

IN THE MATTER OF an appeal by Deborah Dennis of a decision by the City of Charlottetown to deny the Appellant's subdivision application on August 9, 2021.

**SUBMISSIONS OF THE APPELLANT ON JURISDICTIONAL ISSUE &
AMENDED NOTICE OF APPEAL**

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1

IN THE MATTER OF an appeal by Deborah Dennis of a decision by the City of Charlottetown to deny the Appellant's subdivision application on August 9, 2021.

WRITTEN SUBMISSIONS OF THE APPELLANT

OVERVIEW

1. These submissions set out the Appellant's position regarding the jurisdictional issue raised by the Respondent (the "City") in its Reply to the Notice of Appeal dated October 13, 2021. The City's position is that Council's decision to deny the Appellant's application is not an appealable decision pursuant to section 28(1.1) of the *Planning Act*, RSPEI 1988, cP-8 (the "*Planning Act*").
2. The submissions address whether Council's decision to deny the Appellant's application is an appealable decision pursuant to section 28(1.1) of the *Planning Act*, RSPEI 1988, cP-8 (the "*Planning Act*").
3. It is the Appellant's position that the decision on the variance application fits within the categories of appealable decisions under the *Planning Act*. Further, the Council's rejection of the Appellant's application for a variance acts essentially as a complete and final rejection of the entire subdivision application. To deny the Appellant the right to appeal the City's decision on the variance matter for jurisdictional reasons would in practice deny her any right of appeal in relation to the entire subdivision application.

FACTS

4. The Appellant is the owner of a vacant lot located on Viceroy Avenue and bearing provincial parcel number 349035 (the "**Property**").

5. On November 5, 2020, the Appellant submitted a subdivision application for the subdivision of the Property, which included a preliminary survey plan drafted by Delta Surveys Inc.. The application stated as follows:

“Want to make two residential lots out of Viceroy St. Property #349035. I want to take 4ft off the back of Admiral St. Duplexes and make the west lot on Viceroy 58ft deep and 142 ft long. The East lot on Viceroy will be approx. 187 ft. long and narrow.”

City Record, Tab 1, Subdivision and Lot Consolidation Application

6. On December 16, 2020, Emily Trainor, a planning and development officer employed by the City, emailed the Appellant as follows:

“Should you wish to proceed with the subdivision of the Viceroy property only, please have your survey updated to reflect this change. From there, we can get the subdivision in motion.”

City Record, Tab 17, page 195

7. On January 11, 2021, Ms. Trainor emailed Delta Survey Inc., a land surveyor company retained by the Appellant, stating as follows:

“Preliminary subdivision plan is approved in principle. Please proceed with preparing the final subdivision plan.”

City Record, Tab 17, page 217

8. On March 2, 2021, Ms. Trainor emailed the Appellant the following:

“Before granting final approval, I need to review with Laurel Thompson, a senior planner at our office with significant subdivision experience. Laurel is unfortunately out sick – I’ll notify you and Brian as soon as she is back to the office (hopefully tomorrow!) and I am able to review with her.”

City Record, Tab 17, page 224

9. On March 8, 2021, Laurel Palmer-Thompson, a senior planning and development officer employed by the City, advised the Appellant by email that the subdivision application could not be approved until a variance is sought.

City Record, Tab 17, page 228

10. On March 17, 2021, the Appellant submitted a variance application.

City Record, Tab 2

11. On March 23, 2021, the Appellant submitted a revised variance application in response to a suggestion by Ms. Thompson to move the house westward which would result in less rear yard variance.

City Record, Tab 3 and Tab 17, page 255

12. On May 3, 2021, the Planning Board deferred resolution regarding the two major variances to allow the Appellant to continue her work with Planning Staff and further revise the design proposal to require fewer variances.

City Record, Tab 7

13. On June 30, 2021, the Appellant submitted a second variance application in addition to a revised design proposal prepared by SableArc Studios.

City Record, Tab 17, page 304

14. On August 3, 2021, the Planning Board met and discussed the application. The discussion articulated no reasons for rejection.

