

HALIFAX REGIONAL MUNICIPALITY

PENINSULA COMMUNITY COUNCIL MINUTES

November 10, 2008

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

STAFF: Ms. Karen Brown, Senior Solicitor
Ms. Sheilagh Edmonds, Legislative Assistant
Ms. Julia Horncastle, Acting Municipal Clerk

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1. CALL TO ORDER

The Chair called the meeting to order at 7:00 p.m. in the Council Chamber, and welcomed Councillor Jerry Blumenthal and Councillor Jennifer Watts, who were elected to represent Districts 11 and 14 respectively in the recent municipal election.

2. APPROVAL OF MINUTES

MOVED by Councillor Blumenthal, seconded by Councillor Watts that the minutes of October 20, 2008 be approved. MOTION PUT AND PASSED.

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

There were no additions or deletions. The agenda was accepted as presented.

4. BUSINESS ARISING OUT OF THE MINUTES / STATUS SHEET:

4.1 Status Sheet

4.1.1 Neighbourhood Downzoning

There was no update provided. This item is to be left on the Status Sheet.

4.1.2 Presentation - Halifax Peninsula Community Health Board

There was no update provided. This item is to be left on the Status Sheet.

4.1.3 Mitchell's Enviro Depot Update

Councillor Sloane advised that she has forwarded a couple of e-mails to Bylaw Enforcement regarding an odour coming from the property. She requested that staff provide an update to her as soon as possible. This item is to remain on the Status Sheet.

4.1.4 Peninsula Place Flooding

No update was provided. This item is to remain on the Status Sheet.

4.1.5 By-law Regulations Respecting the Keeping of Fowl

No update was provided. This item is to remain on the Status Sheet.

4.1.6 Litter Receptacles in the area of Robie/North/Agricola/Almon

No update was provided. This item is to remain on the Status Sheet.

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 01183: Development Agreement - 5687 Charles Street, Halifax**

Notice of Motion on this item was given at a meeting of Peninsula Community Council on October 20, 2008.

A report dated September 23, 2008 from the Chair of the District 12 Planning Advisory Committee with an attached staff report dated August 29, 2008 was before Community Council for consideration.

Ms. Randa Wheaton, Senior Planner, outlined the application by Rod Malay on behalf of the owner, Samira Meshal, to permit certain commercial uses, including a restaurant and professional office uses on the ground floor of an existing mixed use building at 5687 Charles Street, Halifax. In her presentation, Ms. Wheaton advised that the building initially was zoned C-2 and has been used mainly as an autobody repair shop, but in 1995, under the Peninsula North Secondary Planning Strategy the property was redesignated to high density residential and rezoned to Multiple Dwelling Zone (R-3). She noted that this change made the existing commercial retail use nonconforming to the land use bylaw, and that in 2007 approval was given for a two-storey addition to the building for residential purposes subsequent to a variance approval which relaxed the minimum frontage, the minimum front yard setback, the minimum right side yard setback, minimum lot area, and maximum lot coverage requirements.

Ms. Wheaton advised that the proposal is for a eat-in and take-out restaurant with outdoor seating area in the ground floor commercial space facing Charles Street; second and third floor residential units; and allowance for professional offices uses in the commercial space as an option. She pointed out that there will be no increase in height, size, or floor area of the existing building.

Ms. Wheaton cited the following reasons staff were recommending approval:

- the current building is a significant improvement over the former building and has enhanced the neighbourhood
- the proposal provides a reasonable reuse of the ground floor commercial space and is consistent with the intent of the Municipal Planning Strategy
- the draft development agreement addresses issues of compatibility

Ms. Wheaton responded to questions from Council.

In response to a question from Councillor Blumenthal concerning other as-of-right uses permitted, Ms. Wheaton advised that any other R-3 use would be permitted.

The Chair reviewed the procedures for public hearing, and then opened the hearing for anyone wishing to speak on this matter.

The Chair called three times for anyone 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 Blumenthal that Peninsula Community Council:

- 1. Approve the Development Agreement, as contained in Attachment A of the August 29, 2008 staff report.**
- 2. Require that the development agreement be signed within 120 days, or any extension thereof granted by Community Council on request of the applicant, from the date of final approval by Community Council and any other bodies as necessary, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.**

Councillor Sloane advised that she was very pleased to support this application as the property in the past has been used as a place for car parts and for illicit drug activity. She added that proposal is a vast improvement over previous uses and she noted that the applicant is being environmentally conscious by using recyclable materials and geo-thermal energy.

MOTION PUT AND PASSED.

8.2 Variance Hearings:

8.2.1 Variance Appeal - #14823 - 6340 Cornwall Street

A staff report dated October 9, 2008 was submitted.

