

November 3, 2023

VIA: EMAIL (PJRafuse@irac.pe.ca)

The Island Regulatory & Appeals Commission
Attention: Philip Rafuse
National Bank Tower, Suite 501
134 Kent Street
Charlottetown, PEI
C1A 7L1

Dear Mr. Rafuse:

Re: Andrea Battison v City of Charlottetown
Appeal LA23009

Please find enclosed the written submissions of the City of Charlottetown (the "City") as required by the Direction of Procedure dated September 28, 2023, requiring said submissions in response to the written submissions of the Appellant dated October 23, 2023.

Yours very truly,

Maggie Hughes

Maggie Hughes and Melanie McKenna

cc. Andrea Battison, the Appellant
Meaghan Hughes and Stephen Flanagan, for the Applicant
Jason Doyle, Director of Housing Services

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WRITTEN SUBMISSIONS OF THE RESPONDENT CITY

Andrea Battison v City of Charlottetown

November 3, 2023

Background

1. This is an appeal of the March 27, 2023, decision of the City of Charlottetown Planning & Heritage Department (the "City") to approve a demolition permit for the building located at 231 Richmond Street, PID # 340703 (the Property) (the "Appeal") [Tab 19].
2. On March 16, 2023, the Developer made an application to demolish the two-story building located at the Property (Permit # 001-DEM-23) (the "Permit") [Tab 1]. The Permit was approved with conditions on March 27, 2023 [Tab 5].
3. The Appeal was filed on April 17, 2023, along with a Reconsideration Request made pursuant to section 3.15.3(c) of the City of Charlottetown's Zoning & Development Bylaw [Tab 8]. The Notice included a Request for Abeyance seeking a decision on the Reconsideration Request before proceeding with the Appeal. This request was granted on April 18, 2023 (see April 18, 2023 Email from P. Rafuse attached hereto as Appendix "A").
4. On August 14, 2023, the Charlottetown City Council ("Council") made a decision not to reverse the decision to approve the Permit [Tab 24]. The Appellant was given notice of this decision on August 21, 2023 [Tab 35] and on August 24, 2023, the Commission provided filing deadlines in relation to the Appeal (see August 24, 2023 Email from P. Rafuse attached hereto as Appendix "B"). A further Direction of Procedure was issued on September 28, 2023 (attached hereto as Appendix "C").
5. It is important to note that this is not: (1) an appeal of the February 15, 2022, decision of the Charlottetown City Council to allow the Developer's requests for two major variances to permit a new three-story apartment building at 231 Richmond Street [Tab 18]; (2) an appeal of the August 14, 2023, decision of Council regarding the reconsideration request; or, (3) an appeal of the June 14, 2023 recommendation from the Planning & Heritage Board to Council not to impose a temporary designation on the Property [Tab 11]. As such, the City has not addressed any of the Appellant's submissions with regard to same.

Jessie Frost-Wicks et. al. v City of Charlottetown, Order LA20-04 at paragraph 49
[Appendix "D"].

6. Specifically, items 2, 3, 4, 5 and 7 (pertaining to the major variance and proposed development), and item 6 (pertaining to the recommendation from the Planning & Heritage Board) on page four of the Appellant's written submissions are not

appropriately categorized as issues subject to this Appeal and will not be addressed by the Respondent in these written submissions.

The Appellant's Submissions

Part A

7. The crux of the Appellant's argument as set out at pages five through eleven of the Appellant's written submissions pertain to the Appellant's argument that the Property is located in the "Lot 500 Area" of the City of Charlottetown and therefore, legislation governing Heritage Preservation Areas," as defined by the City of Charlottetown Heritage Preservation Bylaw (the "Heritage Preservation Bylaw"), ought to apply.

City of Charlottetown Heritage Preservation Bylaw [Appendix "E"]

8. As indicated by the City in its Reply dated September 21, 2023, this argument fails as the City currently does not have any area designated as a Heritage Preservation Area under the Heritage Preservation Bylaw, including the 500 Lot Area.
9. As the Island Regulatory and Appeals Commission ("IRAC") has noted, policy submissions seeking change to the law should be made to politicians, not an adjudicative body.

George Kelly v Minister of Communities, Cultural Affairs and Labour, Order LA07-11
at para 17 [Appendix "F"].

10. Further, while the Appellant continues to reference "Heritage Resources," a term reserved for properties designated as such under the Heritage Preservation Bylaw, the Property has not received this designation [see List of Heritage Resources attached hereto as Appendix "G"].
11. An evaluation completed in 2007 indicated that the Property received a rating of "Grade 3," making it ineligible for designation [Tab 11]. The matter was discussed again during the June 14, 2023 meeting of the Planning & Heritage Board (the "Board") where the Board considered whether they should recommend that Council impose a temporary designation on the Property [Tab 11]. They did not. Among other things, the meeting minutes reflect the following:
 - a heritage evaluation was conducted on the property in 2007 and resulted in a score of "Grade 3." Properties with this grade are ineligible for designation as a heritage resource;
 - the deterioration of the property's condition since 2007 would result in even lower score today;
 - the property does not merit heritage designation;
 - the building is not architecturally remarkable or one of a kind;

- the building is in disrepair; and,
- the property does not have enough historical significance or unique characteristics to merit designation.

