

CHEBUCTO COMMUNITY COUNCIL

MINUTES

APRIL 12, 1999

THOSE PRESENT: Councillor Bill Stone, Chair
Councillor Stephen D. Adams
Councillor Russell Walker
Councillor Graham Read

ALSO PRESENT: Deputy Mayor Uteck
Barry Allen, Municipal Solicitor
Greg Smith, Development Officer
Stephen Feist, Planner
Sandra Shute, Assistant Municipal Clerk

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1. **INVOCATION**

The meeting was called to order at 7:00 p.m. with an Invocation at 2750 Dutch Village Road, Halifax.

2. **SWEARING IN CEREMONY**

Councillor Graham Read - District 17 - Purcell's Cove - Armdale was duly sworn in by Deputy Mayor Larry Uteck.

3. **APPROVAL OF MINUTES - MARCH 1, 1999**

MOVED by Councillors Walker and Adams to approve the Minutes of meeting held on March 1, 1999 as circulated. MOTION PUT AND PASSED.

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

Added Items: RCMP/Halifax Regional Police - Councillor Adams

Deletions: 10.1.1 - Delegations - Greater Chebucto Community Development Association

MOVED by Councillors Read and Adams to approve the Order of Business as amended. MOTION PUT AND PASSED.

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

5.1 **Status Sheet Items**

5.1.1 **Snow Removal from Sidewalks**

An Information Report dated March 9, 1999 entitled "Enforcement of By-law S-300 re Snow and Ice Removal from Sidewalks" was before Community Council.

MOVED by Councillors Walker and Adams to accept the report. MOTION PUT AND PASSED.

5.1.2 Dumping - Harrietsfield and Williamswood and Possibility of Gate

Councillor Adams moved this to the September meeting.

5.1.3 Feasibility of Community Transit - Sambro/Harrietsfield Area

MOVED by Councillors Adams and Walker that staff be directed to advise Community Council how to incorporate this into next year's area rate - the different levels of rating - District 18, former District 5, the entire Chebucto Community Council catchment area and if it is possible to put area rates on businesses. MOTION PUT AND PASSED.

5.1.4 Request for Mailbox - 3 Ford Street

A letter dated March 17, 1999 from the General Manager of Commercial Sales, Canada Post was before Community Council advising that a mailbox would be installed at the corner of Ford Street and Main Avenue. Canada Post would be monitoring its use and the other mailboxes in the immediate vicinity over the next few months. Canada Post would subsequently advise of its findings.

Councillor Walker said he would appreciate that anyone who could, should use the new mailbox, because it was on a trial period.

5.1.5 Tax Rate for Fergusons Cove Area

Councillor Adams advised he had brought this matter forward to Regional Council in the form of Notice of Motion and a report was being requested.

5.1.6 Aster Court, Glenbourne

An Information Report dated March 30, 1999 on the above was before Community Council.

Councillor Stone advised that the report dealt with the main issues put forward at the last meeting. The conclusion of the report indicated that the path through Park SM-2 would be relocated to the western side of the stream, further away from the residents of Aster Court and the Stage II Agreement would be amended accordingly. It was also recommended that the fence along the park boundary and the rear property lines of Aster Court be constructed as prescribed by the Stage II Development Agreement for Aster Court.

Councillor Stone pointed out that other concerns of the residents expressed at the last meeting were either beyond HRM's control or could not be dealt with.

Councillor Walker referred to page 4 of the report and asked if the matter of how Greater Homes sell their houses involves HRM or not. In reply, Mr. Feist, Planner advised there was not much that HRM could do in terms of monitoring what real estate agents tell people. It was between the individual and the company. There are organizations such as the Better Business Bureau that investigates.

MOVED by Councillors Walker and Read to accept the conclusions contained in the report and that the conclusions in the Staff Report be carried out. MOTION PUT AND PASSED UNANIMOUSLY.

