

**MARINE DRIVE, VALLEY AND CANAL
COMMUNITY COUNCIL MEETING
MINUTES**

October 28, 2009

PRESENT: Deputy Mayor Hendsbee, Chair
Councillor Barry Dalrymple
Councillor Steve Streach

STAFF: Mr. Randy Kinghorne, Solicitor
Ms. Barbara Coleman, Legislative Assistant
Ms. Sherryll Murphy, Deputy Municipal Clerk

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1. **CALL TO ORDER**

The meeting was called to order at 7:00 p.m.

2. **APPROVAL OF MINUTES - September 9, 2009**

MOVED By Councillor Dalrymple, seconded by Councillor Streach that the minutes of September 9, 2009 be approved as distributed. MOTION PUT AND PASSED

3. **APPROVAL OF THE ORDER OF BUSINESS AND APPROVAL OF ADDITIONS AND DELETIONS**

MOVED By Councillor Streach, seconded by Councillor Dalrymple that the Rules of Order be varied due to hardship on behalf of the applicant, to allow the incoming telephone call from the applicant to be heard as supplementary evidence in the Variance hearing, Item 8.2.1 - Appeal of the Development Officer's decision to refuse a Variance at 1428 Myra Road, Porters Lake. MOTION PUT AND PASSED

MOVED By Councillor Streach, seconded by Councillor Dalrymple that the Order of Business be approved. MOTION PUT AND PASSED

4. **BUSINESS ARISING OUT OF THE MINUTES**

4.1 **Status Sheet Review**

Members of Community Council reviewed the status sheet. A number of items were noted as being completed and will be removed. The Legislative Assistant will continue to follow up with staff on the remainder of the items.

5. **MOTIONS OF RECONSIDERATION: None**

6. **MOTIONS OF RESCISSION: None**

7. **CONSIDERATION OF DEFERRED BUSINESS: None**

8. **HEARINGS**

8.1 **PUBLIC HEARINGS: None**

8.2 VARIANCE HEARINGS

8.2.1 Appeal of the Development Officer's decision to refuse a Variance at 1428 Myra Road, Porter Lake

- A report dated October 20, 2009 was submitted to members of Community Council.

At 7:05 p.m. Atlantic Standard Time, a call was received from Ms. Dixie Lee Connolly, the applicant in this hearing. She notified members of Council that Mr. David Melvin, lawyer, would be acting on her behalf.

Deputy Mayor Hendsbee reviewed the process of a Variance Hearing for participating members of the public.

Mr. Sean Audas, Development Officer reviewed the report, explaining why he thought that Council should uphold his decision to refuse the variance based Section 250(3) of the HRM Charter noting that:

- the building did not violate the intent of the land use bylaw as the difference in what was approved and what was constructed was minor
- the constraints associated with this property were not general to properties in this area.
- the applicant acted in total disregard of the requirements of the land use by-law.

In response to Deputy Mayor Hendsbee's requested clarification as to why there was a discrepancy in two certified surveyors certificates, Mr. Audas replied that one of the surveyors used the siding on the building versus the foundation of the building. This would speak to some of the discrepancy.

Mr. Randolph Kinghorne, Solicitor for HRM, further clarified that it was found that there may have been some tampering with the surveyor's markers creating some confusion as where the markers actually should have been

Deputy Mayor Hendsbee called for speakers that were abutting property owners within 30 metres of the property.

Mr. Charles Fougere, 1434 Myer Road, indicated that the discrepancy in the survey started with the first surveyor only using one location pin. The second surveyor found all additional four pins buried in the moss using a metal detector. He advised Council that he has no problem with the shed being where it is on the applicants' property. However, Mr. Fougere wanted assurances that should damage occur to the the siding or soffits of the shed from his trees, he does not want to be held responsible.

Deputy Mayor Hendsbee called for further speakers. Hearing none, he asked the applicant for her comments. As noted above, Ms. Connolly was available for comment by telephone

Mr. David Melvin, Solicitor, spoke on Ms. Connolly's behalf. He advised Council that his client, had done everything in her power to assure that the shed was built in compliance with the land-use by-laws and the variance for which they had previously received approval. He further advised that she relied on the assurances of HRM staff that the shed was built in compliance. Ms. Connolly went as far as retaining the services of her own surveyor, Mr. G.R. Myra, N.S.L.S. When she received his certificate stating that the back end of the garage was 3.2 feet not the required 4 feet, she immediately applied for the variance and was subsequently refused, the decision which she is now appealing.

Deputy Mayor Hendsbee's asked which measurement, the 2.3 feet or the 3.2 feet setback, would be incorporated into the variance should the variance be allowed. Mr. Kinghorne advised that the motion should be tied to where the building presently sits.

In response to Deputy Mayor Hendsbee's question as to which buildings were cited in the variance, Mr. Audas replied that it was only the shed.

