



Date Issued: May 15, 2023
Docket: LA21019
Type: Planning Act Appeal

INDEXED AS: Deborah Dennis v. City of Charlottetown, 2023 PEIRAC 05 (CanLII)

Order No: LA23-05

BETWEEN:

Deborah Dennis

Appellant

AND:

City of Charlottetown

Respondent

ORDER

Panel Members:

J. Scott MacKenzie, K.C. Chair
Erin T. Mitchell, Commissioner

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

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Appearances & Witnesses

For the Appellant, Deborah Dennis

Counsel:

Geoff Gibson
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For the Respondent, City of Charlottetown

Counsel:

David W. Hooley, K.C.
Maggie Hughes of
Cox & Palmer

Witness:

Alex Forbes, FCIP

1. INTRODUCTION

1. This is an appeal of the decision of the City of Charlottetown (the “City”), dated August 9, 2021, to reject a request by Deborah Dennis (the “Appellant”) for a minor variance and a major variance on a lot at Viceroy Avenue (PID #349035) (the “Property”). The minor variance would reduce the minimum front yard setback requirement from 19.7ft to 18ft, while the major variance would reduce the minimum rear yard setback requirement from 24.6ft to 15.2ft.
2. The Appellant sought the variances in order to permit two new single-detached dwellings on the Property, which she proposed to subdivide into two separate parcels.

2. BACKGROUND

3. On November 5, 2020, the Appellant filed an Application for Subdivision and Lot Consolidation with the City.¹ The Application sought to make two residential lots out of the existing parcel.
4. Through consultation with City Planning Staff, it was determined that, because of the shape of the lots and their insufficient depth to locate a dwelling in accordance with the setback requirements of the Zoning and Development Bylaw in the R-1L (Single-Detached Residential) Zone, the Appellant would first be required to apply for and receive approval for variances before final subdivision approval could be granted.²
5. As a result, on March 23, 2021, the Appellant submitted a Variance Application with the City for approval to vary the setback requirements to build a single dwelling on each of two lots.
6. On April 15, 2021, notice was sent to nearby property owners advising them of the Variance Application, and requesting written comments for or against the requested variances.³ The City received sixteen (16) written responses, one of which was considered neutral, while fifteen (15) responses objected to the Variance Application.⁴
7. This Application was discussed at the May 3, 2021, meeting of the City’s Planning and Heritage Board (“Planning Board” or the “Board”). The Board voted unanimously to defer the Variance Application in order for the Appellant to work with Planning Staff on a revised proposal that would require less variance(s) on the Property.⁵

¹ Record of the City of Charlottetown, Tab 1. [Record]

² Record, Tab 17, pg. 229.

³ Record, Tab 4.

⁴ Record, Tab 6, pgs. 26-55.

⁵ Record, Tab 8, pg. 74.

8. On June 30, 2021, the Appellant submitted a revised Variance Application,⁶ along with a revised design proposal.⁷
9. On July 15, 2021, a second notification letter was sent to nearby residents advising them of the revised Variance Application and requesting written comments.⁸ The City received eight (8) letters of objection in response to the revised Variance Application.⁹
10. On August 3, 2021, the revised Variance Application was considered by the Planning and Heritage Board. At that meeting, the City's Planning Staff reviewed the proposal in detail, and the Appellant's architect was present to speak to the proposal and answered some questions of Planning Board members. The meeting was also attended by members of the public, and four (4) members spoke in some detail about their objection to the variance requests.¹⁰
11. At the conclusion of the August 3, 2021, Planning and Heritage Board meeting, the Board moved, 5-1, to recommend to Council that the request for one minor variance and one major variance on the Property be rejected.¹¹
12. On August 9, 2021, at the regular meeting of Council, with no discussion on the matter, Council voted 8-1 to accept the recommendation of Planning Board and reject the Appellant's revised Variance Application.¹²
13. A copy of Council's resolution to reject the revised Variance Application was sent to the Appellant via email on August 10, 2021.¹³
14. The Appellant filed a Notice of Appeal with the Commission on August 30, 2021. An amended Notice of Appeal was filed November 29, 2021.
15. After the filing of the Notice of Appeal, the Commission agreed to hold this matter in abeyance at the request of the parties while they explored possible resolutions. Commission Staff assisted with these efforts via mediation sessions; however, the Appellant notified the Appeals Administrator on September 16, 2022, that a hearing would be required, the hearing was scheduled by the Commission for December 5, 2022, being the earliest opportunity. Unfortunately, due to illness it was not possible to proceed on that date and the hearing in this matter ultimately proceeded for the morning on January 13, 2023, and continued on the morning of January 19, 2023.

