

Peninsula Community Council
September 12, 2011

TO: Chair and Members of Peninsula Community Council



SUBMITTED BY: _____
Austin French, Manager of Planning Services

DATE: August 25, 2011

SUBJECT: Case 16823, Development Agreement, 3089 Gottingen Street,
Caribbean Twist

ORIGIN

Application by Hanna John Toulany.

RECOMMENDATION

It is recommended that Peninsula Community Council:

1. Give Notice of Motion to consider the proposed development agreement, as described in Attachment A, to permit a change to a non-conforming use at 3089 Gottingen Street, Halifax, and to schedule a public hearing.
2. Approve the proposed development agreement, as contained in Attachment A.
3. 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

This application is for a development agreement to allow a restaurant use at 3089 Gottingen Street, at the corner of Kaye Street, in Halifax. The property is located in the R-2 (General Residential) Zone. A restaurant, Caribbean Twist, presently exists at this location and has been established since March 2010. Prior to this there was another restaurant, Toulany's Lunch Box, that existed for a short period of time. Commercial uses, including restaurant uses, are not permitted by the land use by-law in the R-2 Zone. Actions to have the property owner comply with the by-law (have the restaurant closed) were initiated when HRM became aware of the illegal use. Subsequently, the property owner applied for a development agreement, which if approved, will allow the restaurant use to be issued a development permit.

The Property

The property is comprised of a two storey building with ground floor commercial space and two dwelling units located on the second floor. There are two parking spaces for the residents to the north of the building and limited landscaped open space, primarily located on east side of the building, which has served as an area for the outdoor storage of refuse.

Zoning and Property History

The ground floor of the building has been used for commercial uses for a considerable period of time, pre-dating the residential zoning of the property, which was first established in 1950. The last commercial use that is recognized by HRM is a convenience store (a retail store), which has status as a non-conforming use. Non-conforming uses are allowed to continue as they exist, but their ability to be changed to a different category of non-conforming use is limited.

In the 1950s through to the 1970s, the City of Halifax allowed for some changes to non-conforming uses by evaluating the anticipated impact of the change to the surrounding area. This was done through the issuance of development permits. In the 1980s a new policy, Implementation Policy 3.14, was adopted, requiring that proposed changes to non-conforming uses be considered by development agreement. This allows for specific conditions to be placed on a non-conforming use, public input, and a decision of the community council. This application has been made pursuant to this policy.

DISCUSSION

While the application is to solely allow for a restaurant use, the current use of the property is more appropriately viewed as both a retail store and a restaurant therefore these are the uses considered through the proposed development agreement (Attachment A).

Enabling Municipal Planning Strategy

Council is to consider this proposal with regard to the Halifax Municipal Planning Strategy as set out in Policy 3.14:

“Council may, by development agreement, permit a non-conforming use 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, . . .”

This policy has criteria for evaluating a change in use, which are mainly concerned with mitigating impacts upon neighbouring properties and ensuring that any new use is less-intensive than the current use (Attachment B).

In the proposed development agreement, a restaurant use, a retail use, or a combined restaurant and retail use are all to be allowed. These are viewed as appropriate uses for the ground floor commercial area as they are uses that reflect the activities that have traditionally occurred upon the property. Importantly, in light of Policy 3.14, the permitted land use activity will be less intensive than the conforming use that is permitted on the property as a result of the controls that will be enacted with the proposed development agreement (Attachment A). For example:

- There are currently no specific requirements for the outdoor storage of refuse that might be associated with the commercial use. The development agreement specifies that an area and containers for outdoor storage are to be located to the rear of the driveway. There are also requirements that the specified containers be appropriately designed, maintained, and emptied and cleaned on a regular basis.
- There are currently no limitations on the hours of operation for the ground floor commercial uses. The proposed development agreement limits the hours of operation to between 7:00 a.m. and midnight.
- The proposed development agreement specifies that only liquor that is consumed with a meal may be served. This provision serves to limit the type of permitted restaurant use in light of the residential surroundings.
- There is an existing parking area immediately off Gottingen Street, to the north of the building. No alteration to this arrangement is viewed as necessary. However, with the proposed development agreement, the parking area is required to be used solely for employees and the dwelling unit residents. With regard to customers, there is parking available upon the streets surrounding the property.
- There are separate signs that face on Gottingen and Kaye streets, above the ground floor windows on the exterior of the building. There are requirements in the proposed development agreement that limit their size and location of signs to that which is currently found on the building. There is an option for awnings with signage to be installed, provided that such signage does not increase in size.

