

September 13, 2018

DOC/2018/04430-02



Dear [REDACTED]:

Re: Your request for access to information under Part II of the *Access to Information and Protection of Privacy Act, 2015* [Our File #: MAE/84/2018]

On September 5, 2018, the Department of Municipal Affairs and Environment received your request for access to the following records/information:

[REDACTED] *I am applying to receive a copy of the appeal application and related material submitted by [REDACTED] to build two duplexes at 7-9 Cliffside Avenue in the town of Conception Bay South. [REDACTED] is appealing a decision made by the Town of Conception Bay South Council for a variance on property to build. We request a copy of the entire appeal application, a copy of the building specifications, a copy of survey plan or sketch plan of subject property."*

I am pleased to inform you that a decision has been made by the Deputy Minister for the Department of Municipal Affairs and Environment to provide access to some of the requested information.

However, some of the information contained within the records has been refused in accordance with the following exceptions to disclosure, as specified in the *Access to Information and Protection of Privacy Act, 2015 (the Act)*:

"40(1): The head of a public body shall refuse to disclose personal information to an applicant where the disclosure would be an unreasonable invasion of a third party's personal privacy."

As required by 8(2) of the *Act*, we have severed information that is unable to be disclosed and have provided you with as much information as possible.

In accordance with your request for a copy of the records, the appropriate copies have been enclosed.

The *Access to Information and Protection of Privacy Act* requires us to provide an advisory response within 10 days of receiving the request. As this request has been completed prior to day 10, this letter also serves as our Advisory Response.

Please be advised that you may appeal this decision and ask the Information and Privacy Commissioner to review the decision to provide partial access to the requested information, as set out in section 42 of the *Act* (a copy of this section of the *Act* has been enclosed for your reference). A request to the Commissioner must be made in writing within 15 business days of the date of this letter or within a longer period that may be allowed by the Commissioner. Your appeal should identify your concerns with the request and why you are submitting the appeal.

The address and contact information of the Information and Privacy Commissioner is as follows:

Office of the Information and Privacy Commissioner
2 Canada Drive
P. O. Box 13004, Stn. A
St. John's, NL. A1B 3V8
Telephone: (709) 729-6309
Toll-Free: 1-877-729-6309
Facsimile: (709) 729-6500

You may also appeal directly to the Supreme Court Trial Division within 15 business days after you receive the decision of the public body, pursuant to section 52 of the *Act*.

Please be advised that responsive records will be published following a 72-hour period after the response is sent electronically to you or five business days in the case where records are mailed to you. It is the goal to have the responsive records posted to the Completed Access to Information Requests website within one business day following the applicable period of time. Please note that requests for personal information will not be posted online.

If you have any further questions, please feel free to contact me by telephone at 709-729-7183 or by e-mail at lisas@gov.nl.ca.

Sincerely,



LISA SULLIVAN
ATIPP Coordinator
Enclosures

Access or correction complaint

42. (1) A person who makes a request under this Act for access to a record or for correction of personal information may file a complaint with the commissioner respecting a decision, act or failure to act of the head of the public body that relates to the request.

(2) A complaint under subsection (1) shall be filed in writing not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16(2).

(3) A third party informed under section 19 of a decision of the head of a public body to grant access to a record or part of a record in response to a request may file a complaint with the commissioner respecting that decision.

(4) A complaint under subsection (3) shall be filed in writing not later than 15 business days after the third party is informed of the decision of the head of the public body.

(5) The commissioner may allow a longer time period for the filing of a complaint under this section.

(6) A person or third party who has appealed directly to the Trial Division under subsection 52(1) or 53(1) shall not file a complaint with the commissioner.

(7) The commissioner shall refuse to investigate a complaint where an appeal has been commenced in the Trial Division.

(8) A complaint shall not be filed under this section with respect to

(a) a request that is disregarded under section 21;

(b) a decision respecting an extension of time under section 23;

(c) a variation of a procedure under section 24; or

(d) an estimate of costs or a decision not to waive a cost under section 26.

(9) The commissioner shall provide a copy of the complaint to the head of the public body concerned.

Direct appeal to Trial Division by an applicant

- 52.** (1) Where an applicant has made a request to a public body for access to a record or correction of personal information and has not filed a complaint with the commissioner under section 42, the applicant may appeal the decision, act or failure to act of the head of the public body that relates to the request directly to the Trial Division.
- (2) An appeal shall be commenced under subsection (1) not later than 15 business days
- (a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or
 - (b) after the date the head of the public body is considered to have refused the request under subsection 16(2).
- (3) Where an applicant has filed a complaint with the commissioner under section 42 and the commissioner has refused to investigate the complaint, the applicant may commence an appeal in the Trial Division of the decision, act or failure to act of the head of the public body that relates to the request for access to a record or for correction of personal information.
- (4) An appeal shall be commenced under subsection (3) not later than 15 business days after the applicant is notified of the commissioner's refusal under subsection 45(2).

