

NOTE:
Appeal process is a public process.

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

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. In addition, the Commission requires the Appellant to provide the Notice of Appeal to any parties directly affected by the Notice of Appeal on the same date the municipal council or Minister is notified.

RECEIVED
JAN 4 2022
The Island Regulatory and Appeals Commission

Drop Box
3:15 pm
MLA

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.irc.pe.ca

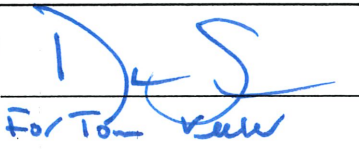
TAKE NOTICE that I/we hereby appeal the decision made by the Minister responsible for the administration of various development regulations of the *Planning Act* or the Municipal Council of N/A (name of City, Town or Community) on the 14th day of December, 2021, wherein the Minister/Community Council made a decision to deny an Amended Development Permit Application filed on July 27, 2021. (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 outlined 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)

The Appellants request that the Commission conduct a hearing de novo of the within matter, and in doing so allow the within appeal, quash the Decision, and order the Application to be approved.

Name(s) of Appellants	<u>Parry Aftab and Allan McCullough</u>	Signature(s) of Appellant(s)	
	Please Print		For Tom Keeler
Mailing Address	<u>c/o Thomas B. Keeler, McInnes Cooper</u>	City/Town	<u>Charlottetown</u>
	<u>141 Kent Street, Suite 300</u>	Postal Code	<u>C1A 1N3</u>
Province	<u>Prince Edward Island</u>	Telephone	<u>(902) 368-8473</u>
Email Address	<u>tom.keeler@mcinnescooper.com</u>		

Dated this 4th day of January, 2022
Day month Year

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 appealinquiries@irc.pe.ca.

Notice of Appeal (Continued)

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

Names of the Appellants:


1. Parry Aftab
2. Allan McCullough

Grounds of Appeal:

1. The Appellants applied for an Amended Development Permit Application on July 27, 2021 (the "Application") seeking to clarify and amend previous Development Permit Applications M-2017-0119 and M-2018-0281 in relation to a property owned by the Appellants, and identified as PID # 877647.
2. The Department of Agriculture and Land (the "Department") issued a decision on December 14, 2021 (the "Decision") denying the Application, a copy of which is attached below.
3. The Department failed to correctly follow the provisions of the *Planning Act* and the applicable Subdivision and Development Regulations, and otherwise erred in their interpretation and application of the *Planning Act* and the Subdivision and Development Regulations.
4. The Department erred in concluding that the Application would have a "detrimental impact", as defined in the Subdivision and Development Regulations, and in doing so failed to identify, follow and apply sound planning principles in their consideration of the Application, and the resulting Decision.
5. The Department erred in considering and applying irrelevant factors in their consideration of the Application, and the resulting Decision, and failed to consider relevant factors supporting the merits of the Application.

6. The Department failed to provide adequate reasons for rejecting the Application, with the result that the Department violated the common law duty of procedural fairness.
7. The Appellants accordingly request that the Commission conduct a hearing de novo of the within matter to substitute their 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 Department, and order the Application to be approved.

DATED at Charlottetown, Queens County, Prince Edward Island this 4th day of January, 2022.


For: **Thomas B. Keeler**

McInnes Cooper
Suite 300, 141 Kent Street
Charlottetown, PEI C1A 1N3
Telephone: (902) 368-8473

Solicitor for the Appellants



Agriculture
and Land

Agriculture
et Terres



Land Division

31 Gordon Drive
PO Box 2000, Charlottetown
Prince Edward Island
Canada C1A 7N8

Division de terres

31, promenade Gordon
C.P. 2000, Charlottetown
Île-du-Prince-Édouard
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December 14, 2021

Parry Aftab
c/p McInnes Cooper
141 Kent Street, Suite 300
Charlottetown, PE C1A 1N3

Dear Ms. Aftab:

Subject:	Application for a single-unit residential dwelling (cottage)
Property ID #:	877647
Property Location:	Bessie Willow Lane, Point Prim, Queens County

The Department of Agriculture and Land has reviewed your application for a single-unit residential dwelling (cottage) on Property # 877647, received on July 21, 2021 located in Point Prim.