While the property is in a residential zone, it is equally important to consider that it is part of an area that is defined by the businesses that surround Hydrostone Park. The proposed development agreement strikes a balance between allowing some flexibility for the commercial use of the building while ensuring that there are appropriate controls to reasonably mitigate land use

compatibility issues. The terms of the development agreement reflect and are consistent with the criteria of policy 3.14 (Attachment A and B).

BUDGET IMPLICATIONS

There are no budget implications. The Developer will be responsible for all costs, expenses, liabilities and obligations imposed 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, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was consultation, achieved through a Public Information Meeting on May 26, 2011 (Attachment C). Notices of this meeting were posted on the HRM website, in the newspaper and mailed to property owners within the notification area (Map 1).

A public hearing has to be held by Regional Council before it can consider approval of any amendments. Should Council proceed with a Public Hearing on this application, in addition to published newspaper advertisements, property owners within the notification area will be notified of the public hearing by mail.

ALTERNATIVES

1. Council could approve entering into the proposed development agreement, which is the recommended alternative.
2. Council could approve entering into the proposed development agreement with changes that are agreed to by the applicant. Such changes, depending upon their magnitude, may necessitate the holding of an additional public hearing.
3. Council could refuse entering into the proposed development agreement. If this course of action is taken, Council is required to specify the reasons for the refusal and specifically how the proposal is inconsistent with the policies Halifax Municipal Planning Strategy.

ATTACHMENTS

Map 1	Location and Zoning
Attachment A	Proposed Development Agreement
Attachment B	Review of Relevant Municipal Planning Strategy Policy
Attachment C	Public Information Meeting Minutes

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: Richard Harvey, Senior Planner, 490-5637

Attachment A – Proposed Development Agreement

THIS AGREEMENT made this ____ day of _____, 20__,

BETWEEN:

[INSERT PROPERTY OWNER]

an individual, in the Halifax Regional Municipality,
in the Province of Nova Scotia (hereinafter called the “Developer”)

OF THE FIRST PART

- and -

HALIFAX REGIONAL MUNICIPALITY

a municipal body corporate, in the Province of Nova Scotia
(hereinafter called the “Municipality”)

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands identified as 3089 Gottingen Street and which said lands are more particularly described in Schedule A hereto (hereinafter called the “Lands”);

AND WHEREAS the Developer has requested that the Municipality enter into a Development Agreement to allow for restaurant and store on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policy 3.14 of the Halifax Municipal Planning Strategy and Section 99 (4) of the Halifax Peninsula Land Use By-law;

AND WHEREAS the Peninsula Community Council for the Municipality approved this request at a meeting held on _____, referenced as Municipal Case Number 16823;

THEREFORE, in consideration of the benefits accrued to each party from the covenants herein contained, the Parties agree as follows:

PART 1: GENERAL REQUIREMENTS AND ADMINISTRATION

1.1 Applicability of Agreement

- 1.1.1 The Developer agrees that the Lands shall be developed and used only in accordance with and subject to the terms and conditions of this Agreement.

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

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

1.3 Applicability of Other By-laws, Statutes and Regulations

- 1.3.1 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 Lot Owner agree(s) to observe and comply with all such laws, by-laws and regulations, as may be amended from time to time, in connection with the development and use of the Lands.
- 1.3.2 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 the Municipality 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 or appropriate professional as required by this Agreement or other approval agencies.

1.4 Conflict

- 1.4.1 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.
- 1.4.2 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

- 1.5.1 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 laws, by-laws, regulations and codes applicable to the Lands.

1.6 Provisions Severable

- 1.6.1 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 Words Not Defined under this Agreement

- 2.1.1 All words unless otherwise specifically defined herein shall be as defined in the applicable Land Use By-law and Subdivision By-law, if not defined in these documents their customary meaning shall apply.

2.2 Definitions Specific to this Agreement

Building means the building on the lands.

