with respect to 2022 Haultain Street, as outlined in correspondence item no. 2009-238, be prepared and brought forward to Council for consideration.

Councillor Braithwaite observed that the application should be assessed as if it had been submitted as a proposal for work not yet carried out, as opposed to a request to retain construction that had already been completed without permission. On this basis, given the size of the required variances, she felt that the application should not succeed.

The question was then called.

CARRIED
(Councillor Braithwaite against the motion)

3. 2009-239 DIRECTOR OF BUILDING AND PLANNING, July 8, 2009
Re Development Variance Permit Application – 2383 Musgrave Street

Jack Clover, representing the applicant, who was his daughter, said that they had been unaware of the restriction on the amount of hard-surfaced area in the front yard when planning and carrying out the construction of a patio. He noted that no other structures were involved, and that an attempt had been made to mitigate the nonconformity by reducing the paved part of the driveway. He said that new plantings along the front border would eventually grow to the point where the patio would be more screened from the public sidewalk.

MOVED by Councillor Herbert

Seconded by Councillor Copley, That a resolution authorizing the Director of Building and Planning to issue a development variance permit with respect to 2383 Musgrave Street, as outlined in correspondence item no. 2009-239, be prepared and brought forward to Council for consideration.

As with the previous application, Councillor Braithwaite said that this proposal would not likely have received her support had it been submitted in advance of construction.

The question was then called.

CARRIED
(Councillor Braithwaite against the motion)

4. 2009-240 DIRECTOR OF BUILDING AND PLANNING, July 8, 2009
2009-240-1 REVISED PLANS, July 13, 2009
Re Uplands Building Permit/Development Variance Permit Application –
3220 Weald Road

Brian Canfield, applicant, spoke to his application for a side yard setback variance in respect of a shed proposed for the south side of the property.

The Committee examined the revised plans that had been submitted subsequent to the preparation of the report from the Director of Building and Planning. The revisions were designed to address the concerns of the municipal arborist about the possible impact of the original proposal on the root zone of a nearby Garry Oak tree.

The Committee asked about possible noise issues associated with the proposal to house an emergency electrical generator in part of the shed. The building contractor, Dave Rannala, said that the generator would only be used in the event of a power outage, and had to be turned on manually. There was no requirement for regular testing; the only real maintenance task was to ensure that the gasoline did not go stale. As far as the noise associated with the use of the

generator during power outages was concerned, Mr. Rannala said that sound-deadening material would be used in the corner of the shed that would house this equipment.

Mr. Rannala also clarified that a heat pump shown on the revised plans would be moved back to a location that complied with the applicable setback regulations.

MOVED by Councillor Braithwaite

Seconded by Councillor Ney, That it be recommended to Council that the plans for the construction of an accessory building at 3220 Weald Road 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 be prepared and brought forward to the next meeting of Council for consideration.

CARRIED

5. 2009-241 DIRECTOR OF BUILDING AND PLANNING, July 8, 2009
Re Uplands Building Permit Application – 3595 Beach Drive

Sid Chow, Architect, described the features of the proposed new residence, which had been designed to comply with the applicable size and siting regulations.

The Committee noted that the design, while quite modern, had received the approval of the Advisory Design Panel as one that would fit in with the more traditional Uplands architecture.

Responding to a question from the Committee, Mr. Chow said that an arborist would be retained to supervise excavations and other work in the vicinity of mature trees.

MOVED by Councillor Braithwaite

Seconded by Councillor Ney, That it be recommended to Council that the plans for the construction of a new residence at 3595 Beach Drive be approved as to siting and architectural design.

CARRIED

PUBLIC WORKS SECTION: (Chairman – Councillor Herbert)

6. 2009-243 DIRECTOR OF ENGINEERING SERVICES, June 11, 2009
2009-243-1 JANEEN CALVERLEY, May 6, 2009
2009-243-2 MARG PALMER, July 10, 2009
2009-243-3 KEVIN AND JACKIE CARLÉ, July 11, 2009
2009-243-4 JIM GIBSON, July 12, 2009
2009-243-5 SOLANGE MEILLEUR, July 12, 2009
2009-243-6 DAVID BASS, July 13, 2009
Re Boulevard Encroachment Application – 2473 Plumer Street

Janeen Calverley, applicant, described her proposal for landscaping of the boulevard adjacent to her property at 2473 Plumer Street.

It was noted that the proposed landscaping treatment would cover the entire boulevard, extending all the way out to the roadway edge. It was also remarked that the plan submitted with the application did not show the proposed location of large boulders on public property, nor was the plant list sufficiently descriptive to provide an indication of the height to which each of the various species could be expected to grow.

MOVED by Councillor Braithwaite

Seconded by Councillor Ney, That the application for permission to encroach onto the boulevard adjacent to 2473 Plumer Street be tabled pending receipt of revised and more detailed plans providing the information noted in the Committee's discussion, and also addressing the principal concerns set out in the report from the Director of Engineering Services.