Regional Appeal Boards
c/o Department of Municipal Affairs & Environment,
Government of Newfoundland Labrador

File #:

(office use only)

APPEAL SUMMARY FORM

- Your appeal and fee must be filed with the Regional Appeal Board (Attention: Robert Cotter) at the address below within the 14 day appeal period.
- The following information is required. With this form, you **must** submit:
 - a copy or summary of the decision being appealed
 - statement outlining the grounds for your appeal
 - appeal fee \$200.00 plus HST (total \$230.00)

In providing the documentation, please check the items indicating that they are submitted with this appeal form.

All information submitted will become part of a public appeal process.

1. (Please check one of the following) Did you,
- submit a development or building application to the Authority.
 - receive an Order;
- Or, are you
- an interested third party.



2. I am appealing a decision made under (please check one)
- Town of Conception Bay South Municipal Plan and Development Regulations.
 - Interim Development Regulations
 - Local Area Plan
 - Protected Road Zoning Regulations
 - S. 240 of the City of Mount Pearl / Corner Brook Acts
 - Protected Area Plan
 - Highway Sign Regulations
 - S. 194 or 404 of the Municipalities Act

3. What decision are you appealing? (please check one)
- Approval
 - Order
 - Refusal
 - Conditions of an Approval

4. What is the street address of the subject property/development? 7-9 Cliffside Ave

5. When did the Authority make its decision?

12 / 06 / 18
Day Month Year

6. When did you receive notification of this decision?

20 / 06 / 18
Day Month Year

7. Please include any documentation from the authority related to the appeal.



This information is being collected for the purposes of determining and administering an appeal in accordance with Section 42(8) of the *Urban and Rural Planning Act, 2000* and the *Development Regulations (CNLR 3/01)*.

This information will be managed in compliance with the *Access to Information and Protection of Privacy Act*.

s.40(1)

15-006 057-007

**PLANNING AND DEVELOPMENT
JUNE 4, 2018**

A privileged meeting of the Planning and Development Committee was held on Monday, June 4, 2018, in the Long Pond Boardroom. It was called to order at approximately 5:04 p.m. In attendance were: Councillor Davis (Chair), Committee members Councillors Bent and Bursey. Also present were Mayor French, Deputy Mayor Murphy, Councillors Tilley, Youden and Butler, Brian Crawley, Chief Administrative Officer, and Corrie Davis, Director of Planning and Development.

2. Variance Application – 7-9 Cliffside Avenue, Manuels

Application was received May 2, 2018, from property owner to subdivide property at 1 Cliffside Avenue, Manuels, to create two new building lots and construct two duplexes for a total of four dwelling units. The applicant requested a variance to reduce the minimum building lot area requirement from 280 square metres per unit to 252, as the total lot area of 1,068 square metres is insufficient for two duplexes.

The property is located in the Residential Medium Density (R-2) Zone where duplex development is a permitted use.

In accordance with Section 4.14 of the Town's Development Regulations, Council must provide public notice of variance requests and consider representations prior to making a decision on the application.

The proposed variances were advertised in the Shoreline on May 9, 2018 and circulated to 21 property owners, who are located within 50m of the property. As a result of this notice, nine representations and one petition were received by the deadline of May 17, 2018, and were attached to the agenda. A map illustrating the location of the proposed development, along with those that submitted representations and signed the petition was also attached.

In general, these respondents outlined the following concerns:

- a) The proposed development would be inconsistent with the character of the neighbourhood;
- b) The proposed development would detract from property values;
- c) The proposed development would increase traffic levels causing safety issues and nuisance towards neighbours;
- d) Traffic creates a danger to pedestrians as there are no sidewalks in place;
- e) The size and scale of the development would be inconsistent with the Municipal Plan.

The property at 7-9 Cliffside Avenue is located within the Residential Medium Density (R-2) Land Use Zone established by the Town's Municipal Plan. Double Dwelling (Duplex) development is a permitted use within the R-2 zone. As a permitted use, duplex development is consistent with the intended character and density goals outlined in the Municipal Plan. Intensification of an urban area, by means of increased density has been shown to elevate or maintain surrounding property values and provides increased tax revenue for the town with decreased servicing costs. Increased traffic volume is to be expected with any development and should pose low to moderate impact on Cliffside Avenue and surrounding transportation networks. Concerns related to a lack of sidewalks is legitimate, however the proposed development is not the cause of the existing issue.

