



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Harbour East Community Council

June 11, 2009

July 2, 2009

TO: Chair and Members of Harbour East Community Council

SUBMITTED BY: *Denise Schofield*
Denise Schofield, Acting Director of Community Development

DATE: May 21, 2009

SUBJECT: Case 01271: Development Agreement - 95 Montebello Drive,
Dartmouth

ORIGIN

An application by George Habib to enter into a development agreement to permit an addition to an existing convenience store at 95 Montebello Drive, Dartmouth.

RECOMMENDATION

It is recommended that Harbour East Community Council:

1. Give Notice of Motion to consider the proposed development agreement set out in Attachment A of this report and schedule a public hearing; *June 11/09*
- ➔ 2. Approve the proposed development agreement set out in Attachment A of this report to permit an addition to an existing convenience store at 95 Montebello Drive;
3. Require the agreement be signed and delivered within 120 days, or any extension thereof granted by Harbour East Community Council on request of the applicant, from the date of final approval of said agreement by Harbour East Community Council and any other bodies as necessary, whichever is later, including any appeal periods. Otherwise this approval shall be void and any obligations arising hereunder shall be at an end.
4. Approve, by resolution of Council, the discharge of the development agreement of June 27, 2001, between 3048382 Nova Scotia Limited and Halifax Regional Municipality, as set out in Attachment B of this report; and
5. Require that the discharging agreement be signed within 120 days, or any extension thereof granted by Community Council on request of the applicant, from the date of final approval by Community Council and any other bodies as necessary, whichever is later, otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

George Habib, owner of Cascade Pizza, has applied to discharge the existing development agreement for his property at 95 Montebello Drive and enter into a new development agreement. Mr. Habib proposes to expand the existing convenience store in order to more efficiently reconfigure the floorplan.

Proposal

The lands at 95 Montebello Drive are currently used as a convenience grocery store with take-out food service. The applicant is proposing an addition to the existing convenience store of approximately 1400 square feet that will expand the “store” part, create a speciality area for pet food and internal space for the existing ice cream shop. Existing site access to the convenience store from Montebello Drive will be maintained.

The applicant has requested that their existing Development Agreement be discharged in belief the terms and conditions of the existing Agreement are fulfilled.

Location, Designation, Zoning and Surrounding Land Uses

The subject property (PID 40340051) is:

- located at 95 Montebello Drive, the NW corner of the intersection of Montebello Drive and Breeze Drive (Map 1);
- 879.15 square metres (approximately 9463.09 square feet) in area;
- designated Residential under the Municipal Planning Strategy (MPS) and zoned R-3 (Multiple Family Residential) under the Land Use By-law for Dartmouth (Maps 1 and 2); and
- located next to a multi-unit residential building that accesses Montebello Drive by Lombardy Lane, that runs along side of the subject property. The surrounding developed lands abutting both sides of Montebello Drive, Breeze Drive, Avenue du Portage and Caledonia Drive have been developed residentially (Map 2).

Enabling Policy

The Dartmouth MPS only enables neighbourhood convenience store development , in residential areas, through the development agreement process (Attachment C). This enables Council to consider proposals for neighbourhood convenience stores to be reviewed individually on their own merits. When considering new or expanded neighbourhood convenience stores, Council shall consider a broad range of issues such as compatibility of use, bulk and scale with adjacent uses, traffic, parking, and landscaping as well as other aspects.

Existing Agreement

The 2001 Development Agreement addresses landscaping, lighting, maintenance and hours of operation for the neighbourhood convenience store with take-out food service, including deep fryers. The Agreement also provides for an expansion or alteration of a minor nature. Because the Agreement addresses internal use issues, the architectural and landscaping requirements are not intended to apply to additions or site modifications.

DISCUSSION

Staff have reviewed the proposal based on all applicable policies of the Dartmouth MPS, which are included as Attachment C to this report. The following issues have been identified for more detailed discussion.

Residential Compatibility

In an attempt to minimize the impact of the addition on adjacent residential uses, the draft development agreement, as described in Attachment A:

- ensures that refuse containers and propane tanks are adequately screened;
- restricts the hours of operation to between 6:00 a.m. and 1:00 a.m.; and,
- places restrictions on deliveries to the building and the collection of refuse and recyclables.

It is anticipated that most customers of the convenience store live in the surrounding neighbourhood and will walk there. The existing Agreement required 8 parking spaces; the applicant provided 12 spaces and will continue to provide 12 spaces even with the addition. The LUB requires only 10 spaces even with the addition.

Architectural Requirements

The proposed development agreement sets out architectural requirements for the exterior appearance of the proposed addition and the existing building to conform with the building elevations illustrated on Schedule C of the proposed agreement. Overall, the height of the building will not be altered but instead two new gable peaks over the existing take-out food service and variety store entrances will be added, repeating the gable peak of the proposed addition.

Facade Treatment

The DA requires that the Montebello Drive facade building walls include projections and recesses to provide visual interest, and that brick or stone be included as part of the exterior materials schedule. The remainder of the facades may be treated, in part or whole, with stone, brick or stucco, painted clapboard or other suitable material. Staff believes these measures will enhance the compatibility of the building with the surrounding neighbourhood.

Window Openings

The proposed development agreement provides for flexibility in the sizing of the window openings on the Lombardy Lane and Breeze Drive elevations. The applicant has considered the design benefits of increased transparency and has requested that the percentage of glazing on these elevations may be expanded at the permit stage of the expansion.

