8.1.1

HALIFAX
REGIONAL MUNICIPALITY

PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Harbour East Community Council
January 14, 2010

TO: Chair and ~~Members~~ of Harbour East Community Council

SUBMITTED BY: Paul Dunphy, Director of Community Development

DATE: December 16, 2009

SUBJECT: **Case 01346: Development Agreement - 657 Portland Street, Dartmouth**

ORIGIN

An application by Terrain Group Inc., for the lands of Debra Burke and Kimmy Pilon, to enter into a development agreement to permit a neighbourhood convenience use at 657 Portland Street, Dartmouth.

RECOMMENDATION

It is recommended that Harbour East Community Council:

1. Give Notice of Motion to consider the proposed development agreement as set out in Attachment A of this report and schedule a public hearing;

2. Approve the proposed development agreement as set out in Attachment A of this report to permit a neighbourhood convenience outlet use at 657 Portland Street, Dartmouth; and

3. Require the agreement be signed within 120 days, or any extension thereof granted by Council on request of the applicant, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

The lands at 657 Portland Street, Dartmouth, currently contain a residential dwelling with a home occupation (Spa Solutions) that consumes approximately 25% of the floor area. The Dartmouth Land Use By-law only permits home occupations up to 25% of the floor areas of a building. The land owner wishes to expand the operation to approximately 50% of the building's total floor area and erect a wall mounted sign and a ground sign for the use. To achieve this goal, the Terrain Group Inc., on behalf of the land owner, has applied to enter into a development agreement to expand Spa Solutions as a neighbourhood convenience outlet use.

Location, Designation, Zoning and Surrounding Land Uses

- The lands (PID 00242008) at 657 Portland Street, are located at the NE corner of the intersection of Portland Street and Carver Street (Map 1);
- The lands are 1271.38 square metres (approximately 13,685.0 square feet) in area;
- The lands are designated Residential and zoned R-1(Single Family Residential) under the Dartmouth Municipal Planning Strategy and Land Use By-law (Maps 1 and 2); and
- The surrounding lands are zoned R-1 on Portland Street and Carver Street as shown on Map 2.

Enabling Policy

The Dartmouth MPS enables neighbourhood convenience uses through the development agreement process (Attachment C). This type of commercial use consists of outlets such as grocery stores, drug stores, barber shops and TV repair shops. This enables Council to consider proposals for neighbourhood convenience uses on a case by case basis and to consider such aspects as the compatibility of the use, bulk and scale of the development, traffic, parking, and landscaping as well as other aspects.

DISCUSSION

Staff have reviewed the proposal based on all applicable policies of the Dartmouth MPS, which are included in Attachment B to this report. Staff are of the opinion that the proposal is consistent with all applicable policies of the Dartmouth MPS. The following issues have been identified for more detailed discussion.

Land Use Impacts

In an attempt to minimize the impact of the proposed expansion on adjacent residential uses, the draft development agreement, as described in Attachment A:

- does not permit any alterations that would change the character of the dwelling;
- restricts the hours of operation to between 9:00 a.m. and 9:00 p.m.;
- does not permit outdoor storage;
- requires refuse containers to be screened from view from adjacent properties and streets/sidewalks; and
- limits any expansion of the commercial floor area within the building to a maximum of 10%.

Traffic
Access to Spa Solutions is currently permitted from Portland Street and Carver Street. Staff are of the opinion that eliminating the existing left-turn in from Portland Street, a major collector, and permitting a right-turn in only driveway will minimise the impact of the proposed expanded commercial area. The applicant will provide the No-Left Turn sign on Portland that HRM traffic services will fabricate and install.

Parking
On-site parking requirements in the draft Agreement are consistent with the Dartmouth Land Use By-law general provisions for number and size of spaces, surfacing system and bicycle parking. The draft Agreement contains a provision for future expansion of the parking area by identifying spaces on the site plan (Schedule B) for future development.

Landscaping/Screening
The draft Agreement contains requirements for screening of parking and common boundary areas in the Landscaping section of the draft Agreement. Parking areas are to be screened by a wood fence at least 5 feet high with coniferous shrubs planted along its base. The area identified for future parking is also subject to the same requirements when being created.

Signage
The draft development agreement provides for two additional signs on the property. The first is an illuminated sign to be affixed to the Carver Street end of the dwelling. The proposed sign is 3 feet in height and six feet in width having the Spa Solution logo and phone number.

The proposed second sign is 8 feet in height (measured from the ground to the top of the sign) and 8 feet in width and includes a changeable letter sign. Staff is of the opinion that the site's location at the corner of Carver Street and Portland Street warrants support of the consideration of two signs. The traffic flow created by west bound vehicles on Portland Street requires conspicuous, readable signage to identify access to and location of the spa but must also recognize this area is residentially zoned.

Public Information Meeting
A Public Information Meeting (PIM) was held on November 16, 2009, in connection with the proposed development agreement. Concerns brought forward by the public focussed on traffic safety issues, adequacy of on-site parking, screening of adjacent properties and expanded commercial use into a residential area. Staff are of the opinion that these concerns are addressed by the proposed development agreement.

Should Council decide to schedule a public hearing, property owners within the notification area included on Map 2, persons that signed the sign-in sheet at the PIM and persons who requested inclusion by phone call will be notified by mail.

Conclusion:
Staff is of the opinion that the proposed development agreement as set out in Attachment A is consistent with the intent of the MPS for neighbourhood convenience uses within the Residential designation. Therefore, staff recommend that Harbour East Community Council approve the proposed development agreement, included as Attachment A of this report.

BUDGET IMPLICATIONS

There are no budget implications. The Developer will be responsible for all costs, expenses, liabilities, and obligations imposed under or incurred in order to satisfy the terms of this Agreement. The administration of the agreement can be carried out within the approved budget with existing resources.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

ALTERNATIVES

1. Council may choose to approve the proposed development agreement as set out in Attachment A of this report. This is the recommended course of action.

2. Council may choose to approve the proposed development agreement subject to modifications. This may necessitate further negotiation with the applicant and may require a second public hearing.

3. Council may choose to refuse the proposed discharging agreement and/or the proposed development agreement, and in doing so, must provide reasons based on a conflict with MPS policies.

