

**PLANNING AND HERITAGE COMMITTEE – PLANNING BOARD MINUTES
MONDAY, DECEMBER 02, 2019, 4:30 P.M.
PARKDALE ROOM, 2nd FLOOR, CITY HALL**

Present: Mayor Philip Brown
Councillor Greg Rivard, Chair
Deputy Mayor Jason Coady, Vice-Chair
Councillor Julie McCabe
Bobby Kenny, RM
Basil Hambly, RM
Shallyn Murray, RM

Reg MacInnis, RM
Rosemary Herbert, RM
Alex Forbes, PHM
Laurel Palmer Thompson, PII
Greg Morrison, PII
Ellen Faye Catane, PH IA/AA

Regrets: Councillor Bob Doiron
Kris Fournier, RM

Robert Zilke, PII

1. Call to Order

Councillor Rivard called the meeting to order at 4:31 pm.

2. Declaration of Conflicts

Councillor Rivard asked if there are any conflicts. Alex Forbes, PHM, declared conflict for Item 3 (38 Palmers Lane).

3. Approval of Agenda

Mayor Philip Brown clarified agenda item 3, 38 Palmers Lane, which Mr. Brown thought that Council voted for the application to go through traffic study. Mr. Rivard responded that Council did not vote on undergoing traffic study for 38 Palmers Lane but for 68 Brackley Point Road and Maypoint Road.

Moved by Reg MacInnis, RM, and seconded by Basil Hambly, RM, that the agenda for Monday, December 02, 2019, be approved.

CARRIED

4. Adoption of Minutes

Reg MacInnis noted that the motion for Item 10 indicated “Moved by Reg MacInnis, RM, and seconded by Rosemary Herbert, RM...”, where both board members were not at the meeting. It was found out that both Mr. MacInnis and Ms. Herbert placed a motion in the October 07, 2019 meeting where it was recommended to proceed to public consultation. The minutes for November 06, 2019 has been corrected as, “Moved by Shallyn Murray, RM, and seconded by Councillor Bob Doiron, that the...”

Moved by Basil Hambly, RM, and seconded by Shallyn Murray, RM, that the minutes of the meeting held on Wednesday, November 06, 2019, be approved.

CARRIED

5. Business arising from Minutes

There was no business arising from minutes.

6. 35 Prince Street (PID #337089)

This is a request for a variance to extend the legal non-conforming use (i.e., allow the existing Eating & Drinking Establishment to obtain a liquor license) at 35 Prince Street (PID #337089). The property is a mixed-use building located in the Downtown Neighbourhood (DN) Zone of the 500 Lot Area on the corner of Prince Street and King Street. Greg Morrison, Planner II, presented the application. See attached report.

Liquor licenses are typically approved by staff but in 2016, Council approved a variance to convert the former laundromat & convenience store into an Eating & Drinking Establishment with a stipulation that sale of alcohol would not be permitted. The applicants applied for a variance in May 2018 to amend the development agreement to allow them to apply for a liquor license but the application was rejected by Council in June 2018. When a variance is rejected, the applicants cannot apply for the same variance within one (1) year, but since one year has elapsed, the applicants are reapplying for the same variance to approve the request to be able to sell alcohol. Letters were sent to residents within 100 meters of the subject property. Four (4) letters of opposition were received prior to the deadline and one (1) letter of opposition after the deadline. Staff recommendation is to reject the requested variance. The applicants are also present to answer any questions.

Councillor Rivard commented that the recommendation of staff is based on the shortcomings noted on the report for legal non-conforming properties. When dealing with legal non-conforming uses, planning rationale dictates that the long term direction of the property should slowly gravitate back to uses that legally conform in the zone. In this case, the legal non-conforming uses have already been expanded once and the applicant is looking to further expand the legal non-conforming uses, which is contrary to good planning principles. Mr. Morrison also added that when dealing with legal non-conforming situations, the idea is to eventually lead back to being in conformance to the uses rather than adding more non-conforming uses. In this case, adding liquor license makes the property more of a commercial establishment and making it less of the residential nature of the neighbourhood, and will be against good planning principles.

