



## Prince Edward Island

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## Île-du-Prince-Édouard

Justice et  
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**July 14, 2025**

**VIA EMAIL – mwalshdoucette@irac.pe.ca**

Michelle Walsh-Doucette  
Commission Clerk  
Island Regulatory and Appeals Commission  
National Bank Tower, Suite 501  
134 Kent Street, Charlottetown PE C1A 7L1

**Re: Appeal Docket #25006**  
**G. Lorraine Lambert v. Minister of Housing, Land and Communities**  
**Our File: LS 27601**

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### INTRODUCTION

1. We represent the Minister of Housing, Land and Communities ("**Minister**") in relation to the above noted appeal filed by G. Lorraine Lambert ("**Appellant**") on June 18, 2025 ("**Appeal**").
2. The Appeal arises from the Minister denying the Appellant's application, filed on March 5, 2025, requesting a change of use for PID# 942011, located at 11 Houston Road, Mayfield, Queens County ("**Subject Property**"), from commercial (rental cottage) to industrial (home fabrication) ("**Application**").
3. The Minister's position is that, in denying the Application, the Minister
  - (a) followed the proper process and procedure required by the *Planning Act*, RSPEI 1988, Cap. P-8 ("**Act**") and the *Planning Act Subdivision and Development Regulations*, PEI Reg EC693/00 ("**Regulations**"); and
  - (b) relied on sound planning principles within the field of land use planning and as identified in the Act and the Regulations.

## BACKGROUND AND DECISION

4. The Subject Property is currently designated for commercial (rental cottage) use only.
5. The Appellant submitted the Application to the Minister on March 5, 2025, seeking to change the use of the Subject Property to industrial (home fabrication), to allow the Appellant to operate a cottage construction business on the Subject Property. This business would see cottages constructed on the Subject Property, sold and then transported from the Subject Property to destinations chosen by purchasers.<sup>1</sup>
6. On March 20, 2025, Sarah MacVarish, Senior Development Officer (“**MacVarish**”), forwarded the Application to Alex O’Hara, Land Use and Planning Act Specialist (“**O’Hara**”) with the Department of Housing, Land and Communities, and to personnel in both the Department of Transportation and Infrastructure (“**DTI**”) and the Department of Environment, Energy and Climate Action (“**DEECA**”), requesting feedback on the Application.
7. Various personnel in DTI and DEECA provided comments on the Application to MacVarish between March 20 and March 27, 2025.<sup>2</sup>
8. On March 27, 2025, MacVarish sent a letter to property owners within 100 meters of the Subject Property, notifying them of the Application and requesting comments in writing within 14 days.<sup>3</sup>
9. MacVarish received written responses from John Griffin, the owner of PID 875427, and Nathan and Jennifer Hambly, who together own PID 230987. All responding property owners indicated initially that they did not oppose the change of use proposed in the Application, provided that this change of use would apply only to the Subject Property’s current owner. However, when Mr. Griffin was subsequently advised that the proposed change of use would not be limited to the Subject Property’s current owner, he confirmed that he was opposed to the Application.<sup>4</sup>

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<sup>1</sup> Appeal Record, Tab 3, page 66

<sup>2</sup> Appeal Record, Tab 5

<sup>3</sup> Appeal Record, Tab 6, page 87

<sup>4</sup> Appeal Record, Tab 7

10. O'Hara prepared a report, dated May 26, 2025, with respect to the Application ("**Report**").<sup>5</sup> In the Report, O'Hara recommended that the Application be denied. The primary reasons given for this recommendation were that (a) the proposed use of the Subject Property would be incompatible with surrounding land uses (industrial vs. primarily residential), (b) industrial activity on the Subject Property could create excessive noise, (c) the existing infrastructure in the area (i.e. Houston Road) could experience excessive wear-and-tear as a result of industrial activity taking place on the Subject Property, and (d) changing the use of the Subject Property could encourage further non-residential encroachment into this primarily residential area.
11. On May 28, 2025, the Minister denied the Application.<sup>6</sup>

