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Item No. 13.1.1
Harbour East – Marine Drive Community Council
February 6, 2020

TO: Chair and Members of Harbour East – Marine Drive Community Council

-Original Signed-

SUBMITTED BY:

Kelly Denty, Director, Planning & Development

-Original Signed-

Jacques Dubé, Chief Administrative Officer

DATE: January 2, 2020

SUBJECT: Amendment to By-law B-201 Respecting the Building Code

ORIGIN

On February 1, 2018, the following motion of Harbour East - Marine Drive Community Council was put and passed:

“That Harbour East – Marine Drive Community Council request a staff report on amending By-law B-201, Respecting the Building Code, to include fences 6 foot 5 inches and lower.”

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter, 2008, c. 39, clause 188(2)(e): Council may, in any by-law, provide for a system of licences, permits or approvals.

By-law B-201, the *Building By-law*, clause 4(1)(d): In addition to the requirements in the Nova Scotia Building Code Regulations, an application for a building permit shall include plans as set forth in:

(d) Appendix-D: Fences exceeding 6.5 feet (2m) in height

Nova Scotia *Building Code Regulations*, N.S. Reg. 179/2019, clause 1.2.1.2.(1)(g): The *Code* does not apply to:

(g) fences

RECOMMENDATION ON PAGE 2

RECOMMENDATION

It is recommended that Harbour East Marine Drive Community Council retain the existing wording in By-law B-201, the *Building By-law*, regarding the regulation of fences.

BACKGROUND

At the February 1, 2018 meeting of Harbour East – Marine Drive Community Council a motion was passed requested a staff report on amending By-law B-201, *Respecting the Building Code*, to include fences 6 feet 5 inches and lower. The report was requested to address concerns received by Councillor Nicoll regarding both the height and state of good repair of fences under 6 foot 5 inches. Staff was also asked to clarify in the report if the By-law indicates whether fences can be built on the property line, or if there is a required setback.

By-law B-201 Requirements

All fences are exempted from the Nova Scotia Building Code. Within Halifax Regional Municipality, however, fences exceeding 6.5 feet (2m) in height are regulated by By-law B-201, the *Building By-law*.

The current By-law regulating fences has been in effect since 1998. At the time, the Nova Scotia Building Code had been recently amended to exempt fences exceeding 2m in height from its requirements. While staff had encouraged the Province to maintain the need for some form of fencing regulation, it was decided that inclusion of requirements in HRM's By-law 201 would help to ensure fences are designed and anchored in the ground properly to avoid possible future disputes between property owners. Additionally, since the construction of fences over 2m in height were often the result of some form of dispute between neighbours, a decision by Community Council following a hearing from the public was thought to be an appropriate means of addressing such local matters.

Where a fence exceeding 2m in height separates a residential property from another property, approval by the local Community Council is required. As part of the approval process, all adjacent property owners must be notified of the intent to build a fence taller than 2m to allow the public an opportunity to speak to the application. Notification must be given to the adjacent property owners at least 14 days in advance of the Community Council meeting.

Appendix D of By-law B-201 outlines the requirements for an application to build a fence taller than 2m which, in summary, include the following information:

- A plot plan showing all adjacent properties; location of all buildings; location of the proposed fence including height at 8' intervals and the location and condition of all vegetation such as trees, shrubs, flowers, etc.
- Construction details that include a design by a Professional Engineer or Architect
- Any additional information requested by the Authority Having Jurisdiction (Building Official)

State of Good Repair

Under the *HRM Charter* as with any part of a property, fences must be maintained so as not to be dangerous or unsightly.

Setbacks for Fences

HRM's land use by-laws do not require fences to be set back from property boundaries and as such, fences may be located on common boundary lines. In responding to inquiries on fences, staff advise residents to consult with their neighbours before constructing fences on common property boundaries and to take steps to ensure property lines are accurately located on site.

DISCUSSION

To evaluate the request from Community Council on amending By-law B-201 to include fences 2m and lower, staff conducted a jurisdictional scan of fence regulations in 18 Nova Scotia Municipalities and 18 cities in Canada. In summary form, the findings of the jurisdictional scan of these municipalities are:

- Three municipalities in Nova Scotia have no regulation or restrictions on residential fences
- Nearly all the municipalities set a threshold of between 6 and 10 feet for fence height (in side and rear yard)
- Most municipalities have a variance process to approve fence heights over threshold
- Most municipalities don't require a building permit for a fence; some require a development permit
- In most cases variances are approved by a Development Officer, a planner or a single approver in planning; a few decided by committee – only two required Council approval
- Only one other municipality required neighbour/public consultation for variances
- Information required for variances were generally quite basic – rationale, site plan, sketch or construction information
- Fencing materials, colour and appearance as much impact on the approval as construction details
- HRM is the only municipality to require an engineered design for a fence
- Very few municipalities required any involvement from a Building Official – fences are exempted from the building code
- Many municipalities that regulate residential fences set height restrictions for fences forward of the house on a lot. This is to prevent obstruction of a view of traffic.