3. ISSUES

16. 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

⁶ Record, Tab 17, pg. 304.

⁷ Record, Tab 10, pgs. 93-104.

⁸ Record, Tab 9.

⁹ Record, Tab 10, pg. 81; see also, pgs. 109-121.

¹⁰ Record, Tab 12.

¹¹ Record, Tab 12, pg. 179.

¹² Record, Tab 13.

¹³ Record, Tab 17, pg. 419.

procedural fairness. Second, the Commission must consider whether the decision made by the City was one based on sound planning principles.

4. DISPOSITION

17. For the reasons that follow, the appeal is allowed and the decision of Council is quashed. The Commission orders that the minor variance and major variance be approved, with the conditions recommended by City's Planning Staff.

5. POSITIONS OF THE PARTIES

18. The Appellant raised one procedural issue, being that the City failed to provide reasons for its decision. The Appellant submitted that the minutes of the August 9, 2021, Council meeting clearly demonstrate that Council gave no reasons at all, despite being the decision-making body that is responsible to make the decision and give reasons for doing so.
19. The Appellant also argued that the City failed to apply sound planning principles to its decision by not properly considering the Report of Planning Staff and by not following the Official Plan and Bylaw. The Appellant submitted that while nearby residents raised concerns with the proposed development, those concerns were not technically relevant, and all of them were addressed by Planning Staff in their Report. The Appellant submitted that both Planning Board and Council were distracted by the concerns voiced by neighbours.
20. The City, for its part, submitted that a review of the record as a whole demonstrates that the reasons for Council's decision are clear. The City submitted that Council followed the recommendation of Planning Board without debate, and that Planning Board held a fulsome discussion at their August 3, 2021, meeting.
21. The City further argued that the evidence demonstrates the decision has merit based on sound planning principles and that Council properly considered all relevant information and complied with the Official Plan. In this case, the City submitted that Council adopted the recommendation of Planning Board which emphasized public safety, and that this is a sound planning consideration.

6. OVERVIEW OF EVIDENCE

22. The Appellant did not present any witnesses or additional evidence at the hearing. The Appellant's submission with respect to evidence was that the basis on which the City made its decision was included in the Record, and that they did not believe it needed to be supplemented.
23. At the beginning of the hearing, the Commission played a video excerpt from the August 9, 2021, meeting of Council wherein Council voted to reject the Appellant's revised Variance Application. The clip was three minutes and two seconds long and encompassed the entirety of Council's consideration of this matter.
24. Prior to the hearing, the City filed its record with the Commission. The record totaled four-hundred and twenty-four (424) pages and included each of the

Appellant's various Applications, the Reports of the City's professional Planning Staff, including all written comments submitted by members of the public, verbatim minutes of the Planning and Heritage Board meetings and the Council meeting where this matter was discussed, and all correspondence between the parties in relation to the Appellant's applications.

