

PENINSULA COMMUNITY COUNCIL
MINUTES

May 10, 2010

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

STAFF: Mr. Randolph Kinghorn, 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 Uteck that the minutes of April 12, 2010 be approved. MOTION PUT AND PASSED.

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

Additions:

- 12.1 Halifax Common Summer Events - Communications Plan (Councillor Watts)
- 12.2 Minor Baseball (Councillor Sloane)

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: None

5. MOTIONS OF RECONSIDERATION: None

6. MOTIONS OF RESCISSION: None

7. CONSIDERATION OF DEFERRED BUSINESS: None

8. HEARINGS

8.1 Public Hearings:

8.1.1. Case 01319: Development Agreement - 5896 Spring Garden Road and 1489 Carlton Street

- A report dated February 25, 2010 was submitted by the Chair of the District 12 Planning Advisory Committee, with an attached staff report dated January 13, 2010.

Mr. Luc Ouellet, Planner 1 outlined the application by Geoff Keddy & Associates for lands of Spring Garden Towers Incorporated and Sandy Rutledge to discharge the existing development agreement for 5896 Spring Garden Road and to enter into a new development agreement for 5896 Spring Garden Road and 1489 Carlton Street, Halifax, to expand the existing coffee shop use.

Highlights of his presentation are noted as follows:

- Current zoning regulations allow for R-1 uses but this does not include restaurants; however policy 6.8 of the Halifax Municipal Planning Strategy

- enables Community Council to consider the application.
- The building, which is a registered heritage property has been occupied as a coffee shop since 2007 with no issues in this regard; the proposal is not expected to have any impact on the heritage value.
- Most of the customers are from the neighbourhood and tend to walk to the shop, however, there is ample on-street parking for vehicles.

There were no questions from Community Council.

The Chair reviewed the Rules of Procedure for public hearings and opened the hearing.

Mr. Ned Zimmerman advised that he was the Coffee Shop's Manager for the past three years. He added that it has become a gathering place for Dalhousie's medical school students, retired individuals, and other students in the area. Mr. Zimmerman indicated that the shop has become more to the neighbourhood than just a coffee shop, as he has been asked to hold book signings, readings, and community meetings at the location. He advised that the expansion will allow it to continue as a small community gathering place and he hoped that it would continue to develop as focal point for the neighbourhood.

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 public hearing close. MOTION PUT AND PASSED.**

MOVED by Councillor Sloane, seconded by Councillor Watts that Peninsula Community Council:

- 1. Approve the Development Agreement, included as Attachment A of the January 13, 2010 staff report to permit a restaurant/coffee shop within the registered heritage properties located at 5896 Spring Garden Road and 1489 Carlton Street, Halifax.**
- 2. Require the agreement be signed within 120 days, or any extension thereof granted by Council on request of the applicant, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.**
- 3. Discharge the existing development agreement that applies to 5896 Spring Garden Road, to take effect upon the registration of the new development agreement.**

Councillor Sloane noted that the coffee shop was a Fair Trade establishment and was a good corporate citizen. She advised that at the public meeting held on this matter, everyone was in favour of the application.

Councillor Watts advised that she also supported this initiative and she added that she

was a member of the Heritage Advisory Committee, and the Committee felt that it was an appropriate development for this heritage building.

MOTION PUT AND PASSED.

8.2 Variance Appeal Hearings:

8.2.1 Variance Appeal: Variance #15975 - 6088 Oakland Road

- A staff report dated April 28, 2010 was submitted.
- Correspondence dated March 31, 2010 was submitted from David M. Campbell.

Mr. Mike Cowper, Development Technician, presented the report on an application for a variance from the gross floor area (GFA) requirements of the Halifax Peninsula Land Use By-law to permit the construction of a new single unit dwelling. He advised that the variance was approved by the Development Officer but two appeals have been filed.

Mr. Cowper advised that the proposal is to construct a dwelling with a gross floor area of 5233 square feet, on a 7776 square foot lot, but the maximum permitted under the gross floor area is 3888 square feet. He reviewed the criteria by which the Development Officer reviewed the proposal and granted the variance, noted as follows:

- The variance does not violate the intent of the Land Use Bylaw as the proposal is in keeping with the size, scale, and height of other homes in the neighbourhood.
- The majority of homes in the area exceed the Floor Area Requirements(FAR) by 17 percent and the proposal also exceeds the FAR by 17 percent; the proposal is in keeping with the size of a dwelling in relation to the size of the lot, and it is in keeping with the existing homes in the neighbourhood; therefore the difficulty experienced is not general to the properties in the area.
- The property is currently under construction and a permit was approved in December 2009 and, under this application the basement ceiling height was proposed at less than 1.95 metres. When the height is less than 1.95 metres it is not included in GFAR or FAR calculations as it is not considered habitable space. In early April a stop work order was issued as staff determined that the basement ceiling height was more than 1.95 metres as shown on the approved plans. The order was amended to permit construction to proceed with a caveat that the basement area be constructed as per the approved plans.

