



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Harbour East Community Council
June 11, 2009

TO: Chair and Members of Harbour East Community Council

SUBMITTED BY: 
Denise Schofield, Acting Director of Community Development

DATE: May 29, 2009

SUBJECT: Case 01053: Dartmouth MPS / LUB Amendments – Waverley Road

SUPPLEMENTARY REPORT

ORIGIN

- October 30, 2007 – Regional Council directed staff to consider applying a commercial designation to those properties located at 194, 196, 198 and 200 Waverley Road.
- April 1, 2008 – Regional Council expanded the review area to include a larger area along Waverley Road in response to public input.
- October 2, 2008 – Harbour East Community Council reviewed the staff report dated July 24, 2008 and provided direction to staff on how to proceed.
- April 2, 2009 – Harbour East Community Council tabled the staff report dated March 19, 2009 and directed staff to receive and address comments from the public.

RECOMMENDATION

It is recommended that Harbour East Community Council recommend that Regional Council:

1. Give First Reading to the proposed amendments to the Dartmouth Municipal Planning Strategy and Land Use By-law as shown in Attachments A and B, and schedule a public hearing; and
2. Approve the proposed amendments to the Dartmouth Municipal Planning Strategy and Land Use By-law as shown in Attachments A and B of this report.

BACKGROUND

In 2007, Regional Council initiated the Waverley Road planning study to address compatibility issues, arising due to the proximity of industrial uses to residential uses near Red Bridge Pond on Waverley Road (Maps 1 and 2). In 2008, Regional Council expanded the scope of the project, due to feedback from the initial public consultation process. As a result, the project area now includes the lands along Waverley Road from Red Bridge Pond to Montebello Drive (Maps 3 and 4). The goal of the project is:

To establish a mixed use commercial and residential area on Waverley Road that encourages and supports businesses while addressing land use compatibility issues with surrounding residential neighbourhoods.

March 19, 2009 staff report

The March 19, 2009 staff report includes proposed MPS and LUB amendments. Staff propose that Council adopt a new land use designation entitled 'Waverley Road' which contains three sub-designations (Attachment A). The new designation and sub-designations will be applied upon Regional Council's approval of the amendment package (Attachment B). Certain properties within the study area will be rezoned; however, policy for future rezonings and development agreements will also be provided (Attachment C).

Public consultation

At the April 2, 2009 meeting of HECC, Council directed staff to collect comments from the public regarding the proposed MPS and LUB amendments, and to address these comments in a supplementary report. The request for comments was posted on the HRM website, with a deadline of May 13, 2009. In addition, phone calls and emails were directed to those members of the public who had left contact information.

Should Regional Council decide to hold a public hearing, property owners in the area shown on Map 5 will be sent written notification. Public notices will also be posted in the local newspaper and on the HRM website.

DISCUSSION

Since Harbour East Community Council tabled the amendment package on April 2, 2009, staff have received a number of comments from the public (Attachment E). The comments have been grouped into general areas of interest, as summarized in Table 1 on the next page. The complete analysis can be found in Attachment D. The original public submissions are in Attachment E.

In some cases, comments have resulted in revisions to the amendment package (Attachments A and B). In others, staff are recommending no changes be made.

Table 1. Summary of public submissions.		
Public comment		Staff recommendation
<i>Re: Existing development agreements</i>		
1	Although currently covered by a DA, 202 Waverley Road should not be rezoned without adequate protection from offensive uses.	If the development agreement was discharged, permits must be issued for uses permitted in the C-1B zone, as uses cannot be prejudged to be offensive or obnoxious. – No changes are proposed.
<i>Re: Proposed C-1A (Neighbourhood Commercial) zone</i>		
2	224 and 226 Waverley Road should be rezoned to the new C-1A zone now. The C-1A zone should be changed to allow existing residential uses.	The public expressed the desire to have input on these properties before commercial uses are considered. – No changes are proposed with regard to the rezoning; however existing residential uses have been added to the list of permitted uses.
<i>Re: Proposed C-1B (Mixed Use Commercial) zone</i>		
3	The I-1 zone should be maintained at 219 Waverley Road (CME Protective Coatings) and 198 Waverley Road (Perry Rand).	The public clearly expressed that new industrial uses and vehicle-related uses should not be permitted; therefore, the I-1 zone is no longer considered appropriate. – No changes are proposed.
4	The list of uses excluded in the C-1B zone is not sufficient.	Revisions have been made to the proposed amendments to include cabarets, pawnshops and amusement arcades to the list of prohibited uses.
5	‘Vehicle services’ should be permitted in the C-1B zone.	Through the public consultation, staff received no support for new vehicle-related uses. However, Council may direct staff to permit vehicle services with a higher degree of land use control, such as site plan approval or development agreements. – No changes are proposed.
6	Would HRM Fleet Services at 196 Waverley Road become a non-conforming use in the C-1B zone?	No, HRM Fleet Services will be recognized as an existing use, with the ability to expand through the site plan approval process with public input.

<i>Re: Outdoor storage and display</i>		
7	The restrictions on outdoor storage and display are too strict for the C-1B zone.	These restrictions have been revised for the C-1B (Mixed Use Commercial) Zone.
8	The requirements for buffering from residential uses are too strict for the Micmac Bar & Grill at 217 Waverley Road .	The proposed amendments are less strict with regard to this property than the regulations that currently apply. – No changes are proposed.
<i>Re: Non-conforming uses</i>		
9	There should be a method established to outline the existing uses which will become non-conforming.	Staff will continue to use the existing system of development permits and occupancy permits. – No changes are proposed.
10	<p>Policies C-43 and C-44 are not objectionable, though they probably unduly prolong the desired transition process.</p> <p>Policy C-44 should be amended to increase the recommencement period to 12 months.</p> <p>Property owners should be able to ask Council for an additional 12 months.</p>	<p>Staff believe the proposed policies balance the neighbourhood's desire to transition to a mixed use commercial and residential community with commercial and industrial investments in certain properties. – No changes are proposed.</p> <p>A 12 month recommencement period was already included in the proposed amendments to the Dartmouth LUB.</p> <p>To change the length of the permitted recommencement period in the future, Council will have to amend the LUB. – No changes are proposed.</p>
11	Will all of the businesses at 221 Waverley Road become non-conforming uses?	No, only uses that are not permitted in the C-1B zone (such as vehicle services) will become legal non-conforming uses. – No changes are proposed.
12	Since Policy IP-1(c) mandates that Council consider whether a proposal is “compatible and consistent with adjacent uses”, the option to expand through a development agreement is not viable.	All development agreements and rezonings in Dartmouth are currently evaluated under Policy IP-1(c). It is unlikely Council would use their discretion to refuse a development agreement or rezoning unless it was truly incompatible with the neighbourhood. – No changes are proposed.

13	<p>216 Waverley Road (i.e. the vacant property at the corner of Evans Court and Waverley Road) should be recognized as a ‘non-conforming use’ attached to the Micmac Bar & Grill, and it should be rezoned to C-1B.</p>	<p>Staff cannot simply recognize a longstanding use as ‘non-conforming’; it must be proven that it was lawfully existing before the current zone was applied.</p> <p>Rezoning to C-1B would contradict Council’s direction to consider only local commercial uses in this area. – No changes are proposed</p>
<p><i>Re: Study area</i></p>		
14	<p>266, 268 and 270 Waverley Road (north of Montebello Drive) should be re-instated in the study area.</p>	<p>Due to the largely residential nature of this area, six properties north of 252 Waverley Road were removed from the final study area based on Harbour East Community Council’s direction in October 2008. – No changes are proposed.</p>

BUDGET IMPLICATIONS

The costs to process this planning application can be accommodated within the approved operating budget for C310.

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 amendments to the Dartmouth Municipal Planning Strategy and Land Use By-law as outlined in this report and presented in Attachments A and B. This is the recommended alternative.
2. Council may choose to modify the proposed amendments to the Dartmouth Municipal Planning Strategy and Land Use By-law as presented in Attachments A and B. If this alternative is chosen, specific direction regarding the requested amendments is required. Substantive amendments may require another public hearing be held before approval is granted.
3. Council may choose to refuse the amendments to the Dartmouth Municipal Planning Strategy and Land Use By-law. This is not a recommended course of action due to the concerns outlined in this report.

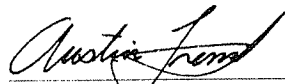
ATTACHMENTS

Map 1	Generalized Future Land Use Map
Map 2	Location and Zoning Map
Map 3	Expanded Study Area
Map 4	Existing Commercial and Industrial Uses
Map 5	Notification Area
Attachment A	Proposed Amendments to the Dartmouth Municipal Planning Strategy
Attachment B	Proposed Amendments to the Dartmouth Land Use By-law
Attachment C	List of Properties to be Rezoned
Attachment D	Analysis of Public Submissions
Attachment E	Public Submissions

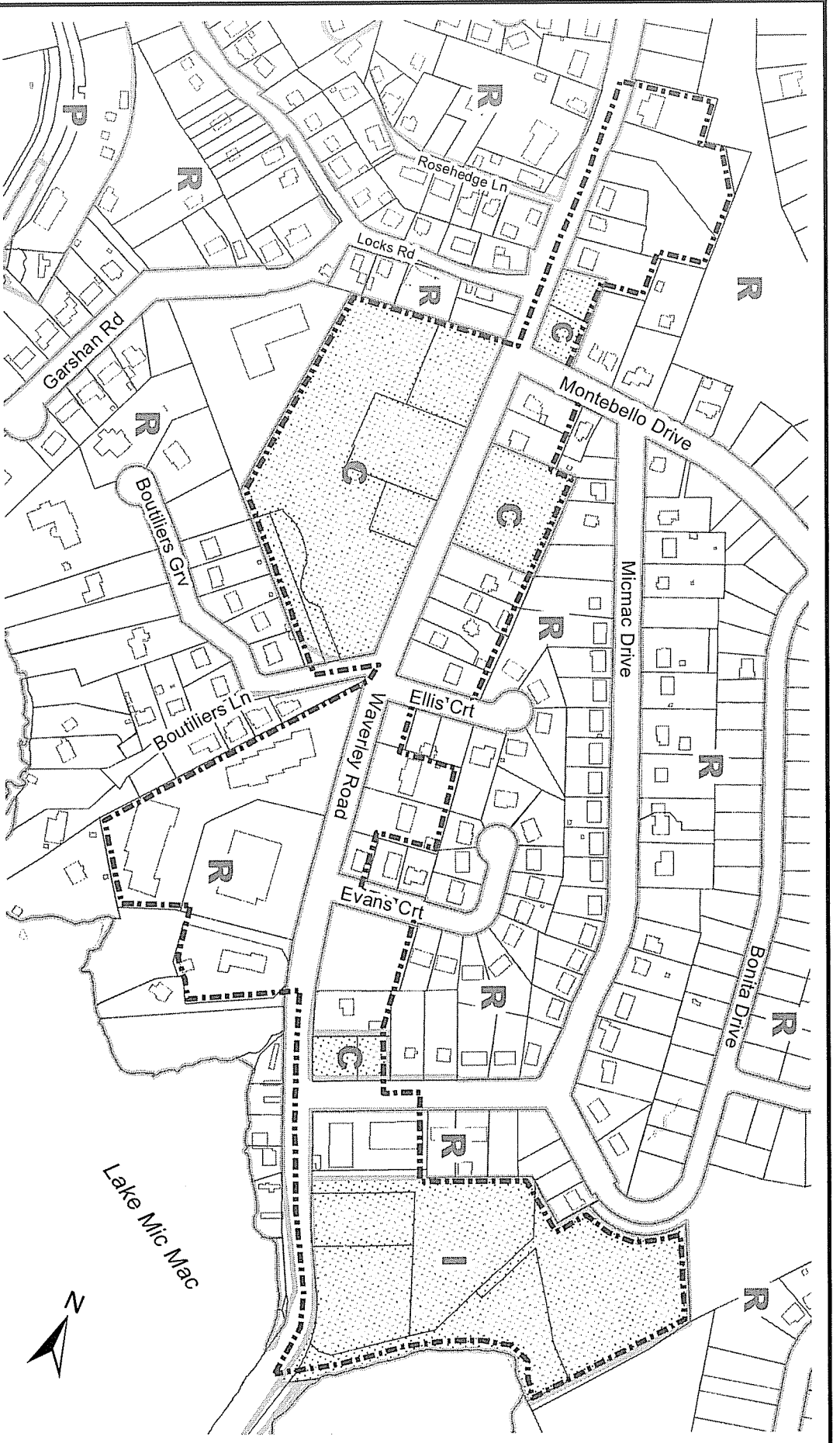
A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Mackenzie Stonehocker, Planner I, 490-3999

Report Approved by:



