

MINUTES of a regular meeting 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, June 28, 2010 at 7:30 p.m.

PRESENT: Acting Mayor N. B. Jensen, Chairman
Councillor H. Braithwaite
Councillor A. R. Cassidy
Councillor P. Copley
Councillor J. D. Herbert

STAFF: Municipal Administrator, M. Brennan
Municipal Clerk, L. Hilton
Confidential Secretary, K. Green
Director of Building and Planning, R. Thomassen
Municipal Treasurer, P. Walker
Director of Engineering Services, D. Marshall

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

ADOPTION OF MINUTES:

Council – June 14, 2010

MOVED by Councillor Copley
Seconded by Councillor Herbert, That the minutes of the Council meeting held on Monday, June 14, 2010, be adopted.

CARRIED

COMMUNICATIONS:

1. 2010-194 DISTRICT OF OAK BAY ANNUAL REPORT 2009
2010-194-1 MUNICIPAL TREASURER, June 16, 2010
Re Municipal Fixes Assets (Tangible Capital Assets) in Financial Statements

(Randy Decksheimer, KPMG Chartered Accountants, in attendance for this item.)

MOVED by Councillor Herbert
Seconded by Councillor Braithwaite, That the District of Oak Bay Annual Report 2009 be received.

Council acknowledged the amount of work required to produce the report and thanked the staff involved on a job well done.

The question was then called.

CARRIED

Randy Decksheimer noted the audited financial statements fairly represent the financial position of the Municipality for the 2009 fiscal year.

Mr. Decksheimer said that the new tangible capital asset information included in the financial statements is a new reporting requirement, drawing attention to the incredible amount of work required by Oak Bay staff to complete this inventory for the 2009 fiscal year.

Mr. Decksheimer and the Municipal Treasurer responded to questions from members of Council with respect to the tangible capital asset inventory report.

MOVED by Councillor Copley

Seconded by Councillor Braithwaite, That correspondence item no. 2010-194-1 be received.

CARRIED

2. 2010-195 DIRECTOR OF BUILDING AND PLANNING, June 16, 2010
Re Development Variance Permit Application – 2363 Bowker Avenue

Don Prevost, applicant, provided a brief description of the proposed plans to replace the existing non-conforming rotting front stairs/landing with new stairs/landing of the same design.

MOVED by Councillor Herbert

Seconded by Councillor Cassidy, That the Director of Building and Planning be authorized to issue a Development Variance Permit with respect to 2363 Bowker Avenue (Lot 1, Section 61, Victoria District, Plan 1266) that will vary the following provisions of Bylaw No. 3531, being the Zoning Bylaw, 1986, as amended:

<u>Bylaw Section</u>	<u>Permitted</u>	<u>Requested</u>	<u>Variance</u>
4.6.5.(1) Projections into the required 7.6 metres front setback of 1.2 metres	1.2 m	4.57 m	3.37 m

to accommodate the front stair/landing as shown in the plans attached to the memorandum from the Director of Building and Planning dated June 16, 2010.

MOVED by Councillor Herbert

Seconded by Councillor Cassidy, That the motion in respect of the development variance permit for 2363 Bowker Avenue be tabled to allow notice to be given in accordance with the *Local Government Act*.

CARRIED

3. 2010-196 DIRECTOR OF BUILDING AND PLANNING, June 22, 2010
Re Development Variance Permit Application – 2443 Florence Street

Jason Binab and Amber Miller, applicants, said they wish to add a master suite in the attic space, which would create more living space to raise a family, along with a rear addition.

Mr. Binab responded to questions from members of Council regarding the proposed dormers and roof heights, noting the proposed height of the house would be similar to several homes in the neighbourhood.

MOVED by Councillor Cassidy

Seconded by Councillor Copley, That the Director of Building and Planning be authorized to issue a Development Variance Permit with respect to 2443 Florence Street (Lot 7, Block 2, Section 28, Victoria District, Plan 915) that will vary the following provisions of Bylaw No. 3531, being the Zoning Bylaw, 1986, as amended:

<u>Bylaw Section</u>	<u>Permitted/ Required</u>	<u>Requested</u>	<u>Variance</u>
6.5.4. (3) (b) Maximum Occupiable Height	4.27 m	5.25 m	0.98 m
6.5.4. (3) (c) Maximum Roof Height	8.53 m	9.75 m	1.22 m
6.5.4. (6) (a) Maximum gross floor area above 0.8 metres below grade	240 sq m	308.6 sq m	68.6 sq m
6.5.4. (11) Minimum interior side lot line setback of second storey	3.0 m	2.89 m	0.11 m

to accommodate the construction of a rear addition and top floor development as shown in the plans attached to the memorandum from the Director of Building and Planning dated June 22, 2010.

