

**PLANNING ADVISORY COMMITTEE  
MINUTES OF REGULAR MEETING  
May 18, 2011**

The Planning Advisory Committee met in the Council Chambers with the following attendance:

Present: Chris Flemming (Chair), Roger McNabb, Eric Drake, Jill Stewart, Dareth Thorne and Michael Burley.

Absent: Cyndy Parker and Mike Craig.

Also present were the Development Officer, Tim Henderson, and Office Administrator, Joyce Thompson.

**1. Call to Order**

Chairman Chris Flemming called the meeting to order at 7:00 p.m.

**2. Declarations of Conflict of Interest, if any**

None.

**3. Additions to and/or approval of Agenda**

It was moved by Jill Stewart, seconded by Dareth Thorne and carried to approve the May 18, 2011 Agenda as amended by moving the variance requests from Section (10) Subdivision Applications to Section (8) Applications for Variances/Approvals.

**4. Confirmation of Minutes**

It was moved by Eric Drake, seconded by Roger McNabb and carried to approve the previous committee minutes (April 27, 2011).

**5. Business Arising from the Minutes**

None.

**6. Presentations / Delegations**

None

**7. Zoning Applications**

None

**8. Applications for Variances / Approval**

8.1. Michael O'Keefe – Property owner of 270 Champlain Avenue, an application to the Town of Saint Andrews and Planning Advisory Committee for a street line setback encroachment approval.

Mr. O'Keefe would like to build a garage which will have its foundation's closest point 7 feet from Diana Drive. He will require a setback variance from the Planning Advisory Committee to do so. Mr. O'Keefe applied for a Building Permit to build a garage last year. His application was late in the season and since he would have required a rear yard setback variance, he decided to wait until the spring building season. Since that time, the new Zoning Bylaw #10-04 has come into force and states in regulation 3.15 Setbacks (1) No building shall be *erected* or *altered* so that it is closer to a street line than 6 m (19.7 ft) unless otherwise provided for in this By-law. Since the main house is constructed on an angle at the corner of Diana Drive and Champlain Avenue, it borders two street lines. The area prepared for the garage places the corner of the garage 7 feet from the property line on Diana Drive.

The Committee reviewed the documentation provided which included the Development Officer's Planning Report, application form and accompanying information and pictures, and the polling letter. There were no letters of response from the 200 meter polling area. The applicant, Michael O'Keefe, was present and offered verbal comment and when the chairman asked if there were any affected parties who wished to speak to the application, there were none. The Development Officer noted that that the new Zoning Bylaw regulation 3.15 (1) was created specifically to eliminate the alignment issues of houses built on an angle on street corners. The next lot on Diana Drive has not been developed at this time but it is conceivable when it is, the alignment on the street line will be affected by this variance approval. Committee member Roger McNabb noted that he had concerns about granting this variance as it would place the proposed garage so close to the road and ditch that the town's Public Works crew may have a difficult time to get in with their large equipment if they had to dig up the road or ditch to work on water lines, etc.

It was moved by Roger McNabb, seconded by Jill Stewart and carried to deny approval to Michael O'Keefe for 7 foot variance from a street line in a Serviced single/two Family Residential Zone to facilitate the construction of a garage at 270 Champlain Ave. Eric Drake registered a nay vote.

8.2 Jamie Emberley – Property owner of 71 Parr Street, an application to the Town of Saint Andrews and Planning Advisory Committee to enable the owner to have two driveways on the lot.

Mr. Emberley would like to add a driveway to his property but will have to reduce the landscaped area of his lot frontage to do so. This will require a variance from the Planning Advisory Committee. Mr. Emberley would like to remove a small section of his hedge and raise the area to allow a driveway to be installed to accommodate his travel trailer. The Zoning Bylaw No. 10-04, - 3.27 (8) Parking Regulations states that within a Residential Zone, required parking must be located beyond the required *front yard* of a *single-family dwelling*, *semi-detached dwelling*, *two-family dwelling* or *apartment dwelling*. Paved areas and/or *driveways* must not occupy more than forty percent (40%) of the required *front yard*. The town installs a minimum 20 foot culvert or curb opening so all 80 foot lots require a variance to have more than one

driveway permitted. Mr. Emberley feels the added driveway will not have an impact on the streetscape as the driveway and hedge will only be wide enough to accommodate his trailer.

