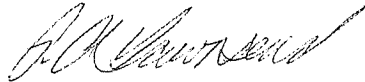


**Harbour East Community Council
November 10, 2011**

TO: Chair and Members of Harbour East Community Council

SUBMITTED BY:



Phil Townsend, Director, Planning & Infrastructure

DATE: October 26, 2011

SUBJECT: Case 17233: C-1 Zoning and Permitted Uses in the Auburn Drive Area

INFORMATION REPORT

ORIGIN

At the July 7, 2011, meeting of Harbour East Community Council, the following motion was passed:

MOVED by Councillor Karsten, seconded by Councillor Fisher, that Harbour East Community Council request a staff report regarding C-1 Zoning and permitted uses in the Auburn Drive area of Dartmouth.

BACKGROUND

On July 5, 2011, Regional Council approved the repealing of the Planned Unit Development (PUD) in Forest Hills. The PUD was a council-approved agreement between the former Halifax County and the Nova Scotia Department of Housing that came into effect in the 1970's. This agreement permitted the Province of Nova Scotia to establish a master planned community known as Forest Hills, and granted the Province sole control and final authority over land use regulations and enforcements during the phases of the development. The PUD provided a wide range of affordable housing options that appealed to a broad range of residents. It also included provisions for community parks, schools, and local convenience stores.

On January 26, 2010, a motion was passed by Regional Council to initiate amending the Municipal Planning Strategy for Cole Harbour/Westphal (MPS) to remove all land use policies that pertain to the PUD in the Urban Residential Designation from the MPS, and applying standard municipal zoning. Staff opened Case 15940 and proceeded with discharging the PUD. As a result, HRM has gained control over the type and scale of land uses that can operate within the community of Forest Hills (refer to staff report dated April 15, 2011). As part of the amendments in Case 15940, Staff recommended applying the C-1 (Neighbourhood Business) Zone to existing convenience stores that have been developed under the PUD. The only convenience store affected by the approved amendments is located at 272 Auburn Drive, Westphal.

Purpose

The property owner of the convenience store at 272 Auburn Drive, is currently running a take-out food service in conjunction with the store. During the Public Hearing for the PUD amendments, it was expressed that due to the loss of other businesses provided at the convenience store such as video rental, the take-out service is necessary to remain viable. He requested an amendment to the definition of convenience store permitted in the C-1 (Neighbourhood Business) Zone under the LUB for Cole Harbour/Westphal, to allow for take-out restaurants under the definition. Amendments to Land Use By-Laws fall under the jurisdiction of Community Councils, not Regional Council, which is the reason why Harbour East Community Council is reviewing the issue.

This Information Report has been prepared at the request of Harbour East Community Council in response to questions and comments raised at the Public Hearing about the as-of-right local convenience uses permitted under the PUD and the Land Use By-Law for Cole Harbour/Westphal (LUB), as it relates to the store operated at 272 Auburn Drive.

Location, Designation, Zoning and Surrounding Land Use

272 Auburn Drive is:

- located on the north eastern corner of the intersection of Auburn Drive and Quindora Crescent; adjacent to Auburn High School (Map 1);
- approximately 2,153 square feet in area;
- comprised of a two-storey building with two residential units on the upper level and a convenience store on the main level;
- designated Urban Residential under the Municipal Planning Strategy for Cole Harbour/Westphal (MPS) (Map 1);
- zoned C-1 (Neighbourhood Business) under the Land Use By-Law for Cole Harbour/Westphal (LUB) (Map 2); and
- surrounded by R-1 (Single Family Dwelling) Zone to the north and east, R-2 (Two Unit Dwelling) Zone to the west, and P-2 (Community Facility) Zone from Auburn High School to the south (Map 2).

PUD Agreement

Under the PUD Agreement, Forest Hills community was developed in 11 phases and consisted of approximately 4,000 housing units. The final phase of the development (Phase 11, comprised of 400 single family and semi-detached housing units, an elementary school, local parkland and a local shop) is 272 Auburn Drive.