MOVED by Councillor Cassidy

Seconded by Councillor Copley, That the motion in respect of the development variance permit for 2443 Florence Street be tabled to allow notice to be given in accordance with the *Local Government Act*.

CARRIED

4. 2010-197 DIRECTOR OF BUILDING AND PLANNING, June 23, 2010
Re Development Variance Permit Application –2566 Bowker Avenue

Bill Eller, applicant, said it is necessary to replace the existing garage because an oil tank leak has contaminated the soil under the garage and a large tree has caused extensive damage to the garage floor. The new and larger garage would be constructed in virtually the same location as the existing garage, he said.

MOVED by Councillor Herbert

Seconded by Councillor Cassidy, That the Director of Building and Planning be authorized to issue a Development Variance Permit with respect to 2566 Bowker Avenue (Lot 18, Section 61, Victoria District, Plan 874) that will vary the following provision of Bylaw No. 3531, being the Zoning Bylaw, 1986, as amended:

<u>Bylaw Section</u>	<u>Required</u>	<u>Requested</u>	<u>Variance</u>
6.5.4. (7) Minimum clear space between buildings	3.0 m	0.91 m	2.1 m

to accommodate the siting of a new garage as shown in the plans attached to the memorandum from the Director of Building and Planning dated June 23, 2010.

MOVED by Councillor Herbert

Seconded by Councillor Cassidy, That the motion in respect of the development variance permit for 2566 Bowker Avenue be tabled to allow notice to be given in accordance with the *Local Government Act*.

CARRIED

5. 2010-198 DIRECTOR OF BUILDING AND PLANNING, June 24, 2010
Re Development Variance Permit Application – 523 Oliver Street

Rus Collins, designer, described the proposed variances being requested, saying when he submitted the development variance permit application he was surprised to be told that the proposed sunken patio would be considered a structure, and would therefore result in the need three more variances than anticipated.

Questions were raised regarding the design of the house, including the location of the sunken patio, and it was noted by some members of Council that the depth and location of the patio may not provide extra light for the basement as intended.

The view was also expressed that given the existing house would be demolished, and that the applicants would be starting from a bare lot, the zoning regulations should be accommodated.

With respect to the view of the proposed new house from the street, Mr. Collins advised that it would not be much different from the existing house.

Mr. Collins responded to various questions and concerns expressed by some members of Council regarding the proposed development, and he noted that the reason the homeowners opted to build a new home on the site versus renovating the existing home was due to the cost.

With respect to the interpretation of the Zoning Bylaw, Mr. Collins said that the regulations seem unfair for certain types of lots depending on the slope of the land and he suggested that the perhaps an amendment to the Bylaw could be considered in that regard.

MOVED by Councillor Copley

Seconded by Councillor Herbert, That the Director of Building and Planning be authorized to issue a Development Variance Permit with respect to 523 Oliver Street (Lot 19, Block D, Section 22, Victoria District, Plan 1092) that will vary the following provisions of Bylaw No. 3531, being the Zoning Bylaw, 1986, as amended:

<u>Bylaw Section</u>	<u>Permitted/ Required</u>	<u>Requested</u>	<u>Variance</u>
4.17.1 Maximum exposed vertical face of retaining wall	1.2 m	2.13 m	0.933 m
6.5.4. (2) (c) Minimum interior side lot line setback for accessory structure	1.52 m	0.91 m	0.6 m
6.5.4. (6) (a) Total gross floor area	360 sq m	371.2 sq m	11.2 sq m
6.5.4. (6) (a) Gross floor area above 0.8 metres below grade	240 sq m	248 sq m	8 sq m
6.5.4. (7) Minimum clear space between building and structure	3 m	0 m	3 m

to accommodate the new house design as shown in the plans attached to the memorandum from the Director of Building and Planning dated June 22, 2010.

