

July 12, 2024

VIA EMAIL

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

Dear Mr. Rafuse:

Re: Erin Lamb v Town of Three Rivers – Appeal LA24012

This letter is in response to your correspondence dated June 14, 2024, requesting the Town of Three Rivers (the “Town”) Record and Reply to the Notice of Appeal filed by Erin Lamb on June 13, 2024 (the “Appeal”). The Town’s Record was provided on July 5, 2024. Please accept this correspondence as the Town’s Reply to the Notice of Appeal.

The Appellant has appealed a decision of Town Council dated May 29, 2024 (“Council’s Decision”) [Tab 12, Page 47], whereby Council approved the Developer’s request for a Development Permit (the “Permit”) to develop a three-storey, twenty-four unit residential building (the “Development”) with a minor variance of 2.9 ft of increased height on lot 24-1 Queens Road (PID Numbers 1065887 and PID 197657) (the “Property”) (the “Application”) [Tab 2].

Background

The Application, submitted April 18, 2024, was put forward as a development under section 6.1.2.26 of the Development Bylaw which permits multi-unit dwellings within the Agricultural Zone (AG). Specifically, the applicable subsection reads as follows:

6.1 Agricultural Zone (AG)

6.1.1 General

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1. Except as provided in this Bylaw, all development and land used in the AG Zone shall comply with the provisions of this section.

[...]

6.1.1. Permitted Uses

[...]

(26) Multi-unit dwellings.

The Planning and Development Officer reviewed the Application and prepared a report dated May 9, 2024 to Planning Board recommending that Planning Board recommend that Council approve the Application [Tab 18]. While Planning Board adopted this recommendation at the May 9, 2024 Planning Board Meeting [Tab 7, Page 22], ultimately, the Application was removed as an agenda item at the May 13, 2024 Council Meeting due to concerns that the drawings accompanying the Application which referred to the Development as a “24 Unit Apartment” [Tab 15, Page 75] would cause confusion. The Developer was approached about amending the language to “Multi-Unit Dwelling” to avoid this [Tab 15, Page 92-93].

In the interim, Planning Board gave further consideration to whether a fence ought to be erected on the Property to address potential safety concerns [Tab 15, Page 90-91]. As a result of these concerns, the May 9, 2024 report to Planning Board was amended as follows in the report dated May 23, 2024 [Tab 10, Page 40]:

5. A landscaping scheme showing fencing to the west, east and northern sides of the fencing shall be no less than 1.8 metres in height and be installed prior to first occupation of the development hereby approved.

The condition to obtain consent to “extend the sewer system for serving the development” contained in the May 9, 2024 report [Tab 8, Page 28] was also removed from the May 23, 2024 report as said consent was received [Tab 17].

The May 23, 2024 report and the drawings which were amended to change the term “apartment” to “multi-unit dwelling” were presented to Planning Board at the May 23, 2024 meeting. However, condition 5 was slightly varied. Planning Board rescinded the May 9, 2023 motion and approved the motion to recommend approval of the Application on conditions to Council [Tab 9, Page 30].

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The May 29, 2024 report was provided to Council in advance of the Special Meeting of Council [Tab 11]. Council approved the Application on the conditions set out in the May 29, 2024 and a development permit was issued on May 30, 2024 [Tab 13].

Grounds of Appeal

The grounds of appeal are listed as follows:

“We appeal on the grounds Appeal 27.1(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.”

Details respecting this ground of appeal are further outlined in the letter from the Appellant to the Town dated May 7, 2024. It is the Town’s interpretation of this ground that the Appellant, who owns and operates a vacation home at 162 Queen’s Road in Montage (the “Appellant’s Property”), is concerned that the Development will result in the following:

- safety of pedestrians and drivers and trespassing on the Appellant’s Property;

It is the Town’s respectful position that this argument is anecdotal and speculative. The Department of Transportation and Infrastructure was consulted in respect of the Application and confirmed that it did not have safety concerns [Tab 16]. The Town encourages residents who experience trespassing to inform the relevant police agency and/or seek remedies under the Trespass to Property Act, RSPEI 1988, c T-6.

