

# Request for Decision



**To:** Peter de Verteuil, CAO **File No:** Bylaw No. 3166  
**Meeting Date:** October 2, 2017 Committee of the Whole Meeting  
**From:** Michelle Geneau  
**Re:** Zoning Bylaw No. 3166, 2017 – Public Hearing comments

## **RECOMMENDATION:**

**That the Committee of the Whole direct staff to make the following changes to Zoning Bylaw No. 3166, 2017, as recommended in the staff report:**

- 1. Revise the setbacks for detached secondary suites;**
- 2. Specify that the maximum permitted number of fabric covered structures is one (1);**
- 3. Add “recreational vehicle” in addition to the total number of motor vehicles and watercraft that may be parked or stored on a low density residential property;**
- 4. Regulate the location of “mechanical equipment” instead of only heat pumps, and add a definition for “mechanical equipment” which includes heat pumps, air conditioners, generators, and other similar equipment;**
- 5. Prohibit the installation of mechanical equipment in front yards;**
- 6. Change the heading “Conditions of Use Regulations” in the Low Density, Medium Density and High Density Residential Zones to “Conditions of Use and Subdivision Regulations”**
- 7. Add “Except as otherwise permitted in this bylaw” to the beginning of section 3.13.1 Projections into Yards;**
- 8. Remove the incorrect text stating “four storeys” next to “High Density Residential” in the legend of the Zoning Map.**

**And that the Committee of the Whole direct staff to hold a Public Hearing for the Zoning Bylaw on October 16, 2017 and to advertise for the Public Hearing in accordance with the Local Government Act.**

## **BACKGROUND:**

At the Public Hearing for Zoning Bylaw No. 3166, 2017, held on Monday, September 18<sup>th</sup>, 2017, comments and suggestions for the new Zoning Bylaw were provided by three members of the public. Councillor Jackson provided some additional comments and questions on the bylaw by email prior to the Public Hearing.

At the Council Meeting following the Public Hearing, Council deferred third reading of the bylaw to the October 16<sup>th</sup> Council Meeting and directed staff to provide a report on the public feedback for the October 2<sup>nd</sup> Committee of the Whole Meeting.

In the analysis section the public feedback is noted and discussed, and in some cases options for potential changes to the bylaw are provided. Recommended changes are listed in the staff recommendation and noted in the options in the Analysis section.

## **ANALYSIS:**

### **1. Detached Secondary Suites**

Concern was expressed about the impacts of shading from buildings on neighbouring yards with the proposed maximum height and minimum setbacks for detached secondary suites. The new Zoning

Bylaw permits detached secondary suites in the Low Density Zone, up to 90 m<sup>2</sup> or 60% of the habitable gross floor area of the single family dwelling.

The proposed bylaw contains the following regulations for accessory buildings:

Accessory Building		Regulation
Maximum Height		5 m
		6 m for <i>buildings</i> with a flat roof where a <i>detached secondary suite</i> is located in the second storey.
		7.5 m for <i>buildings</i> with a roof pitch 8:12 or greater, if a <i>detached secondary suite</i> is located in the second storey.
Minimum Parcel Line Setback	Front	6 m
	Rear	1.2 m
	Side, Interior	1.2 m
	Side, Exterior	3 m

The existing bylaw permits detached secondary suites up to 60 m<sup>2</sup> or 40% of the gross floor area of the single family dwelling. The following regulations are currently in place:

Accessory Building		Regulation
Maximum Height		4 m
Minimum Parcel Line Setback	Front	12 m
	Rear	3 m
	Side, Interior	1.5 m
	Side, Exterior	4.5 m

The maximum height and setbacks for the principal building in the proposed Low Density Residential Zone and current R-1 Urban Residential Zone are also provided below for information:

PROPOSED BYLAW		
Principal Building		Regulation
Maximum Height		7.5 m For <i>buildings</i> with a roof pitch less than 6:12
		8.25 m For <i>buildings</i> with a roof pitch 6:12 to 8:12
		9 m For <i>buildings</i> with a roof pitch 8:12 or greater
Minimum Parcel Line Setback	Front	4 m
	Rear	6 m
	Side, Interior	1.5 m, except that where the <i>dwelling units</i> in a <i>two-unit rowhouse</i> are separated by a <i>party wall</i> .
	Side, Exterior	3 m
Minimum Garage Setback		6 m where the garage door attached to a <i>single-unit</i> or <i>two-unit dwelling</i> is facing a <i>highway</i> .
EXISTING BYLAW		
Principal Building		Regulation
Maximum Height		7.5 m
Minimum Parcel Line Setback	Front	7.5 m
	Rear	7.5 m
	Side, Interior	1.5 m
	Side, Exterior	4.5 m

