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Item No. 10.1.5
Harbour East-Marine Drive Community Council
June 10, 2015

TO: Chair and Members of Harbour East-Marine Drive Community Council

SUBMITTED BY: *Original signed*

Bob Bjerke, Chief Planner

DATE: May 15, 2015

SUBJECT: **Case 19864 – HRM-initiated application to amend the Dartmouth Land Use By-law to clarify the number of residential buildings permitted on a lot**

ORIGIN

- April 23, 2015: Decision of the Nova Scotia Utility and Review Board upholding a decision of the Development Officer to refuse a development permit for 17 single-unit dwellings on two existing parcels to be accessed by a common driveway on property located at 294 Waverley Road, Dartmouth, Nova Scotia

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter, Part VIII, Planning and Development

RECOMMENDATION

It is recommended that Harbour East-Marine Drive Community Council:

1. Give First Reading to the proposed amendment to the Land Use By-law for Dartmouth to clarify that only one residential building per lot is permitted, as contained in Attachment A of this report, and schedule a public hearing; and
2. Approve the proposed amendments to the Land Use By-law for Dartmouth, as contained in Attachment A of this report.

BACKGROUND

As enabled by the Dartmouth Municipal Planning Strategy (MPS), the Dartmouth Land Use Bylaw (LUB) regulates residential development by establishing a hierarchy of zones and general provisions. These provisions establish limits and regulation on density, land use, building height, lot coverage, setbacks, and yard requirements. Taken together, these measures establish a limit of one residential building per lot, although there is no direct clause which establishes this limitation. Such a clause is contained within the other 21 land use bylaws of the municipality.

A development proposal was received in 2014 for lands on Waverley Road, where 17 single unit dwellings were proposed to be located on just two properties. The Development Officer refused the permit on the basis that the proposal did not comply with the bylaw, specifically with regard to a limitation of one residential building per lot. The applicant appealed this decision to the Nova Scotia Utility and Review Board, on the grounds that the LUB does not contain a specific provision on this matter. The Board ruled that the Development Officer was correct in his refusal of the application and dismissed the appeal. The Board did state, however, that the LUB should be amended as soon as possible in order to clarify this matter.

DISCUSSION

Every other LUB within HRM contains some form of limitation on the number of dwellings or main buildings per lot. These limitations often vary by zone, and often do allow more than one main building in non-residential zones. There is wide variance in the wording of these provisions however they all have the same effect of limiting the number of residential buildings per lot in residential zones. Such a restriction is also appropriate in Dartmouth in order to protect the character of neighbourhoods. In order to achieve consistency for ease of administration throughout Dartmouth, it is recommended that an existing provision in the Downtown Dartmouth LUB be adapted and applied to the rest of Dartmouth as shown in Attachment A. The only exception to the one residential building per lot rule in Dartmouth will be within the T (Mobile Home Park) Zone, where such parks typically consist of only one parcel of land. This new clause will clearly establish a limit of only one residential building per lot in all other zones.

The HRM Charter establishes that an MPS need not contain supporting policy that establishes the need to regulate density, land use, building height, lot coverage, setbacks, and yards. Therefore, Council may amend the LUB to adopt or revise these provisions as it sees fit, provided that there is no conflict with any existing MPS policy. The required amendment to the LUB may therefore be adopted without reference to any provision of the MPS as there is no applicable enabling policy.

FINANCIAL IMPLICATIONS

The costs to process the LUB amendment can be accommodated within the approved 2015/16 operating budget for C310 Planning & Applications.

COMMUNITY ENGAGEMENT

No community engagement has been undertaken in relation to the proposed land use bylaw amendment as it is seen as a minor housekeeping measure, and is being brought forward in response to the decision of the Nova Scotia Utility and Review Board.

A public hearing must be held by Community Council before they can consider approval of any amendments to the LUB. Should Community Council decide to proceed with a public hearing on this amendment, the public will be notified with a published newspaper advertisement. The HRM website will also be updated to indicate notice of the public hearing. The proposed land use bylaw amendments will potentially impact the following stakeholders: local residents and property owners, community or neighbourhood organizations, and businesses.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications associated with this report.

ALTERNATIVES

1. Harbour East-Marine Drive Community Council may choose to approve the proposed amendment to the Dartmouth Land Use Bylaw subject to modification. This may necessitate further analysis and a supplementary report. A decision of Council to approve this LUB amendment is appealable to the N.S. Utility & Review Board as per Section 262 of the HRM Charter.
2. Harbour East-Marine Drive Community Council may choose to refuse the proposed amendment to the Dartmouth Land Use Bylaw, and in doing so, must provide reasons why doing so would not reasonably carry out the intent of the MPS. A decision of Council to refuse this LUB amendment is appealable to the N.S. Utility & Review Board as per Section 262 of the HRM Charter.

ATTACHMENTS

Attachment A: Amendment to the Dartmouth Land Use By-law

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/index.php> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

Report Prepared by: Mitch Dickey MCIP LPP, Planner, 902.490.5719

Original signed

Report Approved by:

Kelly Denty, Manager, Development Approvals, 902.490.4800

Attachment A
Amendment to the Dartmouth Land Use Bylaw

BE IT ENACTED by the Harbour East-Marine Drive Community Council of the Halifax Regional Municipality that the Dartmouth Land Use By-law is hereby amended as follows:

The following clause is inserted in Part 2, immediately following clause 10:

“10A There shall be no more than one dwelling per lot in any zone, excepting that more than one mobile dwelling per lot is permitted in a T zone.”

I HEREBY CERTIFY that the amendments to the Land Use By-law for Dartmouth, as set out above, were duly passed by a majority vote of the Harbour East-Marine Drive Community Council at a meeting held on the ___ day of _____, 2015.

GIVEN under the hand of the Clerk and the Corporate Seal of the Halifax Regional Municipality this ___ day of _____, 2015.

Municipal Clerk