Provisions under the PUD were drafted to allow local shopping in the form of a local store in each neighbourhood centre. Specific sites were selected for commercial uses and were created to be larger than residential lots, with an access to a collector road. Moreover, these sites were permitted to contain residences as well as convenience stores. Section 8.10a of the Forest Hills (PUD) Master Plan Agreement permitted the following uses:

- retail commercial;
- service commercial;
- office uses; and
- religious and institutional facilities.

Over the past 20 years, each parcel of land under the PUD was selected and designed to reflect a specific use. The agreement's intent was that, as phases were completed, properties would be removed from the PUD and zoned under the area's Land Use By-Law.

Land Use By-Law for Cole Harbour/Westphal - Land Use Provisions

Types of uses and land use provisions in the C-1 (Neighbourhood Business) Zone under the LUB for Cole Harbour/Westphal are specific to existing local convenience uses. The zone permits the following uses, subject to provisions detailed in Attachment B:

- existing variety stores;
- existing food stores; and
- single unit dwellings.

Municipal Planning Strategy for Cole Harbour/Westphal – Enabling Policy

The MPS for Cole Harbour/Westphal consists of criteria that allow the consideration of expanding or altering existing neighbourhood convenience uses in the Urban Residential Designation through the development agreement process. As part of Case 15940, a new clause was added in order to permit the ability to use the development agreement process to consider additions or changes of commercial uses on 272 Auburn Drive.

This enables Council to consider proposals for neighbourhood convenience uses on a case by case basis and to contemplate significant impacts such as land use compatibility, scale of the development, traffic, parking, maintenance, landscaping, as well as other criteria listed under Policies UR-17 and UR-18 (Attachment A).

DISCUSSION

The MPS amendments detailed in Case 15940 resulted in all properties in Cole Harbour/Westphal Plan area being addressed equally under MPS policies and LUB provisions, especially in the case of neighbourhood commercial uses on 272 Auburn Drive.

Local/Neighbourhood Business Uses – Other Suburban Plan Areas

The Cole Harbour/Westphal area is a predominantly residential community with a suburban form and character. It is one of several suburban communities in the Municipality that are experiencing similar and continuous growth. These communities include Sackville, Eastern Passage/Cow Bay and Timberlea/Lakeside/Beechville.

All four plan areas promote residential expansion and attract significant proportion of new homeowners. They also discourage excessive commercial development in the Urban Residential Designation. Although the as-of-right neighbourhood commercial services such as corner stores and personal service shops are permitted to serve residential neighbourhoods in all four plan areas, the Cole Harbour/Westphal plan area only allows existing local convenience uses such as variety and food stores (Attachment C). Provincial records show that no explicit approval was provided for food take-out services to operate on the site; a permit was only granted for local convenience uses. In addition, the property owner failed to provide evidence of Provincial approval.

Staff expressed concerns with regards to issues associated with increasing the intensity of food services on the site. There are various land use impacts on the surrounding residential neighbourhood; therefore, amending the LUB is an insufficient mechanism to address the adverse effects of take-out restaurants on the community, such as land use compatibility, business scale, maintenance, traffic, parking, and others.

The Municipal Planning Strategies for all four plan areas, address the possibility of considering other types of local/neighbourhood commercial uses and their associated impacts through the development agreement process due to compatibility concerns with adjacent residential developments. Such agreements can address concerns such as traffic generation on local streets, access controls, hours of operation, and visual effects related to site and building design (Attachments C and D).

Conclusion

Based upon review of the applicable policies and regulations regarding C-1 Zone uses in all four plan areas, Staff believe the current policies and requirements for C-1 Zone uses by development agreement, provides an appropriate and consistent level of control over such uses and their associate land use concerns.

