

Town of Berwick
Report to Municipal Council
Agenda Item

Subject: Planning Advisory Committee Recommendation for First Reading
Regarding

From: Brighter Community Planning and Consulting

Date: April 14th, 2026

The following recommendations for First Reading to Council are being forwarded from the Planning Advisory Committee for further discussion and action:

THAT Council gives First Reading to amendments to the MPS and LUB to enable unique sites and structure policies, as attached in appendix A, and forward the amendments to public hearing scheduled for May 12th, 2026.

THAT “accessory” be removed from Policy 5.33.

The purpose of this report is to present the proposed amendments to the Municipal Planning Strategy and Land Use By-law respecting Unique Sites and Structures for Council’s first reading. Staff brought these amendments forward in response to a development permit application for 104 Front Street, where the current policy framework does not provide a clear mechanism to consider a non-conforming building, and a patio on adjacent publicly owned DNR land associated with the Harvest Moon Trail.

The proposed amendments would create a narrow policy tool that allows Council to consider development by Development Agreement where a property contains unique physical, historic, or contextual constraints. The main discussion is whether the Town should create a limited policy mechanism for older sites and structures where strict application of the Land Use By-law prevents reasonable adaptation or reuse. Staff identified a gap in the current framework for sites such as 104 Front Street, particularly where historic development patterns, lot constraints, and adjacency to public land create barriers that the current by-law does not address.

The existing Municipal Planning Strategy already supports commercial activity in the Town’s established commercial areas and allows Council to consider certain developments by Development Agreement. The Commercial General policies set standards for parking, loading, setbacks, and fencing, while the implementation policies allow Council to regulate building location, landscaping, parking, lighting, access, and compatibility through a Development Agreement. The proposed amendments would not create a broad as-of-right permission. They would create a limited policy basis for Council to consider proposals involving genuinely unique sites and structures.

A key issue during review was whether the policy is narrow enough. Staff and PAC do not want a policy that applicants could apply broadly across the Town or use to avoid normal Land Use By-law

requirements where no unusual site constraint exists. Staff agree that the policy must remain limited to sites or structures with genuine historic, physical, or contextual constraints that set them apart from other properties. Staff do not intend this policy to function as a general flexibility tool. It is meant to address exceptional cases where existing site conditions create barriers that standard by-law provisions do not reasonably address.

The Planning Advisory Committee considered the matter on April 7, 2026. After reviewing the staff report, hearing comments from the public, considering the relevant Municipal Planning Strategy policies, PAC passed a positive motion. Staff have made changes to clarify the language of amendments; they are the following:

- Policy 5.32 – Replace “accommodate a permitted use” with “develop”
- Policy 5.33 – Removal of “accessory”
- LUB Section 10.1 – Replace “Accessory” with “Non permanent”

Council must now decide whether the proposed amendments should proceed to public hearing. Staff support first reading on that basis. The proposed amendments would allow Council to consider unique sites and structures through a narrow, case-by-case, Development Agreement process while keeping site-specific matters such as compatibility, parking, access, lighting, and trail interface for review through a future agreement.

Report to PAC – Municipal Planning Strategy and Land Use Bylaw amendments

Prepared by:	Ethan Oderkirk, Junior Planner
Subject:	Municipal Planning Strategy and Land Use By-law Amendments – Unique Sites and Structures
Date:	April 7 th 2026
Purpose:	PAC consideration of planning report and recommendation
Recommendation	Staff recommend that PAC recommend to Council that the proposed Municipal Planning Strategy and Land Use By-law amendments be approved and that the application proceed to a Public Hearing and by Development Agreement
Draft Motion	That the Planning Advisory Committee recommend that Council approve the proposed amendments to the Municipal Planning Strategy and Land Use By-law respecting Unique Sites and Structures, and that the application proceed to a Public Hearing and by Development Agreement.

Part 1: Purpose


The purpose of this report is to present for Planning Advisory Committee (“PAC”) consideration an application to amend the Municipal Planning Strategy (“MPS”) and Land Use By-law (“LUB”) to enable Council to consider development by Development Agreement for lands located at 104 Front Street.

The proposed amendments introduce town wide policies for the development of properties that due to historical development, unusual circumstances, or environmental constraints, may be developed subject to a Development Agreement

The amendments are intended to address unique site conditions.