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

Mr. Warren Zimmer, Oakland Road, addressed Community Council and advised that both he and his wife oppose the variance. Mr. Zimmer stated that it was always the

intention of the property owner to build the basement at 8.5 ft. noting that the framing had gone in at that height before the walls went up. He suggested that they were working from two sets of plans. Mr. Zimmer noted that after the stop work order was issued on the property, rather than comply with the approved plans, the owners went the route of a variance application, which was granted. Mr. Zimmer advised that in his view, it was the intention of the property owner to build a house bigger than what was permitted under GFAR and that after they got their permit, they changed their plans. He added that they should not be rewarded for intentional disregard of the Land Use Bylaw. Mr. Zimmer also pointed out that the house will be largest in the area, and does not fit with the character of the neighbourhood.

Mr. David Harris, Oakland Road, advised that he was reluctant to address this matter as the property owners will be his future neighbours, however, he was in agreement with Mr. Zimmer. Mr. Harris added that he felt this process was a calculated attempt to circumvent the rules and that he believed the house was never intended to be 3800 square feet but to make it as big as possible. Mr. Harris noted that another issue raised was whether the basement is correctly defined as a basement. He advised that two walls are exposed and two are not, with both the rear and left side being exposed. Mr. Harris added that he felt that people should not be rewarded for playing games with the rules.

Ms. Ethel Ingram, Oakland, addressed Community Council in regard to the process. She suggested that this process puts the onus on the neighbours and not on the City. She encouraged Community Council to reconsider the process when issues of housing and construction come up in a neighbourhood.

Ms. Colleen Mizerit, the applicant, addressed Community Council and advised that her building plans have not changed, and that they were the same as were submitted to the city. She explained that her original intention was to renovate the house, however, once this was underway they found that very little would pass current building code, so it was then that she applied for demolition permit. Ms. Mizerit added that she was under tight time constraints to come up with a new set of drawings, and that she had already hired a work crew. She advised that her building plans included heat pumps, which require a lot of bulkheads. As a result of this, it impacted on the basement and she lost an area she had intended be used as an exercise room. Ms. Mizerit pointed out that this is why she applied for the minor variance, and that there was never any intention to deceive anyone. With regard to concerns raised about the size of the home, she pointed out that it was a two storey home but that it may appear larger because it was positioned on the highest point on the street.

Mr. Mizerit addressed Community Council and provided further details on the difficulties he and his wife encountered during the design and construction of the home. He noted that they are proceeding with the same plans as were approved, but due to the issues that arose involving duct work and the fact that trusses had already been purchased, the advice they received from their engineer on how to deal with these issues involved applying for a variance. Mr. Mizerit advised that there was never any intention to mislead the City or his neighbours.

There being no further speakers, it was **MOVED by Councillor Uteck, seconded by**

Councillor Watts that the appeal hearing close. MOTION PUT AND PASSED.

MOVED by Councillor Uteck, seconded by Councillor Sloane that the decision of the Development Officer be overturned and the variance be refused.

In moving her motion Councillor Uteck indicated that her concern was not as much about what happened but how it happened, suggesting that there was overwhelming evidence the house was being built with the intent of using the basement. She also noted that in her previous experience with matters like this and involving GFAR (Gross Floor Area Ratio), the applicant will usually speak with their neighbours and the Councillor. Councillor Uteck added that she's had no such discussion with the property owners. Councillor Uteck indicated that her decision was based calls of concern from the neighbours that she has received and that the construction continued even after a stop work order was issued.

Councillor Sloane indicated that she supported the motion because GFAR was put in place to prevent overbuilding.

Councillor Watts also indicated her support for the motion was based on support for GFAR.

MOTION PUT AND PASSED.

At this time, Councillor Blumenthal asked Councillor Sloane to assume the Chair, so he could speak to the following item.

8.2.2 Variance Appeal: Variance #15973 - 5644 Kane Street, Halifax

- A staff report dated April 29, 2010 was submitted.

