

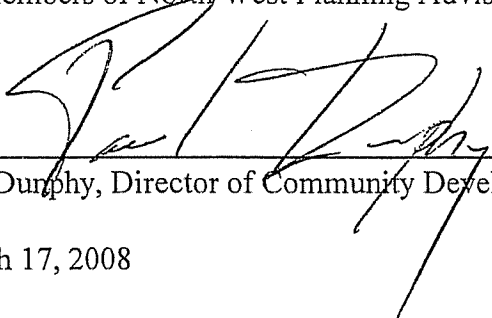


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Marine Drive, Valley and Canal Community Council - April 30, 2008
Western Region Community Council - March 31, 2008
North West Planning Advisory Committee - April 2, 2008

TO: Chair and Members of Western Region Community Council
Chair and Members of Marine Drive, Valley and Canal Community Council
Chair and Members of North West Planning Advisory Committee

SUBMITTED BY: _____


Paul Dunphy, Director of Community Development

DATE: March 17, 2008

SUBJECT: Case 00962 - Land Use By-law Amendment for Accessory Building Requirements on Steep Grades

ORIGIN

An application initiated by Western Region Community Council to consider amendments to the Land Use By-law (LUB) for Beaver Bank, Hammonds Plains and Upper Sackville to provide flexibility to height requirements for accessory buildings on extreme grades.

RECOMMENDATION

It is recommended that Western Region Community Council, Marine Drive, Valley and Canal Community Council and North West Community Council:

- Reject proposed amendments to the Land Use By-law for Beaver Bank, Hammonds Plains and Upper Sackville that provide flexibility to the height requirements for accessory buildings on properties with steep grades.

BACKGROUND

On June 26, 2006, Western Region Community Council (WRCC) requested an information report on the challenges faced by a property owner on Nottingham Drive (Stillwater Lake) that constructed an accessory building on a property with steep grades.

An Information Report dated October 5, 2006 was submitted to WRCC which outlined several approaches for amending the LUB to permit an increase in the height of accessory buildings and recommended an approach that would focus only on properties with steep grades. Council supported this recommended course of action and staff opened Planning Case 00962 to review this matter further.

Existing Height Requirements for Accessory Buildings

Section 4.12 of the LUB, included as Attachment B to this report, sets out the standard height restrictions for the R-1 and R-2 Zones and a more flexible height limit intended to accommodate taller residential accessory buildings. The LUB restricts accessory buildings to a maximum height of 15 feet in the R-1 (Single Unit Dwelling) Zone and R-2 (Two Unit Dwelling) Zones. However, the LUB was amended in 2003 (Case 00444) to enable accessory buildings up to a height of 25 feet under the following circumstances:

- i) accessory building doesn't exceed the height of the main building;
- ii) side walls of the building are no more than 12 feet in height;
- iii) side and rear yards must meet the zone standards or half the height of the accessory building, whichever is greater;
- iv) minimum separation distance from the main building;
- v) not located in the required front yard; and
- vi) minimum lot area of 40,000 sq. ft.

Issues Related to Building on Steep Grades

Typically stepped foundation walls and frost walls are required when building on a slope which can increase construction costs. However, height is measured using a calculation of the average height of a building, and because portions of buildings constructed on steep slopes are typically buried underground, the slope can enable the construction of taller buildings. In the case of the subject property on Nottingham Drive the applicant was able to construct a full 2 storey accessory building that adheres to the maximum height restriction of 15 feet.

Increasing the maximum permitted height of accessory buildings on steep grades may reduce costs associated with stepped foundations and frost walls in some cases by reducing the amount of structure that must be buried into the slope. However, this additional flexibility could also enable construction of more full 2 storey accessory buildings which staff feel is inconsistent with the LUB amendments approved in 2003. Further, no other plan area provides an exemption or flexibility for the height of accessory buildings, main dwellings or commercial buildings on steep grades. In

addition, the proposed amendments would only effect detached garages because an attached garage can be built to a height of up to 35 feet.

