

Item 7.1.1

Harbour East-Marine Drive Community Council

May 2, 2013

June 6, 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: April 15, 2013

**SUBJECT: Case 18241: Development Agreement for an Automotive Repair Shop
at 782 Main Street, Westphal**

ORIGIN

Application by Mike Macdonald

LEGISLATIVE AUTHORITY

HRM Charter; Part VIII, Planning & Development

RECOMMENDATION

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

1. Give Notice of Motion to consider the proposed development agreement as provided in Attachment A to allow an automotive repair outlet at 782 Main Street, Westphal and schedule a public hearing;
2. Approve the proposed development agreement as set out in Attachment A of this report to permit an automobile repair outlet at 782 Main Street, Westphal; and
3. Require 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

An application has been submitted by Mike Macdonald to operate an automobile repair outlet at 782 Main Street in Westphal. Policy HC-6 of the Cole Harbour/Westphal Municipal Planning Strategy (MPS) enables Council to consider automobile repair outlets by development agreement.

The Proposal and Site

The applicant is proposing an automobile repair use at 782 Main Street that would include paint and body work, engine repair and other related activities. The proposed use is in an existing highway commercial corridor area and the subject property was previously occupied by a water drilling company. The proposal is solely for a change in use and no expansion is proposed to the existing building.

The existing building was constructed in 1993 within the portion of the property zoned C-4. However, associated commercial activity, such as storage and parking, has occupied portions of the property zoned R-1A from time to time.

The Property

The subject property is generally described as follows:

- located on Main Street opposite the Memorial Gardens Cemetery;
- frontage and access from Main Street but also contains an existing driveway to Memorial Drive, a residential street;
- designated Highway Commercial (HC) and Urban Residential (UR) (Map 1) under the Cole Harbour/Westphal MPS;
- zoned C-4 (Highway Commercial) Zone with a small portion zoned R-1A (Single Unit Dwelling) Zone (Map 2) under the Cole Harbour/Westphal Land Use By-law (LUB) ;
- approximately 15,913 sq. ft. (1,478.3 sq. m.) in area and contains an existing building approximately 3,600 sq. ft. (334.4 sq. m.) in size; and
- adjacent to a pumping station, pizza restaurant on Main St and a residential property on Memorial Drive.

Existing Policy

The Cole Harbour/Westphal MPS and LUB allows automobile repair in association with a service station, as-of-right, in the Highway Commercial designation. However, stand-alone automotive repair uses in the Highway Commercial designation can only be permitted subject to a development agreement. The MPS states this area is appropriate for automotive repair uses provided controls are placed on parking and open storage and display. Policy HC-6 allows Council to consider a development agreement for an automotive repair use.

DISCUSSION

Staff reviewed the proposed development relative to the applicable policies in the Cole Harbour/Westphal MPS. Specifically, an evaluation of the proposal against the enabling Policies HC-6 and IM-11 has been completed and is presented in Attachment B. Upon review of the MPS, it is the opinion of staff that the proposed development and proposed development agreement (Attachment A) meets the intent of the plan policies. While the proposal is consistent with policy, staff has identified the following issues for more detailed discussion.

Access to Memorial Drive

The property currently has two different points of access: one along its primary frontage on Main Street and another along the rear of the lot at Memorial Drive (Attachment A - Schedule B). Memorial Drive is classified as a local street serving residential properties, while Main Street is an arterial street. To reduce the impacts of commercial development on the residential street and to prevent traffic shortcutting from Main Street, the access to Memorial Drive will be eliminated as per section 3.4 of the proposed development agreement (Attachment A).

Site Design and Compatibility

The southern portion of the property abuts a residential property. To reduce impacts on the neighbouring properties, the development agreement requires a fence with landscaping around the base to be installed to provide a buffer from the abutting property (Attachment A - Schedule B). The bay doors for the vehicle repair face the east side of the property which abuts a pumping station. The tire storage and garbage bins are located along the west side of the property which abuts the existing commercial building (pizza restaurant). This orientation will help to alleviate the impact on the neighbouring residential properties.

The property is zoned C-4 which permits a wide variety of as-of-right uses, including vehicle repair in association with a service station. The automotive repair use is not considered to have any greater impacts on the surrounding properties than the uses currently permitted in the C-4 Zone.

Outdoor Storage and Display

At this time, the proposal does not include any outdoor storage or display. However, if this is desired in the future, the development agreement requires outdoor storage to be fully screened from adjacent residential properties and streets by means of an opaque fence or masonry walls with suitable landscaping. Refuse containers are also be subject to the same screening requirements.

Parking

A portion of the parking area is currently on the adjacent HRM-owned pumping station lands. The proposed parking plan arrangement results in the parking being removed from these lands and placed completely within the bounds of the subject property. This will provide adequate off-street parking for the proposed automotive repair use.

R-1A Zoned Portion of the Property

The enabling policy does not apply to the portion of the subject property designated Urban Residential and zoned R-1A (Single Unit Dwelling). Commercial uses have existed on this property for over 20 years and portions of the property within the R-1A Zone have been used for purposes accessory to the commercial operation on an occasional basis.

