

To: **Port Hastings Area Advisory Committee
Inverness Planning Advisory Committee
Inverness County Council**

From: **Planning Staff (EDPC)**

Date: **June 1, 2015**

Reference: **Application by Derrick Fox of D&R Fox Developments Limited to amend the *Port Hastings Land Use By-law* to permit grouped dwellings in the Mixed Use (C-1) Zone of the Port Hastings Plan Area.**

Recommendation:

That Council **approve** the proposed text amendments to the *Port Hastings Land Use By-law* to:

- 1) define a grouped dwelling as “a type of multiple-unit dwelling consisting of more than four (4) dwelling units that are contained within two (2) or more buildings located on the same lot;”
- 2) define a multiple-unit dwelling as “a dwelling that contains more than four (4) dwelling units,” and;
- 3) permit grouped dwellings in the Mixed Use (C-1) Zone subject to a minimum separation distance between buildings and the same conditions as multiple-unit dwellings.

These amendments will allow D&R Fox Developments Limited to apply to develop more than one semi-detached dwelling on the same lot in Port Hastings, Inverness County (PID 50004720).

Background:

In 2012, planning staff processed an application by D&R Fox Developments Limited to amend the *Port Hastings Municipal Planning Strategy* (MPS) and *Port Hastings Land Use By-law* (LUB) to permit a multiple-unit dwelling consisting of twenty-four (24) units. The units were intended to be marketed to seniors as rentals. The resulting amendments permitted multiple-unit dwellings in the Mixed Use (C-1) Zone subject to Site Plan Approval. In the time since those amendments were approved, D&R Fox Developments Limited have changed their development

Summary of Proposal:

<i>Designation:</i>	General Development
<i>Zoning:</i>	Mixed Use (C-1)
<i>Area:</i>	1.3 hectares (3.3 acres)
<i>Site Visit:</i>	May 8, 2015

plans for the property from one large multiple-unit dwelling to a series of smaller semi-detached dwellings, still intended to be rented to seniors.

The proposed site for the development (PID 50004720) is situated between Highway 104 and the Cape Breton & Central Nova Scotia Railway. The portion adjacent to the highway has been filled in and brought level with highway grade. The rest of the property slopes



Figure 1: View of site from Highway 104

significantly toward the Strait of Canso. The property has been cleared of most vegetation and is currently used to store heavy equipment. Immediately to the west of the property is the site of the former Canadian Tire property, while the property directly to the east is used for open storage of soil and aggregate. Across Highway 4 are a variety of land uses, including automobile sales and servicing (Midway Motors), crane rentals (Woody's Crane Rental), an auto body shop (Hughie's Collision Centre), a general contractor (Norvon Enterprises Ltd.), and three single-detached dwellings.

Analysis:

Planning staff consider these to be minor follow-up amendments to the amendments requested in 2012. The proposed amendments are intended to permit grouped dwellings under the same provisions as multiple-unit dwellings, thereby permitting the applicant's proposed semi-detached residential development. The previous amendments were written such that new multiple-unit dwellings would require site plan approval before receiving a development permit, "[ensuring] that parking and access, waste management, storm water control and amenity areas for residents are well designed and the development [...] sets the right standard for residential development in the neighbourhood" (2012 staff report) The proposed amendments will define grouped dwellings as, "a type of multiple-unit dwelling consisting of more than four (4) dwelling units that are contained within two (2) or more buildings located on the same lot" and will require grouped dwellings to meet the same requirements as multiple-unit dwellings.

The proposed amendments also include a minimum separation distance for grouped dwellings of 6.1 metres (20 feet) or half the height of the higher of the buildings, whichever is greater. This will result in a separation distance equivalent to that of placing the units on separate lots and is the requirement already in place for the Town of Port Hawkesbury and the plan areas of Central Richmond, Isle Madame, Central Antigonish, and the Antigonish Fringe.



Figure 2: Site slopes evenly towards the Strait of Canso

The MPS permits new multiple-unit dwellings in the Mixed Use (C-1) Zone and permits duplexes, semi-detached, and converted dwellings in the Residential One (R-1) Zone. The proposed amendments will define grouped dwellings as consisting of the same number of dwelling units as multiple-unit dwellings, arranged in two or more buildings on a lot. For this reason, planning staff are of the opinion that permitting new grouped dwellings subject to the same special provisions as multiple-unit dwellings is consistent with the intents of the MPS. The rationale behind defining multiple-unit and grouped dwellings as consisting of more than four (4) dwelling units is based on Policy 1.11 of the MPS, “[i]t shall be the intention of Council to permit the development of multiple unit dwellings (*more than 4 units*) within the Plan Area on properties that can be connected to municipal water and sewer services, subject to Site Plan Approval” (emphasis added). Currently, the LUB does not include a formal definition of multiple-unit dwellings or grouped dwellings in its Definitions section. The proposed amendments will clarify the intent of the MPS regarding multiple-unit dwellings by defining “grouped dwellings” and “multiple-unit dwellings” based on number of dwelling units.

