

Prior to the passing of this motion, considerable discussion took place.

Councillor Benjamin indicated that, if carried, this motion would initiate requests for Cross Walk Guards in all County Schools. He felt a study should be done on the cost of Cross Walk Guards before the motion is considered.

However, Warden Lawrence assured the Councillor that the Management Committee would include this as part of their examination of this issue.

Councillor Williams spoke in favour of the motion as well and Councillor Topple also advised that he did not advocate Cross Walk Guards in Subdivisions; his motion, he advised, was in regard to main highways. He also advised that additional Cross Walk Guards might decrease the amount of bussing required.

Provincial Election Candid ates- Councillor Gaetz

Councillor Gaetz spoke briefly to congratulate Councillors Poirier and MacKay on being chosen to run in the Provincial Election and wished them well in the opportunity before them.

Dutch Settlement School - Councillor Lichter

Councillor Lichter voiced his disappointment at recent obstacles being placed in the way of construction of the Dutch Settlement School, by the Department of Education. He was especially concerned in view of the length of time it had taken to get the School lifted from the moratorium; advising that the Management Committee first went out to look at the School Site thirteen months ago and had worked hard for some time to come up with a solution to the water problem. He assured Council that this solution had been found.

Councillor Lichter requested Council's support in requesting the Chief Administrative Officer to write to the Minister of Education, urging that this School be approved at the earliest possible date.

The Councillor also advised that the Department of Education was now considering putting the School in Carrol's Corner; he was emphatically opposed to this suggestion.

It was moved by Councillor Lichter, seconded by Councillor Eisenhauer:

"THAT the CAO be requested to write to the Minister of Education, urging that the addition to the Dutch Settlement School be approved immediately."

Motion Carried.

Councillor Williams spoke briefly on this issue expressing some concern over the Department of Health's doubts in regard to the water problem.

Transit - Councillor Baker

Councillor Baker advised Council that he had been successful in achieving an extension of his Transit service. He advised that the new service would go from Spryfield Mall, down the Herring Cove Road around the loop to Sambro, Harrietsfield and back to the Spryfield Mall .

He further advised that this had been successfully achieved through a Provincial Government Grant which had enabled him to participate in a six-month demonstration project for four trips a day at low cost, offered by Cassibo Buses Ltd.

The Councillor requested that the four trips daily be advertised in the newspaper in the form of a public notice to inform the residents that the service was now available.

Industrial Commission Meeting - Councillor Margeson

Councillor Margeson requested clarification of the date of the upcoming meeting of the Industrial Commission. He advised that he had received a notice which was not in accordance with the date indicated in the last set of Industrial Commission Minutes.

Warden Lawrence advised that the Minutes were correct in regard to the date, but that the meeting had since been moved forward to september 16, 1981 at 2:00 p.m.

Fire Prevention Month - Councillor Margeson

Councillor Margeson also requested when the presentation on Fire Prevention would come to Council and was advised by Mr. Kelly that it had been set for 2:00 P.M. at the October 20, 1981 Council Session.

Halifax County Industrial Commission By-Law - Mr. Kelly

Mr. Kelly advised that an amendment to the Instrument of Incorporation concerning the Industrial Commission By-Law was necessary to change the composition of the Commission from "at least five" members to "eleven" members so that the Instrument of Incorporation and the By-Law itself will be consistent.

It was moved by Councillor Wiseman, seconded by Councillor Williams

"THAT the Instrument of Incorporation concerning the Industrial Commission By-Law be amended on one line of the First Amendment by deleting the words "at least five" and replacing them with "eleven"."

Motion Carried.

FCM - Trash Conference, October 1981 - Councillor Margeson

Councillor Margeson advised that while reading an FCM Publication, he had noticed that a conference would be held in October, regarding "Trash". He questioned whether there would be any Municipal Representation at that Conference.

Warden Lawrence advised that the matter had not been discussed at the Metropolitan Authority.

Councillor Margeson then requested that the CAO look into this.

ADJOURNMENT

It was moved by Councillor Gaetz:

"THAT the Council Session adjourn."
Motion Carried.

Therefore, the Session adjourned at 5:30 P.M.

M I N U T E S & R E P O R T S

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PUBLIC HEARING

OCTOBER 5, 1981

PRESENT WERE: Deputy Warden Deveaux, Chairman
Councillor Walker
Councillor Williams
Councillor Baker
Councillor Topple
Councillor Adams
Councillor Gaetz
Councillor Lichter
Councillor Benjamin
Councillor Margeson
Councillor Eisenhauer
Councillor MacDonald
Councillor Wiseman

ALSO PRESENT: Mr. K. R. Meech, Chief Administrative Officer
Mr. Robert Cragg, Municipal Solicitor
Mr. Brant Wishart
Ms. Dorothy Smith
Mr. J. Hefler
Mr. Robert McConnell, Waverley
Mrs. Gladys McConnell, Waverley
Ms. Debra Gillis, Solicitor
Mrs. Cathy MacKay

SECRETARY: Mrs. Christine Harvey

Deputy Warden Deveaux brought the Public Hearing to order at 7:10 P.M.

APPOINTMENT OF RECORDING SECRETARY

It was moved by Councillor MacDonald, seconded by Councillor Eisenhauer:

"THAT Mrs. Christine Harvey be appointed Recording Secretary."
Motion Carried.

ROLL CALL

Mr. Meech then called the Roll.

At this point in the Public Hearing the Deputy Warden outlined to those in the Council Chambers, the procedure to be followed during the Public Hearing.

REZONING REQUEST, # 9-81

Ms. Dorothy Smith of the Planning Department came forward to outline the above mentioned request to rezone lands of Robert and Gladys McConnell located on the Rocky Lake Drive at Waverley, Halifax County, District 14 from R-4 (General Residential Zone) to C-1 (Commercial Local Business Zone.)

With the use of an overhead projected map, Ms. Smith gave the Council members a description of the lot and surrounding area as well as the existing zoning of the lot and surrounding area. (Please see report of the Planning Department for detail and clarification).

Ms. Smith advised that the purpose of the rezoning application was to enable Mr. & Mrs. McConnell to operate a restaurant and take-out business on the site.

Ms. Smith gave some history of the site in question and the operation of the business, advising: "The area in which the site in question is located was zoned to R-4 (General Residential Zone) in 1970 at the request of the Waverley Ratepayers Association. As the McConnells were apparently operating a restaurant-take out from the property at that time, the business became a non-conforming use and subject to the provisions of Part VIII of the Planning Act dealing with non-conforming uses.