Austin French, Manager of Planning Services, 490-6717



Map 1 Generalized Future Land Use Map

Waverley Road

Commercial & Industrial Designations

Proposed Review Area for Commercial Designation

Dartmouth Plan Area

Designation
 R Residential
 C Commercial
 I Industrial
 P Park



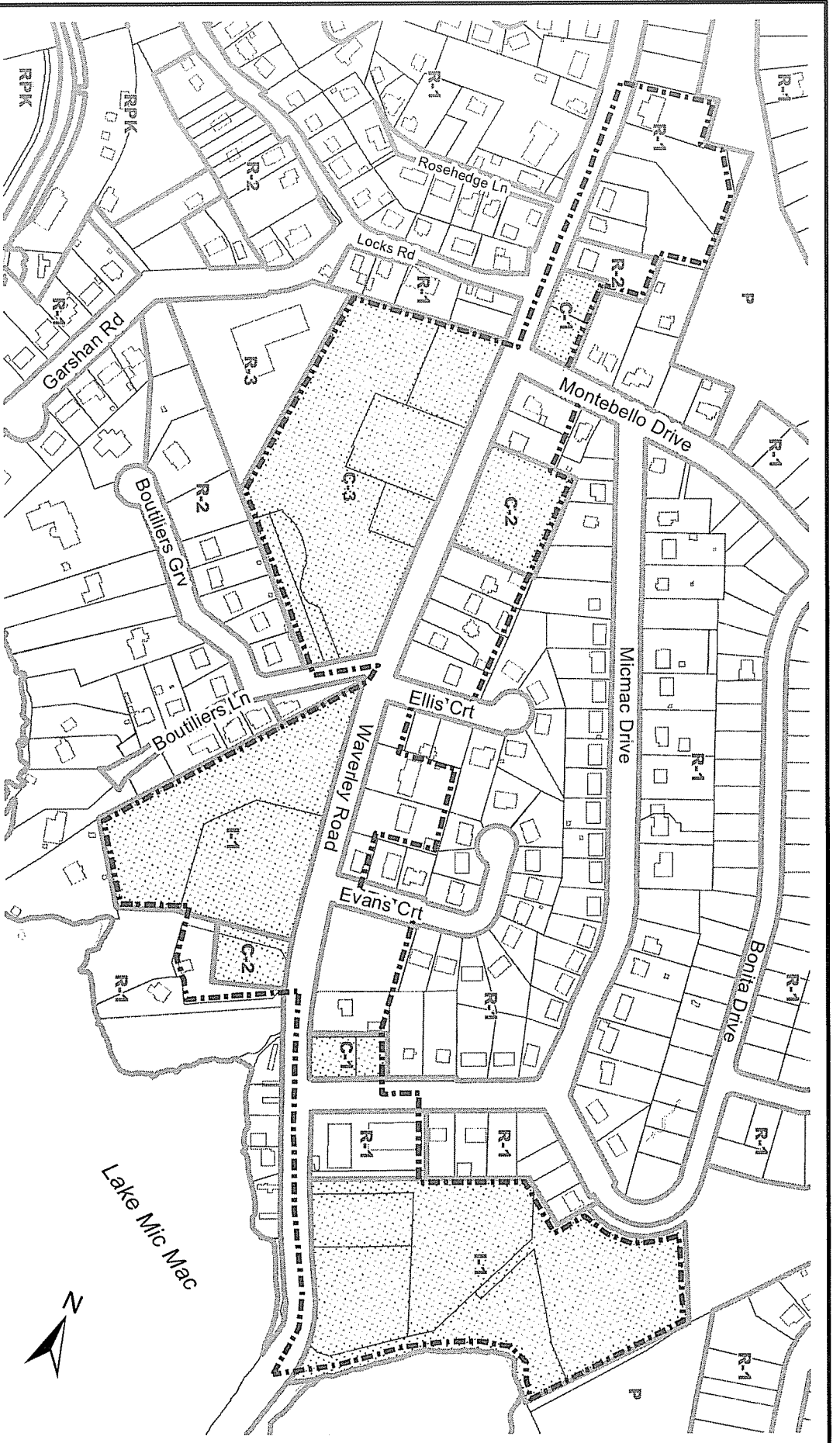
HAJIFAX
 REGIONAL MUNICIPALITY
 COMMUNITY DEVELOPMENT
 PLANNING SERVICES

This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the Dartmouth Plan Area.
 HRM does not guarantee the accuracy of any representation on this plan.

Jan. 13, 2009

Case 01053

file:T:\work\planning\Holly\Official_Maps\Case_maps\Case_01053\Map1_glum.pdf (HLX)



Map 2 Location and Zoning Map

Waverley Road

Industrial & Commercial Zones

Proposed Review Area for Commercial Designation

Dartmouth Plan Area

Zone

- R-1 Single Family Residential
- R-2 Two Family Residential
- R-3 Multiple Family Residential
- C-1 Local Business
- C-2 General Business
- C-3 General Business
- I-1 Light Industrial
- P Park
- RPK Regional Park



HALIFAX
REGIONAL MUNICIPALITY
COMMUNITY DEVELOPMENT
PLANNING SERVICES

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

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

Jan. 13, 2009





Case 01053





file T:\work\planning\Holly\Official_Maps\case_maps\Case_01053\01053_zoning.pdf (HLK)



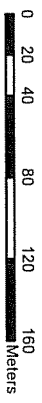
Map 3 Expanded Study Area

Waverley Road

-  Existing Commercial & Industrial Uses
-  Section to be excluded from Expanded Study Area
-  Original Study Area
-  Expanded Study Area

-  Existing Commercial & Industrial Uses
-  Section to be excluded from Expanded Study Area
-  Original Study Area
-  Expanded Study Area

Dartmouth Plan Area



HALIFAX
REGIONAL MUNICIPALITY
Community Development
Planning Services

This map is an unofficial reproduction of a portion of the Dartmouth Plan Area.
HRM does not guarantee the accuracy of any representation on this plan.



Map 4 Existing Commercial & Industrial Uses

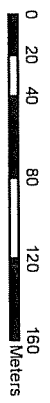
Waverley Road

Existing Commercial & Industrial Uses

Areas 1-4

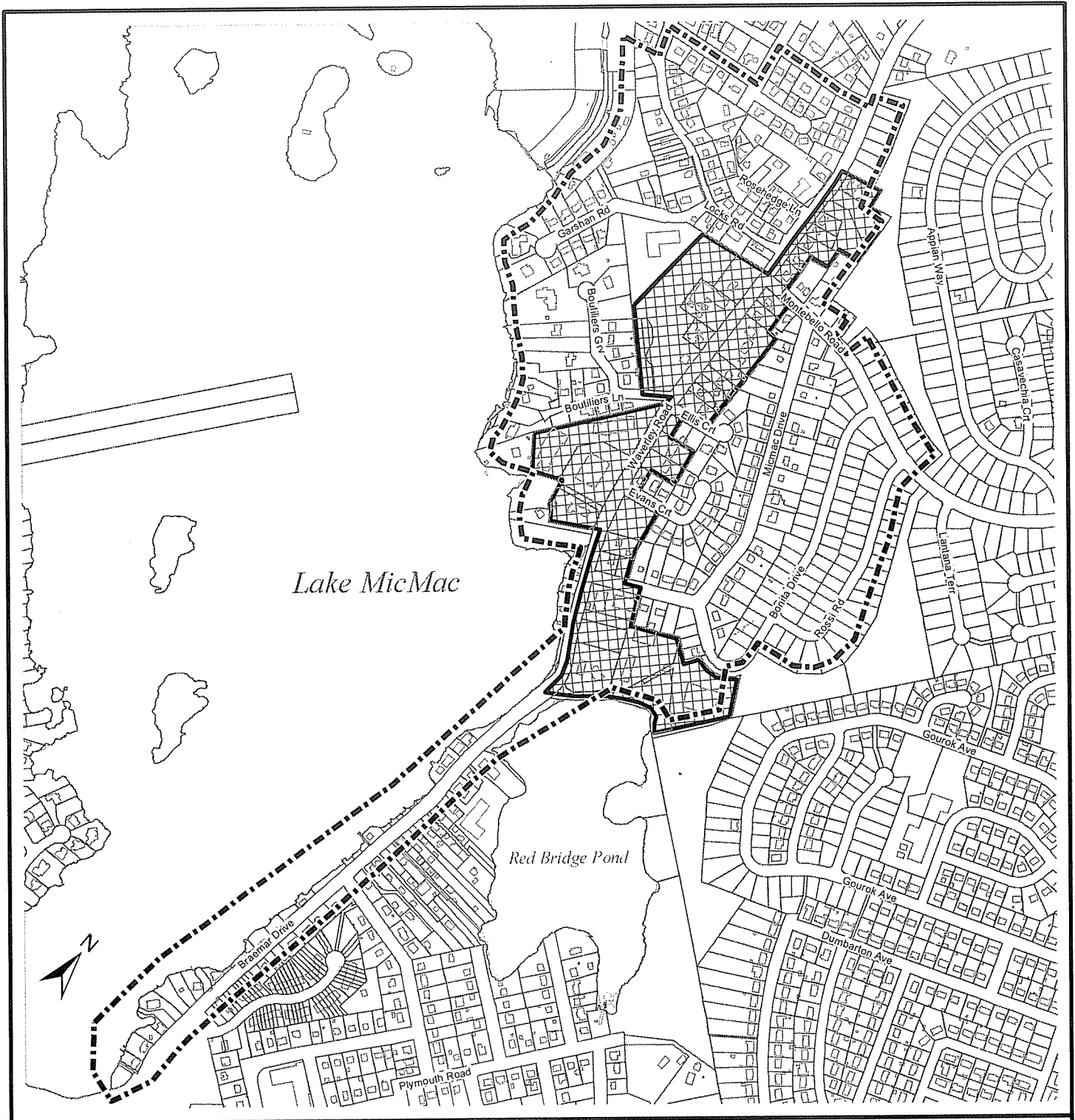
Section to be excluded from Area 1

Dartmouth Plan Area



HALIFAX
 REGIONAL MUNICIPALITY
 Community Development
 Planning Services

This map is an unofficial reproduction of a portion of the Dartmouth Plan Area. HRM does not guarantee the accuracy of any representation on this plan.



Map 5 Notification Area

Waverley Road



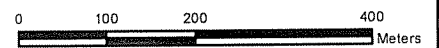
Proposed Notification Area



Proposed Review Area for Commercial Designation

Dartmouth Plan Area

HALIFAX
REGIONAL MUNICIPALITY
COMMUNITY DEVELOPMENT
PLANNING SERVICES



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

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

**Attachment A:
Proposed Amendments to the Dartmouth Municipal Planning Strategy**

BE IT ENACTED by the Regional Council of the Halifax Regional Municipality that the Municipal Planning Strategy for Dartmouth, which was adopted by the former City of Dartmouth on the 25th day of July 1978 and approved with amendments by the Minister of Municipal Affairs on the 15th day of September, 1978, as amended, is hereby further amended as follows:

1. In the Table of Contents, insert one new item in Chapter 5 after ‘32 Primrose Street’:

Waverley Road Designation

2. In the Table of Contents, insert one new item in the List of Maps after Map 9t:

Map 9u Waverley Road Generalized Future Land Use

3. In the Table of Contents, insert one new item in the List of Tables after Table 4:

4a Generalized Land Use Matrix – Waverley Road Designation

4. Add a new subsection at the end of Chapter 5 ‘Commercial’ after Policy C-31 as follows:

(9) WAVERLEY ROAD DESIGNATION

The lands located on Waverley Road from Red Bridge Pond to Montebello Drive have developed such that residential, commercial and industrial uses of varying intensities are mixed in close proximity. In 2008, a planning study was conducted along this stretch of Waverley Road, with the intent to create a mixed use community that meets the needs of residents, while allowing existing businesses to continue growing in a manner that limits conflicts. To meet these goals, a new land use designation will be created: ‘Waverley Road’. The Waverley Road designation includes three sub-designations and new zones, to encourage growth that is more community focussed, and to permit certain land uses only by site plan approval or development agreement.

Policy C-32 It shall be the intention of Council to establish the Waverley Road designation, as shown on Map 9u. The vision for the Waverley Road designation is to encourage a mixed use community which has a range of commercial uses, while addressing land use compatibility issues by limiting the types of land uses permitted and by establishing land use controls. Due to the commercial concentration in the

designation, within residential areas, expanded home occupations can be considered through site plan approval regulations in the land use by-law. Further, the designation will recognize existing land uses.

Within the Waverley Road designation, specific land use changes or controls are required for three distinct areas due to the types and location of uses. To achieve the intent of the designation, separate sub-designations shall be established for the three distinct areas, which are:

- Residential lands on the east side of Waverley Road;
- Lands around Montebello Drive on the east side of Waverley Road; and
- Lands near Red Bridge Pond, as well as lands on the west side of Waverley Road.

WR Low Density Residential Sub-designation

In 2008, the lands on the east side of Waverley Road were mainly used for residential purposes, and the community wanted this pattern to continue. In addition to maintaining the low density residential character of this area, there is support for consideration of auxiliary dwelling units through amendments to the land use by-law. Further, expanded home occupations shall be permitted subject to site plan approval regulations within the land use by-law. As this sub-designation has been applied to a residential enclave surrounded by commercial uses, neighbourhood commercial uses may also be considered, but only by development agreement to minimize land use conflicts.

Policy C-33 Within the Waverley Road designation, it shall be the intention of Council to establish the WR Low Density Residential sub-designation, as shown on Map 9u of this Plan. The intent of this sub-designation is to recognize and support the area's low density residential character as well as its central location within the commercially-oriented Waverley Road designation.

