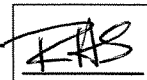
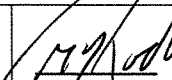


COUNCIL AGENDA/INFORMATION

- Closed
- Reg. Council
- Supplemental

Date: July 23, 09 Item # 13
Date: _____ Item # _____
Date: _____ Item # _____

 Director	 CAO
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13

DISTRICT OF WEST VANCOUVER
750 – 17TH STREET, WEST VANCOUVER, BC V7V 3T3

COUNCIL REPORT

Date: July 17, 2009 File: 1010-20-06-007
From: Bob Sokol, Director of Planning, Lands and Permits
Subject: Rezoning Application No. REZ06-007 (5775 Marine Drive -- Takumi Japanese Restaurant)

RECOMMENDED THAT:

1. Zoning Bylaw No. 2200, 1968, Amendment Bylaw is 4602, 2009 be approved.

Purpose

This report is intended to inform Council that the conditions precedent (see section 2.1) to this rezone have been met and to obtain Council's approval of Zoning Bylaw No. 2200, 1968, Amendment Bylaw is 4602, 2009 (Appendix A)

1.0 Background

1.1 **Prior Resolutions:**

June 22, 2009

Zoning Bylaw No. 2200, 1968, Amendment Bylaw No. 4602, 2009 be read a second time; and
Zoning Bylaw No. 2200, 1968, Amendment Bylaw No. 4602, 2009 be read a third time.

June 15, 2009

Council held and closed the public hearing.

May 25, 2009

Zoning Bylaw No. 2200, 1968, Amendment Bylaw is 4602, 2009 be now introduced and read a first time in short form; and
Zoning Bylaw No. 2200, 1968, Amendment Bylaw is 4602, 2009 be considered at a Public Hearing to be held on June 15, 2009 at 7:00PM in the Municipal Hall Council Chamber.

2.0 Analysis

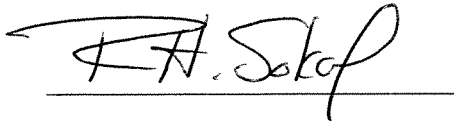
2.1 Conditions Precedent

During the public hearing process and in the Council report dated May 15, 2009, two issues related to this rezoning were identified and made conditions precedent to final approval of this rezone. Those issues were formalization of the use of the municipal boulevard for parking through a licencing agreement and formalization of the commitment of the property owner to install and maintain a sound barrier on the east side of the deck to reduce potential noise impacts to the surrounding properties. The District and the property owner have agreed to the terms of a Licence to Occupy the Municipal Road Allowance (Appendix B) and to a section 219 covenant (Appendix C) to be placed on the title for the property related to the installation and maintenance of a sound barrier on the east side of the deck.

3.0 Recommendation

With the meeting of these conditions precedent, Staff recommends that Council approve Zoning Bylaw No. 2200, 1968, Amendment Bylaw 4602, 2009.

Author:



A handwritten signature in black ink, appearing to read 'B. Sokol', is written over a horizontal line.

Appendices:

- A. Zoning Bylaw No. 2200, 1968, Amendment Bylaw is 4602, 2009.
- B. Licence to Occupy the Municipal Road Allowance
- C. Section 219 Covenant related to the Noise Barrier



District of West Vancouver

**Zoning Bylaw No. 2200, 1968
Amendment Bylaw No. 4602, 2009**

Effective Date –

District of West Vancouver

**Zoning Bylaw No. 2200, 1968
Amendment Bylaw No. 4602, 2009**

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District of West Vancouver

Zoning Bylaw No. 2200, 1968 Amendment Bylaw No. 4602, 2009

A bylaw to amend the Zoning Bylaw to revise the allowed uses within the Multiple Use Zone 5 (M.U.5) zone

WHEREAS the Council of The Corporation of the District of West Vancouver deems it expedient to provide for amendment of the Zoning Bylaw;

AND WHEREAS the Council wishes to provide for a comprehensive residential development;

NOW THEREFORE, the Council of the District of West Vancouver enacts as follows:

Part 1 Citation

1.1 This Bylaw may be cited as "Zoning Bylaw No. 2200, 1968, Amendment Bylaw No. 4602, 2003".

Part 2 Severability

2.1 If a portion of this bylaw is held invalid by a Court of competent jurisdiction, then the invalid portion must be severed and the remainder of this bylaw is deemed to have been adopted without the severed section, subsection, paragraph, subparagraph, clause or phrase.

