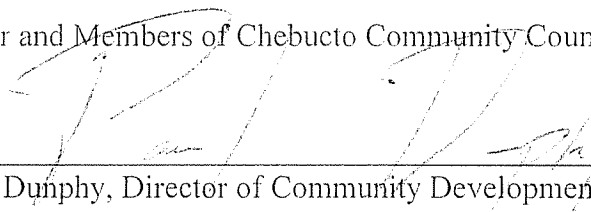


Chebucto Community Council
February 7, 2011

TO: Chair and Members of Chebucto Community Council

SUBMITTED BY: 
Paul Dunphy, Director of Community Development

DATE: January 24, 2011

SUBJECT: **Case 16558: Lot Modification Development Agreement, Sylvia Ave.,
Halifax**

ORIGIN

Application by Habitat for Humanity.

RECOMMENDATION

It is recommended that Chebucto Community Council:

1. Move Notice of Motion to consider an application by Habitat for Humanity to enter into a development agreement for property at 10 Sylvia Avenue, Halifax and schedule a public hearing.
2. Approve the proposed development agreement, included as Attachment A of this report, to allow the property at 10 Sylvia Avenue to be subdivided and developed for two semi-detached dwellings.
3. Require that the Development 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 shall be void and any obligations arising hereunder shall be at an end.

BACKGROUND

Habitat for Humanity is a not-for-profit organization that builds affordable housing, mainly through volunteer construction, and encourages home ownership for lower income levels. They propose to develop two semi-detached dwellings at 10 Sylvia Avenue in Spryfield.

The organization purchased the property in 2007 believing that the lands were large enough to subdivide for this purpose. The zoning regulations of the Halifax Mainland Land Use Bylaw (LUB) allow semi-detached dwellings to be developed on properties with a minimum lot area of 5,000 square feet (see Attachment B). However, based on a land survey, it was found that the property is actually only 9,844 square feet in area. The property has been in existence since 1946. A house was demolished on the property in 2004 and the property is currently vacant.

Habitat for Humanity has therefore applied to establish the semi-detached dwellings by a development agreement. Through the development agreement, it is also seeking a reduction to the front yard setback requirement for certain building features.

Proposal

Habitat for Humanity is proposing that, for this site, the lot area requirement in the Halifax Mainland LUB for semi-detached dwellings be modified to allow one semi-detached lot of an area of approximately 2,344 square feet (154 square feet smaller than the required 2,500 square feet). It is further proposing that the front yard setback requirements be reduced to 15 feet (5 feet less than the required 20 feet), with the allowance for building features, such as stairs or bay windows, to be placed no more than 5 feet from the main wall of the buildings.

Location, Designation , Zoning and Surrounding Uses

- The property is located on the corner of Sylvia Avenue and River Road (PID 40095689) near Herring Cove Road.
- The property is zoned R-4 under the Land Use Bylaw for Halifax Mainland, Mainland South Secondary Plan, and is designated High Density Residential in the Municipal Planning Strategy for Halifax (See Maps 1 & 2).
- The surrounding area is a mix one and two storey dwellings with 2, three storey apartment buildings opposite the property on Sylvia Avenue.

Enabling Policy

Implementation Policy 4.6 (see Attachment C) of the Halifax MPS establishes the ability to enter into a Development Agreement to modify the lot requirements within the Halifax Peninsula LUB and the Halifax Mainland LUB.

DISCUSSION

Implementation Policy 4.6 enables the modification of the lot area and yard requirements of the LUBs for Halifax Peninsula and Halifax Mainland through a development agreement. The policy contains criteria to be satisfied when considering a modification. They include the importance of maintaining the character of the surrounding neighbourhood and securing appropriate development for the property that could not be achieved without the modification.

Lot Area

The proposed modifications to the lot area requirements of the LUB are quite minor in nature. The semi-detached dwellings are consistent with the character of the area. It is important to note, that there are more intensive forms of development including apartment buildings that are permitted as of right on this property. Habitat for Humanity has chosen to develop the semi-detached dwellings in order to promote resident home ownership.

