

RIVERVIEW PLANNING ADVISORY COMMITTEE

STAFF REPORT

Rulings of Compatibility

Subject : Ruling of compatibility

File number: 23-0298

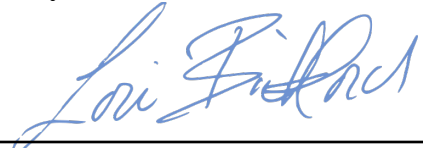
Meeting Date: Wednesday, May 10, 2023

From :

Reviewed by :



Kirk Brewer
Planner / Urbaniste



Lori Bickford
Planner / Urbaniste

GENERAL INFORMATION

Applicant/: Janet Hebert

Landowner : Wendy MacDonald DRM Realty

Proposal:

Ruling of compatibility to determine if a bake shop is similar to a florist



SITE INFORMATION

Location: 206 Pine Glen, Town of Riverview / Ville de Riverview

PID: 05095682

Lot Size: 1733m²

Current Use: Residential/Commercial

Zoning: SC

Future Land

Use: Commercial

Surrounding

Use & Zoning: Suburban commercial (SC) - mixed use commercial; Multi unit dwelling (R3); Single unit dwelling (R1); Residential business service (RBS) - mixed use

Municipal

Servicing: Public sewer, water, and storm systems

Access/Egress: Harvey Road

Municipal Plan Policies

Policy 7.1.1 It shall be the intention of Council to recognize and foster development of retail and

service outlets serving the suburban portions of the town by establishing the Suburban Commercial (SC) Zone within the Commercial Designation.

Zoning Bylaw and or Subdivision By-law Regulation

The property is subject to conditional rezoning by-law 300-5-11, which limits the permitted uses on the property. A bake shop is not listed as a permitted use.

Internal Consultation & External Consultation

The application was distributed to the Development Review Committee (Planning, CAO/Clerk, Engineering, Economic Development, Parks, and Fire Department) for comments. No concerns were raised.

Discussion

The subject property was rezoned from R1 - single unit dwelling to SC - Suburban commercial in 2009 to permit a physiotherapy clinic facing Pine Glen Road in conjunction with a single unit dwelling facing McAllister Dr. A copy of the staff report to Council is attached. The rezoning allowed the walkout basement portion of the building to be used for commercial purposes.

As part of the rezoning, Council imposed conditions that limited the permitted uses on the property in order to reduce potential conflict between the commercial uses and the surrounding residential property. In addition to a single or two unit dwelling, medical clinic, office use, personal service shop, bed and breakfast, and florist/gift shop are permitted.

The current proposal is to use the commercial space to sell crafts and consignment crafts such as wood signs, jewelry, paintings, photographs, knitting, etc., which would be considered a gift shop. However, the proposal also involves a bakery component where sweets and cakes would be baked and sold on site. This type of use is not considered in the rezoning, so it is unclear whether it would be permitted on the property under the current conditions.

Any proposal that deviates substantially from the list of permitted uses will need to go through a second Council amendment process. However, a zoning by-law cannot anticipate every potential use and the Community Planning Act authorizes the Committee to determine whether a use that is not listed is similar to and compatible with a use that is listed. In this case, a florist is a permitted use, so staff is recommending a ruling of compatibility to determine if the bake shop is similar to a florist use as opposed to amending the rezoning by-law entirely.

When evaluating a similar and compatible use, staff assesses impacts related to traffic, noise, odours, etc. that may have an impact on surrounding properties. The plan is to use a residential-scale fridge and stove to bake small batches for on-site sale, and not anything at a commercial scale that would mass-produce goods to serve multiple locations. Both a florist and a bake shop of this scale are relatively low-impact uses that are not significant traffic generators and produce no noise or unpleasant odours. When comparing a bake shop to other permitted uses such as offices and personal services shops (hair and aesthetic salons, etc.), as well as the mixed-use nature of Pine Glen Road, staff is of the opinion that a bake shop is within the intent of the 2009 rezoning and will not create any nuisances.

Public Notice

Public notice was mailed to property owners within 60m of the subject property on April 26, 2023. As of the writing of this report, no comments have been received.

Legal Authority

55(1) Subject to the terms and conditions it considers fit, the advisory committee or regional service commission may permit

(a) a proposed use of land or a building that is otherwise not permitted under the zoning by-law if, in its

opinion, the proposed use is sufficiently similar to or compatible with a use permitted in the by-law for the zone in which the land or building is situated

Recommendation

Staff recommends that the Riverview Planning Advisory Committee APPROVE the ruling of compatibility at 206 Pine Glen Road (PID 05095682) to determine that a bake shop is similar to and compatible with a florist because:

- 1) it will not generate additional traffic, noise, or unpleasant odours for the neighbouring properties, and
- 2) the use is within the intent of permitted uses established by the rezoning approved by municipal council in 2009.

(PID/NID 05095682)

