

MaryAnne McNulty vs. City of Summerside

IRAC APPEAL LA#22023

THAYNE JENKINS, COS PLANNING OFFICER, MAY 25, 2023

MaryAnne McNulty v. City of Summerside - IRAC Appeal LA#22023

1. Introduction

The City of Summerside Planning Officer reviewed the IRAC file documents for **Appeal LA#22023**. As a professional land-use planner my review examines two key issues:

- Did the City follow the proper process?
- Does Council's decision have merit based on sound planning principles?

2. Applicable documents

- a. PEI Planning Act;
- b. Summerside Official Plan;
- c. Summerside Zoning Bylaw;
- d. IRAC documents – Appeal LA#22023
- e. City of Summerside (CoS) YouTube meeting videos – Council public meeting Nov 1 2022; Planning Board Nov 15 2022; Council meeting Nov 21 2022.

The IRAC documents, and more particularly the staff report prepared for planning board; council public meeting minutes dated Nov 1; planning board meeting minutes dated Nov 15 and council meeting minutes dated Nov 21 were used in my review.

Of note, transcripts of written minutes are summaries of the actual meetings. City of Summerside YouTube channel videos provide verbatim minutes. Both sources are essential to understand the discussions and reasonings of planning board and council throughout the process.

3. Did the City follow the proper process?

- a.) **process for a Restricted Use amendment – excerpt of section 5.10 of the Zoning Bylaw.**

5.10 Procedures for Official Plan, Secondary Plan, Zoning, Discretionary Uses, and Restricted Uses

Council may approve or deny applications for an official plan amendment, secondary plan amendment, zoning amendment, discretionary use and restricted use, subject to the following procedures:

- a. *Council shall call a public meeting to provide residents and other interested persons the opportunity of making representations on the application. A minimum of 7 clear days prior to the public meeting, the Development Officer shall post the date, time and place of the public meeting, together with the general terms of the application, by:*
 - i. *Zoning bylaw amendments, discretionary and restricted use applications shall require a minimum of one public notice in a local newspaper.*

- ii. *Amendments to the Official Plan and/ or Secondary Plan shall require a minimum of two public notices in a local newspaper; and*
 - iii. *Written notice in all applications shall be mailed to all property owners within 60 m (196.8 ft) of the boundaries of the subject property.*
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- d. *Applications for discretionary and restricted use approvals shall accord with the following procedures:*
 - i. *Council holds a public meeting;*
 - ii. *Staff report is prepared to Planning Board;*
 - iii. *Planning Board makes recommendations to Council;*
 - iv. *At a separate Council meeting held on a different day, a resolution to pass the amendment(s) is passed.*

Planning Officer comments regarding process:

- Notice of a public Council meeting was advertised in the newspaper on Oct 19, 2022 (IRAC doc, page 102).
 - Letters were mailed to property owners within 60 meters (200ft) of the subject property (IRAC doc – pages 97-101).
 - A Council public meeting was held on Nov 1 to allow the applicant(s) and the public to make comments and ask questions.
 - A staff report was prepared for the Planning Board meeting of Nov 15.
 - A Planning Board meeting was held, and additional public comments were allowed. The Planning Board made a recommendation to the Council to approve. There were no conditions in the recommendation of planning board.
 - A second Council meeting was held on Nov 21, and Resolution CoS 22-127 was read aloud. The Resolution included the Section 5.7 zoning criteria; the recommendation of planning board; and two conditions of approval.
 - Amendments to the original resolution were made at the council meeting (to add two additional conditions. This proposed amendment was debated and then approved. The amended Resolution with four conditions was approved by majority vote of council.
 - Notice of the decision was posted on-line (IRAC docs - page 195) and in a public place at City Hall inside the main front doors.
- b.) restricted use designation – excerpt of section 8.5 of the zoning bylaw**

8.5 Restricted Use Designation

- a. *The purpose of a Restricted Use designation is to manage requests for land uses that have unique characteristics, special requirements, and innovative ideas or because of unusual site constraints, require specific regulations.*