BUDGET IMPLICATIONS

There are no budget implications.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

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

COMMUNITY ENGAGEMENT

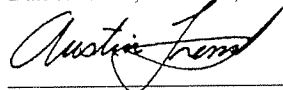
This is an Information Report; therefore, community engagement is not required.

ATTACHMENTS

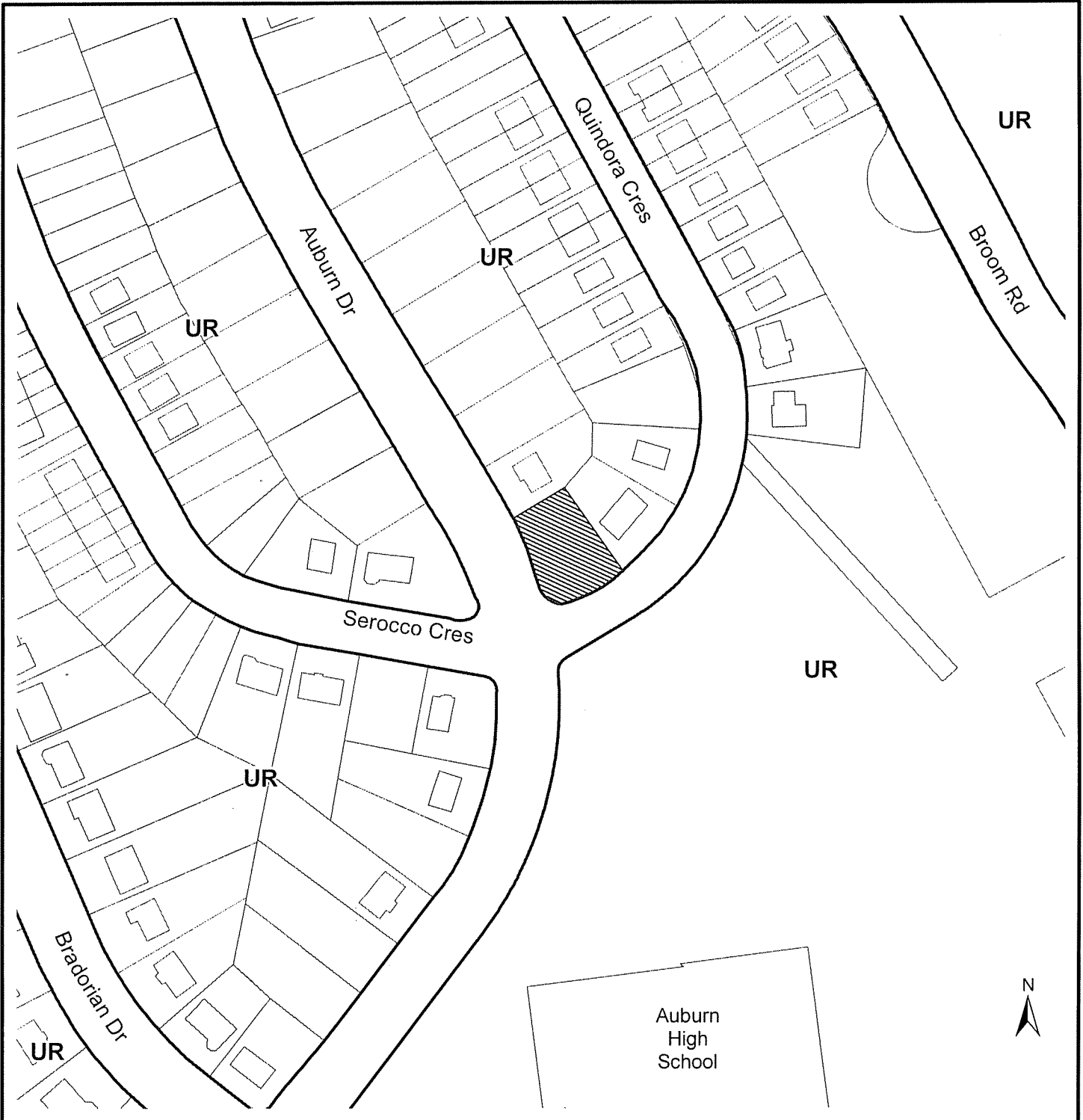
Map 1	Generalized Future Land Use
Map 2	Location and Zoning
Attachment A	Extracts from the MPS for Cole Harbour/Westphal
Attachment B	Extracts from the LUB for Cole Harbour/Westphal
Attachment C	Evaluation of Local/Neighbourhood Business Uses in Urban Residential Designation - Suburban Plan Areas
Attachment D	MPS Policies for Local/Neighbourhood Commercial Uses in Urban Residential Designation - Suburban Plan Areas

