

8.1.2

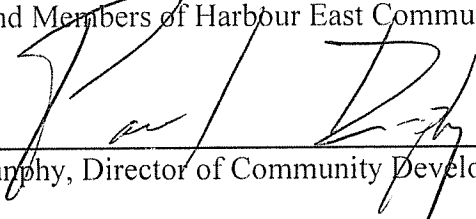


PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Harbour East Community Council

April 2, 2009
May 11, 2009

TO: Chair and Members of Harbour East Community Council

SUBMITTED BY: 
Paul Dunphy, Director of Community Development

DATE: March 12, 2009


SUBJECT: **Case 01220: Amending Agreement / 1038 Cole Harbour Road, Cole Harbour**

ORIGIN

Application by Hardman Group Limited for a substantial amendment to an existing development agreement for 1038 Cole Harbour Road to permit a proposed ground sign on the northeast corner of the property.

RECOMMENDATION

It is recommended that Harbour East Community Council:

1. Move Notice of Motion to consider a proposed amending agreement as provided in Attachment A to this report; *April 2, 2009*
-  2. Approve the proposed amending agreement as provided in Attachment A to this report, to permit the location of an additional ground sign under the existing development agreement in place at 1038 Cole Harbour Road and schedule a public hearing; and
3. Require the proposed amending agreement be signed and delivered within 120 days, or any extension thereof granted by Harbour East Community Council on request of the applicant, from the date of final approval of said agreement by Harbour East Community Council and any other bodies as necessary, whichever is later, including any appeal periods. Otherwise this approval shall be void and any obligations arising hereunder shall be at an end.

BACKGROUND

The former Municipality of the County of Halifax entered into a Development Agreement with The Hardman Group Limited in 1987 to develop a restaurant at 1038 Cole Harbour Road with over-the-counter and drive-thru service. The Hardman Group is now seeking an amendment to the existing Agreement to allow a ground sign to be located on the northeast corner of the property formed by Cole Harbour Road and Armbro Lane.

Location, Zoning and Designation

- The subject property is located at 1038 Cole Harbour Road, Cole Harbour.
- The current designation is Community Commercial (see Map 1).
- The current zoning is C-2 (General Business) (see Map 2).

Existing Development Agreement

The existing Development Agreement permits development of a portion of the building as a restaurant with a drive-thru. Signage is limited to the original ground sign located adjacent to the driveway entrance on Cole Harbour Road.

Proposal

The Hardman Group has applied for an amendment to the existing Development Agreement to permit a second ground sign. The sign is a double-sided freestanding ground sign approximately sixteen feet in height and eleven feet in width overall with a changeable letter sign incorporated into the main body as shown in Schedule C to the amending agreement. The additional sign has been requested by The Hardman Group as the existing signage is not meeting their advertising needs.

The Hardman Group shall continue to comply with all other requirements of the existing Agreement.

Existing Policy

The subject property is within the Community Commercial Designation of the Cole Harbour/Westphal MPS that allows for specific developments such as fast food restaurants, that could potentially conflict with residential uses, to be subject to specific control. Policy CC-6 allows Council to consider take-out and drive-thru restaurant service according to the development agreement provisions of the *HRM Charter*. Site access, buffering abutting residential use, site design and exterior finish of buildings shall be given regard by Council when considering an amending agreement under Policy CC-6.

In considering amendments to a development agreement, Council shall give regard to the specific plan policy and matters of the general evaluation criteria as outlined in Policy IM-11.

DISCUSSION

Staff have reviewed the proposed amendment and determined it to be consistent with applicable plan policy and compatible with the provisions of the existing Agreement. In making a comparison to an as-of-right scenario on the same site four ground signs, up to twenty five feet in height, would be permitted.

Staff have reviewed the site plan and the sign elevation. The proposed amending agreement shall:

- i. Restrict the location of the proposed sign to the northeast corner of the property;
- ii. Prohibit the sign from extending into the public street right-of-way, daylighting triangle, driveway or parking spaces; and
- iii. Require the area shown on the Site Plan (Schedule B) where the sign is to be located to be covered with asphalt.

