


Peninsula Community Council
September 12, 2005

TO: Peninsula Community Council

SUBMITTED BY: 
Heather Ternoway, Chair
District 12 Planning Advisory Committee

DATE: August 16, 2005

SUBJECT: Gerrard Lodge - Surveys for Development Agreements

ORIGIN

District 12 Planning Advisory Committee meetings - November 22, 2004, June 27, 2005 and July 25, 2005

RECOMMENDATION

The District 12 Planning Advisory Committee recommends that:

Peninsula Community Council request that a full survey on the Gerrard Lodge property be carried out.

Peninsula Community Council, as a working practice, rely on surveys instead of location certificates for all developments requiring Development Agreements within District 12.

BACKGROUND/DISCUSSION

On March 8, 2004, Peninsula Community Council approved a development agreement to permit an addition to 1230 Barrington Street, Halifax, to permit eight residential units.

The plans attached to the development agreement specified a rear yard setback distance of 6.1 feet. Upon preparation of detailed construction drawings, a more detailed survey revealed that a discrepancy existed in the lot size. The rear yard setback was allowed to be reduced to 4.4 feet by the Development Officer, who determined that the 20% reduction in lot size was substantially in conformance with the development agreement. The 4.4 foot measurement was confirmed by a surveyor's location certificate.

A member of the Committee has measured the distance between the two buildings and believes it to be 2'-4" (photo attached). It is felt that either the addition to Gerrard Lodge or the neighbouring home was built over the property line. The Committee is therefore recommending that a full survey of the property be undertaken.

The Committee has concerns relative to fire safety and whether the closeness of the two buildings meets Fire Code regulations.

The Committee further recommends that the Municipality, as a working practice, rely on surveys instead of location certificates for all developments requiring development agreements within District 12. Requiring a full survey prior to approval of a development agreement would eliminate future problems like that of Gerrard Lodge, particularly where buildings are close together. Financial institutions require a full survey prior to securing financing for any development, so it's not felt to be unrealistic to require the full survey prior to approval of the development agreement.

ATTACHMENTS

Photo

Memorandums from Steve Higgins to District 12 Planning Advisory Committee dated June 27 and June 29, 2005.

Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report prepared by: Gail Harnish, Admin/PAC Coordinator, 490-4937

← → 2'-4"



June 27/05



DEVELOPMENT SERVICES - WESTERN REGION

MEMORANDUM

TO: Gail Harnish
FROM: Steven Higgins - Development Officer
SUBJECT: Gerrard Lodge - Info for District 12 PAC

I've reviewed the request for update regarding the Gerard Lodge development. The questions would appear to relate three items:

- 1) General conformance with the Development Agreement;
- 2) Consequences or penalties if the non-compliance with the DA is found to exist; and
- 3) The location of the rear of the building relative to the rear property line.

With regard to item 1), the property is not yet deemed to be in compliance with the Development Agreement as there are some architectural and landscape related improvements that have yet to be completed. Development and Heritage staff continue to work toward resolving these outstanding items. Occupancy permits have not been issued and final inspections have yet to be completed by Building Inspection Staff, Heritage Staff and Development Staff.

With regard to item 2), there are a number of enforcement and remedy provisions set out in Part 5 of the Development Agreement (copy attached). However, in addition to these clauses the Municipal Government Act (MGA) contains a clause (Section 264) that further sets out HRM's authority to compel property owners to comply with Development Agreements (copy attached). Section 264 of the MGA is the preferred method of gaining compliance with Development Agreement breaches.

With regard to item 3), the original concept plans attached to the Development Agreement specified a rear yard setback distance of 6.1 feet. This dimension was based on preliminary survey information and a building size as shown on the proposed plans. Upon preparation of detailed construction drawings, a more detailed survey revealed that a discrepancy existed in the lot size. If a building of the same size and design as the one approved by Council was to be constructed, the resultant rear yard would be 4.4 feet at the closest point. Staff considered the situation and the proposal for a 1.5 foot reduction was approved as being substantially in conformance with the DA.

Please let me know if you need anything further.

Steven Higgins
Development Officer

cc. Paul Dunphy
Sharon Bond
Maggie Holm

- 4.4 If the Developer(s) fails to complete the development, or after five years from the date of registration of this Agreement at the Registry of Deeds, whichever time period is less, Council may review this Agreement, in whole or in part, and may:
- (a) retain the Agreement in its present form;
 - (b) negotiate a new Agreement;
 - (c) discharge this Agreement.

PART 5: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

- 5.1 The Developer agree that any officer appointed by the Municipality to enforce this Agreement shall be granted access onto the Lands during all reasonable hours without obtaining consent of the Developer. The Developer further agree that, upon receiving written notification from an officer of the Municipality to inspect the interior of any building located on the Lands, the Developer agree to allow for such an inspection during any reasonable hour within one day of receiving such a request.
- 5.2 If the Developer fails to observe or perform any covenant or condition of this Agreement after the Municipality has given the Developer thirty (30) days written notice of the failure or default, then in each such case:
- (a) the Municipality shall be entitled to apply to any court of competent jurisdiction for injunctive relief including an order prohibiting the Developer from continuing such default and the Developer hereby submit to the jurisdiction of such Court and waive any defence based upon the allegation that damages would be an adequate remedy;
 - (b) the Municipality may enter onto the Property and perform any of the covenants contained in this Agreement whereupon all reasonable expenses whether arising out of the entry onto the lands or from the performance of the covenants may be recovered from the Developer by direct suit and such amount shall, until paid, form a charge upon the Property and be shown on any tax certificate issued under the Assessment Act;
 - (c) the Municipality may by resolution discharge this Agreement whereupon this Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law; and/or
 - (d) in addition to the above remedies the Municipality reserves the right to pursue any other remediation under the Planning Act or Common Law in order to ensure compliance with this Agreement.