City Record, Tab 11

15. On August 9, 2021, Council moved to reject the Appellant's application without any questions or discussion.

City Record, Tab 13

16. On August 30, 2021, the Appellant filed an appeal with the Commission, twenty-one days following Council’s decision, as required by subsection 28(1.3) of the *Planning Act*.

Planning Act, RSPEI 1988, c. P-8, S. 28(1.3)

ARGUMENT

17. Regulation 3.19 of the City of Charlottetown’s *Zoning and Development Bylaw* provides a right to appeal, *inter alia*, Council’s planning decisions:

A person who is dissatisfied with the administration of the by-law by Council may appeal **certain decisions** to the Island Regulatory and Appeals Commission in accordance with the *Planning Act*.

Zoning and Development Bylaw, s. 3.19

18. Subsection 28 (1.1) of the *Planning Act* provides those certain decisions which may be appealed:

- 28.(1.1) Subject to subsections (1.2) to (1.4), any person who is dissatisfied by a decision of the council of a municipality
 - (a) that is made in respect of an application by the person, or any other person, under a bylaw for
 - (i) a development permit,
 - (i.1) an occupancy permit, in relation to a matter under this Act or the regulations,
 - (ii) a preliminary approval of a subdivision,
 - (iii) a final approval of a subdivision; or
 - (b) to adopt an amendment to a bylaw, including
 - (i) an amendment to a zoning map established in a bylaw, or

(ii) an amendment to the text of a bylaw,

may appeal the decision to the Commission by filing with the Commission a notice of appeal.

19. In considering how to interpret these provisions in respect of variance applications, the decision in *Raymond Nicholson v. Town of Cornwall* affirmed that a variance application decision was made “in respect of an application for a development permit”:

[10] **While the term “variance” is not specifically listed in subsection 28(1.1) of the Planning Act**, the Commission finds that Mr. Nicholson’s application for a variance, and the Town’s decision to deny the requested variance, **were made in respect of an application for a development permit**. Accordingly, the Commission finds that it has the jurisdiction to hear this appeal.

Raymond Nicholson v. Town of Cornwall (March 1, 2010) LA10-02, para 10

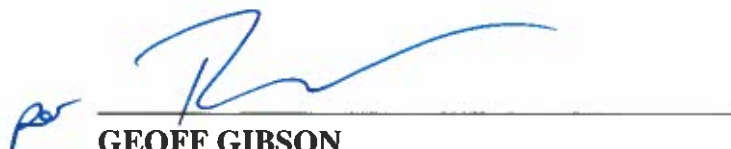
20. There is sound logic behind this reasoning. Where a variance application is an intrinsic part of the development process, to deny the right to appeal that decision effectively denies any right of appeal regarding development itself.
21. As evidence by the timeline above, the Appellant’s variance application was part of an extensive subdivision and development plan. By itself it carried no stand-alone significance, in the sense that no such application would be needed other than within the context of the subdivision application. Further, and crucially, the decision on the variance matter is determinative of the entire subdivision and development plan. Absent a successful appeal on this question, this is the only decision which will be made on the entire subdivision application.

CONCLUSION

22. As the Commission has determined in another matter, a variance application is in relation to the enumerated grounds of appeal and is therefore appealable. To determine otherwise here would result in an outcome which would be both illogical and unjust, as it would essentially deny an unsuccessful subdivision applicant her only avenue of appeal.

23. The Appellant requests that the Commission find that the matters being appealed are appealable matters pursuant to s. 28(1.1) of the *Planning Act*.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 29th day of November, 2021.



