

Harbour East - Marine Drive Community Council
February 7, 2013

TO: Chair and Members of Harbour East - Marine Drive Community Council

Original Signed

SUBMITTED BY:

Brad Anguish, Director of Community and Recreation Services

DATE: January 16, 2013

SUBJECT: Case 17971: Development Agreement, 5 - 7 Tupper Street, Dartmouth

ORIGIN

Application by John and Kathryn Leedham

LEGISLATIVE AUTHORITY

HRM Charter; Part VIII, Planning & Development

RECOMMENDATION

It is recommended that Harbour East - Marine Drive Community Council:

1. Give Notice of Motion to consider the proposed development agreement, as provided in Attachment A, to permit the development of two existing undersized lots to create two, 2 unit buildings at 5 and 7 Tupper Street, Dartmouth, and schedule a Public Hearing;
2. Approve the proposed development agreement, as provided in Attachment A of this report; and
3. Require the agreement be signed by the property owner within 120 days, or any extension thereof granted by Council on request of the property owner, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

John and Kathryn Leedham have made application to enter into a development agreement for their lands at 5 and 7 Tupper Street in Dartmouth. The proposal is to remove the older style bungalow and small garage at 5 Tupper Street and utilize an existing vacant lot at 7 Tupper Street (Map 2). The existing lots are to be re-subdivided to create two new lots with frontage along Esdaile Avenue rather than Tupper Street. Two, 2-unit dwellings in accordance with the standards of the applied R-2 Zone in the Dartmouth Land Use By-law (LUB) (Attachment C) would then be constructed on the reconfigured lots. The re-subdivided lots will be approximately 4,091 square feet (380 square metres) and 3,812 square feet (354 square metres) in area, and two of the units would have direct access to Esdaile Avenue while the other two units would have access to Tupper Street from the rear of the buildings (Attachment A – Schedule B).

Location, Designation and Zoning

The subject properties are:

- located at 5 and 7 Tupper Street in Dartmouth and were created in 1959;
- situated at the corner of Tupper Street and Esdaile Avenue and contain one older style bungalow with a small garage at 5 Tupper Street and a vacant lot at 7 Tupper Street;
- surrounded by single detached dwellings;
- designated Residential Designation under Dartmouth Municipal Planning Strategy (MPS) (Map 1); and
- zoned R-2 (Two Family Residential) Zone under Dartmouth Land Use By-law (LUB) (Map 2).

Enabling Policy

The subject properties are located in the Residential Designation, which is intended to be a priority area for residential uses. Policy IP-3 of the Dartmouth MPS allows Council to consider existing undersized lots which have insufficient lot area, lot frontage or both, and which abut a vacant R-1 or R-2 Zoned lot; both may be reconfigured and developed through the development agreement process. The intent of the existing undersized lot policy is to recognize the establishment of lots that were created prior to the 1978 establishment of minimum lot standards in the Dartmouth LUB. It is recognized that conventionally designed housing would be difficult to locate on these types of lots given their small size. Accordingly, the development agreement provisions are intended to be used to provide the flexibility required to provide housing suitable to meet these specific constraints. Policy IP-1(c) is also applicable as it contains the general implementation criteria that apply to all development agreements. Both policies are included in Attachment B.

DISCUSSION

It is the opinion of staff that the development agreement as contained in Attachment A satisfies the intent of the applicable enabling MPS policies (Attachment B). While the proposed development agreement is consistent with the intent of these applicable policies, staff identified the following issues for specific discussion.

Building Scale and Compatibility with Existing Neighbourhood

Staff considers the proposal to be suitable in terms of building scale and compatibility with the existing neighbourhood. In terms of building heights, both buildings are proposed to be approximately two (2) storeys high from Esdaile Avenue but are built on a grade that slopes to the rear providing the appearance of additional storeys from Tupper Street (Schedules C, D and E - Attachment A). Both Esdaile Avenue and Tupper Street are comprised primarily of similar building forms containing single and two unit buildings of similar height, length and width to the proposed (Policy IP-3, Attachment B). Three and four storey medium density apartment buildings are located directly across Tupper Street from the proposed building (Map 2). One storey bungalows lie adjacent to the site at 26 Esdaile Avenue and 9 Tupper Street (Map 2). To mitigate impacts to these properties, a wooden fence, between 5 and 6 feet in height will be required along these property boundaries.

In terms of the physical site, the proposed lots are approximately 4,091 square feet and 3,812 square feet in area, respectively (Attachment A-Schedule B). The proposed building footprints account for approximately 34% and 35% lot coverage which complies with the maximum lot coverage requirement of 35% of the applied R-2 Zone (Attachment C). In addition, the proposed buildings will meet the other remaining setback distances as set out in the Dartmouth LUB.

Parking and Access

A minimum of two parking spaces per lot are proposed. All four units contain garages (Attachment A-Schedule B) which can accommodate one (1) space per unit which is in accordance with the LUB requirement (Attachment C). The driveway to the rear of both buildings will require an access easement for Lot 23A. Accordingly an easement will be required for this purpose which has been provided for in the development agreement.

As previously indicated, the property at 7 Tupper Street is presently vacant but contains a driveway access that serves 9 Tupper Street (Map 2). The property at 9 Tupper Street is owned by Kathryn Leedham who is also one of the applicants, however, this property is not subject to the proposed development agreement. A new driveway access will be required for 9 Tupper Street and this lot is capable of supporting its own driveway, independent of 7 Tupper Street.

Conclusion

It is the opinion of staff that the proposed development is consistent with the intent of the Policies guiding development of existing undersized lots in Dartmouth. The proposed buildings meet the criteria set out in the R-2 Zone as discussed above, as well as the general evaluation criteria set out in Policies IP-3 and IP-1(c). Therefore, staff recommends Council enter into the proposed development agreement as set out in Attachment A of this report.

FINANCIAL IMPLICATIONS

There are no financial implications. The Developer will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement. The administration of the Agreement can be carried out within the approved 2012/13 budget with existing resources.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy.

The level of community engagement was consultation, achieved through a public information meeting (see Attachment D), the HRM Website, responses to inquiries, as well as an information/notification sheet that was sent to property owners in the general area of the site regarding the proposal.

Should Council decide to proceed with a public hearing on this application, in addition to the published newspaper advertisements, property owners within the notification area will be notified as shown on Map 2.

The proposed development agreement will potentially impact local residents and property owners.

ENVIRONMENTAL IMPLICATIONS

The proposal meets all relevant environmental policies contained in the MPS. Please refer to Attachment C of this report for further information.

ALTERNATIVES

1. Approve the proposed development agreement, as contained in Attachment A. This is the staff recommendation.
2. Approve the terms of the development agreement, as contained in Attachment A, with modifications or conditions. Some modification or conditions may require additional negotiation with the developer and a second public hearing.
3. Refuse the proposed development agreement. Pursuant to Section 245 (6) of the Halifax Regional Municipality Charter, Council must provide reasons to the applicant justifying this refusal, based on policies of the Dartmouth MPS.

