



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Chebucto Community Council
May 4, 2009

TO: Chair and Members of Chebucto Community Council

SUBMITTED BY:

A handwritten signature in dark ink, appearing to read "Paul Dunphy", written over a horizontal line.

Paul Dunphy, Director of Community Development

DATE: April 23, 2009

SUBJECT: **Case 01244: Development Agreement, 91 Purcells Cove Road,
Halifax**

ORIGIN

Application by Daniel and Madonna Kunzli for a development agreement to replace a non-conforming commercial use with a residential dwelling unit at 91 Purcells Cove Road, Halifax.

RECOMMENDATION

It is recommended that Chebucto 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 91 Purcells Cove Road, Halifax, and to schedule a public hearing.
2. Approve the proposed development agreement, as contained in Attachment "A."
3. Require that the proposed development agreement be signed and delivered within 120 days, or any extension thereof granted by Council on request of the applicant, from the date of final approval by Council and any other bodies as necessary, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

The subject property, 91 Purcells Cove Road, Halifax (PID 00252270), is zoned R-1 (Single Family Dwelling Zone) under the Halifax Mainland Land Use By-law. The ground floor of the building has been used as commercial space since at least 1960, and as such is considered a non-conforming use. This space was most recently occupied as Phil's Fish and Chips and, among other uses, was formerly occupied as the Melville Snack Bar. The upper storey of the building contains a residential dwelling unit.

The property owners have made an application to convert the existing ground floor commercial space into a second residential dwelling unit. Should Council approve the development agreement, the authorized use of the property would be a two unit dwelling, and commercial uses would no longer be permitted.

DISCUSSION

Designation and Municipal Planning Strategy (MPS) Policy

The property is designated as Low Density Residential (LDR) under the Mainland South Secondary Area Plan. The LDR designation permits both single unit dwellings and two unit dwellings. As the proposal does not meet all of the requirements of the R-2 (Two Family Dwelling) Zone, rezoning was not explored by this application.

The Halifax Municipal Planning Strategy (MPS) allows Council to consider this change of use by development agreement, 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 that are to be reviewed when evaluating a change in use, which are primarily focussed on mitigating impact upon neighbouring properties and ensuring that a new use is less-intensive than the current use (Attachment “B”, Review of Applicable Municipal Planning Strategy Policies).

Analysis

The change in use from commercial to residential is a change to a less intensive use and will lessen the level of activity on the property and its impact upon surrounding neighbourhood. Specifically, impacts on the community such as traffic generation, noise, and odour are typically much lower for

residential uses than commercial uses. From the review of the proposal against the criteria found in policy 3.14, the matters that warrant attention are as follows:

Compatibility

The existing neighbourhood is residential, and although it primarily consists of single unit dwellings, there are a few two unit dwellings along this portion of Purcells Cove Road. As well, lands at the rear of this property, fronting on Melville Avenue, are zoned R-2. As such, a two unit dwelling is more compatible with the community than the existing commercial use.

Architectural Design

The property owners have undertaken renovations to make the building more physically compatible with the residential environment. These include reducing the size of the windows on the front facade, relocating the front entrance and removing the commercial canopy. These renovations are reflected in the illustration provided in Schedule C of the development agreement.

Landscaping

Currently, the entire front yard of the property is paved and used for vehicular access. To be consistent with both the MPS and the provisions of the LUB, the development agreement requires that 2/3 (67%) of the front yard of the property be landscaped, and a maximum of 1/3 (33%) of the front yard be used for vehicular access, parking and manoeuvring.

Dwelling Unit Size

The LUB requires a minimum of 900 square feet of living space for each dwelling unit. The proposed dwelling unit on the ground floor is approximately 765 square feet. As the intent of the policy is still met, the development agreement will permit this dwelling unit to be undersized.

Front Yard Setback

The proposal generally conforms to the requirements of the R-2 Zone of the LUB with one exception: the existing building does not meet the required setback from the street line. This is not uncommon for older buildings in this area and has no bearing on the current application.