Part 2: Background

Project Summary

Property Owner	Andy Peters
Civic Address	104 Front Street
PID	55245591
Designation	Commercial
Zone	Commercial General (C1)
Subject Properties (shown in red outline)	
Subject Property Area	0.18 Acres (8000 square ft.)
Existing Land Use	Mixed Use Residential and Commercial
Adjacent Land Use	Recreational and Commercial

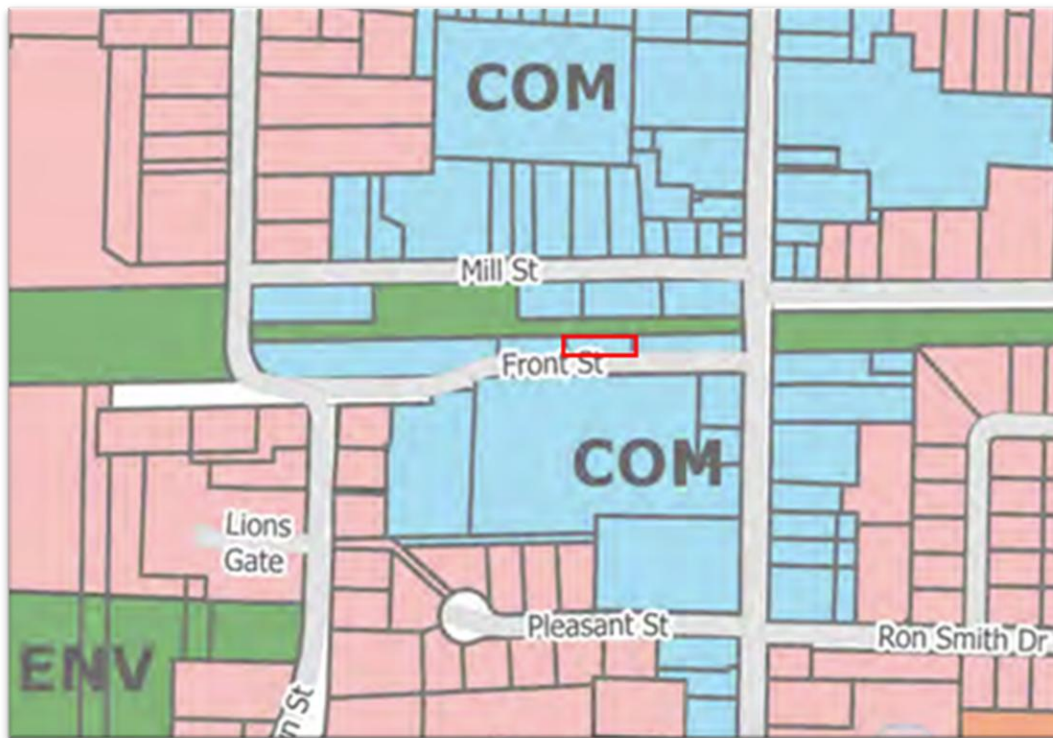
Location and Site Description

The Town received a development permit application for a restaurant in a portion of the building located at 104 Front Street, PID 55245591, within the Commercial