25. At the hearing, the City called one witness, being Alex Forbes, FCIP. Alex Forbes is the Manager of Planning and Heritage for the City of Charlottetown. He was accepted by the Commission as an expert in land use planning. Mr. Forbes signed off on the two Planning Staff reports that were presented to Planning Board and recommended approval of the requested variances. At the hearing, Mr. Forbes confirmed that he reviewed and supported both reports of Planning Staff and that both were in accordance with sound planning principles.
26. The report prepared by Planning Staff for the August 3, 2021, Planning Board meeting,¹⁴ with respect to the revised Variance Application, is comprehensive and, as this Commission has come to expect from the professional planners at the City, a thorough review of the Application. It includes an overview of the Property and surrounding neighbourhood, an analysis of a number of objectives and policies set out in the Official Plan (e.g. sections 3.1.2, 3.2.1, and 3.3.1) and relevant provisions of the Zoning and Development Bylaw, and comprehensively addresses the front and rear yard setbacks, as well as public feedback on the Application.
27. In particular, the Report highlights the Official Plan policies around encouraging infill development and the use of existing infrastructure (3.1.2).¹⁵ Planning Staff conclude that the request conforms with the Official Plan. Further, the Report highlights sections 6.1.1 and 6.2.1 of the Bylaw with respect to non-conforming and undersized lots to allow for development on irregular shaped lots. The report concludes that in this case, the unusually shallow lot depth should not deprive the Appellant of the ability to make reasonable use of the Property.¹⁶
28. The Report also lists, in some detail, the concerns raised by the public on both occasions that written comments were requested. Those concerns included the proximity of the development to the surrounding houses, loss of mature trees, the substantial reduction in the setbacks, and the impact of additional driveways and traffic generated by this development and the resulting safety concerns to young students attending West Kent Elementary School, across the street.
29. Planning Staff took care in the Report to address these concerns. For example, Planning Staff's recommendation also includes a condition that eight existing trees be retained on the property. With respect to the setback variances, Planning Staff noted that rear yard setback deficiencies are a feature of the surrounding development block and addressed concerns about the closeness of lots and privacy, recommending a condition of approval be the installation of a privacy hedge. The front yard setback was deemed supportable as it "harmonizes with the existing character of the surrounding neighbourhood."

¹⁴ Record, Tab 10.

¹⁵ Record, Tab 10, pg. 83.

¹⁶ Record, Tab 10, pgs. 84-85.

30. Finally, the Report evaluates the traffic-related concerns, indicating that feedback from Public Works was that there would be “limited negative impacts” resulting from two new homes on the Property.¹⁷
31. In his oral testimony, Mr. Forbes spoke to the general purpose of an official plan and its policies and how it is intended to guide future development in the City. He testified that it is not uncommon for the policies in the Official Plan to speak to competing interests, but that they are all rooted in sound planning and that their application is a balancing act.
32. Mr. Forbes provided evidence that when Planning Staff considers the written submissions from the public in cases like this, they try to identify whether something of a technical nature may have been overlooked or not adequately considered by Planning Staff. They then try to answer those concerns with direction in their Report.
33. On cross-examination, Mr. Forbes spoke to infill development and how it is a good thing that makes use of existing infrastructure (e.g. water and sewer lines, streets, and existing amenities in the neighbourhood). Mr. Forbes also agreed, on cross-examination, that many of the properties nearby the Appellant’s Property have similar setbacks as those sought by the Appellant in her application, and that adjacent non-conformity could lend support to a likewise non-conforming development.

7. ANALYSIS

Authority and Guideline

34. The Commission has the authority to substitute its decision for one made by a municipal council; however, the Commission does not lightly interfere with these types of decisions.¹⁸ The Commission ought not to interfere with a decision merely because it disagrees with the end result.¹⁹
35. The parties agree that the guideline developed by the Commission for exercising its appellate authority under the *Planning Act* is applicable in this case. The guideline involves two main considerations:
 - 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
 - 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.²⁰

¹⁷ Record, Tab 10, pgs. 86-87.

¹⁸ Order LA22-07, *Landfest Company Ltd. v. Town of Stratford* at para 32. [*Landfest*]

¹⁹ Order LA10-06, *Warren Doiron v. City of Charlottetown*, at para 15. [*Doiron 2010*]

²⁰ See, for example, *Landfest* at para 32; and LA17-02, *APM Construction Services Inc. v Community of Brackley* at para 21.

36. 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. 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.²¹ The Commission will typically be deferential toward planning decisions by Council that are properly made.

