Re: Grounds for Appeal of Building and Development Permit #304-BLD-24, issued by The City of Charlottetown on 19 Nov 2024 for PID # 889873

The residents of Southview Estates, West Royalty, in the City of Charlottetown hereby oppose the issue of the above noted permit. We request that the said permit be declared null and void for reasons outlined below. The rationale used to support each of our claims is also provided under each heading outline.

Rules of Natural Justice and Procedural Fairness

1. Residents of Southview Estates contend that the "Rules of Natural Justice and Procedural Fairness", a cornerstone of Canadian Law, were not adhered to in this application process. "Aggrieved persons" were thereby denied their right to appeal as provided for under Section 27 and 28 of the **PEI Planning Act**, and Section 3.15 of the city's **Zoning and Development Bylaw.** Residents assert that they were thereby denied their right to properly assess details of the application and appeal the granting of the permit. The 21-day time limit mentioned above applies to Reconsideration hearings under Section 3.15 of Charlottetown Zoning and Development bylaws. It also applies to appeals under Section 28 of the Provincial Planning Act through the Island Regulatory and Appeals Commission.

2. Public notice that Building and Development Permit #304-BLD-24, issued on **19 Nov 2024** for PID # 889873 was not posted on the City of Charlottetown's website Permit Approval Page until some period **after 2 Dec 2024.** Furthermore, on **23 Nov 2024** our duly elected city councillor advised us that he had asked planning staff to let him know if any permit was issued for PID # 889873 and informed us that "there still has not been anything proposed for the corner lot". However, this permit application for PID # 889873 was dated 7 June 2024 – approximately five months before our Councillor's initial enquiry and request for notification. The permit was also issued four days before our councillor's enquiry and request for notification on 23 November 2024. All this, in addition to residents simultaneous ongoing monitoring of the Permit Appeal Page. The result was that residents received only 5 days in which to appeal – two of which were over a weekend. We therefore submit that the noted contravention of the **Rules of Natural Justice and Procedural Fairness** was a fatal flaw in this permit approval process.

As-of-Right Development

1. This permit was approved based on the "as-of-right" doctrine governing specific uses within designated zones. As-of-right development doctrine simply means that you have the right to develop your property as you see fit; however, it is not an absolute right. The doctrine only applies after you have established that your development complies with all zoning bylaws and regulations. Section 3.3.8 a. of our Zoning and Development Bylaw makes this clear wherein it states that:

   "An application for a Development and/or Building Permit shall be rejected if: The proposed Development does not conform to this by-law or other by-laws or applicable provincial legislation;"

2. We now know that the stated purpose of this development, as detailed on the application for this permit, was not accurate or relevant at the time the 19 November 2024 permit was issued. The Royalty Maples Cottages and Motel was sold to the Province of PEI and moved from the site one month earlier. Therefore, the application information being considered by planning staff under as-of-right doctrine no longer applied, because that information was invalid. This meant that a "new" application and "new" review by city planning staff under the as-of-right rules as detailed in Section 3.3 of our Zoning and Development Bylaw was required. The as-of-right rules could no longer be applied to whatever the applicant then had planned for the lot. That information was not available to the city planners when the 19 November 2024 as-of-right assessment was being made - and it still isn't.

3. Another major issue not adequately examined under Section 3.3 pertaining to as-of-right development applications is the matter of legal street access for this property. The proposed access on the site plan is through a lot line and into an intersection of two intersecting streets. Furthermore, this was for a lot with a previous history of street access issues that were never ruled in the applicant's favor. Despite this information already being available on the department's file for PID #889873, it does not appear to have been used in the required as-of-right assessment process. Furthermore, the required approval of Public Works staff (again a Section 3.3 requirement) was not given prior to this permit being issued. Therefore, it ought not to have been issued.

Land Use Buffer Requirement

1. The requirement for a **Land Use Buffer,** a physical barrier designed to separate Commercial uses from Residential uses does not appear to have been considered in this as-of-right development application. The requirement was added to our Zoning and Development Bylaws in 2018. Here is the text as in appears in our bylaw:

a. *"6.6.1 The provision and Maintenance of a Land Use Buffer between **Commercial** or Industrial **Uses** and adjoining **Residential Uses** shall be required for all **new** Development, and such a Land Use Buffer shall include one (1) or more of the following features: a berm; a natural area containing a Watercourse or trees; or a man-made feature such as a wall, Fence, or walkway.*

b. *6.6.2 Unless otherwise provided for in this by-law, a 4.0 m (13 ft) Land Use Buffer **shall be shown on the site plan and constructed** along any Lot Line of a Multi-unit Residential, Commercial, or Institutional Building where the said Lot Line abuts a R-1L, R-1S, R-1N, R-2, or R-2S **Zone.**"*