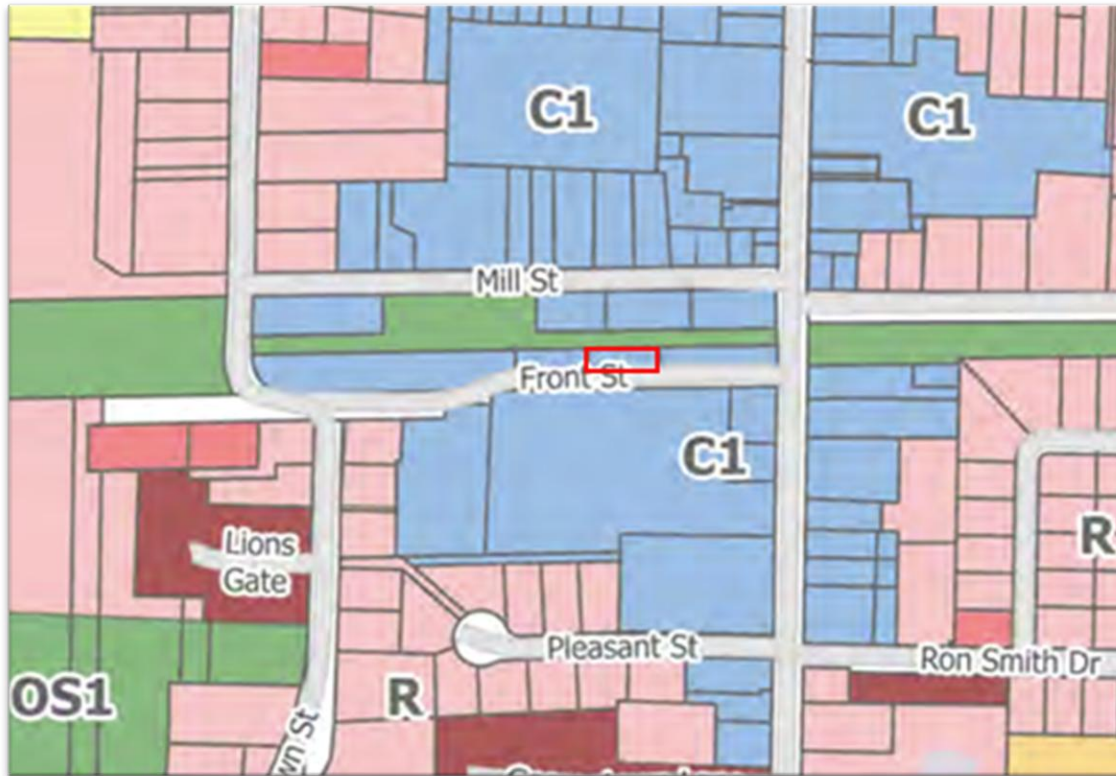
designation and zoned Commercial General (C1). The development officer could not issue the permit due to noncompliance with the land use bylaw.

The Subject Property contains an existing mixed-use building that predates the current zoning framework and does not comply with present setback requirements in the front and rear, making it a non-conforming structure. The building was likely constructed to support the former Dominion Atlantic Railway, and after the rail line was discontinued, has been used for a variety of functions. The building is currently housing two apartments and a Guy's Frenchy's. The lot has little room for parking, with the existing uses taking up most of the current parking on the Subject Property.

The Subject Property is located within the Town's traditional commercial area. Surrounding lands include commercial uses and the Harvest Moon Trail. The Annapolis Valley Trail System (Harvest Moon Trail) runs directly adjacent to the rear of the property to the north. To the east and west, barn-like storage structures used in conjunction with the former Dominion Atlantic Railway is located along Front Street, while to the south the Home Hardware warehouse fronts onto Commercial Street with associated parking along Front Street.



Land Use Designation Map - Commercial



Zoning Map – Commercial General (C1)

Background

The applicant applied for a development permit and the development officer could not issue a development permit for the restaurant use. The Town initiated amendments to the MPS and LUB to accommodate situations where due to historical development patterns or to facilitate the reuse of a building that has identified constraints, development may occur by development agreement.

The Subject Property contains an existing commercial use, Guys Frenchy's, and two (2) residential dwelling units located on the second floor. The existing front entrances serving these uses extend into the public right-of-way, along Front Street.

The future restaurant also wishes to build a new entrance on the south side of the building, and a patio on the north side of the building. The proposed patio would extend onto lands owned by the Department of Natural Resources (the Harvest Moon Trail). The applicant has applied for a Crown lease to permit construction of the deck on leased land.

Site Context & Application History

In 2024, the Town issued a Development Permit for the Subject Property to allow two (2) residential dwelling units and a Taproom with an Accessory Brewery. The approval

contemplated a “pickup and leave” and did not include an eat in restaurant use. The residential component required one (1) parking space per dwelling unit. The approved plans did not include a kitchen, fixed seating, outdoor seating, or detailed interior layout drawings.

In 2026, the applicant submitted a new Development Permit application with internal plans that include a commercial kitchen, fixed seating, and a defined dining layout. The application also proposes a rear deck on the rear and a new front entrance facing Front Street. These changes represent a shift in use from a limited taproom model to a sit-down restaurant use.

A restaurant requires a greater number of parking spaces under the Land Use By-law. In addition, the introduction of fixed seating and outdoor seating increases the calculated parking demand.

The proposed rear deck and new front entrance also introduce external structural changes to a building that already does not meet setback requirements within the Commercial General (C1) Zone.

Part 3: Discussion

Municipal Planning Strategy Policy Review

The Municipal Planning Strategy (“MPS”) establishes the Town’s policy framework for managing growth, development, and land use. The Strategy sets out Council’s intent for how land within the Town should be used and developed over time and provides the policy direction that guides decisions on amendments, rezonings, and Development Agreements.

