

HARBOUR EAST-MARINE DRIVE COMMUNITY COUNCIL
MINUTES

June 6, 2013

PRESENT: Councillor Darren Fisher, Chair
Councillor David Hendsbee, Vice Chair
Councillor Bill Karsten
Councillor Lorelei Nicoll
Councillor Gloria McCluskey

STAFF: Ms. E. Roxanne MacLaurin, Senior Solicitor
Ms. Jennifer Weagle, Legislative Assistant

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1. CALL TO ORDER

The Chair called the meeting to order at 6:00 p.m., with the Invocation led by Councillor McCluskey.

2. APPROVAL OF MINUTES – April 18, 2013

MOVED by Councillor McCluskey, seconded by Councillor Nicoll, that the Harbour East-Marine Drive Community Council minutes of April 18, 2013 be approved as circulated. MOTION PUT AND PASSED.

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

Deferred:

- 9.1.1 “Russell Lake Water Quality Policy Review Project” (deferred to the July 4, 2013 meeting)

MOVED by Councillor Hendsbee, seconded by Councillor McCluskey, that the order of business be approved, as amended. MOTION PUT AND PASSED.

4. BUSINESS ARISING OUT OF THE MINUTES/STATUS SHEET

There were no updates to report.

5. MOTIONS OF RECONSIDERATION/RECISSION – None

6. CONSIDERATION OF DEFERRED BUSINESS – None

7. HEARINGS

7.1 Public Hearings

7.1.1 Case 18241: Development Agreement for an Automotive Repair Shop at 782 Main Street, Westphal

A staff report dated April 15, 2013 was before Community Council.

Ms. Jennifer Chapman, Planner, presented the application to operate an automobile repair outlet at 782 Main Street in Westphal.

Ms. Chapman responded to questions of clarification from members at this time, clarifying that if the applicant wished to use the back portion of the property for parking in the future, it would require an amendment to the development agreement since the back portion of the property is designated as residential.

Mr. Mike MacDonald, Applicant, addressed Community Council, noting that he does not have any intended use for the back of the property, so the residential designation is not an issue.

The Chair opened the floor for those wishing to speak for or against the proposed development agreement.

Mr. Joe West, Memorial Drive, Dartmouth, acknowledged that the property has been cleaned up a lot. He suggested that a no exit sign be posted in the cul-de-sac since people use it as an exit. Mr. West noted that there is grass in the middle of the cul-de-sac that is no longer mowed, and he would like it mowed.

The Chair suggested that Mr. West call the HRM call centre at 3-1-1 to place a request to have the grass cut.

Mr. Peter Spurway, West Lawrencetown, spoke in favour of the application. He indicated that Mr. MacDonald is a good businessman and the business will be a distinct asset to the community.

The Chair called three times for any further speakers. Hearing none, it was **MOVED by Councillor McCluskey, seconded by Councillor Karsten, that the public hearing be closed. MOTION PUT AND PASSED.**

Ms. Chapman clarified that access to the property off Memorial Drive will be closed, as per the development agreement.

MOVED by Councillor Nicoll, seconded by Councillor McCluskey, that Harbour East-Marine Drive Community Council:

- 1. Approve the proposed development agreement as set out in Attachment A of the April 15, 2013 report to permit an automobile repair outlet at 782 Main Street, Westphal; and**
- 2. Require the agreement be signed by the property owner within 120 days, or any extension thereof granted by Council on request of the property owner, 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.

7.2 Variance Appeal Hearings

7.2.1 Case 18139: Appeal of Variance Refusal – 58-66 Stella Drive, Porters Lake

A staff report dated May 24, 2013 was before Community Council.

A submission from the Appellant was submitted to Community Council containing photos and copies of: correspondence, permits, assessment notices, electrical inspection report, receipts, advertisements, a location certificate, and an Environment Act Directive. This submission applies for Items 7.2.1 and 7.2.2.

Mr. Andrew Faulkner, Development Officer, presented the staff report for the appeal of the Development Officer's decision to refuse a request for variance to permit an existing accessory building, used as a commercial car wash, to have a reduced front yard setback.

Mr. Faulkner responded to questions of clarification at this time.

The Chair opened the variance appeal hearing for those persons entitled to speak.

