

HALIFAX & WEST COMMUNITY COUNCIL

MINUTES

February 18, 2013

PRESENT: Councillor Linda Mosher, Chair
Councillor Wayne Mason, Vice Chair
Deputy Mayor Reg Rankin
Councillor Jennifer Watts
Councillor Stephen Adams
Councillor Russell Walker

STAFF: Ms. Karen Brown, Senior Solicitor
Mr. Trevor Creaser, Development Officer
Mr. Miles Agar, Planner
Mr. Ted Aubut, Legislative Assistant

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1. CALL TO ORDER

The Chair called the meeting to order at 7:02 pm in Council Chambers at City Hall, 1841 Argyle Street, Halifax.

2. APPROVAL OF MINUTES – February 4, 2013

MOVED by Councillor Adams, seconded by Councillor Walker that minutes of February 4, 2013 be approved, as presented. MOTION PUT AND PASSED.

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

MOVED by Councillor Walker, seconded by Deputy Mayor Rankin that the agenda be approved, as presented. MOTION PUT AND PASSED.

4. BUSINESS ARISING OUT OF THE MINUTES

4.1 Status Sheet Review

Having reviewed the status sheet, Community Council requested that staff prepare updates for March 18, 2013 on the following items:

- April 11/11: Year-round tennis facility for HRM, as proposed by Tennis Nova Scotia
- April 23/12: Establishment of an Implementation Committee for Western Common Regional Park

Community Council also agreed that the item below can be removed from the status sheet so long as it is discussed within the context of the Centre Plan:

- March 5/12: Prosecution of chickens under the Halifax Peninsula Land Use By-Law

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 17458: 5599 Fenwick Street – Phasing Amendments

The following documents were before Community Council:

- A staff report dated December 4, 2012
- Correspondence from Rebecca Jamieson and Christopher Beaumont dated February 17, 2013
- Correspondence from Jamie Sealy dated February 18, 2013

Mr. Miles Agar, Planner, delivered a presentation on Case 17458, an application by Templeton Properties to amend the phasing provisions of the existing development agreement for 5599 Fenwick Street.

Mr. Agar provided an overview of the existing development agreement, which was approved in 2011 and sets out a comprehensive redevelopment of the Fenwick Tower property in four phases:

- Phase 1: Construction of the West Tower and the west portion of the Fenwick commercial building
- Phase 2: Construction of Fenwick Street townhouses, the redevelopment of Fenwick Tower's facade, and the construction of the eastern portion of the commercial building
- Phase 3: Construction of the South Street Tower and of the east extension of Fenwick Tower, including atrium
- Phase 4: Interior renovation of Fenwick Tower and penthouse addition

He explained that the developer wishes to change the order, but not the substance of the project. He is also proposing to condense the four phases into three, as outlined below:

- Phase 1: Construction of Fenwick Street townhouses, exterior and interior renovation of Fenwick Tower including penthouse addition and construction of eastern portion of the commercial building
- Phase 2: Construction of South Street Tower
- Phase 3: Construction of the West Tower along with the western portion of commercial building

Mr. Agar indicated that the re-phasing presented a number of benefits, including visual and site improvements sooner than previously planned. Given this, he recommended that Community Council approve the proposed amending phasing agreement.

The Chair thanked Mr. Agar for this presentation and asked members of Community Council if they had questions of clarification. As there were none, the Chair reviewed the rules of public hearings and invited residents, for or against the proposal, to the microphone.

Mr. Joe Metledge of Templeton Properties explained that the initial phasing plan was based on a number of financial assumptions, some of which have changed. He noted that the re-ordering of construction plans will free up a lot on South Street to use for construction purposes and to avoid traffic on Fenwick Street.

Mr. Christopher Beaumont of Fenwick Street had no objection to the proposed phasing changes. However, he wished to remind Community Council of the commitment made by HRM to mitigate the project's impact on residents of Fenwick Street. He worried about construction-related traffic during the six (6) year redevelopment of the Fenwick Tower property. Many residents do not have driveways and therefore purchase permits to park on the street. With cars parked on both sides, Fenwick Street is quite narrow. He asked that Fenwick and Lucknow streets not be accessible for truck traffic during construction, noting that the neighbourhood has been disrupted for two years during road repairs. Mr. Beaumont similarly expressed concern over the increased density and its effects on quality of life in the neighbourhood.