No injurious affection

261 Property is deemed not to be injuriously affected by the adoption, amendment or repeal of a statement of provincial interest, interim planning area and development regulations in connection with it, subdivision regulations, subdivision by-law, municipal planning strategy, land-use by-law or the entering into, amending or discharging of a development agreement.

Former Planning Act

262 A municipal development plan and zoning by-law or municipal planning strategy and land-use by-law adopted pursuant to a former *Planning Act* are a municipal planning strategy and land-use by-law within the meaning of this Act, to the extent they are consistent with this Act.

Conflict

263 In the event of a conflict between this Part and this Act or another Act of the Legislature, this Part prevails.

Breach of development agreement

264 (1) A municipality may, upon the breach of a development agreement, if thirty days notice in writing has been provided to the owner, enter the land and perform any of the terms contained in the development agreement *or take such remedial action as is considered necessary to correct a breach of the development agreement, including the removal or destruction of any thing that contravenes the terms of a development agreement.*

(2) All reasonable expenses, whether arising out of the entry on the land or from the performance of the terms, are a first lien on the land that is the subject of the development agreement.

(3) No action shall be maintained against a municipality or against any agent, servant or employee of a municipality for anything done pursuant to this Section.

Breach of approved site plan

265 (1) A municipality may, upon the breach of an approved site plan, if thirty days notice in writing has been provided to the owner, enter

M E M O R A N D U M

TO: Gail Harnish
FROM: Steven Higgins - Development Officer
SUBJECT: Gerrard Lodge - Additional info for District 12 PAC
DATE: June 29, 2005

I've reviewed the additional request for update regarding the Gerard Lodge development. Following is a breakdown of the particular questions and the associated responses.

- 1) *Has a measurement been taken of the distance from the rear building line to the property line and if so, what is that distance? Committee members believe that it is significantly less than the 4.4 feet provided for in the DA.*

Staff have not taken any measurements as the location of the property line is not apparent in the field and subjective measurements and estimations are not sufficiently accurate for these purposes. Measurements of this sort are always done by professional surveyors and documented in a certified plan called a Location Certificate. The 4.4 foot measurement was confirmed by surveyors location certificate.

- 2) *If the measurement is less than 4.4 feet, what remedy/measures will be taken?*

Since adequate confirmation of the setback has been provided, no remedy/measures are planned. If the Location Certificate had indicated less than the distance allowed in the permit approval and the resultant change was not deemed to be substantially in conformance with the agreement, the developer would have two alternatives:

- a) change the building to comply with the terms of the permit; or
- b) appeal to Council for an amendment of the agreement to permit the lesser distance

3) *What is the definition of/process involved in a more detailed survey?*

Most plans and proposals at the development agreement stage that do not involve subdivision activity are based on existing survey records and any available documentary evidence as to property dimensions and size. This information is used to prepare the building and concept plans that form the schedules to the DA. The next stage of the development process would include on-site survey work completed in support of building construction drawings. These plans require significantly more detailed and accurate information than the previous concept plans. In the vast majority of cases, any discrepancies between existing records and actual on-site survey work are minor and do not result in any visible changes to the concept plan. In this case the result was the rear setback being reduced to accommodate a building of the size and dimensions as those approved through the DA process.

4) *What was the discrepancy in the lot size?*

Staff have requested confirmation of the exact measured differences however the calculations were not available at the time of the drafting of this memo. Staff estimate the difference to be approximately 16 to 20 inches in lot depth across the width of the property.

5) *How was it determined that a 20% reduction in lot size was substantially in conformance with the DA?*

The Development Agreement provides the Development Officer some discretion in respect of the fact that the plans attached to the development agreement are conceptual. In every project regulated by development agreement, there are issues that arise during the detailed design and construction phase that require the Development Officer to decide whether a proposed change is substantially in conformance with the approved concept. As in all cases where these decisions are required, the following process was followed:

- a) The terms of the Development Agreement were examined to see if the document contained the clauses needed to provide the required discretion to the Development Officer and/or any wording that qualified or limited that discretion;
- b) The reasons for the proposed alterations were then considered. For example, was this simply a desire on the part of the developer and was there a substantial advantage to be gained at the community's expense or was there a legitimate explanation for the circumstances. The former would not receive further consideration and the latter would be further explored;
- c) The file records related to the DA were reviewed and discussions were held with the planning staff that were involved with the file in order to gain some perspective on the significance of the issue under consideration; and

- d) Finally, the alternative solutions were explored in the context of the impacts on finished product, time considerations for the property owner, and the spirit of fairness to all involved.

After examining the circumstances as described above, it was determined that the overall proposal was substantially in conformance with the development agreement.

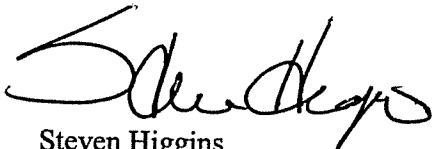
- 6) *Does the metal trim above the door on the Barrington Street facade comply with the DA and where does it state that this is an appropriate material?*

This feature is not in compliance with the Development Agreement. Heritage staff have already advised the Developer that its removal is required prior to any sign off, final approval, or occupancy permit.

- 7) *Was there a formal survey of the lot?*

As noted in item 1) above, a full certified location certificate has been submitted to reflect the location of the building and the property line.

Please let me know if you need anything further.



Steven Higgins
Development Officer

cc. Paul Dunphy
Sharon Bond
Maggie Holm