Landscaping

Mr. Habib has carried out substantial planting on the site that is to remain in place and will be supplemented as the new development proceeds. The draft Agreement requires a landscaping plan to be submitted to the Development Officer for the purpose of ensuring that any new

plantings or landscaping features are not a safety issue if planted in the daylighting triangle or street/access sightlines.

Lighting

The proposed development agreement requires that outdoor lighting on the site be confined to the proposed development and directed away from adjacent properties. The applicant is required to submit a Lighting Plan that indicates the location and type of all outdoor illuminating devices proposed for the site prior to the issuance of a Construction Permit.

Discharge of Existing Agreement

Staff is of the opinion that Mr. Habib has complied with the terms and conditions of the existing Development Agreement. Pursuant to the terms of the existing Agreement, and in accordance with the provisions of the Halifax Regional Municipality Charter, staff concur with and support the applicant's request to discharge the existing Agreement.

Public Information Meeting/Area of Notification

The public information meeting requirement was waived by the area Councillor. Should Community Council decide to hold a public hearing, in addition to published newspaper advertisements, property owners in the area shown on Map 2 will be sent written notification.

Conclusion:

Staff is of the opinion that the proposed development agreement set out in Attachment A is consistent with the intent of the MPS for neighbourhood convenience store development within the Residential designation. Therefore, staff recommend that Harbour East Community Council approve the proposed development agreement, included as Attachment A of this report.

BUDGET IMPLICATIONS

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

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

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

ALTERNATIVES

1. Council may choose to approve the proposed development agreement as set out in Attachment A of this report and the discharge agreement as set out in Attachment B. This is the recommended course of action.

2. Council may choose to approve the proposed development agreement subject to modifications and approve the proposed discharge agreement. This may necessitate further negotiation with the applicant and may require a second public hearing.

3. Council may choose to refuse the proposed development agreement and/or the proposed discharging agreement, and in doing so, Council must provide reasons for the refusal based upon a conflict with MPS policies.

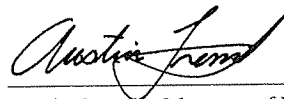
ATTACHMENTS

Map 1	Generalized Future Land Use Map
Map 2	Zoning and Notification Map
Attachment A	Proposed Development Agreement
Attachment B	Proposed Discharging Agreement
Attachment C	Excerpts from the Dartmouth Municipal Planning Strategy

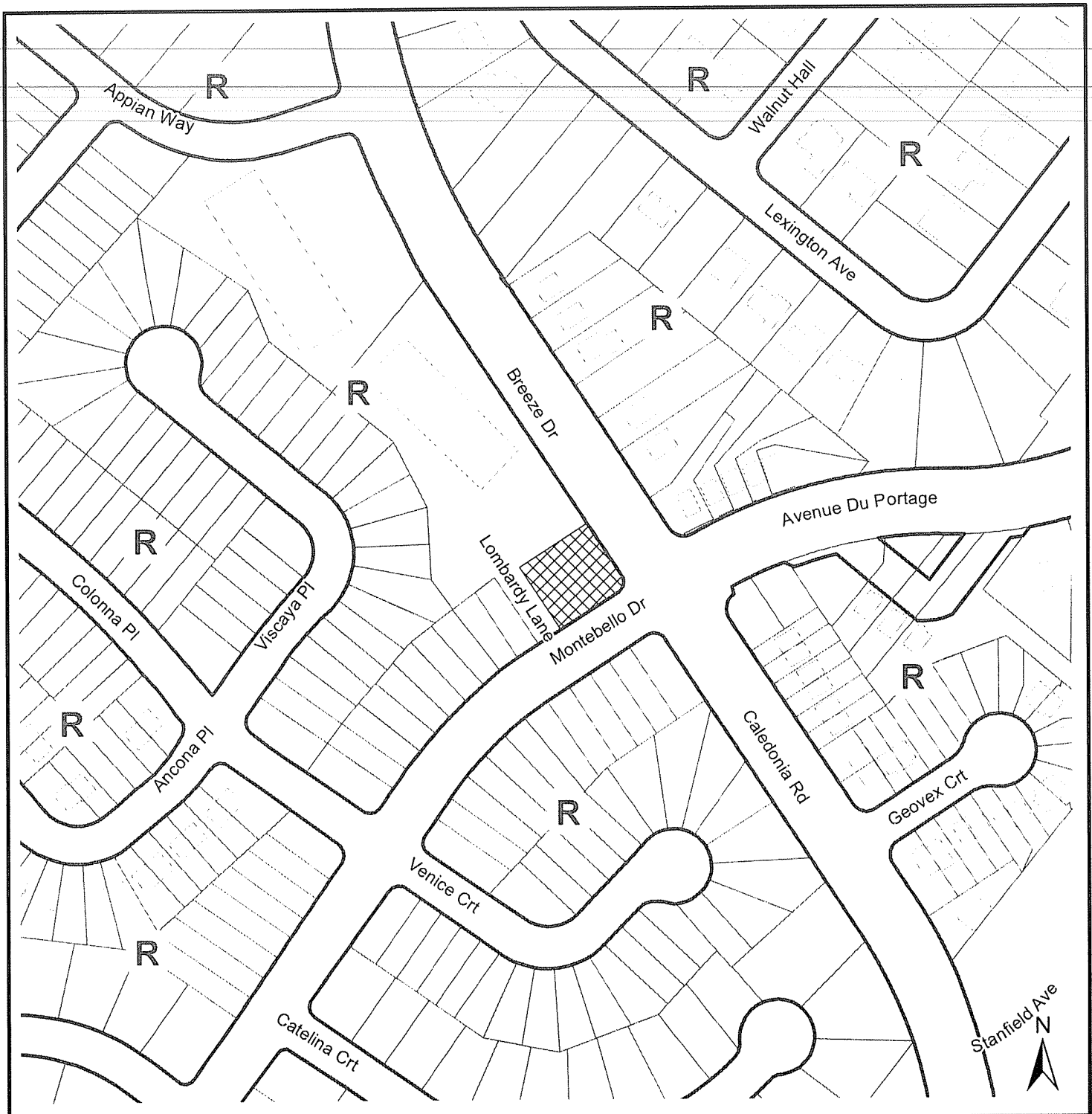
A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by : Darrell Joudrey, Planner, 490-4181