The MPS identifies the Commercial designation as the Town’s traditional commercial area and supports a range of commercial, institutional, and accessory residential uses.

The proposal connects to the MPS direction for downtown development. Policy 3.7 directs Council to prioritize and encourage development on or near Commercial Street, and Policy 3.8 supports development through reduced parking requirements. These policies recognize the importance of strengthening the downtown core and acknowledge that older commercial areas often do not function like newer development areas.

Policy 4.45 allows Council to consider waiving parking requirements of mixed-use commercial and residential developments in the C1 Zone by Development Agreement. In doing so, Council may assess compatibility with adjacent dwellings, road access, public street frontage, parking, and building design.

Policy 4.46 specifically enables Development Agreement consideration for mixed-use commercial and residential development on Front Street adjacent to the former DAR right-of-way, which matches the location of the Subject Property.

The implementation policies support a Development Agreement approach. Policies 5.16 and 5.17 allow Council to impose conditions on matters such as lighting, noise, structure location, design, landscaping, parking, circulation, hours of operation, and stormwater management. Whereas Policy 5.23 allows Council to require supporting information, including site plans, elevations, grading, landscaping, drainage, traffic, and lighting details.

Policy 5.30 allows Council to consider the expansion of a non-conforming use, or a change from one non-conforming use to another, by Development Agreement where adjacent land uses remain protected and impacts can be mitigated. Policy 5.31 directs Council to establish Land Use By-law regulations for non-conforming structures.

104 Front Street provides an example of a unique site. The Subject Property lies within the Commercial designation. The Commercial designation encourages a broad range of commercial activities within the Town's established commercial areas, supporting commercial investment within the downtown.

Many buildings in older commercial districts predate current development regulations and exist as non-conforming structures.

The existing policy framework does not clearly provide authority for Council to consider proposals with unique site features and constraints. This gap presents an opportunity to introduce a "Unique Sites and Structures" policy framework, that would enable Council to evaluate development proposals involving atypical site conditions, such as 104 Street.

Land Use By-law Review

The Land Use By-law establishes the regulatory framework that implements the policies of the Municipal Planning Strategy. The LUB regulates land use through zoning and establishes development standards such as setbacks, parking requirements, and permitted uses.

The LUB operates on a lot-based regulatory framework, meaning that buildings and structures associated with a use are required to be located on the same lot as the primary use. This framework provides clarity in the administration and enforcement of zoning.

While this approach functions effectively in most circumstances, it does not account for unique conditions in historic downtown environments. In such areas, development patterns were often established prior to adoption of modern zoning standards, resulting in:

- Compact lot configurations
- Building constructed close to property boundaries
- Limited space on individual parcel to accommodate accessory features such as decks, patios, ramps, or outdoor seating areas

Amendments would not create an as-of-right permission for such structures and instead, would create a mechanism through which Council may evaluate proposals on a case-by-case basis.

Proposed Amendments

The proposed policy amendments would recognize that unique site and structural conditions may limit how existing properties can adapt under the current Land Use By-law. Historic development patterns and environmental constraints can create circumstances where strict application of current regulations prevents the reasonable adaptation or continued use of an existing site.

The proposal for 104 Front Street identifies a gap in the current framework, as the Municipal Planning Strategy and Land Use By-law do not clearly address buildings that extend onto abutting publicly leased land. The proposed “Unique Sites and Structures” amendment would address that gap through a narrow policy tool intended for historic or atypical downtown properties where strict lot-based application of the Land Use By-law would prevent reasonable adaptation of an existing building.

The proposed MPS Policy 5.32 focuses on unique structures affected by historical, environmental, or topographical constraints. These unique buildings or properties often predate current parcel configurations, setback requirements, and parking standards. As a result, they may face practical limitations when adapting to modern commercial needs. In these situations, strict application of the Land Use By-law may prevent the reasonable adaptation or continued use of an existing building.

A Unique Structures policy would give Council a clear mechanism to consider adaptive reuse and limited expansion through the Development Agreement process. This approach helps support continued investment in established commercial areas, strengthen the downtown economy, and retain the built form that defines the Town’s traditional commercial area. Carefully regulated structures, such as decks or patios, may improve the viability of existing businesses without requiring demolition or large-scale redevelopment.

