

# REPORT TO COUNCIL



**Date:** July 25, 2017

**RIM No.** 0940-50

**To:** City Manager

**From:** Community Planning Department (TB)

**Application:** DVP16-0076

**Owner:** W62o Holdings Ltd

**Address:** 135 Rutland Rd N

**Applicant:** Compass Real Estate  
Developments

**Subject:** Development Variance Permit

Existing OCP Designation: MXR – Mixed Use (Residential/Commercial)

Existing Zone: C4 – Urban Centre Commercial

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## 1.0 Recommendation

THAT Council NOT authorize the issuance of Development Variance Permit No. DVP16-0076 for Lot A, Section 26, Township 26, ODYD, Plan EPP60238, located at 135 Rutland Rd N, Kelowna, BC.

## 2.0 Purpose

To consider a Staff recommendation to NOT issue a Development Variance Permit to vary the required minimum setback for a free-standing sign from 1.5m required to 0.0m proposed.

## 3.0 Community Planning

Community Planning Staff do not support the requested variance to eliminate the 1.5m minimum setback for a free-standing sign on the subject property. The concrete base for the sign has already been installed illegally by the applicant without permits and is located within an established Statutory Right of Way (SRW) for underground transmission lines in favor of FortisBC Electric (FBC). Despite repeated correspondence and requests, City Bylaw has been unsuccessful at forcing the applicant to remove the illegal concrete sign base. There are alternate locations for the sign on the subject property that would not require a variance and would not be located within the SRW. Staff have encouraged the applicant to explore one of these alternate locations.

## 4.0 Proposal

### 4.1 Background

There was a commercial building on the subject property that was demolished in 1998. The property remained vacant until 2015 when a new commercial development was constructed with 3 commercial tenant spaces including one drive-through. As part of the commercial development, 5.0m along Highway 33 was dedicated to Ministry of Transportation and Infrastructure (MOTI) as road dedication for a future right hand turn lane or widening of the highway. MOTI has stated that they have no immediate plans to utilize the road dedication and so the area is treated as a wide landscaped boulevard.

The applicant applied for this Development Variance Permit on March 3, 2016 in order to construct a free-standing sign on the property. At some point in the summer of 2016, the applicant illegally constructed the sign base without Council's approval of the variance or the required building permits. Through the variance application circulation process, it was discovered that a FortisBC Electric Statutory Right-of-Way (SRW) was registered on-title that provided protection for underground transmission lines that delivers electricity to the commercial development on the subject property. The sign has been illegally located within that SRW.

### 4.2 Project Description

The proposed free-standing sign would provide signage for the three existing commercial tenants (Starbucks, Dominoes, Memphis Blues). It is proposed on the south property line on Highway 33 E. Starbucks and Dominoes currently have visible store frontage on Highway 33 E and have five fascia signs combined. Memphis Blues is located on the rear of the building and has limited visibility from Highway 33 E and therefore would benefit from the increased visibility that a free-standing sign could provide. The proposed free-standing sign requires a variance to vary the setback to the property line from 1.5m required to 0.0m proposed.

There are alternate locations for the construction of the free-standing sign that would not require a variance and would not be located within a SRW. One option is to locate it within the parking lot, which currently provides more than 125% of the required parking. The additional parking was created after the development was completed and is in excess of the Zoning Bylaw for maximum parking allowance. Another alternative would be to locate the sign near the entrance to the property on Rutland Rd N. Staff have worked with the applicant for over a year to encourage one of these alternate locations.

The applicant began construction on the free-standing sign in June or July of 2016 by installing wiring for the sign as well as pouring concrete for the sign base. It is for this reason that the applicant has declined pursuing an alternate location for the proposed sign. This construction was done illegally and without the required building permit. Had the applicant applied for a building permit, it would have been denied as the sign is located within the FortisBC Electric SRW. In the technical comments section of this report, FortisBC Electric has stated that they will not support allowing this free-standing sign within their SRW and have requested that the City of Kelowna Council deny this variance. The SRW legal documentation is attached for Council review as Attachment "A".

Over the past year, the applicant has provided 3 design revisions for the sign. Initially it met the majority of the Design Guidelines and was considered an aesthetically pleasing design with high quality materials including a wood frame, development identification for "Rutland Crossing", and a dual post base (see Figure 1 below). The current version has deteriorated in terms of design and is now proposed as a single post base, no building identification, and with lower quality materials including painted metal framing (see Figure 2 below). This sign will be highly visible on Hwy 33 E.

Figure 1: Initial Proposal

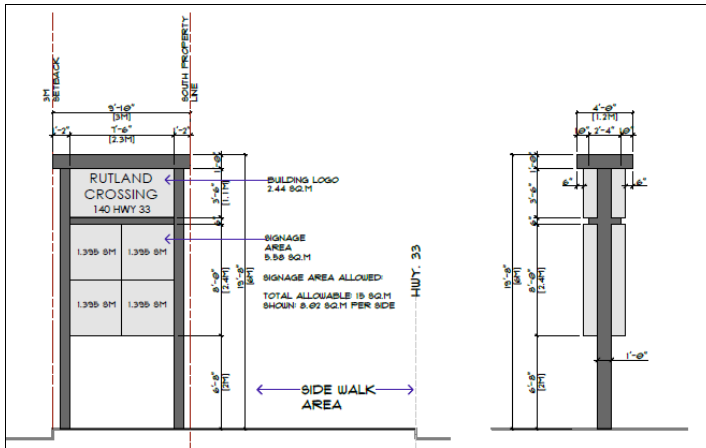
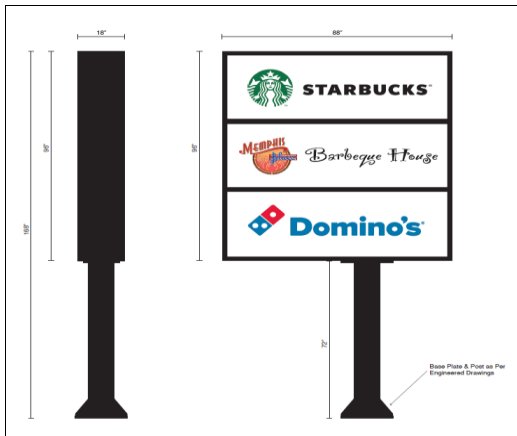