Public Meeting / Area of Notification

A public information meeting was not held for this application. In lieu of a public information meeting, residents within the notification area shown on Map 1 were sent letters advising them of the proposal and requesting comment. Staff received two responses to the letters, both in favour of the

proposal. Should Council decide to hold a public hearing, in addition to published newspaper advertisements, property owners in the area shown on Map 1 will be sent written notification.

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 this 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 entire development agreement. This is the staff recommendation.
2. Council may choose to alter the terms of the development agreement. This may necessitate further negotiations with the applicant and may require an additional public hearing.
3. Council may refuse the entire development agreement. Pursuant to Section 245 (6) of the *Halifax Regional Municipality Charter*, Council must provide reasons for this refusal, based on the policies of the MPS.

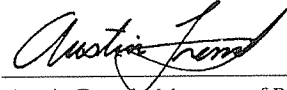
ATTACHMENTS

Map 1	Location, Zoning, and Area of Notification
Attachment "A"	Proposed Development Agreement
Attachment "B"	Review of Applicable Municipal Planning Strategy Policies

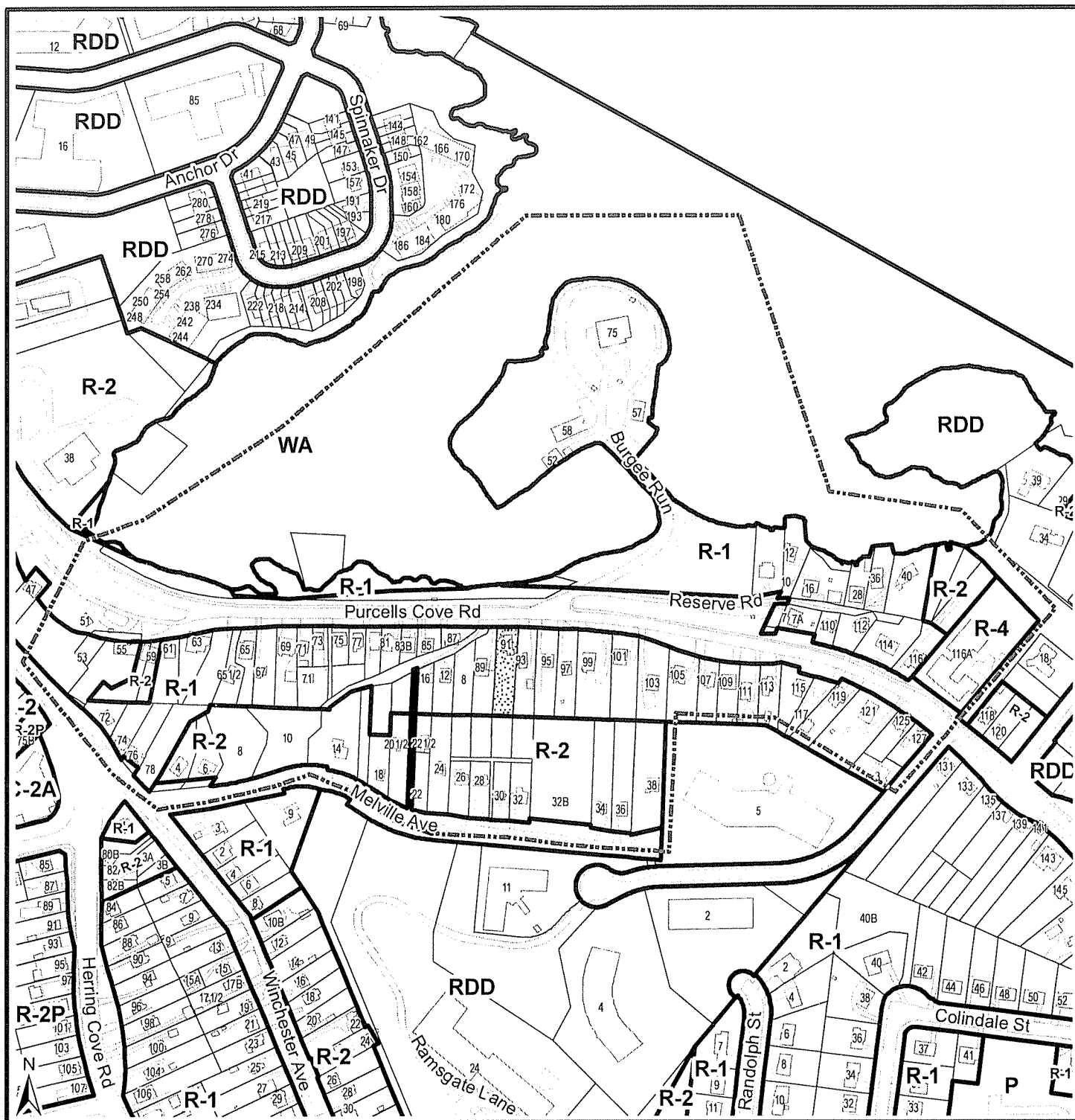
A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by : Patricia Hughes, Planner I, Community Development, 490-1948