These types of structures can also create land use impacts that require site-specific review. Decks, patios, and similar accessory features may increase noise, lighting, outdoor activity, circulation conflicts, or parking demand. These impacts do not make such structures inappropriate, but they do require careful evaluation to ensure compatibility with surrounding uses and the public realm. The Development Agreement process gives Council the ability to address these matters through site-specific terms, conditions, and mitigation measures.

Staff support a narrowly defined amendment that applies only where the primary building is non-conforming in nature, the proposed structure is accessory and non-permanent, the circumstance arises from historical, environmental, or topographical constraints, and the proposal proceeds through the Development Agreement process. This approach would allow the Town to support adaptive reuse and continued investment in unique buildings while maintaining a clear and enforceable review framework.

The amendments would require demonstration of the uniqueness of the site, allow for the expansion of non permanent uses on to adjacent public land and requirement consistency with the intent of the MPS.

Overall, the proposed amendments depend less on the specific circumstances of 104 Front Street and more on whether the Town wishes to create a limited mechanism to address unique structural conditions that create barriers under the current Land Use By-law. Staff find that this approach can be supported where it remains narrow, enforceable, and focused on existing unique structures.

Part 4: Draft Development Agreement

Attached to this report is draft development agreement for PAC's review. It applies the specific draft policies and considers the policies of 5.23 of the MPS, which are the general criteria for all development agreements.

Policy 5.23 requires Council to be satisfied regarding the adequacy of the road network. The traffic authority is suggesting that Front Street be converted to one way to allow for additional street parking. The Town Traffic Authority has not made this conversion to one way a pre-condition of the restaurant use and therefore, has not identified any concerns regarding traffic that can not be resolved. No other issues of note were identified. There is sufficient water capacity available for the proposed restaurant use outlined in a study done by CBCL in 2023.

The proposal will require an encroachment agreement, as a portion of the front entrance extends into the public right-of-way. This matter would need to be addressed to the satisfaction of the Town prior to issuance of any required approvals or permits.

Staff have also reviewed the specific proposal against the draft policies. Given the historical uses of the site and the limited size of the property, the adjacency to the Harvest Moon trail, this site has unique constraints and will be enabled under Policy 5.32 when amendments are approved. The proposed use supports the economic developments goals of the Plan in Section 2.53 and Policy 3.1.5 regarding development the commercial core.

Under Sections 225C and 225D of the *Municipal Government Act*, Council may consider the proposed Development Agreement at the same time as the associated Municipal Planning Strategy and Land Use By-law amendments, and may grant provisional approval or approval in principle where the Development Agreement has been presented at the public hearing and only minor administrative revisions remain. In this case, final approval of the Development Agreement would not occur unless and until the related MPS and LUB amendments are adopted and take effect, with final approval occurring when the Minister has approved the amendments.

Part 5: Recommendation

Staff recommend that the Planning Advisory Committee recommend to Council the proposed amendments to the Municipal Planning Strategy and Land Use By-law to introduce provisions for Unique Sites and Structures be approved and that the application proceed to a Public Hearing and by Development Agreement in accordance with the requirements of the *Municipal Government Act*.

Part 6: Draft Motion

That the Planning Advisory Committee recommend that Council approve the proposed amendments to the Municipal Planning Strategy and Land Use By-law respecting Unique Sites and Structures, and that the application proceed to a Public Hearing.

Part 7: Appendix

Appendix A: Policy Review

Appendix B: Site Plan

Appendix C: Amendments

Appendix D: Draft Development Agreement

Appendix A – Relevant MPS Policies

Policies	Comments & Concerns
<p>MPS Policy 4.45</p> <p>It shall be the intention of Council to encourage, promote and consider mixed use commercial/residential development with reduced parking requirements on those properties zoned Commercial General (C1) by Development Agreement. In addition to criteria contained in Policy 5-24, Council shall consider the following:</p>	<p><i>See comments below</i></p>
<p>a) That the proposed structure is generally compatible with existing dwellings on adjacent properties;</p>	<p>The example property at 104 Front Street already exists within the established downtown commercial area and contains two (2) residential units above the commercial use. The proposed amendments would allow Council to consider accessory structures through Development Agreement, where compatibility with surrounding uses can be evaluated.</p>
<p>b) That the proposed development can be integrated into and accommodated within the adjacent road network;</p>	<p>Front Street and Commercial Street provide established access routes within the Town’s central business district. Through the Development Agreement process, Council can evaluate potential impacts on traffic circulation and access. Front Street is proposed to be a one-way street to better accommodate the parking requirements and not as a precondition to the approval.</p>
<p>c) The ground floor commercial shall front on a public street.</p>	<p>The proposed restaurant use on the Subject Property is on ground floor, fronting onto Front Street.</p>
<p>d) Parking shall not front on Commercial Street. Underground parking is encouraged.</p>	<p>The subject property does not contain sufficient space for on-site parking due to its compact lot configuration. Parking will not be located on Commercial street, as it can be accommodated by on street parking along Front Street.</p>
<p>e) Council may consider waiving</p>	<p>There is determined to be adequate</p>

