

January 10, 2025

VIA EMAIL (mwalshdoucette@irac.pe.ca)

The Island Regulatory & Appeals Commission
Attention: Michelle Walsh-Doucette, Commission Clerk
National Bank Tower, Suite 501
134 Kent Street
Charlottetown, PEI
C1A 7L1

Dear Ms. Walsh-Doucette:

Re: Victoria Row Merchants Assn v. City of Charlottetown – Appeal LA 24-020

We write in response to your correspondence dated November 27, 2024, requesting the City of Charlottetown's (the "City") Record and Reply to the Notice of Appeal filed by Victoria Row Merchants Association in LA 24-020 (the "Appellant") on November 26, 2024 (the "Appeal"). The City's Record was provided on December 23, 2024. Please accept this correspondence as the City's initial reply to the Notice of Appeal.

The Appellant has appealed the City's decision of November 6, 2024, which approved the Developer's application for a Building and Development Permit (245-BLD-24) (the "Permit") to renovate the former Confederation Library and for the addition of a pavilion at 145 Richmond Street (the "Application").

Preliminary Issue – Is the Appellant an “aggrieved person” under the *Planning Act*?

The Commission's statutory authority to hear and decide this appeal is found at subsection 28(1.1) of the *Planning Act*, which provides an “aggrieved person” with a right of appeal. As a preliminary issue, the City seeks confirmation that the Appellant is an “aggrieved person” within the meaning of section 27.1 of the *Planning Act*.

The Notice of Appeal lists the Appellant as the “Victoria Row Merchants Assn”. Although “Victoria Row Merchants' Association (2017) Inc.” is listed as an incorporated entity under PEI's Corporate Registry, the Notice of Appeal does not specify how the corporation satisfies the definition of “aggrieved person”.

Meaghan Hughes | Partner

Direct (902) 629-3904 Main (902) 628-1033 Fax (902) 566-2639 Email mhughes@coxandpalmer.com

Dominion Building, 97 Queen St, Suite 600, Charlottetown, PE C1A 4A9

Under section 27.1 of the *Planning Act*, the definition of “aggrieved person” is as follows.

27.1 Definition

In this Part, “aggrieved person” means, in respect of a decision of the Minister under subsection 28(1) or the council of a municipality under subsection 28(1.1),

(a) the applicant;

(b) the Minister;

(c) a municipality affected by the decision;

(d) an individual who in good faith believes the decision will adversely affect the reasonable enjoyment of the individual’s property or property occupied by the individual;

(e) an incorporated organization, the objects of which include promoting or protecting

(i) the quality of life of persons residing in the neighbourhood affected by the decision,

(ii) the natural environment in the community affected by the decision, or

(iii) features, structures or sites having significant cultural or recreational value in the community affected by the decision; or

(f) an organization, the majority of whose members are individuals referred to in clause (d).

To determine whether the Commission’s jurisdiction is properly engaged in this matter, the City seeks further particulars from the Appellant with respect to its status as an “aggrieved person”.

City’s Initial Response to Notice of Appeal

The City submits that further particulars to the grounds of appeal are required before a substantive reply can be provided. Nonetheless, the City provides the following as a preliminary response to this Appeal.

The Application is governed, *inter alia*, by section 3.3 of the City’s Zoning & Development Bylaw (the “Zoning Bylaw”). The subject property is located within the Park/Cultural (PC) Zone¹. The Permit allows for the interior renovation and minor intensification through additional building footprint of an existing arts and cultural centre that has existed on the property since 1964 (the “Development”). The approved use of the Property, as an arts and cultural centre, will remain unchanged. The proposed Development met the minimum

¹ Zoning Bylaw, section 33.

regulations of the Zoning Bylaw based on the current zoning of the property. Given the specifics of the proposed Development, a variance was not required, nor was the Design Review process engaged.

The ground of appeal alleging that the Development is “contrary to the convenience, health and safety of the occupants or residents in the vicinity” requires further particulars to provide a specific reply. However, the City confirms that the Development Officer reasonably determined there was no evidence to suggest that “the proposed Development would be detrimental to the convenience, health or safety of the occupants or residents in the vicinity or the general public” as per section 3.3.9(e) of the Zoning Bylaw. To the contrary, the Development Officer determined that the renovation work to modernize and upgrade the existing facilities to current standards, would enhance the convenience, health and safety for users through accessibility upgrades and design enhancements.

The ground of appeal alleging a failure to follow the processes set out in the City’s bylaws, including the duty of procedural fairness, requires further particulars to provide a specific response.

The ground of appeal alleging a failure to follow sound planning principles also requires further specificity, but in general, is unfounded. In issuing the Permit, the City considered and applied sound planning principles, as expressed in the *Planning Act*, the Zoning Bylaw, the City’s Official Plan, and generally. The City considered and applied various sound planning principles in issuing the Permit, including the following.

- The Development meets the requirements of the Zoning Bylaw, including the permitted uses within the Park/Cultural (PC) Zone in accordance with the prescribed regulations under section 33. The Application sought to alter and enhance an existing permitted use under the Zoning Bylaw. Such permitted use could be dually classified as either a Community Building or a Cultural Establishment under the Zoning Bylaw.
- The Development will enhance the 500 Lot Area and promote the objectives of the Official Plan. The intent and purpose of the Official Plan, as it applies to the Development, can be drawn from section 4.2 (A Vibrant Downtown – The 500 Lot Area). This section highlights the goal of the Official Plan to have the 500 Lot Area continue to be the economic, cultural and social centre of Charlottetown and Prince Edward Island.
- The Permit issued ensured that no major changes were to be made that would negatively impair the appearance, character or function of the site. Consequently, the Permit adheres to section 4.2.3 of the Official Plan and the Park/Cultural Designation as it applies to the subject property.

The City submits that it successfully undertook the exercise of approving a permit in accordance with sound planning principles to enhance the 500 Lot Area through maintaining the appearance, function and character of the property as well as enhancing the economic, cultural and social centre of Charlottetown and Prince Edward Island.

Summary

As a preliminary matter, the City seeks further particulars from the Appellant to determine whether the Victoria Row Merchants' Association (2017) Inc. is an "aggrieved person" within the context of the *Planning Act*, therefore engaging the Commission's jurisdiction.

With respect to the City's response to the grounds of appeal, further particulars are needed to provide a specific reply. As such, the City reserves the right to provide a further written response upon receipt of the Appellant's submissions.

We trust the foregoing to be of assistance and look forward to moving this matter forward.

Yours very truly,

A handwritten signature in blue ink, appearing to be 'Meaghan Hughes', written in a cursive style.

Meaghan Hughes & Karen Campbell, K.C.

Cc: Iain McCarvill, Key Murray Law
James Dickie, Brighton Construction
Philip Rafuse, IRAC
Jessica Gillis, IRAC
David Gundrum, City of Charlottetown