Mayor Brown clarified if this application was rejected by Council last year and Mr. Morrison confirmed.

Councillor Rivard asked for any further comments or questions; there being none, the following resolution was put forward:

Moved by Reg MacInnis, RM, and seconded by Basil Hambly, RM, that the request to extend a legal non-conforming use (i.e., allow the existing Eating & Drinking Establishment to obtain a liquor license) at 35 Prince Street (PID #337089), be recommended to Council for rejection.

**CARRIED
(7-0)**

R. Herbert not present at this time to vote on this application

7. 165 Dorchester Street (PID #338400)

This is a request for a variance to reduce the required lot frontage from 65.5 ft to approximately 44.5 ft in order to convert the existing legal non-conforming 4-unit apartment dwelling into a 5-unit apartment dwelling located at 165 Dorchester Street (PID #338400). The subject property is located in the Downtown Neighbourhood (DN) Zone. Greg Morrison, Planner II, presented the application. See attached report.

A recent zoning inquiry was done in October 2019 to confirm that the existing 5-unit apartment building was permitted. Records indicate that in 1982, a 4-unit apartment building was located and is considered a legal non-conforming use. There are no records for the fifth unit. The property owners submitted a variance application in November 2019 to reduce the lot frontage. Letters were sent to residents within 100 meters and no comments were received. In the DN zone, properties that have at least 65.6 ft lot frontage would be permitted four or more units. The property has 44.5 ft lot frontage and would typically allow three units. Since the property already has four units prior 1982, they are grandfathered in and considered legal non-conforming use. While it is hard for staff to review an application when work has been done prior obtaining a permit, this application is considered to be an efficient use of the existing building. It provides higher density in the downtown core, harmonious to existing neighbourhood as there are no exterior renovations that will be done on the property, no additional parking is required and it creates additional housing in the downtown area. Staff recommendation is to approve the requested variance. Should the application be approved, the applicants are required to submit a building permit application and building plans to meet the building code requirements for the fifth unit.

Councillor McCabe asked if the applicants or the current owners were the owners at the time the work was done and Mr. Morrison responded that that the current owners have the property as five units and is going through a sale and that he is not sure if the current owners did the work or if it existed before they owned the property.

Councillor Rivard asked for any further comments or questions; there being none, the following resolution was put forward:

Moved by Shallyn Murray, RM, and seconded by Reg MacInnis, RM, that the request to reduce the required lot frontage from 65.5 ft to approximately 44.5 ft in order to convert the existing legal non-conforming 4-unit apartment dwelling into a 5-unit apartment dwelling located at 165 Dorchester Street (PID #338400), be recommended to Council for approval.

**CARRIED
(6-0)**

Mayor Brown and R. Herbert not present at this time to vote on this application

8. Reconsideration for 38 Palmers Lane (PID #275156)

Alex Forbes declared conflict for this application and has requested to step out of the room for this application.

This is a request for a reconsideration of Council's decision on September 09, 2019 to approve the rezoning of the property at 38 Palmers Lane (PID #375156) from the Low Density Residential (R-2) Zone to the Medium Density Residential (R-3) Zone. The purpose of the rezoning was to construct a three storey, 18-unit apartment building on the vacant property. Greg Morrison, Planner II, presented the application. See attached report.

On October 15, 2019, a notice of an appeal to IRAC was filed appealing Council's decision. The letter indicated that the appellant is seeking for reconsideration by Council and asked for IRAC to be held in advance until the reconsideration is concluded. The application today is to deal with the reconsideration of the approval of the rezoning.

When an application for reconsideration is submitted, it has to pass the threshold test. The threshold test basically says that the request for reconsiderations falls under the grounds in Section 3.15 of the Zoning & Development Bylaw. The three grounds that can be considered are that new facts/evidence that weren't available at the time of the initial order have come to light, material change of circumstances have occurred since the order or decision or there is clear doubt as to the correctness of the order or decision in the first instance. If after receiving a recommendation from Planning Board, Council determines that the request passes the threshold test, the rezoning request would be reinitiated and it would then proceed to a public consultation.