BUDGET IMPLICATIONS

There are no budget 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 this Agreement can be carried out within the approved budget with existing resources.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

ALTERNATIVES

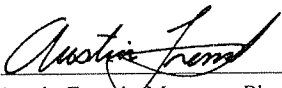
1. Council may choose to approve the proposed amending agreement as contained in Attachment A of this report. This is the recommended course of action.
2. Council may choose to approve the proposed amending agreement subject to modifications. This may necessitate further negotiations with the applicant or potentially a new public hearing.
3. Council may choose to refuse the proposed amending agreement and, in doing so, must provide reasons based on a conflict with MPS policies. This is not the recommended course of action as staff are satisfied that the proposed amending agreement is consistent with the intent of the MPS.

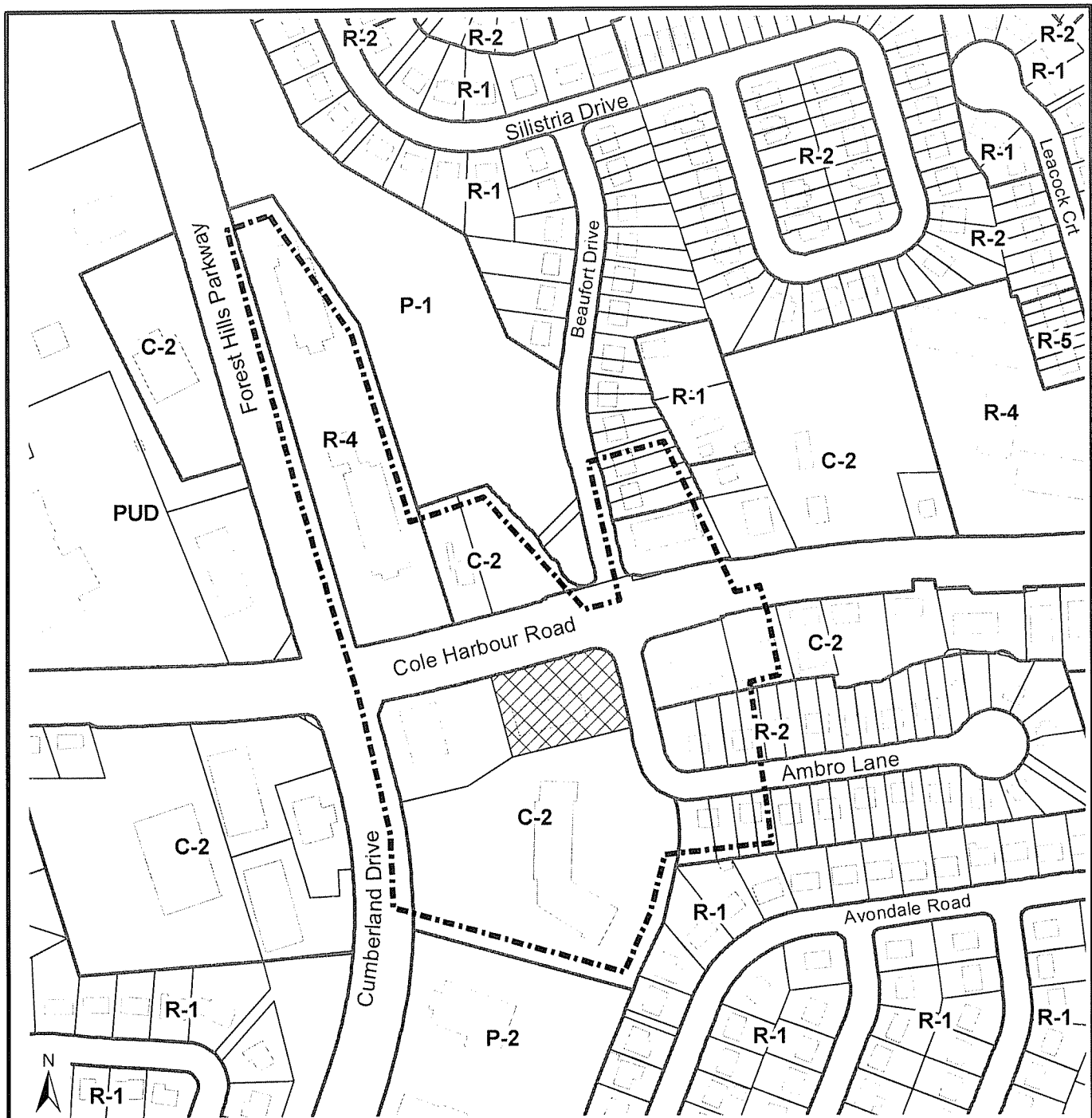
ATTACHMENTS

Map 1	GFLUM
Map 2	Zoning and Notification
Attachment A	Proposed Amending Development Agreement
Attachment B	Relevant Policy from Cole Harbour/ Westphal Municipal Planning Strategy

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 : Darrell Joudrey, Planner, 490-4181