Report Approved by:




Austin French, Manager of Planning Services, 490-6717



Map 1 Generalized Future Land Use

95 Montebello Drive

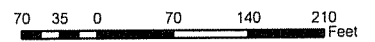
 Subject Property

Designation

R Residential

HALIFAX

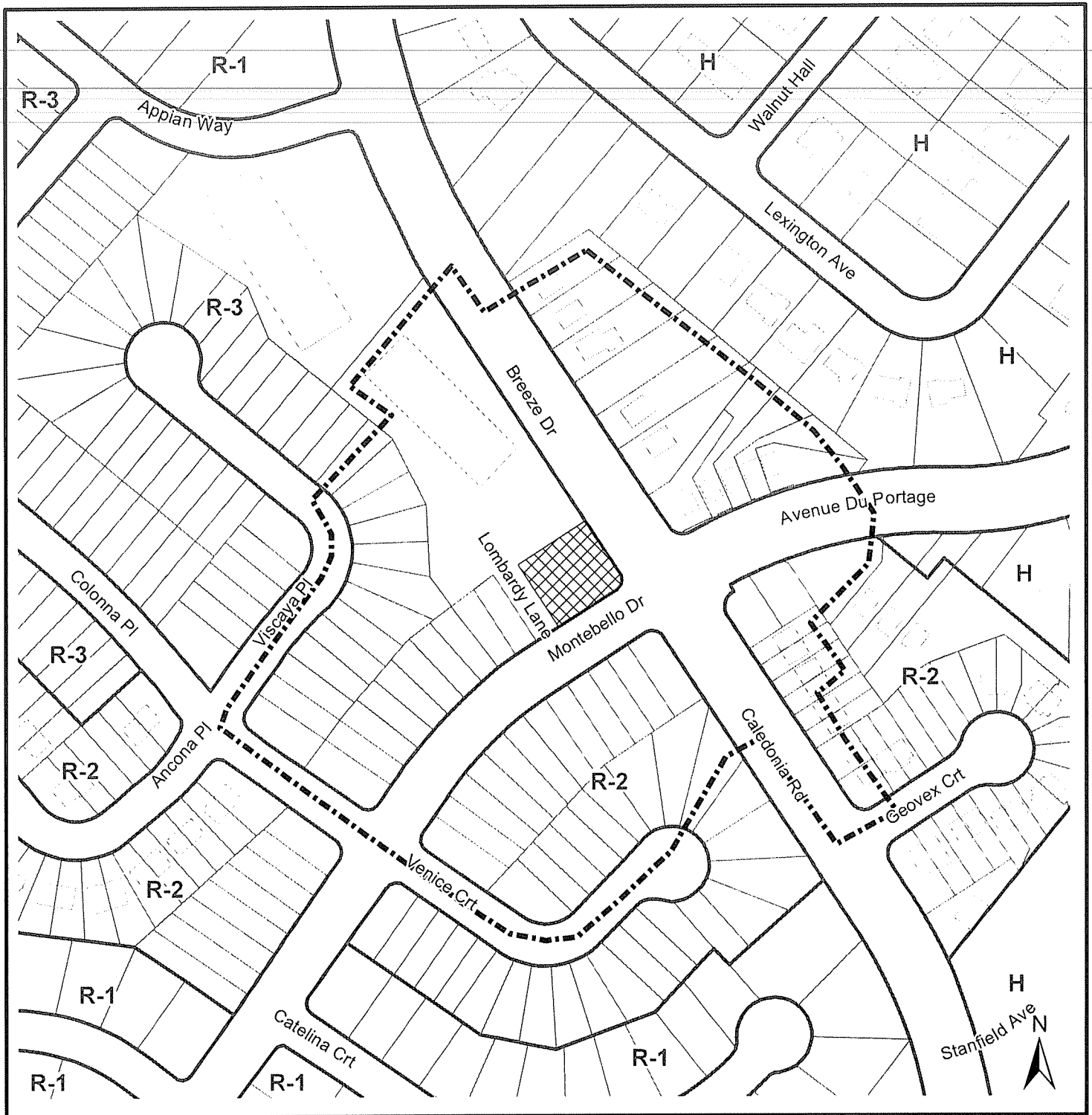
REGIONAL MUNICIPALITY
COMMUNITY DEVELOPMENT
PLANNING SERVICES



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


Dartmouth Plan Area



Map 2 Location and Zoning

95 Montebello Drive

 Subject Property

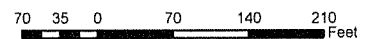
 Notification Boundary

Dartmouth Plan Area

Zone

- R-1 Single Family Residential
- R-2 Two Family Residential
- R-3 Multiple Family Residential
- H Town Housing
- P Park

HALIFAX
REGIONAL MUNICIPALITY
COMMUNITY DEVELOPMENT
PLANNING SERVICES



This map is an unofficial reproduction of a portion of the Zoning Map for the Dartmouth Land Use By-law area.