6. **MOTIONS OF RECONSIDERATION** - None
7. **MOTIONS OF RESCISSION** - None
8. **CONSIDERATION OF DEFERRED BUSINESS** - None
9. **PUBLIC HEARINGS**
- 9.1 **Appeal of Minor Variance Approval for 16 Rosedale Avenue - Case 5213**

A Staff Report dated March 16, 1999 re the above was before Community Council.

Mr. Greg Smith, Development Officer advised that the decision to grant a Minor Variance had been appealed by two of the property owners in the neighbourhood. With the aid of overheads, he provided an overview of the Staff Report. Subsequently, he advised he had approved the Minor Variance based on the terms and conditions of the Planning Act which stated that the Minor Variance could be approved if it was considered to be minor, if it was not general to properties in the area and if it was not intentional disregard for the terms and conditions of the Planning Act or Land Use By-law. He added further information as far as his decision to grant the Minor Variance was concerned.

Councillor Read asked the area of the lot and if the garage was built as a two-storey structure. In reply, Mr. Smith advised the lot was approximately 5000 sq.ft. and the garage was built in 1978 as a two-storey structure. On a further question as to the lot coverage, Mr. Smith advised that the permitted lot coverage was 35% of lot and the addition would mean 33-34%.

Councillor Stone referred to the letters in opposition received, one of which indicated that the bedroom window would be 3' from the new structure. He asked for clarification. Mr. Smith advised the existing window in the garage would be 3' from the lot line and the abutting dwelling to the right is situated in the middle of the property. It was not 3' from the building on the abutting property.

Councillor Stone referred to the other letter and concern about a fireplace. In response, Mr. Smith said he understood it was a pellet stove which requires venting but not a chimney. It was proposed for the same wall as the 3' distance.

Councillor Read asked what was the spacing between the main house and the property to the left of the building. He was told it was somewhere between 2 ½' and 3' at the wall structure. The side yard requirement was 8' but it pre-dates the By-law.

The Chair then called for speakers in favour of the Minor Variance.

Mr. Ernest Ritchie, the owner of 16 Rosedale Avenue advised that Mr. Tsouris' house was actually about 30' from the property line and the distance between the main structure and the fence was 24'. With regard to the pellet stove, he wanted to use it for emergencies when there was no power to heat and cook. It could be by-passed.

The Chair then called for speakers in opposition to the Minor Variance - in favour of the Appeal.

Ms. Glenda Armsworthy, 7 Central Avenue said that the building is very high in the back part next to her property - the garage portion - and she was concerned that with a fireplace or pellet stove, the smoke would come down over her and she has a bronchial problem. As well, when the permit was first granted, it was for the use of a garage or playroom and now they want to do something with it and want to change the By-laws. The By-laws were for a reason - to protect people - and she felt that if a By-law was changed for one or two people, the whole thing should be changed. It was not built so that in 10 or 20 years time it could be made into a living quarters. There were two very large buildings on the property that they are going to join together by a hall and bathroom. That was too much for one piece of property; it was not a duplex which was allowed in an R-2 zone, an apartment in a house or semi-detached. For a garage there has to be a certain distance from the other properties and she felt it is a little too close to the line.

Mr. George Tsouris, 12 Rosedale Avenue was represented by Ms. Glenda Armsworthy because Mr. Tsouris did not speak English well. On behalf of Mr. Tsouris, Ms. Armsworthy stated that Mr. Tsouris lives next door and it would be too busy for his own privacy because it was not even 3' away. Mr. Tsouris had someone write in regarding his concerns.

Councillor Stone acknowledged receipt of letters from both Mr. Tsouris and Ms. Armsworthy as part of the Staff Report.

There were no further speakers.

Councillor Adams asked for further clarification regarding the statement in Mr. Tsouris' letter that the bedroom window would be 3' from the new structure. In reply, Mr. Ritchie said that Mr. Tsouris' dwelling was 30' from the property line and his bedroom window could be 33' from the garage. Mr. Tsouris was in a lowered area and was protected.