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A

- b. comply with the by-law provisions;
- c. obtain a Permit;
- d. cease work on or Restore a Building or property to its original condition, when Development has been undertaken; or
- e. obtain a proper Subdivision approval;

In contravention of this by-law is guilty of an offence and liable under conviction to a fine and, in default of payment, to a term of imprisonment

- 3.17.2 Any person who impedes, attempts to impede, refuses or does not permit inspection of a property pursuant to this by-law shall be guilty of an offence.
- 3.17.3 Where a person convicted under this section fails to commence the restoration ordered within sixty (60) days after the order has been made, the City may take such steps as it deems necessary to Restore or remove the subject matter of the offence at the expense of the Owner.
- 3.17.4 When an offence under this by-law is committed or continued for more than one (1) day, the person who committed the offence is liable to be convicted for a separate offence for each day on which the offence is committed or continued.

3.18 PENALTIES

- 3.18.1 A person, contractor or Owner who violates this by-law is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars (\$5,000) in each case together with the cost of prosecution, and, in default of payment of the fine and costs, to imprisonment for a term not exceeding three (3) months unless the fine and costs together with the costs of enforcing the same are sooner paid.
- 3.18.2 Where the offence is a continuing offence in addition to the penalties provided in this section, such person shall be liable for all costs in immediate removal of such an offence, and the Provincial Judge may impose a penalty not exceeding five thousand dollars (\$5,000) for every day the said offence continues and in default of payment thereof to imprisonment not exceeding thirty (30) days.
- 3.18.3 Where there is default of payment, any person or corporate officer is liable to be imprisoned in accordance with the *Summary Convictions Act*.

3.19 APPEALS

- 3.19.1 A person who is dissatisfied with the administration of the by-law by Council may appeal certain decisions to the Island Regulatory and Appeals Commission in accordance with the *Planning Act*.

B

27. Production of permit

- (1) Where any building or structure is being constructed or other activity performed for which a permit is required under any bylaw or regulation made pursuant to this Act, a person authorized by the Minister or the council may require the person constructing the building or structure or performing the activity to show to him the permit therefor and on failure to do so within one day thereafter, that person is guilty of an offence.

Power of entry

- (2) For the purposes of subsection (1), a person authorized by the Minister or the council may enter upon any lands upon which the building or structure is being constructed or the activity performed. 1988, c.4, s.27.

PART V — APPEALS

28. Appeals from decisions of Minister

- (1) Subject to subsections (1.2) to (4), any person who is dissatisfied by a decision of the Minister that is made in respect of an application by the person, or any other person, pursuant to the regulations for (a) a development permit;
- (b) a preliminary approval of a subdivision or a resort development;
 - (c) a final approval of a subdivision;
 - (d) the approval of a change of use; or
 - (e) any other authorization or approval that the Minister may grant or issue under the regulations,

may appeal the decision to the Commission by filing with the Commission a notice of appeal.

Appeals from decisions of council

- (1.1) Subject to subsections (1.2) to (1.4), any person who is dissatisfied by a decision of the council of a municipality
- (a) that is made in respect of an application by the person, or any other person, under a bylaw for
 - (i) a development permit,
 - (i.1) an occupancy permit, in relation to a matter under this Act or the regulations,
 - (ii) a preliminary approval of a subdivision,
 - (iii) a final approval of a subdivision; or
 - (b) to adopt an amendment to a bylaw, including
 - (i) an amendment to a zoning map established in a bylaw, or
 - (ii) an amendment to the text of a bylaw,

may appeal the decision to the Commission by filing with the Commission a notice of appeal.

“bylaw”

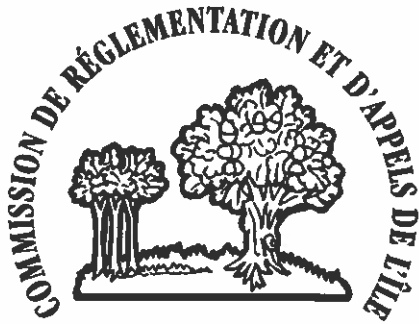
- (1.2) In subsection (1.1) and subsection (1.4) “bylaw” means a bylaw made under this Act.

Notice of appeal and time for filing

- (1.3) A notice of appeal must be filed with the Commission within 21 days after the date of the decision being appealed.



