

North West Community Council
January 26, 2006

TO: North West Community Council

SUBMITTED BY: *Gail Harnish / for*
Joel Matheson, Chair
North West Planning Advisory Committee

RE: Case 00842: Discharge of Development Agreement, 1368 Bedford Highway

DATE: January 11, 2006

ORIGIN

North West Planning Advisory Committee meeting - December 7, 2005

RECOMMENDATION

The North West Planning Advisory Committee recommend that the North West Community Council approve the discharge of the development agreement of June 4, 1991, between Karon Holdings Limited and the Town of Bedford, as set out in Attachment A of the staff report dated November 24, 2005.

There was a recorded vote taken on the motion; four voted in favour of the motion and two voted against it.

ATTACHMENTS

Staff report dated November 24, 2005

Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

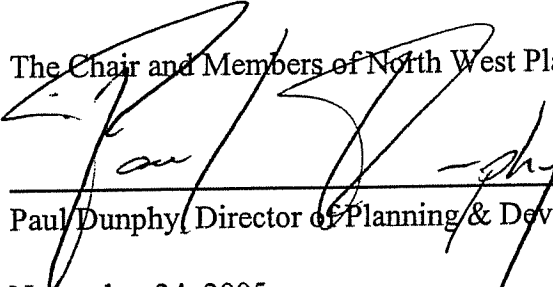
Report prepared by: Gail Harnish, Admin/PAC Coordinator, 490-4937

North West Planning Advisory Committee
December 5, 2005

TO:

The Chair and Members of North West Planning Advisory Committee

SUBMITTED BY:


Paul Dunphy, Director of Planning & Development Services

DATE:

November 24, 2005

SUBJECT:

Case 00842: Discharge of Development Agreement, 1368 Bedford Highway

ORIGIN

1. Application by Karon Holdings Limited to discharge the development agreement for 1368 Bedford Highway.

RECOMMENDATION

It is recommended that the North West Community Council:

1. Approve the discharge of the development agreement of June 4, 1991, between Karon Holdings Ltd. and the Town of Bedford, as set out in Attachment A.

BACKGROUND

Site Description and Location

The subject property is located at 1368 Bedford Highway (see Map 1).

Designation and Zoning

The property is designated Mainstreet Commercial under the Bedford Municipal Planning Strategy (MPS) and is zoned CMC (Mainstreet Commercial). The Development Agreement, ratified June 4, 1991 (previously approved June 19, 1989), permitted the conversion of the first floor of the existing duplex to a retail boutique and gift shop.

Public Information Meeting

No public information meeting was held.

DISCUSSION

The development agreement allowed for the commercial use of the main floor. The property, at the time of the development agreement process, was designated Commercial on the Generalized Future Land Use Map and zoned R-1 (Single Family Residential). The designation was changed to Mainstreet Commercial on the Generalized Future Land Use Map and zoned CMC (Mainstreet Commercial) with the approval of the MPS and Land Use Bylaw in October 1991. The purchaser of the property wishes to use the property for uses permitted under this zone (see Attachment B).

The Development Agreement in subsection 19 states: "This Agreement shall become null and void in the event that a zone is placed on the subject property which accommodates the uses(s) stated in this agreement." The CMC (Mainstreet Commercial) Zone permits retail uses and residential. Staff's position is that the Development Agreement is no longer in effect and therefore should be discharged. Any development would have to meet the requirements of the CMC Zone.

The owners have requested that the Development Agreement be discharged in order allow the CMC Zone requirements to bear on the property. Under these circumstances, staff support the proposed discharge.

BUDGET IMPLICATIONS

None at this time.

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 discharge the Development Agreement and permits would be issued under the provisions of the CMC Zone. This is the recommended course of action.
2. Council could refuse to discharge the Development Agreement. This is not recommended.