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

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

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

1.3 **Applicability of Other By-laws, Statutes and Regulations**

Further to Section 1.2, nothing in this Agreement shall exempt or be taken to exempt the Developer, lot owner or any other person from complying with the requirements of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law to the extent varied by this Agreement), or any statute or regulation of the Provincial/Federal Government and the Developer or Owner agrees to observe and comply with all such laws, by-laws and regulations in connection with the development and use of the Lands.

The Developer shall be responsible for securing all applicable approvals associated with the on-site and off-site servicing systems required to accommodate the development, including but not limited to sanitary sewer system, water supply system, stormwater sewer and drainage system, and utilities. Such approvals shall be obtained in accordance with all applicable by-laws, standards, policies, and regulations of HRM and other approval agencies. All costs associated with the supply and installation of all servicing systems and utilities shall be the responsibility of the Developer. All design drawings and information shall be certified by a Professional Engineer.

1.4 **Conflict**

Where the provisions of this Agreement conflict with those of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law to the extent varied by this Agreement) or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail.

Where the written text of this Agreement conflicts with information provided in the Schedules attached to this Agreement, the written text of this Agreement shall prevail.

1.5 **Costs, Expenses, Liabilities and Obligations**

The Developer shall be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement and all federal, provincial and municipal regulations, by-laws or codes applicable to any lands.

1.6 Provisions Severable

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

PART 2: DEFINITIONS

- 2.1 All words unless otherwise specifically defined herein shall be as defined in the Dartmouth Land Use By-law.

PART 3: USE OF LANDS AND DEVELOPMENT PROVISIONS

3.1 Schedules and Development of the Lands

The Developer shall develop the Lands in a manner, which, in the opinion of the Development Officer, conforms with the Schedules attached to this Agreement and the plans filed in the Halifax Regional Municipality as Case Number 01271.

The schedules are:

- Schedule A: Legal Description of the Lands
- Schedule B: Site Plan
- Schedule C: Building Elevations

3.2 General Description of Land Use

- 3.2.1 The use of the Lands permitted by this Agreement is a neighbourhood convenience store development consisting of a maximum of 2900 square feet.

3.3 Requirements Prior to Approval

- 3.3.1 Prior to the issuance of a Construction Permit, the Developer shall submit a Master Site/Grading Plan, unless otherwise stated by the Municipality.
- 3.3.2 Prior to occupying the addition, the Developer shall provide approval from the Development Engineer indicating compliance with Part 4 of this Agreement to the Development Officer, unless otherwise stated by the Municipality.
- 3.3.3 Notwithstanding any other provision of this Agreement, the Developer shall not occupy or use the addition for any of the uses permitted by this Agreement unless final approval has been issued by the Municipality. No final approvals shall be issued by the Municipality unless and until the Developer has complied with all applicable provisions

of this Agreement and the Land Use By-law (except to the extent that the provisions of the Land Use By-law are varied by this Agreement) and with the terms and conditions of all permits, licenses, and approvals required to be obtained by the Developer pursuant to this Agreement.

3.4 Detailed Provisions for Land Use

- 3.4.1 The neighbourhood convenience store must meet the requirements of the Dartmouth Land Use By-law except where specifically varied by this Agreement.
- 3.4.2 Notwithstanding the frontage and area requirements set out in the Dartmouth Land Use By-law, a maximum 2900 square feet development as illustrated on Schedule B shall be permitted pursuant to this Agreement.
- 3.4.3 Lot setbacks shall generally conform to those illustrated on Schedule B, in the opinion of the Development Officer.

3.5 Siting and Architectural Requirements

- 3.5.1 The Developer agrees that the addition and existing building constructed on the Lands shall comply with the site plan attached to this Agreement as Schedule B and the building elevations attached to this Agreement as Schedule C.
- 3.5.2 Exterior building materials of the front elevation shall include stone, brick or an acceptable equivalent in the opinion of the Development Officer, as illustrated on Schedule C.
- 3.5.3 The facade of the front elevation shall contain recesses and/or projections, as illustrated on Schedule C, to avoid the appearance of long flat walls.
- 3.5.4 The facades of the right, left and rear elevations shall be veneered with stone, brick or stucco, painted clapboard or treated in an another manner deemed acceptable to the Development Officer.
- 3.5.5 The window openings for the Breeze Drive and the Lombardy Lane elevation views as illustrated on the building elevations attached as Schedule C may be varied in height and width to permit window openings up to 60% of the total wall area. A maximum of 2 additional windows may be permitted on the Breeze Drive elevation. A continuous horizontal band of glazing is not acceptable.
- 3.5.6 Trim of no less than 4 inches in width shall be provided around all windows.
- 3.5.7 The fascia board shall not exceed 4 inches in height without a profiled molding.

3.5.8 The Development Officer may approve modifications to the architectural requirements of this section and the building elevations attached as Schedule C, provided the changes are consistent with the intent of this Agreement and minor in nature, in the opinion of the Development Officer.

3.6 Parking, Circulation and Access

3.6.1 The layout of the access points and the number and layout of parking spaces on the Lands shall be as generally illustrated on Schedule B.