Report Approved by: 
Austin French, Manager, Planning Services, 490-6717



Map 1 - Location and Zoning

1038 Cole Harbour Road
Cole Harbour

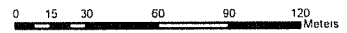
 Subject area

 Area of notification

Cole Harbour/Westphal
Plan Area

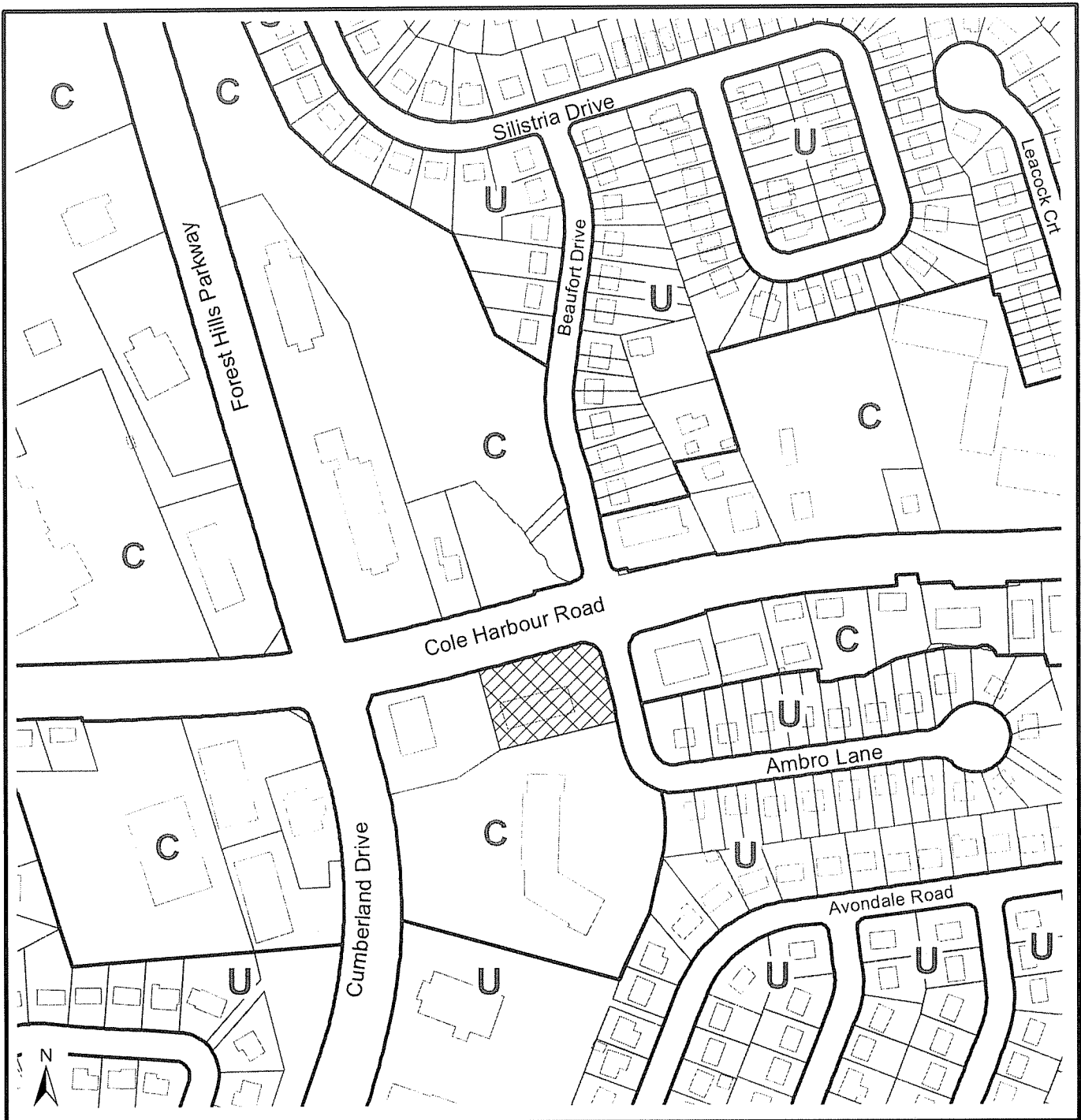
Zone

- R-1 Single Unit Dwelling
- R-2 Two Unit Dwelling
- R-4 Multi-unit Dwelling
- R-5 Rowhouse Dwelling
- C-2 General Business
- P-1 Open Space
- P-2 Community Facility
- PUD Plan Unit Development



This map is an unofficial reproduction of a portion of the Zoning Map for the Cole Harbour/Westphal Plan Area


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



Map 2 Generalized Future Land Use

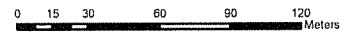
1038 Cole Harbour Road
 Cole Harbour



 Subject area

Designation

- C Commercial
- U Urban



This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the Cole Harbour/Westphal Plan Area