- b. *The Restricted Use designation is a "custom made" or "fine-tuned" designed for one specific area or project only. It is still a legally by-lawed land use and the underlying current zoning does not change. Any changes to the uses or rules require the full public hearing re-designation or zoning process.*
- c. *The purpose of this Designation is to accommodate single special uses which, because of their particular nature, cannot be easily accommodated within another Zone or where rezoning would result in undesirable future land uses due to the "as of" rights in that zone.*
- d. *The '[x]' designates the specific map reference for the site designated "Ru" and references the type of development approved for that site and recorded on a special schedule for that purpose.*
- e. *Council may attach terms and conditions to the approval of a restricted use. After hearing the recommendation of the Planning Board, Council may revoke a restricted use approval for violation of any condition attached to an approval.*
- f. *The Ru[x] Designation is for a single use only, and restricts land use to a single purpose. All land use applications shall be evaluated on their merits by the Development Officer who will establish the appropriate development standards on an individual basis and reviewed by Council for their determination.*

Planning Officer comments regarding restricted uses:

- The restricted use designation is authorized in the zoning bylaw as an overlay designation of the underlying zone to allow individual uses that cannot be accommodated in another zone or may open the door to other inappropriate land uses as-of-right.
- A restricted use is not as-of-right. If it ceases operation, the underlying zone automatically applies, without need of going back to Council or rezoning.
- A restricted use can be revoked by Council for violation of a condition(s).
- The restricted use designation is an appropriate land use planning tool to manage site specific land uses. It is similar in functionality to a spot zone, but current zoning does not change.
- The restricted use designation allows the Council at its discretion to attach terms and conditions to an approval. Four conditions were attached in the Council resolution CoS 22-127 dated Nov 21, 2022.

4. Does Council's decision have merit based on sound planning principles?

Section 5.7 of the Zoning Bylaw states a number of criteria for reviewing development applications, including restricted uses under the bylaw. Specifically, it requires:

*Council, Planning Board, and the Development Officer **shall consider** (bold emphasis added) the following general criteria when reviewing applications, as applicable:*

- a. *Conformity with all requirements of this Bylaw.*
- b. *Conformity with the Official Plan (2018) and any approved Secondary Plans.*

- c. *Suitability of the site for the proposed development.*
- d. *Compatibility of the proposed development with surrounding land uses, including both existing and projected uses.*
- e. *Any comments from residents or other interested persons.*
- f. *Adequacy of existing water, sewer, road, storm water and electrical services, city parking and parklands for accommodating the development, and any projected infrastructure requirements.*
- g. *Impacts from the development on pedestrian/vehicular access and safety, and on public safety generally.*
- h. *Compatibility of the development with environmental, scenic and heritage resources.*
- i. *Impacts on City finances and budgets.*
- j. *Other matters as specified in this Bylaw, as well as other applicable City policies and bylaws.*
- k. *Other matters as considered relevant.*

Planning Officer comments regarding sound planning principles:

- The previous use of the subject property was a social service agency or group home for Community Connections providing daily support services to individuals who are not a family unit. I'm not aware if overnight accommodations were offered.
- The proposed restricted use (homeless shelter) is similar to a "social services agency" which is a permitted use in the Institutional zone.
- The criteria from section 5.7 of the zoning bylaw were stated in the staff report and staff comments where applicable were made.
- Not all criteria from section 5.7 are applicable to this application.
- The criteria from section 5.7 were included in Council resolution CoS 22-127 and read aloud at the Council meeting.
- The recommendation of the Planning Board was included in Council resolution CoS 22-127.
- Planning Board and Council discussed submissions from the applicant(s) and all public comments, that were received in writing and voiced at meetings.
- The subject property and area are in a heritage district, but the subject property is not designated heritage or profiled for its heritage value. **See Heritage District map on page 8.**
- A restricted use application did not require a special heritage board review under the heritage bylaw. **See excerpt of Heritage Bylaw SS-20 on page 9 of this report.**
- The Official Plan enables restricted use designations in any zone. **See pages 6 of this report.**
- Compatibility of the proposed development with surrounding land uses. The land uses are a mix of medium-density residential, institutional (churches, and Provincial courthouse/jail) City Park, residential-commercial (bed & breakfast). **See land use map overview on page 10 of this report.**
- Furthermore, the immediate area included land uses in the past for residential-

- commercial: (Ms. Daisy's restaurant and Cox-Palmer law office).
- Intensification of residential density: 91 Central Street (2020) and 92 Summer Street (2021) across the street from the subject property were approved by Council for discretionary uses from single-family use to four-unit apartment buildings. **See land use map overview on page 10 of this report.**

