



Bylaw No. 122 & Legal Non-Conforming FAQ

BYLAW NO. 122 – FACTS

- [Bylaw No. 122](#) was adopted on September 15, 2022
- Bylaw No. 122 decreased maximum floor area for dwellings and total floor area for all buildings in the Rural Residential, Agriculture, Forestry, and Natural Resource zones
- Bylaw No. 122 **does not create any legal non-conforming situations** in terms of maximum floor area of dwellings and the setback to the interior side lot line for dwellings and cottages in the Rural Residential zones.
- If the floor area of a legal dwelling exceeds the more restrictive maximum floor area regulations adopted on September 15, 2022, the floor area of the dwelling as it was on September 15, 2022 is the permitted maximum floor area for that dwelling.
- EXAMPLE:
 - A dwelling was legally constructed in 2021 on a 0.3 ha lot in the RR1 zone with a floor area of 3000 ft².
 - Bylaw No. 122 was then adopted in September 2022. The new maximum floor area regulations in Bylaw No. 122 (which amended the LUB) requires a new dwelling in the RR1 zone to have a maximum floor area of no greater than 2500 ft² on a lot with an area less than 0.4 has.
 - Due to Subsection 5.1(6), the dwelling constructed in 2021 is permitted to retain the 3000 ft² floor area.
 - **The adoption of Bylaw No. 122 did not create a legal non-conforming situation for this dwelling constructed in 2021 as the larger floor area of 3000 ft² is the permitted floor area due to Subsection 5.1(6)**
 - Subsection 5.1(6) is as follows:
“Despite Subsection 5.1(5), on a lot that contains a legal dwelling constructed prior to September 15, 2022, a replacement dwelling may be constructed, or the existing dwelling re-constructed or altered, provided the floor area of the replacement, re-constructed or altered dwelling does not exceed the floor area of the dwelling on the lot on September 15, 2022 and for this purpose the Local Trust Committee may require an owner to submit a certification from an appropriately qualified person as to the floor area of the dwelling at the time of the adoption of this bylaw.”

LOCAL GOVERNMENT ACT – NON-CONFORMING FACTS

Non-conforming rules can be found in Sections 528 to 535 of the [Local Government Act](#). Different non-conforming rules apply to the following different situations:

- Non-conforming **use or density** – Sections 528, 530, 531, 532
- Non-conforming **siting, size, or dimensions** of buildings and/or structures – Section 529
- Non-conforming Form of Tenure – Section 535
- Other – Sections 533, 534, and 535

In order to determine which Section of the Local Government Act applies to your non-conforming situation, you must determine if the Land use Bylaw (LUB) regulation is for “use”, “density”, or “siting, size, or dimensions”?



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QUESTION NO. 1:

How to determine if a LUB regulation is for a “use”, “density”, or “siting, size, or dimensions” in the South Pender Land Use Bylaw?

(excerpt from South Pender LUB No. 114)