C



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**
Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LA09017
Order LA10-02**

IN THE MATTER of an appeal by
Raymond Nicholson of a decision of the
Town of Cornwall, dated August 19, 2009.

BEFORE THE COMMISSION
on Monday, the 1st day of March, 2010.

Allan Rankin, Vice-Chair
John Broderick, Commissioner
David Holmes, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Philip J. Rafuse

Appeals Administrator
Land, Corporate and Appellate Services Division

IN THE MATTER of an appeal by
Raymond Nicholson of a decision of the
Town of Cornwall, dated August 19, 2009.

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IN THE MATTER of an appeal by
Raymond Nicholson of a decision of the
Town of Cornwall, dated August 19, 2009.

Appearances & Witnesses

1. For the Appellant Raymond Nicholson

**Raymond Nicholson
Glen Fullerton**

2. For the Respondent

**Kevin McCarville
Dean Lewis**

IN THE MATTER of an appeal by
Raymond Nicholson of a decision of the
Town of Cornwall, dated August 19, 2009.

Reasons for Order

1. Introduction

[1] The Appellant Raymond Nicholson (Mr. Nicholson) has filed an appeal with the Island Regulatory and Appeals Commission (the Commission) under section 28 of the *Planning Act*, R.S.P.E.I. 1988, Cap. P-8, (the *Planning Act*). Mr. Nicholson's Notice of Appeal was received on September 8, 2009.

[2] This appeal concerns an August 19, 2009 decision of the Respondent Town of Cornwall (the Town) to deny a height variance application for an accessory building constructed on parcel number 603290 (the subject property), located at 31 James Street in Cornwall.

[3] After due public notice and suitable scheduling for the parties, the appeal was heard on January 13, 2010.

2. Discussion

Mr. Nicholson's Position

[4] Mr. Nicholson's position may be briefly summarized as follows:

- In April 2008 he applied for a building permit to construct a storage building on the subject property. He received a building permit but did not construct the building that year. In 2009 he re-applied in order to renew the building permit. He received the permit and started construction. In June 2009 Town staff visited the subject property and Mr. Nicholson was informed that his building was too high. He applied to the Town for a variance from the height requirements of the Town of Cornwall Zoning and Subdivision Control (Development) Bylaw (the Bylaw). On August 19, 2009, the Town denied his application for a height variance.

- Mr. Nicholson told the Commission that his storage building is approximately 18 feet high. He informed the Commission that he was not aware that the Bylaw restricted accessory buildings to a maximum height of 12 feet. Mr. Nicholson stated that the application form for a development permit does not ask an applicant for the height of the proposed building; rather it only asks the number of stories for the proposed building. Mr. Nicholson states that he does recall having signed “a paper” when he picked up his permit. However, he believes that he never received a copy of the paper he signed. Mr. Nicholson told the Commission that it would be very expensive to make the building conform with the Bylaw as much of the building would have to be dismantled and the building reconstructed.

[5] Mr. Nicholson requests that the Commission allow his appeal, quash the Town’s decision and grant him a height variance for his accessory building.

The Town’s Position

[6] The Town’s position may be briefly summarized as follows:

- The Bylaw specifies that, in a residential zone, an accessory structure shall not exceed 12 feet in height above grade.
- Both the April 9, 2008 and March 23, 2009 development permits contained a list of specific conditions. On page 2 of the permits, condition number 4 specified that the “accessory structure shall not exceed twelve (12) feet (3.6 m) in height above grade.” Page 2 of both permits was signed by Mr. Nicholson and Town staff. The Town submitted that it is staff’s practice to provide an applicant with a copy of all pages of a building permit. The Town submitted that Mr. Nicholson ought to have been aware of the height requirement as that information was included as a condition on the building permit and Mr. Nicholson confirmed his agreement of the conditions with his signature.

[7] The Town requests that the Commission deny the appeal.

3. Findings

[8] After a careful review of the submissions of the parties and the applicable law, it is the decision of the Commission to deny this appeal. The reasons for the Commission’s decision follow.

