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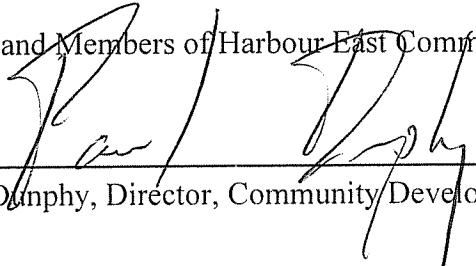
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Harbour East Community Council

April 2, 2009

May 11, 2009

TO: Chair and Members of Harbour East Community Council

SUBMITTED BY: 
Paul Dunphy, Director, Community Development

DATE: March 12, 2009


SUBJECT: Case 01237: Eastern Passage / Cow Bay LUB - Housekeeping Amendments

ORIGIN

Application initiated by staff.

RECOMMENDATION

It is recommended that Harbour East Community Council:

1. Give First Reading to consider various housekeeping amendments to the Land Use By-law for Eastern Passage / Cow Bay, as shown in Attachment A, and schedule a public hearing; and *April 2, 2009*
-  2. Approve the proposed amendments to the Land Use By-law for Eastern Passage / Cow Bay, as shown in Attachment A.

BACKGROUND

The Land Use By-law (LUB) for Eastern Passage / Cow Bay has been in effect for approximately seventeen years. As with any LUB, there is a need for amendments to reflect practical experiences in day-to-day administration. On occasion, amendments are needed to correct omissions, clarify definitions and clauses, refine the physical requirements for development, or provide for consistency in wording between municipal by-laws.

DISCUSSION

The proposed housekeeping amendments generally deal with the following areas:

Changes in the provincial registration system

In the Nova Scotia Land Registration system, individual properties are now referenced by a 'property identifier', commonly called a PID number. As such, all outdated references to LMIS numbers and LRIS parcel index numbers have been replaced with PIDs.

Nova Scotia Environment

With regard to sewage disposal, the name of the provincial department has been changed to Nova Scotia Environment.

Halifax Regional Municipality Charter

As of January 13, 2009, the new *HRM Charter* is in effect as the primary legislation under which HRM will operate. Any references to either the Planning Act or the Municipal Government Act have been replaced with the *Halifax Regional Municipality Charter*.

Regional Subdivision By-law

The Regional Subdivision By-law came into effect in 2006. References to the old Subdivision By-law have been replaced with the appropriate section of the Regional Subdivision By-law.

1998 deletion of the Rural Residential Zone / Designation

In 1998, the Rural Residential designation was deleted from the MPS and LUB for Eastern Passage / Cow Bay. References to the Rural Residential designation have now been removed from the LUB.

At that time, the Rural Residential (R-6) zone was also deleted from the LUB, and replaced with a comparable Rural Area (RA) zone. Outdated references to the R-6 zone have been replaced with the RA zone where appropriate.

Signage provisions for the C-2 Zone

To maintain consistency, the signage provisions for the C-2 zone have been moved from the zone into Part 5: Signs.

*Minimum front yards
in the C-2 Zone*

Currently, the C-2 zone requires a front or flankage yard which varies depending on the street. Staff have been interpreting the requirements as a minimum front yard, which is consistent with other zones in the LUB. The proposed amendments clarify this position.

*Subdivision of a
semi-detached
dwelling in the C-2
Zone*

Two unit dwellings are permitted in the C-2 zone, including semi-detached dwellings where the units are vertically divided by a common wall. Once constructed, semi-detached dwellings are typically subdivided along the common wall to place each unit on its own lot and to allow the units to be sold to separate owners.

However, the C-2 zone does not allow for a zero foot side yard on the side being common with the other dwelling unit, which takes away the option to subdivide. This appears to be an oversight and the proposed amendments correct the situation.

Accessory buildings

A minor amendment is proposed to refer to the maximum size of an accessory building as 'footprint' instead of 'area'. This is consistent with staff's day-to-day interpretation of the LUB.

*Activity within
watercourse buffers*

The planning documents for Eastern Passage / Cow Bay are more strict than most of HRM's LUBs with regard to watercourse buffers. The MPS prohibits structures within the buffer, but it does not prohibit driveways or public infrastructure.

