



Corporate Report

NO: L003

COUNCIL DATE: March 27, 2006

REGULAR COUNCIL - LAND USE

TO: Mayor & Council DATE: March 24, 2006
FROM: General Manager, Planning and Development FILE: 7905-0259-00
SUBJECT: Additional Information Related to a Proposed Development Variance Permit
for a Partially Constructed Dwelling at 9752 - 160A Street
Development Application No. 7905-0259-00

RECOMMENDATION

It is recommended that Council:

1. Receive this report as information; and
2. Approve Development Variance Permit No. 7905-0259-00 for property at 9752 - 160A Street, subject to the owner of the subject property:
 - Applying for a revision to the building permit in order to re-commence construction of the subject dwelling; and
 - Submitting a Restrictive Covenant to the City regarding a water curtain system that is to be installed in the building and an accompanying Letter of Undertaking by a lawyer to guarantee registration of the Restrictive Covenant on the title to the lot.

BACKGROUND

At the January 30, 2006 Regular Council - Land Use meeting, Council approved Development Variance Permit ("DVP") No. 7905-0259-00 to proceed to public notification. The application is to relax the east side yard and the rear yard setbacks in order to retain the partially constructed house that is located on the subject site (Appendix D). In addition, Council instructed staff to provide a chronology of events and a copy of the original foundation survey when the DVP is considered for formal approval.

At the February 13, 2006 Regular Council Meeting, DVP No. 7905-0259-00 was again considered. Council again deferred consideration of approval of the DVP and instructed staff to provide additional information regarding the Building Code requirements for the subject dwelling as a result of the reduced side yard setback, the possibility of registering a Restrictive Covenant on the title to the subject land regarding Building Code requirements and information regarding the owner's application, regarding the same matter to the Board of Variance.

The following chronology was provided to Council at the February 13, 2006 Regular Council meeting:

- The building permit for the subject single-family dwelling at 9752 – 160A Street was issued on October 2, 2003.
- The City accepted the foundation forms for the building on November 17, 2003, based on the submitted site survey, dated November 17, 2003, showing adherence to the minimum building setbacks (Appendix II). It was determined later, however, that this site survey was incorrect.
- On Tuesday, June 15, 2004, the sheathing was inspected and considered acceptable. At the time, the building inspector questioned the spacing between the subject dwelling and the adjacent dwelling to the east, which was at the same stage of construction as the subject dwelling. The property owner was instructed to discontinue work, pending determination of the siting of both the subject building and the building to the east.
- On Tuesday, July 13, 2004, the City received a revised site survey, dated July 5, 2004, for the subject lot, indicating that the subject dwelling was incorrectly sited (Appendix III).
- On Friday, July 16, 2004 a Stop Work order was posted on the subject lot.
- On August 18, 2004, the Board of Variance heard an appeal from the owner of the subject property, requesting a relaxation of the side yard setback from 1.2 metres (4 ft.) to 0.36 metre (1.2 ft.) and the rear yard setback from 7.5 metres (25 ft.) to 7.28 metres (24 ft.). The appeal was denied.
- On January 10, 2005 a Building Code equivalency report was submitted to address the concerns related to the control of fire spread as a result of the close proximity of the subject dwelling to the property line to the east.
- On August 10, 2005, the fees for the DVP application were submitted along with a revised surveyor's certificate, dated October 14, 2004 (Appendix IV).
- On January 30, 2006, the subject DVP application was forwarded to Council for consideration.

The builder discontinued construction after the Stop Work order was posted. In consideration of the extended time that the exterior wood areas have been exposed to the elements, an assessment of the building condition will be required prior to resumption of construction.

DISCUSSION

The following information is provided to respond to the requests made by Council at its Regular meeting on February 13, 2006.

Building Code Requirements

The applicant is seeking to vary the east side yard setback from 1.2 metres (4 feet) to 0.37 metres (1.2 feet), as shown on Appendix IV. Due to the proximity of the subject dwelling to the east property line, there are specific Building Code requirements that need to be addressed. Prior to the initial Planning Report being forwarded to Council on January 30, 2006, the applicant's engineering consultant submitted a Building Code Equivalency Report to the Building Division that addressed control of fire spread as a result of the reduced side yard setback. The Report proposes a water curtain sprinkler system to protect the openings (i.e. windows and doors) along the east building face of the subject house where the reduced setback to the property line exists. The house plan indicates six windows and no doors along this east façade. The water curtain system is proposed to be located on the inside of the house, above each of the six windows. This proposed solution has been reviewed by Building Division staff and is acceptable.

Proposed Restrictive Covenant for Required Water Curtain System

To ensure that the water curtain system remains operational and that future owners of the subject house are aware of this Building Code requirement, it is proposed that a Restrictive Covenant be registered on the title to the lot that documents the need for the proposed water curtain system. It is recommended the owner of the subject property be required to submit such a Restrictive Covenant to the satisfaction of the City Solicitor and an accompanying Letter of Undertaking from the owner's lawyer to register the Restrictive Covenant after the City has executed the Restrictive Covenant.

Previous Appeal to Board of Variance

Prior to submission of this DVP application, the owner of the subject property made an appeal to the Board of Variance on August 17, 2004, requesting the same relaxations to the side yard and rear yard setbacks. This appeal was denied. The minutes of the August 17, 2004 Board of Variance meeting are attached as Appendix V.

Results of Public Notification

Seven written submissions were received in support of the DVP, as a result of the DVP public notification process. Copies are attached as Appendix VI.

CONCLUSION

Based on the above, it is recommended that Council approve DVP No. 7905-0259-00 for property at 9752 – 160A Street subject to the owner of the subject property:

- Applying for a revision to the building permit in order to re-commence construction of the subject dwelling; and
- Submitting a Restrictive Covenant to the City, regarding a water curtain system that is to be installed in the building and an accompanying Letter of Undertaking by a lawyer to guarantee registration of the Restrictive Covenant on the title to the lot.

Murray Dinwoodie
General Manager
Planning and Development

SR/kms/saw

Attachments:

- Appendix I - Map of Subject Site
Appendix II - Survey Certificate dated November 17, 2003
Appendix III - Survey Certificate dated July 5, 2004
Appendix IV - Survey Certificate dated October 14, 2004
Appendix V - Board of Variance Minutes, dated August 17, 2004
Appendix VI - Submissions as a result of DVP Public Notification Process