

Trustees,

Please accept the following submission in support of the current Land Use Bylaw provisions regarding house size and siting.

Our South Pender community faces a number of important challenges including:

- a significant increase in population (27% between 2016-2021 highest in the Trust)
- finite island resources such as water supply
- erosion of our community's rural character as densification accelerates.
- Adapting to the climate crisis and mitigating its impacts

The 2022 changes to Bylaw 114 enacted by former trustees Thorn and Wright were responsive to these challenges.

The current house size and setback limits in Bylaw No. 114 were reached after more than a dozen meetings in the previous LTC term. There was plenty of opportunity for community members to share their views at regular LTC meetings, community information meetings and the public hearing and in writing. In our view, the house size and setback values enacted in 2022 were reached through a fair and open process. We appreciate that some community members have a different view of the process and would have preferred a different outcome.

Section 478(2) of the Local Government Act states that all bylaws enacted by trustees must be consistent with the Official Community Plan. Key goals in our OCP include:

- maintaining our Island's rural character,
- protecting the natural features and biodiversity of the island,
- ensuring that land use and development are compatible with the rural island character and that growth is gradual and sustainable,
- reducing green-house gas emissions

Trustees have a primary responsibility to ensure that bylaws they approve are consistent with our OCP goals. Former trustees Thorn and Wright gave careful consideration to these goals when enacting the 2022 bylaw changes on house size and siting and they aligned the size and siting values with our OCP goals.

We support the current house size limits in part because they correct the very large 2016 house size limits that were far in excess of the average house size now in our community. For example, the 2016 house size limit was set at 3,800 ft² for lots under 1 acre. This is 2 ½ times the average size of the 32 houses in that lot size category. (see the attached table 1 in Appendix 1 prepared by a community member.) In our view the significantly larger house sizes adopted in 2016 were not consistent with our OCP goal that requires trustees to: "...ensure land use, development, and associated servicing

are compatible with the rural island character and that their growth is gradual and sustainable.”

Increasing the house size limit 2 ½ times greater than the existing average house size for these smaller lots does not support gradual growth and it will greatly impact the rural character in these neighborhoods where small lots predominate. The 2022 house size limit set at 2,500 ft² for lots under 1 acre is 1 ½ times larger than the current average house size on these lots and allows for gradual growth while maintaining the current rural character of our community. These 2022 adjusted house size limits are more in keeping with our OCP goals.

The land use designation map in Schedule B of our OCP shows that a large majority of residential lots are located along the coastline on the Northeast and the Southwest shores. This coastline contains some of the most sensitive ecosystems on South Pender including species at risk protected by Federal legislation. Most of the small lots are located along the coastline. Houses with larger footprints are more likely to negatively impact these ecosystems.

Larger 3,800 ft² houses on smaller lots are not consistent with our OCP goal to protect the natural features and biological diversity of our Island. The house size reduction to 2,500 ft² for these smaller lots is more in keeping with our OCP goals and the Trust preserve and protect mandate. The increase to a 50 ft. setback from the natural boundary of the sea is an improvement that will also help protect the sensitive ecosystems along the coastline.

In appendix 2 we have included some examples of plans for houses under 2,500 ft² to illustrate the viability of this limit for smaller lots. Houses #1 and #2 are 3 bedrooms, 2 bath dwellings both under 1,500 ft². House #3 is a 2,400 ft² dwelling with 4 bedrooms and 2 ½ baths. House #4 is a 4-bedroom 3 bath house under 2,400 ft². These houses illustrate that the 2,500 ft² house limit for lots under 1 acre is a reasonable limit for these smaller ecologically sensitive lots. We are strongly opposed to increasing the current 2,500 ft² house size limit for lots under 1 acre.

Where there are exceptional circumstances that could warrant a larger home on these smaller lots, property owners have the option of applying for a variance and having that application considered on its merits.

While we fully support the existing house size and siting values in Bylaw 114, we are open to considering minor adjustments to these values that are consistent with our OCP goals and meet the needs of our growing population. We are particularly interested in further exploring proposals advanced by community members including adjustments for attached garages that do not involve living space and the relationship between cottages and possible secondary suites.

“Legally non-conforming”

Legally non-conforming is a land use concept that has been at the centre of the recent divisions in our community as we struggle to find the right solutions to the challenges regarding house size and siting.

When house size limits were being discussed in 2015, “legally non-conforming” was a concept poorly understood by many and some community members felt it was stigmatizing to be so labeled. Lost in the furor around “legally non-conforming” was the fact that the Local Government Act provided similar size and siting protection under section 529 for “legally non-conforming” properties as all other “conforming” properties enjoyed under the local trust bylaw.