Cole Harbour/Westphal
 Plan Area

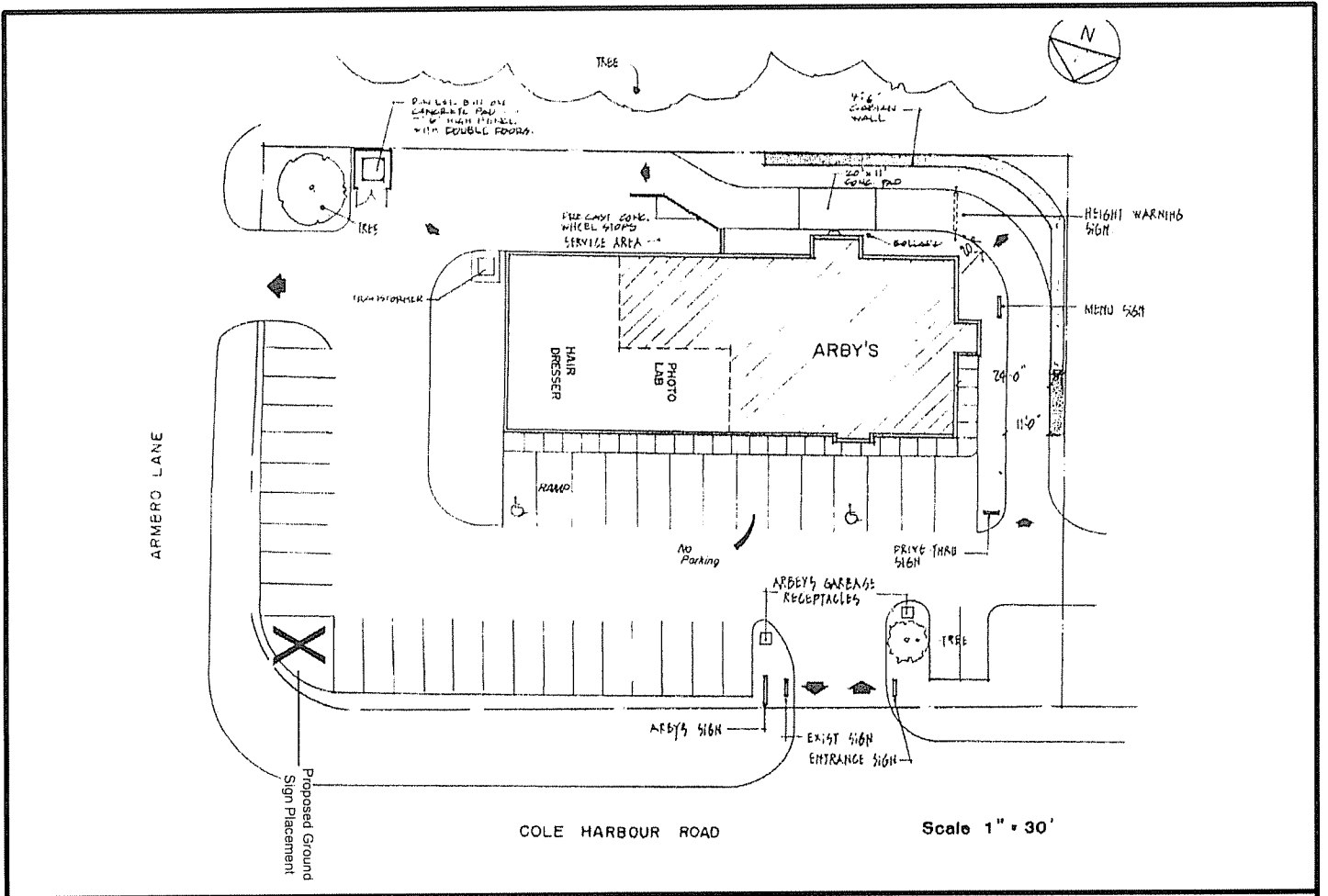
HRM does not guarantee the accuracy of any representation on this plan

- (a) the ground sign shall be located on the site plan as generally indicated on Schedule C of this Agreement;
 - (b) the sign shall not extend beyond a property line, or project over a public right-of-way, daylighting triangle, or parking space;
 - (c) the Developer shall provide to the Development Officer certification from a qualified professional indicating that the Developer has complied with clause 5.1(b) of this Agreement; and
 - (d) the sign shall be fabricated and generally appear as illustrated in Schedule C of this Agreement.
2. In addition to the above amendments, development of the Lands shall comply with all other provisions set out in the Existing Agreement except where specifically varied by this Agreement.

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, A.D., 2009.

SIGNED, SEALED AND DELIVERED) **HARDMAN GROUP LIMITED**
in the presence of)
per _____) per: _____
))
))
per _____) per: _____
))

SEALED, DELIVERED AND)
ATTESTED to by the proper)
signing officers of Halifax Regional)
Municipality duly authorized)
in that behalf in the presence) **HALIFAX REGIONAL MUNICIPALITY**
per _____) per: _____
) **MAYOR**
))
per _____) per: _____
) **MUNICIPAL CLERK**

