



CORPORATION OF THE TOWNSHIP OF ESQUIMALT

Municipal Hall
1229 Esquimalt Road
Esquimalt, B.C. V9A 3P1

Staff Report

File #:15-539

REQUEST FOR DECISION

DATE: November 26, 2015

Report No. DEV-15-069

TO: Laurie Hurst, Chief Administrative Officer

FROM: Karen Hay, Planner

SUBJECT:

Interim Amendment to Zoning Bylaw 1992, No. 2050 - Amendment Bylaw No. 2861

RECOMMENDATION:

That Council, upon considering comments made at the Public Hearing, resolves that Amendment Bylaw No. 2861 attached as Appendix 'A' to Staff Report DEV-15-069, which would amend Zoning Bylaw, 1992, No. 2050, by replacing text and figures as detailed in the content of the amending bylaw **be considered for third reading and adoption.**

RELEVANT POLICY:

Official Community Plan Bylaw, 2006, No. 2646

Zoning Bylaw, 1992, No 2050

Development Application Procedures and Fees Bylaw No. 2791, 2012

Advisory Planning Commission Bylaw, 2012, No. 2792

STRATEGIC RELEVANCE:

Council's Strategic Priorities 2015-2019: Ensure the Township's processes for business and development are clear and predictable.

BACKGROUND:

Appendices:

Appendix A: Amendment Bylaw No. 2861 - Amendment to Zoning Bylaw, 1992, No. 2050

Appendix B: Public Comments

Appendix C: Public Hearing Newspaper Advertisement

Purpose:

Esquimalt's Zoning Bylaw, 1992, No. 2050 was adopted on April 5, 1993. In the past twenty-two years there have been substantial changes in staff, provincial legislation, and local development culture. There are challenges to interpreting the language, and lack of language contained within the current Zoning Bylaw. With Council just beginning an Official Community Plan review, it will be another two - three years before a new zoning bylaw can be envisioned.

This interim amendment bylaw is intended to provide clarification for Council, staff, residents and developers. It is largely based on staff interpretations of the intent of the language contained within the current bylaw over the last twenty years. Where there are gaps in the current legislation staff have attempted to provide reasonable requirements. Only upon undertaking this amendment process has staff recognized the extent that interpretation, in lieu of written regulation, has become the norm over the years.

A substantial amount of time has been spent drafting the new Definitions and it is the opinion of staff that they now provide the required clarity for interpreting the General Regulations, and should reduce the number of development variance applications that are currently being considered.

Summary of changes to the General Regulations and the Zoning Districts:

1. Permitted Uses: New language provides improved clarity; prohibiting commercial vehicle repair on residential property, whether it occurs within a building or in a yard; further clarifies the scope of commercial vehicle repair; and clearly states that all types of vehicle and appliance repair cannot be a 'Home Occupation'.

Additional regulations have been added which would allow the use of land in all zones as a temporary 'laydown site', for short periods of time [up to 60 days], for uses directly related to a public highway construction or a public infrastructure project. Also allows land within any zone in the municipality to be used for a Park.

A provision allowing one secondary suite on parcels that are at least 530.0 square metres in area and developed solely for single family residential has been moved to this section from the Secondary Suite section. By placing the provision in the Permitted Uses section it now clearly applies to all parcels that have multiple family residential zoning and those that have two family residential zoning, which are developed solely for single family residential use. Currently the provision only applies to properties with multiple family residential zoning and leaves an uncertainty around properties with two family residential zoning that are being used solely for single family residential use.

2. Home Occupations: An updated regulation allows two businesses per dwelling unit instead of the current one. This change reflects the current employment culture in Canada, where many more people are now private contractors, work from home, often almost exclusively on a computer, with

no impact on their neighbours. It supports small business. The use 'Home Occupation' is added to several residential zones where it was inadvertently omitted in the past.

