

Committee Meetings Agenda

October 5, 2021

Call to order 5pm

Planning Board

- I. 715 Water St East – Restricted Use
- II. 129 South Drive – Major Variance

Technical Services

- I. Crosswalk on MacEwen (near Elizabeth)

Bylaw, Policy Review

- I. Public meeting notifications

Community Services

- I. Bowling lanes
- II. Summerside Golf Course

Police/Fire Services

- I. Open Fires
- II. West Drive speeding

Electric Services

- I. Power outages notifications

Committee of the Whole

- I. Municipal Government Act Section 119 1 (a)
- II. Municipal Government Act Section 119 1 (a)
- III. Municipal Government Act Section 119 1 (d)

October 5, 2021

Department/Committee: Planning Board

Subject: 715 Water Street East - Restricted Uses

SUPPORTING EXPLANATION:

Purpose: The purpose of the Restricted Use is to allow a “Heavy Machinery Repair Shop”, a “Dwelling Unit” and a “Bus Tour Business” as Restricted Uses in the Single Family Residential (R1) zone.

Background: An application was received from Cairns Motel Inc. for 715 Water Street East (PID #863662 and PID #836288). This application will require City Council approval to allow the restricted uses (a “Heavy Machinery Repair Shop”, a “Dwelling Unit” and a “Bus Tour Business”). Aaron Wedge (co-owner operator) was of the understanding that his property was zoned commercial and did not realize he was not complying with City bylaws. The property was zoned Agricultural prior to the zoning bylaw review in 2018/2019. Upon staff receiving an inquiry from neighbours, regarding the allowed uses on the property, staff determined the property owner would require Council approval to allow the uses to continue. The proposed Restricted Use area is indicated on the map below. The area (30m/100’ from rear of quonset hut) allows a turning area for the busses, should the busses require to be parked in the quonset hut for detailing, etc.



There are two buildings/properties being considered on the site for the restricted uses. Building A is located on the site of an original a farm building. A building permit was issued for Building A, following a permit to demolish the former farm building in April of 2011. Building A is divided into two areas, area 1 is being utilized as the Heavy Machinery Repair Shop". Area 2 is being utilized as a double car garage with an apartment above it. Building B (quonset hut), is used as an accessory building to serve the "Heavy Machinery Repair Shop" and the "Bus Tour Business" as well as grass cutting/snow removal equipment for the Motel. Building B is an existing accessory building that was part of the Cairns family farm.



Report: Under section 5.7 of the zoning bylaw when Planning Board reviews a restricted use, it has to consider the following general criteria, as applicable:

a. *Conformity with all requirements of this Bylaw (Zoning Bylaw).*

Staff Comment: This application requires a restricted use approval in the Single Family Residential zone in order to conform to this Bylaw. The current zoning, Single Family Residential (R1) does not change. One of the purposes of the Restricted Use designation is to accommodate uses where rezoning would result in undesirable land uses due to the "as of" rights in that zone. The proposed restricted uses are permitted in other zones, if the property were to be rezoned to one of these zones (ie. Industrial) just to accommodate the restricted uses being sought, it would result in other undesirable land uses in the area. The specific uses can be achieved by designating a portion of the property as a restricted use allowing only the restricted use.

e. *Any comments from residents or other interested persons.*

A public meeting was held on September 13th, 2021. The public meeting notice was advertised in the August 30th, edition of the Guardian. Thirty-seven (37) letters were mailed to twenty-four (24) property owners. Aaron Wedge spoke, providing an overview of the proposed intent for the restricted use.

Staff Comment: The applicant provided an explanation of his request for the proposed restricted uses. Troy Campbell (728 Flamingo Drive) indicated that he was concerned with the derelict busses, and the shipping container on the property and the safety of children who were playing on the busses. Mr. Campbell had no issue with the mechanic shop or the bus business itself. Johnathan MacKay (727 Robin St.) spoke, he indicated that he had no issues with any business on the property or the state of the property. Megan MacKay (727 Robin Street) spoke and she indicated she had no issues with any business on the property or the state of the property. Chad Montgomery (730 Flamingo Drive), indicated that he was concerned with the derelict busses on the property and was worried there would be more in the future. He also questioned why the applicant was requesting approval now, when the businesses have been in operation for some time. The concerns raised have been addressed throughout this report.