Auxiliary Dwelling Unit (R-1A) Zone

Policy C-34 Within the WR Low Density Residential sub-designation, it shall be the intention of Council to establish an auxiliary dwelling unit (R-1A) zone which permits auxiliary dwelling units, as well as uses permitted in the single family dwelling (R-1) zone and accessory uses. In addition, the auxiliary dwelling unit (R-1A) zone will provide for the use of dwellings for day care facilities and home occupations, as well as expanded home occupations by site plan approval. In considering amendments to the land use by-law to apply the auxiliary dwelling unit (R-1A) zone, Council shall have regard for the following:

- (a) adequacy of the exterior design, height, bulk and scale of the development with respect to its compatibility with the existing neighbourhood; and
- (b) the provisions of Policy IP-1(c).

Development agreements: Neighbourhood commercial uses

Commercial uses are the predominant use in the Waverley Road designation; however, residential uses are currently more common within the WR Low Density Residential sub-designation. Therefore, the impacts of proposed neighbourhood commercial uses on residential neighbours need to be given special attention. Therefore, neighbourhood commercial uses shall mean uses permitted in the C-1A zone and such uses shall only be considered by development agreement.

Policy C-35 Within the WR Low Density Residential sub-designation, Council shall consider neighbourhood commercial uses by development agreement in accordance with the provisions of the *Halifax Regional Municipality Charter*. In considering such an agreement, Council shall have regard for the following:

- (a) adequacy of the exterior design, height, bulk and scale of the development with respect to its compatibility with the existing neighbourhood;
- (b) number, location and layout of parking and loading areas;
- (c) landscaping, screening and buffering, especially to reduce impacts on residential land uses;
- (d) hours of operation; and
- (e) the provisions of Policy IP-1(c).

WR Neighbourhood Sub-designation

In 2008, the lands around Montebello Drive on the east side of Waverley Road were used for a mix of neighbourhood commercial and residential uses. In the future, the mix of uses in this area may change to a more commercial focus, with the development of small scale commercial uses and dwelling units in conjunction with commercial uses. In residential areas, expanded home occupations will be permitted subject to site plan approval regulations within the land use by-law.

Policy C-36 Within the Waverley Road designation, it shall be the intention of Council to establish the WR Neighbourhood sub-designation, as shown on Map 9u of this Plan. The intent of this sub-designation is to encourage neighbourhood commercial uses and lower density residential uses.

Neighbourhood Commercial (C-1A) Zone

Policy C-37 Within the WR Neighbourhood sub-designation, it shall be the intention of Council to establish a neighbourhood commercial (C-1A) zone which permits existing residential uses, single unit dwellings, two unit dwellings, townhouses, food and grocery stores, restaurants (excluding drive-through restaurants), personal service shops, veterinary clinics without outdoor runs, and small scale offices, retail stores, fitness centres and health clinics. The land use by-law shall

limit the heights of buildings and lot coverage, and shall limit the floor area used for certain commercial purposes. No outdoor storage shall be permitted within the zone, and outdoor display shall be restricted to the temporary or seasonal display of plant materials or perishable goods normally associated with retail uses permitted in the zone. In considering amendments to the land use by-law, Council shall have regard for the following:

- (a) adequacy of the exterior design, height, bulk and scale of the development with respect to its compatibility with the existing neighbourhood; and
- (b) the provisions of Policy IP-1(c).

Auxiliary Dwelling Unit (R-1A) Zone

Policy C-38 Within the WR Neighbourhood sub-designation, it shall be the intention of Council to enable the auxiliary dwelling unit (R-1A) zone, and to consider amendments to the land use by-law using the provisions of Policy C-34.

WR Mixed Use Sub-designation

In 2008, the lands near Red Bridge Pond, as well as lands on the west side of Waverley Road, were used for a variety of commercial and industrial uses. Industrial uses are no longer considered appropriate within this area. In recognition of this area's capacity to sustain a higher intensity mix of uses than in the other Waverley Road sub-designations, permitted development includes institutional uses, multiple unit dwellings, existing municipally owned fleet services, and a wide variety of commercial uses. However, certain commercial uses may be prohibited due to their potential impact on residential uses in the area.

Policy C-39 Within the Waverley Road designation, it shall be the intention of Council to establish the WR Mixed Use sub-designation, as shown on Map 9u of this Plan. The intent of this sub-designation is to encourage and support a variety of commercial uses, as well as institutional and residential uses.

Mixed Use Commercial (C-1B) Zone

Policy C-40 Within the WR Mixed Use sub-designation, it shall be the intention of Council to establish a mixed use commercial (C-1B) zone which permits single unit dwellings, two unit dwellings, townhouses, institutional uses, local and neighbourhood commercial uses, and general commercial uses excluding drive-through restaurants, adult entertainment uses, cabarets, amusement arcades, pawn shops, recycling depots and vehicle service uses. However, existing municipally owned fleet services at 196 Waverley Road will be permitted by site plan approval. The land use by-law shall limit the heights of buildings and lot coverage. In considering amendments to the land use by-law, Council shall have regard for the following:

- (a) adequacy of the exterior design, height, bulk and scale of the development with respect to its compatibility with the existing neighbourhood;
- (b) the provisions of Policy IP-1(c).

Development agreements: Multiple unit dwellings / Long term care facilities

Multiple unit dwellings were recognized during the Waverley Road study as a land use which could contribute to the desired walkable, mixed use community; however, concern was expressed about the impact such uses may have on the existing neighbourhoods. Therefore, multiple unit dwellings shall only be permitted by development agreement to ensure compatibility with the existing neighbourhoods.

Also, residents recognized the need for long term care facilities in the community and identified this sub-designation as an appropriate location. Controls on design and reduced impacts on residential neighbours are desired, therefore applications for long term care facilities should only be considered through the development agreement process.

Policy C-41 Within the WR Mixed Use sub-designation, Council shall consider multiple unit dwellings and long term care facilities by development agreement in accordance with the provisions of the *Halifax Regional Municipality Charter*. In considering such an agreement, Council shall have regard for the provisions of Policy IP-5, and should use the land use density standards of the R-3 zone as a guide.

Development agreements: Self storage facilities

Self storage facilities are generally low impact uses, with few visits generated by their users. However, issues may arise when they are located near residential areas, due to issues with regards to lighting, appearance and hours of operation. Self storage facilities should only be considered by development agreement, in order to limit nuisances and impacts on residential neighbours.

Policy C-42 Within the WR Mixed Use sub-designation, Council shall consider self storage facilities by development agreement in accordance with the provisions of the *Halifax Regional Municipality Charter*. In considering such an agreement, Council shall have regard for the following:

- (a) adequacy of the exterior design, height, bulk and scale of the development with respect to its compatibility with the existing neighbourhood;
- (b) controls are placed on the development to reduce conflict with adjacent or nearby land uses;
- (c) number, location and layout of parking and loading areas;
- (d) lighting design to reduce impacts on adjacent properties;
- (e) landscaping, screening and buffering, especially to reduce impacts on residential land uses;

- (f) visual impacts from Waverley Road should be minimized, through the use of landscaping, buffering, screening and significant setbacks from Waverley Road for any buildings or fences;
- (g) hours of operation; and
- (h) the provisions of Policy IP-1(c).

Legal non-conforming uses

With the adoption of the Waverley Road designation, certain uses will become legal non-conforming uses as a result of amendments to the land use by-law. To support the affected businesses, the municipal planning documents allow for consideration of a development agreement to provide more flexibility for future expansion or change of use than a non-conforming use would normally receive under the provisions of the *Halifax Regional Municipality Charter*.

Policy C-43 Within the WR Mixed Use sub-designation, Council shall consider permitting a legal non-conforming use – as identified in the land use by-law – to be changed to another less intensive non-conforming use, or permit the structure in which such a use is located to be altered or expanded by development agreement in accordance with the provisions of the *Halifax Regional Municipality Charter*. In considering such an agreement, Council shall have regard for the following:

- (a) controls are placed on the development to reduce conflict with and impacts on adjacent land uses;
- (b) when adjacent to residential uses, existing conditions resulting in noise, dust, vibration, odour, and emissions must be mitigated;
- (c) adequacy of the exterior design, height, bulk and scale of the development with respect to its compatibility with the existing neighbourhood;
- (d) facilities for parking, loading, vehicular access, outdoor display and outdoor storage shall be designed to avoid any adverse effects on adjacent properties and to mitigate existing problems, through attention to factors including but not limited to:
 - (i) layout and number of parking spaces and loading areas;
 - (ii) location on the site;
 - (iii) surface treatment and storm drainage; and
 - (iv) access from the street.
- (e) landscaping, screening and buffering, especially to reduce impacts on adjacent residential uses;
- (f) controls on signage;
- (g) hours of operation; and
- (h) the criteria listed in Policy IP-1(c).

In order to allow for re-use of the existing buildings in the WR Mixed Use sub-designation, it shall be the intention of Council to consider extending the period of inactivity permitted for a

non-conforming use, while still working towards the long-term transition of the area to a mixed use commercial and residential node.

Policy C-44 Within the WR Mixed Use sub-designation, on lands occupied by legal non-conforming uses – as identified in the land use by-law – it shall be the intention of Council to consider permitting the recommencement of a legal non-conforming use of land after it is discontinued for a continuous period longer than six months.

5. Add a new table directly after Table 4 as shown:

Table 4a: Generalized Land Use Matrix – Waverley Road Designation			
WR Mixed Use Sub-designation	WR Neighbourhood Sub-designation	WR Low Density Residential Sub-designation	<<< Sub-designation <i>Land Use</i>
●	●	●	Single Unit Dwelling
●	●	●	Auxiliary Dwelling Unit
●	●		Two Unit Dwelling
●	●		Townhouse
●			Multiple Unit Dwelling
			Mobile Homes
●	●	●	Neighbourhood Conv. Stores
●	●	●	Home Occupations
●	●		Retail Trade
●	●		Service Commercial
			Regional Commercial
●	●		Local Office
●	●		General Office
●	●		Tourist Commercial
			Warehousing / Distribution
			Light Industrial
			Harbour Oriented Industrial
			General Industrial
●	●	●	Local Parks / Rec. Facilities
●	●	●	District Parks / Rec. Facilities
●	●	●	City Parks / Rec. Facilities
●	●	●	Regional Parks & Facilities
			Watershed
●	●	●	Environmental Protection Area
●	●	●	Local Institutional
●	●	●	City / Regional Institutional
●	●	●	Utilities

6. Adding a sentence after the words “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” (currently on page 123), as follows:

The zoning by-law may use site plan approval as a mechanism to regulate various uses.

7. Adding one new map, directly after Map 9t (Wright’s Cove):

Map 9u Waverley Road Generalized Future Land Use

THIS IS TO CERTIFY that the amendments to the
Municipal Planning Strategy for Dartmouth, as set
out above, were passed by a majority vote of the
Halifax Regional Council on the ____ day of
_____, 2009.

GIVEN under the hands of the Municipal Clerk and
under the Corporate Seal of the Halifax Regional
Municipality this ____ day of _____, 2009.

Julia Horncastle
Acting Municipal Clerk

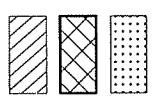
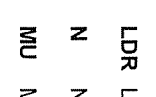



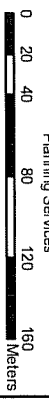
Map 9U Waverley Road Generalized Future Land Use

Designation

 (WR) Waverley Road Designation

Waverley Road Sub-Designations

 LDR Low Density Residential
 N Neighbourhood
 MU Mixed Use



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

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



**Attachment B:
Proposed Amendments to the Dartmouth Land Use By-law**

BE IT ENACTED by the Regional Council of the Halifax Regional Municipality that the Land Use By-law for Dartmouth, which was adopted by the former City of Dartmouth on the 25th day of July 1978 and approved by the Minister of Municipal Affairs on the 15th day of September, 1978, as amended, is hereby further amended as follows:

Table of Contents

1. Insert one new item after Part 2 “R-1M (Single Family Modified Residential) Zone”:

PART 1A R-1A (Auxiliary Dwelling Unit) Zone

2. Insert two new items after Schedule “AA”:

Schedule “AB” – Waverley Road Zoning Map

Schedule “AC” - Waverley Road Legal Non-conforming Uses

Section 1 - Definitions

3. Insert one new definition after Section 1(d) (“Apartment Hotel”):

(da) **AUXILIARY DWELLING UNIT** means a self-contained second dwelling unit within a single unit dwelling, such that the auxiliary dwelling unit is no greater in size than forty (40) percent of the gross floor area of the dwelling, and is secondary to the main residential use of the property.

4. Insert one new definition after Section 1(r) (“Family”):

(ra) **FITNESS CENTRE** means a building or part thereof designed to promote physical fitness, health awareness and maintenance through a variety of programs and services tailored to individual needs, including but not limited to a gym, yoga studio or martial arts studio, and which may include, as an accessory use to the fitness centre use, services for weight management, nutrition education and paramedical clinics including but not limited to physiotherapists, psychologists, speech therapists, chiropractors, osteopaths, naturopaths and registered massage therapists.

