

**Heritage Advisory Committee - August 28, 2013
North West Planning Advisory Committee - September 4, 2013**

TO: Chair and Members of Heritage Advisory Committee & North West
Planning Advisory Committee

SUBMITTED BY:

| |
|-----------------|
| Original Signed |
|-----------------|

Brad Anguish, Director of Community & Recreation Services

DATE: August 12, 2013

SUBJECT: Case 18336: Development Agreement – 991 Windgate Drive, Beaver
Bank

ORIGIN

Application by Alan Whitlam and Joyce McCully

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter, Part VIII, Planning & Development

RECOMMENDATION

It is recommended that the Heritage Advisory Committee and North West Planning Advisory Committee recommend that North West Community Council:

1. Move Notice of Motion to consider the proposed development agreement as contained in Attachment A to allow for a full service restaurant at 991 Windgate Drive, Beaver Bank and schedule a public hearing;
2. Approve the proposed development agreement as contained in Attachment A; and
3. Require that the agreement be signed by the property owner within 120 days, or any extension thereof granted by Council on request of the property owner, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is later, otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

The property at 991 Windgate Drive is a registered heritage property commonly referred to as the Hallisey House, a name derived from its builder Daniel Hallisey. In 2001, previous owners of the subject property entered into a development agreement with HRM to permit the property to be developed with a restaurant and miniature golf course. In the years following, the ownership of the property changed and the agreement was amended to permit other land uses including a full service restaurant and a lounge.

In 2011, the development agreement was discharged and the property was subdivided resulting in the creation of two additional residential building lots, 983 and 977 Windgate Drive. As a result, the total lot area of 991 Windgate was reduced from 4,582 square meters (49,327 square feet) to 1,634 square meters (17,588 square feet), less than the land use by-law lot area requirement of 2,700 square meters (29,064 square feet) for MU-1 commercial uses. The subject property is zoned MU-1, however its lot area limits the as-of right use of the property to residential uses permitted by the zone.

The applicant has proposed the use of a full service restaurant at 991 Windgate Drive. Full service restaurants are listed as a permitted land use in MU-1 zone, however because the subject property was subdivided and no longer meets the minimum lot area requirement for commercial use, the proposed restaurant requires approval from Community Council. Policy 125(a) of the Beaver Bank, Hammonds Plains and Upper Sackville Municipal Planning Strategy (MPS) allows Community Council to consider land uses which are not otherwise permitted in the existing zone by development agreement. A copy of Policy 125(a) is provided as Attachment B.

Proposal

The applicant has requested to enter into a development agreement to permit a full service restaurant. As proposed, the restaurant will provide seating on the main floor, second floor and exterior patio. The third floor will be used for storage and closed off to the public. Access to the property will be provided via an existing driveway from Windgate Drive. A total of 28 parking spaces are proposed for patrons and staff, including two mobility disabled parking spaces. While the interior of the heritage building will be renovated to accommodate the restaurant, no significant alteration or modification to the exterior structure is proposed. The developer has proposed to replace the existing siding, which is in need of repair, with wood or an approved alternative material. Further, the developer has proposed to install a dormer window (Schedule D of Attachment A) which previously adorned the building. Efforts will also be made to landscape the property and to retain important features such as the property's existing apple trees.

Location, Designation and Zoning

The subject property is:

- a corner lot located at 991 Wingate Drive, Beaver Bank, which has frontage along Windgate Drive and Beaver Bank Road;
- approximately 1,634 square meters (17,588 square feet) in total area;
- serviced with municipal water and sewer;
- home to an existing heritage property commonly known as the Hallisey House;

- designated Mixed Use A under the Municipal Planning Strategy (MPS) for Beaver Bank, Hammonds Plains and Upper Sackville (Map 1); and
- zoned MU-1 (Mixed Use 1) Zone under the Land Use By-law for Beaver Bank, Hammonds Plains and Upper Sackville (Map 2).

Railway and Surrounding Land Use

The subject property is located at the intersection of Wingate Drive and Beaver Bank Road. The intersection includes a railway crossing which previously served as part of the Windsor and Hantsport Railway Service. The railway service ceased operation in 2010.

Surrounding land uses consist mainly of single unit residences, with the exception of a commercial lumber yard located to the west along Beaver Bank Road. Immediately adjacent properties located to the east have been recently developed with single unit dwellings. The property adjacent to the northern property boundary is currently undeveloped although is zoned Mixed Use 1 which permits both residential and small scale commercial land uses.

Heritage

The Hallisey House is valued for its association with its builder Daniel Hallisey, his daughter Mary Hopkins, and granddaughter Mary O'Donnell, and their contributions to community and public service. The Hallisey House was first built in 1856 but was later lost to fire. The present house was built by Daniel Hallisey in 1872. Hallisey emigrated from Ireland to New York in 1854, but soon moved to Nova Scotia to work on the Provincial Railroad. In 1858 he became stationmaster for Beaver Bank. In 1863, he took on added responsibility as postmaster of Beaver Bank. The title of postmaster would be continued by his daughter and later granddaughter until the post office closed in 1962.

Although used primarily as a post office and train station, the Hallisey House is said to have also operated as an inn, a tavern and private residence. Sir Robert Borden, eighth Prime Minister of Canada, is said to have visited his friend and fellow Conservative, Daniel Hallisey, on occasion when travelling through Beaver Bank by train from Halifax to Kentville.

The property had fallen into disrepair by the late 1990's. In 2001, the property was redeveloped into a restaurant and miniature golf course and was later used as a tavern. In 2011, the property was subdivided into three separate parcels. The two newly subdivided lots (983 and 977 Windgate Drive) have been since developed with single unit dwellings. Following the subdivision process, the heritage designation was removed from the two newly created parcels. 991 Windgate Drive, home to the Hallisey House, continues to be recognized as a registered municipal heritage property.

Role of HAC

Policy CH-1 (Attachment B) of the Regional MPS establishes evaluation criteria for Council's consideration where a proposed development agreement involves a heritage property. The Heritage Advisory Committee (HAC) is to review the proposal only relative to the criteria of Policy CH-1, and provide a recommendation to Community Council.

DISCUSSION

MPS Policy

Subject to Policy 125(a), the Beaver Bank, Hammonds Plains and Upper Sackville MPS allows for consideration of land uses which are not otherwise permitted in the existing zone by development agreement.

It is the position of Staff that the development agreement provided in Attachment A satisfies the intent of the MPS and Policy 125(a) (Attachment B). While the proposal is consistent with the intent of the MPS, staff have identified the following items for discussion:

Compatibility with Surrounding Land Uses

Although Policy 125(a) allows for consideration of land uses which are not otherwise permitted in the existing zone, the associated policy criteria focuses heavily on compatibility and limiting potential nuisance which may be generated by the proposed development. Through an extensive review, staff focused particular attention on the proposed development and its compatibility with adjacent residential development located along Windgate Drive and Beaver Bank Road. As a result of this review, many provisions have been included in the development agreement regarding buffering, noise, lighting and traffic.

Buffering:

Due to the close proximity between the proposed development and the nearest residence at 983 Windgate Drive, special provisions have been included in the development agreement regarding buffering and visual screening. As proposed, the development agreement requires, prior to the issuance of an occupancy permit, construction of a six foot high solid wood board fence along the northeastern property line. The fence will provide clear separation between the two properties, help to reduce potential noise generated by the full service restaurant and will help to limit lighting and glare generated by vehicles entering and exiting the subject property. Although not currently developed, similar provisions have been included in the development agreement to provide a buffer along the northern property boundary. Should the adjacent property at 267 Beaver Bank Road be developed, a six foot high fence may be required to serve as a buffer.

Noise:

Provisions have been included in the development agreement to mitigate potential noise generated by the proposed full service restaurant. Hours of operation are identified as being between 9:00 am and 12:00 am (midnight) Monday to Sunday, inside the heritage building. Permitted hours for the outdoor patio are 10:00 am to 9:30 pm Monday to Saturday, and 10:00 am to 7:00 pm on Sunday. These hours are consistent with the intent of HRM By-law N-200 Respecting Noise. Further, the development agreement restricts the use of sound amplification equipment and does not permit live entertainment on the outdoor patio.

Lighting:

Prior to the issuance of a development permit, the development agreement requires that the developer submit a lighting plan. The intent of the lighting plan is to ensure all proposed lighting

is directed to driveways, parking areas, building entrances and walkways and is arranged so as to divert the light away from streets, adjacent lots and buildings. Further, in an effort to reduce the amount of light generated by the proposed development, the development agreement requires that all lighting used for the outdoor patio shall be extinguished by 10:00 pm, except those lights required for safety and security.

Traffic:

Traffic generated by the proposed restaurant is not anticipated to have a significant impact on the local street network. However, the MPS for Beaver Bank, Hammonds Plains and Upper Sackville identifies Beaver Bank Road as a busy corridor, especially during peak travel periods. As a means to limit traffic impact, the development agreement does not permit driveway access to or from Beaver Bank Road. Instead, a single two way access is provided via an existing driveway on Windgate Drive.

Heritage Policy Review

Policy CH-1 of the Regional MPS applies where a proposed development agreement involves a heritage property and establishes review criteria. The review by HAC of this proposal is limited to the criteria of this policy. The policy ensures that the heritage property covered by the development agreement is not altered to diminish its heritage value and that the development maintains its integrity.