f. *Adequacy of existing water, sewer, road, storm water and electrical services, city parking and parklands for accommodating the development, and any projected infrastructure requirements.*

Staff Comment: The City's water supply and sewer treatment systems can handle the loading created by the restricted uses. Water Street East will handle the volume of traffic from the business's and residential. Storm water the existing parking area will require an underground storm system to collect the drainage and pipe it to the existing street ditch system on Water Street East. 715 Water St East has existing 1-phase electrical service. 3-phase electrical service is available on Water St East to service the area. Any electrical service upgrades or additional service requirements are at the cost of the owner. On site parking is available for the proposed uses. Parkland dedication is not required for a restricted use application.

g. *Impacts from the development on pedestrian/vehicular access and safety, and on public safety generally.*

Staff Comment: The existing access meets the maximum width to serve the restricted uses being requested, as well, access and the parking area may require paved surfaces. There is a sidewalk on the south side of Water Street East and a pedestrian crossing nearby at Small Avenue.

h. *Compatibility of the development with environmental, scenic and heritage resources.*

Staff Comment: There are no compatibility issues regarding scenic or heritage resources. The heavy machinery repair shop is required to have a separator (sand/oil/grit) that removes the environmentally sensitive substances from the waste water before the remaining waste water runs into the City's sanitary sewer lines to be treated at one of our treatment facilities. Properties with sand, oil and grit separators are responsible for regular pumping and cleaning in order to properly filter and hold designated solids from entering the City sewer systems. Roof drains from Building A are directly piped into the sewer system which is not permitted, these roof drains will have to discharge into a storm system or be piped directly onto the ground.

i. *Impacts on City finances and budgets (City cost).*

Staff Comment: This development does not impact City finances or budgets.

j. *Other matters as specified in this Bylaw.*

Staff comment: In early July 2021, staff meet with the applicant on site. The applicant allowed staff us to view the property and explained the business uses (“Heavy Machinery Repair Shop”, “Dwelling Unit” and “Bus Tour Business”) and the buildings uses on site. In addition to land use review, the building uses required review as well, please see Building Officers comments (attached).

k. *Other matters as considered relevant.*

Staff Comment: The current water and sewer servicing for the properties would not be allowed today as multiple properties share water and sewer services. Each building (hotel, house, repair shop/bus business/apartment) would have their own water and sewer service sized accordingly for the use of the building and be billed accordingly to that use. The restricted use heavy machinery repair shop/dwelling unit/bus business accessory building property would be required to have its own water and sewer services and be billed according to their uses under the Water and Sewer Bylaw. The applicant has made efforts to have the property organized and neat by removing two or the derelict busses.

RECOMMENDATION: City Staff supports the application from Cairns Motel Inc. to allow the proposed uses (“Heavy Machinery Repair Shop”, “Dwelling Unit” and “Bus Tour Business”) as restricted uses within the Single Family Residential (R1) zone. Staff suggest that Council defer the approval until the matters noted by staff are addressed and resolved. Some of the matters may be addressed via a development agreement. The following matters to be considered are, but not limited to the following:

1. Matters as outlined in the Building Officer’s review
2. Installation of a separator (sand/oil/grit) in Building A. (mandatory).
3. Installation of water and sewer services to Building A.
4. Consolidation of PID #863662 and PID #836288.
5. Paved parking areas and storm system and/or site drainage plan.
6. Removal of remaining derelict busses and deadline for removal date. (Owner stated, he hopes to have them removed within the year – September 2022)

As per Section 5.10 (b, iii) of the Zoning Bylaw, the Planning Board shall make a recommendation to Council on this application before it is approved or denied.

The planning board recommendation whether carried or defeated will be brought forward to Council for a final decision.

PLANNING BOARD RECOMMENDATION: The application received from Cairns Motel Inc. to allow the restricted uses (“Heavy Machinery Repair Shop”, “Dwelling Unit” and “Bus Tour Business”) as a restricted use within the Single Family Residential (R1) zone be recommended to be deferred until the matters noted by staff are addressed and resolved.

Moved by: _____

Seconded by: _____

Motion:

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715 Water Street

Staff comments prepared by the Building Officer regarding the building.

Background

Building Permit 2011-4-0064 was issued on 5/26/2011 for an “Accessory Building” in the Agricultural zone at 715 Water Street.