Ms. Debbie Falle, Head of Chezzetcook, indicated she is a neighbour of the subject property. She has a young, visually impaired grandson and he plays in the area of the property where the traffic from the car wash exit. She commented on a dispute with the appellant with regard to ownership of the driveway. Ms. Falle noted concern that the appellants had taken photos of her house earlier in the day, suggesting it was an invasion of privacy. She indicated that she had previously passed on her comments with regard to the appellant's use of his property to Councillor Hendsbee and HRM staff, and they are aware of the issues.

Mr. Wayne Ubdergrove, Head of Chezzetcook, Appellant, advised that he has the support of the community to run his business from the property. He noted that he built the subject building 14 years ago, and he did call at the time and was told he didn't need a permit if the building was under 200 sq. ft. Mr. Ubdergrove noted that there are several other businesses in the immediate area, and that there is a buffer of trees separating his business. He acknowledged that there has been a property dispute with his neighbour, and that he had his property surveyed and decided not to use the driveway mentioned by Ms. Falle. Mr. Ubdergrove indicated that his plan is to close out the car wash business and use the building for washing the equipment and vehicles from his septic business. He noted that the building is environmentally safe and was built with a cement slab and catch pits that can be vacuumed out.

Responding to questions from members of Community Council, Mr. Ubdergrove advised that it would be very difficult to have the building moved because of the slab, catch pits, and water supply.

The Chair called three times for any further speakers. Hearing none, it was **MOVED by Councillor McCluskey, seconded by Councillor Karsten, that the variance appeal hearing be closed. MOTION PUT AND PASSED.**

Councillor Hendsbee suggested that he believes this is a case of a business operating for some time not realizing that permits were not in place. He has driven past many times without even realizing that the business was there because of the wide ditch and treeline. Councillor Hendsbee indicated that he would prefer to see the shared driveway closed off to ensure there is no egress from that location. He suggested that with the property owner closing the car wash business, it will further reduce commercial

traffic. Councillor Hendsbee noted that he has been trying to get the province to realign the intersection at Stella Drive for some time.

MOVED by Councillor Hendsbee, seconded by Councillor McCluskey, that Harbour East-Marine Drive Community Council allow the appeal.

Councillor Karsten suggested that he cannot support the motion because the Development Officer has stated clearly that he cannot grant the appeal based on the legislation, regardless of how long the building has been on the property.

Councillor McCluskey indicated that she does not see an issue with the location of this small building on the property, although she understands the Development Officer is doing his job.

Councillor Nicoll suggested that the issue should be resolved properly by moving the building and she supports the decision of the development officer.

Councillor Hendsbee noted that a previous refusal by a development officer was overturned by Community Council at a neighbouring property, and to apply a consistent approach he is asking for the same consideration for the subject property.

MOTION DEFEATED.

7.2.2 Case 18140: Appeal of Variance Refusal – 58-66 Stella Drive, Porters Lake

A staff report dated May 24, 2013 was before Community Council.

A submission from the Appellant was submitted to Community Council containing photos and copies of: correspondence, permits, assessment notices, electrical inspection report, receipts, advertisements, a location certificate, and an Environment Act Directive. This submission applies for Items 7.2.1 and 7.2.2.

Mr. Andrew Faulkner, Development Officer, presented the staff report for the appeal of the Development Officer's decision to refuse a request for variance to permit an existing detached commercial building to have a reduced front yard setback. Mr. Faulkner clarified that this is a different building than the previous variance appeal on the same property.

Responding to questions of clarification from Councillor McCluskey, Mr. Faulkner advised that 12 feet would have to be taken off the building for it to comply, or the use of the building could revert to the original intent of residential. He further clarified that the permit was issued for 20 feet, the permit elapsed without any work being done, and the owner went ahead and built anyway.

The Chair opened the variance appeal hearing for those persons entitled to speak.

Mr. Wayne Ubdergrove, Head of Chezzetcook, noted that the building started as a residential garage, and due to personal circumstances ended up converting the upper

floor to an apartment to live there himself. An electrical permit for the building was approved, which is in the package he submitted. He was also paying business occupancy tax on the property, so he assumed that the municipality knew what was on the property. Mr. Ubdergrove also noted that the road was realigned and the ditch was move closer to the building when it was repaved. He commented that he is just trying to make a living. He did not construct the buildings maliciously and didn't realize he was operating without a permit.

Members of Community Council asked questions of clarification at this time.

