

December 27, 2019

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

Attention: Philip Rafuse

Dear Mr. Rafuse:

**Re: Matthew Richard v City of Charlottetown
Notice of Appeal – November 6, 2019**

This letter is by way of reply to yours of November 6, 2019 requesting the City of Charlottetown's (the "City") record and reply to the Notice of Appeal filed by Matthew Richard (the "Appellant") against the City with the Island Regulatory and Appeals Commission ("IRAC") on November 6, 2019.

For ease of reference, the City has enumerated each ground of appeal as set out by the Appellant followed with a response to each ground.

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.

The City submits that it adhered fully with the requirements of the Zoning and Development Bylaw (the "Bylaw") and the *Planning Act*, R.S.P.E.I. 1988, c P-8 (the "Act"). In particular, the City adhered to the requirements for notice and representations to the public, thereby satisfying its obligation to act in accordance with the principles of natural justice.

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The provisions of the Bylaw relevant to this application for a major variance are as follows:

3.9.3 Before a Major Variance may be approved, the Development Officer shall:

- a. Receive from the applicant a completed Variance application and sufficient funds to cover the cost associated with processing the application;
- b. Provide written notice by ordinary mail explaining the purpose of the proposed Major Variance to all Affected Property Owners within 100 m (328.1 ft) of the boundaries of the subject Lot; and
- c. Ensure that the notice identifies the subject Lot and describes the Major Variance application and the date by which written objections must be received.

3.9.4 After fourteen (14) calendar days from the date of the notice, the Major Variance will be referred to Planning Board which shall consider the request and any comments received in response to the notice, and shall make a recommendation to Council. Council may, without prejudice, approve or reject the Major Variance.

The Planning and Heritage Department (the “Department”) received a completed Variance Application (“Variance Application”) and sufficient funds in accordance with 3.9.3(a) of the Bylaw on or about September 18, 2019. In accordance with section 3.9.3(b) and (c) of the Bylaw, the Department notified all “Affected Property Owners” (i.e. as per the Bylaw definition) within 100 meters of the subject property in a letter dated September 19, 2019, annexed hereto as **Appendix “A”**. The Variance Application was reviewed by the Department and the Department provided a recommendation to the Planning Board on October 7, 2019. The

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Department recommended that the Variance Application and the Lot Consolidation Application (“Consolidation Application”) be approved subject to a number of conditions.

Further, the relevant provision of the Act is as follows:

23.1 Notice of decision of Minister or council

(1) Where

- (a) the Minister makes a decision of a type described in subsection 28(1); or
- (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,

[...]

- (ii) if the decision is made by the council of a municipality, in that municipality.

In accordance with section 23.1 and 28(1.1) of the Act, the resolution approving the Variance Application and the Consolidation Application was dated October 15, 2019. A notice of the approval including the information required pursuant to section 23.1(2) of the Act was posted on the City’s website on or about October 18, 2019 (notice annexed hereto). At any time during business hours, members of the public are able to attend at the Planning Department and access the information regarding the City’s October 15, 2019 decision.

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In response to the Appellant's allegation that the public was not afforded an opportunity to make representations, the City refers to the letter dated September 19, 2019 which solicited written comments on the application to be submitted by October 3, 2019. Only one response was received, which was in support of both the Consolidation Application and the Variance Application. To further clarify, the Bylaws do not require that a variance application be vetted at a public meeting. Pursuant to section 3.10.3 of the Bylaw, a public meeting is required when the application before the City is an application to amend the bylaws or rezone a property subject to the Bylaw. The notice requirements to the required parties were all satisfied.

It is the City's position that the relevant provisions set forth in the Bylaw were fully adhered to and further submits, that as a result of full compliance with their statutory requirements, the City did not deny any resident their entitlement to natural justice and the City is not subject to any further common law requirements of procedural fairness¹.

