

---

**Date Issued:** October 4, 2022  
**Docket:** LA21-013  
**Type:** Planning Appeal

**INDEXED AS:** Andrea Battison v. City of Charlottetown, 2022 PEIRAC 10 (CanLII)

**Order No:** LA22-10

**BETWEEN:**

Andrea Battison

**Appellant**

**AND:**

City of Charlottetown

**Respondent**

**AND:**

APM Commercial

**Developer**

---

## ORDER

---


Panel Members:

J. Scott MacKenzie, K.C. Chair

M. Douglas Clow, Vice-Chair

Erin T. Mitchell, Commissioner

**CERTIFIED A TRUE COPY**

  
Philip J. Rafuse,  
Appeals Administrator  
Prince Edward Island Regulatory &  
Appeals Commission

## 1. INTRODUCTION

1. This is an appeal of the decision of the City of Charlottetown (the “City”), dated June 14, 2021, to amend its zoning and development bylaw to approve a site-specific exemption in the Downtown Mixed Use Neighbourhood of the 500 Lot Area, at 199 Grafton Street (PID 342790), Charlottetown, Prince Edward Island (the “Property”) by the Appellant, Andrea Battison (the “Appellant”). The decision permits the construction of a six storey, 84-unit apartment building with parking located within and under the building on the Property by the developer, APM Commercial.
2. Upon hearing the evidence and hearing submissions from the parties, the Commission is of the view that the City followed the proper process in considering the amendment to the bylaw and the City followed sound planning principles in considering the merits of the development.
3. The Commission denies the appeal and confirms the City’s decision.

## 2. BACKGROUND

4. On June 14, 2021, the City adopted Bylaw PH-ZD.2-046, exempting the Property from certain provisions of sections 30.2 and 30.3 of the City’s Zoning and Development Bylaw in order to allow a multi-unit apartment building with underground parking (the “Development”).
5. On July 2, 2021, the Appellant filed a Notice of Appeal with the Commission challenging the City’s decision to amend its bylaw and approve the site-specific exemption.
6. At the Appellant’s request, the appeal was held in abeyance pending the Appellant’s request to the City for reconsideration pursuant to s. 3.15 of the City’s Bylaw.
7. The Appellant filed an Amended Notice of Appeal on April 21, 2022 clarifying her grounds of appeal.
8. Due to difficulties surrounding scheduling of witnesses, the availability of parties, ongoing issues with scheduling due to COVID-19 restrictions, and a period of uncertainty surrounding the Development, all of which was outside the Commission’s control, the hearing was scheduled for May 25, 2022.
9. On May 25, 2022, the appeal was heard by the Commission and a decision was reserved.

## 3. ISSUES

10. The appeal raises two main questions for the Commission. First, the Commission must determine whether the City followed its procedure and discharged its duty of procedural fairness. Second, the Commission must consider whether the decision made by the City accords with sound planning principles.

#### 4. DISPOSITION

11. For the reasons that follow, the appeal is dismissed. The Commission is satisfied that the City followed its bylaw procedure and discharged its duty of procedural fairness when it considered and adopted Bylaw PH-ZD.2-046. The Commission is also satisfied that the decision made by the City was based on sound planning principles.

#### 5. POSITIONS OF THE PARTIES

12. According to the Appellant, the City made numerous and substantial errors during many steps of the process to approve the site-specific amendment. The Appellant's grounds of appeal can be summarized as follows:

- i. The City failed or neglected to request or conduct studies or analyses to ensure that the bonus height and massing of the project would successfully mitigate shadow, visual, and heritage impacts;
- ii. The City failed to obtain documentation and plans for a four-storey building option that was included in the site-specific exemption amendment for the proposal at 199 Grafton Street;
- iii. The City made errors in the variance descriptions in the resolution for the site specific exemption amendment that were requested and / or provided the wrong plans for evaluation and / or omitted variances required for the project to proceed as proposed;
- iv. The City failed to follow the correct process for obtaining an external design review;
- v. The City failed to consider the health and safety of the general public in approving the project; and
- vi. The City failed to follow good planning principles.