Implementation Policy 4.6 also requires the consideration of Section II of the MPS for Halifax. The most relevant policy is Policy 2.4

2.4 *Because the differences between residential areas contribute to the richness of Halifax as a city, and because different neighbourhoods exhibit different characteristics through such things as their location, scale, and housing age and type, and in order to promote neighbourhood stability and to ensure different types of residential areas and a variety of choices for its citizens, the City encourages the retention of the existing residential character of predominantly stable neighbourhoods, and will seek to ensure that any change it can control will be compatible with these neighbourhoods.*

The R-4 zone permits a variety of residential uses including an apartment house with a density of 75 persons per acre. This would result in a density of approximately 16 to 17 persons, potentially comprising 6 to 8 units. The proposed semi-detached dwellings would create a density similar to the requirement for a multi unit building, but at a scale that would be more complementary to the neighbourhood. The surrounding area is a mix of one and two storey dwellings with 2, three storey apartment buildings opposite the property on Sylvia Avenue. The proposed semi-detached dwellings will add to the variety of housing types, while still retaining the existing character of the neighbourhood.

Front Yard

The other element sought to be modified is the front yard setback requirement for the lot proposed to front on River Road. For this lot, the front yard setback requirements are to be reduced to 15 feet (5 feet less than the required 20 feet), with the allowance for building features, such as stairs or bay windows, to be placed no more than 5 feet from the main wall of the

building. Such a modification could be considered by the Development Officer through the variance process, however, the development agreement process also affords such an opportunity.

The proposed modification to the front yard setback is in keeping with intent of the LUB. The LUB permits a flankage yard of 10 feet, which will apply to the lot which fronts on Sylvia Avenue. If the property was not subdivided, a building could be constructed up to 10 feet from the street along the majority of the length of River Road. The relaxed setback will also provide a more gradual building stepback along River Road.

It is also important to note, as the subject property is a corner lot and elongated in shape, the lots to be created along River Road will be more shallow than other lots of the same size. For this reason, this situation is unique and the difficulty experienced is not general to the properties in the area.

Based upon the policies of the MPS for Halifax, the proposal is suitable and will be a positive contribution to the neighbourhood. A detailed analysis of the applicable policies of the MPS is provided in Attachment D of this report.

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, 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 through information leaflets mailed to residents in the notification area (see Map 3). Residents were invited to express any concerns regarding the proposed development agreement. Information concerning the application has also been made available on the HRM website. As of the date of this report no comments from the public have been received by staff.

ALTERNATIVES

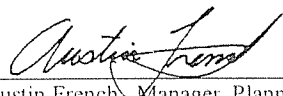
1. Council may choose to approve the proposed development agreement as set out in Attachment A of this report. This is the recommended course of action.
2. Council may choose to approve the proposed development agreement subject to modifications. This may necessitate further negotiation with the applicant.
3. Council may choose to refuse the proposed development agreement, and in doing so, must provide reasons based on a conflict with MPS policies. This alternative is not recommended for the reasons stated within this report.

ATTACHMENTS

Map 1:	Generalized Future Land Use Map
Map 2:	Zoning Map
Map 3:	Notification Area
Attachment A:	Proposed Development Agreement
Attachment B:	Excerpts from the LUB for Halifax Mainland
Attachment C:	Excerpts from the MPS for Halifax
Attachment D:	Review of Relevant Policies from the MPS for Halifax

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 : Jillian MacLellan, Planner 490-4423

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

Attachment A:
Proposed Development Agreement

THIS AGREEMENT made this day of **[Insert Month]**, 20__,
BETWEEN:

<INSERT DEVELOPER NAME>
a body corporate, 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 10 Sylvia Avenue, 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 modify the lot requirements of the Land Use Bylaw for Halifax Mainland on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Implementation Policy 4.6 and Section II of the Municipal Planning Strategy for Halifax and Section 31 of the Land Use By-law for Halifax Mainland;

AND WHEREAS the Chebucto Community Council for the Municipality approved this request at a meeting held on **[Insert - Date]**, referenced as Municipal Case Number 16558.

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, use and subdivision of the Lands shall comply with the requirements of the Land Use By-law for Halifax Mainland 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

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

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, SUBDIVISION AND DEVELOPMENT PROVISIONS

2.1 Schedules

The Developer shall develop the Lands in a manner, which, in the opinion of the Development Officer, conforms with the following Schedules attached to this Agreement and filed in the Halifax Regional Municipality as Case Number 16588:

Schedule A	Legal Description of the Lands
Schedule B	Subdivision Plan

2.2 General Description of Land Use

2.2.1 The uses of the Lands permitted by this Agreement are the following:

- (a) Any use permitted within the R-4 (Multiple Dwelling) Zone, subject to the provisions contained within the Land Use Bylaw for Halifax Mainland.
- (b) Notwithstanding clause (a), where the lands are developed for semi-detached dwellings, the siting requirements of Section 2.3 and the subdivision requirements of Section 2.4 of this agreement shall prevail.