In September 1980 the structure containing the McConnell's dwelling and restaurant was destroyed by a fire and the McConnells subsequently applied for a building permit to restore the lost business and dwelling. However, as the restaurant had been a nonconforming use and was destroyed by more than 50% of its assessed value by the fire, the Chief Building Inspector informed the applicants on October 8, 1980 that he could not process their application for a building which would contain a restaurant. In addition, the Chief Building Inspector informed the McConnells, that as theirs was a small lot flanked on three sides by public highways, it would be extremely difficult to locate the proposed building 30 feet from each highway as required under the provisions of the Municipality's Building By-Law.

The McConnells then applied for a building permit for a single family dwelling home, which due to the small size of the lot and its position relative to highways was forwarded to Council for approval of lesser setbacks. The lesser setbacks were approved by Council on November 19, 1980 and Mr. McConnell signed a statement to the effect that he would build the dwelling in conformity with the setbacks as approved by County Council."

In February of 1981, the Chief Building Inspector informed Mr. McConnell that:

"It has been brought to my attention...that construction..does not seem to conform to the request that the building permit was applied. This permit was processed on the basis that this structure was to be used as a single family dwelling...the ground floor of the structure has been laid out to be used as a possible grocery store.

Although this could be considered a permissible use in an R4 Zone, a limitation of some 500 square feet is placed upon the commercial use by that zone.

As a result, I would ask you to confirm to this office that if it is your intention to operate a grocery store from this structure, that the store will not contain a ground floor area of more than 500 square feet and that you will apply for the necessary permit for commercial renovations."

Ms. Smith continued to advise: that Mr. McConnell did not reply to this correspondence and in April of 1980 the Chief Building Inspector again wrote to Mr. McConnell stating:

"I have just received a report ...that you are presently using this structure for the operation of a "take-out" restaurant. As a result, I must inform you that this is not considered a permissible use in the present residential zoning which your property is zoned and I must, therefore, ask your immediate co-operation in seeing that this practice ceases and also that this property is not used for this purpose again until such time as you have received the necessary zoning."

Subsequent to supplying Council with this historical information regarding the lot in question, she went on to advise of the comments of the Department of Transportation and the Department of Health.

The comments of the Department of Transportation were: "The Department would have no objection to a re-zoning that would bring the existing business into conformity with the Municipal Zoning By-Law. However, the lot would not appear to have the capacity for any expansion as reduced setbacks are already in affect and any further reductions would not likely meet with the approval of this Department."

The Department of Health indicated no objection to the proposed rezoning.

The Planning and Development Department recommends that the application be rejected by County Council for the following reasons, as outlined by Ms. Smith:

1. The Solicitor representing the McConnells has informed the Planning and Development Department that the McConnells have operated a restaurant from the property in question since 1969. The lot in question was zoned to R-4 (General Residential Zone) in 1970 and thus the commercial establishment located on the site became a non-conforming use.

A land use is zoned to a non-conforming status when, for a variety of reasons, the use, the lot on which the use is located and-or the building containing the use is not appropriate to the area in which it is located and therefore is restricted from expanding and should eventually relocate to a more suitable location.

In this instance, it would appear that the McConnell Restaurant was zoned to R-4 and therefore to a non-conforming status for a number of reasons. The lot was small, the land use in the area was primarily residential and the takeout restaurant was located at the junction of three roads and thus there was a danger of traffic problems occurring.

The factors that resulted in the commercial use being zoned to a non-conforming status in 1970 have not been significantly altered to warrant zoning the restaurant to a conforming status at this time.

2. The lot in question on which the business is located is small, having an area of approximately 4,850 square feet. A lot of this size is unsuitable for a business such as a take-out restaurant due to the traffic that such a use generates and the limited space available for parking.

A lack of parking space can result in haphazard parking patterns (i.e., cars using the roads) causing congestion. Given that the property in question is located at the junction of three roads, any problems associated with parking could conceivably result in a hazard to the motoring public.

Problems associated with traffic are further complicated at this site as there are no clearly defined access points from the property onto the highways that flank three sides of the lot. In addition, there is a blind curve on the Rocky Lake Drive just south of the property and two schools located almost directly across the road from the McConnell lot which generates pedestrian traffic.

Therefore, given the factors of a small lot, no clearly defined access points to the property, the three public roads flanking the lot and the close proximity to School Avenue, the nearness of the blind curve and pedestrian traffic in the area as the result of the existence of two schools, there is a potential for serious problems.

3. A C-1 (Commercial Local Business Zone) would not be appropriate to the area. If this request for C-1 zoning is granted, all uses permitted under the provisions of that zone could establish by right on the property. Therefore, if the lot was ever sold or the present landowners decided to change the use, any number of commercial establishments could locate on the site. Given the proximity of the lot to a stable residential area, the lot size and its location relative to roads, the potential for a change of use and the establishment of a commercial enterprise which would detract even further from the area must be taken into consideration.

4. The McConnells were warned several times that the erection of a take-out restaurant ran contrary to the provisions of the Municipality's R-4 (General Residential Zone). Nevertheless, with full knowledge that this was illegal, they elected to proceed with the project.

Generally speaking, rezoning uses that have been established illegally to a conforming status undermine the credibility of the Municipality's Zoning By-Law. The assurance of protection against incompatible uses that zoning provides may be seriously eroded if uses are permitted to establish in this manner. Approval of rezoning in these cases may serve to encourage other individuals to proceed with projects regardless of County regulations and it is felt that this practice should be discouraged.

Questions From Council

Deputy Warden Deveaux advised Council that Mr. Hefler, the Chief Building Inspector was present in the Council Chambers and was also available for questioning from Council.

Councillor Walker questioned Ms. Smith briefly in regard to the fact that as the Lot in question was bordered on three sides by highway, it would appear to him that the Lot was not really suitable for residential housing but was rather more suitable for a commercial enterprise, such as was proposed. Therefore, he considered that the commercial zone should be put into effect and the restaurant business be permitted to remain. Although, it was, in his opinion, not a suitable lot for residential use, he also felt that since the McConnells had been dwelling there for years, there was no reason to prevent them from doing so now.