Finally, the City submits that notice, if any is required, to tenants of a property or properties subject to a variance application would be covered under the *Landlord and Tenant Act*, R.S.P.E.I. 1988, c L-4. *Any obligation to tenants prescribed pursuant to this Act would be an obligation of the property owner, being the landlord, and not the City.* As a result, the City had no legal obligation to notify the tenant(s) of the properties that a variance and consolidation was being considered by Council.

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.

The October 15, 2019 resolution of the City approving the Variance Application and the Consolidation Application dated September 18, 2019 is not contrary to the City's Official Plan. Rather, the City submits that both applications have significant support from the Official Plan.

¹ *Souris (Town) v Jarvis*, 2009 PESC 35

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In particular, the City finds support for its decision in the following provisions of the Bylaw, but is not limited to these provisions:

3.1.2 Our objective is to promote compact urban form and infill development, as well as the efficient use of infrastructure and public service facilities.

3.2.1 Our objective is to preserve the built form and density of Charlottetown's existing neighbourhoods, and to ensure that new development is harmonious with its surrounding.

3.2.2 Our objective is to allow moderately higher densities and alternative forms of development in any new residential subdivisions which may be established, provide that this development is well planned overall, and harmonious with existing residential neighbourhoods.

4.2.2 Our objective is to promote new development that reinforces the existing urban structure.

4.2.5 Our objective is to ensure that the concept of compatible development is fundamental to all aspects of the Charlottetown Plan.

4.2.6 Our objective is to protect and strengthen the character of the residential neighbourhood in the 500 Lot Area.

4.2.10 Our objective is to ensure that all new buildings are designed and constructed so that they become future Heritage resources.

The City's position remains that the proposed development has ample support from the Official Plan. In the City's opinion, the proposed development is essential to the continued growth and prosperity of Downtown Charlottetown. It is a new development that aims to

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promote and strengthen the character of Downtown Charlottetown and achieves that directive through the aesthetic and built form of the development and the provision of 43 housing units in the downtown core.

3. The consolidation Bylaws, detailed at Section 45.3 of the City of Charlottetown's Zoning and Development Bylaws, were not complied with.

The City submits that it fully complied with the requirements set out in section 45.3 of the Bylaw. The Appellant has not referenced a particular aspect of section 45.3 that the City has allegedly failed to comply with, making it difficult to respond in an informed manner at this early stage in the appeal. The City would submit that section 45.3 largely details the requirements for the applicant respecting a subdivision or consolidation application to satisfy, rather than requirements for the City. With that said, the City submits that it has complied with section 45.3 in the following manner:

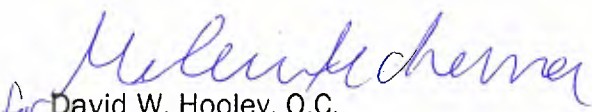
- The Consolidation Application was for four (4) lots and preliminary approval was not required.
- The Consolidation Application was completed and submitted in conformity with the Bylaw.
- Notice was given to the Affected Property Owners within 100 m. (328 ft.) of the subject property on September 18, 2019, although not strictly speaking required for Downtown Mixed-Use zoned properties.
- The Consolidation Application was submitted to the Department, was reviewed and recommended for approval by the Department (Development Officer), reviewed and recommended for approval by the Planning Board and finally, approved by Council in a resolution dated October 15, 2019.

In conclusion, the City submits that Council's October 15, 2019 resolution to approve the Consolidation Application and the Variance Application subject to a number of conditions to

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be satisfied, was a well-informed decision that considered both the potential benefits and potential drawbacks of approval. The processes and procedures as set out in the Bylaw, in particular sections 3.9 and 45.3, were adhered to as well as the common law rules of natural justice to the extent required. Further, there is ample support in the City's Official Plan for the decision to approve the Consolidation Application and the Variance Application. The decision of Council was unanimous, receiving support from the 10 City Councilors. As such, the City submits that this is not a decision with which the Commission should interfere. Rather, the Commission should show deference to the decision of the City and not substitute their opinion for that of the duly elected City Council.

Yours very truly,


for David W. Hooley, Q.C.

DWH/mm

c. Alex Forbes
Peter Kelly