Procedural Issue

37. The Appellant raised one procedural issue, being that the City failed to provide any reasons for its decision. In summary, the Appellant argued that no matter how generous an interpretation is given to the Record and the minutes of the August 9, 2021 Council Meeting on this issue, no reasons whatsoever are apparent. In their submission, there is nothing from Council to show why the Variance Application was rejected.
38. The City responded to this ground of appeal by imploring the Commission to consider the entire Record, including the reports of Planning Staff, the minutes of the preceding Planning Board meeting(s), and the public's objection letters. The City's position is that, upon a review of the Record as a whole, Council's decision and reasons were known to the Appellant.
39. As the Commission has previously stated, reasons are sufficient when they explain why a municipal council arrived at its decision.²² When reviewing for adequacy or sufficiency, the Commission must consider the reasons given as a whole in the context of the application before council and with an appreciation for the type of decision made.²³
40. In this instance, the Commission is not satisfied that Council provided adequate, or any, reasons to explain why it arrived at its decision.
41. The verbatim minutes of the August 9 Council Meeting in respect of this matter read, in full, as follows:²⁴

6.1 Planning & Heritage – Councillor Terry MacLeod, Chair

Moved by Councillor Terry MacLeod
Seconded by Councillor Julie McCabe

RESOLVED:

That the request for:

- One (1) Minor Variance to reduce the minimum front yard setback requirement from 19.7ft to 18ft; and

²¹ Order LA18-02, *Queen County Condominium Corporation No. 40 v. City of Charlottetown*, at para 41. [QCC 40]

²² Order LA17-08, *Pine Cone Developments Inc. v. City of Charlottetown* (November 15, 2017) at para. 56. See generally *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village)*, 2004 SCC 48 at para. 12.

²³ Order LA22-07, *Landfest Company Ltd. v. Town of Stratford* at para. 46.

²⁴ Record, Tab 13.

- One (1) Major Variance to reduce the minimum rear yard setback requirement from 24.6ft to 15.2ft,

In order to permit two (2) new single-detached dwellings on the lot at Viceroy Ave. (PID #349035) which is proposed to be subdivided into two (2) separate parcels, be rejected.

Mayor Brown: Questions?

Councillor Ramsay: Questions called.

Mayor Brown: Questions called. All those in favour, please raise your hand.

Councillor McCabe: To reject?

Mayor Brown: It's in favour to reject. Thank you for the clarification. I have Councillor Rivard, Councillor Jankov, Councillor Tweel, Councillor MacLeod, Deputy Mayor Coady, Councillor McCabe, Councillors Duffy and Ramsay in favour. Against the rejection? So it is 8-1 and that's Councillor Doiron.

**Carried 8-1
Councillor Doiron Opposed**

42. It is clear to see that Council's consideration of this matter contains zero discussion or deliberation with respect to the Application, and no rationale whatsoever for their decision to reject the Appellants variance requests. The motion was read, questions were called in a cursory fashion, and the vote was held with no comment from a single Councillor.
43. The City argued that a consideration of the entire Record, including that Council adopted both the decision and reasons of Planning Board, establishes that Council's reasons were known. They cited the Commission's comments in Order LA12-02 as support for their contention that when Council follows Planning Board's recommendation, it may fairly be said that in so doing, Council is adopting the reasoning and analysis used by Planning Board.²⁵
44. The Commission has carefully reviewed the entire Record before it, and does not agree that the it cures Council's defective reasons in this instance.
45. First, in this case, Planning Board made a recommendation to Council which was contrary to the recommendation of City Planning Staff. On this point, the Commission has been clear: where that happens, there is an added obligation on Council to demonstrate sound planning reasons for not following the advice of its professional planning staff.²⁶ Council's decision-making process should clearly demonstrate what factors were considered that support the final decision.²⁷

²⁵ Order LA12-02, *Atlantis Health Spa v. City of Charlottetown*, at para 23.

²⁶ *Landfest*, at para 48; see also Order LA20-04, *Jessie-Frost Wicks et al. v. City of Charlottetown*, at para 35.

