

Harbour East-Marine Drive Community Council
April 4, 2013

TO: Chair and Members of Harbour East-Marine Drive Community Council

Original Signed

SUBMITTED BY: Brad Anguish, Director of Community and Recreation Services

DATE: March 7, 2013

SUBJECT: **Case 18118 – Time Extension to Development Agreement on Nadia Drive, Dartmouth**

ORIGIN

Application by Genivar on behalf of Banc Properties.

LEGISLATIVE AUTHORITY

HRM Charter, Part VIII, Planning and Development

RECOMMENDATION

It is recommended that Harbour East-Marine Drive Community Council:

1. Approve, by resolution, the proposed Amending Agreement as set out in Attachment A of this report to extend the date for the commencement of construction for the development of two multiple unit dwelling buildings on Nadia Drive, Dartmouth; and
2. Require the Amending 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 Trinity Subdivision project is a development located between Windmill Road and Victoria Road in Dartmouth. The project consists of:

- (a) 198 townhouse units (existing and planned) pursuant to the existing R-3 (Multiple Family Residential – Medium Density) Zone;
- (b) a multiple unit dwelling (Building A) now under construction containing 45 units enabled by a development agreement, approved by Harbour East Community Council in 2008 (Case 01009); and
- (c) two multiple unit dwellings (Building B and C) containing 60 and 39 units on a 3.2 acre (1.29 ha) portion site enabled by a development agreement, approved by Harbour East Community Council in 2008 (Case 01010).

Maps 1 and 2 illustrate the location and planning context of the site and the site plan for Buildings B and C is shown on Map 3.

Existing Development Agreement

The development agreement for the two multiple unit dwellings (Buildings B and C) contains a five year time limit for commencement of construction which expires on September 12, 2013. Commencement of construction is defined within the development agreement under Section 8.3.1 as the issuance of a construction permit. Any amendment to the commencement date is considered non-substantive under clause 6.2 (a) of the development agreement and may be approved through a resolution of Council without a public hearing. To date, construction permits have not been issued for Buildings B and C.

Proposed Time Extension

The developer advises that he has not yet moved forward with these two buildings due to past market conditions. Due to economic changes, most significantly the awarding of shipbuilding contracts to the Halifax Shipyard, the developer feels there is now a market for these buildings. Accordingly, construction has started on one building (Building A, Map 3) enabled under Case 01009. The developer is requesting an extension to the commencement time frame for the remaining two buildings (Buildings B and C) by three years to September 12, 2016.

DISCUSSION

The existing development agreement for Buildings B and C is enabled through Policy IP-5 of the Dartmouth Municipal Planning Strategy (Attachment B). This policy establishes that any building containing more than two units must be considered through the development agreement process.

The existing development agreement contains a commencement date to encourage the timely development and completion of the project. If the development has not commenced within the allotted time, Council may grant an extension at the request of the owner, in cases where it is felt that the development is still appropriate. In this instance the request is for a three year extension

to the commencement of construction deadline. The three year extension provides the developer with adequate time to apply for the necessary permits and commence construction of the project.

Section 8.3.1 of the development agreement states “*In the event that a Construction Permit has not been issued within 5 years from the date of registration of this Agreement at the Registry of Deeds, as indicated herein, the Municipality may, by resolution of Council, either discharge this Agreement, whereupon this Agreement shall have no further force or effect, or upon the written request of the Developer, grant an extension to the date of commencement of construction.*”

If Council grants the three year extension, all development rights for Buildings B and C under the existing agreement will remain. In the event the request for a time extension is denied, the owner will have until September 12, 2013 to acquire a construction permit for the proposed development. If a construction permit is not acquired by that date, Council has the option to discharge the existing development agreement. A new development agreement application would then be required to consider multiple unit residential development. In the absence of a development agreement, given the lot configuration and limited road access, development may be limited to a single unit dwelling or a two unit dwelling on the 3.2 acre (1.29 ha) site.

Section 8.3.2 of the existing development agreement currently permits a ten year time frame for the completion of the entire development (September 12, 2018). Under Section 6.2 of the agreement, a change to the date of completion is also considered a non-substantive amendment. However, the applicant has not made application to amend the date of completion. The three year extension for commencement of construction would result in a two year time frame for the construction of the two buildings. This is considered to be reasonable.