Accessory Building Heights in Other Plan Areas

Staff have identified the maximum permitted height of accessory buildings in other nearby and similar plan areas. Height requirements were observed to be more restrictive in the more densely developed plan areas with municipal sewer and water services. The following table illustrates the accessory building height requirements in these various plan areas:

Plan Area	Accessory Building Height	Exemption
Beaver Bank, Hammonds Plains, Upper Sackville	R-1 and R-2: 15'	25' but not to exceed height of main building, sidewalls not to exceed 12', lot is min 40,000 sq.ft.
Shubenacadie Lakes	R-1A: 25' or height of main building R-1B, R1-C, R-1D: 25' R-1E, R-6, R-7: 35'	
Sackville	Residential Zones: 15'	
Bedford	Residential Zones: 15'	
St. Margarets Bay	R-1, RA, RA-1, R-1E, and R-2: 25' or height of main building	
Timberlea, Lakeside, Beechville	Residential Zones: 15'	

DISCUSSION

Staff have assessed the options previously presented to Council and recommend against such amendments due to the impacts such amendments. The 2003 LUB amendments that increased the maximum height of accessory buildings to 25 feet in the R-1 Zone were intended to permit taller buildings but ensure that the scale of such buildings was limited to 1.5 storeys. As evidenced by the property on Nottingham Drive, full 2 storey accessory buildings can be built on lots with steep slopes now without utilizing this option. Because the ability to construct a 2 storey building increases according to the degree of grade, most property owners on lesser grades have limited or no ability to build 2 storey accessory buildings. Construction costs may indeed increase in co-relation to slope but this is true for all forms of development and no flexibility exists for the construction of main dwellings or commercial buildings. Therefore, staff recommend that Council reject the proposal to amend the Land Use By-law.

Option

If Council disagrees with staff's recommendation, staff have prepared proposed amendments, set out in Attachment A of this report, for Council's consideration. The LUB identifies grades of 20% or more as being sufficiently steep to warrant an increased setback from watercourses. Therefore, staff recommend that a subject building area on a property should have a grade of 20% or higher to qualify for any potential flexibility.

Under the amendments set out in Attachment A, the maximum height permitted would increase to 20 feet on any R-1 Zoned property with a slope of 20% or higher. This may save some cost related to buried foundation walls but would also further enable construction of full 2 storey accessory buildings. Therefore, this approach would necessitate a hard height limit so that no portion of the building could exceed a height of 25 feet to prevent significantly taller buildings on steep grades.

Conclusion

Staff are of the opinion that further LUB amendments to the height provisions for accessory buildings are not warranted. However, if Council wishes to proceed with LUB amendments, staff have prepared proposed amendments, set out in Attachment A, which would provide flexibility for properties on extreme grades, establish a reasonable hard height maximum consistent with those in place in other similar plan areas and would be easily understood by the public.

BUDGET IMPLICATIONS

None. The costs to process this application can be accommodated within the approved C310 operating budget.

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

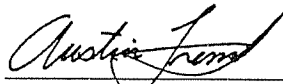
1. Council may choose not to amend the Land Use By-law for Beaver Bank, Hammonds Plains and Upper Sackville. This is the recommended course of action. If Council refuses the proposed amendment, and in doing so, must provide reasons for their decision.
2. Council may choose to amend the Land Use By-law for Beaver Bank, Hammonds Plains and Upper Sackville as set out in Attachment A of this report. This is not the recommended course of action for reasons stated in this report.

ATTACHMENTS

- Attachment A Amendments to the Beaver Bank, Hammonds Plains and Upper Sackville
Land Use By-law
- Attachment B LUB Requirements for Accessory Buildings
- Attachment C Public Information Meeting Minutes - May 17, 2007

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 : Joseph Driscoll, Planner, 869-4262



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

Attachment A:
Amendments to the Beaver Bank, Hammonds Plains and Upper Sackville Land Use By-law

BE IT ENACTED by the Western Region Community Council, Marine Drive, Valley and Canal Community Council, and the North West Community Council of the Halifax Regional Municipality that the Land Use By-Law for Beaver Bank, Hammonds Plains and Upper Sackville, which was adopted by Halifax Regional Municipality on the 9th day of November, 1999, as amended, is hereby further amended as follows:

1. Delete the text of section 4.12 (c) (ii) and replace it with the following:
 - (ii) **no main wall of the building shall exceed a height of 12 feet from floor to ceiling;**
2. Add the following new section, 4.12 (d), to Part 4 after section 4.12 (c) and before section 4.13:

4.12 (d) Notwithstanding sections 4.12 (a) (iii), 4.12 (a) (iv), and 4.12 (c), an accessory building or structure, excluding boat houses, in any R-1 (Single Unit Dwelling) Zone may exceed 15 feet in height if the following conditions are met:

 - (i) **a qualified licensed professional has certified, in a manner deemed satisfactory to the Development Officer, that the area of the lot proposed for the location of the building has a grade of 20% or more;**
 - (ii) **height of the building does not exceed 20 feet;**
 - (iii) **no portion of the building shall exceed a height of 25 feet or the height of the main building, whichever is less;**
 - (iv) **building shall not be located closer to any lot line than the minimum distance required for the main building or a distance equal to ½ the height of the accessory building, whichever is greater;**
 - (v) **lot shall have a minimum area of 40,000 square feet; and**
 - (vi) **all other applicable provisions of this By-law are met.**

I HEREBY CERTIFY that the amendments to the Land Use By-law for Beaver Bank, Hammonds Plains and Upper Sackville as set out above, were passed by a majority vote of the North West Community Council, Western Region Community Council and Marine Drive, Valley and Canal Community Council at a joint meeting held on the ____ day of _____, 2008

GIVEN under the hand of the Municipal Clerk and under the Corporate Seal of the Halifax Regional Municipality this ____ day of _____, 2008.