5. Insert three new definitions after Section 1(af) (“Registered Plan”):
- (afa) **RESTAURANT, DRIVE-THROUGH** means a building or part of a building wherein food is prepared and offered for sale to the public for consumption within or outside the building. A drive-through restaurant is characterized by the provision of take-out services at a counter or from a drive-through car pick up window. It does not provide the service of delivering to or waiting on tables nor is it licensed to sell alcoholic beverages.
 - (afb) **RESTAURANT, FULL-SERVICE** means a building or part of a building wherein food is prepared and offered for sale to the public primarily for consumption within the building and may include a take-out area which does not exceed 10% of the gross floor area of the full service restaurant. A full service restaurant is characterized by the provision of table service, including buffet service and may also be licensed to serve alcoholic beverages.
 - (afc) **RESTAURANT, TAKE-OUT** means a building or part of a building wherein food is prepared and offered for sale to the public primarily for off-premises consumption and may include a seating area which does not exceed 25% of the gross floor area of the take-out restaurant. A take-out restaurant does not provide the service of delivery to or waiting on tables nor is it licensed to sell alcoholic beverages. Take-out restaurants, however, may provide a home delivery service.
6. Insert two new definitions after Section 1(ala) (“Used Building Material Outlet”):
- (alb) **VEHICLE SERVICES** means the use of a building, structure or land to provide sales of vehicles or services for vehicles, including but not limited to: autobody shops, automotive repair outlets, car dealerships, car washes, service stations, retail gasoline outlets and vehicle depots.
 - (alc) **VETERINARY CLINIC** means a building or structure in which domestic animals are examined, treated, groomed, or operated on, and in conjunction with which, there may be shelter provided within the building during a period of medical treatment.

Section 2 - General Provisions

7. Amend Section 11 (keeping of livestock) by inserting, directly after “R-1M,”:
- R-1A,

8. Amend Section 12 (business or profession concerned with house pets) by inserting, directly after “R-1M,”:

R-1A,
9. Amend Section 14(f) (parking requirements) by deleting:

restaurants,

and replacing it with:

full-service restaurants, drive-through restaurants
10. Insert a new clause after Section 14(f) (parking requirements):

(fa) for take-out restaurants, one parking space per 200 square feet of floor area shall be provided;
11. Insert one new clause after Section 18(T) (development agreements):

18(U) Within the Waverley Road designation, notwithstanding any other provisions of this By-law, certain uses may be considered through policy:
 - (a) Within the WR Low Density Residential sub-designation, in accordance with Policy C-35, neighbourhood commercial uses may be considered by development agreement.
 - (b) Within the WR Mixed Use sub-designation, in accordance with:
 - (i) Policy C-41, multiple unit dwellings and long term care facilities may be considered by development agreement;
 - (ii) Policy C-42, self-storage facilities may be considered by development agreement;
 - (iii) Policy C-43, alteration or expansion of a non-conforming use may be considered by development agreement on lands identified in Schedule “AC” of this By-law; and
 - (iv) Policy C-44, a non-conforming use of land may be recommenced if discontinued for a continuous period of up to 12 months on lands identified in Schedule “AC” of this By-law.

12. Amend Section 22 (boarders and lodgers) by inserting, directly after “R-1M,”:

R-1A,
13. Amend Section 23 (home occupations) by inserting, directly after “R-1M,”:

R-1A,
14. Insert a new clause after Section 23 (home occupations):
- 23A Notwithstanding Subsection 23(g) of the General Provisions, on lands zoned as residential within the Waverley Road designation, as identified on Schedule “AB” of this By-law, Expanded Home Occupations that use up to 60% of the gross floor area of the dwelling and accessory buildings are permitted subject to Site Plan Approval. Where the Site Plan Approval provisions conflict with Section 23 of the General Provisions, the Site Plan Approval provisions shall prevail. The Development Officer shall approve a site plan where the following matters have been addressed:
 - (a) Where the proposed expanded home occupation abuts a residential use or zone:
 - (i) required parking and loading areas shall be set back from side and rear property boundaries;
 - (ii) a landscaped buffer of a minimum width of five (5) feet shall be provided in these portions of the property; and
 - (ii) an opaque fence or landscaping, to screen the view from abutting residential properties, shall be constructed along all property boundaries abutting a residential use or zone.
 - (b) No outdoor display shall be permitted;
 - (c) Commercial signage shall be limited to one sign of a maximum area of four (4) square feet, and shall be located to minimize intrusion on the neighbourhood;
 - (d) The maximum size of an expanded home occupation use shall not exceed 3000 square feet; and
 - (e) New accesses shall be from Waverley Road or Montebello Drive only.
15. Amend Section 27A (accessory buildings) by inserting, directly after “R-1M,”:

R-1A,

16. Amend Section 28(3) (front setbacks) by inserting, between R-1 and R-2:
R-1A 15 feet minimum

17. Amend Section 28(3) (front setbacks) by inserting, between C-1 and C-2:
C-1A 10 feet minimum
C-1B 10 feet minimum

18. Amend Section 29A (medical clinics) by inserting, directly after “R-1M,”:
R-1A,

19. Amend Section 32E (sign limitations) by inserting, directly after “R-1,”:
R-1A,

Section 3 - Zones

20. Amend Section 31 (list of established zones) by inserting one new zone after “R-1M Single Family (Modified) Residential Zone”:
R-1A Auxiliary Dwelling Unit Zone

21. Amend Section 32(1) (list of permitted uses) of the R-1 zone by inserting one new item after “(g) uses accessory to any of the foregoing uses”:
32(1) (h) within the Waverley Road designation, expanded home occupations are permitted subject to site plan approval, in accordance with the requirements of Section 23A of the General Provisions.

22. Insert the R-1A zone as a new zone, immediately following Part 2: R-1M (Single Family (Modified) Residential) Zone (currently on page 29):
PART 1A: R-1A (AUXILIARY DWELLING UNIT) ZONE
32B (1) The following uses only shall be permitted in a R-1A Zone:
(a) R-1 uses as hereinbefore set out;

- (b) auxiliary dwelling units; and
- (c) uses accessory to any of the foregoing uses.

32B (2) Within the Waverley Road designation, expanded home occupations are permitted subject to site plan approval, in accordance with the requirements of Section 23A of the General Provisions.

32B (3) Buildings used for R-1 and R-1A uses in a R-1A Zone shall comply with the requirements of the R-1 Zone.

32B (4) OTHER REQUIREMENTS: AUXILIARY DWELLING UNITS:

Where auxiliary dwelling units are permitted in a R-1A Zone, the following shall apply:

- (a) no more than forty (40) percent of the gross floor area of the dwelling shall be devoted to the auxiliary dwelling unit;
- (b) dwellings containing an auxiliary dwelling unit shall be designed to maintain the appearance of a single unit dwelling from the street; and
- (c) one (1) off-street parking space shall be provided for the auxiliary dwelling unit.

23. Amend Section 38(1) (C-1 permitted uses) by adding a new subsection, after subsection (f):

(fa) veterinary clinics without outdoor runs,

24. Housekeeping amendment to Subsection 38(3)(d) (floor area maximum) of the C-1 zone by deleting:

5000 square feet

and replacing it with:

5000 square feet.

25. Insert the C-1A zone as a new zone, immediately following Part 8: C-1 (Local Business) Zone:

PART 8A: C-1A (NEIGHBOURHOOD COMMERCIAL) ZONE

38A (1) The following uses only shall be permitted in a C-1A Zone:

- (a) Existing residential uses,
 - (b) R-1, R-1A and R-2 uses, in conjunction with a commercial use,
 - (c) TH uses as hereinbefore set out,
 - (d) food and grocery stores,
 - (e) restaurants, excluding new drive-through restaurants,
 - (f) personal service shops,
 - (g) veterinary clinics without outdoor runs,
 - (h) offices (including offices of professional people providing personal services), not to exceed 5000 square feet,
 - (i) retail, not to exceed 5000 square feet,
 - (j) fitness centres, not to exceed 5000 square feet,
 - (k) health clinics, not to exceed 5000 square feet,
 - (l) uses accessory to any of the foregoing uses.
- 38A (2) Buildings used for R-1, R-1A and R-2 uses in a C-1A Zone shall be permitted only in conjunction with a commercial use, and new accesses shall be limited to one driveway per building accessing Waverley Road or Montebello Drive only.
- 38A (3) Buildings used for TH uses in a C-1A Zone shall comply with the requirements of the TH Zone, and new accesses shall be limited to one driveway per building accessing Waverley Road or Montebello Drive only.
- 38A (4) Buildings used for commercial uses in a C-1A Zone shall comply with the following requirements:
- (a) Lot area minimum - 5,000 square feet.
 - (b) Height maximum - 45 feet, with two storeys (to a maximum of 30 feet measured from the ground) to be used for commercial uses.
 - (c) Lot coverage maximum - 60%.
 - (d) New accesses shall be limited to one driveway per building accessing Waverley Road or Montebello Drive only.
 - (e) Where the C-1A use abuts a residential use or zone:
 - (i) required parking and loading areas shall be set back from side and rear property boundaries;
 - (ii) a landscaped buffer of a minimum width of five (5) feet shall be provided in these portions of the property; and
 - (ii) an opaque fence or landscaping, to screen the view from the adjacent residential property, shall be constructed along all property boundaries abutting the residential use or zone.
 - (f) No outdoor storage shall be permitted, and outdoor display shall be restricted to the temporary or seasonal display of plant materials or perishable goods normally associated with retail uses permitted in this zone, provided that no such display area is located within any parking area required pursuant to Section 14 of the General Provisions of this by-law.

26. Insert the C-1B zone as a new zone, immediately following the new C-1A zone and immediately preceding Part 9: C-2 (General Business) Zone:

PART 8B: C-1B (MIXED USE COMMERCIAL) ZONE

- 38B (1) The following uses only shall be permitted in a C-1B Zone:

- (a) R-1, R-1A, R-2, R-3, C-1, S and TH uses as herein set out;
- (b) Commercial uses except:
 - (i) drive-through restaurants;
 - (ii) adult entertainment uses;
 - (iii) cabarets;
 - (iv) amusement arcades;
 - (v) pawn shops;
 - (vi) vehicle service uses; and
 - (vii) recycling depots.
- (c) Existing municipally owned fleet service uses; and
- (d) Uses accessory to the foregoing uses.

- 38B (2) Buildings used for R-1, R-1A, R-2, R-3, S and TH uses in a C-1B Zone shall comply with the requirements of an R-1, R-1A, R-2, R-3, S or TH Zone respectively, except:

- (a) New accesses shall be limited to one driveway per building accessing Waverley Road or Montebello Drive only; and
- (b) Notwithstanding Section 45(1) (the permitted uses in a S (Institutional) Zone), long term care facilities in the C-1B Zone may only be considered by development agreement in accordance with Section 18(U)(b)(i) of this By-law.

- 38B (3) Buildings used for commercial uses in a C-1B Zone shall comply with the following requirements:

- (a) Lot area minimum - 5,000 square feet.
- (b) Height maximum - three storeys (to a maximum of 40 feet measured from the ground) to be used for commercial uses.
- (c) Maximum Lot coverage - 80%.
- (d) New accesses shall be limited to one driveway per building accessing Waverley Road or Montebello Drive only.
- (e) Where the commercial use abuts a residential use or zone:
 - (i) required parking and loading areas shall be set back from side and rear property boundaries;
 - (ii) a landscaped buffer of a minimum width of five (5) feet shall be provided in these portions of the property; and
 - (ii) an opaque fence or landscaping, to screen the view from the adjacent residential property, shall be constructed along all

- property boundaries abutting the residential use or zone.
- (f) Existing municipally owned fleet services at 196 Waverley Road (PID 40789166) shall be permitted to expand through site plan approval, subject to the requirements of the C-1B Zone.