2. So, the above Section 6.6.1 text describes a requirement for a 13ft Land Use Buffer between Commercial **"Use"** and adjoining Residential **"Use".** That is precisely the situation presented in this application for "new development" for which Section 6.6.1 states that a Land Use Buffer **"shall be required".**

3. Charlottetown's Official Plan defines the role of the city as one that *"articulates policies which preserve existing residential low-density neighborhoods"*. The City of Charlottetown fulfilled that role in 2018 when it articulated a new policy in our 2018 Zoning Bylaw. Through that bylaw amendment, **Council added a Land Use Buffer requirement** for any **new development** in a C-2 Highway Commercial Zone that shares a boundary with a R-1L low-Density Zone - like Southview Estates. That Section 6.6.1 Land Use Buffer requirement mandates a **barrier** like a wall, a fence, or watercourse designed as a "**visual and spatial separation between commercial uses and adjoining residential uses".** We believe that the purpose and intent of that bylaw requirement is very clearly spelled out in black and white plain language that any reasonable person should easily understand. It also reflects an objective laid out in our Official Plan: one of preserving residential low-density neighborhoods.

4. Section 6.6.2 of that bylaw clearly specifies that ***"a 13ft Land Use Buffer shall be shown on the site plan and constructed along any Lot Line of a… Commercial…Building where the said Lot Line abuts a R-1L…. zone"***. Note that the term "zone" is key here because the bylaw specifies the requirement for that barrier along any lot line of a commercial development where it abuts a R-1L "**zone"** - not only where it abuts a **"residential Lot"**, as was the case with the repealed 2006 **Landscaped Open Space** Buffers requirement.

5. "**Land Use** Buffers" are also very different from the "**Landscape** Buffers" provided for in the nearby Section 6.5. of our zoning bylaw. Landscape Buffers are beautification features like flowers and shrubs within a zone, and the bylaw specifically **permits** driveways through those buffers so that people can access property within their zone.

Conversely, Land Use Buffers make **no** provision for driveways, roads, or any access points. This is because Land Use Buffers are intended to act as a visual and spatial **separation** between highly incompatible commercial "uses" and low-density residential "uses".

6. Proponents of the **annexation** of this C-2 Highway Commercial zone with the R-1L Low-Density Residential zone of Southview Estates purport that Trainor Street is not part of a R-1L zone, and that therefore the Land Use Buffer requirement does not apply. That supposition is incorrect - and here's why. The developers of Southview Estates built every square inch of this neighborhood on their residential-zoned property. That residential development included construction of all our streets, like Trainor Street and Kati Drive. All that construction was built on the developer's land that was located 100% inside a residential zone. The owners of the C-2 Highway Commercial Zone contributed nothing to that development. It's western border just happened to back onto that residential property. The Commercial Zone (which contained PID #889873) had street access only unto the Malpeque Road. It had no street access at the back of the property where it bordered our developer's residential land.

7. Trainor Street is not colored yellow on the city's current zoning map - as our lots are, but it is not colored red either - as is the case with the Commercial Zone. So, does that mean it is not part of any zone? No, it does not. Our Zoning and Development Bylaw at Section 1.4.4 (a) states that:

   > *"Where the boundary of any **Zone** is* uncertain*, and the boundary substantially follows a street, lane, or public right-of-way then **the centre line** of such feature is the boundary."*

   So, it follows that if the boundary of two dissimilar zones on opposite sides of a street is uncertain, then **the center line** of that street is the boundary between the two zones.

8. Therefore, Section 1.4.4.(a) clarifies that the streets built by our developer on residential-zoned land **are not meant to be excluded from zoning**. Furthermore, if the **boundary** of a zone can follow the centre line of a street, as noted in Section 1.1.4 (a), then the street **must be** part of that zone.

9. In our case, the boundary for that C-2 Highway Commercial Zone is not uncertain. Therefore, there was no need to use the centre line of Trainor Street to establish the boundary of that C-2 zone as per Section 1.1.4.(a). The **boundary** between the C-2 and R-1L zones remained in its pinned survey position when our developer created Trainor Street. Trainor Street was constructed 100% on the R-1L Residential side of the zone

boundary line. So yes, the C-2 Highway Commercial Zone boundary line and lot line remained where it always was - and where it still is - colored red on our zoning map.