PART 3: USE OF LANDS, SUBDIVISION AND DEVELOPMENT PROVISIONS

3.1 Schedules

- 3.1.1 The Developer shall develop the Lands in a manner, which, in the opinion of the Development Officer, conforms to the following Schedules attached to this Agreement and filed in the Halifax Regional Municipality as Case Number 16823:

Schedule A Legal Description of the Lands

Schedule B Site Plan

3.2 Requirements Prior to Approval

- 3.2.1 Prior to the issuance of an occupancy permit, the Developer shall confirm that the requirements of this Agreement have been met, including the provisions relating outdoor storage where such storage is provided.

3.3 Land Use

3.3.1 The following land uses are permitted:

- (a) Dwelling units;
- (b) Restaurants; and
- (c) Retail stores.

3.4 Land Use Requirements

3.4.1 The second floor of the building shall contain a maximum of two dwelling units.

3.4.2 The ground floor of the building shall be comprised of a single leasehold space containing the following uses:

- (a) a restaurant;
- (b) a retail store; or
- (c) a restaurant and a retail store.

3.4.3 For clarity, pursuant to 3.4.2, the following shall not be permitted:

- (a) lounges or other uses that allows alcoholic beverages to be consumed on-site in the absence of a meal; and
- (b) adult entertainment uses

3.4.5 The hours of operation for the ground floor uses shall be between 7:00 a.m. and midnight.

3.4.6 This Agreement does not prohibit sidewalk seating that may be associated with a restaurant use, subject to the requirements of this Agreement, including hours of operation and the consumption of alcoholic beverages.

3.4.7 The basement of the building may be used for storage for any of the permitted uses.

3.5 Building and Site Requirements

3.5.1 The building shall not be expanded or altered so as to increase the volume of the building that is capable of being occupied.

3.5.2 Awnings shall be permitted upon the sides of the building facing Gottingen and Kaye streets.

3.5.3 Areas of parking, landscaping, and outdoor storage shall be in keeping with Schedule B.

3.6 Signs

3.6.1 The following signs shall be permitted:

- (a) Facing Gottingen Street, one facial sign or a sign upon an awning pursuant to clause 3.5.2, which in either case shall have a maximum sign area of 3 feet in height by 12 feet in length; and
- (b) Facing Kaye Street, one facial sign or a sign upon an awning pursuant to 3.5.2, which in either case shall have a maximum sign area of 2 feet in height by 8 feet in length.

3.7 Parking

3.7.1 The parking shall be as shown on Schedule B and shall be dedicated to employees or residents of the building and not used otherwise.

3.8 Outdoor Storage

3.8.1 Where outdoor storage occurs, it shall be:

- (a) located within the area shown on Schedule B;
- (b) screened on its sides by an opaque wooden fence of other similar means, to a maximum of 5 feet in height;
- (c) designed and maintained to minimize both the attraction of pests and the potential for airborne contamination;
- (d) closed and secured when not in use;
- (e) emptied on a regular basis and at minimum when containers are full; and
- (f) cleaned on regular basis.

3.9 Lighting

3.9.1 Lighting shall be directed to driveways, parking areas, loading area, building entrances and walkways and shall be arranged so as to divert the light away from streets, adjacent lots and buildings.

3.10 Subdivision of the Lands

3.10.1 No subdivision of the lands shall be permitted.

3.11 Maintenance

3.11.1 The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the exterior of the building, fencing, walkways, outdoor storage, recreational amenities, 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 and ice control, salting of walkways and driveways.

PART 4: AMENDMENTS

4.1 Non-Substantive Amendments

- 4.1.1 The following items are considered by both parties to be not substantive and may be amended by resolution of Council.
- (a) Changes to the following requirements:
 - i. the location of parking, landscaping, and outdoor storage requirements specified in clause 3.5.3;
 - ii. the outdoor storage requirements specified in clause 3.8.1;
 - ii. the sign requirements specified in clause 3.6.1;
 - iii. the subdivision requirements specified clause 3.10.1; and
 - (b) The granting of an extension of the time requirements specified in Section 5.3, if the Municipality receives a written request from the Developer at least 30 calendar days prior to the date by which the Developer is required to have obtained said permits.

4.2 Substantive Amendments

- 4.2.1 Amendments to any matters not identified under Section 4.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Halifax Regional Municipality Charter*.

PART 5: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

5.1 Registration

- 5.1.1 A copy of this Agreement and every amendment or discharge of this Agreement shall be recorded at the Registry of Deeds or Land Registry Office at Halifax, Nova Scotia and the Developer shall incur all costs in recording such documents.