5.1 Rural Residential Zones																						
Permitted Uses		RR1	RR2	RR3																		
(1)	The following uses are permitted, subject to the regulations set out in this Section and the general regulations, and all other uses are prohibited:																					
(a)	Dwelling;	✓	✓	✓																		
(b)	Cottage;	✓	✓	✓																		
(c)	Agriculture;	✓	✓	✓																		
(d)	Rescinded;	✓	✓	✓																		
(e)	Accessory uses, buildings and structures, including, but not limited to, home businesses and roadside stands for the sale of produce grown on the same lot.	✓	✓	✓																		
Density		RR1	RR2	RR3																		
(2)	On a parcel less than 0.8 hectares (2 acres) in area, one (1) dwelling is permitted and no cottage is permitted.	✓	✓	✓																		
(3)	On a parcel 0.8 hectares (2 acres) or greater in area, but less than 4.0 ha (10 acres) in area, one (1) dwelling and one (1) cottage are permitted.	✓	✓	✓																		
(4)	On a parcel 4 hectares (10 acres) or greater in area, two (2) dwellings and two (2) cottages are permitted.	✓	✓	✓																		
Siting and Size		RR1	RR2	RR3																		
(5)	Maximum Floor Area per lot:	✓	✓	✓																		
	<table border="1"> <thead> <tr> <th>Lot Area</th> <th>The total floor area of all buildings may not exceed:</th> <th>The floor area of a dwelling may not exceed:</th> </tr> </thead> <tbody> <tr> <td>Less than 0.4 ha (1 acre)</td> <td>465 m² (5000 ft²)</td> <td>232 m² (2500 ft²)</td> </tr> <tr> <td>0.4 ha to < 0.8 ha (1 to 2 acres)</td> <td>557 m² (6000 ft²)</td> <td>279 m² (3000 ft²)</td> </tr> <tr> <td>0.8 ha to < 1.6 ha (2 to 4 acres)</td> <td>743 m² (8000 ft²)</td> <td>325 m² (3500 ft²)</td> </tr> <tr> <td>1.6 ha to < 4 ha (4 to 10 acres)</td> <td>836 m² (9000 ft²)</td> <td>348 m² (3750 ft²)</td> </tr> <tr> <td>4.0 ha (10 acres) or greater</td> <td>1394 m² (15000 ft²)</td> <td>372 m² (4000 ft²)</td> </tr> </tbody> </table>	Lot Area	The total floor area of all buildings may not exceed:	The floor area of a dwelling may not exceed:	Less than 0.4 ha (1 acre)	465 m ² (5000 ft ²)	232 m ² (2500 ft ²)	0.4 ha to < 0.8 ha (1 to 2 acres)	557 m ² (6000 ft ²)	279 m ² (3000 ft ²)	0.8 ha to < 1.6 ha (2 to 4 acres)	743 m ² (8000 ft ²)	325 m ² (3500 ft ²)	1.6 ha to < 4 ha (4 to 10 acres)	836 m ² (9000 ft ²)	348 m ² (3750 ft ²)	4.0 ha (10 acres) or greater	1394 m ² (15000 ft ²)	372 m ² (4000 ft ²)			
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(6)	Despite Subsection 5.1(5), on a lot that contains a legal dwelling constructed prior to September 15, 2022, a																					

ANSWER:

Each zone in Part 5 of the South Pender Land Use Bylaw is broken into separate regulation sections which generally include: permitted uses, density, siting and size, conditions of use, and/or subdivision regulations. To determine which regulation is either “use”, “density”, or “siting, size, or dimensions”, refer to the heading of the section that regulation is found in. For example, maximum floor area regulations for dwellings are located under the ‘siting and size’ section; therefore, Section 529 of the *Local Government Act* applies.



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QUESTION NO. 2:

Is my house “grandfathered” now that the South Pender Land Use Bylaw was amended to a more restrictive maximum floor area?

ANSWER:

If your house was legally constructed prior to the adoption of Bylaw No. 122, and now exceeds the new maximum floor area, the floor area of your house as it was on September 15, 2022 is legal.

QUESTION NO. 3:

What if my house burns down? Will we need to comply with the new maximum floor area regulations in the South Pender Land Use Bylaw?

ANSWER:

As stated in Subsection 5.1(5), a replacement dwelling may be constructed, if the dwelling exceeded the maximum floor area, it can be replaced provided the floor area of the new house does not exceed the floor area of the previous dwelling that burnt down as it was on September 15, 2022.

QUESTION NO. 4:

Subsection 5.1(5) states that the owner must “submit a certification from an appropriately qualified person as to the floor area of the dwelling at the time of the adoption of this bylaw”. What does this mean?

ANSWER:

This means that if a home owner does need to rebuild a house that exceeded the maximum floor area, the property owner would be responsible to provide evidence of the floor area of their house as it was on September 15, 2022. An example would be to provide floor plans that were submitted as part of a previous Building Permit.

QUESTION NO. 5:

Bylaw No. 122 amended the height regulation of a dwelling which now requires a dwelling to not exceed 9.2 metres (30 feet) in height at any point. As my house is located on a slope, one side of my house exceeds 9.2 metres (30 feet) in height. My house used to comply with the height regulation but now it does not. Does this mean my house is legal non-conforming?

ANSWER:

Yes, this means your dwelling is legal non-conforming in terms of height. Height is considered a **siting, size, or dimensions** regulation therefore Section 529 of the Local Government Act complies. To summarize, Section 529 states that if “the siting, size or dimensions of a building constructed before the bylaw was adopted does not conform with the [newly adopted] bylaw, [then the] the building may be maintained, extended or altered” as long as “the repair, extension or alteration would, when completed, involve no further contravention of the bylaw”. In other words, you are permitted to alter/renovate your house as long as you’re not increasing the area of the house that is currently not in compliance with the newly adopted bylaw. If you wish to extend or construct an addition to your house where it is over 9.2 metres (30 feet) in height, then a variance would be required. A variance could be granted by a Development Variance Permit or by the Board of Variance.