2.3 Siting Requirements

2.3.1 Where the Lands are developed for semi-detached dwellings, the main building's siting, bulk and scale shall comply with the requirements of the R-2 Zone of the Land Use Bylaw for Halifax Mainland as may be amended from time to time, except that for the lots fronting on River Road:

- (a) the front yard setback shall be a minimum of 15 feet; and
- (b) stairs, bay windows and similar building features shall be permitted to encroach a maximum of 5 feet from the building into the required front yard.

2.4 SUBDIVISION OF THE LANDS

Subdivision applications shall be submitted to the Development Officer in accordance with the plan presented as Schedule B and the Development Officer shall grant subdivision approval subject to and in accordance with the following terms and conditions:

- (a) The lands may be subdivided into two lots prior to construction of the semi-detached dwellings. In this case one lot shall have an area of 5,000 square feet; the other shall have an area of approximately 4,844 square feet.

- (b) The lands may be subdivided into 4 semi-detached lots as shown in Schedule B. Each lot shall have an area of 2,500 square feet, excluding one lot which shall have an area of approximately 2,344 square feet.
- (c) A subdivision grading plan illustrating the drainage system and patterns common to all four proposed lots in accordance with the Lot Grading By-Law is required at the time of subdivision.

PART 3: AMENDMENTS

3.1 Non-Substantive Amendments

The following items are considered by both parties to be not substantive and may be amended by resolution of Council.

- (a) The granting of an extension to the date of commencement of construction as identified in Section 4.3.1 of this Agreement;
- (b) The granting of an extension to the length of time for the completion of the development as identified in Section 4.5.1 of this Agreement;

3.2 Substantive Amendments

Amendments to any matters not identified under Section 3.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Halifax Regional Municipality Charter*.

PART 4: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

4.1 Registration

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.

4.2 Subsequent Owners

- 4.2.1 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.
- 4.2.2 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).

4.3 Commencement of Development

- 4.3.1 In the event that development on the Lands has not commenced within 3 years from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office,

as indicated herein, 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.

4.3.2 For the purpose of this section, commencement of development shall mean final subdivision approval and endorsement of the lots and registration.

4.3.3 For the purpose of this section, Council may consider granting an extension of the commencement of development time period through a resolution under Section 3.1(a), if the Municipality receives a written request from the Developer at least sixty (60) calendar days prior to the expiry of the commencement of development time period.

4.4. Completion of Development

Upon the completion of the whole development or complete phases of the development, 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;
- (c) discharge this Agreement; or
- (d) for those portions of the development which are completed, discharge this Agreement and apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By-law for Halifax Mainland, as may be amended from time to time.

4.5 Discharge of Agreement

4.5.1 If the Developer fails to complete the development after **5** years from the date of registration of this Agreement at the Registry of Deeds or Land Registration 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.

PART 5: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

5.1 Enforcement

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.

5.2 Failure to Comply

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 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 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 Registered Owner Name)

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

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

On this ____ day of _____, A.D. 20 ____, before me, the subscriber personally came and appeared _____ a subscribing witness to the foregoing indenture who having been by me duly sworn, made oath and said that _____, _____ of the parties thereto, signed, sealed and delivered the same in h presence.

A Commissioner of the Supreme Court
of Nova Scotia

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

On this ____ day of _____, A.D. 20 ____, before me, the subscriber personally came and appeared _____ the subscribing witness to the foregoing indenture who being by me sworn, made oath, and said that _____, Mayor and _____, Clerk of the Halifax Regional Municipality, signed the same and affixed the seal of the said Municipality thereto in h presence.

