

Notice of Appeal

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



TO: The Island Regulatory and Appeals Commission
National Bank Tower, Suite 501, 134 Kent Street
P.O. Box 577, Charlottetown PE C1A 7L1
Telephone: 902-892-3501 Toll free: 1-800-501-6268
Fax: 902-566-4076 Website: www.irac.pe.ca

NOTE:
Appeal process is a public process.

TAKE NOTICE that I/we hereby appeal the decision made by the Minister responsible for the administration of various development regulations of the *Planning Act* or the Municipal Council of Three Rivers (name of City, Town or Community) on the 24th day of July, 2023, wherein the Minister/Community Council made a decision to approve a mixed use development consisting of a 22-unit apartment with 3837 sq. ft. of ground floor commercial space, together with a major variance for an additional 4.8 ft. of building height on land at PID's 198069, 196675 & 196642 School St. Montague (attach a copy of the decision).

AND FURTHER TAKE NOTICE that, in accordance with the provisions of Section 28.(5) of the *Planning Act*, the grounds for this appeal are as follows: (use separate page(s) if necessary)
The grounds for appeal are as outline in the following pages of this Notice of Appeal.

AND FURTHER TAKE NOTICE that, in accordance with the provisions of Section 28.(5) of the *Planning Act*, I/we seek the following relief: (use separate page(s) if necessary)

- 1) that the Commisison conduct a hearing de novo of the within matter to substitute its own decision from the one appealed as if it were the original decision maker, and in doing so allow the within appeal; quash the decision of the Municipal Council of Three Rivers dated July 24, 2023; and
- 2) such further and other relief as may be authorized under the Planning Act and the Island Regulatory and Appeals Commission Act.

EACH APPELLANT MUST COMPLETE THE FOLLOWING: (print separate sheets as necessary)

Name(s) of Paul Grinton &
Appellant(s): Geraldine Johnston-Grinton
Please Print

Signature(s) of [Signature]
Appellant(s): G Johnston-Grinton

Mailing Address: c/o Key Murray Law

City/Town: Charlottetown

Province: Prince Edward Island

Postal Code: C1A 1K7

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Telephone: 902-894-7051

Dated this 10th day of August, 2023
day month year

IMPORTANT

Under Section 28.(6) of the *Planning Act*, the Appellant must, within seven days of filing an appeal with the Commission serve a copy of the notice of appeal on the municipal council or the Minister as the case may be.

Service of the Notice of Appeal is the responsibility of the Appellant

Information on this Form is collected pursuant to the *Planning Act* and will be used by the Commission in processing this appeal.
For additional information, contact the Commission at 902-892-3501 or by email at info@irac.pe.ca.

NOTICE OF APPEAL (CONTINUED)

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

This appeal concerns the issuance of a development permit, namely Development Permit Number 35.23.DEP, for a 22-unit apartment with 3837 sq. ft. of ground floor commercial space, together with a major height variance for an additional 4.8 ft. of building height on land at PID's 198069, 196675 and 196642 (the "Development Permit") to the applicant, Kreative Acres Corp. ("Kreative Acres"), by the Town of Three Rivers (the "Town") on July 24, 2023.

The grounds for this appeal are as follows:

1. The Town did not conform with its *Official Plan (March 2023)* (the "Official Plan") as follows:
 - a. The Town failed to make a decision in accordance with sound planning principles.
2. The Town did not conform with its *Development Bylaw #2023-02 (March 2023)* (the "Development Bylaw") as follows:
 - a. Contrary to subsection 3.2.1(2) of the Development Bylaw, the Town's Planning and Development Officer, Lee Kenebel ("Mr. Kenebel"), issued the Development Permit for a development that was not in compliance with the Development Bylaw.
 - b. The Town approved the Development Permit for the incorrect parcel identifier (PID). At section 5 of the Development Permit Application submitted by Kreative Acres to the Town on May 12, 2023, Development Permit Application Number 35.23.DEP (the "Development Permit Application"), the PIDs are listed as 198069, 196642 and 196675; however, on March 14, 2022, the Town approved consolidating PIDs 198069, 196642 and 196675 into PID 196642. Furthermore, the public notice posted at the Town's Town Hall, pursuant to subsection 3.8(4) of the Development Bylaw, incorrectly states that the PID for the Development Permit is PID 198069.
 - c. Contrary to subsection 3.6(3) of the Development Bylaw, the Town approved a major zoning variance that does not meet the required criteria.
 - d. Contrary to subsection 3.2.1(1) of the Development Bylaw, Kreative Acres began developing the land at PID 196642 on June 30, 2023, and July 24, 2023, without a development permit, which the Appellant, Geraldine Johnston-Grinton ("Geraldine"), advised the Town.
 - e. Contrary to subsection 3.2.3 of the Development Bylaw, the Development Permit was approved without being accompanied by the required documentation, including but not limited to,
 - i. a plan, drawn to an appropriate scale and showing: the dimension of the lot to be used; the distance from the lot boundaries, dimension and height

of the building or structure proposed to be erected; and the measures undertaken to demonstrate flood resilient design, where development is located within the Rising Sea Level Impact Overlay (RSLIO); the proposed location and dimension of any parking space, loading space, driveway, drive aisles and landscaped area;

- ii. a floor plan of the proposed building; and
 - iii. a survey certified and stamped by a Prince Edward Island Land Surveyor.
- f. Contrary to subsections 6.8.1(1) and 6.8.3(1) of the Development Bylaw, the Development Permit did not comply with the provisions required of a development in the Mixed Use (MU) Zone.
- g. The Development Permit was issued on July 24, 2023, subject to the condition that "the approved plans are: the completed application form and drawings A001, A002, A030, A100, A101, A102, A200, A300, A301 & C100". However, after the Development Permit was issued, Geraldine requested, on multiple occasions, the Development Permit Application and all applicable documents listed in section 3.2.3 of the Development Bylaw (the "Requested Documents") from the Access to Information and Protection of Privacy Coordinator, Joan Marks, but drawings A100, A101, A102, A300 & A301 were not provided (the "Missing Drawings"), contrary to subsection 6.1(h) & (i) of the *Access to Information/Protection of Personal Information Bylaw*. At section 6 of the Development Permit Application, it states that the setbacks to the proposed structures are in an attached plan; however, no such plan was included with the Requested Documents. After following up with Mr. Kenebel for the Missing Drawings on August 1, 2023, Mr. Kenebel wrote that the Missing Drawings were "not relevant to the decision to issue a development permit".

3. The grounds for this appeal may be expanded upon, once the Appellants have the benefit of the full record produced by the Town.

DATED at Charlottetown, Queens County, Prince Edward Island this 10th day of August, 2023.



Shea L. Callaghan
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Charlottetown, PE C1A 1K7
Lawyer for the Appellants



The following application was approved by the Town of Three Rivers Council at the Special Council meeting held July 24, 2023:

- **Development Application – Case 35.23 DEP, PID’s 198069, 196642 and 196675, School Street, Montague**
 - THAT Planning Board recommend to Mayor and Council to approve the 22-unit apartment with 3837 sq. ft. of ground floor commercial space and together with the major variance for an additional 4.8 ft. of building height on land at PID’s 198069, 196642 & 196675, subject to the following conditions:
 - Condition 1: The permit is valid for 12 months from the date of issue.
 - Condition 2: The methodologies for erosion and sediment control for before/during/after the construction process detailed on Drawing C100 shall be implemented upon the commencement of the development and remain in place until completion of the development hereby approved.
 - Condition 3: This applicant is required to secure any access/entrance permits through the Department of Transportation and Infrastructure.
 - Condition 4: The approved plans are:
 - The completed application form.
 - Drawings A001, A002, A030, A100, A101, A102, A200, A300, A301 & C100 dated May 12, 2023