CARRIED

7. 2009-244 DIRECTOR OF ENGINEERING SERVICES, June 12, 2009
2009-244-1 RHONDA AND STEPHEN EARTHY, May 6, 2009
Re Boulevard Encroachment Application – 2156 Brighton Avenue

Stephen Earthy, applicant, said that the rock wall and fence, which were the principal components of the encroachment application, were pre-existing. They were located on a high rock outcrop and did not interfere with pedestrian passage along the Brighton walkway.

The other element of the requested encroachment was a set of stone steps providing access from the driveway to the east.

MOVED by Councillor Cassidy

Seconded by Councillor Copley, That it be recommended to Council that permission be granted for an encroachment onto the boulevard abutting 2156 Brighton Avenue, consisting of an existing rock wall and fence, along with a new set of stone steps, in the locations shown on the plans attached to correspondence item no. 2009-244-1, subject to the owners of the property entering into a boulevard encroachment agreement, and providing also that the agreement stipulate that the steps be kept as tight to the natural rock outcrop as possible in order to minimize disturbance to public trees, and that no handrail be installed on the steps and no modifications be undertaken to the rock wall or fence, prior to municipal approval of the proposed design in each case.

CARRIED

8. 2009-245 DIRECTOR OF ENGINEERING SERVICES, July 9, 2009
2009-245-1 BILL ZICKMANTEL, June 15, 2009
Re Boulevard Encroachment Application – 6 Sylvan Lane

Bill Zickmantel, applicant, said that the encroachment application had arisen out of his plan to relocate his driveway from the Denison Road side to the Sylvan Road side of his property. Part of the encroachment was a retaining wall required as a result of the terrain and the existing pattern of planting. The other element was related to the planting of rhododendrons, which, Mr. Zickmantel observed, were in keeping with the treatment of boulevards all along Sylvan Lane and Denison Road.

The Committee observed that the wings of the proposed new driveway appeared quite wide, and the Director of Engineering Services advised that all aspects of the driveway would still have to conform to the Driveway Access Bylaw notwithstanding any boulevard encroachment agreement.

MOVED by Councillor Cassidy

Seconded by Councillor Ney, That it be recommended to Council that permission be granted for an encroachment onto the boulevard abutting 6 Sylvan Lane, consisting of a rock wall and plantings of the size and type and in the locations shown on the plans attached to correspondence item no. 2009-245-1, subject to the owners of the property entering into a boulevard encroachment agreement.

CARRIED

9. 2009-246 DIRECTOR OF ENGINEERING SERVICES, July 8, 2009
2009-246-1 KENNEDY GARDEN AND LANDSCAPE SERVICES, June 15, 2009
Re Boulevard Encroachment Application – 661 Newport Avenue

Chris Kennedy, landscaping contractor, described the proposed treatment of the boulevard on behalf of the applicant.

The Committee observed that the proposed landscaping left the bulk of the boulevard in grass, consistent with the pattern on the street. The effect of the landscaping, the Committee noted, would be to soften the visual impact of the wall that defined the front property line. In that regard, it represented an enhancement and beautification of public property rather than an appropriation for private use, and was a good example of an appropriate encroachment from that point of view.

MOVED by Councillor Braithwaite

Seconded by Councillor Cassidy, That it be recommended to Council that permission be granted for an encroachment onto the boulevard abutting 661 Newport Avenue, consisting of plantings of the size and type and in the locations shown on the plans attached to correspondence item no. 2009-246-1, subject to the owners of the property entering into a boulevard encroachment agreement.

CARRIED

10. 2009-247 DIRECTOR OF ENGINEERING SERVICES, July 8, 2009
2009-247-1 KEVIN AND SABRINA JARDINE, [Undated]
Re Boulevard Encroachment Application – 3150 Rutland Road

Mike Miller, developer and building contractor, representing the applicants, explained the rationale for the construction of a stone pillar on the boulevard. The pillar would contain an intercom that would allow the security gate to be operated remotely. The gate itself, Mr. Miller noted, and much of the existing perimeter rock wall as well, was located within the boundaries of the private property.

MOVED by Councillor Copley

Seconded by Councillor Braithwaite, That it be recommended to Council that permission be granted for an encroachment onto the boulevard abutting 3150 Rutland Road, consisting of a stone pillar of the size and type and in the location shown on the plans attached to correspondence item no. 2009-247-1, along with the required underground electrical wiring enclosed in a suitable conduit, subject to the owners of the property entering into a boulevard encroachment agreement.

CARRIED

11. 2009-248 DIRECTOR OF ENGINEERING SERVICES, July 8, 2009
Re Interim Report on Boulevard Encroachment Application Process
Review

The Committee expressed agreement in principle with the proposal to set out more prescriptive guidelines for the content of boulevard encroachment applications, possibly including a checklist of required information to be completed by the applicant as well.

Acknowledging the amount of time involved in the processing of boulevard encroachment applications, moreover, the Committee also supported the imposition of an application fee. It felt, however, that the fee should not be set so high as to discourage applications, which in turn could result in an increase in unauthorized work on boulevards. A fee in the range of \$50 to \$100 was mentioned as a reasonable amount in this regard.