Report Approved by:





Austin French, Manager of Planning Services, 490-6717



Map 1 - Location and Zoning

91 Purcells Cove Road
Halifax


 Subject area
 Area of notification

Halifax Mainland
Land Use By-Law Area

Zone

R-1 Single Family Dwelling
R-2 Two Family Dwelling
R-2P General Residential
R-4 Multiple Dwelling
RDD Residential Development District
C-2A Minor Commercial
WA Water Access

HALIFAX
REGIONAL MUNICIPALITY
COMMUNITY DEVELOPMENT
PLANNING SERVICES

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

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

Attachment "A" - Proposed Development Agreement

THIS AGREEMENT made this day of , 2009

BETWEEN:

DANIEL AND MADONNA KUNZLI

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

OF THE FIRST PART

- and -

HALIFAX REGIONAL MUNICIPALITY,

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

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located at 91 Purcells Cove Road, [Insert PID #] , Halifax 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 a second residential dwelling unit on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policy 3.14 of the Implementation Policies of the Halifax Municipal Planning Strategy and Section 71(5) of the Land Use By-law for Halifax Mainland;

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

AND WHEREAS the Chebucto Community Council approved this request at a meeting held on _____, referenced as Municipal Case Number 01244;

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

Applicability of Agreement

- 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.

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

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

Applicability of Other By-laws, Statutes and Regulations

- 1.3 Further to clause 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 in connection with the development and use of the Lands.
- 1.4 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.

Conflict

- 1.5 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.
- 1.6 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.

Costs, Expenses, Liabilities and Obligations

- 1.7 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 regulations, by-laws or codes applicable to any lands.

Provisions Severable

- 1.8 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.
- 1.9 All words unless otherwise specifically defined herein shall be as defined in the applicable Land Use By-law and Subdivision By-law.

PART 2: USE OF LANDS AND DEVELOPMENT PROVISIONS

Schedules

- 2.1 The Developer shall develop the Lands in a manner, which, in the opinion of the Development Officer, is generally in conformance with the Schedules attached to this agreement, filed in the Halifax Regional Municipality as Case Number 01244, and identified as follows:

Schedule "A" - Legal Description of the Lands

Schedule "B" - Site Plan

Schedule "C" - Front Elevation

Requirements Prior to Approval

- 2.2 Notwithstanding any other provision of this Agreement, the Developer shall not occupy or use the Lands for any use 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.

Permitted Land Uses

- 2.3 The Developer shall not develop or use the Lands for any purpose other than a two unit dwelling which is generally in conformance with Schedules B and C of this agreement.
- 2.4 Notwithstanding Section 2.3 of this Agreement, nothing shall prevent the developer from using the Lands for other uses permitted by the Land Use By-law, including but not limited to accessory uses and home occupations, provided that all requirements of the Land Use By-law are met.
- 2.5 Development of the Lands shall conform to the R-2 (Two Family Dwelling) Zone of the Land Use By-law, unless otherwise in this agreement.

