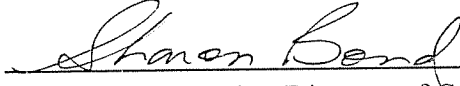




PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

District 12 Planning Advisory Committee
September 22, 2008

TO: Chair and Members of the District 12 Planning Advisory Committee

SUBMITTED BY: 
Sharon Bond, Acting Director of Community Development

DATE: August 29, 2008

SUBJECT: Case 01183: Development Agreement, 5687 Charles Street, Halifax

ORIGIN

Application by Rod Malay on behalf of the owner, Samira Meshal, to permit certain commercial uses, including a restaurant and professional office uses, on the ground floor of an existing mixed use building at 5687 Charles Street, Halifax.

RECOMMENDATION

It is recommended that District 12 Planning Advisory Committee recommend that Peninsula Community Council:

1. Give Notice of Motion to consider an application by Rod Malay on behalf of the owner, Samira Meshal, to permit certain commercial uses on the ground floor of an existing mixed use building at 5687 Charles Street, Halifax, and schedule a public hearing;
2. Approve the development agreement, as contained in Attachment A of this report;
3. Require that the development 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

The property at 5687 Charles Street is the first property on the north side of Charles Street east of Agricola Street (refer to Map 1). It is a 3 storey building with an unoccupied ground floor commercial retail space and 2 residential units above. The surrounding area includes a mix of residential and commercial uses.

Description of Proposal:

The proposal consists of:

- An eat-in and take-out restaurant including an outdoor seating area in the ground floor commercial space, facing Charles Street;
- Two residential units, one each on the second and third floors;
- Allowance for professional office uses in the commercial space as an option; and
- No increase in the height, size or floor area of the existing building.

History of Building and Commercial Uses:

The original single storey building came into existence in the early 1950's prior to the Land Use By-law. The property was zoned C-2, General Business Zone, at that time. It has had several uses but was occupied mainly as an auto body repair shop. In 1995, the Peninsula North Secondary Planning Strategy was approved and the property was redesignated to HDR (High Density Residential) and rezoned to R-3 (Multiple Dwelling Zone). This change made the existing commercial retail use non-conforming to the Land Use By-law, as the use was not residential and the existing building could not comply with other by-law requirements such as angle controls and open space.

In 2007, development approval was given for a 2 storey addition to the building for residential purposes subsequent to the approval of a variance which relaxed the minimum frontage, minimum front yard setback, minimum right side yard setback, minimum lot area and maximum lot coverage requirements.

Zoning and Enabling Policy:

The property lies within Area 6 of the Peninsula North Secondary Planning Area of the Halifax MPS. The subject site is designated High Density Residential (HDR) and zoned R-3 (Multiple Dwelling). Implementation Policy 3.14 and Section 99(4) of the Land Use By-law allow Council to be able to consider the proposal through the development agreement process (refer to Attachment B).

DISCUSSION

Existing policy calls for a balance between the maintenance of low-rise residential areas, allowances for limited neighbourhood and minor commercial uses as well as the suitable re-use of existing non-

conforming uses and structures. As the historic retail use is non-conforming, the existing ground floor space cannot be used for many commercial uses.

Implementation Policy 3.14 provides Council with the ability to approve suitable alternate uses of the ground floor space, provided that they are "less intensive" than the existing or previous non-conforming uses that occupied the space. Since there have been continuous attempts to occupy or rent the space, the non-conformity applies to the last use which legally occupied the space, which, in this case, is auto parts sales. This use could have occupied the entire ground floor. Therefore, Council has some discretion in determining whether the proposed uses (restaurant and professional offices) are less intensive than auto parts sales. In considering the level of intensity of a particular land use, Council may wish to consider factors such as the size or floor area, pedestrian and vehicular traffic, hours of operation, noise levels, lighting and emissions.

It is staff's view that the proposed uses may be considered marginally less intensive than auto parts sales, although no studies have been conducted to compare specific person or vehicle counts or noise or emission levels. In terms of the proposed restaurant use versus auto parts sales, the number of restaurant customers is likely to be slightly fewer, but these customers will stay for longer periods of time. It is staff's understanding that many of the restaurant customers would be walking to this location as opposed to customers arriving by vehicle as they would have for the auto parts sales. In terms of hours of operation, the auto parts sales would have been most likely open on weekdays and on Saturday mornings while the restaurant would be expected to be open for more extended hours.

The following provisions have been placed in the draft development agreement (Attachment A) in order to address neighbourhood compatibility issues:

- permitted land uses are restricted to the restaurant and professional offices as well as those uses permitted as-of-right;
- signs on the building are limited in number and size and are illuminated only from the front;
- deliveries to the building will occur only between the hours of 9am-5pm;
- there will be no outdoor storage or display and the garbage container will be screened;
- mechanical equipment will be screened from the street and be sited as to minimize disturbance to the residential units;
- existing on-site parking is exclusive to the residential use and not for commercial use; and
- no exhaust fans shall be permitted to face the adjacent residential property.