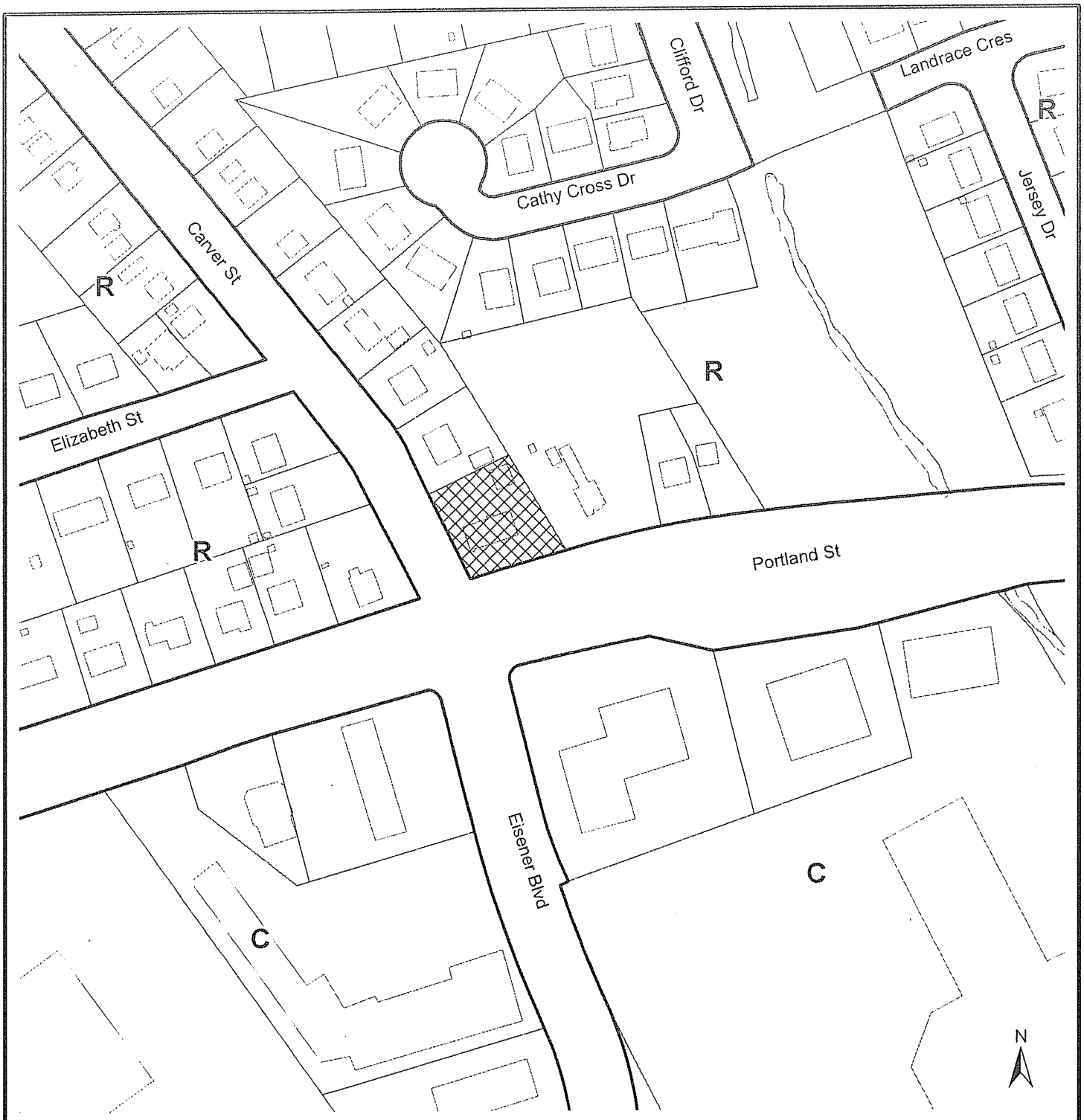
ATTACHMENTS

Map 1	Generalized Future Land Use Map
Map 2	Zoning and Notification Map
Attachment A	Proposed Development Agreement
Attachment B	Excerpts from the Dartmouth Municipal Planning Strategy
Attachment C	Minutes of Public Information Meeting, November 16, 2009

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 : Darrell Joudrey, Planner, 490-4181