ATTACHMENTS

Map 1: Zoning

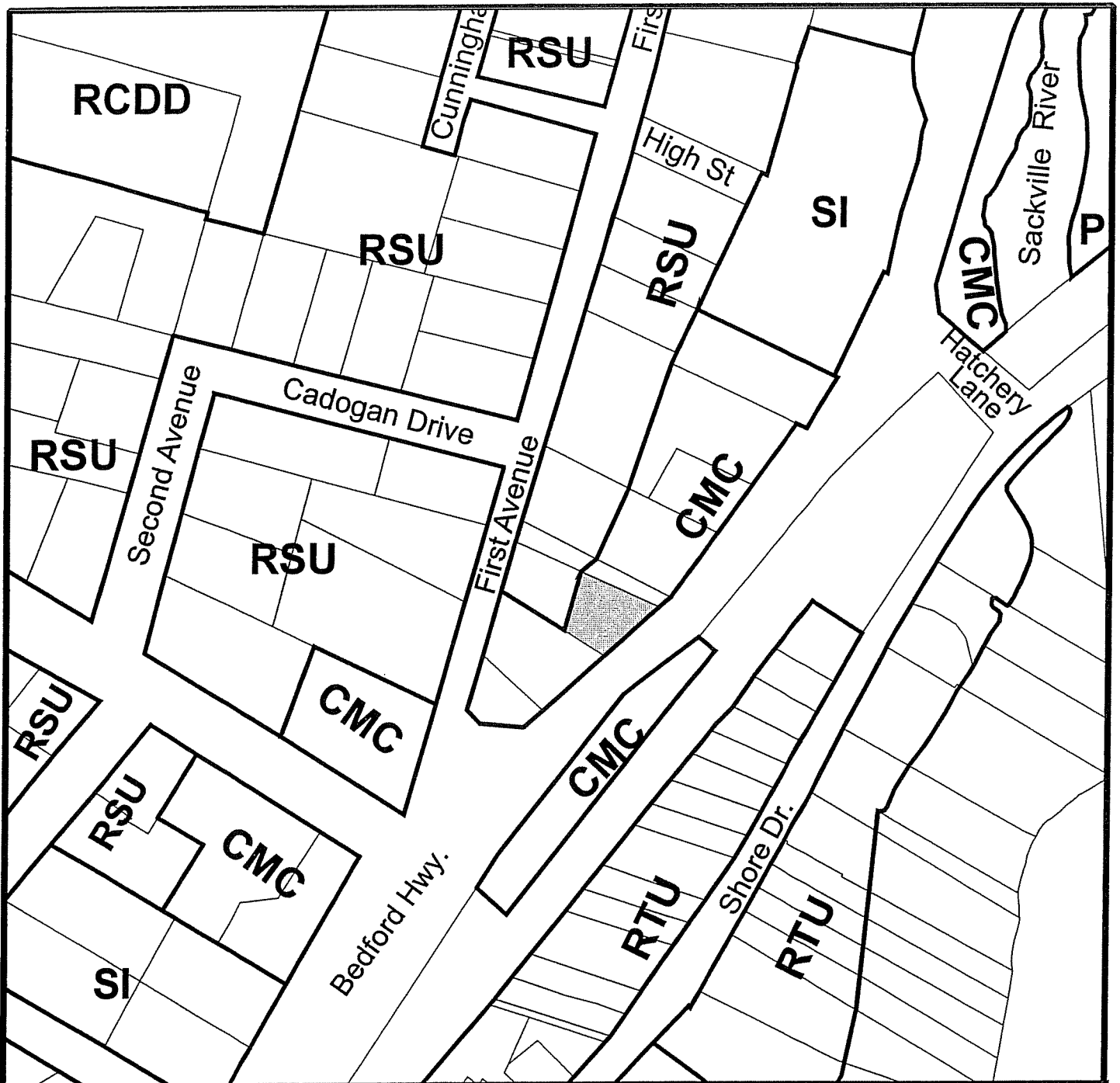
Attachment A: Proposed Discharging Agreement

Attachment B: Extracts from the Bedford Land Use Bylaw

Attachment C: Existing Development Agreement

Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Angus E. Schaffenburg, Senior Planner, Development and Planning 869-4747