The Committee reviewed the documentation provided which included the Development Officer's Planning Report, application form and accompanying information and pictures, and the polling letter. There was one letter of response from the 100 meter polling area and that neighbour stated that they had no concerns with the variance request. The applicant was not present and when the chairman asked if there were any affected parties who wished to speak to the application, there were none. The Development Officer stated that if this application is granted, the PAC should try and put restrictions on the ability to increase its width in the future and if approved, the application will be reviewed by the Public Works Department to ensure it will not cause liability issues. Roger McNabb asked the Development Officer what the costs would be to restore the sidewalk and street if the second driveway was installed, and the Development Officer responded that he estimated that it would cost about \$4000.00 for the restoration work.

It was moved by Roger McNabb, seconded by Michael Burley and carried to deny permission to Jamie Emberley to create a second driveway and a reduction to the landscaped area of a lot in the residential zone at his property at 71 Parr Street.

8.3 Anglican Parish of St. Andrews – Property owners of 77 King Street, an application to the Planning Advisory Committee for a variance to permit a use which is not identified as a use in the Zone and a second variance for a fence height.

Although the Anglican Church owns the property, Mrs. Theresa Smith is heading up the group who wish to create a community garden on the side lot of the church lawn. The use is not identified as a permitted main or secondary use in an Institutional Zone. A fence has also been applied for which will be 7 feet in height and require a variance to install. The garden will consist of approximately 50 plots. The garden would not have a building on the lot but would be fenced in with a seven foot deer fence. This consists of green metal poles with light weight, black plastic fencing material. It is the applicants' position that the fence would be almost transparent from a distance and they intend to grow vines and flowers on it. This project is being coordinated by Theresa Smith and her Community Garden group and is operating outside of the Anglican Church's umbrella but the Church is supporting them by providing the space.

The Zoning Bylaw No. 10-04, regulation 6.1.1 does not state that this is a permitted use in the Institutional Zone. A variance to permit this use is therefore required. An additional variance is required to permit a 7 foot fence as the Zoning Bylaw regulation 3.22 (2) (a) "Fences" states that fences cannot be more than 3.3 (1 meter) feet high in an Institutional Zone. A variance is required for 3.7 feet.

The Development Officer's report noted that the PAC has an unusual circumstance to review with this application. The municipal Zoning Bylaw does not specifically list or mention community gardens as a defined use in an Institutional Zone. The Committee must decide if a community garden meets the description of one of the permitted uses listed under section 6.1.1 (a). The committee must also consider the historic and open space principles of the Town's Municipal Plan and if this application is approved impose conditions on both the property's use as a community garden and fence height variance to protect the spirit of the Municipal Plan.

The Chairman introduced the matter by discussing with the committee the nature of the committee's authority in this matter. The definition of "similar use" was reviewed and the permitted uses for the zone were examined. As a result of these discussions, it was moved by Eric Drake, seconded by Michael Burley and carried that the Committee feels that it does not have authority to consider this request as it requires more than a minor change to the zoning by-law. They stated that because a community garden is not listed as one of the permitted uses in an Institutional Zone, as listed below, they feel that the change would be that of such significance that it would actually be considered a new use, and not a variance. This would therefore require a change in the Zoning By-Law and changes to by laws are done only by Council. The permitted uses for an Institutional Zone and the definition for Institutional Use are as follows:

#### **6.1.1 INST Zone Permitted Uses**

No *development* shall be undertaken nor shall any land, *building* or *structure* be used within any INST (Institutional) *Zone* for any purpose other than:

- (a) One or more of the following *main uses*:
  - (i) a *cultural use* or facility;
  - (ii) a *day care centre*;
  - (iii) a *government use*;
  - (iv) a *group home*;
  - (v) an *institutional use*;
  - (vi) *senior citizens' housing*;
  - (vii) a *place of worship* or religious or secular institution;
  - (viii) a public or non-profit art gallery, *theatre*, library, auditorium, museum, archives, interpretative centre, or other similar cultural facility;
  - (ix) a public school or post-secondary educational institution;
  - (x) a *residential care facility*;
  - (xi) a service club or other not-for-profit establishment;
  - (xii) a scientific, academic, or commercial research establishment; or

**1.1 DEFINITIONS "INSTITUTIONAL USE"** Means the **use** of land, **buildings** or **structures** for religious, educational, health, **recreational uses**, community centre, hospital, **senior citizen housing**, **residential care facility**, museums, **group homes**, **residential care facilities** and long-term care facilities.

Several members of the Community Garden Club were present and spoke to the issue. After much debate and discussion, the garden club asked if the Planning Advisory Committee would at least consider the application for the 7 foot fence. The Committee reviewed the documentation provided which included the Development Officer's Planning Report, application form and accompanying information and pictures, and the polling letter. There were two letters of response from the 100 meter polling area and both were in support of the proposed garden and fence. The applicant, Theresa Smith, was present and informed the Committee members as to what the gardens club's plans were for the proposed fence. She explained that they will be using large mesh material which will be attached to green metal posts, and that there will be perennials planted on both sides of the fence to keep the fence as invisible as possible. Several of the garden club members, as well as Reverend John Matheson spoke to the committee and offered their support of the proposed community garden and fence.