A scan of other zoning bylaws around BC found that 7.5 m is a common permitted height for a two-storey detached suite or a suite located above a detached garage. Some municipalities only permit single storey detached suites. The permitted setbacks for detached suites varied greatly amongst municipalities, from 0.6 m to 3 m for the minimum interior side setback, and 0.6 m to 5 m for the minimum rear setback.

The Municipality of North Cowichan requires a 2 m setback for the ground floor of a detached secondary suite and a 3 m setback for the second storey. North Cowichan also regulates eave height in addition to maximum building height, and permits a maximum eavesline height of 5.5 m for coach houses.

The Town of Ladysmith permits a maximum height for two storey detached suites to be between 5.7m and 6.6 m, depending on roof pitch, and has setbacks requirements of 3 m for both the side and rear. Detached secondary suites in Ladysmith require a Development Permit under the Coach House Intensive Residential Development Permit Area; DPA guideline categories include building character and design, accessibility and livability, landscaping, energy conservation and rain water management.

**OPTIONS:**

- a. Leave the minimum setbacks and maximum height as proposed; and/or
- b. *Increase the minimum setbacks; (Increasing the setbacks could eliminate some of the potential shading issues – **recommended** – as suggested in the letter, a shading study of alternative setbacks could aid staff in determining new recommended setbacks)*
- c. *Decrease the maximum height. (Decreasing the maximum height would require property owners who want to build a two-storey suite to apply for a Development Variance Permit.)*

**2. Fabric Covered Structures**

There was concern that “temporary storage purposes” was not defined and that there was no time period for the storage of other “things”. While the definition for fabric covered structures includes the term “temporary storage purposes” (an undefined term), subsection 3.6.3(d) states “fabric covered structures on a residential property are only permitted from November 1<sup>st</sup> to March 1<sup>st</sup> for the purpose of storing motor vehicles or recreational vehicles and where a setback of 3 m or greater is provided between the principal building and a side parcel line;”. Staff interpret this to mean that fabric covered structures are not permitted for the storage of items other than motor vehicles or recreational vehicles, and that structures are not permitted at other times of the year.

There was also concern that the bylaw does not contain a height limit. The maximum area is limited to 23 m<sup>2</sup>, and from a preliminary search for fabric covered structures, it appears that typical vehicle shelters do not exceed 4 m in height, which is shorter than the proposed maximum accessory building height. No bylaw examples were found to limit fabric covered structure height, only area.

**OPTIONS:**

- a. Leave the currently proposed regulations;
- b. Add a maximum height for fabric covered structures; and/or
- c. Add a maximum number of fabric covered structures (**recommended - one**).

**3. Storage of Recreational Vehicles**

It was noted that the existing Zoning Bylaw does not permit the storage of recreational vehicles over a certain size on residential properties, but that the proposed bylaw does not specify a size for these items.

From the existing bylaw:

**5.7 Storage of Heavy or Oversize Equipment/Vehicles**

No provision shall be made for the storage of the following types of equipment or vehicles on any residentially zoned parcel:

- (i) commercial vehicles in excess of 4086 kilograms (9,000 lbs.) gross vehicle weight;
- (ii) **recreation** vehicles in excess of 5443.20 kilograms (12,000 lbs.) gross vehicle weight;
- (iii) sailing vessels or pleasure motor craft in excess of 10.0 m in length;
- (iv) **commercial vehicles in excess of 6.0 m in length;**
- (v) industrial, construction or logging equipment;
- (vi) more than two commercial vehicles each having a gross vehicle weight of less than 4086 kilograms (9,000 lbs.).

From the proposed bylaw:

**3.35 Commercial and Stored Vehicles**

3.35.1 Residentially-zoned land must not be used for parking, storing or repairing a *commercial vehicle* which has, or at any time has had, a licensed gross vehicle weight greater than 8,500 kg, as indicated on a present or past *commercial vehicle* registration.