5.2 Subsequent Owners

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

5.3 Commencement of Development

- 5.3.1 The Developer shall obtain an initial development permit and an occupancy permit for the ground floor use of the building within 90 days from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office, as indicated herein, or this the 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.

5.4 Completion of Development

- 5.4.1 Following the issuance of the initial development permit, pursuant to Section 5.3, or any subsequent development permit for the ground floor of the building, 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;

5.5 Discharge of Agreement

- 5.5.1 If the Developer fails to obtain an initial development permit and occupancy permit, pursuant to Section 5.3, 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.

PART 6: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

6.1 Enforcement

- 6.1.1 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 twenty four hours of receiving such a request.

6.2 Failure to Comply

- 6.2.1 If the Developer fails to observe or perform any condition of this Agreement after the Municipality has given the Developer 30 days written notice of the failure or default, 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 defence 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 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; or
- (d) In addition to the above remedies, the Municipality reserves the right to pursue any other remedy under the *Halifax Regional Municipality Charter* or Common Law in order to ensure compliance with this Agreement.

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, 20__.

SIGNED, SEALED AND DELIVERED in
the presence of:

[INSERT PROPERTY OWNER]

Per: _____

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 B – Review of Relevant Municipal Planning Strategy Policy

Policy	Comment
<p>3.14 Council may, by development agreement, permit a non-conforming use 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, provided that:</p>	
<p>a) the layout and design of the property shall be complementary to the fabric of the neighbourhood, and this shall be achieved through attention to a variety of factors including, but not limited to, the following, on which Council shall specify conditions to be met in the development agreement:</p> <ul style="list-style-type: none"> i) architectural design; ii) the size, location, and landscaping of courts, open spaces, and yards; iii) location of primary and secondary entrances to the building; and iv) size, location, and design of fences. 	<p>The existing building and site are complementary to the neighbourhood. No changes of any substance are viewed as necessary nor are they enabled by the proposed development agreement. The site plan of the proposed development agreement shows the location of the building and the parking area and the text of the agreement specifies that these features are to be retained in the future.</p>
<p>b) vehicular activity, particularly parking and loading, shall be controlled so as not adversely to affect the neighbourhood in terms of traffic flow and nuisance;</p>	<p>There is no change to the location of the existing parking area. The proposed development agreement specifies that it is to be used for the proprietors of the commercial business and the residents of the dwelling units. The parking area is not viewed as being appropriate or needed for customer parking, given its proximity to street intersections.</p>
<p>c) facilities for parking, loading, vehicular access, outdoor display, and outdoor storage shall be designed to avoid any adverse effects on adjacent properties and to ameliorate existing problems, through attention to factors including but not limited to:</p> <ul style="list-style-type: none"> i) location; ii) surface treatment; iii) storm drainage; iv) access from the street; and v) screening, buffering, and landscaping. 	<p>The proposed organization of outdoor storage through the development agreement is relevant to this policy. At the time when the applicant was made, garbage and cooking oil storage was located immediately at a rear door, located between the building and a neighbouring dwelling along Kaye Street. The proposed development agreement requires a formal outdoor storage area at the rear of the parking area with specific provisions about refuse storage and cleanliness.</p>

Attachment B – Review of Relevant Municipal Planning Strategy Policy

Policy	Comment
<p>d) except where specific benefits to the neighbourhood can be demonstrated, all additions to a building, all off-street parking and loading areas, and all outdoor display and storage areas shall be set back from the street line by the more restrictive of:</p> <ul style="list-style-type: none"> i) the minimum setback of the existing building; or ii) the mean setback of the buildings on the adjacent properties on either side; or iii) the minimum setback specified for the zone in which the use is located. 	<p>The sole change with the proposed development is the requirement for the outdoor storage to be located to the rear of the driveway. This arrangement meets the policy criteria.</p>
<p>e) except where specific benefits to the neighbourhood can be demonstrated, additions to the structures on the property shall not:</p> <ul style="list-style-type: none"> i) further encroach upon the minimum side and rear yards stipulated for the zone in which the property is located; or ii) result in the total lot coverage or building height exceeding the maximum stipulated for the zone in which the property is located; 	<p>No additions to the building are permitted without an amendment to the proposed development agreement.</p>
<p>f) any outdoor lighting or sign illumination shall be directed away from, or screened from, adjacent residential properties;</p>	<p>The proposed development agreement specifies that lighting be directed away from adjacent properties. The existing signs, which are controlled by the development agreement face the adjoining streets.</p>
<p>g) no bulk refuse containers shall be visible from the street or from the immediate neighbourhood;</p>	<p>This is controlled in the proposed development agreement through a requirement that refuse be enclosed and screened from abutting properties and the street.</p>
<p>h) no additional lot area shall be used for outdoor storage, and measures shall be taken to screen any outdoor storage areas from the street and immediate neighbourhood;</p>	<p>The proposed outdoor storage area represents a reorganization of the way in refuse and other matters have been stored on the property, rather than an additional area of the lot that is being used.</p>
<p>i) with regard to on-site advertising for</p>	<p>The proposed development agreement allows</p>