Part 3 Amendment

Zoning Bylaw 2200, 1968 Part 3, Division 5 (M.U.5 – Multiple Use Zone 5), is hereby amended by deleting the following from Section 81-502 Uses Permitted:

“- one or more bakeshops or confectioneries, whose products are sold retail on the premises, and/or combined bakeshop/cafes. The capacity for any combination of these uses on any parcel shall not exceed 40 seats and not more than 40 patrons, at any time in total. This patron capacity does not include patrons entering premises for the sole purpose of purchasing goods for use or consumption off the property. The validity of this provision permitting bakeshop,

confectionery, and/or a combined bakeshop/café use on any site in this zone is contingent upon the validity of the above provisions restricting patron capacity”.

b) in Part 8, Division 1, Subdivision 5 (M.U.5 – Multiple Use Zone 5) by submitting the following in Section 81-502 Uses Permitted:

“- one or more bakeshops or confectioneries, whose products are sold retail on the premises, and/or restaurants. The capacity for any combination of these uses on any parcel shall not exceed 60 seats and not more than 60 patrons, at any time in total. This patron capacity does not included patrons entering premises for the sole purpose of purchasing goods for use or consumption off the property. The validity of this provision permitting bakeshop, confectionery, and/or a restaurant use on any site in this zone is contingent upon the validity of the above provisions restricting patron capacity”.

READ A FIRST TIME on May 25, 2009

PUBLIC HEARING on June 15, 2009

READ A SECOND TIME on June 22, 2009

READ A THIRD TIME on June 22, 2009

ADOPTED by the Council on

Mayor

Municipal Clerk

THE CORPORATION OF THE DISTRICT OF WEST VANCOUVERAPPLICATION FOR LICENCE TO OCCUPY MUNICIPAL ROAD ALLOWANCE

THIS AGREEMENT is dated for reference July 9th, 2009.

Hynes Investments Inc. (the "Licensee") hereby applies to The Corporation of the District of West Vancouver (the "District") for a licence (the "Licence") to occupy:

those portions of the municipal road known as 5700 block Marine Drive, Kolthammer Crescent and Primrose Place adjacent to 5775 Marine Drive (the "Property") for portions of 6 vehicle parking stalls as shown outlined in heavy black lines on the sketch plan attached as Schedule "A" (the "Licensed Area"),

subject to the terms and conditions set out in this Licence.

1. Acceptance or non-acceptance and effect of application. Upon acceptance of this application by execution by the District, this application will constitute a Licence to Occupy the Licensed Area subject to the terms and conditions contained herein. If the District does not accept this application, the amount paid on account of the Licence Fee will be returned to the Applicant.
2. Term. Subject to this Licence, the Licensee shall occupy the Licensed Area commencing on September 1st 2009, for a period of five years and then from year to year, at the option of the District, at a licence fee and on terms to be determined by the District.
3. Annual Licence Fee. As a consideration for the granting of this Licence, the Licensee will pay to the District the sum of:

One Thousand Two Hundred Dollars (\$1,200) per year (the "Licence Fee"),

payable in One Hundred Dollar (\$100) instalments on the first day of each and every month commencing September 1st, 2009 and continuing on the first day of each consecutive month until August 1st, 2014. The Licensee shall provide the District with twelve (12) post-dated cheques for payments due under this Licence commencing on September 1st, 2009 and on each anniversary thereafter. In addition, the Licensee shall provide twelve (12) post-dated cheques for each renewal period in the amount of the current Licence Fee for each renewal period.

