

February 18th, 2020

Island Regulatory and Appeals Commission
5th Floor Suite 501
134 Kent Street
Charlottetown, PE C1A 7L1

Attention: Philip Rafuse

Dear Mr. Rafuse:

RE: Amended Notice of Appeal in the matter of Matthew Richard v City of Charlottetown

This amended notice of appeal is in response to the City's reply to the original Notice of Appeal filed by the Appellant against the City with the Island Regulatory and Appeals Commission on November 6, 2019.

The Appellant raised 3 grounds of appeal in his original notice. Those grounds are:

1. The Planning Board's recommendation should not have been approved by Council because the Planning Board procedures denied residents their entitlements to natural justice; namely, notice and to make representations.
2. The approved resolution is contrary to the City of Charlottetown's Official plan to: (i) address social housing needs and equitable distribution; (ii) preserve the built form of Charlottetown's existing neighbourhoods; and (iii) to protect and strengthen the character and stability of neighbourhoods.
3. The Consolidation Bylaws, detailed at Section 45.3 of the City of Charlottetown's Zoning and Development Bylaws, were not complied with.

The Appellant elaborates and expands on ground 1 and 2 below. The Appellant abandons ground 3.

Ground 1

The Appellant amends the original Notice of Appeal with the following in reply to City's assertion that it complied with its statutory notice obligations: the Appellant submits that the City did not comply with its obligations as to notice under section 23.1 of *Planning Act*:

23.1 Notice of decision of Minister or council

(1) Where

1. (a) the Minister makes a decision of a type described in subsection 28(1); or
2. (b) the council of a municipality makes a decision of a type described in subsection 28(1.1)

the Minister or council, as the case may be, shall, within seven days of the date the decision is made, cause a written notice of the decision to be posted

(c) on an Internet website accessible to the public; and

(d) at a location accessible to the public during business hours,

3. (i) if the decision is made by the Minister, in
 1. (A) a provincial government office in Charlottetown, and
 2. (B) a provincial government office in the county where the land that is the subject of the decision is located, or
4. (ii) if the decision is made by the council of a municipality, in that municipality.

Contents of notice

(2) A notice of a decision that is required to be posted under subsection (1) shall contain

5. (a) a description of the land that is the subject of the decision;
6. (b) a description of the nature of the application in respect of which the decision is made;
7. (c) the date of the decision;
8. (d) the date on which the right to appeal the decision under section 28 expires; and
9. (e) the phone number of a person or an office at which the public may obtain more information about the decision. 2006,c.15,s.1.

In the record disclosed by the City to the Appellant, there is no evidence to show that the City complied with its obligation to "cause a written notice" of the impugned decision to be posted at a location accessible to the public during business hours.

Nevertheless, the Appellant acknowledges that the notice attached at Appendix A was available on the City of Charlottetown's website within the required seven day period. However, this document is deficient in respect of the notice requirements mandated by section 23.1 of the *Planning Act* because the work description provided in this notice is merely "Major Variance – Lot frontage and side-yard step back" whereas the request approved by Council was for a major variance *in addition to 4 lot consolidations*. The Appellant, therefore, submits that subsection 23.1(2)(b) was not complied with because the description of the nature of the application in respect of which the decision was made was incomplete.

The Appellant submits that where, as here, the notice effected is insufficient to notify the affected parties of the true nature of the decision and its impact, notice cannot be said to have been adequate. Residents on the to-be-consolidated lots – or any other interested party – could not have understood that the request approved by Council on October 15, 2019 was to 1) consolidate 91 King, 93 King, 94-98 Dorchester Street and 100-102 Dorchester Street or that 2) the Major Variance and consolidation were requested and approved "in order to construct a five-storey, 43-unit apartment building" - a description from which they could have inferred that their homes would be demolished and their lives displaced.¹ The Appellant urges the Commission not to interpret "a descrip-

tion of the nature of the application" in subsection 23.1(2)(b) narrowly or in a manner which would frustrate the purpose of the notice requirement in the first instance. Rather, "a description of the nature of the application" must be interpreted in a manner which accords with the purpose of requiring notice to be given: so that affected parties may make an informed decision about whether to appeal the decision given its impact on their interests.

