

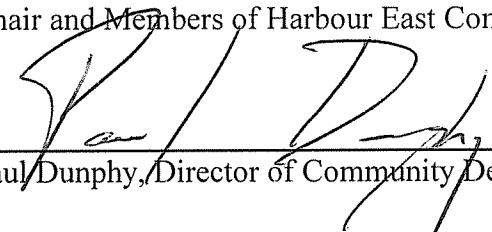


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Harbour East Community Council
August 6, 2009

TO: Chair and Members of Harbour East Community Council

SUBMITTED BY: 
Paul Dunphy, Director of Community Development

DATE: July 16, 2009

SUBJECT: Case 01293 - Dartmouth LUB Amendments - Undersized Lots

ORIGIN

- Motion of Harbour East Community Council (HECC) on June 11, 2009:
“Moved by Councillor Barkhouse, seconded by Councillor Nicholl, that staff initiate the amendment process for the Dartmouth Land Use By-law to address development on existing undersized lots.”

RECOMMENDATION

It is recommended that Harbour East Community Council:

1. Give First Reading to the proposed amendments to the Dartmouth Land Use By-law, as set out in Attachment A of this report, and schedule a public hearing; and
2. Approve the proposed amendments to the Dartmouth Land Use By-law, as set out in Attachment A of this report, to permit development on existing undersized lots.

BACKGROUND

In Dartmouth, there are several hundred lots that were created before the current single unit dwelling lot size requirements of 50 feet of frontage and 5,000 square feet came into effect. The majority of these lots were built upon, though there remain approximately 80 undersized vacant lots in residential zones. These lots are known as existing undersized lots, and as such lack sufficient lot area, or frontage, or both. HECC has requested that staff amend the Dartmouth Land Use By-law to allow for development on existing undersized lots in residential zones.

Existing Undersized Lot Provisions:

Section 19 of the Dartmouth LUB contains a provision which addresses development of existing undersized lots:

Where a lot for which a development permit has been requested does not comply with the provisions of this by-law, the Development Officer shall grant a development permit if:

- (a) the lot has been approved by the Development Officer on the latest registered approved plan or it appears on a plan registered before April, 1948, or is described as a separate lot in a registered deed; and*
- (b) the lot cannot, by reason of adjacent buildings or other physical impediments be increased to the required size; and*
- (c) the owner of such lot has complied with all other provisions of this by-law.*

Subsection (b) was interpreted by the courts in 1993 to mean that if it is theoretically possible to enlarge the lot to meet zone standards, by acquiring adjacent land, then a permit cannot be issued. The only exceptions to this are if such acquisition would make the adjacent parcels undersized, if existing buildings on the adjacent property are too close to the property line, or if there are actual physical impediments such as watercourses, cliffs, or roads.

Existing MPS Policy:

The Dartmouth MPS does not contain any policies that support or encourage the development of undersized residential lots for single unit dwellings. However, there is policy within the Dartmouth MPS to allow Council to consider development of two unit dwellings on existing undersized lots, by development agreement. This was introduced in 1987 in response to numerous two unit dwellings being built in the Woodside area which were seen as being incompatible with existing single unit housing. The policy requires that a new two unit building on an undersized lot could only proceed by development agreement. This also applied to existing homes on smaller lots where the owner wished to add a second unit.

When these new policies were presented to Council in 1987, it was stated that there would be no change for single unit dwellings on undersized lots in any residential zone, and that as of right

development could continue. However, the 1993 Court Ruling impacted the implementation of the regulations.

In addition to vacant lots, there is an issue with undersized, developed, R-2 zoned properties. A small number of semi-detached dwellings were built before the current standard of 25' of frontage per unit were introduced. This has the effect of preventing the subdivision of these buildings to allow separate ownership of each unit.

DISCUSSION

Effect of 1993 Court Ruling:

The court ruling basically put the onus on most owners of existing undersized lots to find a way to enlarge their lot to meet the zone standards. In practice, however, it is seldom possible to increase the size of a lot. Few neighbours are willing to sell some of their land to enable something to be built on a vacant lot next door. This has resulted in most of the existing undersized lots being rendered unbuildable. Notwithstanding the court ruling, the policy for allowing two unit dwellings on an undersized R-2 lots through the development agreement process still applies.

Undersized Lots in Other Plan Areas:

All other plan areas within HRM contain provisions for the development of existing undersized lots. In almost all cases, including Downtown Dartmouth, the development of the lot for uses permitted in the zone is allowed as of right, provided all other zone standards are met. The exception is Halifax, where a development agreement process known as a lot modification agreement is used.

It should be noted that in most cases it is perfectly feasible to construct a home on these undersized lots and meet all applicable requirements pertaining to setbacks and lot coverage. In fact, some zones in the urban plan areas of HRM allow for the creation of new lots with similar frontage and area to the majority of existing undersized lots in Dartmouth. Within Downtown Dartmouth, for example, new lots for single unit dwellings with as little as 25' of frontage and 2,500 square feet of area are permitted. Peninsula Halifax allows lots of 40' and 4,000 square feet as of right, with smaller lots via a development agreement process.

It is possible to permit the development of existing undersized lots through either the development agreement process, or by using site plan approval. Amendments to the Dartmouth MPS would be required to enable this. It is the opinion of staff, however, that the development of most lots can be adequately regulated through existing land use and subdivision bylaw requirements which address setbacks and lot coverage. However, undersized waterfront lots should be viewed differently.