Ms. Smith readily agreed that there were two or three businesses in the immediate area surrounding Mr. and Mrs. McConell's property and that the general area was suitable for commercial use but maintained that the particular lot in question was too small and in too dangerous a location.

Councillor Benjamin also spoke on this issue advising that the general area in question had long since been the commercial centre of Waverley, containing a general store, post office etc. He advised that the rezoning was done without consideration of expanding the commercial area down as far as the Nova Scotia Building Supply Centre. It was Councillor Benjamin's feeling that it would be good planning to make the entire area in question down as far as that Building Supply Centre, a Commercial Local Business Zone. He felt that the area would be of far greater use as a commercial area than it was as a residential area and agreed that the three highways bordering the McConnells' property did not lend that particular property to residential zoning.

Councillor Topple questioned Ms. Smith in regard to the Lesser Setbacks as previously mentioned in Ms. Smith's report. He asked whether the original building which had been destroyed by fire before had been as close to the road line as the present foundation.

Ms. Smith advised that it was her understanding that Mr. McConnell's intention was to build on the original foundation and which he did do for the major part of the building. However, part of the newly constructed building extended over the original foundation.

This statement was supported by Mr. Hefler, the Chief Building Inspector who also advised that, although Council aproved a setback of 15 feet, the building was constructed closer to the road.

Councillor Topple then questioned Mr. Hefler as to whether the building had not burned down at all, the setback would still be lesser than that required today, to which Mr. Hefler agreed that it would certainly be lesser than that which was required by today's standards.

Mr. Hefler further advised that this had been the reason that Mr. McConnell had been required to request a lesser setback which would subsequently approve the reconstruction of his home for residential purposes.

Councillor Lichter questioned if the lot was included in a rezoning application for R-4 today, the issue was being debated, and the question asked; "what could be built in and R-4 Zone, an apartment building, of twenty stories?", what would be the answer of the Planning Department?

Ms. Smith advised that in order to build an apartment building in the first place, the lot must be a minimum of 6,000 square feet; this particular lot would not even be elegible for a two-unit building because it does not meet the square footage requirement of any zone. Also, in answer to a question from Councillor Lichter, she indicated that it would make little sense to zone the lot today to R-4.

Councillor Lichter, then indicated that the zoning had been commercial in 1970 and should have remained so. It seemed to him that there had been an oversight in the blanket zoning of the general area to to R-4 and now the McConnells were suffering because of that oversight.

Ms. Smith then pointed out that the business had been in operation since that time and the McConnells have had a great deal of time to apply for the proper rezoning but instead have been operating the business in a nonconforming use; a very precarious position in which to operate a business.

Councillor Lichter advised that in 1970 he would not have put Mr. and Mrs. MacConnell in that precarious position in regard to their business.

At this point in the Hearing, Mr. Hefler pointed out that the proposed C-1 Commercial Zone still allows for the R-4 uses, so in effect, looking at the mistake made in 1970, another mistake could be made tonight in zoning the area to C-1. He advised that the lot, due to its size and other considerations, such as being bordered by three highways, make this lot a very difficult one to zone. He also indicated that the lot does not even have sufficient square footage to develop under any

subdivision zoning. He advised that this was a case where there was a non-conforming use on the land which disappeared, due to the fire, and now a year later with not only the same non-conforming use present, but also a larger one and one, which he was not certain he could give a permit for, if approved. He advised that the Planning Department issued a permit for a single family dwelling on this lot, at which time, it was indicated to the applicant verbally and in writing, that the Municipality would process the permit for a single family dwelling only and at a later date apply for a zone change (not knowing that it would have taken this long).

He further advised that construction on the building is now such that he was uncertain whether or not it conformed to the requirements of a commercial structure. He advised that the concern of the Planning Department is that a building is there being used for a purpose not permissible under the zoning By-Law and which has not, to-date, been issued an occupancy permit.

Councillor Lichter questioned whether, Mr. Hefler when in saying, "that the building would not qualify for a commercial use", was referring to the requirements of the Fire Marshall. He was informed by Mr. Hefler that this was indeed what he was referring to.

Councillor Lichter then advised that he had asked the Planning Department at the PAC Meeting at which it had been decided that there would be a Public Hearing, to investigate that aspect. He questioned: "was the Fire Marshall contacted to get clarification on that issue?"

Mr. Hefler advised that he was unsure of whether or not this had been done as the Fire Marshall would not have been contacted through the Building Inspectors Office; the Building Inspector's Office had processed the application on the basis of a Residential Application for an R-4 use and did not process an application for a Commercial Use because at the time when the application was received, it was not a permissible use in that zone. He further advised that the Fire Marshall would definitely have to be contacted before the Department could process an occupancy permit for any commercial use in that building.

Councillor Lichter then questioned Ms. Dorothy Smith as to whether one of the things which had been decided on at the PAC Meeting (at Councillor Lichter's suggestion) was that the Fire Marshall's Office be contacted in order to determine whether or not the structure could accommodate a commercial establishment.

Ms. Smith advised the Councillor that enquiries were made through Mr. Hefler about whether the Fire Marshall would be contacted and were told the same thing as the Councillor had been told; however, she advised that the Planning Department themselves had not contacted the Fire Marshall. She also advised that she was unaware of a request to do that although it would be more appropriate to go through the Building Inspector because of his information on the building.

Councillor Lichter was concerned that at the PAC Meeting it had been agreed that this matter would be investigated; yet it had not been investigated as requested and agreed.

Mr. Birch advised that he also could not recall being requested to investigate this matter of whether or not the building would be acceptable from the Fire Marshall's point of view as a commercial establishment. He did, however, remember stating at that PAC Meeting, on the advice of Mr. Hefler, that notwithstanding approval by Council to re-zoning that there were further requirements to be met. Whether or not they could be met would depend on the application before the Fire Marshall. Examples of the requirements would be that plumbing would have to be copper as opposed to plastic.

He further advised that without the input of the Fire Marshall the advice put before Council today was based on the expertise of the Building and Planning Division and the use of the Building Code.

Councillor Benjamin questioned Dorothy Smith in regard to the fact that her remarks pertained to non-conforming use and re-zoning. He questioned whether she was suggesting that all properties which are now non-conforming should apply for a re-zoning to correct the existing use to which they are putting their properties.

He further clarified this line of questioning advising that she had made previous statements in that Mr. McConnell had many years in which to apply for a proper zoning for his business, which implied that Mr. MacConnell should have made the initiative to have that rezoned, although he was there before the blanket zoning was placed on the area.