A Commissioner of the Supreme Court
of Nova Scotia

[illegible]

Case 16558
Schedule B: Site Plan

SYLVIA AVENUE

Attachment B:
Excerpts from the Halifax Mainland LUB – R-4 Zone

R-4 ZONE
MULTIPLE DWELLING ZONE

29(1) The following uses shall be permitted in any R-4 Zone:

- (a) R-1, R-2 and R-2T uses;
- (b) boarding house;
- (c) lodging or rooming house;
- (d) apartment house;
- (e) uses accessory to any of the foregoing uses if not specifically prohibited;

OTHER USES

- (f) in any one building, one office for rendering professional or personal services, provided that the net area for such purposes does not exceed 700 sq.ft.;
- (g) special care home;
- (h) greenhouse;
- (i) the office of a consulate located in a single-family dwelling provided such dwelling is used by the consul as his private residence.
- (j) day care facility (RC Mar 3/09; E - Mar 21/09)

29(2) No person shall in any R-4 Zone carry out, or cause or permit to be carried out, any development for any purpose other than one or more of the uses set out in subsection (1).

29(3) No person shall in any R-4 Zone use or permit to be used any land or building in whole or in part for any purpose other than one or more of the uses set out in subsection (1).

COMMERCIAL USES

29A Notwithstanding the provisions of Section 9(d), 14 and 29(1), an apartment house at or within 120 ft. of an intersection, which contains 100 or more self-contained dwelling units may include those commercial uses which are permitted in Section 38A(1), except a bowling alley, a motion picture theatre, a service station and billboard, provided that such uses are located on the ground floor of the apartment and are separately accessible from the building exterior.

SIGNS

29B Exterior advertising of the commercial uses described in Section 29A shall be permitted provided such advertising is not illuminated.

NO WINDOW DISPLAY

- 30 Where any building is used in an R-4 Zone for any of the purposes described in clause (f) of Section 29(1), no display window shall be permitted, nor shall any evidence of the use of such building for such purposes be visible from the exterior of such building, PROVIDED HOWEVER, that nothing contained herein shall prohibit the display of a sign not exceeding one square foot in area and bearing the name and profession as set forth in clause (f) of Section 29(1) of any person occupying such building.

R-1, R-2 AND R-2T USES IN R-4 ZONE

- 31 Buildings erected, altered, or used for R-1, R-2 and R-2T uses in an R-4 Zone shall comply with the requirements their respective zones.

BILLBOARDS

- 32(1) No person shall erect or display any billboard or illuminated sign in an R-4 Zone.

NON-ILLUMINATED SIGN

- 32(2) A non-illuminated sign not to exceed 6 square feet in size may be erected in an R-4 zone, provided such sign will not cause a hazard or nuisance to the public.
- 33 Where any building is erected, altered or used for R-4 uses in an R-4 zone, such building shall comply with the following requirements:

MINIMUM LOT AREA

- 33(1) (a) The minimum lot area upon which such building is located shall be 6,000 square feet with a minimum continuous street frontage of at least 60 feet on one street, except when a lot faces on the outer side of a curve in the street, in which case the frontage may be reduced to 30 feet;
- (b) The Council may, after public hearing if deemed necessary, permit modification of the minimum lot area and continuous street frontage as provided in clause (a) of this subsection if, in the opinion of Council:
- (i) the amenity, convenience, character, and value of neighbouring properties will not be adversely affected; and
 - (ii) conditions necessitating such modification are unique to the lot and have not been created by either the owner of such lot or the applicant.

DISTANCE FROM LOT LINES - 80E ANGLE

- 33(2) (a) The distance from any part of such building and any official street line or lines abutting upon such lot shall be not less than 20 feet measured at right angles to

any such official street line or lines, provided, however, that such distance may be reduced to not less than 10 feet at right angles to any such official street line or lines if that part of the building which is less than 20 feet from any such official street line or lines is entirely contained within the arms of an 80 degree horizontal angle as determined in subsection (3) of this section;

- (b) The distance from any part of such building and any lot line of such lot other than an official street line shall be not less than 10 feet measured at right angles to such lot line;
- (c) All windows and doors serving habitable rooms in such building shall be located not less than 10 feet from any lot line of such lot measured at right angles to such lot line;
- (d) Notwithstanding the provisions of clauses (a) and (b) of subsection (2), the distance from any part of such building, not containing any windows or doors serving habitable rooms, to any official street line or lot line may be less than the distance prescribed in said clauses (a) and (b) herein or may extend to any such official street line or lot line of the lot upon which such building is located, provided that:
 - (i) The height of such part of the building does not exceed 5 feet above the natural ground level measured at any point on any official street line abutting such lot and extending for a horizontal distance of 10 feet measured at right angles to any such official street line;
 - (ii) The height of such part of the building does not exceed 5 feet above the natural ground level measured at any point on any lot line of such lot other than an official street line; and
 - (iii) The building is so designed that it does not interfere with traffic safety.
- (e) (Deleted)