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: Dali H. Salih, Planner I, Planning Services, 490-1948




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



Map 1- Generalized Future Land Use

272 Auburn Drive

 Subject Property

Designation

UR Urban Residential

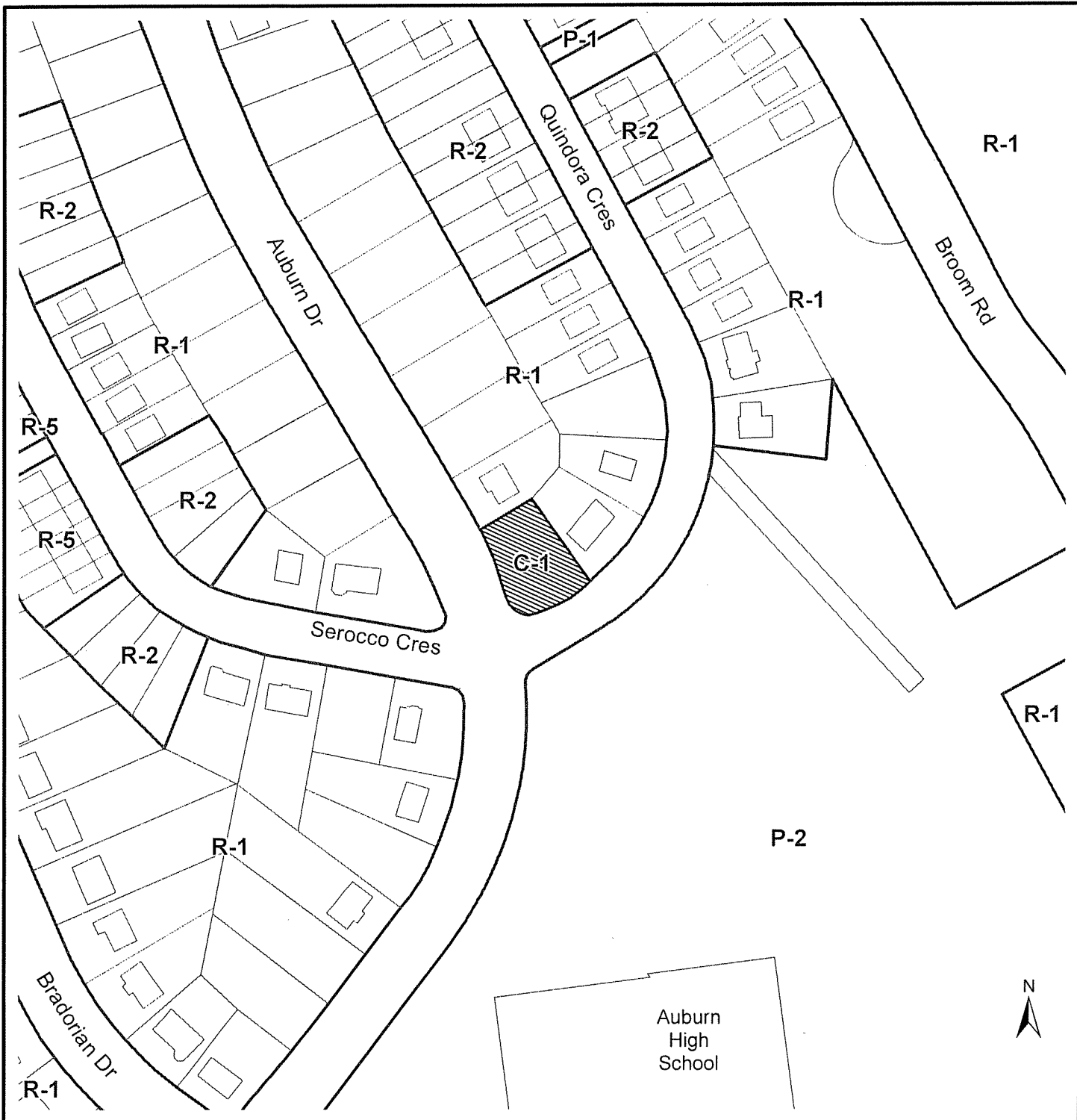
Cole Harbour/ Westphal Plan Area

HALIFAX
REGIONAL MUNICIPALITY
COMMUNITY DEVELOPMENT
PLANNING SERVICES




This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the Cole Harbour/ Westphal Plan Area

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



Map 2 - Zoning and location

272 Auburn Drive

 Subject Property

Zone

- R-1 Single Unit Dwelling
- R-2 Two Unit Dwelling
- R-5 Row House Dwelling
- C-1 Neighbourhood Business
- P-1 Open Space
- P-2 Community Facility

Cole Harbour/ Westphal Plan Area



This map is an unofficial reproduction of a portion of the Zoning Map for the Cole Harbour/Westphal Plan Area

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

ATTCHMENT A:

Excerpts from the Municipal Planning Strategy for Cole Harbour/Westphal

Section III: Land Use Intent

Neighbourhood Business Uses

Although general commercial development is not permitted in the Urban Residential Designation, neighbourhood business uses such as corner stores, personal service shops, professional offices, specialty retail and cafes/coffee shops can conveniently serve local residents from locations within their own neighbourhoods. However, such uses can create compatibility concerns with adjacent residential development relative to traffic generation on local streets, access controls, hours of operation, and visual effects related to site and building design. In light of these concerns, new neighbourhood business uses will only be considered by development agreement. Existing neighbourhood business zoning will be maintained. Where deemed appropriate, limitations may be placed on the range of uses permitted where there is expressed concern relative to increased traffic and impact on adjacent residential uses.