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



Map 1 - Generalized Future Land Use

657 Portland Street

Subject Property

Designation

R Residential
C Commercial

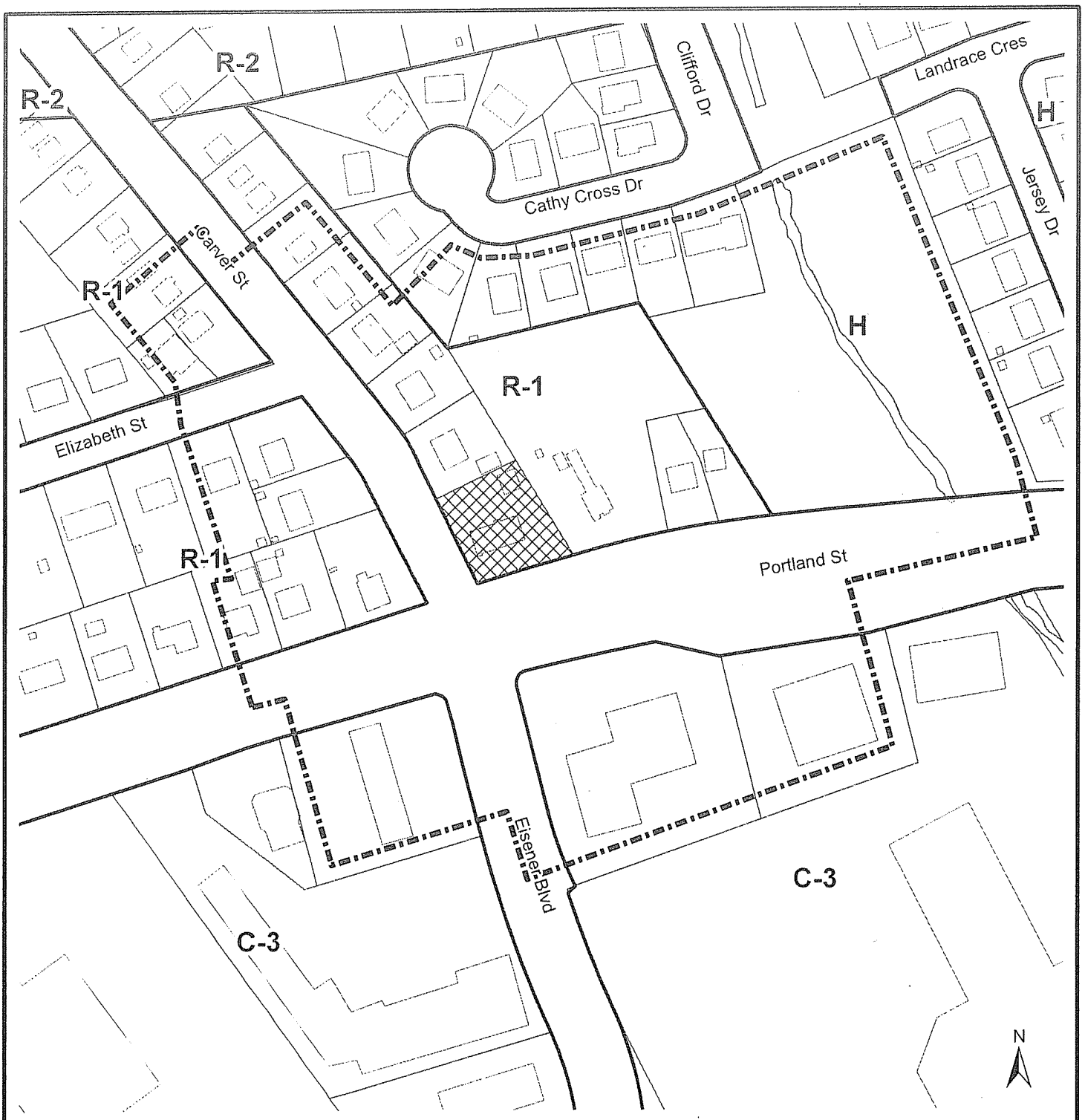
Dartmouth Plan Area

HALIFAX
REGIONAL MUNICIPALITY
COMMUNITY DEVELOPMENT
PLANNING SERVICES

0 40 80 160 240 Feet

This map is an unofficial reproduction of a portion of the Zoning Map for the Dartmouth Plan Area

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



Map 2 - Location and Zoning

657 Portland Street

Subject Property

Notification Area

Dartmouth Plan Area

Zone

R-1 Single Family Residential
R-2 Two Family Residential
C-3 General Business
H Holding

HALIFAX
REGIONAL MUNICIPALITY
COMMUNITY DEVELOPMENT
PLANNING SERVICES

0 40 80 160 240 Feet

This map is an unofficial reproduction of a portion of the Zoning Map for the Dartmouth Plan Area.

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

Attachment A: Proposed Development Agreement

THIS AGREEMENT made this day of , 2010,

BETWEEN:

DEBRA PATRICIA BURKE and KIMMY CORRINA PILON,
tenants-in-common, in the Halifax Regional Municipality,
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 657 Portland Street, PID 00242008, Dartmouth, and which said lands are more particularly described in Schedule A hereto (hereinafter called the"Lands");

AND WHEREAS the Developer has requested that the Municipality enter into a Development Agreement to allow for a neighbourhood convenience outlet use on the Lands pursuant to the provisions of the *Halifax Regional Municipality Charter* and pursuant to Policies C-2 and IP-1(c) of the Dartmouth Municipal Planning Strategy;

AND WHEREAS the Harbour East Community Council for the Municipality approved this request at a meeting held on [INSERT - Date], referenced as Municipal Case Number 01346;

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 Regional Subdivision By-law**

Except as otherwise provided for herein, the development, subdivision and use of the Lands shall comply with the requirements of the Dartmouth Land Use By-law 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 and/or Lot Owner agrees 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 any 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 unless otherwise specifically defined herein shall be as defined in the applicable Land Use By-law and Subdivision By-law.

PART 3: USE OF LANDS AND DEVELOPMENT PROVISIONS

3.1 Schedules and Development of the Lands

The Developer shall develop the Lands in a manner which, in the opinion of the Development Officer, is in conformance with the following Schedules attached to this Agreement and filed in the Halifax Regional Municipality as Case Number 01346:

Schedule A: Legal Description of the Lands
Schedule B: Site Plan
Schedule C: View from Portland Street
Schedule D: Floor 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 building for any of the uses permitted by this Agreement unless all approvals has been issued by the Municipality. No final approvals shall be issued by the Municipality unless and until the Developer has complied with all applicable provisions of this Agreement and the Land Use By-law (except to the extent that the provisions of the Land Use By-law are varied by this Agreement) and with the terms and conditions of all permits, licenses, and approvals required to be obtained by the Developer pursuant to this Agreement.

3.3 General Description of Land Use

3.3.1 The use of the Lands permitted by this Agreement are as follows:

(a) Spa/hair salon; and
(b) Any uses permitted within the existing zone applied to the Lands subject to the provisions contained within the Land Use By-law for Dartmouth as amended from time to time.

3.3.2 The Development Officer may approve unenclosed structures attached to a main building such as verandahs, decks and porches and steps, mobility disabled ramps, to be located within the minimum front, side and rear yards provided the provisions of the Dartmouth Land Use By-law as amended from time to time for such structures are adhered to.

3.4 Detailed Provisions for Land Use

3.4.1 The spa/hair salon use must meet the applicable requirements of the Dartmouth Land Use By-law except where specifically varied by this Agreement.

3.4.2 Notwithstanding the frontage and area requirements set out in the Dartmouth Land Use By-law, a maximum 1910 square feet, or 49% of the total floor area of the building shall be permitted for spa/hair salon use, as illustrated in Schedule D.

3.4.3 The spa/hair salon use shall be permitted to sell stock-in-trade on the property related to the spa/hair salon use.

3.5 Siting and Architectural Requirements

3.5.1 The Developer agrees that no alterations shall be made that would change the residential character of the existing dwelling on the Lands as illustrated in Schedule C of this Agreement.