The regulatory models of other municipalities in Nova Scotia and Canada indicate an intent to manage residential fence height to a certain threshold, but to allow for exceptions. Nearly all municipalities had regulatory models that allowed for the construction of fences below a threshold without any approval from the municipality. Most models also allowed for exceptions to the height threshold based on rationale for the exception and information on the construction and appearance of the proposed fence. The typical variance model provides for an objective review of exemption applications by a representative or a committee of representatives in the planning department. Variance applications can be processed and decided relatively quickly. An expeditious process allows for the clear majority of fences under the threshold height, to be built without “red tape” and minimizes regulatory burden on property owners. Future advancements with Planning & Development’s permitting technology will possibly allow better and increased fence data collection.

Residential fence regulations in HRM align in most aspects with the most common approaches to regulating fences in other municipalities. The difference is in the approval of fences over HRM’s threshold height of 2m. HRM requires Building Officials to review designs for proposed fences and inspect fences to ensure they are constructed according to plan. It imposes more cost on the applicant to have a fence designed by a professional engineer. Approvals are substantially more time consuming and complex requiring public input and Community Council approval. The more rigid requirements for exemptions indicate an intent to prohibit unsafe and/or unattractive fences.

In HRM, fences under the 2m height threshold are unregulated so there is no data to report on how many residential fences are built in HRM each year. Similarly, 311 call volumes attributed to fence complaints or inquiries are not specifically tracked. Therefore, it is not possible to determine workload and staff increase that would be required to regulate all fences regardless of height. Anecdotally, Customer Service staff estimate that during construction season (March-November) they receive 10 calls daily regarding fences. Based on that estimate there could be as many as 800 fence builds per year. In addition, each year, there are home owners who proceed to build or renovate without a building permit. Building Standards staff is

responsible to identify such cases, issue Stop Work Orders and refer for prosecution instances of non-compliance. If all fences required a building permit it would create a dramatic increase in such cases causing additional demand on staff resources.

Relative to the number of fences in HRM, there are few complaints about fences each year. Under the *HRM Charter* there is enforceable legislation that requires property owners to maintain their property so as not to be dangerous or unsightly. If a fence poses a safety risk or is unsightly, Compliance Officers have the authority to order a remedy. HRM is in the process of Regulatory Modernization that is focused on reducing instances of unnecessary regulatory burden and 'red tape' for citizens. To amend By-law B-201 to regulate all fences would substantially increase the regulatory overlap that already exists for fences over 2m in height. As such, staff recommend maintaining the by-law in its present form relative to fences.

Should Harbour East - Marine Drive Community Council refuse the staff recommendation, it could choose to forward a recommendation to Regional Council requesting that staff prepare an amendment to By-law B-201 to require permits for fences under 2m in height, thus regulating all fences. This could create an increase in permit applications that would require additional staff resources to manage the added volume of work. It would also increase the regulatory burden on homeowners who wish to build a fence on their property and add a delay while applications are processed.

Staff advise that it is highly likely that some homeowners would construct fences without approval and staff would have to rely on complaints to identify these violations. Investigating complaints for fences without approved permits would further increase the workload for Building Officials. These costs would add little value in the regulation of fences since safety and appearance of fences can be adequately regulated under existing legislation (dangerous and unsightly provisions in the *HRM Charter*).

FINANCIAL IMPLICATIONS

There are no financial implications associated with the recommendation in this report.

RISK CONSIDERATION

The risks associated with the recommendation are low as there are relatively few complaints related to fences. The most common complaints relate to safety and appearance of fences; which can be resolved under the dangerous and unsightly provisions in the *HRM Charter*.

COMMUNITY ENGAGEMENT

No community engagement was conducted in the preparation of this report. Should Community Council refer the matter to Regional Council for direction on undertaking amendments to By-law B-201, staff would conduct consultation with stakeholders prior to returning to Council with recommended amendments.

ENVIRONMENTAL IMPLICATIONS

There is no environmental impact associated with the recommendation in this report.

ALTERNATIVES

1. Harbour East – Marine Drive Community Council may recommend that Regional Council direct the Chief Administrative Officer to draft amendments to By-law B-201 to regulate all fences regardless of their height. This is not recommended for the reasons outlined in this report.

ATTACHMENTS

None

A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

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