UR-17 Notwithstanding Policy UR-2, in recognition and support of existing neighbourhood business uses, within the Urban Residential Designation, it shall be the intention of Council to establish a neighbourhood business zone which permits neighbourhood businesses along with single detached dwellings. It is the intention of Council that this zone shall be applied only to properties having a neighbourhood business zone on the effective date of the planning strategy. The range of uses permitted in a neighbourhood business zone may be limited on those properties where there is expressed concern over increased traffic and impact on adjacent residential uses.

UR-18 Notwithstanding Policies UR-2 and UR-17, within the Urban Residential Designation, it shall be the intention of Council to consider new neighbourhood business uses, and to provide for the expansion of, and/or consideration of additional uses, at an existing neighbourhood convenience store at 272 Auburn Drive, according to the development agreement provisions of the Planning Act. In considering such agreements, Council shall have regard to the following: *(amended RC-July 5, 2011; E - Oct 8, 2011)*

- a) neighbourhood business uses shall be limited to uses that are primarily intended to serve the local neighbourhood;
- b) the proposed development does not exceed a maximum gross floor area of two thousand (2,000) square feet, exclusive of any area devoted to an accessory dwelling unit;
- c) the architectural design is compatible with the predominant roof styles, window styles and exterior materials used in the surrounding residential neighbourhood;
- d) the height, bulk and lot coverage of any building is compatible with adjacent land uses and with the character of the surrounding residential neighbourhood;
- e) open storage or outdoor display shall not be permitted;
- f) site design features, including signage, landscaping, parking areas and driveways are of an adequate size and design to address potential impacts on adjacent developments;

