

Municipality of Lakeshore – Report to Council

Growth & Sustainability

Community Planning



To: Mayor & Members of Council
From: Ian Search, Planner II
Date: January 25, 2023
Subject: Housekeeping Zoning By-law Amendment ZBA-03-2023

Recommendation

Approve Zoning By-law Amendment Application ZBA-03-2023 (By-law 8-2023, Lakeshore By-law 2-2012, as amended), to permit air conditioning units and heat pumps in the interior side yard; remove reference to “free standing” air conditioning units and heat pumps; require air conditioning units, heat pumps, and small-scale generating systems to be located no closer to municipal drains than the setback requirements that apply to buildings and structures; revise encroachment permissions for small-scale generating systems by requiring a minimum 1.2 metre setback from rear and interior side lot lines; introduce a penalty section necessary to conduct enforcement, and; restore the previous Hamlet Commercial Exception 9 Zone (HC-9) affecting 2730 County Road 42 which did not permit transport trailers to be used for storage on the property.

Background

Zoning By-law Amendment (ZBA-03-2023) is a proposed housekeeping amendment to revise current provisions in the zoning by-law that regulate air conditioning units, heat pumps and small-scale generating systems. It proposes a new penalty section necessary to conduct enforcement of the by-law as it relates to the contravention of any provision in the by-law, and it restores the previous Hamlet Commercial Exception 9 (HC-9) zone affecting 2730 County Road 42 which did not permit transport trailers to be used for storage on the property.

Air Conditioning Units and Heat Pumps

A heat pump is an appliance that pulls heat from the cold outdoor air and transfers it into a building. These appliances are also capable of cooling a building by collecting heat from inside a building and pumping it to the outside. They function essentially the same as an air conditioning unit when operating in cooling mode. In fact, outdoor heat pumps and air conditioning units are often indistinguishable in appearance to the average person (see Attachment 2). Building inspectors have observed that heat pumps

are rare in Lakeshore as most buildings utilize a furnace and air conditioning unit to supply their heating and cooling needs.

Lakeshore is the only municipality in Windsor-Essex County with a zoning by-law that does not permit the placement of air conditioning units and heat pumps in an interior side yard, regardless of their setback distance from the lot line. Prior to the adoption of the current Lakeshore Zoning By-law in 2012, each of the pre-amalgamation municipalities had their own zoning by-law. It appears that each of these former zoning by-laws permitted the appliances to be placed in an interior side yard except for Rochester.

An interior side yard is a yard between the side wall of the main building or structure on the lot and the side lot line and extending from the front yard (or front lot line, if no front yard exists) to the rear yard (or the rear lot line, if no rear yard exists). Unlike an exterior side yard on a corner lot, this yard is not immediately adjoining a street (see Appendix 1).

With Lakeshore being an outlier on this issue, builders/property owners have naturally placed air conditioning units or heat pumps in the interior side yard of their lot. The inconsistency of Lakeshore's regulations with other municipalities in Windsor-Essex County has resulted in difficult challenges for the municipality's Building Division – final inspections cannot pass, and building permits cannot be closed. Moreover, it is likely that these appliances are often placed in this yard because the rear yard is used to provide amenity space where these appliances are considered an intrusion to the enjoyment of those spaces – especially with respect to lakefront properties. Indeed, except for corner lots where there is an exterior side yard, the zoning by-law currently only permits these appliances in the rear yard of a lot.

Over the years, By-law enforcement has received very few complaints from residents regarding the placement of these appliances in the interior side yard despite the apparent and extensive non-compliance that exists. Other municipalities in the County of Essex shared similar feedback when they were contacted for information about this issue. For example, the Chief Building Official for the Corporation of the Town of Kingsville stated that they could not find a single complaint or investigation in their records for an air conditioning unit or heat pump in the interior side yard, and the Municipal By-law Enforcement Officer for the Municipality of Leamington could only recall two complaints since 2011. While the sound generated by these appliances is dependent on factors such as model, age and maintenance, this suggests that they can be placed in interior side yards without disturbing abutting neighbours.