Map 1 Zoning



Subject Property

HALIFAX
REGIONAL MUNICIPALITY
Planning Services

| | | | |
|------|--|-----|----------------------------|
| RSU | Single Dwelling Unit Zone | CMC | Mainstreet Commercial Zone |
| RTU | Two Dwelling Unit Zone | SI | Institutional Zone |
| RCDD | Residential Comprehensive Development District | P | Park Zone |



THIS DISCHARGING AGREEMENT made this day of ,
2006,

BETWEEN:

SANORA PROPERTIES INCORPORATED
(hereinafter called the "Owner")

OF THE FIRST PART

-and-

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

OF THE SECOND PART

WHEREAS the Owner is the registered owner of certain lands located at 1368 Bedford Highway in Bedford, also known PID 00434845 (hereinafter called the "Lands");

AND WHEREAS the Town of Bedford entered into a development agreement with the previous owners of the Lands, said agreement being recorded at the Registry of Deeds on August 16, 1991 in Halifax in Book No. 5118, Pages 452-461 (hereinafter referred to as "the Agreement");

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

AND WHEREAS in accordance with the requirements of the Municipal Government Act, the North West Community Council approved the discharge of the existing agreement at a meet held on _____;

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

1. The Agreement is hereby discharged and shall no longer have any force or effect.

Signed, sealed and delivered
in the presence of:

per: _____

Sealed, Delivered and Attested
by the proper signing officers of
Halifax Regional Municipality
duly authorized on that behalf
in the presence of

per: _____

per: _____

MAYOR

per: _____

MUNICIPAL CLERK

Attachment B: Extract from the Bedford Land Use Bylaw

PART 14 MAINSTREET COMMERCIAL (CMC) ZONE

No development permit shall be issued in a Mainstreet Commercial (CMC) Zone except for one or more of the following uses:

- a) dwelling units not to exceed 50% of the gross floor area and not to be located fronting on a street on the first floor
- b) daycare facilities, nursery school, early learning centre
- c) business and professional offices
- d) medical, veterinary, and health service clinics; outdoor kennels associated with veterinary clinics are prohibited
- e) bed and breakfast/guest home establishments not exceed three (3) units per establishment
- f) inn and country inn establishments not exceed ten (10) units per establishment
- g) full Service Restaurant
- h) food stores not to exceed 5,000 sq.ft. per business
- i) post office
- j) general retail stores not to exceed 5,000 square feet per business (excluding mobile home dealers)
- k) personal and household service shops (exclusive of massage parlours)
- l) banks and financial institutions
- m) commercial parking lots
- n) pub, lounge to a maximum of 800 sq. feet devoted to public use
- o) all age/teen clubs
- p) recycling depots
- q) drycleaning depots
- r) notwithstanding a) seniors residential complexes by development agreement in accordance with Policy R-19A
- s) uses accessory to the foregoing uses
- t) existing residential uses
- u) existing motel, inn, hotel uses
- v) funeral homes
- w) existing uses located at 1067, 1111, 1180, 1189, 1239, 1312 and 1350 Bedford Highway as described in Appendix B

ZONE REQUIREMENTS CMC

In any Mainstreet Commercial (CMC) Zone, no development permit shall be issued except in conformity with the following requirements:

Minimum Lot Area 4,000 sq. ft
Minimum Lot frontage 40 ft.

| | |
|-----------------------------------|---|
| Minimum Rear Yard | 40 ft. |
| Minimum Front Yard | 0 ft. |
| Minimum Sideyard | 0 feet; 25 ft. corner vision triangle required for corner lots. |
| Maximum Height of Building | 2 floors above Bedford Highway |
| Maximum Lot Coverage | 50 % |
| Driveway Opening Width | 25 ft. maximum (curb cut) |
| Number of Driveway Openings | Maximum number of driveway openings is one per lot for lots having less than 150 ft. of frontage. Additional driveways (maximum width of 20 ft.) shall be based on one per 150 ft. of additional frontage. Shared driveways are encouraged. |

SPECIAL REQUIREMENT: PARKING

- a) Parking within the front yard shall not be permitted. Parking shall be permitted in the rear and side yard.
- b) Where parking is provided in the side yard all parking lots shall be screened with a natural vegetative buffer along the front property line adjacent the street.
- c) Where Commercial parking lots are permitted in the zone all parking lots shall be screened with six (6) feet of natural vegetative buffer along the front property line adjacent the street.