Planning and Development Committee Meeting**June 4, 2018****Page 5**

The Director noted that the property has adequate frontage and lot area to accommodate a four-unit row dwelling without any variances or mandatory public consultation. Similarly, the property could be re-configured to accommodate a single duplex and a single dwelling (with subsidiary apartment) without any variances or other mandatory public notification / consultation.

A variance was approved for a reduction to the minimum rear yard requirement to facilitate the creation of a new infill lot from the adjacent property in 2016.

This information was provided for the consideration of the Committee. A recommendation to Council on whether to approve or refuse the application is required.

Following a discussion, the Committee concurred to refuse the variance request.

The following recommendation is presented for consideration of Council: Recommendation:

Be it so resolved that variances requested to lot area to accommodate proposed duplex development at 7-9 Cliffside be refused as the variances would result in development that is inconsistent with the character of the neighbourhood which is primarily comprised of single story single dwellings.

My grounds for appeal is that I disagree that the neighbourhood is mostly single story dwelling homes. There is still land to be developed in this area. The street next to Cliffside already has a duplex with an adjoining lot owned by the same developer which I believe will be another duplex. Duplex's are affordable living for many families.

REGIONAL APPEAL BOARD

Regional Appeal Boards are established under the Urban and Rural Planning Act to hear appeals arising from a decision:

- *made under a town's Municipal Plan and Development Regulations;*
- *to issue an Order under Section 102 of the Urban and Rural Planning Act;*
- *to issue an Order under Section 404 of the Municipalities Act and Section 240 of the City of Mount Pearl and Corner Brook Acts;*
- *to refuse to issue a permit under Section 194 of the Municipalities Act; and*
- *made under Regulations pursuant to the Urban and Rural Planning Act, 2000 (including the Benton, Butterpot-Witless Bay Line, Conne River, Gander River, Highway Signage, Interim Development Control, Marble Mountain, Occupancy and Maintenance, and Protected Road Zoning Regulations).*

REGIONAL APPEAL BOARDS HAVE NO JURISDICTION TO HEAR MATTERS RESULTING FROM:

- *Council decisions regarding proposed amendments (re-zoning) to the Municipal Plan and Development Regulations.*
- *Council recommendations for the acquisition of Crown Land;*
- *Taxation or property assessment; and*
- *Municipal operations (snow clearing, garbage collection, water and sewer services, etc.).*

HOW TO FILE AN APPEAL

Deadline:

An appeal must be filed within 14 calendar days of the person who made the original application has received written notification of the decision being appealed. In the case of an Order, the appeal must be filed within 14 calendar days of it being served or posted. Where an appeal of a decision and the required fee is not received by the Board within this time limit, the right to appeal that decision is considered to have been forfeited.

Fee:

An appeal fee of \$200 and HST (\$230 total) must accompany this form in order for your appeal to be registered. Cheques and money orders must be made payable to the Newfoundland Exchequer. You may pay using credit card by calling the Central Cashier's office at (709)729-4071 or (709)729-3042. If your appeal is successful, the fee will be refunded.

You must include the following information with your appeal:

A written statement outlining the grounds for your appeal. A copy of the decision or Order that you are appealing. If you do not have that information please provide a summary of the decision being appealed.

Where to file:

The completed appeal form can be delivered or mailed to the Secretary of the Regional Appeal Board at the Department of Municipal and Affairs and Environment, 4th Floor, West Block, Confederation Building P.O. Box 8700, St. John's, NL A1B 4J6. The secretary of the Regional Appeal Board can be contacted by telephone at (709) 729-3090 or by fax at (709) 729-4475.

APPEAL HEARING AND DECISION

A notice that your appeal has been registered will appear your local newspaper. All development related to the appeal must stop until the Board makes its decision. You will be advised, in writing, of the time, date, and place of the Hearing. You, or a representative, may appear before the Board at the Hearing concerning the matter under appeal. The Authority or any other person affected will also be given an opportunity to appear before the Board at the Hearing to present submissions concerning the matter under appeal. You will be notified, in writing, of the decision of the Board. The decision of the Board is final but may, on a question of jurisdiction or law, be appealed to the Trial Division (Supreme Court of Newfoundland and Labrador) within 10 days of the appellant receiving the decision.