The Appellant maintains that residents were entitled to notice as a matter of natural justice. In that regard, the Appellant submits that the City's reliance on *Souris (Town) v Jarvis*, 2009 PESC 35 (*Souris*) to the contrary is misplaced. *Souris* addressed the question of whether the requirements of natural justice were operative in the context of a city promulgating a city by-law. The Appellant submits that that question is not relevant here. The Appellant is not challenging the making of a law, the Appellant is challenging the application of a law, namely, section 3.9 of the Zoning and Development By-Law, reproduced below:

3.9 MAJOR VARIANCES

3.9.1 Where a Development and/or Building Permit application does not meet the regulations of this by-law the applicant may apply for a Major Variance if the proposed Building or Development complies with the general intent and purpose of the City of Charlottetown Official Plan (emphasis added).

The Appellant submits that the Development Officer, the Planning Board, and the City were required, pursuant to the above, to consider and decide whether the impugned proposal complied with the general intent and purposes of the City of Charlottetown Official Plan. The City was not here acting in a purely legislative capacity - which was the decisive characterization in *Souris* - but rather was acting in a quasi-administrative role. This case cannot assist the City.

Given that this decision raises the spectre of displacement for the occupants of 21 homes, the Appellant submits that the importance of the decision for those individuals cannot be overstated. The Appellant re-submits, therefore, that the residents, at least, were entitled to notice as matter of natural justice, and that the statutory regime does not oust that entitlement.

Ground 2

On page 5 of the City's reply, the City reproduces provisions from the Charlottetown Official plan that the City says support its decision. The Appellant submits that these provisions must be read in context, namely, within the context of the official city plan's objectives to (i) address social housing needs and equitable distribution; (ii) preserve the built form of Charlottetown's existing neighbourhoods, and (iii) protect and strengthen the character and stability of neighbourhoods. In light of the current housing crisis afflicting the City of Charlottetown the Appellant places specific reliance on the first objective.² The Appellant submits that Council did not consider or decide whether the variance and consolidation application furthered this objective, given that the impugned resolution was passed without debate.

The Appellant further submits that it was unreasonable for the Council to rely on the recommendation from the Planning Board. The Appellant highlights the comments of Alex Forbes, PHM at the Planning Board minutes from Monday October 7th 2019. Mr. Forbes specifically counselled other members of the Planning Board not to take into consideration the displacement of residents as an effect of the Variance and Consolidation application. This, the Appellant submits, misconstrued the role of the Planning Board as set out in the Official City Plan:

6.3 The Role of the Planning Board

The Planning Board plays an important role in maintaining and enhancing growth and development in Charlottetown. In accordance with the Prince Edward Island Planning Act, the Planning Board is also obliged to review the Official Plan and implementation by-laws "at intervals of not more than five years". Moreover, the Board will assume the principal responsibility for overseeing development of the concept plans described earlier in this document. With the adoption of the CHARLOTTETOWN PLAN, the Board will continue its day-to-day planning responsibilities, but will also need to focus on implementation of the plan's policies, and assessing the effectiveness of the associated implementation by-laws (emphasis added).

As indicated in ground 2 of the original Notice of Appeal, the Plan states: Our **policy** shall be to work with our partners to address social housing needs, and to encourage its equitable distribution throughout the City.³ The Planning Board's role is specifically mandated to include a focus on the implementation of the Plan's policies: equitable distribution of housing is therefore within the official parameters of the Planning Board, and it was incorrect to for Mr. Forbes to suggest the opposite.⁴ The Appellant submits that equitable distribution not only may have been considered, but in light of the Major Variance by-law reproduced above, it must have been considered. Although Mr. Forbes' assertion was contested by some of those present at the Planning Board meeting of October 7, 2019 – including Mayor Brown and member Rosemary Herbert – it was not commented upon or contested by other members. The Appellant submits that the effect of Mr. Forbes erroneous comments on other board members cannot therefore be accurately measured and therefore the possibility of tainting cannot be eliminated. Furthermore, the Report of the Planning and Heritage Department which was before the Planning Board on October 7 2019 also failed to advert to the policy of equitable distribution within the Charlottetown Official Plan.⁵ The Appellant submits that it was therefore unreasonable for Council to rely on the recommendation of the Board.