The current proposal is to allow the existing building (located within the C-4 Zone) to be used for automotive repair purposes but to not allow any further intrusion of the use within the area of the lot that is zoned R-1A. The development agreement does not permit any expansions to the existing building and prohibits commercial activities from occurring within the rear yard which abuts the residential properties along Memorial Drive. Additionally, the agreement requires buffering along the rear property line through the use of an opaque fence and tree planting.

Conclusion

It is the opinion of staff an automotive repair use at 782 Main Street developed in accordance with the proposed development agreement (Attachment A) meets the intent of Policies HC-6 and IM-11. Therefore, staff recommends approval of the proposed development agreement in Attachment A.

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 incorporated with this case is consistent with the intent of the HRM Community Engagement Strategy.

The level of community engagement was information sharing, achieved through the HRM Website and responses to inquiries. The local councillor for the area was consulted and the Public Information Meeting was waived.

Should Harbour East-Marine Drive Community Council decide to proceed with a public hearing for this application, in addition to the published newspaper advertisements, property owners within the notification area will be notified as shown on Map 2.

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

ENVIRONMENTAL IMPLICATIONS

The proposal meets all relevant environmental policies contained in the Cole Harbour/Westphal MPS.

ALTERNATIVES

1. Council may choose to approve the proposed development agreement as shown in Attachment A. 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. Council may choose to refuse the proposed 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. Council may choose to approve the proposed development agreement subject to modifications. This may necessitate further negotiation with the applicant and may require an additional public hearing.

ATTACHMENTS

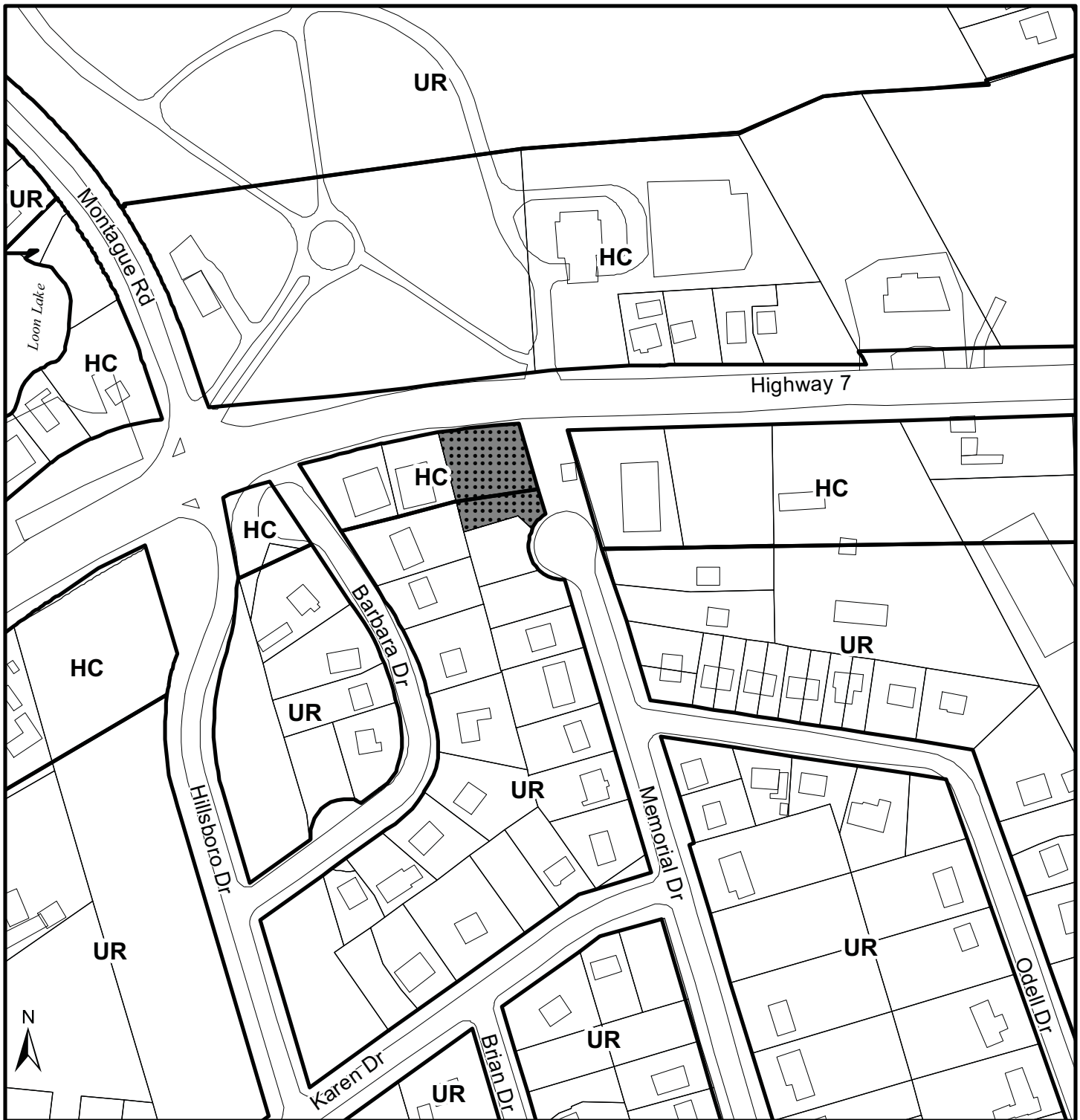
Map 1	Generalized Future Land Use
Map 2	Zoning and Notification
Attachment A:	Proposed Development Agreement
Attachment B:	Excerpts from the Municipal Planning Strategy for Cole Harbour/Westphal & Policy Review
Attachment C:	Excerpts from the Land Use By-law for Cole Harbour/Westphal