- g) there is direct access to a minor or major collector as identified on Map 3 - Transportation, with preference given to commercial sites which are located at the intersection of major and minor collectors;
- h) the impact on traffic circulation and, in particular, the suitability of access to and from the site;
- i) maintenance of the development;
- j) hours of operation; and
- k) the provisions of Policy IM-11.

(Reg.Council-May11/99, Effective-June26/99)

ATTACHMENT B:

Excerpts from the Land Use Bylaw for Cole Harbour/Westphal

PART 16: C-1 (NEIGHBOURHOOD BUSINESS) ZONE (RC-May 11/99;E-Jun 26/99)

16.1 C-1 USES PERMITTED

No development permit shall be issued in any C-1 (Neighbourhood Business) (RC-May 11/99; E-Jun 26/99) Zone except for the following:

Commercial Uses

Existing variety stores
Existing food stores
Single unit dwellings

Additional Neighbourhood Business Uses Permitted on Properties Described as 363 Caldwell Road (PID# 403311), 369 Caldwell Road (PID#40714818), and 404 Caldwell Road (PID#40124745)

- professional / business offices (e.g. legal, insurance, real estate)
- personal service shops (e.g. tailor, hair salon)
- specialty retail (e.g. bakery, deli, gifts)
- cafe / coffee shops (may include drive-thru window)
- medical / veterinary offices (RC-May 11/99;E-Jun 26/99)
- professional / business offices (e.g. legal, insurance, real estate);
- personal service shops (e.g. tailor, hair salon), which shall not include tattoo parlours or massage parlours;
- specialty retail (e.g. bakery, deli, gifts), which shall not include pawn shops;
- medical offices; and
- veterinary offices, which shall not include the boarding of any animal, whether daily or overnight, except for animals that require boarding for medical purposes. (HECC – December 2, 2010; E – December 25, 2010)

ATTACHMENT C

**Evaluation of Local/Neighbourhood Business Uses in Urban Residential Designation - Suburban Plan Areas
(Cole Harbour/Westphal, Eastern Passage/Cow Bay, Sackville and Timberlea/Lakeside/Beechville)**

	Cole Harbour/Westphal C-1 (Neighbourhood Business)	Eastern Passage/Cow Bay C-1 (Local Business)	Sackville C-1 (Local Business)	Timberlea/Lakeside/Beechville C-1 (Local Business)
LUB - Commercial Uses	Existing variety stores	Variety stores	Variety stores	Variety stores
	Existing food stores	Food stores	Food stores	Food stores
	Additional Business Uses on 363 Caldwell Road, 369 Caldwell Road, and 404 Caldwell Road	--	Service and Personal service shops	Service and Personal service shops
LUB- Residential Uses	Single Family Dwelling	Single Family Dwelling	Single Family Dwelling	Single Family Dwelling
	--	Bed & Breakfast in conjunction with permitted single unit dwellings	--	--
MPS - Urban Residential Designation	Additional commercial uses permitted by Development Agreement	Additional commercial uses permitted by Development Agreement	Additional commercial uses permitted by Development Agreement	Additional commercial uses permitted by Development Agreement
	UR-17 and UR-18 (Attachment A)	UR-21 (Attachment D)	UR-17 and UR-18 (Attachment D)	UR-19 and UR-22 (Attachment D)
MPS - Policy				

ATTACHMENT D

MPS Policies for Local/Neighbourhood Commercial Uses in Urban Residential Designation - Suburban Plan Areas (Eastern Passage/Cow Bay, Sackville and Timberlea/Lakeside/Beechville)

Municipal Planning Strategy for Eastern Passage/Cow Bay

Section III: Land Use Intent

Local Commercial Uses

Although general commercial development is not permitted in the Urban Residential Designation, neighbourhood commercial services such as corner stores and personal service shops can conveniently serve the public from locations in the general residential area. However, as with medical clinics and larger day care facilities, such uses have the potential to create compatibility concerns with adjacent residential development relative to traffic generation on local streets, access controls, hours of operation, and visual effects related to site and building design. In light of these concerns, zoning for existing local commercial uses will be maintained, but new local commercial uses will only be considered by development agreement.