Ms. Smith advised that there would have been two opportunities; 1) at the time of the Public Hearing in 1970 when the R-4 zoning was placed on the property and again; 2) anytime since the blanket rezoning. By rezoning a property to non-conforming status whether intentional or non-intentional and a particular use in intentionally zoned to a non-conforming status the reason behind that is because it is felt that the use is not particularly compatible with the area and for some reason it has deficiencies such as parking, such as size, such as conflict with the surrounding area in regard to noise, or traffic hazards or whatever hazards may be involved.

To zone a use to a non-conforming status with the hope that you can continue to operate; if closed for more than a period of six months, it cannot be resumed, if destroyed by more than 50% of its assessed value, by fire or otherwise (as in this case) it cannot be rebuilt. Ms. Smith indicated that these were provincial regulations, not county regulations, and are in the Planning Act of the Province. Therefore, if you intentionally zone something to a non-conforming status you would hope that the use would relocate to a more suitable location; unfortunately, on occasion, properties are zoned to a non-conforming use either intentionally or unintentionally due to a lack of information.

She advised that it was very difficult when doing a land-use investigation of an area, to prepare a zoning for that area, it would be impossible discover every use, as so many businesses are not obvious from outside the buildings and therefore, it would be very easy to zone someone into a non-conforming use unknowingly.

In 1970, the business was not noticed and the owner of the business did not respond to the advertisement of the Public Hearing held at that time in order to oppose the blanket zoning and this is the reason it was zoned into a non-conforming use.

At this point in the meeting Councillor Benjamin advised Council that in this case, it would be wise to look at the matter from the human standpoint. He advised that both of the McConnells were getting on in years, and that if this business were closed, their livelihood would be taken away, and it being rather late in years to learn a new trade, the MacConnells would likely have no alternative than to live the remainder of their years on welfare. He also advised that unfortunately the McConnells did not have sufficient insurance at the time of the fire.

He further advised that he was not condoning that the Municipality become liberal in allowing non-conforming businesses to continue, if the owners wish to sell or resell their properties, but in all fairness, in this particular case, the social aspect should be considered above-all, where the McConnells have devoted their life to their business and have lost it through no fault of their own, through fire damage.

Ms. Smith advised that it was her understanding, in terms of the manner in which the Green Paper is being presented, which is a revision to the Planning Act, there will be some recommendations for changes to the non-conforming use status. Ms. Smith was unsure of these exact changes and indicated her uncertainty of how the changes would affect a situation such as this particular one. However, she advised that as the Planning Act stands now, it is the duty of her Department to give the Council the best advice as Planners and hope that Council will respond to the human and social element.

Councillor Benjamin then questioned Mr. Hefler as to whether the dimensions as stated in that plan (realizing that the new building is erected on the existing foundation) is any larger in size than the building that was demolished by the fire.

Mr. Hefler reiterated comments he had made previously advising that the main building was built on the existing foundation but that part of the building jutted out somewhat, overlapping the original foundation and being closer to the highway. He then went into greater detail going to the overhead projected map and pointing out just exactly where the difference in the size of the new building was and which highway it ran closer to, than the old structure.

During the ensuing conversation between Councillor Benjamin and Mr. Hefler it was determined that Mr. McConnell had submitted to the Building Inspectors Department a sketch along with a request for the same setback as had been on the previous structure without mention of the fact that there would be any intent to override those measurements.

Mr. Hefler also proceeded to quote from a letter written to his Department from the applicant, Mr. MacConnell, specifying certain measurements which were not adhered to during the actual construction of the new building.

This particular issue was debated at great length with Councillor Benjamin taking the position that Mr. McConnell had probably not realized that the veranda was an important issue as Mr. McConnell, not having any surveying abilities or having studied in that field, could have misunderstood the requests of the Building Inspectors Department.

However, Mr. Hefler was not in agreement with this suggestion and advised that the requirements of the Building Inspectors Department, with regard to measurements and setbacks, had been made extremely clear to the applicant.

Councillor Wiseman then questioned Dorothy as to the fact that the building was presently being used as a restaurant and was advised by Ms. Smith that this was the case and the restaurant has been operational for quite some time, even though there has been no occupancy permit.

Councillor Wiseman then indicated some concern that the business was in fact being operated illegally. She then questioned Ms. Smith as to the comment from the Department of Health.

Ms. Smith advised that the Department of Health when asked for their comment, did not reply by letter but did confirm verbally via a telephone call, that they had no objection. Rather than hold up the application any longer, the Planning Department had decided to proceed without the written confirmation.

Councillor Gaetz requested additional clarification from Mr. Hefler in regard to the setbacks and was given the same points previously expressed by Mr. Hefler during his conversation with Councillor Benjamin.

Councillor Lichter then questioned Mr. Helfer as to whether, when before a building permit is issued, the footings have to be surveyed and the survey plan must be submitted.

Mr. Hefler explained that this would be the normal course of events for new construction; however, in this particular instance, where there was already a foundation in place the same rules and regulations did not apply.

At this point in the Hearing Mr. Birch interjected that what probably happened was that when Mr. McConnell built on the old foundation, he measured for his setbacks right from the pavement bordering his lot. He then advised that from a Planning Department point of view the lesser setbacks were not the problem in this application, the main issue was the non-conforming use, regardless of whether it was zoned correctly or not.

It has been non-conforming for ten years or more and since being destroyed has come back for renewal with a lot of less than 5000 sq. ft. when in actuality 20,000 sq. ft. is required for a single family dwelling and a restaurant and under those circumstances the Planning Department feels they have no alternative but to recommend denial of the application. He did however, concede that there was definitely a human and social element to be considered in this case, which would be the responsibility of Council to weigh.

Councillor Margeson requested some additional clarification in regard to the square footage of the lot in question. This clarification was provided by Mr. Hefler and Ms. Smith who with the use of the overhead projected plan of the lot, were able to give more detail to the small sketch included in the PAC Report.

During the discussion between the Councillor and Ms. Smith it was determined that a residential single family home and a grocery store would be permissible under the R-4 zoning which presently prevails on this lot, as it was an appropriate size for this use.