13. The City and Developer both take the position that all proper processes and procedures were followed and that no error was committed in permitting the site-specific exemption. The City asserts that the Appellant has mischaracterized the process undertaken as "a series of variances" as opposed to a site-specific amendment. Further, the City asserts that the Appellant has failed to demonstrate through its evidence that the City failed to follow sound planning principles when evaluating the development.

#### 6. ANALYSIS

14. While the Commission has the authority to substitute its decision for one made by a municipal council, the Commission does not lightly interfere with these types of decisions<sup>1</sup>. The Commission ought not to interfere with a decision merely because it disagrees with the end result<sup>2</sup>. Indeed, reasonable people, when looking at the same

---

<sup>1</sup> Order LA22-07 *Landfest Company Ltd. v. Town of Stratford*

<sup>2</sup> *Charlottetown (City) v. Prince Edward Island (Island Regulatory and Appeals Commission)* 2013 PECA

set of facts, may come to entirely different conclusions as to how the law is applied to those facts. The Commission 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 from planning professionals confirming that the decision is based on the *Planning Act*, the applicable official plan and bylaw, and sound planning principles<sup>3</sup>. The Commission will typically be deferential toward planning decisions by Council that are properly made<sup>4</sup>.

15. The Appellant called one witness, Harold Madi. Mr. Madi was qualified as an expert in the fields of Planning and Urban Design. As noted by the City, portions of Mr. Madi's report were not complete as at the time of filing.
16. Mr. Madi is familiar with the City of Charlottetown. He was commissioned to prepare a report, "City of Charlottetown 500 Lot Area Development Standards and Design Guidelines" in 2011.
17. Mr. Madi gave fair and measured testimony which the Commission largely accepts. Mr. Madi's perspective is that, currently, the City of Charlottetown is experiencing pressures very similar to other cities of similar size. These pressures include affordability issues, a desire to enhance the pedestrian experience in the City and how to maintain a good stock of buildings with historic character. Mr. Madi does not necessarily believe that the Development is a "bad" development, merely that it could be better.
18. Mr. Madi concludes that, with regard to the massing, bonus height, the design of the parking structure and the "abandonment" of Clark Street, the Development poses serious questions. According to Mr. Madi, the Development is not compatible in height, form or scale with the surrounding neighborhood. However, and the Commission places great importance on this, Mr. Madi states that, with some changes, the Development could be compatible.
19. The City called three witnesses, being Alex Forbes, Scott Adams and Laurel Palmer-Thompson. Scott Adams' evidence centered mostly on traffic and the nature of Clark Street. His perspective is that Clark Street is more of a laneway than a street.
20. Alex Forbes is the head of planning for the City of Charlottetown. He testified regarding the adoption of the 500 Lot Design standards bylaw and the relevant sections of the Official Plan dealing with the 500 Lot area of Charlottetown. Mr. Forbes described the 500 Lot bylaw as a "form based code", which is the best tool that the city has to ensure that sensitive areas of the City are maintained. Mr. Forbes described the intent behind the design standards is to provide developers with a roadmap to ensure that issues of design would be left up to professionals to judge.
21. As the Development under appeal was situated in the 500 lot area, a design review was automatically triggered. Mr. Forbes described Peter Fellowes, B. Arch, the design reviewer, "as qualified as you can be." Independently of Mr. Forbes' assessment, the Commission has reviewed the report of Mr. Fellowes<sup>5</sup>. The Commission finds that Mr. Fellowes' report is thorough and properly considers the relevant sections of the City's

---

<sup>3</sup> Order LA18-02 *Queen County Condominium Corporation No. 40 v. City of Charlottetown*

<sup>4</sup> Order LA17-06 *Donna Stringer v. Minister of Communities, Land and Environment*

<sup>5</sup> City's Record, Tab 2

Zoning and Development Bylaw. Mr. Fellowes concludes that the Development will promote an influx of new downtown residents, removal of a surface level parking lot at the critical corner of Prince and Grafton Street and offers a “nice, contemporary look”. The Commission accepts that, at the design review stage, Mr. Fellowes’ conclusions are considered ones taking into account the relevant sections of the Zoning and Development Bylaw.

