

SECTION 4 GENERAL PROVISIONS

GENERAL PROVISIONS FOR BUILDINGS AND STRUCTURES

4.1 ACCESSORY BUILDINGS

- .1 No Accessory Building or Structure Shall be Used for human habitation except as specifically permitted in this By-law.
- .2 No more than two (2) Accessory Buildings May be Erected in a residential zone or on a residential Lot provided the total area for both Buildings does not exceed 60 sq. m (645.9 sq. ft.) in area.
- .3 Accessory Buildings and Structures May be Erected in any zone but the following requirements Shall apply in all zones:
 - (a) maximum Building size: 10% of Lot Area or no larger than the main building which ever is smaller in all zones, except residential zones where the subsection 2 applies for size;
 - (b) minimum distance to the Side Lot Line: 0.76 m (2.5 ft.), or that required by this By-law for a Corner Lot;
 - (c) minimum distance to the Rear Lot Line: 0.76 m (2.5 ft.);
 - (d) maximum Building Height: 4.6 m (15.1 ft.) except those associated with a Designated heritage Building or in a heritage area May be higher upon the recommendation of the Heritage Board and approval of Council;
 - (e) location: Rear or Side Yard, provided that an Accessory Building is located no closer to the Front Lot Line than the principal Building or the Side Yard, or on a Corner Lot no closer than the Front Yard Setback requirements and no closer than the Main Building on an adjoining Lot;
 - (f) minimum distance to a Main Building: 1.22 m (4 ft.) to any projections, eaves, decks, etc.)
- .4 Additional requirements for Garages, Carports, toll booths and security gates Shall be as follows:
 - (a) unless otherwise specified in this By-law, Garages or Carports May be centred on the mutual Lot Line if constructed as one Building;
 - (b) boat houses and boat docks May be built to the Shoreline;
 - (c) toll booths May be Erected for a Parking Lot at the entrance to the Lot; and
 - (d) security booths May be Erected at the entrance to a service Lot.
 - (e) plastic garages and/or structures Shall be prohibited in all zones for use as storage and for vehicles.

4.2 BUILDING HEIGHT

- .1 Subject to the specific provisions of the zones set out in this By-law, the maximum Building Height in the City Shall be 12 m (39.4 ft.), and any proposal for Development beyond this threshold Shall be subject to the recommendation of the Planning Board, and upon such terms and conditions as May be determined by the Council after considering Building material, the architectural harmony of the Building with its surroundings, Streetscape, bulk and scale of the Building in the neighbourhood, and Parking.
- .2 If the proposal for Development is beyond the said Height threshold, Council May set out terms of reference for and require the Developer to present an impact statement pertaining to the proposed Height of the Building in order to make its determination.
- .3 Height is the vertical distance measured from average finished Grade to the highest point of the roof surface in the case of flat roofs, or the ridge of a gable, hip, or gambrel roof, and excluding such Structures as antennas, municipal water storage tanks, skylights, cupolas, elevator penthouses, mechanical penthouses, solar panels, chimneys, silos, smoke stacks, steeples and spires. Height restrictions do not apply to these excluded structures unless determined to affect a heritage resource and then the Heritage Advisor as per Section 6 May review the application.
- .4 The maximum height of a Structure housing mechanical equipment on a roof in Industrial, Commercial and Institutional Zones may be increased by the Development Officer provided:

- (a) the height of the Structure does not exceed 3 meters in height above the height permitted in the applicable Zone and the Structure stepped back from the edge of the roof by 3 meters as determined by a projections-upwards of the walls; and
- (b) the Development Officer determines the additional height will not be out of character to the adjoining buildings or the streetscape;
- (c) If the Development Officer is uncertain whether or not the additional height will be out of character to the adjoining buildings or the streetscape and a variance will be required as per Section 4.28 or 4.29.

4.3 DECKS, AND OTHER PROJECTIONS INTO YARDS

Except for Accessory Buildings, every part of any Required Yard as defined in this By-law Shall be open and unobstructed by any Structure from the ground to the sky with the exception of Structures listed in the following Table which Shall be permitted to project into the Required Yards for the specified distances indicated:

STRUCTURE	REQUIRED YARD IN WHICH PROJECTION IS PERMITTED	MAXIMUM PROJECTION INTO REQUIRED YARD	MINIMUM DISTANCE FROM LOT LINE
Canopies, awnings	Any Yard except Side Yard	1.0 m (3.3 ft.)	0.3 m (1.0 ft.)
Cornices, eaves, gutters, chimneys, pilasters, and footings	Any Yard	0.6 m (2.0 ft.)	0.3 m (1.0 ft.)
Balconies	Side and Rear Yard	1.2 m (3.9 ft.)	1.0 m (3.3 ft.)
Bay windows	Any Yard	0.6 m (2.0 ft.)	1.0 m (3.3 ft.)
Disabled ramps	Any Yard	1.5 m (4.9 ft.)	1.0 m (3.3 ft.)
Exterior staircase (landing and stairs connecting to the First Storey)	Any Yard	1.83m (6 ft)	6.0 m (19.7 ft) from the Front Lot Line and 1.2 m (3.9 ft.) from any other Lot Line
Exterior staircase (fire escapes and any stairs extending beyond the First Storey)	Any Yard except Front Yard	1.2 m (3.9 ft.)	1.2 m (3.9 ft.) from any Lot Line
Patio/Decks above grade	Rear and Side Yard		Same as minimum Side Yard for Main Building, except in R1L, R1S, R2 and R2S where the Setback is 4.6 m (15.1 ft.) from the Rear Lot Line
Patio/Decks at Grade	Rear and Side Yard		1.0 m (3.3 ft.) from the Rear or Side Lot Line
Patio/Decks at grade or less than 1.0 m (3.3 ft) high	Front Yard	1.83m (6 ft)	2.0 m (6.6 ft) from the Front Lot Line

Porch/Verandahs	Front or Rear Yard	1.5 m (4.9 ft.)	1.0 m (3.3 ft.)
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** "At Grade" for a deck is 0.3 m (1.0 ft.) or less above grade **

4.4 EXISTING BUILDINGS OR STRUCTURES

Where a Building or Structure has been Erected on or before the effective date of this By-law, on a Lot having less than the minimum frontage area or depth, or having less than the minimum Setback or Side Yard or Rear Yard required by this By-law, the Building or Structure May be enlarged, reconstructed, repaired, renovated, or demolished provided that:

- .1 The enlargement, reconstruction, repair, renovation, or new Building does not further reduce the existing yard setbacks that does not conform to this By-law, and in the case of a demolition, a new Building is constructed within two (2) years; and
- .2 All other applicable provisions of this By-law are satisfied.

4.5 FENCES

- .1 Notwithstanding any other provision of this By-law, subject to this section, a fence May be placed or located in a Yard.
- .2 Except for a security fence of chain link construction in a commercial, industrial, or institutional zone, no fence located in the Front or Flankage Yard Setback area May exceed in Height:
 - a) 1.83 m (6.0 ft.) in a residential zone; or
 - b) 2.50 m (8.2 ft.) in any other zone;

and in any sight triangle area of a Corner Lot, fence Height and construction materials Shall be subject to approval by the City.

- .3 Except for an active Farm, no fence in a residential zone May be electrified or incorporate barbed wire or other dangerous material in its construction.

4.6 GROUPED DWELLINGS

- .1 The Development Officer May issue a permit for grouped Dwellings on a single Lot in all zones where residential development is permitted except for R-1L and R-1S and R-2S Zones if the Buildings and Lot are held in common Ownership but such a grouping Shall not include Single-Detached Dwellings with one dwelling unit. The City May require a Development agreement between the Owner and the City which Shall be registered on title.
- .2 The minimum distance between Buildings on any Lot containing grouped Dwellings Shall be 6.0 m (19.7 ft.).
- .3 All grouped Dwellings and the Lot on which they are situated Shall be under single Ownership.
- .4 The minimum Lot Area on which grouped Dwellings May be located Shall be 0.4 hectare (1.0 acre).
- .5 The minimum Standards of a zone Shall apply to any Lot on which grouped Dwellings are located, but the minimum Lot Frontage requirement Shall only apply as if one Building is being located on the Lot.
- .6 Where a lot consolidation is required for grouped dwellings to meet or exceed Clause 4 above in this section (*Lot Are 0.4 hectares (1.0 acres)*), Council may after giving particular consideration to the criteria as contained in subsection 4.60, and after following the procedures in Section 4.6 as if this were a rezoning, approved or reject the lot consolidation and Grouped Dwellings application.

4.7 ONE MAIN BUILDING ON A LOT

- .1 No Person Shall Erect more than one (1) Main Building on a Lot within any zone except in Commercial, Industrial, Institutional, Manufactured Housing and Comprehensive Development Area zones, or where specifically provided for in this By-law.

- .2 No Person Shall construct a Building over any Lot boundary regardless of whether the Lots are owned by the same Owner except as otherwise permitted in this By-law.

4.8 RESTORATION TO A SAFE CONDITION

The Development Officer May waive any provision of the By-law in order to enable the strengthening or restoring to a safe condition of any Building or Structure.

4.9 SATELLITE DISHES

- .1 Satellite dishes larger than 61 cm (24 in.) in diameter Shall not be permitted on a Street-facing portion of a Building or Structure in any residential zone and no more than one (1) dish of any size may be placed on the building facing a street on a Heritage designated building and they shall require approval of the Heritage Advisor as per Section 6 of the Zoning and Development Bylaw. A communications tower over 10.0 m (32.8 ft.) requires a Building permit and notification of all Affected Property Owners within 100 m (328 ft.) of this Lot. Landscaping May be required near residential Uses. Council May consider such objections from Affected Property Owners as safety, shadowing, noise, electrical interference or health related issues.

4.10 WINDMILL TOWERS

- .1 Windmills Shall be permitted within the City of Charlottetown but not without first obtaining a building permit from the City's Planning Department. The application Shall be accompanied by the following:
 - (a) a site plan accurately drawn to scale and certified by a surveyor that shows:
 - (b) the location of the Windmill Tower on the site and its' proximity to other Structures or Buildings on the Site;
 - (c) the location and proximity of all Structures, Buildings occupied by people, power lines or other utility lines on site and on adjoining properties within a radius equal to three (3) times the proposed Windmill Tower height;
 - (d) certification by a registered professional engineer or the manufacturer's certification along with drawings and specifications verifying the dimensions and sizes of the various structural components of the tower's construction and design data which indicates the basis of design; and,
 - (e) certified sound level values for the proposed wind turbine.
- .2 Windmills may only be permitted in the C-2, C-3, M-1, M-2, M-3 zones and Institutional Zones and the following additional requirements shall apply:
 - (a) Windmills Shall only be permitted on Lots having a minimum width and length three (3) times the height of the Windmill;
 - (b) Windmill height Shall not exceed a total height of 75 feet in any zone;
 - (c) No Windmill Shall be constructed in any front or side yard area. All other setback requirements Shall be measured from property lines to the center of the base of the Windmill Tower and from Buildings occupied by people to the center base of the Windmill Tower;
 - (d) the setback for Windmills Shall be 1.2 times the height of the Windmill from any property boundary or Building occupied by people on the subject lot and 2 times the height of the Windmill from any Building occupied by people on an adjoining Lot;
 - (e) guy wires and anchors for towers Shall not be located closer than one-quarter (1/4) of the height of the Windmill Tower to any property boundary.
 - (f) landscaping or appropriate screening may be required at the Development Officer's discretion;
 - (g) there shall be a limit of one (1) Windmill per Lot.
 - (h) roof-mounted Windmills Shall not be permitted.
- .3 Windmills may only be considered in a residential zone if one Windmill is proposed as a sustainable development initiative aimed to power a single subdivision and minimally the requirements of section 4.9 are met. Such an application Shall also first require that the procedures for notification and approval as set out in Section 4.28 (Minor Variances) of this By-

law be followed and the developer Shall be required to enter into a Development Agreement upon terms and conditions acceptable to the City.

