



Report to Hantsport Area Advisory Committee

Submitted By: Jeanne Bourque, Planner

Date: July 13, 2016

Subject: **Amendment to Hantsport Land Use By-law (HLUB) to permit existing two unit dwellings in Single Unit Residential (R-1) zone.**

File No. **HLUB 16-01**

STAFF REPORT

ORIGIN

Multiple queries were received at the planning office about a Hantsport property, 11 Porters Avenue, regarding existing zoning and potential use.

BACKGROUND

This property was zoned "Residential Single Family (R-1)" in the original 1976 Municipal Planning Strategy (MPS), and then "Single Unit Residential (R-1)" in the 2010 MPS. File documents show that in 1987 a municipal permit was issued for the addition of a second dwelling unit to the house. The 1976 MPS states that, "*multiple family development proposals will be required to make application for a zoning amendment*", but no documentation can be found that a rezoning took place. This makes the use of the dwelling as two units non-conforming.

DISCUSSION

Generally speaking, when land use by-laws are revised, every attempt is made to accommodate existing uses, either by putting the correct zone on the property, or by listing those uses as permitted uses in that zone. If this is not done then the current use, if it is not listed as a permitted use in the new zone, becomes non-conforming. Section 4.2 (b) of the Hantsport Land Use By-law (HLUB) defers to the definition of non-conforming contained in Sections 238-241 of the Municipal Government Act (MGA).

Non-conforming status severely restricts what can be done on a property in terms of enlarging the existing structure, or rebuilding it if most of it is destroyed by fire. Also, if a non-conforming use ceases for more than 6 months, it cannot be re-commenced.

The zoning map prepared in 2010 places R-2 zoning on primarily vacant properties designated as "Future Development/ Opportunities", and one property on Main Street. When planning staff received a query about the property at 11 Porters Avenue, staff conducted a site visit to Hantsport. While there, we did a very brief "windshield survey", that is, we drove through a few areas of the community and noted those properties that had more than one power meter, or civic numbers, or main entry doors. This was not a comprehensive exercise, but we did note about a dozen other properties that were obviously two-unit dwellings. These, like 11 Porters Avenue, are all zoned R-1. All of these properties, and any other two unit dwelling that was existing prior to the adoption of the HLUB in 2010 would be considered non-conforming.

After research and deliberation, staff developed amendments to the Hantsport Land Use By-law (HLUB) that would address what appears to be an oversight in the drafting of the 2010 version of the HLUB. These amendments would establish all two-unit dwellings that existed at the time of the adoption of the planning documents as conforming. The amendments are detailed in this report and are being brought to the Hantsport Area Advisory Committee (HAAC) for discussion and direction.

PROPOSED AMENDMENTS

There are two text amendments being proposed:

1. The first is to add to the list of permitted uses for the Single Unit Residential (R-1) zone in the Hantsport Land Use By-law (HLUB), "*Existing two unit dwellings*".
2. The second is to amend the definition of "existing" in the HLUB so that it reflects this change to the permitted uses.

Exhibit 1, attached to this report, shows the proposed amendments.

HANTSPORT MUNICIPAL PLANNING STRATEGY AND HANTSPORT LAND USE BY-LAW CONSIDERATIONS

When considering any text amendments to the planning documents, Council must determine whether the proposed amendment reasonably carries out the intent of the Hantsport Municipal Planning Strategy (HMPS) and does not conflict with the Hantsport Land Use By-law (HLUB). In this case, we refer to the narrative of the HMPS, Section 4.0 **Residential Policies**. This section discusses Council's intent regarding existing and future residential development.

4.1 Residential Low Density

Most of the residential area of the Town consists of detached single unit development. The survey revealed that most residents support this type of development and were not in favour of allowing the conversion of existing housing into two or more residential units.

While Council is in favour of increasing residential density it will respect the wishes of most residents and maintain a single unit zone on the existing single unit residential development in the Town. However, in the adjacent vacant areas shown as “Future Development Areas” on the Opportunities Map Council will establish a two unit residential zone. Residents who locate in these areas should have knowledge that the zone permits two units and will make their decision accordingly. **The two unit zone will also apply to the existing two unit development in the Town.**

As can be seen in the highlighted narrative of the HMPS, it was clearly Council’s intent that existing two-unit dwellings in the R-1 zone be permitted and considered conforming. This could have been done in one of two ways – either by applying the R-2 zone to the appropriate properties, or by adding existing two unit dwellings to the list of used permitted in the R-1 zone. Neither of these was done.

It should be noted that the HMPS provides an opportunity for Council to consider rezoning any lands within the Residential Designation to Multiple Unit (R-3), but there is no provision anywhere to rezone any property to accommodate a new two unit dwelling (R-2). The proposed amendments in this staff report do not address this concern.

CRITERIA TO CONSIDER FOR ALL AMENDMENTS

There are no specific policies that are relevant to this proposed text amendment. Policy IM-3 is the general policy that must be considered for all land use by-law amendments.