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: Jennifer Chapman, Planner 1, 490-3999

Original Signed

Report Approved by:  Kelly Denty, Manager Development Approvals, 490-4800



Map 1 - Generalized Future Land Use

782 Main Street
Dartmouth

HALIFAX
REGIONAL MUNICIPALITY
DEVELOPMENT APPROVALS

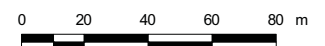


Area of Proposed
Development Agreement

Designation

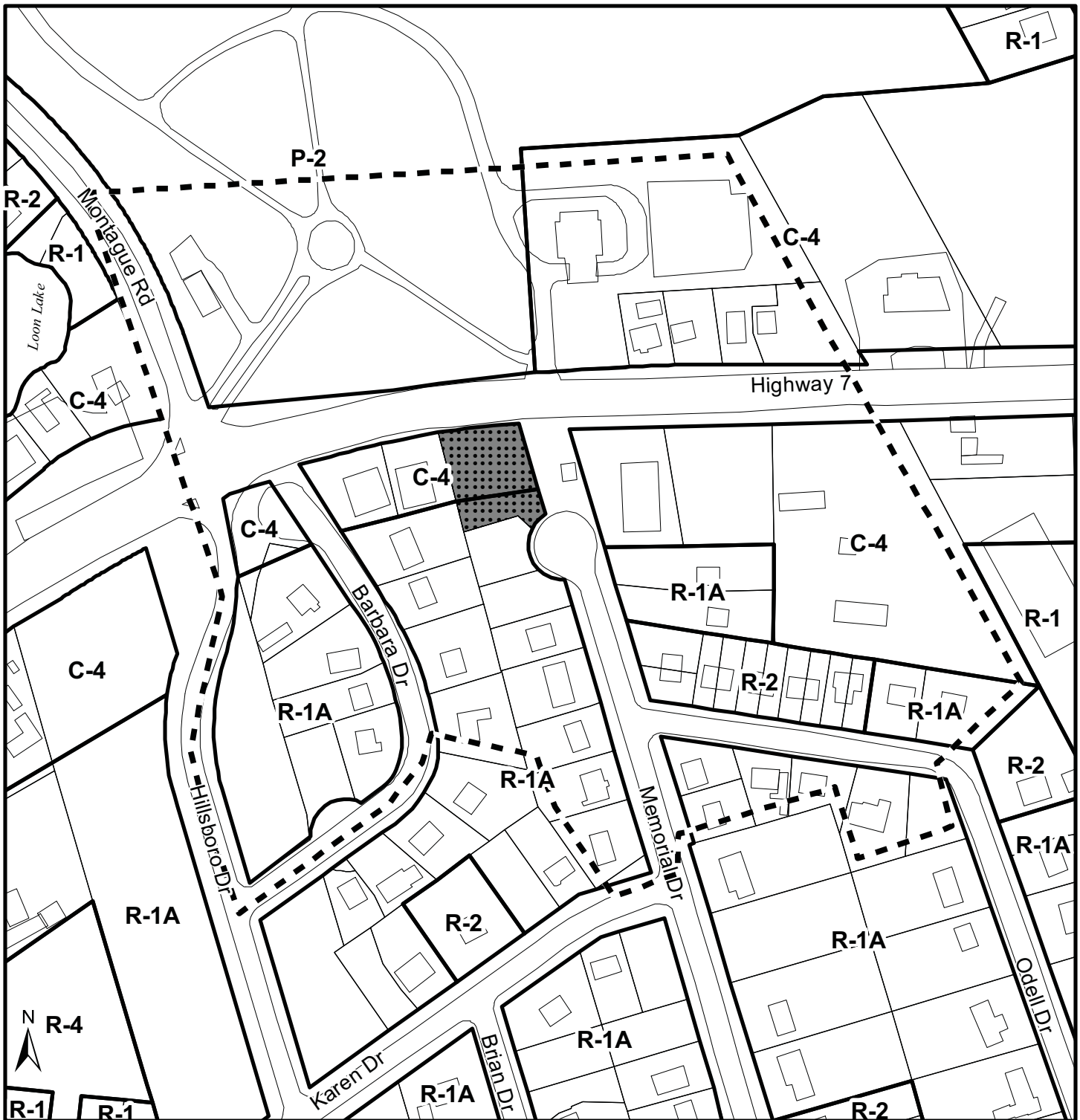
UR Urban Residential
HC Highway Commercial