In considering the approval of this non-substantive amendment under Section 6.2, the existing development agreement requires that property owners within 500 feet of the site be informed by mail at least ten days in advance of the proposed amendment being considered by Council.

Conclusion

It is the opinion of staff that the request to extend the commencement of construction by three years is reasonable as the developer is actively continuing with other phases of the larger development. Attachment A contains the amending development agreement which would extend the time limit for commencement of construction by three years. Staff recommend approval of the requested extension as the development proposal is still appropriate for the area and meets the intent of Policy IP-5.

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 information sharing, achieved through a sign on the site and information on the HRM website. Public information meetings and public hearings are not required for non-substantive amendments to a development agreement. The decision of a non-substantive amendment is made by resolution of Council.

In addition, in accordance with Section 6.2 of the existing development agreement, property owners within 152 m (500 ft) of the site were informed by mail at least 10 days in advance of the proposed non-substantive amendment being considered by Council.

The proposed development agreement will potentially impact (but not be limited to) the following stakeholders: local residents and property owners.

ENVIRONMENTAL IMPLICATIONS

The proposal meets all relevant, environmental policies contained in the Dartmouth MPS.

ALTERNATIVES

1. Community Council may choose to approve the proposed amending agreement, as contained in Attachment A, thereby extending the commencement of construction for an additional three years. This is the staff recommendation.
2. Community Council may choose to approve the proposed amending agreement, as contained in Attachment A, with modifications or conditions respecting the commencement of construction. A shorter deadline is not recommended by staff on the basis that the three year extension is reasonable. Some modifications or conditions may require additional negotiation with the developer.
3. Community Council may choose to refuse to grant the time extension, thus not extending the commencement date and effectively discharging the agreement if a building permit is not secured by September 12, 2013. This is not recommended for the reasons outlined in this report.

ATTACHMENTS

Map 1	Generalized Future Land Use
Map 2	Zoning and Notification
Map 3	Site Plan
Attachment A	Proposed Amending Development Agreement
Attachment B	Applicable Policies from the Dartmouth Municipal Planning Strategy
Attachment C	Relevant Sections of Existing Development Agreement