- .4 Prior to receiving a permit to erect any Windmill Tower the developer Shall receive approval from Transport Canada and comply with any Federal or Provincial Regulations pursuant to the *Aeronautics Act* and the Charlottetown Airport Zoning Regulations. If it is deemed by Transport Canada that the proposed Windmill Tower presents a navigational hazard, then such a determination shall be grounds for permit rejection.
- .5 A Windmill will be considered abandoned if not operated for a period of two (2) years or if it is deemed a safety hazard. Once a Windmill is deemed abandoned or a safety hazard, it Shall be considered an offence and subject to penalties under Section 4.30 of the Zoning and Development By-law.
- .6 Climbing access to the Windmill Tower Shall be limited either by:
 - (a) The installation of a fence of not less than 1.8 m (5.9 ft) in height with a locked gate around the Windmill Tower base; or
 - (b) By limiting Windmill Tower climbing apparatus to no lower than 3 m (10 ft) from the ground.

4.11 SUBDIVIDING OF ATTACHED DWELLINGS

Semi-detached and Townhouse Dwellings May be divided independently for individual sale and Ownership provided that:

- .1 A Subdivision of the parcel of land has been approved by the City, and the approved Subdivision Shall provide for appropriate Easements or common area to allow entry by an Owner of any portion of the Building to his back Yard area.
- .2 The Dwelling Units Shall be separated from the Basement floor to the underside of the roof by a vertical fire wall built in accordance with the Building and Fire Code regulations which have been adopted by the City.
- .3 A separate water and sewer service Shall be provided for each unit in accordance with Section 4.2 of the P.E.I. Municipal Water and Sewerage Utility Rules and Regulations.
- .4 Each unit Shall have a separate electrical service, except where sustainable development initiatives are being utilized such as the use of a shared Windmill, Ground Source Heat Exchange System, and/or other alternative renewable energy resource.
- .5 Each unit Shall have a separate heating device, except where sustainable development initiatives are being utilized such as the use of a shared Windmill, Ground Source Heat Exchange System, and/or other alternative renewable energy resource.
- .6 Each unit Shall have separate Parking or access to a common Parking area that has been approved by the Development Officer.
- .7 An agreement, approved by the City, Shall be made between the Owners in a form that conforms to the provisions of the *Registry Act* R.S.P.E.I. 1988, Cap. R-10 and amendments thereto covering the following terms:
 - (a) Party Walls;
 - (b) Maintenance;
 - (c) fire insurance;
 - (d) Easements;
 - (e) Parking;
 - (f) snow removal; and
 - (g) joint Ownership of any other pertinent items
- .8 Any other terms and conditions that May be required by the City Shall be met.

4.12 SWIMMING POOLS

- .1 A Swimming Pool May be Erected or placed in a side or Rear Yard provided that the pool is not less than 1.8 m (5.9 ft.) from the nearest Lot Line.
- .2 A Swimming Pool Shall be completely surrounded with a fence or Structure of not less than 1.8 m (5.9 ft.) in Height.
- .3 The fence Used to surround a Swimming Pool Shall be of a type that would impede unauthorized passage either through, under, or over the fence to the pool area.
- .4 Water and sewer services Shall be in accordance with the PEI Municipal Water and Sewerage Utility General Rules and Regulations.
- .5 Temporary inflatable swimming pools are exempt from the requirements of Section 4.11.

4.13 VEHICLE BODIES

No truck, bus, coach, recreational vehicle or trailer or Streetcar body, nor a Structure of any kind other than a Dwelling Unit Erected and Used in accordance with this and all other municipal By-laws Shall be Used for human habitation and no vehicle body, truck trailer, or container Shall be Used as a commercial or Accessory Building except as specifically permitted by other legislation.

GENERAL PROVISIONS FOR LAND USE

4.14 IN-LAW SUITE

- .1 One (1) In-law Suite May be permitted in a single or two-unit Dwelling for the specific Use of an immediate Family member if:
 - (a) the In-law Suite is clearly subordinate in the Main Building;
 - (b) one (1) of the two (2) units is occupied by the Owner of the Dwelling;
 - (c) the In-law Suite is limited to two (2) bedrooms;
 - (d) an approved agreement is signed by Council and the Owner of the Dwelling requiring the subordinate unit to cease to exist as an In-law Suite if the immediate Family member ceases to live in the subordinate unit or the Main Building. The agreement Shall be registered with the deed to the property in accordance with the provisions of the *Registry Act*, R.S.P.E.I. 1974, Cap. R-11;
 - (e) one (1) additional Parking Space is provided.
- .2 An In-law Suite shall not be permitted in any R-1N Zone.

4.15 BED & BREAKFAST, TOURIST HOME AND HERITAGE INN

- .1 Bed & Breakfast, Heritage Inn or Tourist Home Establishments May be permitted in residential zones provided that:
 - (a) the Owner of the Establishment lives in the Dwelling;
 - (b) incidental accommodation is limited to no more than three (3) bedrooms in an R-1L, R-1S, R-2, R-2S Zones and no more than seven (7) rooms in the R-3 and R-4 Zones;
 - (c) cooking equipment such as a refrigerator, a stove, an oven, or a hot plate Shall not be permitted in a room that is Used for sleeping accommodation;
 - (d) not less than one (1) readily accessible bathroom facility containing a toilet, wash basin, and bath tub or shower is provided for every three (3) bedrooms;
 - (e) no meals other than breakfast are provided to guests of the Establishment;
 - (f) no more than one (1) non-illuminated Fascia Sign or ground Sign is installed, and said Sign Shall not exceed 0.186 sq. m. (2 sq. ft.) in an R-1, R-1S, and R-2, R-2S Zone and 0.45 sq. m (4.8 sq. ft.) in gross surface area in other residential zones;
 - (g) there is no other secondary or Accessory Use of the property;
 - (h) not less than one (1) additional Parking Space Shall be provided for every three (3) bedrooms or guest rooms Used for the bed and breakfast; and
 - (i) incidental accommodation is limited to no more than seven (7) bedrooms in a Heritage Inn as permitted in a R3, R4 and C1 Zones.
- .2 Where a Building is Designated as a Heritage Resource or in the Heritage Area under this By-law, Council May permit the Building to be established as an Owner-occupied Heritage Inn with up to seven (7) bedrooms in an R-1, R-1S, R-2, or R-2S Zone, with Notice to adjoining property Owners if over three (3) bedrooms. In an R-3 and R-4 Zone, Council May permit more than

seven (7) bedrooms in a Heritage Inn, Bed & Breakfast and Tourist Home after giving Notice, and the Owner and the City Shall enter into a Development agreement.

- .3 The Owner of the Building May apply for a Building permit to establish a Heritage Inn.
- .4 Any aggrieved Person May lodge a complaint or complaints regarding a Heritage Inn within the City. After due investigation by City Staff, and after consultation with Planning Board and/or Heritage Board, a recommendation Shall be brought to the attention of Council, and Council Shall determine the disposition of the complaint or complaints, and Council May suspend or cancel a permit for the Heritage Inn or place future restrictions on the Heritage Inn by Development agreement or otherwise.

4.16 DEVELOPMENT WITHIN THE 30 NEF NOISE CONTOUR LINE OF THE AIRPORT

Residential Development within or above the 30 NEF contour line, as defined in the “Charlottetown Airport Land Use Plan” dated November 1992 and also shown on the City of Charlottetown Zoning Map, Shall only be permitted after consultation with the Airport Authority and implementation of appropriate noise reduction measures with appropriate acoustic features considered in the design for the development. The City May require a noise impact assessment to be carried out before permits are issued for any development between the 30 and 35 NEF contour lines. No Development Shall occur above the 35 NEF contour line unless Airport related.

4.17 EXISTING DUPLEX AND SEMI-DETACHED DWELLINGS IN RESIDENTIAL ZONES

- .1 An Existing Converted Dwelling or an Existing Semi-Detached Dwelling that is lawfully in existence at the effective date of this By-law in any location within an R-1L or R-1S Residential Zone Shall be a Permitted Use and Shall be deemed to be a conforming Use in the R-1L or the R-1S Zone within which it is located at that date.
- .2 Any Person who, subsequent to the effective date of this By-law, makes a proposal for such an Existing Converted Dwelling or Semi-Detached Dwelling that entails Building, construction, or other site Development that would require a permit under this By-law Shall make an application to the City for a Building permit to carry out the work.
- .3 Where the Building, construction or other site Development meets the minimum requirements of this By-law, the Development Officer May issue a Building permit.
- .4 Where the application does not conform to the minimum requirements of the zone in respect to Lot size, dimensions or Setbacks, or any other requirement of this By-law, the Development Officer Shall give consideration to the application having regard to:
 - (a) the compatibility of the proposed changes with the surrounding neighbourhood;
 - (b) the convenience, adequacy and safety of Street and pedestrian connections;
 - (c) the suitability of water and sewer services and connections; andif the Development Officer is satisfied that the proposed Development is feasible and represents a reasonable improvement to the property in question and the immediate neighbourhood, he May issue a Building permit.
- .5 Where the Development Officer has specific concerns about the application, he May, at his discretion, refer the application to the Planning Board who Shall make a recommendation to the Council on the disposition of the application.

4.18 EMERGENCY/TRANSITIONAL FACILITIES

- .1 Before issuing a Building/Occupancy permit for an Emergency/Transition Facility, the Development Officer Shall send a letter to PEI Department of Health asking for comments on the proposed Emergency/Transition Facilities under the *Public Health Act* of PEI and any other provincial regulations for the particular type of Emergency/Transition Facilities.
- .2 The Development Officer May issue a Building permit for an Emergency/Transition Facility in all zones except in the R-1L, R-1S, R-2, R-2S and MH Zones provided the establishment of an

Emergency/Transition Facility meets the following requirements and the individual stays in the facility are for no longer than six (6) months:

(a) REGULATIONS FOR EMERGENCY/TRANSITION FACILITIES

	<u>Interior Lot</u>	<u>Corner Lot</u>
Lot Area (Minimum)	370 sq. m (3,982.8 sq. ft.)	395 sq. m (4,251.9 sq. ft.)
Lot Frontage (Minimum)	12.0 m (39.4 ft.)	15.0 m (49.2 ft.)
Front Yard (Minimum)	6.0 m (19.7 ft.)	6.0 m (19.7 ft.)
Rear Yard (Minimum)	6.0 m (19.7 ft.)	6.0 m (19.7 ft.)
Side Yard (Minimum)	1.83m (6.0 ft.)	6.0 m (19.7 ft.)
Height (Maximum)	11.0 m (36.1 ft.)	11.0 m (36.1 ft.)

- (b) The number of rooms is determined by the following:
 - i. three (3) beds for the first 370 sq. m (3,982.8 sq. ft.) of Lot Area or 395 sq. m (4,251.9 sq. ft.) for a corner lot;
 - ii. for every additional bed over three (3) beds, the Lot Shall be increased by 73 sq. m (786 sq. ft.) up to a maximum of eight (8) beds.

- (c) There Shall be an Amenity Area for an Emergency/Transition Facility which Shall be 7.5 sq. m (70 sq. ft.) per two (2) beds of which 2.1 sq. m (23 sq. ft.) Shall be Landscaped Open Space. This Amenity Area May be interior space (i.e. workshop room, games room) and/or exterior such as green space in a Yard, exclusive of a Front or Flanking Yard. The Development Officer May require the exterior Amenity Area to have a wooden opaque fence and/or Landscaped with appropriate material. A living room or kitchen Shall not be considered to be part of the required Amenity Area.

- (d) Qualified supervisory staff (experience in supervising the type of tenants expected to occupy the facility) necessary in relation to the nature of the Emergency/Transition Facility Shall be provided on a 24-hour basis for the Emergency/Transition Facility.

- (e) Before issuing a Building/Occupancy permit for an Emergency/Transition Facility, the Development Officer Shall send a letter to Community Hygiene (PEI Department of Health and Social Services) asking for comments on the proposed Emergency/Transition Facilities under the *Public Health Act* of PEI and any other provincial regulations for the particular type of Emergency/Transition Facilities.

- (f) Before sending a Notice or issuing a Building/Occupancy permit for an Emergency/Transition Facility, the Development Officer Shall receive from the applicant a business/operating plan which outlines but is not limited to the following: hours of operation; number and qualifications of staff or operators; number and type of residents; screening process for accepting residents; operating policy on when and how people are admitted to the facility; traffic and parking expected; liability insurance coverage; and non-profit or not for profit status.