SPECIAL REQUIREMENTS: LANDSCAPING

Front yards, if provided are to be landscaped. No asphalt other than for driveways and parking areas shall be permitted.

SPECIAL REQUIREMENTS: ARCHITECTURAL GUIDELINES

- a) Building Requirements Buildings of over 50 feet width measured parallel to the street shall have the appearance of two or more buildings by altering the appearance of the facade and/or roof in increments no greater than 50 feet.
- b) Roof Design Requirements Pitched roofs shall have a minimum slope of 10 degrees. Dormers and gables are permitted. Mansard roofs shall not project beyond the face of the wall below, except to permit eaves for ventilation.
- c) Exterior Cladding bricks, wood shingles, wood siding, wood clapboard, stone and acceptable equivalent, however no vinyl siding shall be permitted.
- d) Windows Windows, except for commercial storefronts at grade, shall be treated as individual openings in the wall surface; continuous bands of horizontal glazing will not be permitted except for storefronts at grade. For square and rectangular window openings, the height of window sashes shall exceed the width. Total window area per building face shall not

exceed 50% of the area of the building face (in order to maintain the visual emphasis on the wall surface). Windows shall be accentuated by design details (i.e. arches, hoods, mouldings, decorative lintels, pediments, sills);

- e) Additions to
existing buildings

Additions to the fronts and sides of existing buildings are to conform to these design standards.

SPECIAL REQUIREMENTS: SIGNS

Signs in the Mainstreet Commercial Zone shall be subject to the following general provisions:

1. Permitted signs include signboards, facial wall signs, projecting wall signs, ground signs, window signs, or as an integral part of a canopy, awning or similar device.
2. Signs are to be constructed of wood or have a wood-like appearance, with exterior shielded illumination.
3. Signs shall not obstruct the corner vision triangle at street intersections.
4. The maximum number of permitted signs is 2 per facade, or one (1) per each business in a multiple occupancy building.
5. Signs within the Mainstreet Commercial zone shall also be subject to sub-sections 1, 2, and 3 of Section 38 of the General Provisions.

Signboards

Signboards shall form an integral part of the building facade by being located between the top of the ground floor windows and the bottom of the second storey windows. Signboards shall not exceed a height of 3 feet and shall extend the entire length of the facade.

Facial Wall Signs

Facial wall signs shall not exceed twenty (20) square feet in area and shall not extend beyond the top and extremities of the wall on which it is affixed.

Projecting Wall Signs

Projecting wall signs shall not: a) project more than four feet over a public sidewalk; b) project more than six feet from the building to which it is attached; c) hang closer than nine feet above a sidewalk or public right of way; d) exceed an area of 16 sq. ft.

Ground Signs

Ground signs shall not: a) exceed a height of eight feet; b) exceed an area of 20 sq. ft. per side; c) be within 2 feet of the street right-of-way; d) be within 10 feet of a side property line or driveway.

Sandwich Boards

Sandwich boards shall not exceed a single face area of eight (8) square feet and shall be located so as to not obstruct passage along any public sidewalk.

Canopies/Awnings

Canopies and awnings attached to walls shall not project more than 4 feet over a public sidewalk. Canopies and awnings shall be self supporting and shall be placed a minimum height of 9 feet above a sidewalk. Signage may be included as an integral part of an awning or canopy.

Mobile Signs

Mobile signs shall be permitted once per business for a maximum period of 60 continuous days for new business openings. These signs shall have no moving parts nor display flashing or unshielded lights. These signs shall have a maximum area of 32 sq.ft.