22. Laurel Palmer-Thompson is employed as a planner with the City. She was involved in the process that ultimately led to the site-specific amendment bylaw being adopted by the City. She initiated the design review and wrote the recommendation for approval that was sent to the design review board.
23. Ms. Palmer-Thompson testified on cross-examination that, initially, the Development came in as a request for a major variance application but when she became involved she determined that it was more appropriate for the Developer to apply for a site-specific amendment. She made that determination because a site-specific amendment is a more rigorous process than the process involved with a major variance application; the process is more akin to that used in a rezoning.
24. A review of the City’s record reveals the following steps were taken in ultimately approving the site specific amendment:
  - The Developer submitted its initial application for a variance on December 23, 2020.
  - An email was sent from Alex Forbes to the Developer on February 1, 2021, indicating that, due to the location of the Development, a design review was needed.
  - The application for design review was initiated with a design review submission on February 21, 2021.
  - The design review was completed on March 19, 2021, from Peter Fellowes, B. Arch. Mr. Fellowes’ report indicated that the Development was an appropriate one for the area.
  - On March 20, 2021, Planning and Heritage Department Staff, led by Laurel Palmer-Thompson, encouraged the City’s Design Review Board to approve the proposed site plans for the Development. In this report from Planning and Heritage it is noted that “staff will review the design reviewer’s recommendations pertaining to the required variances and will forward a detailed report to Planning Board following public notification of the requested variances”.
  - On March 22, 2021, the City’s Planning and Heritage Committee moved that the Development’s proposed site plans be approved and, further, that the Design Review Board’s recommendation will be forwarded to the Planning Board outlining their assessment of the variances and design recommended by the Design Review Board.
  - On March 25, 2021, the Developer formally applied for the site-specific exemption.

- On April 6, 2021, Planning and Heritage staff met to consider the application for the site-specific exemption. The exemption would allow for a six story multi-residential building. The proposal included a bonus height application. It was noted by City staff that the site-specific exemption process is a much more robust process which examines all variance components of the development under one application. City staff noted that the site-specific exemption was not contrary to the official plan and that it ought to proceed to public consultation.
  - On April 27, 2021, a public meeting was held. Notices were posted in advance in The Guardian, on the City's website and notices were sent out to identified property owners who would be affected by the development. The Appellant was in attendance at the public meeting.
  - On May 3, 2021, after compiling the information and comments obtained from City residents, City staff presented a recommendation in support of the Development provided a development agreement was signed outlining the terms and conditions of approval. The City's planning and heritage board passed a motion in support of approval for the site-specific exemption.
  - On May 10, 2021, the amendment to the Zoning and Development bylaw passed first reading. It passed second reading and was officially adopted on June 14, 2021.
25. The recommendation from Planning and Heritage clearly demonstrates a consideration and application of the applicable sections of the bylaw as it relates to the proposed Development. The evidence supports that Planning staff were clearly alive to the issues that the Development presented. Issues surrounding setbacks, building facades, parking and the unique nature of the lot were identified in the design review. Comments both for and against the development were incorporated into the reports and presentations to Council.
26. Section 7.1 of the Zoning and Development Bylaw provides that any substantive application for development in the 500 Lot Area must be subject to a design review process. Witnesses for the City explained to the Commission that the design review process was created to recognize the unique history and structure of the area and to ensure that future development is compatible with its special character. In essence, the design review process provides an additional level of oversight, including a review by the heritage board for the City and an external architect.
27. The design reviewer considers a proposed building's exterior appearance with reference to the design standards in the Bylaw and the 500 Lot Standards and Guidelines (the "Guidelines")<sup>6</sup>. According to the City, the reviewer provides comments and indicates if the proposal meets the design standards and the Guidelines. The reviewer does not re-design the building.
28. The Commission finds that the decision made by the City was based on objective evidence from planning professionals. The application submitted by the Developer was carefully evaluated by City planning staff and they explained their rationale for approving the Development. Both Mr. Forbes and Ms. Palmer-Thompson are experienced professional planners, and the Commission finds their evidence to be

---

<sup>6</sup> See also, Bylaw, ss. 9.8-9.9.

credible and balanced in this case. Their conclusions also find legitimacy in the content of the Official Plan and Bylaws and reflects sound planning principles.