In 2011, the building was professionally designed by an engineer and a building permit was issued for an accessory building. Foundation and framing inspections were completed however there is no record on file to indicate the owner obtained final inspection or that the designer submitted the required project close-out forms. As such the 2011 permit is deemed to be an open permit.

The 2011 building plans indicate a large main floor open area with four garage doors that is noted on the plans to be “garage” space. Separated from the main area is a secondary “garage” space with three garage doors. Plans for the secondary garage indicate a room with a half-bath and a washer and dryer. On the second floor above this secondary garage there is an unfinished space indicated to be a “storage” space.

The understanding is this new building replaced an old barn in the same location and the use was to be for personal storage along with equipment storage for the owner’s properties.

Current Status

Since the date of initial construction, the building has undergone one or more change-of-uses each of which would have required an additional building permit regardless of whether actual construction work was required. Those changes include:

- an apparent apartment in the second floor “storage” space
- an office space for the bus company operations
- a diesel repair and inspection shop

Based on the uses and the building size, each of these uses would have required the involvement of a professional designer (Architect). A building code review of each new use and how they affect the existing use or uses would have been required. Among other things these reviews usually cover items such as fire separations, egress and exiting requirements, smoke and carbon monoxide alarm placements and ventilation system requirements. Designer-stamped plans and project forms would be completed and submitted for each change and each would require an occupancy permit before the space is occupied.

Current Offenses

As the issues regarding the building were brought to the City’s attention after the March 31, 2020 implementation of the Provincial Building Codes Act (BCA), the regulations under the Act apply.

The following are violations under the Act:

- BCA Section 11: Commencing construction, demolition or change-of-use of a building without a permit,
- BCA Regs Section 6 (1): Failing to obtain a building permit in accordance with Section 9,
- BCA Regs Section 8(1)(a): Failing to acquire occupancy permit before occupying a building,
- BCA Regs Section 17: Owner failing to ensure all required permits or approvals are in place before commencing work,
- BCA Regs Section 21: Owner failing to consult or engage professionals,

Each of the above violations is a separate offense.

Per BCA Section 27 (3): A corporation that contravenes a provision of this Act or the regulations is guilty of an offense punishable on summary conviction and is liable to a fine of not less than \$1000 and not more than \$50,000.

Per BCA Section 27 (4): Where an offense by a corporation continues after a conviction under subsection (3), each day or part of a day on which the offense continues constitutes a separate offense for which the minimum fine is \$1000 multiplied by the number of days during which the offense continues.

BCA Section 16. Dangerous premises

Per BCA Section 16:

1. A building or real property constitutes a dangerous premise if the building or real property
 - a. poses an actual or potential risk of fire,
 - b. poses an actual or potential danger to the safety of persons or the safety of property,
 - c. has undergone unapproved building modifications, or
 - d. is structurally unsound.

As the building has undergone unapproved building modifications under the Act it would be deemed to be a dangerous premise.

Recommendation

It is the recommendation of the Building Officer that:

1. all uses for which a building permit was not obtained cease. It is the understanding of the building officer that the apartment is not currently occupied and is to remain vacated,
2. until all unpermitted uses cease, the application process for rezoning the property be halted,
3. once rezoned, permits for each use be obtained. The owner will be required to retain an Architect to conduct a building code review and provide building plans showing code compliance and/or work required for code compliance. The owner is to submit the code review, plans and required project forms with a building permit application. Separate building permits for each use may be obtained,
4. once final inspection is completed under the owner-obtained building permit and an Occupancy Permit is issued, uses within the building may recommence,
5. the owner obtains a building permit if the use of the other building (Quonset) within the rezoned boundary is no longer used for an agricultural use. If it is to remain for agricultural use any future change in use will require a building permit,
6. initial fines for the above offenses be levied with the potential for additional fines to be levied for continuing offenses.