Waterfront Lots:

The development of any waterfront lot raises concerns about the potential for impact on lakes due to the risks of sedimentation and erosion during construction, and the removal of natural

vegetation and alteration to grades for landscaping. In addition the construction of waterfront homes typically results in gradual encroachment onto the lake through the construction of wharves, retaining walls and outright infilling.

Under the Regional Plan measures have been put in place to reduce these risks, specifically a 20m building setback and non-site disturbance buffer. The Regional Plan recognises that there are existing lots which may not be able to meet the 20m requirement. Accordingly the development officer has the ability to reduce the requirement as appropriate.

A number of vacant undersized lots on Lake MicMac and Lake Banook have been identified. There are two on Lake Banook in the Lakeview Point Road area , and 16 on Lake MicMac along Braemar Drive. These range in area from 500 to 4,800 square feet. While the two lots on Lake Banook are able to meet the 20m setback requirement, none of the parcels on Lake MicMac can do so.

Given the importance of the lakes in Dartmouth, and the need to protect them, Council may therefore wish to use more stringent requirements for these undersized lots. While the Regional Plan enables the development officer to reduce the 20m buffer, a local land use by-law can be more stringent. Wording is therefore suggested that would limit development on undersized waterfront lots to those where the 20m requirement can be met. This would remove the ability for the development officer to grant reductions in the buffer.

To provide more flexibility for owners of undersized waterfront lots, Council could consider new MPS policy to address development within the 20m buffer. This could allow development of some undersized waterfront lots through the development agreement or site plan approval processes, while providing the municipality with greater control over site design and environmental protection measures.

Undersized, Developed R-2 Zoned Lots:

On some pre-1978 lots, semi-detached homes were built on lots with less than the currently required 50' of frontage overall, or 25' per unit. There is currently no flexibility to allow the owners to subdivide to allow each unit to be on its own lot. Since these units were built before the current frontage requirement of 25' per unit, it is reasonable to allow subdivision to take place as this will not permit any new development, nor have any land use impacts.

Conclusion:

The 1993 court ruling has undermined the intent of the Dartmouth MPS. It is reasonable to fulfill the original MPS intent and amend the land use bylaw to permit as of right development on most existing undersized lots. Attachment 1 includes the appropriate wording which will allow this, provided that all other requirements of HRM bylaws are met. On properties which are zoned R-2 and where two units are proposed, existing policy requiring a development agreement process will still apply.

Public Information Meeting:

No public information meeting has been held.

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 amendment as shown in Attachment "A" to the Land Use By-law. This is the recommended course of action.
2. Council may choose to alter the proposed amendments to the Land Use By-law. This may necessitate further report(s). In the event revisions are requested an additional public hearing may be required.
3. Council may choose to refuse the proposed amendments to the Dartmouth Land Use By-law set out in Attachment A of this report and in doing so, Council must provide reasons for the refusal based upon a conflict with MPS policies. This option is not recommended for reasons set out above.

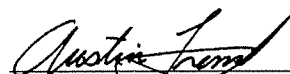
ATTACHMENTS

Attachment A: Proposed Dartmouth LUB Amendments

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 : Mitch Dickey, Planner, 490-5719

Report Approved by:



Austin French, Manager of Planning Services, 490-6717

Attachment A
Proposed Amendments to
Land Use By-law for Dartmouth

BE IT ENACTED by the Harbour East Community Council of the Halifax Regional Municipality that the Dartmouth Land Use By-law, which was adopted by the Council of the former City of Dartmouth on the 25th day of July 1978, as amended, is hereby amended as follows:

1. Section 19 is hereby replaced with the following:

- 19 (a) Notwithstanding anything else in either this By-law, a vacant, residentially zoned lot having less than the minimum required frontage or area, or both, as required by either this by-law or the Regional Subdivision By-law may be used for a purpose permitted in the zone in which the lot is located, and a building may be erected on the lot, provided that all other applicable provisions of this by-law are satisfied.
- (b) An existing undersized lot may be increased in area or frontage or both, and still remain an existing undersized lot if after the increase, the lot still remains undersized.
- (c) A building that has been erected on or before the effective date of this By-law on a lot having less than the minimum required frontage or area, or both, as required by either this By-law or the Regional Subdivision By-law, or having less than the minimum front yard, side yard, rear yard, separation distance or watercourse setback or buffer required by this By-law, may be enlarged, reconstructed, repaired or renovated provided that:
- (i) the enlargement, reconstruction, repair or renovation does not further decrease the front yard, side yard, rear yard, or separation distance that does not conform with this By-law; and
- (ii) All other applicable provisions of this by-law are satisfied.
- (d) Notwithstanding 32A(3), no reduction in a required watercourse setback and buffer shall be permitted for lots identified under 19(a) or 19(c).

2. The following new section is hereby added:

- 33 (5) Notwithstanding the frontage requirement of Section 33 (3), an existing semi-detached dwelling in existence as of the 25th of July, 1978, on a lot that having less than 50' of street frontage, may be subdivided so that each unit is on its own lot provided that all other requirements of this by-law are met.

I HEREBY CERTIFY that the amendments to the Dartmouth Land Use By-law, as set out above, were duly passed by a majority vote of the Harbour East Community Council at a meeting held on the ___ day of _____, 2009.

GIVEN under the hand of the Clerk and the Corporate Seal of the Halifax Regional Municipality this ___ day of _____, 2009.

Acting Municipal Clerk