3.6.2 All parking areas and the access shall have a finished hard surface such as asphalt, concrete, paving blocks or an acceptable equivalent in the opinion of the Development Officer.

3.6.3 The Developer agrees that lighting shall be directed to parking areas, building entrances and walkways and shall be arranged so as to divert the light away from streets, adjacent lots and buildings.

3.6.4 The Development Officer may approve changes to the parking and circulation layout illustrated on Schedule B provided that such changes are minor in nature and consistent with the intent of this Agreement, in the opinion of the Development Officer.

3.7 Landscaping

3.7.1 Prior to the issuance of a Construction Permit, the Developer agrees to submit a Landscaping Plan which complies with the provisions of this section and generally conforms with the overall intentions of the preliminary landscape details shown on Schedule B.

3.7.2 All plant material shall conform to the Canadian Nursery Trades Association Metric Guide Specifications and Standards and sodded areas to the Canadian Nursery Sod Growers' Specifications.

3.7.3 The Developer agrees that landscaping or appropriate vegetative cover shall be provided in all disturbed areas not occupied by buildings, walkways, driveways and parking areas except for areas where natural vegetative cover is maintained.

3.7.4 Further to Subsection 3.7.3, existing landscaped areas shall remain grassed and planted or include landscape features such as mulch, stone, perennials, annuals, shrubs or other vegetation and features deemed acceptable by the Development Officer.

3.7.5 Any new trees shall have a minimum caliper of 60 mm measured at a height of 300 mm above the ground.

3.8 Signage

- 3.8.1 All signage shall be permitted in accordance with the Dartmouth Land Use By-law except where specifically varied by this Agreement.
- 3.8.2 The existing ground sign as indicated on the site plan attached as Schedule B to this Agreement may be relocated provided that all required setbacks from the street line of the Dartmouth Land Use By-law are met.
- 3.8.3 The Developer shall be permitted to affix a changeable letter sign with a total sign face area not to exceed 30 square feet to the existing ground sign that does not impede pedestrian or vehicular movement on site in the opinion of the Development Officer.
- 3.8.4 The Developer shall not be permitted any temporary signage on the Lands.

3.9 Outdoor Storage and Display

- 3.9.1 No outdoor storage shall be permitted on the Lands. Refuse containers located outside the building shall be fully screened from adjacent properties and from streets and sidewalks by means of opaque fencing/masonry walls with suitable landscaping. Organic green bins must be located a minimum distance of 10 feet from the building.
- 3.9.2 Propane tanks shall be located on the Lands in such a way to ensure minimal visual impact from Montebello Drive and the residential properties abutting the property line. These facilities shall be secured in accordance with the applicable approval agencies and screened by suitable landscaping.

3.10 Hours of Operation

- 3.10.1 The take-out food service and convenience store use shall be permitted to operate between the hours of 6:00 a.m. and 1:00 a.m., seven days a week.
- 3.10.2 Deliveries to the building, and the collection of refuse and recyclables, shall occur only between the hours of 8:00 am and 5:00 pm, Monday to Friday.

3.11 Maintenance

The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the interior and exterior of the buildings, fencing, walkways, parking areas and driveways, and the maintenance of all landscaping including the replacement of damaged or dead plant stock, trimming and litter control, garbage removal and snow removal/salting of walkways and driveways. Maintenance of the development shall be the responsibility of the property owner and the Developer

shall ensure that future property owners are aware of their obligations to maintain and keep in good repair all portions of the development.

PART 4: STREETS AND MUNICIPAL SERVICES

4.1 General Provisions

All design and construction shall conform with the HRM Municipal Service Systems Design Guidelines unless otherwise provided for in this Agreement and approved in writing by the Development Engineer prior to undertaking the work. The Development Officer, in consultation with the Development Engineer, may give consideration to minor changes to accesses and driveways, provided the modifications serve to maintain or enhance the intent of this Agreement.

4.2 Off-Site Disturbance

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

PART 5: ENVIRONMENTAL PROTECTION MEASURES

5.1 Detailed Site Plan

The Developer agrees to have prepared by a qualified person and submitted to the Municipality for review and approval by the Development Engineer, a detailed Site Plan for the development. No work is permitted on the Lands until the requirements of this clause have been met and implemented unless otherwise stated in this Agreement and approved by the Development Engineer.

5.2 Erosion Control

No final approval shall be issued unless the entire lot is either fully stabilized with sod or is temporarily stabilized and maintained with a covering of plastic or other such measures approved by the Development Engineer. Any temporary stabilization of the lot shall be replaced with final landscaping (top soil and sod) within six (6) months of the issuance of the final approval. The owner of the lot shall be responsible for ensuring that any temporary stabilization materials are replaced and/or maintained on an as-required basis to ensure that exposed soil is adequately stabilized at all times.

PART 6: AMENDMENTS

6.1 Substantive Amendments

Amendments to any matters not identified under Section 6.2 shall be deemed substantive and may only be amended in accordance with the approval requirements of the Halifax Regional Municipality Charter.

6.2 Non-Substantive Amendments

The following items are considered by both parties to be not substantive and may be amended by resolution of the Council.

- (a) The granting of an extension to the date of commencement of development as identified in Section 8.3 of this Agreement;
- (b) The granting of an extension to the length of time for the completion of the development as identified in Section 8.3.3 or 8.4 of this Agreement;
- (c) A commercial access point from Breeze Drive to the rear of the Lands for delivery only;
- (d) Changes to hours of operation; and
- (e) Establishment of a second ground sign.