Currently, the LUB does not allow for driveways or infrastructure within the watercourse buffer, which has limited certain landowner's ability to develop. The LUB amendment will allow access through the watercourse buffer and will maintain consistency with planning documents: structures within the watercourse buffer will still be prohibited.

*Telecommunications
towers*

When the LUB came into effect, telecommunications towers were generally limited to television or radio towers; however, cell towers are now commonplace and should be included in the LUB.

*Development permits
for small accessory
buildings*

Although the LUB states that accessory buildings under 300 square feet do not require a development permit, they must still meet the requirements of the LUB with regard to setbacks, etc. Therefore, standard practice has been for staff to require a development permit application so the proposal can be reviewed for setbacks, free of charge.

Fee schedule

The LUB currently has an outdated fee schedule for planning applications. Standard practice is to use the planning application form to determine fees, which will be reflected by this amendment.

Public Participation

A public information meeting has not been held in connection with the proposed amendments. Should Harbour East Community Council decide to proceed with a public hearing, residents will be notified of the hearing through published newspaper advertisements.

Conclusion

The proposed housekeeping amendments, as shown in Attachment A, are minor in nature and do not result in substantive changes to land use requirements. Instead, they generally reflect how staff has been interpreting the LUB and introduce some requirements where they had been omitted in oversight. As such, staff recommend that Harbour East Community Council approve the proposed changes as contained in Attachment A of this report.

BUDGET IMPLICATIONS

The costs to process this planning application can be accommodated within the approved operating budget for C310.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

ALTERNATIVES


1. Council may choose to approve the proposed Land Use By-law amendments. This is the recommended alternative.
2. Council may choose to approve only some of the Land Use By-law amendments proposed in Attachment A.
3. Council may choose to refuse the proposed Land Use By-law amendments, and in doing so, must provide reasons based on a conflict with the MPS policies.

ATTACHMENTS

Attachment A Amendments to the Land Use By-law for Eastern Passage / Cow Bay

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by : Mackenzie Stonehocker, Planner I, Community Development, 490-3999



Report Approved by: Austin French, Manager, Planning Services, 490-6717

Attachment A:
Amendments to the Land Use By-law for Eastern Passage / Cow Bay

BE IT ENACTED by the Regional Council of the Halifax Regional Municipality that the Land Use By-law for Eastern Passage / Cow Bay is hereby amended as follows:

1. Amend Section 3.4 (Zones not on maps) by deleting the following:

Planning Act

and replacing it with the following:

Halifax Regional Municipality Charter

2. Amend Section 3.6 (Other uses considered by development agreement) by deleting the following:

Planning Act

and replacing it with the following

Halifax Regional Municipality Charter

3. Amend Section 3.6(b) (Other uses considered by development agreement) by deleting the following:

and Rural

4. Amend Section 3.6(c) (Other uses considered by development agreement) by deleting the following:

Rural Residential,

5. Amend Section 4.1(d) (Development permits) by deleting the following subsection (i):

any accessory building or structure which has less than three hundred (300) square feet (27.9 m²) of gross floor area; and

6. Amend Section 4.3 (Sewage disposal and water systems) by deleting the following:

the Department of Health

and replacing it with the following:

Nova Scotia Environment

7. Amend Section 4.5 (One main building on a lot) by deleting the following:

R-6 (Rural Residential)

and replacing it with the following:

RA (Rural Area)

8. Amend Section 4.5 (One main building on a lot) by deleting the following:

LRIS parcel index number 369439

and replacing it with the following:

PID 00369439

9. Amend Section 4.6 (Existing undersized lots) by deleting the following:

Part 14 of the Subdivision By-law

and replacing it with the following:

Section 41 of the Regional Subdivision By-law

10. Amend Section 4.7(a) (Reduced frontage or area) by deleting the following:

Section 98 of the Planning Act

and replacing it with the following:

Part IX of the *Halifax Regional Municipality Charter*

11. Amend Section 4.7(d) (Reduced frontage or area) by deleting the following:

Part 14 of the Subdivision By-law

and replacing it with the following:

Section 38 of the Regional Subdivision By-law

12. Amend Section 4.7(d) (Reduced frontage or area) by deleting the following:

Section 14.1 of the Subdivision By-law

and replacing it with the following:

Section 38 of the Regional Subdivision By-law

13. Amend Section 4.9 (Non-conforming uses) by deleting the following:

Planning Act of Nova Scotia

and replacing it with the following:

