

## **Heritage Conservation Districts Regulations**

made under Section 26 of the

Heritage Property Act  
R.S.N.S. 1989, c. 199

O.I.C. 92-682 (July 14, 1992), N.S. Reg. 138/92

as amended up to O.I.C. 2000-451 (September 6, 2000), N.S. Reg. 157/2000

### **Citation**

1 These regulations may be cited as the "Heritage Conservation Districts Regulations".

### **Definitions**

2 In these regulations

- (a) "Act" means the Heritage Property Act;
- (b) "Board" means the Nova Scotia Municipal Board [now Provincial Administrative Review Board];
- (c) "directional emphasis" means the relative emphasis given to the horizontal and vertical elements in a building elevation or in a sequence of building elevations;
- (d) "district" means a heritage conservation district;
- (e) "massing" means the form and shape of the various parts or elements that comprise a building or structure and their relationship to each other in the overall design of the building or structure or in a sequence of buildings or structures;
- (f) "registered mail" includes certified mail, signature mail and a service provided by private couriers commonly known as signature service;
- (g) "open spaces" include public and private spaces, parks, gardens, parade squares, ponds, waterfront areas, streets, parking areas, yards and areas of vacant or undeveloped land;
- (h) "rhythm" means the pattern established by a succession of parts or elements in a building elevation or in a sequence of building elevations;
- (i) "service infrastructure" means the various public utility services and structures such as sewerage systems, waterworks, electricity and gas distribution systems, telephone systems, streets, bridges, tunnels, parking facilities, sidewalks and other pedestrian pathways, which together support and service the occupation of a heritage conservation district and contribute to its physical character;
- (j) "setting" means the arrangement of
  - (i) open spaces,
  - (ii) topography,
  - (iii) vegetation,
  - (iv) views from public places within the district to places within the district, and

(v) other natural or constructed features,

that together comprise the visual and physical surroundings of buildings in the district, and that may have historic or architectural significance in their own right;

(k) "symmetry" means the correspondence in size, position and proportion of the parts or elements of a building elevation or of a sequence of building elevations, including windows, doors, bays and chimneys about a dividing line or centre;

(l) "utility structure" means a building or structure housing or supporting public or private utility equipment or machinery, including but not limited to, telephone poles, power poles, electrical transformers, street lighting fixtures, pumping stations, oil tanks, propane tanks and garbage containers;

(m) "visual balance" means equilibrium in the arrangement of the parts or elements of a building elevation or of a sequence of building elevations, including windows, doors, bays or porches, in relation to each other about a dividing line or centre.

#### Purpose of a conservation plan

3 (1) The purpose of a conservation plan is to

(a) provide statements of policy that address problems and opportunities concerning the conservation of the historic or architectural value of buildings and structures in the district and their setting; and

(b) identify expenditures, initiatives and conservation by-law provisions for the implementation of the conservation plan.

#### Content of a conservation plan

4 (1) A conservation plan may include statements of policy with respect to the following:

(a) the conservation, preservation, restoration, rehabilitation, alteration or redevelopment of buildings or structures and their settings based upon their historic or architectural value;

(b) the demolition or removal of buildings or structures in the district;

(c) the effects of any alteration or redevelopment of the service infrastructure upon the heritage value of the district;

(d) the location and architecture of new developments and their settings in relationship to existing developments and their settings within the district;

(e) the conservation of settings;

(f) tourism and community improvement undertakings in the district;

(g) relationship of the proposed conservation plan and conservation by-law with other municipal, provincial or federal community planning or heritage planning policies, regulations or programs, other than those referred to in clause (e) of subsection (2);

(h) the use of agreements as provided for under Section 20 of the Act; and

(i) any other matter relating to the conservation of the historical, architectural or cultural value of the district.

