

ARRETE NO 91-24

ARRETE DE LA MUNICIPALITE DE NEGUAC

CONCERNANT LA SAUVEGARDE DU PATRIMOINE MUNICIPAL

Le Conseil de la Municipalité de Néguaç, en vertu des pouvoirs qui lui sont conférés par la loi sur la sauvegarde du patrimoine municipal, Chapitre M-21.1, Loi du Nouveau Brunswick 1978 décrète:

1. INTERPRETATION

Dans le présent arrêté,

(a) "Act" means the Municipal Heritage Preservation Act, 1978, Statutes of New Brunswick, Chapter 21.1;

(b) "Alter" means to change in any manner, structurally or otherwise, in whole or in part, the exterior of a building or structure and includes to restore, renovate, repair, construct or to change in any manner the design of such building or structure;

(c) "alteration" means any change set out in clause (b);

(d) "Appeal Board" means the Provincial Planning Appeal Board;

(e) "Appurtenances" includes, but is not limited to, walls, fences, light fixtures and standards, steps, paving and signs;

(f) "Board" means the Preservation Review Board appointed pursuant to Section 8 of the Act;

(g) "Certificate" means a Certificate of Appropriateness provided for by the Act;

(h) "Contemporary materials" includes, but is not limited to, angel stone, aluminum, pre-cast concrete, mirrored glass panels and any other materials not available for buildings constructed on or prior to 1915;

(i) "Council" means the Mayor and Councilors of the Village of Néguaç.

(j) "design" means general appearance of the exterior of a building or structure including size, shape, exterior surface textures, colors, decorative features, and standards of maintenance, qualities and types of exterior materials, landscaping, relationship of building or structure to its site, and other matters relating to the nature of the exterior appearance;

(k) "development" means the erecting, placing, relocating, removing, renovating, restoring, demolishing, altering, repairing or replacing of the exterior of a building or structure, in whole or part other than traffic control devices or statutory notices, within a Preservation

Area;

(l) "facade opening" means any penetration of the solid material comprising the building facade. This includes window openings, doors, and archways. The area devoted to facade opening is measured on an orthographic projection from the facade elevation;

(m) "facade opening/wall ratio" means the ratio between the area of the facade devoted to windows and door openings and the area of the facade composed of opaque materials (wall);

(n) "height of a building or structure" means the vertical distance from the ground at the center of the building facade to the highest point of the coping of a flat roof between the eaves and a ridge or to the deck line of a mansard roof or the average height between the plate and ridge of a gable, hip, or gable roof and excluding such structures as elevator penthouses, chimneys, smoke stacks and steeples;

(o) "Municipality" means the Village of Neguac;

(p) "Maintenance" means those actions undertaken to prevent the deterioration of a building or structure but does not include any alteration, design change and/or replacement where such replacement involves a change in design;

(q) "owner" means the registered owner of a building or structure within the Preservation Area, the lessee thereof, or a person in possession of a bona fide contract to purchase same;

(r) "pilaster" means an upright architectural member that is rectangular in plan and is structurally a pier but architecturally treated as a column and the usually projects a third of its width or less from the wall;

(s) "Preservation Area" means that preservation area established under Section 5 of the Act and defined in Section 2 of this By-law;

(t) "restore" means any actions undertaken which returns a building or structure to its condition and appearance at the specific period in time at which it was originally constructed;

(u) "sandblasting" means a technique for the cleaning of buildings or structures of masonry construction which employs abrasive particles under pressure of water or air;

(v) "setback" means the distance between the street line and the front building line of a principal building or structure projected to the sideline of the lot;

(w) "standards" means the standards of development defined in this By-law;

(x) "street line" means the dividing line between a lot and the right-of-way of a street, road, highway, avenue, lane, court or private easement providing generally the primary access to and egress from the property abutting along its length;

(y) "structural alteration" means any change in the supporting members of a building, such as a bearing walls or partitions, columns, beams, girders, etc., which results or could result in a change in the exterior walls or roof of such building or structure;

(z) "traditional materials" includes, but is not limited to, wood, brick, stone, but excludes those materials not commonly used prior to 1915;

(aa) "yard" means an open space on the same lot with a building, such space being unoccupied and unobstructed from the ground upward;

(bb) "yard, rear" means a yard extending across the full width of the lot between the rearmost building structure and the rear lot line;

(cc) "yard, front" means a yard extending across the full width of the lot between the street line and any building or structure;

(dd) "yard, side" means the yard between the side lot line and the parts of the building or structure nearest thereto and extends from the street line to the rear line of said lot.