Section 4 - Scheduling

27. Insert new Schedule “AB” immediately following existing Schedule “AA”:

Schedule “AB” – Waverley Road Zoning Map

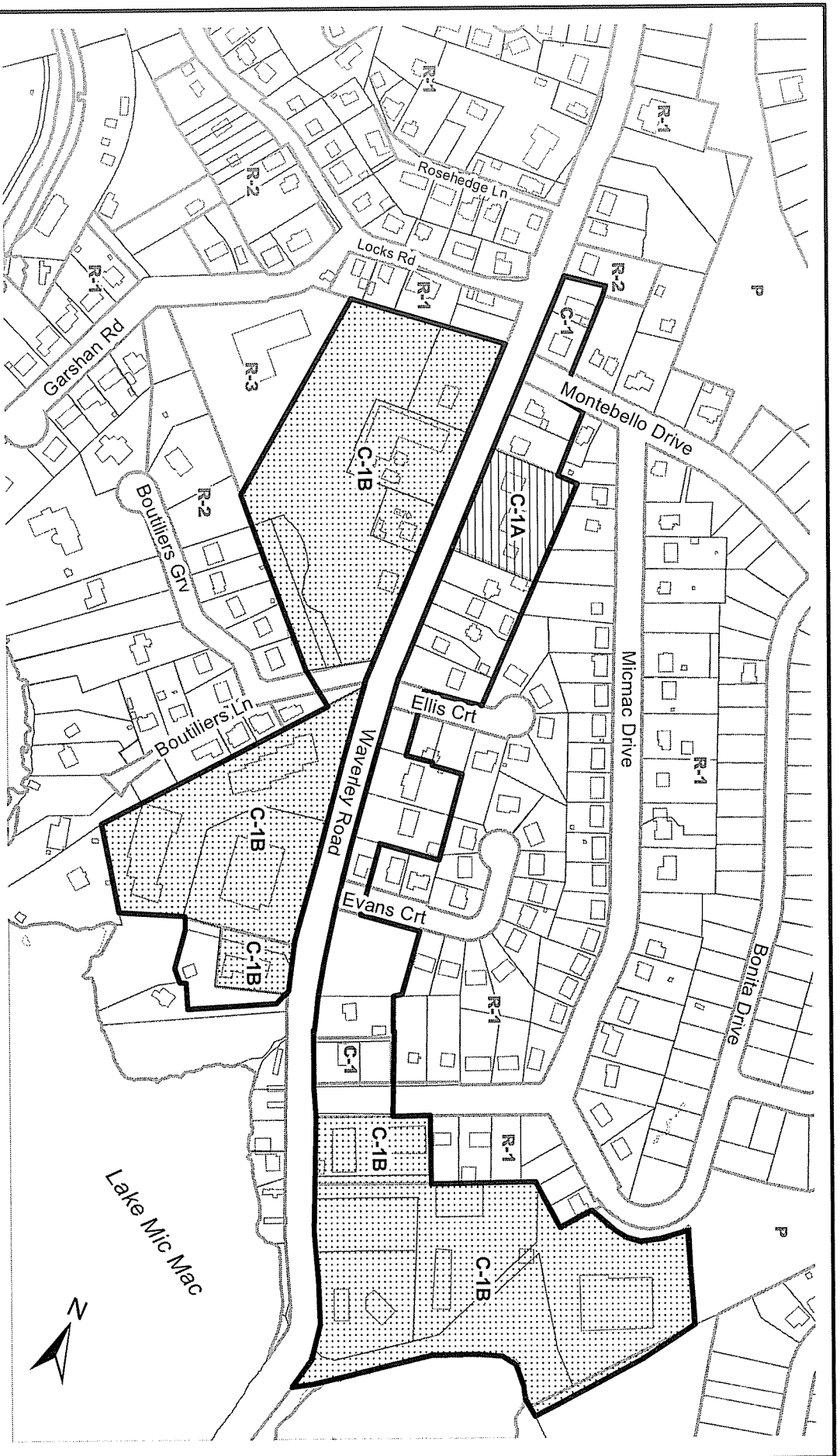
28. Insert new Schedule “AC” immediately following new Schedule “AB”:

Schedule “AC” - Waverley Road Legal Non-conforming Uses

I HEREBY CERTIFY that the amendment to the Land Use By-law for Dartmouth, as set out above, was passed by a majority vote of the Regional Council of the Halifax Regional Municipality at a meeting held on the ____ day of _____, 2009.

GIVEN under the hands of the Municipal Clerk and Under the Corporate Seal of the Halifax Regional Municipality this ____ day of _____, 2009.

Julia Horncastle
Acting Municipal Clerk



Schedule AB Waverley Road Zoning Map

Waverley Road

Waverley Road Study Area & Designation

Area Being rezoned to C-1A
 Area being rezoned to C-1B

Dartmouth Plan Area

Zone

- R-1 Single Family Residential
- R-2 Two Family Residential
- R-3 Multiple Family Residential
- C-1 Local Business
- C-1A Neighbourhood Commercial
- C-1B Mixed Use Commercial
- P Park
- RPK Regional Park

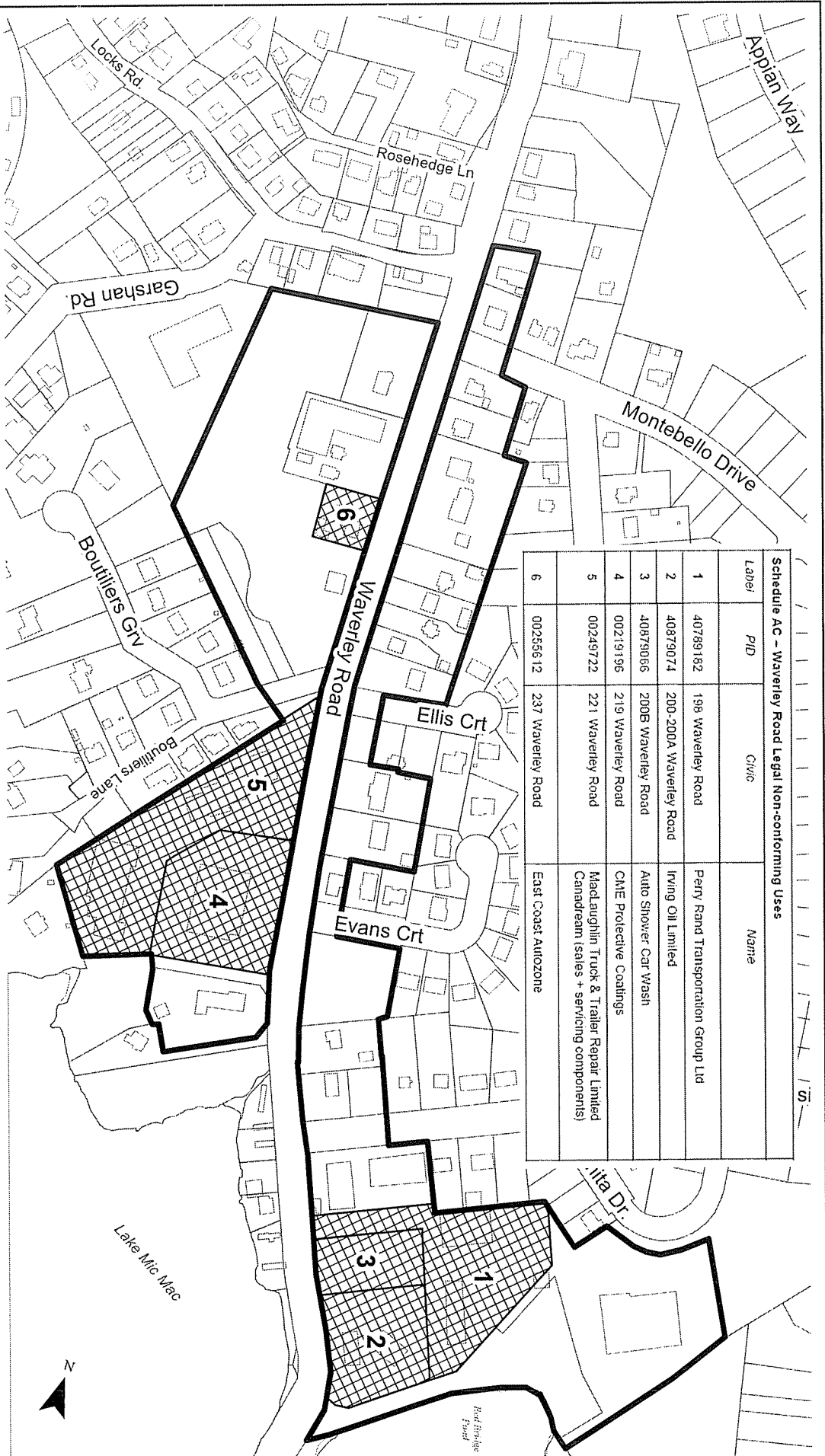


This map is an unofficial reproduction of a portion of the Zoning Map for the Dartmouth Plan Area.

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







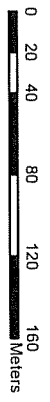
HALIFAX
 REGIONAL MUNICIPALITY
 COMMUNITY DEVELOPMENT
 PLANNING SERVICES



Label	PID	Civic	Name
1	40789182	198 Waverley Road	Perry Rand Transportation Group Ltd
2	40879074	200-200A Waverley Road	Iving Oil Limited
3	40879066	200B Waverley Road	Auto Shower Car Wash
4	00219195	219 Waverley Road	CME Protective Coatings
5	00249722	221 Waverley Road	MacLaughlin Truck & Trailer Repair Limited Canada/ream (sales + servicing components)
6	00255612	237 Waverley Road	East Coast Autozone

Schedule AC Waverley Road Legal Non-Conforming Uses

-  Waverley Road
-  Waverley Road Study Area & Designation
-  Legal Non-Conforming Commercial & Industrial Uses
-  Dartmouth Plan Area



This map is an unofficial reproduction of a portion of the Dartmouth Plan Area. HRM does not guarantee the accuracy of any representation on this plan.



**Attachment C:
 List of Properties to be Rezoned**

Zoning Change	Civic Address	PID
From C-2 to C-1A	242-244 Waverley Road	PID 40265977
From R-1 to C-1B	202 Waverley Road	PID 40789174
From I-1 to C-1B	194 Waverley Road	PID 40789190
	196 Waverley Road	PID 40789166
	198 Waverley Road	PID 40789182
	200A Waverley Road	PID 40879074
	200B Waverley Road	PID 40879066
	219 Waverley Road	PID 00219196
	221 Waverley Road	PID 00249722
From C-2 to C-1B	217 Waverley Road	PID 40879439
From C-3 to C-1B	(no civic address)	PID 40268765
	(no civic address)	PID 40285942
	233 Waverley Road	PID 00255521
	237 Waverley Road	PID 00255612
	245 Waverley Road	PID 40638686
	249 Waverley Road	PID 00255588

**Attachment D:
 Analysis of Public Submissions**

Public Comment		Staff Analysis
<i>Re: Existing development agreements</i>		
1	<p>Although currently regulated by a restrictive development agreement, 202 Waverley Road should not be rezoned to C-1B (Mixed Use Commercial) without adequate protection from offensive uses.</p>	<p><u>Existing MPS / LUB:</u> R-1 (Single Family Residential) Zone; however, an existing development agreement permits certain commercial uses.</p> <p><u>Proposed amendments (March 19):</u> Rezone to C-1B (Mixed Use Commercial); however, the existing development agreement would remain in effect.</p> <p><u>Staff response:</u> If the development agreement was discharged, C-1B uses would be permitted. Permits must be issued for any use permitted in the C-1B zone, as staff cannot prejudge a use to be offensive or obnoxious.</p> <p><u>Recommendation:</u> No changes proposed</p>
<i>Re: proposed C-1A (Neighbourhood Commercial) zone</i>		
2	<p>224 and 226 Waverley Road should be rezoned to the new C-1A (Neighbourhood Commercial) zone, since they are the only two lots facing Waverley Road in this block.</p> <p>The C-1A zone should also be changed to permit residential uses as they currently exist (i.e. not in conjunction with a commercial use).</p>	<p><u>Existing MPS / LUB:</u> R-1 (Single Family Residential)</p> <p><u>Proposed amendments (March 19):</u> Remain as R-1, with potential for expanded home occupations through site plan approval and C-1A (Neighbourhood Commercial) uses through development agreement.</p> <p><u>Staff response:</u> Although C-1A uses would be reasonable on these properties, staff and the public believe a public process specific to these properties (as required by the development agreement process) would be appropriate, since they are surrounded by residential properties.</p> <p><u>Recommendation:</u> With regard to the rezoning, no changes are proposed. However, staff have added existing residential uses to the list of permitted uses in the C-1A zone, so they will not become non-conforming.</p>

<i>Re: proposed C-1B (Mixed Use Commercial) zone</i>		
3	<p>The I-1 zone should be maintained at 219 Waverley Road (CME Protective Coatings) and 198 Waverley Road (Perry Rand Transportation Group).</p>	<p><u>Existing MPS / LUB:</u> I-1 (Light Industrial) Zone.</p> <p><u>Proposed amendments (March 19):</u> Rezone to C-1B (Mixed Use Commercial), with new options for non-conforming uses.</p> <p><u>Staff response:</u> During consultation, the public was clear that new industrial uses or vehicle-related uses should not be permitted; therefore, the existing I-1 zone will be changed to a zone which does not permit these uses.</p> <p>The C-1B zone will prohibit new industrial and vehicle service uses from being established, although existing industrial uses may continue indefinitely as legal non-conforming uses, and may change or expand through a development agreement.</p> <p><u>Recommendation:</u> No changes proposed.</p>
4	<p>The list of uses excluded in the C-1B (Mixed Use Commercial) zone is not sufficient.</p> <p><u>In addition to:</u></p> <ul style="list-style-type: none"> – drive-through restaurants – adult entertainment uses – vehicle service uses – recycling depots <p><u>The following should be excluded:</u></p> <ul style="list-style-type: none"> – amusement arcades – fuel dispensing facilities – dry cleaning plants – salvage yards – any facility that vents fumes 	<p><u>Staff response:</u> Although amusement arcades are less popular than in past years, it is reasonable to exclude them from the C-1B (Mixed Use Commercial) zone. Fuel dispensing, dry cleaning plants and salvage yards are already excluded, as ‘vehicle services’ and industrial uses, respectively.</p> <p>Staff cannot prejudge an otherwise permitted commercial use based on the possibility that it may produce fumes; only specific uses can be excluded.</p> <p>Finally, since the proposed amendments were drafted, amendments have been approved to exclude cabarets and pawn shops from the C-2 zone. To be consistent, these uses should also be excluded from the C-1B zone.</p> <p><u>Recommendation:</u> Staff have revised the proposed amendments to the Dartmouth LUB to exclude the following uses from the C-1B zone:</p> <ul style="list-style-type: none"> – drive-through restaurants – adult entertainment uses – cabarets – amusement arcades – pawn shops – vehicle service uses (excepting municipal fleet services) – recycling depots