Cole Harbour/Westphal
Plan Area



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 Notification

782 Main Street
Dartmouth

 Area of Proposed
Development Agreement

 Area of notification

Cole Harbour/Westphal
Plan Area

Zone

R-1A Single Unit Dwelling
R-1 Single Unit Dwelling
R-2 Two Unit Dwelling
R-4 Multiple Unit Dwelling
C-4 Highway Commerical
P-2 Community Facility

HALIFAX
REGIONAL MUNICIPALITY
DEVELOPMENT APPROVALS

0 20 40 60 80 m

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 owner's name here)
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 782 Main St, Cole Harbour/Westphal and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Developer has requested that the Municipality enter into a Development Agreement to allow for an automotive repair shop on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policy HC-6 of the Cole Harbour/Westphal Municipal Planning Strategy and Section 3.6(v) of the Cole Harbour/Westphal Land Use By-law;

AND WHEREAS the Harbour East-Marine Drive Community Council for the Municipality approved this request at a meeting held on **[Insert - Date]**, referenced as Municipal Case 18241;

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

PART 1: GENERAL REQUIREMENTS AND ADMINISTRATION

1.1 Applicability of Agreement

The Developer agrees that the Lands shall be developed and used only in accordance with and subject to the terms and conditions of this Agreement.

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

Except as otherwise provided for herein, the development, use and subdivision of the Lands shall comply with the requirements of the Land Use By-law for Cole Harbour/Westphal and the Regional Subdivision By-law, as may be amended from time to time.

1.3 Applicability of Other By-laws, Statutes and Regulations

1.3.1 Further to Section 1.2, nothing in this Agreement shall exempt or be taken to exempt the Developer, lot owner or any other person from complying with the requirements of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law to the extent varied by this Agreement), or any statute or regulation of the Provincial/Federal Government and the Developer or Lot Owner agree(s) to observe and comply with all such laws, by-laws and regulations, as may be amended from time to time, in connection with the development and use of the Lands.

1.3.2 The Developer shall be responsible for securing all applicable approvals associated with the on-site and off-site servicing systems required to accommodate the development, including but not limited to sanitary sewer system, water supply system, stormwater sewer and drainage system, and utilities. Such approvals shall be obtained in accordance with all applicable by-laws, standards, policies, and regulations of the Municipality and other approval agencies. All costs associated with the supply and installation of all servicing systems and utilities shall be the responsibility of the Developer. All design drawings and information shall be certified by a Professional Engineer or appropriate professional as required by this Agreement or other approval agencies.

1.4 Conflict

1.4.1 Where the provisions of this Agreement conflict with those of any by-law of the Municipality applicable to the Lands (other than the Land Use By-law to the extent varied by this Agreement) or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail.

1.4.2 Where the written text of this Agreement conflicts with information provided in the Schedules attached to this Agreement, the written text of this Agreement shall prevail.

1.5 Costs, Expenses, Liabilities and Obligations

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

1.6 Provisions Severable

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

PART 2: DEFINITIONS

2.1 Words Not Defined under this Agreement

All words 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.

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 with the following Schedules attached to this Agreement and filed in the Halifax Regional Municipality as Case Number 18241:

Schedule A Legal Description of the Lands(s)
Schedule B Site Plan

3.2 Requirements Prior to Approval

- 3.2.1 Notwithstanding any other provision of this Agreement, the Developer shall not occupy or use the Lands for any of the uses permitted by this Agreement until after a Development Permit has been issued by the Municipality. Upon the issuance of a Development Permit the Developer comply with all applicable provisions of this Agreement and the Land Use By-law (except to the extent that the provisions of the Land Use By-law are varied by this Agreement) and with the terms and conditions of all permits, licenses, and approvals required to be obtained by the Developer pursuant to this Agreement.
- 3.2.2 The requirements of Sections 3.4, 3.7, 3.8 and 3.9 shall be completed at the time of issuance of the Occupancy Permit.

3.3 General Description of Land Use

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

- (a) Automobile Repair Use (Major) within existing building;
- (b) Any uses permitted within the existing zone applied to the Lands subject to the provisions contained within the Cole Harbour/Westphal Land Use By-law, as amended from time to time.

3.4 Parking, Circulation and Access

3.4.1 The parking area shall be situated as shown on Schedule B. The parking area shall maintain setbacks from the property lines as shown on Schedule B.

3.4.2 The parking area shall provide a minimum of 10 parking spaces.

3.4.3 The parking area shall be hard surfaced or gravelled.

3.4.4 Vehicular access to Memorial Drive shall not be permitted and the existing shall be eliminated in manner deemed acceptable by the Development Officer.

3.5 Outdoor Lighting

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

3.6 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, 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.

3.7 Signs

3.7.1 The sign requirements shall be in accordance with the Cole Harbour/Westphal Land Use By-law as amended from time to time.

