
Request for Decision



To: Peter de Verteuil, CAO **File No:** 3900
Meeting Date: January 8, 2018 **Submission Date:** January 3, 2018
From: Michelle Geneau, Manager of Planning
Reviewed By:
Subject: Zoning Bylaw No. 3166

RECOMMENDATIONS:

1. **That the Committee of the Whole approve the proposed wording to amend Zoning Bylaw No. 3166, 2017, to include a site specific amendment to include automobile sales for 439 and 461 Trans Canada Highway;**
And That the Committee of the Whole direct staff to hold a Public Hearing for Zoning Bylaw No. 3166, 2017, on February 19, 2018 and to advertise for the Public Hearing in accordance with Part 14 of the *Local Government Act*.
2. **That the Committee of the Whole provide direction to staff on single unit dwelling use in the proposed Medium Density and High Density Residential Zones, based on the options provided in the January 8, 2018 report by the Manager of Planning.**
3. **That the Committee of the Whole direct staff to review and reduce the proposed Minimum Floor Area Ratio regulations in all of the zones in which they apply, based on the information in the January 8, 2017 report by the Manager of Planning.**

BACKGROUND:

At the November 27, 2017 Council Meeting, following the Public Hearing held the same evening, Council passed the following motions:

That Council defer consideration of third reading to Zoning Bylaw No. 3166, 2017 - a bylaw to regulate the use of land; buildings and structures; require off-street parking and loading spaces; and establish standards for the provision of landscaping and screening.

and:

That Zoning Bylaw No. 3166, 2017 be amended at second reading to provide site specific exemptions to permit automobile sales at 439 and 461 Trans Canada Highway.

Council's resolution was in response to submissions at the Public Hearing from the owner of the properties containing the two existing car dealerships located on the Trans Canada Highway, and statements from other individuals supporting his request to add automobile sales as a permitted use for his properties.

This report provides information on automobile sales use, as well as non-conformance of existing single family dwellings in multi-family residential zones, another item that was discussed at the public hearing. Density regulation through minimum Floor Area Ratio requirements is also discussed.

ANALYSIS:

Automobile Sales

The new Zoning Bylaw as previously presented to Council did not include car dealerships (or automobile/ motor vehicle sales) as a permitted use in the Highway Corridor Commercial Zone. The existing Zoning Bylaw allows the following uses:

- (1) motor vehicle sales, rental, servicing and repair; service station, excluding autowrecking and storage of wrecked vehicles;
- (2) retail and wholesale sale of motor vehicle parts and accessories;

Automotive sales was not originally included in the new Highway Corridor Commercial Zone because the Official Community Plan (OCP) and the University Village Local Area Plan (UVLAP) (added as an Appendix to the OCP in 2015) support denser land use along the highway corridor and development located closer to the highway. Policy Area 5 (PA-5) – Highway Commercial in the UVLAP includes the following policies:

- Preferred Building Typologies: Ground floor commercial/retail, office space above ground floors, mixed use development with residential units above ground floors.
- Parking areas for all new developments shall be to the rear of buildings.
- Buildings shall be massed along and located at the building setback for the highway corridor.
- Vehicle access to and from the TCH shall not be permitted unless there are no other options (side street, laneway, shared access agreement).

The OCP's Highway Corridor Commercial Development Permit Area also includes guidelines that support building siting close to the highway and improving the appearance of commercial properties from the highway. The guidelines specifically state that when car dealerships redevelop the building shall be brought forward and a maximum of one row of vehicles displayed along the frontage.

Staff's aim was to encourage development that met OCP policies, but not to negatively impact existing businesses. The owner of the two existing car dealerships and several of his supporters presented at the November 27th Public Hearing that not allowing the existing use would hinder the future business operations and requested a site-specific exemption for automobile sales.

Division 13 of Part 14 of the *Local Government Act* contains provisions for non-conforming uses. Section 528 states that a particular use of land, buildings or structures that exists at the time of the adoption of a bylaw may continue as a non-conforming use. If the use is discontinued for a continuous period of six months, any subsequent uses must meet the new bylaw. Structural alterations or additions are not permitted for non-conforming uses (unless authorized by a Board of Variance to relieve hardship). If a building with a non-conforming use sustains damage to more than 75% of its value above the foundations, the structure must be repaired or reconstructed to meet the new bylaw regulations.