<p>5</p>	<p>‘Vehicle services’ should be permitted in the C-1B (Mixed Use Commercial) zone.</p> <p><u>Examples were:</u></p> <ul style="list-style-type: none"> – Canadream RV Rentals – MacLaughlin Truck and Trailer Repair Limited <p><u>However, this would also apply to:</u></p> <ul style="list-style-type: none"> – HRM Fleet Services – Perry Rand Transportation Group – Irving Oil Limited – Auto Shower Car Wash – East Coast Autozone 	<p><u>Proposed amendments (March 19):</u> ‘Vehicle services’ means “the use of a building, structure or land to provide sales of vehicles or services for vehicles, including but not limited to: autobody shops, automotive repair outlets, car dealerships, car washes, service stations, retail gasoline outlets and vehicle depots.”</p> <p><u>Staff response:</u> During the public consultation, issues with regard to vehicle services were a concern. These concerns related to noise, fumes, outdoor storage and potential environmental contamination.</p> <p><u>Recommendation:</u> No changes proposed; however, Council may direct staff to permit vehicle services with a higher degree of land use control, such as site plan approval or development agreements.</p>
<p>6</p>	<p>Would HRM Fleet Services at 196 Waverley Road become a non-conforming use in the C-1B (Mixed Use Commercial) zone?</p>	<p><u>Existing MPS / LUB:</u> I-1 (Light Industrial) Zone.</p> <p><u>Proposed amendments (March 19):</u> The new definition of ‘vehicle services’ would include HRM Fleet Services.</p> <p><u>Staff response:</u> During the public consultation, issues with regard to vehicle services were a concern, and HRM Fleet Services was mentioned.</p> <p>While other non-conforming uses have the option to expand through a development agreement, this is not possible for HRM Fleet Services – the municipality cannot enter into a development agreement with itself.</p> <p><u>Recommendation:</u> As such, the proposed amendments have been revised to recognize the existing municipally owned fleet services depot as an existing use. Staff propose that site plan approval be used for any future expansions, as the process allows public input.</p>

Re: Outdoor storage and display		
7	The restrictions on outdoor storage and display are too strict for the C-1B (Mixed Use Commercial) zone.	<p><u>Staff response:</u> While it is reasonable to limit outdoor storage and display in the C-1A (Neighbourhood Commercial) zone, the C-1B (Mixed Use Commercial) zone is a more permissive commercial zone, where outdoor storage and display may be required.</p> <p>When the C-1B zone abuts a residential use or zone, screening and buffering provisions will still apply to limit the impact of the commercial use.</p> <p><u>Recommendation:</u> Staff have removed the subsection limiting outdoor storage and display in the C-1B zone from the proposed amendments to the Dartmouth LUB.</p>
8	The proposed restrictions on outdoor storage and display and the requirements for buffering from residential uses are too strict for the Micmac Bar & Grill at 217 Waverley Road .	<p><u>Existing MPS / LUB:</u> The property currently has two zones: the C-2 (General Business) Zone and the R-1 (Single Family Residential) Zone.</p> <p>Currently, any expansion next to a residential or community zone or use would be subject to the setback requirements in Section 2(15) of the Dartmouth LUB. The required buffer is either 20 feet along the length of the adjacent property, or it can be reduced to 10 feet in combination with an opaque 6 foot fence.</p> <p><u>Staff response:</u> With regard to buffering from residential zones or uses, the proposed requirements for buffering in the C-1B (Mixed Use Commercial) zone are less strict than those that apply to this property today.</p> <p>It should be noted that the requirements would only be applied if the existing building was expanded; the business as it exists today is not required to conform to the new requirements.</p> <p><u>Recommendation:</u> No changes proposed.</p>
Re: Non-conforming uses		
9	There should be a method established to outline the existing uses which will become non-conforming.	<p><u>Staff response:</u> All land uses are expected to have a up-to-date development permit or occupancy permit that reflects the currently existing use.</p> <p><u>Recommendation:</u> No changes proposed.</p>

<p>10</p>	<p>– Policies C-43 and C-44 are not objectionable, though they probably unduly prolong the desired transition process.</p> <p>– Policy C-44 should be amended to increase the recommencement period to 12 months.</p> <p>– In addition, a property owner should be able to apply to Council during that 12 months for an additional 12 month extension.</p>	<p><u>Existing MPS / LUB:</u> Non-conforming uses cannot be expanded, and cannot be recommenced after a 6 month period of inactivity.</p> <p><u>Proposed amendments (March 19):</u> Non-conforming uses may expand or change through a development agreement, and the recommencement period is extended up to 12 months of inactivity.</p> <p><u>Staff response:</u> The aim was to balance the neighbourhood’s desire to transition to a mixed use commercial and residential community, with existing investments in certain commercial and industrial properties. Staff believe these policies meet this aim.</p> <p>A 12 month recommencement period was already included in the proposed amendments to the Dartmouth LUB. The ability to ask for an additional 12 months was not included.</p> <p>Staff believe that doubling the recommencement period from 6 months to 12 months is sufficient, and a reasonable compromise between the neighbourhood’s desire to transition and property owner’s existing investments.</p> <p><u>Recommendation:</u> No changes proposed; however, Council may direct staff to change the permitted recommencement period to a different length of time.</p>
<p>11</p>	<p>Will all of the businesses operating at 221 Waverley Road become non-conforming uses?</p> <p>Current tenants:</p> <ul style="list-style-type: none"> – truck and trailer repair – RV rental – HVAC services – commercial painting – commercial door installation 	<p><u>Existing MPS / LUB:</u> I-1 (Light Industrial) Zone.</p> <p><u>Proposed amendments (March 19):</u> Rezone to C-1B (Mixed Use Commercial), with new options for non-conforming uses.</p> <p><u>Staff response:</u> Only uses that are not permitted in the C-1B zone will become legal non-conforming uses.</p> <p>For example, the truck and trailer repair business is a ‘vehicle service’, so it would become non-conforming. Rental of vehicles is not a ‘vehicle service’; however, sale and servicing of those rental vehicles would not be permitted; therefore, the rental portion of the business would be permitted as-of-right, but the sale or servicing components would become non-conforming. The HVAC, painting and door installation businesses are ‘commercial uses’, which are permitted in the C-1B zone.</p> <p><u>Recommendation:</u> No changes proposed.</p>

<p>12</p>	<p>Since Policy IP(1)(c) mandates that Council consider whether a proposal is “compatible and consistent with adjacent uses”, the option to expand or change a non-conforming use through a development agreement is not viable.</p>	<p><u>Existing MPS / LUB:</u> I-1 (Light Industrial) Zone or C-3 (General Business) Zone.</p> <p><u>Proposed amendments (March 19):</u> Rezone to C-1B (Mixed Use Commercial), with new options for non-conforming uses.</p> <p><u>Staff response:</u> To recognize existing commercial and industrial businesses that will be rezoned, staff have proposed development options for non-conforming uses beyond those available anywhere else in Dartmouth. Furthermore, all rezoning and development agreement applications in Dartmouth are currently evaluated against Policy IP(1)(c), as well as other relevant policies, public consultation, and various internal and external approval agencies. It is unlikely that Council would use their discretion to refuse a development agreement based on the single clause mentioned in the public submission, unless the proposal was truly incompatible.</p> <p><u>Recommendation:</u> No changes proposed.</p>
<p>13</p>	<p>216 Waverley Road (i.e. the vacant property at the corner of Evans Court and Waverley Road) should also be recognized as a ‘non-conforming use’ attached to the Micmac Bar & Grill, the sole property it has served since 1972.</p> <p>In addition, the vacant property should be rezoned to C-1B (Mixed Use Commercial).</p>	<p><u>Existing MPS / LUB:</u> R-1 (Single Family Residential)</p> <p><u>Proposed amendments (March 19):</u> Remain as R-1, with potential for C-1A (Neighbourhood Commercial) uses through a development agreement.</p> <p><u>Staff response:</u> In order to recognize a longstanding use that is no longer permitted in the current zone as a legal non-conforming use (i.e. a parking lot in the R-1 zone), the landowner must prove that the use was lawfully permitted before the current zone came into effect. Staff cannot simply recognize an illegal use as ‘non-conforming’.</p> <p>The use of this property as a parking lot for patrons of the Micmac Bar & Grill is a legal non-conforming use; however, the use of this property as a parking lot for any other use is illegal.</p> <p>Rezoning this property to C-1B (Mixed Use Commercial) would contradict Council’s direction, since Option 3 only considered local commercial uses (e.g. C-1 or C-1A uses) in this area. However, the ability to apply C-1A uses through a development agreement could potentially permit restaurants and their accessory uses (i.e. parking) on this property.</p> <p><u>Recommendation:</u> No changes proposed.</p>

<i>Re: Study area</i>		
14	266, 268 and 270 Waverley Road (north of Montebello Drive) should be re-instated in the study area.	<p><u>Existing MPS / LUB:</u> R-1 (Single Family Residential) Zone.</p> <p><u>Proposed amendments (March 19):</u> None – HECC removed six properties from the northern end of the study area on October 2, 2008, as recommended in the staff report dated July 24, 2008.</p> <p><u>Staff response:</u> The properties north of 252 Waverley Road were excluded from the final study area after the public workshop. Neither staff nor the public saw further expansion of commercial uses in this area as appropriate, given the largely residential nature of the surrounding area.</p> <p><u>Recommendation:</u> No changes proposed.</p>

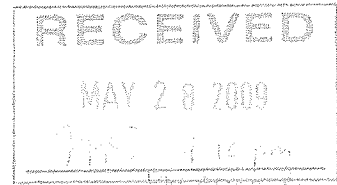
**Attachment E:
Public Submissions**

See attached letters from:

- J&W Whebby Builders and Repairs Ltd.
- Glenn and Judy Conrad
- Phil Power
- Janice Carney
- Peter McDonough, on behalf of 3010526 Nova Scotia Ltd.
- Tom Boyne, on behalf of Terry LeGoffic

Case 01053: Dartmouth MPS/LUB Amendments – Waverley Road

To: Halifax Regional Municipality
From: J&W Whebby Builders and Repairs Ltd.



We felt the need to write a letter expressing our concerns regarding the rezoning of Waverley road. The public participation survey didn't seem to ask some of the questions addressing business owners in the area. We currently operate in what I believe is a Legal Non-Conforming zone (268 Waverley road) and were originally included in the rezoning agenda but have been dropped but would like to be included to be zoned commercial such as the properties on the other side of Montebello Drive. Also we must express concerns of the effect on our ability to earn a living via our rental properties in the area.

We would like to have 266, 268 and 270 Waverley road included in the commercial zoning. We own these 3 of the 6 lots which have been dropped from the original rezoning plan and wanted to know if we could have them re-entered and why they were dropped. There is already a green belt and a hill behind our property to act as a buffer. Since we already pay commercial tax, having a commercial piece of land would be beneficial to us even though we have no intentions of changing our type of business.

We are not in favor of rezoning the currently zoned I1 areas of Waverley road. Some of the businesses located behind the Irving on the Waverley road rent from us and most of them won't be affected immediately by the rezoning. However this will in the future limit who we can have as tenants directly effecting our ability to rent these properties as well as decreasing the value of these properties. This will make it harder for us to earn a living off these properties, but sadly are not even are largest concern.

Our largest concern for the rezoning is the building currently occupied by Perry Rand. This Building is essentially a warehouse with several large bay doors in it and a decent sized lot which extends behind the 3 unit building over to the right-of-way for the Fleet Services building. If or when this building becomes vacant this building will be rendered useless and would be a complete financial loss. This may not be the intent of the rezoning but will be the result.

We would like to continue operating our rentals as they are. We have no intentions to demolish them to build other structures. Although there will be a much greater limitation on that as well with the new rezoning. I agree with some residents of the neighbourhood that it would be a good place for a park or maybe even a seniors home. However the land is privately owed and not feasible unless the city wanted to purchase the land from J&W and then they could do as they wished.

We do not believe that the Waverley road area should exclude automotive services. By our count there are 9 business in this area who would fall under this

category. I understand that the rezoning doesn't mean everybody has to close up shop immediately but this is the goal of it. I don't see why we can't all manage to co-exist and deal with problems as they arise. We don't have a problem with any of these businesses and no one from the area who we know have expressed concerns to us about them either. We heard that people near the car wash didn't like the noise but that's just hearsay and from my understanding before opening and receiving a permit they had a public hearing for it anyways.

This rezoning will hurt those who own rental properties such as ourself quicker and more directly then those who operate they're own business. This is due to the obvious fact that rental properties would be more likely to change occupants and/or uses more frequently. However, the rezoning would reduce flexibility for those who decide to relocate they're business or shut down and still wished to generate an income from it. As far as the residential that is proposed to be zoned commercial I think that is a good idea. It allows for future business expansion in the area and for homeowners to increase the value of their homes. However if the businesses in the area can't be diverse it's expansion will be limited. Our communities are growing but are still only able to sustain a limited number of similar businesses.

This entire problem arose from a large number of nuisance complaints originating from the same residence and has escalated over time. We had made attempts to satisfy this resident and the city by marking off 30 foot set backs on our property as well as constructing a large 12 fence. Perry Rand has also been more then co-operative, shutting down parts of their businesses and restricting hours of operation voluntarily. We have already gone through and continue to be burdened with rising financial costs and nuisance complaints however.