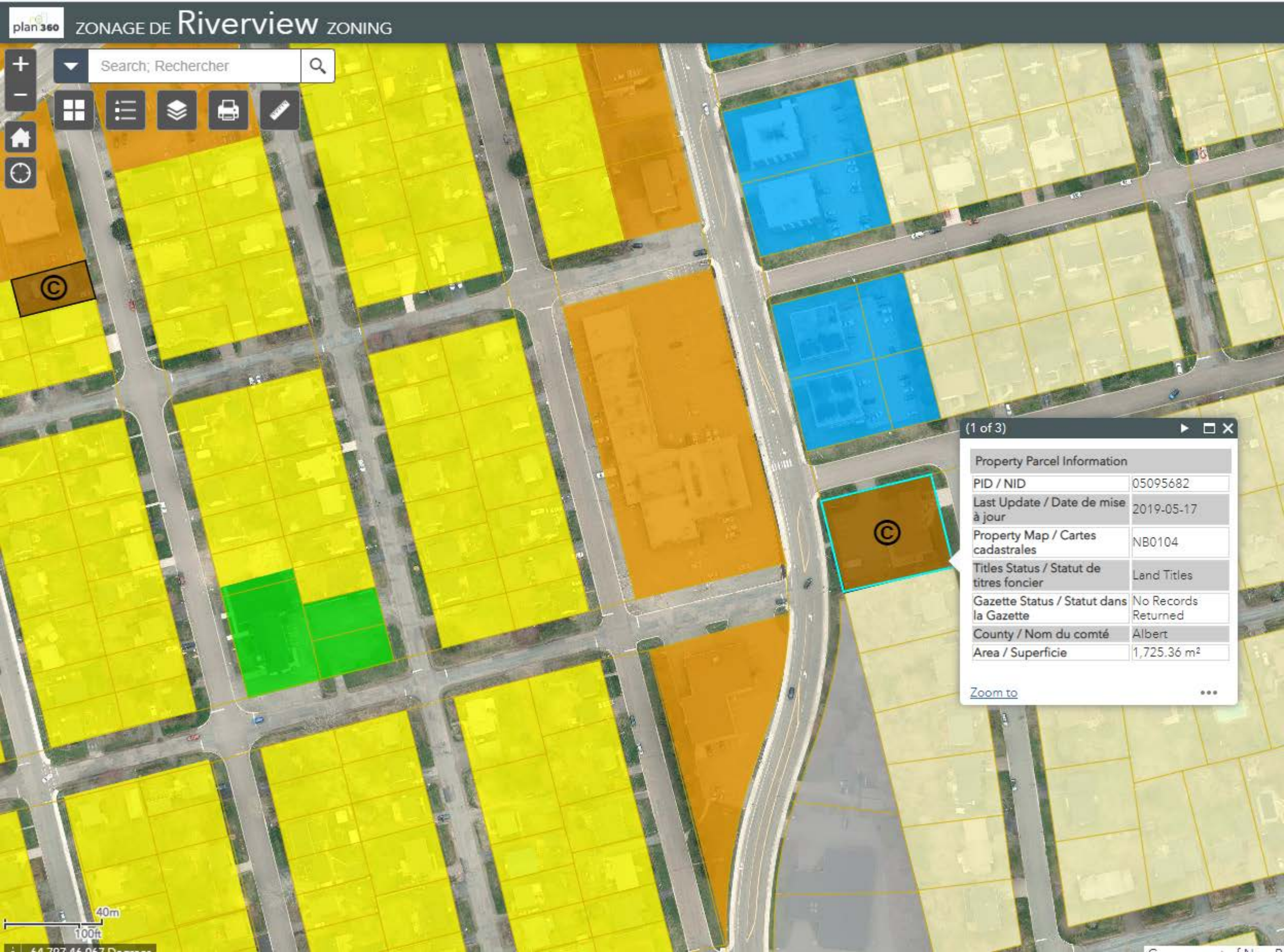
Riverview

Date: 2023-04-17



Search; Rechercher

Map navigation icons: Home, Refresh, Print, Layers, List, Grid, Zoom In, Zoom Out



(1 of 3) [Close] [Maximize] [Refresh]

Property Parcel Information	
PID / NID	05095682
Last Update / Date de mise à jour	2019-05-17
Property Map / Cartes cadastrales	NB0104
Titles Status / Statut de titres foncier	Land Titles
Gazette Status / Statut dans la Gazette	No Records Returned
County / Nom du comté	Albert
Area / Superficie	1,725.36 m ²

Zoom to ...