3.35.2 Parking or storage of *motor vehicles* for a *single-unit dwelling* must not exceed a combined total of four (4) *motor vehicles* or *watercraft*, and parking or storage of *motor vehicles* for a *two-unit dwelling* must not exceed a combined total of six (6) *motor vehicles* or *watercraft*.

In the new bylaw the total number of motor vehicles and watercraft that can be stored on a property is limited rather than the size.

OPTIONS:

- a. Leave the currently proposed regulations;
- b. Add “recreational vehicle” to 3.35.2 (**recommended**); and/or
- c. Reintroduce restrictions to the size of watercraft, recreational vehicles and commercial vehicles, similar to the existing bylaw (*additional research may be required to determine appropriate weight or length restrictions*).

**4. Heat Pumps**

It was suggested that heat pump siting regulations also apply to air conditioners and generators. Several other local governments use a term such as “mechanical equipment” to regulate all utility devices that create external noise, including heat pumps, air conditioning, refrigeration units and permanent generators. “Mechanical equipment” is used elsewhere in the proposed bylaw, but not defined. Some local governments regulate heat pump location only, some also include air conditioning units, and some also include generators.

It was stated that heat pumps should not be permitted in front yards. The proposed bylaw permits heat pumps in the front, exterior side or rear of a building, and within an interior side yard if it is a minimum of 4 m from the parcel line. Subsection 3.14.3 states “Where a heat pump is located at the front of a *building* it must be screened from view by *landscaping* or decorative *fence* enclosure not exceeding the maximum *fence height* within a *front yard*.” None of the bylaw examples used for comparison permit heat pumps within a front yard.

**OPTIONS:**

- a. Leave the currently proposed regulations for heat pumps and their siting;
- b. Change the term to “mechanical equipment” and provide a definition (**recommended**);
- c. Add “air conditioners” and “generators”; and/or
- d. Prohibit heat pumps and/or other mechanical equipment in front yards (**recommended**).

**5. Subdivision Regulations for Residential Zones**

It was pointed out the Low Density, Medium Density and High Density Residential Zones contain “Conditions of Use Regulations” but do not contain “Subdivision Regulations” like the other zones. The proposed sections contain regulations that would apply to subdivision, such as minimum parcel area and minimum parcel frontage, so would implicitly apply to subdivision as well. However, it would be a simple change to add “Subdivision” to the section heading and would ensure this is clear.

**OPTIONS:**

- a. Leave the currently proposed section title;
- b. Change the section title to include “Subdivision Regulations” (**recommended**).

**6. Additional Setback Requirements for Storage and Structures**

It was noted that the Low Density Residential Zone in the proposed bylaw only contains setback regulations for principal buildings and accessory buildings (in addition to regulations for heat pumps and parking space locations), and that “there are no setback regulations for any other structures that may be on the property”.

Section 3.13 Projections into Yards (for all zones) contains the following regulations:

3.13.1 The minimum *parcel line setbacks* in Parts 4 to 6 of this bylaw do not apply to wheelchair ramps or, to the extent indicated, to the following features:

Feature	Maximum Permitted Projection
Eave, exterior finish, <i>green wall</i> , gutter, cornice, sunlight control projection	0.6 m
Chimney	0.75 m
Steps and landing	2 m
<i>Porch</i>	2 m into a <i>front</i> or <i>exterior side yard</i> only
<i>Open Deck</i>	2 m into a <i>rear yard</i> only

3.13.2 Rainwater harvesting *structures*, equipment and apparatus, including rain barrels and cisterns, that do not require a Building Permit may be sited within the required *parcel line setbacks*.

This section does not contain additional regulations that state that no other features or structures may be located within the setback areas. The commenter suggested that it is common for other zoning bylaws to include regulations such as:

"No building, structure, feature or portion thereof shall be developed, used, occupied, constructed, erected, modified, converted, enlarged, reconstructed, altered, placed, maintained or added to within any required yard except as follows, provided that they meet the provisions of the Building Code"; or

"YARD - means an open space on a lot unoccupied and unobstructed by any building or structure, except as otherwise provided for in this Bylaw. For the purposes of this definition a fence is not considered a structure".