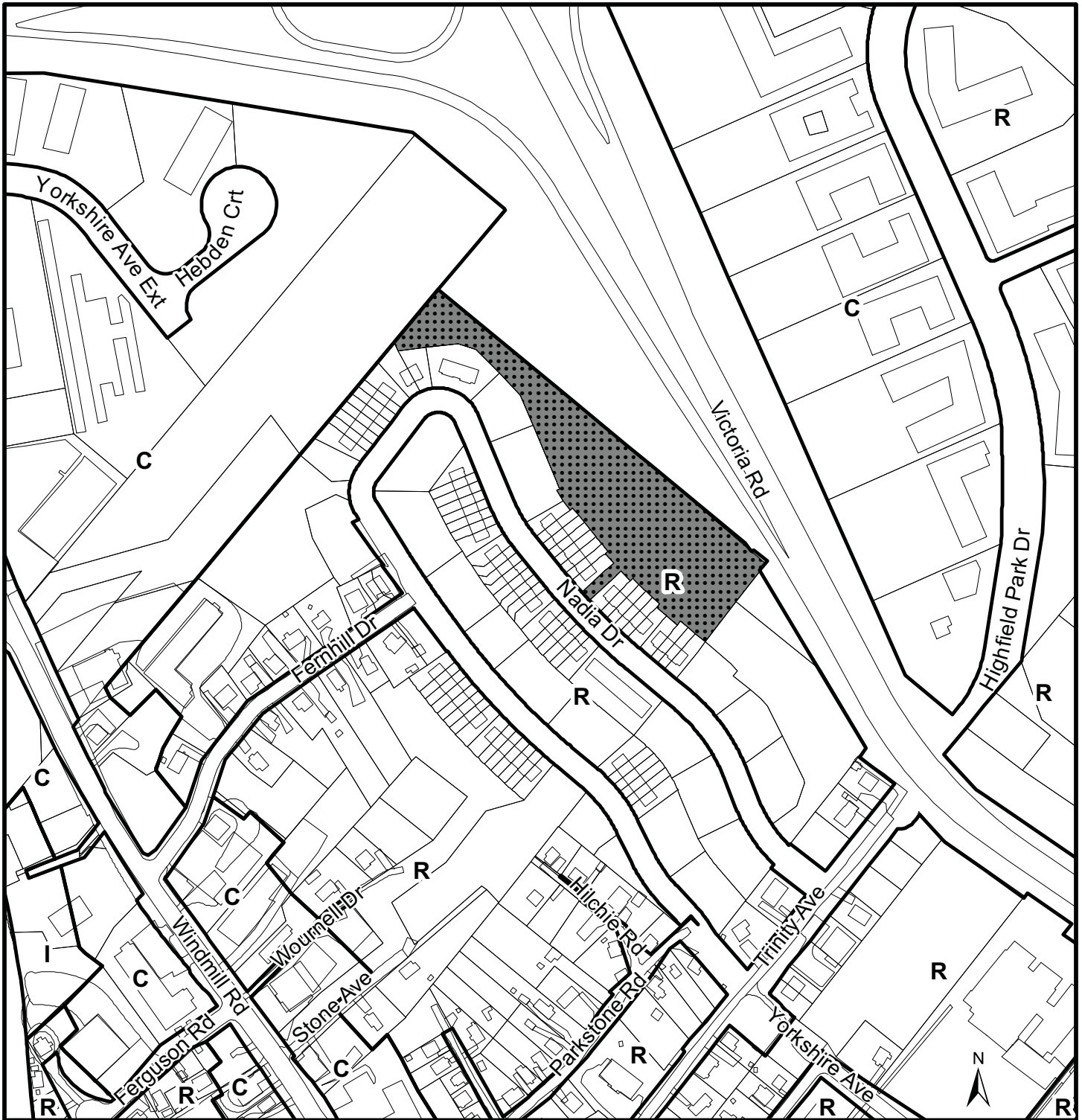
A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Mitch Dickey, Planner, 490-5719

Original Signed

Report Approved by:


 Kelly Denty, Manager of Development Approvals, 490-4800



Map 1 - Generalized Future Land Use

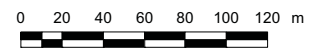
PID 41268616
Dartmouth



 Area Subject to Development Agreement & Requiring Time Extension

Designation

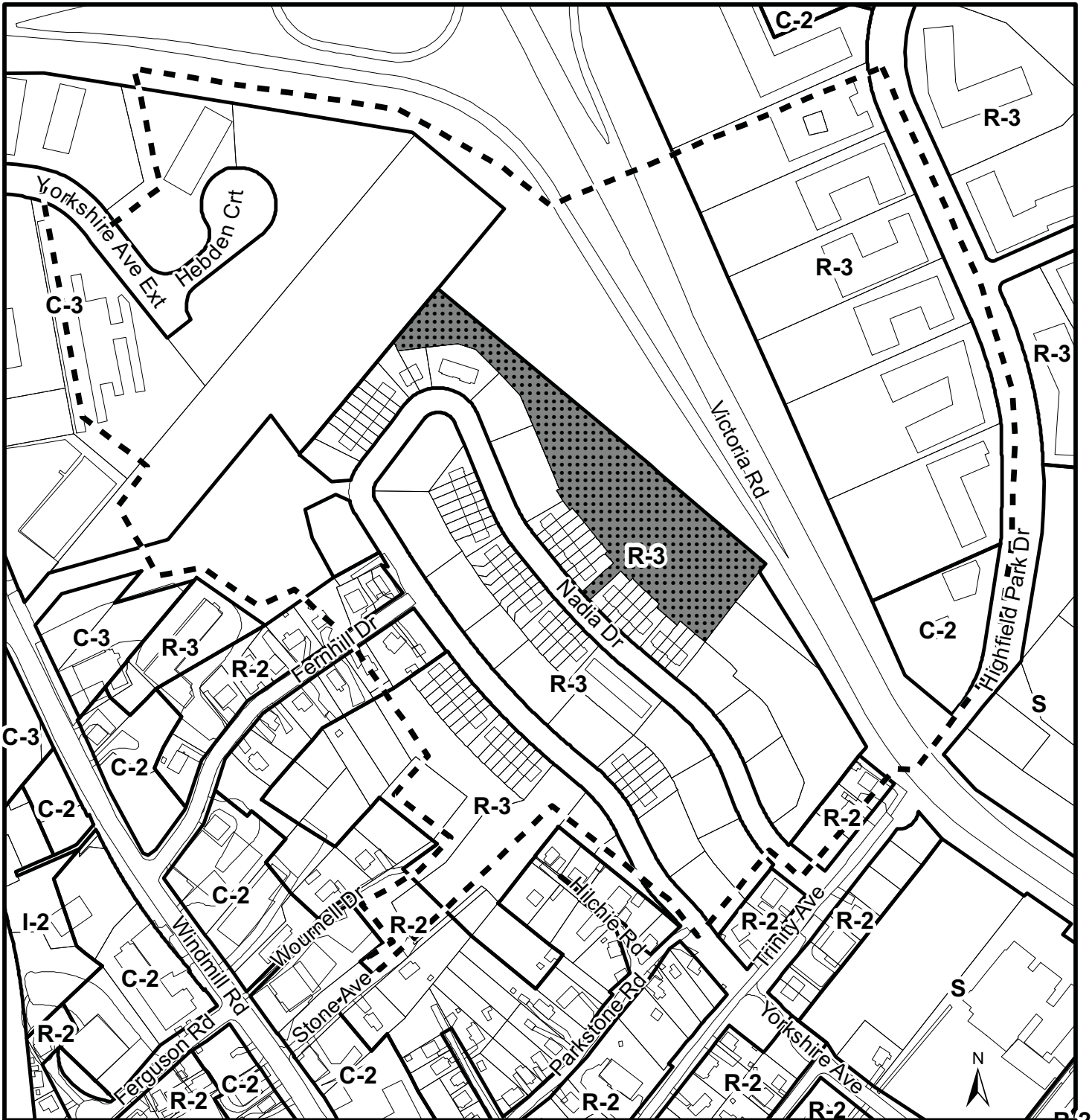
- R Residential
- C Commercial
- I Industrial



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.

Dartmouth Plan Area



Map 2 - Zoning and Notification

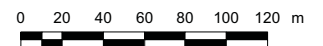
PID 41268616
Dartmouth

-  Area Subject to Development Agreement & Requiring Time Extension
-  Area of Notification