This information is being collected for the purposes of determining and administering an appeal in accordance with Section 42(8) of the Urban and Rural Planning Act, 2000 and the Development Regulations (CNLR 3/01).

This information will be managed in compliance with the Access to Information and Protection of Privacy Act.

June 14, 2018

s.40(1)



Your application 2018-109 dated May 2, 2018, to subdivide property at **7-9 Cliffside Avenue, Manuels**, and variances to reduce the minimum building lot area to accommodate construction of two duplexes, was discussed at a meeting of Council held June 12, 2018. It was the decision of Council to refuse the variances, for the following reason:

The variances would result in development that is inconsistent with the character of the neighbourhood which is primarily comprised of single story dwellings.

Please note that you have the right to appeal this decision. The appeal and a fee of \$200.00 plus HST (\$230.00 total) must be submitted to the Secretary of the Appeal Board at the Department of Municipal Affairs and Environment, 4th Floor, West Block, Confederation Building, P.O. Box 8700, St. John's, NL, A1B 4J6 within 14 days of the day that you receive this decision. If the appeal and fee is not submitted with this time limit, your right to appeal is considered to be forfeited. You should note that any interested person also has the right to appeal the decision regarding your application within the 14 days appeal period.

If you require anything further, please feel free to contact the undersigned at 834-6500 ext. 403, at your convenience.

Yours truly,

Sean McGrath
Development Control Coordinator

/tm

cc: Corrie Davis, Town Planner

10.11 Residential Medium Density Zone (R-2)

10.11.1 Permitted Uses

Conservation
Office
Single Dwelling
Double Dwelling
Family Child Care
Subsidiary Apartment
Apartment Buildings (to a maximum of 4 units)
Row Dwellings (to a maximum of 4 units)
Parks, playgrounds, trails
Telecommunications Structures and Antenna
Utilities

s.40(1)

10.11.2 Discretionary Uses

Agriculture
Apartment Buildings (5 to 10 units)
Row Dwellings (5 to 10 units)
Bed and Breakfast
Child Care
Convenience Store
Family and Group Care Home
Assisted Living Facility (under 80 beds)
Home Occupations including light industry such as manufacturing of crafts, art;
Medical and professional services
Private School for teaching individuals or small groups including such things as music, art or craft, but excluding nursery or pre-school education
Place of Worship
Public School
Boat houses, wharves and docks

10.11.3 Lot Requirements

<i>Standard (* per unit)</i>	<i>Single</i>	<i>Double</i>	<i>Row</i>	<i>Apartment</i>
Minimum lot area (m ²)	450	280 *	220 *	210*
Minimum lot frontage (m)	15	15	6m/unit	30
Minimum building line setback (m)	10	10	10	10
The minimum building line setback along Lawrence Pond Road north of Route 2, shall be set at 12m to ensure future functioning of the street as a collector road.				
Minimum side yard	1.2	1.2	3	5

Minimum flanking yard	8	8	8	8
Minimum rear yard	10	10	8	10
Maximum lot coverage			33%	
Minimum building height	8	8	10	10

10.11.4 Convenience Stores

Convenience Stores may be permitted where:

- They are located next to an arterial or collector street, preferably at an intersection.
- Off-street parking for at least five vehicles shall be provided.

10.11.5 Apartment Uses

Multiple unit dwellings between 4 and 10 units may be considered where they are to be located in areas close to commercial areas along the Conception Bay Highway; or along collector streets connecting to Route 2.

10.11.6 Family and Group Care

May be permitted in a dwelling where the use of the dwelling does not differ from or adversely affect the amenities of the adjacent residences or the neighbourhood.

10.11.7 Assisted Living Facilities

Assisted living facilities such as nursing homes or seniors residences that include various assisted living options may be permitted up to a maximum of 50 beds. Such facilities shall be sited in built up areas of the community, close to commercial areas or on a collector street and serviced with municipal water and sewer services. Such uses shall be compatible with surrounding uses and be provided with adequate parking, landscaping, good vehicular and pedestrian access, amenity space and landscaping.

10.11.8 Public Schools and Places of Worship

Public schools and places of worship shall only be permitted on arterial or collector roads.

10.11.9 Permitted Signs

Signs associated with Home Occupations in accordance with Regulation 6.6.

Canopy, Facial Wall sign, Ground Sign for Convenience Stores, Homes for Special Care, Childcare and Places of Worship.

Potential copyright material

If you wish to obtain a copy please contact the ATIPP Office at (709) 729-7072 or atippoffice@gov.nl.ca.