The current building is a significant improvement over the former building and has enhanced the neighbourhood. The proposal provides a reasonable re-use of the ground floor commercial space and is consistent with the intent of the MPS. The draft development agreement (Attachment A) addresses such matters as permitted uses, signs, deliveries and the location of mechanical equipment.

Public Information Meeting/Notification Area

A public information meeting was waived by the local Councillor on the basis of a petition received from the applicant in support of the proposal which includes many of the property owners near the

property (refer to Attachment C). If Community Council decides to hold a public hearing regarding this application, property owners within the area identified on Map 1 will be notified.

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 approve the development agreement. This is the recommended course of action.
2. Council may refuse to enter into the agreement. This alternative is not recommended as staff are satisfied that the proposal is consistent with the policies and intent of the MPS.
3. Council may choose to propose modifications to the agreement. Such modifications may require further negotiations with the Developer.

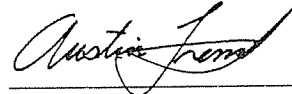
ATTACHMENTS

Map 1	Location and Zoning
Attachment A	Draft Development Agreement containing the following Schedules: Schedule B - Site Plan Schedule C - Photo of Existing Building
Attachment B	Review of Relevant Municipal Planning Strategy Policy
Attachment C	Petition in Support of the Application

A copy of this report can be obtained online at <http://www.halifax.ca/boardscom/Dist12PAC/Agendas.html> then choose the appropriate Agenda by 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, 490-4499

Report Approved by:





Austin French, Manager of Planning Services, 490-6717



Map 1 - Location and Zoning

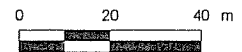
5687 Charles Street
Halifax

-  Subject area
-  Area of notification

Halifax Peninsula
Land Use By-Law Area

Zone

- R-2 General Residential
- R-3 Multiple Dwelling
- C-2 General Business
- P Park and Institutional



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

Attachment A

THIS AGREEMENT made this day of , 2008,
BETWEEN:

SAMIRA MESHAL,
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 located at 5687 Charles Street, Halifax (PID# 00169466) 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 ground floor commercial uses within the existing apartment building on the Lands pursuant to the provisions of the *Municipal Government Act* and pursuant to Implementation 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 on the day of , 2008 (referenced as Municipal Case Number 01183);

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

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

Except as otherwise provided for herein, the development and use of the Lands shall comply with the requirements of the Halifax Peninsula Land Use By-law and the Regional Subdivision 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, as may be amended from time to time, 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 or appropriate professional as required by this Agreement or other approval agencies.

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. Where metric values conflict with imperial values within the written text of this Agreement, the metric values 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 laws, regulations, by-laws or codes applicable to the 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: USE OF LANDS AND DEVELOPMENT PROVISIONS

2.1 SCHEDULES

The Developer shall develop and use the Lands in a manner, which, in the opinion of the Development Officer, is generally in conformance with the following Schedules attached to this agreement and filed in the Halifax Regional Municipality as Case Number 01183:

Schedule A	Legal Description of the Lands
Schedule B	Site Plan
Schedule C	Photo of Existing Building

2.2 Permitted Uses

- 2.2.1 The permitted uses on the ground floor of the existing residential building shall include, in addition to those permitted by the Land Use By-law, professional offices and restaurant (eat-in and take-out) including an outdoor seating area for the restaurant.
- 2.2.2 Other uses proposed for the ground floor of the building which are not indicated in Section 2.2.1 shall only be considered through a substantive amendment to the development agreement.
- 2.2.3 Notwithstanding any other provision of this Agreement, the Developer shall not occupy or use the Lands for any of the uses permitted by this Agreement unless an Occupancy Permit has been issued by the Municipality. No Occupancy Permit 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

2.3 Signs

Signs shall be for safety and identification of the business only and shall be permitted provided that:

- (a) the ground floor commercial uses shall be permitted up to three fascia signs located on the ground floor, the total combined sign area of which shall not exceed 20 square feet;
- (b) a sign is to be provided at the driveway exit warning drivers to watch for pedestrians;
- (c) signs shall not be neon or back lit, but shall be non-illuminated or lit from the front;
- (d) projecting and/or canopy signs may be permitted provided that encroachment permits/licenses are approved;
- (e) no mobile, moveable or fluorescent coloured signs shall be permitted, illuminated or otherwise;
- (f) no flashing lights shall be incorporated in the sign and any lighting shall be arranged so as not to be directed at neighbouring properties; and

- (f) except as otherwise specifically provided for above, all signs shall comply with the requirements of the Halifax Peninsula Land Use By-law.