No significant alterations to the heritage building are proposed as part of this proposal, although the developer, at a later date, intends to reinstate a dormer window which previously appeared on the building (Schedule D of Attachment A) but has since been removed. Further, the developer intends to replace the exterior siding of the building, some of which currently includes painted vinyl siding, with wood or an approved alternative material. Staff have been in discussions with the developer regarding both the proposed siding and the reinstallation of the dormer window and are of the position that these changes represent a non-substantial alteration to the heritage building, which may be authorized by staff. However, in the future and throughout the development process, should a substantial alteration to the heritage building be proposed, the developer shall be subject to a substantial alteration process and approval by Regional Council. Further, such proposals will be considered through HRM's standard process and will be evaluated based on the building's character defining elements and the Building Conservation Standards of the *Heritage Property By-law*.

It is staff's view that the proposed building satisfies Policy CH-1. A detailed discussion is provided in Attachment B. The primary criteria are addressed by the proposal as follows:

- Landscaping requirements ensure the retention of existing landscape features (i.e. apple trees) on the property to reflect the front yard conditions of the heritage property;
- Required fencing is to be constructed of wood and painted in a colour identical or complementary to the heritage building; and
- Signage requirements ensure the integrity of the heritage building by limiting size to an appropriate scale, restricting the use of internal lighting and requiring the use of appropriate materials such as wood.

Summary

Staff is satisfied that the proposed development for a full service restaurant at 991 Windgate Drive meets the requirements of Policy 125(a) of the MPS for Beaver Bank, Hammonds Plains and Upper Sackville and Policy CH-1 of the Regional MPS. Further, the proposed development agreement contains provisions to address concerns related to neighbourhood compatibility and helps to protect the character of existing heritage property. For these reasons, Staff is recommending that Community Council approved the proposed development agreement as contained in Attachment A of this report.

FINANCIAL IMPLICATIONS

There are no financial 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.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy.

The level of community engagement was consultation, achieved through a Public Information Meeting held on March 18, 2012 (see Attachment C for minutes). Notices of the Public Information Meeting were posted on the HRM website, placed in the newspaper, and mailed to property owners within the notification area as shown on Map 2.

A public hearing has to be held by Community Council before they can consider approval of a development agreement. Should Community Council decide to proceed with a public hearing on this application, in addition to the published newspaper advertisements, property owners within the notification area shown on Map 2 will be notified of the hearing by regular mail.

The proposed development agreement will potentially impact local residents, businesses, and property owners.

ENVIRONMENTAL IMPLICATIONS

No implications have been identified.

ALTERNATIVES

The Heritage Advisory Committee and the North West Planning Advisory Committee could recommend that Community Council:

1. Approve the proposed development agreement, as contained in Attachment A of this report.
This is the staff recommendation. A decision of Council to approve this development

agreement is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.

2. Refuse to approve the development agreement and, in doing so, must provide reasons why the agreement does not reasonably carry out the intent of the MPS. This is not recommended for the reasons discussed above. A decision of Council to reject this development agreement, with or without a public hearing, is appealable to the N.S. Utility & Review Board as per Section 262 of the *HRM Charter*.
3. Approve the proposed development agreement subject to modifications. This may necessitate further negotiation with the applicant and may require an additional public hearing.

ATTACHMENTS

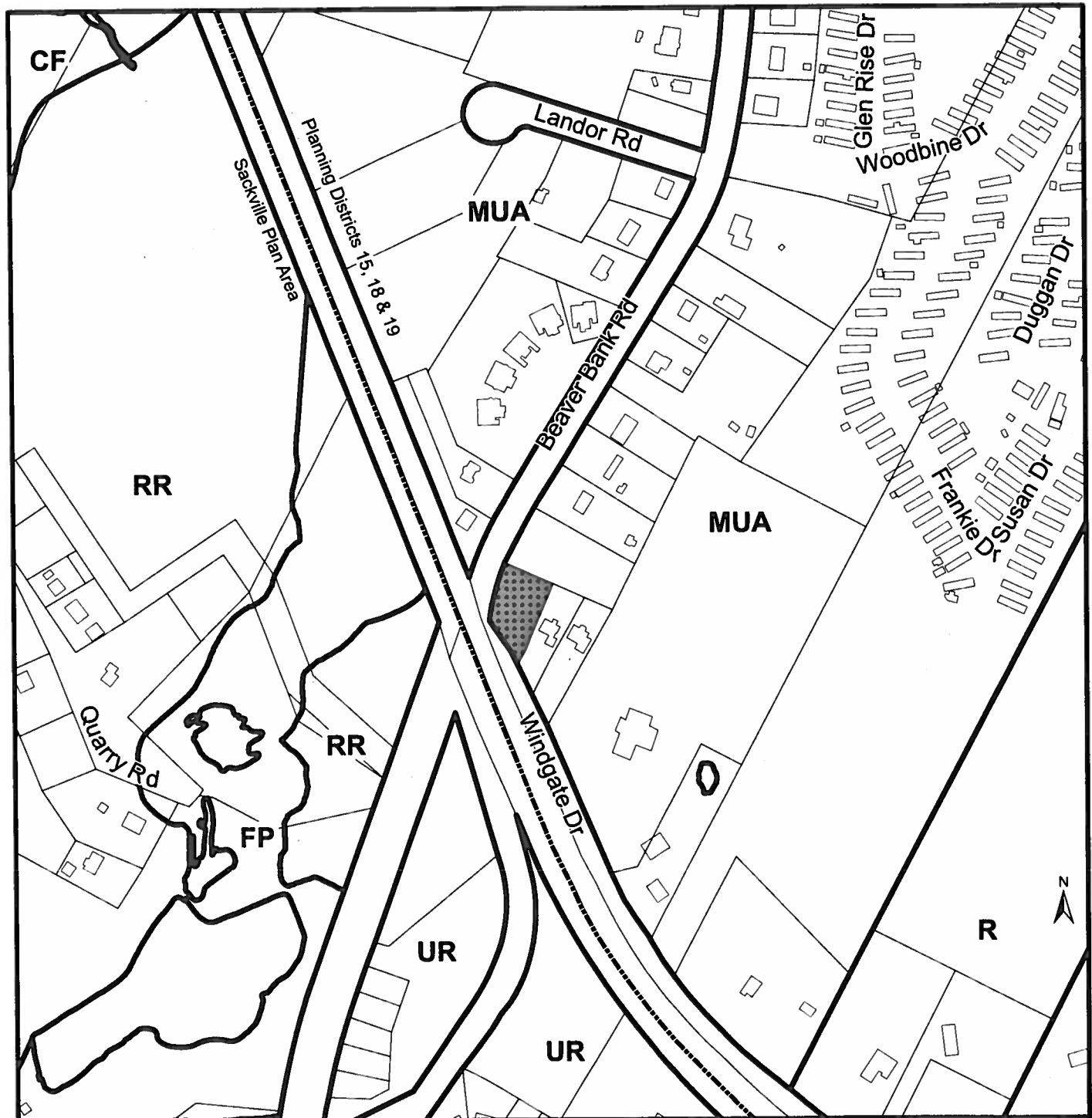
| | |
|---------------|---|
| Map 1: | Generalized Future Land Use |
| Map 2: | Zoning and Notification |
| Attachment A: | Proposed Development Agreement |
| Attachment B: | Policy Review - Beaver Bank, Hammonds Plains and Upper Sackville MPS and the Regional Municipal Planning Strategy |
| Attachment C: | Public Information Meeting Minutes |

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

Report Prepared by: Tyson Simms, Planner I, 490-5739

Original Signed

Report Approved by: Kelly Denty, Manager of Development Approvals



Map 1 - Generalized Future Land Use

991 Windgate Drive,
Beaver Bank

Designation

 Area of Proposed
Development Agreement

Planning Districts
15, 18 & 19

R Residential
MUA Mixed Use A

 Plan Area Boundary

Planning Districts 15, 18 & 19
Sackville Plan Area

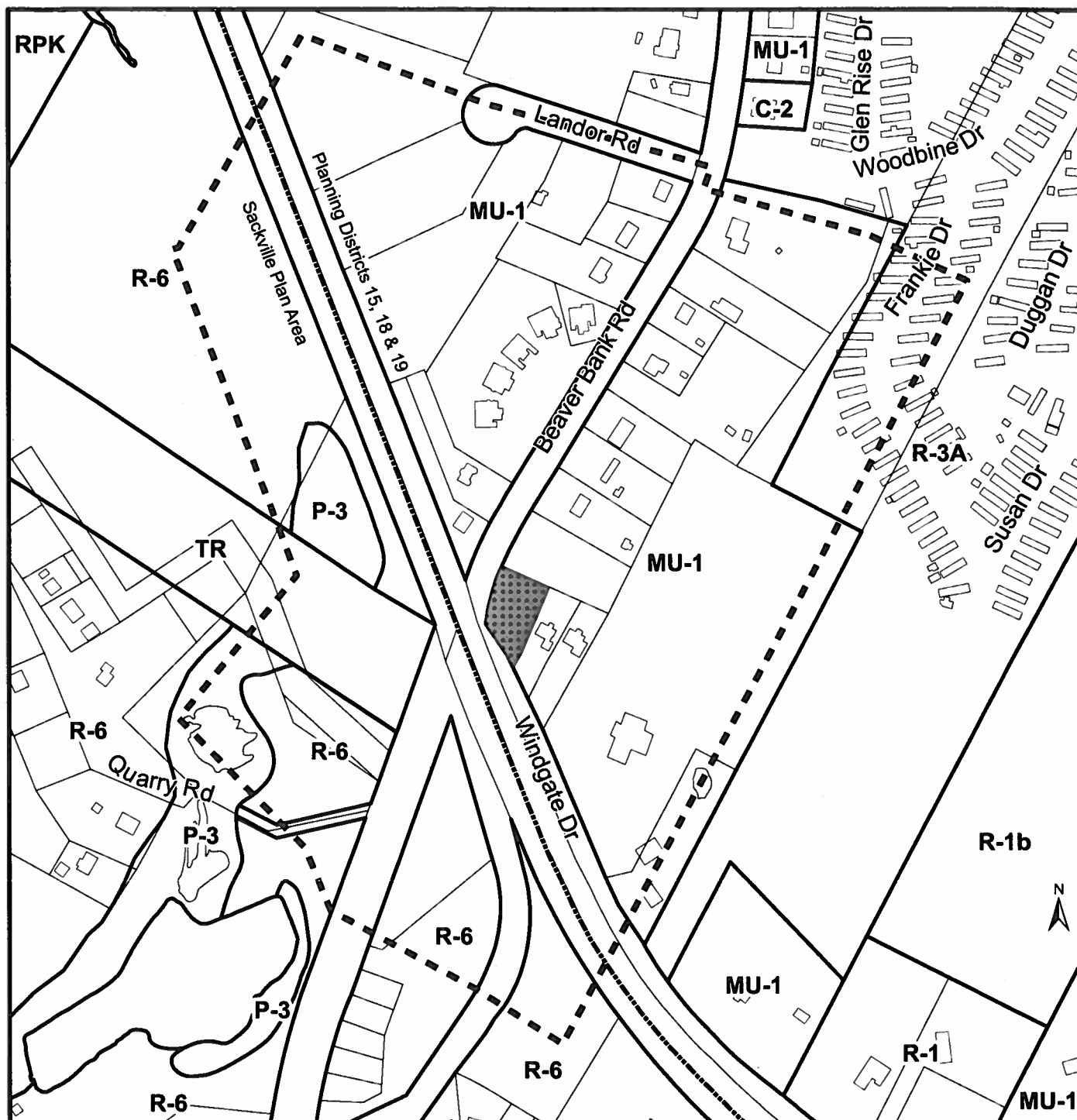
Sackville UR Urban Residential
RR Rural Residential
CF Community Facility
FP Floodplain