Attachment B – Review of Relevant Municipal Planning Strategy Policy

Policy	Comment
<p>commercial or industrial uses:</p> <ul style="list-style-type: none"> i) where the property is located in a residential zone, no additional advertising surface area or illuminated signage shall be added; and ii) in all other cases, such advertising shall not exceed the limits prescribed for the zone in which the property is located. 	<p>two signs to be affixed to the face of the building or on awnings. Their size is to be consistent with the size of the signs that currently exist upon the building.</p>
<p>j) in the case of commercial and industrial operations in residential zones, the following additional considerations shall also apply:</p> <ul style="list-style-type: none"> i) there shall be a demonstrable improvement to the neighbourhood; ii) existing conditions resulting in noise, dust, vibration, odour, and emissions shall be required to be ameliorated where these cause a nuisance or hazard; and iii) operating hours shall be restricted to prevent nuisance. 	<p>See the main body of the staff report.</p>
<p>k) No subdivision of the lot shall have occurred subsequent to the time of the adoption of this section.</p>	<p>No subdivision has occurred.</p>

Attachment C – Public Information Meeting Minutes

HALIFAX REGIONAL MUNICIPALITY PUBLIC INFORMATION MEETING CASE # 16823

**7:00 p.m.
Thursday, May 26, 2011
Bloomfield Center, Halifax**

IN ATTENDANCE: Richard Harvey, Senior Planner, HRM Planning Services
Holly Kent, Planning Technician, HRM Planning Services
Sharlene Seaman, Planning Controller, HRM Planning Services
Councillor Jerry Blumenthal
Councillor Jennifer Watts

**ALSO IN
ATTENDANCE** John Toulaney, Applicant
Anne Meuke, Consultant

**PUBLIC IN
ATTENDANCE:** Approximately 7

The meeting commenced at approximately 7:05 p.m.

1. Opening remarks/Introductions/Purpose of meeting – Richard Harvey

Richard Harvey opened the meeting by introducing himself as a planner for the Western Region with Halifax Regional Municipality (HRM). He introduced HRM staff and the Councillors present. He welcomed everyone and thanked them for coming.

He stated that the purpose of the meeting was to get feedback from the public concerning an application to permit a restaurant at 3089 Gottingen Street, Halifax, by development agreement.

2. Overview of planning process – Richard Harvey

Mr. Harvey talked about the planning process. He stated that a development agreement is a contract between a property owner and HRM concerning characteristics of a development. He gave background on the property, showing the building and the location. He stated that the building has traditionally been a convenience store. Currently it is a restaurant, with two dwelling units located above. Although the building faces Hydrostone Park, it is within an R-2

Zone, which is residential zone. C-2 and C-2A zones are found in the area. The particular property is likely in an R-2 zone because there are surrounding residential uses on the block where the property is located. He gave some context to the residential and a commercial setting. Although residential zoning applies to the property, the commercial use that occupies the ground floor predates the residential zoning and in fact the current land use by-law, which was originally established in 1950. It has a non-conforming use status. As a non-conforming use, it is permitted to continue, but it cannot expand nor may it be reestablished if it changed to a use that is permitted by the land use by-law. Therefore, it can continue to be used for the same type of commercial use that was in place when it became a non-conforming use. However, a change from a convenience store to a restaurant represents an actual change in use; a different land use category, which is therefore not permitted. With this another store may be opened, a change to a restaurant is not something that can be changed by way of issuing a permit. To address this situation, there is a policy within the Municipal Planning Strategy, which does allow for a change of use to be considered by a development agreement on the basis that there may be situations where a change of use is desirable. This allows HRM to consider a change through a discretionary process, decided upon by Council.