MOVED by Councillors Walker and Adams to close the Public Hearing. MOTION PUT AND PASSED.

MOVED by Councillors Walker and Adams to uphold the Development Officer's decision and to deny the Appeal of the Minor Variance Approval for 16 Rosedale Avenue.

Councillor Read stated that he had an opposite conclusion of what the Planning Act said regarding a Minor Variance. The intent of the Land Use By-law was to provide adequate spacing or a desirable amount of spacing between living areas and this was not the case and does violate the intent of the Land Use By-law and, therefore, was not minor. Mr. Smith had indicated the difficulty was not general to the area but, according to the map, it looked typical of a 5000 sq.ft. lot. The existing building, although legal, was non-conforming - more than 14' high, a two storey garage which was not permitted and because there was a playroom, it could be classified as living space which was non-conforming. The dwelling on the site was less than 8' from one of the abutting property lines, which was non-conforming. He understood that if there was non-conforming property, you were not allowed to make any additions. The addition should not be allowed because it does not meet the test in the Planning Act or Land Use by-law for a Minor Variance, was non-conforming and when the Land Use By-law was amended in the early 90's to limit garages to 14' and one storey, the intent was not to allow two storey garages and this should not be violated further by allowing this particular change to take place. It was out of context with the surrounding property, located in such a way as to dominate the adjacent properties and, in recent years, back yards have become more of a living space for people. This is the only property in the Rosedale area that hugs the property lines on both sides. The situation should not be aggravated by allowing for an addition of 340 sq.ft. between the house and garage. In his opinion, the granting of the Minor Variance was a mistake by the Development Officer as it was inconsistent with actions and permits given in the past. The dwelling arrangement would be out of context with the surrounding properties.

Councillor Stone said that each Minor Variance should be dealt with on its own merits. Looking at the map, he did not see many garages in connection with the properties in the area. He had concerns from the letters sent in but the answer received about the 3' distance was not 3' from the abutting dwelling but from the line. With regard to the pellet stove, he did not think that could be dealt with from a variance perspective but the owner had advised he was prepared to look at this. As far as whether or not this is a Minor Variance, staff advised

that the application meets the requirements of the Land Use By-law and this was an R-2 area with only one unit on the property at the moment. The Minor Variance would allow for a second unit. While he understood Councillor Read's points, in this case he thought it was a Minor Variance. There was a fair distance from the next existing dwelling.

Councillor Read referred to the houses being quite some distance from the property line and said the owner of 16 Rosedale was counting on the fact that the abutting property owners have kept their houses well away from the property line. Each of the abutting property owners has the right to build up to within 8' of their property line.

Councillor Read then asked Mr. Barry Allen, Municipal Solicitor, for his interpretation of the Planning Act and what is a Minor Variance.

Mr. Allen said that with regard to a non-conforming use, it was the building itself that was non-conforming but the use to which it was put conforms. The provision of the Planning Act that applies provides that you cannot expand a structure that contains a non-conforming use. This does not apply because the use is conforming. Even if it were not, the effect of the decision to grant the variance was that both the structure and use would then be conforming. The main issues raised pertaining to the application of the sections of the Act themselves, there was no case law in Nova Scotia on Minor Variances because they never get to Court. Whether or not the variance is minor, there were two ways to look at it: 1) a quantitative analysis - variances of up to 100% have been found not to be minor but in other cases small percentages have been found to be more than minor and qualitative analysis - you have to determine what the intent of the Land Use By-law is in providing for a side yard. Community Council would have to decide what it thinks the intent of the side yard provision is and the degree to which the variance infringes on or violates the intent. The variance provisions do permit a degree of discretion. 2) What is general to the property in the area and there were very few situations where there is a completely unique situation. The degree to which you can grant variances where there is some commonality has not been tested in the Courts. Community Council would have to decide if there was something unique or different about the situation here. With regard to intentional disregard, it was not an issue.