Ground 3

This ground is abandoned.

Additional Issue

If the Commission is inclined to decide the issue of whether the decision to approve the consolidation and variance was made in conformance with the purpose and intent of the Official City Plan, as per section 3.9 of the Zoning and Consolidation By-Law, then the Appellant gives notice to the City and the Commission of his intention to call expert evidence on that question.

Relief Requested

The Appellant seeks an order quashing the decision of Council and remitting the matter back to the Planning Board with specific direction to take into account the mandatory consideration of equitable distribution of housing within the City, particularly in light of the aforementioned housing crisis, with adequate notice to affected parties to precede the Planning Board's consideration.

Respectfully,



Matthew Richard

1Application Record of the City of Charlottetown, Index item 10, "Resolution of Council, October 15, 2019"

2Found at p. 21 of the Official Plan: https://www.charlottetown.ca/UserFiles/Servers/Server_10500298/File/Resident%20Services/Bylaws%20and%20Regulations/Official%20Plan%20and%20Zoning%20and%20Development%20Review/City%20of%20Charlottetown%20Official%20Plan%20-%20PH-OPA.1-003.pdf.

And see the following document regarding the above mentioned housing crises: <https://www03.cmhc-schl.gc.ca/hmip-pimh/en/TableMapChart/Table?TableId=2.2.33&GeographyId=11&GeographyTypeId=2&DisplayAs=Table&GeographyName=Prince%20Edward%20Island>

3See section 3.3.2 of the City of Charlottetown Official Plan

4See City of Charlottetown's application record at Index item 8, Planning Board Minutes.

5See City of Charlottetown's application record at Index item 7.



Planning & Heritage Summary (Week ending October 18, 2019)

ISLAND REGULATORY APPEALS COMMISSION (IRAC) APPEAL PERIOD INFORMATION

The information provided on this page is intended to provide notice to the public when building and development permits have been approved by the Charlottetown Planning and Heritage Department. Residents or interested parties have **21 days to appeal** to the Island Regulatory and Appeals Commission (IRAC) any building and development permit approvals listed below within the required time period.

If you have any questions regarding the approvals listed below please contact the Planning and Heritage Department at 902-629-4158.

Planning Development Permit Approvals

FILE #	PID #	PERMIT #	APPLICATION DATE	DECISION DATE	DECISION	PROPERTY LOCATION	WORK DESCRIPTION	NAME	DEADLINE TO MAKE AN APPEAL
19-009	345736	009-BLD-19	10-Jan-19	16-Oct-19	APPROVED	140 Rochford Street	New fire escape	James Johnston	6-Nov-19
19-105	part of 1100528	112-BLD-19	13-Mar-19	15-Oct-19	APPROVED	50 MacWilliams Road (Lot #4)	Occupancy Permit: New 6-unit townhouse with garages	Affleck Construction	5-Nov-19
19-185	344218	522-BLD-19	07-Aug-19	10-Oct-19	APPROVED	155 Kent Street	Exterior façade improvements (Hotel)	William Chandler	31-Oct-19
19-208	1100528	244-BLD-19	02-May-19	15-Oct-19	APPROVED	74-76 MacWilliams Road (Lot 7)	Two 4-unit condominiums (South Side)	Doug Beaton	5-Nov-19
19-291	145755	337-BLD-19	06-Jun-19	16-Oct-19	APPROVED	550 Malpeque Road	Occupancy Permit: Renovating building for grocery store	Amon Sedighi	6-Nov-19
19-545	340802	696-BLD-19	15-Oct-19	18-Oct-19	APPROVED	228 Grafton Street	Change window to exterior door	Yue Liu	8-Nov-19
18-543	1091289 Parent	471-BLD-18	09-Oct-18	17-Oct-19	APPROVED	40-42 Bambrick Drive (Lot # 36)	Occupancy Permit: New Semi Detached Dwelling	Luke Morrison	7-Nov-19

