July 09, 2014

**Subject Property:**
910, 920, 932 and 946 Eckhardt Avenue W

Lot A, District Lot 366, SDYD, Plan 34986; and,
Lots 4, 5 and 6 all of District Lot 366, SDYD, Plan 10670

**Application:**
Development Variance Permit PL2014-045

The applicants are requesting to vary Section 6.5.1.7 of Zoning
Bylaw 2011-23 to allow for temporary fencing on a permanent basis

**Information:**
The staff report to Council and Development Variance Permit PL2014-045 will be available for public inspection from **Friday, July 11, 2014 to Monday, July 21, 2014** at the following locations during hours of operation:

- Penticton City Hall, 171 Main Street
- Penticton Library, 785 Main Street
- Penticton Community Centre, 325 Power Street

You can also find this information on the City’s website at [http://www.penticton.ca/EN/meta/city-news/latest-news.html](http://www.penticton.ca/EN/meta/city-news/latest-news.html).

Please contact the Planning Department at (250) 490-2501 with any questions.

**Council Consideration:**
Council will consider this application at its Regular Council Meeting scheduled for **6:00 p.m. Monday, July 21, 2014**, in Council Chambers at Penticton City Hall, 171 Main Street.
**Public Comments:**
You may appear in person, or by agent, the evening of the Council meeting, or submit a petition or written comments by mail or email no later than **9:30 a.m., Monday, July 21, 2014** to:

Attention: Corporate Officer, City of Penticton  
171 Main Street, Penticton, B.C. V2A 5A9  
Email: publichearings@penticton.ca.

No letter, report or representation from the public will be received by Council after the conclusion of the July 21, 2014 Council Meeting.

**Please note** that all correspondence submitted to the City of Penticton in response to this Notice will form part of the public record and will be published in a meeting agenda when this matter is before the Council or a Committee of Council. The City considers the author's address relevant to Council's consideration of this matter and will disclose this personal information. The author's phone number and email address is not relevant and should not be included in the correspondence if the author does not wish this personal information disclosed.

Those persons with special hearing, language or access needs should contact City Hall at (250) 490-2400 prior to the meeting.

Anthony Haddad, MCIP  
Director of Development Services
Council Report

Date: July 21, 2014                       File No: DVP PL2014-045
To: Annette Antoniak, City Manager
From: Blake Laven, Planning Manager
Property: 910, 920, 932, 946 Eckhardt Avenue West
Subject: Deny “Development Variance Permit 2014-045”

Staff Recommendation

THAT Council deny “Development Variance Permit PL2014-045”, a permit to allow for temporary fencing to remain on a permanent basis in violation of Section 6.5.1.7 of Zoning Bylaw 2011-23 for Lot A, District Lot 366, Similkameen Division Yale District, Plan 34986 and Lots 4, 5, and 6, of District Lot 366, Similkameen Division Yale District, Plan 10670, located at 910, 920, 932 and 946 Eckhardt Avenue W.

Background

The subject properties (Attachment A) are currently vacant and under land remediation and environmental testing. The most recent use of the property was as a gas station operating under the Petro Canada franchise. The gas station use was discontinued in mid-2013, shortly after the new Petro Canada station was opened at 1090 Westminster Avenue. All buildings on the subject property were demolished in January 2014 and all pumps, canopy and underground tanks have been removed. Since the time of demolition, the property has been surrounded by an unsightly temporary construction fence (Attachment B).

Recently, Council passed amendments to the zoning bylaw that clarified when temporary fencing was acceptable (during active construction, demolition and events) and when it was not permitted (any other time), and outlined some regulations for fencing around vacant properties. The regulations allow for fencing with the following characteristics:

- Powder coated chain link fence containing screening along all street frontages that has either a weather resistant banner containing art work that would not be considered offensive by the public; or a mix of small and medium sized trees and shrubs; or
- Solid wooden fencing that contains artwork that would not be considered offensive by the public on all visible street frontages.

Even if Council had not adopted these amendments to the zoning bylaw, the temporary fencing would not technically be permitted. The current fencing on the site exceeds the height limits of fencing in the commercial areas of the city and is not permanently affixed to the ground.
After adoption of the zoning amendments, Bylaw Enforcement has been actively sending out enforcement letters advising of the new regulations and providing property owners with the opportunity to comply with the rules prior to ticketing. The property owners were sent notification in May of this year and have made the subject variance application as a result of this enforcement action. The property owners have not received any fines as of yet. The applicant has provide a letter outlining that the anticipation is that the property will be remediated by the end of 2014 or early 2015 and sold to a prospective developer for redevelopment shortly thereafter (Attachment ‘C’). The applicants do not feel that the cost of a permanent fence is justifiable given the fact that they anticipate redevelopment within the next few years.

Proposal

Rather than installing the permitted type of fencing or removing the fencing altogether, the applicants are requesting a development variance permit to vary Section 6.5.1.6 of Zoning Bylaw 2011-23 to permit keeping the temporary fencing on a permanent basis, until such time as the property is redeveloped.