10. To further illustrate this point, Section 5.1.1 of our Zoning and Development Bylaw states that:

    "Nothing in this by-law shall prevent the use of land **in** any Zone for: a. **Public streets**; …."

    Our developer did just that – he used land within, and only **within, his residential zone** to create **public streets**. Both these sections of our Zoning and Development Bylaw reinforce our argument that public streets are **permitted** (Section 5.5.1) in any zone and **are not excluded** (Section 1.1.4. a) **from the zone in which they are built.** When our new development was constructed 45 years ago, it was built entirely within the developer's residential zone - the "permitted" public streets included. Accordingly, Trainor Street was built entirely within our R-1L Residential Zone, full stop

    Therefore, in the present case, the requirement for a Land Use Buffer "along any lot line of a commercial development" (as described in Section 6.6.2) includes where this entire C-2 Highway Commercial lot line (the C-2 zone boundary) abuts our R-1L Low-Density Residential **Zone** along Trainor Street. To suggest otherwise would pretend that all the above bylaw guidance and requirements do not exist. It would also ignore the purpose and intent of our Land Use Buffer bylaw: to create a "**visual and spatial separation between commercial uses and adjoining residential uses"**. And finally, it would ignore our Official Plan objective of preserving existing low density residential neighborhoods. In fact, the suggestion would have the **opposite** effect of the stated objectives of Section 6.6. and our Official Plan because it would blatantly **annex** C-2 Highway Commercial and R-1L Residential uses – a nonsensical supposition that flies in the face of stated governance.

11. It is also critical to note that **the construction of a private road** through a Land Use Buffer is prohibited. Section 6.6.2 of our Zoning and Development Bylaw states that the Land Use Buffer shall be required ***"unless otherwise provided for in this by-law".*** We know that a driveway or roadway through a Land Use Buffer is **not otherwise provided for** in this bylaw. Obviously, a roadway would defeat the Section 6.6.1 purpose and intent of a visual and spatial **separation** between incompatible uses. It would also ignore and conflict with the stated goal on page 8 of our Official Plan: to Preserve and Protect existing Residential Neighborhoods.

12. Section 45.12.2 of our Zoning and Development Bylaw states that: *"Council may after receiving a recommendation from the Planning Board, approve the consolidation of a lot*

which has a suitable private street access for pedestrian and vehicular traffic, where: the purpose and intent of the Lot consolidation or subdivision sought is consistent with the goals and objectives of the City's Official Plan and this by-law,"

13. As detailed above this proposed development would have **no** legal private street access, and it is not consistent with the noted goals and objectives of the Official Plan or this by-law. Also of note is that a similar consolidation and as-of right development application for this same lot was submitted by this same applicant in 2020. At that time the same issues of street access, the Land Use Buffer requirements, and resident safety that we have in the present application were considered by Planning Board, and by Council. Planning board twice considered the application and twice recommended that Council deny the application. First, with 78% of eligible board members voting against, and the second time with 86% of the board voting against. Council initially approved the application, but upon further examination in an extensive Reconsideration Process **Council rescinded its earlier approval and denied the application.** We verily believe that the decision of our duly elected Council, and the recommendations of our duly appointed Planning Board **established precedent for Commercial Development on this lot - i.e. no Commercial Development annexation of C-2 PID # 889873** with the existing R-1L Low-density neighborhood of Southview Estates.

14. The present case also involves a "new" Commercial Development application. Section 6.6.2 of our Zoning and Development Bylaw therefore requires that the applicant show a 13ft Land Use Buffer on the site plan along the entire Trainor Street lot line where it abuts the adjoining R-1L Low-density zone. That Land Use Buffer bylaw requirement was not met. **Section 3.3.8. states that an as-of right application be rejected if the requirements of the same bylaw are not met**. This application for a commercial development permit ought to have been rejected because it did not show the required Land Use Buffer, or a **legal** street access, on the site plan. As detailed above, a legal street access could not be shown, because a driveway through the required Land Use Buffer is **"not otherwise provided for in this bylaw."**

Historical Zoning Designation of PID 889873 ?