- (g) Lot Owners Shall be given Notice of intended Use with the business/operating plan, and the process for Other Variances (Sec 4.29) Shall be followed with Planning Board making a recommendation to Council, and Council Shall also consider the business plan and the recommendation of Chief of Police in making its determination. The City Shall include a notice with the mail-out requesting landlords to inform the tenants.
- (h) Before issuing a Building/Occupancy permit for an Emergency/Transition Facility, the Development Officer Shall obtain input from the Chief of Police on the business plan and the location of the Emergency/Transition Facility in a neighbourhood as it relates to relevant matters including, but not limited to, neighbourhood peace or safety concerns, other conflicting land Uses in the neighbourhood, location of schools and Day Cares, and pedestrian and traffic movements.
- (i) Emergency/Transition Facilities Shall provide Parking as per Section 4.
- (j) Issuance of a Building permit for an Emergency/Transition Facility May be made subject to such terms and conditions as Council, on the recommendation of the Development Officer and/or Planning Board, May prescribe including a requirement to enter into a Development agreement prescribing such terms and conditions as Council Shall deem necessary or advisable.
- (k) An Emergency/Transition Facility Shall not be located within 100 metres of any Elementary School (primary grades for school children).
- (l) An Emergency/Transition Facility Shall not be located within 200 metres of an existing Emergency/Transition Facility.
- (m) An Emergency/Transition Facility Shall not be located on the same Square Block as an existing Emergency/Transitional Facility.
- (n) The maximum size Sign permitted for an Emergency/Transition Facility Shall be 0.186 sq. m (2 sq. ft.) in area.
- (o) Any aggrieved Person May lodge a complaint or complaints regarding an Emergency/Transition Facility within the City. After due investigation by City staff, and after consultation with Planning Board, a recommendation Shall be brought to the attention of Council, and Council Shall determine the disposition of the complaint or complaints, and Council May suspend or cancel a permit for the Emergency/Transition Facility or place future restrictions on the Emergency/Transition Facility by Development agreement or otherwise.

.3 **GROUP HOMES** - The Development Officer May issue a Building permit for a Group Home provided that the Establishment of the Group Home is not in an R-1, R-1S and MH Zones and meets the following requirements:

- (a) It Shall be limited to a Dwelling Unit unless, after receiving a recommendation from Planning Board, Council permits a Group Home in another building;
- (b) Before issuing a Building/Occupancy permit for a Group Home, the Development Officer Shall receive from the applicant a business/operating plan which outlines but is not limited to the following: hours of operation; number and qualifications of staff or operators; number and type of residents; screening process for accepting residents; operating policy on when and how people are admitted to the facility; traffic and parking expected; liability insurance coverage; and non-profit or not for profit status.

- (c) Before issuing a Building/Occupancy permit for a Group Home, the Development Officer Shall obtain input from Chief of Police on the business plan and the location of the Group Home in a neighbourhood as it relates to relevant matters including, but not limited to, neighbourhood peace or safety concerns, other conflicting land Uses in the neighbourhood, location of schools and Day Cares, pedestrian and traffic movements.
- (d) There Shall be an Amenity Area for a Group Home which Shall be 6.5 sq. m (70 sq. ft.) per two (2) beds of which 2.1 sq. m (23 sq. ft.) Shall be Landscaped Open Space in an R-3 or R-4 Zone. This Amenity Area May be interior space (i.e. workshop room, games room) and/or exterior such as green space in a Yard, exclusive of a Front or Flanking Yard. The Development Officer May require the exterior Amenity Area to have a wooden opaque fence and/or Landscaped with appropriate material. A living room or kitchen Shall not be considered to be part of the required Amenity Area. Council May waive the Amenity Area for a Group Home after receiving a recommendation from Planning Board.
- (e) Issuance of a Building permit for a Group Home May be made subject to such terms and conditions as Council, on the recommendation of the Development Officer and/or Planning Board, May prescribe including a requirement to enter into a Development agreement prescribing such terms and conditions as Council Shall deem necessary or advisable.
- (f) The property Shall be inspected and an Occupancy permit Shall be issued prior to Occupancy.

4.19 HOME OCCUPATIONS

A Home Occupation, as defined in Section 3.102, Shall be a conditional permitted Use in the residential zones (R-1L, R-1S, R-2, R-2S, R-3, R-4) of this By-law, and every Home Occupation Shall in all respects be subject to the following requirements:

- .1 A permit for a Home Occupation May be granted by the Development Officer in a Single-Detached Dwelling; a Mini-Home Dwelling; a Modular Dwelling or Modular Home; or, in one (1) unit only of a Semi-Detached Dwelling, a Duplex Dwelling, a Converted Dwelling comprising no more than two (2) Dwelling Units; or, in an Accessory Building on the same Lot; for a period of one (1) year. The permit May, upon application and payment of any prescribed fee, be automatically renewed for subsequent years, unless the permit is not renewed due to legitimate complaints under subsection 15.
- .2 The Proprietor(s) of the Home Occupation Shall be the Owner or lessor of the Dwelling in which the Home Occupation is located and Shall live in the Dwelling. There Shall be a maximum of one (1) full-time employee or two (2) part-time employees, other than the Proprietor, working inside or outside of the Dwelling in which the Home Occupation is located. There shall be a maximum of two (2) (ie. full-time equivalent) individuals working inside or outside of the Dwelling in which the Home Occupation is located, including the Proprietor(s). The Proprietor(s) Shall not exceed the requirements above by contracting work out to other persons (employees) not located in the Dwelling.
- .3 The Proprietor(s) of a Home Occupation Shall be required to obtain a Building permit, and the Proprietor(s) of the Home Occupation Shall, if the Building permit is issued, and after completion of any alterations or renovations required for the Home Occupation, be required to obtain an Occupancy Permit before commencing operation of the Home Occupation. The Home Occupation Shall be registered in a Registry of Home Occupations to be maintained by the City.
- .4 The total Floor Area of a Home Occupation Shall not exceed 25% of the Gross Floor Area of the Dwelling or Dwelling Unit in which the Home Occupation is located; or, 46.5 sq. m (500 sq. ft.) of the Dwelling and/or Accessory Building in which the Home Occupation is located, whichever is the lesser.
- .5 There Shall be no change in the Dwelling or Lot which would indicate that a Home Occupation is being conducted therein, except for one (1) non-illuminated Fascia Sign per Lot which Shall not exceed 0.45 sq. m (4.8 sq. ft.) in gross surface area.
- .6 There Shall be no external storage of materials or containers which would indicate that any part of the Dwelling or Lot is being Used for any purpose other than a residential Use.
- .7 There Shall be no outdoor animal enclosures.

- .8 No more than one (1) Commercial Vehicle that is part of the Home Occupation Shall be Parked or stored on the Lot, but notwithstanding the foregoing, other vehicles May be Parked or stored on the Lot in a wholly enclosed Building.
- .9 The Home Occupation Shall not interfere with the natural enjoyment of adjoining residential properties by reason of generating on or off-site electrical interference, dust, noise, smoke, fire or safety hazard, Excessive numbers of vehicles or customer, client, patient or supplier visits, or any nuisances not normally associated with a residential Dwelling.
- .10 No Home Occupation Shall be permitted unless one (1) additional off-Street Parking Space is provided in addition to that required by the applicable residential zone; or, one (1) additional off-Street Parking Space is provided for each employee, including Family member(s) employed, whichever is the greater number.
- .11 No Home Occupation Shall be permitted where any Building or the Lot is already being used in whole or in part for any other secondary or accessory purpose or for any other non-residential Use.
- .12 Before the Development Officer May grant a permit for a Home Occupation, the Development Officer shall first give Notice (Section 4.29.2). In addition, the Development Officer Shall also insert in a newspaper circulating in the City at least two (2) advertisements serving public notice as to receipt of the Home Occupation application. Where objections are received, Council, after a recommendation from the Planning Board, May direct the Development Officer to issue or not issue the Home Occupation permit. If deemed necessary or advisable, Planning Board May recommend and/or Council May conduct a public meeting before determining whether or not to grant or refuse the permit.
- .13 A Home Occupation permit Shall not be issued for a Dwelling to be converted to a single family, Single-Detached Dwelling, Semi-Detached Dwelling, Duplex Dwelling or Converted Dwelling, as the case may be, until all of the provisions of this Bylaw to convert to a single family, a Single-Detached, a Semi-Detached Dwelling, Duplex Dwelling or Converted Dwelling, as the case may be, are first complied with.
- .14 The following uses are not permitted as a Home Occupation:
 - (a) an Automobile Shop,
 - (b) an Automobile Body Shop,
 - (c) an Automobile Service Station or repair shop,
 - (d) adult entertainment,
 - (e) a welding shop,
 - (f) an amusement arcade,
 - (g) a restaurant,
 - (h) a Taxi Stand,
 - (i) a Neighbourhood Convenience Store,
 - (j) a Kennel service,
 - (k) a Retail Store,
 - (l) a retail sales Office,
 - (m) a gun shop sales and service, or,
 - (n) an Office, but only if the Office would entail Excessive daily customer, client, supplier or patient visits,
 - (o) a Community Building in an R-1, R-1S, R-2 or R-2S Zone, or
 - (p) any other Use that is of a potentially disruptive nature or May cause a nuisance to the residential neighbourhood as determined by the Development Officer.
- .15 Any aggrieved Person May lodge a complaint or complaints regarding a Home Occupation within the City. After investigation by City Staff, and after review by the Planning Board, a report and recommendation from Planning Board Shall be brought to the attention of Council. Council Shall determine the disposition of the complaint or complaints, and Council May, with or without holding a public meeting, suspend or cancel a permit for the Home Occupation or place future restrictions on the Home Occupation by Development Agreement or otherwise.

4.20 MIXED USES

Where two (2) or more Permitted Uses are located, or are to be located, in one (1) Building or on one (1) Lot, and when the regulations applicable to these Uses are different, the most restrictive regulations Shall be deemed to be in force for that Lot or Building, unless otherwise specified.

4.21 NEIGHBOURHOOD DAYCARE CENTRE

Where a Neighbourhood Daycare Centre is permitted under this By-law, it Shall be subject to the following requirements:

- .1 It Shall be restricted to a maximum of seven (7) children.
- .2 It Shall be Owner-operated. The proprietor(s) of the Neighbourhood Daycare Centre shall be the Owner or lessor of the dwelling in which the Neighbourhood Daycare is located and Shall live in the dwelling.
- .3 It Shall not be located on any Corner Lot, or on a collector or arterial Street.
- .4 It Shall be located on a local Street where on-Street Parking is permitted.
- .5 Signage for the Neighbourhood Daycare Centre Shall comply with the Residential Sign regulations of this By-law.
- .6 It Shall comply with all provincial requirements of the *Child Care Facilities Act* R.S.P.E.I. 1988, Cap. C-5 and amendments thereto.
- .7 No Neighbourhood Daycare Centre Shall be permitted where the Building or Lot is Used for a Home Occupation or where there is another secondary or Accessory Use of the property.
- .8 It Shall comply with the City's Building Code and Fire Prevention By-laws.
- .9 No Neighbourhood Daycare Centre Shall be permitted unless one (1) additional off-Street Parking Space is provided in addition to that required by the residential zone, or one (1) additional off-Street Parking Space is provided for each employee, including Family members employed, whichever is the greater number.
- .10 Any aggrieved Person May lodge a complaint or complaints regarding a Neighbourhood Daycare Centre within the City. After due investigation by City Staff, and after consultation with Planning Board, a recommendation Shall be brought to the attention of Council, and Council Shall determine the disposition of the complaint or complaints, and Council May suspend or cancel a permit for the Neighbourhood Daycare Centre or place future restrictions on the Neighbourhood Daycare Centre by Development agreement or otherwise.

4.22 NON-CONFORMING USES

- .1 Subject to the provisions of this By-law, a Building or Structure, or a specific Use of land or a Building, which is lawfully in existence on the effective date of this By-law, and which does not conform to the permissible Use of the zone where it is located, May continue to exist.
- .2 A Building or Structure Shall be deemed to be Existing on the effective date of this By-law if:
 - (a) it was lawfully constructed or under construction on that date; or
 - (b) the permit for its construction was in force and effect on that date,but this clause Shall not apply unless the construction commenced within twelve (12) months after the date of issue of the permit and is completed in accordance with the permit in a reasonable time.
- .3 A non-conforming Building or Structure May be Altered or repaired provided that such Alteration or repair does not increase the Height, size, or volume of the Building or Structure, or change its Use. Rebuilding a non-conforming Building or Structure to the same size or smaller

Shall be permitted provided the original parking spaces are maintained. A non-conforming use Shall also be permitted to convert to a residential use provided parking is provided.