The Businesses in this area existed long before the residential encroached on them. I know what's done is done but it seems silly for somebody to be able to buy a cheap peace of land because its near an industrial zone, build a house and then be able to shut the businesses down because they don't want them there. Small business like these employ a great deal of people in our province and many of the workers like where they are and not having to commute to Halifax or the traffic logged Burnside.

We would also like to add that in speaking with some of the other business owners in the area, there seems to be some confusion on deadlines for comments and the status of the case. One person told us that it had been suspended for a year which obviously isn't the case. I would recommend that the city take some time to contact the business and land owners in the industrial and commercial zones in order to make sure they have their input in the process before proceeding.

From: <glenn.conrad
To: <andrew.younger@halifax.ca>, <bonds@halifax.ca>, <stonehm@halifax.ca>
Date: 06/04/2009 10:03 pm
Subject: Staff Report – Case 01053: Dartmouth MPS / LUB Amendments – Waverley Ro

This is in response to a telephone message from Ms. Stonehocker, HRM Planner, requesting feedback from interested parties to herself and Councilor Younger on the proposed amendments to Dartmouth MPS / LUB before Harbour East Council sends them to Region Council.

Generally speaking we find the stated intention to establish a mixed use commercial / residential area on Waverley Road that encourages and supports business while addressing land use compatibility issues with surrounding residential neighborhoods to be acceptable and working toward the common good. The proposed amendments are laced with provisions designed to mitigate conflict issues between business and residents.

However, we are concerned about the intention to rezone the property identified as 202 Waverley Road from R-1 to C-1B. We do not find the list of excluded commercial uses of C-1B zone to be sufficient. We would recommend the following be added to the list re: Part 8B - 38B:

- (v) dry cleaning plants
- (vi) any fuel dispensing facility (retail or private)
- (vii) any facility that vents toxic or unpleasant smelling fumes into the atmosphere.
 - ex: furniture stripping and refinishing
- (viii) amusement arcades
- (ix) salvage yard

The above are in addition to i to iv already proposed. Given the very negative experience we had with a furniture refinishing business at this location it is hard to believe Planning would not have excluded this type of business on the first pass. The only reason we were ultimately able to shut this business down at the 202 Waverley road location was because it was zoned R-1 and it was not permitted by the development agreement which was restrictive in the type of commercial uses permitted.

We could never support the rezoning of this property to C-1B without adequate protection from this and similarly offensive businesses. We certainly know the current landowner had no qualms about putting this property to illegal land use.

Also there should be no fuel dispensing permitted on any property located within a proposed C-1B zone. Needless to say with the Perry Rand tour and school buses being refueled on a daily basis, almost in our backyard, we can attest to the complete unacceptability of this type of facility.

With respect to the policies related to self-storage facilities, multiple unit dwellings, and elderly care facilities, they all seem well intended.

Now comes the matter regarding Policies C-43 and C-44 especially as it pertains to issues around legal non-conforming land use. If we are talking about legal nonconforming land uses that are not potentially or actually harmful to adjacent residential property owners or citizens one couldn't take too much objection to your proposed policies in this regard, albeit it probably unduly prolongs the process of achieving the desired transition of Waverley Road. But there is the rub, and let's get right to the point.

These policies relate to the continued use of 198 Waverley Road by the Perry Rand Transportation Group. Just a short time ago Ms. Bond left us a telephone message indicating she was at a loss to explain how "we" thought the Perry Rand lease with Whebby Enterprises for the 198 Waverley Road property was for a five year term, when in fact it does not expire for another two years. For the record, "we", Glenn and Judy Conrad came to that conclusion because we were told so by HRM staff or alderman on numerous occasions- the previous councilor, incumbent councilor, and by Mr. Josh Judah in our kitchen. As an aside we were also advised by one of our neighbors, tenants of Flora Whebby, and who are employees of Stock Transportation (industry scuttlebutt) that the lease on 198 Waverley Road was up for bids last fall. So,

unless everyone lied the five-year lease was either amended or a new lease was entered into. So, for five years we were teased by information from HRM that Perry Rand would be gone in five years, if not sooner; that in fact, Perry Rand wanted out of the lease but Whebby Enterprises refused to release them. From all HRM quarters the word was that no one believed they should be there (well documented in our mountainous file).

For our part we expressed our appreciation for HRM's efforts to shut down the Perry Rand bus operation from 6:00 pm until 7:00am the following morning, and that although we documented on many occasions that the daytime noise was unacceptable we said we would restrain from complaining on a daily basis in the knowledge that the lease expired at the end of December 2008 and Perry Rand would then be gone. Now it appears their departure date is indefinite. Extremely disturbing and totally unacceptable..

We also documented on several occasions, as well as during our meeting with the mayor and various staff, our concern about the possible ill effects of being exposed to the toxicity of such a high volume of diesel fumes on such a regular basis resulting from the constant idling, shunting, refueling and serving that goes on everyday at this service depot. Even the most superficial research on the toxicity of diesel fumes and the amount of carbon dioxide and other gases even one bus emits (not to mention 15-30 buses) into the atmosphere on an annual basis by idling just one half hour per day, would lead any person who was not intellectually challenged, to conclude that this type of operation you cannot allow anywhere near a residential neighborhood. We warned and complained to no avail.

I regret to inform you that on December 12, 2008 I took my wife to the emergency department of Dartmouth General because of her extreme inability to breath, whereupon she was immediately admitted to intensive care and remained there for twelve days on oxygen therapy to clear her lungs. The diagnosis at this point shall remain confidential. Suffice it to say she has been diagnosed with a very serious respiratory condition that cannot be reversed. All that can be done is for her to be treated and protected from potential triggers that could provoke a similarly severe recurrence.

How could a person whose medical history was completely devoid of any respiratory problems of any sort, who never smoked, and worked in a smoke and scent free environment (hospitals) most of her working career over a period of seven or eight years gradually develop recurring sinus and bronchial problems, full blown asthma and culminating in twelve days of intensive care hospitalization and a horrible diagnosis of an irreversible respiratory condition.. In the complete absence of any other factors it does not take rocket science to establish a causal connection to the constant daily barrage of toxic organic solvents from the Woodgrain operation at 292 Waverley Road from 1999 to 2007 compounded by the daily exposure to diesel fumes from the 15 to 30 diesel buses that have been operating from 198 Waverley Road from January 2005 to the present. Incidentally I also am a non-smoker and have been for over 40 years.

This unfortunately rains on the parade of any thought that involves Perry Rand continuing to operate at 198 Waverley Road. Inherent in a liberal democracy and in all the regulations and by-laws that permit individuals the freedom to pursue self-interest is the proviso that any such activities are not harmful to others or infringe on their rights. The certainty and reality that the Perry Rand bus operation has been injurious to my wife's health requires that "our" government take the necessary actions to ensure that that the exposures that without doubt attributed to her ill health be removed with the utmost expedience. In addition we are in awe that this bus operation would be permitted to operate immediately adjacent to a day care center. The implications are mind boggling. We also are aware that one of our residential neighbours directly abutting the Perry Rad operation also cares for several pre-schoolers during the day. We often wonder the types of symptoms these kids are presenting and the perplexity of the parents who haven't made the connection that there are diesel engines emitting diesel fuels into the atmosphere on a daily basis that in all probability are affecting their kids. School buses are not permitted to idle their engines in school yards for very good reasons.

Given the extreme seriousness of this situation I must tell you that from our viewpoint we attribute the fact that we had to experience the barrage of daily toxins from Woodgrain for so many years to the negligence of HRM staff in not properly investigating our complaints properly from day one. Instead we were

repeatedly advised incorrectly that the property was zoned commercial and that the business operator had a permit to be there. Only after years of being bounced back and forth between HRM and the Provincial Dept of Environment did I stumble across a copy of the original development agreement for 202 Waverley Rd. that identified the R-1 zoning and the restricted commercial uses. If HRM had investigated our complaints properly all those years of exposure to toxic organic solvents could have been prevented.

Also it is our view that when Whebby Enterprises signed a 5-year lease with Perry Rand, without a development permit, and only applied for the permit after HRM was inundated with noise complaints from adjacent residential property owners; and was given the permit by HRM, after the fact, that also was negligence. The most cursory site inspection would have revealed the property was in non-compliance with respect to the zoning regulations requiring a landscaped 30-foot buffer and full screening from any adjacent residential property. How else could it be described but negligence that a site inspection was not done? Had it been done the permit could not have been issued and the matter would have been left to Perry Rand and Whebby Enterprises to resolve instead of victimizing innocent residents. Lack of resources does not cut it as an excuse.

Now to an issue where we expect immediate action. We insist that the Perry Rand refueling facility at 198 Waverly Road be relocated elsewhere on the property. At the current location of the facility it is impossible for them to comply with the zoning requirement that the vehicles do not infringe on the 30' landscaped buffer. The buses back in to be refueled alongside the fuel tanks and in doing so the rear end of the vehicles comes to within 10 feet to 15 feet of our property line. The buses line up in some type of zigzag formation like inchworms and idle waiting for their turn. The bus getting fuelled is idling, spewing fumes over the fence into our property for the entire 10 to 15 minutes it takes to refuel and then another bus moves in. It is futile for anyone to deny this because we have the incriminating pictures to prove it. In addition because there is no secondary containment such as a concrete apron to prevent spills from getting into the ground the soil is saturated with 5 years of fuel slopping onto the ground during the refueling operations. The fumes are there now with or without the buses.

We were told by an HRM staff person the ground was contaminated, and Councilor Younger told us one of the reasons the property was not purchased as a location for the new pumping station was the prohibitive cost of remediating the site. This was no surprise to us.

At any rate the refueling operation is in non-compliance to the zoning regulation. This is something HRM can remedy immediately by ordering Perry Rand to relocate the fuelling facility elsewhere on the property. Given the current condition of my wife's health and the certainty of the detrimental effect of these daily exposures, I will consider HRM's failure to rectify this situation with expedience as something more than benign neglect. Unfortunately the stakes in this bizarre situation have risen exponentially upon the reality of my wife's diagnosis of a severe and irreversible respiratory condition and her recent hospitalization.

Of course the noise, dust and vibrations have also been an issue since day one. My wife had a good paying administrative position with Capital Health, which she loved and had no intention of leaving until age 65. When Perry Rand commenced operations at 198 Waverley Road with their 24/7 operation she had no choice but to leave her job because of the inability to get a reasonable period of uninterrupted sleep. The financial loss has been significant (far in excess of the \$50K Jack Whebby claims we cost him in legal fees and compliance expenses. The house vibrations that we experience on a daily basis are very unnerving and damaging to the structure of our house. We had our house painted professionally throughout, at considerable expense, in the fall of 2003, just before Perry Rand commenced operations in January 2004. In 2007 we had our basement finished and had the same painter back to paint. She and her crew could not believe the cracks that developed around most of our interior door casings which were non-existent upon the completion of their paint job 4 years previously. We have had numerous trades people in to do a multitude of jobs from tree pruning, roofing, to new window installation and without exception they have all commented on the noise from the buses in the depot adjacent to our property. Within the last week we contracted a tradesman to retile our bathroom floor. We had contracted his services previously and in making the connection he said, "Oh yeh, you are the people who have those buses making all that noise behind your property". Our neighbors at the time had an infant son. The husband is in the military and away a lot. They sold their property within 6 months of Perry Rand commencing operations because the infant could not sleep day or night because of the noise. The people

who purchased the property from them immediately tried to back out of the deal because of the noise but were unable to do so. We have documented on many occasions our assertion that we are exposed daily to noise that would be expected from a permanent construction zone. The bleating of air brakes, beeping reverse direction alarms, gear shifting and idling, and the accompanying vibrations are a constant irritation, as is the dust from the unpaved yard area. The daily barrage of these noises exact a terrible price. My wife has been on anxiety pills for the past two years. I too find the inability to enjoy our yard during the day to be very stressful. I understand the provincial guideline for acceptable level of noise is 55dB. This is not a law or statute, merely a guideline, but I can assure you the noise emanating from the Perry Rand operation significantly exceeds that guideline. We will be officially requesting copies of the residential affidavits that were taken in the fall of 2004 from affected residential property owners, plus copies of the results of the sound intensity readings that were taken over a 30 day period from a neighbors deck. We were told by HRM staff that the noise was excessive. We believe the noise and vibrations exceed acceptable standards.

Sorry folks. The time for games, lies and deception is over. The worst nightmare that could possibly come out of this situation has now become reality. We were told by Josh Judah in our kitchen several years ago when he was investigating the whole thing (prior to the Supreme Court injunction closing down the 24 hour operation) that this was a very serious problem and that the way it would probably be resolved for us was that one day we would wake up and the Perry Rand operation would be gone. You know, that seems to me to still be the best solution – and sooner than later.

We are currently preparing our home for sale in the event that Perry Rand remains at their current location. All I can say in this regard is that the last thing Perry Rand, Whebby Enterprises and HRM would want to see is a For Sale on our lawn as long as there are unresolved noise and pollution issues pertaining to business operations at 198 Waverley Road that continue to affect the physical and mental health of my family.

We are open to holding discussions with HRM towards resolving this very grave issue. Another meeting with the mayor might be appropriate.