3.5.2 The Municipality agrees that modifications may be made to the architectural requirements of this section, provided the changes are consistent with the intent of this Agreement and minor in nature.

3.6 Parking, Circulation and Access

3.6.1 The internal driveway layout and the number and layout of parking spaces on the Lands shall be as illustrated in Schedule B.

3.6.2 The layout of the access point to the Lands from Portland Street shall accommodate a right-turn in only as illustrated on Schedule B.

3.6.3 Further to Section 3.6.2, the Developer shall prepare a detailed drawing showing the radii and profile for the right-turn in only access and submit it to the Developer Officer, in consultation with the Development Engineer, for review to determine compliance with this Agreement prior to issuance of a Construction Permit.

3.6.4 All parking areas and the access shall have a finished hard surface such as asphalt, concrete, paving blocks or an acceptable equivalent that, in the opinion of the Development Officer is in conformance with Schedule B.

3.6.5 The proposed "future parking spaces" to be developed at a later date shall comply with the requirements for parking areas of 3.6.4. relative to the existing rear fence and removal of existing vegetation.

3.6.6 The Developer agrees that all lighting shall be directed to parking areas, building entrances and walkways and shall be arranged so as to divert the light away from streets, adjacent lots and buildings.

3.7 Landscaping

3.7.1 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 where areas are planted in conjunction with disturbance caused by the required fencing and parking expansion.

3.7.2 The Developer agrees that the existing vegetation as shown on Schedule B shall be maintained and that landscaping or appropriate vegetative cover shall be provided in all disturbed areas not occupied by buildings, walkways, driveways and parking areas.

3.7.3 The Developer shall provide a solid board wood fencing a minimum of 5 feet in height but no greater than 6 feet in height to screen parking areas along common property boundaries as illustrated on Schedule B.

3.7.4 The area at the base of the fencing shall be planted with coniferous shrubs at a maximum spacing of 5 feet on centre. The fence at the rear property boundary shall be planted alongside the future parking spaces at such time as those spaces are developed

3.8 Signage

3.8.1 All signage shall be permitted in accordance with the Dartmouth Land Use By-law as amended from time to time except where specifically varied by this Agreement.

3.8.2 The Developer shall be permitted to affix to the Carver Street elevation of the existing building a 3 feet high and 6 feet wide illuminated sign provided no flashing lights are incorporated in the sign.

3.8.3 The Developer shall be permitted an illuminated changeable letter ground sign with total dimensions not to exceed 8 feet in height measured from the ground to the top of the sign and 10 feet in width.

3.8.4 The ground sign shall not obstruct the vision of drivers (intersection sight triangles) leaving/entering the roadway or driveways, or detract from the visibility or effectiveness of any traffic sign or control device on public streets.

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

3.8.6 The Developer shall not be permitted any temporary signage on the Lands.

3.9 Outdoor Storage and Display

3.9.1 No outdoor storage shall be permitted on the Lands. Refuse containers located outside the building shall be fully screened from adjacent properties and from streets and sidewalks by means of opaque fencing with suitable landscaping. Organic green bins must be located a minimum distance of 10 feet from the building.

3.10 Hours of Operation

3.10.1 The spa/hair salon use shall be permitted to operate between the hours of 9:00 a.m. and 9:00 p.m., seven days a week.

3.11 Maintenance

The Developer shall maintain and keep in good repair all portions of the development on the Lands, including but not limited to, the interior and exterior of the buildings, 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 removal/salting of walkways and driveways. Maintenance of the development shall be the responsibility of the property owner and the Developer shall ensure that future property owners are aware of their obligations to maintain and keep in good repair all portions of the development.

PART 4: STREETS AND MUNICIPAL SERVICES

4.1 General Provisions

All design and construction shall conform with the HRM Municipal Service Systems Design Guidelines unless otherwise provided for in this Agreement and approved in writing by the Development Engineer prior to undertaking the work. The Development Officer, in consultation with the Development Engineer, may give consideration to minor changes to accesses and driveways, provided the modifications serve to maintain or enhance the intent of this Agreement.

4.2 Off-Site Disturbance

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 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.

PART 5: ENVIRONMENTAL PROTECTION MEASURES

5.1 Erosion Control

No final approval shall be issued unless the entire lot is either fully stabilized with sod or is temporarily stabilized and maintained with a covering of plastic or other such measures approved by the Development Engineer. Any temporary stabilization of the lot shall be replaced with final landscaping (top soil and sod) within six (6) months of the issuance of the final approval. The owner of the lot shall be responsible for ensuring that any temporary stabilization materials are replaced and/or maintained on an as-required basis to ensure that exposed soil is adequately stabilized at all times.

PART 6: AMENDMENTS

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 Halifax Regional Municipality Charter.

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 development as identified in Section 8.3 of this Agreement;
(b) The granting of an extension to the length of time for the completion of the development as identified in Section 8.3.3 or 8.4 of this Agreement;
(c) Changes to hours of operation;
(d) A minor change in use from spa/hair salon; and
(e) An increase in total commercial floor area by 10%.

PART 7: ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

7.1 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 one (1) day of receiving such a request.

7.2 Failure to Comply

If the Developer fails to observe or perform any covenant or condition of this Agreement after the Municipality has given the Developer thirty (30) days written notice of the failure or default, except that such notice is waived in matters concerning environmental protection and mitigation, then in each such case:

(a) The Municipality shall be entitled to apply to any court of competent jurisdiction for injunctive relief including an order prohibiting the Developer from continuing such default and the Developer hereby submits to the jurisdiction of such Court and waives any defense based upon the allegation that damages would be an adequate remedy;

(b) The Municipality may enter onto the Lands and perform any of the covenants contained in this Agreement or take such remedial action as is considered necessary to correct a breach of the development 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; and

(d) In addition to the above remedies the Municipality reserves the right to pursue any other remediation under the Municipal Government Act or Common Law in order to ensure compliance with this Agreement.

PART 8: REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

8.1 Registration

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

8.2 Subsequent Owners

8.2.1 This Agreement shall be binding upon the parties thereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the Lands which is the subject of this Agreement until this Agreement is discharged by Council.

8.2.2 Upon the transfer of title to any lot, the subsequent owner(s) thereof shall observe and perform the terms and conditions of this Agreement to the extent applicable to the lot.