SIZE OF BUILDING - 60E ANGLE

- 33(3) (a) Subject to the provisions of subsection (2), such building or any part thereof shall not project beyond the angular planes determined by constructing such angular planes over such lot;
- (i) From each lot line at natural or finished ground level, whichever is the lower, at a vertical angle of 60 degrees above the horizontal and measured perpendicular to such lot line or, in the case of a curved lot line, perpendicular to the tangents of all points of such lot line provided, however, that where the natural ground level at the lot line is more than 5 feet above the finished ground level established at any point on the wall opposite the lot line and where the horizontal distance to the face of any part of such wall or its vertical projection is less than 50 feet, the angular planes shall be constructed over the lot from all points on the intersections of the vertical projection of the lot line and the horizontal projection of the finished level; or

- (ii) In the case where a lot line of such lot coincides with an official street line from the center line of such street or from any intervening line parallel to such center line provided, however, that:
 - (A) the distance from the line on which the plane is constructed and the lot line does not exceed 30 feet; and
 - (B) the vertical angle of 60 degrees is constructed perpendicular to the line on which the plane is constructed or in the case of a curved line, perpendicular to the tangents of all points of the curved line.

EXCEPTION TO 60E ANGLE

- (b) Notwithstanding the provisions of clause (a) of subsection (3) and subject to the provisions of subsection (2), any part of such building may project beyond any prescribed 60 degree angular plane if:
 - (i) The projection through the plane subtends a horizontal angle not exceeding 80 degrees formed by lines drawn from a point on the line on which the 60 degree angular plane is constructed opposite to the center of the projection; and
 - (ii) The extremities of the projection are enclosed by the arms of such 80 degree horizontal angle.

DISTANCE BETWEEN EXTERNAL WALLS - 65E ANGLE

- 33(4) (a) For the purposes of this subsection:
- (i) "Base line" means, in the case of a wall rising from the ground, the natural or finished level of the ground adjoining the base of the wall, whichever is lower, and in all other cases means the lowest line of the wall above the natural or finished level of the ground, whichever is lower;
 - (ii) A wall supported by construction above posts, pillars, or other open construction shall be deemed to rise from the ground, and the base line of the wall shall be deemed to be the line on which the projection downward of the face of the wall meets the natural or finished level of the ground, whichever is lower; and
 - (iii) Where external walls are not parallel to each other, but the angle of divergence does not exceed 85 degrees, such walls shall be deemed to face each other.
- (b) The provisions of subsection (4) shall only apply if any part of such building is erected within the arms of horizontal angles of 65 degrees constructed outwards at the natural level of the ground from the nearest extremities of external walls that face each other provided, however, that where the two extremities of one such wall are respectively equidistant from the opposite extremities of the other wall or where the two extremities of one wall are equidistant from the nearest extremity of the other wall, the 65 degree horizontal angle may be constructed from either pair of equidistant extremities;

40E ANGLE

- (c) The distance between any external walls of such building that face each other shall be not less than 50 feet, and any part of such building shall not project beyond any of the angular planes determined by constructing such angular planes outwards from the base line of each such external facing wall of each part of such building at a vertical angle of 40 degrees above the horizontal and measured perpendicular to such line or in the case of a curved base line, perpendicular to the tangents of all points of such curved base line;
- (d) Where two external walls of such building face each other and neither wall contains any door or window serving a habitable room, the provisions of clause (c) of subsection (4) shall not apply; but the distance between such walls shall be not less than 6 feet.

BALCONIES, CORNICES, EAVES, AND CANOPIES

- 33(5) (a) Notwithstanding the provisions of subsection (3) and (4) of this section, separate individual balconies, which are open on three sides, cornices, eaves, and canopies may project through the angular planes as determined in such subsections provided, however, that any part of such balcony, cornices, or eaves shall be not less than 10 feet from any lot line of such lot;
- (b) Notwithstanding clause (a) of subsection (5), canopies may project to within 5 feet of the street line.