Halifax Regional Municipality Charter

14. Amend Section 4.11(a)(ii)(1.) (Accessory buildings) by deleting the following:

R-6 (Rural Residential)

and replacing it with the following:

RA (Rural Area)

15. Amend Section 4.11(a)(iii) (Accessory buildings) by deleting the following:

750 square feet in area

and replacing it with the following:

750 square feet in footprint

16. Amend Section 4.15 (Restoration to a safe condition) by deleting the following:

Planning Act

and replacing it with the following:

Halifax Regional Municipality Charter

17. Amend Section 4.17 (Height regulations) by deleting the following:

television or radio antennae,

and replacing it with the following:

telecommunications masts or towers,

18. Amend Section 4.18(1) (Watercourse setbacks and buffers) by deleting the following:

(d) Within the required buffer pursuant to clauses (a) and (b), activity shall be limited to the placement of board walks, walkways and trails not exceeding 3 metres in width, within the required buffer of the Cow Bay River or Smelt Brook.

and replacing it with the following:

(d) Within the required buffer pursuant to clauses (a) and (b), activity shall be limited to the placement of fences not exceeding 1.83 metres in height, boardwalks, walkways and trails not exceeding 3 metres in width, public road crossings, driveway crossings and wastewater, storm and water infrastructure.

19. Amend Section 4.24 (Commercial motor vehicles) by deleting the following:

except an R-6 (Rural Residential) Zone,

and replacing it with the following:

except on a lot in an RA (Rural Area) Zone in association with a use permitted in the RA (Rural Area) Zone,

20. Amend Part 5 (Signs) by adding a new section and sub-sections after Section 5.9(c):

5.10 SIGNAGE PROVISIONS FOR THE C-2 ZONE

In addition to the provisions of Sections 5.1 to 5.9 inclusive, signs for all uses in the C-2 Zone shall be subject to the following general provisions. Permitted signs include signboards, fascia wall signs, projecting wall signs, ground signs and canopies / awnings.

- (1) Signboards shall form an integral part of the building facade by being located between the top of the ground floor windows and the bottom of the second floor windows. Signboards shall not exceed a height of two (2) feet and shall not extend more than two-thirds of the entire length of the facade.
- (2) Fascia wall signs shall not exceed twenty (20) square feet in area and shall not extend beyond the top and extremities of the wall on which it is affixed.
- (3) Projecting wall signs shall not:
 - (a) project more than four (4) feet over a public sidewalk;
 - (b) project more than six (6) feet from the building to which it is attached;
 - (c) provide less than nine (9) feet of clearance above a sidewalk or public right-of-way;
 - (d) exceed an area of sixteen (16) square feet.
- (4) Grounds signs shall not:
 - (a) exceed a height of fifteen (15) feet;
 - (b) be within two (2) feet of the street right-of-way;
 - (c) be within ten (10) feet of a side property line or driveway;
 - (d) exceed a sign area of twenty-five (25) square feet per side.
- (5) If the ground sign is constructed of wood with exterior shielded illumination only, then the sign area may be increased to thirty (30) square feet per side.
- (6) The ground sign may be composed of two elements: a section for fixed lettering, and a section for changeable lettering. The fixed lettering section shall not exceed fifteen (15) square feet per side, and the section for changeable lettering shall not exceed twenty (20) square feet per side. The combined sign area shall not exceed the maximum permitted by Sections 5.10(4)(d) or 5.10(5).

- (7) Canopies and awnings attached to walls shall not project more than four (4) feet over a public sidewalk. Canopies and awnings shall be self supporting and shall at no point be located less than nine (9) feet above a sidewalk or public right-of-way. Signage may be included as an integral part of an awning or canopy.

21. Amend Section 9.3(a) of Part 9 (R-3 Zone) by deleting the following:

in accordance with the Canadian Standards Association CAN Z240.-10.1-M86 Recommended Practice for Site Preparation, Foundation and Anchorage of Mobile Homes and as amended from time to time.

and replacing it with the following:

in accordance with the Canadian Standards Association Z240.10.1-08 Site Preparation, Foundation, and Anchorage of Manufactured Homes as amended from time to time.

