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Item No. 13.1.4
Halifax and West Community Council
December 15, 2021

TO: Chair and Members of Halifax and West Community Council

SUBMITTED BY: *Original Signed*

Denise Schofield, Acting Chief Administrative Officer

DATE: November 12, 2021

SUBJECT: **Land Use By-law amendment for front yard setbacks in the C-2C (Dutch Village Road Mixed-Use) Zone**

ORIGIN

- Application by WM Fares Group requesting amendments to the Municipal Planning Strategy for Halifax and the Land Use By-law for Halifax Mainland to permit a six-storey multi-unit building on Westerwald Street in Halifax (Case 22816)
- December 15, 2020: Regional Council initiated the MPS amendment process for Case 22816, which included a review of zoning for the subject site and properties on Westerwald Street
- Application by Upland Planning and Design Studio, on behalf of United Gulf Developments, for amendments to the Municipal Planning Strategy for Halifax and the Land Use By-law for Halifax Mainland to permit a six-storey, multi-unit building at the corner of Main Avenue and Titus Street (Case 23245)
- March 23, 2021: Regional Council initiated the MPS amendment process for Case 23245 and directed the CAO to review the building height, rooftop structures, building depth, lot coverage and building setback requirements in the C-2C Zone
- July 13, 2021: Halifax and West Community Council recommended that Regional Council direct the CAO to consider changes to the C-2C Zone, as detailed below.
- August 17, 2021: Regional Council directed the CAO to consider changes to the C-2C (Dutch Village Road Mixed Use) Zone. Any changes should improve safety for pedestrians and vehicles, and create space for landscaping, street trees and active transportation infrastructure. Council directed changes be considered through the ongoing zoning review of Case 23245

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter (HRM Charter), Part VIII, Planning & Development.

RECOMMENDATION ON PAGE 2

RECOMMENDATION

It is recommended that Halifax and West Community Council:

1. Give First Reading to consider approval of the proposed amendments to the C-2C (Dutch Village Road Mixed Use) Zone of the Land Use By-law for Halifax Mainland, as set out in Attachment A, to increase the minimum required front and flanking yard setbacks and schedule a public hearing; and
2. Adopt the amendment to the C-2C Zone of the Land Use By-law for Halifax Mainland, as set out in Attachment A.

BACKGROUND

Dutch Village Road is Fairview's main street. New development has been happening in the area, including through the C-2C (Dutch Village Road Mixed-Use) Zone. The C-2C Zone currently does not have a minimum front yard setback requirement, which has created unforeseen problems made evident by recent developments. These problems include difficult design for level landing areas and at building entrances, lack of space for landscaping, and construction problems next to buildings built at the street line.

Proposal Details

Staff are proposing changes to the front yard setbacks in the C-2C Zone, as follows:

- Existing front yard setback – minimum 0 metres, maximum 3 metres
- Proposed front yard and flanking yard setback – minimum 1.5 metres, maximum 3 metres

This change would apply to all future permit applications within the C-2C Zone. The proposed change is in response to direction from Regional Council, other HRM departments, and the public.

Plan Dutch Village Road and the C-2C Zone

The C-2C Zone was created in 2016 through a planning process called Plan Dutch Village Road. This focused redevelopment and commercial uses on Dutch Village Road (Fairview's "Commercial Main Street") and on Joseph Howe Drive. These are major streets, which already have commercial and mixed-use developments. Major objectives of the Plan Dutch Village Road policies are to:

- Generate a more defined commercial node;
- Ensure new development transitions appropriately to low density residential neighbourhoods within the Dutch Village Road study area;
- Create new buildings that are better integrated with the neighbourhood context; and
- Require site design that creates livable and walkable communities.

The intent of the C-2C Zone is to permit a mix of commercial and residential uses to serve the needs of the Fairview area. Mid-rise buildings up to 25 metres are permitted as-of-right. High-rise buildings are allowed on some sites, by development agreement. On some sites, the Commercial Designation permits mid-rise, multi-unit buildings on properties where low-rise buildings were previously permitted. *Currently, the C-2C Zone has no minimum front yard setback – this means buildings can be built up to the front lot line.*

Dutch Village Road Complete Streets Project

A redesigned Dutch Village Road is a priority of the Integrated Mobility Plan (IMP) and is supported by the Active Transportation Priorities Plan (ATPP). HRM staff are working on a detailed design for Dutch Village

Road, based on the Council-approved Dutch Village Road Complete Streets Functional Plan (June 9, 2020¹). This project will improve safety and close the active transportation gaps along the street. It includes:

- a sidewalk on the west side of the street, where there is currently none;
- enhanced, narrower street crossings;
- protected bicycle lanes on both sides of the street;
- safety improvements, like changing perpendicular parking to parallel parking; and
- streetscaping elements, such as benches and trees.