As there were no further speakers, the following motion was placed.

MOVED By Councillor Streach, seconded by Councillor Dalrymple that the public portion of the meeting be closed. MOTION PUT AND PASSED

Councillor Streach indicated that the least onerous setback should be placed on Mr. Fougere.

MOVED By Councillor Streach, seconded by Councillor Dalrymple that Community Council overturned the decision of the development officer and granted the variance with the caveats that the building remains as is and the setback is set at 2.3 feet from the property line. MOTION PUT AND PASSED

8.2.2 Appeal of the Refusal of Variance # 15658 - 134 Tucker Lake Rd

- A report dated October 20, 2009 was submitted to members of Community Council.

Mr. Trevor Creaser, Development Officer reviewed the report with members of the Community Council. He advised Council that during the review for the building permit the close proximity of the deck to the property line was not noted. It was not until later, during the framing stage of the construction that it was noticed. At that time, Mr. Creaser advised the applicant was given the option to redesign the deck to meet the minimum 8 feet

setback or to apply for a variance which they did. The variance was denied on October 13, 2009.

Mr. Creaser responded to questions of Council noting that:

- there is a fence which was 6 to 6 ½ feet between the two properties
- there are two doors to the deck from the house, one on the side and one on the front of the building
- footings are already in place for the deck creating a huge financial hardship for the applicant, should they be directed to move the footings and change their plans for their deck.

Deputy Mayor Hendsbee called for speakers that were property owners within 30 metres of the property.

Mr. Ronald Ormston, 128 Tuckerlake Rd, Beaver Bank noted that his property was adjacent to the property in question. At this time, he submitted a picture of the two properties showing the property lines, the fence and the neighbouring house. He indicated that he did not have any problem when the fence was constructed between the two properties with the upright boards of the fence put on backwards. However, he conveyed to Council that he felt that the deck on the right side was asking too much. Further, he said that it was a large deck and looms 10 feet in the air and would have a very negative impact on the enjoyment of his home.

Deputy Mayor Hendsbee called for further speakers. Hearing none, he asked the applicant for her comments.

Ms. Christine Garber, the applicant, indicated to Council that she felt that she had met all the requirements for construction of her home. She further noted that she was up front with everything seeking approval from HRM staff as she went along. She indicated that had she known of the problem when it was feasible to fix it, she would have done so. She maintained that she should not have to incur further expense because of HRM's mistake in not noting the discrepancy in the side yard. She indicated that it would have been her preference to build closer to the lake and avoid this problem but the buffer zones prevented her from doing so.

In response to Deputy Mayor Hendsbee's inquiry if privacy fencing was going to be installed, Ms. Garber indicated that privacy fencing would be installed on both sides of the deck to eye level. She noted that it would not be needed on the front of the deck as the front faced the lake and would not impact on her neighbours.

As there were no further speakers, the following motion was placed.

MOVED By Councillor Streach, seconded by Councillor Dalrymple that the public portion of the meeting be closed. MOTION PUT AND PASSED

MOVED By Councillor Streach, seconded by Councillor Dalrymple that the Marine Drive, Valley and Canal Community Council overturn the decision of the development officer and grant the variance.

Councillor Streach noted for the record that the mistake that HRM staff made in not picking up on the setbacks to the property line at the time of the issuance of the building permit was unacceptable and can not be allowed to happen again. He further noted that fixing this problem now would create undue hardship for the applicant but is also very unfortunate for the abutting homeowner.

MOTION PUT AND PASSED

9. CORRESPONDENCE, PETITIONS AND DELEGATIONS:

9.1 Correspondence: None

9.2 Petitions: None

9.3 Presentations: None

10. REPORTS:

10.1 Case 01315: Development Agreement - 47 East Jeddore Road, Jeddore.

- A report dated October 16, 2009 was submitted to members of Community Council.

MOVED By Councillor Streach, seconded by Councillor Dalrymple that Marine Drive, Valley and Canal Community Council:

- 1. Give Notice of Motion to consider the proposed development agreement as set out in Attachment A of the report dated October 16, 2009 and schedule a public hearing;**
- 2. Approve the proposed development agreement as set out in Attachment A of the report dated October 16, 2009 to permit use of the entire school at 47 East Jeddore road as a commercial building;**
- 3. Require the agreement be signed within 120 days, or any extension thereof granted by Council on request of the applicant, from the date of final approval**

by Council and any other bodies as necessary, including applicable appeal periods, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

MOTION PUT AND PASSED

11. **MOTIONS - None**
12. **ADDED ITEMS - None**
13. **NOTICES OF MOTION - None**
14. **PUBLIC PARTICIPATION**

No speakers came forward.

15. **NEXT MEETING**
16. **ADJOURNMENT**

The meeting was adjourned at 8:30 p.m.

Barbara Coleman
Legislative Assistant