The currently proposed definitions for yards (there are separate definitions for front, rear, exterior side and interior side) only specify "the area of a lot between a parcel line and the principal building". The commenter also suggested that required yards are "intended to facilitate passage and access around buildings for firefighting, maintenance, air and light". The Building Inspector has confirmed that setback areas in yards are not required for firefighting purposes. However, the bylaw does not specify that fences or other landscape features may be located within required setbacks. Several bylaw examples include fences and other structures or features not currently listed in 3.13.1. Some bylaws contain a separate regulation stating that no building, structure or feature is permitted within setbacks, and some merely include a precursor to their list of exempted features, such as "except as otherwise permitted in the bylaw...".

It may become difficult to start regulating additional types of structures. The currently proposed definition for structure is fairly broad: "means anything constructed, placed, or erected on land, including *retaining walls* greater than 1.2 m in *height*". To regulate additional impactful structures within require setback areas the definition for structures may need to be modified and/or additional feature exceptions would need to included in the table in subsection 3.13.1.

OPTIONS:

- a. Leave the currently proposed setback exceptions;
- b. Add to the beginning of subsection 3.13.1 in the Projections into Yards section "Except as otherwise permtted in this bylaw" (**recommended**);
- c. Add a regulation to section 3.13 Projections into Yards (*i.e.* "All required setback areas must be kept free of buildings and structures, excluding permitted projections");
- d. Add additional feature exceptions to subsection 3.13.1 (*i.e.* "children's play equipment", "landscape buffers, fences, retaining walls, trellises or other landscape features", "swimming pools" and "clothesline poles" – **recommended**); and/or
- e. Revise the definition of structures.

## 7. Floor Area Ratio for the Low Density Residential Zone

It was suggested that floor area ratio be used to regulate density within the Low Density Residential Zone, to create more flexibility with respect to the size of the unit. An example was provided that a person with disabilities would be able to build a single storey home with the same floor area as a two storey home, otherwise they would be limited to half the floor area as everyone else because they could only build to the maximum parcel coverage.

The proposed bylaw contains a maximum parcel coverage of 35%. The existing bylaw also contains a 35% maximum parcel coverage, and also has a floor area ratio of 0.5. A maximum parcel coverage of 35% of the minimum lot size of 400 m<sup>2</sup> would permit a floor area of up to 140 m<sup>2</sup> (1500 ft<sup>2</sup>), and many low density lots in Duncan are larger than 400 m<sup>2</sup>. Therefore, if the same maximum parcel coverage was kept and floor area ratio was added, it would more likely have the effect of limiting the size of two storey dwellings and two unit dwellings. Six of the fifteen sample bylaws reviewed (40%) applied floor area ratio in single family zones. Some of these bylaws also had different maximum parcel coverage amounts depending on whether the dwelling was a single storey or two storey building. If floor area ratio is added, the maximum parcel coverage amount should also be reconsidered and possibly revised.

OPTIONS:

- a. Leave the currently proposed Low Density Residential Zone regulations (**recommended**);
- b. Add floor area ratio regulations; and/or
- c. Revise the maximum parcel coverage.

## **8. Additional Setback Map**

It was asked whether the additional 2 m setback to public roads shown in Figure 3.15.1 (Evans Street, Boundary Street, Jubilee Street south of Evans Street, and Kenneth Street) would apply to front *and* exterior side setbacks. The presentation slide said ‘*and*’ while the bylaw says ‘*or*’. On a corner parcel which abuts two streets shown in the map, the additional setback would apply to both the front setback and exterior side setback. On a corner parcel where only one of the frontages abuts a street shown in the map, the additional setback requirement would only apply to that frontage. The Downtown Development Permit Area (DPA) Guidelines state that a minimum of 75% of a building’s principal or front façade must be between 2 and 2.5 m from the property line and most of the building should be near the street edge. The C-1 Zone in the existing bylaw has 0 m setbacks on all sides, and the new bylaw proposes 1 m front and exterior side setbacks for Downtown other than Craig Street. The additional setback area will ensure that sidewalk widening and other streetscape improvements are possible where required.

