

HALIFAX REGIONAL MUNICIPALITY

PENINSULA COMMUNITY COUNCIL
January 11, 2010

MINUTES

PRESENT: Councillor Jerry Blumenthal, Chair
Councillor Dawn Sloane, Vice Chair
Councillor Jennifer Watts

REGRETS: Councillor Sue Uteck

STAFF: Mr. Randolph Kinghorne, Senior Solicitor
Ms. Sheilagh Edmonds, Legislative Assistant

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1. CALL TO ORDER

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

2. APPROVAL OF MINUTES

MOVED by Councillor Sloane, seconded by Councillor Watts that the minutes of December 14, 2009 be approved. MOTION PUT AND PASSED.

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

Deletion:

8.2.3 Variance #15683 - 6331 Norwood Street
(appellant has withdrawn)

Addition:

12.1 Rescheduling March Meeting (Councillor Blumenthal)

MOVED by Councillor Sloane, seconded by Councillor Watts that the agenda, as amended, be approved. MOTION PUT AND PASSED.

4. BUSINESS ARISING OUT OF THE MINUTES / STATUS SHEET

4.1 Status Sheet

4.1.1 Neighbourhood Downzoning

No update was provided. This is to remain on the Status Sheet.

4.1.2 Mitchell's Enviro Depot Update

No update was provided. This is to remain on the Status Sheet.

4.1.3 CN Property Maintenance

No update was provided. This is to remain on the Status Sheet.

4.1.4 Peninsula Place Flooding

No update was provided. This is to remain on the Status Sheet

4.1.5 Litter Receptacles in the area of Robie/North/Agricola/Almon

No update was provided. This is to remain on the Status Sheet

4.1.6 Pedestrian Walk Light in the Urban Core

E-mail correspondence dated January 7, 2010 was circulated from Mr. Ken Reashor, Traffic Authority.

Councillor Watts advised that this item could be removed from the Status Sheet.

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 Appeal Hearings:

8.2.1 Variance #15631 - 1670 Robie Street

- A staff report dated October 30, 2009 was submitted.
- Correspondence was submitted from the following individuals: James Allard, Stuart MacKinnon, Michel Amar, Meigan Aspin, Aubrey and Joan Fricker, and Joanne and Carl Holm.

Mr. Mike Cowper, Development Technician, presented the report outlining the reasons for the Development Officer's refusal of a variance request for the Floor Area Ratio requirements of the Halifax Peninsula Land Use Bylaw to permit a developed basement at 1670 Robie Street. In his remarks, Mr. Cowper advised that the proposal is larger than existing Floor Area Ratio (FAR) for dwellings in the neighbourhood, and it is in the top end of the scale for the Floor Area Ratio of existing dwellings; therefore to permit the variance would not be consistent with the intent of the land use bylaw. He explained that the proposed FAR is 1.09 and that when comparing lots of similar size, the average is 0.87. Mr. Cowper added that the difficulty experienced is general to properties in the area because all dwellings in the study area exceed FAR requirements to some extent and all would require a variance to achieve the FAR proposed in this variance. He noted that there is currently no intentional disregard to the Land Use Bylaw. In closing, Mr. Cowper noted that there were six submissions on this application; three in favour of Mr. Abi Daoud's request and three in opposition.

There were no questions of staff by Community Council.

The Chair reviewed the rules of procedure for variance hearings, and opened the hearing.

Mr. Fouad Abi Daoud, the appellant, addressed Community Council and presented his reasons for requesting the variance. He advised that this process has been a long

ordeal for his family, and that he only wanted to create a recreational room in the basement for his growing children. Mr. Abi Daoud noted that he carried out some research and he suggested that if the notification area had been expanded there are some homes that reach the 1.09 Floor Area Ratio. Further, it appears that in some cases Council has permitted the Gross Floor Area Ratio when it has been over 300 percent of the GFAR restriction, and in cases where there were single family homes, Council permitted this so the family would have more space. Mr. Abi Daoud added that he was born in this city, and raised in this neighbourhood and all he wanted to do was to give his children the same kind of upbringing that his parents provided for him.

Councillor Watts noted that she had viewed the site this past weekend and there was a 'For Sale' sign on the property. She questioned Mr. Abi Daoud on his intent for the future use of his home.

In response, Mr. Abi Daoud explained that he had recently carried out renovations on the house and a friend who is real estate agent suggested that he could get a good price on the home. In this regard, he advised that he decided to try and test the market, however the offers he received were too low. He noted that the listing on the house has lapsed and the sign has been removed. Mr. Abi Daoud reiterated again that it is his desire to live in this neighbourhood and, barring any future career promotions, it is his intention to live in this home his entire life.

Mr. Stuart MacKinnon, 1660 Robie Street, addressed Community Council and spoke in support of Mr. Abi Daoud's application. Mr. MacKinnon referred to a comment by Mr. Cowper on the GFAR regulations, and advised that Mr. Abi Daoud's house is in character with the neighbourhood homes, noting that he has increased its property value and has taken what was once a slum home and turned it into a nice family dwelling.