PART 7: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

7.1 Enforcement

The Developer agrees that any officer appointed by the Municipality to enforce this Agreement shall be granted access onto the Lands during all reasonable hours without obtaining consent of the Developer. The Developer further agrees that, upon receiving written notification from an officer of the Municipality to inspect the interior of any building located on the Lands, the Developer agrees to allow for such an inspection during any reasonable hour within one (1) day of receiving such a request.

7.2 Failure to Comply

If the Developer fails to observe or perform any covenant or condition of this Agreement after the Municipality has given the Developer ten (10) days written notice of the failure or default, except that such notice is waived in matters concerning environmental protection and mitigation, then in each such case:

- (a) The Municipality shall be entitled to apply to any court of competent jurisdiction for injunctive relief including an order prohibiting the Developer from continuing such default and the Developer hereby

submits to the jurisdiction of such Court and waives any defense based upon the allegation that damages would be an adequate remedy;

- (b) The Municipality may enter onto the Lands and perform any of the covenants contained in this Agreement or take such remedial action as is considered necessary to correct a breach of the development agreement, whereupon all reasonable expenses whether arising out of the entry onto the lands or from the performance of the covenants or remedial action, shall be a first lien on the Lands and be shown on any tax certificate issued under the Assessment Act;
- (c) The Municipality may, by resolution, discharge this Agreement whereupon this Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law; and
- (d) In addition to the above remedies the Municipality reserves the right to pursue any other remediation under the Municipal Government Act or Common Law in order to ensure compliance with this Agreement.

PART 8: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

8.1 Registration

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

8.2 Subsequent Owners

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

8.3 Commencement of Development

- 8.3.1 In the event that development has not commenced within three (3) years from the date of registration of this Agreement at the Registry of Deeds, as indicated herein, the Municipality may, by resolution of Council, either discharge this Agreement, whereupon

this Agreement shall have no further force or effect, or upon the written request of the Developer, grant an extension to the date of commencement of construction.

- 8.3.2 For the purposes of this section, development shall mean completion of the footings for the proposed building.
- 8.3.3 If the Developer(s) fails to complete the development, or after five (5) years from the date of registration of this Agreement at the Registry of Deeds, whichever time period is less, Council may review this Agreement, in whole or in part, and may:
- (a) Retain the Agreement in its present form;
 - (b) Negotiate a new Agreement; or
 - (c) Discharge this Agreement.

8.4 Completion of Development

Upon the completion of the development or portions thereof, or within/after five (5) years from the date of registration of this Agreement with the Registry of Deeds, whichever time period is less, Council may review this Agreement, in whole or in part, and may:

- (a) Retain the Agreement in its present form;
- (b) Negotiate a new Agreement; or
- (c) Discharge this Agreement on the condition that for those portions of the development that are deemed complete by Council, the Developer's rights hereunder are preserved and the Council shall apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By-law for Dartmouth, as amended from time to time.

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

SIGNED, SEALED AND DELIVERED)
in the presence of)