29. The Appellant in her submissions and evidence advances that the City failed to do many things where, in fact, the City is not required to do them. The Commission makes no comment as to whether or not the suggestions of Mr. Madi or the Appellant should be included in the Official Plan, the City's by-laws, or otherwise. That public policy debate is one that should be held with municipal councillors. As the Commission has stated in the past, policy submissions seeking change to the law should be made to politicians, not to an adjudicative body<sup>7</sup>.
30. For the appeal to succeed, the Appellant would have to demonstrate that the City did not follow the proper process for the approval of the site specific amendment or the Appellant would have to demonstrate the City did not consider sound planning principles in approving the site-specific amendment. Sound planning principles are a guard against arbitrary decision making and, in order to ensure adherence to sound planning principles, a professional land use planner must be consulted<sup>8</sup>. In this case, the Commission heard from three experienced professional planners; one called by the Appellant, two called by the City. What emerged from the testimony of the planner called by the Appellant was that this was a development that, with "minor tweaks", could be better. It is not enough to suggest that, because a different conclusion on the suitability of a development might be reached by different planners, that the City did not follow sound planning principles in approving the development.
31. The major area of disagreement between Mr. Madi and City staff was regarding Clark Street. From Mr. Madi's perspective, the development will cause Clark Street to become an abandoned corridor of wind and desolation. This is contradicted by the City's witnesses as well as the evidence found in the record. Clark Street is a narrow street in the City of Charlottetown. Its dimensions are such that a sidewalk cannot be placed on Clark Street and its current and historical use has been to service the properties on Kent Street. While not a planner, the comments of Mr. Fellowes in the design review are germane in that he characterizes Clark Street as a service lane. Mr. Adams for the City described how Clark Street is a laneway which is not meant for pedestrians, but rather a laneway meant for vehicles to access properties on Kent Street. The Commission accepts the evidence of the City's witnesses; Clark Street is not being abandoned with this development.
32. The Commission did not address the Appellant's ground of appeal alleging the City did not consider the health and safety of the City's citizens. It is a serious allegation and the Commission heard no evidence demonstrating how the City failed to consider the health and safety of its citizens.

## 7. COMMENTARY ON COSTS

33. The Developer raised the question of costs at the hearing. The Commission does not have authority to issue costs. The power to award costs must be specifically conferred in legislation. The *Planning Act* currently does not grant the Commission with the authority to award costs on appeal.

---

<sup>7</sup> Order LA20-06 *Matthew Richard v. City of Charlottetown*

<sup>8</sup> Order LA17-06 *Donna Stringer v. Minister of Communities, Land and Environment*

## 8. CONCLUSION

34. For the reasons above, the appeal is dismissed. The Commission thanks the Appellant, the City and the Developer for their submissions in this matter.

### IT IS ORDERED THAT

The appeal is hereby dismissed.

**DATED** at Charlottetown, Prince Edward Island, Tuesday, October 4, 2022.

### BY THE COMMISSION:

*(sgd) J. Scott MacKenzie*

---

J. Scott MacKenzie, K.C., Chair

*(sgd) M. Douglas Clow*

---

M. Douglas Clow, Vice-Chair

*(sgd) Erin T. Mitchell*

---

Erin T. Mitchell, Commissioner



## NOTICE

Section 12 of the *Island Regulatory and Appeals Commission Act* reads as follows:

*12. The Commission may, in its absolute discretion, review, rescind or vary any order or decision made by it, or rehear any application before deciding it.*

Parties to this proceeding seeking a review of the Commission's decision or order in this matter may do so by filing with the Commission, at the earliest date, a written Request for Review, which clearly states the reasons for the review and the nature of the relief sought.

Sections 13(1) and 13(2) of the *Act* provide as follows:

*13(1) An appeal lies from a decision or order of the Commission to the Court of Appeal upon a question of law or jurisdiction.*

*(2) The appeal shall be made by filing a notice of appeal in the Court of Appeal within twenty days after the decision or order appealed from and the rules of court respecting appeals apply with the necessary changes.*

**NOTE:** In accordance with IRAC's *Records Retention and Disposition Schedule*, the material contained in the official file regarding this matter will be retained by the Commission for a period of 2 years.