- .4 If a Building that is non-conforming under the provisions of this By-law is destroyed by a fire, or is otherwise damaged by fire to an extent of 75% or more of the assessed value of the property, it Shall not be rebuilt or repaired unless:
 - (a) it is rebuilt or repaired in conformity with the permitted land Uses of this By-law;
 - (b) such rebuilding, enlargement, reconstruction, repair, renovation, or new Building does not further reduce a Front Yard or Side Yard that does not conform to this By-law;
 - (c) the rebuilding or repair is in conformity with other requirements of this By-law insofar as is reasonable and feasible; and
 - (d) the rebuilding or repair commences within six (6) months of the date of the said destruction or damage.
- .5 Any change of occupants or tenants of any premises or Building Shall not of itself be deemed to affect the Use of the premises or Building for the purposes of this By-law.
- .6 A non-conforming Use of land or Building Shall not be permitted to resume if it has been discontinued for a period of six (6) consecutive months, and in such event the land or Building Shall not thereafter be Used except in conformity with this By-law.
- .7 Where a nonconforming commercial use is occupying a building and the owner is requesting to convert the building or part thereof to residential use, and it is determined the number of units and use will not adversely affect the neighbourhood by way of traffic to the site, the Development Officer may after receiving the plans allow the building to be used for residential purposes or may refer the matter for a variance.

4.23 UTILITIES AND INFRASTRUCTURE

- .1 Nothing in this By-law Shall prevent the Use of land in all zones for public Utility Services, Structures and Appurtenances (related to City of Charlottetown, Electric service and Telephone service), but any such Structures Shall be Designed, constructed and landscaped so as not to detract from the Streetscape.
- .2 No Building May be Erected unless arrangements have been made for the supply of electric power, water, sewage, Streets, or other services which are satisfactory to the Development Officer or the Director of Public Services.
- .3 Notwithstanding any other provision of this By-law, no electric meters or other connections Shall, where a practical Alternative exists, be placed on the exterior front of a Building or Structure.

4.24 NEIGHBOURHOOD CONVENIENCE STORES - EXISTING

- .1 An Existing Neighbourhood Convenience Store Shall be a Permitted Use in all residential zones
- .2 Each Neighbourhood Convenience Store that is lawfully in existence at the effective date of this By-law Shall be deemed to be a conforming Use at that date, within the zone in which it is situated.
- .3 Any Person who makes a proposal for an Existing Neighbourhood Convenience Store that involves Building, construction, site Development, or changes in the Use of the land and would require a permit under this By-law Shall present an application to the Development Officer together with scaled drawings showing the Building in plan and elevation as well as details of the site Development, and the proposal Shall be examined by the applicant and the Development Officer to determine whether the proposed Development will comply with this By-law and with the zone in which it is situated.
- .4 If the Development Officer is satisfied that that the proposed Development is feasible and represents a reasonable improvement to the property in question and the immediate neighbourhood, he May issue a Building permit.
- .5 Where the proposed Development or redevelopment is intended to convert the Use of the Existing Neighbourhood Convenience Store to a residential Use of three (3) units or less, and the Development Officer is satisfied that the proposed Development is feasible and represents a

reasonable improvement to the property in question and the immediate neighbourhood, he May issue a Building permit.

- .6 Where the proposed Development or redevelopment does not conform to the minimum Lot size, width, or Setback requirements of the zone in which it is situated or any other requirement of this By-law, the Development Officer Shall give consideration to the application having regard to the following:
- (a) compatibility of the proposed changes with the surrounding neighbourhood;
 - (b) the convenience, adequacy and safety of Street and pedestrian connections;
 - (c) the adequacy of urban beautification features such as Landscaping and attendant Structures;
 - (d) the suitability of water and sewer services and connections;
 - (e) the adequacy of stormwater drainage systems, both surface and underground;
 - (f) the adequacy of fire protection access; and
 - (g) the Design compatibility of the proposed Building or Buildings with Significant adjacent heritage Structures or sites, if any;

and if the Development Officer is satisfied that the proposed Development is feasible and represents a reasonable improvement to the property in question and the immediate neighbourhood, he May issue a Building permit.

- .7 Where a proposed Development or redevelopment or change of Use from a Convenience Store to a Less Intensive commercial Use is proposed, the Planning Board Shall make a recommendation to Council.
- .8 Where the Development Officer or Planning Board have specific concerns about a proposed Development, a satisfactory agreement with the applicant to address those concerns May be negotiated.
- .9 Where a satisfactory agreement with the applicant is unable to be reached, the Planning Board Shall consider the application in its entirety and any recommendations which the Development Officer has made and Shall make a recommendation to Council on the disposition of the application.
- .10 The Council May send Notices to adjoining properties within 100 m (328.1 ft.) or they May advertise and call an open meeting where the applicant Shall attend to present and defend his or her application, and the public Shall be given an opportunity to make comment, and after consideration of the input received and the recommendation of the Planning Board, the Council Shall make a disposition of the application.
- .11 Where a Building permit is issued for an Existing Neighbourhood Convenience Store, the permit Shall serve as a Development agreement between the two parties that the Development will be carried out in accordance with the drawings and other documents produced in respect of the permit application and agreed upon between both parties, and Shall bear the Signatures of the Owner and the City.
- .12 Where an applicant refuses to enter into an agreement as provided for in this section, the application Shall be denied.

4.25 USES PERMITTED IN ALL ZONES

Nothing in this By-law Shall prevent the Use of land for:

- .1 Public Streets;
- .2 Public Parks and playgrounds; and
- .3 Utility Services.

4.26 USES PROHIBITED IN ALL ZONES

Notwithstanding any other provision of this By-law, the Use of a vehicle or recreational vehicle as a permanent place of residence Shall not be permitted within any zone in the City.

GENERAL PROVISIONS FOR LEGAL PROCEDURES

4.27 AMENDMENTS TO THE ZONING AND DEVELOPMENT BY-LAW

- .1 A Person who seeks to rezone a parcel of land, or to otherwise have this By-law amended, Shall address a written and Signed application to the Council.
- .2 An application under this section Shall include such information as May be required by the Development Officer for the purpose of adequately assessing the desirability of the proposal, and if the application is for a rezoning Shall include:
 - (a) either a legal description and a plot plan or a survey plan accurately showing the location of the property or properties to be re-zoned;
 - (b) the names and addresses of the Owners of the properties and, if the applicant is not the Owner, a statement as to the applicant's interest in the property; and
 - (c) a drawing that shows any proposed Building for the Lot in a detailed concept plan with a floor plan and elevations for the Building and a detailed site plan showing the location of the Building on the Lot and the required Parking and Landscaping.
- .3 The applicant Shall, when submitting the application, deposit with the City an amount estimated to be sufficient to pay a fee for any required advertising and mail-outs in accordance with a fee schedule to be set from time-to-time by resolution of Council.
- .4 Before amending any regulations or rezoning any parcel of land, Council Shall conduct a public meeting to receive the views and opinions of the public and the applicant, and Notice of the hearing and its purpose Shall be given by publishing a Notice in not less than two issues of a newspaper circulating in the City with the first Notice at least seven (7) calendar days prior to the public hearing date.
- .5 Before amending the text of this By-law or rezoning any parcel of land, Council Shall request and consider the recommendations of the Planning Board and the Development Officer and before the Planning Board considers an application, all information outlined in subsections 1 through 3 Shall be complete.
- .6 In considering a rezoning application, the Development Officer or Planning Board May require the applicant to provide such other information as it deems necessary in addition to that required by this By-law.
- .7 On the recommendation of the Planning Board, Council May, for reasons that are in the best interests of the City, reject a proposed amendment to this By-law without public Notice and without referral to a public meeting, but if an application goes to a public meeting, then Council Shall determine the disposition of the application and the applicant May not be allowed to withdraw the application after the public meeting.
- .8 Before rezoning any parcel of land, the Development Officer Shall advise all Affected Property Owners within 100 m (328.1 ft.) of the boundaries of the subject property, through notification in writing at least one (1) week prior to the public meeting, of the date of the public meeting.
- .9 A copy of the purpose of the rezoning application Shall be posted in at least one (1) conspicuous place on the subject Lot at least seven (7) calendar days prior to the date fixed for the public meeting.
- .10 When an application for a rezoning, or an amendment to this By-law has been lawfully determined, the same or a similar rezoning or amendment application Shall not be heard by Council within one (1) year of its rendering a decision unless Council is of the opinion that there is valid new information or a substantial change in the application.
- .11 A Notice in writing Shall be sent to the applicant within seven (7) calendar days of the Council decision stating if the application is successful, and if not successful, stating the appeal process available to the applicant.
- .12 The Council May itself initiate a Zoning and Development By-law amendment for a change in zoning or for other changes to the text of this By-law without the Signatures of the Owner or Owners of the lands involved in the rezoning, provided that the proposed amendment obtains the support of a majority of the whole Council.
- .13 Where there is an amendment to the text of this By-law that does not entail a change in zoning, all procedures in this subsection Shall be followed except that the procedure for notification of all Assessed Property Owners Shall not apply.

4.28 RECONSIDERATION

- .1 If a permit or approval under this By-law is granted, not granted, or granted subject to conditions the applicant or an aggrieved Person feels are unjustified or unwarranted under this By-law, the applicant or an aggrieved Person May seek a reconsideration before Council.
- .2 An aggrieved Person or an applicant wishing to launch a reconsideration Shall make known their intention to do so and the grounds or reasons as per subsection 3 below by written letter delivered to the Development Officer within twenty-one (21) calendar days of the initial decision.
- .3 Council May review, rescind, change, Alter or vary any order or decision made by the Development Officer or Council, and Council May reconsider any application under this section provided that:
 - (a) new material facts or evidence not available at the time of the initial order or decision have come to light;
 - (b) a material change of circumstances has occurred since the initial order or decision; or
 - (c) there is a clear doubt as to the correctness of the order or decision in the first instance.
- .4 A letter Shall be sent by ordinary mail explaining the valid reconsideration request to all Affected Property Owners within 100 m (328.1 ft.) of the boundaries of the subject Lot identifying the subject Lot.
- .5 Council Shall hear any proper request for reconsideration of a decision under this section. Council Shall give all interested Persons a full opportunity to be heard and make a determination on a request for reconsideration.
- .6 The City is not liable for any construction commenced prior to the lapse of the twenty-one (21) calendar day appeal period.
- .7 The City Shall not consider an application for reconsideration if, at the same time, there is an appeal filed with the Island Regulatory and Appeals Commission; but the City May proceed with reconsideration if the applicant has instructed the Island Regulatory and Appeals Commission in writing to hold this appeal in abeyance, and the Commission has agreed in writing to hold their appeal until the appellant has exhausted the recourse of reconsideration with the City.

4.29 MINOR VARIANCES

- .1 Where the Development Officer is not able to issue a Building or Development Permit because the proposed Building or Development does not meet the minimum Standards of this By-law, the Development Officer Shall be empowered to grant a variance of up to 15% of the minimum Setback requirements for a front, rear, side or Flankage Yard and 10% of other minimum Standards pertaining to a Lot Area, a Lot Frontage or a Building Height, provided that:
 - (a) a current plot plan or survey plan is provided showing the Existing and any proposed Alterations to a Building;
 - (b) the need for consideration of a variance is owing to conditions peculiar to the property or unique to the area and not the result of actions by the Owner, and a literal enforcement of this By-law would result in unnecessary and undue hardship;
 - (c) the proposed Building or Development complies with the general intent and purpose of the Official Plan and this By-law;
 - (d) the proposal is desirable and represents an appropriate Development or Use of the site;
 - (e) no previous variance has been granted for the Lot or property;
 - (f) the proposed variance from the requirements of this By-law is minor in nature;
 - (g) the Lot is held in separate Ownership from adjoining properties on the effective date of this By-law;
 - (h) issuance of a permit would not compromise the health, safety, convenience or general well-being of any Person or group of Persons or the liability of the City;
 - (i) the variance request does not entail a rezoning application.
- .2 Before granting any variance under this section, the Development Officer Shall:
 - (a) receive from the applicant sufficient funds to cover the costs associated with the mail-outs and processing of this application;

- (b) provide written Notice by ordinary mail explaining the purpose of the variance to all Affected Property Owners within 100 m (328.1 ft.) of the boundaries of the subject Lot; and
 - (c) ensure that the Notice identifies the subject Lot and describes the variance application and the date by which written objections must be received;
- .3 If any objections are received within fourteen (14) calendar days from the date of the Notice, the requested variance will be automatically referred to the Planning Board which Shall consider the request having regard for the foregoing criteria and recommend to the Development Officer to approve or reject the application. If no objections are received within that time, the variance May be granted by the Development Officer.
 - .4 When an application for a variance has been lawfully determined, the same or a similar variance application Shall not be heard by Council within one (1) year of its rendering a decision unless Council is of the opinion that there is valid new information or a substantial change in the application.
 - .5 If, after one (1) year of a variance approval by the Development Officer, no Building permit is issued or the Building permit is not acted upon (construction has not commenced), the variance and any permits Shall automatically be deemed null and void.