In 2016 the trustees responded to this intense debate by opting to set the house size limit very high to minimize the number of properties that were labelled “legally non-conforming”. This decision had the effect of setting house size limits based on the largest houses in the community which were far in excess of the average house sizes as illustrated in the attached table 1.

This debate around “legally non-conforming” continued in 2022 and Trust planning staff attempted to clarify the actual impact of “legally non-conforming” in a presentation at a community information meeting on June 17, 2022. The affected properties were deemed legal under the Local Government Act which allowed them to be fully replaced if destroyed by fire, etc. However, they were “grandfathered” as “non-conforming” because the protection to fully replace the dwelling was in the Local Government Act, not in our LUB.

Although this protection existed under the Local Government Act, former trustees Wright and Thorn reinforced this protection by enshrining a parallel protection within the LUB itself. They accomplished this by adding section 5.1(5) making all dwellings legally conforming as of September 15, 2022, regardless of house size.

This “legally conforming” designation was confirmed by Trust staff in the March 2024 report: “Bylaw No. 122 and Legal Non-Confirming FAQ” which clearly establishes that all houses constructed prior to September 15, 2002 are deemed “legally conforming” with Bylaw 114 regardless of size, including those very large houses that were legally non-conforming under the 2016 larger house size limits.

In our view, so-called “legal non-conforming” is, or should be, a non-issue in our current review of the house size and siting limits.

Variances

Our current trustees have expressed the view that variances are an indication that the policy on house size and siting is flawed and should be adjusted to avoid variances for house size and siting. We do not share that view.

Variances are a legitimate planning tool established under the Local Government Act and provide some flexibility for homeowners to take into account exceptional circumstances and possible hardship situations. This flexibility is sound planning policy and allows trustees to establish a policy standard in accordance with the Trust preserve and protect mandate and our OCP goals, while providing property owners with the flexibility to vary that standard where the circumstances merit an adjustment.

The key policy advantage for variances is that it gives adjacent property owners an opportunity to express support for the variance or to convey concerns about the impacts of the variance on their property interests. Trustees then consider the merits of the variance application in light of all relevant information including that provided by affected neighbours. This is sound public policy that should be supported, not rejected.

Some have complained that the \$1,976 application fee for a variance is too high. Given the current building cost on the Island (\$500+ per ft²), a 2500 ft² house would cost well over 1 million dollars. The variance fee would amount to less than 1/4 of 1% of the building cost, a very reasonable cost that provides adjacent neighbours a voice in the process. This fee covers staff time to process the application. In any event, the trustees determine the variance application fee and it is within their authority to reduce the fee if they consider the current fee is too high. We note that the variance policy provides a 75% refund if a variance request is withdrawn before trust staff refer a written report to the LTC on the application.

Some community members have complained about the cost impact of a delay in the consideration of an application, particularly in this period of heightened inflation affecting the cost of building materials. It is important to distinguish between a delay on the part of the Trust and a delay in processing on the part of the applicant. Trustees have oversight on the variance application process and are in a position to ensure that Trust staff act expeditiously in the processing of an application. The consequences of any delay on the part of the applicant accrues to the applicant.

Insurance

One of the confounding issues in the community discussion about house size and siting is the assertion that “legally non-conforming” status will increase the homeowner’s insurance premiums. The March 2024 staff report indicating all dwellings are “legally conforming” as of September 15, 2022, should put that issue to rest. Additional premiums can apply to building code changes and that is now more common with code adjustments relating to climate change impacts. This would apply to all properties regardless of size or siting status and is not related to the bylaw changes in 2022.

We appreciate that increased insurance costs may in some cases be related to asbestos mitigation common in older homes and hazardous materials among other things. This would apply equally to all properties regardless of size or siting but may vary for older homes constructed at a time when asbestos insulation was more commonly used.

The insurance literature also provides examples of cases where increased insurance costs may be related to zoning changes for “use” and “density” provisions. For example, the literature provides the example of a building that includes a corner store or a restaurant on the ground level and the owner’s residence above. If a change in the bylaw removes the use of commercial ventures from the zone, there are options for insurance coverage for the loss of that use. A similar situation could occur where a zoning change removes short term vacation rentals as a permitted use. There may be insurance to cover the loss related to that bylaw change. That is related to use and not related to size and siting changes enacted in 2022.

Another zoning example in the literature is related to density where zoning allows for 4-plex rentals, and the zoning is changed to duplex rentals only. In that case there may be insurance to cover the loss related to density changes. It is important to keep in mind that the Local Government Act does not fully protect non-conforming use and density as it does with size and siting. Additional insurance costs associated with use and density have no bearing of the size and siting bylaw changes enacted in 2022.

Based on our current understanding we do not see any basis to conclude that house size or siting provisions in our current bylaw can adversely affect insurance premiums.