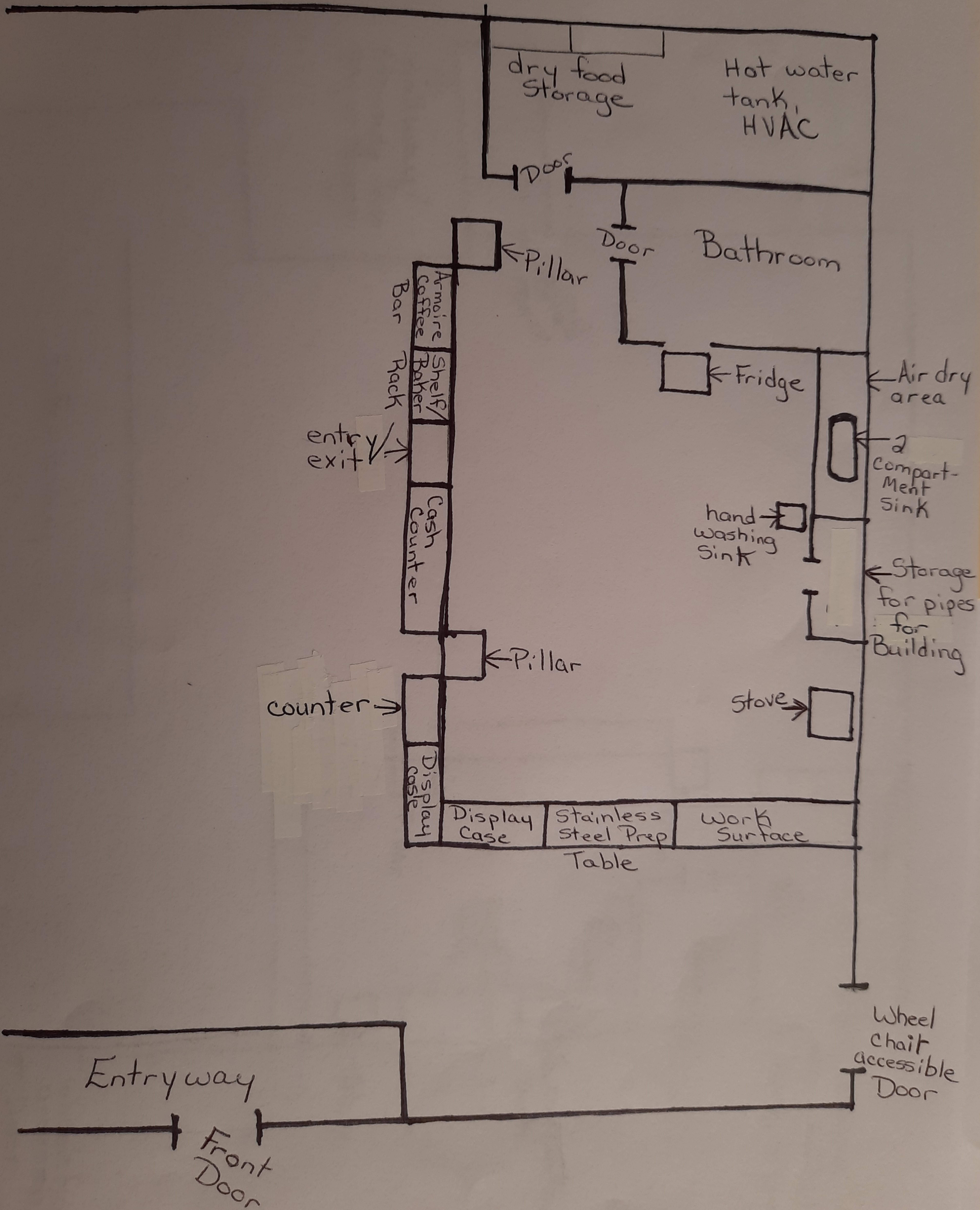
40m
100ft



206
FOR LEASE
206 387 6930

NO PARKING

Close up drawing of kitchen area only



File #09-13192

COPY

27840348
2009-10-02
10:05:49



BY-LAW No. # 300-5-11


A BY-LAW TO AMEND THE TOWN OF RIVERVIEW
ZONING BY-LAW NO. 300-5.

BE IT ENACTED BY THE TOWN COUNCIL OF THE TOWN OF RIVERVIEW AS
FOLLOWS:


The Town of Riverview Zoning By-law, being By-law Number 300-5 enacted on
October 23, 2006, and filed in the Albert County Registry Office as number 23058143 on
November 10, 2006, is hereby amended as follows:

1. By inserting at the end of sentence 1.2(1) "as amended by the map hereto attached
as Schedule "A-8" entitled "Town of Riverview Zoning Map" and dated June 10,
2009.

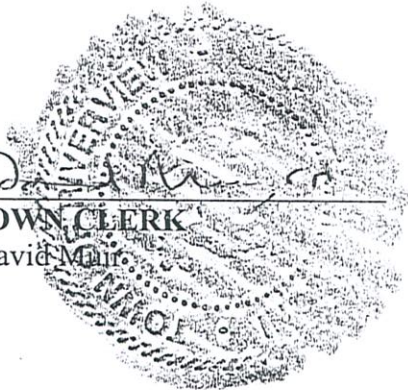
ENACTED this 14th day of September, A.D. 2009.



 MAYOR
 Clarence Sweetland



 TOWN CLERK
 David Marr



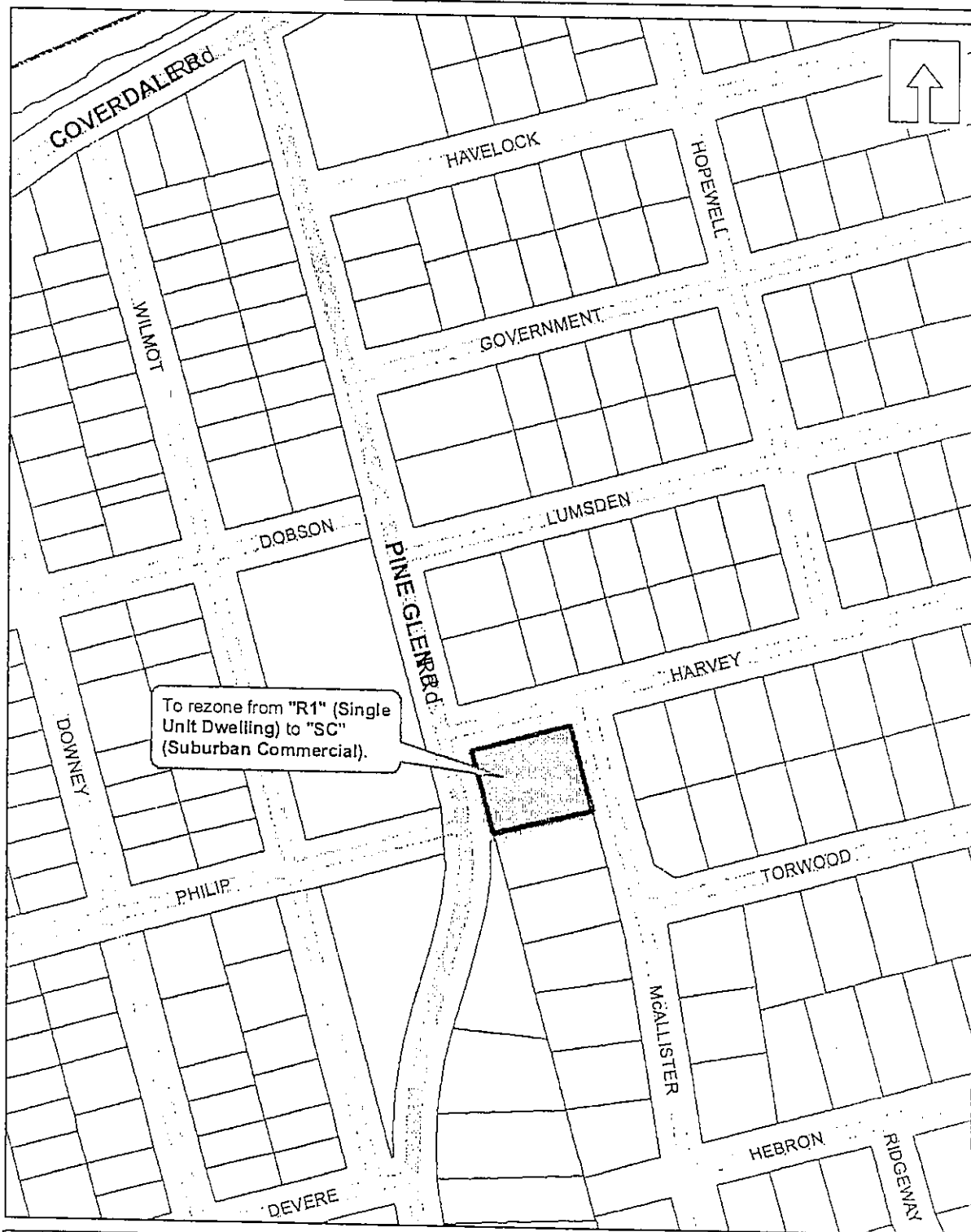
First Reading	August 24, 2009
Second Reading	September 14, 2009
Third Reading	September 14, 2009

