

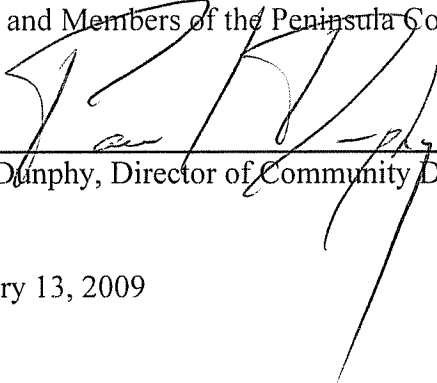
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PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Peninsula Community Council
February 9, 2009

TO: Chair and Members of the Peninsula Community Council

SUBMITTED BY: 
Paul Dunphy, Director of Community Development

DATE: January 13, 2009

SUBJECT: **Case 01229: Discharging Agreement - 6054-56 Cunard Street,
Halifax**

ORIGIN

Application by Gordon Dickie and Erin Brown to discharge the existing development agreement for 6054-56 Cunard Street, Halifax.

RECOMMENDATION

It is recommended that Peninsula Community Council:

1. Approve the discharging agreement, presented as Attachment A to this report, for lands located at 6054-56 Cunard Street, Halifax.
2. Require that the discharging agreement be signed within 120 days, or any extension thereof granted by Community Council on the 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

The subject property is located at 6054-56 Cunard Street in the North End of Halifax (refer to Map 1) and is zoned R-2 (General Residential), Peninsula North Secondary Plan, Area 1.

The history associated with this property is as follows:

- four unit dwelling existing where only a two unit dwelling was authorized
- enforcement actions begin in the late 1980's
- to solve the violation, the City of Halifax and the owner at the time entered into a Development Agreement (DA) which proposed a staged removal of two of the dwelling units
- DA required the owner convert the four unit dwelling to three units by October 11, 1992
- Occupancy Permit issued December 17, 1991, to occupy a three unit dwelling
- DA required that the building be converted to two dwelling units prior to the property being sold or October 11, 1995, whichever came first
- to this date no application has been received to remove the third unit
- the present owner purchased the property as a three unit dwelling after obtaining a zoning confirmation letter from HRM stating that this was the authorized use (the presence of the DA was overlooked)
- last record available relating to the authorized use of the building is the 1991 Occupancy Permit for a three unit dwelling
- the DA was identified during the property purchase; the owners wish to legalize the third unit
- June 4, 2008, application for a variance from the lot area, lot frontage, lot coverage, and front and left side yard requirements of the Halifax Peninsula Land Use By-law to permit conversion of a two unit dwelling to a three unit dwelling
- variance refused by the Development Officer on September 15, 2008
- when the Development Officer's decision to refuse the variance was appealed to Peninsula Community Council on November 10, 2008, Council overturned the DO's decision
- owners are now requesting to have the 1990 Development Agreement discharged so that a Development Permit for three units can be issued pursuant to the approved variance

DISCUSSION

The development agreement intended to reduce the number of dwelling units, over time, from four to two units and accommodate the owner of the day by allowing some time to undertake the necessary conversion work. The conversion from four dwelling units to three dwelling units was undertaken by the owner who signed the agreement but the conversion from three units to two units was not done.

The current owner of the property wishes to legalize the three existing dwelling units. The property does not meet the requirements of the R-2 Zone for a three unit dwelling relative to lot area, frontage, side and front yards. However, these requirements were relaxed by virtue of Council's decision to

overturn the Development Officer's refusal of the variance. Given this and the fact that the existing building is compatible with those surrounding it, staff believe that it is appropriate to discharge the existing development agreement.

Public Information Meeting: No public information meeting was held. Such meetings are not typically convened for development agreement discharge applications.

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

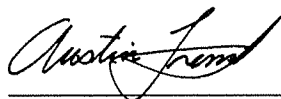
1. Council could consent to enter into a discharging agreement and allow the subject property to remain with three dwelling units within the R-2 (General Residential) Zone.
2. Council could refuse to enter into a discharging agreement and the use allowed by the development agreement would be retained as the only permitted use.