The General Provisions of the LUB already permit more than one main building on a lot in the Mobile Home Park (MHP), Rural Mixed Use (RM-1), Industrial (M-1), and Mixed Use (C-1) Zones. Planning staff are of the opinion that the proposed amendments are consistent with this provision for the Mixed Use (C-1) Zone.

The following is a summary of the specific requirements of the MPS for amending the LUB. Planning staff are of the opinion that the correspondence with outside agencies received for the 2012 staff report remains sufficient for the current amendment. The primary requirement

of the MPS for the development of new multiple-unit dwellings with more than four (4) units is that they be located where serviceable by municipal water and sewer. In processing the 2012 amendment, staff received confirmation from the Inverness Department of Public Works that the site could be serviced by municipal water and sewer. Further, there are no anticipated costs to the municipality resulting from the proposed amendments. Planning staff consider existing community facilities adequate to handle the proposed development. The Area Manager of Nova Scotia Transportation and Infrastructure Renewal confirmed that the proposed access could meet stopping sight distance requirements and that the proposal was not premature or inappropriate by reason of road networks in, adjacent to, or leading to the development. Through the site plan approval process, the applicant will be required to submit storm and surface water protection plans to help mitigate risk of potential contamination of watercourses, erosion, or sedimentation. While the site does include steep grades at the east and west corners, a large portion slopes evenly towards the Strait of Canso and will be suitable for development with adequate grading and/or terracing. Through the site plan approval process, the applicant will be required to show retaining walls, fences, and existing or proposed vegetation. From this, planning staff will be able to ensure that the proposed development will be appropriately buffered from neighbouring uses and traffic.

It should be noted that in the case of a breach of an approved site plan, the Municipal Government Act offers two means of recourse. The first is “if thirty days notice in writing has been provided to the owner, [the Municipality may] enter the land and perform any of the terms contained in the site plan” (MGA 265 [1]). The expenses for this work would become a lien on the land subject to the site plan. The second is to “apply to the Supreme Court of Nova Scotia for any or all of the remedies provided pursuant to this Section” (MGA 266[2]). If the breach of site plan is relatively minor (such as the construction of a berm or fence), it should be straightforward for the Municipality to remedy the situation. If the breach is relatively major (such as constructing one single detached dwelling instead of a grouped dwelling), it may prove more difficult for the Municipality to remedy the situation.

The criteria for amending the LUB are included as Appendices “B” and “C.” The requirements for Site Plan Approval are included as Appendix “D.”

Conclusions:

Planning staff are of the opinion that the proposed text amendments to the *Port Hastings Land Use By-law* conform to the intents of the *Port Hastings Municipal Planning Strategy* and with the requirements of all other municipal by-laws and regulations. Staff therefore recommend that Council **approve** the proposed text amendments to the *Port Hastings Land Use By-law* to:

- 1) define a grouped dwelling as “a type of multiple-unit dwelling consisting of more than four (4) dwelling units that are contained within two (2) or more buildings located on the same lot;”
- 2) define a multiple-unit dwelling as “a dwelling that contains more than four (4) dwelling units,” and;
- 3) permit grouped dwellings in the Mixed Use (C-1) Zone subject to a minimum separation distance between buildings and the same conditions as multiple-unit dwellings.

These amendments will allow D&R Fox Developments Limited to apply to develop more than one semi-detached dwelling on the same lot in Port Hastings, Inverness County (PID 50004720).

Appendix 'A' – Proposed Amendment Text

A By-law to Amend the *Port Hastings Land Use By-law* to Permit Grouped Dwellings in the Mixed Use (C-1) Zone

The *Port Hastings Plan Area Land Use By-law* is hereby amended by deleting text indicated below with a strikethrough and inserting text indicated below in bold red:

PART 5: GENERAL PROVISIONS FOR ALL ZONES

[...]

