

BEFORE THE ISLAND REGULATORY AND APPEALS COMMISSION

IN THE MATTER OF an appeal by Andrea Battison with respect to the approval of a Bylaw Amendment to allow a six (6) storey, 84-unit apartment building at PID #342790 located at 199 Grafton Street, Charlottetown, Prince Edward Island, Canada

## **REVIEW OF PROPOSAL FOR 199 GRAFTON STREET IN RELATION TO THE SPIRIT AND INTENT OF THE APPLICABLE IN-FORCE REGULATORY FRAMEWORK**

### **1.0 REQUIRED SUPPLEMENTARY MATERIAL**

My name is Harold Madi, and I live in Toronto, Ontario, Canada.

I am the Principal of Urbanism by Design, a planning and urban design consultancy, and I will be providing evidence in relation to the above-noted appeal before the Island Regulatory and Appeals Commission.

Per Section 58 'Expert Reports' in the Rules of Practice and Procedure, Prince Edward Island Regulatory & Appeals Commission, I had provided on previous occasion my **Acknowledgement of Experts Duty** and **curriculum vitae**, attached as **Appendix A** and **Appendix B** respectively.

### **1.1 Nature of the Request to Prepare this Report**

While Partner at The Planning Partnership (TPP), I was retained by the City of Charlottetown in August 2010 to lead a planning study process that culminated at the end of 2011 with the **500 Lot Area Development Standards & Design Guidelines** (DS&DG), for which I was the principal author.

The DS&DG is the foundational document that guided and informed subsequent amendments to Charlottetown's Official Plan and implementing bylaws that comprise the current in-force regulatory framework for the 500 Lot Area.

This was an extraordinary undertaking given the complex, historic context of national significance and the innovative, form-based approach for guiding development, which I will touch on in more detail later.

In May of 2021, I was initially contacted by Andrea Battison, whom was one of the key stakeholders involved in the study process for the DS&DG, representing the Downtown Residents Group.

Ms Battison brought to my attention the application for 199 Grafton, seeking my opinion on the proposal in the context of the DS&DG. With a quick scan of the proposal documents, I was able to immediately identify several issues that were at odds with spirit and intent of the DS&DG.

This appeal provided me with the opportunity to bring to light the issues, to recommend improvements to better align with the objectives of regulation, and to identify what if any changes might need to be made to improve the effectiveness of the regulations.

## **1.2 Facts And Assumptions That Underpin My Conclusion**

First are the regulations themselves and my intimate knowledge and experience of having been involved in their development – from conception to implementation.

Second is my extensive working experience in downtown planning and regulating infill in comparable context – not just across North America but also for the other major cities in Atlantic Canada where I've led recent, award-winning, and effective comprehensive guiding plans, including Halifax, Fredericton and Moncton.

Third is my extensive experience in development and design review processes:

- I currently sit on the Design Review Panel for Mississauga;
- had been a panel member for the City of Vaughan, Waterfront Toronto and the Toronto Community Housing Corporation; and,
- as Director of Urban Design, I led a team of staff that reviewed all developments applications in Toronto and oversaw the Toronto Urban Design Review Panel where I implemented a number of key changes to improve its effectiveness, capacity and pool of panel members.

## **1.3 Disclosure Of Matters Outside My Area Of Expertise**

I will disclose my limited expertise where such matters arise that I have minimal knowledge of or experience working with.

## **1.4 Information And Document Referenced**

To support my opinion, the following documents have been reviewed and may be referred to:

- The Port House presentation provided by APM
- The Design Review Submission provided by APM (February 21, 2021)
- External Design Reviewer Comments (March 18, 2021)
- The Design Review Board Packages and Minutes (March 22, 2021 and May 3, 2021)
- Planning Staff Reports (March 22, 2021; April 6, 2021; May 3, 2021; and May 10, 2021)
- Charlottetown Official Plan (as amended March 28, 2022)
- Zoning and Development Bylaw (PH-ZD.2) (as amended March 28, 2021)
- 500 Lot Area Development Standards & Design Guidelines (December 2011 prepared by The Planning Partnership)

## 2.0 BACKGROUND TO THE 500 LOT AREA DEVELOPMENT STANDARDS & DESIGN GUIDELINES

A recap of why and how the DS&DG came about is relevant to formulating an understanding of the context that they are responding to and what they aspire for in the 500 Lot Area. With this understanding one may be more acutely aware of the critical issues with the proposal for 199 Grafton.

