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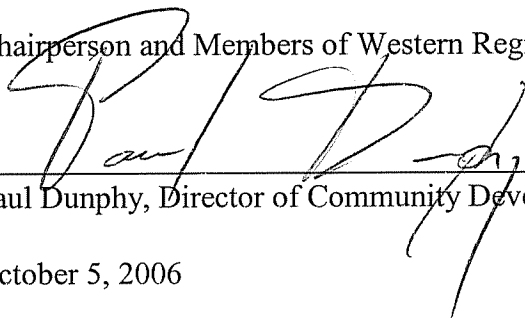


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Western Region Community Council
October 23, 2006

To: Chairperson and Members of Western Region Community Council

Submitted by:


Paul Dunphy, Director of Community Development

Date: October 5, 2006

SUBJECT: Land Use By-law Requirements for Height on properties with Extreme Grades

INFORMATION REPORT

ORIGIN

Motion of Western Region Community Council on June 26, 2006.

BACKGROUND

Council Motion: On June 26, 2006, Western Region Community Council requested an information report on the challenges faced by the property owner at 53 Nottingham Drive, Tantallon, in the construction of an accessory building on a property with extreme grades. Staff was also asked to provide a discussion of the options available to provide more flexibility with building height and extreme grades.

53 Nottingham Drive: The property owner of 53 Nottingham Drive in Tantallon recently experienced some challenges in constructing an accessory building due to the grades located on the property. The property in question has a slope from the road to the house of approximately 50 percent. Typically the maximum height of an accessory building is 15 feet. In the Land Use By-law, however, there are options to go to greater height. In this case, the requirements were too stringent to meet the property owner's needs. Thus the property owner had to significantly alter the grade on the property to meet the 15 foot height requirement. The property owner was frustrated that the Land Use By-law did not provide more flexibility with regard to height on properties that have steep grades. Relevant Land Use By-law provisions are attached as Attachment A.

DISCUSSION

Staff have identified the following options:

1. **Land Use By-law Amendment to increase the Maximum Permitted Height** - The maximum height of buildings is controlled by the Land Use By-law. Council could request that the maximum height of accessory structures be increased. Ultimately this type of amendment may help in some instances but does not provide the flexibility needed to deal with all circumstances. This type of amendment may have a negative impact on properties that are smaller in area. Staff do not recommend this option.
2. **Land Use By-law Amendment to allow an increase in Height in certain circumstances** - Although this may solve the problem in some instances, it is difficult to devise scenarios to accommodate all instances. For example, a greater accessory building height could be permitted for grades over 25 percent, but the new height may not work for grades that are 50 percent. Notwithstanding the difficulty in developing such policy, there may be opportunities to amend the existing regulations to be more flexible. This is the recommended option.
3. **Plan Amendment to allow the Development Officer to Vary Height** - The Municipal Government Act allows the establishment of a variance for height and other zone regulations through Municipal Plan policy. This option allows the Development Officer to use discretion to vary the height of a building. The decision of the Development Officer can be appealed by the applicant or surrounding property owners to Community Council. Council has the final say if required. This option appears to allow the maximum amount of flexibility, however it is not the preferred option of staff. Development Services has identified that the enabling policy in the Municipal Government Act (MGA) does not allow staff to have specific criteria for review, thus it is difficult for staff to effectively administer such variances. There are no planning strategies in HRM that contain policies that would allow height to be varied.

BUDGET IMPLICATIONS

None

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

None

ATTACHMENTS

Attachment A Relevant Land Use By-law Provisions

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

Report Prepared by: Andrew Bone, Planner, 869-4226

Attachment A
Relevant Land Use By-law Provisions

2.31 HEIGHT means the vertical distance of a building between the established grade and highest point of the roof surface for flat, hip, or gable roofs, and to the deckline for mansard and gambrel roofs. In the case of multi-unit dwellings, height shall mean the vertical distance of a building between the established grade and the highest point of the roof surface for flat roofs, and to one-quarter the height between the finished ceiling of the uppermost floor and the highest point of any other roof type, and provided that no roof space be used for human habitation.