Dartmouth Plan Area

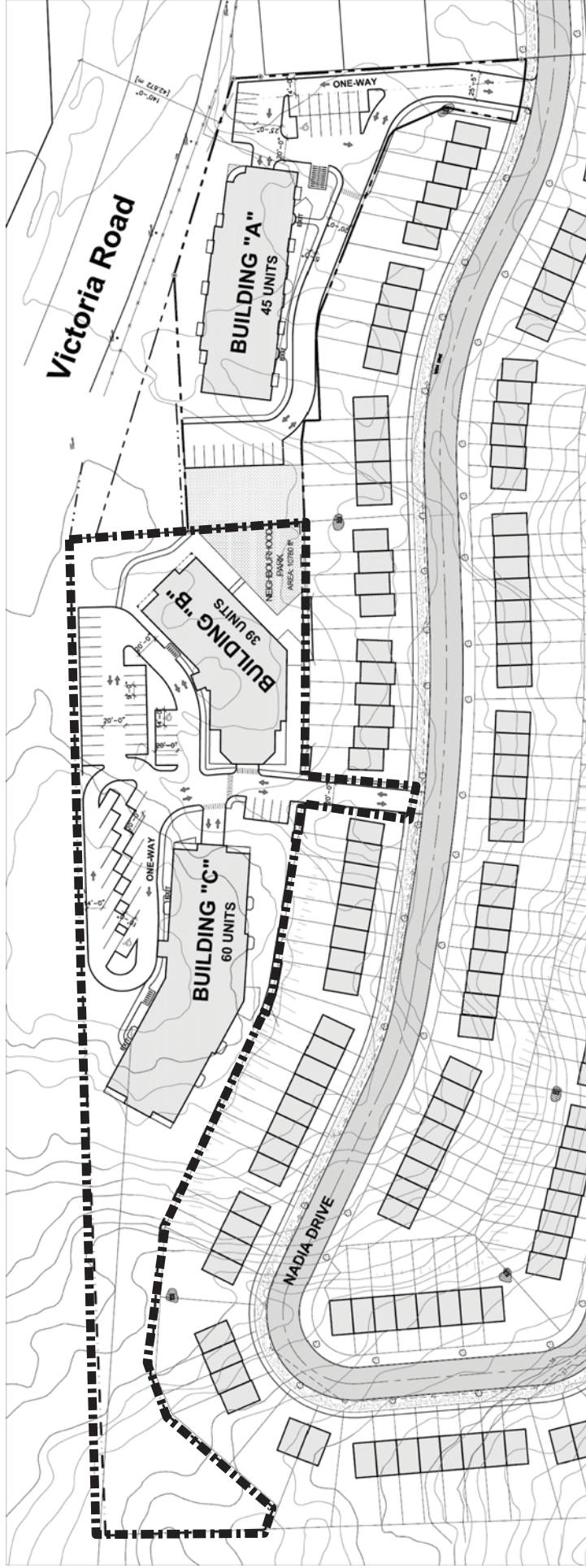
Zone

- R-2 Two Family Residential
- R-3 Multiple Family Residential (Medium Density)
- C-2 General Business
- C-3 General Business
- I-2 General Industrial
- S Institutional



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.



Map 3
Site Plan

Trinity Subdivision

Subject Site



HRM does not guarantee the accuracy of any base map information on this map.

Attachment A
Proposed Amending Development Agreement

THIS AMENDING AGREEMENT made this _____ day of _____, 2013
BETWEEN:

<INSERT DEVELOPER NAME>,
a body corporate, in the Province of Nova Scotia

OF THE FIRST PART

- and -

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

OF THE SECOND PART

WHEREAS the Banc Properties Limited and the Halifax Regional Municipality previously entered into an agreement to allow for development of two multiple unit dwellings on Nadia Drive in Dartmouth, the said Agreement being recorded at the Registry of Deeds at Halifax as Document 91690397 (hereinafter called the "Existing Agreement") referenced as Municipal Case Number 01010;

AND WHEREAS the Developer has requested an amendment to the provisions of the Existing Agreement to permit a time extension for the commencement of construction by entering into this Amending Agreement (hereinafter called the First Amending Agreement) referenced as Municipal Case Number 18118; and

AND WHEREAS the Harbour East–Marine Drive Community Council of Halifax Regional Municipality, at its meeting on the ____the day of _____, 2013, approved this request, referenced as Municipal Case Number 18118;

THEREFORE in consideration of the benefits accrued to each party from the covenants herein contained, the Parties agree to the following amendment to the Existing Agreement:

1. Section 8.3.1 of The Existing Agreement shall be amended by replacing the words "5 years" with the words "8 years".

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, 2013.

SIGNED, SEALED AND DELIVERED
in the presence of:

<ENTER NAME OF DEVELOPER>

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

HALIFAX REGIONAL MUNICIPALITY

MAYOR

MUNICIPAL CLERK

Attachment B
Applicable Policies from the Dartmouth Municipal Planning Strategy

Policy IP-5: It shall be the intention of City Council to require Development Agreements for apartment building development in R-3, R-4, C-2, MF-1 and GC Zones. Council shall require a site plan, building elevations and perspective drawings for the apartment development indicating such things as the size of the building(s), access and egress to the site, landscaping, amenity space, parking and location of site features such as refuse containers and fuel storage tanks for the building. In considering the approval of such Agreements, Council shall consider the following criteria:

- (a) adequacy of the exterior design, height, bulk and scale of the new apartment development with respect to its compatibility with the existing neighbourhood;
- (b) adequacy of controls placed on the proposed development to reduce conflict with any adjacent or nearby land uses by reason of:
 - (i) the height, size, bulk, density, lot coverage, lot size and lot frontage of any proposed building;
 - (ii) traffic generation, access to and egress from the site; and
 - (iii) parking;
- (c) adequacy or proximity of schools, recreation areas and other community facilities;
- (d) adequacy of transportation networks in, adjacent to, and leading to the development;
- (e) adequacy of useable amenity space and attractive landscaping such that the needs of a variety of household types are addressed and the development is aesthetically pleasing;
- (f) that mature trees and other natural site features are preserved where possible;
- (g) adequacy of buffering from abutting land uses;
- (h) the impacts of altering land levels as it relates to drainage, aesthetics and soil stability and slope treatment; and
- (i) the Land Use By-law amendment criteria as set out in Policy IP-1(c).

IP-1(c): In considering zoning amendments and contract zoning, Council shall have regard to the following:

- (1) that the proposal is in conformance with the policies and intent of the Municipal Development Plan
- (2) that the proposal is compatible and consistent with adjacent uses and the existing development form in the area in terms of the use, bulk, and scale of the proposal
- (3) provisions for buffering, landscaping, screening, and access control to reduce potential incompatibilities with adjacent land uses and traffic arteries
- (4) that the proposal is not premature or inappropriate by reason of:
 - (i) the financial capability of the City is to absorb any costs relating to the development
 - (ii) the adequacy of sewer and water services and public utilities
 - (iii) the adequacy and proximity of schools, recreation and other public facilities
 - (iv) the adequacy of transportation networks in adjacent to or leading to the development
 - (v) existing or potential dangers for the contamination of water bodies or courses or the creation of erosion or sedimentation of such areas

- (vi) preventing public access to the shorelines or the waterfront
 - (vii) the presence of natural, historical features, buildings or sites
 - (viii) create a scattered development pattern requiring extensions to truck facilities and public services while other such facilities remain under utilized
 - (ix) the detrimental economic or social effect that it may have on other areas of the City.
- (5) that the proposal is not an obnoxious use
- (6) that controls by way of agreements or other legal devices are placed on proposed developments to ensure compliance with approved plans and coordination between adjacent or nearby land uses and public facilities. Such controls may relate to, but are not limited to, the following:
- (i) type of use, density, and phasing
 - (ii) emissions including air, water, noise
 - (iii) traffic generation, access to and egress from the site, and parking
 - (iv) open storage and landscaping
 - (v) provisions for pedestrian movement and safety
 - (vi) management of open space, parks, walkways
 - (vii) drainage both natural and sub-surface and soil-stability
 - (viii) performance bonds.
- (7) suitability of the proposed site in terms of steepness of slope, soil conditions, rock outcroppings, location of watercourses, marshes, swamps, bogs, areas subject to flooding, proximity to major highways, ramps, railroads, or other nuisance factors.

Attachment C
Relevant Sections of Existing Development Agreement

6.1 Substantive Amendments

Amendments to any matters not identified under Section 6.2 shall be deemed substantive and may only be amended in accordance with the approval requirements of the Municipal Government Act.

6.2 Non Substantive Amendments

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

- (a) The granting of an extension to the date of commencement of construction as identified in Section 8.3.1 of this Agreement;
- (b) The granting of an extension to length of time for the completion of the development as identified in Section 8.3.2 of this Agreement;

In considering the approval of a non-substantive amendment under Section 6.2, property owners within 500 feet of the site shall be informed by mail at least 10 days in advance of the proposed amendment being considered by Council.

8.3.1 In the event that a Construction Permit has not been issued within 5 years from the date of registration of this Agreement at the Registry of Deeds, as indicated herein, the Municipality may, by resolution of Council, either discharge this Agreement, whereupon this Agreement shall have no further force or effect, or upon written request of the Developer, grant an extension to the date of commencement of construction.

8.3.2 If the Developer fails to complete the development, or after 10 years from the date of registration of this Agreement with the Registry of Deeds, whichever time period is less, 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.

8.4 Completion of development

Upon the completion 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; or
- (c) discharge this Agreement.