²⁷ *Landfest*, at para 48.

46. The City pointed the Commission to a discussion among Councillors at the August 9, 2021, Council Meeting about an unrelated application for a different property, several streets away, that occurred after the vote to reject this Application, to say it demonstrates that Council knew that Planning Board considered public safety in reaching its decision. The Commission does not accept this argument. Council's discussion about an unrelated matter, after they already voted to reject this Application, does not serve as reasons, even with the most generous interpretation.
47. Second, Planning Board's August 3, 2021, minutes reveal similarly deficient reasons.²⁸ The meeting opened with a thorough review of the Application by Planning Staff, which was followed with some questions and general discussion between Board members and Planning Staff. For example, Councillor McCabe raised the traffic and safety concerns resulting from West Kent Elementary School, and Planning Staff responded by explaining that the City's engineer is satisfied that the introduction of two new dwellings will not produce any additional safety impacts on Viceroy Avenue. Councillor Jankov asked some questions about the privacy hedge maintenance, the driveway condition, and the as-of-right development conditions on the Property, which were all addressed by Planning Staff. The Appellant's architect then made a presentation to the Board and answered questions from Councillors and Resident Members. Afterward, members of the public were invited to speak at the meeting and ask questions of Planning Staff.
48. After this general review and discussion of the Application, the Board went immediately to a motion without any discussion between Board members about the information they heard, the answers they got from Planning Staff and the Appellant, or their thoughts or opinions on the merits of the variance requests.²⁹
49. In summary, even the most scrutinous review of the minutes of Council's August 9, 2021, meeting, the minutes of Planning Board's August 3, 2021, meeting, and the Record as a whole, does not reveal sufficient reasons *why* Council arrived at its decision to deny the Appellant's variance requests. To find otherwise would be to speculate.
50. At the risk of being redundant, the Commission reiterates that Council **must** provide thorough, cogent, and thoughtful reasons when evaluating planning applications from the City's residents. Procedural fairness requires, and the Commission expects, that every municipal council provide sufficient reasons, based on sound planning principles, to justify its decision. More is expected when an application has been the subject of a public meeting, when written submissions for and against the application have been received from members of the public, and when Council has received adverse recommendations from their professional staff. Those recommendations are not binding and may be overcome; however, there must be sufficient information presented to the Commission to demonstrate a careful evaluation by Council and that the final decision was motivated by planning-related considerations.³⁰

²⁸ Record, Tab 12.

²⁹ Record, Tab 12, pgs. 178-179.

³⁰ *Jessie-Frost Wicks*, para 36

51. To conclude, this ground of appeal is accepted by the Commission. Council failed to discharge its duty of fairness as the primary-decision maker. The effect of this defect is that the Commission is not required to show deference to the decision made by Council.³¹

Sound Planning Principles

52. It is well-settled that the Commission must be satisfied that the final decision made by Council was animated by sound planning principles. In the absence of reasons from Council, the Commission will, therefore, review the evidence before it to determine whether or not the Appellant's revised Variance Application will succeed, thus deciding the matter anew as if it were the original decision maker, and providing reasons for same.
53. The Appellant's revised Variance Application sought a minor variance and a major variance for her Property on Viceroy Avenue. The minor variance would reduce the minimum front yard setback requirement from 19.7ft to 18ft, while the major variance would reduce the minimum rear yard setback requirement from 24.6ft to 15.2ft.
54. As already stated, the report prepared by Planning Staff with respect to the revised Variance Application,³² is comprehensive, professional, and a thorough review of the Application. The recommendation from Planning Staff clearly demonstrates a detailed consideration of the applicable policies of the Official Plan and sections of the Bylaw as they relate to the variance requests.
55. The positive attributes of the variance requests, as concluded by Planning Staff, include:³³
- Supporting Official Plan policies for infill development on vacant lots that maximizes the use of existing underground services near centre of employment.
 - Proposed single-detached dwellings represent low-intensity use that is consistent with dwelling type on surrounding properties.
 - Proposed dwellings meet minimum width and requirements for single-detached dwellings established in Zoning By-law definition.
 - Subject property is large in size, with future lot frontages and areas (post subdivision) exceeding R-1L Zone requirements.
 - Proposed dwelling height is less than the maximum permitted height in R-1L Zone.
 - Traffic generated by proposed two new single detached dwellings on Viceroy Avenue will be minimal.
 - Proposed retention of eight (8) existing trees on the property.