Figure 2: Current Proposal



An Alternate Recommendation supporting the variance has been included in Section 8.0 of this report for Council's consideration. The recommendation includes the registration of a Section 219 Restrictive Covenant that would require the property owner to relocate the sign in the future in accordance with the City's relevant bylaws of the day should MOTI carryout highway improvements for the road dedication area.

#### 4.3 Site Context

Rutland Crossing is located on the north side of Highway 33 E and the east side of Rutland Road N. It is on a prominent corner in Rutland's Urban Centre.

Adjacent land uses are as follows:

Orientation	Zoning	Land Use
North	C4 – Urban Centre Commercial	Commercial
East	C4 – Urban Centre Commercial	Commercial
South	C4 – Urban Centre Commercial	Commercial
West	C4 – Urban Centre Commercial	Commercial

## Subject Property Map: 135 Rutland Rd N



## 4.4 Zoning Analysis Table

Zoning Analysis Table		
CRITERIA	C4 ZONE REQUIREMENTS	PROPOSAL
Development Regulations for Free-Standing Signs		
Minimum Distance from Intersection	8.0m	27.28m
Minimum Distance from Property Line	1.5m	0.0m <sup>❶</sup>
Maximum Height	8.0m	6.0m
Maximum Area of Sign	13.99m <sup>2</sup>	8.02m <sup>2</sup>
Maximum Number of Signs per Frontage	1 sign	1 sign
<sup>❶</sup> Indicates a requested variance to the minimum distance from property line.		

## 5.0 Current Development Policies

### 5.1 Kelowna Official Community Plan (OCP)

#### **Comprehensive Design Guidelines - Signs**

- Integrate signage that contributes to the overall quality and unique character of a development (e.g. coordinate proportion, materials, and colour).<sup>1</sup>
- Do not compromise the scale and visual qualities of a building with the size and number of signs.<sup>2</sup>
- Locate, size, and format signs such that they can be easily read by pedestrians.<sup>3</sup>

## 6.0 Technical Comments

### 6.1 Development Engineering Department

- Please see attached City of Kelowna Memorandum dated May 2, 2016.

### 6.2 FortisBC Electric

FortisBC Electric (FBC) would never approve the construction of any structure within a Statutory Right of Way (SRW). FBC has not been made aware of this project in terms of hooking it into power.

If we had to excavate the section, the pylon would at least incur significant extra cost if not be a safety hazard for the construction crews. The electrical crossing of the primary line there is also a serious safety issue both for the developer's crew as well as FBC personnel going forward. The applicant may have violated WorkSafeBC regulations by digging so near the underground primary line and pouring concrete.

FBC has serious concerns regarding the safety of this project and asks that the City of Kelowna deny the permit and enforce the removal of the pylon from the SRW area. Further, if the applicant intends to cross the SRW area with electrical of any kind, they need to contact us immediately for review prior to construction.

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<sup>1</sup> City of Kelowna Official Community Plan, Chapter 14.17.1

<sup>2</sup> City of Kelowna Official Community Plan, Chapter 14.17.2

<sup>3</sup> City of Kelowna Official Community Plan, Chapter 14.17.3

## **7.0 Application Chronology**

Date of Application Received: March 3, 2016  
Date Public Consultation Completed: November 23, 2016

## **8.0 Alternate Recommendation**

THAT Council authorizes the issuance of Development Variance Permit No. DVP16-0076 for Lot A, Section 26, Township 26, ODYD, Plan EPP60238 located at 135 Rutland Rd N, Kelowna, BC; subject to the following:

1. The dimensions and siting of the sign to be constructed on the land be in accordance with Schedule "A";
2. A 219 Restrictive Covenant is registered on title requiring the sign to conform to the bylaws of the day if the City of Kelowna or Ministry of Transportation widen or develop the highway in the future;

AND THAT variances to the following section of Sign Bylaw No. 8235 be granted:

### **Section 5.6.1(d) Free-Standing Sign Regulations**

To vary the required minimum setback for a free-standing sign from 1.5m permitted to 0.0m proposed.

AND FURTHER THAT this Development Variance Permit is valid for two (2) years from the date of Council approval, with no opportunity to extend.

**Report prepared by:** Trisa Brandt, Planner I

**Reviewed by:** Terry Barton, Urban Planning Manager

**Approved for inclusion by:** Ryan Smith, Community Planning Department Manager

### **Attachments:**

Attachment "A": Statutory Right of Way Document  
Schedule "A": Site Plan & Elevations  
Draft Development Variance Permit DVP16-0076