Section 5.6 of Lakeshore's property standards by-law states that air conditioners and all similar equipment shall be maintained in good repair and free from defects. This could be used to provide enforcement in cases where a defective/broken appliance is generating disruptive noises. Other options available to residents and property owners include using barriers like fences or landscaping to break uninterrupted noise transmission. It is also anticipated that windows are generally closed during periods of the year when these devices are running on a more regular basis.

While the other municipalities in the County permit the appliances to be placed in an interior side yard, most do not permit them to encroach into the required interior side yard setback, which has enabled them to deal with complaints about appliances being placed too close to mutual lot lines. Below is a table that summarizes the encroachment regulations for other municipalities in the County of Essex. The Town of Lasalle does not have encroachment regulations and has therefore been excluded from the table.

Municipality	Encroachment Regulation/Permission
Town of Tecumseh	"Free-standing outdoor furnace and air conditioning units", rear yards only, 1.5 metres
Municipality of Leamington	"free-standing outdoor furnace, air conditioning units and other such devices", rear and exterior side yards only, 1.5 metres
Town of Kingsville	"Central air conditioning units, heat pumps, stand-by generators and other similar features", cannot be located within 1.2 metres of an interior side lot line
Town of Amherstburg	"heat pumps, air conditions, and/or air exchangers", 1.5 metres into any required yard provided the projection is no closer than 0.9 metres to the lot line
Town of Essex	"Central Air Conditioning and Outdoor Heating Units", into any yard except in a required front or side yard in a residential district

By-law 8-2023 proposes to bring Lakeshore into general conformance with other municipalities in the County by permitting air conditioning units and heat pumps in the interior side yard, but still requiring the minimum interior side yard setback of the applicable zone. In the case of residential zones, the typical minimum interior side yard setback is 1.5 m. Lakeshore's Engineering and Infrastructure Division agreed with the proposed amendment stating that the appliances should not encroach into required interior side yard setbacks to mitigate impacts to lot grading. Ensuring adequate access through the interior side yard for property maintenance is another consideration for keeping these yards clear.

It is important to note that the current zoning by-law permits "heat pumps and outdoor free-standing air conditioning units" to encroach 1.5 metres into a required rear yard and exterior side yard provided it is no closer than 0.5 m to a rear lot line or 1.0 m to an exterior side lot line. By-law 8-2023 does not propose to eliminate those existing encroachment permissions.

The current regulations for these appliances refer specifically to "free-standing" air conditioning units and heat pumps throughout the zoning by-law. By-law 8-2023 proposes to remove the term "free-standing" from the regulations. This amendment will

remove ambiguity by making it clear that the regulations apply to both free-standing and wall mounted appliances.

Another section of the zoning by-law suffering from ambiguity is whether these appliances are subject to required setbacks from municipal drains. The setback between any building or structure from a covered municipal drain shall be 8.0 m from the centreline of the covered municipal drain, and 8.0 m from the nearest top of bank for an open municipal drain plus the depth of the open municipal drain, measured from the nearest top of bank. A minimum distance may be established by the applicable Conservation Authority, but these are the minimum setbacks where such a distance is not specified. By-law 8-2023 will make the zoning by-law clear that these appliances are subject to the same setbacks to protect the corridors needed for maintenance of municipal drainage systems.

Small-Scale Generating Systems

A small-scale generating system is a system that generates electricity only for the property owner and does not contribute to the electricity grid (see Appendix 2). It is particularly useful to residents during power outages.

The zoning by-law currently permits small-scale generating systems to encroach 2.5 metres into required rear and interior side yards only. However, the Ontario Building Code (OBC, Section 6.2.5.2) requires a minimum 1.2 metre setback from a property line. Therefore, as a housekeeping item and to bring this regulation into conformance with the OBC, By-law 8-2023 revises the existing encroachment permissions to require a minimum 1.2 metre setback from a rear lot line or exterior side lot line where they encroach into either one of those yards.

To protect the corridors needed to perform maintenance of municipal drainage systems, By-law 8-2023 will also make it clear that these appliances are subject to the same setback requirements from municipal drains that apply to buildings and structures.