4.30 OTHER VARIANCES

- .1 Where the Development Officer cannot issue a Building or Development Permit because a variance being sought is not a minor variance as specified in this By-law, the Council May, under special circumstances and on recommendation from the Planning Board, provided the requirements of 4.29.1 are met, approve the variance in the following circumstances:
 - a. The Building Height regulations in the zones in this By-law as listed in Section 8 May be varied by Council by more than the percentage-allowed in the Minor Variances section above;
 - b. The need for consideration of a variance is owing to conditions peculiar to the property or unique to the area and not the result of actions by the Owner, and a literal enforcement of this Bylaw would result in unnecessary and undue hardship;
 - c. the extension of a specific non-conforming Use upon a site occupied by such Use or Building on the effective date of this By-law;
 - d. a Temporary Use of land in a manner otherwise prohibited by this By-law for a period not exceeding four (4) months in any year, and Council may permit temporary Structures for a period of up to one (1) year which may be renewed for one (1) year;
 - e. a non-conforming Use of a Building site or a Structure which has been discontinued for a period of six (6) months or more to be returned to a non-conforming Use provided it has not been discontinued for more than two (2) years;
 - f. a Less Intensive Use of the Building or site other than the previous non-conforming Use, provided that the Building or Structure had not at any time in the interim become a conforming Use;
 - g. an Existing commercial Building to be expanded to one (1) Side Lot Line with zero Setback;
 - h. an Accessory Building to be located on a Lot closer to the Street than the Main Building on the Lot;
 - i. the variance request is not substantial and does not entail a rezoning application. If there is any doubt, then a rezoning application must be sought by the applicant.
- .2 If, after giving particular consideration to the criteria as contained in subsection 1, and after following the procedures in Section 4.29.2 and allowing for 14 calendar days before receiving a recommendation of the Planning Board, Council May, without prejudice, approve or reject the variance.
- .3 When an application for a variance has been lawfully determined, the same or a similar variance application Shall not be heard by Council within one (1) year of its rendering a decision unless Council is of the opinion that there is valid new information or a substantial change in the application.
- .4 If, after one (1) year of a variance approval by Council, no Building permit is issued or the Building permit is not acted upon (construction has not commenced), the variance and any permits Shall automatically be deemed null and void.

OFFENCES

4.31 BY-LAW ENFORCEMENT

- .1 The Development Officer or Designate is authorized, with cause, to enter any land, Building, or Structure in the City, provided such entry is not excessive or by force, is at a reasonable time, and is for the purpose of making an inspection or examination relating to this By-law.
- .2 By-law enforcement May be undertaken by the City in accordance with the procedures established in PART IV of the *Planning Act*, R.S.P.E.I. 1988, Cap. P-8.
- .3 The Development Officer May apply to a Justice of the Peace or Provincial Court Judge for an order authorizing entry onto the property in question in the event that any Person refuses or does not permit an inspection to be carried out pursuant to this By-law.
- .4 The Provincial Court Judge or Justice of the Peace May at any time issue a warrant in the prescribed form authorizing a Person named in the warrant to enter and search a Building, receptacle or place if the Provincial Court Judge or Justice of the Peace is satisfied by information on oath that there are reasonable grounds to believe that an offence is being committed and the entry will afford evidence relevant to an offence, and such a search warrant Shall name the date upon which it expires which Shall be not later than fifteen (15) days after the warrant is issued.
- .5 In addition to any fine or penalty imposed, the Provincial Court of Prince Edward Island May order the Person convicted to Restore the premises or land on which the offence has occurred to its original condition or to the satisfaction of the authority having jurisdiction, unless such restoration will constitute a safety or health hazard.
- .6 In addition to, or instead of, the penalties referred to in the “Violations” section, the Supreme Court of Prince Edward Island May, upon application by the City, cease or prohibit by injunction any Development which does not comply with the provisions of this By-law.
- .7 The City, its Officers and employees Shall not be liable for any damage caused to any property when acting under the authority of this section.

4.32 BY-LAW OFFENCES

- .1 Any Person who, being the Owner or occupant of any land, Building, or Structure to which this By-law applies, fails to:
 - (a) remove any Sign;
 - (b) comply with the provisions;
 - (c) obtain a permit;
 - (d) cease work on, and Restore to its original condition, any property on which a Development has been undertaken; or
 - (e) obtain a proper Subdivision approval;in contravention of this By-law is guilty of an offence and liable under conviction to a fine and, in default of payment, to a term of imprisonment
- .2 Any Person who impedes, attempts to impede, refuses or does not permit inspection of a property pursuant to this By-law Shall be guilty of an offence.
- .3 Where a Person convicted under this section fails to commence the restoration ordered within sixty (60) days after the order has been made, the City May take such steps as it deems necessary to Restore or remove the subject matter of the offence at the expense of the Owner or occupier.
- .4 When an offence under this By-law is committed or continued for more than one (1) day, the Person who committed the offence is liable to be convicted for a separate offence for each day on which the offence is committed or continued.

4.33 PENALTIES

- .1 A Person, contractor or Owner who violates this By-law is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars (\$5,000) in each case together with the cost of prosecution, and, in default of payment of the fine and costs, to imprisonment for a term not exceeding three (3) months unless the fine and costs together with the costs of enforcing the same are sooner paid.

- .2 Where the offence is a continuing offence in addition to the penalties provided in this section, such Person Shall be liable for all costs in immediate removal of such an offence, and the Provincial Judge May impose a penalty not exceeding five thousand dollars (\$5,000) for every day the said offence continues and in default of payment thereof to imprisonment not exceeding thirty (30) days.
- .3 Where there is default of payment, any Person or corporate Officer is liable to be imprisoned in accordance with Section 31(3) of the *Summary Convictions Act*.

GENERAL PROVISIONS FOR CITY LOTS

4.34 FLANKAGE YARD SETBACKS

1. All Flankage Yard requirements Shall meet the same Setback requirement as that required for the minimum Front Yard Setback in the applicable zone. And where a Corner Lot is located adjacent to Existing Buildings on the same Block and side of the Street the Setback from the Front Lot Line and Flankage Yard Lot Line Shall be the average distance that the front walls of the Existing Buildings, other than Accessory Buildings or Structures, are set back from their Front Lot Lines; or
2. Where the proposed development meets the required setbacks on both the Front Yard and Flankage Yard, then the Rear Yard and Side Yard setbacks may be interchanged at the discretion of the Development Officer, when the principle entrance of the proposed development is to be oriented towards the Flankage Yard.

4.35 BUILDING SETBACK EXEMPTION

No Person Shall Erect or Use a Building or Structure on a Lot and have any part of the Building or Structure closer to the Front Lot Line than the Front Yard Setbacks which are established for the zone in which it is located, with the following exceptions:

- .1 A Building or Structure that was lawfully Erected on or before the effective date of this By-law with a Setback from the Front Lot Line which is less than that permitted in the zone in which it is located May have additions to such Building or Structure with a minimum Setback from the Front Lot Line that is equal to or greater than its Setback before the adoption of this By-law.
- .2 Where a Lot is located between Existing Buildings on the same Block and side of the Street:
 - (a) the Setback from the Front Lot Line Shall be the average distance that the front walls of the Existing Buildings, other than Accessory Buildings or Structures, are set back from their Front Lot Lines; or
 - (b) where a Building can meet the minimum Front Yard Setback and will not be located closer to the Street than the Buildings on the adjoining Lots, it may be permitted.

4.36 ACCESS TO A PUBLIC STREET

- .1 Notwithstanding subsection 4.35.1, but except in the R-1 and R-2 Zones, Council may, after receiving a recommendation from the Planning Board, approve the consolidation or subdivision of a Lot(s) which has a suitable private Street access for pedestrian and vehicular traffic, where in Council’s opinion, due regard has generally been given to the requirements of Section 4.60; and more specifically,
 - a. the purpose and intent of the Lot consolidation or subdivision sought is consistent with the goals and objectives of the City’s Official Plan and this Bylaw,
 - b. the proposed private access to the proposed Development is suitable and safe for emergency vehicles such as police, fire and ambulance services for such a Development,
 - c. Utility and Municipal Services including water, sanitary sewer, storm sewer, electricity, telecommunications are adequately provided and accommodated,
 - d. safe and convenient public and private pedestrian and vehicular access is adequately provided for,
 - e. the minimum lot size is 0.75 hectares (1.84 acres),
 - f. the Lot is required to have minimum street frontage of 25 feet; and
 - g. such other criteria as Council may deem relevant in a particular situation have been satisfied.

- .2 No Person Shall Erect or Use a Building or Structure, or Use any Lot of land regulated by this By-law, unless the Lot of land to be Used, or the Lot of land upon which the Building or Structure is situated or to be situated, abuts or fronts on a public Street.
- .3 All access to a Lot, both vehicular and pedestrian, Shall be safe and where there is concern, the City May require an independent assessment by a qualified traffic consultant at the Owner's expense.
- .4 Any future subdivisions of the Lot as subdivided under subsection 4 above (4.35.4) Shall not be permitted unless the new Lot(s) has frontage on a Street as required by the zone in which it falls.
- .5 The City Shall review a proposal for Subdivision or Development with regard to the access for vehicular and pedestrian traffic having consideration for the following:
- (a) The required sight distance Standards where a vehicle operator approaching an access driveway with an eye level of 1.1 m (3.6 ft.) above Grade Shall be able to see any object larger than 0.4 m (1.3 ft.) in Height at an access to a Lot for a minimum distance of:
- | <u>Designation</u> | <u>Minimum Stopping Sight Distance</u> |
|--------------------|--|
| Arterial Street | 170.0 m (557.7 ft.) |
| Collector Street | 85.0 m (278.9 ft.) |
| Local Streets | 45.0 m (147.6 ft.) |
- (b) If an access to a Lot crosses a sidewalk or curb, or requires the removal of a utility pole or fire hydrant, the City Shall be notified and May require modifications to be at the Owners expense.
- (c) No driveway Shall be located on utility department services to a Building or other services such as water turn-off valves.
- (d) An access to a Corner Lot May be reviewed by the Police and Public Works officials of the City, and the City Shall require that the access be placed no closer than 15.24 m (50 ft.) to the right-of-way of the intersection or they May permit the access on the Lot at the furthest possible distance from the Street intersection.
- .7 The City May restrict a Lot from having more than one (1) access point to a Street.
- .8 The City May, where there is an intensity in the Use of a Lot, require the closing of one (1) or more access points to enhance the safety of the Street access to that Lot. All access locations and curb crossings Shall require the approval of the City Public Works Department or the Department of Transportation and Public Works where such Streets or highways are under its jurisdiction. The City of Charlottetown and/or the Province may restrict or eliminate existing access to a lot if there are street improvements necessary or for public safety due to the activities on the lot i.e. Drive-thru Business.
- .9 The Development Officer May require a traffic study for any Development or proposed Subdivision in the City, and after receiving concurrence of both Public Works and Police Departments, May approve the Development or Subdivision.
- .10 Where a Development proposal has the potential to generate substantial increased traffic flow, the Development Officer May consult with the Planning Board, and the Council, on recommendation from the Planning Board, May require the Developer to obtain an independent traffic analysis and May negotiate an agreement with the Developer for an equitable cost sharing of necessary Road improvements arising from the analysis.
- .11 No Building permit Shall be issued where the proposed Building or Structure, or its Alteration, repair, location or Use would be detrimental to the convenience, health or safety of occupants or residents in the vicinity or the general public.