11.3 AMENDMENTS OF THE LAND USE BY-LAW

11.3.1 Criteria

The Strategy is accompanied by a regulatory document known as a Land Use Bylaw. It is intended that the Land Use By-law be amended from time to time usually through a formal application process made to the Town. An application may be received to amend a clause(s) or section(s) of the Bylaw or to amend the Zoning Map (these latter amendments are also known as rezonings).

Council may only approve amendments to the Land Use By-law if they are consistent with the policies of this Strategy. In addition to policies or statements contained throughout the Strategy the following is a list of general criteria to be followed by Council in its consideration of an amendment.

Policy IM-3

In considering amendments to the Town of Hantsport Land Use By-law, in addition to the criteria set out in various policies of this Strategy, Council shall consider:

(a) whether the proposal is considered appropriate in terms of:

- (i) the adequacy of sewer and water services;***
- (ii) the adequacy of school facilities;***
- (iii) the adequacy of fire protection;***
- (iv) the impact on adjacent uses;***
- (iv) the adequacy of road networks adjacent to, or leading to the development; and***
- (v) the financial capacity of the Town to absorb any costs relating to the development.***

As the proposed amendment only applies to existing land use, there are no concerns relating to these criteria.

(b) the suitability with any aspect relative to the movement of auto, rail and pedestrian traffic;

As the proposed amendment only applies to existing use, there are no concerns relating to this criteria.

(c) the adequacy of the dimensions and shape of the lot for the intended use;

As the proposed amendment only applies to existing use, there are no concerns relating to this criteria.

(d) the pattern of development which the proposal might create;

As the proposed amendment only applies to existing use, there are no concerns relating to this criteria.

(e) the suitability of the area in terms of steepness of grade, soil and geological conditions, location of water courses, marshes or bogs and susceptibility of flooding;

Not applicable.

(f) whether the proposal meets the requirements of the appropriate provincial or federal agencies as well as whether it conforms to all other relevant municipal by-laws and regulations;

Not applicable

(g) the impact of not only the use being proposed but all uses permitted in the zone;

The Municipal Planning Strategy clearly supports carefully increasing the residential density in the community, and staff consider that two unit dwellings are compatible with single unit residential.

(h) the site meets all of the zone requirements for the zone sought; and

As the proposed amendment only applies to existing two unit dwellings, there are no concerns relating to this criteria.

(i) any other matter required by relevant policies of this Strategy.

All other matters have been addressed elsewhere in this report.

PUBLIC PARTICIPATION PROGRAM

The *Municipal Government Act* requires that Councils adopt a public participation program for the preparation of planning documents, which includes amendments to those documents. West Hants has had such a program since 1988, with the latest revision done in 1999.

In the eight years since adopting the current West Hants MPS and LUB, the municipality has prepared several reports to address errors in the text and maps of those planning documents as staff became aware of them. These so-called "housekeeping" amendments

are generally widely applicable to numerous properties, making notification of adjacent landowners impractical. The public participation process for this kind of amendment entails posting the staff report on the municipal website, with copies available to any interested member of the public. This same process will be carried out for this proposed correction of the HLUB as well.

If HAAC recommends approval of the housekeeping corrections, the staff report will be forwarded to the Planning Advisory Committee (PAC) for review and consideration. If PAC recommends approval, the proposed amendments will be sent to Council for consideration, and after First Reading a Public Hearing and Second Reading will be advertised and held. After receiving public input in that forum, the decision typically goes to Council immediately following the hearing. If Council approves the correction, then an advertisement is published setting out the public's right of appeal.

CONCLUSION

This report has reviewed the proposed amendments against relevant policies and requirements of the HMPS and the HLUB, and Planning staff feel that the proposed amendments reasonably carry out the intent of the HMPS, and do not conflict with the HLUB. Staff therefore recommend that the amendments be approved.

OPTIONS

Any of the following options could form a motion:

1. Hantsport Area Advisory Committee could accept staff's recommendation and recommend approval to Planning Advisory Committee for further consideration and action. This is the option recommended by staff.
2. HAAC could request that staff make changes to the recommended amendments and prepare a supplementary staff report on those changes.
3. HAAC could recommend that the housekeeping amendments not be considered. If this is the option chosen, then all existing two unit dwellings in the R-1 zone will continue be non-conforming. This option is not recommended by staff.

Report Prepared by: _____
Jeanne Bourque, Planner

Report Approved by: _____
Karen Dempsey, Director of Planning

EXHIBIT 1

Text to be added is **bolded** and **underlined**.

Part 2 Definitions

For the purpose of this By-law, all words shall carry their customary meaning except for those defined hereafter:

Existing means in reference to a use or structure, that it existed on the effective date of the 1988 Land Use By-law except for reference to existing mini homes **or two unit dwellings** in which case EXISTING shall mean the effective date of this By-law.

Part 8 Residential

8.2 Single Unit Residential (R-1) Zone

8.2.1 Permitted Uses

- single detached dwellings
- residential day care centre
- the keeping of horses provided they are kept in a fenced area at a minimum of 0.4 hectares (44,560 sq. ft.) for each horse. *(As amended August 17, 2015)*
- **existing two unit dwellings.**