UR-21 Notwithstanding Policy UR-2, within the Urban Residential Designation, it shall be the intention of Council to consider new local commercial uses according to the development agreement provisions of the Planning Act. In considering any such agreement, Council shall have regard to the following:

- a) that commercial uses be limited to service and personal service uses, local convenience outlets, and an accessory dwelling unit;
- b) that the proposed development does not exceed a maximum gross floor area of two thousand (2,000) square feet, exclusive of any area devoted to an accessory dwelling unit;
- c) that the use is primarily intended to serve the local neighbourhood;
- d) that the height, bulk, lot coverage and appearance of any building is compatible with adjacent land uses;
- e) that no open storage or outdoor display shall be permitted;
- f) that site design features, including signage, landscaping, parking areas and driveways are of an adequate size and design to address potential impacts on adjacent developments;
- g) that there is direct access to a minor or major collector as identified on Map 3, Transportation, with preference given to commercial sites which are located at the intersection of major and minor collectors;
- h) the impact on traffic circulation and, in particular, the suitability of access to and from the site;
- i) maintenance of the development;
- j) hours of operation; and
- k) the provisions of Policy IM-11.

Municipal Planning Strategy for Sackville

Section III: Land Use Intent

Local Commercial Uses

Although general commercial development is not permitted in the Urban Residential Designation, neighbourhood commercial services such as corner stores and personal service shops can conveniently serve the public from locations within the general residential area. However, such uses create compatibility concerns with adjacent residential development relative to traffic generation on local streets, access controls, hours of operation, and visual effects related to site and building design. In light of these concerns, zoning for existing local commercial uses will be maintained, but new local commercial uses will only be considered by development agreement.

UR-17 Notwithstanding Policy UR-2, in recognition and support of existing local commercial uses within the Urban Residential Designation, it shall be the intention of Council to establish a local business zone which permits variety and food stores. It is the intention of Council that this zone shall be applied only to existing local commercial uses.

UR-18 Notwithstanding Policies UR-2 and UR-17, within the Urban Residential Designation, it shall be the intention of Council to consider new local commercial uses, **and the expansion of local commercial uses in the C-1 (Local Commercial) zone beyond the permitted gross floor area (RC-Sep 16/08;E-Oct 11/08)**, according to the development agreement provisions of the Planning Act. In considering any such agreement, Council shall have regard to the following:

- (a) that commercial uses shall be limited to service and personal service uses and local convenience outlets;
- (b) that the proposed development does not exceed a maximum gross floor area of **five thousand (5,000) (RC-Sep 16/08;E-Oct 11/08)**, exclusive of any area devoted to an accessory dwelling unit;
- (c) that the use is primarily intended to serve the local neighbourhood;
- (d) that the height, bulk **and (RC-Sep 16/08;E-Oct 11/08)** lot coverage of any building is compatible with adjacent land uses **and with the character of the surrounding residential neighbourhood (RC-Sep 16/08;E-Oct 11/08)**;
- (e) that no open storage or outdoor display shall be permitted;
- (f) that site design features, including signage, landscaping, parking areas and driveways are of an adequate size and design to address potential impacts on adjacent developments;
- (g) that there is direct access to a major collector as identified on Map 3 - Transportation, with preference given to commercial sites which are located at the intersection of major and minor collectors;
- (h) the impact on traffic circulation and, in particular, the suitability of access to and from the site;
- (i) that it is not being considered on lands which are presently zoned and developed for either single or two unit dwelling purposes nor where it is intended to replace a single or two unit dwelling which has been demolished, removed or destroyed by fire.