- 34 Where any building is erected, altered, or used as a boarding house, lodging, or rooming house, or an apartment house in an R-4 Zone, such building, in addition to the requirements hereinbefore set out in Section 33, shall comply with the following requirements:

DENSITY

- 34(1) The population density of such building shall not exceed 75 persons per acre.

OPEN SPACE

- 34(2) The lot upon which such building is located shall contain a minimum open space of:
 - (a) 150 square feet for each bachelor unit/275 square feet for each one-bedroom unit/575 square feet for each two-bedroom unit/950 square feet for each three-bedroom unit/1,325 square feet for each four-bedroom unit and over;
 - (b) At least 80 percent of the open space required in clause (a) of subsection (2) of Section 34 shall be landscaped open space, provided that:
 - (c) For the purposes of subsection (2) the roof or any portion thereof of any part of such building that has no residential accommodation included below such roof or portion thereof may be calculated as landscaped open space provided that:
 - (i) no part of such roof is more than 5 feet above the ground level of at least one lot line of such lot; and

- (ii) such roof or portion thereof is capable of being used as landscaped open space.

SPECIAL CARE HOME - LANDSCAPED SPACE

- 34(3) A minimum of 35 percent of the lot area of any lot on which a building is erected, altered or used as a special care home, shall consist of landscaped open space.

Attachment C:
Excerpts from the Halifax MPS

Implementation Policies

4.6 For any proposed development, the City may permit modification of the yard or lot area or width provisions of the Peninsula and Mainland Zoning By-laws under the authority of Section 33(2)(b) of the Planning Act. A decision of the Council of the City of Halifax to permit such modification may be preceded by a public hearing if deemed necessary and such modification shall be granted provided that:

- (a) the amenity, convenience, character and value of neighbouring properties will not be adversely affected;
- (b) conditions necessitating such modification are unique to the lot and have not been created by either the owner of such lot or the applicant;
- (c) the modification is necessary to secure an appropriate development of the lot where such lot is of such restricted area that it cannot be appropriately developed without such modification;
- (d) the modification is consistent with Section II of this Plan; and Halifax MPS 227
- (e) the registered owner of the land for which the modification is sought shall enter into an agreement with Council pursuant to Section 34(1) of the Planning Act.

Attachment D:
Review of Relevant Policies from the Halifax MPS

Policy Criteria	Staff Comment
<p>Implementation Policy 4.6 For any proposed development, the City may permit modification of the yard or lot area or width provisions of the Peninsula and Mainland Zoning By-laws under the authority of Section 33(2)(b) of the Planning Act. A decision of the Council of the City of Halifax to permit such modification may be preceded by a public hearing if deemed necessary and such modification shall be granted provided that:</p>	
<p>(a) the amenity, convenience, character and value of neighbouring properties will not be adversely affected;</p>	<p>The surrounding area is a mix one and two storey dwellings with two three storey apartment buildings opposite the property on Sylvia Avenue. The property is zoned R-4 which permits the use of an apartment house with a density of 75 persons per acre as of right. The proposal includes the design of two semi-detached dwellings, approximately 20.3 ft in height. Staff is of the opinion that the proposed lot modification will not adversely affect the amenity, convenience, character and value of neighbouring properties.</p>
<p>(b) conditions necessitating such modification are unique to the lot and have not been created by either the owner of such lot or the applicant;</p>	<p>The lot has been in existence prior to 1946. The property owner, Habitat for Humanity, purchased the property under the assumption that the lot was over 10,000 sq. ft. However, once the property was surveyed it was noted that the property is 9,844 sq. ft. The lot is a corner lot and is elongated in shape. To accommodate the proposed dwelling a relaxation in the front or rear yard would be required for the proposed lots fronting River Road. As the flankage yard applied to the dwelling fronting Sylvia Avenue is 10 ft, a reduced front yard would create a more gradual step-back along these lots. Staff are of the opinion that the conditions are unique to this lot and have not been created by either the owner of the lot or the applicant.</p>