Window Signs

Window signs shall not: a) exceed 25% of the window area; b) exceed 25% of the glass area of a door; area shall be calculated on the basis of the smallest geometric shape which will contain all of the message.

**Development Agreement
For 1368 Bedford Highway (Ron Pierce)
Retail Boutique and Gift Shop**

Civic #1368 Bedford Highway

452

This Agreement made this 4th Day of June, 1991

✓ 33452 ✓

BETWEEN: **KARON HOLDINGS LTD..**

(hereinafter referred to as the "Developer")

- and -

THE TOWN OF BEDFORD, an incorporated Town, of
the County of Halifax, Province of Nova Scotia.

(hereinafter referred to as "the Town")

WHEREAS, the Developer has requested that the Town enter into a Development Agreement, with the Developer, pursuant to sections 55 and 66 of The Planning Act of Nova Scotia, so that the Developer may use the property in a manner which is not presently provided for under the Land Use By-Law of the Town;

THEREFORE, in consideration of the benefits which flow to both parties as a result of the covenants contained herein, the parties hereto agree:

1. The development project (hereinafter referred to as "the Development") includes all components meeting the definition of "development" in the Planning Act, however the project is briefly described as follows:
 - Conversion of the first floor of the existing duplex residential dwelling at 1368 Bedford Highway to a retail boutique and gift shop; retention of the second floor as a self-contained residential dwelling unit.
2. The Developer is the registered owner of, or has registerable ownership rights in the lands as described in Schedule "A" attached hereto (hereinafter referred to as "the lands").

3. The Developer shall construct the Development in conformance with site plans, conceptual plans, supporting technical documents and renderings of the overall development proposal, as submitted to the Council of the Town and as presented to the public at a public hearing held on the 12 day of June 1989, and subsequently filed with the Planning and Development Control Department of the Town, which documents and plans are attached hereto as Schedule "B" and are hereinafter referred to as "the Plans".
4.
 - (1) The Developer shall not develop or use the lands for purposes other than those described in this Agreement.
 - (2) The proposed use of the land which is allowed by this development agreement is the following:
 - a retail boutique and gift shop with related office and storage space on the first floor of the existing structure on "the lands";
 - one self contained residential dwelling unit located on the second floor of the existing structure.

And, for further clarification, does not include the following:

- an expansion of the existing building's floor area beyond five (5) percent;
- a restaurant, tea room, or any other eating establishment;
- a commercial retail use which requires parking in excess of one (1) space per three hundred (300) square feet of floor area as per Part 5, Section 22 of the Town's Land Use By-Law;
- the expansion of on-site parking beyond the two spaces presently provided.

5. The decision of the Development Officer of the Town as to whether the Development is in conformance with the terms of this Agreement, or with the Plans, shall be conclusive.
6.
 - (1) Any substantial amendment to either this Agreement or the Plans, shall be subject to the procedures provided for in Section 66 of the Planning Act.
 - (2) Amendments which are not substantial are any amendments other than those affecting the following:
 - use of the land and the building;
 - any external structural change to the building which increases the floor area of the building by more than five (5) percent;
 - any increase in the area of the commercial retail operation beyond the first floor of the structure;
 - the provision of additional on-site parking or parking on the adjacent residentially zoned lands known as #27 First Avenue.
7. Any amendment whether substantial or otherwise must be approved by both parties in writing.
8.
 - (1) The detailed plans, including but not limited to construction plans, landscaping plans, engineering plans and any location certificates, shall conform with the Plans.
 - (2) The decision of the Development Officer of the Town as to whether the detailed plans are in conformance with the Plans, and with the terms of this Agreement, shall be conclusive.
9. Construction on the site shall comply with all Federal and Provincial laws and all Town By-Laws, regulations and policies in effect in the Town, provided however, that construction on the site shall be exempted from the provisions of the Town's Land Use By-Law only as particularly provided for in this Agreement, and any amendment therefore agreed in writing by the parties, and not otherwise.