2. **PRESERVATION** (lieu de préservation et application de l'arrêté)

(1) That portion of the Village of Néguaac described in the attached Schedules "A", "B", & "C" which forms part of this By-law is hereby established as a Preservation Area to be known as The City Center Preservation Area.

(2) This By-law shall apply to the Preservation Area established by subsection (a) hereof.

3. **GUIDANCE STANDARDS**

Cet arrêté sera administré par un comité de sauvegarde tel que décrits à l'article 9 de la loi.

4. **REGISTER OF BUILDINGS**

(1) The Board shall acquire or compile a register of all buildings or structures in the Preservation Area.

(2) In order to provide guidance to the public on standards of design for developments in the Preservation Area, the Board shall maintain the file or files containing drawing, photographs and other descriptive or pictorial items showing structures, architectural styles, and materials appropriate to the area.

(3) Such registers and files shall form part of the records of the Board.

5. CERTIFICATE OF APPROPRIATENESS

(1) Subject to subsection 2,

No person shall carry out or cause to be carried out any development within the Preservation Area, with the exception of maintenance, and whether a building permit or demolition permit has been issued or not, until a Certificate of Appropriateness has been issued by the Board.

(2) No development in accordance with the Certificate shall be carried out until every right of appeal under the Act has been exercised in the particular case or until the time prescribed by the Act for exercise of that right of appeal has expired.

6. APPLICATION FOR CERTIFICATE

(1) An application for a Certificate of Appropriateness shall be filed with the Secretary of the Board who shall not accept any application which is incomplete or appears to be incomplete.

(2) Any application shall be made by the owner of the property for which the development is proposed in the form prescribed by the Board and shall include:

(a) in the case of an existing building or structure development plans and specification which describe in the detail any proposed demolition or alterations to such building or structure and appurtenances.

thereto, including additions, deletions, design changes, repairs, excluding maintenance, replacements, etc, and any proposed changes to the existing open spaces, yards, driveways, landscaping and other site details; or

(b) in the case of new construction, development plans and specifications of the proposed building or structure and appurtenance there to including details relating to the site such as landscaping, open spaces, yards, driveways, etc.

(3) The Secretary shall submit the completed application to Board for its consideration.

(4) Prior to deciding on an application for a Certificate the Board shall take such action as may be reasonably required to inform the applicant and all such other person as the Board may deem appropriate that the application is pending and shall give such persons an opportunity to be heard. Failure of any person to receive notice as provided here in shall not invalidate any action by the Board.

(5) Where the Board deems it necessary, a public hearing on an application may be conducted by the Board.

(6) If the Board determines that the proposed development is appropriate and that, in the opinion of the Board, the development complies with the provisions of the Act, this By-law and the provisions of any other Act respecting zoning and planning development and all By-laws and regulations there under, the Board shall issue a Certificate to the applicant.

(7) The Certificate shall be numbered and signed by the Chairman or his designate stating that the proposed development for which application has been made is approved by the Board, or the Appeal Board on appeal, and bearing the date of approval and any terms and conditions on which the approval is granted and which the Board considers necessary for the standards to be met.

(8) The Board may refuse to issue a Certificate where it considers that the development plans and specifications submitted as part of the application are incomplete or where such plans and specifications show that the proposed development, with the exception of demolition, is incompatible with the standards of development prescribed in Section 9.

(9) If the Board determines that a Certificate should not be issued, it shall forthwith notify the applicant of such determination.