The Chair called three times for anyone else wishing to speak; there being none, it was **MOVED by Councillor Sloane, seconded by Councillor Watts that the variance hearing close. MOTION PUT AND PASSED.**

Mr. Cowper responded to questions from Community Council.

Councillor Watts noted that there are concerns in regard to the issue of rooming houses in the area and she questioned staff on whether there would be any future potential for this happen and, if so, what was process in this regard.

In response, Mr. Cowper advised that GFAR rules are designed to reduce the proliferation of rooming houses within the neighbourhood. He noted that the zone in this area does not permit rooming houses; however, it allows up to a four-unit dwelling. He added that it would be permitted in this particular case due to the size of the lot. Mr. Cowper explained that if there was an application for a two-unit building, it would need to meet certain criteria, including open space, parking for each of the units, minimum lot size and frontage, and side yard setback requirements. He added that the current configuration of the building and property does not meet those criteria, however there is the ability for variance for several of those criteria.

In response to a further question by Councillor Watts, Mr. Cowper advised that the approval or denial of the variance cannot be tied to the future use of the property; however, he noted that if there were future application to convert to a second unit, staff would come before Community Council again.

MOVED by Councillor Sloane, seconded by Councillor Watts that the decision of the Development Officer to refuse the variance be overturned, and the variance be granted. MOTION PUT AND PASSED.

8.2.2 Variance #15707 - 5236 South Street

- A staff report dated January 4, 2010 was submitted.

Ms. Brenda Seymour, Development Technician, outlined the staff report concerning the application for a variance for the rear yard setback, lot coverage and side yard setback of the Halifax Peninsula Land Use Bylaw to permit a rear yard addition to convert an illegal rooming house to a six-unit residential building. In her presentation she advised that the Development Officer approved the variance, however, it was appealed by the property owners at 5228 South Street.

Ms. Seymour responded to questions from Community Council.

In response to a question by Councillor Sloane, Ms. Seymour advised that there are four parking spots on the site.

In response to a question by Councillor Watts on how the residents of 5228 South Street access their property, Ms. Seymour referred to a photo and pointed out that on the left hand side of 5228 South Street there is a driveway, and the photograph shows that two cars are parked. She added that the driveway on the other side of the property is on the property of 5236 South Street and that the property line actually goes to the edge of the building of 5228 South Street.

There were no further questions of Community Council; and the Chair opened the variance appeal hearing.

Mr. Lee Hallett, 5228 South Street, addressed Community Council and advised that he and his business partner, Trevor Stienburg, own 5228 South Street. He added that he and his wife have lived in the building for 15 years, and that his business partner has lived there for the past year, and there are three other tenants. Mr. Hallett advised that he has done extensive renovations to the property. He noted that he has a good relationship with a neighbour who is selling his rooming house, and that he has had uninterrupted use of both driveways on either side of his property in and out, to get to his parking lot.

Mr. Hallett provided photos noting that the condominiums in the vicinity also share the throughway. He explained that if the variance is granted it will mean that he will have no parking, and can't access his building. He added that he has a driveway on the left however it is very narrow and has never been used to enter through, turn around, and drive back out—it has only ever been used to park a car on the side. Mr. Hallett advised

that he obtained signed statements from the previous two owners indicating they also had uninterrupted use of both driveways on either side, illustrating that there was at least 25 years of uninterrupted use to cut across the parking lot of where they are now proposing to put an addition on the building. Mr. Hallett also advised that he had an issue with the regard to the 43 percent, the setbacks, and noted that if steps are erected on the left side, facing his building, this will leave very little space between the two buildings. In closing, Mr. Hallett advised that his biggest concern is losing access to his parking lot.

Councillor Sloane questioned the Solicitor on the issue of any associated rights, given that there has been uninterrupted use of the access for the past 25 years.

In response, Mr. Randolph Kinghorne, Senior Solicitor, advised that, possibly, there may be some sort of squatters rights but this would not be the proper forum in which to raise the matter. He explained that to acquire prescriptive rights, it is essentially an adverse right that you have to show that you have done it and, eventually, that's been without permission, adding that if you enter someone's property with their permission, then you don't acquire any rights.

Mr. Kinghorne added that the evidence Mr. Hallett presented does not establish that these people had access to this property without the permission of the property owners. Mr. Kinghorne noted that Community Council should be mindful that even if there is a prescriptive right here, the fact that Community Council would grant a variance would not preclude them from raising that right in a court of law and they could have a court issue an injunction in spite of the variance to prevent construction from taking place.

Councillor Sloane questioned if it would be in order that Community Council defer this matter for a month to allow both parties to work things out.

Mr. Kinghorne advised that if Community Council felt it needed more time to deal with the matter, deferring would not be an issue, however, if the parties involved do not feel there is any value in further discussion, he questioned the point of delaying the decision.

Mr. George Ghosen addressed Community Council and advised that he was representing Fenwick Developments Limited, the property owner of 5236 South Street.