MOVED by Councillor Copley

Seconded by Councillor Herbert, That the motion in respect of the development variance permit for 523 Oliver Street be tabled to allow notice to be given in accordance with the *Local Government Act*.

CARRIED

6. 2010-199 DIRECTOR OF BUILDING AND PLANNING, June 24, 2010
Re Provincial Request for Local Government Inclusion in Solar Hot Water Ready Regulation

The Director of Building and Planning advised that the Province has developed new “Solar Hot Water Ready” regulations for all new single family dwellings and is inviting local governments to consider adopting and enforcing these new regulations.

The proposal, Mr. Thomassen said, would see all new houses having a conduit built in to accommodate rooftop solar panels. Although in theory this may be in line with Oak Bay’s Climate Change initiatives, Mr. Thomassen felt it necessary to draw attention to possible areas of conflict, including various aspects of the tree bylaw, right to light issues, building orientation, and cost, all as described more fully in his memorandum (correspondence item no. 2010-199), which would require more investigation. Therefore, he did not recommend moving forward with the initiative at this time, he said.

Following discussion, Council felt that given the timeline and the potential for conflicting issues with respect to being included in the Solar Hot Water Ready Regulation, it was suggested that staff observe the direction that other local governments take, and that the subject be revisited at a later date.

MOVED by Councillor Herbert

Seconded by Councillor Braithwaite, That the request from the Province of British Columbia for the District of Oak Bay to be included in the Solar Hot Water Ready Regulations be declined at this time.

CARRIED

As requested, the Director of Building and Planning agreed to observe what other jurisdictions decide and advise Council in due course.

7. 2010-200 OAK BAY HERITAGE COMMITTEE, June 9, 2010
Re Minutes of the Meeting

MOVED by Councillor Braithwaite

Seconded by Councillor Cassidy, That the minutes of the Oak Bay Heritage Committee meeting held on June 9, 2010, be received.

CARRIED

8. 2010-201 ANDREW ROSS AND SANDRA WADDINGTON, June 22, 2010
2010-201-1 CHRISTOPHER HODGKINSON, June 24, 2010
2010-201-2 PATTERSON ADAMS BARRISTERS & SOLICITORS, June 24, 2010
2010-201-3 J. JUDD BUCHANAN, June 28, 2010
2010-201-4 SARAH PEARCE, June 28, 2010
2010-183-1 ROSEMARY SHORT, May 31, 2010
2010-159-1 SARAH PEARCE, May 12, 2010
Re Development Permit with Variances – 1175 Beach Drive

MOVED by Councillor Cassidy
Seconded by Councillor Braithwaite, That the correspondence items no. 2010-201 to 2010-201-4, 2010-183-1 and 2010-159-1 be received.

CARRIED

NEW BUSINESS:

Rock Retaining Wall – 63 Sylvan Lane

Councillor Cassidy declared a conflict of interest with respect to discussing 63 Sylvan Lane inasmuch as one of the parties involved is represented by a law firm that is a client of his. Councillor Cassidy left the meeting at 8:24 p.m.

Drawing attention to a letter circulated to members of Council earlier in the week, Acting Mayor Jensen asked staff for an update on the rock retaining wall at 63 Sylvan Lane.

The Director of Building and Planning advised that a new application has been submitted for a tiered concrete wall system to replace the boulder wall that was to be removed and he is waiting for more information before considering issuing the permit. Mr. Thomassen noted that the new wall would comply with the Bylaw and therefore no variances are being requested.

Councillor Cassidy returned to the meeting at 8:27 p.m.

TABLED:

Development Variance Permit – 2061 Cedar Hill Cross Road

MOVED by Councillor Herbert
Seconded by Councillor Copley, That the following motion be lifted from the table:

That the Director of Building and Planning be authorized to issue a Development Variance Permit with respect to 2061 Cedar Hill Cross Road (Lot 21, Section 31, Victoria District, Plan 16629), varying the following provision of Bylaw No. 3531, being the *Zoning Bylaw, 1986*, as amended:

Bylaw Section	Permitted	Requested	Variance
6.4.4.(6)(a)			
Maximum Gross Floor Area Above 0.8 Metres Below Grade	300 sq m	414 sq m	114 sq m

to accommodate the construction of a top floor addition as shown on the plans appended to Committee of the Whole agenda item #2010-177, being a memorandum from the Director of Building and Planning dated May 28, 2010.