Mr. Beaumont submitted a document outlining his concerns to the Clerk.

The Chair reminded the public that the Community Council will only be voting on the proposed phasing changes.

There being no further speakers, the Chair asked the applicant to provide concluding remarks.

Mr. Metledge indicated that the goal of rephrasing is to free up square footage off of South Street to unload trucks and store material. While there will be some traffic on Fenwick Street, major activities will not be on that street.

MOVED by Councillor Walker, seconded by Councillor Watts that the hearing be closed. MOTION PUT AND PASSED.

MOVED by Councillor Mason, seconded by Councillor Walker that Halifax & West Community Council:

- **Approve the proposed amending development agreement, as presented in Attachment A of the staff report dated December 4, 2012; and**
- **Require that 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.**

Councillor Mason acknowledged the concerns raised by Mr. Beaumont and indicated that he will work with the developer to ensure that the project is the least disruptive as possible.

MOTION PUT AND PASSED.

8.2 Variance Appeals

8.2.1 Case 17658: Appeal of Variance Approval, PID No. 41267873, Blink Bonnie Terrace, Halifax

The following documents were before Community Council:

- A staff report dated January 31, 2013
- A tree and vegetation assessment submitted by the applicant
- A list of property owners directly impacted by the proposed variance

Mr. Trevor Creaser, Development Officer explained that the applicant proposes to build a new, single family dwelling on Blink Bonnie Terrace. To do so, she is requesting a front yard setback of 10 feet, 6 inches, instead of the mandated 15 feet, to accommodate a second floor overhang.

Mr. Creaser noted that the lot in question is irregular in shape. Other than the front yard setback, the design meets all other by-law requirements. He then showed an aerial view of the property, explaining that it backs onto 2259 McDonald Street, which the applicant also owns.

Mr. Creaser explained that section 250 of the HRM Charter sets out three (3) criteria for which a Development Officer may not grant variances to requirements of the Land Use By-law, namely:

- If it violates the intent of the development agreement or land use by-law
- If the difficulty experienced is general to properties in the area
- If the difficulty experienced results from an intentional disregard for the requirements of the development agreement or land use by-law

On the first point, Mr. Creaser reiterated that the lot is irregular in shape and area, making it difficult to build a regular home on it. He felt that the variance request was minor and therefore in keeping with the by-law.

On the second point, he indicated that the difficulty experienced is not generalized. Created in 1948, the lot in question is the only undeveloped lot in the vicinity and is not as deep as neighbouring lots.

On the third and final point, Mr. Creaser indicated that the applicant had applied for a development permit in good faith and requested the variance before starting any work on the property.

Mr. Creaser then reviewed the main concerns raised by the appellants, namely privacy, property subdivision, and setbacks. He explained that privacy is not a criteria set out by the land use by-law. The appellants also questioned the legality of the subdivision of the land, given that 2259 McDonald Street has been managed as a single parcel for more than 60 years. To this, Mr. Creaser noted that the lot on Blink Bonnie Terrace was shown on a plan of subdivision in 1929 and described in deed in 1948. Finally, the appellants felt that the proposed building was in violation of the 20 foot rear yard requirement. Mr. Creaser believed this not to be the case. He acknowledged that there will not be 20 feet separating the new home from that of 2259 McDonald Street. However, this is because the addition off 2259 McDonald Street was constructed in 1969, before minimum rear yard setbacks were included to the land use by-law.

In his concluding remarks, Mr. Creaser indicated that Community Council can either uphold the variance approval or overturn it.

The Chair thanked Mr. Creaser for his presentation and invited members to ask questions of clarification.

Councillor Adams observed on page 4 of the staff report that Mr. Creaser had identified and commented on the concerns raised by the appellants. He wished to know if this was common practice.

Mr. Creaser replied that he has seen a few reports that take the same approach.

Councillor Adams wondered if this appropriate, noting that it is up to Community Council, not the Development Officer, to decide whether the appellant's concerns are justifiable.

There being no further questions of clarification, the Chair reviewed the rules of procedure and invited all appellants to the microphone.

