

Municipality of Lakeshore – Report to Council

Growth & Sustainability

Community Planning



To: Mayor & Members of Council

From: Aaron Hair, Planner III

Date: July 21, 2021

Subject: Zoning By-law Amendment ZBA-21-2021 re: Float Homes

Recommendation

Approve Zoning By-law Amendment Application ZBA-21-2021 (By-law 63-2021, Lakeshore By-law 2-2012, as amended), to add the definition of Float Home to the Zoning By-law and to add this use to Section 6.62, Uses Prohibited in all Zones as presented at the August 10, 2021, Regular Council meeting.

Background

Over the past several years Lakeshore has received several inquiries regarding float homes as an alternative living accommodation. As a result of these inquiries, Lakeshore engaged Monteith Brown Planning Consultants (MBPC) and requested a planning opinion in the form of a review and analysis of the Lakeshore Zoning By-law as it relates to the establishment of float homes. MBPC also assisted the Municipality with creating a definition for a Float Home.

FLOAT HOME – shall mean a building or structure incorporating a flotation system, intended or capable of being used in whole or in part for human habitation, that functions substantially as a land building or structure while it is moored or docked and does not include any other type of dwelling as defined herein.

Attachment 1 – contains a few examples products/float homes that have been brought to the Municipality's attention. The definition and zoning by-law amendment is meant to include float homes/structures/products/vessels such as (but not limited to) these.

The Municipality of Lakeshore Zoning By-law has been structured to permit and restrict uses by incorporating provisions commonly found in such documents. Key provisions in this instance are as follows:

1.5 Permitted Uses

Any use not specifically permitted by this By-law within a defined zone shall not be permitted in the Town. A use which is defined, but not specifically

permitted by this By-law within a defined zone or by a zone exception shall not be permitted.

6.62 Uses Prohibited in all Zones

The establishment of any use of land, buildings or structures shall be in accordance with the following provisions, which apply to prohibit particular uses, buildings or structures in all zones unless otherwise stated.

e) Uses not listed as permitted uses in a zone or defined area in this By-law shall be prohibited in such zone or defined area.

Based on discussions with MBPC & Municipal staff, it is apparent that there are a number of concerns/issues associated with the float homes including, and not limited to, waste/refuse management, sanitary waste disposal, inadequate ingress/egress and serious flooding concerns.

MBPC Summary Opinion:

Based on MBPC's review and analysis of the issue at hand and all supporting materials provided to them by the Municipality of Lakeshore, it is the professional planning opinion that the establishment of "float homes" is not permitted by the Municipality of Lakeshore Zoning By-law No. 2-2012. In reaching this conclusion, they offer the following comments and observations for your consideration:

1. As set out in the Municipality of Lakeshore Official Plan, any further development at in the settlement areas is contingent upon the establishment of long-term municipal servicing. This has yet to be undertaken.
2. In the absence of a specific definition of "float home" (or similar residential use, building or structure) in the Municipality of Lakeshore Zoning By-law No. 2-2012, and in the absence of a float home being listed as a permitted use in the Residential Waterfront – Lake St. Clair (RW2) Zone, such a use is not permitted.
3. The Zoning By-law contains sufficient provisions, as typically expected in such documents and as provided for by the Planning Act, so as to preclude a specific use or range of uses from being established unless certain conditions and criteria are satisfied. There is no expressed permissions given in the Zoning By-law that would permit a float home in either the RW2 zone or through a general regulation or provision.
4. While it might be submitted that a float home, and the characteristics which distinguish float homes as an alternative and permanent type of residential occupancy, falls within the definition of a single detached dwelling, this would require a thorough evaluation of the Ontario Building Code and any pertinent definitions and standards contained therein.
5. Based on a review of the Zoning By-law definitions, a float home would not fall within the definition of any other definition of a residential use or occupancy.

6. A determination has not been made as to whether the inland channels form part of a navigable waterway, confirmation of ownership of the bed of the waterway and whether in fact the Municipality has the authority to regulate the use of the waterway.
7. The Lakeshore Official Plan does not designate the inland channels whereas the Zoning By-Law does appear to zone the channels. The Planning Act sets out the requirements to regulate “LAND” use. Arguably, float homes could be considered a water use, although float homes are designed and dependent upon being moored or tied to land. Related to this are the implications of other Provincial and Federal statutes which may apply.

While MBPC is prepared to state that the Zoning By-law does not permit float homes, further investigation is required to examine the implications of assuming jurisdiction over land use control where waterways are concerned. It is important that for now the Municipality should clearly address float homes so as to clearly legislate the treatment of such accommodation to provide clear rules for the public.