CARRIED

With no members of the public wishing to speak to the application, the question on the main motion was then called.

CARRIED

Development Variance Permit – 2086 Marne Street

Councillor Jensen indicated a conflict inasmuch as a family relation has recently entered into a contractual relationship with the applicant. Councillor Jensen left the meeting at 8:28 p.m.

MOVED by Councillor Braithwaite
Seconded by Councillor Cassidy, That the following motion be lifted from the table:

That the Director of Building and Planning be authorized to issue a Development Variance Permit with respect to 2086 Marne Street (Lot 1, Section 19, Victoria District, Plan VIP77912), varying the following provision of Bylaw No. 3531, being the *Zoning Bylaw, 1986*, as amended:

Bylaw Section	Permitted	Requested	Variance
4.17.1 No retaining wall shall have an exposed face with a vertical distance from bottom to top exceeding 1.2 m	1.2 m	1.5 m	0.3 m

to accommodate a concrete retaining wall as shown on the plans appended to Committee of the Whole agenda item #2010-178, being a memorandum from the Director of Building and Planning dated May 31, 2010.

CARRIED

With no members of the public wishing to speak to the application, the question on the main motion was then called.

CARRIED

Councillor Jensen returned to the meeting at 8:29 p.m.

Development Permit with Variances – 1175 Beach Drive

MOVED by Councillor Cassidy
Seconded by Councillor Braithwaite, That the following motion be lifted from the table:

That the Director of Building and Planning be authorized to do all acts and things necessary to issue a Development Permit to Bison Properties Ltd. with respect to Lot A, Sections 23 and 73, Victoria District, Plan VIP82201 and the abutting foreshore zoned CD-1 (hereinafter together called the “Land”), substantially as set out in the document (hereinafter called the “Amended Development Permit”) appended to the resolution with respect to the Land forming part of the regular meeting agenda package considered by Council on June 14, 2010, for the purpose of amending Development Permit No. 001-07 issued to Bison Properties Ltd. pursuant to a resolution of Council dated June 11, 2007, which was subsequently amended by Development Permit No. 004-07 and Development Permit No. 027-2009 (together hereinafter called the “Original Development Permit as Amended”) to allow changes to the proposed development of the Land as depicted in the Original Development Permit as Amended and to increase and alter the variances granted in the Original Development Permit as Amended as set out in the Amended Development Permit.

CARRIED

MOVED by Councillor Cassidy

Seconded by Councillor Braithwaite, That the motion be amended to insert the words “with the exception of plans DPA3 and DPA5, dated May 31, 2010, which are replaced by Plans DPA3 and DPA5 dated June 15, 2010, and included in the regular meeting agenda package considered by Council on June 28, 2010”, immediately after the words “June 14, 2010”.

The question on the motion to amend was then called.

CARRIED

Jack Angus, solicitor, was in attendance on behalf of his clients James and Lenore Hopkins, Oak Bay residents, to advise of their objection to the variances being requested for the south side of the building and the proposed changes to the east terrace and stairs at 1175 Beach Drive.

Mr. Angus said the plans are not simple changes as described by the applicant, and he drew attention to the plans that indicate the upper level of the building has expanded east to west. He also said the south side of the building appears to have increased in mass by reducing the depth of the larger balconies to Juliet balconies, and extending the building wall southwards.

Responding to questions, the Director of Building and Planning advised that although there are changes to the configuration of the building, the density has not changed. Mr. Thomassen acknowledged that the upper level has been added to and that the floor area of the balconies has been reduced to increase interior space.

Mr. Angus continued, saying that allowing the stairwell to be moved from the terrace to the south side of the building will have a deleterious impact on the neighbours. Mr. Angus also questioned the offices being relocated and urged Council to find out the reason for all of the requested changes, and how the development will look in the end. He added that Council should defer considering the variances and request that better plans, and perhaps a model, be provided prior to making a decision.

