

Harbour East Community Council
June 9, 2011

TO: Chair and Members of Harbour East Community Council

SUBMITTED BY:



For Paul Dunphy, Director, Community Development

DATE: May 25, 2011

SUBJECT: **Case 16568: Land Use By-law Amendments – Larger Accessory Buildings**

ORIGIN

July 8, 2010 Harbour East Community Council Meeting (Item 10.2.1)

Moved by Councillor Nicoll, seconded by Councillor Barkhouse that Harbour East Community Council request that staff initiate the process to allow larger accessory buildings on larger lots in Cole Harbour/Westphal and the Eastern Passage/Cow Bay non-serviced areas.

RECOMMENDATION

It is recommended that Harbour East Community Council:

1. Give First Reading to the proposed amendments to the Cole Harbour/Westphal and Eastern Passage/Cow Bay Land Use By-laws as shown in Attachments A and B, and schedule a Public Hearing; and
2. Approve the proposed amendments to the Cole Harbour/Westphal and Eastern Passage/Cow Bay Land Use By-laws as shown in Attachments A and B, to allow larger accessory buildings in unserviced areas.

BACKGROUND

On August 6, 2009 Council received an information report regarding potential impacts of amending the land use by-laws under Harbour East Community Council's jurisdiction to permit larger and taller accessory buildings on larger rural residential properties. In response to that report, on June 8, 2011 Council directed staff to initiate the process allowing larger accessory buildings on larger lots outside the Urban Service Areas (lands capable of being serviced with central sewer and water) of Cole Harbour/Westphal and Eastern Passage/Cow Bay.

Land Use By-laws

Within the Cole Harbour/Westphal and Eastern Passage/Cow Bay Land Use By-laws (LUB), detached accessory buildings in residential zones shall not:

- exceed height of 15 feet measured from the established grade to highest point of the peak;
- be located in the required front yard;
- be located closer than 4 feet from side and rear lot lines;
- be located closer than 8 feet from any wall of the main building;
- be located closer to the front lot line than the dwelling on the property; and
- exceed 750 square feet.

Attached accessory buildings situated in residential zones of Cole Harbour/Westphal and Eastern Passage/Cow Bay may be the same height as the dwelling and must meet the same setbacks from lot lines as the main dwelling. The square footage of the dwelling and the accessory building footprint is controlled by the maximum lot coverage for the particular residential zone it is located in. In Eastern Passage/Cow Bay, home occupations are permitted in detached accessory buildings within the unserviced portion of the Urban Residential designation.

DISCUSSION

Requests for oversized detached accessory buildings outside the Urban Service Area in Cole Harbour/Westphal and Eastern Passage/Cow Bay is in response to demands for greater height and larger building footprints.

Function of Accessory Buildings

Accessory buildings are primarily built as garages for the storage of motor vehicles as well as for additional storage, particularly for those items that are not desirable to store within the home, such as lawn mowers, sports and recreation equipment and garden tools. Accessory buildings are specifically defined and regulated under the Cole Harbour/Westphal and the Eastern Passage/Cow Bay Land Use By-laws (Attachments C and D). A comprehensive examination of the size regulations of detached accessory buildings must be based upon the concept that accessory buildings should be built in such a manner as to appear and function secondary to the principle building and to provide for the storage of household items and items associated with home businesses where permitted.

Height of Detached Accessory Buildings

The current permitted height of accessory buildings in any residential zone of Cole Harbour/Westphal and Eastern Passage/Cow Bay is 15 feet measured from the established grade to the highest point of the roof. The established grade is the average elevation of the finished

surface of the ground where it meets the exterior of the building. Some municipalities permit the accessory building to be no taller than the height of the dwelling while other locales determine the height by establishing a maximum wall height and a maximum roof pitch.

Staff recommends that accessory buildings should not be greater than the height of the main dwelling. Controlling the overall height and bulk of accessory buildings needs to be balanced with aesthetic opportunities, such as providing for steeper pitched roofs. This permits increased bulk but at the same time allows residents to match pitches with their house for aesthetic purposes. Allowing accessory buildings to be built to the same height as the main dwelling presents the possibility that buildings could be built to the maximum height utilizing a flat roof, thus posing a potentially large bulk. Staff is of the opinion that buildings having roofs with a pitch of 4:12 or less should be permitted a maximum wall height of 16 feet measured to the bottom of the soffit.