HALIFAX
REGIONAL MUNICIPALITY
DEVELOPMENT APPROVALS

0 30 60 120
Meters

This map is an unofficial reproduction of
a portion of the Generalized Future Land
Use Map for the plan area indicated.

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



Map 2 - Zoning and Location

991 Windgate Drive,
Beaver Bank

 Area of Proposed
Development Agreement

 Notification Area

 Plan Area Boundary

Planning Districts 15, 18 & 19
Sackville Plan Area

Planning Districts
15, 18 & 19

Sackville

Zone

R-1 Single Unit Dwelling
R-1b Auxilliary Dwelling with Home Business
MU-1 Mixed Use 1
C-2 General Business

R-6 Rural Residential
P-3 Foodplain
TR Transportation Reserve
RPK Regional Park

HALIFAX
REGIONAL MUNICIPALITY
DEVELOPMENT APPROVALS

0 30 60 120
Meters

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

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

Attachment A
Proposed Development Agreement

THIS AGREEMENT made this day of **<Insert Month>**, 2013,

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 991 Windgate Drive in Beaver Bank, and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Lands have been registered as a Municipal Heritage Property pursuant to the provisions of the Municipality's Heritage Property By-law (By-law H-200) and the *Heritage Property Act* as amended from time to time;

AND WHEREAS the Developer has requested that the Municipality enter into a Development Agreement to permit the development of a full service restaurant, on the Lands pursuant to the provisions of the Halifax Regional Municipality Charter and pursuant to Policy P-125(a) of the Municipal Planning Strategy for Beaver Bank, Hammonds Plains and Upper Sackville and pursuant to Policy CH-1 and Policy IM-15 of the Regional Municipal Planning Strategy;

AND WHEREAS the North West Community Council of the Municipality, at its meeting on **<Insert – Date>**, approved the said Agreement subject to the registered owner of the Lands described herein entering into this Agreement, referenced as Municipal Case Number 18336;

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*

1.2.1 Except as otherwise provided for herein, the development, use and subdivision of the Lands shall comply with the requirements of the Land Use By-law for Beaver Bank, Hammonds Plains and Upper Sackville and the Regional Subdivision Bylaw, 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 *Heritage*

1.4.1 The Developer acknowledges that provisions have been made under this Agreement which require that the Developer meet the requirements of the Heritage Bylaw and the Heritage Property Act.

- 1.4.2 Prior to the undertaking any building and site alterations, the developer agrees to provide the Heritage Planner with such plans and information needed for the Heritage Planner to determine compliance with the terms of this agreement.

1.5 Conflict

- 01.5.1 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.

- 1.5.2 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.

1.6 Costs, Expenses, Liabilities and Obligations

- 1.6.1 The Developer shall be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement and all Federal, Provincial and Municipal laws, by laws, regulations and codes applicable to the Lands.

1.7 Provisions Severable

- 1.7.1 The provisions of this Agreement are severable from one another and the invalidity or unenforceability of one provision shall not affect the validity or enforceability of any other provision.

PART 2: DEFINITIONS

2.1 Words Not Defined under this Agreement

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

2.2 Definitions Specific to this Agreement

The following words used in this Agreement shall be defined as follows:

- (a) "Architect" means a professional, full member in good standing with the Nova Scotia Association of Architects;
- (b) "Character-Defining Elements" as defined in the *Heritage Property Act*.

- (c) "Footprint" means the area of a building, including land over which the building projects, and including covered porches or verandas at a rate of one-half (1/2) their total area, but excluding any area below the eaves of a roof, and excluding any portion not covered by a roof, such as unsheltered steps, verandas or decks;
- (d) "Heritage Value" as defined in the Heritage Property Act.
- (e) "Landscape Architect" means a professional, full member in good standing with the Canadian Society of Landscape Architects;
- (f) "Professional Engineer" means a professional, full member in good standing with the Association of Professional Engineers of Nova Scotia;
- (g) "Surveyor" means a land surveyor who is a registered member in good standing of the Association of Nova Scotia Land Surveyors; and

PART 3: USE OF LANDS, SUBDIVISION AND DEVELOPMENT PROVISIONS

3.1 Schedules

The Developer shall develop the Lands in a manner, which, in the opinion of the Development Officer, conforms to the following Schedules attached to this Agreement and filed in the Halifax Regional Municipality as Case Number 18336:

| | |
|------------|--------------------------------|
| Schedule A | Legal Description of the Lands |
| Schedule B | Site Plan |
| Schedule C | Floor Plan |
| Schedule D | Proposed Replica Dormer |

3.2 Requirements Prior to Approval

3.2.1 Prior to the issuance of a Development Permit, the Developer shall provide the following to the Development Officer, unless otherwise permitted by the Development Officer:

- (a) A Lighting Plan in accordance with Section 3.6 of this Agreement;
- (b) A Landscaping Plan in accordance with Section 3.7 of this Agreement.

3.2.2 At the time of issuance of an Occupancy Permit, the Developer shall provide the following to the Development Officer, unless otherwise permitted by the Development Officer:

- (a) Written confirmation from a qualified professional which the Development Officer may accept as sufficient record of compliance with the lighting requirements as set out in Section 3.6 of this Agreement;

- (b) Written confirmation from a Landscape Architect (a full member, in good standing with Canadian Society of Landscape Architects) that the Development Officer may accept as sufficient record of compliance with the landscaping requirements as set out in Section 3.7 of this Agreement.

3.2.3 Notwithstanding any other provision of this Agreement, the Developer shall not occupy or use the existing Heritage Building on the Lands for any of the uses permitted by this Agreement unless an Occupancy Permit has been issued by the Municipality.

3.3 *General Description of Land Use*

3.3.1 The use(s) of the Lands permitted by this Agreement are the following:

- (a) Full Service Restaurant subject to Section 3.3.2 and 3.3.3 of this agreement;
- (b) The service of liquor without food purchase (lounge) subject to Section 3.3.2 and 3.3.3 of this agreement;
- (c) Accessory uses, limited to an office (contained within the existing Heritage Building), and a parking area, and;
- (d) MU-1 (Mixed Use 1) Zone Residential Uses pursuant to the land use by-law.

3.3.2 Restaurant and Lounge Uses are permitted subject to the following:

- (a) The combined maximum gross floor area of commercial uses, including any use of outdoor patio(s) and/or deck(s), shall not exceed 1,500 square feet.
- (b) The hours of operation shall not exceed 9:00 am to 12:00 am (midnight).
- (c) No video lottery terminals or gaming devices shall be permitted.
- (d) Live entertainment shall not be permitted with the exception of unamplified acoustic music.
- (e) There shall be no operation of sound amplification devices other than in conformance with By-law N-200 or any other noise related By-law.
- (f) Approval of the Nova Scotia Alcohol and Gaming Authority.
- (g) Section 6.5.2 of this development agreement.

3.3.3 Restaurant and Lounge Uses are permitted on the existing outside patio/deck attached to the Heritage Building subject to the following:

- (a) The combined maximum gross floor area of commercial uses, including any use of outdoor patio(s) and/or deck(s), shall not exceed 1,500 square feet.
- (b) The hours of operation shall not exceed 10:00 am to 9:30 pm between Monday and Saturday.
- (c) The hours of operation shall not exceed 10:00 am to 7:00 pm on Sunday. These hours shall also apply to Statutory Holidays and Remembrance Day.
- (d) Live entertainment shall not be permitted.
- (e) No operation of sound amplification devices shall be permitted.

- (f) Lighting used for the patio/deck shall be extinguished by 10:00 pm, except those required for safety and security.
- (g) Approval of the Nova Scotia Alcohol and Gaming Authority.
- (h) Section 6.5.2 of this development agreement.