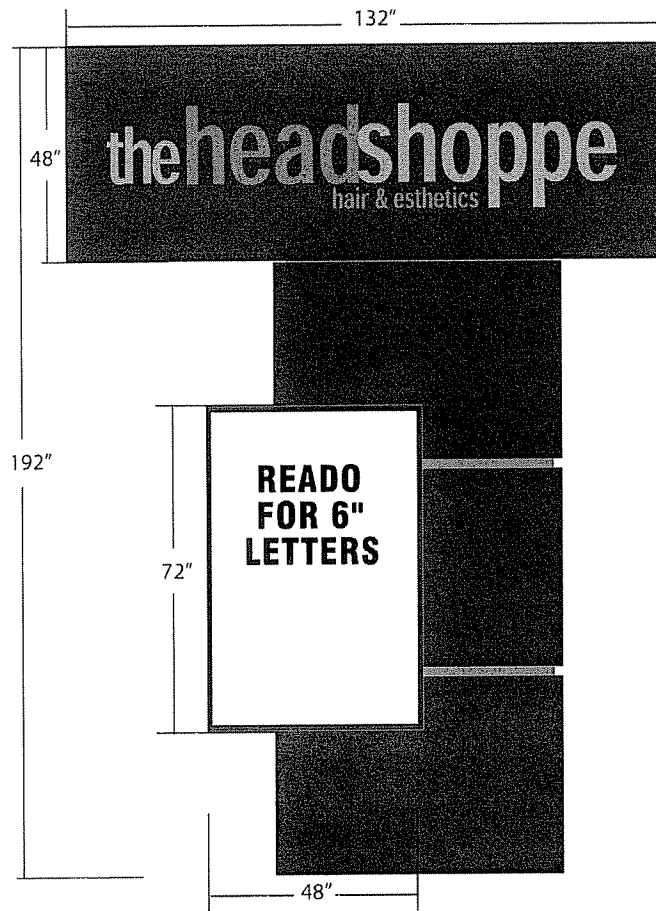


Schedule B

Site Plan

HRM does not guarantee the accuracy of any base map information on this map





Schedule C
Sign Elevation

HRM does not guarantee the accuracy of any base map information on this map



**Attachment B:
Relevant Policies from the Cole Harbour/ Westphal Municipal Planning Strategy**

CC-6 Notwithstanding CC-2, within the Community Commercial Designation, it shall be the intention of Council to only consider permitting drive-in and take-out restaurants according to the development agreement provisions of the Planning Act. When considering such an agreement, Council shall have regard to the following:

- (a) access;
- (b) the provision and maintenance of buffered separation from abutting residential properties;
- (c) site design, including drive-through service lanes, parking and loading areas, landscaping, and refuse storage areas;
- (d) the exterior finish of buildings; and
- (e) the provisions of Policy IM-11.

IM-11 In considering amendments to the land use by-law or development agreements, in addition to all other criteria as set out in various policies of this planning strategy, Cole Harbour/Westphal Community Council shall have appropriate regard to the following matters:

- (a) that the proposal is in conformity with the intent of this planning strategy and with the requirements of all other municipal by-laws and regulations;
- (b) that the proposal is not premature or inappropriate by reason of:
 - (i) the financial capability of the Municipality to absorb any costs relating to the development;
 - (ii) the adequacy of sewer and water services;
 - (iii) the adequacy or proximity of school, recreation and other community facilities;
 - (iv) the adequacy of road networks leading or adjacent to or within the development; and
 - (v) the potential for damage to or destruction of designated historic buildings and sites.
- (c) that controls are placed on the proposed development so as to reduce conflict with any adjacent or nearby land uses by reason of:
 - (i) type of use;
 - (ii) height, bulk and lot coverage of any proposed building;
 - (iii) traffic generation, access to and egress from the site, and parking;
 - (iv) open storage;
 - (v) signs; and

- (vi) any other relevant matter of planning concern.
- (d) that the proposed site is suitable in terms of steepness of grades, soil and geological conditions, locations of watercourses, potable water supplies, marshes or bogs and susceptibility to flooding; and
- (e) any other relevant matter of planning concern.
- (f) 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.
(Regional Council - July 2, 2002, Effective - August 17, 2002)

IM-12 In considering amendments to the land use by-law or development agreements, Cole Harbour/Westphal Community Council shall hold a Public Hearing according to the Planning Act.