10. All specific components of the Development, which could include but are not limited to access, parking, landscaping, screening and buffering, lighting and any other components listed in Schedule "C", shall conform to any requirements as described in Schedule "C" which is attached to this Agreement.
11. Any roads or walkway shall be constructed:
 - (a) in conformance with any specific requirements as shown on the Plans, and
 - (b) unless otherwise stated in section 24 of this Agreement, in conformance with Town standards and specifications for roads and walkways.
12. The Developer shall submit detailed engineering plans of the Development in all cases. When requested to do so by the Development Officer, those plans shall also include the following:
 - (a) The nature and extent of any tree clearing, land filling or land excavating to be undertaken prior to or during construction of the Development;
 - (b) The manner in which the drainage of storm water is to be altered from its existing flow pattern, and how it is to be managed or controlled;
 - (c) The nature of specific controls to prevent the discharge of soil or other sediments or effluent into any neighbouring watercourse during construction.
13. Any engineering plans required pursuant to clause 11 shall be subject to the approval of the Development Officer of the Town, acting on the advice of the Town's Director of Engineering and Works, and shall require approval, in writing, from the Development Officer of the Town before a Development Agreement is issued.
14. (1) The Developer shall maintain the Development and any portion thereof, (including preventative maintenance and repair) to the same standards that the Development and any portion thereof was constructed;

- (2) The Developer shall maintain in all respects, including keeping in good repair and keeping free of snow, any roads or walkways required to be constructed and not owned by the Town.
- 15.
 - (1) All offsite Development costs directly related to the Development shall be the responsibility of the Developer; without limiting the generality of the foregoing, these costs include the costs of road construction or reconstruction and walkway construction as well as connecting to the trunk services such as water, sanitary and storm water systems;
 - (2) Whether a particular offsite development cost is directly related to the Development shall be the decision of the Development Officer, and his decision shall be conclusive.
- 16.
 - (1) In consideration of the sum of Ten Dollars (\$10.00) from the Town, the receipt and sufficiency of which is hereby acknowledged by the Developer, the Developer acknowledges and accepts its obligations under clause 15 of this Agreement notwithstanding any provisions of the Planning Act;
 - (2) The Developer confirms and agrees that the execution of this Development Agreement by the Town is not contingent upon the Developer agreeing to the provisions of clause 15 of this Agreement.
- 17.
 - (1) The entering into of this Agreement was approved in principle by the Council of the Town at a duly held meeting of Council convened on the 19th day of June, 1989;
 - (2) This Agreement shall not be entered into, or signed by both parties, until either the time of Appeal under section 71 of the Planning Act has elapsed or any appeals which have been lodged have been disposed of and the resolution of Council has been affirmed by the Nova Scotia Municipal Board;
 - (3) Neither a development permit nor building permit shall be issued until this Agreement has been entered into by both parties.

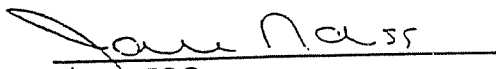
18. This Agreement may be reviewed within five (5) years from the date of execution and at that time, the Town may:
 - (a) leave this Agreement as is;
 - (b) attempt to negotiate a new agreement;
 - (c) discharge this Agreement on the condition that the Developer's rights hereunder are preserved by accommodating this use in the Municipal Planning Strategy and Land Use By-Law of the Town.
19. This Agreement shall become null and void in the event that a zone is placed on the subject property which accommodates the use(s) stated in this agreement.
20. If construction of the Development is not completed, in the opinion of the Development Officer, within five (5) years, the Town may:
 - (a) extend this Agreement;
 - (b) negotiate a new Agreement;
 - (c) discharge this Agreement.
21. If, in the opinion of the Development Officer, construction of the Development has not commenced within twelve (12) months of the date of execution of this Agreement, this Agreement shall be null and void.
22. The Developer agrees to pay for all legal costs and expenses incurred by the Town that have originated from the application for this Development Agreement.
23. It is agreed that the provisions of this Development Agreement are severable from one another and that the invalidity of one provision shall not prejudice the validity or enforcement of any other provision.
24. Schedules A,B, and C, attached to this Agreement shall form part of this Agreement.
25. The Developer shall at all times indemnify and save harmless the Town from and against all claims demands,loss, costs,damages,actions,suits or other proceedings by whomever made,sustained, brought or prosecuted