- difficulty controlling fires at the proposed development if one were to occur and in the event that the Montague Fire Brigade does not currently possess the appropriate equipment; and,

In response to this concern, the Town states that the Building Code section of the Land Division (of the Department of Housing, Land and Communities) is responsible for the administration and enforcement of the Building Codes Act pursuant to an agreement between the Town and the Minister of Housing, Land and Communities per subsection 4(3) of the Building Codes Act. Issues of fire safety of buildings in the Town are appropriately dealt with at the building permit stage [Tab 21].

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This argument was accepted by the Commission in LA24-04 where the Commission stated as follows at paragraph 62:

“With respect to the specific issues of fire safety raised by the Appellants and testified to by Mr. MacDonald, the Commission understands the Appellants’ position to be that the Town should not approve the development of a 4-storey building in Montague because the MVFB does not have an aerial device sufficient to service a building of this height. On this point, the Commission accepts the position of the Town and the evidence of Lee Kenebel that matters of building code and fire code compliance are addressed at the building permit stage, and that enforcing the Building Codes Act in the Town of Three Rivers is the jurisdiction of the Minister of Housing, Land and Communities.”

It follows that matters concerning building heights (National Building Code), fire and other related codes, are addressed Provincially during the Building Permit process.

- disruption caused by the construction of the proposed development including vehicle access and water and sewer.

It is the Town’s position that while they appreciate that construction can at times be disruptive to residents in the area, it is not a basis upon which development would be denied. The required approval was received on May 9, 2024.

With respect to the Appellant’s comments regrading drainage and landscaping contained at page two of the letter dated May 7, 2024, the Town is requesting further particulars. However, at this juncture, the Town states that condition three of the Development Permit requires the Developer to submit a drainage and erosion control plan for approval in advance of construction [**Tab 13, Page 58**].

It is further the Town’s interpretation of this ground that the Appellant is arguing that the Property ought to have been rezoned. With respect to this argument, it is the Town’s position that the Property did not require rezoning approval as the Development is a multi-unit dwelling which is a permitted use in the AG Zone.

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Relief Sought

The relief sought is as follows:

“We are concerned about the lack of infrastructure in the area will encourage trespassing across our property to get to safer areas where there are sidewalks, to avoid the dangers of Queens Road. We are requesting that the developer erect a fence on their side of the property line that is no less than $\frac{3}{4}$ down the length of our driveway, OR plant hedging that will create a division between the properties of the same distance. We feel rezoning of the property should have been done.”

Further relief is also contained in the letter dated May 7, 2024 [Tab 14, Pages 84-87] and includes the items summarized below. The Town has endeavored to address several of these items individually; however, with respect to the requested relief generally, information requests are made through the Town’s Access to Information and Protection of Personal Information Bylaw (“ATIPPI Bylaw”). On June 10, 2024, the Appellant made a request for information relating to the Application through the ATIPPI Bylaw [Tab 20] and was provided with the requested information in the Town’s custody and control shortly thereafter [Tab 15, Page 101].

1. Request for documents for rezoning approval for AG to R3 for PID 197657 and 1065887

As indicated above, it is the Town’s position that the Property did not require rezoning approval as the Development is a multi-unit dwelling which is a permitted use in the AG Zone pursuant to section 6.1.2.26.

2. That Montague Fire Department and Fire Marshall’s Office be consulted

As indicated above, it is the Town’s position that matters concerning building heights (National Building Code), fire and other related codes, are addressed Provincially during the Building Permit process

3. Updates on any changes to the approved plans

The Appellant will receive notification where public notification is required by section 3.8 of the Development Bylaw.

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4. That a fence be erected

It is the Town's position that matters concerning fencing are appropriately addressed at condition 5 of the Development Permit.

5. Plans for drainage and erosion control and access to them

It is the Town's position that this request is addressed at condition 3 of the Development Permit.

6. That the Appellant be consulted with respect to water and sewerage

It is the Town's position that the appropriate approval to extend the sewer system was received on May 9, 2024.

7. That the Department of Transportation, Infrastructure and Energy consult the Appellant

It is the Town's position that this request is addressed at condition 4 of the Development Permit.