Councillor Margeson then debated briefly whether a grocery store with a microwave oven in which sandwiches or such like could be heated up and eaten on the spot would be considered a restaurant or a grocery store; in other words pointing out that there was little difference between the present and continued proposed use of the building and if it were a grocery store, which would be a permissible use under the existing zoning.

Mr. Hefler felt this line of debate was immaterial as the premises are not being used as a "grocery store" but as a "take-out restaurant".

Deputy Warden Deveaux then questioned whether the lot was now, or would in the future, be used for residential housing. He was advised by Ms. Smith that the upper storey of the building is being used as the residence of the McConnells while the lower storey is presently being used for the operation of the restaurant business.

In regard to Mr. Birch's comments, that the setbacks were not the issue of importance, but also keeping in mind Mr. Hefler's concern that the veranda comes out beyond the former foundation, the Deputy Warden questioned whether that constituted a setback that was not intended in the original plan.

Mr. Birch reiterated his previous contention that the setbacks were not the issue but advised that they were technically a requirement for Council to approve the rezoning request. He indicated that the question Council should ask of itself is: "Is this a suitable accommodation for a Restaurant?" If Council feels the premises are suitable and the application for rezoning is approved, then immediate steps should be taken to ensure that it remains on the old foundation.

Deputy Warden Deveaux then questioned whether a building permit had been issued and whether any word had been received back from the Department of Health.

He was advised by Mr. Birch that a permit for a business had not been issued but that Mr. McConnell had been permitted to rebuild his single family dwelling and that the Department of Health had approved that the single family dwelling be rebuilt.

Councillor Benjamin advised that the Department of Health had been called in before construction started and they were advised of the location of the washroom facilities, etc. prior to their construction. He advised that the Health permit was issued for the single family dwelling but that it could not be issued for a restaurant until clarification had been received from the Building Inspectors Department. He also raised a question for Mr. Hefler in regard to whether or not plastic plumbing pipe would be acceptable for the single family dwelling and-or restaurant.

Mr. Hefler advised that plastic pipe is acceptable under the new building code but that in this case there is a problem, as two different uses are being proposed for the building; that difference would be the fire separation. Mr. Hefler advised that his field inspection indicated that there was not appropriate fire protection in the building if it is to be used for the dual purpose of residential dwelling and restaurant.

Councillor Benjamin questioned whether Mr. Hefler had approached the Fire Marshall's Office to have this inspected or was it a routine requirement to have the Fire Marshall inspect the design of it before it is given approval from the Municipal Building Inspector's Department. Mr. Hefler advised in reply that the Municipality has a standing policy with the Fire Marshall that it will not issue a building permit unless the adequate protection against fire hazards has been undertaken. However, in this circumstance a building permit could not be issued due to the fact of the improper zoning.

Speakers In Favour of the Rezoning Application

Debra Gillis, Solicitor for Mr. & Mrs. McConnell: Ms. Gillis advised that the McConnells have been operating their restaurant business since 1969 at the same location and were unaware of the rezoning application in 1970 which changed the zoning of their property and thereby made it a non-conforming use. She advised that they have had no opposition from the area residents that they know of; in fact, there was a building permit issued to the McConnells in 1974 and 1975 to renovate their takeout and at that time there was no discussion or opposition to a non-conforming use. She also advised that as the Planning Department have pointed out the Departments of Transportation and Health have no objection to this proposed rezoning. She advised that this is noted in the Planner's Report to Council.

Ms. Gillis requested that Council consider the historical use of this building and the fact that it has been used as a takeout business since 1969. She indicated, that it had already been pointed out by several Councillors this evening that it is of no greater use as a residential area. She also requested that Council consider the effect of a refusal of the application on the McConnell's livelihood. She indicated that Mr. McConnell was 62 years of age while Mrs. McConnell was 60 years old; they have been operating the business for 12 years and have no place to look for new employment at their ages.

Ms. Gillis also pointed out that in the area, there are a number of Commercial Uses, such as an antique shop, schools in the area, a church; the area was not totally residential. She suggested that the McConnells should not be put into a precarious position because of the blanket rezoning of the area which took place in 1970. She requested that the lot be rezoned back to its former zone of C-1 (Commercial Local Business Zone). She also indicated to Council the previous statements of the Planning Department; that the lot could be used as a grocery store under its present zone. She did not feel that it would be any less of a compatible use as a restaurant then it would a grocery store.

In regard to the question of the setbacks as they are at present, she advised that Mr. McConnell had indicated to her that the building as it now is; is smaller than the original building and the part that now juts out goes only as far as the original foundation. Ms. Gillis expressed her hope that this would clear up some of the confusion in regard to the size of the building and the set-backs.

In regard to the blanket rezoning of the area in 1970, she advised that irregardless of the advertising the McConnells were unaware of it; thus, they did not oppose it. In regard to the presently proposed rezoning of the McConnell lot she advised that she was also unaware of any opposition to it and requested that Council take note of this lack of opposition from area residents.

Councillor Margeson once again expressed his opinion, to Ms. Gillis, that there was little difference between a restaurant and a grocery store, as food could be purchased and eaten in a grocery store, as well. He also voiced his opinion that there would be no greater traffic hazard were the site a grocery store operation, as is permitted under the present zoning, or it were a restaurant as permitted under the requested zoning.

Deputy Warden Deveaux advised Councillor Margeson that regardless of the similarities or differences between the two uses one was permitted under one type of zoning and the other permitted under another zoning and these were the guidelines which would have to be followed by Council.

Councillor Margeson expressed his concern that the area was zoned R-4 with the knowledge that a restaurant was there; that the restaurant has successfully operated illegally since that time, with the exception of a short time while being reconstructed subsequent to its fire damage, and now the Municipality wants to stop its operation. He felt that if the Municipality was ever to stop the operation the time to do so would have been after the blanket rezoning or subsequent to the fire which damaged more than 50% of its premises.

The Deputy Warden pointed out that all things were subject to human error.

There were no further questions from Council for Ms. Gillis and no further speakers in favour of the rezoning application.

Speakers in Opposition of the Rezoning Application

None.

Comments and Motion From Council

It was moved by Councillor Benjamin, seconded by Councillor Walker:

"THAT the Request to Rezone lands of Robert and Gladys McConnell located on the Rocky Lake Drive at Waverley, Halifax County, District 14, from R-4 (General Residential Zone) to C-1 (Commercial Local Business Zone), be approved by Municipal Council."

Motion Carried.