(2) A conservation plan shall include statements of policy regarding

(a) the rationale or justification for heritage conservation measures in the district;

- (b) the rationale for the boundaries of the district;
- (c) the types of development for which a certificate is required;
- (d) the types of development, if any, for which the council shall hold a public hearing pursuant to subsection (5) of Section 19G of the Act; and
- (e) the relationship of the proposed plan and by-law with any municipal planning strategy, land use by-law, subdivision by-law or provincial land use policy or regulation in effect for the district.

#### Content of a conservation by-law

##### 5 (1) A conservation by-law shall include

- (a) a description of the boundaries of the district by the use of a map or text adequate to identify the area;
  - (b) a list of those types of development for which a certificate is required, that may include any or all of the following:
    - (i) the construction of new buildings or structures,
    - (ii) the substantial alteration, restoration or rehabilitation of existing buildings or structures,
    - (iii) the demolition or removal of buildings or structures,
    - (iv) the construction, relocation, reconstruction, substantial alteration, demolition or removal of fences, walls, steps, staircases or other structures that may affect or contribute to the heritage value of the district,
    - (v) the construction, relocation, reconstruction, substantial alteration, demolition or removal of utility structures,
    - (vi) the construction or placement of signage that may affect or contribute to the heritage value of the district,
    - (vii) the substantial alteration of the exterior colour of existing buildings or structures,
    - (viii) the planting, placement or removal of trees, hedges, shrubs or other vegetation that may affect or contribute to the heritage value of the district,
    - (ix) the substantial alteration of grade; and
  - (c) the form and content of an application for a certificate including, where applicable, a site plan and a graphic representation of buildings or structures.
- (2) A conservation by-law may specify developments for which no certificate is required.
- (3) A conservation by-law may include design guidelines, which may include any or all of the following:
- (a) aspects of the architectural design, character or external appearance of buildings or structures including, but not restricted to, facade design, scale, proportion, bulk, height, massing, symmetry, visual balance, rhythm, directional emphasis, number of storeys, ground area, roof shape, exterior materials, appearance and placement of utility structures, architectural details or ornamentation;
  - (b) the location or arrangement of buildings or structures in relation to their setting;
  - (c) the design, location or arrangement of fences, walls, steps, staircases or other structures that may affect or contribute to the heritage value of the district;

(d) landscape design and the placement, location or arrangement of trees, hedges, shrubs and other vegetative features of the district in relation to their setting;

(e) the location, or placement design of signage that may affect or contribute to the heritage value of the district;

(f) the exterior colour of buildings or structures.

(4) A conservation by-law shall include

(a) a list of the types of development for which the heritage officer may issue a certificate directly in accordance with the conservation by-law, and which does not require a public hearing;

(b) a list of the types of development, if any, for which the council shall hold a public hearing.

Public participation program for adoption

6 (1) Before undertaking the preparation of a conservation plan and by-law, a council shall adopt, by resolution, a public participation program.

(2) The content of a public participation program shall be at the discretion of the council, but it shall identify opportunities and establish ways and means of seeking the opinions of the public with respect to the proposed conservation plan and by-law.

(3) The public hearing held pursuant to subsection (3) of Section 19A of the Act shall not be considered a part of the public participation program adopted pursuant to this Section, and the public participation program shall be concluded prior to the publication of the advertisement notifying of council's intention to adopt a conservation plan and by-law.

(4) A council may adopt separate public participation programs for the preparation of conservation plans and by-laws for different districts.

Background studies and information

7 (1) In the preparation of a conservation plan and by-law, the council as a minimum shall undertake studies relating to the following:

(a) the rationale or justification for heritage conservation measures in the district;

(b) the rationale for the boundaries of the district;

(c) the relationship of a conservation plan and conservation by-law with any municipal planning strategy, land-use by-law or provincial land-use policy or regulation in effect for the district; and

(d) an analysis of the social and economic implications of the establishment of the district, as these relate to clause (a).

(2) After acceptance by a council of background studies prepared pursuant to this Section, the council shall provide public access to the studies and provide two copies of the studies to the Minister.