Part B

12. The Appellant's second argument as stipulated at pages twelve through seventeen of the Appellant's written submissions is that issuing a demolition permit is contrary to the City of Charlottetown Official Plan (the "Official Plan").
13. The Appellant argues that pursuant to section 3.7 of the Official Plan, the entire 500 Lot Area is part of the "Great George Heritage Area" and therefore a Heritage Preservation Area. The Appellant goes on to argue that pursuant to section 4.2.1 of the Heritage Preservation Bylaw and section 3.5.2 of the Zoning and Development Bylaw, a demolition permit cannot be issued for a property in an area designated as such.
14. While the City does not disagree that the policy outlined at section 3.7 of the Official Plan strives to expand the 500 Lot Area, again, this area is not a Heritage Preservation Area and is not designated as one under any bylaw.
15. With regard to section 4.2.1 of the Official Plan, the Appellant argues that by issuing Permit #001-DEM-23, the City has failed in its duties under this section to "*protect, restore and build upon the heritage resources in the area*", and "*not undermine or destroy.*" The Appellant further argues that issuing the Permit violates the objective to "*protect, restore, respect and leverage all Heritage Resources.*" Again, the Property is not a Heritage Resource.
16. Section 4.2.1 of the Heritage Preservation Bylaw and section 3.5.2 of the Zoning and Development Bylaw do not apply.
17. While the policy does go on to suggest that the ability to demolish buildings in the 500 Lot Area shall be dependent on an assessment of each property's heritage attributes, an assessment was conducted in 2007 and did not result in a designation. Again, on June 14, 2023, the Heritage Board further considered whether it would be appropriate to temporarily designate the Property as a heritage resource and concluded that it would receive an even lower grade in 2023. Ultimately, it was not designated a heritage resource.
18. Further, while section 4.2.1 of the Official Plan states that "*new development, redevelopment, intensification and changes in land use should not be discouraged as they can have positive influences and make significant contributions to the evolution of the area,*" this policy simply requires that proposed changes in the Lot 500 Area be carefully considered so as not to undermine/destroy the elements and

qualities that define this area. This is a consideration to be made in relation to the proposed development, not the issuance of the demolition permit. The demolition itself is as of right.

Matthew Richard v City of Charlottetown, Order LA20-06 at paragraph 4 [Appendix "H"].

Part C

19. The Appellant's third argument as outlined at pages eighteen through twenty-six regarding procedural errors and sound planning principles includes argument which is not the subject of this Appeal. As such, the City will address only the following:

a) (1) *Issuance of 001-DEM-23*

The City disputes that the Permit applicant was not the registered owner of the Property. The City has further requested particulars from the Appellant with regard to the argument that the issuance of the Permit is contrary to sound planning principles but has not received same. In any event, it is the City's position that a demolition permit is not a development permit and that the Permit was issued in accordance with the law. Further, while the fire safety plan is required before the demolition takes place, it is not required before the Permit is conditionally approved.

The City further relies on *Commission to Queens County Condominium Corporation No. 40 v City of Charlottetown* for the propositions that (1) expert evidence is required where the Appellant argues that a decision as not made in accordance with sound planning principles; and, (2) technical errors that are immaterial and do not result in unfairness are not sufficient to affect the ultimate outcome of an appeal.

Queens County Condominium Corporation No. 40 v City of Charlottetown,
LA18-02 at para 41 [Appendix "I"].

b) (8) *A Development permit is required before demolition can occur*

Section 3.3.2 of the Zoning & Development Bylaw prohibits development from taking place without a demolition permit. For the purposes of the Zoning and Development Bylaw and the ordinary practices of the City of Charlottetown, demolition is not considered a "Development." Development permits and building permits are governed by section 3.3 of the Bylaw. Demolition permits, on the other hand, are governed by section 3.5 of the Bylaw. Simply put, a demolition permit is not a development or building permit.

c) (9) *A substantive Heritage Permit was required*

Given the Property is not located in a Heritage Preservation Area and is not a Heritage Resource, the Heritage Preservation Bylaw and its requirements do not apply to the Property.

d) (10) Section 6 "General Provisions for Development" of the Heritage Preservation Bylaw was not applied.

As above.

Respondent's Position and Conclusion

20. Given the forgoing, it is the City's position that the sole issue before the Commission is whether the City followed the proper process and procedure in making its decision to issue the Permit. The City submits that it has.
21. We therefore request that the Commission dismiss the Appeal.