³¹ *Landfest*, para 33.

³² Record, Tab 10.

³³ Record, Tab 10, pg. 84.

56. These positive attributes are well explained and supported throughout the Report. For example, it analyzes a number of objectives and policies set out in the Official Plan, including the policies around encouraging infill development and the use of existing infrastructure (3.1.2).³⁴ It also summarizes, in detail, the compliance of the proposed development with several provisions of the Bylaw (e.g. pursuant to requirements in the Single Detached Residential Zone).
57. The shortcomings of the variance requests were identified as being primarily those issues raised through public objection:³⁵
- Deficient lot depth on subject property.
 - Proposed proximity to dwellings to the south.
 - Inadequate site design on adjacent school site (e.g. insufficient on-site parking and lack of on-site vehicle queuing space) results in congestion/traffic violations and pedestrian/vehicular safety concerns on Viceroy Ave during peak school times.
58. These deficiencies are similarly addressed in Planning Staff's Report and recommendation. For example, the recommendation includes a condition on approval that a privacy hedge be installed to mitigate privacy concerns due to the proximity of dwellings. The evidence supports that the Appellant was agreeable to this condition. A second condition of approval regarding the driveway access was, in part, intended to address the possibility of cars turning in the driveways and exacerbating the traffic issues.
59. The Report evaluates the traffic-related concerns, and aptly identifies the traffic issues as "a direct result of the site design issues on the school side" and advised that these deficiencies should not preclude the Appellant from making reasonable use of the Property.³⁶
60. On this point, the Commission accepts that the traffic concerns of residents are legitimate. However, it is not satisfied that they are germane to the approval of varied front and rear yard setbacks to permit two new single-family dwellings in this neighbourhood. While the Official Plan does address "Safety in the Community" at section 5.7, stating that public safety is of great concern to the residents of Charlottetown, the evidence does not demonstrate that the Appellant's requested variances offend this notion. The City's Manager of Public Works raised no concerns with the development, finding there would be no traffic concerns.³⁷ Charlottetown Police Services commented that two new driveways could "complicate an already challenging situation", but attributed that situation to the drop off times at West Kent Elementary School.³⁸ Mr. Forbes testified on cross-examination that there is no real appreciable difference to any of these safety

³⁴ Record, Tab 10, pg. 83.

³⁵ Record, Tab 10, pg. 84.

³⁶ Record, Tab 10, pgs. 86-87.

³⁷ Record, Tab 17, pgs. 285-87.

³⁸ Record, Tab 17, pg. 274.

concerns if a dwelling is setback 19.7ft versus 18ft from the front of the property line.

61. Public participation is an important element of the planning process. This is evidenced in the objects of the *Planning Act*, the objectives and policies of the Official Plan, and the provisions of the Zoning and Development Bylaw requiring Council to seek public input on certain planning decisions. The Commission does not underestimate the importance of the public's feedback when evaluating an application such as the one at issue here. However, the Commission has regularly emphasized to municipalities the need for objective decision-making and not exercises in subjectivity. Reliance must be placed on the assessments, opinions, and reports of trained professionals as opposed to the hue and cry of neighbours or politicians. For example, in *Biovectra Inc. v. City of Charlottetown*, the Commission stated:³⁹

At common law, a property owner may do with his land what he wishes, subject to the rights of surrounding property owners, for example, the law of nuisance. However, these rights may be restricted by statute, regulation or bylaw. Such restrictions must be expressed clearly and with solid legislative authority. To the extent that discretion is permitted by the statute, regulation or bylaw the wording must be clear and the criteria objective. Arbitrary discretion is to be avoided.