A. The Application

Development: The Subject Property is currently approved for Residential (summer cottage) use. This proposal is to construct a large, 3 bedroom cottage consisting of multiple storeys.

B. Decision

The Subject Property is within a geographic area where land use and development is not regulated by a local official plan or zoning by-law. Therefore, the Subject Property falls within the jurisdiction of this Department. Land use and development are regulated by the *Planning Act* Subdivision and Development Regulations and other provincial laws and regulations.

Pursuant to clause 6(c) of the *Planning Act* and subsection 3.(2)(d) of the *Planning Act* Subdivision and Development Regulations, **the above noted application is Denied.** The reasons for this decision are explained in detail below.

C. Reasons

The *Planning Act* Subdivision and Development Regulations provide provisions for the construction of a structure under subsection 31.(1)(a). As well, subsection 3.(2)(d) requires that no development permit shall be issued if the proposal has a detrimental impact, in this case, on surrounding land uses.

Development permission is ordinarily granted for a structure in rural areas where it can be visually integrated into the surrounding landscape and it is of an appropriate design. The determination of whether a new building integrates into the landscape requires an assessment of the extent to which the development of the proposed site, including necessary site works, will blend in unobtrusively with its immediate and wider surroundings.

An assessment of integration has been determined from critical views along stretches of the public road network (RTE 209) and shared private laneways serving existing or approved dwellings (Bessie Willow Lane).

Reasons to deny a proposed structure based on integration and design would include;

- it is a prominent feature in the landscape;
- the design of the building is inappropriate for the site and its locality;

It is important that care is exercised in the siting and design of new buildings to ensure they can integrate harmoniously with their surroundings and thereby protect the amenity and character of rural landscapes. The form and proportions of a new building are key elements in the design and strongly influence its visual impact on the landscape. If form and proportion are wrong, then little can be done with any other features to mitigate the impact of a poor design. Where the scale, form or massing of a building would make it dominant or incongruous in the local landscape, development permission should be refused. The subject structure would not be deemed congruous with its surrounding development, particularly with the approved subdivision dwelling structures (lots 1 & 3).

There are several different ways in which new development in rural areas can impact detrimentally on rural character. One building by itself could have a significant effect on an area if it is poorly sited or designed and would be unduly prominent, particularly in more open and exposed landscapes such as seen in this proposal where all three aspects of impact on rural character are present.

- Overlooking and loss of privacy
- The design, appearance and materials of the proposed development
- Impact on visual amenity (but not the loss of a private view)

Please refer to the *Planning Act* Subdivision and Development Regulations subsection 3.(2)(d).

***Planning Act* Subdivision and Development Regulations**

**3.(2) No development permit shall be issued where a proposed building, structure, or its alteration, repair, location, or use or change of use would
(d) have a detrimental impact;**

**1.(f.3) “detrimental impact” means any loss or harm suffered in person or property in matters related to public health, public safety, protection of the natural environment and surrounding land uses, but does not include potential effects of new subdivisions, buildings or developments with regard to
(i) real property value;
(ii) competition with existing businesses;
(iii) viewscapes; or
(iv) development approved pursuant to subsection 9(1) of the *Environmental Protection Act***

D. Right of Appeal

Notice of this decision will be posted on the PEI Planning Decisions website. We suggest typing “PEI Planning Decisions” into your internet search engine to link to the website.

Please be advised that pursuant to section 28 of the *Planning Act*, this decision may be appealed to the Island Regulatory & Appeals Commission (“IRAC”) (PO Box 577, Charlottetown, PE, C1A 7L1: <http://www.irac.pe.ca>). An appeal must be filed within 21 days after the date of this letter or the Commission is under no obligation to hear the appeal. For more information about appeals, please contact IRAC.

If you have any questions in regards to this decision, contact me at emlloyd@gov.pe.ca or (902) 368-5590.

Sincerely,



Eugene Lloyd
Manager (Acting) of Provincial Planning