8.3 Commencement of Development

8.3.1 In the event that development has not commenced within three (3) 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.

8.3.2 For the purposes of this section, commencement of development shall mean issuance of a Construction Permit.

8.4 Completion of Development

8.4.1 If the Developer fails to complete the development after five (5) years from the date of registration of this Agreement at the Registry of Deeds 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.

8.4.2 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; or
(c) Discharge this Agreement on the condition that for those portions of the development that are deemed complete by Council, the Developer's rights hereunder are preserved and the Council shall apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By-law for Dartmouth, as may be amended from time to time.

8.4.3 For the purposes of this section, completion of development shall mean issuance of a Completion Certificate.

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, A.D., 2010.

SIGNED, SEALED AND DELIVERED in the presence of

_____

DEBRA PATRICIA BURKE and KIMMY CORRINA PILON

Per: _____

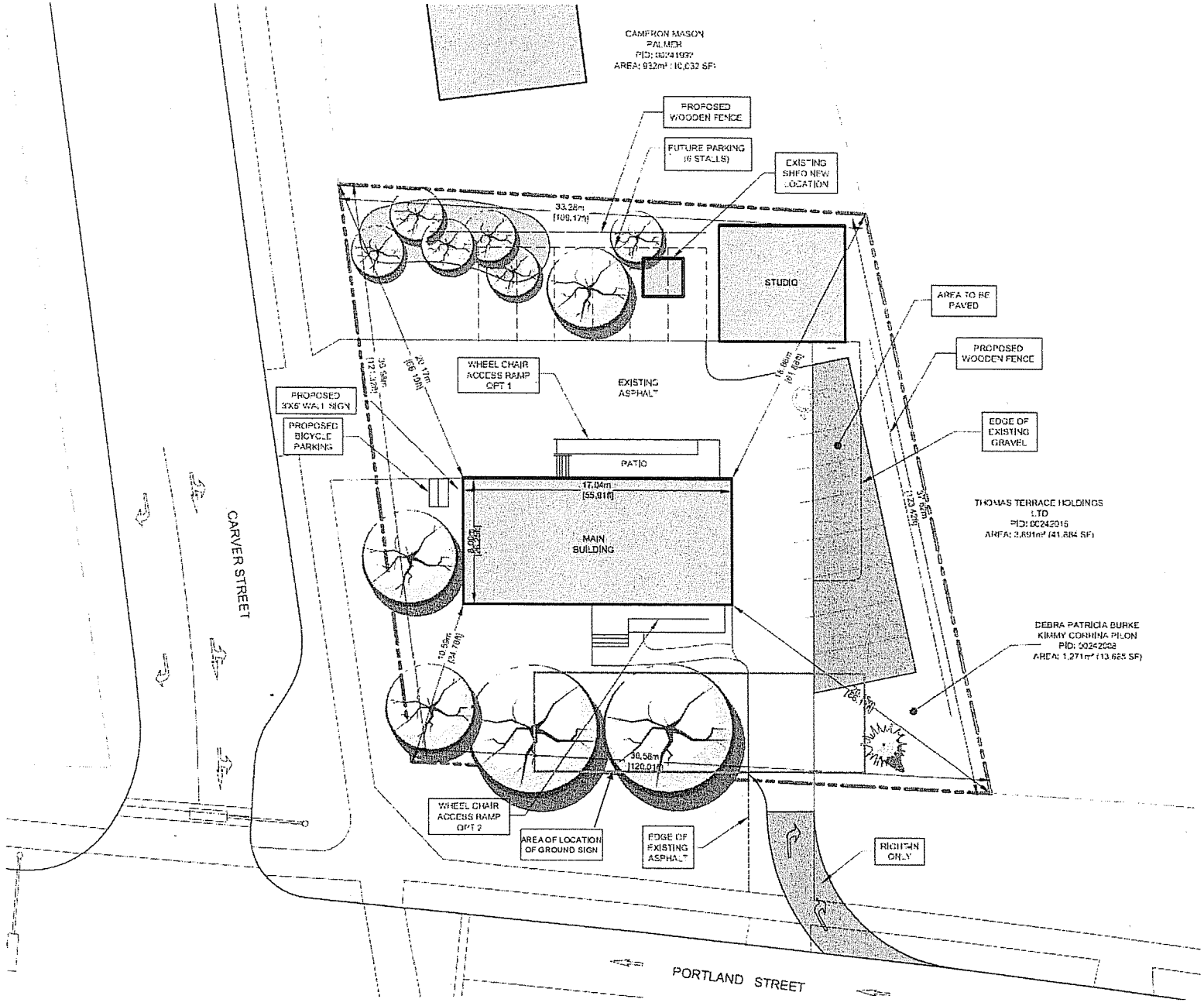
SEALED, DELIVERED AND ATTESTED to by the proper signing officers of Halifax Regional Municipality duly authorized in that behalf in the presence of