Prior to the undertaking and implementation of the DS&DG, there were notable issues and tensions arising from new developments in the 500 Lot area, that can be summarized as follows:

- **Development Pressures.** There was a growing renewed interest for investing and developing in the downtown area of Charlottetown, which was consistent with trends in other North American cities as demographic, economic and cultural shifts generated market demands for walkable, compact, mixed-use, communities such as downtown areas.
- **Controversial Developments.** Recent major developments in the 500 Lot Area were highly controversial either due to their scale and/or disregard for compatibility with on-site or adjacent heritage structures. Community members were generally concerned about out of place, or visually overwhelming building heights, poor heritage conservation and new construction that was perceived to be of lesser design quality.
- **Polarized Interests.** These developments became a flashpoint for the community, further polarizing those that prioritized the retention of the area's heritage characteristics from those that prioritized growth and development
- **Antiquated Regulatory Framework.** There was general agreement on either side that the conventional regulatory regime that serves the broader city adequately, was ill-fitting for the historic 500 Lot area resulting in lack of clarity and guidance, leading to unpredictable approval processes and unintended built outcomes.
- **Innovative Tailored Approach Needed.** A proven but tailored approach to guide and shape development was necessary - one that enabled on-going change and robust growth while retaining the area's treasured characteristics that define its unique 'sense

of place’, as both objectives were critical for the economic health and success of the 500 Lot Area

### **3.0 THE FUNDAMENTALS OF THE DS&DG AND THEIR APPLICATION**

#### **3.1 Building on a Body of Work & Engagement**

The DS&DG were informed by several previous studies, best practices, as well as extensive stakeholder and public engagement to ensure that they were credible, defensible, and broadly supported. The approach, key principles and critical components are as follows:

#### **3.2 The Essence of the 500 Lot Area’s Distinct Character**

The essence of the 500 Lot Area is that it is a compact, walkable, diverse, amenity and culturally rich district that is experienced primarily on foot – its continued success hinges greatly on ensuring that the form and quality of new buildings reinforce and enhance the area’s distinct sense of place with priority given to the enriching the pedestrian experience.

#### **3.3 Form-Based Guidance Shapes How We Experience Places**

The DS&DG apply an approach to guiding development that is **nuanced to the complex, mixed-use, and eclectic** characteristics of the area, focusing primarily on the **physical placement, massing, and design qualities** of new buildings, with a specific mindfulness for:

- how they fit in their general context being the city block and/or surrounding city blocks;
- their relationship with the on-site heritage structures and/or adjacent buildings or heritage; and most importantly,
- how they interface and contribute to the public realm, namely the streetscape

In contrast to conventional two-dimensional regulatory tools such as zoning, the form-based approach has a greater emphasis on defining the appropriate placement, orientation, scale, shape and design qualities of the building, so that it is doing its part in the overall assembling and choreographing of the various elements that shape one’s experience of a place (streetscapes, open spaces, buildings, landmarks, etc).

#### **3.4 Walkability is the Measure of Success**

This approach is especially relevant and vital to the 500 Lot Area, because its development predates conventional zoning and the advent of the automobile, emerging in a period when urban patterns and places were derived from, and designed primarily for, the pedestrian scale and experience.

These human-scaled patterns of walkable streets and blocks, compact building placements, narrow shopfronts, and fine mix and variety of functions are:

- what distinguish this area from much of rest of the city;
- lend to its charm and appeal for residents and visitors; and,

- are now its greatest assets into the future given that we now live in an ‘urban century’ where walkable urban places have great market appeal, while being highly conducive to more sustainable urban growth patterns.

### **3.5 Context and the Public Realm are the Design Priority**

This approach is also a departure for conventional architectural practices, as it obliges a sensitivity to context and attention to the designing of buildings from the outside in, as much as designing them from the inside out.