3.7.2 Ornamental plants shall be planted and maintained around the entire base of any ground sign as part of the required landscaping.

3.8 Buffering

- 3.8.1 The lands shall be buffered from the adjacent residential property located on Memorial Drive through the use of a 6 foot high opaque fence running the length of the lot line, and contain a mix of nursery stock trees at 10 feet spacing on centre and shrubs at 6 feet spacing on centre at the base of the fence, as shown on Schedule B.
- 3.8.2 No portion of the rear yard shall be used for commercial purposes.

3.9 Screening

- 3.9.1 Refuse containers located outside the building shall be fully screened from adjacent residential properties and streets by means of opaque fencing or masonry walls with suitable landscaping.
- 3.9.2 Open storage located outside the building shall be fully screened from adjacent residential properties and streets by means of opaque fencing or masonry walls with suitable landscaping.

3.10 Hours of Operation

- 3.10.1 Deliveries to the building, and the collection of refuse and recyclables, shall occur only between the hours of 7:00 am and 10:00 pm.
- 3.10.2 Hours of operation shall conform to all relevant Municipal and Provincial legislation and regulations, as may be amended from time to time.

PART 4: AMENDMENTS

4.1 Non-Substantive Amendments

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

- (a) The granting of an extension to the date of commencement of construction as identified in Section 5.3.1 of this Agreement;
- (b) The length of time for the completion of the development as identified in Section 5.4 of this Agreement;

4.2 Substantive Amendments

Amendments to any matters not identified under Section 6.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Halifax Regional Municipality Charter*.

PART 5: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

5.1 Registration

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

5.2 Subsequent Owners

5.2.1 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.

5.2.2 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).

5.3 Commencement of Development

5.3.1 In the event that development on the Lands has not commenced within 3 years from the date of registration of this Agreement at the Registry of Deeds or Land Registry Office, as indicated herein, the Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law.

5.3.2 For the purpose of this section, commencement of development shall mean the issuance of a Development Permit.

5.3.3 For the purpose of this section, Council may consider granting an extension of the commencement of development time period through a resolution under Section 4.1(b), 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.

5.4 Completion of Development

Upon the completion of the whole development or complete phases of the development, Council may review this Agreement, in whole or in part, and may:

- (a) retain the Agreement in its present form;
- (b) negotiate a new Agreement;
- (c) discharge this Agreement; or
- (d) for those portions of the development which are completed, discharge this Agreement and apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By-law for Cole Harbour/ Westphal as may be amended from time to time

5.5 Discharge of Agreement

5.5.1 If the Developer fails to complete the development after 3 years from the date of registration of this Agreement at the Registry of Deeds or Land Registration Office Council may review this Agreement, in whole or in part, and may:

- (a) retain the Agreement in its present form;
- (b) negotiate a new Agreement; or
- (c) discharge this Agreement.

PART 6: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

6.1 Enforcement

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

6.2 Failure to Comply

If the Developer fails to observe or perform any condition of this Agreement after the Municipality has given the Developer 30 days written notice of the failure or default, then in each such case:

- (a) The Municipality shall be entitled to apply to any court of competent jurisdiction for injunctive relief including an order prohibiting the Developer from continuing such default and the Developer hereby submits to the jurisdiction of such Court and waives any defense based upon the allegation that damages would be an adequate remedy;
- (b) The Municipality may enter onto the Lands and perform any of the covenants contained in this Agreement or take such remedial action as is considered necessary to correct a breach of the Agreement, whereupon all reasonable expenses whether arising out of the entry onto the Lands or from the performance of the covenants or remedial action, shall be a first lien on the Lands and be shown on any tax certificate issued under the *Assessment Act*;
- (c) The Municipality may by resolution discharge this Agreement whereupon this Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law; or
- (d) In addition to the above remedies, the Municipality reserves the right to pursue any other remedy under the *Halifax Regional Municipality Charter* or Common Law in order to ensure compliance with this Agreement.

IN WITNESS WHEREAS the said parties to these presents have hereunto set their hands and affixed their seals the day and year first above written.

SIGNED, SEALED AND DELIVERED in
the presence of:

(Insert owner's name here)