## **APPEAL**

12. The Appellant filed the Appeal on June 18, 2025, pursuant to section 28 of the Act.<sup>7</sup>
13. In her Notice of Appeal, the Appellant appears to raise the following four grounds of appeal:
- (a) A similar change of use was approved by the Minister for a property in Oyster Bed.
  - (b) The Appellant's proposed use of the Subject Property will not result in excessive noise, as construction hours would be restricted to 10:00 a.m. to 5:00 p.m. (or 9:30 a.m. to 5:30 p.m.). Further, the Appellant's employees use electric hammers, which do not cause as much noise as regular hammers.
  - (c) The proposed use of the Subject Property will not result in excessive wear and tear on Houston Road, as the construction of each cottage will require only three deliveries for building supplies and one for roof trusses.

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<sup>5</sup> Appeal Record, Tab 1B

<sup>6</sup> Appeal Record, Tab 1A

<sup>7</sup> Appeal Record, Tab 2

- (d) The Appellant intends to construct only cottages on the Subject Property, which itself is surrounded by rental cottages and houses under construction. The fabric of land will therefore not be changed should the proposed change of use be permitted.<sup>8</sup>

14. The Minister's response to the Appeal is set out below. Should the Appellant expand on, provide further explanation for, or otherwise provide submissions on her grounds of appeal, the Minister reserves the right to provide a further reply thereto.

## LEGISLATION – THE ACT AND THE REGULATIONS

15. Clause 6(c) of the Act provides that the Minister shall generally administer and enforce the Act and its Regulations.<sup>9</sup>
16. The Regulations apply to all areas of the province, except those municipalities with official plans and bylaws.<sup>10</sup> The Subject Property is located in Mayfield, an area that does not have an official plan or bylaws. The Regulations, therefore, apply to the Subject Property.
17. The Regulations recognize the following standard classes of use for a parcel of land: “...*residential, commercial, industrial, resource (including agriculture, forestry and fisheries), recreational and institutional*...”.<sup>11</sup>
18. The Regulations define “*commercial*” and “*industrial use*” as follows:
- (e.1) “**commercial**” means the use of a building or lot for the storage, display or sale of goods or services, and includes hotels, motels, inns, or rental cottages;
- ...
- (j.1) “**industrial use**” means the use of a building or lot for the storage, distribution, processing, assembly or recycling of wholesale products, goods or materials, or for activities relating to transportation, extraction, manufacturing, construction, warehousing, assembly or general repair;<sup>12</sup>

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<sup>8</sup> Appeal Record, Tab 2, pages 38 to 42

<sup>9</sup> *Planning Act*, RSPEI 1988, c P-8, <https://canlii.ca/t/5652r>, at clause 6(c)

<sup>10</sup> *Subdivision and Development Regulations*, PEI Reg EC693/00, <https://canlii.ca/t/56gjrr>, at subsection 2(1)

<sup>11</sup> *Ibid*, at clause 1(d)

<sup>12</sup> *Ibid*, at clauses 1(e.1) and (j.1)

19. The Subject Property has been approved for commercial (rental cottage) use only.<sup>13</sup>

20. The Regulations prohibit any deviation from an existing land use unless an application for a change of use has been submitted to, and approved by, the Minister. Subsection 29(1) of the Regulations states:

**29. Change of use**

*(1) No person shall deviate from an existing land use or an approved plan of subdivision, including changing the use of a lot from the approved use, unless a revised plan of subdivision, where applicable, and an application for a change of use has been submitted to, and has been approved by, the Minister.*<sup>14</sup>

21. The Act defines “development”, in part, and “development permit” as follows:

(d) “**development**” means

...

*(iv) changing the use or intensity of use of a parcel of land or the use, intensity of use or size of a structure or building;*

...