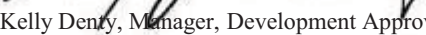
ATTACHMENTS

Map 1	Generalized Future Land Use
Map 2	Zoning and Location
Attachment A	Proposed Development Agreement
Attachment B	Excerpts the Dartmouth MPS and Additional Policy Evaluation
Attachment C	Excerpts from the Dartmouth LUB
Attachment D	Minutes from the Public Information Meeting

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Shayne Vipond, Senior Planner, 490-4335


Original Signed


Report Approved by:  Kelly Denty, Manager, Development Approvals, 490-4800



Map 1 - Generalized Future Land Use

5 & 7 Tupper Street

 Subject Property

 Plan Area Boundary

Dartmouth Plan Area

Designation

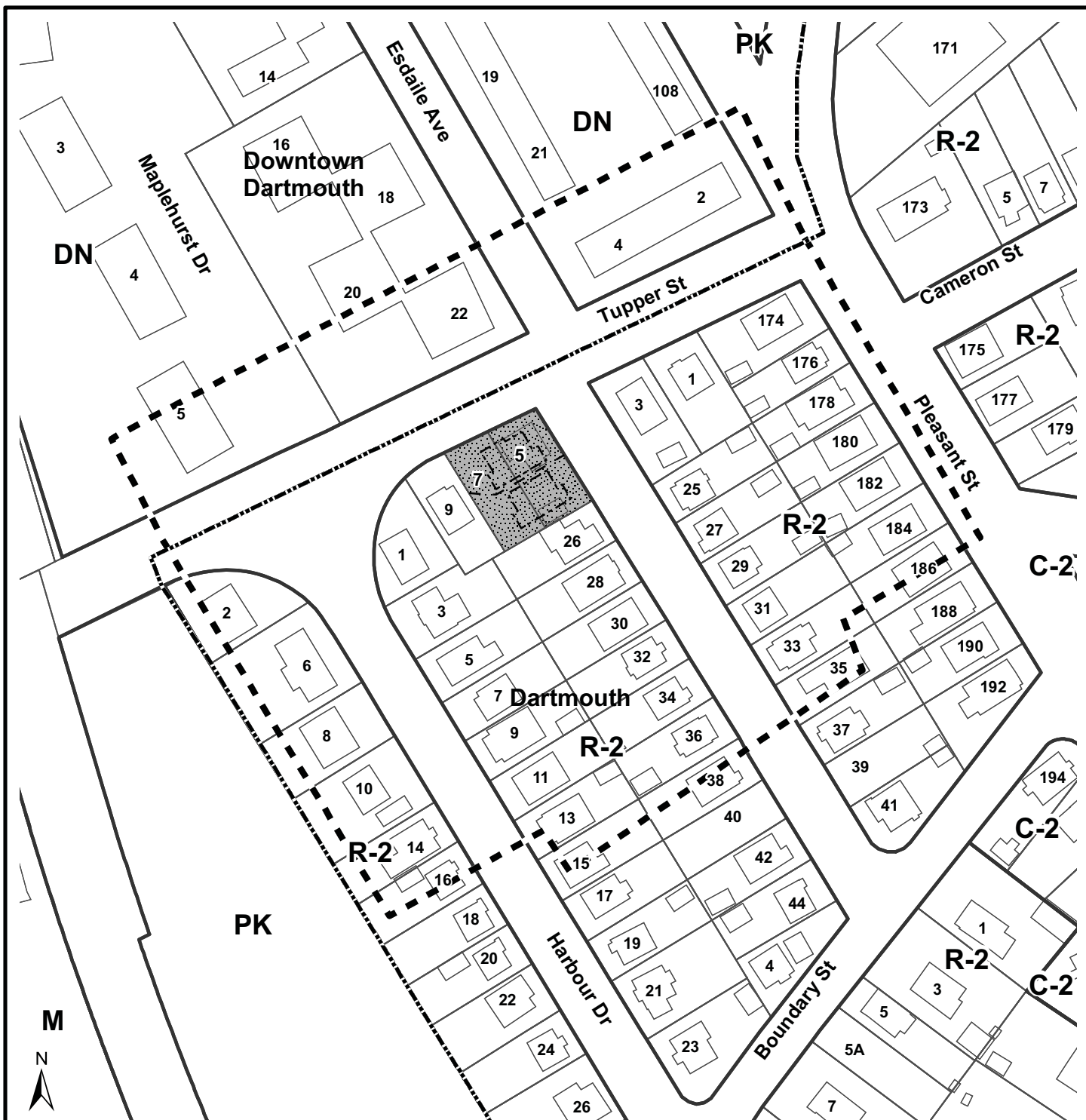
Dartmouth	R	Residential
Downtown Dartmouth	DN	Downtown Neighbourhood

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0 5 10 20 30
Meters


This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the Dartmouth Plan.

HRM does not guarantee the accuracy of any representation on this plan.



Map 2 - Zoning and Location

5 & 7 Tupper Street

 Subject Property

 Notification Area

 Plan Area Boundary

Dartmouth Plan Area

Zoning

Dartmouth	R-2	Two Family Residential
Downtown Dartmouth	DN	Downtown Neighbourhood
	PK	Park & Open Space

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This map is an unofficial reproduction of a portion of the zoning Map for the Dartmouth Plan Area.

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Attachment A: Proposed Development Agreement

THIS AGREEMENT made this day of [Insert Month], 20____,

BETWEEN:

(INSERT INDIVIDUAL'S NAMES)

Individuals, in the Halifax Regional Municipality, in the Province of Nova Scotia
(hereinafter called the "Developer")

OF THE FIRST PART

- and-

HALIFAX REGIONAL MUNICIPALITY

a municipal body corporate, in the Province of Nova Scotia
(hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located at 5 and 7 Tupper Street, Dartmouth, and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Developer has requested that the Municipality enter into a Development Agreement to allow two, 2 unit residential buildings to be developed on the Lands pursuant to the provisions of the Halifax Regional Municipality Charter and pursuant to Policies IP-3 and IP-1(c) of the Dartmouth Municipal Planning Strategy;

AND WHEREAS the Harbour East - Marine Drive Community Council of the Municipality approved this request at a meeting held on [Insert - Date], referenced as Municipal Case Number 17971;

THEREFORE, in consideration of the benefits accrued to each party from the covenants herein contained, the Parties agree as follows:

PART 1: GENERAL REQUIREMENTS AND ADMINISTRATION

1.1 Applicability of Agreement

The Developer agrees that the Lands shall be developed and used only in accordance with and subject to the terms and conditions of this Agreement.

1.2 Applicability of Land Use By law and Subdivision By-law

Except as otherwise provided for herein, the development, use and subdivision of the Lands shall comply with the requirements of the Land Use By law for Dartmouth and the Regional Subdivision By law, as may be amended from time to time.

