

Municipality of the District of Lunenburg

Minutes of a Special Meeting of Municipal Council

Held in Council Chamber, 10 Allée Champlain Drive, Cookville, NS

Tuesday, April 20, 2021 – 11:00 a.m.

Attendance:

Mayor Carolyn Bolivar-Getson, via Teams

Deputy Mayor Martin Bell, District 2, Vice Chair

Councillor Leitha Haysom, District 1

Councillor Wendy Oickle, District 3

Councillor Pam Hubley, District 4

Councillor Cathy Moore, District 5

Councillor Sandra Statton, District 6

Councillor Michelle Greek, District 7

Councillor Kacy DeLong, District 8

Councillor Reid Whynot, District 9

Councillor Chasidy Veinotte, District 10

Staff:

Tom MacEwan, Chief Administrative Officer

Alex Dumaresq, Deputy Chief Administrative Officer

Sherry Conrad, Municipal Clerk

Joanne Powers, Executive Assistant

Norma Schiefer, Development Officer

Jeff Merrill, Director of Planning & Development Services

Via Microsoft Teams

Sarah Kucharski, Communications Officer

Darren Shupe, Senior Planner

Byung Jun Kang, Planner

Bill Schurman, Director of Recreation Services

Elana Wentzell, Director of Finance

Dave Waters, Director of Business Development, Tourism & Infrastructure

Joshua Bryson, Solicitor for Applicant

Jenny Boehner, Articled Clerk

Derek Montgomery, Applicant

Dan Geck, Assessed Owner

Carin Geck, Assessed Owner

1. CALL TO ORDER

Mayor Bolivar-Getson called the meeting to order at 11:00 a.m. and began by acknowledging that the meeting was held in Mi'kma'ki, the traditional territory of the Mi'kmaq people.

2. OPENING REMARKS BY CHAIRPERSON

Mayor Bolivar-Getson stated that the purpose of the meeting was for a Variance Appeal.

2.i. Introduction of Council Members

Councillors introduced themselves.

2.ii Introduction of Staff

Staff in attendance introduced themselves: Tom MacEwan, CAO; Norma Schiefer, Development Officer; Jeff Merrill, Director of Planning & Development Services; and Sherry Conrad, Municipal Clerk.

2.iii Review of Agenda and Rules of Conduct

Mayor Bolivar-Getson stated the Rules of Conduct.

3. REPORTS AND PRESENTATIONS BY DEVELOPMENT OFFICER (10 minutes)

3.i Review of Legislation and Notification Process

Ms. Schiefer provided a summary of the process. She stated that in 2019 a Development Permit and Building Permit for a one-bedroom cabin, for a tourist accommodation, were issued to Dan Geck at 90 Eisenhower Road in Oakland.

At the first site inspection of the structure, the Building Official did a GPS reading and everything appeared to be in order. Later it was brought to the Development Officer's attention that the location of the structure may have encroached on a property line, so a Building Official visited the property and did another GPS reading, which showed a discrepancy with the first reading. The Building Official issued a Stop Work Order and requested a Surveyor's Location Certificate to confirm the site. The Surveyor's Location Certificate determined that the structure, with the deck, was crossing the property line, which was in contravention with the Oakland Land Use By-law (LUB) and the National Building Code.

The options available to the landowner as outlined in the Land Use By-law, were to either move the structure to meet the setback requirement or apply for a variance for an exemption to be requested.

In December, an application was received from the landowner requesting a reduction of the rear-yard setback. In February, the Development Officer issued the decision that the rear-yard setback could be reduced to .8 metres (approximately 2.2 feet). As part of that decision, letters were sent to adjacent property owners advising of the reduction and the right of appeal. An appeal was received from a neighbouring property.

The LUB, along with the requirements of the *Municipal Government Act*, outline that a variance can be applied for with specific requirements to be met. The Development Officer determined, based on the application submitted, that a variance was an acceptable option in this situation.

The Oakland LUB, when issuing any permits, requires certain setbacks from property lines. Ms. Schiefer indicated in her report that there were some minimum requirements. There was a front-yard setback of 5 metres, and minimum side-yard of 1.5 metres and a minimum rear-yard of 1.5 metres. Once an application is received, it is required that the applicant submit a site sketch showing the proposed location of the structure, and it is processed based on the requirements of the LUB.

Ms. Schiefer noted that this property had frontage on two roads – Oakland Road and Eisenhower Road. The definitions in the LUB, outline how to determine which setback applies to which property line. This lot was considered a through lot where it had frontage on both roads, but as the definition indicates, the front lot line is the lot line where the access to the property is coming from, and in this case, Eisenhower Road.

