

January 12, 2024

VIA EMAIL

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

Attention: Philip Rafuse

Dear Mr. Rafuse:

**Re: Johnston-Grinton/Grinton (the "Appellants") v Town of Three Rivers (the "Town")
Appeal LA 23019 (the "Appeal")**

As you are aware, we represent the Town of Three Rivers (the "Town") in relation to the Appellants' appeal of the Town Council's decision to issue a Development Permit to Kreative Acres Corp.

Following receipt of the Notice of Appeal filed with the Island Regulatory and Appeals Commission (the "Commission") on August 11, 2023 (the "Appeal"), the Town filed its Record and Reply on September 11, 2023 and September 18, 2023, respectively. A Supplemental Record was also filed by the Town on January 5, 2024. The Commission requested that the Appellants provide further written submissions which were subsequently provided on November 17, 2023. Please accept the enclosed submissions as the Town's response to the Appellants' written submissions.

We understand the Appellants will have further opportunity to respond to the enclosed submissions on or before January 23, 2024, and that the Town may also file additional submissions on or before January 30, 2024.

Yours very truly,



Melanie McKenna
MM/mh

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Submissions of the Town of Three Rivers

1. The Appellants, Geraldine Johnston-Grinton & Paul Grinton (the “Appellants”), have appealed a decision of Town Council dated July 24, 2023, where Council issued a Development Permit (Number 35.23.DEF) to Kreative Acres Corp. (the “Developer”). The Development Permit authorized the Developer to construct a 22-unit apartment building at PIDs 198069, 196642 and 196675 (the “Properties”) (the “Permit”) (the “Decision”). As part of the Permit, the Developer was granted a major variance for an additional 4.8 ft. of building height, subject to a number of conditions to be satisfied by the Developer prior to the commencement of construction.
2. The Appellants’ Notice of Appeal was filed with the Island Regulatory and Appeals Commission (the “Commission”) on August 11, 2023 (the “Appeal”). The Town filed its Record and Reply on September 11, 2023 and September 18, 2023, respectively.
3. A Supplemental Record was filed by the Town on January 5, 2024, and the Appellants’ written submissions were provided on November 17, 2023 (the “Appellants’ Written Submissions”).
4. The Appellants’ Written Submissions address the following grounds of appeal:
 - a. Ground 1(a): “sound planning principles” [see paragraphs 91 to 92];
 - b. Ground 2(a): “approved under incorrect bylaw” [see paragraphs 47 to 54];
 - c. Ground 2(c): “variance does not meet the criteria” [see paragraphs 74 to 90];
 - d. Ground 2(e): “approved without required documentation” [see paragraphs 59 to 67]; and,
 - e. Ground 2(f): “application does not comply with Mixed Use Zone requirements” [see paragraphs 68 to 70].
5. The Appellants’ Written Submissions further expand on ground 2(g) by arguing that the development permit application was inconsistent with the Permit [see paragraphs 55 to 58 of the Appellants’ Written Submissions].
6. The Appellants’ Written Submissions also add an additional ground of appeal, arguing that the notice requirements outlined at section 3.8(2)(b) of the Town’s Subdivision and

Development Bylaw were not complied with [see paragraphs 71 to 73 of the Appellants' Written Submissions].

7. The Town has endeavoured to address the Appellants' Written Submissions below and, for reasons that follow, the Town submits that the Appeal ought to be denied, and the Decision stand.

Preliminary – Jurisdiction and the applicable test

8. The Town does not dispute that the Commission has jurisdiction to hear this Appeal. However, it is the Town's position that the Commission ought to dismiss the Appeal.
9. The Town further agrees with the Appellants' submissions on the applicable test; however, the Town disagrees that the test cannot be made out in this instance. The Town followed proper process and procedure in reaching the Decision and the Decision has merit based on sound planning principles.
10. For ease of reference, the herein submissions mirror the numbering system in the Appellants' Written Submissions.

1A: "The permit application was approved under the incorrect bylaw" (ground 2(a))

11. According to the Appellants at paragraphs 47 to 54 of the Appellants' Written Submissions, the development permit application ought to have been considered in accordance with the "Zoning Bylaw 2017" as opposed to the "Zoning Bylaw 2023" as the application was submitted on May 12, 2023, and the "Zoning Bylaw 2023" did not receive Ministerial approval until May 25, 2023. According to the Appellants, the provisions of each "Zoning Bylaw" contain substantial differences which are material to the Appeal. The Appellants do not indicate said differences or how they are material. The Town requests these particulars be provided by the Appellants.
12. The Town submits that the application was properly assessed in accordance with "Zoning Bylaw 2023" as the application was assessed and registered on May 30, 2023, following the enactment of said bylaw. In advance of considering the application, the Developer and the Town mutually agreed that although the application was filed on May 12, 2023, the Town

would not consider or register it until the “Zoning Bylaw 2023” received ministerial approval. While the Developer had the option to resubmit the permit application at a later date, they did not do so on the understanding that it would not be assessed or registered until after the “Zoning Bylaw 2023” received ministerial approval.

13. According to the *Planning Act*, RSPEI 1988, c P-8 at sections 15(1)(a) and 17 respectively, a plan becomes the official plan for the area following approval by the Minister and bylaws are effective on the date of approval by the Minister. As such, at the time the application was considered, the “Zoning Bylaw 2023” was effective.
14. If the Commission were to overturn Council’s decision on the basis that the permit application ought to have been considered under the “Zoning Bylaw 2017,” the Developer could resubmit their application for consideration under the “Zoning Bylaw 2023” and the same decision (i.e. approval of the application) could result.