3.4 *Alteration and Demolition*

3.4.1 Further to Section 3.3.1, the Developer or future owner covenants and agrees that it shall not demolish the heritage property building located on the Lands described in Schedule A attached hereto or alter its exterior appearance in any manner without the written consent of the Halifax Regional Municipality. The Developer or future owner further expressly waives its rights under Section 18 of the said Heritage Property Act to make any alteration or carry out demolition as provided therein.

3.4.2 The Developer may acquire a development permit for the installation of the dormer window identified on Schedule D of this agreement. The proposed replica dormer window is subject to the requirements of the *Heritage Property By-law*.

3.5 *Parking, Circulation and Access*

3.5.1 The parking area shall be sited as generally shown on Schedule "B".

3.5.2 A minimum total of 26 surface parking spaces shall be provided.

3.5.3 Further to the requirements of Section 3.5.2, a minimum total of 2 mobility disabled parking spaces shall be provided.

3.5.4 The parking lot shall be hard surfaced or graveled, and treated to prevent the rising of dust or loose particles when necessary.

3.5.5 The limits of the parking lot shall be defined by a combination of fencing, landscaping and/or curb.

3.5.6 A driveway shall be sited as generally shown on Schedule B.

3.5.7 Driveway access to and/or from Beaver Bank Road shall be prohibited.

3.6 *Outdoor Lighting*

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

- 3.6.2 Festoon lighting (hanging patio lanterns/lights), naked bulb lighting and flashing bulb (strobe lighting) shall not be permitted.
- 3.6.3 Blinking or flashing lights may be permitted for temporary Holiday display.
- 3.6.4 Further to subsection 3.2.1(a), prior to the issuance of a Development Permit, the Developer shall prepare a Lighting Plan and submit it to the Development Officer for review to determine compliance with Subsection 3.6 of this Agreement. The Lighting Plan shall contain, but shall not be limited to, the following:
- (a) The location, on the building and on the premises, of each lighting device; and
 - (b) A description of the type of proposed illuminating devices, fixtures, lamps, supports, and other devices.
- 3.6.5 The Lighting Plan and description shall be sufficient to enable the Development Officer to ensure compliance with the requirements of Subsection 3.6 of this Agreement. If such plan and description cannot enable this ready determination, by reason of the nature or configuration of the devices, fixtures or lamps proposed, the Developer shall submit evidence of compliance by certified test reports as performed by a recognized testing lab.
- 3.6.6 Illumination of the character defining elements of the Heritage Building may be permitted to showcase the heritage property at night. Proposals for such lighting are subject to review by the Development Officer and the Heritage Planner.
- 3.7 *Landscaping*
- 3.7.1 Landscaping Plan
- Further to subsection 3.2.1(b), prior to the issuance of a Development Permit, the Developer agrees to provide a Landscaping Plan. The Landscaping Plan shall be prepared by a Landscape Architect and comply with all provisions of this section.
- 3.7.2 All plant material shall conform to the Canadian Nursery Trades Association Metric Guide Specifications and Standards and sodded areas to the Canadian Nursery Sod Growers' Specifications in the opinion of the Landscape Architect that prepares the plans required pursuant to Subsection 3.7.1.
- 3.7.3 Prior to the issuance of any permits subject to Section 3.2.1(b), the Developer shall provide an inventory of existing apple trees on the subject Lands to the Development Officer. The provided inventory shall be verified by the Development Officer or the Planner.

- 3.7.4 All existing apple trees shall be retained, maintained and replaced (if required). If replacement is required, the Development Officer may allow a new location for the replaced tree.
- 3.7.5 The developer shall provide a six (6) foot solid wood board privacy fence along the eastern property line (abutting residential properties located along the northeastern portion of Windgate Drive) as shown on Schedule B. The fence shall be painted in a colour identical or complementary to the existing Heritage Building on the Lands.
- 3.7.6 Shrubs and plantings shall be required along the northern property line (abutting properties located along the eastern portion of Beaver Bank Road) at a rate of one (1) tree (minimum 45 mm calibre) and three (3) shrubs per 4.6 meters (15 feet).
- 3.7.7 The developer shall provide a six (6) foot solid wood board privacy fence along the northern property line (abutting properties located along the eastern portion of Beaver Bank Road) if the adjacent property (267 Beaver Bank Road) is developed for residential uses. The fence shall be painted in a colour identical or complementary to the existing Heritage Building on the Lands.
- 3.7.8 All fencing shall be constructed of wood. Fencing not required as a privacy fence shall be either a picket or post and rail design.
- 3.7.9 All portions of the Lands not used for structures, parking areas, driveways, curbing, or walkways shall be landscaped except for areas where natural vegetative cover is maintained.
- 3.7.10 The Landscaping Plan shall include the location, spacing and species of any vegetation. The Developer shall maintain all landscaping, shrubs, plants, flower beds and trees and shall replace any damaged, dead or removed stock.
- 3.7.11 Planting materials shall be selected for their ability to survive in their specific location relative to such factors including, but not limited to, sunlight/shade conditions, or rooftop and sea exposure conditions.

3.7.12 *Compliance with Landscaping Plan*

Prior to issuance of the Occupancy Permit, where the weather or time of year allows, the Developer shall submit to the Development Officer a letter, prepared by a member in good standing of the Canadian Society of Landscape Architects, certifying that all landscaping has been completed according to the terms of this Agreement.

3.7.13 Notwithstanding subsection 3.7.12, where the weather and time of year does not allow the completion of the outstanding landscape works, the Developer may supply a security deposit in the amount of 110 percent of the estimated cost to complete the landscaping. The cost estimate is to be prepared by a member in good standing of the Canadian Society of Landscape Architects. The security shall be in favour of the Municipality and shall be in the form of a certified cheque or automatically renewing, irrevocable letter of credit issued by a chartered bank. The security shall be returned to the Developer only upon completion of the work as described herein and illustrated on the Schedules, and as approved by the Development Officer. Should the Developer not complete the landscaping within six months of issuance of the Occupancy Permit, the Municipality may use the deposit to complete the landscaping as set out in this section of the Agreement. The Developer shall be responsible for all costs in this regard exceeding the deposit. The security deposit or unused portion of the security deposit shall be returned to the Developer upon completion of the work and its certification.

3.8 *Maintenance*

The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the exterior of the building, fencing, walkways, parking areas and driveways, and the maintenance of all landscaping including the replacement of damaged or dead plant stock, trimming and litter control, garbage removal and snow and ice control, salting of walkways and driveways. This also applies to the structural integrity of the Heritage Building and its character defining elements.

3.9 *Signage*

- (a) Signs identifying the business shall be limited to:
 - i. One double-faced projecting sign may be located on the façade of the Heritage Building;
 - ii. One ground sign may be permitted on the Property;
- (b) The projecting sign shall not exceed 20 square feet per side.
- (c) A ground sign shall not exceed a height of 6 feet from the finished grade.
- (d) A ground sign shall not exceed 24 square feet per side.
- (e) No sign shall conceal or alter any character defining element.
- (f) No ground sign shall obstruct the vision of drivers leaving the roadway or driveway, or detract from the visibility or effectiveness of any traffic sign or control device on public streets.
- (g) Signs may be externally illuminated only.
- (h) All signs shall be constructed of natural materials such as wood or an acceptable equivalent.
- (i) Mobile signs and textile banners shall not be permitted.

- (j) Developer shall provide drawings to scale showing any proposed signage.
- (k) Any proposed signs shall be reviewed by the Heritage Planner prior to a permit for a sign being issued.

3.10 *Outdoor Storage*

- (a) Outdoor storage shall not be permitted, with the exception of the following:
 - i. Refuse bin(s) for 5 stream waste disposal and recycling shall be required.

3.11 *Solid Waste Facilities*

- 3.11.1 The use of the Heritage Building as a full service restaurant or lounge shall be consistent with the HRM *Solid Waste Resource Collection and Disposal By-law* (By-law No. S-600). A designated space for source separation services shall be shown on the final building plans and approved by the Development Officer and Building Inspector in consultation with Solid Waste Resources.
- 3.11.2 Refuse containers located outside the Heritage Building shall be screened with a combination of small shrubs and a four (4) foot high wooden privacy fence around its perimeter. The fence shall be painted in a colour identical or complementary to the existing Heritage Building on the Lands.

3.12 *Archeological Significance*

- 3.12.1 The developer shall contact the Curator of Special Places with the Heritage Division of the Department of Tourism, Culture and Heritage of the Province of Nova Scotia should any development or disturbance of the subject property result in the identification of significant archeological resources.

PART 4: STREETS AND MUNICIPAL SERVICES

4.1 *General Provisions*

- 4.1.1 All design and construction of primary and secondary service systems shall satisfy the Municipal Design Guidelines unless otherwise provided for in this Agreement and shall receive written design approval from the Development Officer, in consultation with the Development Engineer, prior to undertaking the work.

4.2 *Municipal Water Distribution, Sanitary Sewer and Storm Sewer Systems*

- 4.2.1 The Municipal water distribution, sanitary sewer and storm sewer systems shall conform with Halifax Water's latest edition of their Design and Construction Specifications unless otherwise deemed acceptable by Halifax Water and the Municipality.

4.3 *Off-Site Disturbance*

- 4.3.1 Any disturbance to existing off-site infrastructure resulting from the development, including but not limited to, streets, sidewalks, curbs and gutters, street trees, landscaped areas in either street rights of way or in park areas, and utilities, shall be the responsibility of the Developer, and shall be reinstated, removed, replaced or relocated by the Developer as directed by the Development Officer, in consultation with the Development Engineer.

