

11 January 2023

VIA EMAIL

Island Regulatory and Appeals Commission
Attention: Philip Rafuse
National Bank Tower, Suite 501
134 Kent Street
Charlottetown, PE C1A 7L1

Our File: 15042-243dk

Dear Mr. Rafuse:

RE: Appeal LA#22023 – MaryAnne McNulty v. City of Summerside

We write further to your letter dated 13 December 2022, in which you requested the City of Summerside (the “**City**”) to file a Record and Reply to the Notice of Appeal filed by MaryAnne McNulty (the “**Appellant**”) on 9 December 2022 (the “**Appeal**”). Please accept this correspondence as the City’s Reply to the Notice of Appeal.

NATURE OF THE APPEAL

The Appellant appealed Resolution COS 22-127, whereby Council approved a Restricted Use authorization for a Men’s Shelter at 287 Winter Street, PID # 310730 (the “**Subject Property**”).

THE SUBJECT PROPERTY

The Subject Property is zoned Institutional (I). It is located within the City’s Heritage District, which is comprised of a mix of residential, commercial, and institutional uses.

On the West, the Subject Property is adjacent to another property zoned Institutional (St. Paul’s Catholic Church). On the North and East are properties zoned Medium Density Residential (R3). On the South is Winter Street.

The Subject Property was until recently used as a “Group Home” operated by Community Connections Inc. The Subject Property has not been used as a single-family dwelling for some time.

NATURE OF THE APPLICATION

The City received an application for a Restricted Use on 14 October 2022 from the Native Council of PEI and the Department of Social Development and Housing.

The application and supporting materials described a request to use the Subject Property as an “emergency shelter service” which offers temporary and short-term accommodation to men experiencing homelessness, unstable living conditions, exiting institutional care, and/or leaving abusive relationships.

RESTRICTED USE

A “Restricted Use” is authorized by section 5.12 of the City’s *Official Plan*. It is a designation which restricts land use on a specific property to a single use only. Its purpose is to accommodate land uses which cannot be easily accommodated within another zone or where rezoning would result in undesirable and/or negative impacts.

Section 8.5 of the City’s *Zoning Bylaw (SS-15)* provides additional guidance on the Restricted Use designation. Council is authorized to approve a Restricted Use and impose conditions on the approval.

Where a Restricted Use is approved, the City’s zoning map is amended by the subject property being designated “Ru[x]”. When the Restricted Use ceases operation, the special zoning designation loses its status, and the original zoning applies.

GROUND OFS OF APPEAL

The Appellant’s grounds of appeal relate to the merits of Council’s decision. Fundamentally, the Appellant asserts that the Subject Property is not a suitable site for the Restricted Use and is incompatible with the neighbourhood.

The Appellant’s Notice of Appeal indicates that since 2017 she has owned and operated a bed and breakfast known as the Summerside Inn, which is immediately adjacent to the Subject Property. She raises concerns regarding the impact on tourism, scenic and heritage resources, and property values. She asserts that the Restricted Use of the Subject Property will irreparably damage her business.

JURISDICTION OF THE COMMISSION

Section 28(1.1)(b)(i) of the *Planning Act* confirms the right of appeal to this Commission. This section permits appeals where they relate to the amendment of a zoning map established under a bylaw.

A Restricted Use is not a “rezoning” in the usual sense. It requires no amendment to the *Zoning Bylaw* or *Official Plan*. There is no change to the underlying zoning designation. However, once approved, a Restricted Use requires an amendment to the zoning map through the designation “Ru[x]”.

The City is satisfied that the nature of its decision is one which is within the Commission’s jurisdiction to hear and decide. Council’s decision is clearly one which impacts the use to which a specific property can be put within the City of Summerside.

THE CITY FOLLOWED ESTABLISHED PROCESS

Section 5.10 of the *Zoning Bylaw* establishes the process to be followed in reviewing and deciding an application for a Restricted Use. Council followed established process:

- An Application for a Restricted Use and supporting materials were submitted to the City;
- Notice of a public meeting was provided to neighbouring landowners within 60m of the Subject Property through mailed letters. General notice was provided to the public in the newspaper;
- Council held a public meeting. It permitted members of the public to speak and submit written comments;
- Staff prepared a report and recommendation to Planning Board. Staff recommended approval;
- Planning Board reviewed the application, staff recommendation, and public comment. Planning Board made a recommendation to Council. Planning Board recommended approval;
- At a separate meeting, Council passed Resolution COS 22-127;
- Notice of the decision was posted/published in accordance with section 23.1 of the *Planning Act*; and
- The Applicant was informed of Council’s decision by letter dated 29 November 2022.

THE CITY’S DECISION ACCORDS WITH SOUND PLANNING PRINCIPLES

The City’s decision has merit based on sound planning principles:

- The recent use of the Subject Property is substantially similar to the proposed use – in that it will provide supervised accommodation and other support services to individuals who are not a family unit;
- The proposed use is substantially similar to a defined “social services agency”, which is a permitted use within the existing Institutional (I) zone;
- There is a need for an emergency shelter in the City which serves men;
- Restricted Uses are authorized by the *Official Plan* and *Zoning Bylaw*;
- The Restricted Use designation was designed to deal with exactly the sort of application which is at play in the present matter;
- The underlying zoning designation of the Subject Property has not changed and will revert to Institutional (I) should the Men’s Shelter cease operating;

- The Subject Property is not a designated heritage property. While it is in the Heritage District, is not reviewable under the *Heritage Conservation Bylaw*; and
- The assessed values of neighbouring properties were not impacted by a similar approval for a Women's Shelter in November of 2021.

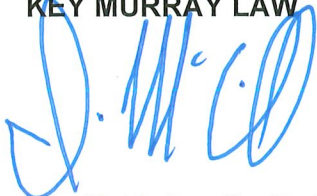
CONCLUSION

The City reserves the right to present additional evidence and argument at a hearing of this matter.

After a hearing of this matter, the City will respectfully request that the Appeal be dismissed.

Yours very truly,

KEY MURRAY LAW



Iain M. McCarvill, JD, LL.M

cc. MaryAnne McNulty, Appellant
Gordon MacFarlane – CAO, City of Summerside
Anne Drake, Applicant
Derek D. Key, K.C.