8. Results of soil testing

It is the Town's position that requests for information are to be made through the ATIPPI Bylaw.

9. Information and updates on the status of the Application

It is the Town's position that requests for information are to be made through the ATIPPI Bylaw. As previously stated, the Appellant will receive notification where public notification is required by section 3.8 of the Development Bylaw.

Conclusion

The guideline developed by the Commission for exercising its appellate authority under the *Planning Act* involves two main considerations:

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1. Whether the municipal council followed the proper procedure as required by its bylaw, the *Planning Act* and the law in general, including the duty of procedural fairness; and
2. Whether the decision made by the municipal council has merit based on sound planning principles in the field of land use planning and as enumerated in the Official Plan and Bylaw.

Order 24-04, *Supra* at paragraph 18.

It is the Town's position that the above-noted guidance applies to this Appeal.

Overall, it is the Town's position that it followed the proper procedure in reaching the decision which, the Town submits, has merit based on sound planning principles in the field of land use planning and as enumerated in the Town's Official Plan and Development Bylaw.

The report presented at the May 29, 2024 Special Council Meeting sets out the key planning issues arising from the Application as follows:

- higher density residential development and housing need;
- the proposed minor variance seeking an additional 2.9 ft of overall building height;
- the Official Plan Policies concerning housing development; and,
- compliance with the Development Bylaw.

Each of said planning issues are detailed in the report which concludes that the Application aligns with the policies and objectives of the Official Plan and Development Bylaw. According to the report, said policies and objectives are furthered by emphasizing compatibility with the surroundings and promoting higher density and sustainable development and offering diverse housing types. While a minor variance is required, it is only necessary to accommodate a style of roof which is recommended to keep with and enhance the aesthetic appeal of the area, thereby conforming with section 4.5 of the Official Plan which aspires to ensure that development is attractive, compatible and functional.

The report further considers that the Property is serviced with municipal water and that at the time of the Application, sewer services would have to be extended. Approval to extend said services has since been granted. Further matters such as drainage and erosion and parking

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are also considered in the report and ultimately resulted in the recommendation to include six conditions of the Permit, including the requirement to screen parking lots abutting residential uses with landscape buffers and/or fences, further ensure the policies and objectives are met.

The detail included in the report, as well as the Town's Record which indicates that Planning Board's recommendation to council was well thought out, provides evidence that the Town followed the proper procedure and the decision made by the municipal council has merit based on sound planning principles.

The Appellant has not raised any procedural issues, except to say that the Property ought to have been rezoned. The Town states that rezoning was not required in this instance as multi-unit dwellings are permitted in the AG Zone by way of section 6.1.2.26 of the Development Bylaw. With respect to appellant intervention on the basis of sound planning principles, the Commission stated as follows at paragraph 19 of Order LA24-04:

The Commission does not lightly interfere with decisions made by a municipal council. The Commission will typically be deferential toward planning decisions by Council that are properly made, and will generally be reluctant to interfere with a decision on the basis that it is not consistent with sound planning principles where that decision is supported by objective and reliable evidence. This evidence must come from planning professionals confirming that the decision is based on the Planning Act, the applicable official plan and bylaw, and sound planning principles.

It is the Town's respectful submission that the report before counsel on May 29, 2024 was thoroughly prepared by Planning and Development Officer for the Town, Lee Kenebel. Mr. Kenebel has experience and training as a land-use planner and is a member of the Royal Town Planning Institute and his evidence with respect to land-use planning has previously been deemed credible and knowledgeable by the Commission (Order LA24-04 at paragraph 61).

Given the forgoing, the Town requests that the Commission dismiss the Appeal.

If you should have any questions arising, please do not hesitate to contact the undersigned. The Town respectfully reserves the right to provide further submissions upon receipt of the Appellant's response.

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Yours very truly,

Maggie Hughes

Maggie Hughes

cc. Lee Kenebel, Planning and Development Officer
John Jamieson, CAO
Erin Lamb, the Appellant Lamb
Randy Mitchell, the Developer (Anchored Construction)