Prior to the approval of the motion Councillor Benjamin indicated that, as stated by the various speakers; both staff members and the solicitor for the applicant, there was a social and human element in this particular case. He also pointed out that there has been a history of setbacks, not only because of the fire but because arsenic had been discovered in the water on the lot, thereby temporarily closing the restaurant by the Atlantic Health Unit until, through the co-operation of Twin Cities Dairy, a tank was brought on the lot and water hooked into the building which the local Fire Department transported from Sackville.

Councillor Benjamin also pointed out that when the premises had previously been destroyed by fire by more than 50% of its assessed value the applicant had gone through much red tape and confusion because he had been under the impression that he was operating under legal and conforming uses.

The Councillor also pointed out that there have been no objections from the Department of Health, and in fact, the McConnells have co-operated with the Health Department. There was also no objections from the Departments of Transportation or Environment or from the local Ratepayers Association, who on the contrary, desired to rezone the entire area and have asked Mr. Birch to investigate the existing zone of the entire village of Waverley with a view to updating the zone with the delivery of water from Pockwock coming on-stream. He indicated that this investigation was in process.

However, because of the delay in the operations of the McConnell's business that the completion of the investigation into the present zoning would create, it was the recommendation that they should apply for the change of zoning at this time.

Councillor Benjamin also indicated that this area was once the original commercial centre of Waverley, housing both the original post office and general store, therefore, making it unnatural for the R-4 zoning to have taken place in 1970. He felt the zoning of the McConnell property was an oversight of the Planning Department and advised that this was also the feeling of the residents as they are now requesting that the entire area, including the McConnell property, the neighbouring Bottle Exchange and Hilchie Property, now used for Commercial Storage down as far as the N.S. Buiding Supply area be zoned C-1 as this was a natural and historical commercial area.

In regard to the traffic hazard which was felt may exist due to the property being surrounded on three sides, he pointed out that there was restricted parking along the # 2 Highway in front of the McConnells to the Cobequid Road, so there cannot be any obstruction to traffic by parking there unless parked in violation and subject to ticketing. The parking on the property would allow approximately 10 cars which should be adequate parking for any normal day as it is not a large restaurant.

He advised that also at this location is where the children cross the street to go to school and he pointed out that the Waverley Ratepayers have seen fit to engage cross walk guards at that location to protect these children.

He advised that the location of this building whether it be for commercial or residential use, would have little bearing on the traffic that would be heading across the street to the school.

He also advised that the house adjacent to the McConnell property is not lived in at the present time but is used for historical display purposes by the owner, Mrs. Smith, who also has an historical Black Smith Shop in her outside shed also for display purposes. Therefore, the Councillor felt that this area also leant more toward commercial zoning.

He advised that the size of the foundation has been of considerable concern to Council members; therefore, he pointed out, as clearly stated by the solicitor of the McConnell's that it is not completely the full size of the house that was there prior to the fire.

ZONING REQUEST, # 14-81, BIG ACRES SUBDIVISION

Mr. Brant Wishart came forward to advise Council that Zoning Request # 14-81 was a request to zone Big Acres Subdivision located on the Acres Road and Birchwood Drive Williamswood, Halifax County, District 5 from an unzoned status to R-2 (Residential Two Family Dwelling Zone).

Mr. Wishart advised that the application has been advertised as per the provisions of the Planning Act and that no correspondence has been received in regard to it.

Mr. Wishart indicated that an application, in the form of a petition signed by twenty-three property owners and the developer of Big Acres Subdivision, representing thirty lots, has been received requesting that the unzoned portions of Big Acres Subdivision be zoned to R-2 (Residential Two-Family Dwelling Zone.) The stated purpose of the application is to protect property owners within the subdivision from the intrusion of incompatible land uses.

With the use of an overhead projected map, Mr. Wishart described the surrounding lots and area as well as the existing zoning of the area (Please see Report for Detail and Clarification).

Mr. Wishart advised that it is the policy of the Planning and Development Department to support applications such as this from residents requesting restrictive zoning as a means of protecting residential areas from incompatible land uses.

The requested R-2 Zone in this case, would offer the desired protection and is compatible with both the existing land use within the subdivision and the zoning that is now in effect in the area.

Therefore, it is recommended that the application to zone the unzoned portions of the Big Acres Subdivision to R-2, be approved by County Council.

Questions From Council

None.

Speakers in Favour of the Zoning Application

Mrs. Cathy MacKay, 679 Old Sambro Road, Harrietsfield: Mrs. MacKay advised that herself and her husband were building a home at 61 Acres Road, Big Acres Subdivision and have discovered that there is presently no zoning after the 650 off the main highway and they wish to extend the R-2 zoning to protect the property values of the home and to keep out any incompatible uses, thus keeping the Subdivision as a Residential area only.

Mrs. MacKay requested that Council support the application.

Councillor Margeson questioned Mrs. MacKay as to how far that property was from the Armdale Rotary and was advised that it was approximately nine miles away.

He then questioned whether over a period of time, could Mrs. MacKay visualize the area as being somewhat like Bedford, in that it could become a more commercialized area. Mrs. MacKay did not see such a change in the area in the foreseeable future although there was still some undeveloped land in the area. It was her feeling, with which Mr. Margeson agreed, that it was a nice residential area.

Councillor MacDonald questioned Mrs. MacKay as to whether the balance of the residents in the subdivision were agreeable to the proposed rezoning, to which she advised that when she went door to door with her petition, all responses were favourable.

Councillor Baker advised that the area for proposed rezoning was in his district and indicated that he had received several calls in support of the application. As well, he advised that he was certainly in favour of the application.

There were no further questions from Council.

Speakers in Opposition to the Zoning Application

None.

Comment and Motion From Council

It was moved by Councillor Baker, seconded by Councillor Williams:

"THAT the request to zone Big Acres Subdivision, located on the Acres Road and Birchwood Drive, Williamswood, Halifax County, District 5 from an unzoned status to R-2 Zone, receive approval from Halifax County Council."
Motion Carried.

ADJOURNMENT

It was moved by Councillor Eisenhauer, seconded by Councillor Adams:

"THAT the Public Hearing adjourn."
Motion Carried.

Therefore, the Public Hearing adjourned at 8:35 P.M.