4.37 UNDERSIZED LOTS

- .1 Notwithstanding any other requirements of this By-law:
- (a) a vacant Lot shown on a deed as separate Lot(s) from adjoining parcels on the effective date of this By-law, having less than the minimum frontage, depth or area required by this By-law, May be Used for any purpose permitted in the zone in which the Lot is located and the Development Officer May issue a Development Permit provided that all other applicable provisions in this By-law are satisfied;

- (b) a Lot containing a structure, and held in separate Ownership from adjoining parcels on the effective date of this By-law, May be Used for any purpose permitted in the zone in which the Lot is located, and the Development Officer May issue a Development Permit provided that all other applicable provisions in this By-law are satisfied; and
 - (c) no Person who owns a Lot held in separate Ownership from adjoining parcels on the effective date of this By-law, having less than the minimum frontage, depth or area required by this By-law, Shall be deprived of the ability to make reasonable Use of the Lot in accordance with the zone in which it is located, and where such a Person makes application for a Development Permit the Development Officer May:
 - i. waive Rear Yard, Front Yard or Side Yard Setback requirements to an extent that is reasonable and feasible and does not compromise safety, convenience or the esthetic character of the neighbourhood and May issue a permit;
 - ii. apply procedures set out in this By-law for the handling of variances if the variance from the required Rear Yard, Front Yard or Side Yard Setback is substantial; or
 - iii. before issuing the said permit, consult with the Planning Board who Shall recommend to Council on waiving of the said Setbacks and a reasonable and feasible disposition of the application.
- .2 Panhandle Lots may be permitted for Single-detached dwellings in residential zones provided the main body of the lot meets the R-1L Zone requirements for Lot size and have minimum 25 ft. frontage on a street and after due regard has been given to the requirements of Section 4.60.3. Only one (1) panhandle lot may be taken from the parent parcel.

4.38 REDUCTION IN LOT SIZES

No Lot Shall be reduced in area, either by conveyance or alienation of any portion thereof, or otherwise, so that any Building or Structure on such Lot Shall have a Lot Coverage that exceeds, or a Front Yard, Rear Yard, Side Yard, Lot Frontage, or Lot Area that is less than that required by this By-law for the zone in which such Lot is located.

4.39 YARDS BORDERING ON WATER

Where, in this By-law, a front, side or Rear Yard is required, and part of the area of the Lot is wetland or is beyond the rim of a river bank or Watercourse or between the top or toe of a cliff or embankment having a slope of fifteen percent (15%) or more from the horizontal, then the required Yard Shall be measured from the nearest Main Wall of the Main Building or Structure on the Lot to the edge of the wetland or the top of the said cliff or embankment if such area is closer than the Lot Lines. Where a Building or Structure can be built over the water and has all required approval from Federal and Provincial Governments, the area of the water lot shall only be counted for the area encompassed by the foot print of the Building or Structure under the provisions of this bylaw for Lot area and all other provisions for the zone in which the property is located shall be followed.

4.40 SIGHT TRIANGLE ON CORNER LOTS

- .1 Notwithstanding any other provisions of this By-law, no Building or Structure Shall be Erected on a Corner Lot within 6 m (19.7 ft.) of the triangular space included between Street Lot Lines.
- .2 No shrubs or foliage Shall be planted or maintained on a Corner Lot which would obstruct the view of a vehicle driver approaching the intersection within 6 m (19.7 ft.) of the point of intersection of the Street Lot Lines.

4.41 ESTABLISHMENT OF BUILDING LINE

- .1 In the event that the said Building Line encroaches on a public right-of-way, the encroachment permitted Shall be no greater than that which previously existed on the site or than the Defacto Building Line for the Street or Block.

GENERAL PROVISIONS FOR PARKING

4.42 PARKING SPACE STANDARDS

- .1 A Parking Space Shall have dimensions of not less than 2.6 m (8.5 ft.) by 5.5 m (18.0 ft.) and Shall have adequate space to permit access and egress of a motor vehicle to and from a Street or highway by means of a driveway, aisle, or a maneuvering area, and Parking Spaces for trailer trucks, buses, motor homes or other large vehicles which Shall be Designed with dimensions of 3.7 m (12.1 ft.) by 18.3 m (60 ft.) or larger, if necessary to accommodate longer vehicles.
- .2 For every Building to be Erected, placed or Used, or changed in Use for any of the purposes listed in the following table, there Shall be provided and maintained off-Street Parking on the same Lot to the minimum extent prescribed by the table.
- .3 A Parking requirement calculation that is derived from the table and that specifies at least 0.5 of a space but less than 1.0 Shall be deemed to be a requirement for one (1) additional space.
- .4 Off-Lot Parking Shall be allowed as-of-right on an adjoining Lot of the same zone or a Parking zone provided that Lot is owned by the same Person and Notice is provided to subsequent Owners that this Lot is required for Parking.
- .5 Renovations and Alterations, which do not result in an increase in the gross floor area of a Building, Shall not require any additional parking, but the number of spaces which existed prior to the Renovations, Alterations, Shall not be diminished. New additions require parking but only the new area use requires additional parking, but the number of spaces which existed prior to the addition shall not be diminished that is required for the uses in the building.
- .6 The Development Officer May, with the approval of the Council, approve off-Lot Parking:
 - (a) for developments located outside of the DMU Zone south of Euston Street provided that the lot or Building containing the required parking is within 240 m (787.4 feet) of the subject lot and the Developer has filed with the City a lease providing the parking for a period of not less than 10 years;
 - (b) for development located within the DMU Zone where the existing parking is located on an existing Lot or within 280 m (918.6 feet) of the subject lot and the Developer has filed with the City a lease providing the required parking for a period of not less than 10 years;
 - (c) for developments located within the M-1, M-2 and M-3 Zones provided the Developer has filed with the City a lease providing the required parking for a period of not less than 10 years.
- .7 Where a lease required under subsection 4.42(5) expires or is cancelled the owner of the property for which the lease was required shall forthwith notify the City of the expiration or cancellation of the lease and:
 - (a) provide the City with a copy of a lease which replaces the lease which has expired or has been cancelled and meets the requirements of the Bylaw with respect to parking; or
 - (b) cease occupation or use of that portion of the subject lot which relates to the lease until the required parking is provided; or
 - (c) pay to the City the amount of money required for the current cash-in-lieu or parking spaces under subsection 4.47, subject to meeting the requirements of subsection 4.47.
- .8 The Parking requirements Shall not apply where a Building is repaired after a fire or other catastrophe provided that the original number of spaces is available after reconstruction.
- .9 Where a Building or Lot Use is used for more than one use or is not listed, the Development Officer May apply the closest Parking requirement deemed to fit the proposed Use(s) for the purposes of determining the Parking requirements.
- .10 Except for a Shopping Centre and any property whose parking requirements are established by subsection 4.42(a), where there is multiple Use of a site, the Parking requirements for the site Shall be the sum of the parking required for each Use.
- .11 Sections 4.30 and 4.31, “Minor Variances” and “Other Variances”, Shall not apply to the Parking provisions required in the following table for Minimum Required Parking Spaces.

<u>Use</u>	<u>Minimum Required Parking Spaces</u>
Animal Hospital or shelter	1 space for every 28 sq. m (301.4 sq. ft.) of floor space
Auditorium, arena, hall, stadium, other indoor recreation facility and other places of public assembly	Where there are fixed seats, 1 space for every 5 seats or 3 m (9.8 ft.) of bench space; where there are no fixed seats, 1 space for every 19 sq. m (204.5 ft.)
Bed & breakfast, tourist, boarding, or rooming home	1 space per 3 bedrooms or guest rooms
Bowling alley and curling rink	Bowling alley - 2 spaces for each lane Curling rink - 4 spaces per curling sheet in addition to the requirement for the rest of the Building
Business Office, Retail Store, retail service shop (north of Lots fronting on Euston Street)	2 spaces for the first 23.2 sq. m (250 sq. ft.) of Floor Area plus 1 additional space for each additional 25 sq. m (269.1 sq. ft.) of Floor Area.
Business Office, Retail Store, retail service shop (south of Lots fronting on Euston Street) or located within the DMU Zone	2 spaces for the first 42 sq. m (450 sq. ft.) of Floor Area plus 1 additional space for each additional 97 sq. m (1,045 sq. ft.) of Floor Area.
Car Wash	5 spaces continuous in-line for the first bay and 3 space for each additional bay
Church, Community Building or Place of Amusement	1 space per 5 seats or 3 m (9.8 ft.) of bench space
Cocktail lounge, tavern or Club (north of Lots fronting on Euston Street)	1 space per 3 sq. m (32.3 sq. ft.) of restaurant dining area and one space per 21 sq. m (226.0 sq. ft.) of Floor Area other than dining area
Cocktail lounge, tavern or Club (south of Lots fronting on Euston Street) or located within the DMU Zone	1 space per 4.5 sq. m (48.4 sq. ft.) of restaurant dining area and one space per 42 sq. m (452.1 sq. ft.) of Floor Area other than dining area
Community Care Facility (north of Lots fronting on Euston Street)	1 space per 3 bedrooms
Community Care Facility (south of Lots fronting on Euston Street) or located within the DMU Zone.	1 space per 4 bedrooms
Day care facility	1 space for each employee plus a drop-off area for the children
Drive-in Establishment	A minimum of 25 spaces plus 1 space for every 8.6 sq. m (92.6 sq. ft.) of dining area
Drive-thru or fast-food Establishment	1 space for every 4 sq. m (43.1 sq. ft.) of dining area plus queuing space as required by this By-law
Dwelling Unit located north of Lots fronting on Euston Street	1 space per Dwelling Unit for a one-bedroom or bachelor unit and 1.25 spaces for a two-bedroom unit or over.
Dwelling Unit located south of Lots fronting on Euston Street or located within the DMU Zone.	1 space per Dwelling Unit in a Building with three or few Dwelling Units; and in a Building with more than three Dwelling Units the parking shall be 1 space for every two Dwelling Units with no parking lot to have less than three parking spaces.
Dwelling Unit, mini-home or Modular Home	1 space
Dormitory	1 space for every 3 beds or 1 space per unit
Funeral home	A minimum of 15 spaces plus 1 space for each 5 seats
Heritage Inn	1 space per guest room and 2 spaces for the Owner or proprietor
Hospital	1.25 spaces per bed
Hotel or Motel	1 space per guest room or suite; 1 space for every 21 sq. m (226.0 sq. ft.) of commercial, Office space or public Use access; 1 tour bus space May be substituted for vehicle Parking for every 18 rooms or suites up to a maximum of 36 rooms or suites.

Industrial or warehousing Establishment manufacturing	1 space for each 23 sq. m (247.6 sq. ft.) of Office space plus 1 space for each additional 25 sq. m (269.1 sq. ft.) of Floor Area. of manufacturing area plus 1 space for each 93 sq. m (1,000 sq. ft.) of warehousing area (exclusive of loading, truck Parking, and Landscaping areas) or 1 space for each employee, whichever is greater
Inn	1 space per guest room and 2 spaces for the Owner or proprietor
Laundromat	1 space per every 2 machines
Library	Minimum of 10 Parking Spaces or 1 space per 93 sq. m (1,000 sq. ft.) of Floor Area, whichever is greater
Marina or yacht Club	1 space per every 3 boat berths and mooring areas
Medical/dental Clinic and/or Offices	6 spaces per practitioner
Museum and art gallery	1 space per 46 sq. m (495.2 sq. ft.) of Floor Area plus 1 space per employee
Neighbourhood Convenience Store	2 spaces for the first 20 sq. m (215 sq. ft.) of Floor Area plus 1 additional space for each additional 20 sq. m of Floor Area.
Nursing Home and Group Home and Emergency/Transition Facilities	1 space per 4 beds, plus 1 space per 2 employees, plus 1 space per staff and/or visiting doctor based upon maximum employment shift
Parks with active recreation facilities e.g. ball, soccer, track, tennis	Where there are fixed bleachers 1 space per 6 seats or 1 space per 1000 sq. ft. of play area.
Restaurant	1 space per 4.5 sq. m (48 sq. ft.) of area allowed for dining (seating and aisles) and one space per 42 sq. m (452.1 sq. ft.) of Floor Area other than dining area
Shopping Centre and Retail Store (stand alone) on the same Lot	4.5 spaces per 93 sq. m (1000 sq. ft) Floor Area
School, elementary	1 space for each staff Person plus 1 space for every 8 teaching classrooms
School, junior high	1 space for each staff Person plus 1 space for every 4 teaching classrooms
School, senior high	1 space for each staff Person plus 2 spaces per teaching classroom
Senior citizen home (north of Lots fronting on Euston Street)	1 space per 3 Dwelling Units
Senior citizen home (south of Lots fronting on Euston Street) or located within the DMU Zone.	1 space per 4 Dwelling Units
Theatre (south of Lots fronting on Euston Street) or located within the DMU Zone.	1 space per 10 seats
Theatre (north of Lots fronting on Euston Street)	1 space per 5 seats
University or college	1 space for each staff Person plus 6 spaces per teaching classroom
All other Uses not listed	1 space per 20 sq. m. (215 sq. ft.) of Floor Area or 1 space per 10 seats

NOTE: South of Euston Street means land located within the City lying south of the southern boundary of Brighton Road and its prolongation to the North River, Euston Street and west of the western boundary of Esher Street and its prolongation to Charlottetown Harbour.