ATTACHMENTS

Map 1	Location and Zoning
Attachment A	Draft Discharging Agreement
Attachment B	Existing 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 : Randa Wheaton, Senior Planner, Community Development, 490-4499

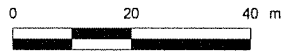


Report Approved by: Austin French, Manager of Planning Services, 490-6717



Map 1 - Location and Zoning

6054-56 Cunard Street
Halifax



Subject area

Zone

R-2	General Residential
C-2A	Minor Commercial

This map is an unofficial reproduction of a portion of the Zoning Map for the Halifax Peninsula Land Use By-Law Area

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

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) **GORDON DICKIE and ERIN BROWN**
in the presence of)

_____)
) Per: _____

_____)
) Per: _____

_____)
)

SEALED, DELIVERED AND) **HALIFAX REGIONAL MUNICIPALITY**
ATTESTED to by the proper)

signing officers of Halifax Regional)
Municipality duly authorized) Per: _____

in that behalf in the presence of) MAYOR
)

_____) Per: _____
) MUNICIPAL CLERK

870

506

THIS AGREEMENT made this 27th day of December, 1990,

BETWEEN:

APPROVED AS TO FORM City Solicitor

MISS ELLA M. CORBIN,
(hereinafter called the "Developer")

OF THE FIRST PART

- and -

CITY OF HALIFAX,
a municipal body corporate,
(hereinafter called the "City")

OF THE SECOND PART

WHEREAS the Developer is the owner of property located at 6054/56 Cunard Street, in the City of Halifax, which is zoned R-2, Peninsula Land Use Bylaw and the building located thereon presently contains four dwelling units without the benefit of development or occupancy permits therefor;

AND WHEREAS it is acknowledged that the four dwelling units were created contrary to the Halifax Zoning Bylaw then in effect;

AND WHEREAS the zoning at present still only permits a maximum of two dwelling units;

AND WHEREAS the Developer wishes to obtain permission to use the four dwelling units pursuant to Section 83 of the Peninsula part of the Land Use Bylaw;

AND WHEREAS a condition of the granting of approval of Council is that the Developer enter into an agreement with the City;

AND WHEREAS the Council of the City, at its meeting on the 11th day of October, 1990, approved the said development agreement to permit use of the four dwelling units subject to the registered owner of the lands described herein entering into this agreement;

AND WHEREAS the said development agreement is identified as Case No. 6135 in the City of Halifax Development and Planning Department.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the granting by the City of the development agreement requested by the Developer, the Developer agrees as follows:

1. REGISTERED OWNER

The Developer is the registered owner of the lands known as 6054/56 Cunard Street in the City of Halifax, described in Schedule "A" hereto (hereinafter called the "lands").

2. USE OF PROPERTY

The building may be used for four dwelling units.

3. CONVERSION OF DWELLING UNITS

- a) The building shall be converted to three dwelling units prior to 11 October 1992.
- b) The building shall be converted to two dwelling units prior to the property being sold by the Developer or prior to 11 October 1995, whichever date is earliest.

4. DESTRUCTION OF BUILDING

- a) That in the event that the third and/or fourth dwelling units are destroyed so as to become uninhabitable, as determined by City Ordinance 157 (Minimum Standards for Existing Buildings and Housing Accommodations), these units cannot be rebuilt, repaired or re-occupied as dwelling units. These portions of the building must be incorporated into the remaining dwelling units.
- b) That in the event that more than two dwelling units are destroyed or damaged so as to become uninhabitable, as determined by City Ordinance 157 (Minimum Standards for Existing Buildings and Housing Accommodations), the building may only be rebuilt, repaired or re-occupied in conformance with the requirements of the Land Use Bylaw applicable to the property.

5. OBSERVANCE OF THE LAW

Notwithstanding any other provision of this agreement, the Developer shall not undertake or carry out any development on the lands which does not comply with all City of Halifax laws, including, without restricting the generality of the foregoing, the Building Code Ordinance and the Fire Prevention Ordinance and no permit shall be issued for any such development.

6. ISSUANCE OF PERMITS

The City shall issue the necessary permits for the development upon the expiration of the twenty-one (21) day appeal period under Section 71 of the Planning Act, as the same may be amended from time to time, or upon the withdrawal or dismissal of any appeal which may be taken.

Time shall be of the essence of this agreement.

This agreement shall be binding upon the parties hereto and their heirs, successors and assigns.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals as of the day and year first above written.

SIGNED, SEALED AND DELIVERED)
in the presence of)

*Eun O'Brien Esmonds sec to the
signature of Miss Corbin*

MISS ELLA M. CORBIN

Per *E. M. Corbin*

CITY OF HALIFAX

Mustard L. Alga

Per *Mustard L. Alga*
Mayor

Per *Karen F. Darn*
City Clerk

Province of Nova Scotia
County of Halifax

I hereby certify that the within instrument was recorded in the Registry of Deeds Office at Halifax in the County of Halifax, N. S., at 3:18 o'clock P. M., on the 4th day of Jan A.D., 1991 in Book No 5025 at Pages 870-874 as Document Number 506

Robert A. Healey
Registrar of Deeds for the Registration District of Halifax County