*(e.12) “**development permit**” means a permit issued for a development under the regulations or pursuant to a bylaw but does not include a building permit issued under the Building Codes Act;*<sup>15</sup>

22. An approval of a change of use granted by the Minister would therefore be, by definition, a development permit.

23. The Minister is prohibited under clause 3(2)(d) of the Regulations from issuing a development permit for a change of use where the change of use would have a “*detrimental impact*”:

***Idem, development permits***

***(2) No development permit shall be issued where a proposed building, structure, or its alteration, repair, location, or use or change of use would***

*(a) not conform to these regulations or any other regulations made pursuant to the Act;*

*(b) precipitate premature development or unnecessary public expenditure;*

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<sup>13</sup> Appeal Record, Tabs 1F and J, pages 27 and 35

<sup>14</sup> *Subdivision and Development Regulations*, supra note 10, at subsection 29(1)

<sup>15</sup> *Planning Act*, supra note 9, at clauses 1(d) and (e.12)

- (c) *in the opinion of the Minister, place pressure on a municipality or the province to provide services;*
- (d) ***have a detrimental impact***; or
- (e) *result in a fire hazard to the occupants or to neighbouring buildings or structures.*<sup>16</sup> [emphasis added]

24. The Regulations define “*detrimental impact*” as follows:

*(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) viewscales; or*
- (iv) development approved pursuant to subsection 9(1) of the Environmental Protection Act;*<sup>17</sup>

25. This is the legislative framework through which the Minister received and considered the Application.

## THE TEST

26. In Order LA25-02, the Commission outlined the appropriate two-part test (“**Test**”) to be applied when exercising its appellate authority under the Act in relation to a decision of the Minister:

- “i. Whether the Minister followed the proper procedure as required by the Planning Act, the Regulations and the law in general, including the duty of procedural fairness, in making the decision; and*
- ii. Whether the Minister’s decision was made in accordance with the Planning Act, the Regulations and was based on sound planning principles in the field of land use planning.”*<sup>18</sup>

## Part 1 of the Test – Process

27. The documentary evidence in the Appeal Record demonstrates that the Minister followed the proper process and procedure, and the applicable legislation.

<sup>16</sup> *Subdivision and Development Regulations*, supra note 10, at clause 3(2)(d)

<sup>17</sup> *Ibid*, at clause 1(f.3)

<sup>18</sup> *Parry Aftab and Allan McCullough v. Minister of Housing, Land and Communities*, 2025 PEIRAC 16 (CanLII), <https://canlii.ca/t/kbjqk>, at para. 27

28. Upon receipt of the Application, the Minister carried out the following consultations:
- (a) The Minister sought and received input from personnel in DTI and DEECA;
  - (b) The Minister notified property owners surrounding the Subject Property of the Application and received their input, as contemplated by subsection 29(2) of the Regulations; and
  - (c) The Minister received and considered the Report, which was prepared by O'Hara, who was certified as a Registered Professional Planner in October 2024.
29. In preparing the Report, O'Hara carried out a site visit, which the Commission has in the past found to be a relevant consideration under part 1 of the Test.<sup>19</sup>
30. The Minister advised the Appellant in writing that the Application was denied for the reasons set out in the Report.<sup>20</sup>
31. For these reasons, the Minister submits that the first part of the Test is satisfied.

## **Part 2 of the Test – Sound Planning Principles**

32. The Minister also satisfied the second part of the Test, as the Minister's decision to deny the Application is supported by objective and reliable evidence, and is based on the Act, the Regulations, and sound planning principles.
33. The Commission considered a similar appeal in *Freake (Re)*, 2017 CanLII 153318 (PE IRAC) ("**Freake**"). In *Freake*, Natacha Freake ("**Natacha**") submitted a change of use application to the Minister for a parcel of land in Cardigan, requesting that the parcel's use be changed from residential to residential/commercial. Natacha hoped to operate a motorcycle sales shop on the parcel.<sup>21</sup>
34. The Minister denied Natacha's application for reasons similar to those given in this matter for denying the Application. The Minister's reasons for denial were summarized by the Commission in *Freake* as follows:

*"[...] such a change of use in this situation could have a "detrimental impact" on the protection of the surrounding land uses by creating an*