.12 General

Shared parking is encouraged as a means of conserving scarce land resources, reducing storm water runoff, reducing the heat island effect caused by large paved areas and improving community appearance. The Development Officer is authorized to approve Shared parking facilities, subject to the following standards;

1. Shared parking is allowed among different categories of uses or among uses with different hours of operation, but not both.
2. Accessible parking spaces (for persons with disabilities) may not be shared and must be located on-site.
3. Up to 10% of required parking spaces for any use may be used jointly by a temporary commercial use.
4. Applicants must provide a shared parking agreement executed by the parties establishing the shared parking spaces. Shared parking privileges will continue in effect only as long as the agreement, binding on all parties, remains in force. If the agreement is no longer in force, then parking must be provided as otherwise required by this Bylaw.
5. Shared parking may be located off-site, subject to the regulations of this section (4.42.4 and .5).

Shared Parking for Different Categories of Uses

A use may share parking with a different category of use according to only one of the following:

1. If an office use and a retail sales-related use share parking, the parking requirement for the retail sales-related use may be reduced by up to 20%, provided that the reduction does not exceed the minimum parking requirements for the office use.
2. If a residential use shares parking with a retail sales-related use (expressly excluding lodging uses, eating and drinking establishments and entertainment-related uses) the parking requirement for the residential use may be reduced by up to 30%, provided that the reduction does not exceed the minimum parking requirement for the retail sales-related use.
3. If an office and a residential use share off-street parking, the parking requirement for the residential use may be reduced by up to 50%, provided that the reduction does not exceed the minimum parking requirement for the office use.

Shared Parking for Uses with Different Hours of Operation

1. For the purposes of this section, the following uses are considered daytime uses:
 - a. customer service and administrative offices;
 - b. retail sales uses, except eating and drinking establishments, lodging uses, and entertainment-related uses;
 - c. Educational Institution with 90% of courses or activities offered during the normal business hours;
 - d. warehousing, wholesaling, and freight movement uses;
 - e. manufacturing, production and industrial service uses; and
2. Other similar primarily daytime uses, as determined by the Development Officer.
3. For the purposes of this section, the following uses are considered nighttime or Sunday uses:
 - a. auditoriums necessary to public or private schools;
 - b. religious assembly uses;
 - c. entertainment-related uses, such as theatres, bowling alleys, and dance halls; and
 - d. other similar primarily nighttime or Sunday uses, as determined by the Development Officer.

4. Up to 90% of the parking required by this Bylaw for a daytime use may be supplied by the off-street parking provided for a nighttime or Sunday use and vice-versa, when authorized by the Development Officer.
5. The applicant must show that there is no substantial conflict in the principal operating hours of the uses for which shared parking is proposed.
6. The Development Agreement between parties shall include such items as the following;
 - .a each parking space shall be useable by all parkers i.e. no restrictions and shall be marked as parking for the uses as per their agreement.
 - .b strategy included to guide parkers to all spaces and separation of parkers who compete for the spaces on the lot or in the facility when it is not their turn or time.
7. Council may approve other uses or times provided the City of Charlottetown Parking Committee make a recommendation on alternate shared parking to what is prescribed hereunder;

TEMPORARY SHARED PARKING

Council may upon a recommendation of Planning Board with input by the traffic authority and/or public works of the City of Charlottetown, permit by resolution, temporary use of land for shared parking provided;

1. The temporary use of land in any zone for shared parking shall only be for a period of up to one year (but which may be extended once for an additional 6 months).
2. There is a viable plan for permanent parking or permanent shared parking developed by the applicant
3. The applicant must enter into an agreement with the City of Charlottetown that parking will be provided as per the Zoning and Development Bylaw for permanent parking within a specified time frame but in no case more than eighteen months from the date of the agreement.
4. The temporary parking is designed to meet the requirements of the Zoning and Development Bylaw for design of a parking lot (Section 4.45) and is stamped and signed by a qualified engineer for drainage and design.

4.42A PARKING STANDARDS AND REQUIREMENTS – PROPERTIES LOCATED SOUTH OF EUSTON STREET OR LOCATED WITHIN THE DMU ZONE SOUTH OF EUSTON STREET

- .1 In addition to clauses 1, 3, 4, 5, 6, 8, 9, 11 and 12 of subsection 4.42, the parking requirements for land located south of Euston Street Shall be as follows:
 - (a) new Buildings Shall require parking in accordance with the Table in subsection 4.42;
 - (b) Renovations, Alterations, changes in use or intensification of Use, which do not result in an increase in the gross floor area of more than 390.2 sq m (4,200 sq ft) of a Building, Shall not require any additional parking, but the number of spaces which existed prior to the renovations, alterations, changes in Use or intensification of Use shall not be diminished;
 - (c) Additions to a building which are greater than 390.2 sq m (4,200 sq. ft.) in gross floor area shall require additional parking spaces for that portion of the gross floor area which is new and in excess of the first 390.2 sq m (4,200 sq.ft.), in accordance with the Table in subsection 4.42.

4.43 STANDARDS FOR MOBILITY DISABLED PARKING SPACES

- .1 Each reserved Parking Space Shall contain an area of not less than 21.96 sq. m (236.4 sq. ft.) measuring at least 3.6 m (12 ft.) by 6.1 m (20.0 ft.).

- .2 Where the limits of the Parking Lot are defined by a curb, the Parking Lot Shall be provided with a ramped curb as close as possible to the location to an accessible entrance or elevators and in no case, Shall it be further than 50 m (164.0 ft.) from the location which it is intended to serve, with the exception of a University or College which has a central campus and perimeter parking already established.
- .3 Where there is no defined curb each reserved Parking Space Shall be situated as close as possible to the location it is intended to serve.
- .4 Each reserved Parking Space Shall be clearly identified by a ground Sign.
- .5 Reserved Parking Spaces for those who are mobility disabled Shall be provided as an addition to the required spaces in conformity with the following schedule:

Medical Clinics and Offices of any health practitioner	1 reserved Parking Space for the mobility disabled per 5 - 15 Parking spaces required with 1 additional space for each 15 required spaces or part thereof
Senior citizen homes/ Nursing Homes	1 reserved Parking Space per 20 beds
Multiple Dwellings	1 reserved Parking Space per 5 to 30 units
Restaurants and Theatres	1 reserved Parking Space per 30 to 50 seats
	All other Uses 3 reserved Parking Spaces for the mobility of the disabled per 26-100 Parking Spaces required and over 100 parking spaces required on a site, 2% of all parking shall be for the disabled.

4.44 UNDERGROUND PARKING

Where there is underground Parking located within or under the main footprint of a Building in a residential (R3 or R4) zone, the density of units on a Lot May be increased by 20% of the requirements set out for the zone (# of units x 20% = increase); Parking is required for the increased density. A minimum of 75% of parking required for a Development must be Underground Parking in order to receive the 20% density bonus.

4.45 PARKING LOTS

- .1 Each Parking Space Shall be made accessible for access and egress by means of a stable surfaced lane, right-of-way, or Street at least 3.0 m (9.8 ft.) in width and where there are more than six (6) vehicles in a parking area or required under this By-law, the access to the parking shall be at least 6 m (19.7 ft.).
- .2 Parking Spaces for apartments Shall be exclusive of the Front Yard of an apartment Building, and such Parking Spaces Shall not be situated within 1.5 m (4.9 ft.) of any door or window serving as a bedroom.
- .3 Within this By-law, where Parking facilities for six (6) or more vehicles are required or permitted:
 - (a) the Parking area Shall be maintained with a stable surface that is treated to prevent the raising of dust or loose particles and prevent the drainage of storm or surface water runoff on to adjacent Lots;
 - (b) any lights Used for illumination of the Parking Lot or Parking station Shall be so arranged as to divert the light away from adjacent Lots, yet provide lighting to the parking areas and for pedestrians. All pedestrian access to the building from the parking lot shall be designed with pedestrian travel routes that minimize hazards and inconvenience to pedestrians in parking areas in getting to the building, and shall be well marked and maintained;

- (c) a Structure which is not more than 4 m (13.1 ft.) in Height and 5 m (16.4 ft.) in area May be Erected in the Parking area for the Use of Lot attendants;
- (d) no Signs Shall be Erected on any Parking Lot other than directional Signs, authorized Parking Signs and the name of the Owner, and these Signs Shall not exceed 2 sq. m (21.5 sq. ft.) in total area;
- (e) scale drawings drawn to Parking Design Standards and certified (stamped) by a qualified engineer, architect, or public land surveyor Shall be submitted where there are ten (10) or more Parking Spaces or for less than ten (10) spaces as required by the Development Officer with the application for the Building permit showing entrances and exits to such Parking facilities, all proposed and Existing Parking Spaces, aisles, lighting, and drainage of the Lot;
- (f) where a Parking Lot is in or abuts a residential property or residential zone, and the Lot contains more than four (4) Parking Spaces, a landscaped Buffer of at least 1.0 m (3.3 ft.) in Height Shall be planted at least 1.0 m (3.3 ft.) wide in from the Lot Line on the property for which application is made and Shall be maintained in a healthy growing condition by the Owner. In addition to or instead of the Landscaping, the Development Officer May require an opaque-type fence;
- (g) the access to a Parking Lot or loading area Shall be a Minimum Width of 3.1 m (10.2 ft.) for one-way traffic, a Minimum Width of 6.2 m (20.3 ft.) for two-way traffic, and the maximum width of the driveway or access to a Lot Shall be 8 m (26.2 ft.) unless otherwise required due to particularly high traffic levels, where the Development Officer may approve such an increase upon review by the Police and Public Works Departments, to accommodate a central turning lane that has been designed and certified by a qualified engineer; and
- (h) the City May, where for safety reasons due to traffic volumes and the number of Existing access points to an arterial or collector Street, require adjoining property Owners to share the access to their Lots and Parking, or the City May refuse a new access to a Lot.

4.46 LOCATION OF PARKING FACILITIES

- .1 No Parking Spaces Shall be located within the required Front Yard Setback in a residential Building containing more than three (3) units, and no driveway area Shall occupy more than 40% of the required Front Yard.
- .2 Council May permit parking in the required Front Yard Setback of a Townhouse Dwelling, a Block Townhouse Dwelling or a Stacked Townhouse Dwelling provided such Front Yard does not front on a collector or arterial Street.

4.47 CASH-IN-LIEU OF PARKING SPACES

- .1 Council May require or accept Cash-in-lieu of Parking Spaces in any situation where a Development Permit has been applied for and adequate or required off-street Parking cannot be provided or, in the opinion of Council, having considered a recommendation from the Planning Board, is unfeasible.
- .3 Clause 1 applies to the following zones:
 - (a) a Downtown Mixed Use (DMU) zone;
 - (b) a Business Office (C-1) zone adjoining a Downtown Mixed Use (DMU) zone;
 - (c) an Institutional (I) zone lying south of Grafton Street or the western prolongation thereof.
- .4 Cash-in-lieu of Parking Spaces Shall not be applied to cases of a change in use , Alterations, repairs or renovations in an existing zone
- .5 All funds obtained through the cash-in-lieu provisions Shall be used exclusively for the provision of additional Parking spaces or facilities in the downtown area.
- .6 Council shall, by resolution from time to time, set the fee for Cash-in-lieu of Parking Spaces.

