



Planning Review Adjustment Committee November 21, 2022

Minutes of the meeting of the Planning Review Adjustment Committee of the Fundy Regional Service Commission held on Monday November 21, 2022 at 10:00 a.m. at Crane Mountain, Saint John.

1. Call to Order

The Chairperson, Dwight Allaby, called the meeting to order at 10:00 a.m.

2. Record of Attendance

BOARD MEMBERS

Dwight Allaby, Chairperson
John Cairns, PRAC Member
Glen Baxter, PRAC Member
Donna Murchison, PRAC Member
Ron Bridges, PRAC Member
Tina Dealy, PRAC Member
Brenda Rathburn, PRAC Member
Cindy MacCready, PRAC Member - **Absent**

STAFF

Alicia Raynes, Recording Secretary, FRSC
Nick Cameron, Assistant Development Officer
Sarah , Temp Use Renewal – Daycare (Upper Loch Lomond)
Heidi Woodcock, Tentative Subdivision Private Access (Musquash)
Joseph Brenna, Similar or Compatible Use (West Quaco)

3. Approval of Order of Business

The Chairperson asked for approval of the agenda as presented.

Motion: To approve the November 21, 2022 Agenda as circulated.

Moved: Brenda Rathburn
Seconded: Ron Bridges
Vote: *Motion Carried*

4. Disclosure of Conflict of Interest

None

5. Approval of Minutes

The Chairperson called for a motion to approve the minutes as circulated.

Motion: To approve the November 29, 2021 minutes as circulated.

Moved: Glen Baxter
Seconded: Donna Murchison
Vote: *Motion Carried*

6. Applications

a. Temporary Use Renewal (Daycare), 218 Route 820, Upper Loch Lomond

Nick Cameron, Assistant Development Officer, FRSC, presented the report for the application for a Temporary Use Renewal for Brother Bear's Daycare Inc.

Applicant: Brother Bear's Daycare Inc.

Request: Heidi Wilson of Brother Bear's Daycare Inc. has made an application to renew a temporary use for one additional year to operate a daycare facility at 218 Route 820, Upper Loch Lomond.

Requirement for Temporary Use:

It was explained that other than as a home occupation, a standalone daycare facility is not a permitted use within the Simonds Rural Plan. Therefore, a text amendment would be required. A review of the Simonds Rural Plan has been pending but was further impeded by changes to local government across New Brunswick. As such, rural plan amendments in Local Service Districts have been halted by the Minister of Local Government until a new local government and council are established on January 1, 2023.

Mr. Cameron explained that a temporary use of one-year was approved by PRAC at the January 13, 2021 meeting. As per the conditions set by PRAC, the timeframe of the approval began on the first day of operating the daycare which occurred in October, 2021. It was further explained that this one-year approval has now expired. Subsection 52(2)(i)(ii) of the Community Planning Act authorizes PRAC to consider an extension of the temporary use for one additional year. This subsection of the Act requires the applicant to submit a rural plan amendment application, which has been completed. Additionally, the Act requires a resolution from council to confirm they will consider the rural plan amendment application, however, a new village council for Fundy-St. Martins is not authorized to do so until January 1, 2023. In the meantime, FRSC staff advise that a one-year extension of this temporary use is considered by PRAC now to avoid a sudden disruption to the daycare and provide a transparent process for the public.

Consultation:

As per section 6.2 of the PRAC By-law and Operating Procedures, notices were sent to property owners within 100m of 218 Route 820 (subject property) on October 24, 2022. In total, notices were sent to five property owners and a deadline for written submissions was set for November 14, 2022. To date, no written comments have been received.

Overview of Application:

Brother Bear's Daycare has operated at 218 Route 820, Upper Loch Lomond since October 2021. Prior to this, the property was a vacant church. A residential dwelling at 220 Route 820 is located on the same lot. The daycare operates in the former church building and a fenced outdoor play area. The dwelling is currently being rented and no change of use is proposed for the dwelling.

The Fundy Regional Service Commission has not received any comments or complaints from the public regarding the daycare since it began operating.

A daycare is a similar land use to the previous operation of the site as a church. It is a recent trend to see the adaptive reuse of churches and other similar institutional structures, such as schools, to be renovated and used for community amenities or commercial uses, such as a community daycare. Given the nature of the use and the area, there are no adverse land use impacts associated with the application.

Recommendation:

Whereas a standalone daycare facility is not currently permitted in the Simonds Parish Planning Area Rural Plan Regulation;

And whereas PRAC has authorized a daycare facility to operation at 218 Route 820, Upper Loch Lomond as a temporary use for one-year with conditions at their meeting on January 13, 2021;

And whereas subsection 52(2)(i)(ii) of the Community Planning authorizes the PRAC to authorize a temporary use for an additional one-year period;

And whereas a new local government for this area will be established on January 1, 2023;

It is recommended that the application from Heidi Wilson on behalf of Brother Bear's Daycare Inc to permit the operation of a daycare facility at 218 Route 820 in Upper Loch Lomond (PIDs 00354365, 55114474) for an additional one-year period, be granted with the following condition:

1. The village council of Fundy-St. Martins is engaged at the soonest opportunity as per section 53(2)(i)(ii)9C) of the Community Planning Act.

