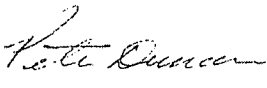




P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Harbour East Community Council
April 5, 2012

TO: Chair and Members of Harbour East Community Council

SUBMITTED BY:  / for
Peter Stickings, Acting Director, Planning and Infrastructure

DATE: March 9, 2012

SUBJECT: **Case 17634 Non-Substantial Amendment to the Development Agreement for 185 Windmill Road, Dartmouth**

ORIGIN

Application by Geoff Keddy Architects for a non-substantial amendment to a development agreement to enable conversion of ground floor commercial space to a barrier free residential unit at 185 Windmill Road, Dartmouth.

RECOMMENDATION

It is recommended that the Harbour East Community Council:

1. Approve, by resolution, the proposed amending development agreement for 185 Windmill Road, as set out in Attachment A of this report, to permit conversion of ground floor commercial space to a barrier free residential unit; and
2. Require the agreement be signed by the property owner within 120 days, or any extension thereof granted by Council on request of the property owner, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

The subject site is located at the corner of Windmill Road and Jamieson Street as shown on Map 1. The existing building on the site currently has two ground floor commercial units, and one second floor apartment. The commercial uses consist of a convenience store and a pawn shop, which is a legal non-conforming use. In the 2010, Harbour East Community Council approved a development agreement, which allows for the construction of additions to the second and third floor of the building to accommodate five additional residential units. However, the agreement does not permit residential units on the ground floor. Therefore, the applicant is requesting an amendment to the agreement to permit the creation of a barrier free residential unit on the ground floor.

Requested Amendment

The Nova Scotia Building Code Regulations establish a requirement that a ratio of barrier free units be provided in multiple unit buildings. Where a building does not have an elevator, such units must be provided on the ground floor. The existing development agreement sets out that the ground floor space is to be commercial, but that the space can be converted to residential as a non-substantial amendment. The applicant is therefore seeking approval of a non-substantial amendment to enable one ground floor unit to satisfy the barrier free requirement.

Existing Development Agreement

The existing development sets the maximum number of residential units on the lands and their location and type of units under Section 2.3(a) as follows:

“2.3(a) A maximum of six (6) apartments, to be located on the second and third floors, and consisting of no more than one (1) three-bedroom unit, and five (5) one-bedroom units;”

Under the non-substantial section of the Agreement, Council may consider the conversion of ground floor commercial space within the building to residential use and changes to the type of dwelling units as per Section 5.1(e):

“5.1(e) The conversion of ground floor commercial space to residential use and alterations in the type of unit by number of bedrooms, pursuant to the requirements of the R-3 (Medium Density Residential) Zone.”

Therefore, the Agreement allows Council to consider the re-location of one of the apartment units to the ground floor area as long as the number of units does not increase and the type of units within the building complies with the R-3 Zone standards.

Zoning and Land Use

The property is zoned C-2 (General Business) under the Dartmouth Land Use By-law. The C-2 zone permits most commercial uses. Multiple unit dwellings were permitted as of right in the zone until 1991, pursuant to the standards of the R-3 (Medium Density Residential) zone. However, the construction of more than two dwelling units in the zone now requires a development agreement.

The area is mixed residential, with some institutional uses and vacant lots. The property directly

abuts a provincially-owned senior citizen housing facility to the rear, and an HRM walkway to the south.

DISCUSSION

Staff has reviewed the applicable sections of the MPS and the existing development agreement and are of the opinion that the proposed application for re-location of a residential unit to the ground floor is consistent with plan policy and the existing agreement.

The existing development agreement allows for a maximum of six units and the application will not increase the number of units on the site. Furthermore, the number of bedroom units proposed within the building is consistent with the R-3 zone standards for the site and there will be no external ground floor addition. The proposed change will also result in a decreased intensity of commercial use on the site as part of the pawn shop will be lost to create the new barrier free unit.

The site has sufficient parking area to accommodate both the existing commercial and proposed residential uses. There are no concerns relative to traffic, site design, architecture or signage as these matters are all addressed by the existing development agreement. Therefore, staff recommends that Council approve the proposed amending agreement as outlined in Attachment "A".

COMMUNITY ENGAGEMENT

No community engagement is undertaken for non-substantial amendments to development agreements. Although no public hearing needs to be held by Council to consider approval of such amendments to a development agreement, there is a 14 day appeal period following Council's decision.

The proposed development agreement amendment will potentially impact the following stakeholders: local residents and property owners.

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 proposed Operating, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation.

ALTERNATIVES

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

2. Council may choose to approve the proposed amending agreement subject to modifications. This may necessitate further negotiation with the applicant, or an additional public hearing.
3. Council may choose to refuse the proposed amending agreement, and in doing so, must provide reasons based on a conflict with MPS policies.