_____

HALIFAX REGIONAL MUNICIPALITY

Per: _____
MAYOR

Per: _____
MUNICIPAL CLERK

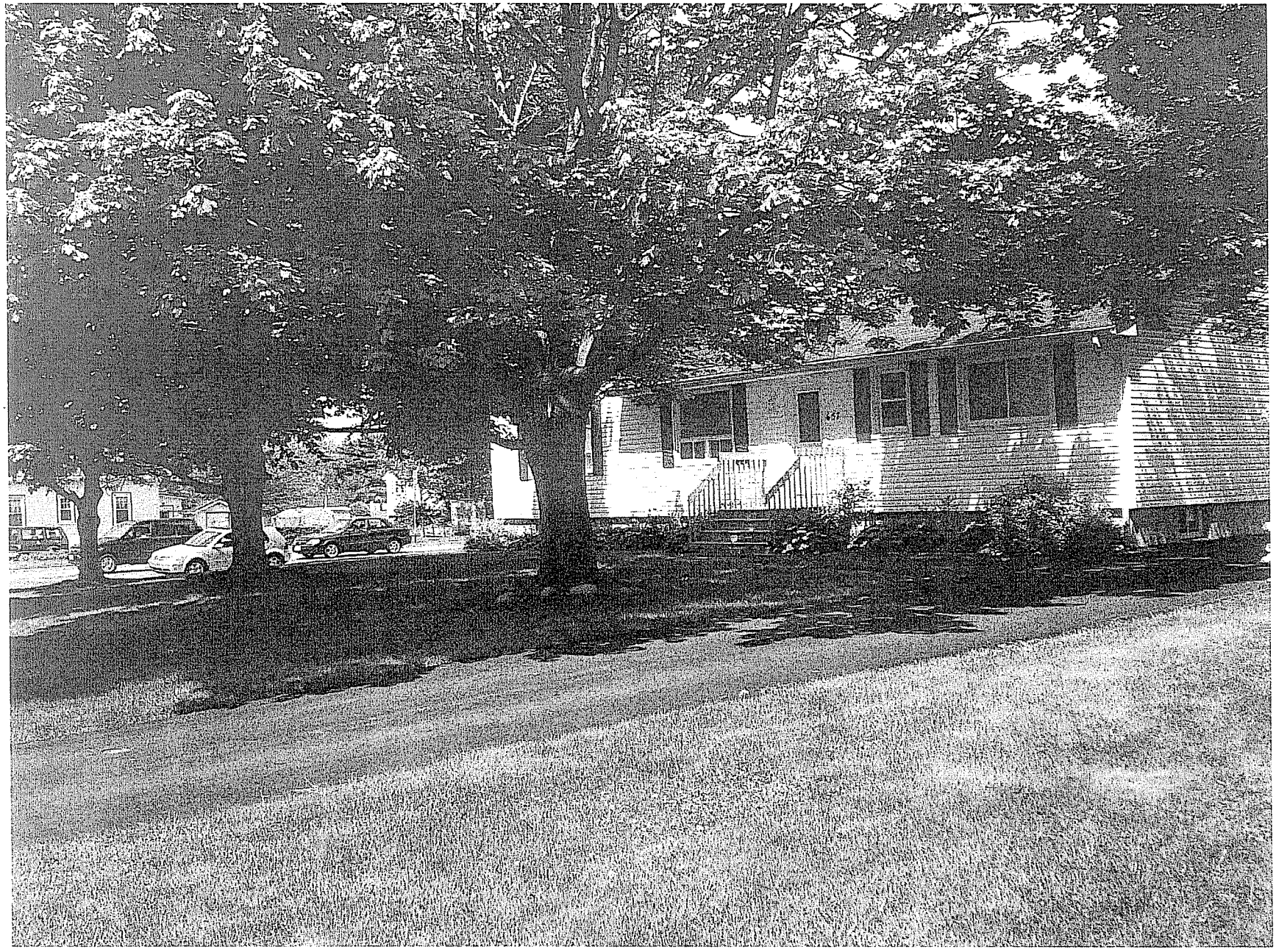


Schedule B Site Plan

HRM does not guarantee the accuracy of any base information.

HALIFAX
REGIONAL MUNICIPALITY
COMMUNITY DEVELOPMENT
PLANNING SERVICES

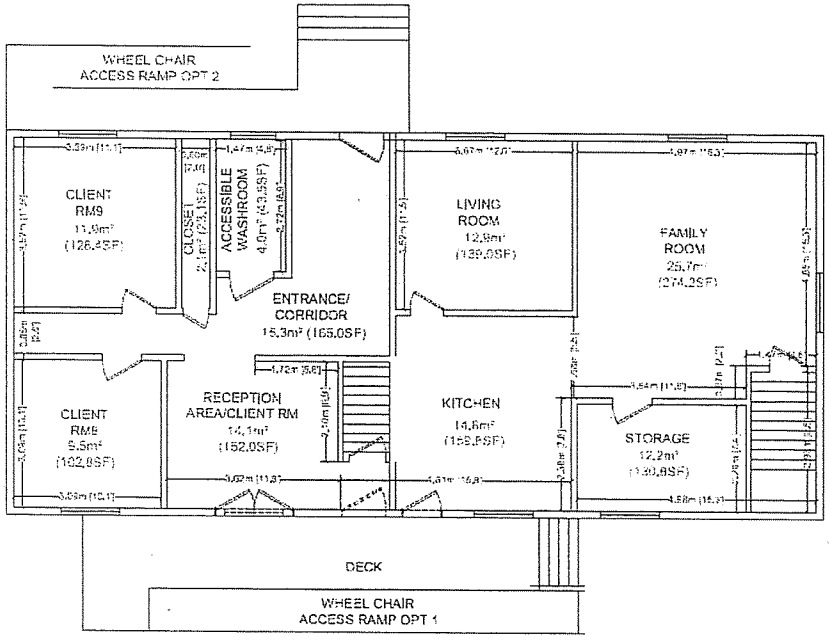
December 8, 2009 | Case 01346 | T:\work\planning\Holly\Official_Maps\case_maps\Case_01346\SchB_01346.PDF (HLK)



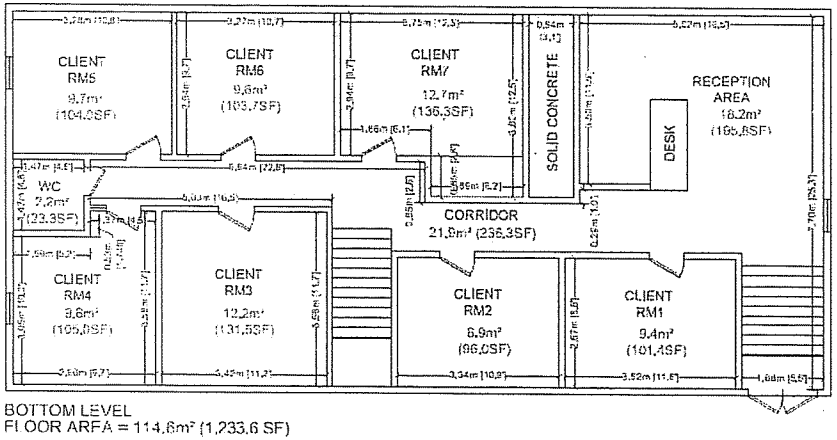
Schedule C Photo of Portland Street View

HRM does not guarantee the accuracy of any base information.