Offence Provisions

The zoning by-law currently does not include offence provisions preferred to conduct enforcement. In an effort to ensure clear enforcement provisions existing within the zoning by-law instead of relying on the Planning Act in combination with the zoning by-law, it is recommended that a penalty section be added. Section 10 is proposed to be added immediately following Section 9.23:

10.0 Penalties

Every person who contravenes any provision of this by-law is guilty of an offence, and upon conviction is liable of a penalty in accordance with the provisions of the Provincial Offences Act.

Restore previous Hamlet Commercial Exception 9 (HC-9)

At the September 14th 2021 Council meeting, Council made a resolution to defer consideration of Zoning By-law Amendment ZBA-1-2021. ZBA-1-2021 was an amendment to exempt a subject property, 2730 County Road 42, from Section 6.59 (c) of the Zoning By-law that would permit transport trailers to be used for storage on the lot.

At the September 16th 2021 Council meeting, Council passed the by-law (By-law 74-2021) giving effect to ZBA-1-2021. The passing of By-law 74-2021 was an administrative error, as it was the intention of Council to revisit the development proposal at a later date after Administration had prepared a temporary use by-law for the proposed use. Council would ultimately end up refusing the temporary use by-law when it was presented to them at the November 9th 2021 Council meeting.

By-law 8-2023 will rezone the subject property back to the Hamlet Commercial Exception 9 (HC-9) zone that it was prior to the passing of By-law 74-2021.

Comments

Provincial Policy Statement (PPS) and County of Essex Official Plan

There are no issues of provincial or county significance raised by this proposed housekeeping amendment.

Lakeshore Official Plan

The Municipality of Lakeshore currently has an active Community Improvement Plan for the Belle River Business Improvement Area – a designated Community Improvement Project Area. The Community Improvement Plan outlines a series of financial incentive programs to stimulate investment in private property within the designated area. In particular, the Plan outlines a façade improvement grant for commercial and mixed-use buildings, which is intended to encourage improvements to building façades and signage. To support the implementation of these incentives in a positive and desirable manner, the Municipality developed Community Improvement Area design guidelines for properties on Notre Dame Street and First Street within the Community Improvement Area. Applications for façade improvement grants are subject to the guidelines, and they are used by administration to evaluate façade improvement projects. The following guideline with respect to heating, ventilation and air conditioning equipment forms part of the guidelines:

“Where possible, mechanical equipment should be located on the roof and appropriately screened. Otherwise, mechanical and heating, ventilation, and air conditioning (HVAC) equipment should be located in the rear yard as much as possible, or in the side yard, where it cannot be reasonably accommodated in the rear yard...”

By-law 8-2023 will bring the zoning by-law into conformity with the design guidelines for the Community Improvement Area by permitting an applicant seeking a façade

improvement grant to place air conditioning units and heat pumps in an interior side yard where such appliances cannot be reasonably accommodated in the rear yard.

Section 5.4.1.2. Inland Floodplain Development Control Area of the Lakeshore Official Plan states that “development is prohibited in the floodway with the exception of buildings and/or structures required for flood and erosion control. It has been determined that a setback of 8 metres plus the depth of the watercourse or municipal drain, to a maximum of 15 metres, will constitute the Floodway Zone, for the majority of watercourses”. By-law 8-2023 will provide a protection measure against potential property damage for various outdoor appliances (air conditioning unit, heat pump, small-scale generating system) by making the regulations clear that these appliances are subject to the same setback requirements that apply to buildings and structures. This is in addition to protecting the maintenance corridors of municipal drains.

Others Consulted

Notice was given to agencies and the general public as required under the provisions of the *Planning Act* and regulations for the February 14, 2023, public meeting.

Financial Impacts

There are no budget impacts resulting from the recommendation.

Conclusion

Based on the foregoing, Administration recommends that Council approve ZBA-03-2023 as per the Recommendation section of the report.

Attachments

Appendix 1 – Illustration of Yards

Appendix 2 – Appliances

Report Approval Details

Document Title:	ZBA-03-2023 - Housekeeping Zoning By-law Amendment.docx
Attachments:	- Appendix 1 - Illustration of Yards.pdf - Appendix 2 - Appliances.pdf
Final Approval Date:	Feb 9, 2023

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

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