(10) An appeal of a decision of the Board as to any matter for which an appeal lies under the Act, may be made to the Planning Appeal Board in accordance with the provisions of Section 15 and 16 of the Act.

7. BUILDING EXTERIOR

The exterior of any existing building or structure or any part there of any appurtenances there within the Preservation Area shall not be altered, reconstructed or otherwise changed, and no Certificate shall be issued for any development with the exception of demolition, unless the development conforms to the standards set forth in Section 9.

8. NEW BUILDING

The erecting or placing of a new building or structure within the Preservation Area shall be in compliance with the standards laid down in Section 9.

9. STANDARDS

(1) Any development, with the exception of demolitions, within the Preservation Area shall comply with the following regulations:

For the purpose of Section 9 the following definitions apply:

"neighboring buildings or structures" means the existing buildings or structure fronting upon the same side of the street or streets and adjacent or most proximate to the development.

"side yard ratio" means the ration of the width of the side yard between the side lot line and the parts of the building or structure nearest there to, and the total width of a lot.

(a) Where the setbacks of neighboring buildings or structures are uniforms, the setback of the development shall conform thereto.

- (b) Where the setbacks of neighboring buildings or structures are not uniform:
- (1) If the setback of one of the neighboring buildings or structures is the same as the setback of the building or structure adjacent or most proximate to it then the setback of the development shall conform thereto, or regulations.
 - (2) If the setback of the neighboring building or structure on either side of the development is not the same as the setback of those buildings or structures adjacent or most proximate to it, then the setback of the development shall conform to that of either the neighboring buildings or structures.
- (c) The side yard ratio on each side of a development shall conform to the relative side yard ratios of either of the neighboring buildings or structures so as to maintain the pattern of open and occupied spaces.
- (d) The height of a development shall not be less than 80 percent and not more than 120 percent of the average height of existing buildings constructed prior to 1915 and not subsequently altered and located within the same block as the development, fronting upon the same side of the street.
- (e) The height/width ratio of the facades of a development shall not vary by more than 10 percent from the height/width ratio of the facades of existing buildings constructed prior to 1915 and not subsequently altered and located within the same block as the development, fronting upon the same side of the street.
- (f) Notwithstanding paragraph (e), the Board may issue a Certificate of Appropriateness for a building or structure proposed for a parcel of land of a width greater than the average width of building lots within the same block where such proposed building or structure is too wide to comply with the height/width ratio set forth in paragraph (e), provided that, the Developer shall cosmetically divide the facade of such building or structure with pilasters or other design techniques into sections or bays which do conform to the required height/width ratio.
- (g) The allowable facade opening/wall ratio for the facade of a development shall not vary by more than 10 percent from the facade opening/wall ratio of the facades on existing buildings of the same type or style constructed prior to 1915 and not subsequently altered, and located within the same block as the development, fronting upon the same side of the street.
- (h) The dimensions of the windows in a development shall not vary by more than 10 percent from the dimensions of the window in existing buildings of the same type or style constructed prior to 1915 and not subsequently altered, and located within the same block as the development, fronting upon the same side of the street.
- (i) The roof or roofs of a development in regard to their direction, pitch and arrangement shall conform to those on existing buildings of the same type or style constructed prior to 1915 and not subsequently altered, and located within the same block as the development, fronting upon the same side of the street.

(j) The size, shape and prominence of a porch, entrance projection or doorway in a development shall be similar to those found on existing buildings of the same type or style constructed prior to 1915 and not subsequently altered and located within the same block as the development, fronting upon the same side of the street.

(k) A development shall use traditional detailing and traditional materials for its exterior facades in keeping with those found on existing building or buildings of the same type or style or style constructed prior to 1915, and not subsequently altered and located within the same block as the development, fronting upon the same side of the street. The Board may permit the use of contemporary material where their appearance is compatible with the appearance of traditional materials and detailing.

(2) In the case where there is no existing building or structure constructed prior to 1915 and located within the same block as the development, fronting upon the same side of the street, the standards of this Section are deemed to relate to a building or structure constructed prior to 1915 which is most proximate to the development.

