

**PLANNING ADVISORY COMMITTEE
MINUTES OF REGULAR MEETING
August 24, 2011**

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

Present: Chris Flemming (Chair), Mike Craig, Roger McNabb, Dareth Thorne, Lee Sochasky, and Jill Stewart.

Absent: Cyndy Parker and Michael Burley.

Also present was 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 Roger McNabb and carried to approve the August 24, 2011 Agenda as presented.

4. Confirmation of Minutes

It was moved by Jill Stewart, seconded by Dareth Thorne and carried to approve the previous committee minutes (May 18th, 2011) as amended by adding one missed motion under Section 8-Applications for Variances.

It was moved by Roger McNabb, seconded by Jill Stewart and carried to approve the previous committee minutes (July 20, 2011) as presented.

5. Business Arising from the Minutes

None

6. Presentations / Delegations

None

7. Zoning Applications

None

8. Applications for Variances / Approval

8.1 Richard and Regan Lea property owners of 425 Water Street have applied to the Planning Advisory Committee for permission to build a garage parallel to Patrick Street with an encroachment into the side-street setback.

The Lea's applied for a Building Permit to build and position a garage to allow natural light and not impact the view of the harbour for the upstairs or downstairs residents. The new Zoning Bylaw #10-04 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. The Leas would like to build a garage which will have its foundation's closest point 10 feet from Patrick Street. Since the property is on the corner of Water and Patrick Street, the applicants must obtain a setback variance before being granted a building permit.

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 four letters of response from the 100 meter polling area. The applicants were present and when the Chairman asked if there were any affected parties who wished to speak to the application, there was one. David Carey, who is a neighbour of the Leas, spoke in favour of the proposed variance. The Development Officer stated that the new Zoning Bylaw's regulation 3.15 was implemented to address issues that arise when property owners wish to build on corner lots at angles to the houses on the rest of the street. He noted that in this case, the house is already built and its front runs parallel to Water Street. He explained that the Leas would like to build a garage in the back of the lot and protect the view of the harbour for their neighbours and themselves and that Regulation 3.15 makes provisions to permit this when there are structures on either side of the lot in question. He said that although there are not structures directly on each side of the Leas and this regulation cannot be applied, there are structures close by which could be considered. He also noted that this area of the Town has many different setbacks and lot sizes and he felt that the Lea's request would not compromise their street line of Patrick Street and is landscaped so the setback would be hardly noticeable in any event. He concluded that the Development Officer supports this request as submitted.

It was moved by Jill Stewart, seconded by Michael Craig and carried to grant Richard and Regan Lea a variance of 10 feet to permit the construction of a garage at 425 Water St. with an encroachment of 10 feet into the side-street setback.

9. Sign Applications

None

10. Subdivision Applications

None.

11. Organizational Matters

- 11.1 Review of the process of the May 18th PAC Meeting regarding the application from the Anglican Parish of St. Andrews – Property owners of 77 King Street, application for a variance to permit a use which is not identified as a use in the Institutional Zone and a second variance for a fence height.

The Development Officer presented Committee with a letter from the Town's solicitor, Richard McPhee, in which he offered comments on the application from the Anglican Church for a variance to create a community garden at 77 King Street. A copy of this memo is attached to these minutes.

It was moved by Lee Sochaksy, seconded by Roger McNabb and carried that the Development Officer's report on actions subsequent to the PAC decisions on the applications considered at May 18, 2011 meeting be added to the May 18, 2011 minutes.

12. Other Business

None.

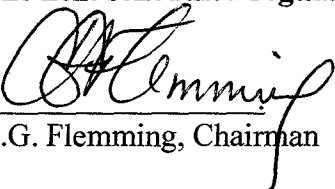
13. Question Period

None

14. Adjournment

It was moved by Dareth Thorne to adjourn the meeting at 7:28 pm.

The next scheduled regular meeting of the Committee will be September 21, 2011.


C.G. Flemming, Chairman

RICHARD F. McPHEE
BARRISTER & SOLICITOR
28 KING STREET SUITE 200
SAINT JOHN, NEW BRUNSWICK, E2L 1G3

MEMORANDUM

TO: Tim Henderson
FROM: Richard F. McPhee
DATE: June 9, 2011
RE: Anglican Church Community Garden

I have briefly reviewed the documentation you provided and offer the following comments:

1. The "use" as a community garden would fall under the definition of an "agricultural use" in the Zoning By-law.
2. An "agricultural use" is not listed specifically as a permitted use in an Institutional Zone.
3. An "institutional zone" is defined as the use of land for religious, educational, health and recreational use, etc.
4. A "recreational use" is also defined to include the use of land for tennis courts, lawn bowling greens, athletic fields, golf courses, picnic areas and "similar uses" to the foregoing.
5. The zoning also permits an "accessory use" which is "incidental" to the main use.
6. Based on the foregoing, it is my understanding Council considered whether the community garden would be considered a permitted use in an Institutional Zone and decided in the affirmative.
7. It should be pointed out that Council has no authority in my opinion to "approve" uses which are not permitted in a Zoning By-law. Therefore, I would be careful with the wording of a Council motion in this regard. Council could "confirm" that a use is a permitted use but could not "approve" a use not permitted.
8. I would also caution against using the phrase "secondary" use as this relates to a use "within" a building - see definition.
9. There would be support for Council's determination based on an argument that the garden is a recreational use of the property, as it is similar to the uses specifically listed in the definition of a "Recreational Use". Council could also be of the opinion that such a community related use is in fact "incidental" to the main use as a religious facility.
10. The Church may be satisfied with this ruling of Council and proceed

on that basis. This would be their decision. If they wanted further protection from appeals (as Council's decision can really only be an opinion that the use is permitted as mentioned above), then they should seek approval of PAC arguing that the use is "compatible" and should be approved. Again, it is only PAC and not Council which can authorize a use which is not permitted in the Zoning Bylaw.

11. There has already been a variance given for the fence so the Church may take the position that the variance relates to the land and it is irrelevant that they did not make the application as long as they consented to it.
12. If this is only a summer project, I would leave it to the Church to decide if they want any more comfort that the use is permitted and whether they want the added protection (or risk) of going back to PAC.
13. At some time in the future when the Zoning By-law is amended, you could add "community gardens" in the definition of "Recreational Use". As a recreational use is permitted in an Institutional Zone, this would end the discussion.

I hope the foregoing is of assistance.

Richard F. McPhee

/mmc

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