HALIFAX
REGIONAL MUNICIPALITY
COMMUNITY DEVELOPMENT
PLANNING SERVICES

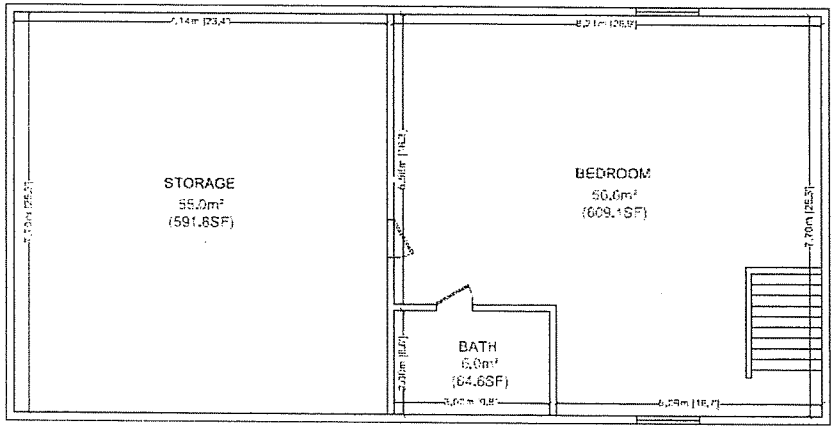


MAIN LEVEL
FLOOR AREA = 122.6m² (1,319.7 SF)



BOTTOM LEVEL
FLOOR AREA = 114.6m² (1,233.6 SF)

PORTION OF BUILDING
FOR SPA PURPOSES (48.4% OF TOTAL)



TOP LEVEL
FLOOR AREA = 117.6m² (1,265.9 SF)

Schedule D Floor Plan

HRM does not guarantee the accuracy of any base information.

HALIFAX
REGIONAL MUNICIPALITY
COMMUNITY DEVELOPMENT
PLANNING SERVICES

Attachment B: Excerpts from the Dartmouth Municipal Planning Strategy

(c) **Neighbourhood Convenience Store:** This form of commercial establishment consists of outlets such as, but not necessarily limited to, grocery stores, drug stores, barber shops, TV repair shops, etc. These uses form a very significant part of any neighbourhood way of life. To date there are approximately 50 of these sorts of facilities within Dartmouth totalling approximately 25,000 square feet in floor area. There is no set criteria for the number or amount of these stores, however, their numbers are usually kept down due to the limited area they serve. There are several concerns related to these uses (location, siting) that criteria should be established for reviewing any proposal of such a use.

To enable neighbourhood convenience outlets to operate in residential areas, they should be reviewed individually on their own merits and handled through the contract zoning provisions of Section 33 (2) (b), 34 (1) of the Planning Act[1].

33(2)(b) Where the municipal development plan so provides, provide that the council may by resolution approve any specific development requested which would not otherwise be permitted by the by-law, but no approval shall be given inconsistent with the municipal development plan.

34(1) Approval by the council pursuant to clause (b) or (c) of subsection (2) of Section 33 shall only be granted subject to the condition that the registered owner of the land upon which the development is to occur shall enter into an agreement with the council containing such terms and conditions as the council may direct.

This process will allow for the use to occur when and where Council sees fit after the appropriate public hearings have occurred without providing a wide open zone within which a wide range of commercial uses may occur (Policy C-2).

Policy C-2 It shall be the intention of City Council to deal with neighbourhood convenience outlets through the contract zoning provisions of the Planning Act - Section 33 (2) (b).

Implementation

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 near by 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
(8) that in addition to the public hearing requirements as set out in the Planning Act and City by-laws, all applications for amendments may be aired to the public via the "voluntary" public hearing process established by City Council for the purposes of information exchange between the applicant and residents. This voluntary meeting allows the residents to clearly understand the proposal previous to the formal public hearing before City Council
(9) that in addition to the foregoing, all zoning amendments are prepared in sufficient detail to provide:

(i) Council with a clear indication of the nature of proposed development, and
(ii) permit staff to assess and determine the impact such development would have on the land and the surrounding community

(10) ***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)***

Attachment C: Minutes from the Public Information Meeting, November 16, 2009

HALIFAX REGIONAL MUNICIPALITY
PUBLIC INFORMATION MEETING
CASE # 01346 - Terrain Group

7:00 p.m.
Monday, November 16, 2009
Portland Street Community Room

IN ATTENDANCE:	Jill MacLellan, Planner, HRM Planning Services Darrell Joudrey, Planner, HRM Planning Services Hilary Campbell, Planning Technician, HRM Planning Services Sharlene Seaman, Planning Controller, HRM Planning Services Councillor Darren Fisher Kurt Pyle, Planning Supervisor
ALSO IN ATTENDANCE:	Debra Burke, Applicant Kim Pilon, Applicant
PUBLIC IN ATTENDANCE:	Approximately 15

The meeting commenced at approximately 7:05 p.m.

1. Opening remarks/Introductions/Purpose of meeting - Jill MacLellan

Ms. MacLellan opened the meeting by introducing herself as the planner in charge of the meeting. She then introduced the applicant and HRM staff, including Darrell Joudrey who is the planner in charge of the application. She then passed the floor to Councillor Fisher.

Councillor Fisher introduced himself and stated that he is new within HRM as a Councillor. He advised of the application and stated he believed the left turn (off of Portland) was a dangerous spot and that the application may be good in regards to this problem.

2. Overview of planning process - Jill MacLellan

Jill MacLellan gave an overview and explained the process for the application. She explained that the Public Information Meeting was not the only opportunity for public input as a public hearing must occur before council can vote on the application. She explained there are two principle reasons

for tonight's meeting. The first is to inform citizens that HRM has received an application and to identify what the application is requesting. The second is to hear comments, questions and concerns from the public. She stated that it was important to note that no decisions would be made at this meeting and there would be another meeting where public input could be taken.

She stated the application: Application by Terrain Group Inc., for lands of Debra Burke and Kim Pilon, to expand a commercial use (spa) within the existing building at 657 Portland Street, Dartmouth. She noted that the applicant would not be changing the footprint or exterior of the building but increasing the amount of space allowed to be used within. The applicant was also looking to increase the size of the current sign square footage. These changes are currently not permitted under the Dartmouth Land Use By-Law (LUB).