Conclusion

For the reasons detailed above, we support retention of the current bylaw provisions on house size and siting. The 2022 adjustments are responsive to the Islands Trust Act preserve and protect mandate, are in accordance with the Trust Policy Statement and are consistent with the established goals in our OCP. They are a major improvement over the house size and siting values in 2016.

Having said this, we are open to considering minor adjustments to the 2022 house size and siting limits where there is a rationale to support these adjustments that is responsive to the Islands Trust Act preserve and protect mandate, in accordance with the Trust Policy Statement and consistent with our OCP goals.

We are fully committed to working with community members and trustees to achieve our OCP Community Vision Statement:

Our South Pender community is committed to preserve the rural nature and natural diversity of our island environment for future generations.

Respectfully submitted,

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APPENDIX 1. Table 1. Dwelling size – current and permitted 2016 & 2022

SOUTH PENDER ISLAND DWELLING SIZE - CURRENT AND PERMITTED

SOUTH PENDER ISLAND LOT SIZE	# CURRENT DWELLINGS	AVERAGE CURRENT HOUSE SIZE (SQ. FT.)	MAXIMUM FLOOR AREA 2021 SQ. FT.	% INC OVER EXISTING	MAX FLOOR AREA 2016 SQ. FT.	% INC OVER EXISTING	# TOTAL %			% VACANT LOTS TO TOTAL LOTS
							VACANT LOTS	BUILDABLE LOTS	BUILDABLE LOTS	
LESS THAN 1 ACRE	32	1510	2500	166%	3800	252%	7	39	17%	18%
1 - 2 ACRES	90	1944	3000	154%	4500	231%	15	105	45%	14%
2 - 4 ACRES	52	1615	3500	217%	5600	347%	8	60	26%	13%
4 - 10 ACRES	11	1997	3750	188%	5854	293%	3	14	6%	21%
10+ ACRES	15	2727	4000	147%	6030	221%	2	17	7%	12%
TOTAL (AVERAGE)	200	1959	3350	174%	5157	269%	35	235	100%	15%

Data based on 2016 BC Assessment Records and needs updating but will not likely change the overall figures substantially.

Some Observations

The current house size restrictions allows an average increase in house sizes of more than 170% over existing house sizes.

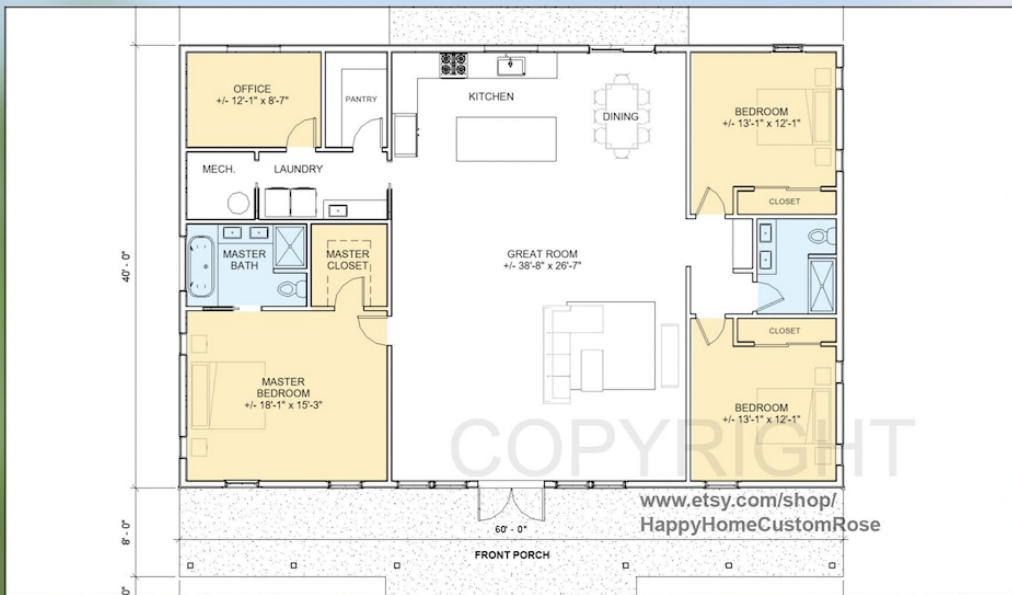
The former house size restrictions allowed almost a 270% increase over existing house sizes.

The number of vacant lots is quite small in relation to built on lots (85% are already built on, 15% are vacant).

As existing dwellings are renovated or replaced, this will have the greatest effect on changes to the Island in the future (especially on 2-4 acre properties) that could be rebuilt up to 217% of existing size houses with the current bylaws and 347% with the previous bylaws.