Planning Officer conclusions:

- Planning Board and Council followed the process as set out in section 5.10 of the zoning bylaw.
- Sound planning principles: the zoning criteria in section 5.7 were included in the staff report and in Council resolution CoS 22-127.
- Council made a discretionary decision to approve the restricted use and attached four conditions in its approval to help manage its compatibility in the neighbourhood.
- Regarding suitability of the subject site for the proposed use, its past use as a social services agency or group home for Community Connections, is similar to the proposed restricted use (homeless shelter).
- The subject property is in a heritage district that encompasses a large concentration of historic buildings: residential properties, institutional properties, City Park and commercial properties, including part of downtown Water Street.
- Intensification is an appropriate planning tool to increase residential density. Both 91 Central Street and 92 Summer Street were recently approved from single-family to multiple family four-unit apartments. The proposed restricted use (homeless shelter) with a maximum of six beds is in keeping with the density of properties on Winter Street.

Respectfully submitted,
Thayne Jenkins

Thayne Jenkins,
Planning Officer
City of Summerside

Official Plan excerpts

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5.12 Restricted Uses

The purpose of this designation is to restrict land use to a single use only, which cannot be easily accommodated within another zone or where rezoning would result in undesirable and negative impacts on the neighborhood or immediate area. A Restricted Use shall be tied to a specific parcel and zone. When the Restricted Use ceases operation, the special zoning designation will lose status and the original zoning shall apply.

Objective	To allow restricted uses in any zone
Policies	The following are Council's statements of policy
	<ol style="list-style-type: none"> 1. Allow restricted uses in any zone. The underlying or current zoning of the property does not change and reverts back to the original zoning automatically when the restricted use ceases.
	<ol style="list-style-type: none"> 2. All restricted uses shall require a Council discretionary use public process as specified in the zoning bylaw.

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≡ **Social responsibility and inclusion** – create diverse communities with accessibility to affordable housing, education, health care and public amenities for all citizens. This encompasses the notion of “community.” It is the essence of a safe, healthy, accessible and friendly city. **Social inclusion recognizes and values diversity and emphasizes individual belonging by increasing social equality and participation of diverse and disadvantaged residents.**

Objective	To create growth strategies that focus on making Summerside a diverse community
Policies	The following are Council's statements of policy
	Residential neighbourhoods will be open to proposals such as boarding houses, group homes, senior citizens housing, nursing care facilities, bed & breakfast homes, secondary suites and compatible commercial uses. Home based business will also be encouraged.