MOVED by Councillor Braithwaite

Seconded by Councillor Copley, That correspondence item no. 2009-248 be received.

CARRIED

12. 2009-249 DIRECTOR OF ENGINEERING SERVICES, July 9, 2009
2009-249-1 MICHAEL AND CARLA PERRY, April 23, 2009
Re Request for Financial Assistance for Shared Fence – 1415 Monterey
Avenue

Michael Perry, applicant, elaborated on his request for the Municipality to share in the cost of replacing the fence between his property at 1415 Monterey Avenue and the municipal parking lot to the north.

The Director of Engineering Services observed that the design of the parking lot included a very wide area of landscaping on the south side, intended to serve as a buffer between the institutional and residential uses. He noted that the Municipality shared many boundaries with private property owners, and that caution had to be exercised in setting a precedent that could result in significant costs over time. In general, he said, cost sharing was considered only for fences that were subject to significant wear and tear from public activities – e.g., those adjacent to sports fields.

Mr. Perry observed that the landscaped berm itself may have contributed to the deterioration of the fence in that it brought parts of the structure other than the posts into contact with the soil.

MOVED by Councillor Cassidy

Seconded by Councillor Braithwaite, That this item be tabled to allow the applicant, in consultation with the Parks Department, to return to the Committee with a more detailed reconstruction proposal that describes the proposed fence design and specifications, and which includes an accurate cost estimate as well; and further that the Parks Department in the interim carry out some re-profiling of the soil in the landscape buffer on the south side of the Monterey Avenue parking lot so as to keep the organic material away from the fence, with the orientation of the sprinkler heads to be checked as part of this work.

CARRIED

REGULATORY SECTION: (Acting Chairman – Mayor Causton)

- 13. 2009-242 MUNICIPAL ADMINISTRATOR, July 7, 2009
- 2009-242-1 ROBIN BAYLEY, July 9, 2009
- 2009-242-2 ROBIN BAYLEY, July 10, 2009
- 2009-229 KIM WESTAD, May 28, 2009
- 2009-229-1 OAK BAY BUSINESS IMPROVEMENT ASSOCIATION, June 17, 2009
Re Animal Control Regulations – Dogs Tethered in Public Places

Speaking to the staff report, the Municipal Administrator confirmed that a bylaw amendment along the lines envisaged by Council, creating a potential hazard on premises owned or controlled by the Municipality, would attract liability under the *Occupiers Liability Act*.

With Council still interested in taking a less rigid approach in situations where a dog tethered to a post obviously poses no threat, however, Mr. Cochrane suggested that the issue might then be more appropriately dealt with from an enforcement policy point of view.

Mr. Cochrane noted that no regulation could capture all the nuances of situations that may be encountered in the field, and that an attribute of the best law enforcement officers was that they had sound judgement and were capable of exercising reasonable discretion where the circumstances warranted. Sometimes, he observed, it was useful to provide guidance in this regard.

Mr. Cochrane said it was also the case (with building regulations as a prominent exception), that a local government could not be compelled to enforce a particular bylaw. It has some discretion in that regard, and as a general rule a municipality is not liable in damages for any loss or injury sustained as a result of the exercise of that discretion not to enforce a bylaw.

The prohibition against tethering dogs in public places, Mr. Cochrane noted, was not expressly stated in the *Animal Control Bylaw*, but was something that had to be inferred -- primarily from the definition of a dog being “at large”. In this situation, he observed, and in light of the increased flexibility that Council wished to see, it would not be unreasonable to set out some guidelines for the enforcement of the “at large” prohibition as it applied to tethered dogs.

Mr. Cochrane went on to outline guidelines for the animal control enforcement officers that he felt would be reasonable and defensible.

Councillor Cassidy agreed with the concerns expressed about the bylaw amendment route, observing that it could have the unintended effect of justifying the tethering of a dangerous dog in a public place. Noting that no tickets had actually been issued for the offence in question, he felt that the issue had attracted attention out of proportion to its actual significance.

Mayor Causton also supported the approach of setting out enforcement guidelines, at least as an interim measure subject to future re-examination in light of experience in the field.

MOVED by Councillor Herbert

Seconded by Councillor Braithwaite, That enforcement priorities for the “dog at large” provisions of the *Animal Control Bylaw* in application to the tethering of dogs in public places be focused away from situations where all of the following apply:

- the dog is obviously not in distress and appears docile;
- the dog is of a size and type such that it could not reasonably be considered to pose a significant threat even if it was somehow provoked;
- the dog is tethered in a way that does not create or have the potential to create a tripping hazard or otherwise obstruct public passage;
- the dog is not tethered to a public structure designed for human use such as a bicycle rack, a bench or a bus shelter; and
- the length of time the dog has been tethered is such that it could not reasonably be considered to have been abandoned.

CARRIED

ADJOURNMENT:

MOVED by Councillor Braithwaite

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

CARRIED

The meeting adjourned at 10:05 p.m.

Certified Correct:

D/Municipal Clerk

Chairman, Land Use Section

A/Chairman, Regulatory Section

Chairman, Public Works Section