Accordingly, the principles for guiding and shaping development that underpin the DS&DG, include:

- the 500 Lot Area is a special place warranting special rules and privileges
- reinforce the existing urban structure and hierarchy
- reinforce and extend the historic street and block pattern
- protect, restore, respect and leverage all heritage resources
- provide transitions between areas of differing intensities and scales
- the first 3-storeys fronting the street matter the most
- strengthen visual and physical orientation and connectivity
- larger and taller buildings have the greatest civic responsibilities
- design and construct buildings so that they become beloved heritage in the future

### **3.6 Quantitative and Qualitative Considerations**

Another important departure from regulatory conventions is that the DS&DG acknowledges that cities are integrated systems and dynamic evolving places where some standards and design decisions need to correspond to other key variables such as the role and type of street that the property addresses, while some decisions can be more discretionary because some element may be more qualitative such as a roof line or selection of cladding.

To that end, complementary to the Development Standards are other guides and references to aid in the more discretionary and qualitative decision-making, but they are also of critical importance because they bring the city to life by enabling variety of expressions to emerge within a complementary design vocabulary.

## **4.0 REVIEW OF THE 199 GRAFTON PROPOSAL**

In the context of the Official Plan policies and zoning standard for the 500 Lot Area, as well as the contextual understanding and intent set out by the DS&DG - the foundational document – it is my opinion that the critical issues with the proposal for 199 Grafton can be organized according to the following themes:

### **4.1 All three Streetwalls Fail the Public Realm**

There appears to be a discrepancy between the Official Plan and the DS&DG with regards the key principal that the first 3-storeys fronting a public street matter most. In the OP this objective is reserved just for commercial building but in my opinion this is inconsistent with the overarching theme of character retention and walkability – as currently the quality of public face of residential streets is no less important than that of commercial ones. This is far too important to the integrity of the public realm and how it is experienced to not consider it universally across the entire 500 Lot Area.

Accordingly, when assessing the streetwall of this proposal I defer back to the DS&DG rationale for Guiding Principal 7 (p6):

### **The First 3-storeys Fronting the Street Matter the Most**

*The 500 Lot Area is experienced primarily through its streetscapes and open spaces, the quality of which is shaped and defined by the buildings that frame them. As with most historic centres, this is a pedestrian-oriented environment where most activities are accomplished on foot. Whether a building is 2 or 8-storeys, it is the first levels and how they interface with the street that makes the greatest impact on the quality of that walking experience.*

*The Standards & Guidelines seek to ensure that new developments in the 500 Lot Area are designed with careful consideration for how the first 3-storeys interface with the street and provide visual interest. Buildings should properly address the sidewalk with frequent entries and windows, and particular attention should be paid to the quality of materials and architectural detailing. Shop fronts should animate the street with prominent heights, high levels of transparency, and narrow human-scaled widths. Higher levels should step-back above the 3rd storey to reinforce the area's prevailing low-rise street wall.*

*Blank or inactive grade levels, as well as pedestrian bridges or tunnels over or under streets should be prohibited to protect the pedestrian environment and to ensure its maximum animation.*

As important as getting it right, is not getting it wrong. Gaps or dead walls can adversely impact one experience and dissuade pedestrians.

Hillsborough Street Streetwall is an above grade parking structure without the mitigating required grade level animated use to mitigate the

#### **4.2 The Massing is Blatantly Monolithic**

#### **4.3 The Typology is a Parkade Masquerading as an Apartment**

#### **4.4 Exceptions Must Have a Tipping Point**

Planning a city and establish a vision and its implementing regulations is generally a fair and democratic process that is regularly revisited on a comprehensive level. Individual proponents subsequently seeking to modify the rules for their own property interests, while generously permitted to propose doing so, must understand the opportunity to alter the larger plan is a privilege that ought to be well rationalized and tempered with a clear concerted effort to meet the spirit and intent of the regulating documents.

Naturally, the closer a proposal is respectful and aligned to the regulatory framework the more likely a favourable review outcome with less recommended modification. That is after all the purpose of making the regulating documents readily available.