(3) Subject to subsection 2,

In the case where the existing buildings or structures constructed prior to 1915 and located within the same block as the development, fronting upon the same side of the street have been subsequently altered, the standards of this Section are deemed to relate to the unaltered state and appearance of such existing buildings or structures where such state and appearance can be determined from the records of the Board, or original photographs, plans, specifications or other such evidence, or in the case where such information is not available the standards shall be deemed to relate to buildings of the same type and style constructed prior to 1915 and not subsequently altered and located within the Preservation Area.

(4) Mid-Block developments which do not front on any street or streets are exempt from the standards set forth in this Section.

(5) Masonry Cleaning

(a) The cleaning of buildings and structures of masonry construction within the Area shall employ a technique which, in the opinion of the Board, will not damage the surface of the facade.

(b) Any person who proposes to clean or cause to be cleaned any buildings or structure of masonry construction within the Area shall apply to the Board for a Certificate, which must have been issued by the Board before work is to proceed. For the purpose of this By-law, the cleaning of such a building or structure is deemed to constitute an alteration to the exterior surface texture and is not considered maintenance.

10,11,12. DEMOLITION, REMOVAL OR RELOCATION

(1) Subject to substance (5) no building or structure within the Preservation Area, or any appurtenance thereto, shall be demolished, removed or relocated and no Certificate for such development shall be issued until,

(a) such building or structure has been identified by the Board as incompatible with the Preservation Area in terms of the standards prescribed in Section 9; or

(b) the owner has made a publicity advertised offer to sell such building or structure and the land pertaining thereto, for a period of not less than six months, in accordance with the procedure set forth in subsection 2 of this Section, and no contract has been made for the sale of the property; or

(c) the owner has listed for sale such building or structure and the land pertaining thereto with a Multiple Listing Service within the Village for a period of not less than six months, and no contract has been made for sale of the property.

(2) The owner, who is making an offer to sell such building or structure pursuant to subsection 1 (b) of this Section, shall:

(a) Before publishing the offer to sell, file such offer to sell with the Secretary;

(b) At his own expense, cause a Notice of the offer to sell to be published in a newspaper of general circulation in the municipality, such Notice to appear at least once a month for a period of not less than six calendar months;

(c) Ensure that the offer to sell is at a price based on the fair market value of the property.

(3) The Secretary, upon receiving the offer to sell pursuant to subsection 2(a), shall forthwith notify the Minister responsible for the Historic Sites Protection Act.

(4) The Notice of the offer to sell shall be in the form prescribed by Schedule "B" attached hereto and forming part of this by-law and such Notice shall:

(a) identify the property and its location;

(b) state the offering price;

(c) state the date the offer to sell is to begin, which date shall not be earlier than the date such offer was files with the Secretary pursuant to subsection 2(a);

(d) include a photograph of the property, such photograph to conform to details set out in said Schedule "B";

(5) If, in the opinion of the Board, the offer to sell is at a price in excess of the fair market value of such property, the Board may refuse to approve the Notice until such time as the owner has amended the Notice accordingly or the owner has established to the satisfaction of the Board that the price is reasonable under the circumstances.

(6) Notwithstanding this section, where the owner who is applying to the Board for a Certificate of Appropriateness to demolish a building or structure or any part thereof has also made application to the Board for a Certificate to erect a new building and in such application the owner proposes to retain or reconstruct the existing facade, provided that such facade would conform to the development standards set forth in Section 9, the Board shall issue Certificates of Appropriateness for both the demolition and the new construction.

For purposes of this subsection such reconstruction shall not alter or change the design of the existing building or structure unless such alteration is for the purpose of restoring the street level facade to its original state and appearance.

11. (1) (a) If, in the opinion of the Board, the nature of a property to be sold is such that it would require a publicity advertised offer to sell of more than six months duration in order to attract potential purchasers, the Board may require the Notice of offer to sell referred to in Section 10 (1) (b) to remain in effect for a period not exceeding twelve months.