COUNCIL SESSION

OCTOBER 6, 1981

PRESENT WERE: Deputy Warden Deveaux, Acting Chairman
Councillor Williams
Councillor Baker
Councillor McInroy
Councillor Topple
Councillor Adams
Councillor Gaetz
Councillor Smith
Councillor McCabe
Councillor Margeson
Councillor Eisenhauer
Councillor Wiseman
Councillor Walker

SECRETARY: Virginia Veinot

OPENING OF COUNCIL - THE LORD'S PRAYER

Deputy Warden Deveaux brought the Council Session to order with the Lord's Prayer at 2:00 p.m.

ROLL CALL

Mr. Meech called the roll.

APPOINTMENT OF RECORDING SECRETARY

It was moved by Councillor Baker, seconded by Councillor Margeson:

"THAT Virginia Veinot be appointed Recording Secretary."
Motion Carried.

Deputy Warden Deveaux advised Council that since today was Election Day that perhaps it could be agreed that the session continue no later than 4 - 4:30 p.m. This was agreed to by the Councillors.

SWEARING IN OF COUNCILLOR ELECT - HAROLD MCINROY, DISTRICT # 7

Mr. Harold McInroy took the Oath of Office as Councillor representing District # 7.

Deputy Warden Deveaux congratulated Councillor McInroy and welcomed him to Halifax County Council.

Deputy Warden Deveaux advised that Councillor McInroy had agreed to serve on the Management Committee and the Board of Management, Rehab Centre if that was agreeable to Council.

It was moved by Councillor Gaetz, seconded by Councillor Topple:

"THAT Councillor McInroy serve on the Management Committee and the Board of Management, Halifax County Regional Rehabilitation Centre."

Motion Carried.

APPROVAL OF MINUTES - AUGUST 18, 1981 - REGULAR SESSION

Councillor Smith advised that she had only received a copy of these minutes in her mailbox yesterday and therefore had not had an opportunity to thoroughly review them.

It was moved by Councillor Smith, seconded by Councillor Gaetz:

"THAT the approval of the August 18, 1981 Regular Session Council Minutes be deferred to the next session of Council."

Motion Carried.

APPROVAL OF MINUTES - SEPTEMBER 1, 1981 - REGULAR SESSION

Councillor Smith pointed out an omission of the mover and seconder on the top of page 7 of the September 1st Council Minutes. She further advised that the mover was Deputy Warden Deveaux and the seconder, Councillor Topple.

It was moved by Councillor Williams, seconded by Councillor Smith:

"THAT the September 1, 1981 Regular Session Council Minutes be approved as amended."

Motion Carried.

APPROVAL OF MINUTES - SEPTEMBER 15, 1981 - REGULAR SESSION

It was moved by Councillor Wiseman, seconded by Councillor Margeson:

"THAT the September 15, 1981 Regular Session Council Minutes be approved."

Motion Carried.

Councillor Margeson thanked Mr. Cragg, Solicitor, for providing the information, re his legal opinion of School Area Rates as it relates to the Education Act. He further advised that this information proved very useful at their Ratepayers Meeting.

LETTERS AND CORRESPONDENCE

Mr. Meech advised that the first piece of correspondence was an official communication received from the Department of Education advising of the release of two schools from the moratorium. These schools being the Cole Harbour Elementary School and the Humber Park School Addition.

Councillor Toppie advised that at a previous Council Session we had deferred any action on the William Ross - Humber Park School and there had never been a motion to approve a decision. He further asked the Solicitor if a motion was required.

Mr. Cragg advised that technically a motion should be approved.

Mr. Meech suggested that if Council was in agreement then the Management Committee should be requested to proceed with the implementation of those two schools as released from the moratorium.

It was moved by Councillor Toppie, seconded by Councillor Gaetz:

"THAT Council approve the letter as received from the Minister and that the Management Committee be requested to proceed with the implementation of the construction of the Cole Harbour Elementary School and the Humber Park School Addition."
Motion Carried.

Mr. Meech advised that the second letter relates to an issue that was raised by Council which resulted in the passing of a resolution relative to the expansion of Cable Television to various parts of the Municipality. He further advised that Mr. Oxner is to be in attendance at the October 20th session of Council to provide first hand information on the matter of expansion of cable services and respond to any queries.

Councillor Baker advised that he had called Halifax Cable regarding his area and he was assured that this fall they were going to start servicing his area and by next spring, 1982, it will be a reality.

Deputy Warden Deveaux suggested that any questions or comments be brought up at the next session of Council at which time Mr. Oxner will be in attendance.

MEETING WITH DEPARTMENT HEADS

It was agreed by the Council members that the meeting with the Department Heads, Mr. Mason and Mr. Wdowiak, be deferred.

REPORT OF THE PLANNING ADVISORY COMMITTEE REPORT

It was moved by Councillor Smith, seconded by Councillor Wiseman:

"THAT the Planning Advisory Committee Report be received."
Motion Carried.

Mr. Meech advised that the first item on the report advised that the Planning Advisory Committee has reviewed a request for subdivision approval under the Undersized Lot Legislation, Lot CBl, Lands of Douglas and Hazel Harlow located at Ferguson's Cove. The Committee recommends that this subdivision application be granted approval since the lot meets the requirements of the Department of Transportation and is eligible for Regional Development Permits.

It was moved by Councillor Williams, seconded by Councillor Smith:

"THAT Council approve the subdivision application for lands of Douglas and Hazel Harlow, Lot CBl, Ferguson's Cove, District 5, under the Undersized Lot Legislation and that a Public Hearing be held on November 3, 1981 at 2:00 p.m."
Motion Carried.

Mr. Meech advised that the second item of the Planning Advisory Committee Report dealt with an amendment to the Planning Act, re appeal decisions at the subdivision approval stage.

Mr. Meech suggested that this item be deferred until the next session at which time most of the Councillors would be in attendance to discuss this matter.

It was agreed by Council that this item be deferred.

SUPPLEMENTARY REPORT OF THE PLANNING ADVISORY COMMITTEE

Rezoning Application #15-81

Mr. Meech advised that the first item concerned Rezoning Application # 15-81, Clayton Developments Limited. This was a request to rezone Block E-9 and Lots 1139 to 1143 inclusive located on Colby Drive and Mapton Green at Colby Village, Cole Harbour, District 7. The suggested date for the Public Hearing was October 26, 1981 at 7:00 p.m.