Once the Location Certificate was received, it showed that a deck was under construction which crossed the property line. Ms. Schiefer advised that the deck had to be removed as it was in contravention of both the LUB and the Building Code. With the deck removed, the structure would be .8 metres from the property line.

The owner advised that when he plotted out the spot, he based it off a survey pin, which unbeknown to him, appeared to not be tied to any survey plan.

Ms. Schiefer advised that before issuing the variance, she consulted with both the Building Official and the Department of Transportation, and they were fine with the location of the structure.

Notice was given to the property owners within 30 metres of the property, and communication was received from one property owner. The *Municipal Government Act* states that Council can hear the variance appeal and make any decision that the Development Officer could have made. The options for Council were to uphold the Development Officer's decision and approve the variance or require the setbacks of the LUB be met and require the building to be relocated.

3.ii Recommendation from Development Officer

Included in 3.i and circulated with the agenda.

4. WRITTEN AND/OR ORAL PRESENTATION (10 minute)

4.i Review of Written Submissions by CAO/Clerk

Ms. Conrad reported that two submissions were received:

1. From Derek Montgomery's solicitor, Joshua Bryson, appealing the Development Officer's decision to grant the variance; and
2. From the assessed property owner, Dan Geck, to provide his reasoning for requesting the variance.

She noted that the submissions were provided with the agenda.

4.ii Presentation by Assessed Owner(s) or Applicant

Mr. Bryson, a solicitor with Wells, Lamey, Bryson, Schnare & Mailman, representing Derek Montgomery, a resident of 68 Eisenhower Road, and Jenny Boehner, Articled Clerk, provided their presentation (circulated with the agenda).

Mr. Bryson reviewed his arguments and their grounds of the appeal:

- The proposed variance is in violation of Section 235(3)(c) of the *Municipal Government Act*;
- The proposed variance is in violation of Section 235(3)(a) of the *Municipal Government Act*;
- Development Officer Schiefer erred in law when granting the variance; and
- There were unauthorized and unlawful changes to Mr. Geck's Development Permit construction plan
- Mr. Geck had ample space on his property to build the cabin without a variance.

Dan and Carin Geck, property owners at 90 Eisenhower Road, explained that in their opinion they followed the setback requirements of the Oakland SPS and LUB. They stated that a survey was not done of the property when they purchased it, and they had no way of knowing that the survey pin used to determine the property line was not a registered pin and so they did not intend to violate or disregard the LUB. It was not until they were requested to get a Location Certificate that they found it was just a pin put in place by a previous owner and was not registered.

Ms. Geck asked that the letters from residents in the area that were submitted with Mr. Bryson's submission not be considered as they have no statutory right in the Appeal as they are not within the 30 metres of the subject property.

5. COMMITTEE MEMBERS AND ASSESSED OWNER OR APPLICATION DISCUSSION (10 min)

5.1 Clarification Only

Clarification questions were raised over the location of the structure and its close proximity to the property line. There were questions about the validity of the letters from the public included in Mr. Bryson's submission, questions regarding the GPS readings, and clarification of the definition regarding the front and rear yard.

Mr. MacEwan noted that the letters from the public included in Mr. Bryson's submission should only be considered if there was a suggestion of intentional disregard by Mr. Geck.

6. DEVELOPMENT OFFICER CLOSING REMARKS (5 minutes)

6.i Provide Final Comments/Clarification

Ms. Schiefer thanked everyone for their comments and clarified the Municipality's application process in that staff do not request a location certificate for every building application as it is an expense to the property owner.

6.ii Review of Council Options:

Mayor Bolivar-Getson clarified that Council's options were:

- a. Grant the Assessed Owner's Appeal
- b. Uphold the Development Officer's decision to approve variance

Mr. MacEwan explained that following the hearing there would be a motion of Council.

7. CLOSING OF THE APPEAL

7.1 No Further Debate or Discussion

Mayor Bolivar-Getson closed the appeal at 12:16 p.m. Mr. MacEwan noted that Council's options were to either grant the assessed owners' appeal or uphold the Development Officer's decision to approve the variance.

Moved by Deputy Mayor Bell, seconded by Councillor Moore that Municipal Council uphold the Development Officer's decision to approve the variance for PID: 60709938, 90 Eisenhower Road, Oakland, NS. Opposed – Councillors Hubley, DeLong, and Haysom. Motion carried.

8. ADJOURNMENT

There being no further business at 12:24 p.m., it was moved by Councillor DeLong, seconded by Deputy Mayor Bell that the meeting adjourn. Carried.