Correspondence opposing the variance application was submitted from the following:

- Ms. Anne MacDonald
- Dr. Mark Gibson and Dr. Susanne Craig
- Mr. Dave O'Connor
- Mr. Kevin McCabe

Mr. Andrew Faulkner outlined reasons why he refused a variance request in regard to a conversion of a two unit dwelling to a three unit dwelling at 6340 Cornwall Street, Halifax.

Mr. Faulkner noted that the application is for legalization of a third unit. Mr. Faulkner advised that in 1990 a permit was issued for this property for the construction of dormers to create head room in a two unit dwelling, and shortly after this another permit was issued for further interior renovations in the two unit building, with no additional units permitted.

But, subsequently an occupancy permit was issued to occupy the renovated space.

Mr. Faulkner advised that according to the LUB they are not eligible to use that section of the conversion, and staff have to apply the R-2 zone requirements to this property. He added that the proposal does not meet the lot size requirements, frontage, or left side requirements. In conclusion, Mr. Faulkner advised that in his opinion, to allow further reduction of requirements to allow additional units would violate the intent of the Land Use Bylaw as the lot area, lot frontage, left side yard setback, gross floor area found on this property do not meet the requirements for a three unit dwelling on the Peninsula Centre area. He noted that the majority of properties in the buffer area are single unit dwellings and of the 14 buildings in the buffer area, 13 of those would have difficulty meeting the requirements for a three unit dwelling, and therefore the difficulty experienced is general to the area. Mr. Faulkner noted that the permit issued in 1990 clearly stated that it was for interior renovations in the attic area in the existing two unit dwelling. This permit did not permit additional dwelling units. He noted that the present owner inherited this violation when he purchased the property eight years ago, and there has been no intentional disregard for the requirements of the land use bylaw by this owner.

Mr. Faulkner responded to questions from Community Council.

The Chair opened the hearing for those wishing to speak.

Mr. Jim Fawcett, 6327 Jubilee Road spoke in support of the Development Officer's decision to refuse the variance. Mr. Fawcett indicated that his home was a single family dwelling which he moved into a couple of years ago. Since this time he has seen a slow decline in his neighbourhood due to the amount of student housing in the area and the continuous disruptions of students. He noted that not only has this had an impact on his quality of life but the declining state of upkeep of these properties is also having an impact on the neighbourhood. Mr. Fawcett added that if the property in question were to go to three units, he was concerned that there would be the potential for more students and he worries about the longer term impact on the single families in the area that this will have.

Mr. David O'Connor addressed Community Council and advised that he was representing the Church that was located next door to the property in question. Mr. O'Connor pointed out that the present owner sold the building and moved out on October 1st and the title switched October 31st so the present owner is new. Secondly, Mr. O'Connor pointed out that if there is a bylaw that stipulates the requirements for side yards, gross area, etc. then this proposal should not be legalized if the owner was given all the information upfront when he was carrying out his renovations in the 1990's.

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

Councillor Uteck stepped down from the Chair; Councillor Sloane assumed the Chair.

Councillor Uteck addressed the appeal advising that she was in support of the

Development Officer's decision to refuse the request. She noted that on Peninsula Halifax the marketing of homes is becoming a problem in regard to what potential buyers are buying and what they believe are permitted uses. Councillor Uteck noted that this particular area is relatively stable, and she would not want to see it start to tip the other way, as the property is not owner-occupied, and there are parking issues in the neighbourhood, and it violates much of the land use bylaw.

MOVED by Councillor Uteck, seconded by Councillor Watts that Peninsula Community Council uphold the Development Officer's decision to deny the variance. MOTION PUT AND PASSED.

Councillor Uteck assumed the Chair.

8.2.2 Variance Appeal - #14712, 6054 Cunard Street

A staff report dated November 3, 2008 was submitted.

Mr. Andrew Faulkner, Development Officer, outlined the reasons for his decision to refuse a variance request in regard to the lot area, lot frontage, lot coverage, and front and left side yard requirements of the Halifax Peninsula Land Use By-law to permit conversion of a two unit dwelling to a three unit dwelling at 6054 Cunard Street, Halifax.

In his presentation, Mr. Faulkner advised that there is a long history of enforcement action with this property going back to the late 1980's when, at that time, there was a four-unit dwelling when only a two-unit dwelling was authorized. Mr. Faulkner explained that to resolve the issue the owner at that time entered into a Development Agreement with the City of Halifax which proposed a staged removal of two of the dwelling units to bring it into compliance. The second stage of the development agreement required that the building be converted to two dwelling units prior to property being sold or October 11, 1995, whichever came first. He pointed out that no application was ever received to remove the third unit, and staff did not follow up on the 1995 deadline.

Mr. Faulkner advised that the current property owner purchased the dwelling as a three unit dwelling after retaining a zoning confirmation letter from his office. He noted that the last record staff has is the 1991 occupancy permit for a three unit dwelling and the Development Agreement was overlooked. He added that the Development Agreement only came to light, after the property was purchased, and the current owners are now trying to legalize the third unit.