(c) the modification is necessary to secure an appropriate development of the lot where such lot is of such restricted area that it cannot be appropriately developed without such modification;	An additional 156 square feet is required to enable the proposed subdivision to develop the two semi-detached dwellings. As this lot is located on a corner, if one duplex was constructed there would be a large gap on one of the streets. If a larger duplex or if an apartment building was constructed it would defeat the intent of Habitat for Humanity projects, which promotes home ownership for lower income levels.
(d) the modification is consistent with Section II of this Plan; and	Please see the detailed analysis below
(e) the registered owner of the land for which the modification is sought shall enter into an agreement with Council pursuant to Section 34(1) of the Planning Act.	A development agreement is a required component to this application.
Section II – Applicable Policies	
1. Economic Development 1.2 The City should strive to expand its tax base so that it can maintain its tax rates at levels that are competitive with other municipalities of the region.	By allowing this lot to be subdivided into four semi-detached lots it creates the possibility to increase property tax revenue.
2. Residential Environments 2.1 Residential development to accommodate future growth in the City should occur both on the Peninsula and on the Mainland, and should be related to the adequacy of existing or presently budgeted services.	This application has been reviewed by HRM Development Engineering and Halifax Regional Water Commission. No issues concerning the capabilities of services were indicated. Detailed servicing plans will be required at the permitting stage.
2.4 Because the differences between residential areas contribute to the richness of Halifax as a city, and because different neighbourhoods exhibit different characteristics through such things as their location, scale, and housing age and type, and in order to promote neighbourhood stability and to ensure different types of residential areas and a variety of choices for its citizens, the City encourages the retention of the existing residential character of predominantly stable neighbourhoods, and will seek to ensure that any change it can control will be compatible with these neighbourhoods.	The surrounding area is a mix one and two storey dwellings with a 2 three storey apartment buildings opposite the property on Sylvia Avenue. The proposal includes the design of two semi-detached dwellings, approximately 20.3 ft. in height. Staff are of the opinion the proposal adds to the variety of housing types, while still retaining the existing character of the neighborhood
2.8 The City shall foster the provision of housing for people with different income levels in all neighbourhoods, in ways which are compatible with these neighbourhoods. In so	This application has been submitted by Habitat for Humanity a not-for-profit that builds affordable housing, mainly through volunteer construction, and encourages home ownership

doing, the City will pay particular attention to those groups which have special needs (for example, those groups which require subsidized housing, senior citizens, and the handicapped).	for lower income levels. The proposed semi-detached dwellings will be a habitat for humanity project.
2.10 For low and medium density residential uses, controls for landscaping, parking and driveways shall ensure that the front yard is primarily landscaped. The space devoted to a driveway and parking space shall be regulated to ensure that vehicles do not encroach on sidewalks.	The Halifax Mainland Land Use Bylaw requires a parking space of 8 ft x 16 ft and requires that no more than 33% of the front yard shall be used for vehicular access, maneuvering and parking. The remaining 67% is to be dedicated to landscaping. These requirements will not be amended through the proposed development agreement and must be satisfied during the building permit stage.
7. Community Facilities 7.9 In consideration of applications for subdivision, resubdivision, lot consolidation, rezoning, or development agreements, it shall be the policy of the City to examine the availability of adequate recreational open spaces, and to grant approval to such applications only where the legally enforceable standards of the City can be reasonably met.	Our IMS Mapping shows various neighborhood parks in the area. Parkland planning has confirmed the subject site is within the service delivery radius of the JL Ilsley School Park and the MacIntosh Run Park
8. Environment 8.4 The City shall identify areas of natural significance and natural areas which are environmentally sensitive. The City will protect these areas from environmental degradation insofar as possible, through such means as zoning, development standards, and public education.	There has been no indication that this property is deemed to be environmentally sensitive or of natural significance.
12. Citizen Participation 12.4 The City shall develop procedures for consulting with the public on decisions which will affect the planning or development of the City. These procedures shall pay particular attention to the timing of public access to information, the methods for providing it, and the need of individuals and groups to have an adequate time period for review prior to final City Council decisions.	An information leaflet was distributed to property owners within the neighbourhood, encouraging the public to contact staff with any comments, questions or concerns regarding the application. Information concerning this application has also been made available on our HRM website. As requirement of the Development Agreement process there will be a public hearing where the public is invited to express their opinion and comment on the application.

<p>12.5 The City shall encourage citizens to make written submissions on planning issues or items of neighbourhood concern (for example, development proposals, rezoning issues). These briefs will, if possible, accompany staff reports to City Council, but in any case shall be submitted to Council for their information.</p>	<p>As part of the required public hearing process, the public is invited to express their comments concerning the application in writing to the municipal clerk. These comments will be distributed to the Community Council prior to any decisions.</p>
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