1. In May of 2024 our residents attended two separate public information sessions regarding the new Official Plan for our city. During those presentations the lead consultant showed an overhead of a **City of Charlottetown Zoning Map that clearly showed PID # 889873 as a R-1L residential lot.** When questioned about where the map came from the lead consultant advised that it was provided by The City of Charlottetown. The City's Development Officer and a member of his staff were sitting in the front row, but when asked by our resident to respond to this finding they refused to say anything. So, based on that presentation, and being given no response to the

contrary, it appeared clear to us that PID # 889873 was zoned residential – and appropriately so, as you will see in the following paragraph. That map was not created for the noted presentation, so it appears to have been an official zoning map at some point in time. Sometime prior to 8 Oct 2024 the map used in the presentation was changed to show PID # 889873 as being in a C-2 Highway Commercial Zone. That map should be traceable, because city staff provided it to the consultants. Where did it come from? Where is it now? And who changed it in the presentation? These questions need to be answered because they involve factors that are critical to the decision-making process involved in the issue of this permit.

2. PID # 889873 had historically been part of PID # 388199 – zoned C-2 Highway Commercial. In 2001 the owner of PID # 388199 decided to sever PID # 889873 from the parent lot, and to build his family home there. So, the R-1L zoning depicted in the Official Plan presentation map, aligns with that subdivision of lots. It also aligns with Section 25 of our Zoning and Development Bylaw in that a single detached dwelling is not permitted in a C-2 Highway Commercial Zone, hence the need to rezone residential.

Annexation of Incompatible Zones

1. Despite being refused street access to our low-density neighborhood from a C-2 zone on two previous submissions, the property owner is trying for a third time to force annexation of his C-2 lot with our R-1L zone. He is also doing this with full knowledge that this has never been done before in the amalgamated City of Charlottetown, because he listened to our presentations in 2020. **This has never been done and does not exist anywhere in the city because it is prohibited by law.** Section 6.6 was inserted in our bylaws in 2018 for the explicit purpose of preventing it. In addition to being prohibited by law, permitting the annexation of such incompatible C-2 and R-1L zones would ignore the fundamental purpose of zoning. It would also threaten the safety and viability of all our low-density neighborhoods - neighborhoods that our Official Plan specifically promised to protect and preserve.

Historical Street Access Issues

1. The applicant for this permit has been offered choices for PID # 889873. For the past five years he was offered the choice to provide access to this commercial lot through his own land - he chose not to. He was offered the opportunity to re-zone his single detached dwelling lot in keeping with the low-density neighborhood he was attempting to annex - he chose not to. Instead, he chose to demolish that twenty-something year old house and try his luck once again seeking approval to annex two extremely incompatible zones.

2. The applicant made his choices. Now, what about the safety concerns of the residents in our low-density neighborhood? What about **their** legal protections such as the Land Use

Buffer bylaw that was enacted to provide a visual and spatial barrier between incompatible zones? What about the negative financial implications for residents that would be a direct consequence of annexing our neighborhood with this C-2 Highway Zone? Consider also all the as-of-right heavy commercial vehicle activities that can occupy that same lot, and operate in our low- density neighborhood? How can the city control that under the as-of-right doctrine then? Has the city considered the safety risks associated with all those scenarios? Our residents have, and we know that it is downright dangerous for our entire neighborhood.

3. The applicant has made his choices respecting this lot over the past five years. He has been denied twice – and for very good reason. As detailed above, this applicant knowingly created the current dilemma. He also created it while knowing the full consequences that are facing him today, because he tried twice before and was refused. So now, he is once again pressuring our city staff to break the rules and accommodate him.

A Path Forward

1. The landowner and the City of Charlottetown has only two paths forward: if PID # 889873 wants to be part of Southview Estates: the lot must be re-zoned R-1L. Not a difficult decision to make given the informed choices the landowner has made.

2. Otherwise, if the landowner wants to continue with this Application for Commercial Development on the C-2 Lot, then he and The City of Charlottetown must explore a viable option for a well-designed safe egress onto the Malpeque Road for this C-2 zone. That is the historical access point for the entire C-2 Highway Commercial Zone.

3. The proposal described in paragraph (2) above is not new – it was part of a recommendation for this same lot in 2019. Planning staff then recommended that any approval of that similar Development Permit for this property be made subject to a Development Agreement for a common access point along the entire South-facing lot line onto the Malpeque Road. The current dilemma provides an excellent opportunity to re-visit this option. It would meet the egress needs of both C-2 lots, ensure compliance with our Zoning and Development Bylaw, and protect the existing low-density residential neighborhood of Southview Estates from present and future encroachment from the myriads of possible C-2 as-of-right commercial activities in this C-2 zone.

Submitted by:

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Appellant