Kevin Walker, Bison Properties Ltd., responding to concerns expressed by Mr. Angus, described the changes in the design and the variances requested as shown on the plans, explaining that the interior space additions result in some of the balconies being reduced in size, although the floor area still meets that permitted for the development.

Mr. Walker commented that although the building would move southward, the modified (Juliet) balconies would have less occupancy space and therefore would have less of an impact on the neighbours to the south.

With respect to concerns about the design change to the south elevation, Mr. Walker described the efforts being made to enhance the texture of the building façade, including the varying setbacks of some of the floors, the glass panels and new guardrails, and the high quality materials that are being used to finish the building, which are as originally presented to Council.

Mr. Walker advised that the extended terrace will be above an existing building, and that stairs on the south side of the building would create a more natural flow of traffic, adding that the stairs are not designed for loitering as they have no landing. It was clarified by Mr. Walker that the proposed south side stairs would be the same height approximately as the middle of the Hampshire House carport and would then descend below the carport, which would restrict the view of most of the stairway for those residents.

Mr. Walker confirmed that the building meets the floor area requirements, noting that there have been no changes made to the amenities that were originally presented to Council. Mr. Walker said that approximately three months ago neighbours were invited to an information session on the proposed changes, and he also met with the Hampshire House residents on two occasions to review the proposed plans, with every effort being made to provide a complete and thorough understanding to neighbouring residents.

Concern regarding the ambient lighting of the stairwell and its possible affect on the neighbours was noted, and Mr. Walker explained where the light level would be in the context of Hampshire House.

Responding to questions, the Director of Building and Planning explained the variances for the setbacks that are being requested as part of the application to amend the development permit.

Acting Mayor Jensen indicated that his largest concern with the proposed changes is the expansion of the building walls to the south. He noted his dissatisfaction with the original design, which he said is made worse with the south side expansion. The relocation of the stairs, he said, is not of particular concern.

Councillor Cassidy pointed out that the stepped setbacks of the south side of various floors, in his mind, provides a visual improvement over the previously approved design. Additionally, he was of the view that the shallower Juliet balconies would be an improvement for the residents to the south, as they would be less inviting to guests of the hotel than the larger, previously approved balconies. He suggested that the changes should be kept in perspective, pointing out that the building would not be expanding to a great extent.

Focusing on what is proposed versus how the proposed differs from that previously approved, Councillor Cassidy indicated he would not have objected to the new design aspects during the original consideration of the development application. He also pointed out that while every individual change may not improve the design in his opinion, when considered as a package, overall, they do.

Councillor Herbert expressed his concern about the drawings provided, noting that he would prefer to see the varying setbacks of the different floors clearly represented in the drawings. He noted he found it difficult to consider voting in favour of the changes without such drawings reflecting the new “stepped” design.

With no other members of the public wishing to speak to the application, the question on the main motion, as amended, was then called.

DEFEATED

(Acting Mayor Jensen and Councillors Copley and Herbert against the motion)

BYLAWS:

For Adoption

MOVED by Councillor Cassidy

Seconded by Councillor Herbert, That Bylaw No. 4513, *Sea Scout Licence Authorization Bylaw, 2010*, be adopted.

CARRIED

For First, Second and Third Reading

MOVED by Councillor Cassidy

Seconded by Councillor Herbert, That Bylaw No. 4514, *Capital Works and Equipment Reserve Fund Appropriation Authorization Bylaw, 2010, Amendment Bylaw No. 1, 2010*, be introduced and read a first time.

CARRIED

MOVED by Councillor Cassidy

Seconded by Councillor Herbert, That Bylaw No. 4514, *Capital Works and Equipment Reserve Fund Appropriation Authorization Bylaw, 2010, Amendment Bylaw No. 1, 2010*, be read a second time.

CARRIED

MOVED by Councillor Cassidy

Seconded by Councillor Herbert, That Bylaw No. 4514, *Capital Works and Equipment Reserve Fund Appropriation Authorization Bylaw, 2010, Amendment Bylaw No. 1, 2010*, be read a third time.

CARRIED

ADJOURNMENT:

MOVED by Councillor Braithwaite

Seconded by Councillor Cassidy, That the Council meeting be adjourned.

CARRIED

The meeting adjourned at 10:10 p.m.

Certified Correct:

Municipal Clerk

Acting Mayor