Designers have advised staff the current C-2C setbacks are a concern. Two new buildings at the corner of Rosedale Avenue and Dutch Village Road are being built under the C-2C Zone, with no front yard setback. Residents have objected to these buildings, saying they are too close to the street. Having no front setbacks makes street and sidewalk design challenging, because new sidewalks must be designed to match the exact grade of the new doorway. Even small setbacks create space to compensate for grades, supporting constructability for sidewalks and buildings. If other buildings are built with no front yard setbacks, they will create similar problems.

Cases 23245 and 22816

There are two active planning cases involving the C-2C Zone. Case 22816 is a proposal to review the zoning on Westerwald Street (off Dutch Village Road) and expand the C-2C Zone to allow multi-unit development. Case 23245 is also a proposal to expand the C-2C Zone to allow a multi-unit development on additional lots at the corner of Main Avenue and Titus Street. When Council initiated this case, they directed staff to consider changing the C-2C Zone standards, specifically including minimum front yard setbacks.

While work on Cases 23245 and 22816 continues and will come forward to Council under separate cover, staff has advanced this report on front yard setbacks in the C-2C Zone independent of these projects.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The community engagement was undertaken as part of Case 22816 and Case 23245. It was achieved by:

- providing information and seeking comments through the HRM website;
- posting signs on the subject sites;
- mailing letters to property owners within the notification areas; and
- a survey for Case 22816.

Through engagement for Case 23245 and 22816 some residents have raised concerns about the lack of setbacks for new buildings at the corner of Rosedale Avenue and Dutch Village Road. Similarly, some people responding to the survey for Case 22816 also mentioned these buildings. Concerns about the lack of a front yard setback included:

- Poor visibility at the intersection, making it unsafe for people driving or walking;
- A lack of privacy for residents with balconies close to the street;
- An overwhelming and imposing feeling of buildings when the buildings are as close to the street as they are; and
- A lack of landscaping.

Halifax and West Community Council must hold a public hearing before they can consider approving the proposed LUB amendment. Should Community Council proceed with a public hearing, property owners in

¹ [Dutch Village Road Complete Streets Functional Plan Report](#). June 9, 2020. HRM Regional Council.

the notification area (Map 2) will be notified of the hearing by mail. Newspaper ads will be published and the HRM website will be updated to give notice of the public hearing.

The proposed amendment to increase the C-2C Zone's front and flanking yard setbacks may impact:

- People walking, driving or cycling on or near Dutch Village Road; and
- Business owners and others intending to develop their property.

DISCUSSION

Attachment A contains proposed amendments to the front yard setbacks in the C-2C Zone, as follows:

- Existing front yard setback – minimum 0 metres, maximum 3 metres
- Proposed front yard and flanking yard setback – minimum 1.5 metres, maximum 3 metres

This change would apply to all future permit applications within the C-2C Zone.

Front Yard Setbacks – Challenges

The C-2C Zone currently does not require a front yard setback. The goal was to create a pedestrian friendly main-street environment. Small setbacks help frame the street and contribute to attractive streetscapes, but having no setback requirements are not appropriate for these reasons:

- **Grading and Landing Areas:** setbacks provide space to match the height of building entrances with the height of the adjoining street or sidewalk. Nonexistent or small setbacks make street design difficult and can force designers into sub-par design options. This is particularly important on Dutch Village Road, where there is limited space. Additionally, the Building Code requires level landing areas at building entrances – a setback can provide space for a level landing, without relying on public sidewalks (which may be sloped) as a landing area.
- **Construction:** rebuilding or maintaining streets and sidewalks is much harder to do when it requires excavation next to building foundations. Modest setbacks can reduce this problem. Similarly, constructing and maintaining a building without any setback often necessitates impactful sidewalk encroachments.
- **Landscaping:** setbacks provide space for landscaping.
- **Public Realm:** setbacks provide space for amenities like bike racks, flower boxes, sandwich boards and benches, which are appealing for pedestrians. Ground floor businesses may use a setback for outdoor seating, café space or spill out retail, which animate the public realm.
- **Utility Setbacks:** There are mandatory safety setbacks from power lines. These setbacks may limit the ability to build to the property line, especially above the first floor.