Comments

The Provincial Policy Statement states:

1.1 Managing and Directing Land Use to Achieve Efficient and Resilient Development and Land Use Patterns

1.1.1 Healthy, liveable and safe communities are sustained by:

- c) avoiding development and land use patterns which may cause environmental or public health and safety concerns

3.0 Protecting Public Health and Safety

Ontario's long-term prosperity, environmental health and social well-being depend on reducing the potential for public cost or risk to Ontario's residents from natural or human-made hazards.

Development shall be directed away from areas of natural or human-made hazards where there is an unacceptable risk to public health or safety or of property damage, and not create new or aggravate existing hazards.

Mitigating potential risk to public health or safety or of property damage from natural hazards, including the risks that may be associated with the impacts of a changing climate, will require the Province, planning authorities, and conservation authorities to work together.

3.1.2 Development and site alteration shall not be permitted within:

- a) the dynamic beach hazard;
- b) defined portions of the flooding hazard along connecting channels (the St. Marys, St. Clair, Detroit, Niagara and St. Lawrence Rivers);

- c) areas that would be rendered inaccessible to people and vehicles during times of flooding hazards, erosion hazards and/or dynamic beach hazards, unless it has been demonstrated that the site has safe access appropriate for the nature of the development and the natural hazard; and
- d) a floodway regardless of whether the area of inundation contains high points of land not subject to flooding.

The County of Essex Official Plan states:

Section 2.4 Flooding and Erosion (Natural Hazards)

It is the policy of this Plan that local Official Plans direct development to areas outside of areas susceptible to flood or other hazards as depicted on Schedule "C1" of this Plan....

2.4.1 Lake St. Clair, Detroit River and Lake Erie

a) It is a policy of this Plan to identify the Lake St. Clair, Detroit River and Lake Erie floodprone areas as being susceptible to flooding and erosion hazards. The regulatory flood standard for flood plains will be the one in one hundred year (1:100) or maximum observed flood condition for the Essex Region watersheds and the one in one hundred year (1:100) or maximum observed flood condition which is the two hundred and fifty year (1:250) flood condition affecting the Thames River and its tributaries for the Lower Thames Valley watersheds.

The Lakeshore Official Plan states:

5.4.1.3 Lake St. Clair Shoreline Floodprone Area

d) Development and site alteration may be permitted in the Lake St. Clair Floodprone Areas other than those identified in Section 5.4.1.3 (c), in consultation with the appropriate Conservation Authority, and where the risk to public safety and other effects can be absorbed, managed or mitigated in accordance with the following standards:

- i. the flooding and erosion hazards can be safely addressed, and the development and site alteration is carried out in accordance with floodproofing standards, protection works standards, and access standards;
- ii. existing hazards are not aggravated or new hazards are not created;
- iii. no adverse environmental impacts will result, and no negative impact on natural heritage features will result. An EIA may be required to demonstrate that no adverse environmental impacts will result;
- iv. vehicles and people have a way of safe ingress and egress during times of flooding, erosion or other emergencies;
- v. the development does not include institutional uses, special needs housing, or essential emergency services or the disposal, manufacture, treatment or storage of hazardous substances; and
- vi. development is carried out in accordance with established standards and procedures.

Zoning By-law

A float home, as proposed to be defined, would not fall within the definition of any other definition of a residential use or occupancy. Subject to the draft by-law amendment being adopted by Council and coming into effect, a “Float Home” would not be permitted in any zone ‘as-of-right’ and the use of any land for such purposes would require an amendment to the Zoning By-law.

As stipulated by Section 34(1) of the Planning Act, zoning by-laws may be passed by councils of local municipalities for, in part:

1. For prohibiting the use of land, for or except for such purposes as may be set out in the by-law within the municipality or within any defined area or areas or abutting on any defined highway or part of a highway.
2. For prohibiting the erecting, locating or using of buildings or structures for or except for such purposes as may be set out in the by-law within the municipality or within any defined area or areas or upon land abutting on any defined highway or part of a highway.

The Municipality of Lakeshore Zoning By-law has been structured to permit and restrict uses by incorporating the following key provisions:

1.5 Permitted Uses

Any use not specifically permitted by this By-law within a defined zone shall not be permitted in the Town. A use which is defined, but not specifically permitted by this By-law within a defined zone or by a zone exception shall not be permitted.

3.2 Licenses and Permits

No municipal license or permit shall be issued where the said license or permit is required for a proposed use of land or a proposed erection, enlargement or use of any building or structure that is in violation of any of the provisions of this By-law.

5.7 Application of Regulations

No person shall within any zone or defined area use any land or erect, build, construct, reconstruct, relocate, excavate for, alter, add to, enlarge, extend or use any building or structure, except in conformity with this by-law for the zone or defined area in which such land, building, structure or use is located.