Mr. Ghosen began his remarks by providing background information on how his client acquired the property. He advised that the company was approached by the property owners of 5236 South Street to purchase it by court order, explaining that the property owner was asked to shut down the illegal rooming house, and Fenwick Developments Limited agreed to purchase the property as long as it was economically feasible and fits into the character of the neighbourhood. Mr. Ghosen added that three different drawings were prepared before city staff gave approval. Mr. Ghosen noted that variances of this type are not unique to the south end of Halifax and are approved as long as the open area and parking requirements are met. Mr. Ghosen advised that as of 4:30 p.m. today, they had a search carried out at the Supreme Court of Nova Scotia and there has been no right of titles, no property liens, no mechanic liens, no quieting of titles whatsoever to establish any clear right-of-way to that property in the back of the

existing dwelling. Mr. Ghosen advised that he has spoken to the present owner, Mr. Stan Lewindowski, and he has advised that he has never given any permission for anyone to use the back part of his parking lot.

With regard to his proposal of the property Mr. Ghosen advised that their intention is to take an illegal rooming house and turn it into a six-unit development. He pointed out that, of all the letters staff sent out in their notification, only one has proposed an appeal to this matter. In closing, Mr. Ghosen noted that, in looking at the property, there are three different driveways—his property has two driveways, one between 5236 and 5244 South Street, and 5244 has not appealed this development and they are probably just as impacted by the proposal. He added that the second driveway to the east is also his driveway and to his knowledge, the appellants have never used it, but they use the driveway that is two driveways over from their own. Mr. Ghosen advised that the appellant has their own driveway and access to their own parking lot, and although it is narrow, there are similar sized driveways in the area.

In response to a question from Councillor Sloane, Mr. John Salah, the project engineer hired by Fenwick Developments Limited approached Community Council and presented drawings depicting the elevations of the property in its current and proposed states.

The Chair called three times for anyone wishing to address Community Council; there being none it was **MOVED by Councillor Sloane, seconded by Councillor Watts that the variance appeal hearing close. MOTION PUT AND PASSED.**

Councillor Sloane moved to approve that Community Council uphold the decision of the Development Officer to approve the variance; however, there was no seconder and the motion was lost.

MOVED by Councillor Sloane, seconded by Councillor Watts that this variance appeal be deferred for one month. MOTION PUT AND PASSED.

8.2.3 Variance #15683 - 6331 Norwood Street

This variance appeal was deleted during the approval of the order of business. The appellant withdrew his appeal.

9. CORRESPONDENCE, PETITIONS AND DELEGATIONS:

9.1 Correspondence: None

9.2 Petitions - None

9.3 Presentations: None

10. REPORTS

10.1 Staff Reports: None

10.2 Committee Reports: None

10.3 Members of Peninsula Community Council

10.3.1 Bloomfield - Update from November Meeting - Councillor Watts

Mr. Peter Bigelow, Manager of Real Property Planning, provided a verbal update with regard to the advancement of the Bloomfield project. He explained that following Regional Council's approval, staff met with the Imagine Bloomfield group in a capacity building session, whereby they engaged a redevelopment company called Artscape, and then brought them to Halifax for two days in a joint session. Mr. Bigelow added that they discussed what their approach should be, and he noted that HRM staff that would not normally be working on such a project were invited to sit in. He advised that, in addition, there was a two hour session of staff and area councillors with the Artscape representatives in which they discussed Bloomfield specifically. Mr. Bigelow added that this was very successful as it helped in determining what the next steps should be.

With regard to the next step, Mr. Bigelow advised that they will issue an Expression of Interest (EOI) 'with no obligation to look for partners'. This would enable them to see what potential there is in the community for other groups to participate in the Imagine Bloomfield. Following this, city staff will review the EOI to find threads that tie together, and they will then prepare an appropriate program, which will be brought back to Peninsula Community Council. Mr. Bigelow noted that this would probably be a three to four month process. Following this, staff could go out and find the partner to actually put it together and by the end of this year, staff would like to be in a position to come back to Council with a program.

Mr. Bigelow responded to questions.

11. MOTIONS: None

12. ADDED ITEMS

12.1 Rescheduling March Meeting (Councillor Blumenthal)

Councillor Blumenthal asked that Councillor Sloane assume the Chair so he could speak to this matter.

Councillor Blumenthal advised that he was a member of the District Boundary Review Committee and that he was unaware the Committee had scheduled Peninsula Community Council's March 8, 2010 meeting for their public presentation. Councillor Blumenthal explained that he had made prior arrangements to be out of town on March 8, 2010, therefore he would like Community Council's consideration of rescheduling the March 8, 2010 meeting to March 3, 2010 in order that he could be present during the District Boundary Review's presentation.

MOVED by Councillor Blumenthal, seconded by Councillor Watts that Peninsula Community Council's meeting of March 8, 2010 be rescheduled to March 3, 2010. MOTION PUT AND PASSED.

13. NOTICES OF MOTION - None

14. PUBLIC PARTICIPATION

No one came forward to speak during Public Presentation.

15. NEXT MEETING - February 8, 2010

16. ADJOURNMENT

The meeting adjourned at 8:17 p.m.

Sheilagh Edmonds
Legislative Assistant