Newer by-laws, including the Regional Centre Land Use By-law (Centre Plan) require minimum front yard setbacks, generally at least 1.5 metres. Existing streets like Quinpool Road have a very tight, urban feel, but many buildings have some setback from the street line. In short, staff advise that a zero-metre front yard setback is not appropriate and unnecessarily constrains the pedestrian realm.

Requiring a front yard setback may make some smaller lots harder to develop. It could impact the cost and feasibility of some developments. However, improving the Dutch Village Road streetscape is a critical Council priority, supported by the Integrated Mobility Plan and Active Transportation Plan. Staff typically no longer recommend zero metre setbacks, even on very tight streets like Portland, Quinpool, Gottingen or Agricola, and advise the need for front yard setbacks strongly outweighs other concerns.

Conclusion

This proposal is consistent with the intent of the MPS and supports the redesign and improvement of Dutch Village Road. Front yard setbacks are needed to manage grade changes between buildings and the street. They also make construction easier, giving designers room to propose ideal solutions for streets and sidewalks, and provide for accessible building entrances. Front yard setbacks provide space for

landscaping, benches, and café space, which improve the public realm. Therefore, staff recommend that the Halifax and West Community Council approve the proposed LUB amendment.

FINANCIAL IMPLICATIONS

There are no financial implications at this time. The HRM cost associated with processing this planning application can be accommodated with the approved 2021-2022 operating budget for C320 Regional Policy Program.

RISK CONSIDERATION

There are no significant risks associated with the recommendations contained within this report. This application may be considered under existing MPS policies. Community Council has the discretion to make decisions that are consistent with the MPS, and such decisions may be appealed to the N.S. Utility and Review Board. Information concerning risks and other implications of adopting the proposed LUB amendment are contained within the Discussion section of this report.

ENVIRONMENTAL IMPLICATIONS

No environmental implications were identified.

ALTERNATIVES

1. Halifax and West Community Council may choose to approve the proposed LUB amendment subject to modifications. Such modifications may require a supplementary report or another public hearing. A decision of Council to approve this proposed LUB amendment is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
2. Halifax and West Community Council may choose to refuse the proposed LUB amendment, and in doing so, must provide reasons why the proposed amendment does not reasonably carry out the intent of the MPS. A decision of Council to refuse the proposed LUB amendment is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.