6.62 Uses Prohibited in all Zones

The establishment of any use of land, buildings or structures shall be in accordance with the following provisions, which apply to prohibit particular uses, buildings or structures in all zones unless otherwise stated.

e) Uses not listed as permitted uses in a zone or defined area in this By-law shall be prohibited in such zone or defined area.

There are a number of other development restrictions contained in the Zoning By-law which have applicability to the establishment of float homes on the subject lands. These restrictions include the following”

6.34 Natural Hazards and Flood Protection Provisions

b) Lake St. Clair Shoreline Floodprone Area:

i) Notwithstanding any other provision of this By-law to the contrary, no part of any building or structure shall be erected on lands located within the Lake St. Clair Shoreline Floodprone Area, as shown on Schedule A of this By-law, unless:

1. the lowest opening of any such building or structure has a minimum building elevation prescribed in a permit issued by the applicable Conservation Authority in consultation with the Town;

2. the setback of the nearest wall of any such building or structure from the water's edge is prescribed in a permit issued by the applicable Conservation Authority in consultation with the Town; and

ii) No person shall construct an accessory building or structure within the prescribed setback limits, except a patio, deck, boat lift, boat well, dock, steps and/or shoreline protective works, provided that the said facilities are constructed as prescribed in a permit issued by the applicable Conservation Authority in consultation with the Town.

6.31 Lands Exhibiting Hazardous Conditions

Notwithstanding any other provisions of this By-law, no buildings or structures shall be erected or used on lands which exhibit a hazardous condition, or a potentially hazardous condition, as a result of their susceptibility to flooding, erosion, subsidence, inundation, soil contamination, or the presence of organic soils or unstable and steep slopes. Additional setbacks from these hazardous conditions shall be identified and established in consultation with the Town and the Conservation Authority.

6.51 Servicing Requirements for all Development

No person shall erect, alter or use any building or structure in any zone or defined area within the Town unless such land, building, or structure is serviced with water and a sanitary system satisfactory to the Town or its designated agent.

It is noted that the above-noted provisions reference “lands” and, in that respect, it would need to be clearly established that float homes are inextricably tied to the land and dependent upon that land for anchorage. The regulations which are specific to the subject lands, namely, the RW2 zone, limit the permitted uses to those listed in Table 7.1. A float home is not listed as a permitted use in the RW2 zone.

8.3 Residential Waterfront Zone Regulations

The following regulations shall apply to the Residential Waterfront – Watercourse (RW1) and Residential Waterfront – Lake St. Clair (RW2) zones. Refer to Section 9.0 for a list of zone exceptions.

Residential Waterfront–Lake St. Clair (RW2)
Permitted Uses As indicated in Table 7.1

Table 7.1 – Permitted Uses

- single detached dwelling
- seasonal dwelling
- group home dwelling
- home occupation
- bed and breakfast establishment

A review of the special regulations or “site-specific” zone provisions applying in the RW2 zone, being 9.6 Residential Waterfront – Lake St. Clair (RW2) Exceptions, reveals that in no instance has special permission or zoning been applied to permit a float home in the capacity of either a stand-alone use or as an additional permitted use.

Summary

Presently, no float homes exist in Lakeshore. Administration recommends bringing forward this Zoning By-law amendment in order to address float homes prior to this type of residential unit being brought in or built in Lakeshore. Providing a definition alleviates any uncertainty in the existing Zoning By-law as to whether these types of dwelling units are permitted in the municipality or not.

When the zoning by-law amendment comes into effect, a proposal to establish a float home would trigger a zoning by-law amendment application. The proposal would be reviewed to ensure conformity with the PPS, and Official Plan policies noted above; the servicing and flood proofing requirements would be reviewed; and agencies and adjacent land owners would receive notice and provided the opportunity to give comments.

If Council chooses to in the future, it can amend the Zoning By-law to permit Float Homes as of right or on a case by case basis where it is appropriate to do so. Administration is planning to undertake a comprehensive Zoning By-law review in the near future in which float homes can be included for further review and public input, if Council so wishes.

Conclusion

Administration recommends approval of the Zoning By-law amendment, as it is consistent with the Provincial Policy Statement and conforms to the County of Essex and Lakeshore Official Plan.

Others Consulted

Notice was given to agencies and the general public as required under the provisions of the *Planning Act* and Regulations. As of the writing of this report, no written submissions have been received from members of the public.

Financial Impacts

The costs incurred for the consultant to provide services relating to the preparation of this Report and By-law are covered under the Development Services budgeted consulting account.

Attachments

Attachment 1 – Float Home Examples

Report Approval Details

Document Title:	Zoning By-law Amendment ZBA-21-2021 Float Homes.docx
Attachments:	- Attachment 1 - Float Home Examples.pdf
Final Approval Date:	Aug 5, 2021

This report and all of its attachments were approved and signed as outlined below:

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