1.3 Applicability of Other By-laws, Statutes and Regulations

- 1.3.1 Further to Section 1.2, nothing in this Agreement shall exempt or be taken to exempt the Developer, lot owner or any other person from complying with the requirements of any by law of the Municipality applicable to the Lands (other than the Land Use By law to the extent varied by this Agreement), or any statute or regulation of the Provincial/Federal Government and the Developer or Lot Owner agree(s) to observe and comply with all such laws, by laws and regulations, as may be amended from time to time, in connection with the development and use of the Lands.
- 1.3.2 The Developer shall be responsible for securing all applicable approvals associated with the on-site and off-site servicing systems required to accommodate the development, including but not limited to sanitary sewer system, water supply system, stormwater sewer and drainage system, and utilities. Such approvals shall be obtained in accordance with all applicable by-laws, standards, policies, and regulations of the Municipality and other approval agencies. All costs associated with the supply and installation of all servicing systems and utilities shall be the responsibility of the Developer. All design drawings and information shall be certified by a Professional Engineer or appropriate professional as required by this Agreement or other approval agencies.

1.4 Conflict

- 1.4.1 Where the provisions of this Agreement conflict with those of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law to the extent varied by this Agreement) or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail.
- 1.4.2 Where the written text of this Agreement conflicts with information provided in the Schedules attached to this Agreement, the written text of this Agreement shall prevail.

1.5 Costs, Expenses, Liabilities and Obligations

The Developer shall be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement and all Federal, Provincial and Municipal laws, by laws, regulations and codes applicable to the Lands.

1.6 Provisions Severable

The provisions of this Agreement are severable from one another and the invalidity or unenforceability of one provision shall not affect the validity or enforceability of any other provision.

PART 2: DEFINITIONS

2.1 Words Not Defined under this Agreement

All words unless otherwise specifically defined herein shall be as defined in the applicable Land Use By-law and Subdivision By-law. If not defined in these documents their customary meaning shall apply.

PART 3: USE OF LANDS, SUBDIVISION AND DEVELOPMENT PROVISIONS

3.1 Schedules

The Developer shall develop the Lands in a manner, which, in the opinion of the Development Officer, conforms with the following Schedules attached to this Agreement and filed in the Halifax Regional Municipality as Case Number 17971:

Schedule A	Legal Description of the Lands(s)
Schedule B	Concept Site Plan
Schedule C	Lot 22A and 23A Front Building Elevations,
Schedule D	Lot 22A Left Side and 23A Right Side Elevations,
Schedule E	Lot 22A and 23A Rear Building Elevations,

3.2 Requirements Prior to Approval

- 3.2.1 The Municipality shall not issue any Development Permit until a Final Plan of Subdivision has been approved for the re-subdivision of the lands as shown on Schedule B.
- 3.2.2 Notwithstanding any other provision of this Agreement, the Developer shall not occupy or use the Lands for any of the uses permitted by this Agreement unless an Occupancy Permit has been issued by the Municipality.

3.3 General Description of Land Use

- 3.3.1 The use(s) of the Lands permitted by this Agreement are as follows:

- (a) a maximum of 2 residential dwelling units per building;
- (b) a maximum of one building per lot; and,
- (c) a maximum of two lots.

3.4 Siting and Architectural Requirements

3.4.1 The buildings shall be located and oriented as generally illustrated on Schedule B, and shall comply with the following:

- (a) lot coverage shall not exceed 35%; and,
- (b) the maximum height of the buildings shall not exceed 4 storeys and the height of elevations as indicated on Schedules C through E.

3.4.2 The design, form, and exterior materials of the building shall, be architecturally detailed, veneered with stone or brick or treated in an equivalent manner, and in the opinion of the Development Officer, generally conform to the Building Elevations included with this Agreement as Schedules C through E.

3.4.3 Façades on Esdaile Avenue and Tupper Street shall be detailed as primary façades. Architectural treatment shall be continued on the sides of these buildings as identified on the attached Schedules.

3.5 SUBDIVISION OF THE LANDS

The Municipality shall not issue any Development Permit until a Final Plan of Subdivision has been approved for the re-subdivision of the lands as shown on Schedule B.

3.6 PARKING

3.6.1 A total number of 4 parking spaces (2 spaces per lot) shall be required as illustrated on Schedule B.

3.6.2 All parking areas shall be hard surfaced with asphalt, concrete, pavers or an acceptable equivalent.

3.6.3 It is the responsibility of the Developer to convey all required right-of-way easements over the properties to accommodate parking at the rear of the buildings as shown on Schedule B.

3.7 LANDSCAPING

- 3.7.1 The Developer shall provide solid board fencing, a minimum of five feet in height but no greater than six feet in height, along the property boundaries separating the proposed lots 22A, Lot 23A from the residential properties to west and south as identified on Schedule B.
- 3.7.2 All portions of the Lands not used for structures, parking areas, driveways, curbing, or walkways shall be landscaped except for areas where natural vegetative cover is maintained. Landscaping shall be deemed to include grass, mulch, decorative stone or water features, planting beds, trees, bushes, shrubs or other plant material or decorative element.

3.8 MAINTENANCE

The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the exterior of the building, fencing, walkways, parking areas and driveways, and snow and ice control, salting of walkways and driveways.

PART 4: STREETS AND MUNICIPAL SERVICES

4.1 Off-Site Disturbance

Any disturbance to existing off-site infrastructure resulting from the development, including but not limited to, streets, sidewalks, curbs and gutters, street trees, landscaped areas and utilities, shall be the responsibility of the Developer, and shall be reinstated, removed, replaced or relocated by the Developer as directed by the Development Officer, in consultation with the Development Engineer.

4.2 Private Infrastructure

All private services and infrastructure located on the Lands, including but not limited to the private driveway(s), laterals for water and sewer, and any private stormwater pipes or collection systems, shall be owned, operated and maintained by the Developer. Furthermore, the Municipality shall not assume ownership of any of the private infrastructure or service systems constructed on the Lands.

PART 5: AMENDMENTS

5.1 Non Substantive Amendments

The following items are considered by both parties to be non-substantive and may be amended by resolution of Council.

- (a) The granting of an extension to the date of commencement of construction as identified in Subsection 7.3.1 of this Agreement; and

- (b) The length of time for the completion of the development as identified in Section 7.4 of this Agreement.

5.2 Substantive Amendments

Amendments to any matters not identified under Section 6.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the Halifax Regional Municipality Charter.

PART 6: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

6.1 Registration

A copy of this Agreement and every amendment or discharge of this Agreement shall be recorded at the Registry of Deeds or Land Registry Office at Halifax, Nova Scotia and the Developer shall incur all costs in recording such documents.

6.2 Subsequent Owners

- 6.2.1 This Agreement shall be binding upon the parties hereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the Lands which are the subject of this Agreement until this Agreement is discharged by Council.
- 6.2.2 Upon the transfer of title to any lot(s), the subsequent owner(s) thereof shall observe and perform the terms and conditions of this Agreement to the extent applicable to the lot(s).