## **9. Below Grade Parking Requirements**

Information was requested on whether all properties in the downtown core will require 50% of the parking requirements to be below grade. At the Public Hearing staff explained that this is correct, and provided the rationale that currently parking in the downtown area is exempt entirely and the City is trying to transition to the highest and best use of the land now that seven years of studying the ground water in this area has determined that underground parking is feasible. Note that where a developer believes site conditions are not conducive to underground parking, they would be permitted to apply to council for a variance and make their case.

## **10. Shared Access to Parking**

Clarification was requested on the restriction for downtown properties to share driveway access if the property frontage is less than 40 m (figure 3.28.5 in the proposed bylaw). At the Public Hearing, staff explained that the purpose for this restriction is to reduce the number of vehicle sidewalk crossings for vehicles in the downtown core area to improve aesthetics and pedestrian safety.

## **11. Parking requirements and minimum height in the Downtown Comprehensive Zone**

It was asked whether below grade parking would be required for a single storey commercial development in the downtown core. Staff explained that in the downtown parking exempt area, the ground floor will remain exempted from providing parking, but that the new minimum height for new development will be two storeys. Confirmation was requested of the fees for cash-in-lieu of parking, which are \$8,000 per required surface parking space and \$25,000 per required below grade parking space.

The commenter expressed concern that the cost of constructing underground parking and the minimum height requirements are cost prohibitive for local property owners, and he felt that the cash-in-lieu of parking fees were reasonable until he noticed that the minimum height requirements were proposed that will require a second storey, and require parking for the second storey and above. The intent behind the minimum height is to prevent the underdevelopment of prime lots in the downtown, and property owners can apply for a variance or zoning amendment.

## **12. Communication on the bylaw**

It was stated that communication should have been sent out to property owners in the downtown, to inform them that the bylaw was being considered and to ask for input. Staff clarified that the information on the Zoning Bylaw was provided in/on:

- the City's newsletter
- the City website
- Facebook
- PlaceSpeak
- notice of the open houses was provided in the Cowichan Valley Citizen,
- notice of the third Open House was distributed to the DDBIA and Chamber of Commerce.

When asked about the newsletter distribution, staff explained that the newsletter is distributed to addresses within the City and that the boundaries of the distribution routes are over 90% contiguous with the boundaries of the City.

The notification for the public hearing met provincial requirements by publishing on two dates in the newspaper. Notice to affected property owners is not required if the bylaw affects ten or more parcels owned by ten or more persons. Direct mail to all property owners and occupiers would be very costly (est. \$3,000) and would involve many more hours of staff resources.

The city is always looking to improve our outreach, which is why the city issues newsletters, updated its website, utilized Placespeak, and communicates regularly with the BIA. Staff have learned that the BIAs mailing list only includes business owners, and thus does not include those that are strictly property owners. Staff will be discussing opportunities for the BIA to include property owners on their email distribution lists. Ultimately property owners are responsible for keeping themselves informed about city initiatives.

## **13. Rezoning of two downtown lots from C-3 to Downtown Comprehensive**

It was asked why two downtown lots are being rezoned from C-3 Service Commercial to the new Downtown Comprehensive Zone in the proposed bylaw. Staff explained that some of the C-3 Zone permitted uses, such as motor vehicle repair and gas stations, are no longer considered appropriate in the downtown core, but that the Downtown Comprehensive Zone will permit some additional uses that were not previously permitted on those parcels. Staff also commented that the intention in the downtown area is to provide for additional density through the floor area ratio regulations and to encourage full utilization of lots. In some cases that may mean small lots with limited development potential may require consolidation or partnerships with neighbouring lots to facilitate development, or variances where necessary.

## **14. Height in the High Density Residential Zone**

It was pointed out that there is a discrepancy between the number of storeys permitted in the High Density Residential Zone (five storeys) and the text in the Zoning Map (four storeys). There is a mistake on the map legend, and the notation of four storeys next to the High Density Residential title will be removed.

*The following comments and questions were received from Councillor Jackson via email.*

## **15. Regulations for utility uses**

It was asked what is included in the proposed bylaw to regulate utility services, and why the new Fortis station on Jubilee Street was permitted in a high density residential zone.