As Council directed, staff have added automobile sales as a site-specific use for the subject properties and added a definition for the use. New construction on these lots will still need to meet new zoning regulations, and the existing buildings will become non-conforming to the setbacks and minimum Floor Area Ratio in the new bylaw (meaning that variances as part of the Development Permit process will be required for additions that do not meet the regulations).

Single Unit Dwelling Non-conformance

At the Public Hearing, one resident came forward to state that due to the non-conforming status of her house on Evans Street, she would not be able to continue to obtain home insurance this spring. Her property is already zoned RM-4 Medium Density (4 Storey) Multi-Family Residential and is proposed to be High Density Residential in the new bylaw. Single unit dwelling use is already not permitted in the RM-4 Zone. Single family and two-family (duplex) residential uses were originally permitted in the RM-3 and RM-4 Zones when the bylaw was adopted in 1988, but were removed as permitted uses by an amendment bylaw in 2011.

When the 2011 amendment bylaw was proposed, staff provided the rationale that the potential redevelopment of properties with new single family and two-family residential dwellings would impede

implementation of the 2007 Official Community Plan (OCP) in areas where medium and high density residential development is recommended and shown in the Land Use Map. For instance, if a lot was developed with a new single unit dwelling, the potential for lot consolidation for larger development configurations, or shared access or parking areas for the surrounding properties would be severely limited. The area east of Jubilee Street, from the north side of Evans Street to White Road, is designated High Density Residential in the OCP.

Land use designations in the OCP are described as follows:

- **Low Density Residential:** To permit single-family housing and duplexes throughout Duncan's neighbourhoods, outside of Downtown.
- **Medium Density Multi-Family Residential:** To permit ground-oriented triplexes and townhouses, and medium-rise apartments.
- **High Density Multi-Family Residential:** To permit multi-level apartment buildings.
- **Mixed Use Commercial and Residential:** To permit a mix of commercial and multi-family residential uses generally in commercial areas and, in particular, in Downtown.

The new residential zones were drafted to meet the OCP designations and policies. Duncan has a very limited land area available for development, and has a dense downtown core, and has to be strategic about growth policies. The Jubilee Street area is identified for densification due to the older age of housing stock, and proximity to downtown and other services. Figure 4 and Map 6 of the OCP identify the Jubilee Street area as part of the "Downtown Neighbourhood", and Figure 5 identifies it as an "area appropriate for high density development". Subsequent plans including the Integrated Community Sustainability Plan and the Community Energy and Emissions Plan support denser residential development in the area adjacent to the downtown core.

Some relevant OCP Policies include:

Growth Management Policies

- 5.1.1 Ensure that new development, infill, and redevelopment are in accordance with the land use designations outlined in Section 3, together with the guidelines set out for Development Permit Areas. Developers and their design teams are encouraged to become familiar with all aspects of this Plan and related regulatory bylaws.
- 5.1.2 Encourage and strongly support smart growth principles

General Housing Policies

- 5.2.1.2 Ensure the most effective use of Duncan's limited land base by supporting higher densities in appropriate locations, e.g. ability of the local street system to handle additional traffic adequately, convenience to schools, transit services and commercial facilities, and adequacy of water, storm and sanitary services.
- 5.2.1.3 Review existing regulations to increase flexibility to allow a wider range of housing types, and encourage residential development that is sustainable, innovative, of high-quality design, construction, and landscaping.

Since the Public Hearing, one additional resident contacted staff and Council with concerns about non-conformance and insurance in the case of fire causing destruction of their property. This resident owns a house in the RM-1 Zone.

There are currently sixteen properties zoned RM-1 Low Density Multi-Family Residential on Third Street and Jubilee Street, proposed to be zoned High Density Residential in the new Zoning Bylaw. RM-1 allows single family dwellings, two family dwellings and townhouses (maximum 40 units per hectare). The RM-1 Zone on Third Street and Jubilee Street contains an estimated thirteen single unit dwellings, one two-unit dwelling and two four-unit dwellings.