He stated that a development agreement can specify land uses and include a site plan that outlines the features of a property. It can also specify maintenance, hours of operations, and other similar conditions. This would form a contract for that particular property. Currently there is a violation of the Land Use By-law. The development agreement would address this matter.

Mr. Harvey advised of the policy and passed the floor over to Anne Meuke to present the proposal.

3. Presentation of Proposal – Anne Meuke

Anne Meuke stated that there are pictures of the site, with the same building on it, dating back to the 1920's. Other than some siding and minor renovations, the building hasn't changed. There are references to a restaurant or a café, periodically, since the 1920's. There has been a commercial use on that corner for a long time.

She stated that the proposal doesn't make much change to the building. There will be some efficiency improvements on the interior to make the kitchen work better and an upgrade the staff bathroom. It will continue to have 30 seats, with operating hours of Monday, Tuesday & Saturday (10:00am to 7:00pm), Wednesday to Friday (10:00 am to 9:00 pm). She feels that this is a neighborhood restaurant. There is no proposed change in parking. Fifty percent of the restaurant's clientele are walk-ins. Generally, there is good on-street parking in the area, at the times that people stop in to eat.

She noted that the signage would be illuminated with overhead lights, with no back lighting. The signs are the same size as they were for the convenience store. The traffic study showed that, compared to the convenience store, there would be less traffic. She believes that the restaurant contributes to the neighborhood because of the cultural and price variety. She feels that it makes a positive contribution to the neighborhood.

Mr. Harvey stated that the application had been made for the development agreement. Public consultation is the current stage of the process. He stated that this was a very important stage as he hoped to get meaningful input. It is important to understand that there is quite a bit of work to follow the meeting. There would be no decisions made at this point. There will be a detailed review; a staff report will then be drafted, along with the development agreement. That would go to Peninsula Community Council. If they want to consider adopting the development agreement, they will need to hold a public hearing. Following that public hearing, Community Council would then vote on whether to approve or reject the proposal. There is an appeal period after the decision, if rejected or approved.

Mr. Harvey asked a few important questions for the public to consider; should a restaurant be permitted as a change of use and if so, what conditions should be placed in the development agreement, in consideration of the site and surroundings.

4. Questions/Comments

Mr. Harvey advised of the ground rules and opened the floor for questions and comments.

Michael Poworoznyk, Halifax, asked what the phrase “Less intensive non-conforming use” means.

Mr. Harvey stated that an industrial use would be intensive, while a restaurant would be less intensive.

Mr. Poworoznyk stated that part of that represents an underline philosophy that people may want a less intensive use. He believes that more positive activity for the neighborhood is a really good thing. Especially given that the restaurant shows cultural diversity and which is needed to reflect the demographics. He welcomes change and likes the family orientation. He notes the proximity to the other commercial uses. He feels that it is part of the Hydrostone Community. He is happy to see the hours of operation go in the development agreement because he would not like to see it change into something like a bar. He would like to see the hours limited to 11:00 pm, at the latest.

He advised that there was an article in the paper stating that this restaurant will be helping people who are coming out of situations that would benefit from training. He feels that the owner is community minded and is willing to contribute to the community.

He asked how long it would take from the meeting until approval.

Mr. Harvey stated that there is a process but it would be a matter of a few months until a decision could be made.

Jonathan Roberts, African Diaspora Association, stated that his group normally meets at Caribbean Twist for their meetings. It is one of the few places that they get to support a business

that has been created. He feels that it is important to have cultural diversity in each neighborhood, rather than having ethnic restaurants in ethnic areas. He feels this is a good spot because it is a good counterpoint to larger coffee chains. It is family owned and has a good spot in the community. Beyond Caribbean Twist, he feels that a restaurant is a good use for that corner because it fits in the commercial area. He worries that a larger corporation might come along and takes advantage of the area so he is happy to have Caribbean Twist there and supports it. He also noted that the African Diaspora Association supports it as well.

Neila MacDonald, Halifax, asked if the development agreement goes through, could the store remain.

Mr. Harvey stated that if the development agreement doesn't get approved, HRM would continue its action to bring the property in conformity with the Land Use By-law. It could be reverted back to the previous use of a convenience store.