1B: “The permit application is inconsistent with the Development permit” (expansion of ground 2(g))

15. The Appellants’ point out that the application requested (among other things) a major variance for an additional 5’10”1/2” feet of building height; however, the Permit permitted a major variance for an additional 4’8” feet of building height.
16. The Appellants submit that this has resulted in non-compliance with the Development Bylaw 2023. It is unclear which sections of the Development Bylaw 2023 are relied on to make this assertion. It is further unclear whether the Appellants are arguing that the development as proposed in the application does not comply with the Bylaw, or whether the development as approved on the permit does not comply with the Bylaw. The Town requests further particulars from the Appellants.
17. Regardless, the Town takes the position that this ground of appeal is meritless. The proposal as outlined in the Permit complies with the Development Permit 2023 and the Town’s Official Plan. In an effort to work with applicants, Town staff frequently assist applicants with amendments to their applications to ensure compliance with the applicable laws. More often than not, permit applications change throughout their processing to ensure compliance with the Town’s bylaws and policies, which is an effort by all parties to work collaboratively.

1C: “The permit application was approved without the required documentation” (ground 2(e))

18. It is the Appellants’ position that the plan filed by the Developer with their application failed to show setbacks to the proposed development as required by section 3.2.3(2)(b) of the Development Bylaw 2023. The Appellants further assert that the survey provided by the Developer with the application contains an error.
19. The Town submits that the plan provided by the Developer complies with the requirements of the Development Bylaw 2023. Staff are easily able to ascertain various measurements, including setbacks, from the subsequent PDF drawings which are well-annotated with various dimensions.
20. With respect to the Appellants’ comments on the survey plan, section 3.2.3.5 of the Development Bylaw 2023 provides the Town staff with discretion to require a survey. Regardless, the Town was in possession of a survey stamped and certified by a Prince Edward Island Land Surveyor as a result of the March 14, 2022 lot consolidation
21. The Appellants’ submission with respect to Fraser Street is incorrect. The Government of Prince Edward Island registered Plan No. 41164 with the Queens County Registry on March 27, 2019. The Government acquired portions of what is now PID 196642 for drainage infrastructure maintenance, which caused the width of Fraser Street to increase to 40ft.

1D: “The permit application did not comply with the requirements for Mixed Use Zones” (ground 2(f))

22. The Town reiterates their position outlined in 1C. The plans provided by the Developer did include the appropriate setbacks and met the requirements of the Mixed Use (MU) Zone.

1E: “The Town approved a major zoning variance that does not meet the notice requirements and the criteria”

- *The Notice Requirements*

23. The Appellants submit that the Town did not adhere to the notice requirements set out in section 3.8(2)(b) of the Development Bylaw 2023.
24. The Town submits that this assertion is incorrect. The list of parcels that were identified as being within 100m of the subject parcel can be found at **[Tab 8, pg. 47]**. PID 196683 is identified on that list and the Town confirms that Notice was sent to all PIDs on that list.
25. The Town notes that PID 196683 is vacant as the former building was demolished several years ago. It is not the responsibility of the Town to ensure that mail is received by residents as the Town relies on residents to provide their up-to-date and correct mailing address.

- *The Criteria*

26. The Appellants, at paragraphs 74 to 80 of the Appellants' Written Submissions, submit that a major variance was not required as the Properties could have accommodated a development with one less storey and fewer units. Respectfully, it is not the Town's, nor the Appellants', decision as to what a developer proposes on a site.
27. The Town has the authority, as outlined in section 3.6(3) of the Development Bylaw 2023 to permit major variances, as long as those variances are in keeping with the general intent and purposes of the Development Bylaw 2023 and the Official Plan. There is no evidence to suggest that is not the case here.
28. The Appellants' have referenced comments from the Montague Volunteer Fire Brigade from February, 2019, almost four years ago, to support their position that the height of the building violates the public health and safety provisions of the Development Bylaw 2023 and the Official Plan. These comments were not made within the context of the Permit and in the Town's submission, should not be considered.
29. The Town submits that the 2019 comments were made prior to the adoption of building codes on Prince Edward Island, and since the adoption of same, it is the responsibility of the professionals engaged on the project to ensure compliance with applicable building and fire codes. This is done at the provincial level when building permits are acquired.

Sound Planning Principles

30. The Appellants submit that the Decision does not have merit based on sound planning principles as it does not comply with one section of the Official Plan and the Development Bylaw 2023.
31. The Town submits that the Decision is based on sound planning principles. The Permit was issued by the Town following a decision of Council, based on a recommendation from staff. The Town's Planning Department consists of several professionals, including Lee Kenebel, a Planning and Development Officer who has been with the Town since October, 2021 and has been a Chartered Member of the Royal Town Planning Institute (UK) since 2012.
32. As part of his role as the Planning & Development Officer, Mr. Kenebel must review every application in their entirety with due regard for the applicable bylaws, in particular the Development Bylaw 2023, and the Town's Official Plan. He then uses his knowledge and experience as a planner and makes a sound, well-informed recommendation to Council. Respectfully, the Appellants have provided no evidence that this was not the case with respect to the Decision.
33. The Town submits that the Decision is not contrary to the one section of the Official Plan referenced by the Appellants and finds support from the Official Plan at various sections. These are referenced in the report of Mr. Kenebel dated July 24, 2023 **[Tab 8, Town's Record]**.

Conclusion

34. In closing, the Town submits that the Decision was made in accordance with the processes and procedures as set out in the applicable bylaws, the principles outlined in the Official Plan and was made in accordance with sound planning principles.
35. The Town, therefore, requests that the Commission dismiss the appeal.