There were no comments or questions from the applicant.

It was asked what would happen if there is no plan by next year when this approval expires. It was explained that there are always risks going forward as we can only extend the temporary use application for a period of one year. If no new by-law is in place, PRAC will have to request an amendment to the plan.

Motion: To accept the recommendation by the Fundy Regional Service Commission to approve the renewal of the temporary use application from Heidi Wilson on behalf of Brother Bear's Daycare Inc, to permit the operation of a daycare facility at 218 Route 820 in Upper Loch Lomond (PIDs 00354365, 55114474) for an additional one-year period, with the following condition:

The village council of Fundy-St. Martins is engaged at the soonest opportunity as per section 53(2)(i)(ii)9C) of the Community Planning Act

Moved: John Cairns
Seconded: Ron Bridges
Vote: *Motion Carried*

**b. Tentative Subdivision Private Access – PID 55161913,
Westbranch Rd, Musquash**

Nick Cameron, Assistant Development Officer, FRSC, presented the report for the application for a Tentative Subdivision Private Access.

Applicant: Marc Woodcock

Request: Marc Woodcock has made an application to subdivide a portion of his property off Westbranch Road in Musquash. The proposal is to create a new private access serving as a right-of-way for two new building lots (lot 22-01 and 22-02) and as access to the remaining land (remnant).

Requirement for Subdivision on a private access:

To subdivide the property, the Planning Review Adjustment Committee (PRAC) will need to consider whether the access is suitable for the development of the property.

Under subsection 6(1)(b) of the Provincial Subdivision Regulation 80-159 Community Planning Act, every lot, block and other parcel of land in a proposed subdivision shall abut such other access as may be approved by the regional service commission as being advisable for the development of land.

The subject property is currently vacant and is located on the north side of Westbranch Road (public road), east of Log Falls Road (private road) and south of the Loch Alva Protected Natural area. Land uses in the area are residential and seasonal camps. Mapping from GeoNB shows no wetlands or watercourses on the subject property. There is a utility corridor at the front of the property with easements for NB Power, Maritimes Northeast Pipeline, and Brunswick Pipeline.

Consultation:

As per section 6.2 of the PRAC By-law and Operating Procedures, notices were sent to property owners within 100m of 218 Route 820 (subject property) on October 24, 2022. In total, notices were sent to six property owners and a deadline for written submissions was set for November 14, 2022. To date, no written comments have been received.

Utilities with an easement on the property were notified of this application, which include NB Power, Maritimes Northeast Pipeline, and Brunswick Pipeline. To date, one response was received from NB Power to request a utility easement for future local services.

Overview of Application:

A tentative subdivision plan was prepared by Hughes Surveys, surveyor for property owner Marc Woodcock. The tentative subdivision plan proposes a right-of-way over an existing driveway from Westbranch Road, across a utility corridor, and would be the single access for the remnant land and two proposed residential building lots.

As per the New Brunswick Subdivision Regulation, to subdivide a property, all lots must abut a public street or "such other access as may be approved by the regional service commission as being advisable for the development of land."

To aid the evaluation of this proposal, this report uses the 'Fundy Regional Service Commission's Guide to Lot Creation on an Access Other than a Public Street' (FRSC guidelines) Site visits were also conducted.

When evaluating whether a private access is advisable for the development of a lot, FRSC guidelines recommend consideration of the topography, sensitive areas, safety, speed, sight visibility, width of the right-of way and continuity of the access. The proposed access would use an existing driveway access point from Westbranch Road. The access point has good sight distance in both directions of Westbranch Road and was previously approved by the New Brunswick Department of Transportation as a suitable access point. From this point, the existing driveway travels north for approximately 150 metres, crossing a utility corridor. The surface is in good condition with a crushed stone surface. Permission was acquired from easement holders to cross the utility corridor when the driveway was constructed. The tentative subdivision plan shows a right-of-way width of 20 metres and total length of approximately +/- 300 metres. The grade along the length of the proposed right-of-way is modest. There are no mapped wetlands or watercourses with the subject property. The right-of-way is entirely contiguous with the subject property with no interruption.