22. Amend Section 14.2 (Lot and yard requirements) of Part 14 (C-2 Zone) by deleting the following:

Front / Flankage Yard:

and replacing it with the following:

Minimum Front / Flankage Yard:

23. Amend Section 14.5 (Lot and yard requirements) of Part 14 (C-2 Zone) by deleting the following:

Front / Flankage Yard:

and replacing it with the following:

Minimum Front / Flankage Yard:

24. Amend Section 14.7 (Lot and yard requirements) of Part 14 (C-2 Zone) by deleting the following:

Front / Flankage Yard:

and replacing it with the following:

Minimum Front / Flankage Yard:

25. Amend Section 14.7 (Lot and yard requirements) of Part 14 (C-2 Zone) by deleting the following:

Minimum Side Yard: 10 feet

and replacing it with the following:

Minimum Side Yard: 10 feet (3.0 metres) or 0 feet (0 metres) from the side being common with another dwelling unit

26. Delete Section 14.17 (General Signage Provisions for all uses) of Part 14 (C-2 Zone).

27. Amend Section 20.5 (Special provisions) of Part 20 (I-3 - Local Service Zone) by deleting the following:

L.M.I.S. Number 373456

and replacing it with the following:

PID 00373456

28. Amend Section 23.6 (Existing commercial recreation use) of Part 23 (P-2 - Community Facility Zone) by deleting the following:

L.I.M.S. No. 638247

and replacing it with the following:

PID 00638247

29. Amend Section 26.2 (CDD requirements) of Part 26 (CDD Zone) by deleting the following:

Planning Act

and replacing it with the following:

Halifax Regional Municipality Charter

30. Amend Section 27.4 (Penalty) of Part 27 (Administration) by deleting the following:

Planning Act

and replacing it with the following:

Halifax Regional Municipality Charter

31. Amend Section 27.5 (Date of by-law) of Part 27 (Administration) by deleting the following:

the Minister of Municipal Affairs

and replacing it with the following:

the Provincial Director of Planning

32. Delete Section 27.6 (Schedule of fees) of Part 27 (Administration) and replace it with the following:

27.6 SCHEDULE OF FEES

An application to amend this By-law or modify any of the provisions of this By-law must be accompanied by a processing fee as well as a fee to cover the cost of advertising at the time of making such application.

33. Amend Section 27.7(a) (Public hearing notification) of Part 27 (Administration) by deleting the following:

registered mail

and replacing it with the following:

mail

34. Amend Section 27.7(b) (Public hearing notification) of Part 27 (Administration) by deleting the following:

registered mail

and replacing it with the following:

mail

35. Delete Appendix "A" (Non-conforming uses), and replace it with the following (Sections 253 to 257 of the HRM Charter):

APPENDIX "A" - Non-conforming Uses

Nonconforming structure or use

- 253 (1) A non-conforming structure, non-conforming use of land or non-conforming use in a structure, may continue if it exists and is lawfully permitted at the date of the first publication of the notice of intention to adopt or amend a land-use by-law.
- (2) A non-conforming structure is deemed to exist at the date of the first publication of the notice of intention to adopt or amend a land-use by-law if
- (a) the non-conforming structure was lawfully under construction and was completed within a reasonable time; or
 - (b) the permit for its construction was in force and effect, the construction was commenced within twelve months after the date of the issuance of the permit and the construction was completed in conformity with the permit within a reasonable time.
- (3) A non-conforming use in a structure is deemed to exist at the date of the first publication of the notice of intention to adopt or amend a land-use by-law if
- (a) the structure containing the non-conforming use was lawfully under construction and was completed within a reasonable time; or
 - (b) the permit for its construction or use was in force and effect, the construction was commenced within twelve months after the date of the issuance of the permit and the construction was completed in conformity with the permit within a reasonable time,
- and the use was permitted when the permit for the structure was granted and the use was commenced upon the completion of construction.
- (4) This Act does not preclude the repair or maintenance of a non-conforming structure or a structure containing a non-conforming use.
- (5) A change of tenant, occupant or owner of any land or structure does not of itself affect the use of land or a structure.