[9] Subsection 28(1.1) of the *Planning Act* reads as follows:

28(1.1) Subject to subsections (1.2) to (1.4), any person who is dissatisfied by a decision of the council of a municipality

(a) that is made in respect of an application by the person, or any other person, under a bylaw for

(i) a building, development or occupancy permit,

(ii) a preliminary approval of a subdivision,

- (iii) a final approval of a subdivision; or
- (b) to adopt an amendment to a bylaw, including
- (i) an amendment to a zoning map established in a bylaw, or
- (ii) an amendment to the text of a bylaw,
- may appeal the decision to the Commission by filing with the Commission a notice of appeal.

[10] While the term "variance" is not specifically listed in subsection 28(1.1) of the *Planning Act*, the Commission finds that Mr. Nicholson's application for a variance, and the Town's decision to deny the requested variance, were made in respect of an application for a development permit. Accordingly, the Commission finds that it has the jurisdiction to hear this appeal.

[11] The core of Mr. Nicholson's position is that he should be granted a height variance for his storage building as he was unaware of the maximum height requirement set out in the Town's Bylaw. The core of the Town's position is that the height requirement was listed as a condition on the building permit.

[12] The second page of the March 23, 2009 development permit reads, in part, as follows:

SPECIFIC CONDITIONS TO PERMIT

...

4. *The accessory structure shall not exceed twelve (12) feet (3.6 m) in height above grade.*

...

Conditions agreed to and signed at Cornwall, Prince Edward Island, this 23 day of March 2009.

FOR THE DEVELOPER

FOR THE TOWN

(Sgd.) Ray Nicholson

(Sgd.) Dean Lewis

[13] Mr. Nicholson believes that he did not receive a copy of page 2 of the permit. The Town states that it provides a copy of the full permit to each successful permit applicant.

[14] In the present matter, it is possible that the Town inadvertently failed to provide a copy of page 2 of the permit to Mr. Nicholson. It is also possible that Mr. Nicholson received a copy of page 2 but lost it.

[15] The Commission notes that the Town's development permit application form requests that an applicant fill in the number of stories of the proposed structure, but there is no request for describing the height of the structure. The Commission is of the view that the Town should consider amending this form to request the height of the proposed structure. Had this information been requested, and had Mr. Nicholson entered a height of 18 feet, it would have served as a 'red flag' for the Town's staff that Mr. Nicholson's plan's overstepped the maximum parameters of the Bylaw.

[16] However, what is crucial is that the Town clearly specified the maximum height condition on the permit and that Mr. Nicholson signed his agreement to the conditions. While it is quite possible that Mr. Nicholson did not read the conditions before signing, any such failure to read the conditions was his omission, rather than an error or omission of the Town.

[17] While the Town had the discretion to grant a height variance to Mr. Nicholson, such a variance would have amounted to a 50% variance, a very major and potentially precedent setting variance. If Mr. Nicholson could not have reasonably been aware of the height restriction, the Commission is of the view that the requested variance would have been a fair and just remedy. However, the Commission finds that the development permit clearly set out the maximum height for the accessory building.

[18] For the above reasons, the Commission finds that the Town acted reasonably when it made the decision to deny a height variance for Mr. Nicholson's accessory building. Accordingly, the Commission denies this appeal.

4. Disposition

[19] An Order denying this appeal follows.

IN THE MATTER of an appeal by
Raymond Nicholson of a decision of the
Town of Cornwall, dated August 19, 2009.

Order

WHEREAS the Appellant Raymond Nicholson has appealed a decision of the Town of Cornwall, dated August 19, 2009;

AND WHEREAS the Commission heard the appeal at a public hearing conducted in Charlottetown on January 13, 2009 after due public notice;

AND WHEREAS the Commission has issued its findings in this matter in accordance with the Reasons for Order issued with this Order;

NOW THEREFORE, pursuant to the *Island Regulatory and Appeals Commission Act* and the *Planning Act*

IT IS ORDERED THAT

1. The appeal is denied.

DATED at Charlottetown, Prince Edward Island, this 1st day of March, 2010.