Ms. Shilo Gempton, Development Technician, outlined the application for a variance from the lot area, left side yard setback, front yard setback, and lot coverage requirements of the Halifax Peninsula Land Use By-law to permit the construction of a commercial (restaurant) building with two residential units, and the reasons why the Development Officer refused the request. She advised that the applicant is proposing to demolish the existing building and construct a new commercial building with two residential units.

Ms. Gempton explained that the left side yard setback requirement for the commercial proposal is 5 ft. and the requested reduction is 2 ft. 10"; the minimum lot size for a commercial use is 4,000 sq. ft. and the lot is 2,838 sq. ft. With regard to the residential proposal, the minimum lot size requirement is 5,000 sq. ft., the minimum front yard setback is 15 ft, the maximum lot coverage is 35% and the minimum left side yard is 5 ft. The lot size is 2,838 and the proposed front yard setback is 4.5 ft, and the proposed lot coverage is 45.4%, and the proposed left side yard is 2ft. 10". Ms. Gempton outlined the criteria under the Land Use Bylaw by which the Development Officer reviewed the application and refused to grant the variance. She advised that the proposal would reduce the lot size by almost half of what is required, and reduce the front yard setback

to less than 1/3 of the requirement, the left side yard setback by nearly half of the requirement and increase the lot coverage by 10 percent. Ms. Gempton added that the proposal is too large on a small lot with an intense commercial use and two residential uses. She pointed out, however, that a variance for replacement of the existing uses (one commercial and one residential) could be supported in that a non-conforming use has existed since prior to 1920. Ms. Gempton advised that the difficulty experienced is general to the properties in the area and that there has been no intentional disregard for the requirements of the Land Use bylaw.

There were no questions from Community Council.

At 7:55 p.m. Community Council recessed

At 7:58 p.m. Community Council reconvened

The Chair reviewed the Rules of Procedure and opened the Hearing.

Mr. Richard Kassner addressed Community Council and advised that he was the architect for the project and he was representing the property owner, who bought the property seven years ago. Mr. Kassner explained that two years ago he was asked by the property owner to renovate the building. He reviewed the difficulties encountered in regard to the building itself and the planning regulations that the property falls under. Mr. Kassner advised that in working with municipal staff and the surrounding neighbours, who are very supportive, they have now reached this stage in the process. He added that the property owner would like to renovate to enhance his restaurant, and in addition to living above the restaurant, he would like to create another unit to provide additional rental income. Mr. Kassner noted that the proposal will align the building with the rest of the street.

Mr. Brian Gallant, a resident of Kane Place, advised that he was a neighbour of property owner and has known him for a number of years. Mr. Gallant indicated that he strongly supported the proposed renovations and noted that there were 40 names on a petition that was submitted with the application indicating no objections with the architectural design or setbacks of the building. Mr. Gallant added that this project was a good fit for the neighbourhood and he asked Community Council to look favourably on the variance request.

Mr. Lucien Nehme, the applicant, addressed Community Council and explained that he had been working on his building since he purchased it, trying to make it more energy efficient as it is expensive to heat, and to have an apartment above the restaurant suitable for his growing family and that would keep him close to his business. He pointed out that the restaurant has been in business for 64 years and indicated that there was a lot of community support for him to fix the building to provide an updated restaurant and that would be more accessible to his elderly and disabled customers.

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

MOVED by Councillor Blumenthal, seconded by Councillor Watts that the decision of the Development Officer be overturned and the variance be granted.

Councillor Blumenthal advised that he has not received any calls of objection from the residents of the area, and indicated that he was supportive of the applicant's proposal noting that he was a very hard working individual and deserves to have this opportunity for a business that he cares about so much.

Councillor Watts added that she was pleased to second the motion and that the community support shown for this proposal speaks to the application.

MOTION PUT AND PASSED.

Councillor Blumenthal assumed the Chair.

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: None

11. MOTIONS:

Councillor Watts indicated that her motion of 11.3 pertained to her motion of 11.1, therefore, she was recommending that it be combined with the motion of 11.1, **to which it was agreed.**

11.1 Councillor Watts

MOVED by Councillor Watts, seconded by Councillor Sloane that staff provide a report to Peninsula Community Council on the content included in the economic analysis that is done by Moncton on the major concerts that are held there to clarify what information is provided in the public domain. And, to request that the Deputy Chief Administrative Officer provide a written report to Peninsula Community Council on the process of how major concerts are decided for either the Garrison Grounds or the North Common including an accurate projection for the number of concert goers that can be accommodated at the Garrison Grounds and whether there is a mechanism to monitor ticket sales leading up to the event to ensure appropriate placement of concerts. MOTION PUT AND PASSED.