4.4 *Outstanding Site Work*

- 4.4.1 The Municipality may accept securities for the completion of outstanding on-site paving and landscaping work on the Lands (at the time of issuance of the first Occupancy Permit). Such securities shall consist of a security deposit in the amount of 110 percent of the estimated cost to complete the work. The security shall be in favour of the Municipality and may be in the form of a certified cheque or irrevocable automatically renewing letter of credit issued by a chartered bank. The security shall be returned to the Developer by the Development Officer when all outstanding work is satisfactorily completed. Should the Developer not complete the required work within six months of issuance of the Occupancy Permit, the Municipality may use the deposit to complete the work. The Developer shall be responsible for all costs in this regard exceeding the deposit. The security deposit or unused portion of the security deposit shall be returned to the Developer upon completion of the work and its certification.

4.5 *Private Infrastructure*

- 4.5.1 All private services and infrastructure located on the Lands, including but not limited to the private circulation driveway(s), laterals for water and sewer, and any private stormwater pipes or collection systems, shall be owned, operated and maintained by the Developer.

PART 5: AMENDMENTS

5.1 *Non Substantive Amendments*

- 5.1.1 The following items are considered by both parties to be non-substantive and may be amended by resolution of Council:

- (a) Provision of additional commercial space beyond that enabled by Sections 3.3.2 and 3.3.3;
- (b) A reduction in the parking requirement below the threshold set out in Section 3.5.2 and 3.5.3;

- (c) Changes to the buffer requirements between the subject property and 267 Beaver Bank Road as required under Section 3.7.7;
- (d) Alterations to the landscaping plan required under Section 3.7;
- (e) The granting of an extension to the date of commencement of construction as identified in Section 6.3 of this Agreement; and
- (f) The length of time for the completion of the development as identified in Section 6.4 of this Agreement.

5.2 *Substantive Amendments*

- 5.2.1 Amendments to any matters not identified under Section 5.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the Halifax Regional Municipality Charter.

PART 6: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

6.1 *Registration*

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

6.2 *Subsequent Owners*

- 6.2.1 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.

- 6.2.2 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).

6.3 *Commencement of Construction*

- 6.3.1 In the event that development on the Lands has not commenced within 2 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.
- 6.3.2 For the purposes of this section, commencement of development shall mean the issuance of a development permit.
- 6.3.3 For the purpose of this section, Council may consider granting an extension of the commencement of development time period through a resolution under Section 5.1, 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.

6.4. *Completion of Development*

6.4.1 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 Downtown Dartmouth, as may be amended from time to time.

6.5 *Discharge of Agreement*

6.5.1 If the Developer fails to complete the development within 4 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.

6.5.2 Council may discharge all portions of this agreement which grant land use rights for the commercial use of a full service restaurant and lounge without the consent of the developer, if the municipal heritage registration for this property is removed and any one or more of the following conditions exist or apply:

- (a) The developer has demolished the Heritage Building known as "Hallisey House".
- (b) Seventy-five percent of the Heritage Building known as "Hallisey House" is destroyed by fire or any other cause and the building is rebuilt without approvals required under the Heritage Property Act.
- (c) Alterations are made to the property without approvals required under the Heritage Property Act.
- (d) The developer has requested the municipal the municipal heritage registration be removed and Council has approved such a request.
- (e) A violation of any portion of this agreement which applies to any permitted commercial use(s).

PART 7: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

7.1 *Enforcement*

- 7.1.1 The Developer agrees that any officer appointed by the Municipality to enforce this Agreement shall be granted access onto the Lands during all reasonable hours without obtaining consent of the Developer. The Developer further agrees that, upon receiving written notification from an officer of the Municipality to inspect the interior of any building located on the Lands, the Developer agrees to allow for such an inspection during any reasonable hour within twenty four hours of receiving such a request.

7.2 *Failure to Comply*

- 7.2.1 If the Developer fails to observe or perform any condition of this Agreement after the Municipality has given the Developer 30 days written notice of the failure or default, then in each such case:
- (a) The Municipality shall be entitled to apply to any court of competent jurisdiction for injunctive relief including an order prohibiting the Developer from continuing such default and the Developer hereby submits to the jurisdiction of such Court and waives any 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.

Case 18336, DA for 991 Windgate Drive
Heritage Advisory Committee - 22 -
North West Planning Advisory Committee

August 28, 2013
September 4, 2013

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)

Witness

Per: _____

HALIFAX REGIONAL MUNICIPALITY

SIGNED, DELIVERED AND ATTESTED
to by the proper signing officers of Halifax
Regional Municipality, duly authorized in that
behalf, in the presence of:

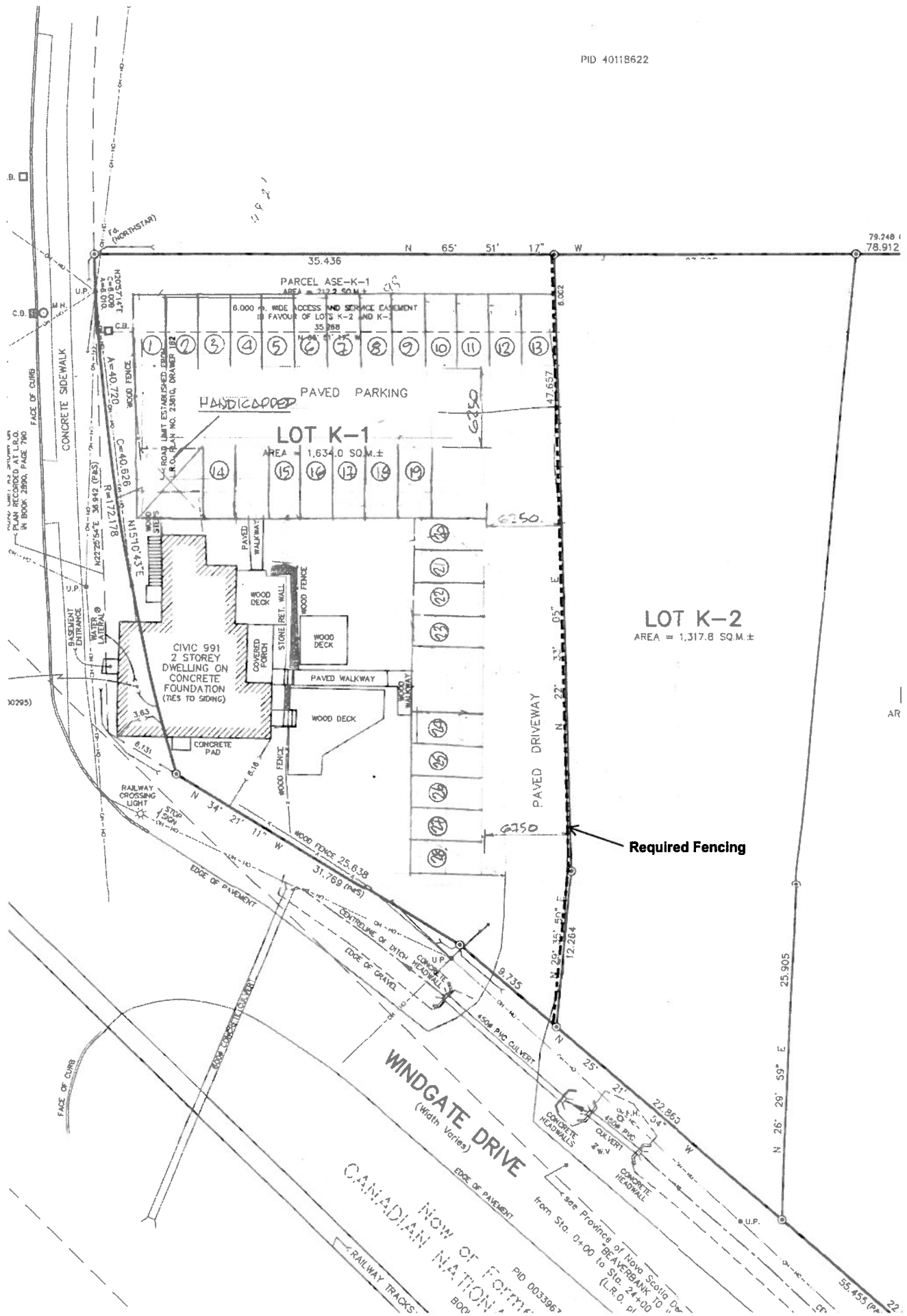
Witness

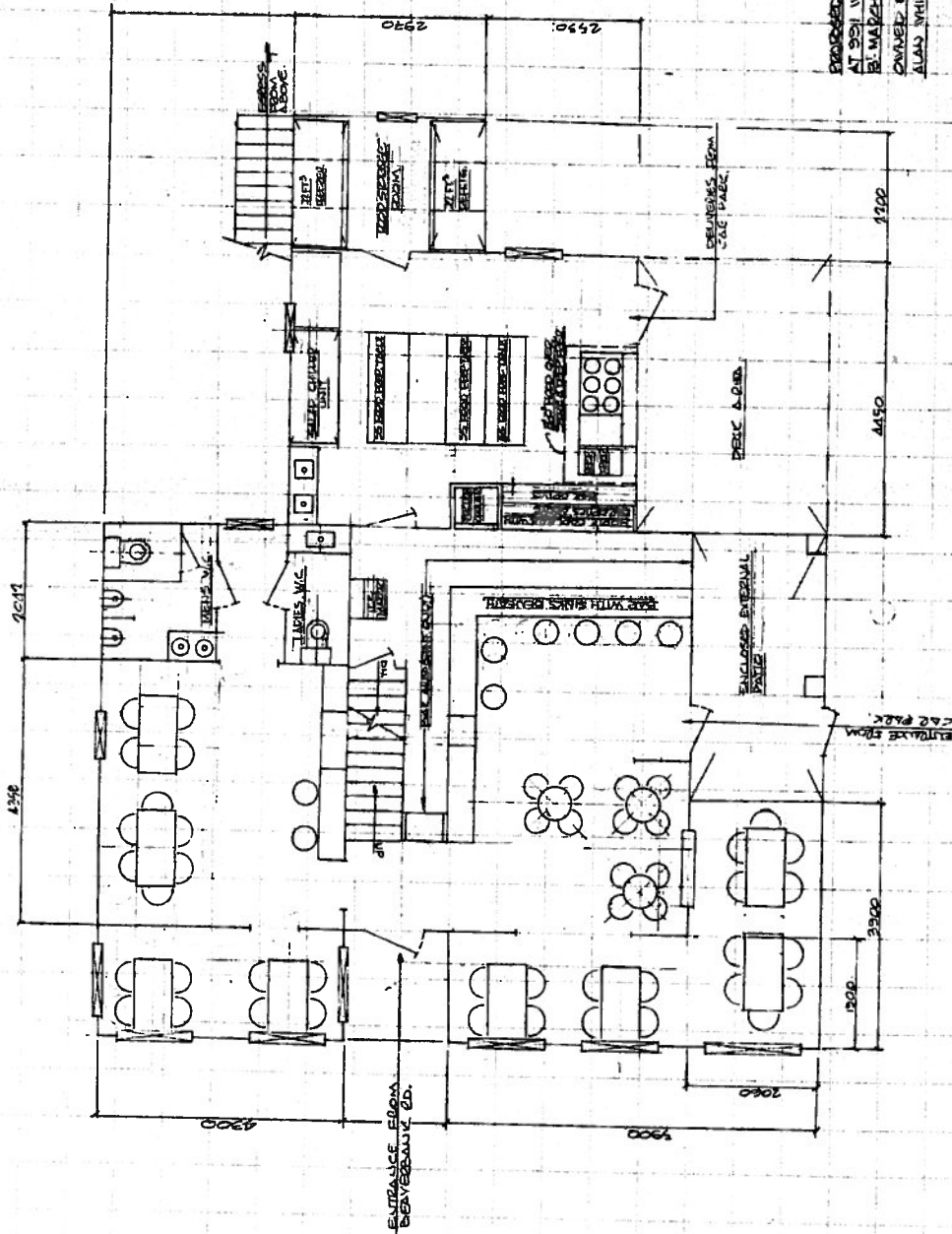
Per: _____
MAYOR

Witness

Per: _____
MUNICIPAL CLERK

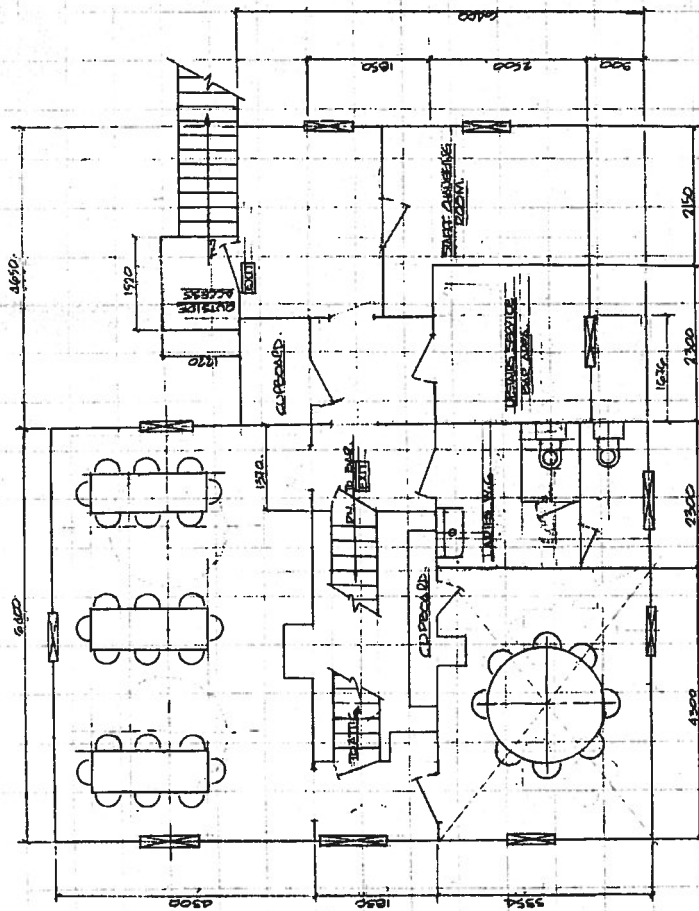
PID 40118622





PRODUCED LOWER RESTAURANT/BAO PLAIN.
AT 931 VINGATE DOVE, BEVERLYBANK
B1 MARCH 2012.
OWNER BY
ALAN WHITMAN & JOYCE MCCULLY.

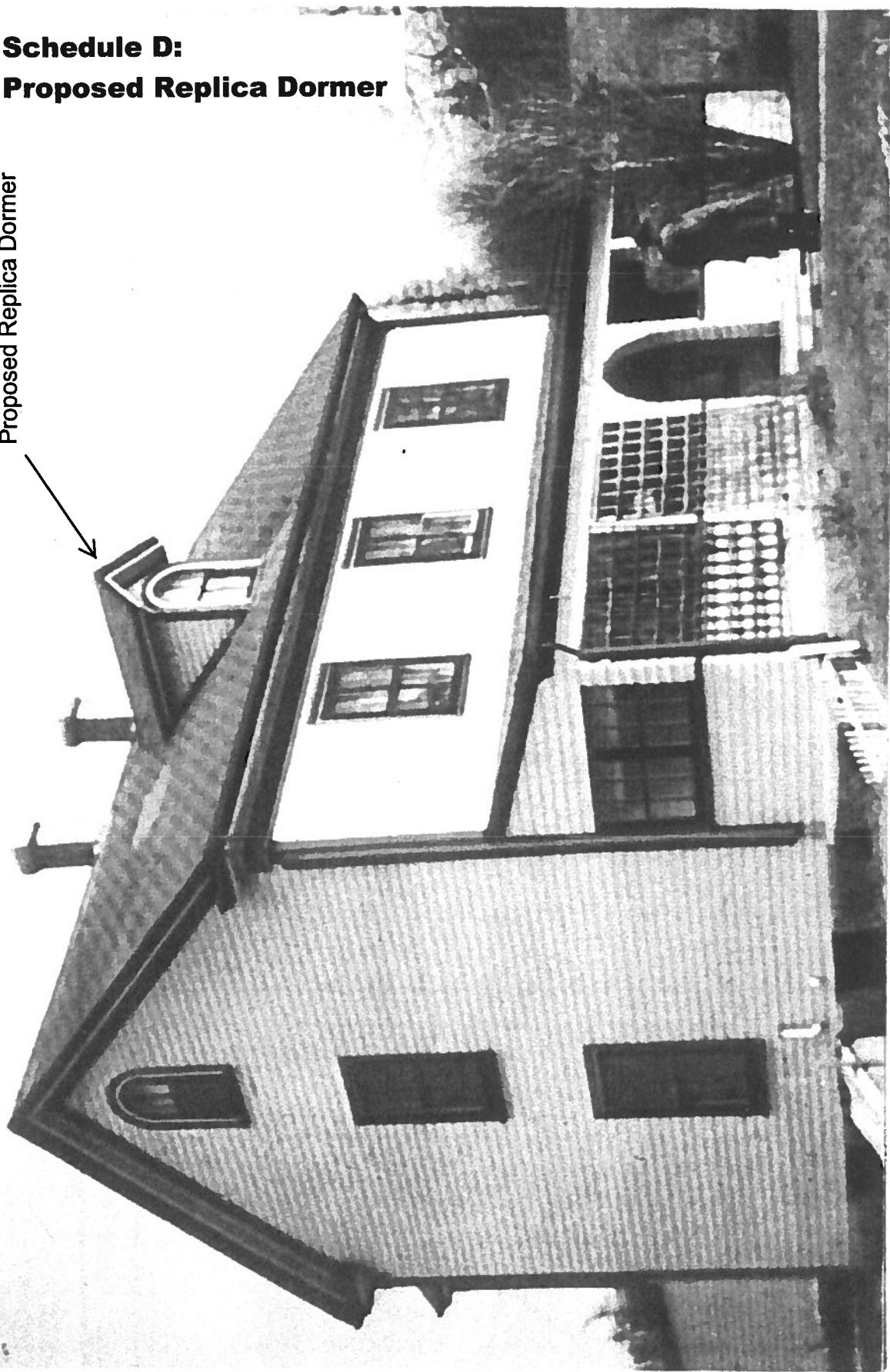
Schedule C: Floor Plan Cont.