It was moved by Councillor Smith, seconded by Councillor Gaetz:

"THAT a Public Hearing be held October 26, 1981 at 7:00 p.m. in the Council Chambers to deal with Rezoning Application # 15-81, request by Clayton Developments Ltd. to rezone Block E-9 and Lots 1139 to 1143 inclusive, located on Colby Drive and Hampton Green at Colby Village, Cole Harbour, District 7."
Motion Carried.

Public Land Donation

Mr. Meech advised that the second item dealt with a Public Land Donation. The Planning Advisory Committee advised that the parcel of recreational land located in the Wonderland Mobile Home Park Subdivision, Lake Echo, being donated to the Municipality as parkland had been declared free and clear of all encumbrances by the Municipal Solicitor and therefore, the Council is in a position to accept title to the land.

It was moved by Councillor Adams, seconded by Councillor McCabe:

"THAT the Municipal Council accept the parkland donation with respect to land located in the Wonderland Mobile Home Park Subdivision, Lake Echo."
Motion Carried.

BUILDING INSPECTORS REPORT RE LESSER SETBACK AND SIDEYARD CLEARANCES

Mr. Meech advised that the Chief Building Inspector was recommending approval of an application for lesser setback of 28.7', Lot A 32, Inishowen Subdivision, Cole Harbour. The applicant being W. D. Morash Ltd.

It was moved by Councillor Margeson, seconded by Councillor McCabe:

"THAT approval be given for the application re lesser setback of 28.7', Lot A32, Inishowen Subdivision, Cole Harbour. Applicant: W. D. Morash Ltd."
Motion Carried.

Mr. Meech advised that the second item on this report was being recommended for approval by the Chief Building Inspector for an application re lesser setback and rear yard clearance of 1.5' and .5', Lot 218BG 135 Skyridge Avenue, Lower Sackville. The applicant: Paul Miller.

It was moved by Councillor Wiseman, seconded by Councillor McCabe:

"THAT approval be given to an application re lesser side and rear yard clearance of 1.5' and .5', respectively,, Lot 218BG, 135 Skyridge Avenue, Lower Sackville. Applicant: Paul Miller."
Motion Carried.

The third item on the report recommended for approval by the Chief Building Inspector was an application for lesser setback of 8', property located at Upper Tantallon. The applicant being Mason's Mushrooms.

It was moved by Councillor McCabe, seconded by Councillor Baker:

"THAT approval be given to an application for lesser setback of 8', property at Upper Tantallon. Applicant: Mason's Mushrooms."
Motion Carried.

The fourth item on the report concerned an application for a lesser setback of 10', Lot 39, Carter and Roman Subdivision, Lawrencetown. This matter had been deferred at the last Council Session so that a report respecting this request could be obtained from the N. S. Department of Transportation. Since that time, the Building Inspection Department has been informed by the Department of Transportation that because this proposed garage would have a tendency to restrict visibility, they cannot approve of this request. Also, because this request would establish a 10' building line on this street, it is recommended by the Building Inspection Department that Council reject this request.

It was moved by Councillor Gaetz, seconded by Councillor Baker:

"THAT the item respecting the application for a lesser setback of 10', Lot 39, Carter and Roman Subdivision, Lawrencetown, be deferred until Councillor Gaetz has had an opportunity to speak to the applicant with respect to the possibility of reducing the size of the building."
Motion Carried.

REPORT OF THE MUNICIPAL SCHOOL BOARD

It was moved by Councillor Margeson, seconded by Councillor McCabe:

"THAT the Report of the Municipal School Board be received."
Motion Carried.

SURPLUS SCHOOLS - BLACK POINT AND GOODWOOD

The School Board Report advised that since the Halifax County Municipal School Board has no further use for the schools located at Black Point and Goodwood, these schools were declared surplus to their needs.

It was moved by Councillor McCabe, seconded by Councillor Gaetz:

"THAT the Municipality accept the repossession of Black Point and Goodwood schools and that the Policy Committee be requested to proceed with the disposal of these schools."
Motion Carried.

Councillor Williams pointed out to the members of Council that he felt the organizations within the community should have an opportunity to submit proposals for the use of such schools.

Mr. Meech explained that the present policy of the Municipality is that once the schools are declared surplus they are advertised in the newspaper and applications are received from community organizations wishing to lease or purchase these buildings for community use. If no interest is expressed by community organizations, then these buildings are sold.

Recently interest has been expressed by the Industrial Commission Office for the use of such buildings for prospective clients providing the buildings are not utilized by community organizations.

Councillor Walker voiced the opinion that it must be extremely expensive to advertise these surplus schools in the newspaper.

Councillor Walker thought that perhaps it might be better to post notices of such surplus schools in the communities concerned so that interested organizations could make application for the use of such buildings.

Mr. Meech suggested that the procedure of disposing of surplus schools could be referred to the Policy Committee as it was expensive to advertise in the paper.

POLICY COMMITTEE REPORT

It was moved by Councillor Gaetz, seconded by Councillor Wiseman:

"THAT the Report of the Policy Committee be received."
Motion Carried.

DECENTRALIZATION OF SOCIAL SERVICES DEPARTMENT

Mr. Meech suggested that since Mr. Mason had just today received additional information on this item that perhaps it could be deferred.

It was moved by Councillor Margeson, seconded by Councillor Baker:

"THAT the item on the Policy Committee Report, re Decentralization of the Social Services Department, be deferred pending further information to be supplied by Mr. Mason."
Motion Carried.

EMO PLAN, COUNTY OF HALIFAX

Mr. Meech advised that this was mainly an information item. He further advised that Mr. Gough, our EMO Director for the County of Halifax, was revising and updating the present County EMO Plan. It was expected that this would be completed by mid-January for submission to Council.

Councillor Margeson felt that this should be slated for the January 19, 1982 session of Council.

It was moved by Councillor Margeson, seconded by Councillor Smith:

"THAT the revised and updated EMO Plan for the County of Halifax be brought before Council on January 19, 1982."
Motion Carried.

APPOINTMENT OF REPRESENTATIVES, HALIFAX COUNTY WEST HOUSING AUTHORITY

Mr. Meech advised that the Policy Committee received a letter from the Hon. R. Fisher Hudson requesting that two representatives be appointed to the Halifax County West Housing Authority as the term of office of the present representatives has expired.

The Policy Committee agreed that since Senior Citizens Housing Developments were located in Hubbards and Sackville that consideration be given to appointing representatives from these two areas.