2.4 Operational Issues

- 2.4.1 The restaurant hours of operation shall conform with all relevant Municipal and Provincial legislation and regulations, as may be amended from time to time.
- 2.4.2 Deliveries to the building shall occur only between the hours of 9:00am and 5:00pm.
- 2.4.3 No outdoor storage or display shall be permitted on the Lands. Refuse containers shall be located in the rear yard outside of the building and shall be fully screened from adjacent properties and from streets by means of opaque fencing or masonry walls with suitable landscaping prior to the issuance of an occupancy permit for any commercial use.
- 2.4.4 All mechanical equipment shall be sited in a manner as to minimize the disturbance to residential units. Mechanical equipment shall be permitted on the roof provided it is incorporated into the architectural treatment/roof structure and provided that the equipment is screened and not visible from Charles Street. Furthermore, no exhaust fans shall be permitted to face the adjacent residential property.
- 2.4.5 The existing on-site parking is exclusive to the residential uses and is not to be used by the commercial patrons.
- 2.4.6 Any outdoor lighting or sign illumination shall be directed away from, or screened from, adjacent residential properties.

2.5 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 buildings, fencing, walkways, 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 removal/salting of walkways and driveways.

2.6 Non-Substantive Amendments

The following item is considered by both parties to be not substantive and may be amended by resolution of Council:

- a) changes to the sign requirements of Section 2.3.

2.7 Substantive Amendments

Amendments to any matters not identified under Section 2.6 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Municipal Government Act*.

3.0 ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

3.1 Enforcement

The Developer agree 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 allow for such an inspection during any reasonable hour within twenty four hours of receiving such a request.

3.2 Failure to Comply

If the Developer fail to observe or perform any covenant or condition of this Agreement after the Municipality has given the Developer 30 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; and/or
- (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 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/or
- (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.

4.0 REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

4.1 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 or Land Registry Office at Halifax, Nova Scotia and the Developer shall incur all cost in recording such documents.

4.2 Subsequent Owners

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 the Council. 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.