6.3 Commencement of Development

- 6.3.1 In the event that development on the Lands has not commenced within 3 years from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office, as indicated herein, the Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law.
- 6.3.2 For the purpose of this section, commencement of development shall mean installation of the footings and foundation for the proposed buildings.
- 6.3.3 For the purpose of this section, Council may consider granting an extension of the commencement of development time period through a resolution under Section 6.1, if the Municipality receives a written request from the Developer at least sixty (60) calendar days prior to the expiry of the commencement of development time period.

6.4 Completion of Development

Upon the completion of the whole development or complete phases of the development, Council may review this Agreement, in whole or in part, and may:

- (a) retain the Agreement in its present form;

- (b) negotiate a new Agreement;
- (c) discharge this Agreement; or
- (d) for those portions of the development which are completed, discharge this Agreement and apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By law for Dartmouth, as may be amended from time to time.

6.5 Discharge of Agreement

If the Developer fails to complete the development after 5 years from the date of registration of this Agreement at the Registry of Deeds or Land Registration Office Council may review this Agreement, in whole or in part, and may:

- (a) retain the Agreement in its present form;
- (b) negotiate a new Agreement; or
- (c) discharge this Agreement.

PART 7: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

7.1 Enforcement

The Developer agrees that any officer appointed by the Municipality to enforce this Agreement shall be granted access onto the Lands during all reasonable hours without obtaining consent of the Developer. The Developer further agrees that, upon receiving written notification from an officer of the Municipality to inspect the interior of any building located on the Lands, the Developer agrees to allow for such an inspection during any reasonable hour within twenty four hours of receiving such a request.

7.2 Failure to Comply

If the Developer fails to observe or perform any condition of this Agreement after the Municipality has given the Developer 30 days written notice of the failure or default, then in each such case:

- (a) The Municipality shall be entitled to apply to any court of competent jurisdiction for injunctive relief including an order prohibiting the Developer from continuing such default and the Developer hereby submits to the jurisdiction of such Court and waives any defense based upon the allegation that damages would be an adequate remedy;
- (b) The Municipality may enter onto the Lands and perform any of the covenants contained in this Agreement or take such remedial action as is considered necessary to correct a breach of the Agreement, whereupon all reasonable expenses whether arising out of the entry onto the Lands or from the performance of the covenants or remedial action, shall be a first lien on the Lands and be shown on any tax certificate issued under the *Assessment Act*;

- (c) The Municipality may by resolution discharge this Agreement whereupon this Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By law; or
- (d) In addition to the above remedies, the Municipality reserves the right to pursue any other remedy under the *Halifax Regional Municipality Charter* or Common Law in order to ensure compliance with this Agreement.

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, 20__.

SIGNED, SEALED AND DELIVERED
in the presence of:

=====

**SEALED, DELIVERED AND
ATTESTED** to by the proper signing
officers of Halifax Regional Municipality,
duly authorized in that behalf, in the
presence of:

(Insert Registered Owner Name)

Per: _____

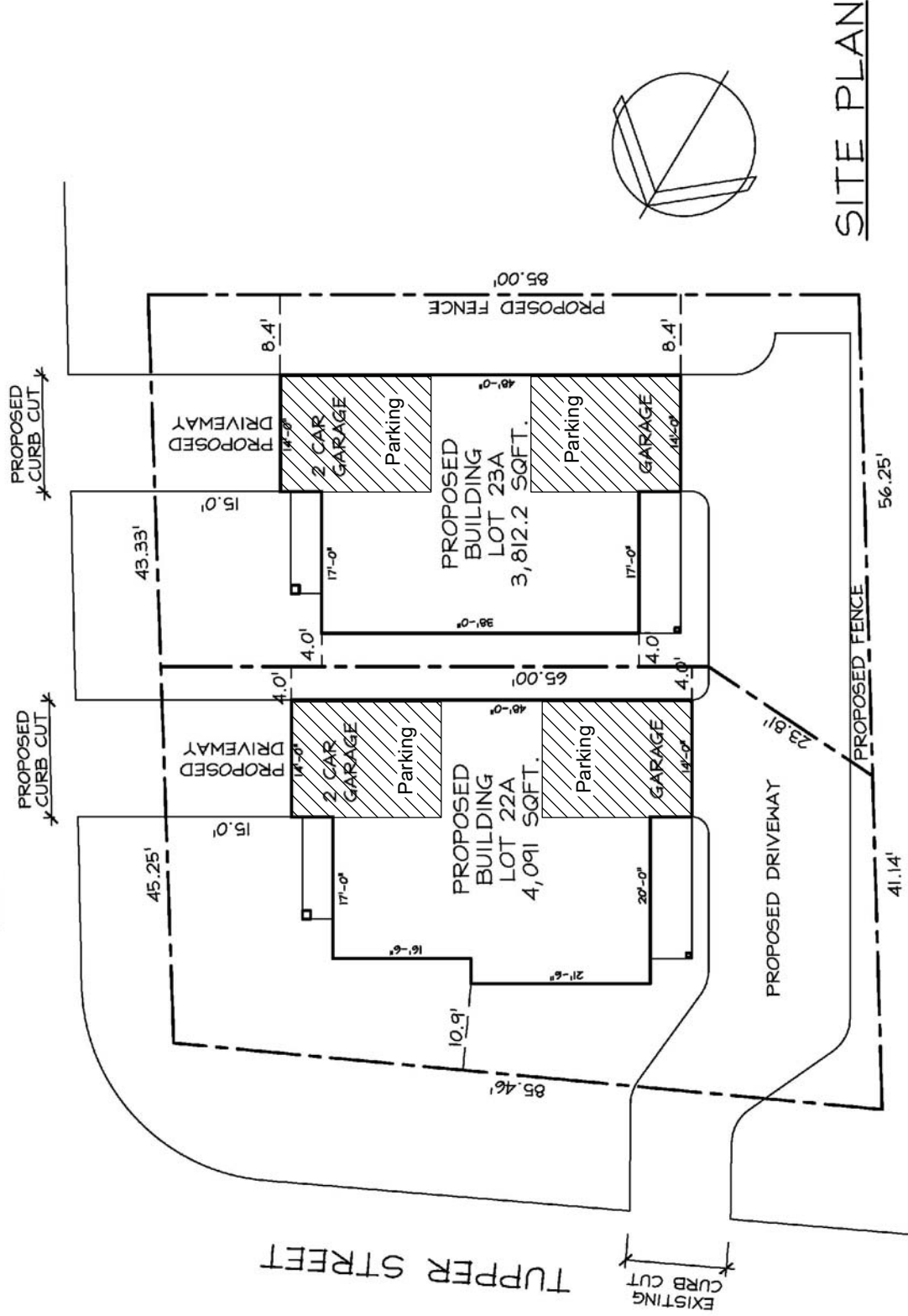
Per: _____
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**HALIFAX REGIONAL
MUNICIPALITY**