Ms. MacDonald stated that the spot would then be empty if no one wanted to have a store there.

Ms. MacDonald stated that she supports Caribbean Twist.

Lyndon Hibbert, business owner, stated that a convenience store would not be a profitable because of the larger chains available in so many locations.

Joe Clements, Halifax, stated that in the 1920's the site was a grocery store and then changed into a restaurant. He asked why it has never been rezoned.

Mr. Harvey stated that this is something may be looked at in the future due to the commercial uses in the area. There is a significant process to make that kind of change. In some ways, a development agreement will take a shorter length of time.

Mr. Clements asked how it ever became an R-2 Zone when it was a grocery store.

Mr. Harvey stated that it may have had something to do with the fact that the store may not have been attractive in the community so they decided to zone it residential, in hopes that it would go away at some point. Over time, the circumstances may have changed. He noted that this was just a speculation on his part.

Jerry Cameron, Halifax, stated that he is a neighbor of the store and had been using it for about a generation. He feels that Caribbean Twist is a brilliant use of the property as it is ethnically diverse; it would be training people who need the benefit of that. He supports the application. As a neighbor, he feels that corner stores do disappear as the bigger chains move in. He feels that this adds diversity to the neighborhood and will be welcome.

Mr. Harvey stated that if the owner is very successful and it could be something else down the road. He asked if that might cause any great concern. He also asked what the range might be for the development agreement. He put these questions out for people to think about.

Mr. Clements asked that if it was designated as commercial space or would it only ever be a restaurant.

Mr. Harvey stated that the development agreement would be more exacting and it could be limited in its hours of operation and whether or not it could have a liquor license.

Mr. Clements feels that the corner of which the site is on will be changing drastically within the next few years. There may be pressure in the future for change. The school in the area is up for review. He is not sure of the pressure this would put on the site. Currently, as a restaurant, it is very welcome in the neighborhood. It works with the Hydrostone and the triangular park.

Mr. Roberts stated that people are looking for a family style restaurant without extreme hours. He asked if a bigger chain could go there.

Mr. Harvey stated that the development agreement would not be able to be so specific as to specify the type of restaurant, for example, whether it is locally owned. He understands that it is a neighborhood concern but it is outside of the planning regulations. Mr. Harvey stated that it is important for the community to understand that the application is not to permit Caribbean Twist. There could be another restaurant operator in the future or a change to another retail use.

Mr. Poworoznyk asked if there were two tiers of liquor licenses.

Mr. Harvey stated that there could be a whole license, where someone could have a drink with no meal required and there is another type that requires a meal to be purchased to have a drink.

Mr. Poworoznyk would like it specified in the development agreement that there should be a restriction with alcohol in that a meal must be purchased because he doesn't want a bar-like feel. He also would like to have illuminated lights for the sign, as they use less electricity. He would like it to be environmentally friendly. He asked what can be placed in the development agreement.

Mr. Harvey stated that signage for a commercial use, in a residential zone cannot have a great amount of signage.

Mr. Poworoznyk showed concern for the flow of traffic and not the parking. He hoped that the street could be widened to ease the traffic flow.

Mr. Harvey spoke about parking, stating that there are parking spaces on-street and extending the road would not be something that would be looked into, due to the limited intensity of the proposal.

Mr. Hibbert advised that there is plenty of parking in the triangle of the Hydrostone. He doesn't think that it would increase the flow or would cause a traffic issue because of the businesses that are already there and servicing.

Mr. Poworoznyk agrees but stated that if the business were to expand, parking might become an issue.

John Toulaney, property owner, stated that there is lots of parking in the back of the building that could be utilized.

Mr. Harvey stated that the development agreement will recognize that this is not be used for customer parking due to proximity of the intersections and that it is more appropriate that it be used for employees and second floor residents.