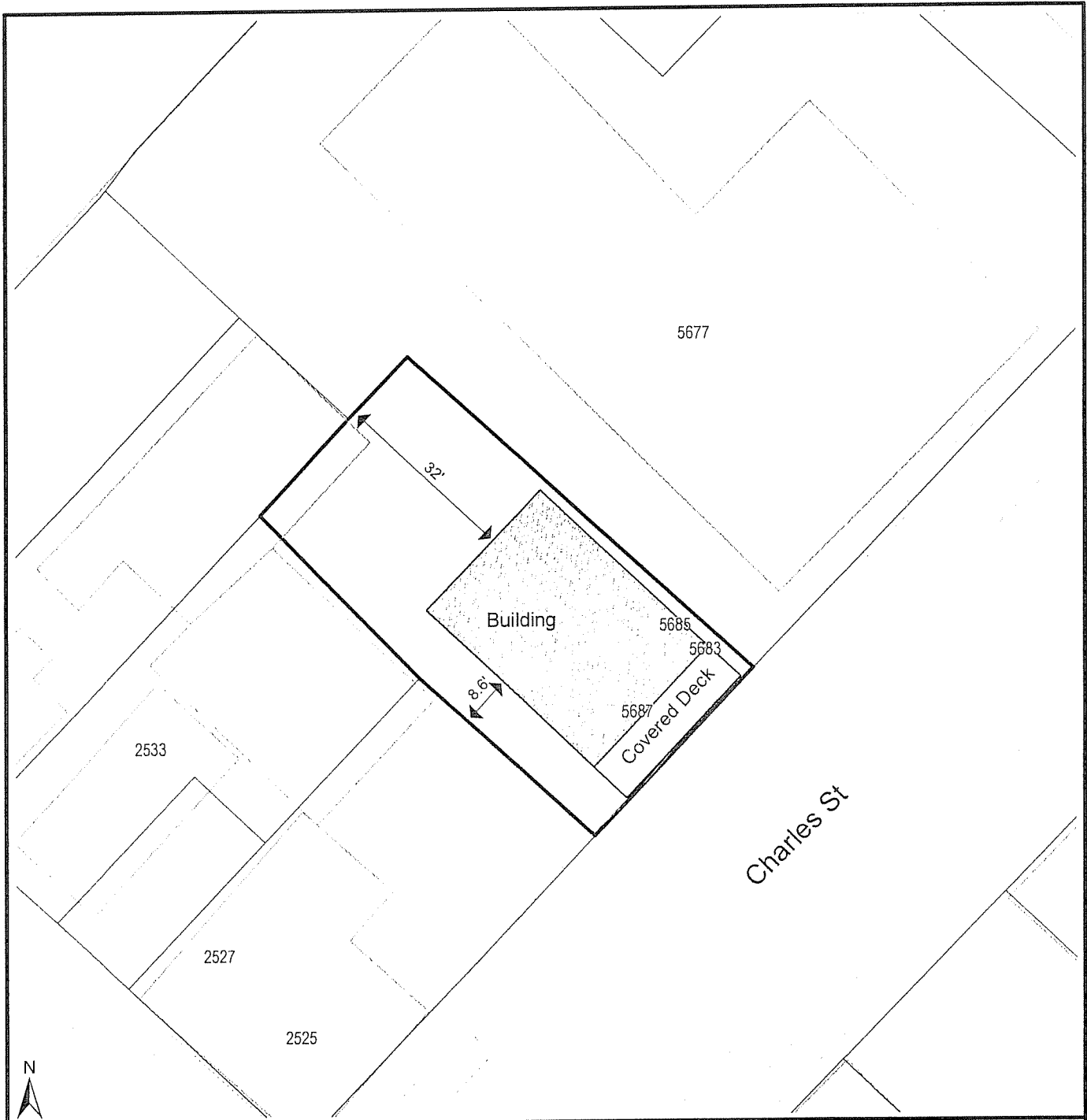
4.3 Commencement of Development

In the event that the proposed development has not commenced within 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.

For the purposes of this section, commencement shall mean the issuance by the Municipality of an Occupancy Permit for the proposed restaurant or office use.


WITNESS that this Development Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, A.D., 2008.

SIGNED, SEALED AND DELIVERED) SAMIRA MESHAL
in the presence of:)
)
per: _____) per: _____
)
Sealed, Delivered and Attested)
by the proper signing officers of)
Halifax Regional Municipality)
duly authorized on that behalf)
in the presence of) HALIFAX REGIONAL MUNICIPALITY
)
)
per: _____) per: _____
) MAYOR
)
per: _____) per: _____
) MUNICIPAL CLERK



Schedule B - Site Plan

5687 Charles Street
Halifax

 Subject property

HALIFAX
REGIONAL MUNICIPALITY
COMMUNITY DEVELOPMENT
PLANNING SERVICES



Halifax Peninsula
Land Use By-Law Area

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

Schedule C



Existing Building

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 original single storey commercial building had little architectural merit so the addition of two residential units above and the architectural detailing and improvements to the facade of the building, now known as the Nile House, not only are complementary to the fabric of the community but have greatly improved the streetscape in this urban condition.</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>The existing on-site parking is exclusive to the residential uses and is not to be used by the commercial patrons. On-street parking will largely be used for clients of the commercial use, which is not viewed as an issue given availability of parking spaces on surrounding streets.</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; 	<ul style="list-style-type: none"> • The location of the residential parking is limited to the existing parking area. • No outdoor storage or display is permitted. <p>Conditions over other matters were not viewed as relevant to this proposal.</p>

<ul style="list-style-type: none"> iv) access from the street; and v) screening, buffering, and landscaping. 	
<ul style="list-style-type: none"> 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: <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>There is no change to the lands that is required to accommodate the proposal and the existing parking arrangement for the residential use is seen as being adequate without additional specifications.</p>
<ul style="list-style-type: none"> e) except where specific benefits to the neighbourhood can be demonstrated, additions to the structures on the property shall not: <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>
<ul style="list-style-type: none"> f) any outdoor lighting or sign illumination shall be directed away from, or screened from, adjacent residential properties; 	<p>The proposed development agreement stipulates that lighting is to be directed away from abutting properties and that any signage associated with the commercial use shall be non-illuminated or lit from the front.</p>
<ul style="list-style-type: none"> g) no bulk refuse containers shall be visible from the street or from the immediate neighbourhood; 	<p>The proposed development agreement requires that refuse containers be located in the rear yard and screened from abutting properties and the street.</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;	No outdoor storage is permitted and the proposed development agreement stipulates that any refuse containers are to be located in the rear yard and screened from abutting properties and the street.
i) with regard to on-site advertising for commercial or industrial uses: 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.	The proposed development agreement allows up to three signs to be affixed to the ground floor facade of the building, the total combined sign area of which shall not exceed 20 square feet.
j) in the case of commercial and industrial operations in residential zones, the following additional considerations shall also apply: 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.	The change in commercial use from retail to restaurant/office use is viewed as being an improvement with regard to neighbourhood compatibility. Conditions related to the placement of mechanical equipment and exhaust fans, restrictions on delivery times, controls on outdoor storage and the location of lighting and signage have been included in the development agreement.
k) No subdivision of the lot shall have occurred subsequent to the time of the adoption of this section.	No subdivision has occurred.