commercial parking requirements if it determined there is adequate street parking or off site parking is provided.	on street parking
f) Commercial buildings shall help create a positive and pedestrian scale street wall	The existing structure contributes to the established street wall along Front Street.
g) A Level 1 Groundwater Assessment prepared by a qualified hydrogeologist identifying potential risk and mitigation options for the protection of quality and quantity of groundwater resources.	Public works has reviewed the proposal and has indicated there are no concerns with off site parking located on the public street.
h) That the design of the proposed structure is complementary to the existing building form: <ul style="list-style-type: none"> a. Building Mass; b. Materials 	There is no parking structure proposed.
i) The policies contained in Policy 5-24	<i>See MPS Policy 5.24</i>
MPS Policy 5.23 It shall be the policy of Council to not amend the Land Use By-law or approve a development agreement unless Council is satisfied the proposal:	<i>See comments below</i>
a) Is consistent with the intent of this Municipal Planning Strategy;	The proposal is consistent with the Municipal Planning Strategy
b) Does not conflict with any Town or Provincial programs, by-laws, or regulations in effect in the Town;	The proposal does not conflict with any programs, by-laws or regulations in the town.
c) Is not premature or inappropriate due to:	
a. The ability of the Town to absorb public costs related to the proposal;	There are no known impacts.
b. Impacts on existing drinking water supplies, both private and public;	Public works has reviewed the application and indicated there are no known impacts.
c. The adequacy of sewer and groundwater to support the proposed density of development;	Public works has reviewed the application and indicated there are no known impacts.

d. The creation of excessive traffic hazards or congestion on road, cycling, and pedestrian networks within, adjacent to, or leading to the proposal;	Front Street will be re routed to become a one-way street to reduce congestion and excessive traffic hazards.
e. The adequacy of fire protection services and equipment;	N/A
f. The adequacy and proximity of schools and other community facilities;	N/A
g. The adequacy of road networks adjacent to, or leading to the proposed development;	The proposal on Front Street is located near Commercial Street.
h. The creation of a new, or worsening of a known, pollution problem in the area, including, but not limited to, soil erosion and siltation of watercourses;	Lighting pollution controls will be in place to reduce light pollution onto adjacent properties.
i. The potential to create flooding or serious drainage issues, including within the proposal site and in nearby areas;	Public works has reviewed the application and indicated there are no known impacts.
j. The potential for damage to or destruction of historical buildings and sites;	N/A
k. Impacts on known habitat for species at risk;	N/A
l. Risks presented by geohazards; and	N/A
m. The suitability of the site in terms of grades, soil and geological conditions, the location of watercourses and wetlands, and proximity to utility rights-of-way.	The front entrance will require an encroachment agreement onto the public right of way.

MPS

5.8 NON-CONFORMING USES, STRUCTURES, AND USES WITHIN STRUCTURES

Policy 5.30

Text Amendment:

It shall be the policy of Council to consider proposals to expand a non-conforming use or to change a non-conforming use to another non-conforming use by development agreement subject to the following criteria:

It shall be the policy of Council to consider proposals to expand a *non-conforming structure*, non-conforming use or to change a non-conforming use to another non-conforming use by development agreement subject to the following criteria:

Add:

Preamble to Policy 5.32 Unique Sites and Structures

Many buildings and sites in the Town predate modern planning regulations. As a result, some properties contain structures or site conditions that do not align with current Land Use By-law standards for setbacks, parking, access, or site layout. These conditions may limit the ability of property owners to adapt, reuse, or reinvest in existing buildings and sites.

Limiting conditions may arise from historic development patterns or physical site constraints, including irregular lot configuration, limited lot depth, topographical constraints, proximity to public or former infrastructure, historical uses such as the former DAR railway, or other barriers created by earlier development. In limited circumstances, these unique conditions may justify a site-specific planning response through the Development Agreement process. This policy is intended to be used only for sites that have unique constraints and shall not be used for situation that a general to an area of over many properties.