11.2 Councillor Watts

MOVED by Councillor Watts, seconded by Councillor Sloane that staff develop a FAQ sheet for the HRM website on the process related to the placement of

communications facilities within HRM similar to the resource that is available on the City of Winnipeg website.

Councillor Watts advised that there have been many questions about recent communication facilities in the Herring Cove area and in her own district. She added that she has referred people to a helpful resource on the City of Winnipeg website, and has discussed this with staff and that they are supportive of the idea.

MOTION PUT AND PASSED.

11.3 Councillor Watts

This motion was combine with item 11.1.

12. ADDED ITEMS:

12.1 Halifax Common Summer Events - Communications Plan (Councillor Watts)

Mr. Mike Gillett, Coordinator, Civic Events and Festivals provided an update on the communications plan in regard to the events being held this summer on the Halifax Common.

A brief discussion ensued and the following points were put forward:

- Councillor Sloane advised that she would update her website, the Councillor's Office website and her other electronic social media with any communications information that staff send out regarding this summer's events on the Common.
- Councillor Uteck noted that, previously, the Councillors had a *concert update e-mail list* in which they could send out important updates and she suggested that this list be re-introduced as means to get out information, particularly, if there has been a sudden change in plans.
- Councillor Watts suggested that staff be cognizant that not everyone uses electronic media as a means of getting information. She advised that she would forward to staff a list of names that require a direct contact (e.g. a telephone call, or a visit in person) to ensure they are aware of any issues that come up, such as traffic changes or street closures.
- Councillor Watts advised that she has received concerns from some business owners in the area that there is an assumption by the public that businesses will either close or the public will feel it is too difficult to shop, if there is a change in the traffic patterns due the concerts. She asked that staff ensure there is appropriate public notification that the businesses are open, if there is a change in the traffic. Councillor Watts also asked that staff forward to the area Councillors a web link to their communication page.

12.2 Minor Baseball (Councillor Sloane)

Councillor Sloane advised that over the past year Community Council has heard concerns from those involved in Minor Baseball about the lack of a minor league 'home', resulting from not only the events on the Common but from the under-utilization of other areas, and due to the manner in which other teams get access to the fields on the Common. She noted that the HRM by Design concept promotes "Complete Neighbourhoods". The Councillor added that she would like a baseball strategy developed for the Peninsula so that there is a sustainable and reliable spot for Minor Baseball, and that the youth do not have to go off the Peninsula in order to play.

MOVED by Councillor Sloane, seconded by Councillor Watts that staff prepare a report on a strategy to sustain minor baseball on the Peninsula, which would include changes for next year that can create a home for minor leagues. MOTION PUT AND PASSED.

13. NOTICES OF MOTION

13.1 Councillor Watts

Councillor Watts gave Notice that at the next regular meeting of Peninsula Community Council scheduled for Monday, June 14, 2010 she intends to move a motion that HRM develop a policy to manage request for upgrades to sports fields in HRM parks on the Peninsula. The following items could be included:

- There needs to be an approve plan for upgrades to sports fields that is presented to HRM staff hat includes Real Property Planning, Area Recreation Coordinator, TPW staff and District Councillor. For replacement of existing equipment, this process would include TPW staff and District councillor only.
- In the case of sports groups or leagues that use several sports fields that cover one or more districts, the plan for upgrades would come to community council for approval.
- Sports teams using sports fields or facilities need to be made aware that unless the upgrades are in an approved plan they will not be approved even if there is external funding available.
- Community consultation about a proposed upgrade is at the discretion of the District Councillor.
- If the upgrades are not coming from capital or district capital funds, then an agreement needs to be developed between the sports team and HRM that covers maintenance, insurance, removal agreement, etc.

In the case of the baseball leagues specifically, I request that staff provide an analysis done with representatives from all the leagues that play on the Peninsula to look at the resources available, needs of the leagues and develop a plan for upgrades that reflects the Peninsula reality of multi-use fields. This analysis would then guide an approved plan for upgrades.

14. PUBLIC PARTICIPATION

No one came forward to address Community Council at this time.

15. NEXT MEETING - June 14, 2010

16. ADJOURNMENT

The meeting adjourned at 8:30 p.m.

Sheilagh Edmonds
Legislative Assistant