It was moved by Roger McNabb, seconded by Eric Drake and carried to grant Theresa Smith a 3.7 foot height variance to allow for a 7 foot fence in an Institutional Zone to be erected on the Anglican Church property at 77 King St., with the following condition:

1. The fence is only allowed to be up from April 1-November 15 in any given year.

It was moved by Roger McNabb, seconded by Michael Burley and carried that the Planning Advisory Committee recommend to Council that if they approve the use of the space at 77 King St. as a community garden, that they do so only once the garden organizers have proven that there will be proper accountability for the garden project, specifically that the following conditions are met:

- 1) That enough funds be raised to ensure that the proper equipment and materials are used to prepare the soil and create the gardens, such as properly stripping the sod, and adding fertilizer, sand, compost, etc.
- 2) That there be adequate funds set aside to guarantee the replacement of any of the existing birch trees that may be damaged or killed as a result of building the gardens.
- 3) That there be adequate funds set aside to guarantee that the property be put back to its original condition in the event that the group decides to no longer run the community garden.

## **9. Sign Applications**

None

## **10. Subdivision Applications**

None.

## **11. Organizational Matters**

The Development Officer advised committee members of the following membership changes coming before Council at the Regular Monthly Council Meeting on June 6<sup>th</sup> and asked if everyone was in agreement with the reappointments.

May 2011 reappointment for the following members:

Chris Flemming reappointed with term ending May 2013  
Jill Stewart reappointed with term ending May 2013  
Dareth Thorne reappointed with term ending May 2014  
Cyndy Parker reappointed with term ending May 2014  
Michael Burley reappointed with term ending May 2014

Eric Drake will not be reoffering so his seat must be filled and appointed to a term ending in 2013.

An additional member is still required with a term ending in 2012.

The Committee members were all in agreement with the above appointments and terms.

## **12. Other Business**

### **13. Question Period**

None

### **14. Adjournment**

It was moved by Dareth Thorne to adjourn the meeting at 8:45 pm.

**The next scheduled regular meeting of the Committee will be June 15,2011.**

---

C.G. Flemming, Chairman

**It was passed by motion at the August 24<sup>th</sup>, 2011 meeting that the Development Officer's report regarding the variance requests discussed at the May 18<sup>th</sup>, 2011 meeting be included in these minutes. The report is as follows:**

## **Report on Actions subsequent to PAC Decisions on the following Applications**

May 18th PAC MEETING

### **8. VARIANCE APPLICATIONS**

8.1 Michael O’Keefe – Property owner of 270 Champlain Avenue, an application for a street line setback encroachment approval.

8.2 Jamie Emberley – Property owner of 71 Parr Street, an application to enable the owner to have two driveways on the lot.

8.3 Anglican Parish of St. Andrews – Property owners of 77 King Street, an application for a variance to permit a use which is not identified as a use in the Zone and a second variance for a fence height.

Although the PAC did make decisions on these items during the regular May 18th Committee Meeting, these items appeared on the PAC Agenda the following month because the applicants packages were not mailed to them and they were not afforded ample time to prepare a presentation.

The PAC members were subsequently advised the new meeting was cancelled because the three items were either withdrawn or resolved.

It is important that this Committee is informed as to the circumstances around these actions.

8.1 Michael O’Keefe’s application to encroach on street setback was a matter discussed with legal counsel and we were advised that the applicant was informed that waiting to be able to adhere to the rear lot setback was advisable to avoid a variance application. He was not informed about the new side yard regulation which would force him to obtain the variance. It is very likely the rear lot setback would have been granted. It was the opinion of legal counsel for the Town to grandfather this request to avoid legal conflict. The PAC was not incorrect in their handling of the matter.

8.2. Jamie Emberly’s – request to build a second driveway request was withdrawn.

8.3 Anglican Parish of St. Andrews’ withdrew application. This application was referred back to the PAC at the request of Council and we will be discussing this issue at the August 24th meeting.

It is the request of the Development Officer that the PAC accepts and approves the minutes of the May 18th meeting as recorded. The decisions made were the decisions of the PAC based on the information available to them at that time and should be recorded. The Committee may wish to include this document with the minutes of May 18th or August 24th meeting as a historic record of the actions taken after the PAC decisions.

Regards,

Tim Henderson  
Development Officer  
August 24, 2011