I certify that this instrument is registered or filed in the	J'arreste que cet instrument est enregistré ou déposé au bureau d'enregistrement du comté de
<u>Albert</u> County Registry Office, New Brunswick	<u>Albert</u> Nouveau-Brunswick
OCT 07 2009	10:05:49 27840348
date	time-heure number-numéro
<u>Maryse Melanson</u> Deputy Registrar - Conservateur Adjoint	

Schedule A-8

Town of Riverview Zoning Map

Date: June 10, 2009

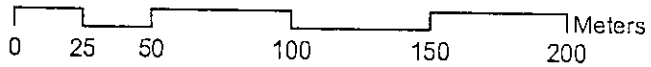


Legend



"SC" (Suburban Commercial)

Scale 1:2,500



THIS AGREEMENT MADE THIS 14th DAY Sept., A.D., 2009

BETWEEN: THE TOWN OF RIVERVIEW, a municipal corporation, incorporated under the Legislative Assembly of the Province of New Brunswick and located at 30 Honour House Court, Riverview, County of Albert, Province of New Brunswick, E1B 3Y9,

hereinafter called the "Town"
Of the First Part;

-and-

Sharron Ann Steeves, 404-50 Assomption Blvd, in the City of Moncton, County of Westmorland and Province of New Brunswick, E1C 05C,

hereinafter called the "Owner"
Of the Second Part;

WHEREAS the Owner has proposed that certain lands at the corner of Pine Glen Road, Harvey Road, and McAllister Road, Riverview, New Brunswick and identified as PID # 05095682, as shown in Schedule "A-8" (hereinafter referred to as "lands") be used for a physiotherapy clinic and dwelling unit in one building;

AND WHEREAS the lands are now zoned "RI" – *Single Unit Dwelling Zone*, wherein the proposed purpose is not a permitted use;

AND WHEREAS the Owner has applied, and the Greater Moncton Planning District Commission has recommended that the Town rezone the lands at Pine Glen Road from "RI" to "SC" – *Suburban Commercial Zone*, in accordance with, and subject to the provisions contained in section 39 of the Community Planning Act, and subject to certain terms and conditions herein set forth;

NOW THEREFORE in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

1. The Owner's Covenants

The Owner covenants and agrees to develop the lands in compliance with the following terms and conditions:

- (a) All uses of the lands pursuant to this agreement shall conform to the provisions of the Town of Riverview Zoning By-law No. 300-5, except as otherwise provided in this agreement.
 - (b) The permitted uses on the lands shall be confined to one or more of the following:
 - (i) a single or two-unit dwelling
 - (ii) an office use
 - (iii) a medical or health office
 - (iv) a personal service shop
 - (v) a bed and breakfast/tourist home
 - (vi) a florist or gift shop
 - (vii) any accessory building, structure or use, incidental to the permitted main use of the land, building, or structure, subject to section 3.10 of the Zoning By-law.
-

- (c) The parking lot to be constructed on the lands shall have a 3 metre wide buffer strip, which shall be planted with trees, which shall be at least 1.5 metres tall at the time of planting and spaced 6 metres apart, and shall include lower plantings, such as shrubs, between said trees.
- (d) The landscaping mentioned in (c) shall not obstruct the sight triangle and shall be planted along Pine Glen Road and Harvey Road, to the entrance to the lands located on Harvey Road.
- (e) The parking lot shall have a direct connection to the Pine Glen Road sidewalk and said connection shall be finished with a barrier free solid surface. This required work shall be the responsibility of the Owner and shall be constructed to the standards confirmed by the Town's Engineering Department.
- (f) At least three (3) windows shall be added to the right elevation of the building to be constructed on the lands.
- (g) The building shall include a proper commercial entrance that is consistent with the attached drawing.
- (h) One (1) non-illuminated sign, not exceeding 0.75 square metres in gross surface area, may be located between the McAllister Road façade and the street line
- (i) The south side of the parking lot shall be screened from the neighbouring property (PID #00661348), with screening to consist of a hedge, fence or landscaping, or combination thereof, which is designed to block visibility of the parking lot.
- (k) Subject to the above conditions, the lands shall otherwise be developed in substantial conformance with the plan and drawings submitted, and attached in Appendix A.

2. The Town's Covenants

The Town covenants with the Owner as follows:

- (a) that the Town will undertake to carry out all necessary procedures for the zoning amendment to have the Owner's premises zoned "SC" – Suburban Commercial, conditional on the terms herein contained and for the purposes stated herein.

3. Notices

Any notices under this agreement shall be sufficiently given by personal delivery by registered mail, postage prepaid, and mailed in a Canadian Post Office, addressed:

Owner	Town
Sharron Ann Steeves 404-50 Assumption Blvd. Moncton, NB E1C 05C	The Town of Riverview Attn: Town Clerk 30 Honour House Court Riverview, NB E1B 3Y9

- 4. The Owner acknowledges and agrees that notwithstanding anything contained herein, the approval of the Town to the amendment to the zoning of the land is wholly conditional upon compliance by the Owner with the terms and conditions herein, and

further shall be of no effect until the zoning amendment is perfected pursuant to subsection 39(2) of the Community Planning Act of New Brunswick.