BY THE COMMISSION:

(Sgd.) *Allan Rankin*
Allan Rankin, Vice-Chair

(Sgd.) *John Broderick*
John Broderick, Commissioner

(Sgd.) *David Holmes*
David Holmes, Commissioner

NOTICE

Section 12 of the *Island Regulatory and Appeals Commission Act* reads as follows:

12. The Commission may, in its absolute discretion, review, rescind or vary any order or decision made by it or rehear any application before deciding it.

Parties to this proceeding seeking a review of the Commission's decision or order in this matter may do so by filing with the Commission, at the earliest date, a written **Request for Review**, which clearly states the reasons for the review and the nature of the relief sought.

Sections 13(1) and 13(2) of the *Act* provide as follows:

13.(1) An appeal lies from a decision or order of the Commission to the Court of Appeal upon a question of law or jurisdiction.

(2) The appeal shall be made by filing a notice of appeal in the Court of Appeal within twenty days after the decision or order appealed from and the rules of court respecting appeals apply with the necessary changes.

NOTICE: IRAC File Retention

In accordance with the Commission's Records Retention and Disposition Schedule, the material contained in the official file regarding this matter will be retained by the Commission for a period of 2 years.

IRAC141AA(2009/11)

2

Amended Notice of Appeal (Continued)

(Pursuant to Section 28 of the *Planning Act*)

This amended notice of appeal is in response to the Record and Reply filed by the City of Charlottetown (the “City”) dated October 13, 2021, in respect of the Appellant’s original Notice of Appeal filed with the Island Regulatory and Appeals Commission (“IRAC”) on August 30, 2021.

Decision Being Appealed

The decision being appealed is that of the City’s municipal council (the “**Council**”) to reject the Appellant’s request for one (1) Minor Variance to reduce the minimum front yard setback requirement from 19.7ft to 18ft and one (1) Major Variance to reduce the minimum rear yard setback requirement from 24.6ft to 15.2ft, so as to allow for two (2) new single-detached dwellings on the vacant lot located at Viceroy Avenue and bearing provincial parcel number #349035 (the “**Property**”), proposed for subdivision into two (2) separate parcels.

- ~~1. The City failed to exercise its decision making discretion in a fair, reasonable and transparent manner;~~
2. 1. The City failed to provide reasons for its decision, contrary to the principles of natural justice and procedural fairness; [see below for amendments and further particulars]
3. 2. The City failed to apply sound planning principles by:
 - a. not properly considering the report of the Planning and Heritage Department; and
 - b. not complying with the principles and objectives of the City of Charlottetown Official City Plan. [see below for amendments and further particulars].
- ~~4. Such further and other grounds as may be apparent upon review of the record and the Commission may permit.~~

Amendments and Further Particulars

1. The City failed to provide reasons for its decision, contrary to the principles of natural justice and procedural fairness.

It is the Appellant's position that, to satisfy the requirements of procedural fairness, Council was required to complete a careful evaluation of the variance application and provide reasons to support its decision.

Procedural fairness requires more than mere adherence to a regulatory application process but adherence to administrative law principles of transparency and reasonableness.

In the Supreme Court of Canada decision of *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village)*, Chief Justice MacLaughlin outlined the duty of municipal councillors to give reasons when refusing an application:

12 The five Baker factors suggest that the Municipality's duty of procedural fairness to the Congregation required the Municipality to carefully evaluate the applications for a zoning variance and to give reasons for refusing them. This conclusion is consistent with the Court's recent decision in *Prud'homme v. Prud'homme*, [2002] 4 S.C.R. 663, 2002 SCC 85, at para. 23, holding that **municipal councillors must always explain and be prepared to defend their decisions**. It is also consistent with *Baker*, where it was held, at para. 43 dealing with a ministerial decision, **that if an organ of the state has a duty to give reasons and refuses to articulate reasons for exercising its discretionary authority in a particular fashion, the public body may be deemed to have acted arbitrarily and violated its duty of procedural fairness**.