3. Calculation of Floor Area and Floor Area Ratio: This section has been substantially rewritten to fill in the blanks where staff has relied on past interpretation. It provides clarity on what portions of buildings and structures are counted when calculating a building's floor area and a parcel's floor area ratio.
4. Height Calculations: This section has been rewritten to provide greater certainty on how the height of buildings and structures are calculated. It also more clearly outlines which features may exceed the maximum heights provided in the zones, and provides limits on the heights of those features.
5. Siting Exemptions: This section regulates the features of a building that may protrude into required setbacks. The rewrite provides greater clarity for large bay windows that have become popular on new buildings, and which sometimes include interior features such as cabinets and countertops that have no floor area. There are also added regulations for below ground stairwells and window wells that are an integral part of a building. The 0.9 metre exemption is based on BC Building Code requirements for satisfactory egress from a building.

An additional section has been added which would respond to the increasing number of 'Accessibility Ramps' that are being added to buildings, and the challenge of locating them, while respecting the setbacks. The new regulation also makes them exempt from lot coverage calculations. This change should help make Esquimalt more accessible, and age friendly.

6. Special Siting Requirements (heat pumps): The regulation is being completely removed due to recent advice that a heat pump is an integral part of a building's mechanical system and as such should not be regulated by zoning. This change should have the positive result of making Esquimalt a more energy efficient community, and would support a new BC wide 'Oil to Heat Pump Incentive Program' being promoted by the Capital Regional District [CRD]. New technology has made modern heat pumps far quieter than their predecessors.
7. Fences: The current regulation for fences located on top of a retaining wall has caused considerable confusion over the years and only allows for very short fences on taller retaining walls, which could pose a safety hazard. New regulations have been written to allow more clarity for the placement and heights of retaining walls, providing a maximum height for retaining walls [1.2 metres] that would not impact the fence height requirements that exist in the individual zones. A diagram has been added to assist with interpretation.

A new provision also provides greater clarity for the height of fences located along the 'access strip' portion of a panhandle lot.

8. Screening and Landscaping: A small change was made to add 'Landscaping' to the regulations in this section since there was no reference to landscaping, except in the heading. Both screening and landscaping must be maintained by the property owner.
9. Visibility at Intersections: The language in this section, as it exists, has proven to be confusing, unenforceable and does not respond to the inherent width variations of existing streets. New

language and distances are provided, which would offer improved areas of visibility around intersection corners. Diagrams are provided to assist with interpretation.

10. Wrecked Vehicles / Derelict Vehicles: Language has been aligned with the current regulations in the Maintenance of Property and Nuisance Regulation Bylaw, 2014, No. 2826. Land use regulations must reside within the Zoning Bylaw. Regulations restrict the parking, storage and accumulation of unlicensed vehicles on a lot.

11. Major Road Setback / Marine Setback: The 'Major Road Setback' requirement has been deleted as it has proven to be undesirable, causing additional variances for developments. The municipality no longer has plans to add additional driving lanes to either Esquimalt Road or Admirals Road. If land is required at specific locations in the future it could be obtained through negotiation or expropriation.

A new 'Marine Setback' regulation has been written, to better achieve the new Provincial requirements for damage mitigation resulting from tsunami, coastal flooding, king tide, storm surge and sea level rise. The provision requires a 30 metre setback for all buildings, structures and non-recreational uses for parcels abutting a sea, with reductions provided for single family residential uses.

12. Boarding: Regulations have been rewritten providing for greater clarity and enforceability; clarifying that 'Boarding' is a rental use, rather than simply attempting to regulate people. The new regulation allows 'Boarding' as an accessory use in all zones where single family residential and two family residential uses are permitted; which includes the majority of the comprehensive development districts.

13. Urban Hens: 'Urban Hens' have been identified as a type of 'urban agricultural land use' within Esquimalt; therefore, Urban Hen regulations must remain in the Zoning Bylaw. The new zoning regulations have been written to align with regulations that exist in the Animal Management Bylaw, 2015, No. 2841. The other regulations that govern the siting of structures to house animals, and that currently reside in Bylaw No. 2841, are also added to the Zoning Bylaw.