#### **4.5 The Proposal Should Have Been Anchored in A Block Plan**

#### **4.6 External Design Review Process Needs a Review and Rethink**

Upon review of the outcome of other external reviewers, it appears that there is no consistent guidance for the reviews and the reviews themselves do not follow a consistent template. apparent that there is no consistent direction

##### **4.6.1 Recommended Objectives of the Design Review Process**

- **Impartiality** - assessment does not present a real or perceived conflict of interest
- **Public Interest Priority** - in the community's best interest as defined by current in-force Council adopted policies, standards and regulations (consider and integrate all complementary intersecting plans ie. Parks & Recreation, Sustainability, Active Transportation, etc)
- **Interpretation Rooted in Demonstrated Good Principles** - where interpretation is necessary, adherence to good planning & urban design principles as defined by:
  - The spirit and intent as established by the contextual paragraphs of the regulating documents and/or the studies and plans that were foundational to those regulating documents,
  - Local built examples with demonstrated adherence to the regulatory framework and successful in their intended outcome
  - The body of knowledge (industry standards, best practices, precedent etc.) that underpin the disciplines involved in authoring and in the implementation in accordance with the regulatory framework ,
- **Getting to Yes Mantra** – ultimately this is all about enabling successful development (that is appropriate for its site and context, does not cause adverse impacts to the public realm or neighbours, results in notable net improvement to the area; and, is functionally viable and financially feasible). Accordingly, the review isn't a process in search of reasons to prevent or impede development, rather its intent should be to

assess with an eyes towards success – meeting and negotiating multiple aligned and sometimes competing or conflicting objectives/interests.

#### 4.6.2 Recommendations for Improved Effectiveness of the External Design Review Process

##### **Qualifications of Reviewers -**

**Preparedness for Review** - education and regular updates

**Thorough & Consistent Reviews** – check lists and criteria, established templates

**Clarity & Certainty** - Weighting of Assessment/Recommendations can be more clear and certain concluding sections of descriptive assessments by concluding each section of assessment with a multiple-choice check box that clarifies the weighting of the issues and direction for modifications. For example, each category or criteria can be summarized and concluded by checking off one of the following:

- **Excellence** – surpasses criteria in all respects
- **Yes** – satisfactorily meets criteria
- **Yes (improvement)** - generally meets the criteria with modest modifications (not critical but an improvement that better meets it) that should then be itemized as a list (ie. Increase front yard setback)
- **Yes (conditional)** – in the right direction towards meeting the criteria conditional on key modifications occurring
- **Yes (exception)** – although the criteria is not entirely being met, the objective as set out in the root policy has been demonstrated to being achieved
- **No** – not meeting the criteria in all respect and need improvements across on the majority of items
- **No (exception)** – although meeting the criteria in general the outcomes are not meeting the objectives as set out in the root policy
- **Redirect** – the criteria is not being met with resultant built outcomes that would be at odds with the spirit and intent of the policy, regulation, standard or guideline

**Transparency & Integrity** – although not enforceable and just one of the multiple layers of the checks and balance in the review process, there is tremendous benefit to posting publicly and promoting external reviews that have been demonstrated elsewhere:

- **Public** - The general public appreciates and learns from the design side perspective and with time gain a design sensibility that expects the bar to be raised, and they can hold decision-makers accountable for failing to at least respond, if not meet the recommendations.
- **Design Professions** - Although there is general resistance initially by the design professions, that quickly shifts to support upon realization that the recommendations often result in a higher quality product and increased design



budget, and/or serve as compelling validation for consistency with their preferred design approaches that the client may have chosen not to pursue. This holds true for professional municipal staff that see benefit in an external perspective that also reinforces their own recommendations.

- **Development Community** - The development community first and foremost prioritize clarity of direction, certainty of outcomes and timing and process that are consistent and universally applied. An effective review process can offer all these qualities in the process and while developers may initially balk at increased costs because of enhancements that may reduce construction or floor-area efficiencies or require higher-grade materials, etc. that eventually dissipates when it becomes understood that its fairly applied to industry competitors and especially as the accolades, awards and uptick in sales start to roll in over time.
- **City** - City-building benefits are an outcome of the upward spiral that results for design review that is truly effective in raising the bar of design.

**Review & Refinement** – regular reviews of the effectiveness of the process and essential as are putting in place metrics to measure successes and to identify weaknesses that need bolstering

# **APPENDIX A:**

## **Acknowledgement of Experts Duty**

# **APPENDIX B:**

# **CURRICULUM VITAE**