Per: _____
Mayor

Per: _____
Municipal Clerk

ESDAILE AVENUE



SITE PLAN

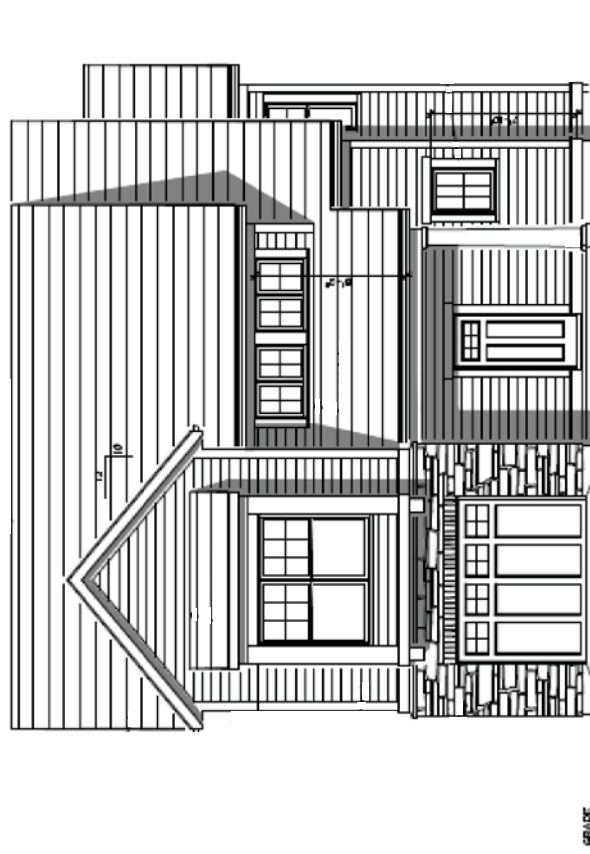
Schedule B Concept Site Plan

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HRM does not guarantee the accuracy of any base information.



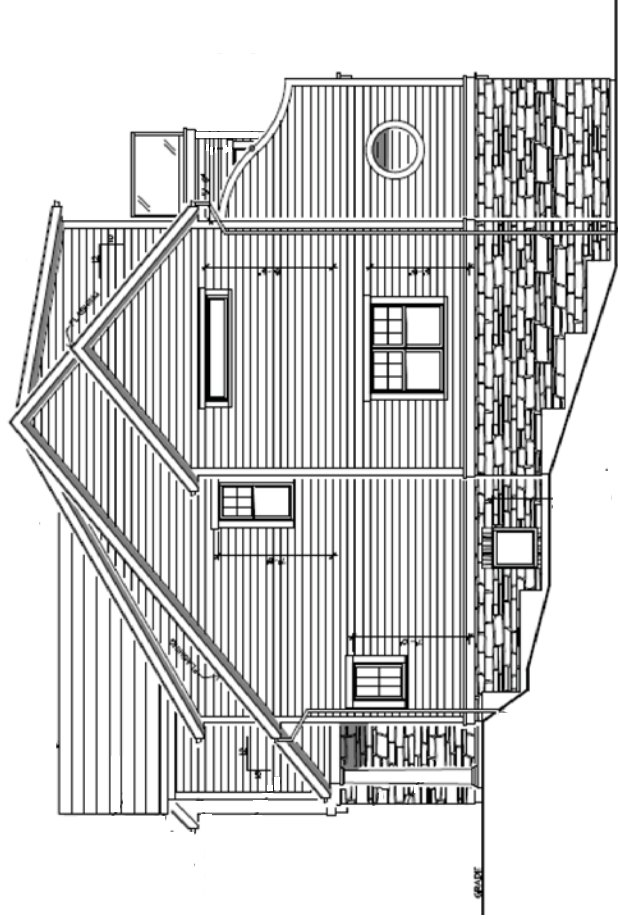
FRONT ELEVATION Lot 22A



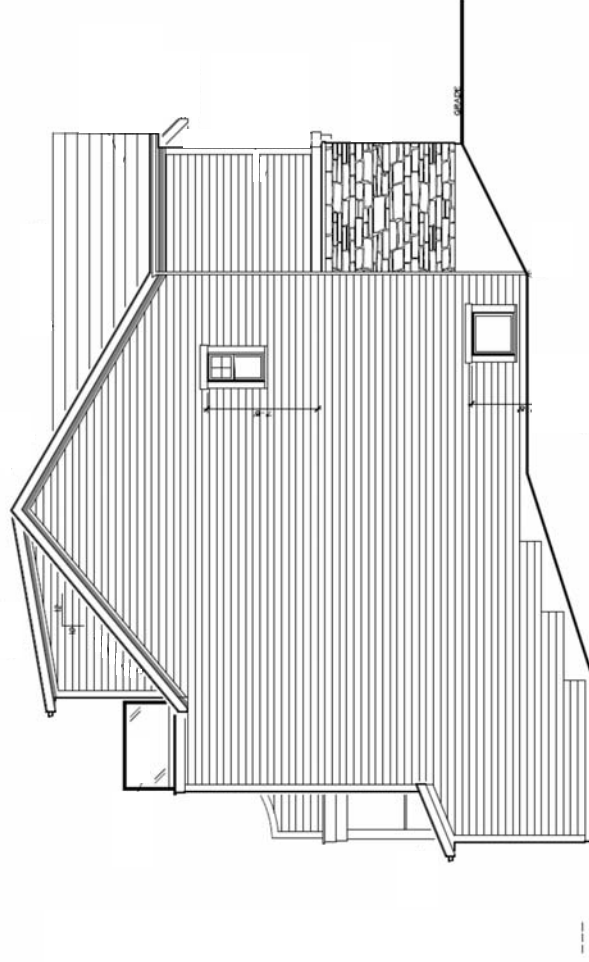
FRONT ELEVATION Lot 23A

Schedule C Lot 22A , Lot 23A Front Building Elevations

HRM does not guarantee the accuracy of any base information.