62. In other words, the discretion of Council when making a planning-related decision is not unfettered. Their discretion has to be exercised in furtherance of the City's Official Plan and Bylaw, which have had input and contribution from the residents of Charlottetown as a whole.⁴⁰ While Council is expected to accept and consider public feedback in respect of a particular application, they must also filter that feedback through the lens of the Official Plan and the Bylaw and ensure that its final decision, while informed by that public feedback, is ultimately animated by sound planning considerations.
63. In this case, in particular, the Commission can clearly see from the evidence before it that the residents and neighbours who raised safety issues related to the traffic congestion outside of West Kent Elementary School have been frustrated and concerned about this issue for quite some time. The Commission empathizes with them. However, when tasked with reviewing a planning-related application on its merits, these kinds of concerns have to be weighed appropriately. The City has an obligation to deal with traffic problems near schools. They are safety and enforcement issues that call for a coordinated solution and action by the City and by the School administration. They are not issues to be dealt with in a development application, unless there is a clear nexus between the proposed development and the safety problem. That is not the case with this Application.
64. In this case, sections 6.1.1 and 6.2.1 of the Bylaw with respect to non-conforming and undersized lots, allow for development on irregular shaped lots, and the Commission agrees with the conclusion of Planning Staff that the unusually shallow lot depth should not deprive the Appellant of the ability to make reasonable

³⁹ Order LA11-01, *Biovectra Inc. v. City of Charlottetown*, at para 61.

⁴⁰ City of Charlottetown Official Plan, July 1999, s. 1.2.

use of the Property, absent compelling reasons based in sound planning. No such reasons exist here.

65. In summary, having received, considered and weighed the evidence provided by the City in the form of the Record and the expert evidence given by Mr. Forbes, the Commission has sufficient evidence before it to decide the merits of this Application. In concert with reviewing and considering the policies of the Official Plan and sections of the Bylaw that apply to these variance requests, the Commission finds that varying the front and rear yard setbacks of the Property to permit two single-family homes in this neighbourhood is consistent with the policies of the Official Plan, the Zoning and Development Bylaw, and has merit based on sound planning principles.
66. In closing the Commission can not let the conduct of the Mayor and Councillors at the Council meeting where this decision was made go without further comment. The Commission has reproduced, above, the entirety of what was said in the consideration of and rejection of this Application. There was no debate and no reasons given. Council is well aware of the direction provided repeatedly by this Commission and the Courts on the requirement to provide reasons rooted in the Official Plan, Bylaws, and sound planning principles when making its decisions. Failure to do so is unfair to applicants who often spend significant time and resources to navigate the City's processes, only to be left wondering why their development was not approved. Applicants for developments within the City and the public in general deserve far better, and the Commission trusts that Council will endeavor to improve its practices in this regard.

8. CONCLUSION

67. For the reasons above, the appeal is allowed and the decision of the Council is quashed. The Commission orders that the minor variance and major variance be approved, with conditions as outlined below.
68. The Commission thanks the Appellant and the City for their submissions in this matter.

9. ORDER

69. The appeal is hereby allowed. The decision of Council is quashed. The Commission orders that:

The request for one (1) minor variance to reduce the minimum front yard setback requirement from 19.7ft to 18ft, and one (1) major variance to reduce the minimum rear yard setback requirement from 24.6ft to 15.2ft, in order to permit two (2) new single-detached dwellings on the Property (PID #349035 on Viceroy Ave.) which is proposed to be subdivided into two (2) separate parcels be approved subject to the following conditions:

- a) Driveway access into the side yard (east or west) of each dwelling is maintained and driveway access is no wider than 3 metres at Viceroy Avenue.

- b) A privacy hedge is planted along the full extent of the south property limit to the satisfaction of the City's Forestry and Environmental Officer prior to Occupancy Permit approval.
- c) Eight (8) existing trees are retained on the property.

DATED at Charlottetown, Prince Edward Island, **Monday, May 15, 2023**

BY THE COMMISSION:

(sgd.) *J. Scott MacKenzie*

J. Scott MacKenzie, K.C., 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.