3048382 Nova Scotia Limited

) Per: _____

_____)

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

HALIFAX REGIONAL MUNICIPALITY

) Per: _____

MAYOR

_____)

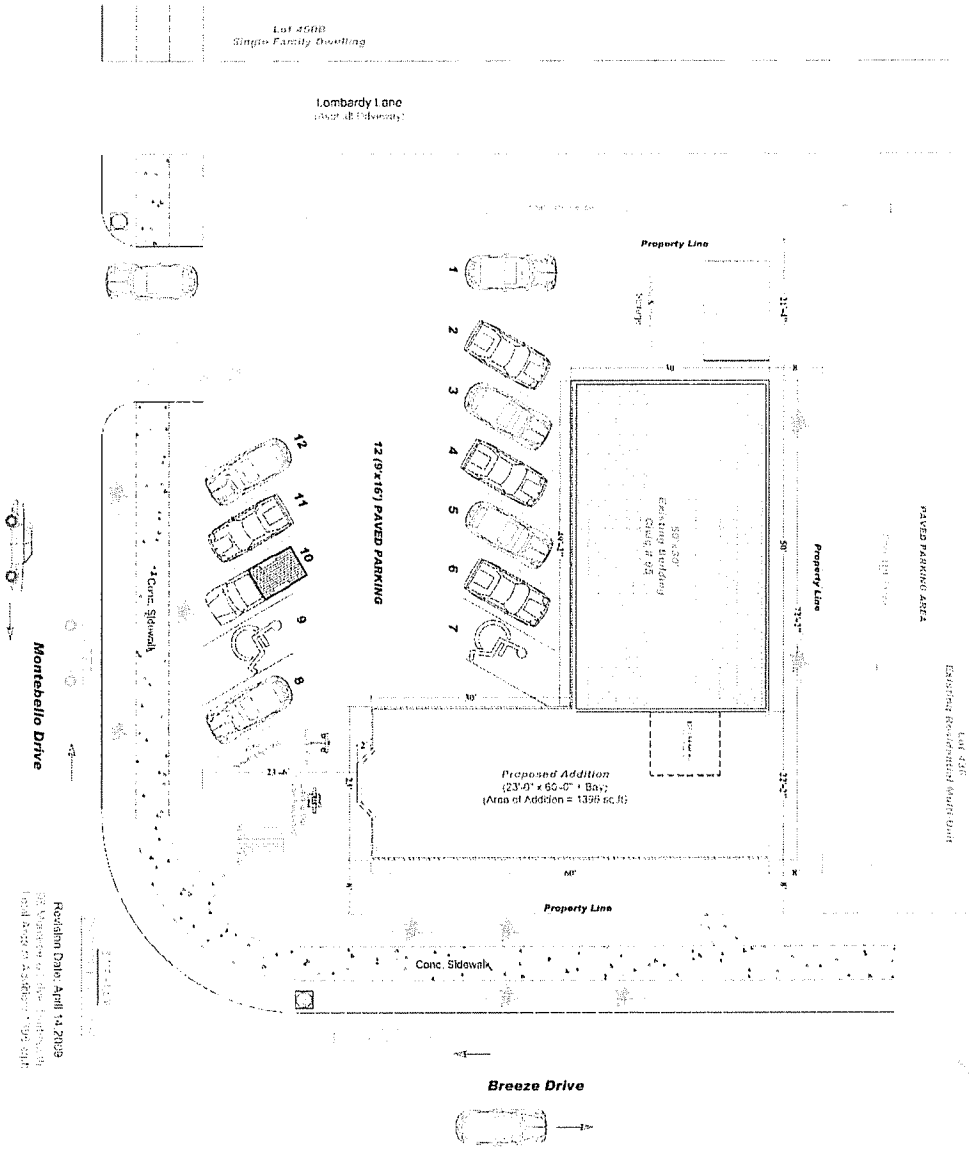
) Per: _____

MUNICIPAL CLERK

Schedule B -Site Plan

May 14, 2009

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



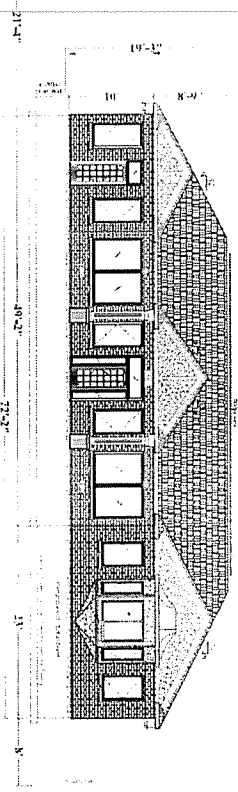
Resolution Date: April 14, 2009
 387 Montebello Drive, Suite 100
 Lombard, Illinois 60148-1000

Case 0127-1

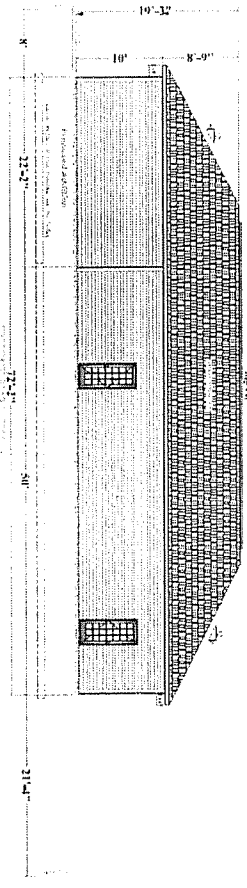
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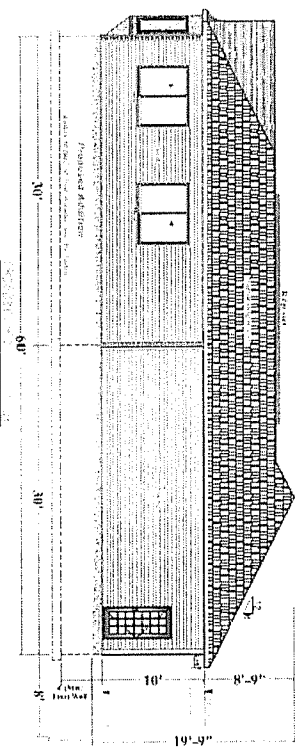
Exhibit 9 Form #:
Case #/Case:



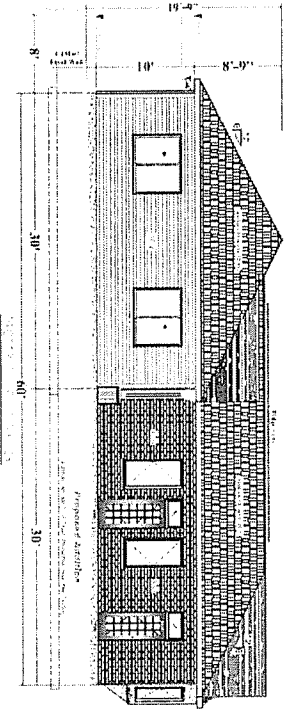
Front Elevation



Rear Elevation



Right Elevation



Left Elevation

Schedule C - Elevations

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

May 14, 2009

Case 01271

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Attachment B: Proposed Discharging Agreement

THIS DISCHARGING AGREEMENT made this day of , 2009,

BETWEEN:

3048382 NOVA SCOTIA LIMITED
a body corporate, in the Halifax Regional Municipality,
Province of Nova Scotia (hereinafter called the "Developer")

OF THE FIRST PART

- and -

HALIFAX REGIONAL MUNICIPALITY,
a municipal body corporate,
(hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located at 95 Montebello Drive, PID 40340051, Dartmouth and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Municipality entered into a development agreement with the Developer to allow a take-out food service on the Lands pursuant to the provisions of the Municipal Government Act and the Municipal Planning Strategy and Land Use By-law for Dartmouth which was recorded at the Registry of Deeds in Halifax as Document Number 24471 in Book 306 at Pages 707 to 715 (hereinafter called the "Agreement");

AND WHEREAS the Developer has requested that the Agreement be discharged;

AND WHEREAS, pursuant to the procedures and requirements contained in the Halifax Regional Municipality Charter, the Harbour East Community Council approved this request by resolution at a meeting held on [INSERT - date], referenced as Municipal Case Number 01271;

WITNESS that it is agreed that the Lands is hereby discharged from the Agreement.