4. Cancellation and Early Termination. If the Licensee defaults in the observance or performance of any of the terms and conditions contained in this Licence and fails to remedy such default within fourteen (14) days of notice from the District of same, the District will be entitled to terminate the Licence immediately, any rule at law or in equity to the contrary notwithstanding.

Either the District or the Licensee will be entitled to cancel the Licence upon giving sixty (60) days' written notice. Upon issuance of a development permit for the Property at any time after the commencement of this Licence, this Licence will become null and void. The establishment of a new licence that is similar or the same as this Licence, after a development permit has been issued will be the sole responsibility of the Licensee. Upon such termination or cancellation, the Licence will be at an end and of no further force and effect, save and except that the Licensee will continue to be responsible for the fulfilment of any obligations outstanding at the date of cancellation.

5. Maintenance. The Licensee will maintain the Licensed Area in a neat and tidy condition at all times and comply with all applicable bylaws of the District.
6. Site Clean-up. Upon expiration or earlier termination of the Licence, the Licensee will leave the Licensed Area in a neat and tidy condition.
7. Non-Pollution Clauses.

7.01 Definitions. For the purpose of this Part:

- (a) "Environmental Law" means all federal, provincial, municipal or local laws, statutes or ordinances relating to environmental matters, including all rules, regulations, policies, guidelines, criteria or the like promulgated under or pursuant to any such laws;
- (b) "Hazardous Substance" means a contaminant, pollutant, dangerous good, waste, toxic substance, special waste or hazardous substance as defined in or pursuant to any Environmental Law;
- (c) "Lands" means the Licensed Area;
- (d) "Notice" means any citation, directive, order, claim, litigation, investigation, proceedings, judgment, letter or other communication, written or oral, actual or threatened, from any person, including any governmental agency; and
- (e) "Permit" means any authorization, permit licence, approval or administrative consent issued pursuant to Environmental Law.

7.02 Compliance with Laws. The Licensee covenants with the District that it will conduct its business and operation on the Lands in compliance with all Environmental Laws and all Permits.

7.03 Notice to District. The Licensee covenants that it will forthwith notify the District of the occurrence of any of the following and will provide the District with copies of all relevant documentation in connection therewith:

- (a) a release of a Hazardous Substance on the Lands, except as is authorized under Environmental Law;
- (b) the receipt by the Licensee of a Notice from any governmental agency of non-compliance pursuant to any Environmental Law, including a Notice of non-compliance respecting a Permit;
- (c) the receipt by the Licensee of a Notice of a claim by a third party relating to environmental concerns; or
- (d) the receipt by the Licensee of information which indicates that Hazardous Substances are present in or on the Lands.