Mr. Pat d'Entremont of Blink Bonnie Terrace expressed concern over the size and design of the proposed dwelling. He felt that it was out of character with the neighbourhood and would dwarf other homes on the street. He and his wife would lose their view of the park and of the Northwest Arm. The value of their property may depreciate as a result. Mr. d'Entremont explained that the neighbourhood had been rezoned R1 a few years ago precisely to avoid the construction of large buildings, like that being proposed. Finally, he noted that he and his wife have been living in the neighbourhood for over 20 years and did not know until recently that the lot was separate from that of 2259 McDonald Street.

Mr. d'Entremont provided the Clerk with images of the current streetscape.

Ms. Cindy Newbury-d'Entremont of Blink Bonnie Terrace similarly believed that the proposed dwelling was incompatible with the neighbourhood and would negatively impact property values. She also expressed concern over the appeals process, noting that residents had little time to prepare their response as hearing notices were only circulated one week in advance.

Mr. Alex Fettes of Blink Bonnie Terrace shared the same concerns as Mr. d'Entremont and Ms. Newbury-d'Entremont. Referring to page 4 of the report, he found it strange that staff would prepare a written rebuttal of the concerns raised by the appellants. He would have appreciated if the rebuttal had been circulated to everyone in advance of the meeting.

Mr. Aaron Mitchell of Blink Bonnie Terrace agreed with the previous speakers. He also indicated that the first *and* second floor violate the minimum setback requirement.

As there were no further speakers, the Chair invited the applicant to the microphone.

Mr. Peter McInroy indicated that he would be splitting his time with his client, Ms. Colleen Hendley-Mizerit. He reminded Community Council that the HRM Charter and the Municipal Government Act allow these types of variances. In fact, setbacks are meant to be flexible. Responding to concerns raised by neighbours, he indicated that privacy is not outlined in the land use by-law and that a variance has nothing to do with the look or design of a dwelling. He then confirmed that the first floor, like the second, encroaches into the front yard.

Ms. Colleen Hendley-Mizerit, the applicant, explained that she bought 2259 MacDonald Street in February 2012 because it came with an undeveloped lot on which she could build her retirement home. She felt that both she and her architect had taken a number of steps to ensure that the building would blend in with the neighbourhood by way of materials used, trees and vegetation, and front yard setbacks. She also felt that she had taken necessary steps to advise her neighbours of her plans, including inviting everyone to view and comment on the architectural renderings. She concluded by adding that her immediate neighbours, on both sides of the lot, are supportive of the project.

Councillor Watts called on Mr. Creaser to clarify if the first and second floors encroach into the 15 foot front yard.

Mr. Creaser replied that the main floor is set back at 15 feet but that columns supporting the second floor overhang encroach into the front yard.

Councillor Watts wished to know if, other than the second floor overhang, the building meets all other guidelines, including height and massing.

Mr. Creaser responded in the affirmative.

MOVED by Councillor Walker, seconded by Councillor Adams that the appeal of variance approval be closed. MOTION PUT AND PASSED.

MOVED by Councillor Walker, seconded by Deputy Mayor Rankin that Halifax & West Community Council uphold the Development Officer's decision to approve the request for variance at PID No. 41267873, Blink Bonnie Terrace, Halifax.

Councillor Walker explained that Community Council must assess 3 criteria when reviewing a variance application. Privacy is not one of them. He agreed with the Development Officer that the difficulty encountered was not general to properties in the neighbourhood. He also agreed that the applicant had not shown an intentional disregard of the rules. On those grounds, he would vote to uphold the decision to grant the variance.

At 7:57 pm, Councillor Mosher stepped down as Chair and Councillor Mason assumed the Chair.

Councillor Mosher noted that the issue at hand is whether a 10 foot, 6 inch front yard setback is acceptable when the minimum zoning requirement is 15 feet. Unlike staff, she found it to be unacceptable, adding that a reduction by one-third is significant. She also found the proposed dwelling to be large relative to the lot and incompatible with the neighbourhood, thereby setting a dangerous precedent. As a final point, Councillor Mosher explained that land use by-laws aim to provide a measure of protection to neighbourhoods and to its residents. In this particular case, neighbours could not have assumed that the lot would be developed. For all of these reasons, she would not be supporting the motion.