13 **Giving reasons for refusing to rezone in a case such as this serves the values of fair and transparent decision making, reduces the chance of arbitrary or capricious decisions, and cultivates the confidence of citizens in public officials**. Sustained by both law and policy, I conclude that the Municipality was bound to give reasons for refusing the Congregation's second and third applications for rezoning. This duty applied to the first application and was complied with. If anything, the duty was stronger on the Congregation's second and third applications, where legitimate expectations of fair process had been established by the Municipality itself.

Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village),
2004 SCC 48, paras 12 and 13.

The Commission has previously adopted this rationale and explained that all planning applications must receive careful evaluation and that sufficient reasoning must be provided to satisfy the requirements of procedural fairness. In *Hanmac Inc. v City of Charlottetown*, the Commission stated:

The direction from the Supreme Court of Canada is clear: a municipality must carefully evaluate an application, give reasons when refusing the application and municipal councilors “**must always explain and be prepared to defend their decisions**”.

A careful evaluation of Hanmac’s application was given by the Planning and Development Officer and by Planning Board and these evaluations supported Hanmac’s rezoning application. **While Council is free to make a decision contrary to the recommendation of its staff and its Planning Board**, as noted in *Congrégation*, **a municipality must undertake a careful evaluation of the application before it in order to meet the duty of procedural fairness...**

Hanmac Inc. v City of Charlottetown, LA15-06, at para 41 and 42

Counsel for the City, in its Reply dated October 13, 2021 (the “**Reply**”) stated that Council had followed the recommendation of Planning Board and “thus implicitly adopted the reasons of Planning Board”.

City Reply, page 3

Planning Board and Council serve different functions and the reasons of Planning Board cannot be substituted for reasons of Council. Even if Planning Board could have been considered to have undertaken “a careful evaluation” of the application (which is denied), the record indicates that Council failed to do so.

Counsel for the City has also written that “the recommendation to deny was for a number of reasons” and that the reasons were “clearly articulated by Planning Board”. Respectfully, the minutes of the August 3, 2021, Planning Board meeting reveal no basis for such a claim. Reasons for rejection were not “clearly articulated” by Planning Board, let alone Council. A lengthy discussion is not synonymous with the giving of reasons, and the satisfaction of the former requirement does not obviate the need for the latter.

2. The City failed to apply sound planning principles.

The Commission has previously opined on the requirement to consider sound planning principles when a municipality is deviating from the recommendations made to it. In *Jessie Frost-Wicks et. al. v. City of Charlottetown*, the Commission stated as follows:

In rejecting a recommendation, Council must demonstrate sound planning reasons for doing so and its decision-making process should clearly demonstrate what factors were considered that support the final decision. That final decision must be rooted in sound planning principles...

Jessie Frost-Wick et. al. v. City of Charlottetown, LA20-04, at para 35

In this situation, the reports of the Planning Department were thorough and set out the history of the application in the Property's subdivision and development context. Staff undertook a thorough review of the Application in light of the City's Official Plan and Bylaw. The evidence contained in the Planning Staff reports confirms that the proposed variances are consistent with and based upon sound planning principles.

The Planning and Heritage Department reports recommending approval of the application specifically concluded that the proposed single-detached dwellings conform with the policies and objectives of the City of Charlottetown Official Plan.

Planning and Heritage Department Report, page 4 and 5
City's Record, Tab 10

Planning Staff clearly considered sound planning principles, as evidenced in their reports. There is no evidence whatsoever in the record that sound planning principles were considered, let alone relied upon, by Council in its rejection of the recommendations of the Department.

To suggest otherwise in light of the record is strictly conjecture and finds no basis in the minutes of the Planning Board meeting or the Council decision. Even if there were "sound planning reasons" to reject the application (which is denied), they have not been "demonstrated" by Council. There is no reference in the decision of Council to the minutes or discussion of Planning Board whatsoever.