Councillor Walker asked if, before the addition is built on and the house is sold, would the Minor Variance be null and void. In response, Mr. Smith advised the Minor Variance goes with the property. Another owner would not be permitted to do anything more than the Minor Variance permits.

MOTION PUT AND PASSED 3-1.

10. **CORRESPONDENCE, PETITIONS AND DELEGATIONS** - None
11. **REPORTS**

11.1 **Development Agreement - 25 Convoy Avenue, Halifax**

**MOVED by Councillors Walker and Adams to accept the report as presented.
MOTION PUT AND PASSED.**

Councillor Walker submitted a Petition signed by 27 residents which had no objections to a bakery/cafe in the area.

12. **MOTIONS** - None

13. **ADDED ITEMS**

13.1 **RCMP/HALIFAX REGIONAL POLICE**

Councillor Adams explained that as a result of a recent decision by the Halifax Regional Police Commission, he wanted to make the following motion:

MOVED by Councillor Adams that Chebucto Community Council request Halifax Regional Police Service to provide a Staff Report exploring the feasibility of assuming responsibility for the enforcement of the area from Harrietsfield through Sambro to Herring Cove (the area known as the “Loop”). Further, that information be included outlining the following:

1. **The ratio of municipal and provincial tickets issued in the former District 5 (Which box on the ticket is ticked after a moving violation or SOT)**
2. **Response times for calls for service for District 18 for the Regional Police Service and the RCMP**
3. **Additional costs required to assume responsibility for the area (any effect it would have on the area already policed)**
4. **The number of overnight parking ban tickets issued in each jurisdiction**
5. **Other pertinent and imperative information that would be helpful in allowing a decision to be made with regard to the feasibility of the process**
6. **The rationale and criteria utilized by the Halifax Regional Police Commission to determine how the decision was brought forward and their definition of what is considered satisfactory policing in the area policed by the RCMP.**

Seconded by Councillor Walker

Councillor Adams acknowledged that the report would be a cooperative report and hopefully would be available for the next meeting. He requested that Police Services be advised that if there is one segment only of the report available (either Halifax Regional Police or RCMP), he would like that to come forward when available and not wait for both segments.

MOTION PUT AND PASSED UNANIMOUSLY.

14. **NOTICES OF MOTION** - None

15. **PUBLIC PARTICIPATION**

Mr. Bob Zinck, Doull Avenue said he understood a connector road might be proposed from Northwest Arm Drive/Dunbrack Street to the subdivision. He requested details if there was something being proposed. He noted there were no sidewalks on most of the streets and a couple schools in the area.

It was agreed to request a Staff Report.

Mr. William Phillips, 9 Crestview Drive raised the following points:

- C He welcomed Councillor Read as the new Councillor for District 17.
- C He asked if there was a way to have two microphones available to the members of Community Council (two Councillors could share one each) when they sit at the middle table so that Councillors would not have to pass the microphone around to each other. The Clerk was asked to look into this possibility.

On another matter, Councillor Adams congratulated Mr. Phillips for defending Mr. Chedrawe, another follower of Community Council, very eloquently on Mr. Chedrawe's actions on a Hot Line Show and coming forward with correct information. He thanked Mr. Phillips for his objectivity and support of a good friend of Community Council.

Mr. Dave Meagher, 2 Aster Court referred to concerns expressed by residents of his area at the last meeting and asked if there was a report available regarding Aster Court, Glenbourne Subdivision. In response, Councillor Stone advised that a report had been received earlier in the meeting, before Mr. Meagher arrived. He explained the contents of the report, the conclusions reached and stated he intended to provide the residents of Aster Court with copies of the Staff Report.

Mr. Meagher raised concerns re blasting in the area, which has dropped off considerably recently but could occur again.

16. **NEXT MEETING** - May 3, 1999

17. **ADJOURNMENT**

On a motion from Councillor Adams, the meeting adjourned at 8:30 p.m.

Sandra M. Shute
Assistant Municipal Clerk