Yours truly,

Glenn and Judy Conrad

Mackenzie Stonehocker - RE: Waverley Road update

From: Phil Power
To: "'Mackenzie Stonehocker'"
Date: 20/04/2009 5:06 PM
Subject: RE: Waverley Road update

Hi Mackenzie,

You had sent me an email that I read on my blackberry (thanks by the way) however it got deleted off of my laptop, can you please resend it???

Also I would like to formally put into comments that I believe the two lots on Waverley road (226, 224) should be zoned commercial as they are the only two lots facing the road with no residence on either side (as the residences are facing Ellis / Evans court) and both property owners are for putting in a commercial application.

You never know what may happen, as I have asked the neighbor if they were willing to sell, we talked for about ½ hour so maybe something will come of it.

Again thanks so much for the help (ps – were you certain of that easement in the upper lot overlooking red bridge pond?)

Phil

Sincerely,

Mr. Phil Power
President
Grasshoppers Holdings Limited
(Grasshoppers Martial Arts, After School, Pilates / Yoga,
Time to Dance, & VIP Transportation Services)
226 Waverley Road
Dartmouth, NS B2X 2C4
(902) 455-4853 phone
(902) 454-8888 fax
www.grasshoppers.ca

From: Mackenzie Stonehocker [mailto:stonehm@halifax.ca]
Sent: April 6, 2009 9:47 AM
To: mrpower@grasshoppers.ca; Andrew Younger
Subject: Re: Waverley Road update

Good morning Andrew and Phil,

I am available between 12 and 2 on Thursday, and could meet with you at Phil's place at whatever time you choose.

Thanks!

Mackenzie Stonehocker - 224 Waverley Road

From: "Carney, Janice"
To:
Date: 28/05/2009 11:07 AM
Subject: 224 Waverley Road
CC: "Carney, Janice"

Hi Mackenzie,

As per our previous conversation, John and I are interested in having our property be considered for rezoning. We only wish to do so if the residential uses are permitted to remain as they are now.

Sincerely,

Janice Carney

Mackenzie Stonehocker - ON BEHALF OF PETER MCDONOUGH

From: "Carson, Bev"
To: "Mackenzie Stonehocker"
Date: 12/05/2009 11:14 AM
Subject: ON BEHALF OF PETER MCDONOUGH
CC: , , "McDonough, Peter"

Hello Mackenzie,

I appreciate you need our comments on or before May 13th. I will not be able to get my thoughts organized in an orderly fashion prior to that date so I wanted to send you my concerns in no fixed priority as follows:

1. It seems extremely unfair to exclude "vehicle service uses" from the as of right opportunities in the Mixed Use Commercial zone. For instance, MacLaughlin Truck and Trailer Repair Limited and their predecessors have been at 221 Waverley Road for more than 35 years. I suspect this would mean this type of a use was in operation long before many of the area residents dreamed of moving to this area of Dartmouth. A business sets up, area residents move in knowing very well of its existence and then lobby to have it limited and eventually eliminated. It has not caused a problem for some 35 years and I do not see how this type of a service for the area residents could reasonably be of concern. Also, my client has another tenant on the property by the name of Canadream Limited. They lease out RVs to many European tourists who use them to tour the Maritimes in the summer. Units, once they have reached a certain level of maturity, are also sold from the site. Again, this is a very unobtrusive use of the property. It could be interpreted (incorrectly I submit) that this is a vehicle service use and thereby excluded by the proposed changes.

Would you tell me what type of a use you consider the HRM Fleet Services Building? It would seem like a vehicle-related business to me. My request is that "vehicle service uses" be eliminated as an exclusion in the zone and thereby permitted as a right.

2. Another question I have relates to Schedule AC Waverley Road Legal Conforming Uses. It refers to 221 Waverley Road and could be interpreted that it is deeming every use at that property to be non-conforming. What is the answer and was this the intent?
3. In the proposed C-1B zone, I note that "No outdoor storage shall be permitted, and outdoor display shall be restricted to the temporary or seasonal display of plant material or perishable goods normally associated with retail uses permitted in this zone...
Again, if this applies to the so-called vehicle-related uses on my client's property, it could mean (incorrectly I submit) that any vehicles left outside would be in violation of the by-law. The same would apply to certain of the smaller businesses operating on the property such as professional painters, electrical and air conditioner installers, etc. They all need to store material outside the confines of the building at certain times. Again, this has gone on for over 35 years and has never been objected to by the area residents. You are trying to kill a dragon that does not exist. This restriction needs to be deleted.
4. By way of comment, I need to add that reference throughout your recommendations to the use of development agreements (D.A.) by my client or others affected, is a nearly useless devise.

I imagine you and planning staff know very well the Policy 1P-1(c) mandates that Council have regard to the fact that the proposal "is compatible and consistent with adjacent uses..." in considering D.A.'s. This virtually eliminates any chance of the land owner obtaining a D.A. from Council. There are now (there was not some time ago) more residents than business people in the area and they thereby speak the loudest at any public hearing. The businessman nearly always loses and an appeal would have little chance because of the "discretion" granted the Council.

I have no solution to this problem except to point out that we are aware that the D.A. option is really not viable and we are not foolish enough to believe that it is. This is particularly galling when my client was requested to approve a minor variance to allow the construction of a residential dwelling on Boutilier's Lane, did so in the spirit of cooperation. Now the concession will come back to haunt it.

The foregoing is all I have at this time but I reserve the right to make further submissions if they can be received by Council.

I must add that the Councillor and yourself have been extremely helpful and cooperative throughout this exercise. While I may strongly disagree with certain of your recommendations (as above), I can not criticize the process in any way. It was fair and transparent throughout.



Bev Carson
Administrative Assistant

tel 902.425.6500 x8201 | fax 902.425.6350

Purdy's Wharf Tower II
1300-1969 Upper Water Street
PO Box 730 Halifax NS B3J 2V1

Notice This communication, including any attachments, is confidential and may be protected by solicitor/client privilege. It is intended only for the person or persons to whom it is addressed. If you have received this e-mail in error, please notify the sender by e-mail or telephone at McInnes Cooper's expense. **Avis** Les informations contenues dans ce courriel, y compris toute(s) pièce(s) jointe(s), sont confidentielles et peuvent faire l'objet d'un privilège avocat-client. Les informations sont dirigées au(x) destinataire(s) seulement. Si vous avez reçu ce courriel par erreur, veuillez en aviser l'expéditeur par courriel ou par téléphone, aux frais de McInnes Cooper.

1. **PARCEL:** Civic No. 217 Waverley Road, Dartmouth
PID No. 40879439
Micmac Bar & Grill

2. **EXISTING ZONING:** C-2 (commercial)

3. **PROPOSED AMENDMENT:** C-1B (mixed/use commercial)

4. **ISSUES FOR OWNER:**

This parcel was acquired by the existing owner in 1963 and the Micmac Bar & Grill opened in 1966. It has remained in existence for 42 years at this location and is at present a very popular and successful business. Parking is an issue and a separate presentation has been made with respect to the parking lot located on the east side of Waverley Road (PID # 0219220), opposite Micmac Bar & Grill.

The proposed amendments in subparagraphs (e) and (f) of 38B of the Proposed Amendments will operate to reduce the parking, require the installation of fencing and berms and prohibit outdoor storage. Not only is parking a concern to any business, adequate parking is one of the many considerations of the NS Gaming Authority in determining the granting and renewal of liquor licenses. Loss of parking would result in a reduction of the number of seats authorized by the Authority. The proposed amendments will prohibit any effective growth or expansion of the business and will effectively make the existing use a “non-conforming use”, prohibiting any future change in response to the needs of the business and its customers.

5. **RECOMMENDATIONS:**

It is recommended that:

1. this parcel be exempted from the proposal amendments in 38B(3)(e)&(f) which would strangle the continued operation of the business; or
2. there be a recognition that the existing use of this parcel where not in conformity with 38B(3)(e)&(f) would constitute a non-conforming use and not require the owner to bring the use of the property into conformity with the by-law and
3. the excepted vehicle services uses in 38B(3)(e)&(f) be excluded from the proposed amendment so that this parcel is consistent with those located to its north.

1. **PARCEL:** Civic No. 216 Waverley Road, Dartmouth
PID No. 0219220
Parking lot opposite Micmac Bar & Grill

2. **EXISTING ZONING :** R-1

3. **PROPOSED AMENDMENT:** None

4. **ISSUES FOR OWNER:** These lands have never been developed or built upon. They were acquired by the existing owner 37 years ago (1972) and have used as a parking lot ever since. This parking lot provides approximately 50-60% of the parking for the patrons of the Micmac Bar & Grill located immediately across the Waverley Road (Civic No. 217 Waverley Rd.). The current use predates the 1978 Dartmouth Municipal Planning Strategy. There is no roadside parking available on the Waverley Road. Obviously the loss of the parking facility would have a significant adverse impact on the business of the Micmac Bar & Grill. Without this parking lot, the patrons of the Micmac Bar & Grill would be forced to park in the residential areas to the east of the Waverley Road.

5. RECOMMENDATIONS:

It is recommended:

1. that the zoning of this parcel be changed to C-1B in order that it be consistent with the zoning of the Micmac Bar & Grill, the sole property that it has served for 37 years. It is to be noted that the lands situate on the east side of the Waverley Road between Evans Court and Micmac Drive contain 3 parcels, including the parking lot. The parking lot represents 60% of the total land area of the 3 parcels. Only one of the contains a residential use and it occupies only 25% of the total. The other use of the 3rd parcel use is to be continued as C-1; or
2. that this parcel be recognized as a non-conforming use attached to the Micmac Bar & Grill property.

1. **PARCEL:** Civic No. 219 Waverley Road, Dartmouth
PID No. 00219196
Industrial site

2. **EXISTING
ZONING:** I-1

3. **PROPOSED
AMENDMENT:** C-1B

4. **ISSUES FOR
OWNER:**

1. The building on this property was originally constructed 50 years ago as a storage warehouse. In 1996 it was converted in accordance with the current zoning, and is used for industrial uses including paint booths, a sand blasting booth, and a large mechanical room with overhead cranes. The sole tenant is engaged in the business of installing protective coatings (on a variety of equipment including seafaring equipment, automobiles, trucks, trailers), mechanical construction, woodworking and other related businesses. This business is a highly specialized business installing protective coatings on a variety of items particularly in the offshore. Such specialized businesses in a smaller business community such as HRM are always at risk due to economic conditions.

It is of significance that the operator of the business is a tenant and not an owner. A tenant does not need to consider the maintenance of an on-going non-conforming use since it can resolve any limitations on use through the re-location of the business to new premises. A landlord must look for a new tenant who is not only engaged in the same business but also who is able to leave its existing location and relocate within the short window attached to non-conforming uses, that is 6 months.

Conditions exist in which a landlord would not have 6 months notice of a tenant's intention to vacate or not renew. Most leases have notice provisions that only require between 3 and 6 months notice. In addition businesses fail. Commonly in the event of a business failure, trustees in bankruptcy or receivers are appointed who often choose to retain the lease pending a sale of the business or the assets. Such actions by a trustee or receiver are usually supported by Court Orders allowing the trustee or receiver to remain in possession (and not operate the business) but to terminate and vacate on short notice (i.e. a week or a month's notice). In such circumstances a landlord can do nothing to continue the non-conforming use.

The effect of the down zoning from I-1 to C-1B will if the non-conforming use cannot be continued, have very severe consequences for an owner of this property. The down zoning will have an immediate effect of the ability to obtain mortgage financing due to the risk of loss of use. If the non-conforming use is lost and the zoning reverts to C-1B, the owner can expect major renovations will have to be undertaken to the building to enable the limited uses and other indirect effects such as different environmental standards for a commercial rather than the current industrial use.

In summary, a landlord is in a very poor position to control in the short period of time of 6 months, to assure the continuation of the non-conforming use.

2. The proposed prohibition of “vehicle service uses” [see Part *B, s.38B(1)(b)] is extremely limiting and does not recognize either the many existing vehicle service uses in the area or the ongoing need for such services. This is the only area of the Waverley Road, the major collector between the former village of Waverley and the downtown of Dartmouth, capable of providing such services. One would think that the many residents of the area would want such services to be available in reasonable proximity to their homes. Clearly such uses provide a very reasonable business opportunity to the owners of the lands that may be down zoned to C-1B.

3. The proposed Development Agreement vehicle is flawed in that Council is obligated to determine that the proposed Development Agreement “is compatible and consistent with adjacent uses...”. It is difficult to contemplate how Council could ever satisfy this requirement since any continuation of uses similar to the existing uses, would not be “compatible and consistent”.

5. **RECOMMENDATIONS:**

It is recommended that:

1. The I-1 zone be continued; or
2. There be a method established to permit the recognition of the existing non-conforming uses. The owner and HRM should

agree to a process whereby the existing uses could be confirmed by an Agreed Statement of Facts that would outline in some detail the non-conforming use existing as at the date of the Amendment;

3. Policy C-44 be amended to provide that the period of discontinued use be increased to 12 months and that an owner may apply to Council during the 12 months for a further 12 months; and
4. The exception regarding “vehicle service uses” be deleted from 38B(1)(b) of Part 8B of the proposed amendment to the LUB.