14. Secondary Suites: The regulations have been rewritten for greater clarity, eliminating regulations that were found to be unmanageable to implement (the 'suite registry'), and unenforceable ('owner occupancy'). Secondary suites are an important form of housing within Esquimalt, providing affordable housing for many, additional income for home owners ('mortgage helpers'), and have proven to have minimal impact on neighbours when well built and maintained.

Staff believe there is still a concern that single family dwellings with suites should have restricted commercial opportunity. Therefore, the new regulations restrict property rental to either the suite or the principal dwelling unit at any one time, and continues to limit on the type of Home Occupation that may exist in a secondary suite to those that do not generate more than one client on the premise at any time. Though the *Community Charter* does consider operating [renting] a secondary suite as a business, and income generated from a suite is taxable under the *Income Tax Act*, the primary function of secondary suites is to provide more affordable housing within the community.

A new regulation also clarifies that a secondary suite cannot be subdivided from the principal dwelling as a secondary suite is an accessory and secondary use to the principal dwelling.

15. Unit Size: The minimum 'Unit Size' regulations are removed from all the 'Multiple Family Residential' zones, as it has been shown that the real estate market will dictate unit sizes. Single people are now quite willing to live in well-designed small units.

16: General housekeeping:

- 'Assembly Use' has been added as a permitted use in the Public/Institutional [P-1] zone and the Parks and Open Space [P-2] zone; as this use is allied with several of the other permitted uses in these zones. Currently, 'Assembly Use' is only permitted as a use in the Core Commercial [C-3] and Town Centre [TC] zones;
- Two zoning districts that have no associated parcels would be deleted; and
- The names of Provincial Acts would be updated.

Advisory Planning Commission:

The Advisory Planning Commission members considered the proposed amendments at their meeting held on October 21, 2015 and were supportive of the changes.

The APC recommended that Amending Bylaw No. 2861, which would amend Zoning Bylaw, 1992, No. 2050 by replacing text and figures as detailed in the content of the amending bylaw, be forwarded to Council with a **recommendation of approval**.

ISSUES:

1. Rationale for Selected Option

The updates included in Amendment Bylaw No. 2861 support Council's strategic priority to ensure the Township's processes for business and development are clear and predictable. The Advisory Planning Commission considered the amendments at its meeting held on October 21, 2015 and was supportive of the proposed changes. Council considered Bylaw No. 2861 at its meeting held November 16, 2015, made one change to the new secondary suites regulations, and granted 1st and 2nd reading. There have been few comments received from the public at the time of writing this report.

2. Organizational Implications

The proposed amendments will make the Zoning Bylaw easier to interpret, thereby saving staff time that can then be dedicated to other applications and projects.

3. Financial Implications

There are no extraordinary financial implications.

4. Sustainability & Environmental Implications

Removing the overly restrictive regulations around heat pumps should help make Esquimalt a more energy efficient community. The Marine Setback regulations are designed to make

Esquimalt more resilient to the consequences of climate change.

5. Communication & Engagement

As this amendment is considered a rezoning application affecting more than ten properties, a Notice of the Public Hearing was placed in two consecutive issues of the Victoria News, the November 27th and December 2nd editions. A Notice has also appeared on the Esquimalt.ca website as a 'News Item' since November 27, 2015.

Correspondence received by staff relating to Amendment Bylaw No. 2861 can be found in Appendix 'B'.

ALTERNATIVES:

1. That Council, upon considering comments made at the Public Hearing, resolves that Amendment Bylaw No. 2861 attached as Appendix 'A' to Staff Report DEV-15-069, which would amend Zoning Bylaw, 1992, No. 2050, by replacing text and figures as detailed in the content of the amending bylaw be **considered for third reading and adoption**.

2. That Council, upon considering comments made at the Public Hearing, returns Bylaw No. 2861 to staff for revisions.