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

SIGNED, SEALED AND DELIVERED)
in the presence of)

_____)

3048382 NOVA SCOTIA LIMITED

) Per: _____)

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

_____)

HALIFAX REGIONAL MUNICIPALITY

) Per: _____)

MAYOR

) Per: _____)

MUNICIPAL CLERK

Attachment C: Excerpts from the Dartmouth Municipal Planning Strategy

- (c) **Neighbourhood Convenience Store:** This form of commercial establishment consists of outlets such as, but not necessarily limited to, grocery stores, drug stores, barber shops, TV repair shops, etc. These uses form a very significant part of any neighbourhood way of life. To date there are approximately 50 of these sorts of facilities within Dartmouth totalling approximately 25,000 square feet in floor area. There is no set criteria for the number or amount of these stores, however, their numbers are usually kept down due to the limited area they serve. There are several concerns related to these uses (location, siting) that criteria should be established for reviewing any proposal of such a use.

To enable neighbourhood convenience outlets to operate in residential areas, they should be reviewed individually on their own merits and handled through the contract zoning provisions of Section 33 (2) (b), 34 (1) of the Planning Act¹.

- 33(2)(b) Where the municipal development plan so provides, provide that the council may by resolution approve any specific development requested which would not otherwise be permitted by the by-law, but no approval shall be given inconsistent with the municipal development plan.
- 34(1) Approval by the council pursuant to clause (b) or (c) of subsection (2) of Section 33 shall only be granted subject to the condition that the registered owner of the land upon which the development is to occur shall enter into an agreement with the council containing such terms and conditions as the council may direct.

This process will allow for the use to occur when and where Council sees fit after the appropriate public hearings have occurred without providing a wide open zone within which a wide range of commercial uses may occur (Policy C-2).

- Policy C-2** It shall be the intention of City Council to deal with neighbourhood convenience outlets through the contract zoning provisions of the Planning Act - Section 33 (2) (b).

Implementation

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

- (1) that the proposal is in conformance with the policies and intent of the Municipal Development Plan

- (2) that the proposal is compatible and consistent with adjacent uses and the existing development form in the area in terms of the use, bulk, and scale of the proposal
- (3) provisions for buffering, landscaping, screening, and access control to reduce potential incompatibilities with adjacent land uses and traffic arteries
- (4) that the proposal is not premature or inappropriate by reason of:
 - (i) the financial capability of the City is to absorb any costs relating to the development
 - (ii) the adequacy of sewer and water services and public utilities
 - (iii) the adequacy and proximity of schools, recreation and other public facilities
 - (iv) the adequacy of transportation networks in adjacent to or leading to the development
 - (v) existing or potential dangers for the contamination of water bodies or courses or the creation of erosion or sedimentation of such areas
 - (vi) preventing public access to the shorelines or the waterfront
 - (vii) the presence of natural, historical features, buildings or sites
 - (viii) create a scattered development pattern requiring extensions to truck facilities and public services while other such facilities remain under utilized
 - (ix) the detrimental economic or social effect that it may have on other areas of the City.
- (5) that the proposal is not an obnoxious use
- (6) that controls by way of agreements or other legal devices are placed on proposed developments to ensure compliance with approved plans and coordination between adjacent or near by land uses and public facilities. Such controls may relate to, but are not limited to, the following:
 - (i) type of use, density, and phasing
 - (ii) emissions including air, water, noise
 - (iii) traffic generation, access to and egress from the site, and parking
 - (iv) open storage and landscaping
 - (v) provisions for pedestrian movement and safety
 - (vi) management of open space, parks, walkways
 - (vii) drainage both natural and sub-surface and soil-stability
 - (viii) performance bonds.
- (7) suitability of the proposed site in terms of steepness of slope, soil conditions, rock outcroppings, location of watercourses, marshes, swamps, bogs, areas subject to flooding, proximity to major highways, ramps, railroads, or other nuisance factors
- (8) that in addition to the public hearing requirements as set out in the Planning Act and City by-laws, all applications for amendments may be aired to the public via the "voluntary" public hearing process established by City Council for the purposes of information exchange between the applicant and residents. This voluntary meeting allows the residents to clearly understand the proposal previous to the formal public hearing before City Council
- (9) that in addition to the foregoing, all zoning amendments are prepared in sufficient detail to provide:

- (i) Council with a clear indication of the nature of proposed development, and
 - (ii) permit staff to assess and determine the impact such development would have on the land and the surrounding community
- (10) *Within any designation, where a holding zone has been established pursuant to "Infrastructure Charges - Policy IC-6", Subdivision Approval shall be subject to the provisions of the Subdivision By-law respecting the maximum number of lots created per year, except in accordance with the development agreement provisions of the MGA and the "Infrastructure Charges" Policies of this MPS. (RC-Jul 2/02;E-Aug 17/02)*