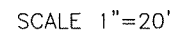
5. Closing comments

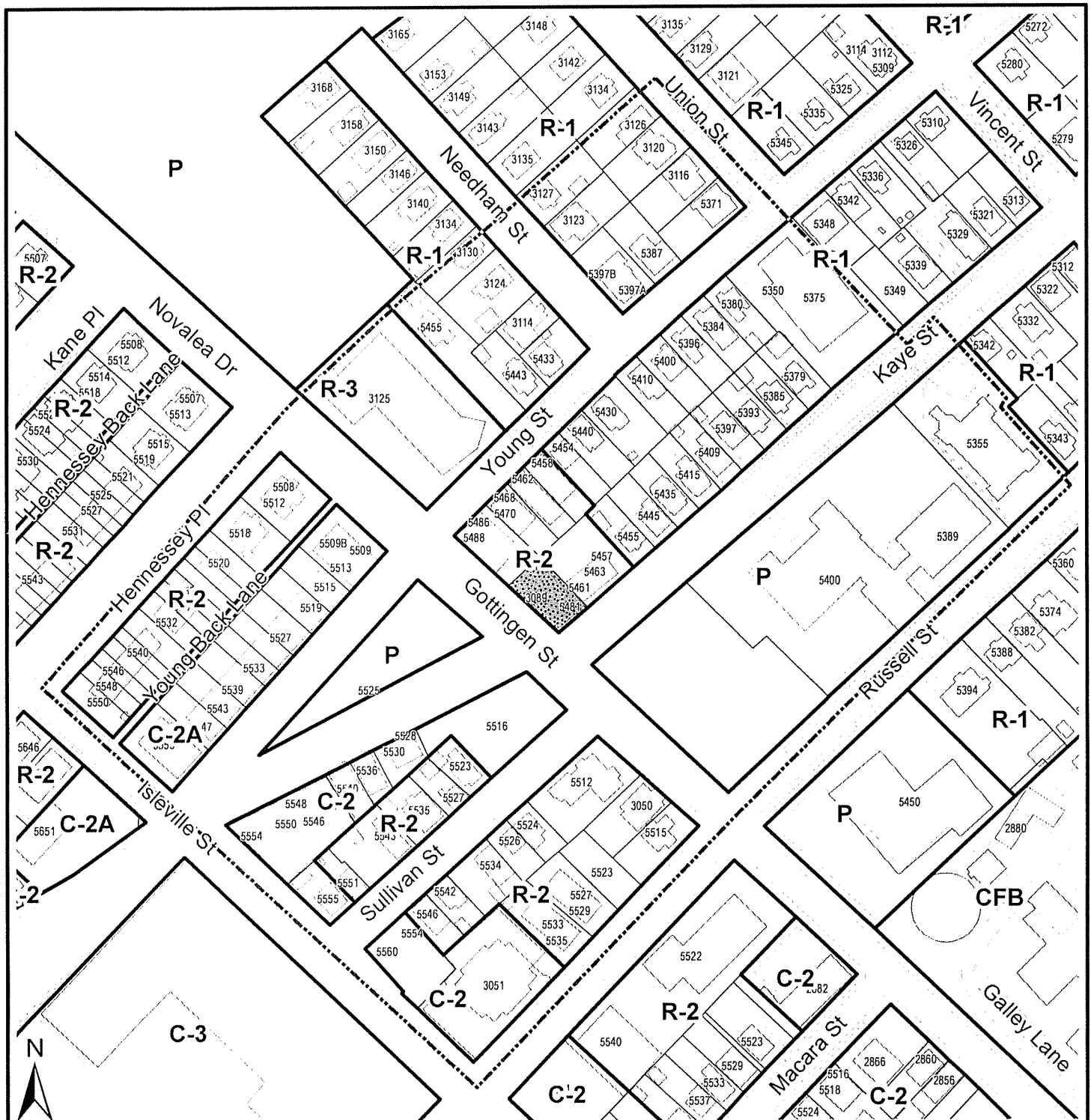
Mr. Harvey gave more information about the process and asked for any other questions. He gave his contact information and thanked everyone for attending the meeting.

6. Adjournment

The meeting adjourned at approximately 7:50 p.m.



GRID NORTH





Map 1 - Location and Zoning

3089 Gottingen Street
Halifax

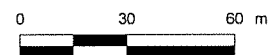
-  Subject area
-  Area of notification

Halifax Peninsula
Land Use By-Law Area

Zone

- R-1 Single Family Dwelling
- R-2 General Residential
- R-3 Multiple Dwelling
- C-2 General Business
- C-2A Minor Commercial
- C-3 General Industrial
- CFB Canadian Forces
- P Park and Institutional

HALIFAX
REGIONAL MUNICIPALITY
COMMUNITY DEVELOPMENT
PLANNING SERVICES



This map is an unofficial reproduction of a portion of the Zoning Map for the plan area indicated

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