



VARIANCE HEARING AGENDA

June 24, 2021

6:30 p.m.

YouTube Live

Let us begin by acknowledging that we are gathered today in Mi'kma'ki. The ancestral, present and future territory of the Mi'kmaw people. Today, we gather with the intent followed by the living Peace and Friendship Treaties - with respect, cooperation and coexistence.

Call to Order

Request for Decision on whether to uphold or overturn the Development Officer's decision to grant a variance to the required number of on-site parking spaces under the Land Use By-law from 11.5 to 4.5 parking spaces at 319 Main Street (Kitch'Inn) following the receipt of a letter of appeal to the Development Officer's decision.

1 Comments by Appellant

2 Comments by Property Owner

3 Comments from the Public

4 Comments/Questions of Council

5 Decision

6 Adjournment



Staff Report – Request for Decision

Prepared for: Council, Variance Appeal Hearing

Meeting Date: June 24, 2021

Subject: Variance Appeal

Prepared by: Heather Archibald, Development Officer

Date: June 16, 2021

General Overview:

The owner of the Kitch’Inn at 319 Main St, Mahone Bay submitted a development permit application to change the use of the art gallery space in her building to a small restaurant. This change of use also requires additional on-site parking space as per the Land Use By-law.

The owner has requested a variance to the required parking spaced needed for the proposed restaurant.

Background:

319 Main St is located within the Restricted Commercial zone under the Land Use by-law. This zone permits restaurants as a permitted use.

The minimum requirement for parking spaces for a restaurant is 3 parking spaces per 9.25 sq.m. of floor area devoted to public use. The restaurant has 385.31 sq.ft. of floor area for public use which requires 11.5 parking spaces.

The proposed variance is for 7 parking spaces.



The existing property can provide a total of 9 on-site parking spaces. 4.5 spaces (at a



Figure 1 - Google Streetview Image of front of property.

required rate of 1.5 parking spaces per rental unit) are required for the 4 B&B rooms available on the property. Leaving a further 4.5 parking spaces for the restaurant. There are an additional 3 public parking spaces at the front of the building on Main

St.

Land Use by-law

Section 4.5.18 permits a variance to the required number of parking spaces as per the Planning Strategy.

4.5.18 Variance From Minimum Requirements

In accordance with the Planning Strategy, the Development Officer may grant a variance from the requirements of this by-law for the number of parking or loading spaces required, the ground area and height of a structure, the floor area occupied by a home-based business, and the height and area of a sign. In accordance with the provisions of Section 235 of the MGA the Development Officer may grant a variance from the requirements of this By-law for the percentage of land that may be built upon, size or other requirements relating to yards, lot area, and lot frontage. In considering these variances, the intent of the Land Use By-law is to carry out the policies expressed in the Planning Strategy.

Planning Strategy

The preamble of COMMERCIAL DEVELOPMENT AND LAND USE under Section 4.3 of the strategy states “The commercial downtown is well defined and it is Council’s intention to encourage the continuation of this commercial core, while at the same time recognising the Town has a long history of scattered small commercial operations around the Town.”

Under the Land Use Designation map of the Municipal Planning Strategy (MPS), 319 Main St is designated as Restricted Commercial Area.

Policy 6.1.7 of the MPS permits variances to the required number of parking spaces for a development. Furthermore it states "For the purposes of considering a variance in accordance with this policy, the intent of the Land Use By-law requirements is to carry out the relevant Policies of this Planning Strategy while allowing for the reasonable development of a lot where there is a site-specific difficulty which the variance can solve."

Development Officer's Decision

As development officer I found the for a variance for 7 parking spaces reasonable to this specific site due to its current activities on the property and location within the Town. For the small restaurant, many of the patrons are likely to be the same customers who are staying at the B&B on site and which already have their parking spaces designated under the 4.5 spaces available on the lot. Furthermore the additional 3 public parking spaces in the street ROW but out of the travelled way of the road in an area where there is no other immediately adjacent commercial operation that may also be using these spaces is unique to this property. Between the Main St. available parking and the high likelihood of dual-purpose clients on the property with parking already provided to them, I find the variance to allow for 7 fewer parking spaces than required reasonable in this situation while recognizing the small commercial endeavour on the property.

The Appeal

As part of the process of a variance all assessed property owners within 30 m are notified of the intended variance and are given an option to object to the issuance of a variance. Nine property owners were notified of the variance. The Town received one letter of objection.

With the objection received, this appeal hearing date was set. When the development officer's decision on a variance is appealed the matter is then determined by Council as per the Municipal Government Act, section 237 (1) "*Where a council hears an appeal from the granting or refusal of a variance, the council may make any decision that the development officer could have made.*"

Under the Municipal Government Act, section 235(3), a Development Officer may not grant a variance where:

- (a) variance violates the intent of the development agreement or land-use by-law;
- (b) difficulty experienced is general to properties in the area; or
- (c) difficulty experienced results from an intentional disregard for the requirements of the development agreement or land-use by-law

As development officer I did not find any of the above three statements to be true and thus determined the request for a variance to the parking spaces valid and appropriate to this development at this specific property.

Variations are specific to a given development and the property. Each request is unique and independent of any other future or past requests. As such any decision made today by Council is not precedent setting.

Request for Decision:

Report submitted for a decision by Council on whether to uphold or overturn the Development Officer's decision to grant the variance to the required number of on-site parking spaces under the Land Use by-law from 11.5 to 4.5 parking spaces.

Respectfully submitted,

Heather Archibald



Maureen Hughes

From: Iain and Yvonne <iainandyvonne@eastlink.ca>
Sent: Wednesday, May 5, 2021 9:57 AM
To: Maureen Hughes
Cc: Heather Archibald
Subject: Variance for 319 Main Street

Importance: High

The e-mail below is from an external source. Please do not open attachments or click links from an unknown or suspicious origin.

Re: Variance File #MB-MV2021-001 Owner: Danielle King
Location: 319 Main Street, Mahone Bay (PID 60375748)

Good Morning,

My husband and I live at 327 Main Street, Mahone Bay. We strongly disagree with a variance being granted to 319 Main Street, Mahone Bay for parking requirements. The Town of Mahone Bay has already given this property two additional parking spaces, that are in a no-parking zone on Main Street, and still over the last few years on three occasions people visiting 319 Main Street, have parked on my front lawn. If a variance for parking is granted, where will the people park? Will there be a limit of guests allowed at the B&B? Will there be a limit of guests allowed at the Wine Bar, if the B&B is at full capacity? We are concerned.

Thank you for giving us an avenue to list our concerns over this matter.

Regards,
Yvonne Delaney
Iain Cocks

Sent from [Mail](#) for Windows 10