4.48 LOCATION OF PARKING STRUCTURES

- .1 A Parking Structure May be located in any Commercial, Industrial or Institutional Zone upon approval of Council after consideration of the following:
 - (a) traffic and access to the site;
 - (b) drainage and services available in the area;
 - (c) architectural compatibility of the Parking Structure to the neighbourhood; and
 - (d) impact of a Parking Structure on adjoining residential areas.
- .2 Council May call a public meeting to consider input from the public on any proposed Parking Structure.

4.49 QUEUING SPACE

Queuing spaces Shall be provided where an Automobile Service Station, a Car Wash, a Automotive Drive-in Business a Drive-thru Business, or a Gasoline Bar is constructed in accordance with the following requirements:

- (a) Car Wash and Drive-thru Business:
 - i. five (5) in-bound queuing spaces Shall be provided for vehicles approaching the drive-up service window; and
 - ii. out-bound queuing space Shall be provided on the exit side of each service position and this space Shall be located so as not to interfere with service to the next vehicle.
- (b) Coffee Shops:
 - i. Council Shall determine stacking requirements for coffee shops after receiving input from the Police and Public Works Departments and/or from a traffic consultant.
- (c) Automobile Service Station, Automotive Drive-in Business and Gasoline Bar:
 - i. four (4) in-bound spaces Shall be provided; and
 - ii. three (3) out-bound spaces Shall be provided.
- d) All queuing spaces Shall be a minimum of 6.5 m (21.3 ft.) long and 3.0 m (9.8 ft.) wide, and queuing lanes Shall provide sufficient space for turning and maneuvering and Shall not occupy any portion of a Designated fire lane.

4.50 LOADING AND UNLOADING FACILITIES

- .1 One (1) off-Street Loading Space Shall be provided for every 1,858 sq. m (20,000 sq. ft.), or fraction thereof, of Building Floor Area whenever a Building is Erected, placed, or converted for manufacturing, storage, Warehouse, retail, or any purpose involving the Use of vehicles for the receipt or distribution of materials or merchandise.
- .2 Council May, after receiving a recommendation from the Planning Board, waive the Loading Space requirement.
- .3 Each Loading Space Shall be at least 3.0 m (9.8 ft.) by 9.0 m (29.5 ft.).
- .4 Loading Space areas, including driveways leading thereto, Shall be constructed of and maintained with a suitable surface which is treated so as to prevent the raising of dust or loose particles.

GENERAL PROVISIONS FOR PERMITS AND APPROVALS

4.51 FEES FOR PERMITS AND RELATED SERVICES

Application or processing fees for Building permits, Sign permits, footing permits, demolition permits, preliminary or final Subdivision approvals, variance requests, rezoning requests, and zoning enquiries and the appropriate cash-in-lieu fee for a Parking Space Shall be set from time to time by a resolution of City Council.

4.52 BUILDING PERMITS

- .1 No Development or demolition Shall be undertaken unless a completed application on the form prescribed from time-to-time by the Development Officer has first been made to the Development Officer and a permit has been issued.

- .2 Every Person proposing to Erect a Building or undertake a Development Shall, when applying for a Building permit, file with the Development Officer:
 - (a) construction plans and site plans in accordance with the applicable provisions of this By-law; see Appendix "E", Minimum Requirements;
 - (b) a grading plan showing Existing and proposed elevations and drainage patterns, and at no time Shall the plan show surface water runoff onto or over adjoining Lots, unless there exists an established natural area where the water flows to a stream or along adjoining properties to a Street or catchment basin; and
 - (c) such other information as the Development Officer May require or which May be necessary to ensure compliance with the provisions of the Building Code By-law. The Development Officer may require a Development to provide information to conform with Section 4.60.
- .3 If an application for a permit is incomplete, the Development Officer Shall notify the applicant in writing within seven (7) calendar days of the submission.
4. Where the Development Officer determines that an application:
 - (a) is required by this By-law to be reviewed by Council;
 - (b) is not entirely clear as to whether it meets the requirements of this By-law, or other By-laws or statutes which May be in force; or
 - (c) is in respect of a Building that May be inferior architecturally, in quality, or May not appear to be in harmony with the surrounding Streetscape;

the Development Officer Shall refer the application to the Planning Board, and the Council Shall, with a recommendation from the Planning Board, give direction on the disposition of the application.
- .5 The Development Officer May issue a Building Permit without referral if the proposed Development meets the requirements of this By-law.
- .6 An application for a Building Permit May be refused by the Development Officer if:
 - (a) the proposed Development does not conform to this By-law;
 - (b) the method of water supply is not appropriate;
 - (c) the method of waste disposal is not appropriate;
 - (d) there is not a safe and efficient access to the Public Highway, Street or Road;
 - (e) the impact of the proposed Development would be detrimental to the environment by reason of noise, dust, drainage, infilling or excavation which affects environmentally sensitive or residential areas;
 - (f) the proposed Development would Significantly detract from one (1) or more properties in the vicinity by reason of architectural disharmony; or
 - (g) the proposed Development would be detrimental to the convenience, health or safety of the occupants or residents in the vicinity or the general public.
- .7 When an application for a Building Permit is refused, the Development Officer Shall notify the applicant in writing of the decision and the reason for the refusal within seven (7) calendar days of the decision.
- .8 Construction undertaken pursuant to a Building Permit Shall be commenced within a twelve-(12) month period from the date of issuance, and Shall be completed within the time specified on the Building Permit.
- .9 A Building Permit May be renewed for one (1) period upon application to the Development Officer and Shall be valid only for the time period specified at the time of renewal.

4.53 PERMIT EXEMPTIONS

A permit Shall not be required for normal Maintenance, i.e. shingling, siding, roofing, repainting, Maintenance or rebuilding of a chimney, a fence under 1.8 m (6 ft.) and the replacement of windows and doors.

4.54 OCCUPANCY PERMITS

- .1 No Person Shall Use or occupy, or permit to be Used or occupied any Building or Structure which has been constructed or Altered in accordance with Part 5 of the City of Charlottetown Building Code By-law, with the exception of:

- (a) additions to Existing Buildings or Structures where no change of occupancy has occurred provided the Building is not increased in size by more than 50% of the existing floor area; or
 - (b) an Accessory Building or Structure not intended for public access; or
 - (c) any new Single-Detached Dwelling, or for any alteration to a Single-Detached Dwelling, Semi-Detached Dwelling or converted Dwelling provided that the use of the Dwelling is not for an In-Law Suite, Bed & Breakfast, Tourist Home, Heritage Inn, Home Occupation, Group Home or a Neighbourhood Daycare Centre.
- .2 An occupancy permit Shall not be issued until:
- (a) the Owner has satisfied the City that the work carried out conforms to all zoning requirements and any plans or other information that was submitted in applying for the Building permit; or
 - (b) the City is satisfied that the work has progressed to a stage where occupancy of the Building or Structure does not endanger the health or safety of the occupants or any other Person entering therein.
- .3 The Development Officer May require proof of other conditions, if any, that are relevant to the occupancy of the Building or Structure. The Development Officer May issue an Occupancy Permit after:
- (a) receiving satisfactory reports from the Building Inspector and /or the Fire Inspector;
 - (b) being satisfied that all the requirements for a permit including the site plan have been met; and
 - (c) being satisfied that the Building, structure or Development complies with all applicable City by-laws.
- .4 The Development Officer May post or cause to be posted one (1) or more notices on any part of a Building or Structure, or an addition or part thereof, that is being occupied in contravention of this By-law.

4.55 DEMOLITION PERMITS

- .1 A demolition permit may be issued for a Building or Structure, or a part thereof.
- .2 Notwithstanding Section 1, an application for the demolition of a Building or Structure containing more than 37 sq. m. (398.3 sq. ft.):
- (a) located on a Heritage Resource identified in Appendix A, shall be treated as if an application to amend the Bylaw had been received and shall, in addition, be referred to the Heritage Board for recommendation to Council prior to Council determining the disposition of the application;
 - (b) located within a Heritage Preservation Area and not located on a Heritage Resource, shall be referred to the Heritage Board which shall make a recommendation to Council respecting the disposition of the application and Council shall determine the disposition of the application;
 - (c) located within the Downtown Growth Area, not located on a Heritage Resource identified in Appendix A and not located in a Heritage Preservation Area shall be processed according to the procedure described in clause 4.28.2, with the appropriate changes, and, if an objection is made by a resident of the City, the Development Officer may, prior to making a decision on the application, consult with the Heritage Officer and Planning Board. If no objection is made the Development Officer shall make the decision.
- .3 A decision to approve or deny an application for demolition of a Building or Structure shall be based on the following factors:
- (a) the condition of the subject Building or Structure;
 - (b) the importance of the subject Building or Structure to meeting heritage objectives;
 - (c) the impact of demolition of the subject Building or Structure on maintenance of the streetscape of the area in which the subject Building or Structure is located;
 - (d) the future use of the lot on which the subject Building or lot is located;

- (e) the compatibility of the architectural style of any proposed replacement Building or Structure;
 - (f) any other relevant factors.
- .4 A demolition permit shall be valid for sixty (60) calendar days but the Development Officer may prescribe a lesser time period, or a greater time period not to exceed ninety (90) calendar days.

4.56 FUEL-BURNING BUILDINGS

- .1 The Use of fuel burning equipment in the City Shall be regulated by the *Environmental Protection Act* R.S.P.E.I. 1988, Cap. E-9 and the *Environmental Protection Act* R.S.P.E.I. 1988, Cap. E-9 Air Quality Regulations (No. EC377/92).
- .2 Further to subsection 1, the City Shall not permit wood or wood chip boilers in Accessory Buildings or stand alone outside that are less than 1 mw (megawatt) in net capacity for commercial, institutional, industrial and apartment Buildings.
- .3 Any Person proposing to install or construct an incinerator, wood or wood chip boiler, or fuel burning equipment of 1mw or greater in net capacity Shall be required to:
 - (a) make an application under Schedule “B” of the Air Quality Regulations and carry out an Environmental Impact Assessment;
 - (b) obtain approval from the Provincial Environment Department; and
 - (c) forward such approval to the Development Officer,
 before the City considers issuance of a Building permit.

4.57 LICENSES, PERMITS, AND COMPLIANCE WITH OTHER BY-LAWS

- .1 Nothing in this By-law Shall exempt any Person from complying with the requirements of the Building By-law or any other By-law in force within the City; or from obtaining any license, permission, permit, authority, or approval required by any other By-law of the City, or statute or regulation of the Province of Prince Edward Island or the Government of Canada.
- .2 Where the provisions of this By-law conflict with those of any other City By-law or any regulations or codes of the Province of Prince Edward Island, the higher or more stringent requirement Shall prevail.

4.58 MUNICIPAL SERVICES

- .1 Where Municipal Services are available in the opinion of the Director of Public Services, no Subdivision approval Shall be issued except where the Subdivision is provided with such services.
- .2 Municipal Services Shall be required for any new Subdivision containing more than one (1) Lot with the following exceptions:
 - (a) In an area where there are no Municipal Services, one (1) Lot from an original parcel Existing on the effective date of this By-law, May be subdivided for Development with on-site services that meet Standards set out by the Province;
 - (b) Any Subdivider proposing to create more than one (1) Lot where no Municipal Services are available in an area, May receive Subdivision approval from the City subject to the installation of a private sewer and water system:
 - (c) The Subdivider Shall install the said private sewer and water system to City Standards in such a manner that allows the City, at such time as it makes Municipal Services available to the area, to provide a connection to the system; and
 - (d) The Subdivider Shall install the said private sewer and water system to services all Lots in the Subdivision and to meet such Standards as are required by Section 13 of the *Environmental Protection Act* R.S.P.E.I. 1988, Cap. E-9.
 - (e) Any Subdivider who receives approval from the City to install a private sewer and water system Shall enter into a Subdivision agreement with the City and Shall provide security for the rehabilitation of a sewage treatment facility, well or any other appurtenance that May become surplus at such time that the system is connected to the Municipal Services.