The Chair called three times for any further speakers. Hearing none, it was **MOVED by Councillor McCluskey, seconded by Councillor Karsten, that the variance appeal hearing be closed. MOTION PUT AND PASSED.**

MOVED by Councillor Hendsbee, seconded by Councillor McCluskey, that Harbour East-Marine Drive Community Council allow the appeal.

Mr. Faulkner responded to questions of clarification from members, noting that general provisions state that there cannot be more than one residential building on one property.

Councillor Hendsbee noted that Mr. Ubdergrove's explanation is fair and reasonable and the appeal should be granted.

Councillor McCluskey commented that in this area a distance from 21 to 30 feet is not unreasonable, and she supports allowing the appeal.

At the request of Councillor Karsten, Ms. Roxanne MacLaurin, Solicitor, indicated that s. 250(3) of the Land Use By-law allows Community Council to address each application on a case by case basis, looking at the particular property and the surrounding neighbourhood.

MOTION PUT AND PASSED.

8. CORRESPONDENCE, PETITIONS & PRESENTATIONS

8.1 Correspondence - None

8.2 Petitions - None

8.3 Presentations - None

9. REPORTS

9.1 Staff Reports

9.1.1 Russell Lake Water Quality Policy Review Project

This item was deferred to the next meeting of Harbour East-Marine Drive Community Council.

9.1.2 Project 01367 – Downtown Dartmouth View Planes – Amendments to the Regional MPS, Dartmouth MPS, and Downtown Dartmouth MPS and LUB

A staff report dated May 17, 2013 was before Community Council.

Mr. Mitch Dickey, Planner, presented the project to Community Council.

Mr. Dickey clarified at the request of Councillor Hendsbee that theoretically buildings could be built up to the red line indicated on the “Development Simulation for Preferred Views” photos included as Figures 2, 3, 4, and 5 in the staff report.

MOVED by Councillor Karsten, seconded by Councillor Nicoll, that Harbour East-Marine Drive Community Council recommend that Regional Council give First Reading to the proposed amendments to the Regional Municipal Planning Strategy, the Dartmouth Municipal Planning Strategy, and the Downtown Dartmouth Municipal Planning Strategy and Land Use By-law as contained in Attachments A, B, C, and D of the May 17, 2013 report, in order to revise protected view planes and waterfront view corridors and schedule a public hearing.

Mr. Dickey advised, at the request of Councillor Karsten, that the transportation corridors secondary planning exercise for Central Halifax and Dartmouth associated with the Centre Plan has halted and staff are looking at how to integrate that into the whole of the Centre Plan. The amendments proposed for the Downtown Dartmouth View Planes will bridge that time until the Centre Plan is complete, in approximately two to three years.

Councillor Nicoll commented that property owners don't own a view, they own a property, and noted that discussions on this topic were held at the recent Federation of Canadian Municipalities conference in Vancouver.

Councillor Hendsbee, noting that some jurisdictions are discussing the right to light, and air rights with regard to development planning, inquired whether HRM or any other municipalities have or are working on any sight lines protection for property owners. Mr. Dickey advised that the HRM Charter and the Municipal Government Act give municipalities in Nova Scotia the ability to deal with solar access (shadowing) on properties through planning documents, although HRM does not have any specific regulations in the Municipal Planning Strategy documents in this regard. He noted that British Columbia and Ontario have legislation with regard to air rights and ownership of air space.

Councillor Hendsbee suggested that although the Brightwood Golf Course is a private property, it does have a public benefit. He noted that the Brightwood property has significant views of the Halifax Harbour and the Bedford Basin.

MOTION PUT AND PASSED.

9.2 Boards & Committees - None

10. MOTIONS - None

11. ADDED ITEMS - None

12. NOTICES OF MOTION - None

13. PUBLIC PARTICIPATION

No members of the public came forward for public participation.

14. NEXT MEETING DATE – July 4, 2013

The next meeting of Harbour East-Marine Drive Community Council will be held on Thursday, July 4, 2013 at 6:00 p.m. in the Dartmouth Council Chamber (rear, waterside entrance), 90 Alderney Drive, Dartmouth.

The June 20, 2013 meeting is not required and has been cancelled.

15. ADJOURNMENT

The meeting was adjourned at 7:57 p.m.

Jennifer Weagle
Legislative Assistant

INFORMATION ITEMS - None