Municipal Clerk

**Attachment B:
LUB Requirements for Accessory Buildings**

4.11 ACCESSORY USES AND BUILDINGS

Provisions made under this by-law to permit uses, buildings, and structures shall, unless otherwise stated by this by-law, also be deemed to include any accessory uses buildings or structures provided that:

- (a) the accessory use, building, or structure is located within the same zone as the principal building or use it is intended to serve or is located within an abutting zone in which the principal use or building is permitted;
- (b) the accessory use building or structure is located on a lot which directly abuts or is directly across a public street or highway, private road or private right-of-way from the lot containing the principal building or use it is intended to serve; and
- (c) all other applicable conditions and requirements of this by-law are satisfied.

4.12 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 used for the keeping of livestock except where agriculture is a permitted use;
 - (iii) 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. common semi-detached garages may be centred on the mutual side lot line; and
 - 2. boat houses and boat docks may be built to the lot line when the line corresponds to the high water mark; and
 - (iv) exceed fifteen (15) feet (4.6 m) in height in any R-1 (Single Unit Dwelling) Zone or R-2 (Two Unit Dwelling) Zone;
 - (v) exceed one thousand (1000) square feet (90 m²) in any R-1 (Single Unit Dwelling) Zone or R-2 (Two Unit Dwelling) Zone;
 - (vi) be built within eight (8) feet (2.4 m) of a dwelling unit or twelve (12) feet (3.7 m) of any other main building.
- (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).
- (c) **Notwithstanding sections 4.12 (a)(iii), 4.12(a)(iv) and 4.12(a)(vi), an accessory building or structure, excluding boat houses, in any R-1 (Single Unit Dwelling) Zone may exceed fifteen (15) feet in height if the following conditions are met:**

- (i) the height does not exceed the height of the main building or twenty-five (25) feet, whichever is less;
- (ii) the side walls of the building do not exceed 12 feet in height;
- (iii) side and rear yards for the building are no less than required in Section 4.12(a)(iii) or $(\frac{1}{2})$ the height of the accessory building, whichever is greater;
- (iv) the building is located no less than required in Section 4.12(a)(vi) or one half $(\frac{1}{2})$ the height of the accessory building height from the main building or any other building, whichever is greater
- (v) the proposed building or structure is not located in the required front yard;
- (vi) the lot shall have a minimum area of 40,000 square feet (3,716 m²);
- (vii) all other applicable provisions of this By-law are met.
(WRCC-August 25/03;E-August 30/03)

**Attachment C:
Public Information Meeting Minutes - May 17, 2007**

**HALIFAX REGIONAL MUNICIPALITY
PUBLIC INFORMATION MEETING**

CASE NO. 00962 - Extreme Grades - Beaver Bank, Hammonds Plains and Upper Sackville

7:00 p.m.

Thursday, May 17, 2007

Wallace Lucas Community Centre

IN ATTENDANCE: Joseph Driscoll, Planner, HRM Planning Services
Cara McFarlane, Administrative Support, HRM Planning Services

REGRETS: Councillor Krista Snow, District 2
Councillor Brad Johns, District 19
Councillor Gary Meade, District 23

**PUBLIC IN
ATTENDANCE:** 5

The meeting commenced at approximately 7:04 p.m.

1. Opening remarks/Introductions/Purpose of meeting - Joseph Driscoll

Mr. Driscoll introduced himself as the Planner carrying the application through the planning process, and Cara McFarlane, HRM Planning Services. Councillors Snow, District 2; Johns, District 19; and Meade, District 23; sent their regrets for the meeting.

The purpose of the meeting is to identify that HRM has opened an application, to identify the scope of the proposal and to receive feedback from the public on any issues and concerns. No decisions will be made at this meeting.