Parking Requirements

23. For every building or structure to be erected or enlarged, off street parking shall be located on the same lot as the use and unobstructed access to a street shall be provided and maintained in conformity with the following chart:

Type of Building	Minimum Parking Required
Residential	
(a) Dwellings with up to and including four (4) dwelling units, single detached, semi-detached, duplex, multiple unit and converted dwellings up to and including four (4) dwelling units, residences in commercial buildings, bed & breakfast establishments Dwellings with up to and including four (4) dwelling units, Single detached, semi-detached, duplex, multiple unit and converted dwellings up to and including four (4) dwelling units, residences in commercial buildings, bed & breakfast establishments	one (1) parking space per dwelling unit
(b) Boarding houses	one (1) parking space per two (2) rooms available for rent
(c) Multiple dwellings with five (5) or more dwelling units Multiple-unit dwellings and grouped dwellings with more than four (4) dwelling units	one and one half (1.5) spaces per dwelling unit
[...]	[...]

Outdoor Amenity Areas

39. An outdoor amenity area shall be provided for all multiple-unit dwelling **and grouped dwelling** developments that contain more than either 20 residents or 20 dwelling units

and provide a minimum of 2.0 square metres (22 square feet) of common outdoor amenity space at ground level for either each resident or each dwelling unit.

[...]

Visitor Parking Requirements

41. Visitor parking for multiple-unit **and grouped** dwellings shall be required as follows:
 - a) 15 percent of the required parking spaces for multiple-unit **and grouped** dwellings containing 5 to 60 dwelling units must be signed for visitor use; and,
 - b) 20 percent of the required parking spaces for ~~multiple~~ **multiple-unit** dwellings **and grouped** containing more than 60 dwelling units must be signed for visitor use.

PART 7 - DEVELOPMENT AGREEMENTS

[...]

2. Pursuant to Section 231 of the Municipal Government Act, the following developments shall be subject to Site Plan Approval:
 - a) Multiple-unit **and grouped** residential dwellings.

[...]

PART 12 - MIXED USE (C-1) ZONE

Uses Permitted

1. No development permit shall be issued in a Mixed Use (C-1) zone except for the following uses:

[...]

- (v) Multiple-Unit Dwellings **and Grouped Dwellings**, subject to special provisions

[...]

General Lot Requirements

2. In any Mixed Use (C-1) zone, no development permit shall be issued except in conformity with the following requirements:

- (a) ~~Commercial uses and Multiple-Unit Dwellings~~ **Commercial uses, Multiple-Unit Dwellings, and Grouped Dwellings with sewer services:**

[...]

Special Requirement – Multiple-Unit Dwellings and Grouped Dwellings

[...]

- 6. Notwithstanding Section 12.1(v), multiple-unit dwellings **and grouped dwellings** shall only be permitted on lots where municipal water and sewer services are available.
- 7. Multiple-unit dwellings **and grouped dwellings** shall be subject to Site Plan Approval, as outlined in Section 7 of this By-law.
- 7A. Notwithstanding the requirements of Section 12.2 (a), the minimum distance between the buildings of a grouped dwelling shall be 6.1 metres [20.0 feet] or half (1/2) the height of the higher of the buildings, whichever is greater.**

[...]

PART 16 – DEFINITIONS

For the purposes of this By-law, all words shall carry their customary meaning except for those defined in this Part. The words and terms listed below shall have the meanings as defined herein.

[...]

- 17A. Dwelling, grouped** means a type of multiple-unit dwelling consisting of more than four (4) dwelling units that are contained within two (2) or more buildings located on the same lot.
- 17B. Dwelling, multiple-unit** means a dwelling that contains more than four (4) dwelling units.

This is to certify that the By-law, of which this is a true copy, was duly passed at a duly called meeting of the Council for the Municipality of the County of Inverness on _____, 2015.

Given under the hand of the Chief Administrative Officer and under the corporate seal of the said Municipality this ____ day of _____, 2015.