- 2.6 The dwelling unit located on the ground floor of the existing building must have a minimum of 750 square feet of living space.
- 2.7 Notwithstanding Section 2.3 of this Agreement, the Development Officer may approve changes to the building and site plans (Schedules B and C attached) provided that the changes are in conformance with Sections 2.4, 2.5, and 2.6.
- 2.8 Accessory buildings are permitted subject to the requirements of the Land Use By-law.
- 2.9 The variance provisions and procedures enabled by the *Halifax Regional Municipality Charter* (Sections 259 to 261) shall apply to the development of the Lands permitted by this Agreement except that, where the Charter references "Land Use By-law", the words "this Agreement" shall be substituted.

Landscaping

- 2.10 A maximum of 33% of the front yard shall be used for vehicular access, manoeuvring and parking.
- 2.11 A minimum of 67% of the front yard must be landscaped.

PART 3: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

Enforcement

- 3.1 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 the building on the Lands, to allow for such an inspection during any reasonable hour within one day of receiving such a request.

Failure to Comply

- 3.2 If the Developer fails 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;
 - (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 Lands and be shown on any tax certificate issued under the *Assessment Act*; and

- (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
- (d) in addition to the above remedies the Municipality reserves the right to pursue any other remediation under the Halifax Regional Municipality Charter or Common Law in order to ensure compliance with this Agreement.

PART 4: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

Registration

- 4.1 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, Halifax, Nova Scotia and the Developer shall incur all cost in recording such documents.

Subsequent Owners

- 4.2 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.
- 4.3 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.

Commencement of Development

- 4.4 In the event that the use permitted pursuant to this Agreement has not commenced within three years from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office, as indicated herein, 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. For the purposes of this clause, commencement means the issuance of an Occupancy Permit for the second dwelling unit.
- 4.5 Council may consider granting an extension to the date of commencement specified in clause 4.4 through a resolution where the Municipality receives a written request from the Developer prior to the expiry of the commencement of development time period.

Discharge

- 6.8 After five years from the date of registration of this Agreement with the Registry of Deeds or Land Registry Office, 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 on the condition that for those portions of the development that are deemed complete by Council, the Developer's rights hereunder are preserved and the Council shall apply appropriate zoning pursuant to the Halifax Municipal Planning Strategy and Halifax Mainland Land Use By-law, as may be amended from time to time.

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, A.D., 2009.

Signed, sealed and delivered 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: _____