- 7.04 Storage of Hazardous Substances. The Licensee will not permit the storage, treatment or disposal of Hazardous Substances on the Lands except in accordance with all Environmental Laws.
- 7.05 Investigations. The Licensee will conduct such investigations, searches, testing, drilling and sampling ("Investigations") as may at any time be required by the District where any reasonable evidence exists that the Licensee's current or prior use or occupation of the Lands may be introducing or increasing the existence of any Hazardous Substance on the Lands. If the Licensee does not complete the Investigations to the satisfaction of the District, the District may enter on the property of the Licensee and take any actions necessary to complete the Investigations, the cost of which actions will be borne by the Licensee.
- 7.06 Remediation. If Hazardous Substances are present on or in the Lands **as a result of the Licensee's use or occupation of the Lands**, the Licensee will take all necessary action, at the cost of the Licensee to remediate the Lands to a level acceptable to the District and to governmental authorities.
- 7.07 Condition of Lands on Termination. Prior to the termination of the Licence, the Licensee will conduct all Investigations required by the District where any reasonable evidence exists that the Licensee's use or occupation of the Lands has introduced or increased the existence of any Hazardous Substance on or in the Lands. The Licensee will provide the result of the Investigations to the District. Where any Hazardous Substance is found on or in the Lands as a result of the Licensee's use or occupation of the Lands, the Licensee will take all necessary action, at the cost of the Licensee, to remediate the Lands to a level acceptable to the District and to governmental authorities.
- 7.08 Access. The Licensee will allow the District access at reasonable hours to the Lands.
- 7.09 Permits. The Licensee will provide to the District satisfactory documentary evidence that all Permits are valid and in good standing as requested by the District from time to time.
8. Indemnity. The Licensee will indemnify and save harmless the District, its officers, directors, employees, agents and shareholders from and against any and all losses, claims, costs, expenses, damages and liabilities, causes of action, actions, claims, suits and judgments including all costs of defending or denying the same, and all costs of investigation, monitoring, remedial response, removal, restoration or permit acquisition and including all solicitor's fees and disbursements in connection therewith which at any time may be paid or incurred by or claimed against the District, its officers, directors, employees, agents and shareholders arising, directly or indirectly, out of:
- (a) a breach by the Licensee of any of the covenants contained in this Licence;
 - (b) any wrongful act or neglect of the Licensee on or about the Licensed Area;
 - (c) any damage to property related to the Licensee's use and occupancy of the Licensed Area;
 - (d) the death of or injury to any person related to the Licensee's use and occupancy of the Licensed Area; or

- (e) where the Licensee's use or occupancy of the Licensed Area results in the presence, release or increase of any Hazardous Substance on or off-site of the Licensed Area;
 - (i) any reasonable action taken by the District with respect of the existence of or any remediation for any such Hazardous Substance on or off-site of the Licensed Area; or
 - (ii) any reasonable action taken by the District in compliance with any Notice of any governmental authority with respect to the existence of any such Hazardous Substance on or off-site of the Licensed Area.

- 9. Insurance. The Licensee, at the Licensee's cost, will obtain and keep in force throughout the existence of this Licence, in the joint names of the District and the Licensee, comprehensive general liability insurance against claims or personal injury, death or property damages occurring upon or in or about the Licensed Area, in an amount of not less than \$5,000,000 per accident or occurrence and otherwise with an insurer and with a deductible and on terms satisfactory to the District. The Licensee will, as a condition of the acceptance of this application by the District, provide evidence as of each renewal date, in the form of an insurance certificate.

- 10. Nature of Licence. The occupancy of the Licensed Area will under all circumstances be viewed as a licence only and will not create nor be deemed to create any interest in the Licensed Area in favour of the Licensee.

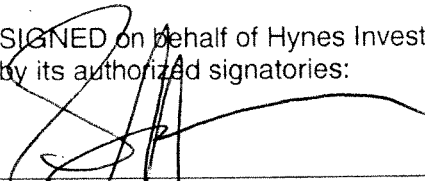
- 11. Dealings with Licence. The Licensee will not transfer or assign the Licence except with the written consent of the District, such consent not to be unreasonably withheld, and will not permit or suffer any other person to occupy the whole or any part of the Licensed Area.

- 12. Renewal. If the Licensee intends to apply to the District for a renewal of this Licence, the Licensee must give written notice of such intention to the District by August 31st of each year the Licence remains in effect.

13. Joint and Several Liability. If the Licensee is constituted of more than one person, firm or corporation, then all covenants and agreements herein set forth on the part of the Licensee will be deemed to be joint and several.

The parties have executed this Agreement as of the date of reference of this Agreement.

SIGNED on behalf of Hynes Investments Inc.
by its authorized signatories:



Hynes Investments Inc.
1495 Marine Drive
West Vancouver, BC V7T 1B8

SIGNED on behalf of THE CORPORATION
OF THE DISTRICT OF WEST VANCOUVER
by its authorized signatories:

Mayor Pamela Goldsmith-Jones

Municipal Clerk Sheila Scholes