5. **Successors**

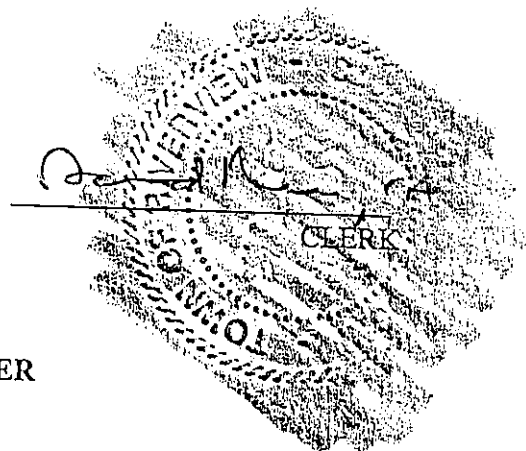
THIS AGREEMENT enures to the benefit of, and binds the parties hereto, their heirs, successors and assigns.

IN WITNESS WHEREOF the Town and the Owner have caused their authorized officers and themselves to execute this agreement and to affix their seals, the day and year first above written;

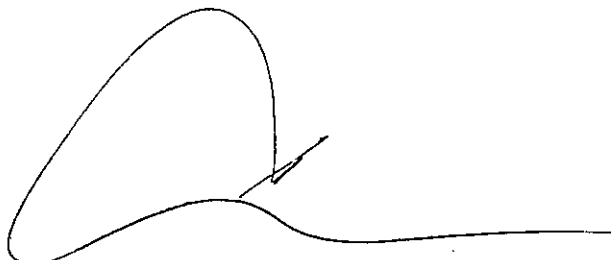
SIGNED, SEALED AND DELIVERED

THE TOWN OF RIVERVIEW


MAYOR

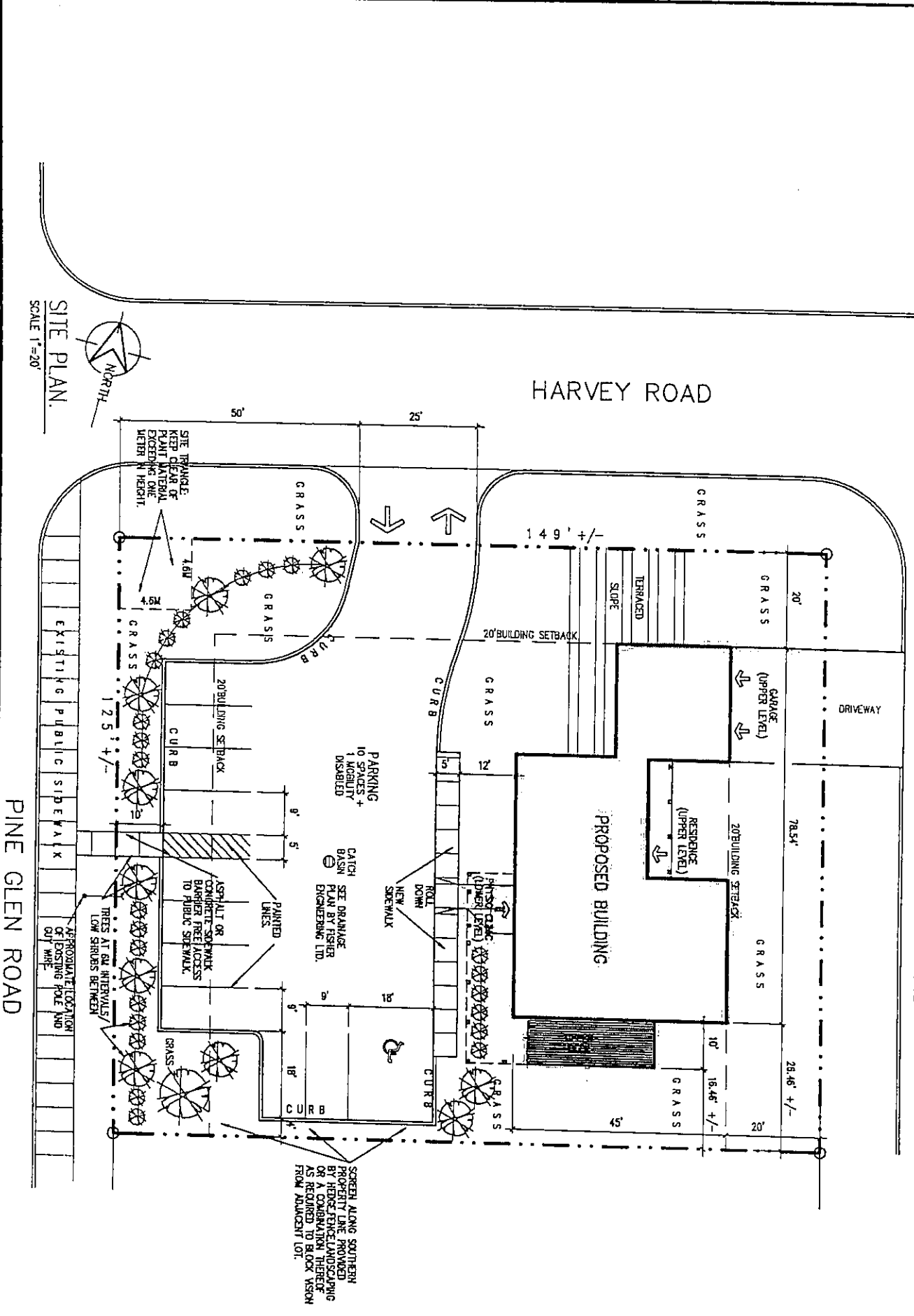
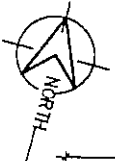