October 5, 2021

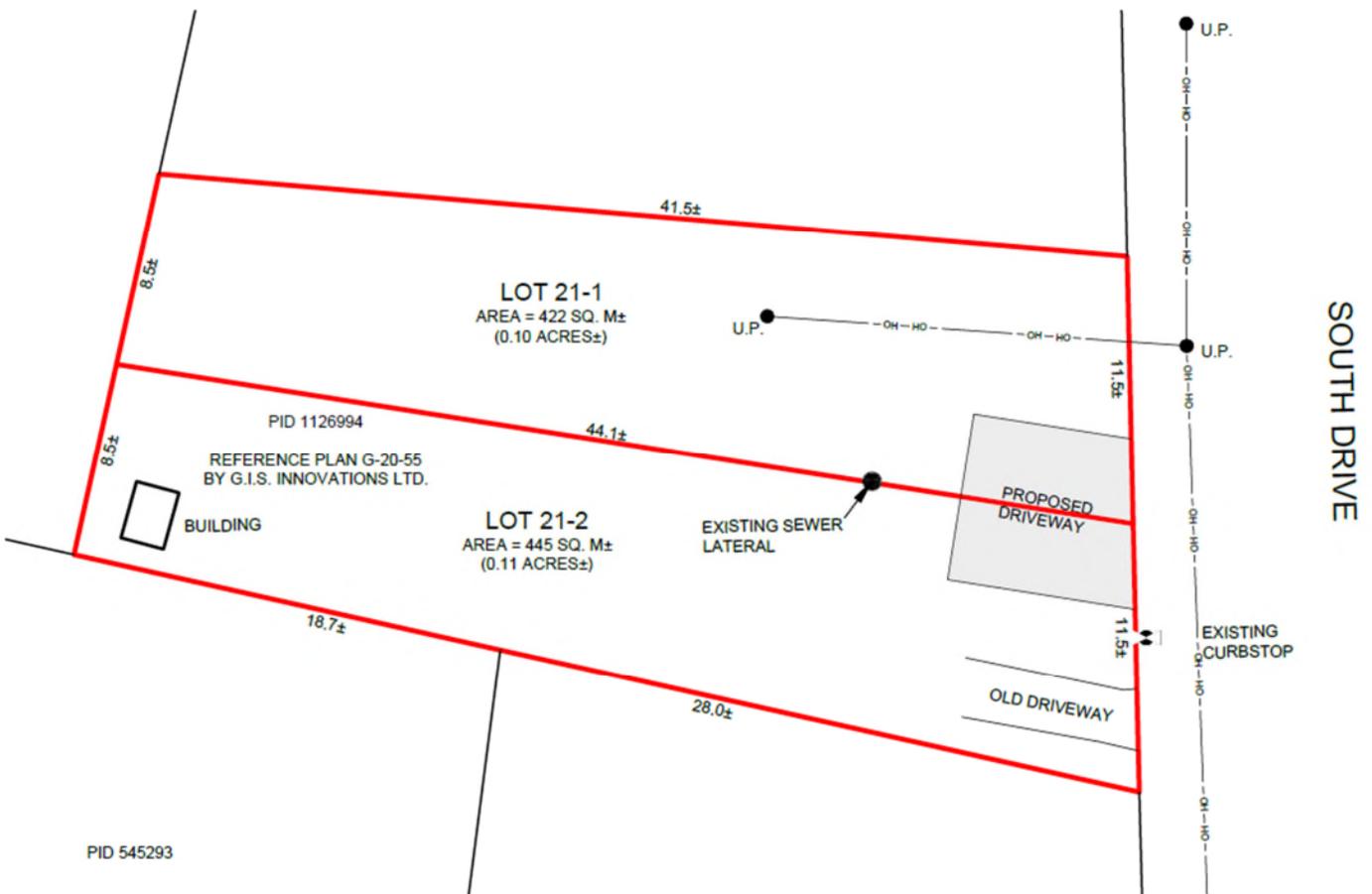
Department/Committee: Planning Board

Subject: 129 South Drive – Major Variance

SUPPORTING EXPLANATION:

Purpose: The purpose of the major variance is to allow a proposed semi-detached building at 129 South Drive.

Background: An application was received from Claire and Andrew Carr to allow a proposed semi-detached dwelling at 129 South Drive, in the R2 zone. A semi-detached dwelling is a permitted use in the R2 zone, but the existing lot width does not comply with the required street frontage for a semi-detached dwelling.



Report:

The proposed lot frontage for a semi-detached dwelling is 23m, the City of Summerside Zoning Bylaw states a minimum lot frontage of 26m is required for a semi-detached dwelling in the R2 zone. The applicant is requesting approval of a variance of 12% to the lot frontage.

