

**NOVA SCOTIA UTILITY AND REVIEW BOARD**

**IN THE MATTER OF THE MUNICIPAL GOVERNMENT ACT**

**- and -**

**IN THE MATTER OF AN APPEAL** by **Mark Moore** from the decision of Halifax Regional Municipality to refuse the approval of a development agreement application for property located at 2315 and 2317 East Petpeswick Road, East Petpeswick, Nova Scotia (PID: 41484023)

**BEFORE:** Richard J. Melanson, LL.B., Member

**DECISION and ORDER**

The appellant operates the Halifax Surf School in East Petpeswick, Nova Scotia. The appellant obtained building permits from Halifax Regional Municipality (HRM) for a single unit dwelling and associated garden suite located at 2315-2317 East Petpeswick Road. The structures were built in 2022.

Construction was completed in 2022. The single unit dwelling and garden suite were both used as bed and breakfast short term rental facilities for customers of the Halifax Surf School business.

The appellant learned of pending land use by-law changes which would prohibit the bed and breakfast, or short-term rental, uses unless he applied for two development permits authorizing such uses before the effective date. One application related to operating his bed and breakfast short term rental in the garden suite (DEVONLY-2023-11742). The other asked for permission to operate the bed and breakfast short term rental in the main single unit dwelling (DEVONLY-2023-11736). The appellant made his applications just in time.

An HRM development officer denied both development permit applications on the following basis:

- A garden suite is only a permitted use in conjunction with a permitted dwelling and is intended for but not limited to accommodation by an elderly parent or parents of those occupying the host dwelling. As the host dwelling is not a primary residence

and is proposed to be used as a commercial bed and breakfast, the lot would no longer be eligible to have a garden suite.

- Occupying the main dwelling as a bed and breakfast use would put the property out of compliance with the LUB, as the property would no longer be eligible to have a garden suite.
- Occupying the garden suite as a bed and breakfast is also not permitted, as that would be contrary to the definition of “garden suite,” specifically that it is intended for occupancy by an elderly parent or parents.
- Occupying both structures as a bed and breakfast would constitute two dwellings on a lot which is not permitted in the LUB. This would constitute a “commercial accommodation use” which is not permitted in the R-6 Zone

The appellant appealed the development officer’s decision to the Board. The Board established a process for the appeal by Hearing Order. After public notice had been provided by a newspaper advertisement, but before any further process was completed, the appellant and HRM requested that the Board suspend the process set out in the Hearing Order while settlement discussions took place.

An informal settlement conference was convened with the Board and a settlement has been reached. The appellant agreed to withdraw his appeal of the development officer’s decision denying a development permit for the operation of a bed and breakfast, or short-term rental, in the garden suite. HRM has agreed not to contest the appeal related to operating the main single unit dwelling as a bed and breakfast, or short-term rental. The parties agree the matter can be decided based on the Appeal Record filed with the Board without further submissions.

At the time of the appellant’s application, a bed and breakfast establishment was a permitted commercial use in the R-6 (Rural Residential) zone, under the Eastern Shore (West) Land Use By-law (LUB). The LUB defines a bed and breakfast as “...a dwelling in which the proprietor supplies for monetary gain, sleeping accommodation, with or without meals, to the travelling public.” There was no requirement that the proprietor reside in the dwelling, as is the case with some other land use by-laws. The appellant’s intent, at the time of the application, was to operate the single unit main dwelling to supply sleeping accommodations as set out in this definition.


The Board is satisfied that, with the issue of the garden suite resolved, there is no basis for denying the application for a development permit to use the main dwelling as a bed and breakfast, or short-term rental. The Board is further satisfied no further process is required, or in the public interest, as the outcome of this appeal is clear from the record before it.

The Board therefore confirms that the appellant has withdrawn the appeal about the garden suite and this issue need no longer be considered.

The Board allows the appeal related to using the main dwelling as a bed and breakfast and orders that:

1. Any further process provided in the Hearing Order is dispensed with pursuant to s.4(2) of the *Municipal Government Act Regulations*.
2. The settlement reached by the parties is accepted.
3. The withdrawal of the portion of the appeal related to the garden suite is accepted.
4. The appeal related to the application for a development permit to operate a bed and breakfast, or short-term rental, in the main single unit dwelling is allowed.
5. The HRM development officer shall issue a development permit in accordance with this decision.

**DATED** at Halifax, Nova Scotia, this 19<sup>th</sup> day of December, 2023.

  
Clerk of the Board