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 (½) 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 (½) 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)

PART 6: R-1 (SINGLE UNIT DWELLING) ZONE

6.1 R-1 USES PERMITTED

No development permit shall be issued in any R-1 (Single Unit Dwelling) Zone except for the following:

- Single unit dwellings
- Existing two unit dwellings
- Existing mobile dwellings
- Day care facilities for not more than seven (7) children and in conjunction with permitted dwellings
- Offices in conjunction with permitted dwellings
- Bed & Breakfasts
- Open space uses

6.2 R-1 ZONE REQUIREMENTS

In any R-1 Zone, no development permit shall be issued except in conformity with the following:

Minimum Lot Area:	on-site services	29,064 square feet	(2700 m ²)
	central water	12,000 square feet	(1118 m ²)
	central sewer	10,000 square feet	(929 m ²)
	Sewer and water services	6,000 square feet	
Minimum Frontage:	on-site services	100 feet (30.5 m)	
	central sewer	75 feet (23 m)	
	Sewer and water services	60 feet	
Minimum Front or Flankage Yard		20 feet (6.1 m)	
Minimum Side or Rear Yard		8 feet (2.4 m)	
Maximum Lot Coverage		35 per cent	
Maximum Height of Main Building		35 feet (10.7 m)	

6.3 R-1 ZONE REQUIREMENTS: OPEN SPACE USES

In any R-1 Zone, where open space uses are permitted, no development permit shall be issued except in conformity with the provisions of Part 22.

6.4 OTHER REQUIREMENTS: OFFICE USES

Where offices are permitted in any R-1 Zone, the following shall apply:

- (a) Any office shall be wholly contained within the dwelling which is the principle residence of the operator of the office.
- (b) No individuals who are not residents in the dwelling shall be employed in the office.
- (c) No more than twenty-five (25) per cent of the gross floor area shall be devoted to any office, and in no case shall any office occupy more than three hundred (300) square feet (28 m).
- (d) No open storage or outdoor display shall be permitted.
- (e) No signs shall be permitted.
- (f) One off-street parking space, other than that required for the dwelling, shall be provided for every one hundred and fifty (150) square feet (14 m²) of floor area devoted to any office.

6.5 OTHER REQUIREMENTS: DAY CARE FACILITIES

Where day care facilities are permitted in any R-1 Zone, the following shall apply:

- (a) With the exception of outdoor play space, any day care facility shall be wholly contained within the dwelling, which is the principle residence of the operator of the facility.
- (b) No open storage or outdoor display shall be permitted.
- (c) No signs shall be permitted.
- (d) One off-street parking space, other than that required for the dwelling, shall be provided.

6.6 OTHER REQUIREMENTS: BED AND BREAKFASTS

Where a bed & breakfast is permitted in any R-1 Zone, the following shall apply:

- (a) The bed & breakfast shall be wholly contained within the dwelling which is the principle residence of the operator of the establishment;
- (b) Not more than three (3) rooms may be let;
- (c) No window display and not more than one (1) business sign shall be permitted and no such sign shall exceed two (2) square feet (0.2 m²) in area; and
- (d) One off-street parking space in addition to that required for the dwelling shall be provided for each room to be let.

6.7 OTHER REQUIREMENTS: COMMERCIAL MOTOR VEHICLES

In any R-1 Zone, not more than one commercial vehicle shall be kept on any lot and no such commercial motor vehicle shall exceed a registered vehicle weight of five (5) tons nor be kept less than ten (10) feet from any front lot line.

6.8 EXISTING HOME BUSINESS USES

Notwithstanding Section 4.9 and 6.1, the existing home businesses identified in Appendix B shall be permitted to the extent they are in existence at the time the land use by-law is adopted.

6.9 EXISTING TWO UNIT DWELLINGS

Notwithstanding Section 4.9, any existing two unit dwellings shall not be permitted to convert into a multi-unit dwelling.

6.10 SENIOR CITIZENS HOUSING

Notwithstanding Section 6.1, senior citizens housing shall be permitted within the R-1 zone on the property in Uplands Park identified by LIC Property Number 420927.

6.11 FRONTAGE ON A STREET

No development permit shall be issued in an R-1 Zone unless the lot or parcel intended to be used or upon which the building or structure is to be erected abuts and fronts upon a public street or highway.

6.12 SUBDIVISION OF EXISTING TWO UNIT DWELLINGS - UPLANDS PARK

Notwithstanding Section 6.2, the minimum lot area per dwelling unit for existing two unit dwellings on the following properties shall be 3,000 square feet and the minimum lot frontage shall be 30 feet: Patricia Foran, LIC Number 420265; Lawrence Leslie, LIC Number 420224; Sarah Martin, LIC Number 420398.