There is quite a bit of analysis in the report regarding the Official Plan. This is the analysis that I completed following my colleague's report on September 2019. Ultimately, it is staff's opinion that the grounds that have been chosen, the clear doubt as to the correctness of the decision in the first instance is primarily reserved for circumstances where there is a procedural defect of irregularity over the course of Council, reaching its decision as opposed to a difference of opinion over the appropriate exercise of a discretion reserved to Council in the Zoning & Development Bylaw. Essentially, Council has the right to either approve or reject rezoning applications and the circumstance is if there is any error in the process. In staff's opinion, there wasn't any procedural error. Through the report, there's the official plan, both pros and cons against the development. Staff feels that there is enough argument to either approve or reject the application and it is Council's discretion as to which way they want to go. Staff does not see any clear doubt as to the correctness of Council's decision, no error in the process and staff recommends that the application does not get reconsidered.

Reg MacInnis: Just a question, if we say, we don't want it considered, where does it go from here?

Julie McCabe: IRAC

Greg Morrison: It will go to Council first. You would recommend to Council. Council has the ultimate decision. If Council decides not to reconsider it, it will go straight to IRAC. If they agree to reconsider it, it will go to a public meeting at the next available public meeting.

Reg MacInnis: We already had a public meeting and these residents have had enough public meetings.

Greg Morrison: It would restart and may have to go back.

Reg MacInnis: We don't need to restart that issue. One of the things I was looking at was the quick summary that you have on positives. It says the City is experiencing demand for housing,

and it is not just housing, it is affordable housing. It is seniors and students that cannot find a place. If you have money, you can apartments anywhere in town, anywhere downtown, in the suburbs, you have lots of choices. What we need is affordable housing. This development doesn't fit the neighbourhood for starters and it is not affordable housing. It doesn't satisfy and it doesn't fit in the positive category. It is more of a shortcut and therefore, if you are ready for a motion, I am ready to move not to go ahead with the discussion. I just feel that that's not our part to go back and put the residents through the same process that they have already been through numerous times (they have been there at least three times). I think if the property has been vacant that long, the person should do something with it that fits the neighbourhood and not keep coming back every four or five years. That is not what we should be doing here. That is why, the reconsideration here, I don't think it is fair for a lot of people.

Bobby Kenny: I agree. We rejected this on September 3rd so our part was done.

Greg Morrison: Council approved the rezoning so the reconsideration would be should we relook at the approved rezoning. Rejecting the reconsideration would keep the approved rezoning approved until IRAC decides one way or the other.

Councillor Rivard: Just to touch on Reg's comments for a quick second. It has nothing to do with this application but from a housing perspective, I would say there's just two factors that we need. We have less than 0.2% vacancy rate right now. We need all types of housing in Charlottetown right now, be it affordable, be it for students, single-detached, duplexes, apartments or whatever it may be. There is certainly a need in Charlottetown for any type of housing but that is the only way we can dig ourselves out of this hole. It has nothing to do with this application. Secondly, an applicant can come back every year, that is their right. If we deny this, they wait at least one year and they can come back next year and ask for next year. There is nothing that states in our bylaw that we have to wait. They can come back every year. To put people or residents through it, based on the bylaw, it is the applicant's right to be able to do that after one year.

Laurel Palmer Thompson: And you are into legal issues because there are also development rights.

Councillor McCabe: I think what we are looking at is whether or not, we've done something wrong in the three points in the threshold for Council to reconsider. I can go back and look. I didn't vote to support the application. You have to be okay with that. I don't think the process was wrong. You may not like the vote but the process, I think, was followed correctly within how it all went down and I don't know if it will make much difference after that. Whether or not we are happy with the decision that Council voted, it is looking at those three points of the threshold to see if we did not follow – was there new information, did something change...