FRSC guidelines contains specific guidelines applicable to different development types or sufficiently similar development types. Mr. Woodcock intends to build a residence for personal use on the remnant land and offer the two new building lots to family members for either residential or seasonal residential development. Developments on a private access do not receive public services such as school

bussing, garbage pickup, snow plowing and road maintenance. It is the responsibility of the landowner to maintain the private access. FRSC guidelines advise that this is noted on the subdivision plan. FRSC guidelines also advise that the new lots on a private access may not be located in close proximity to an urban centre. The proposed lots are approximately 30 kilometers from the closest urban centre in the City of Saint John.

Due to the lack of public services on private roads, principles contained within the FRSC guidelines encourage year-round residential developments to be located on public roads rather than private roads. The subject property in the application is over seven hectares in area and has approximately 126 metres of frontage on a public road (Westbranch Road). Under normal circumstances, this lot may be subdivided by providing each lot with frontage on the public road. However, this is not feasible due to the utility corridor. Crossings over the utility corridor are strictly controlled to protect the infrastructure and safety. Mr. Woodcock has received permission for the existing driveway, which the proposed access for two building lots would utilize. The driveway is in good condition and meets or exceeds the standards within FRSC guidelines. Utility easement holders were notified of this application and invited to submit comment. NB Power requested that a utility easement is created on the proposed lots (lot 22-01 and 22-02) for future local services. No other comments or concerns were received.

Recommendations:

Whereas accessing the proposed lots by a private access is advisable for the development of the subject property and limits the number of crossings over the utility corridor at the front of the subject property;

Therefore, it is recommended that PRAC approve a private access as suitable to create two new building lots on PID 55161913, as proposed in the tentative subdivision plan with the following conditions:

1. Legal right of access, whether by deeded right-of-way, conveyance of right-of-way or other means, must be assured to subsequent owners, assigns, heirs and successors.
2. The remainder of the access to be constructed shall be suitable for emergency vehicles.
3. A utility easement shall be shown on any new lots, as requested by NB Power or other utilities providing services in the area.
4. The final subdivision plan must include appropriate notes, approved by a development officer, that advise the following:
 - a. The created lots may not receive public services.
 - b. Construction and maintenance of the private access is the responsibility of the developer/owner.
 - c. The private access is not suitable for a public street.

It was asked if only three building lots are allowed on a right-of-way. Mr. Cameron explained that is a guideline but is not in the Regulation.

Motion: To accept the recommendation by the Fundy Regional Service Commission to approve a private access as suitable to create two new building lots on PID 55161913, as proposed in the tentative subdivision plan, with the following conditions:

1. Legal right of access, whether by deeded right-of-way, conveyance of right-of-way or other means, must be assured to subsequent owners, assigns, heirs and successors.
2. The remainder of the access to be constructed shall be suitable for emergency vehicles.
3. A utility easement shall be shown on any new lots, as requested by NB Power or other utilities providing services in the area.
4. The final subdivision plan must include appropriate notes, approved by a development officer, that advise the following:
 - a. The created lots may not receive public services.
 - b. Construction and maintenance of the private access is the responsibility of the developer/owner.
 - c. The private access is not suitable for a public street.

Moved: Glenn Baxter
Seconded: Brenda Rathburn
Vote: *Motion Carried*

**c. Similar or Compatible Use (Short Term Cottage Rentals),
West Quaco**

Nick Cameron, Assistant Development Officer, FRSC, presented the report for the application for Similar or Compatible Use.

Applicant: Joseph and Nicholas Brennan

Request: Joseph and Nicholas Brennan have made an application to construct three cottages for short-term rental at 170 West Quaco Road in the Local Service District of Saint Martins. There is an existing dwelling on the eastern portion of the property which will continue to be used by the applicant as a personal seasonal residence.

Requirement for Similar or Compatible Use:

Land use in the Local Service District of Saint Martins is regulated by a Basic Planning Statement established in 1994 under the Community Planning Act. Since this time, the Community Planning Act was repealed and replaced in 2017 and no longer recognizes Basic Planning Statement as a means of regulating land use. However, the current Basic Planning Statement in Saint Martins LSD remains in effect until replaced with a modern rural plan. Uses which are not currently included in the Basic Planning Statement may be permitted with a variance approved by the Planning Review Adjustments Committee (PRAC).

PRAC is authorized to permit a variance from the Basic Planning Statement through Section 55(1)(a) of the Community Planning Act of 2017, which states:

"55(1) Subject to the terms and conditions it considers fit, the advisory committee or regional service commission may permit: (a) a proposed use of land or a building that is otherwise not permitted under the zoning by-law if, in its opinion, the proposed use is sufficiently similar to or compatible with a use permitted in the by-law for the zone in which the land or building is situated"

As per section 6.1 of the PRAC By-law and Operating Procedures, notices were sent to property owners within 100m of 170 West Quaco Road (subject property) on October 24, 2022. In total, notices were sent to 13 property owners and a deadline for written submissions was set for November 14, 2022. To date, one letter in support of the application was received.