OWNER




SHARRON ANN STEEVES

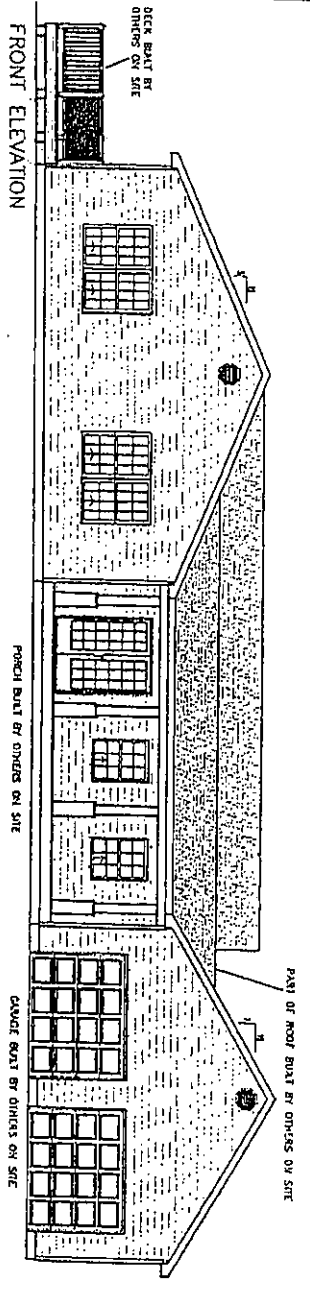
SITE PLAN.
SCALE 1"=20'



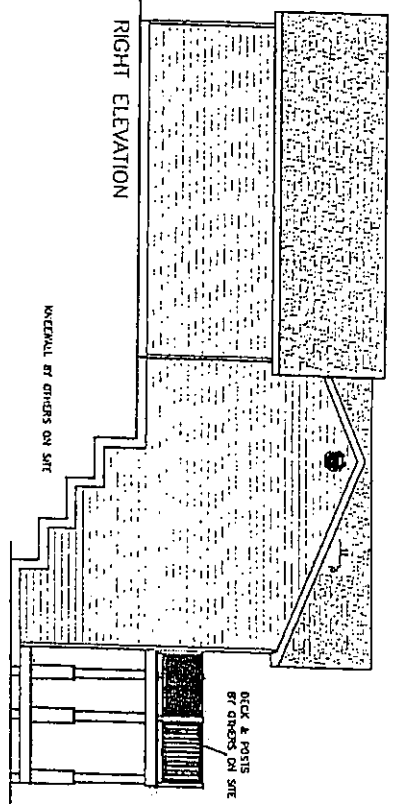
Proposed Facility
Physio Fitness

May 2009 Rev.4/24 August 2009

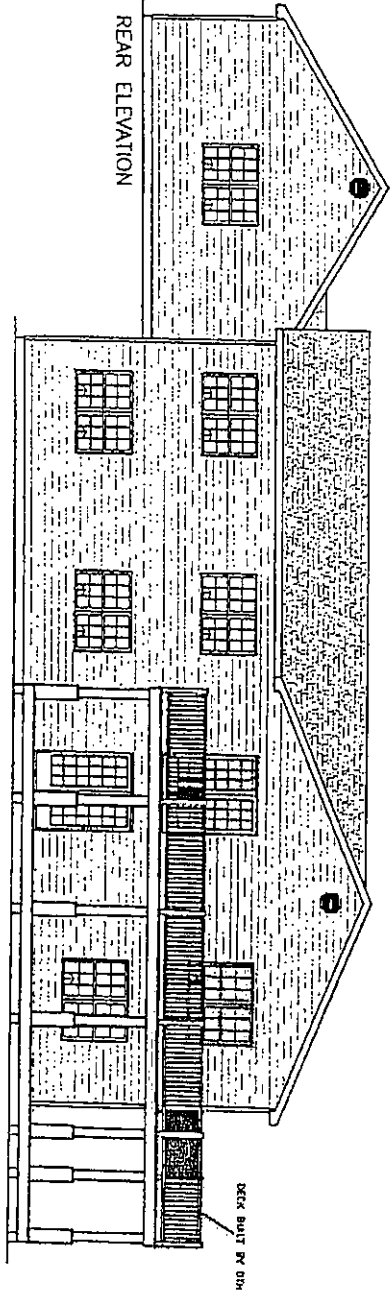
SP1



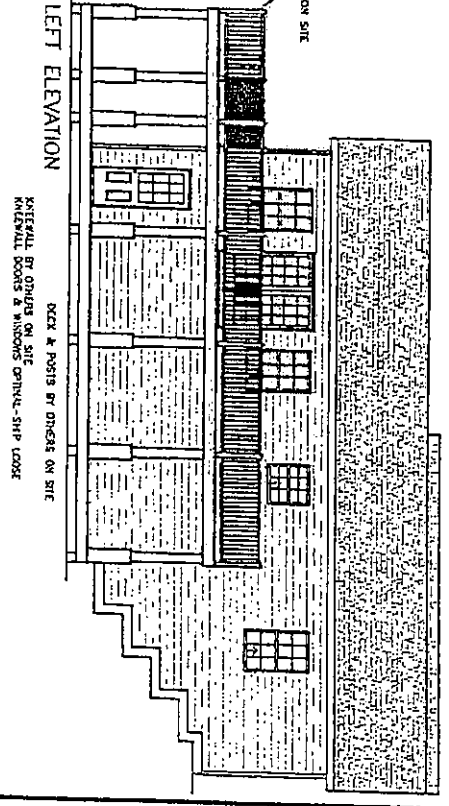
FRONT ELEVATION



RIGHT ELEVATION



REAR ELEVATION



LEFT ELEVATION

ISSUED FOR REVIEW ONLY
NOT FOR CONSTRUCTION

DESIGN BY : V. MARTEL
DATE : APRIL 28, 2009
SCALE : N.T.S.