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<sup>19</sup> *Stringer (Re)*, 2017 CanLII 153317 (PE IRAC), <https://canlii.ca/t/jswkl>, at para. (e) of "3. Findings"

<sup>20</sup> Appeal Record, Tab 1A, at page 7

<sup>21</sup> *Freake (Re)*, 2017 CanLII 153318 (PE IRAC), <https://canlii.ca/t/jswkj>, at para. (2)

*incompatible use that is inconsistent with the surrounding residential properties. Mr. MacNevin also noted that the Appellant's proposed use of the property could have a detrimental impact on the surrounding residential properties with regard to public health (i.e. impact of increased noise, exhaust fumes, hours of operation, etc.) and public safety (i.e., impact of increased traffic, explosive materials, etc.). Mr. MacNevin referred the Commission to Sec. 1(d) and 1(f.3) of the Subdivision and Development Regulations. Further, Mr. MacNevin advised that in accordance with subsection 3(2) of the regulations, that no development permit shall be issued where a use or change of use would not conform with the regulations or other regulations pursuant to the Planning Act."*<sup>22</sup>

35. The Commission agreed, and Natacha's appeal was denied accordingly:

*(17) In reviewing the Minister's file, the Commission notes that the Minister followed the advice of an experienced land use planner who is currently the Manager of Provincial Planning. **The primary basis for the Minister's concern was that the Appellant's request for a partial change of use would create a new use that is incompatible with the surrounding residential properties. This consideration is very much in accordance with sound planning principles.** Concerns were also expressed over the possibility of detrimental impact, as noted in Mr. MacNevin's letter of August 29, 2016 referenced earlier in the Commission's reasons.*<sup>23</sup> [emphasis added]

36. The same is true here – the change of use proposed in the Application would be incompatible with the residential properties that surround the Subject Property.

## **GROUND OF APPEAL – MINISTER'S RESPONSE**

37. With respect to Appellant's grounds of appeal, the Appellant argues first that, since a similar change of use was approved by the Minister for a property in Oyster Bed, the Minister should also have granted the proposed change of use for the Subject Property. The Appellant, however, provides no further details with respect to this Oyster Bed property (i.e. the approved uses for properties surrounding that property or its supporting infrastructure).

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<sup>22</sup> *Ibid*, at para. (11)

<sup>23</sup> *Ibid*, at para. (17)

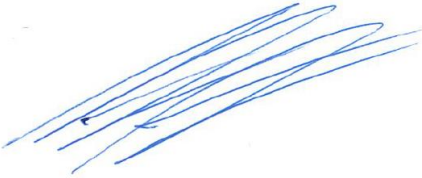
38. Next, the Appellant argues that her proposed use of the Subject Property would not result in excessive noise, nor would it result in undue strain on the area's infrastructure. While it is the Minister's position that the regular delivery of building materials would in fact unduly result in increased wear and tear on infrastructure in the area, the Minister is concerned more so by the implications of transporting cottages from the Subject Property to their intended destination upon completion. The excessive weight of the completed cottages and their transport vehicles travelling over roads in the area could damage existing infrastructure, including Houston Road.
39. The Appellant then argues that the construction of cottages on the Subject Property would not be out-of-character for the area, as the area is populated by cottages and houses under construction. There is, however, a world of difference between living next to a cottage, or a residence under construction for a limited period of time, and living next to an industrial facility that manufactures cottages on a full-time basis from April to October, year-after-year. It may be reasonable to expect home and business owners in a primarily residential area to tolerate the former, but not the latter.

## **CONCLUSION**

40. For the reasons outlined above, the Minister submits that the appeal must be dismissed.
41. Trusting the foregoing is satisfactory; however, if you have questions about these submissions, please do not hesitate to contact the undersigned.

## **ALL OF WHICH IS RESPECTFULLY SUBMITTED**

Yours truly,



Stephen Flanagan  
Lawyer for the Minister of  
Housing, Land and Communities