(3) Within sixty days of the receipt of the studies, the Minister may prescribe additional background studies.

(4) The Minister shall advise the council when no additional studies are required.

Public hearing for adoption, amendment or repeal

8 (1) Before adopting a conservation plan and by-law, a council shall hold a public hearing at which oral and written submissions regarding the proposed conservation plan and by-law are received.

(2) The council shall cause notice to be given of the public hearing and of its intention to adopt a conservation plan and by-law by an advertisement inserted at least once a week for two successive weeks in a newspaper circulating in the area of the district, the first of such notices to be published at least twenty-one clear days before the date fixed for the public hearing.

(3) The council shall cause notice of its intention to adopt a conservation plan and by-law to be delivered by personal service upon or by ordinary mail to each assessed owner, or any subsequent owners shown on the records in the regional assessment office, of property within the proposed district at least twenty-one clear days before the date fixed for the public hearing.

Subsection 8(3) amended: O.I.C. 1999-587, N.S. Reg. 128/99.

(4) The notices required by subsections (2) and (3) shall

(a) describe the proposed district by metes and bounds, by a plan, map or sketch or other description adequate to identify the district;

(b) give a synopsis of the proposed conservation plan and by-law and the effect of the conservation by-law on development of the property; and

(c) state the date, time and place fixed for the public hearing and the place where and hours during which the proposed conservation plan and by-law may be inspected by the public.

(5) The council shall provide copies of the proposed conservation plan and by-law or a portion thereof to interested persons and may charge an amount for copies sufficient to recover the cost of reproduction of copies provided.

#### Approval procedures

9 (1) Upon the adoption of a conservation plan and by-law, four duly certified copies each of the plan and by-law shall be submitted to the Minister for approval together with

(a) one duly certified copy of the resolution of council adopting a program of public participation;

(b) copies of the two newspaper notices notifying of the intention of council to adopt;

(c) one copy of the notice served on property owners; and

(d) one copy of any written submissions received by council,

and the clerk of the municipality shall provide, by statutory declaration, proof of compliance with the resolution of council adopting a program of public participation, and with the public hearing and notice requirements contained in the Act and these regulations.

(2) Upon approval by the Minister of a conservation plan and by-law, the council shall

(a) cause a notice to be published in a newspaper circulating in the district stating that the conservation plan and by-law have been approved, their effective date and the place where they may be inspected;

(b) transmit a copy of the notice to the Minister; and

(c) cause a copy of the conservation plan and by-law, signed by the Minister, to be filed in the office of the registrar of deeds for the registration district in which the district is situated, without proof of the signature or the official character of the Minister.

(3) Section 19A of the Act and Sections 3 to 9 inclusive of these regulations apply mutatis mutandis to the amendment of a conservation plan and by-law.

(4) Notwithstanding subsection (3), the Minister may waive or change the requirement for studies in subsection (1) of Section 7, where Council is proposing to amend a conservation plan or by-law.  
Subsection 9(4) amended: O.I.C. 2000-451, N.S. Reg. 157/2000.

#### Repeals

10 (1) Subsections (1), (2) and (4) of Section 8, clauses (b) and (d) of subsection (1) and subsection (2) of Section 9 apply mutatis mutandis to the repeal of a conservation plan and by-law.

(2) In the case of a repeal of a conservation plan and by-law, no background studies are required, but the notices required pursuant to subsection (2) of Section 8 shall contain the reason for the repeal.

#### Public hearing for certificate

11 (1) The council shall cause notice to be given of a proposed development and of its intention to consider the application for a certificate by a notice to be published at least once a week for two successive weeks in a newspaper circulating in the area of the district, the first of such notices to be published at least twenty-one clear days before the date fixed for the public hearing.

(2) The notice required by subsection (1) shall

(a) describe the location of the proposed development by civic number, by a plan, map or sketch or other description adequate to identify the location;

(b) give a description of the proposed development; and

(c) state the date, time and place fixed for the public hearing and the place where and hours during which information pertaining to the proposed development may be inspected by the public.