PROPOSED UPPER FLOOR PLAN FOR FUNCTIONS
 AT 591 VINGATE DRIVE, BEAVERBANK
 15 MARCH 2012
 DRAWN BY:
 ALAN WHITLAM & JORCE McCULLY

**Schedule D:
Proposed Replica Dormer**

Proposed Replica Dormer



Attachment B

Policy Review - Beaver Bank, Hammonds Plains and Upper Sackville MPS and
the Regional Municipal Planning Strategy

Beaver Bank, Hammonds Plains and Upper Sackville MPS

| | |
|---|---|
| <p>P-125(a) Council should encourage the reuse, restoration and retention of municipally registered heritage properties. One means through which this will be encouraged is by allowing for an increase in development rights for municipally registered heritage properties. For municipally registered heritage properties Council may consider land uses which are not otherwise permitted in the existing zone by development agreement. In conjunction with such development agreements Council may also consider modifying the requirements of the Land Use By-Law. This policy shall be the primary policy for the review of redevelopment of heritage properties in the plan area where the proposed development is not permitted by the zone. In considering any requests for such land uses, the following criteria shall be addressed:</p> | <p>...</p> |
| <p>a) that the building is suitable for conversion, in terms of building size and the nature of the proposed use;</p> | <p><i>The building appears to be suitable for conversion. The subject heritage building has been previously used as a lounge and restaurant. The draft agreement permits the use of a full service restaurant provided the use does not exceed a maximum gross floor area of (139.5 square meters) 1500 square feet. Approximately 28 parking spaces are required as part of the development agreement. This represents a minor variance of 13 percent from the Land Use By-law requirement of 30 spaces, not including 2 mobility disabled parking spaces.</i></p> |
| <p>b) that adequate measures are proposed to ensure the continued protection of the building as a municipally registered</p> | <p><i>Staff is of the opinion that no substantial alterations to the Heritage Building are being proposed as part of the application.</i></p> |

| | |
|--|--|
| heritage property, and that renovations and additions to the building are consistent with the intent of HRM's "Heritage Building Conservation Standards" as revised from time to time; | <i>Staff has reviewed the proposed development agreement to ensure consistency with the intent of HRM's "Heritage Building Conservation Standards". Landscaping requirements require the retention of existing apple trees on the subject property and the planting of new trees and shrubs. Also, the proposed development agreement allows for the re-installation of dormer window which was previously removed from the heritage building.</i> |
| c) that the proposed use(s) of the property are compatible with other uses on the property and surrounding land uses. | <i>The proposed development agreement contains several requirements to ensure proper buffering of the proposed use and adjacent residential land uses. The development agreement requires a 6 foot high solid wood board fence along the northeastern property line and 6 foot high solid wood board fence along the northern property line should the adjacent property (267 Beaver Bank Road) be developed. The development agreement contains requirements for shielded lighting so as to direct light away from adjacent properties. Also, the development agreement contains provisions that limit the hours of operation to coincide with the requirements of HRM By-law N-200 respecting noise.</i> |
| d) that all additions including wheelchair ramps, fire escapes and emergency exits shall be designed to be as compatible as possible with the exterior of the building; | <i>No substantial additions or alterations are being proposed. As proposed the proposed restaurant will be accommodated within the existing structure.</i> |
| e) that adequate measures are proposed to minimize impacts on abutting properties and the streetscape as a whole as a result of traffic generation, noise, hours of operation, parking requirements, and such other land use impacts as may be generated as part of a development; | <i>Traffic is not anticipated to have a significant impact on the local road network. The proposed development agreement prohibits direct driveway access to and from Beaver Bank Road. Driveway access is provided via Windgate Drive. In addition, the development agreement contains provisions to limit potential</i> |

| | |
|---|--|
| | <i>impacts related to noise, lighting and parking.</i> |
| f) that the placement and design of parking areas, lighting and signs, and landscaping is in keeping with the heritage character of the building; | <i>As proposed, parking areas will be located in hard surfaced areas that were previously utilized for parking during the property's former use as a tavern. The development agreement requires a landscaping plan which requires the retention of existing mature trees and the planting of new trees and shrubs. Buffering is required in the form of fencing and landscaping between the subject property and adjacent residential uses. Required solid wood board fencing between the subject property and neighbouring residential uses will aid to contain lighting generated by vehicles. Further, the development agreement requires submission of a lighting plan, shielded lighting fixtures and restrictions on specific types of lighting and signage which may generate potential negative impact on neighbouring properties and/or the character of the heritage building.</i> |
| g) where applicable, the proposal should include an assessment and strategy to protect significant on-site archeological resources which may be impacted by the proposed development. | <i>The subject property is not located within an area of archeological significance as identified by the Province. However, the development agreement contains a clause whereby the developer shall contact the Curator of Special Places with the Heritage Division of the Department of Tourism, Culture and Heritage of the Province of Nova Scotia should any development or disturbance of the subject property result in the identification of significant archeological resources.</i> |
| h) the provisions of Policy P-137. (Regional Council-March 26, 2002, Effective-April 25, 2002) | ... |
| P-137 In considering development agreements and amendments to the land use by-law, in | ... |

| | |
|---|--|
| addition to all other criteria as set out in various policies of this Plan, Council shall have appropriate regard to the following matters: | |
| (a) that the proposal is in conformity with the intent of this Plan and with the requirements of all other municipal by-laws and regulations; | <i>As proposed, the application is in conformance with the provisions of the Municipal Planning Strategy and Land Use By-law for Beaver Bank, Hammonds Plains and Upper Sackville. A minor variance of 13 percent has been permitted under the proposed development agreement to allow for a reduction in total parking spaces from a minimum of 30 required spaces to a minimum of 26 spaces.</i> |
| (b) that the proposal is not premature or inappropriate by reason of: <ul style="list-style-type: none">(i) the financial capability of the Municipality to absorb any costs relating to the development;(ii) the adequacy of central or on-site sewerage and water services;(iii) the adequacy or proximity of school, recreation or other community facilities;(iv) the adequacy of road networks leading or adjacent to or within the development; and(v) the potential for damage to or for destruction of designated historic buildings and sites. | <i>The proposal is not premature or inappropriate for reasons specified under P-137 (b) i-v.</i> |
| (c) that controls are placed on the proposed development so as to reduce conflict with any adjacent or nearby land uses by reason of: <ul style="list-style-type: none">(i) type of use;(ii) height, bulk and lot coverage of any proposed building;(iii) traffic generation, access to and egress from the site, and parking;(iv) open storage; | <i>Please see above response to Policy 125(a), Subsections (e) and (d).</i> |

| | |
|--|--|
| (v) signs; and (vi) any other relevant matter of planning concern. | |
| (d) that the proposed site is suitable in terms of the steepness of grades, soil and geological conditions, locations of watercourses, marshes or bogs and susceptibility to flooding. | <i>The subject site is suitable in terms of the items raised in P-137(d). Further, there are no watercourses or natural water resources located on the subject site.</i> |
| (e) Within any designation, where a holding zone has been established pursuant to "Infrastructure Charges - Policy P-81", Subdivision Approval shall be subject to the provisions of the Subdivision By-law respecting the maximum number of lots created per year, except in accordance with the development agreement provisions of the MGA and the "Infrastructure Charges" Policies of this MPS. (RC-July 2/02; E-Aug 17/02) | <i>Not applicable.</i> |

Halifax Regional Municipal Planning Strategy

| | |
|---|---|
| CH-1 When considering a development agreement application in connection with any municipally registered heritage property, a lot on which a municipally registered heritage building is situated, or a building, part of a building or building site within a heritage conservation district, HRM shall, in addition to the criteria establish under the appropriate policies guiding the development agreement under the appropriate policies guiding the development agreement under the applicable secondary planning strategy, also give consideration to the following: | ... |
| a) that any municipally registered heritage property covered by the agreement is not altered to diminish its heritage value; | <i>No substantial alterations to the heritage building are proposed. The proposed development agreement does not allow alteration or modifications to the heritage property that would diminish its heritage value.</i> |

| | |
|--|---|
| b) that the development maintains the integrity of any municipally registered heritage property, streetscape or heritage conservation district of which it is part; | <i>As proposed, the proposed development maintains the integrity of the municipally registered heritage property. The subject property is not located in a heritage conservation district.</i> |
| c) that significant architectural or landscaping features are not removed or significantly altered; | <i>No significant architectural or landscaping features are proposed to be removed or significantly altered. The proposed development agreement requires the retention of existing apple trees on the subject property which serve as significant landscape features. Further, the proposed development agreement allows for the installation of a dormer style window. The window formed part of the original heritage building and is viewed as an important architectural feature.</i> |
| d) that the development observes, promotes and complements the street-level human-scaled building elements established by adjacent structures and streetscapes; | <i>No significant changes are proposed to the existing heritage building and property. As such, the subject property will have limited impact on adjacent structures and streetscapes.</i> |
| e) that the proposal meets the heritage considerations of the appropriate Secondary Planning Strategy as well as any applicable urban design guidelines; | <i>The proposal meets the intent of applicable policies contained in the Beaver Bank, Hammonds Plains and Upper Sackville Municipal Planning Strategy. See above review of Policy 125(a). This proposal is not subject to any applicable urban design guidelines.</i> |
| f) that redevelopment of a municipally registered heritage property, or any additions thereto shall respect and be subordinate to any municipally registered heritage property on the site by: i. conserving the heritage value and character-defining elements such that any new work is physically and visually compatible with, subordinate to and distinguishable from the heritage property; | <i>No significant alteration or modification to the heritage property is proposed. Where applicable, the proposed redevelopment of the site is in keeping with the issues identified in Section CH-1, Subsection F (i)-(iv).</i> |

| | |
|--|--|
| <ul style="list-style-type: none"> ii. Maintaining the essential form and integrity of the heritage property such that they would not be impaired if the new work was to be removed in the future; iii. Placing a new addition on a non-character-defining portion of the structure and limiting its size and scale in relationship to the heritage property; and iv. Where a rooftop addition is proposed, setting it back from the wall plane such that it is as inconspicuous as possible when viewed from the public realm; and | |
| <ul style="list-style-type: none"> g) any other matter relating to the impact of the development upon surrounding uses or upon the general community, as contained in Policy IM-15 | <p><i>The development agreement proposes measures to address potential nuisance generated by the proposed full service restaurant, including noise, physical separation from adjacent properties and lighting.</i></p> |
| <p>IM-15 In considering development agreements or amendments to land use by-laws, in addition to all other criteria as set out in various policies of this Plan, HRM shall consider the following:</p> | <p>...</p> |
| <ul style="list-style-type: none"> a. that the proposal is not premature or inappropriate by reason of: <ul style="list-style-type: none"> i. the financial capability of HRM to absorb any costs relating to the development; ii. the adequacy of municipal wastewater facilities, stormwater systems or water distribution systems; iii. the proximity of the proposed development to schools, recreation or other community facilities and the capability of these services to absorb any additional demands; | <p><i>The proposal is not premature or inappropriate for any of the reasons identified in Policy IM-15, Subsection A (i) – (v).</i></p> |

| | |
|---|---|
| <ul style="list-style-type: none">iv. the adequacy of road networks leading to or within the development;v. the potential for damage to or for destruction of designated historic buildings and sites; | |
| <ul style="list-style-type: none">b. that controls are placed on the proposed development so as to reduce conflict with any adjacent or nearby land uses by reason of:<ul style="list-style-type: none">i. type of use;ii. height, bulk and lot coverage of any proposed building;iii. traffic generation, access to an egress from the entire site, and parking;iv. open storage;v. signs; and | <i>Please see above response to Policy 125(a), Subsections (e) and (d).</i> |
| <ul style="list-style-type: none">c. that the proposed development is suitable in terms of the steepness of grades, soil and geological conditions, locations of watercourses, marshes or bogs and susceptibility to flooding. | <i>Not Applicable.</i> |