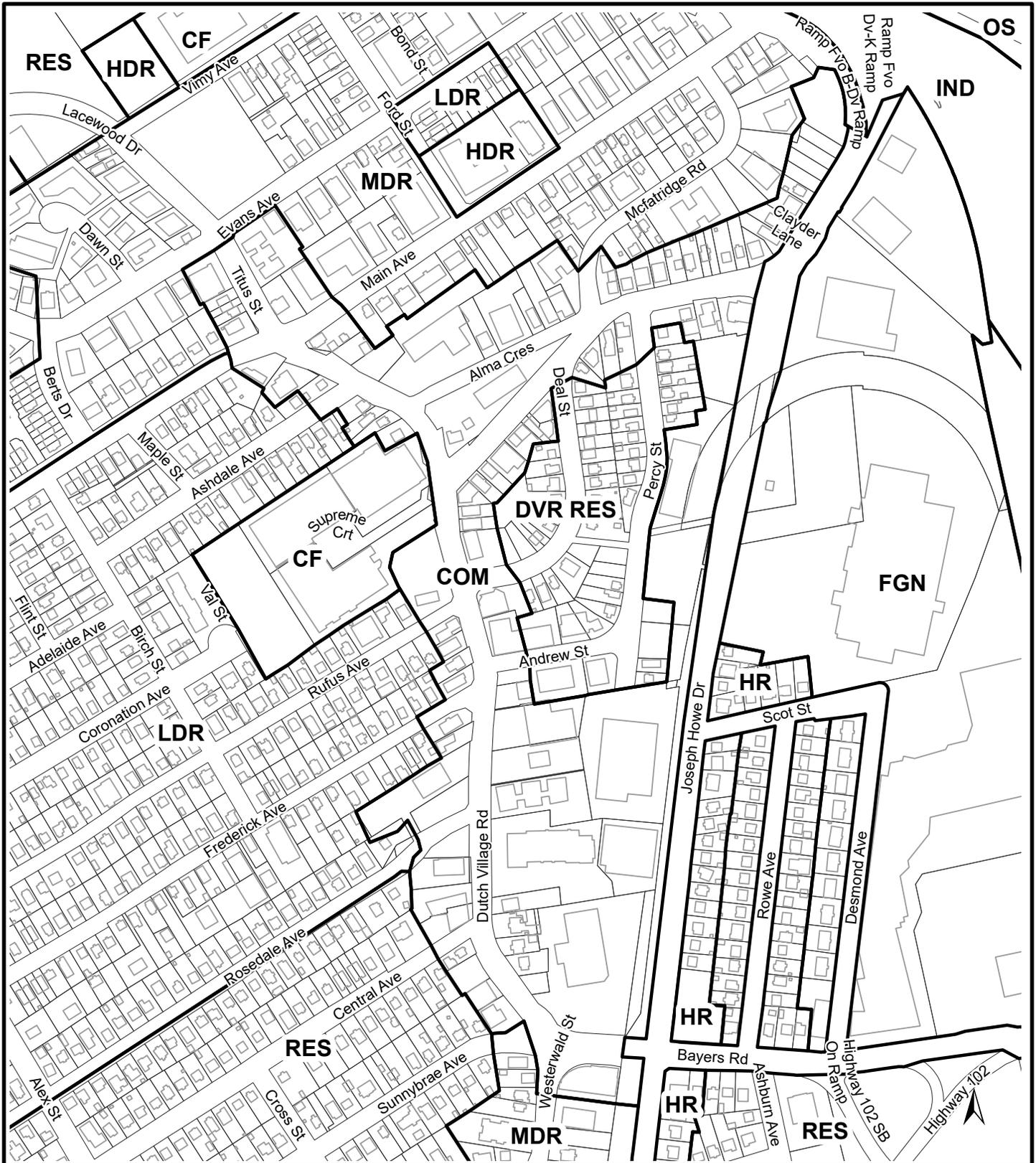
ATTACHMENTS

Map 1: Generalized Future Land Use
Map 2: Zoning and Notification Area

Attachment A: Proposed LUB Amendment

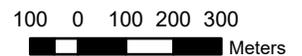
A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Sean Gillis, Planner II, 902.237.3424



Map 1 - Generalized Future Land Use
Halifax

HALIFAX



The accuracy of any representation on this plan is not guaranteed.

ATTACHMENT A

Proposed Amendment to the Land Use By-law for Halifax Mainland

BE IT ENACTED by the Halifax and West Community Council of the Halifax Regional Municipality that the Land Use By-law for Halifax Mainland is hereby further amended as follows:

1. Section 2, Definitions, shall be amended by adding the text shown in bold below immediately following the definition for "Fairview Area":

"Flanking Lot Line" means a street line that is not the front lot line;

"Flanking Yard" means a yard between any exterior wall of the main building and a flanking lot line, but excludes any area of the lot that is a front yard;

2. Section 38BC1 (c) shall be amended by deleting the text shown in strikethrough and adding the text shown in bold:

38BC(1) Buildings erected, altered or used for C-2C uses, in a C-2C Zone shall comply with the following requirements:

- (a) The maximum building depth shall be 25 m;
- (b) Notwithstanding clause 38BC(1) (a), a building may exceed the maximum building depth, provided:
 - (i) the height of the remainder of the building does not exceed 10.5 m;
 - (ii) soft landscaping and amenity space is included on the rooftop of the remainder of the building;
 - (iii) the building maintains side and rear yard setbacks of 3 m for all portions of the building that exceed the maximum building depth; and
 - (iv) the land is shown on ZM-29, Plan Dutch Village Road Buildings May Exceed Maximum Building Depth.
- (c) ~~The maximum front yard setback shall be 3 metres;~~ **The minimum front yard and flanking yard setbacks shall be 1.5 metres and the maximum front yard and flanking yard setbacks shall be 3 metres;**
- (d) Notwithstanding clause 38BC(3) (c), the lands shown on ZM-30, Plan Dutch Village Road Area Exempt from Front Yard Setback Map shall be exempt from the maximum front yard setback requirement;
- (e) The maximum streetwall height shall be as shown on ZM-31, Plan Dutch Village Road Street Wall Height Map. The streetwall height shall not exceed the height shown in metres and shall not exceed the number of storeys, excluding rooftop architectural features, landscape elements and mechanical penthouses and equipment. (RC-Jul 07/20;E-Aug 22/20);
- (f) The building shall be stepped back 3 m on all sides of the building for all portions of the building above the streetwall height;
- (g) The building shall be setback 5m from the side yards above the streetwall height; and
- (h) The streetwall shall extend a minimum of 65 percent of the lot frontage. Where located on a corner lot, the streetwall shall extend 65% of the lot frontage for both streets;

I, Iain MacLean, Municipal Clerk for the Halifax Regional Municipality, hereby certify that the above-noted by-law was passed at a meeting of the [INSERT COUNCIL NAME] held on [DATE], 201[#].

Iain MacLean
Municipal Clerk