2. Overview of planning process

Tonight's meeting, the Public Information Meeting, is the first step. In the future, staff will go over some issues and options with a development engineer and then put together a staff report that will make recommendations to council as to what staff believes should be done. This plan area (Beaver Bank, Hammonds Plains and Upper Sackville) is divided among three community councils (Western Region, North West and Marine Drive, Valley and Canal Community Councils) because small pieces are in all of those council districts. The staff report will therefore have to go before all three councils

and sometime in the future there will be a joint public hearing held. Once council has the report, first reading will be held and a joint public hearing date set. During the public hearing there will be the opportunity for the public to speak either in favor of or against the application.

3. Presentation of Proposal - Joseph Driscoll

The application is to amend the height requirements for accessory properties specifically on extreme grades within the Beaver Bank, Hammonds Plains and Upper Sackville plan area.

Dorman Skinner lives in Hammonds Plains and has experienced some difficulties building a garage on the property due to a steep grade. Based on his experience, he lodged a complaint with Western Region Community Council and as a result Council requested that staff take a look at this issue.

A grade or slope is the change in elevation over a given point. Basically the rise over the run. The grade staff is starting to look at is approximately 20% or more.

Currently under the Land Use By-law (LUB) the maximum height for accessory buildings is 15 feet in the R-1 and R-2 Zones. There were a set of amendments approved in 2003 that extended the height up to 25 feet if a number of requirements were met. One condition was if the lot is at least 40,000 square feet and all the other setbacks were met and the sidewalls of the building did not exceed 12 feet in height. This clause was to prevent people from building 2 ½ to 3 storey buildings.

Development Services uses the definition of average height which does provide some relief for buildings on steep grades.

Mr. Driscoll showed a picture of Mr. Skinner's property. Infilling and landscaping was done so the average height requirement could be met. The way that height is defined in the LUB now allowed Mr. Dorman to build a taller building than normally would have been permitted. His intention was to originally build a one storey building but because he lives on the corner of Hammonds Plains Road and Nottingham Drive there is a PTW setback which would not allow the one storey building. Although he was able to get a nice building and the size he wanted, he incurred considerable costs to do so.

Some options to look at for this amendment are: a) to measure height differently for properties on extreme grades; b) to permit a taller average height; or c) to permit side walls higher than 12 feet for accessory buildings up to 25 feet in height.

Some consideration to look at along with the options are: a) is there appropriate flexibility that exists now? b) homes or commercial buildings on extreme grades don't have a relief either so is it fair to look at just accessory buildings? c) do the issues associated with grades justify taller buildings?

4. Questions/Comments

Dorman Skinner, Nottingham Drive, was disappointed that the Councillors were not present for the meeting. He had to go through a lot to get his permit. The process took months. A lot of obstacles were incurred in trying to design the building due to having a sloped lot. There was not a formula to follow to come up with an idea on how to stick with grade, height and still not exceed the 25 foot height restriction. Three different plans were submitted to Development Services with only one difference shown in stepping in and out of the foundation. The third and final plan incurred a great amount of cost for retaining walls, stepping in the foundation and putting in slopes. The building overall in size, height or design was never changed but he was forced to incur extra costs just to meet the height requirement. He suggests HRM Planning & Development put forth an amendment so that the slope can either be changed from the back wall down to the front or make an amendment to allow a planner the right to view each severe sloped lot on an individual basis and use their discretion to call in other agencies and put forth the adjustment. Mr. Skinner is looking to have this amendment done for future permit applications.

The back wall of Mr. Skinner's accessory building goes down 8 feet which would not allow him to go to zero on the front because the side wall would exceed the height of 12 feet. Mr. Driscoll said due the height restriction some infilling had to take place. In order to get two storeys, Mr. Skinner has 22 feet from peak to gravel. In order to get to an average for the whole building, there had to be infilling done around the building except for the graded wall. This changed the height of the building so he was in compliance.

Perry Oliver, Lucasville, asked what the maximum height requirement is. Mr. Driscoll said it is 15 feet but it can be increased to 25 feet if the sidewalls are kept to 12 feet and all other requirements are met.

Mr. Oliver asked what difference the steps on the accessory building make. Mr. Driscoll explained that the steps had to be incorporated in order to meet the average height of 15 feet. Once the building was built, Mr. Skinner had to backfill almost to the top of the steps to allow him to have the average height in terms of how height is measured.

Mr. Oliver asked when the side wall height was amended. Mr. Driscoll said it was amended in 2003. If the building is attached to the house it could be as high as 35 feet.

Angela Downie wondered if these guidelines are for HRM. Mr. Driscoll explained that this issue is specifically for all properties in Beaver Bank, Hammonds Plains and Upper Sackville plan area.

5. Closing comments

Mr. Driscoll thanked everyone for coming to the meeting and expressing their comments and concerns.

6. Adjournment

The meeting adjourned at approximately 7:44 p.m.