to the extent that the foregoing are based upon, occasioned by or attributable to anything done or omitted by the Developer or his servants or his agents or employees in the fulfilment of any of its obligations under this agreement.

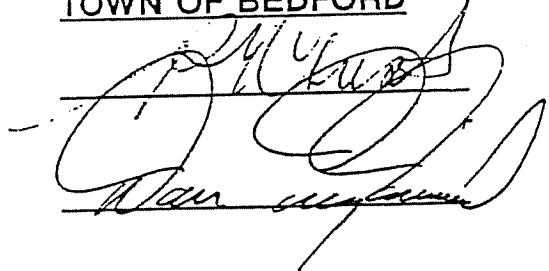
26. The following special provisions shall also apply to the Development:
- (a) Signs shall be placed on the subject property fronting the Bedford Highway as well as in the parking lot of the adjacent commercial business at #1360 Bedford Highway indicating that the parking area for the boutique establishment is the public parking lot on Division Street.
27. The Developer shall convey to the Town, within sixty days of having been requested to do so in writing by the Development Officer of the Town, a good and marketable title to any road, walkway, parkland, recreational land or easement, as indicated in the Plans or as indicated elsewhere in this Agreement.
28. This Agreement shall be binding upon the parties hereto, their heirs, successors and assigns and shall run with the land which is the subject of this Agreement.

DATED at Bedford, Nova Scotia, the day and year first above written.

SIGNED, SEALED AND DELIVERED


WITNESS

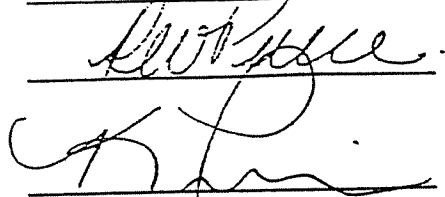
TOWN OF BEDFORD



SIGNED, SEALED AND DELIVERED

Danna Davis - Leves
WITNESS

KARON HOLDINGS LTD.



SCHEDULE "A"

ALL THAT parcel of land and premises situate on the northwesterly side of the Bedford Highway in the Town of Bedford, Province of Nova Scotia, designated as Lot D-2 on a "Plan of Survey of Subdivision of Lands of the Estate of Madge Gertrude Demers", prepared by Wallace Macdonald & Lively, Ltd., signed by A.E. Wallace, N.S.L.S., dated the 23rd day of October, 1985, approved by the Town of Bedford the 26th day of November, 1985, and recorded at the office of the Registrar of Deeds at Halifax as Plan , Drawer , said Lot D-2 having an area of 5,312 square feet, more or less, and being more particularly described as follows:

PREMISING that the line joining Nova Scotia Coordinate Monument 22261 to Nova Scotia Coordinate Monument 61 has a grid bearing of North $48^{\circ}30'11''$ East, and relating all bearings herein thereto;