DANIEL AND MADONNA KUNZLI

per: _____

per: _____

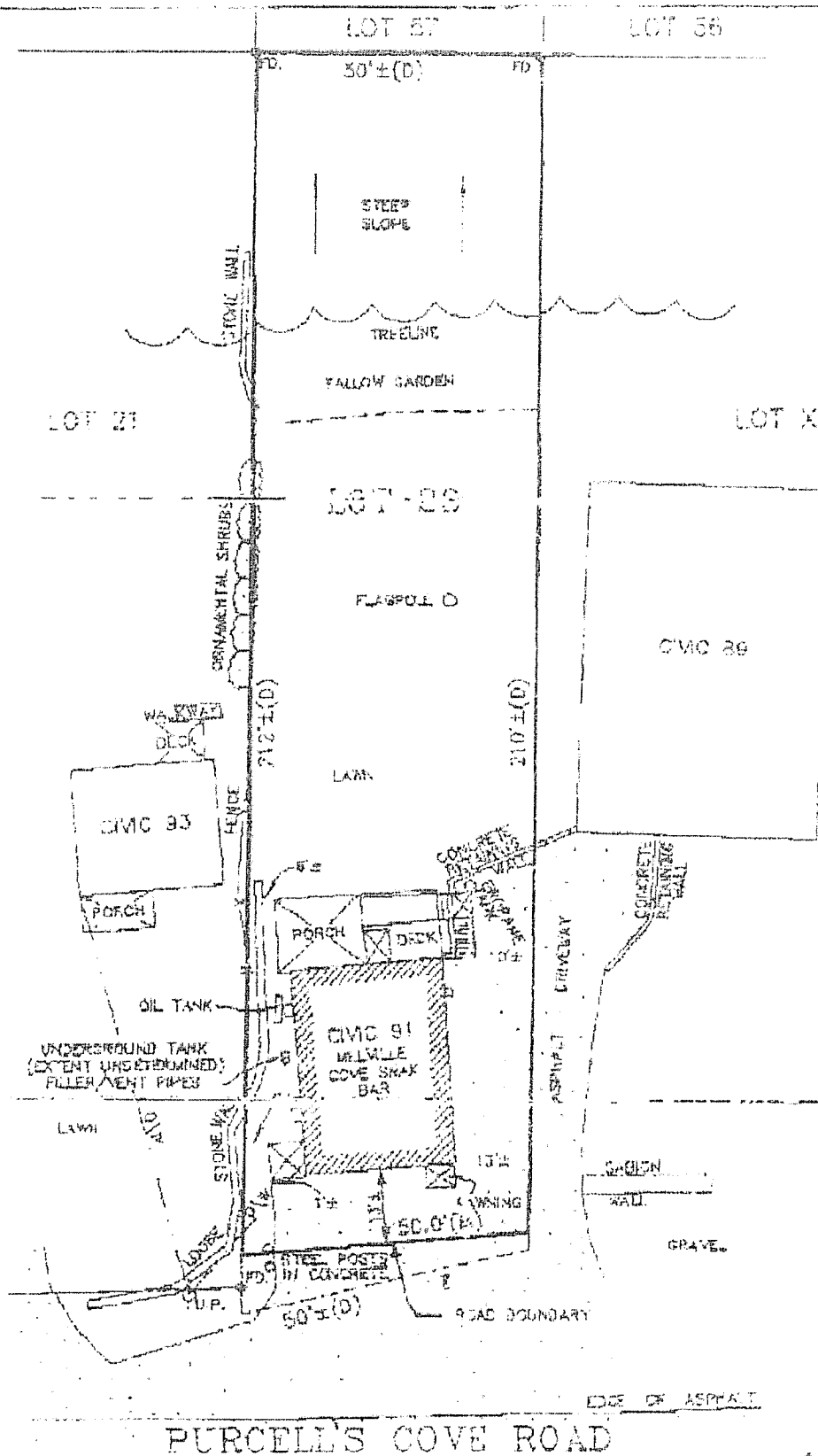
HALIFAX REGIONAL MUNICIPALITY

per: _____

MAYOR

per: _____

ACTING MUNICIPAL CLERK



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Attachment "B" - Review of Relevant Municipal Planning Strategy Policy	
Policy	Comment
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:	This proposal can be considered, as the proposed residential use is less intensive than the existing commercial use.
<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. 	<ul style="list-style-type: none"> i) Modifications, including reducing the size of windows, relocating the front entrance, and removing the commercial canopy, have been undertaken to transform the building into a residential building which is more compatible with the existing community. ii) To be consistent with the zoning requirements, the development agreement requires that 67% of the front yard be landscaped. iii) The location of entrances is consistent with residential uses. iv) Existing fences near the rear of the property are consistent with residential uses.
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;	Traffic flow and parking are typically much less of an issue with residential uses than commercial uses.
<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. 	Outdoor display and storage are not associated with the proposed use. Impacts from parking and vehicular access are typically much lower for residential uses than commercial uses, and no specific provisions are required. The removal of the commercial use is thought to ameliorate any existing problems.
d) except where specific benefits to the neighbourhood can be demonstrated, all	There are no additions proposed at this time. The development agreement requires that all

Policy	Comment
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: 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.	future additions meet the requirements of the zone. There is no off-street parking, loading areas, outdoor storage or display associated with this use.
e) except where specific benefits to the neighbourhood can be demonstrated, additions to the structures on the property shall not: 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;	There are no additions proposed at this time. The development agreement requires that all future additions meet the requirements of the zone.
f) any outdoor lighting or sign illumination shall be directed away from, or screened from, adjacent residential properties;	Outdoor lighting and signs are not associated with this use.
g) no bulk refuse containers shall be visible from the street or from the immediate neighbourhood;	Bulk refuse containers are not associated with this use.
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;	Outdoor storage is not associated with this use.
i) with regard to on-site advertising for commercial or industrial uses: i) where the property is located in a	Not applicable.

Policy	Comment
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.	
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.	Not applicable.
k) No subdivision of the lot shall have occurred subsequent to the time of the adoption of this section.	No subdivision has occurred.