Policy 5.32

It shall be the policy of Council to consider development of properties that have unique site constraints by Development Agreement. Constraints may result from historic development patterns, physical or environmental site constraints limit the reasonable adaptation, reuse, or limited expansion of an existing structure, subject to the following criteria:

- a) The site or structure shall demonstrate unique physical, historic, or contextual constraints that limit the ability to **develop** ~~accommodate a permitted use~~, including but not limited to lot configuration, limited lot depth, historic parcel patterns, topographical constraints, or adjacency to former rail corridors, public trails, or other established site conditions.*
- b) Supports the economic development of the Town*
- c) The proposed use is consistent other policies and the intent of the Municipal Planning Strategy*

d) *The proposal shall meet the general evaluation criteria for Development Agreements in Policy 5.24*

Add:

Policy 5.33

It shall be the policy of council, in limited circumstances pursuant to Policy 5.32, to permit encroachment of non-permanent ~~accessory~~ uses onto public owned lands subject to a signed lease agreement.

LUB

2.10 USES CONSIDERED BY DEVELOPMENT AGREEMENT

Add:

i) *Redevelopment or reuse of unique site and structures*

4.25.2

Non-conforming structures may be replaced, reconstructed, enlarged, renovated, and/or repaired by Development Agreement, provided:

- a) any such construction shall not further infringe on the requirements of this By-law that created the non-conformity, including any required setback, except where Council has approved such encroachment through a Development Agreement for a Unique Site or Structure in accordance with Policy 5.32 of the Municipal Planning Strategy.

Amend:

- a) any such construction shall not further infringe on the requirements of this By-law that created the non-conformity, *except where Council has approved such encroachment through a Development Agreement for a Unique Site or Structure in accordance with Policy 5.33 of the Municipal Planning Strategy.*

10 RECREATION AND OPEN SPACE (OS1) ZONE

10.1 Permitted uses

Add:

- *Accessory **Non permanent** uses associated with an approved unique site or structure on an abutting property.*

ATTENDING

Councillor Ty Walsh, Vice Chair
Mayor Mike Trinacty
Councillor Johanna Kwakernaak
Dave Logie, PAC Citizen Representative
Neil Mattson, PAC Citizen Representative
Kelly Branton, PAC Citizen Representative
Joan Levack, PAC Citizen Representative
Chrystal Fuller, Planner, Brighter Communities Planning
Ethan Oderkirk, Assistant Development Officer, BCP
Krista Longmire, Executive Assistant, Recording Secretary

ALSO IN ATTENDANCE

9 members of the public

ABSENT WITH REGRETS

Councillor Adam Lutz, Chair

1. CALL TO ORDER

The PAC Meeting was called to order at 7:15 pm by Councillor Ty Walsh, Vice Chair.

2. APPROVAL OF THE AGENDA

IT WAS REGULARLY MOVED AND SECONDED THAT THE AGENDA BE APPROVED AS CIRCULATED

MOTION CARRIED

3. APPROVAL OF THE MINUTES

THE MINUTES OF THE PAC MEETING OF JANUARY 19, 2026, BE APPROVED AS CIRCULATED.

4. NEW BUSINESS

- a. MPS/LUB proposed amendments to introduce a unique site and structures policy.**

Further discussion took place regarding the criteria for identifying unique sites and structures and whether staff should refine the criteria to better address these properties. It was agreed to leave the criteria as presented in the proposed policy.

IT WAS REGULARLY MOVED AND SECONDED THAT the Planning Advisory Committee recommend that Council give first reading to the proposed amendments to the Municipal Planning Strategy and Land Use By-law,

introducing Unique Sites and Structures with "accessory uses" removed from Policy 5.33.

MOTION CARRIED

IT WAS REGULARLY MOVED AND SECONDED THAT the Planning Advisory Committee recommend that Council provide initial consideration to the draft Development Agreement of 104 Front Street.

MOTION CARRIED

5. ADJOURNMENT

IT WAS REGULARLY MOVED AND SECONDED THAT THE REGULAR MEETING OF THE PLANNING ADVISORY COMMITTEE BE ADJOURNED AT 7:58 PM.

MOTION CARRIED

As recorded by Krista Longmire, Executive Assistant.