Size of Detached Accessory Buildings

Currently, in the Cole Harbour/Westphal and Eastern Passage/Cow Bay plan areas accessory building size is regulated by a maximum permitted floor area of 750 square feet in any residential zone. The two plan areas also regulate site coverage separately for all buildings on the site. Some municipalities restrict size by site coverage (percentage of lot or house size) or use a combination of floor area and detached accessory site coverage restrictions. Staff believes that in order for accessory buildings to remain secondary in scale to the dwelling the footprint of the building should be proportionately smaller than the dwelling footprint, especially if the proposed height is now the same as the dwelling. Therefore, staff recommends that the building footprint should not exceed 80% of the footprint of the dwelling up to a maximum of 1,250 square feet. If this percentage yields a footprint area less than the current maximum, the accessory building can be built to a maximum footprint area of 750 square feet.

Setbacks

The current setback requirements for detached accessory buildings are generally considered adequate for 15 feet high structures. However, with the proposed height increase potentially matching those of the highest roofline of the dwelling (c. 24 to 30 feet) staff believe that the setbacks from property lines should be increased in order to locate the greater bulk further away from the property line to minimize compatibility issues. Staff is of the opinion that the rear and side property line setbacks should be increased to one half the height of the accessory building; this creates a proportional setback so that impacts of larger and taller buildings are minimized. The setback distance from the dwelling on the property would remain the same at 8 feet.

Conclusion

Staff is of the opinion that the proposed amendments as set out in Attachments A and B of this report are consistent with the intent of the planning documents for accessory building uses within residential zones, located outside the Urban Service Area, for Cole Harbour/Westphal and Eastern Passage/Cow Bay. Therefore, staff recommends that Harbour East Community Council approve the proposed amendments, included as Attachments A and B of this report.

BUDGET IMPLICATIONS

The HRM costs associated with processing this planning application can be accommodated within the approved operating budget for C310-Planning & Applications.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

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

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was consultation, achieved through a Public Information Meeting held on February 7, 2011. Approximately 9 members of the public were in attendance at this meeting. A public hearing has to be held by Council before they can consider approval of any applications.

For the Public Information Meeting, notices were posted on the HRM website and in the newspaper. Should Council decide to proceed with a Public Hearing on this application, in addition to the published newspaper advertisements information will be posted on the HRM website.

The proposed land use by-law amendments will potentially impact the following stakeholders: property owners.

ALTERNATIVES

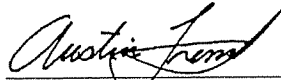
1. Council may choose to approve the proposed amendments to the Cole Harbour and Westphal Land Use By-law and Eastern Passage and Cow Bay Land Use By-law, as set out in Attachments A and B of this report. This is the recommended course of action.
2. Council may choose to approve the proposed amendments to the Cole Harbour and Westphal Land Use By-law and Eastern Passage and Cow Bay Land Use as set out in Attachments A and B of this report By-law, subject to modifications. This may require a second public hearing.
3. Council may choose to refuse to approve the proposed amendments to the Cole Harbour and Westphal Land Use By-law and Eastern Passage and Cow Bay Land Use By-law, as set out in Attachments A and B of this report and in doing so, must provide reasons based on a conflict with MPS policies.

ATTACHMENTS

- Attachment A Proposed Amendments to the Cole Harbour and Westphal LUB
 - Attachment B Proposed Amendments to the Eastern Passage and Cow Bay LUB
 - Attachment C Excerpts from the Cole Harbour and Westphal LUB
 - Attachment D Excerpts from the Eastern Passage and Cow Bay LUB
-

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 : Darrell Joudrey, Planner I, 490-4181



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

Attachment A: Proposed Amendments to the Cole Harbour and Westphal LUB

BE IT ENACTED by the Harbour East Community Council of the Halifax Regional Municipality that the Cole Harbour and Westphal Land Use By-law as adopted by the former Halifax County Municipality on the 30th day of November, 1992 and approved by the Minister of Municipal Affairs on the 3rd day of March, 1993 which includes all amendments thereto which have been adopted by the Municipality, is hereby further amended as follows:

a) Replace 4.11 (a) (ii) (1) with the following:

- “1. in any residential zone in the Urban Service Area, buildings or structures which are accessory to residential uses shall not be located closer to any side or rear lot line than four (4) feet (1.2 m);**
- 1.(a) in any residential zone located outside the Urban Service Area, buildings or structures which are accessory to residential uses shall not be located closer to any side or rear lot line than eight (8) feet (2.4 m) or one half the height of such accessory building or structure, whichever is greater.”**

b) Replace 4.11 (a) (iii) with the following:

- “(iii) no accessory building in any residential zone in the Urban Service Area shall be greater than 15 feet (4.57 metres) in height, from the established grade to the highest point of the roof surface, nor have a footprint greater than 750 square feet (69.68 square metres) in area. (HECC-Jul 12/01;E-Aug 5/01)**
- (iii)(a) no accessory building in any residential zone located outside the Urban Service Area shall exceed the height of the main dwelling, nor have a footprint that exceeds 80% of the footprint of the main dwelling up to a maximum of 1,250 square feet (116.13 square metres), or 750 square feet (69.68 square metres), whichever is the greater.**
- (iii)(b) no accessory building in any residential zone located outside the Urban Service Area having a roof pitch of 4:12 or less shall exceed a maximum wall height of 16 feet (4.88 metres) measured from the established grade to the underside of the soffit; nor”**

c) Delete 4.11 (a) (iv)

I HEREBY CERTIFY that the amendments to the Cole Harbour and Westphal Land Use By-law as set out above, were passed by a majority vote of the Harbour East Community Council held on the ____ day of _____, 2011.

GIVEN under the hand of the Municipal Clerk and under the Corporate Seal of the Halifax Regional Municipality this ____ day of _____, 2011.

Cathy Mellet
Municipal Clerk

**Attachment B:
Proposed Amendments to the Eastern Passage and Cow Bay LUB**

BE IT ENACTED by the Harbour East Community Council of the Halifax Regional Municipality that the Eastern Passage and Cow Bay Land Use By-law which was adopted by the former Halifax County Municipality on the 22nd day of June 1992 and approved by the Minister of Municipal Affairs on the 5th day of October, 1992 which includes all amendments thereto which have been approved by the Municipality, is hereby further amended as follows:

a) Replace 4.11 (a) (ii) (1) with the following:

“1. in any residential zone in the Urban Service Area, except the RA (Rural Area) Zone (HECC-May 11/09; E-May 30/09), buildings or structures which are accessory to residential uses shall not be located closer to any side or rear lot line than four (4) feet (1.2 m), except that within the Heritage Hills development as shown on Schedule A-1, the required setback shall be 2 feet (0.61m) (HECC-Oct 1/09;E-Oct 24/09);

1.(a) in any residential zone located outside the Urban Service Area, buildings or structures which are accessory to residential uses shall not be located closer to any side or rear lot line than eight (8) feet (2.4 metres) or one half the height of such accessory building or structure, whichever is greater.”

b) Replace 4.11 (a) (iii) with the following:

“(iii) no accessory building in any residential zone in the Urban Service Area shall be greater than 15 feet (4.57 metres) in height, from the established grade to the highest point of the roof surface, nor have a footprint greater than 750 square feet (69.68 square metres) in area. (HECC-Jul 12/01;E-Aug 5/01) (HECC-May 11/09; E-May 30/09), except on properties within the Heritage Hills development as shown on Schedule A-1 where lots are identified as being of classification D, E, F and G, on which lots the maximum height shall be 12 feet (3.7m), the maximum floor area shall be 350 square feet (32.5 square metres), and only one accessory building shall be permitted per lot (HECC-Oct 1/09;E-Oct 24/09);

(iii)(a) no accessory building in any residential zone located outside the Urban Service Area shall exceed the height of the main dwelling, nor have a footprint that exceeds 80% of the footprint of the main dwelling up to a maximum of 1,250 square feet (116.13 square metres) or 750 square feet (69.68 square metres), whichever is the greater.

(iii)(b) no accessory building in any residential zone located outside the Urban Service Area having a roof pitch of 4:12 or less shall exceed a maximum wall height of 16 feet (4.88 metres) measured from the established grade to the underside of the soffit;”

I HEREBY CERTIFY that the amendments to the Eastern Passage and Cow Bay Land Use By-law as set out above, were passed by a majority vote of the Harbour East Community Council held on the ____ day of _____, 2011.

GIVEN under the hand of the Municipal Clerk and under the Corporate Seal of the Halifax Regional Municipality this ____ day of _____, 2011.