Witness

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

MAYOR

Witness

MUNICIPAL CLERK

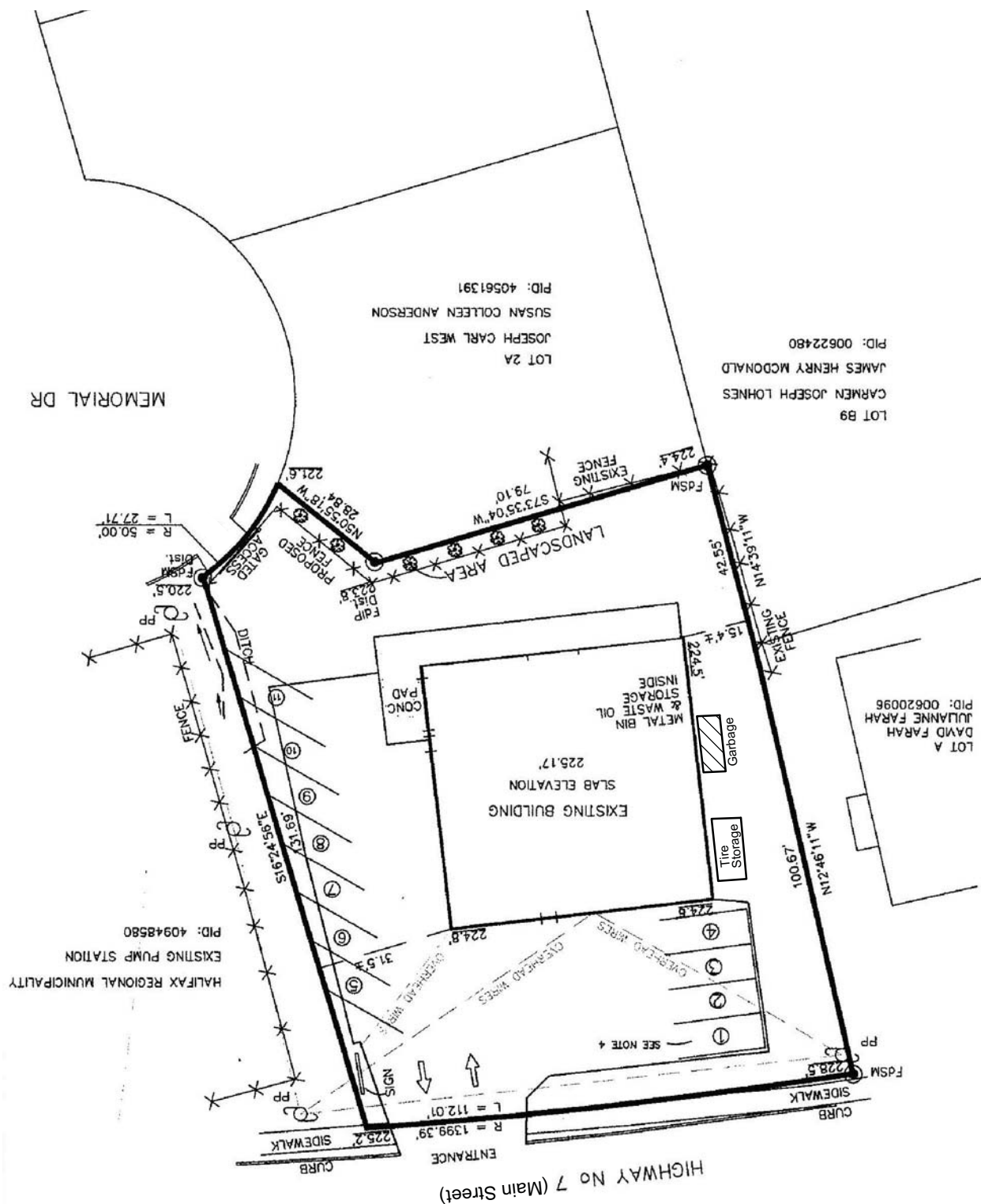
HALIFAX

REGIONAL MUNICIPALITY
DEVELOPMENT APPROVALS

April 16, 2013

Case 18241

T:\work\planning\Holly\Official_Maps\case_maps\Case_18241\Sch B (HK)



Attachment B
Excerpts from the Municipal Planning Strategy
for Cole Harbour/Westphal & Policy Review

HC-6 Notwithstanding Policy HC-2, within the Highway Commercial Designation it shall be the intention of Council to only consider permitting automotive repair outlets according to the development agreement provisions of the Planning Act. When considering such an agreement, Council shall have regard to the following:

Policy Criteria	Staff Comment
<i>(a) vehicular access to the site;</i>	A Traffic Impact Statement was prepared for the proposed development and its findings were accepted by HRM staff. Specifically, the proposed development can be serviced by the existing access to Main Street. However, the site has two accesses - Main Street and Memorial Drive. To reduce the impacts of commercial development on a residential street and to ensure residential traffic is not travelling through a private property to gain access to Main Street, the access to Memorial Drive will be closed off under section 3.4 of the proposed development agreement (Attachment A).
<i>(b) the location and extent of outdoor storage and outdoor display;</i>	No outdoor display or storage proposed, but if it is proposed at a later date it is to be screened as per the requirements in the LUB. Refuse containers shall be fully screened from adjacent residential properties and streets by means of opaque fencing or masonry walls with suitable landscaping.
<i>(c) site design including parking and loading spaces and landscaping; and</i>	The amount of parking is appropriate for the use. Landscaping is proposed where the site abuts the residential lot to the south and at the base of any ground sign.
<i>(d) the provisions of Policy IM-11.</i>	The proposal meets the requirements of Policy IM-11 (see table below)

IM-11 In considering amendments to the land use by-law or development agreements, in addition to all other criteria as set out in various policies of this planning strategy, Cole Harbour/Westphal Community Council shall have appropriate regard to the following matters:

Policy Criteria	Staff Comment
<i>(a) that the proposal is in conformity with the intent of this planning strategy and with the requirements of all other municipal by-laws and regulations;</i>	Proposal meets the requirements of Policy HC-6 (see table above).
<i>(b) that the proposal is not premature or inappropriate by reason of:</i>	
<i>(i) the financial capability of the Municipality to absorb any costs relating to the development;</i>	There are no anticipated costs to the Municipality relating to the proposed development.
<i>(ii) the adequacy of sewer and water services;</i>	The property is serviced with municipal water and sewer and Halifax Water is satisfied that the proposed development can be serviced.
<i>(iii) the adequacy or proximity of school, recreation and other community facilities;</i>	The proposed development is a commercial use, therefore, these facilities will not be impacted by this development.
<i>(iv) the adequacy of road networks leading or adjacent to or within the development; and</i>	A Traffic Impact Statement was prepared for the proposed development and its findings were accepted by HRM staff. Specifically, the proposed development can be serviced by the existing access to Main Street and the road network is adequate to service the proposed development.
<i>(v) the potential for damage to or destruction of designated historic buildings and sites.</i>	Staff is not aware of any such buildings or features on the lands.
<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:</i>	
<i>(i) type of use;</i>	Fencing and landscaping are being provided along the southern property boundary to provide a buffer for the residential use.
<i>(ii) height, bulk and lot coverage of any proposed building;</i>	No new building proposed. The site currently has a single storey 3600 sq ft building.
<i>(iii) traffic generation, access to and egress from the site, and parking;</i>	See previous evaluations. A portion of the parking area is currently on the adjacent HRM-owned pumping station lands. The proposed parking plan has removed the parking from these lands and placed completely within the subject property. With this, adequate parking for the proposed automotive repair use is being provided.

<i>(iv) open storage;</i>	No outdoor display or storage proposed, but if it is proposed at a later date it is to be screened as per the requirements in the LUB. Refuse containers shall be fully screened from adjacent residential properties and streets by means of opaque fencing or masonry walls with suitable landscaping.
<i>(v) signs; and</i>	Signage as per LUB with landscaping around base of any ground sign and consistent with other commercial uses in the area.
<i>(vi) any other relevant matter of planning concern.</i>	None
<i>(d) that the proposed site is suitable in terms of steepness of grades, soil and geological conditions, locations of watercourses, potable water supplies, marshes or bogs and susceptibility to flooding; and</i>	The site is suitable for development. The lands do not have any known watercourses or wetlands.
<i>(e) any other relevant matter of planning concern.</i>	None
<i>(f) Within any designation, where a holding zone has been established pursuant to “Infrastructure Charges - Policy IC-6”, 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-Jul 2/02;E-Aug 17/02)</i>	N/A

**Attachment C
Excerpts from the Land Use By-law for Cole Harbour/Westphal**

2.8A AUTOMOTIVE REPAIR USE (MAJOR) means a building or part of a building used for major repairs of motor vehicles including paint and body repair, transmission repair and replacement, engine repair and replacement, and other customizing activities directly related to the repair or alteration of motor vehicles where a motor vehicle is generally required to remain at the repair facility for one or more days and may be stored outdoors, but shall not include the manufacturing or fabrication of motor vehicle parts for the purpose of sale nor the retailing of gasoline or other fuels. (RC-May 11/99;E-Jun 26/99)

PART 18: C-4 (HIGHWAY COMMERCIAL) ZONE

18.1 C-4 USES PERMITTED

No development permit shall be issued in any C-4 (Highway Commercial) Zone except for the following:

Commercial Uses

Retail stores;
Food stores;
Service and personal service shops;
Banks and financial institutions;
Restaurants;
Outdoor display courts;
Hotels, motels and motor inns;
Indoor commercial recreation uses;
Funeral establishments;
Service stations;
Taxi and bus depots;
Parking lots;
Greenhouses and nurseries;
Veterinary hospitals and kennels;
Re-cycling depots.

Community Uses

Open space uses;
Institutional uses;
Fraternal centres and halls.

Residential Uses

Existing dwellings

18.2 C-4 ZONE REQUIREMENTS: COMMERCIAL USES

In any C-4 Zone, where uses are permitted as Commercial Uses, no development permit shall be issued except in conformity with the following:

Minimum Lot Area:	central services - 10,000 square feet (929.0 m ²) on-site services - 20,000 square feet (1858.1 m ²)
Minimum Frontage:	150 feet (45.7 m)
Minimum Front or Flankage Yard	30 feet (9.1 m)
Minimum Rear or Side Yard	15 feet (4.6 m)
Maximum Height of Main Building	35 feet (10.7 m)
Maximum Lot Coverage	50 percent

18.3 OTHER REQUIREMENTS: COMMERCIAL FLOOR AREA

Notwithstanding the provisions of Section 18.1, no commercial building in any C-4 Zone shall exceed ten thousand (10,000) square feet (929 m²) of gross floor area.