LEFT SIDE ELEVATION Lot 22A



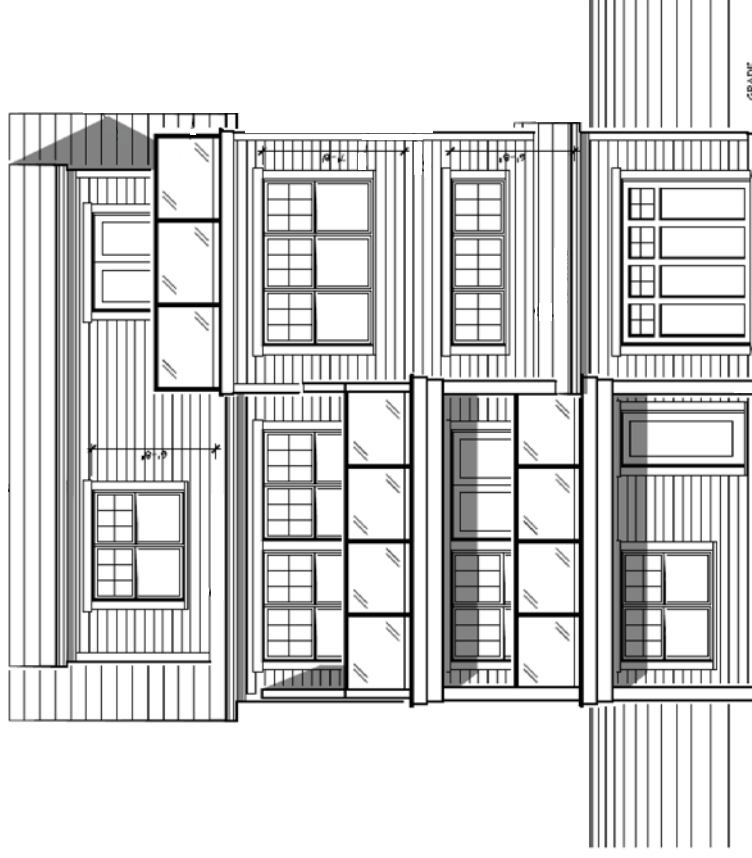
RIGHT SIDE ELEVATION Lot 23A

**Schedule D Lot 22A Left Side Elevation
Lot 23A Right Side Elevation**

HRM does not guarantee the accuracy of any base information.



REAR ELEVATION Lot 22A



REAR ELEVATION Lot 23A

Schedule E Lot 22A, 23A Rear Building Elevations

HRM does not guarantee the accuracy of any base information.

Attachment B: Excerpts from the Dartmouth MPS and Additional Policy Evaluation

Dartmouth MPS

Please note: A review of the proposed development relative to policies IP-3 and IP-1(c) is included within this attachment.

(n) Residential Development of Existing Undersized Lots, Including Lots with Insufficient Frontage

The minimum lot size in the Land Use By-law for R-1 and R-2 development in the City is 5000 square feet with a minimum of 50 foot frontage. Throughout the City there are many existing undersized lots which were created before there were minimum lot size restrictions. The owners are entitled to develop these lots, provided they meet: Land Use By-law requirements regarding lot coverage; sideyards and setbacks. However, conventionally designed housing is difficult to place on those lots because of their size, and the most satisfactory development could be achieved by allowing some flexibility in the Land Use By-law and Subdivision By-law requirements. This flexibility should be permitted by use of Development Agreements under certain conditions.

Policy IP-3 Where there is an R-1 or R-2 zoned lot in an area designated Residential (Deleted-RC-Jul 11/00;E-Sep 2/00) on the Generalized Land Use Map, as amended, and Maps 8a and 8b, and which lot has insufficient area, frontage or both and which abuts a vacant R-1 or R-2 zoned lot which has insufficient area, frontage or both, it shall be the intention of City Council to consider the re-subdivision, but not the consolidation of, two lots, by Development Agreement.

It shall be the intention of City Council that Development Agreements shall be considered only where the two lots being resubdivided and developed are both vacant or where one has an existing residential use on the date this amendment takes effect.

It shall be the intention of City Council that:

- (a) where the existing zoning on the land is R-1, only one dwelling unit may be proposed for each lot, or where the existing zoning on the land is R-2, then single detached, semi-detached or duplex dwellings may be proposed for each lot;
- (b) that parking requirements of the Land Use By-law shall be complied with; and
- (c) the re-subdivision shall not reduce the size of the lot by more than 25%.

It shall also be the intention of City Council to require a site plan showing the proposed development, including the location of buffers and buildings.

In considering the approval of such Agreements, Council shall consider the following:

	Policy Criteria	Comment
(i)	<i>compatibility of external appearance and scale of buildings in terms of height, length and width, with existing residential development;</i>	Esdaile Avenue and Tupper Street are comprised primarily of single family dwellings but also contain some two unit buildings. There are also a number of single and two unit buildings which are of similar height, length and width with the proposed development. See below as well
(ii)	<i>the criteria set out in Policy IP-1(c) herein.</i>	See below

IP-1(c) Zoning By-law

The Zoning By-law is the principal mechanism by which land use policies shall be implemented. It shall set out zones, permitted uses and development standards which shall reflect the policies of the Municipal Development Plan as per Section 33 (3) of the Planning Act. **The zoning by-law may use site plan approval as a mechanism to regulate various uses. (RC-Sep 8/09;E-Nov 14/09)**

Notwithstanding the above, it shall be the intention of Council not to pre-zone lands outside the development boundary as shown on the Generalized Land Use Plan: Map 9;

Map 9b, 9c, 9d, 9e, 9g, 9h,9i (By-law 633), 9i (By-law 724), 9j, 9q, 9m, 9o, 9p (Portland St), 9p (Craigwood) and 9r (As amended by By-law C-475, Sept. 20, 1983 and By-law C-493, Dec.9, 1983 and By-law C-511, July 6, 1984).

It shall recognize that certain areas are premature for specific zoning classifications by reason of lack of services, public facilities or other constraints. Council shall use the H-zone (Holding Zone). ***In the H Zone the permitted types of uses shall be limited in accordance with the Reserve classification in Table 4 (As amended by By-law C-475, Sept. 20, 1983).*** In this manner, Council can maintain a comparatively high degree of control, and major development proposals contemplated for such areas shall be processed as zoning amendments.

In considering zoning amendments and contract zoning, Council shall have regard to the following:

	Policy Criteria	Comment
(1)	<i>that the proposal is in conformance with the policies and intent of the Municipal Development Plan</i>	The proposal has been considered in accordance with policies Policy IP-3and IP-1(c).

	Policy Criteria	Comment
(2)	<i>that the proposal is compatible and consistent with adjacent uses and the existing development form in the area in terms of the use, bulk, and scale of the proposal</i>	The proposed buildings are consistent with other two storey buildings on Esdaile Avenue and are within the maximum lot area requirements of the Dartmouth LUB
(3)	<i>provisions for buffering, landscaping, screening, and access control to reduce potential incompatibilities with adjacent land uses and traffic arteries</i>	A wooden fence, between 5 and 6 feet in height, will be required along the western and southern property boundaries to mitigate impact to neighbouring properties.
(4)	<i>that the proposal is not premature or inappropriate by reason of:</i>	
	<i>(i) the financial capability of the City is to absorb any costs relating to the development</i>	No increase in costs is anticipated.
	<i>(ii) the adequacy of sewer and water services and public utilities</i>	No concerns were identified regarding the capacity of sewer or water. This infill development maximizes utilization of existing infrastructure.
	<i>(iii) the adequacy and proximity of schools, recreation and other public facilities</i>	There are currently schools within proximity, as well as recreation areas and facilities within the vicinity of the proposed development.
	<i>(iv) the adequacy of transportation networks in adjacent to or leading to the development</i>	No concerns were raised regarding the ability of the transportation network to accommodate the units on Esdaile Avenue and Tupper Street.
	<i>(v) existing or potential dangers for the contamination of water bodies or courses or the creation of erosion or sedimentation of such areas</i>	The proposed agreement includes requirements for site grading, stormwater management and erosion and sedimentation controls in accordance with applicable HRM and Provincial standards.
	<i>(vi) preventing public access to the shorelines or the waterfront</i>	There is no shoreline or water frontage is associated with this development.
	<i>(vii) the presence of natural, historical features, buildings or sites</i>	Staff are not aware of any such features on the lands.