Attachment C
Public Information Meeting Minutes

HALIFAX REGIONAL MUNICIPALITY
Public Information Meeting
Case No. 18336

Monday, March 18, 2013
7:00 p.m.
Harold T. Barrett Jr. High School

STAFF IN

ATTENDANCE: Tyson Simms, Planner, HRM Planning Applications
Alden Thurston, Planning Technician, HRM Planning Applications
Nancy Bellefontaine, Planning Controller, HRM Planning Applications

ALSO IN

ATTENDANCE: Alan Whitlam, Applicant
Joyce McCully, Applicant

PUBLIC IN

ATTENDANCE: Approximately 11

1. Call to order, purpose of meeting – Tyson Simms

Mr. Simms introduced himself as the planner facilitating the application through the planning process. Mr. Simms also introduced the Applicants Alan Whitlam and Joyce McCully and HRM staff in attendance Nancy Bellefontaine and Alden Thurston.

The Public Information Meeting (PIM) agenda was reviewed.

2. Presentation of Proposal – Tyson Simms

Mr. Simms indicated that the purpose of the meeting was to inform the public that HRM had received an application for the development of a full service restaurant at 991 Windgate Drive, Beaver Bank. Further, Mr. Simms explained that the purpose of the meeting was to discuss the application and receive feedback and comment from members of the public in attendance.

Mr. Simms presented a map and proceeded to identify the location of the subject property. For context, he identified 2 homes near the subject property. Mr. Simms identified the plan area as the area subject to the Municipal Planning Strategy for Beaver Bank, Hammonds Plains and Upper Sackville. He also identified the zoning of the subject property as MU-1 (Mixed Use 1). He noted that the MU-1 zoning is a little more flexible and allows for additional commercial and

residential uses compared to the common R-1 residential zone. Mr. Simms provided a second map of the subject property, identifying its location relative to the adjacent church property. Mr. Simms identified the subject property as a registered heritage property and provided some background information regarding its previous uses as a post office, inn, restaurant and train station. He further noted the property's most recent uses included a tavern, full-service restaurant and miniature golf course.

Mr. Simms provided a street view of the property showing the existing and proposed parking on the subject property. He also noted that no direct driveway access was being proposed to or from Beaver Bank Road.

Mr. Simms showed another perspective image of the property. This image provided a view of the recently constructed residential properties adjacent to the property located along Windgate Drive. They are further identified as 983 and 977 Windgate Drive.

Mr. Simms showed an aerial photograph of the subject property. He identified that the proposed full service restaurant would be very similar to previous restaurant use approved by Council and would be subject to similar requirements included those prescribed under the Land Use By-law. He further noted that the footprint of the heritage building was not proposed to be changed or altered.

Mr. Simms indicated that significant changes to the exterior of a heritage building, such as the footprint, would be subject to the approval of Regional Council through a substantial alteration process. He identified that this proposal did not include any substantial changes or alterations to the heritage building. As proposed, the applicants have proposed minor modifications to the building including paint color and trim as a means of bringing back the exterior of the existing building. Mr. Simms noted that HRM Staff is of the opinion that these proposed changes do not require approval of Regional Council through a substantial alteration process.

3. Overview of planning process – Tyson Simms

The applicable development agreement planning process was reviewed. Mr. Simms indicated that feedback received from members of the public in attendance would become part of the public record and help staff to review the application and formulate a staff report which would be later presented to Community Council. Mr. Simms also noted that comments provided would provide councilors with an idea of any comments or community concerns prior to voting on the application.

Mr. Simms noted that a copy of the required development agreement would be included as part of a future staff report addressed to Community Council. He further noted that the development agreement planning process takes approximately eight months from start to completion.

Prior to opening the floor for comment, Mr. Simms indicated that the public would have an additional opportunity to speak regarding the application during a scheduled public hearing. Mr.

Simms indicated that following the public hearing and decision of Community Council, members of the public may appeal the decision (within 14 days of the decision) to the Nova Scotia Utility and Review Board.

4. Questions and Comments

TONY BENSON – BEAVER BANK – (BARRET LUMBER)

I have used the previous restaurant, and speak in favor of the application and it seemed to fit well with that building at the time and served a purpose for people to meet in Beaver Bank. What specifically is proposed and when will it be open? We belong to a group of people that meet once a month for dinner and the previous place was our home base for many years and would be a good addition to do that again. I was coming tonight in hopes of getting a little more detail on what the developers are proposing.

Mr. Simms commented on the question regarding anticipated timing, and explained the process of approval and how long it generally takes for approval. Mr. Simms identified that the subject application requires reviews by the Heritage Advisory Committee, the North West Planning Advisory Committee and the North West Community Council. As such, the process takes time and thus is anticipated to arrive in front of Community Council sometime during August or the late part of the summer season.

ROBIN BARRETT – BEAVER BANK (BARRETT LUMBER)

What is the definition of a full-service restaurant? Mr. Simms explained that it's a fully licensed facility that serves food, possibly with a take-out option. If the applicants are successful with their application, they may then make application to the Province for a liquor license.

The upper room – do you know what the plans are for the upper room and what will be done with that? Mr. Simms indicated that his understanding is that there are 3 floors. Two of the floors will be used for the restaurant, however the third floor will not and will be closed to the public.

Mr. Barrett provided some background regarding previous use of property, he comments: "One of the things I remember is a comment from a Lutheran minister and he thought that a full-service restaurant was a good idea for the community and the only request is that there was no VLT's...not sure if that's been brought up, but VLT's are not something that I think would be a good idea for the community."

Mr. Simms advised that the development agreement can identify the permitted use of a property and can provide specific conditions on those uses. Mr. Simms then commented: "When we get into the use of VLT's it may get a little more complicated as I do not believe we have a specific land-use that speaks to the use of VLT's so that's something we have to look into because I don't know if we have the ability to administer that particular use."

Mr. Barrett continued: "Based on the previous use, the previous owner used the upper room as beds, etc. and he based his business plan on that. When he actually went to do the application

because of emergency exits he was told (after he bought the property) that he would not be allowed to use that for any commercial use. The idea was to convert the 2nd floor for dinner parties and meetings, etc. There was an issue regarding exits and fire escapes in the building code. He got caught after purchasing the property and the delays.....you want to get it up and going as soon as possible. Mr. Barrett expressed that he has a lot of sympathy for the previous owner for what he went through because by the time he got the restaurant/mini-putt up and running he was in quite a financial hardship.” Mr. Barrett then directed his comments to the applicants: “The people that took it over, did a great job and I think that re-opening that would be a great idea...but just don’t get blind sided with the time frames and what you can do with the property. Mr. Simms said he couldn’t really comment regarding the previous owner or much of the discussion raised by Mr. Barrett. Mr. Simms indicated that building officials have already been involved in this process during the preliminary review of the application and have commented regarding requirements to meet building code.

ALAN WHITMAN, APPLICANT

Taking in what Robin said, he doesn’t feel like they’ve been blindsided by HRM or Heritage society, and there will be no VLT machines in the establishment. Using upstairs, there have been a lot of questions and have sought an inspection from a code specialist and they’ve told us what to do and we have to get the floor inspected and stiffened up and that we’d have to remove all of the drywall on the bottom floor, but we aren’t sure what we’re doing yet. The outside of the building as Tyson said, we plan on reinstating the dormer window, the siding has been painted and we will put up hardy-board siding with a washout mustardy color and heritage agreed. The landscaping is going to be done to bring it back so we’re proud of it and bring it back to what it used to be. We want it nice for people to go there. Upstairs we are looking to be used for meetings, large parties, overflow if customers demand it, etc...but we can assure you there will be no VLT machines as it’s not what we want in there.

Prior to ending the meeting, Mr. Simms reiterated on the building code specialist report that was provided as part of the planning application. He also indicated that for staff, the next step involves Staff evaluating the application against the established policy criteria outlined in the Municipal Planning Strategy. He then provided his contact information.

Mr. Simms offered one last call for speakers.

DARRELL CONRAD – BEAVER BANK

Ever since the signs went up on the building everyone is in favor and we can’t wait to get it open. It’s a nice spot and I know the way Alan does things and it’ll be done right.

Mr. Simms then closed the meeting with a final comment: “Any questions about where we are at in the process, please contact me at any time. Everyone in attendance here will get a notice if/when this application proceeds to a public hearing and decision of Community Council.”

5. Closing Comments

Mr. Simms thanked everyone for coming and for expressing their comments.