18.4 OTHER REQUIREMENTS: OPEN STORAGE AND DISPLAY

Where any portion of any lot in any C-4 Zone is to be used for open storage or outdoor display, the following shall apply:

- (a) Any area devoted to open storage may not exceed fifty (50) per cent of the lot area.
- (b) No open storage shall be permitted within any required front yard.
- (c) No open storage or outdoor display shall be permitted in any required yard within any C-4 Zone where the required yard abuts any residential zone or community uses zone, except where a fence or other visual barrier is provided.

18.5 OTHER REQUIREMENTS: SERVICE STATIONS

Notwithstanding the provisions of Sections 18.2 and 18.7, where a service station is erected in any C-4 Zone, the following shall apply:

Minimum Lot Area:	30,000 square feet (2787.0 m ²)
Minimum Frontage:	150 feet (45.7 m)
No portion of a pump island shall be located closer than:	20 feet (6.1 m) from any street line
Minimum distance between ramps or driveways	30 feet (9.1 m)
Minimum distance from a ramp or driveway to a road intersection	50 feet (15.2 m)
Minimum angle of intersection of a ramp to a road line	45 degrees
Width of a ramp:	minimum 20 feet (6.1 m) Maximum 26 feet (7.9 m)

18.6 C-4 ZONE REQUIREMENTS: COMMUNITY USES

In any C-4 Zone, where uses are permitted as community uses, no development permit shall be issued except in conformity with the provisions of Part 21 as are applicable.

18.7 OTHER REQUIREMENTS: COMMERCIAL ACCESS

Unless otherwise required by the Provincial Department of Transportation and Communications, all uses which are permitted uses in any C-4 Zone with the exception of service stations, shall be permitted not more than one (1) access onto Provincial Highway No. 7 for each lot.

18.8 EXISTING MULTIPLE UNIT DWELLINGS

Notwithstanding Section 18.1, existing multiple unit dwellings shall be a permitted use within the C-4 Zone. Subject to the requirements of Section 18.2 and the maximum number of units permitted within the identified existing multiple unit dwellings shall be as follows:

<u>Civic Address</u>	<u>LRIS No.</u>	<u>Maximum Number of Dwelling Units</u>
662 Preston Road	619171	3

18.9 OTHER REQUIREMENTS: BUFFERING AND SCREENING
(C-Oct 30/97;E-Nov 29/97)

- (a) In any C-4 Zone where commercial uses, including buildings, parking, outdoor display, or open storage are to be expanded, constructed or located on a lot which is adjacent to property that is zoned or used for residential or community uses, a buffer shall be provided. The buffer shall consist of a grassed landscaped area that is:
- (i) a minimum of twenty (20) feet in depth running the entire length of the adjacent property line and shall contain a vegetation screen consisting of at least two staggered rows of coniferous trees which are at least six (6) feet in height and at a maximum spacing of eight (8) feet on centre;
 - (ii) notwithstanding Subsection 18.9(a) (i), the grassed landscaped area may be reduced to ten (10) feet where an opaque fence of at least six (6) feet in height is provided along the common property boundary and the grassed landscaped area shall contain of a mix of nursery-stock trees at a maximum spacing of ten (10) feet on centre, or a mix of shrubs at a spacing of six (6) feet on centre, or a combination of nursery-stock trees and shrubs at the required spacing;
 - (iii) the landscaped area shall be properly maintained and kept free of litter; and
 - (iv) no structures, parking, storage or open display shall be permitted within the grassed landscaped area.
- (b) Notwithstanding Subsection 18.9(a), for any expansion or construction of a C-4 Zone use which is located adjacent to Loon Lake, the buffer shall consist of a grassed landscaped area that is:

- (i) a minimum of ten (10) feet in depth beginning at the normal high water mark, and running the entire length of the water's edge and shall contain either a mix of balled and burlapped shrubs that are a minimum of 40 cm in height and planted at a maximum spacing of four (4) feet on centre, or a single row of coniferous trees which are at least four (4) feet in height and at a maximum spacing of eight (8) feet on centre, or a combination of coniferous trees and shrubs at the required spacing;
 - (ii) the landscaped area shall be properly maintained and kept free of litter; and
 - (iii) no structures, parking, storage or open display shall be permitted within the grassed landscaped area.
- (c) Notwithstanding Subsection 18.9(a) and (b), for any expansion or construction of a C-4 Zone use which is located on lands identified as PID 00638460, PID 00619775, PID 00619627, and PID 00619502 which are adjacent to Loon Lake, the buffer shall consist of the retention of existing vegetation that is:
 - (i) a minimum of fifty (50) feet in depth beginning at the normal high water mark, and running the entire length of the water's edge;
 - (ii) no structures, parking, storage or open display shall be permitted within the buffer area.
- (d) Notwithstanding Subsection 18.9(a) or (b), a buffer shall not be required under the following conditions:
 - (i) where a change in occupancy does not increase the amount of parking, or open storage, or outdoor display within the commercial lot; or
 - (ii) where an addition to a commercial building does not increase its square footage more than five (5) percent of the total gross floor area, and provided there is no increase in the amount of parking, or open storage, or outdoor display within the commercial lot as a result of this addition.