ATTACHMENTS

Map 1 Location and Zoning
Attachment A Proposed Development Agreement

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: Mitch Dickey, Planner, 490-5719



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

Financial Approved by: Greg Keefe, Director of Finance and Information Technology Services/CFO, 490-6308

- (i) *Five of the units are to be located on the second and third floors, these units shall consist of one (1) three-bedroom unit, and four (4) one-bedroom units; and*
- (ii) *A ground floor barrier free unit, with no more than one bedroom, pursuant to the requirements of the Nova Scotia Building Code Regulations and shall be located entirely within the existing building.”*

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, 2012.

SIGNED, SEALED AND DELIVERED in the presence of:

(Insert Owners Names)

Per: _____

Per: _____

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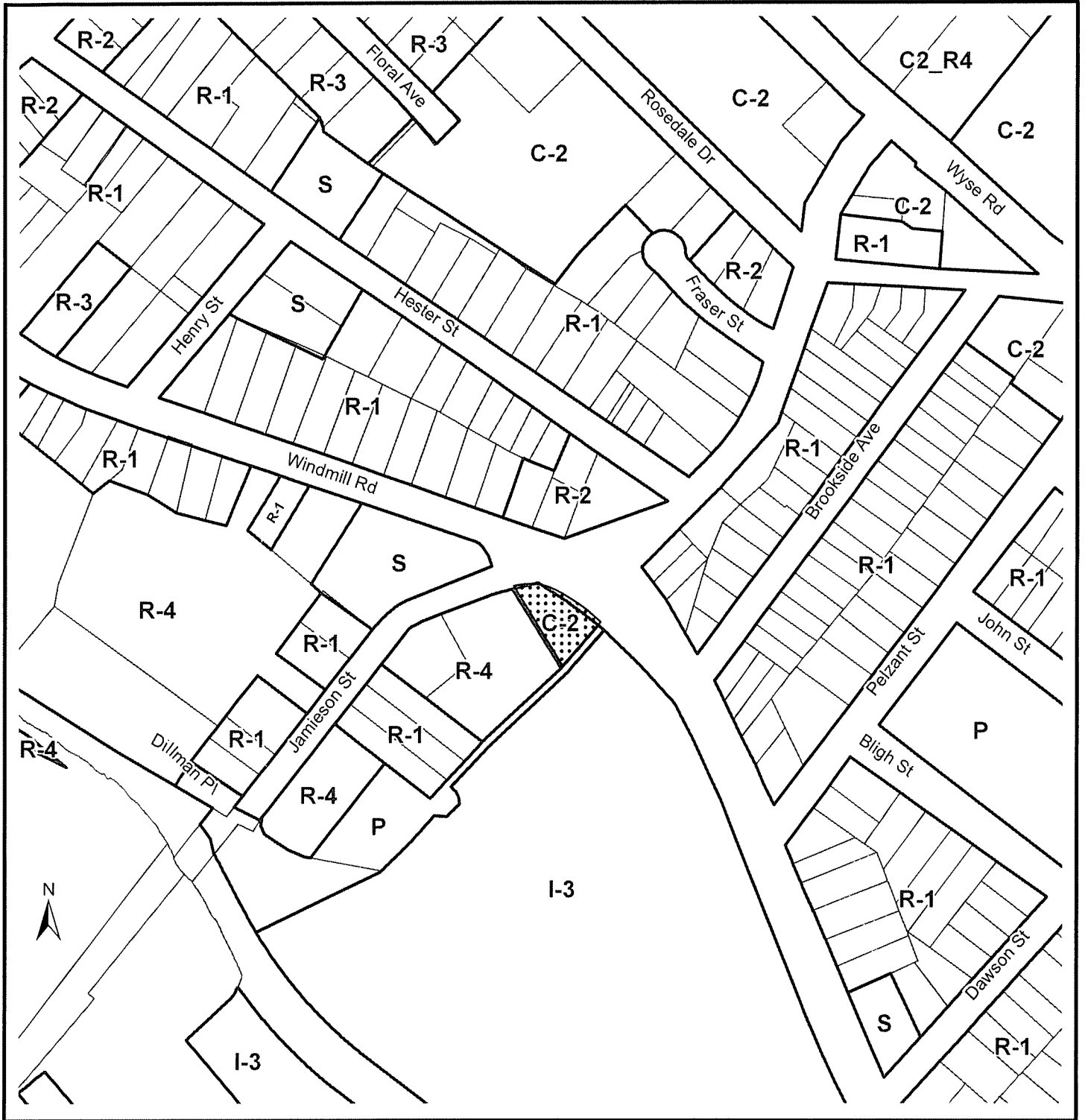
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SEALED, DELIVERED AND ATTESTED to by the proper signing officers of Halifax Regional Municipality, duly authorized in that behalf, in the presence of:

HALIFAX REGIONAL MUNICIPALITY


Per: _____
Mayor

Per: _____
Municipal Clerk



Map 1 - Location and Zoning

185 Windmill Road

 Subject Property

Zone

- R-1 Single Family Residential
- R-2 Two Family Residential
- R-3 Multiple Family Residential (Medium Density)
- R-4 Multiple Family Residential (High Density)
- C-2 General Business
- I-3 Harbour Oriented Industrial
- P Park
- S Institutional

Dartmouth Plan Area



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