Cathy Mellet
Municipal Clerk

**Attachment C:
Excerpts from Cole Harbour and Westphal Land Use By-law**

4.11 ACCESSORY BUILDINGS

- (a) Accessory uses, buildings and structures shall be permitted in any zone but shall not:
- (i) be used for human habitation except where a dwelling is a permitted accessory use;
 - (ii) be built closer to the front lot line than the minimum distance required for the main building or be built closer than eight (8) feet (2.4 m) to any other lot line except that:
 1. in any residential zone buildings or structures which are accessory to residential uses shall not be located closer to any side or rear lot line than four (4) feet (1.2 m);
 2. common semi-detached garages may be centred on the mutual side lot line;
 3. boat houses and boat docks may be built to the lot line when the line corresponds to the high water mark; and
 4. accessory buildings and structures in a P-2 (Community Facility) Zone shall not be built closer to any side or rear lot line than eight (8) feet (2.4 m) or one half (1/2) the height of such building or structure, whichever is the greater.
 - (iii) no accessory building in any Residential Zone shall be greater than 15 feet in height, from the established grade to the highest point of the roof surface, nor greater than 750 square feet in area. (HECC-Jul 12/01;E-Aug 5/01)
 - (iv) exceed seven hundred and fifty (750) square feet (69.7 m²) in any residential zone; nor
 - (v) be built within eight (8) feet (2.4 m) of the main building within any residential zone or twelve (12) feet (3.7 m) in any other zone.
 - (vi) be used for the keeping of livestock, except where agriculture is a permitted use.
 - (vii) no accessory building shall be located closer to the front lot line than the dwelling on the property in any Residential Zone. (HECC-Jul 12/01;E-Aug 5/01)
- (b) Notwithstanding anything else in this By-law, drop awnings, clothes poles, flag poles, garden trellises, fences and retaining walls shall be exempted from the requirements of subsection (a).

Attachment D:
Excerpts from the Eastern Passage and Cow Bay Land Use By-law

4.11 ACCESSORY BUILDINGS

- (a) Accessory uses, buildings and structures shall be permitted in any zone but shall not:
- (i) be used for human habitation except where a dwelling is a permitted accessory use;
 - (ii) be built closer to the front lot line than the minimum distance required for the main building, or be built closer than eight (8) feet (2.4 m) to any other lot line except that:
 - 1. in any Residential Zone, except the *RA (Rural Area) Zone (HECC-May 11/09; E-May 30/09)*, buildings or structures which are accessory to residential uses shall not be located closer to any side or rear lot line than four (4) feet (1.2 m), **except that within the Heritage Hills development as shown on Schedule A-1, the required setback shall be 2 feet (0.61m) (HECC-Oct 1/09;E-Oct 24/09);**
 - 2. common semi-detached garages may be centred on the mutual side lot line;
 - 3. boat houses and boat docks may be built to the lot line when the line corresponds to the high water mark; and
 - 4. accessory buildings and structures in a P-1 (Community Facility) Zone, P-2 (Community Facility) Zone, a I-1 (Light Industry) Zone or a I-2 (General Industry) Zone shall not be built closer to any side or rear lot line than eight (8) feet (2.4 m) or one half (1) the height of such building or structure, whichever is the greater.
 - (iii) **No accessory building in any Residential Zone shall be greater than 15 feet in height, from the established grade to the highest pint of the roof surface, nor greater than 750 square feet in footprint in area. (HECC-Jul 12/01;E-Aug 5/01), (HECC-May 11/09; E-May 30/09), except on properties within the Heritage Hills development as shown on Schedule A-1 where lots are identified as being of classification D, E, F and G, on which lots the maximum height shall be 12 feet (3.7m), the maximum floor area shall be 350 square feet (32.5 square metres), and only one accessory building shall be permitted per lot (HECC-Oct 1/09;E-Oct 24/09);**
 - (iv) be built within eight (8) feet (2.4 m) of the main building in any Residential Zone or twelve (12) feet (3.7 m) in any other zone.
 - (v) be used for the keeping of livestock, except where agriculture is a permitted use.
 - (vi) **No accessory building shall be located closer to the front lot line than the dwelling on the property in any Residential Zone. (HECC-July 12, 2001, Effective-August 5, 2001)**

(b) Notwithstanding anything else in this By-law, drop awnings, clothes poles, flag poles, garden trellises, fences and retaining walls shall be exempted from the requirements of Subclause 4.11(a)(ii)