Financial implication

N/A

Analysis

Deny

When considering a variance to a City bylaw, staff encourages Council to consider whether there is a significant site constraint that exists on the property that makes following the bylaw difficult or impossible, whether approval of the variance would cause a negative impact on neighbouring properties, or if the variance request is reasonable.

In this case, there are no hardships on the property that make following the bylaw difficult and staff feel that approval of the variance will cause a negative impact on neighbouring properties. These properties are in a very prominent location along the main corridor into and out of the City. The property also borders on the Penticton Golf and Country Club. The fencing, rusting in some areas and dilapidated in others is visually unattractive. The applicants have offered to wrap the temporary fencing in a banner that will screen the vacant lot. Staff however, feel that this will not create a positive visual image for the property either as the temporary fencing does not have the rigidity and continuity required for the banner wrapping and will not endure well if the fencing and banner is left up for more than a few seasons. Other gas station companies have installed chain link (permanent) fencing on their remediation sites.

Given the above and the fact that this is the first challenge to the new fence regulations, staff recommend that Council deny the application.

Approve with Conditions

Council may feel that the fact that the property may be redeveloped within a few years is a valid justification that the temporary fencing is sufficient for the time being. If that is the case, Council should issue the permit...
as requested by the applicant. Staff, however, do not recommend this course of action as Council has recently placed these new amendments in the zoning bylaw and issuing a variance waiving the requirements may set a precedent for other properties to follow.

Alternatively, Council may wish to grant the variance, with the condition that the banner be placed around the fencing, which hopefully will reduce some of the negative visual impact that the temporary fencing and vacant lot presents. This is what the applicant has offered to do. The applicant has also offered to continue work with the Economic Development office to find a banner that will be acceptable to the City. If Council were to support this alternative, staff recommend that the condition include provisions for replacing worn banners to ensure the positive image is maintained if the property does not redevelop in the time frame anticipated by the applicant.

Alternate recommendations

THAT Council support “DVP PL2014-045” with the condition that a non-advertising banner be placed around the temporary fencing and be replaced as required from time to time.

THAT “DVP PL 2014-045” be approved.

THAT “DVP PL 2014-045” be referred back to staff.

Attachments

Attachment A – Subject property location map
Attachment B – Images of subject property
Attachment C – Draft DVP

Respectfully submitted,

Blake Laven, RPP, MCIP
Planning Manager

Approval

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<th>City Manager</th>
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For Office Use Only: ADDRESS\Partridge Dr\2915\2014 MP 704\COUNCIL\2014-06-09 Council Report
Attachment B
Images of Subject Property

Figure 1: Image of subject property showing the temporary fence from Eckhardt Avenue

Figure 2: Image of temporary fence as seen from Penticton Golf and Country Club parking lot
June 9, 2014

City of Penticton
171 Main Street
Penticton, British Columbia
V2A 5A9

Hello,

Please find enclosed a Development Variance Permit application for the property located at 910 Eckhardt Avenue, Penticton, BC; (Lt A DL366, SDYDPLN34986, Lt 4, 5 and 6 DL 366 SDYD Pln 1060) The purpose of the development variance application is to request that the new bylaw amendment Section 6.5.1 of the City of Penticton Zoning Bylaw #2011-23 be varied to allow the temporary fence currently in place be allowed with additional screening. Also enclosed is an application cheque in the amount of $562.50.

In October, 2013 and early 2014, I had many productive discussions with the city’s economic development representative. Together we created positive change by working through demolition issues of the former Petro-Canada site and agreeing to a positive process for the temporary fencing and screening of the above noted site. Suncor endeavours to be proactive when working on the non-operating sites and felt a mutually beneficial agreement for this site had been reached. The fence was up and the screening portion was in the works.

This site is currently being remediated and the expectation is that there will be a certificate of environmental compliance (CofC) from the Ministry of British Columbia environment by late 2014 early 2015. The site will be marketed for sale in early summer 2014. The quick sale of this property will have a beneficial impact on the City of Penticton.

Suncor Energy Inc. is requesting the City of Penticton’s consideration that the temporary fence be allowed to stay on the property. The whole site will remained fenced to preserve the integrity of the site from an environmental stand point and ensure the CofC is received. Suncor Energy Inc. will agree to and manage the screening and has requested updated quotes. We will work to have this done in a timely manner. Suncor’s reasoning is the cost of taking down the temporary fence and putting up a permanent...
fence is very expensive and the time frame is short. As well, the bylaw was put in place after the temporary fence was in place and after we had quoted on the initial screening.

Finally, please note that the registered owner on title is Petro-Canada Inc., however due to the fact that Petro-Canada Inc. and Suncor Energy Inc. merged in 2009 and now operate under the name Suncor Energy Inc., the applicant is Suncor Energy Inc. We are in the process of updating all titles to reflect our new operating name Suncor Energy Inc.

If you can please confirm receipt of this application via email to cpatrician@suncor.com, or by calling (403) 767-2647, it would be appreciated. If you have any questions, please do not hesitate to contact me.

Sincerely,

Celia Patrician
Suncor Energy Products Partnership
Leasing Specialist
Western Canada
200, 4838 Richard Road SW
Calgary, AB T3E 6L1
(403) 767-2647