	Policy Criteria	Comment
	<i>(viii) create a scattered development pattern requiring extensions to truck (sic) facilities and public services while other such facilities remain under utilized</i>	The development would utilize sewer, water and transportation infrastructure that is already in place; private laterals will extend from Esdaile Avenue and Tupper Street. This proposed development is an example of urban infill and that maximizes utilization of existing infrastructure and services.
	<i>(ix) the detrimental economic or social effect that it may have on other areas of the City.</i>	Staff are not aware of any potential detrimental effects that the development may pose.
(5)	<i>that the proposal is not an obnoxious use</i>	The proposed use is not expected to produce any obnoxious impacts.
(6)	<i>that controls by way of agreements or other legal devices are placed on proposed developments to ensure compliance with approved plans and coordination between adjacent or near by land uses and public facilities. Such controls may relate to, but are not limited to, the following:</i>	
	<i>(i) type of use, density, and phasing</i>	The use and density of the proposed development are controlled by the agreement. There is no phasing of the development.
	<i>(ii) emissions including air, water, noise</i>	The development is not expected to generate emissions that will warrant controls.
	<i>(iii) traffic generation, access to and egress from the site, and parking</i>	Access and egress from the site is proposed to occur from Esdaile Avenue and Tupper Street. Two garages per building are required as part of the DA to accommodate parking for all four units. This will provide 1 parking space per unit.
	<i>(iv) open storage and landscaping</i>	Open storage is not permitted. Landscaping provisions for maintenance of the property have been required.
	<i>(v) provisions for pedestrian movement and safety</i>	The nature of the development is such that conflict with vehicular traffic is not anticipated. Open access is provided to Esdaile Avenue and Tupper Street.
	<i>(vi) management of open space, parks, walkways</i>	Currently there a variety of recreation opportunities in the vicinity of the proposed development, including the location of the waterfront trail within .25 kms of the site.

	Policy Criteria	Comment
	<i>(vii) drainage both natural and sub-surface and soil-stability</i>	The proposed agreement includes requirements for site grading, stormwater management and erosion and sedimentation controls in accordance with applicable HRM and Provincial standards.
	<i>(viii) performance bonds.</i>	Not applicable
(7)	<i>suitability of the proposed site in terms of steepness of slope, soil conditions, rock out-croppings, location of watercourses, marshes, swamps, bogs, areas subject to flooding, proximity to major highways, ramps, railroads, or other nuisance factors</i>	No concerns have been identified.
(8)	<i>that in addition to the public hearing requirements as set out in the Planning Act and City by-laws, all applications for amendments may be aired to the public via the "voluntary" public hearing process established by City Council for the purposes of information exchange between the applicant and residents. This voluntary meeting allows the residents to clearly understand the proposal previous to the formal public hearing before City Council</i>	Not applicable.
(9)	<i>that in addition to the foregoing, all zoning amendments are prepared in sufficient detail to provide:</i>	
	<i>(i) Council with a clear indication of the nature of proposed development, and</i>	Not applicable.
	<i>(ii) permit staff to assess and determine the impact such development would have on the land and the surrounding community</i>	Not applicable.

	Policy Criteria	Comment
(10)	<i>Within any designation, where a holding zone has been established pursuant to “Infrastructure Charges - Policy IC-6”, Subdivision Approval shall be subject to the provisions of the Subdivision By-law respecting the maximum number of lots created per year, except in accordance with the development agreement provisions of the MGA and the “Infrastructure Charges” Policies of this MPS. (RC-Jul 2/02;E-Aug 17/02)</i>	Not applicable.

Attachment C: Excerpts from the Dartmouth LUB

Dartmouth Land Use By-law

SECTION 1: DEFINITIONS

- (o) DUPLEX DWELLING - means the whole of a dwelling that is divided horizontally into two separate dwelling units, each of which has an independent entrance.

SECTION 2: GENERAL PROVISIONS

- 18A The following types of development shall be considered by DEVELOPMENT AGREEMENT as set out in the Municipal Planning Strategy (Policy IP-2, IP-3, and IP-4).

Residential development of existing undersized lots with insufficient frontage in areas designated residential or urban core on the Generalized Land Use Map (Map 8a and 9).
(As amended by By-law C-618, Aug 21/87)

PART 3: R 2 (TWO FAMILY RESIDENTIAL) ZONE

- 33(1) The following uses only shall be permitted in an R 2 Zone:

- (a) R 1 uses as hereinbefore set out,
- (b) a semi detached dwelling,
- (c) a duplex dwelling,
- (d) basement apartments added to single family dwellings so that each building contains only two families,
- (e) A group home for not more than 6 residents, (HECC: Nov 4/10; E: Nov 27/10)
- (f) any uses accessory to any of the foregoing uses.

- 33(2) Buildings used for R 1 uses in an R 2 Zone shall comply with the requirements of an R 1 Zone.

- 33(3) Buildings used for R 2 uses in an R 2 Zone shall comply with the following requirements:

- (a) Lot area minimum 5,000 sq. ft.
- (b) Lot coverage maximum 35%
- (c) Side and rear yards shall be provided on each side and at the rear of a building as specified in the Building By laws of the City.
- (d) notwithstanding anything contained in this section, a lot in an R 2 Zone created by the subdivision of a lot containing two semi-detached dwellings shall be permitted, provided that each lot resulting from the subdivision and each individual dwelling unit complies with the following requirements:
 - (i) Lot area minimum 2,500 square feet
 - (ii) Lot frontage minimum 25 feet

- (iii) Lot coverage maximum 35%
- (iv) compliance with the building by laws of the City.
- (e) Height Maximum -35 feet on all parcels of land situated within the Lake Banook Canoe Course Area@ as identified on Schedule AW (RC-Feb 8/05;E-Apr 23/05)

33(4) Notwithstanding anything else in this by-law, the following zone requirements shall apply to all new lots that were approved after October 13, 2001:

- (1) Zone Requirements:
 - Minimum Side Yard - 8 feet, and the side yard shall be reduced to zero (0) on the side being common with another dwelling unit
 - Minimum Rear Yard - 10 feet
- (2) The maximum building eave projection into the minimum required side yard shall be 2 feet (HECC-Nov 1/01;E-Nov 25/01)