Justification for Variance: As required by Section 7.2 of the *City Zoning Bylaw SS-15 (2007)* Council, Planning Board and the Development Officer shall consider the variance, against the following tests for justifying a variance:

- a. *That the hardship is due to unique physical conditions of the lot or property, including small lot size, irregular lot shape, existing building location on the property, or exceptional topographical conditions, which make it impractical to develop in strict conformity with Bylaw standards. Exceptional topographical conditions may include, but are not limited to: trees, slope of the land, etc.*

Staff Comment: **Yes**, this variance request would meet this test. The characteristics of the lot has impact on the requirement for the variance as the lot size is existing, not a newly created lot.

- b. *That the proposed variance meets the general intent of the official plan.*

Staff Comment: **Yes**, this variance request would meet this test. The existing lot land use is residential.

- c. *That the proposed variance meets the general intent of the zone.*

Staff Comment: **Yes**, this variance request would meet this test. The proposed semi-detached building meets the required, front, rear and side yard setbacks. The variance will not impact the required setbacks on the existing neighbours. The variance impacts the semi-detached units only.

- d. *That the proposed variance would not impact negatively on adjacent properties, or on the essential character of the surrounding neighborhood, including taking into consideration any comments from neighbors.*

Staff Comment: **Yes**, this variance request would meet this test. Twelve (12) letters were delivered to 9 properties within 30m of the boundaries of the subject property. The property is bordered by neighbours on west, east and north boundaries, and the street on the south boundary. Comments from adjacent property owners were due on or before September 21, 2021. Written comments were received, in the form of a letter and is included in this report. The letter was hand delivered to City Hall and was unsigned, however there is an address and Property number (136 South Drive, PID #68031). The letter is opposing front yard issues, where as the variance being considered is for lot frontage. The author of the letter may not understand the terminology of front yard vs lot frontage. The applicant is seeking a narrower lot not that the building be allowed to be closer to South Drive.

The City's zoning by-law provides regulations for the uses of land and location of buildings on a property. It is difficult for zoning by-law provisions to take into account all circumstances such as pertaining to lot sizes, lot shapes, pie shaped lots, property line yard setbacks or topographic conditions, which may impact the development of a particular property. The hardship for a variance cannot be an economic one, but must be technical in nature.

The size and shape of the property or the design of a building/ project may prevent the owner from fully meeting all of the provisions of the zoning by-law. In such cases, a variance is a mechanism which is used to provide some degree of flexibility and discretion in applying the strict provisions of the by-law. As a general principle, a variance must maintain the general intent and purpose of the zoning by-law. It should never be used as a mechanism to circumvent or frustrate the intent of the by-law. For example, a variance cannot be used to create a land use or to fully eliminate a required yard setback.

Any person who is dissatisfied by a decision of Council or the Development Officer made under the Zoning Bylaw, may appeal to the Island Regulatory and Appeals Commission within twenty-one (21) days of the decision in accordance with the Planning Act.

STAFF REVIEW: Staff support the lot frontage variance of 12% for a proposed semi-detached dwelling at 129 South Drive.

As per Section 5.10 (b, iii) of the Zoning Bylaw, the Planning Board shall make a recommendation to Council on this application before it is approved or denied.

The planning board recommendation whether carried or defeated will be brought forward for Council for a final decision.

PLANNING BOARD RECOMMENDATION: The application from Claire and Andrew Carr for PID #68015 for a lot frontage variance of 12% be recommended to be approved by Council.

Moved by: _____ Seconded by: _____

Motion:

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136 South Drive
Summerside, P.E.I.
C1N 3Y7

PID#: 68031

Attention: Linda Stevenson: Sept 20/2021

Re: Variance Application - 129 South Drive
PID# 68015

Point 1: There has already been a front variance allowed on front of property, which has brought things to close to highway, safety wise. So now the new variance would put the semi-detached dwelling 3 metres (9.84 ft) closer to highway, very dangerous. I vote against this change.

Point 2: Let's consider the snow, the storms (about 95% of time come from the North) right down South Drive. That area at 129 South Drive always gets a lot of snow. The house that was there, was a long way back from highway, so the snowplow could shove it into front yard, but in this case, no front yard, and can't put it further along into someone else's yard (driveway). People don't want snow scooped up & put on lawns on opposite side of road.