CHK BY : ENG
FILE NO : B1341-09-R1
CLIENT : KENT HOMES DIRECT DIEPPE - STEEVES
TITLE : SALES PLAN - ELEVATIONS
30 X 45/55' BUNGALOW



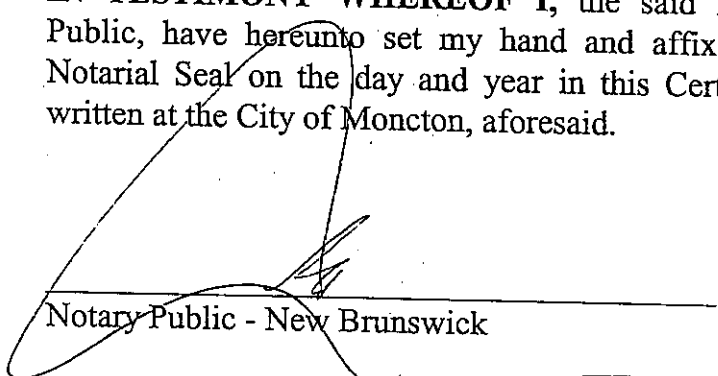
PROVINCE OF NEW BRUNSWICK

COUNTY OF WESTMORLAND

TO WIT:

I, **A. KENT ROBINSON**, a Notary Public, duly commissioned, appointed and sworn in and for the Province of New Brunswick, residing and practising therein, **DO HEREBY CERTIFY** that on this 11th day of September, 2009, before me at the City of Moncton, in the County of Westmorland and Province of New Brunswick, personally came and appeared **SHARRON ANN STEEVES**, the party named in the foregoing Agreement and acknowledged that she signed, sealed, executed and delivered the said Deed as and for her free act and deed, to and for the uses and purposes therein expressed and contained.

IN TESTIMONY WHEREOF I, the said Notary Public, have hereunto set my hand and affixed my Notarial Seal on the day and year in this Certificate written at the City of Moncton, aforesaid.


Notary Public - New Brunswick





Greater Moncton Planning
District Commission
Commission du district
d'aménagement
du grand Moncton

PRELIMINARY REPORT TO COUNCIL

TO: Mayor and Council, Town of Riverview
David Muir, Town Manager/Clerk

FROM: Bill Budd, Executive Director, GMPDC

DATE: June 11, 2009

SUBJECT: Municipal Development Plan and Zoning By-law Amendment
Request – Sharon Steeves, corner of Pine Glen Road, Harvey Road,
and McAllister Road (PID 05095682), to permit a physiotherapy clinic
and dwelling unit in one building.

STAFF RECOMMENDATION

GMPDC staff recommends that:

- 1) That a public presentation be set for July 13, 2009;
- 2) That a public hearing be set for August 24, 2009; and
- 2) That By-laws 300-30-7 & 300-5-11 be referred to the Greater Moncton Planning District Commission for its written views.

SUMMARY

The application was referred to the Greater Moncton Planning District Commission at the May 25th Special Meeting of Council.

The applicant is requesting to rezone property located at the corner of Pine Glen Road, Harvey Road and McAllister Road, in order to permit a new building on the property, which will contain a physiotherapy clinic and dwelling unit. Currently, the lot is vacant.

Given the existing grade of the lot, the building will include a walkout basement. The applicant intends to live on the main floor of the building and operate the physiotherapy clinic in the basement. As such, the building will have a proper residential façade facing McAllister Road, while the commercial parking lot and entrance to the clinic will face Pine Glen Road. Commercial access to the facility is proposed off of Harvey Road, while the residential driveway will be located on McAllister. No additional driveways are proposed on Pine Glen.

BACKGROUND

According to Schedule "A" – Generalized Future Land Use Map of the Municipal Development Plan, the property is designated RLD1 – Residential Low Density 1. Under the Zoning By-law, and specifically Schedule "A" of the Zoning Map, the property is zoned R1 - Single-Unit Dwelling.

The R1 Zone permits a single-unit dwelling as a main use of land. In addition, the Zone also permits a "home occupation" in a single-unit dwelling, which is essentially what the applicant is proposing. However, the Zoning By-law limits the size of a home occupation

to 35 percent of the gross floor area of the dwelling unit to a maximum permitted floor area of 40 square metres. The proposed size of the physiotherapy clinic far exceeds this requirement and therefore cannot be considered a home occupation.

The R1 Zone also permits an “institutional use”, which would include a physiotherapy clinic, albeit the use is subject to terms and conditions by the Greater Moncton Planning District Commission. While this is an option to permit the clinic, both an institutional use and secondary dwelling unit are not permitted.

Ultimately, the existing zone does not permit both a physiotherapy clinic of this size and a dwelling unit on the property. As such, the applicant is requesting to rezone the lands. In order to rezone the lands, an amendment to the Municipal Development Plan and Zoning By-law is required.

MUNICIPAL DEVELOPMENT PLAN

As previously stated, the lot is designated RDL1 - Residential Low Density I. The following guidance is provided in the Municipal Plan:

- Policy 5.1.1 It shall be the intention of Council to maintain the character of existing neighborhoods by establishing a Residential Low Density I designation as shown on the Generalized Future Land Use Map.*
- Policy 5.1.2 It shall be the intention of Council to maintain the character of existing single unit dwelling neighborhoods by establishing a Single Unit Dwelling Zone (R1) within the Residential Low Density I Designation. It shall also be the intention of Council to permit, as a secondary use, an accessory dwelling unit, a limited accessory office/home occupation use, a personal service establishment, a bed and breakfast/tourist home, or a daycare facility, where the use is not visible from the street side of the property.*

With respect to the Suburban Commercial designation, the Municipal Plan provides the following guidance:

- Policy 7.2.1 It shall be the intention of Town Council to recognize and foster development of retail and service outlets serving the suburban portions of the town by establishing the Suburban Commercial Designation as shown on the Generalized Future Land Use Map, and*
- Policy 7.2.2 Within the Suburban Commercial designation, it shall be the intention of Council to encourage commercial development by establishing a suburban commercial (SC) zone within which Council shall permit general retail uses including, but not limited to, food and furniture stores, shopping centers, service and personal service shops, limited medical, dental and other professional services, retail, insurance and financial services, automobile sales and repair outlets, nurseries, retail building supply outlets, restaurants including drive in and takeout restaurants, premises licensed for the sale of alcohol, and uses supportive of the surrounding residential environments.*

A strict reading of these sections would suggest that the rezoning should not be permitted because the lot in question is not designated Suburban Commercial. However, the subject site is just on the edge of Riverview’s RBS – Residential Business Service Zone and the Suburban Commercial designation and zoning is located directly across Pine Glen Road. As such, perceptually, the site is a better fit with a commercial area than with the current zoning. Considering that the proposal is a commercial/residential mix, staff are of the opinion that the location of the lot make it a candidate for redesignation and rezoning.