In citing his reasons for refusing the variance, Mr. Faulkner noted that the lot requirement is for 8,000 sq. ft but it is only 3,196 sq. ft., the frontage is only 34 ft. and 80 ft. is required; and the side yard and front setback would be reduced to 3ft. and 2 ft. respectively. Mr. Faulkner also advised that the majority of the properties in that area are of similar lot size and frontage, therefore they would experience the same difficulty as property owner if they were to convert to a three unit dwelling. Mr. Faulkner added that the owners have made every effort to legalize the three unit dwelling once they became aware of the development

agreement and its implication, so there has been no intentional disregard of the by-law by the present owners.

Mr. Faulkner responded to questions from Community Council.

Councillor Blumenthal noted that in the Background section of the report it refers to this property being in the North End. He advised that this was incorrect as it not within the North End boundaries.

Mr. Peter Rogers addressed Community Council and noted that he was the lawyer representing the applicant, Mr. Gord Dickey and Ms. Erin Brown. Mr. Rogers advised that the appellants bought the property in 2003, believing they had purchased a legal three unit property that they intended to use as an income property. He advised that they carried out due diligence on this property with their lawyer and all the information indicated that it was an authorized three unit building. Mr. Rogers advised that it was only when they went to sell the property, and through the new land registry system, did the existing Development Agreement on the property come to light.

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

MOVED by Councillor Watts, seconded by Councillor Sloane that Peninsula Community Council overturn the Development Officer and grant the variance.

Councillor Watts advised that she was supportive of the variance request as she visited the site this morning and is comfortable that the building fits into the neighbourhood, and that she believed the Municipality dropped the ball on this matter, in regard to the Development Agreement on the property.

MOTION PUT AND PASSED.

9. CORRESPONDENCE, PETITIONS AND DELEGATIONS:

9.1 Correspondence: None

9.2 Petitions - None

9.3 Presentations: None

10. REPORTS:

10.1 Staff Reports:

10.1.1 Councillor Appointments to the Grants Committee and to the Membership Selection Committee.

A report dated October 30, 2008 was submitted from the Legislative Assistant.

Following a brief discussion, **it was agreed** that this matter would be deferred to the December meeting.

10.1.2 Case 00930: Development Agreement - 6955 Bayers Road, Halifax
(Supplementary Report - Notice of Motion and Schedule public hearing)

A supplementary staff report dated October 28, 2008 was submitted.

Correspondence dated November 7, 2008 was submitted from the Bayers Road Neighbourhood Committee.

On a point of clarification, the Chair advised that if Community Council decided to move a motion to schedule a public hearing, then there is to be no debate; but that if Community Council decides to turn down the application, then reasons must be stated for doing so.

Ms. Randa Wheaton, Senior Planner addressed Council and provided an overview of the supplementary staff report. In her presentation, she provided a history of the application and advised that with amendments to the Halifax Municipal Planning Strategy and Land Use Bylaw for this property now in effect, Community Council was in a position to make a decision relative to the proposed development agreement to allow a 16 storey, 121 unit apartment building and donated public open space at 6955 Bayers Road.

MOVED by Councillor Blumenthal, seconded by Councillor Uteck that Peninsula Community Council Move Notice of Motion to consider approval of the proposed Development Agreement contained in Attachment A of the October 28, 2008 supplementary staff report to allow for a 121 unit apartment building, and schedule a public hearing.

THE MOTION WAS PUT AND LOST DUE TO TIE VOTE.

Councillor Watts advised that after consideration of this matter and in speaking with many of the residents in the community, she could not support the application. She referred to Policy 2.14.1 of the Municipal Planning Strategy and explained that she did not feel that the scale and height of the proposal was compatible with the surrounding area.

Councillor Sloane concurred with Councillor Watts' remarks and added that she was also concerned of the impact that a building of this scale would have on sewer and water servicing capacity.

MOVED by Councillor Watts, seconded by Councillor Sloane that Peninsula Community Council refuse the proposed Development Agreement for 6955 Bayers Road to allow for a 16 storey, 121 unit apartment building.

THE MOTION WAS PUT AND LOST DUE TO TIE VOTE.

10.2 Committee Reports: None

10.3 Members of Peninsula Community Council: None

11. MOTIONS: None

12. ADDED ITEMS

There were no additions or deletions to the agenda.

13. NOTICES OF MOTION: None

14. PUBLIC PARTICIPATION

No one came forward to address Community Council during public participation.

15. NEXT MEETING - December 8, 2008

16. ADJOURNMENT

The meeting adjourned at 7:56 p.m.

Sheilagh Edmonds
Legislative Assistant