Nonconforming structure for residential use

- 254 (1) Where a non-conforming structure is located in a zone that permits the use made of it and the structure is used primarily for residential purposes, it may be

- (a) rebuilt, replaced or repaired, if destroyed or damaged by fire or otherwise, it is substantially the same as it was before the destruction or damage and it is occupied by the same use;
 - (b) enlarged, reconstructed, repaired or renovated if
 - (i) the enlargement, reconstruction, repair or renovation does not further reduce the minimum required yards or separation distance that do not conform with the land-use by-law, and
 - (ii) all other applicable provisions of the land-use by-law except minimum frontage and area are satisfied.
- (2) A non-conforming structure, that is not located in a zone permitting residential uses and not used primarily for residential purposes, may not be rebuilt or repaired, if destroyed or damaged by fire or otherwise to the extent of more than seventy-five percent of the market value of the building above its foundation, except in accordance with the land-use by-law, and after the repair or rebuilding it may only be occupied by a use permitted in the zone.

Nonconforming use of land

255 A non-conforming use of land may not be

- (a) extended beyond the limits that the use legally occupies;
- (b) changed to any other use except a use permitted in the zone; or
- (c) recommenced, if discontinued for a continuous period of six months.

Nonconforming use in a structure

256 (1) Where there is a non-conforming use in a structure, the structure may not be

- (a) expanded or altered so as to increase the volume of the structure capable of being occupied, except as required by another Act of the Legislature; or
- (b) repaired or rebuilt, if destroyed or damaged by fire or otherwise to the extent of more than seventy-five percent of the market value of the building above its foundation, except in accordance with the land-use by-law and after the repair or rebuilding it may only be occupied by a use permitted in the zone.

(2) Where there is a non-conforming use in a structure, the non-conforming use may be extended throughout the structure.

(3) Where there is a non-conforming use in a structure, the non-conforming use

- (a) may not be changed to any other use except a use permitted in the zone; or
- (b) may not be recommenced, if discontinued for a continuous period of six months.

Relaxation of restrictions

- 257 (1) A municipal planning strategy may provide for a relaxation of the restrictions contained in this Part respecting non-conforming structures, non-conforming uses of land and non-conforming uses in a structure and, in particular, may provide for
- (a) the extension, enlargement, alteration or reconstruction of a non-conforming structure;
 - (b) the extension of a non-conforming use of land;
 - (c) the extension, enlargement or alteration of structures containing non-conforming uses, with or without permitting the expansion of the non-conforming use into an addition;
 - (d) the reconstruction of structures containing non-conforming uses, after destruction;
 - (e) the recommencement of a non-conforming use of land or a non-conforming use in a structure after it is discontinued for a continuous period in excess of six months;
 - (f) the change in use of a non-conforming use of land or a non-conforming use in a structure, to another non-conforming use.
- (2) The policies adopted in accordance with this Section must be carried out through the land-use by-law and may require a development agreement.

36. Amend Appendix "B" (Existing Uses) by deleting the following:

Planning Act

and replacing it with the following:

Halifax Regional Municipality Charter

37. Amend Appendix "B" (Existing Uses) by deleting the following:

LRIS INDEX NUMBER

and replacing it with the following:

PID NUMBER

38. Amend Appendix "B" (Existing Uses) by deleting the following:

372946

and replacing it with the following:

00372946

39. Amend Appendix "B" (Existing Uses) by deleting the following:

373217

and replacing it with the following:

00373217

40. Amend Appendix "B" (Existing Uses) by deleting the following:

400366

and replacing it with the following:

40081358

41. Amend Appendix "B" (Existing Uses) by deleting the following:

Wilfred A. Conrad

and replacing it with the following:

Wayne Giles Auto Salvage

42. Amend Appendix "B" (Existing Uses) by deleting the following:

371948

and replacing it with the following:

00371948

43. Amend Appendix "Ba" (Salvage Operation) by deleting the following:

Planning Act

and replacing it with the following:

Halifax Regional Municipality Charter

44. Amend Appendix "Ba" (Salvage Operation) by deleting the following:

LRIS INDEX NUMBER

and replacing it with the following:

PID NUMBER

45. Amend Appendix "Ba" (Salvage Operation) by deleting the following:

371930

and replacing it with the following:

00371930

I HEREBY CERTIFY that the amendment to the Land Use By-law for Eastern Passage / Cow Bay, as set out above, was passed by a majority vote of the Regional Council of the Halifax Regional Municipality at a meeting held on the ____ day of _____, 2009.

GIVEN under the hands of the Municipal Clerk and Under the Corporate Seal of the Halifax Regional Municipality this ____ day of _____, 2009.

Julia Horncastle
Acting Municipal Clerk