Lot Subdivisions

FILE	PID#	APPLICATION DATE	APPROVAL DATE	MAILED OUT	DECISION	PROPERTY LOCATION	WORK DESCRIPTION	NAME	DEADLINE TO MAKE AN APPEAL
2019-058	371153	4-Oct-2019	15-Oct-2019	15-Oct-2019	APPROVED	154-156 Nassau Street	Lot subdivision (2 lots)	Steven Larter	5-Nov-2019

Council Approvals

FILE #	PID#	PERMIT #	APPLICATION DATE	APPROVAL DATE	DECISION	PROPERTY LOCATION	WORK DESCRIPTION	NAME	DEADLINE TO MAKE AN APPEAL
19-011B	396713	626-REZ-19	16-Sep-19	15-Oct-19	Approved to proceed to public consultation	68 Brackley Point Road (Vacant Lot)	Rezone property from R1L to R3	Hill-Bay Holdings	5-Nov-19
19-058	278531	515-VAR-19	01-Aug-19	15-Oct-19	Approved for reconsideration	13 Donwood Drive	Minor variance - Home Occupation	Paula MacDonald	5-Nov-19
19-101B	N/A	N/A	06-Aug-19	15-Oct-19	APPROVED	Zoning & Development ByLaw Amendments	Proposed amendments to the Zoning & Development Bylaw pertaining to Operations, Minor and Major Variances, Design Review, Accessory Structures, Non-Conforming Buildings, Non-Conforming Uses, Parking Space	City of Charlottetown	5-Nov-19



CHARLOTTETOWN

							Standards, Subdivision Regulations for Decreased Lot Size through Variance, General Provisions for Fascia Signs, Reinsertion of the Downtown Main Street (DMS) Zone in the General Provision Table for Signage pertaining to Free Standing, Sandwich Board signs and Temporary Banners and Exemptions to sign regulations for Designated properties.		
19-140	336826, 336818	645-VAR-19	20-Sep-19	15-Oct-19	APPROVED	60-62-64-66 Dorchester Street	Major variance - Side yards	Nine Yards Studio	5-Nov-19
19-437	392878	551-VAR-19	16-Aug-19	15-Oct-19	APPROVED	17 Tamarac Ave	Minor variance - Home occupation	Diana Greer	5-Nov-19
19-483	335687	605-VAR-19	04-Sep-19	15-Oct-19	APPROVED	50 King Street	Major variance - Building height	Tim Banks	5-Nov-19
19-507	492579	635-VAR-19	18-Sep-19	15-Oct-19	REJECTED	33 Bolger Drive	Major variance - Lot area	Aaron Stavert	5-Nov-19
19-508	336974, 336966, 336909, 336917	636-VAR-19	18-Sep-19	15-Oct-19	APPROVED	94-98 Dorchester St., 100-102 Dorchester St., 91 King St., 93 King St.	Major variance - Lot frontage and side- yard setback	Nine Yards Studio	5-Nov-19
19-509	352955	637-VAR-19	18-Sep-19	15-Oct-19	APPROVED	21 Greenfield Avenue	Major variance - Side yard	John Reddin	5-Nov-19
2019- 052	1102102, 1078179		5-Sep-2019	15-Oct-19	APPROVED	165 & 185 John Yeo Drive	Lot consolidation	Pan American Properties	5-Nov-19
2019- 056	336990, 336982		18-Sep-2019	15-Oct-19	APPROVED	58-64 Queen St. and 68 Queen St.	Lot consolidation	Nine Yards Studio	5-Nov-19