33 (5) Notwithstanding the frontage requirement of Section 33 (3), an existing semi-detached dwelling in existence as of the 25th of July, 1978, on a lot that having less than 50' of street frontage, may be subdivided so that each unit is on its own lot provided that all other requirements of this by-law are met. (HECC - Sept 10/09; E - Oct 3/09)

Attachment D: Minutes from Public Information Meeting

HALIFAX REGIONAL MUNICIPALITY

PUBLIC INFORMATION MEETING

CASE NO. 17971 – Development Agreement 5 & 7 Tupper Street

**7:00 p.m.
Monday, October 1, 2012
Prince Arthur Junior High School
Library, Prince Arthur Road, Dartmouth**

STAFF IN

ATTENDANCE:

Shayne Vipond, Planner, Planning Applications
Holly Kent, Planning Technician
Jennifer Purdy, Planning Controller

ALSO IN

ATTENDANCE:

Jack Leedham, Applicant
Councillor Jackie Barkhouse, District 8

PUBLIC IN

ATTENDANCE:

7

The meeting commenced at approximately 7:00 p.m.

Opening remarks/Introductions/Purpose of meeting

Mr. Shayne Vipond, Senior Planner, Planning Applications, called the meeting to order at approximately 7:00 p.m. in the Library of Prince Arthur Jr. High School, Prince Arthur Road, Dartmouth. He introduced himself as the Planner guiding this application through the process and also introduced Councillor Jackie Barkhouse, Holly Kent, Planning Technician, HRM Planning Services and Jennifer Purdy, Planning Controller, HRM Planning Services.

Mr. Vipond advised that HRM has received an application to enter into a development agreement for 2, 2 unit dwellings to occupy the lots currently at 5 and 7 Tupper Street. The lots are proposed to be reconfigured to front Esdaile Avenue in Dartmouth.

Mr. Vipond reviewed the application process, noting that the public information meeting is an initial step, whereby HRM reviews and identifies the scope of the application and seeks input from the neighborhood. The application will then be brought forward to Harbour East Community Council which will hold a public hearing at a later date, prior to making a decision on the proposed development.

Presentation of Proposed Application

Mr. Vipond explained that the properties are within the Dartmouth Municipal Planning Strategy and is designated for residential development. The properties are zoned Two Family Residential or R2 in the Dartmouth Land Use By-Law. This policy designation and zoning does permit Harbour East Community Council to consider 2, 2 unit dwellings on these lands subject to the application entering into a development agreement. Mr. Vipond reviewed a slide of the proposed site plan explaining that the two lots are proposed to be reconfigured from Tupper Street to front Esdaile Avenue.

Mr. Vipond reviewed the terms of a development agreement explaining that it is a legal contract between a land owner and HRM in which the use of the land is established. In this way the function and physical positioning of the buildings are established on the lands. Any future owner of this land will be bound by its terms.

At this time, Mr. Vipond reviewed slides of the proposal showing what the development will look like from Esdaile Avenue, Tupper Street and the rear view.

Lack Leedham, Applicant, introduced himself and viewed the slide of the lot layouts explaining that the two lots that are fronting onto Tupper Street now, one is 4025 sq. ft. and the other is 3800 sq. ft. When the two lots were turned to face on Esdaile Avenue, they have the same square footage as they did on Tupper Street. He explained that there is a provision in the Subdivision By-Law that you can reconfigure lots if you keep the square footage identical. He explained that these lots are zoned R2 and the square footage of the building is within the 34% of the lot area; 35% is what is allowed within the By-law. He explained that he is not trying to build any bigger than what is allowed as-of-right. He explained that one of the floors (back of building) is below the grade of Esdaile Avenue.

Questions and Answers

Ms. Iris Barnhill, Dartmouth addressed concern about the traffic and explained that it is a quiet street. She asked how many vehicles will be in the garages.

Mr. Leedham explained that the garage in the front on the building is a two-car garage and there is enough room in front of the garage for an additional car. It is a single width but, is designed to be 32 feet in depth. He explained that the other unit will also have the same layout. He added that in the back of the building, the garage there is for a single car.

Ms. Brenda Dixon, Dartmouth also addressed concern regarding the additional traffic and parking.

Mr. Vipond explained that each unit has two car stacking inside, plus an additional car in the driveway. Also, in the rear portion, there is a right-of-way proposed for access. Therefore, there will be two garages in the rear portion with access to Tupper Street. All eight potential cars would not be coming from the same location.

Ms. Dixon explained that because of the College, there are a lot of homes in the area that are not owner occupied. This has resulted in a lot of on-street parking. She also asked about the height of the buildings.

Mr. Leedham explained that the proposal is for 2 storeys of 9ft with a roof from Esdaile and the back side will be 3 storeys of 9ft each with a little loft in the attic portion. The buildings will be 26 feet tall inside and do not exceed the Land Use By-Law provision of 35 feet.

Mr. Leedham at this time circulated a handout of the actual size of the building.

Mr. Vipond explained that there was some concern regarding the grades, the proximity of the building to the side lot line and whether or not a retaining wall or a management system for the grade difference would be required along the property line.

Mr. Leedham explained that the grade difference is already there. He explained that when these buildings are built, it will go up a slight grade to enter the first floor. The sidewalk will be above the sidewalk that is there now.

Mr. Vipond explained that as part of the development agreement, they will need to provide a site grading plan for storm water management.

Mr. Troy MacIsaac, Dartmouth explained that when he moved in the area, there was only one rental unit on the entire street but now there are a whole lot more. He expressed some concern with rentals because most tenants do not take care of their properties. He also expressed concern with a lot of the tenants being students who all have cars which leave no parking available on the streets. These tenants also cause a lot of noise. He was concerned that this development was going to be a rental.

Ms. Dixon asked if a house at 9 Tupper Street is included within this development.

Mr. Leedham explained that the property in question is not part of this application. He added that there were some thoughts about combining the third lot, however, they decided against it.

He suggested residents not make the assumption that these units will be rentals. They are currently looking into options.

Mr. Vipond explained that HRM does not regulate the tenure of the units through the development agreement.

Mr. Leedham explained that he cares about the area and would not develop something that did not have a positive impact on the neighbourhood.

Ms. Dixon explained that in a previous situation that she was involved with the development started out great. However with change of ownership, the intent changed also. She added concern that this may happen with this proposal.

Ms. Barnhill asked if it is not a rental unit, what it is.

Mr. Leedham explained that he and his wife will be living on the right hand side; he is not sure what their plans are yet for the underneath, whether they will rent it or sell it. He explained that the left unit will be sold.

Mr. Vipond explained that the comments received at tonight's meeting will be included within the staff report that will be brought to Community Council.

Closing Comments

Mr. Vipond thanked everyone for attending. He encouraged anyone with further questions or comments to contact him.

Adjournment

The meeting adjourned at approximately 7:30 p.m.