Like the existing Zoning Bylaw, the new bylaw permits utility uses in each zone. The Province regulates public utilities and may order a local government to permit them, even on public thoroughfares or public property. The new bylaw includes landscaping and screening



requirements for “land zoned commercial, or zoned to permit multi-unit dwellings or institutional use, or for parcels with a *utility use*”, whereas the existing Landscaping and Screening Bylaw did not include utility uses. Fortis could have developed the lot in any manner they wanted, and was cooperative in responding to staff requests for lot layout, fencing and landscaping. If the lot was within a form and character or revitalization Development Permit Area, the City may have been able to make additional requests to meet the guidelines, but the Multi-Family Development Permit Area only applies to multi-unit residential development. Amendments to the DP guidelines to include regulations for utilities could be considered separately in the future but the City may have limited ability to implement them for utility providers.

## **16. Solar collectors**

It was asked why solar collectors are not permitted in front yards. Solar collectors may be quite large and are proposed to be prohibited from front or exterior side yards so that they are placed in less conspicuous areas of a yard. This regulation will also protect them from potential damage or theft.

## **17. Artificial lighting of urban gardens**

Clarification was asked on why artificial lighting is not permitted in urban food gardens, under subsection 3.7.1(c), and whether this meant lighting at night. The regulation refers to artificial grow lighting, which, if used at night in a greenhouse for instance, would likely cause glare to spill over to neighbouring properties or windows of neighbouring residential buildings.

## **18. Third Street riparian area**

It was mentioned that the bylaw does not mention the (west) end of Third Street being a riparian area. Several properties at the west end of Third Street, Lukaitis Lane and White Road are included in the Natural Environment Riparian Area Development Permit Area within the Official Community Plan, and must acquire a Development Permit and meet the guidelines prior to modification of the land or development on the land. Additional regulations are not required in the Zoning Bylaw, and the existing bylaw does not have additional regulations for riparian areas.

## **19. General Repair Service**

It was asked whether “general repair service”, a permitted use in the proposed Downtown Comprehensive Zone, will permit the motorcycle parts store on Jubilee Street which received a Temporary Use Permit to allow its current operation.

The business was not considered permissible in the existing C-1 General Commercial Zone because the permitted use “retail and wholesale sale of motor vehicle parts and accessories” is listed in the C-3 Service Commercial Zone. Therefore either a zoning amendment or temporary use permit was required.

The proposed bylaw contains the following definitions:

***Repair Service, Automotive*** means the use of land, buildings or structures for repair of automobiles and recreational vehicles and may include accessory retail sales of parts and accessories, but specifically excludes body repair and painting.

***Repair Service, General*** means the use of land, buildings or structures for the repair of household items, small motors, electrical devices, and computers and may include accessory retail sales of parts and accessories.

**Retail &  
Personal  
Service**

means the use of land, buildings or structures for the retail sale or rental of goods, foods, or wares, the provision of services to the person or personal goods of a customer, but specifically excludes Pawn Shops and Marijuana Operations.

“Automotive repair service” will be permitted in the Neighbourhood Commercial and Highway Corridor Commercial Zones, and not in the Downtown Comprehensive Zone (other than one location on Duncan Street), however, the existing business on Jubilee Street does not include repairs, only sales of parts. As the sale of automotive parts only is not listed as a separate use in other zones, it will be considered part of a general “retail and personal service” use in the new bylaw and therefore permitted downtown.

**IMPLICATIONS:**

**Financial:** n/a

\_\_\_\_\_  
DOF Signature

**Policy/Legislation:** The currently proposed changes to the bylaw are minor in nature and will not change the uses or density in the bylaw and therefore will not require re-reading of first and second readings or a new Public Hearing. However, Council may still want to hold another Public Hearing to provide the public an opportunity to comment on the bylaw and proposed changes.

**Strategic Priority:** n/a

**Sustainability:** n/a

**Communication:** n/a

**Staffing Implications:** n/a

**ALTERNATE RECOMMENDATION**

**That the Committee of the Whole recommend alternative or additional changes to Zoning Bylaw No. 3166, 2017.**

**ATTACHMENTS:**

Attachment A: Zoning Bylaw No. 3166, 2017  
Attachment B: Public Hearing Minutes and letter

Respectfully submitted,



\_\_\_\_\_  
Michelle Geneau, Manager of Planning



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Reviewed by Director of Public Works & Development Services

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Reviewed by the CAO