Councillor Rivard: And that is what we are being asked tonight. Again, reconsideration happens in certain threshold that is within our bylaw. Even if you agree with the public and the residents that it is not the right thing, again, we are here for reconsideration based on our bylaws.

Greg Morrison: I think the last paragraph in the report is important – "The appellant's dissatisfaction with Council's decision is based on their interpretation of the Official Plan and the

Zoning & Development Bylaw. The exercise of Council is discretionary decision on a rezoning matter under its bylaws and official plan is, in staff's opinion not a matter to be best dealt with on a reconsideration rather it is best suited to be dealt with an appeal to IRAC. Basically, IRAC could be the one mediating whether Council made the right decision based upon the official plan and Zoning & Development Bylaw but the reconsideration process is more on the process of coming to that decision."

Rosemary Herbert: We have discussed this before but I just wonder why the reconsideration comes back to the Planning Committee because we did make a recommendation to Council. They made a decision. It seems to me that the appeal should go back to Council...

Councillor Rivard: Which it will. Your job here is to look the applicants or residents put in for reasons for reconsideration and your job is to weight that if there is enough evidence to make a recommendation to Council to vote on this again. If you don't, that is your vote. Either way, we vote on it next week.

Councillor Rivard asked for any further comments or questions; there being none, the following resolution was put forward:

Moved by Shallyn Murray, RM, and seconded by Rosemary Herbert, RM, that the request to reconsider Council's September 09, 2019 decision pertaining to 38 Palmers Lane (PID #275156), be recommended to Council NOT to be reconsidered.

**CARRIED
(7-0)**

Mayor Brown not present at this time to vote on this application

9. Lot 2014-6 Towers Road (PID # 1076728)

This is a request to amend an existing development concept plan in the CDA Zone from two (2) buildings with eighty eight (88) units in total to one building with eighty eight (88) units for Lot 2014-6 Towers Road (PID # 1076728). Laurel Palmer Thompson, Planner II, presented the application. See attached report.

Letters were also sent to residents within 100 meters of the subject property and no comments were received for or in opposition to the proposed development. The public meeting was held on November 27, 2019 and the developers were present with their consultant. There were no members of the public who spoke on the application. Some of the Council members had questions on parking and parkland and those questions were answered at the public meeting.

Rosemary Herbert, RM, asked if there are any future plans to put a sidewalk along Towers Road. Councillor Rivard mentioned that it is an item in their wishlist and would propose that this be included in Public Work's budget/projects in the future.

Councillor Rivard asked for any further comments or questions; there being none, the following resolution was put forward:

Moved by Rosemary Herbert, RM, and seconded by Reg MacInnis, RM, that the request to amend an existing development concept plan and development agreement in the CDA Zone from two (2) buildings with 88 units in total to one (1) building with 88 units and increase the height from 50 ft. to 62 ft. for Lot 2014-6 Towers Road (PID # 1076728), be approved, subject to design review for the portion of the building with affordable housing and the signing of the amended development agreement.

**CARRIED
(7-0)**

Mayor Brown not present at this time to vote on this application

10. Update on Traffic Study of Tim Hortons along Maypoint Road

Alex Forbes, PHM, explained that the department is anticipating the traffic study report before the day of the Planning Board. However, at this time, there are no reports available yet. Staff, including the Province, Police Department and Public Works have sent their concerns and issues and at this time, the applicants are looking at options in order to fix the concerns.

Reg MacInnis, RM, asked if construction is still on-going in that property and Mr. Forbes responded that the building is not an issue and they can continue to construct the building as approved.

Basil Hambly, RM, also asked if the applicants can operate without approval and Mr. Forbes responded that they can operate the other proposed businesses in that location except for the proposed drive-thru.

There is no decision that needs to be made at this time.

11. New Business

There are no new businesses discussed.

12. Adjournment of Public Session

Moved by Councillor Julie McCabe and seconded by Reg MacInnis, RM, that the meeting be adjourned. The meeting was adjourned at 5:01 p.m.

CARRIED

Councillor Greg Rivard, Chair