Deputy Mayor Rankin indicated that Community Council must base its decision on the 3 criteria outlined in the HRM Charter. Whether the appellants knew that the lot could be developed is not part of this discussion - and even if it were, the Development Officer has shown that the lot was deeded in 1948. He then responded to other concerns raised by the appellants, noting that setbacks were established after the addition was added to the home at 2259 MacDonald Street and that ascetics, like privacy, are not a criteria set out in the land use by-law. He similarly countered the argument that the variance approval would negatively impact the valuation of homes in the area.

Councillor Adams noted that the lot has existed since the 1940s and therefore a home can be built on it. However, he did not believe that reducing the front yard setback is appropriate, as the proposed home should meet all setback requirements. On these grounds, he would not be supporting the motion.

Councillor Mosher indicated that consistent setbacks are important for a number of reasons, including preserving the character of an established neighbourhood. She agreed that the lot is irregular but disagreed that the proposed setback is minor. She felt it was inappropriate to approve the project.

Councillor Watts indicated that the point of contention is the second floor overhang. If it is removed, then the building would be compliant. However, height and massing concerns raised by residents will remain even if the front of the building is redesigned. She agreed that ascetics need to be considered in cases like this but she sensed that changing the materials used would not change the neighbours' attitudes about the dwelling.

At the request of Councillor Watts, Mr. Creaser clarified that the second floor overhang is 31 feet in length while the total building length is 56 feet.

MOTION PUT AND PASSED.

9. CORRESPONDENCE, PETITIONS AND DELEGATIONS

9.1 Correspondence

9.1.1 Correspondence from S.M. Mandaville dated February 6, 2013 and February 12, 2013

Community Council acknowledged receipt of Mr. Mandeville's two reports on stressors in stormwater runoff.

9.2 Petitions – NONE

9.3 Presentations - NONE

10. REPORTS

10.1 Reports from members of Community Council

10.1.1 Deputy Mayor Rankin - Leash length in urban areas

Before Community Council were the following:

- A request for consideration prepared by Deputy Mayor Rankin
- Correspondence from Wendy and Bob McDonald dated February 15, 2013

Deputy Mayor Rankin explained that he was bringing this issue forward on behalf of a resident of Clayton Park West, who felt that legislating lease length could prevent pets from intruding on private property and from threatening passersby. Deputy Mayor Rankin remarked that uncontrollable pets discouraged active transportation. He asked for a staff report to explore this matter further, and asked that the report be restricted to Clayton Park West.

Councillor Walker was concerned that the request was too vague, as no leash length was proposed and because the boundaries of Clayton Park West are not defined. He also suggested that such a rule, if implemented, would be difficult to enforce. Councillor Mason wished to know if a memo or verbal update would suffice instead of requesting a staff report.

Deputy Mayor Rankin reiterated his request for a staff report. He felt that it was the best way to explore best practices for controlling dogs on leashes.

Ms. Karen Brown, Solicitor, confirmed that the request requires that the boundaries of Clayton Park West be defined.

Councillor Walker indicated that the motion would be stronger if it applied to a geographic area already defined by HRM, like Halifax Mainland North.

Councillor Watts expressed support for a staff report on this issue, so long as it not be area-specific. She suggested that it explore best practices for controlling dogs on leashes in urban areas.

MOVED by Deputy Mayor Rankin, seconded by Councillor Adams that Halifax & West Community Council request a staff report exploring best practices for controlling dogs on leashes in urban HRM.

MOTION PUT AND PASSED.

11. **MOTIONS – NONE**
12. **ADDED ITEMS - NONE**
13. **NOTICES OF MOTION - NONE**
14. **PUBLIC PARTICIPATION**

Mr. Graeme Hicks of Young Street observed that the start time for Regional Council meetings is not fixed but rather changes week to week. He believed this inconsistency makes it difficult for residents interested in municipal issues to attend meetings.

15. IN CAMERA

In lieu of convening in camera, Community Council agreed to deal with item 15.1 in public session.

15.1 Approval of Minutes – In Camera Session of February 4, 2013

MOVED by Councillor Mason, seconded by Councillor Walker that Halifax & West Community Council approve in camera minutes of February 4, 2013. MOTION PUT AND PASSED.

16. NEXT MEETING DATE – March 18, 2013 (City Hall)

17. ADJOURNMENT

The meeting was adjourned at 8:30 p.m.

Ted Aubut
Legislative Assistant