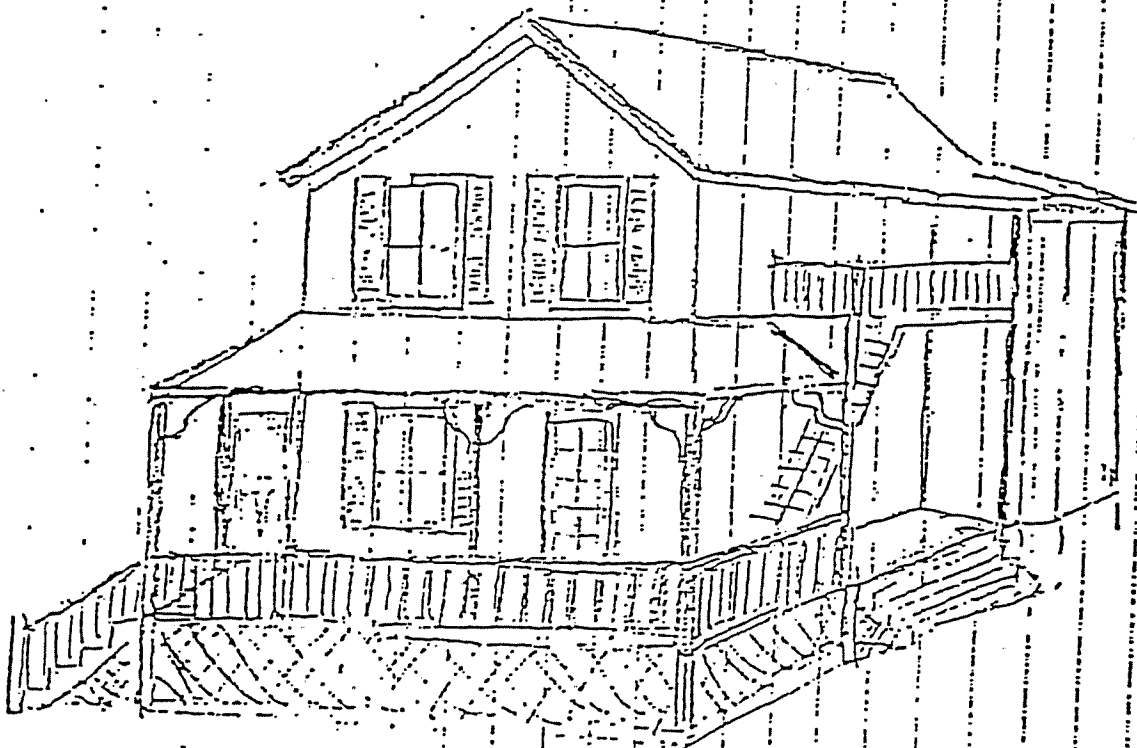
COMMENCING at a survey marker placed on the northwesterly limit of the Bedford Highway at the most easterly corner of Lands now or formerly of Karon Holdings Limited, as shown on said plan;

THENCE North $61^{\circ}15'34''$ West along the northeasterly limit of said Karon Holdings Limited Lands a distance of 54.00 feet to a survey marker placed at the southeast corner of Lot D-1, as shown on said plan;

THENCE North $18^{\circ}10'12''$ East along the easterly limit of said Lot D-1 a distance of 68.60 feet to a survey marker placed on the southwesterly limit of a 16-foot wide Right-of-Way, as shown on said plan;

THENCE South $65^{\circ}28'19''$ East along the southwesterly limit of said Right-of-Way a distance of 96.79 feet to a survey marker placed on the northwesterly limit of the Bedford Highway aforesaid;

THENCE South $50^{\circ}37'20''$ West along the northwesterly limit of said Bedford Highway a distance of 80.33 feet to the point of commencement.



SCHEDULE "C"

(a) PARKING REQUIREMENTS

The parking requirements for this establishment shall be achieved through the utilization of public parking spaces located on Division Street. Additional on-site parking shall not be required or permitted on #1368 Bedford Highway. Parking for the proposed boutique shall not be permitted on the adjacent residentially zoned lands known as #27 First Avenue.

(b) LIGHTING REQUIREMENTS

Illumination of the commercial activity or any sign associated with it shall be directed away from the abutting residential use to the west of the development and away from the Bedford Highway as per Part 5, Section 20 of the Town's Land Use By-Law.

(c) SIGNS

As per the Land Use By-law and Section 26(a) of this Agreement.

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 10:02 o'clock A. M., on the 16th
day of August A.D., 1991
Book No. 5118 at Pages 452-461
as Document Number 33452

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