APPENDIX 2. Sample house plans for dwellings under 2,500 ft2

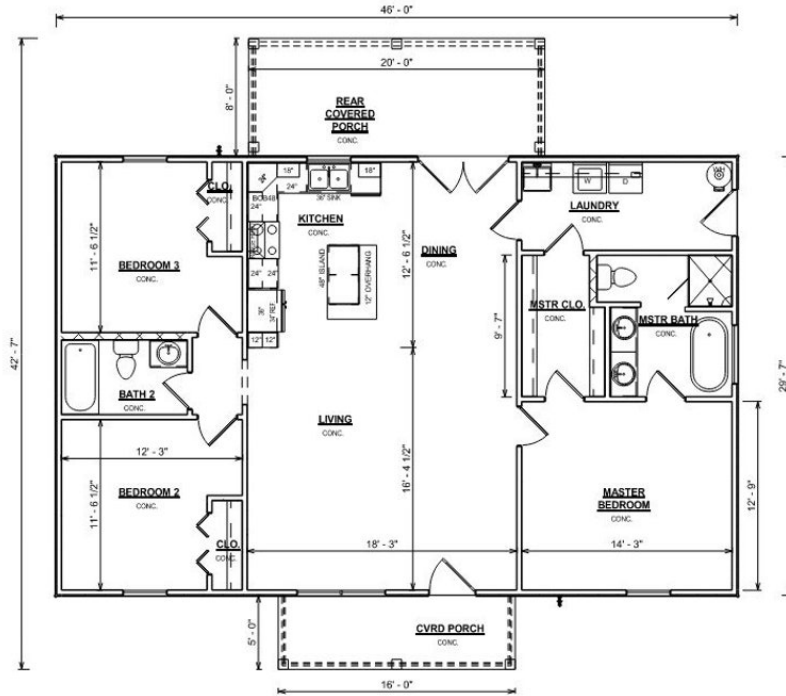
House #1. A 1,380 ft2 house with 3 bedrooms 2 baths modest, but very livable house



https://www.etsy.com/ca/listing/1490271693/farmhouse-barndominium-40-x-60-house?click_key=dbbd5cddec791a9813ed92201e7308efa4b255d5:1490271693&click_sum=93dedfd0&ref=internal_similar_listing_bot-3&listing_id=1490271693&listing_slug=farmhouse-barndominium-40-x-60-house

Letter to Trustees April 22, 2024. House size and siting

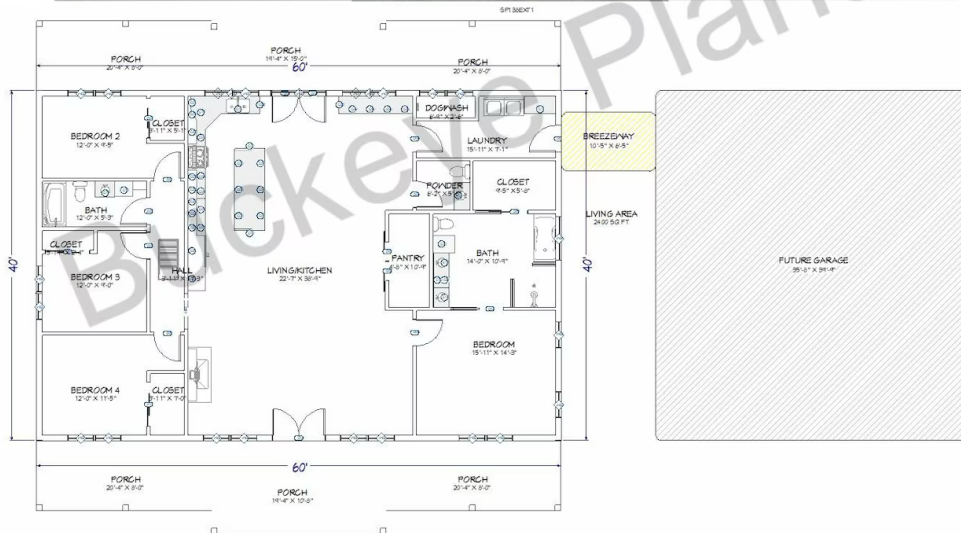
House #2 A 1,500 ft2 3 bedrooms 2 baths.



https://www.etsy.com/ca/listing/1069225678/plan-104-3-bd2-b-1361-htd-square-feet?click_key=8c0834251b8f016b4da67a269f8120eff6ee93e:1069225678&click_sum=a90d6660&external=1&rec_type=ss&ref=landingpage_similar_listing_top-8&frs=1

Letter to Trustees April 22, 2024. House size and siting

House #3. A 4 bedroom 2 1/2 baths 2,400 ft²



Letter to Trustees April 22, 2024. House size and siting

HOUSE # 4 A 4 BEDROOM 3 bath house under 2,300 ft²

<https://www.eplans.com/plan/2637-square-feet-4-bedroom-3-00-bathroom-0-garage-farmhouse-country-cottage-sp302316>