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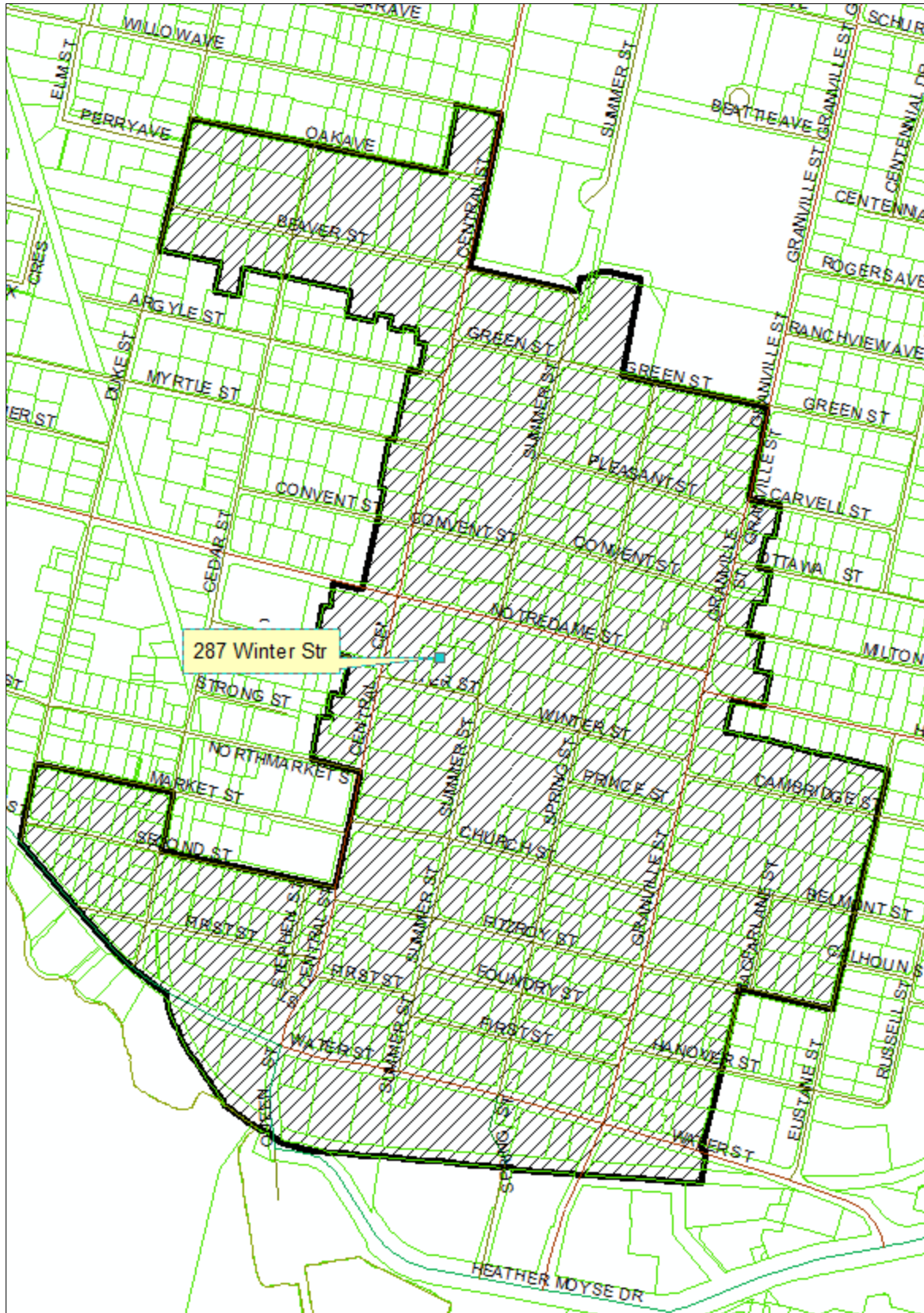
5.3.3 Special Residential Uses

'Special residential uses' include boarding houses, group homes, and nursing care facilities. Particular problems have occurred in cases where special residential uses are narrowly restricted to high density residential zones, because some local residents may be more concerned about opening the door to possible apartment buildings in their neighbourhood than they are about the special use in question.

However, other residents may feel that some special residential uses do not fit with the character of their lower density residential neighbourhood. Thus, Council's concern is to achieve an appropriate balance between: (a) limiting some special uses in low/medium density zones with consideration of local residents' concerns; and (b) permitting some special uses by right in high density residential zones and institutional zones.

Objective	<i>To allow special residential uses subject to Council discretionary approval</i>
Policies	The following are Council's statements of policy
	<ol style="list-style-type: none"> 1 Allow as discretionary/conditional uses: <ol style="list-style-type: none"> a) group homes in residential R3 and R4 zones; b) boarding houses in any low density mixed R2 and medium density R3 residential zone.

Heritage District map



Excerpt of Schedule 'D' Heritage Bylaw SS-20

Schedule 'D.' Reviewable Developments				
REVIEWABLE DEVELOPMENTS	TYPES OF PROPERTIES			
	WITHIN HERITAGE DISTRICT			3. developments on heritage property OUTSIDE HERITAGE DISTRICT
	1. developments on designated heritage property	2. developments on supporting property		
	<i>on-site impacts</i>	<i>off-site impacts on other heritage resources</i>	<i>off-site impacts only on heritage resources</i>	<i>on-site impacts only on property itself</i>
<i>Applications under Summerside Building Bylaw SS-09</i>				
Heritage building exterior alterations or additions	review	no	n/a	review
Heritage building demolitions/relocations	review	review	n/a	review
Changes to supporting property building	n/a	n/a	no	n/a
<i>Applications under Summerside Zoning Bylaw SS-15</i>				
Rezoning	review	review	review	review
Discretionary uses	review	no	no	review
Major variances only on building height and sizes, yard depths, and lot sizes	review	review only for impacts on adjacent heritage resources		review
<i>Applications under Summerside Heritage Conservation Bylaw SS-20</i>				
Zoning exclusions	review	no	n/a	n/a

land use map (overview of current uses)