Other existing RM-1 zoned properties on Trunk Road, Marchmont Road, Wharnccliffe Road and McKinstry Road are proposed to be zoned Medium Density Residential and appear to mostly contain low density strata patio home development and townhouses, with the exception of approximately five properties on Trunk Road with single unit dwellings.

Insurance

Staff have contacted several insurance providers and an adjuster regarding home insurance policies for non-conforming dwellings. An existing dwelling with non-conforming status would not be denied insurance coverage solely based on zoning (other factors such as the condition of the dwelling or past insurance history of the property owner could be reasons for not being granted a policy with building coverage from a specific company). Even in cases where a person cannot get replacement cost insurance, “cash-value” insurance is commonly available depending on the provider.

Staff were informed that, depending on these same factors such as past insurance history, some home owners may still be able to obtain replacement cost insurance, allowing the home to be rebuilt on a nearby property if it is not possible to rebuild on site. If replacement cost insurance for rebuilding to meet the current zoning (i.e. building a townhouse to replace a single unit dwelling) is not available, how an insurance provider determines the cash value of a home at the time it was destroyed varies, but is intended to replicate market value of the building in its current condition instead of the cost of reconstruction.

Depending on their policy, a person could also have coverage for the cost of cleanup of the site, cost of items destroyed within the house, and living costs while searching for a new home. A property owner could invest the cash payout into building a multi-unit dwelling (and could potentially profit from selling or renting the new units), or if not rebuilding on site, the person would also be able to sell the property and put the cash payout and property sale value towards purchasing another property. An additional consideration is that rezoning a property to higher density typically increases the land value for the property.

Zoning in other communities

Staff have researched other zoning bylaws, and found that there is a large amount of variation in the types residential uses permitted within multi-unit residential zones. Some local governments permit single unit dwellings in all of their residential zones, including higher density zones, while some are more similar to Duncan and only permit single unit dwellings in their lower density zones.

There is also a lot of variation in whether local governments choose to “pre-zone” land to encourage redevelopment – for instance rezoning properties to a higher density when a new Zoning Bylaw or Official Community Plan is adopted – or whether they maintain lower density zoning even in areas that are designated higher density for future land use in their Official Community Plan and require rezoning for higher density. Some local governments zone certain areas for a mix of densities.

Options for single unit dwellings:

1. Keep single unit dwelling and two unit dwelling out of the permitted uses of the Medium Density and High Density Residential Zones.

This option would keep the new bylaw as-is.

2. Add single unit dwelling and two unit dwelling to specific areas within the Medium Density and High Density Zones (i.e. the properties with single unit dwellings on that are currently zoned RM-1) but require redevelopment of single unit dwellings to meet the Development Regulations of the Low Density Zone.

This option would permit reconstruction of single unit or two unit dwellings in the case of major property destruction, but staff would need to analyze which areas should be included, requiring up to one or two extra months prior to bylaw adoption.

3. Add single unit dwelling and two unit dwelling to the Medium and High Density Zone.

This option would permit single unit and two unit dwellings in any Medium or High Density Zone, which would require less staff time to make changes to the Zoning Map, but could impede implementation of the densification objectives of OCP.

4. Provide an opportunity for property owners to apply for a site specific amendment to the Zoning bylaw to allow their home to be rebuilt. Applicants would be required to provide evidence that:

- a) The home is their principal residence**
- b) The home was insured in 2017 for replacement cost.**
- c) The 2017 insurance policy did not allow for replacement on a different site.**

This option would allow property owners to come forward to state interest in being permitted to reconstruct in the case of major deconstruction, but would require staff time to develop the notification and staff and Council time for consideration of the applications. Up to two or three extra months would be required prior to bylaw adoption.

Minimum Floor Area Ratio

The new Zoning Bylaw contains Minimum Floor Area Ratios as well as Maximum Floor Area Ratios to control the size and density of development, in the Medium Density Residential, High Density Residential, Downtown Comprehensive, Neighbourhood Commercial, and Highway Corridor Commercial Zones. This creates a minimum and maximum gross floor area for development based on the size of the parcel, in conjunction with Maximum Parcel Coverage, Minimum and Maximum Height, and Minimum and Maximum Parcel Line Setback regulations. Floor Area Ratio is the ratio of the gross floor area of the building on a parcel divided by the total parcel area.