As such, the following Policy applies:

Policy 12.1.9 In considering amendments to the zoning by-law and/or the imposition of terms and conditions, the Council and/or the Commission, in addition to all other criteria as set out in the various policies of this Plan, shall have appropriate regard for the following matters;

- (a) that the proposal is in conformity with the intent of this Plan and with the requirements of all other municipal by-laws and regulations;*
- (b) that the proposal is not premature or inappropriate by reason of:*
 - (i) the financial capability of the Town to absorb any costs relating to the development;*
 - (ii) the adequacy of central or on-site sewerage and water supply services and*
 - (iii) storm drainage measures;*
 - (iv) the adequacy or proximity of school, recreation or other community facilities;*
 - (v) the adequacy of road networks leading or adjacent to or within the development.*
- (c) that controls are placed on the proposed development where necessary, so as to reduce conflict with any adjacent or nearby land uses by reason of:*
 - (i) the type of use;*
 - (ii) the height, bulk and lot coverage of any proposed building;*
 - (iii) traffic generation, access to and from the site and parking;*
 - (iv) open storage;*
 - (v) signs; and*
 - (vi) any other relevant matter of planning concern.*
- (d) that the proposed site is suitable in terms of steepness of grades, soil and geological conditions, location of watercourses, marshes or bogs and susceptibility of flooding as well as any other pertinent matter of environmental concern.*
- (e) that the proposal meets all necessary consideration in respect of public health and safety and that the site design meets all fire protection and access considerations.*

OTHER PLANNING CONCERNS

The development review committee reviewed the project at the June 10, 2009 meeting. No negative comments were noted.

One common concern with applying the SC Zone is that the zone is very permissive and allows a wide variety of land uses. In this case, there are a range of uses permitted in the SC Zone, such as entertainment uses (bars, clubs and taverns) and drive-thru restaurants. Therefore, in order to control the future use of this site should the proposed business relocate or close, staff are of the opinion that the Town should enter into an agreement with the landowner under Section 39 of the Community Planning Act. Any additional developments on this property beyond what the agreement permits would have to be considered on a case-by-case basis and ultimately, decided by Council. The agreement should limit the use on the property to the proposed uses, as well as other compatible uses, such as office space and additional medical and health offices.

One difficulty with this development is determining what is the most important façade. The lot has frontage on three streets and has a significant grade sloping toward Pine Glen Road. As proposed, the development would have a typical residential façade. As a result, the parking lot will be in front of the building and the commercial façade is clearly secondary. While the residents on McAllister will likely appreciate this design, the project does have the traditional building setback that defines the street and public realm on Pine Glen.

Ideally this building would have address the corner of Pine Glen and Harvey. However, because of the existing grade of the property, it is practically impossible to have proper residential and commercial façades on this building unless two separate buildings are proposed, or a much larger building is constructed with extensive cutting and filling. Given the site plan proposed, intensive landscaping should be required along Pine Glen in order to enhance the quality of the streetscape. This is most important because pedestrians and other clients may wish to arrive to the site by foot.

COUNCIL'S OPTIONS

- Deny the request;
- Defer for additional information;
- Table the request; or
- Approve the application and proceed with the Public Process as outlined in this report.

RECOMMENDATION

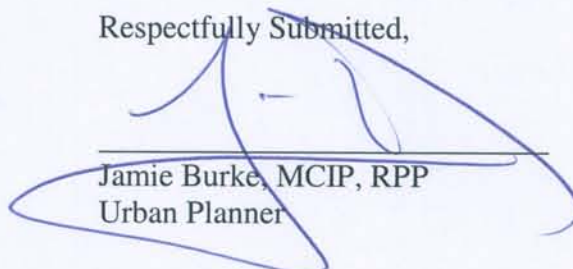
At this time, staff are of the opinion that the project should proceed to a public presentation and public hearing.

With respect to the municipal development plan and zoning by-law amendment application: By-laws 300-30-7 & 300-5-11 (rezoning PID#5095682), from R-1 (Single Unit Dwelling) to SC (Suburban Commercial) to accommodate a physiotherapy clinic and dwelling unit in one building (Applicant: Sharon Steeves. GMPDC#09RZ-13192):

Staff recommends that:

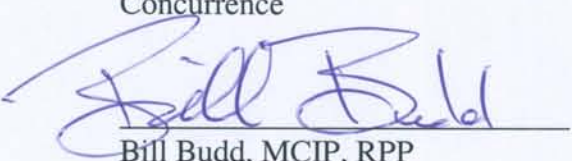
- 1) That a public presentation be set for July 13, 2009;
- 2) That a public hearing be set for August 24, 2009; and
- 2) That By-laws 300-30-7 & 300-5-11 be referred to the Greater Moncton Planning District Commission for its written views.

Respectfully Submitted,



Jamie Burke, MCIP, RPP
Urban Planner

Concurrence



Bill Budd, MCIP, RPP
Executive Director

BY-LAW No. # 300-30-7

**A BY-LAW TO AMEND THE TOWN OF RIVERVIEW MUNICIPAL
DEVELOPMENT PLAN BY-LAW NO. 300-30.**

**BE IT ENACTED BY THE TOWN COUNCIL OF THE TOWN OF RIVERVIEW AS
FOLLOWS:**

The Town of Riverview Municipal Development Plan By-law, being By-law Number 300-30 enacted on October 23, 2006, and filed in the Albert County Registry Office as number 23057947 on November 10, 2006, is hereby amended as follows:

1. Schedule "A", the Generalized Future Land Use Map, is amended as shown on the map attached hereto as "Figure 6", and dated June 10, 2009.

ENACTED this ____ day of _____, A.D. 200__.

MAYOR
Clarence Sweetland

TOWN CLERK
David Muir

First Reading _____
Second Reading _____
Third Reading _____