- (j) maintenance of the development;
 - (k) hours of operation; and
 - (l) the provisions of Policy IM-13; and
 - (m) **the architectural design is compatible with the surrounding residential neighbourhood. (RC-Sep 16/08;E-Oct 11/08)**
-

Municipal Planning Strategy for Timberlea/Lakeside/Beechville

Section III: Land Use Intent

Local Commercial Uses

Although general commercial development is not permitted in the Urban Residential Designation, neighbourhood commercial services such as corner stores and personal service shops can conveniently serve the public from locations in the general residential area. However, as with medical clinics and larger day care facilities, such uses have the potential to create compatibility concerns with adjacent residential development. Care must be taken to protect neighbouring residential properties. Therefore, in order to provide an appropriate level of control over local commercial uses, such uses will be considered by rezoning to a local business zone. Although preference will be given to sites which have direct access to the major street systems, this zone will also be applied to existing local business uses, including the Harmony School of Music, located on Fraser Road.

UR-19 Notwithstanding Policy UR-2, it shall be the intention of Council to establish a local business zone to be applied to existing local business uses. This zone will permit single unit dwellings, variety and food stores, as well as service and personal service shops. In addition, the zone shall control parking, commercial floor area, the screening of refuse containers and prohibit outdoor display and storage. In considering amendments to the land use by-law to a local business zone, Council shall have regard to the following:

- (a) that the proposed development does not exceed a maximum gross floor area of two thousand (2,000) square feet exclusive of any area devoted to an accessory dwelling unit, and is primarily intended to serve the local neighbourhood;
- (b) that the height, bulk, lot coverage and appearance of any building is compatible with adjacent land uses;
- (c) that no open storage or outdoor display shall be permitted;
- (d) direct access to a minor or major collector as identified on Map 3 - Transportation, with preference given to commercial sites which are located at the intersection of major and minor collectors;
- (e) the impact on traffic circulation and, in particular, the suitability of access to and from the site; and
- (f) the provisions of Policy IM-12.

UR-22 Notwithstanding Policy UR-1, within the Urban Residential Designation, it shall be the intention of Council to provide for the continued use of commercial and industrial properties identified in Appendix "B" of the land use by-law. Further, Council shall consider any proposed

expansion or change of such uses according to the development agreement provisions of the Planning Act. In considering any expansion proposal or change of use, Council shall have regard to the following:

- (a) that site design details, including landscaping, buffering, outdoor storage areas, parking areas and driveways are of an adequate size and design to address potential impacts on adjacent residential development, and to provide for the needs of users of the development;
- (b) that the appearance of all buildings and structures related to the use shall be compatible with the surrounding area in terms of scale, exterior appearance and signage;
- (c) the impact on traffic circulation and, in particular, sighting distances and entrances and exits to the site;
- (d) that municipal central services or, in unserved areas, on-site services, are capable of supporting the development;
- (e) an assessment of the environmental concerns related to the development, including potential effects on watercourses, based on a report from the appropriate Federal or Provincial government authority;
- (f) hours of operation;
- (g) that the maximum gross floor area of the proposed development, exclusive of any area devoted to an accessory dwelling unit, shall not exceed six thousand five hundred (6,500) square feet. **In addition, for the total land area of properties known as 2892 and 2894 St. Margaret's Bay Road (Land Registration Information Service (PID Numbers 40054538 and 40305369), the Municipality may permit an expansion of the existing self-storage facility to an overall maximum gross floor area of 41,500 square feet (RC/WRCC - August 9, 2005 / E September 3, 2005).**
- (h) maintenance of the development; and
- (i) the provisions of Policy IM-12.