She then described the property and surrounding area. The current zone is Residential under the Dartmouth Municipal Planning strategy (MPS), Single Family Residential (R-1) under the Dartmouth LUB. The opposite side of Portland is zoned General Business. Under an R-1 zone, commercial uses are only permitted as a home based business which has various provisions. These include that the business must be run by the resident occupant and that there shall be no outdoor storage or alteration to the exterior of the dwelling. Also that the business should not exceed 25 percent of the floor area of the residence. These restrictions are there to maintain the residential nature of the neighborhood.

She stated that this application will not change the zone but will allow a neighbourhood convenience use, such as a grocery store, barber shop, a TV repair shop, etc, under a Development Agreement (DA). This is an agreement between the municipality and the property owner. This will supersede the LUB. The DA allows there to be some flexibility for uses outside what is permitted under the LUB.

3. Presentation of Proposal - Nathan Rogers

Mr. Nathan Rogers introduced himself as the applicant and invited public participation. He stated the use for the existing type of business. He also stated that his client would like to expand their business by 50 percent. Currently the business can only occupy 25% of the home. He noted that the exterior will remain the same. Also he stated that she wanted to make her signs bigger than two feet by two feet, the current size, under the Dartmouth Land Use By-Law. He believes that any two foot by two foot sign is meager. They are proposing a ten foot by ten foot sign along the front of Portland Street and a 3 foot by six foot illuminated sign on the side of the building along Carver Street. He stated that also there would be to have eight parking stalls provided near the building as per the requirements. There will be an accessible stall as well as accessible access to the building (a ramp).

Jill MacLellan advised of the next steps within the planning process; after the Public Information Meeting (PIM), staff will continue to review the proposal. Included in the staff review will be all comments gathered at the PIM. Staff and the applicant will negotiate the DA, which will be reviewed by Council. This will be accompanied by a staff report that includes staff's recommendation on how

Council should proceed. Before Council makes any decision, a Public Hearing (PH) will be scheduled. Residents will be invited to express any concerns during the PH. This is followed with a two week appeal period where the decision can be appealed. She than provided her and Mr. Joudrey's contact information.

4. Questions/Comments

Cameron Palmer lives adjacent to the applicant's property and advised that the previous owners had two businesses. He is concerned about his privacy. He welcomes the fact that a green buffer may be put in place and would like some details on the quality and height. He feels that it isn't his place to take care of that privacy issue. He is concerned about the traffic flow increasing and about the resale of his property.

Martin Barry expressed concern about the increase of traffic. He noted that there are cars often parked on the wrong side of the street as they do not know if it is a one way street or not. He states that he cannot turn left into his driveway because cars try to pass him. He is concerned about the traffic being increased if the business will be increased. He would like more signs stating that it is a two way street.

Kim Pilon, applicant, advised that they tell their customers to never turn left into the business. She takes responsibility for parking on the left side as she thought the spot she had chosen was not an issue. She gets upset with people who park in front of the adjacent property and advises them to move. She believes that the street is a two way and then merges into a one way.

She believes that her business would have more controlled traffic than the previous owners because they were running two businesses. She stated that all they want to do right now is to use the two rooms in the downstairs area, not to have vacant space.

Debra Burke, applicant, states that they would like to have room to grow in the future. They may want to upgrade further down the road so they don't have to go through this process again.

Bob Mackenzie wondered if the DA was site specific or if the property were sold if the DA would go with it.

Jill MacLellan advised that it would go with the property allowing a neighborhood convenience use could go there, as discussed.

Bob Mackenzie stated that he is okay with the business expanding but is more concerned about the traffic flow because of expansion. He understands that every business would like to expand and quotes: "The bigger you are, the more money you make". He is concerned about the public using their driveway for their own convenience and if the sign will state that it is private property.

Jill MacLellan advised that the sign would state that. You may want to listen to this section again. Darrell believes Mr. MacKenzie made comments concerning Ms. Pilon's former comment about potentially expanding in the future. Also, I do not remember commenting about the features of the proposed sign.

Harley Eisener asked the requirements for home business parking.

Jill MacLellan stated that she would have to look that up, but she believed it was at least one space that is required.

Harley Eisener questioned the clients versus the staff in relation to parking. He notes that there could be at one time, fourteen. potential spaces.

Debra Burke confirms that yes, potentially there could be fourteen spaces used.

Nathan Rogers advised that the By-Law requires one space for every three hundred square feet of commercial space totaling at least eight spots.

Mallory Cross wonders if a rezoning would be necessary.

Jill MacLellan stated that under the MPS you can go under a DA to have a neighborhood convenience use.

Mallory Cross asked how much it paves the road for future development or projects.

Nathan Rogers advised that the zone would remain residential. The DA allows someone to go beyond the requirements of the LUB. It is site specific.

Mallory Cross states concern about the parking as he feels a paved parking lot would devalue the surrounding properties and isn't "much to look at". It may cause problems for resale.

Darrell Joudrey, Planning Applications, noted that the LUB is used as a guide for forming requirements for DA's but often additional parking spaces are required to be provided. A DA can go past the LUB and require that there be more parking on site to be developed at a later time.

Ina McLeod advised that the left turn coming out Portland going onto Carver is incorrect on the map provided. It was taken away years ago by the City.

Councillor Fisher stated that you could turn left into driveways off Portland.

Ina McLeod again stated that this was incorrect information. She asked if the DA would effect the current zone.

Jill MacLellan advised that it would not.

Ina McLeod quoted : "somebody is committing wholesale murder on that corner". There is no left turn.

Jill MacLellan stated that she would have to look into that.

Mr. Eisner noted that there should be one straight turn and two turning lanes at Carver. He also questioned the signs and how large they are looking to be.

Nathan Rogers stated that they would be ten by ten.

Mr. Eisner stated that this might impose an issue seeing traffic if the signs are that big.

Kim Pilon commented that her realtor told her that there would be no value loss to the property because of the business. She requested any comments if someone else had information that differed.

5. Closing comments

Ms. Jill MacLellan asked for any other questions and provided contact information. She thanked everyone for attending the meeting.

6. Adjournment

The meeting adjourned at approximately 7:48 p.m.