Overview of Application:

The application proposes three cottages to be used for short-term rental, aimed at tourists. The cottages are to be constructed, and would include a new septic system and well. A license to install a septic system has been approved by the Department of Public Safety for this proposal. Other proposed site work includes developing a new driveway to be used exclusively by cottage tenants. The cottages would be located on the western portion of the property. The eastern portion of the property includes an existing welling, where the applicant resides on a seasonal basis. No change of use is proposed for the existing dwelling.

Staff have discussed the proposal and provisions of the Basic Planning Statement with the applicant and a site visit was also conducted.

Cottages and other tourist accommodations in the Local Service District of Saint Martins have been approved under this Basic Planning Statement by the former Royal District Planning Commission. These uses were permitted by staff, without a decision of PRAC, based on the description of a 'seasonal residential use' in the Basic Planning Statement, which is as follows: *"It is proposed that the seasonal residential uses, being camps, cottages and other single-family dwellings that are not winterized and are only inhabited during part of the year, and no other uses shall be permitted uses in an area designated for seasonal residential use on the map attached as Schedule A."* It is not clear from the description of a seasonal residence that it includes commercial operations. Therefore, a variance by PRAC is necessary to permit the applicant's proposal.

Existing uses in the surrounding area include seasonal and year-round residences, including short term rentals, forested land and a small sawmill. The subject property is roughly 500 metres from the coastline with coastal views. There are no mapped wetlands or watercourses in the area.

Objectives of the Basic Planning Statement propose that conflicts between different land uses are minimized, such as between commercial and residential uses. However, Basic Planning Statements do not provide zoning standards to achieve objectives. Therefore, terms and conditions should be considered for this proposal. A landscaped buffer is a common approach to minimize noise and other potential nuisances between land uses. It is also common for rural plans to provide

provisions for off-street parking for commercial uses, which should also be considered. The site currently provides a natural vegetative buffer along rear and side lot lines and the applicant intends to develop an off-street parking area.

Recommendation:

Whereas, cottages for short-term rental is similar to a seasonal residence as described in the Saint Martins Parish Planning Area Basic Planning Statement;

And whereas Section 55(1)(a) of the Community Planning Act authorizes a regional service commission to permit a proposed use of land that is otherwise not permitted under the zoning by-law if, in its opinion, the proposed use is sufficiently similar to or compatible with a use permitted in the by-law;

It is recommended that short-term rentals at 170 West Quaco Road in West Quaco (PID 00278242) be permitted with the following terms and conditions:

1. At least one off-street parking space be provided for each cottage or dwelling on the property.
2. A fence or landscaped buffer, approved by the development officer, is provided and maintained between the short-term rental use and abutting residential lots.

It was asked if the board of health approved the septic. Mr. Cameron confirmed that approval has been received.

It was also asked if it is normal to be required to provide a parking area. Mr. Cameron explained that it should be provided as long as it can be accommodated.

Motion: To accept the recommendation by the Fundy Regional Service Commission to approve short-term rentals at 170 West Quaco Road in West Quaco (PID 00278242) be permitted with the following terms and conditions:

1. At least one off-street parking space be provided for each cottage or dwelling on the property.
2. A fence or landscaped buffer, approved by the development officer, is provided and maintained between the short-term rental use and abutting residential lots.

Moved: Ron Bridges
Seconded: Tina Dealy
Vote: *Motion Carried*

The date of the next meeting was discussed. No meeting is required in December as no applications have been received. The next meeting is expected to be January 17, 2022.

6. Other Business

**a. Meeting Location and time for future PRAC meetings
(discussion)**

Members suggested that changes be made to the Planning Review Adjustments Committee (PRAC) By-Law so that the time and location of meetings can be flexible. They agreed that it should remain as the third Monday of each month so as to not conflict with the Fundy Regional Service Commission meetings which are currently held on the fourth Monday.

b. Local Governance Reform (verbal update)

Assistant Development Officer, Nick Cameron, provided an update on Local Governance Reform. There will be changes to some boundaries within the Fundy Region. It was mentioned that the Local Service District of Musquash will be moving to the Southwest Service Commission. Additionally, there will be a new entity called Fundy St. Martins that encompasses the LSD of Simonds, Fairfield and the Village of St. Martins.

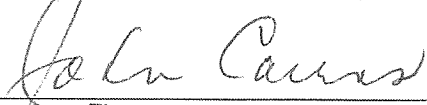
7. Next Meeting

The date of the next PRAC meeting was discussed. There will be no meeting in December, however, there could be a meeting for January, 2023.

Motion: The Chair called for a motion to adjourn at 11:25am.

Moved: Brenda Rathburn
Seconded: John Cairns
Vote: *Motion Carried*

APPROVED (date) February 21st, 2023



John Cairns, Vice Chairperson



Alicia Raynes, Recording Secretary