With the Committee of the Whole direction to staff in November 2017 to remove the underground parking requirements that were in the previous version of the bylaw, staff have determined that the majority of the Minimum Floor Area Ratios are now too high and would require developers to apply for zoning amendments in order to develop a property with surface parking (Floor Area Ratio regulates density and density can not be varied through a Development Variance Permit) and may discourage development. Parking requirements are a major factor in the total area and potential building footprint of a development – for commercial and community uses parking is regulated by floor area and for multi-unit residential use parking is regulated by number of units and number of bedrooms. In downtown Duncan, for example, the small size of lots creates further restrictions on development.

It is rare for a zoning bylaw to contain minimum Floor Area Ratios. However, in a small, dense community such as Duncan, with limited land mass available for development, setting minimum building areas can help to maximize the development meet OCP objectives.

Staff are continuing to create models of different development scenarios for the affected zones and create final recommendations for revisions to the bylaw are not yet complete, therefore the attached version of the Zoning Bylaw does not contain reduced minimum Floor Area Ratio regulations.

Below is an excerpt from the Development Regulations of the Downtown Comprehensive Zone, for information:

Development Criteria		Regulations		
Maximum <i>Parcel Coverage</i>		95%		
Minimum <i>Floor Area Ratio</i>		1.75:1		
Maximum <i>Floor Area Ratio</i>		Base Density	Bonus Density I	Bonus Density II
		3:1	3.3:1	3.6:1
Principal Building		Regulations		
Maximum <i>Height</i>		20 m (6 <i>habitable storeys</i>) for <i>Mixed-Use Development</i> 14 m (4 <i>habitable storeys</i>) for other <i>uses</i>		
Minimum <i>Height</i>		2 <i>storeys</i>		
Minimum <i>Parcel Line Setback</i>	<i>Front</i>	1 m; 0 m on Station Street and Craig Street		
	<i>Rear</i>	0 m		
	<i>Side, Interior</i>	0 m		
	<i>Side, Exterior</i>	1 m; 0 m on Station Street and Craig Street		
Maximum <i>Front or Exterior Side Parcel Line Setback</i>		3 m No more than 25% of the front or exterior side of a <i>building</i> shall be set back further than the maximum <i>setback</i> .		

The Minimum Floor Area Ratio is currently 1.75 in the new bylaw, and the Maximum Floor Area Ratio is 3, with possible bonus density of an additional 0.6. Developing to the maximum density would require underground parking and maximum height, while smaller lots are likely to have surface parking and two or three storeys. The Minimum Floor Area Ratio must be set to accommodate rather than discourage development on smaller lots. Modeling development scenarios of a two to three storey mixed use development with surface parking has determined that a Minimum Floor Area Ratio of approximately 0.7 is more achievable. Models of development scenarios with recommended changes to Minimum Floor Area Ratio regulations will be presented to the February 5, 2018 Committee of the Whole.

IMPLICATIONS:

- Financial:** Costs for advertising the Public Hearing will be attributed to the Development Services budget. If Council decides to undertake further notification (such as the property owner notification in Option 4), additional costs will be incurred.
- Policy/Legislation:** Advertisement for the Public Hearing will be in accordance with the *Local Government Act*.
- Strategic Priority:** Relates to Strategic Priority 2.3 “Comprehensive review of the Zoning Bylaw”.
- Sustainability:** The Zoning Bylaw re-write relates to several Desired Outcomes of the Integrated Community Sustainability Strategy, including Building and Sites outcomes “Duncan provides a diverse and flexible housing stock that meets all income and age requirements, ensuring a diverse community” and “Green building and housing design is prevalent throughout the City.”
- Communication:** Communication of the next Public Hearing will be required. If Option 4 in the Analysis section is selected, staff will send notice and an application to qualifying property owners. Applications received would be brought to a future Committee of the Whole meeting.

Staffing Implications: Development Services staff time was applied to making the proposed changes to the bylaw. Additional staff time will be required if Council recommends further changes or if Option 4 from the Analysis section is selected (Option 4 would require Financial Services staff involvement as well).

ALTERNATIVE OPTIONS

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

APPENDICES:

Attachment A: Public Hearing Minutes

Attachment B: Zoning Bylaw No. 3166, 2017