(b) Where the Board makes such a determination, it shall notify the owner in writing of its decision and it shall amend any published notice to sell and shall pay the additional costs of the advertisement.

(2) If at the end of the offer to sell period, the property has not been sold, the owner shall so notify the Board, and the Board deems necessary for the purpose of preserving any part of such building or structure or appurtenances thereto which are of historic or architectural value or interest.

(3) The Board may issue the Certificate of Appropriateness to demolish a building or structure, subject to such terms and conditions as the Board deems necessary to preserve any parts or features of such buildings or structure which is or historic or architectural value and interest.

(4) Upon issuing a Certificate approving the demolition, removal or relocation of a building or structure or any part thereof, the Board shall forthwith, at its own expense.

(a) cause a notice to be published in a newspaper of general circulation in the municipality stating that the building or structure in question has been approved for demolition, removal or relocation, the date of issue of the Certificate, and outline the statutory right of appeal which exists against the Board's decision; and

(b) notify the Minister responsible for the Historic Sites Protection Act that the Certificate has been issued.

12. (1) Any person who wishes to question the offering price referred to in the Notice of offer to sell shall, within 15 days of the publication of such Notice, file with the Secretary a petition in writing signed by at least six persons resident with the City.

(2) Upon receipt of such petition the Board shall forthwith notify the owner of the property in question, and, at the Board's expense, three accredited real estate appraisers familiar the property shall be appointed, one appraiser to be selected by the Board, one appraiser to be selected by the other two appointees. The appraisers shall file a written report with the Board stating whether or not the offer to sell the property is at a price reasonably related to its fair market value. The opinion of any two of the three appraisers shall be binding and final.

(3) If the appraisal report states that the offer to sell the property is at a price reasonably related to or less than its fair market value, the offer to sell may continue as if no question had been raised.

(4) If the appraisal report states that the offer to sell the property is at a price in excess of the reasonably fair market value, the offer to sell shall be void and of no force and effect for the purpose of this Section, and the owner, if he wishes to take advantage of the right provided by Section 10 (1) (b), must file a new Notice of offer to sell at or below the reasonable fair market value established by the appraisal report.

(5) Notwithstanding any appraisal report, if an owner has entered into binding contract for the sale of the property prior to the date the appraiser's report is filed with the Board, the selling price shall be deemed to be reasonably related to fair market value.

13. MAINTENANCE

Maintenance as defined by this By-law, of the exterior of a building or structure or appurtenances thereto, is permitted and for the purpose of such maintenance a Certificate is not required.

14. ENFORCEMENT

Any person who violates or causes to be violated any provision of this By-law is guilty of an offence and is liable upon summary conviction to a fine of not less than twenty-five dollars (\$25.00) and not more than one hundred dollars (\$100.00) for each day the offence continues and in default of payment to imprisonment in accordance with subsection 31 (3) of the Summary Convictions Act.

15. INTERPRETATION

For the purpose of this By-law:

(a) a word importing the masculine gender includes a feminine gender and a word importing a feminine gender includes the masculine gender;

(b) a word in the singular includes the plural and a word in the plural includes the singular, wherever the context of the By-law would so require.

16. OTHER

The heading used in this By-law are inserted for convenience of reference only and form no part of the By-law.

17. SAFETY

Nothing in this By-Law shall be construed so as to affect any demolition ordered by Common Council pursuant to the "Saint John Building Act, 1925", as amended.

VILLAGE OF NEGUAC CENTRE PRESERVATION AREA BY-LAW

A Notice of offer to sell a property pursuant to Section 10, 11 and 12 shall be in accordance with the following guideline:

The advertisement shall:

- A. Appear in the real estate section of the newspaper.
- B. Be one column in width.
- C. Have at the top of the ad a headline in 24 pt. type in capitals, saying TRINITY ROYAL.
- D. 8 pt. type in the text of the ad.
- E. Identify the property and its location.
- F. State the offering price.
- G. State the date the offer to sell is to begin.
- H. Include a black and white photograph of the property, to be the width of the column by whatever necessary height.