Joe O’Connor
Chief Administrative Officer

Appendix 'B' – Summary of Considerations to Amend the Land Use By-law

Policy A-6	
In considering amendments to the Land Use By-law it shall be the policy of Council to:	
(a) request a report from the Rural Cape Breton District Planning Commission [now Eastern District Planning Commission];	Complete
(b) refer the matter to the appropriate government departments where special expert advice is required;	Completed for previous amendment. <ul style="list-style-type: none"> ▪ Public Works May 25, 2011 ▪ NSTIR July 29, 2011
(c) request the Port Hastings Area Advisory Committee and the Inverness County Planning Advisory Committee consider the report prepared by the Planning Commission with respect to Policy A-8 (Criteria for Amendment to the Land Use Bylaw), and any other policies of this Strategy which affect the proposed amendment	Underway
(d) comply with all legal requirements concerning amendments to the Land Use By-law as set out in the Planning Act; and	Complete
(e) require the applicant to pay the cost for advertising with respect to public notices as provided for in the Planning Act	Payment Received March 6, 2015

Appendix 'C' – Summary of Criteria to Amend the Land Use By-law

Policy A-8	
In considering amendments to the Land Use By-law, in addition to all other criteria as set out in various policies of this Strategy, Council shall have regard to the following matters:	
(a) That the proposal is in conformity with the intent of this Strategy and with the requirements of all other municipal By-laws and regulations;	Complies (Staff Review)
(b) That the proposal is not premature or inappropriate by reason of:	
(i) the financial capability of the municipality to absorb any costs relating to the development;	Complies (Staff Review)
(ii) the adequacy of sewer services and utilities or if services are not provided, the adequacy of physical site conditions for private on-site sewer and water systems;	Complies (Municipality of Inverness correspondence May 25, 2011)
(iii) the adequacy and proximity of school, recreation, and any other community facilities;	Complies (Staff Review)
(iv) the adequacy of road networks in, adjacent to, or leading to the development; and	Complies (NSTIR Area Manager correspondence July 29, 2011)
(v) the potential for the contamination of watercourses or the creation of erosion or sedimentation;	Complies (See Staff Report)
(c) That the proposal conforms to the requirements contained in the Land Use By-law relating to the following:	
(i) type of use;	Complies (See Staff Report)
(ii) height, bulk, and lot coverage of the proposed building;	Will be required to comply at permitting stage
(iii) traffic generation, access to and egress from the site and parking;	Either complies (See Staff Report), or will be required to comply through Site Plan Approval
(iv) open storage;	Will be required to comply at permitting stage
(v) signs; and	Will be required to comply at permitting stage

(vi) similar matters of planning concern.	Complies (Staff Review)
(d) Suitability of the proposed site in terms of steepness of grades, and/or location of watercourses	Complies (See Staff Report)
(e) Suitability of buffering, and access control to reduce potential incompatibility with adjacent land uses and traffic arteries.	Will be required to comply through Site Plan Approval

Appendix 'D' – Requirements of the Land Use By-law for Site Plan Approval

[...]

2. Pursuant to Section 231 of the *Municipal Government Act*, the following developments shall be subject to Site Plan Approval:
 - (a) Multiple-unit residential dwellings.
3. The following evaluation criteria shall apply to any development undertaken pursuant to Part 7, Section (2):
 - (a) Any development must be in compliance with the requirements of the general regulations and applicable zone, as found in the Land Use By-law;
 - (b) Storm and surface water protection plans must be provided.
4. Notwithstanding Part 7, Section (2), the Development Officer may vary the following provisions of the Land Use By-law through Site Plan Approval:
 - (a) The minimum required front yard setback;
 - (b) The minimum required number of off-street parking spaces; and,
 - (c) Visual barrier requirements.
5. A site plan prepared in accordance with Part 7, Section (2) shall include the following, drawn to scale:
 - (a) The location of existing (to remain) and proposed structures on the site;
 - (b) The location of existing (to remain) and proposed off-street parking and loading facilities;
 - (c) The location and width of existing (to remain) and proposed driveway accesses to public or private roads;
 - (d) The type, location and height of any retaining walls, fences, hedges, trees, shrubs or groundcover, as well as any retained natural vegetation;
 - (e) Any existing (to remain) and proposed grade alteration and storm surface water control infrastructure;
 - (f) The location of existing (to remain) and proposed walkways, noting the width and surface materials;
 - (g) The type and location of existing (to remain) and proposed outdoor lighting;
 - (h) The location and type of any facilities and enclosures for the storage of garbage, recycling and other waste materials;
 - (i) The location and type of any amenity area or facilities provided for users of the development;

- (j) The location of existing and proposed easements on the subject property;
 - (k) The type, number and size of any existing (to remain) and proposed signs and sign structures; and,
 - (l) Any provisions for the maintenance of any of the items referred to in this subsection.
- 6.** The process for granting Site Plan Approval follows the same process as that used for a variance, subject to Section 236 of the Municipal Government Act.