#### Council decision on certificate

12 (1) Subject to subsection (2) and subsection (2) of Section 19F of the Act, the decision of the council to approve or deny the application for a certificate shall be made, by resolution, after consideration of any submissions received and shall be by a majority vote of those councillors present when the vote is taken, but only those councillors present at the public hearing may vote upon the application.

(2) Where the council considers an application for a certificate other than one for demolition or removal of a building or structure, the council shall approve the application if it meets the requirements of the conservation by-law, including applicable portions of any design guidelines.

(3) Where the council denies the application for a certificate or approves the granting of the certificate with conditions imposed, the council shall include in the resolution the reasons for the denial or imposition of conditions, as the case may be.

(4) The council, by resolution, may specify conditions that shall attach to the granting of the certificate and the reasons for the conditions, and subsection (2) of Section 14 applies to those conditions.

(5) Upon the making of a decision to approve, approve with conditions or deny the granting of a certificate,

(a) the council shall cause notice to be published in a newspaper circulating in the district stating its decision and setting out the right of appeal; and

(b) the clerk of the municipality shall serve on the applicant, by personal service or registered mail, a copy of the resolution containing council's decision and reasons therefore, where required.

#### Heritage officer decision on certificate

13 (1) When the heritage officer decides to grant a certificate without conditions, the heritage officer shall notify the applicant of the decision by ordinary mail or personal service.

Subsection 13(1) replaced: O.I.C. 2000-451, N.S. Reg. 157/2000.

(2) When the heritage officer decides to grant a certificate subject to conditions or decides not to grant a certificate, the heritage officer shall, by registered mail or personal service, notify the applicant of the decision and the applicant's right to appeal.

Subsection 13(2) replaced: O.I.C. 2000-451, N.S. Reg. 157/2000.

(3) Unless the contrary is proved, any documents served by ordinary mail shall be deemed to be served, delivered or received,

(a) where the delivery is local, on the third day following that upon which the letter, envelope or wrapper containing the document was posted; or

(b) where the delivery is not local, on the day the document would in the normal course of post be delivered,

and in proving such service it shall be sufficient to prove that the letter, envelope or wrapper containing the document was properly addressed and mailed with the correct postage.

Subsection 13(3) amended: O.I.C. 2000-451, N.S. Reg. 157/2000.

Section 13 replaced: O.I.C. 95-521, N.S. Reg. 107/95.

#### Conditions on certificate

14 (1) A certificate may be granted unconditionally or with conditions.

(2) Where a certificate is granted with conditions, the conditions shall

(a) relate to the development permitted by the certificate;

(b) be for a heritage conservation purpose; and

(c) be in accordance with the design guidelines.

(3) Without limiting the generality of subsections (1) and (2), the conditions subject to which a certificate may be granted include conditions with respect to

(a) the use of specific materials on or in a building or structure;

(b) the filing with the heritage officer of acceptable photographic or other documentation of a building or structure before its demolition or restoration, rehabilitation or alteration;

(c) the making good, after work is completed, of any damage caused to the building or structure by the work;

(d) restoration, rehabilitation or alteration of a building or structure or any part of it following the execution of work, with the use of original materials or acceptable alternatives;

(e) the preservation of or alteration in the design of buildings and structures;

(f) the site plan;

(g) the graphic representation of the proposed buildings and structures;

(h) type, species and placement of vegetation;

(i) the placement and design of signage; and

(j) the exterior colour of buildings and structures.

#### Appeal period

15 An appeal concerning the refusal of a certificate or the granting of a certificate with or without conditions by either the heritage officer or council shall be served on the Board within twenty-one days of the date of the publication of the notice of the refusal or granting in the newspaper.

Section 15 amended: O.I.C. 95-521, N.S. Reg. 107/95; O.I.C. 2000-451, N.S. Reg. 157/2000.

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