



P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Item No. 15.1.9
Halifax Regional Council
March 5, 2024

TO: Mayor Savage and Members of Halifax Regional Council

Original Signed

SUBMITTED BY:

Cathie O'Toole, Chief Administrative Officer

DATE: February 14, 2024

SUBJECT: Demo Regulations – Building Permits

ORIGIN

August 22, 2023 Regional Council, item 15.8.2, That Halifax Regional Council direct the Chief Administrative Officer (CAO) to provide a staff report regarding disallowed demolition under normal circumstances until a building permit has been issued, and the establishment of an empty lot tax. Motion put and passed.

LEGISLATIVE AUTHORITY

Building Code Act, RS 1989, c 46, ss 7(1) & 9(1):

7 (1) The council of the municipality may pass by-laws not inconsistent with this Act or the regulations made by the Minister,

(a) prescribing permits or classes of permits for the purpose of this Act and the regulations including permits in respect of construction or demolition or any stage thereof, and for occupancy and change of occupancy of a building;

(b) providing for applications for permits and requiring the applications to be accompanied by such plans, specifications, documents and other information as is prescribed;

(c) requiring the payment of fees on applications for and issuance of permits and prescribing the amounts thereof;

(d) providing for the refunding of fees under such circumstances as are prescribed;

(e) providing for the inspection of construction or demolition;

(f) prescribing the time within which notices required by the regulations must be given to an [a] building official;

(g) prescribing an expiry date for construction or demolition permits.

9 (1) The building official shall issue a permit pursuant to Section 8 except where,

(a) the proposed building or the proposed construction or demolition will not comply with an Act or a regulation or by-law made pursuant to this Act or Parts VIII or IX of the Municipal Government Act; or

(b) the application therefor is incomplete or any fees due are unpaid.

RECOMMENDATION

That Halifax Regional Council take no further action with respect to pursuing an amendment to the Nova Scotia Building Code Act regarding demolition regulation at this time.

BACKGROUND

During the discussion at the August 22, 2023 meeting of Regional Council, it was noted that vacancy is at an all time low, and there have been examples of existing properties being demolished and the lots left undeveloped, sometimes for many years.

Requiring developers to have a building permit issued prior to being allowed to apply for a demolition permit may help close the gap between demolition and construction and reduce the time the land sits idle.

It was also noted that an empty lot tax may provide an additional incentive to move quickly to develop empty lots.

DISCUSSION

This report deals with the first part of the motion, regarding the ability to deny a Demolition permit until a Building Permit is issued. The ability to levy an empty lot tax is dealt with in a separate report.

Provided the permit application is complete and the proposal complies with all applicable sections of the Building Code, the Building Bylaw, the *Building Code Act*, and the Regulations, the Building Official does not have the authority to refuse to issue a demolition permit until the applicant requests a permit for a replacement structure. When issuing building permits, HRM is exercising a statutory authority from the *Building Code Act* directly, and the Building Official only has the authority provided by that Act.

Section 9(1) of the *Building Code Act* provides that a Building Official must issue a permit (which includes a demolition permit) unless certain grounds are satisfied. The grounds for refusal are set out in the *Building Code Act*, the Regulations to the *Building Code Act*, and HRM's *Building Bylaw*, none of which can be used to refuse a demolition permit where the property owner intends to leave the property vacant or install a less intense use after demolition. In brief, the grounds outlined in the Act and regulations are:

- *Building Code Noncompliance;*
- *Building Bylaw Noncompliance;*
- *Zoning and Subdivision Bylaw Noncompliance;*
- *Failure to Comply with a Development Agreement or Lot Grading Plan;*
- *Failure to Obtain a Development Permit;*
- *Non-Payment of Fees;*
- *Failure to Obtain Required Septic Approvals;*
- *Failure to Obtain an Access Permit; and,*

- *Failure to Comply with the Heritage Property Act.*

The Act does **not** enable HRM to supplement the grounds for refusal.

More specifically, HRM lacks the authority to use the Building Bylaw to supplement the grounds for refusal of a demolition permit. HRM is empowered to pass a building bylaw by section 7(1) of the *Building Code Act*. In general terms, section 7(1) allows HRM to establish the procedure for building permit applications: it can create different classes of permits, regulate the application process, set fees, and require building inspections. However, section 7(1) does not allow HRM to create new grounds for the refusal of permits. Although HRM's Building Bylaw contains a section outlining the grounds for refusal, the grounds technically derive their legal force from the *Building Code Act*, and the Building Bylaw restates them.

In summary, HRM does not currently have the authority to withhold demolition permits for land that would be left vacant because the statutory grounds for refusal are not broad enough *and* HRM does not currently have the authority under the *Building Code Act* to supplement them.

In preparing this report, staff analysed Demolition Permits issued in the last five years in the current communities of Halifax and Dartmouth. There have been 163 demolition permits issued for main dwellings, and in 90% of the cases the buildings have been replaced. However, in the cases where the main building has not been replaced, it is not uncommon for the property to remain vacant for several years and refusing demolition permits on these properties will force property owners to keep buildings they do not want. Based on experience in other jurisdictions, unwanted buildings can be expected to fall into a state of disrepair, below minimum standards, and eventually become vacated. This in turns creates a strong likelihood that property owners will litigate, particularly if the property is owned by a developer for holding purposes, and HRM could find itself arguing why a vacant or derelict building should not be demolished.

Proposed amendments to the Regional Plan, pursuant to the Housing Accelerator Fund, will allow more density in established residential neighbourhoods in the Regional Centre. It is not known what impact these amendments will have on the rate of demolition and consolidation in existing neighbourhoods, as neighbourhoods transition from low density 1 -,2- and 3-unit buildings to include more townhouse and low-rise apartment buildings. As mentioned above, HRM is exercising a statutory authority that deals with matters related to protecting the life and safety of our residents, and staff suggest that this is not an area of regulation that is well suited to addressing land use policy concerns.

FINANCIAL IMPLICATIONS

None at this time.

COMMUNITY ENGAGEMENT

Not Applicable.

ALTERNATIVES

Regional Council may decide to direct the Mayor to request an amendment to the Nova Scotia Building Code Act that would allow the Municipality to withhold a Demolition Permit for a residential building until a building permit for a replacement building is issued. 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.

Report Prepared by: Peter Duncan, Director Engineering & Building Standards/Planning & Development, 902.489.4634
