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PO Box 1749 Halifax, Nova Scotia B3J 3A5 Canada

Peninsula Community Council April 6, 2009

TO:

Chair and Members of Peninsula Community Council

SUBMITTED BY:

Paul Dunphy, Director of Community Development

DATE:

March 6, 2009

SUBJECT: Case 01200: LUB Amendment, Halifax Peninsula

<u>ORIGIN</u>

Application by Super Natural Health Food to amend the Halifax Peninsula Land Use By-law to allow restaurants in the C-1 (Local Business) Zone, Halifax.

RECOMMENDATION

It is recommended that Peninsula Community Council:

- 1. Give First Reading of the proposed amendments to the Halifax Peninsula Land Use Bylaw as contained in Attachment "A" and schedule a public hearing; and
- 2. Approve the proposed amendments to the Halifax Peninsula Land Use By-law as contained in Attachment "A" of this report.

BACKGROUND

Super Natural Health Food is a health food and natural product retail store located at 5755 Young Street in Halifax. The owner began renovations of the C-1 zoned business in 2008 with the intention of being able to offer café style lunch menu items in conjunction with the retail operation. Restaurants are not permitted within the C-1 (Local Business) Zone. The applicant's request is to add restaurants as a permitted use in the C-1 zone. The proposed amendment would affect all C-1 zoned properties. The C-1 Zone is confined to 14 different properties within Districts 11 and 14 of the Halifax Peninsula as shown on Map 1 (see attached).

DISCUSSION

The C-1 (Local Business) zoned properties are located in areas designated Residential Environments under the Halifax Municipal Planning Strategy with the exception of a single property located at 6220 North Street.¹ The Halifax MPS policy regarding residential environments intends that commercial expansion should not conflict with the character, stability or scale of the neighbourhood. Consequently, local commercial uses are only permitted within residential environments and with specific requirements as to their location and scale.²

In areas that are zoned C-1 the land use by-law permits a variety of land uses including single family dwellings, multiple unit dwellings, stores for retail trade and rental, banks, public halls, offices, municipal buildings, hairdressers, beauty parlours, and the receiving office of a dry cleaner or dyer. The city wide policy for local commercial describes these local businesses as owner-occupied and serving primarily local and walk-in trade.

Prior to 1979 restaurants were a permitted use in the C-1 Zone. However, on February 19, 1979 Council for the former City of Halifax amended the land use by-law to delete the word "restaurant" from the C-1 Zone. The staff report accompanying the 1979 amendment supported the removal of restaurants based upon the argument that restaurants were not neighbourhood uses. The rationale provided to Council was that restaurants in the context of Peninsula Halifax could not be supported by local neighbourhoods. The concern then was that restaurants would attract customers that would generate unusual levels of traffic and create parking problems. Additionally, in the 1970's planning practice endorsed segregation of land uses deemed a threat to the stability of residential neighbourhoods. Current planning practice as evident in the Regional Plan (RMPS) and the HRM by Design process suggests that local commercial uses are

¹ 6220 North Street is designated Medium Density Residential and through site specific policy in Section XI of the Peninsula North Secondary Plan (Attachment B) was zoned C-1 in order to limit the intensity of commercial development.

² Policy does not permit the rezoning of residential zones to the C-1 (Local Business) Zone in Halifax Peninsula Secondary Plan Areas.

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a critical component in the success of urban neighbourhoods as residents rediscover an appreciation for the advantages of being able to shop and work in the same place they live.

Over the last fifty years neighbourhoods in the Regional Centre have experienced a significant decline in population. One of the goals of HRM's Regional Plan is to provide the critical density necessary for the vitality of all neighbourhoods, whereby retail streets, transit, schools and other essential amenities and services remain viable within the Regional Centre. The RMPS acknowledges that local commercial uses can enrich urban living and enhance residents' quality of life.

MPS Policy

Policy 3.1.1 (Attachment B) distinguishes that local commercial uses within residential neighbourhoods are desirable, permitted that those uses do not conflict with the character or stability or scale of the neighbourhood. However, the policy does not specifically list the types of commercial uses that should be permitted within residential environments. It does, however, provide guidance in terms of the preferred location and scale of commercial uses. Adding restaurants to the list of permitted uses within the land use by-law would be consistent with the local commercial policy, provided that these uses do not conflict with the neighbourhood.

Staff believe that potential conflicts between restaurants and residential uses can be mitigated through additional controls in the land use by-law. In consideration of potential land use conflicts resulting from scale, size, intensity and location of use, traffic and parking issues staff offer the following comments.

Scale, Size, Intensity and Nuisance

Buildings in the C-1 Zone have a height restriction of 35 feet and are limited to maximum lot coverage of 35 percent. Staff believe that these restrictions provide sufficient limitations to restrict restaurants to a size and scale that reinforce the neighbourhood character. Nevertheless, staff have prepared additional amendments that include specific requirements for restaurants. The proposed amendments include limiting the size of restaurants to 1000 square feet, restrictions on the location of commercial patios, fencing and screening requirements, limitations on takeout components, prohibition of drive through windows, and requirements to direct lighting away from any abutting residential zone.

Traffic and Parking

The concern in the 1979 staff report was that restaurants in C-1 zones would attract customers from outside areas that would generate unusual levels of traffic and create parking problems. The C-1 Zone has no parking requirements and staff do not attribute to restaurants a higher demand for parking than any of the other permitted commercial uses. Furthermore, local commercial

uses are required to locate at or adjacent to the intersections of local streets rather than mid-block and parking needs for local commercial uses including restaurants can be accommodated through on-street parking. On-street parking is a type of shared parking and a key factor in promoting businesses, particularly within the urban centre. On-street parking utilizes less land per space than off-street parking and provides easy access to businesses located on city streets. Further, depending upon how on-street parking is situated on a street, it can also serve as a traffic calming device, thereby slowing vehicles and potentially reducing the number and severity of accidents. Staff have reviewed the proposed amendments and have no concerns with regard to traffic impacts or parking.

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Public Information Meeting

A Public Information Meeting for this application was held on December 5, 2008. Minutes of this meeting are provided as Attachment "C" of this report. The public information meeting was not well attended. The public in attendance did ask questions and demonstrate some concern regarding the impact of restaurants on neighbourhood on-street parking. The public also expressed tentative support for the proposed amendment to land use by-law.

Staff recommend that an amendment to the LUB to include restaurants as a permitted use with specific requirements and limitations is consistent with the intent of the local commercial policy and is desirable in order to promote vibrant urban neighbourhoods.

Should Community Council decide to hold a public hearing, in addition to published newspaper advertisements, members of the public who attended the Public Information Meeting will receive written notification.

BUDGET IMPLICATIONS

The HRM costs associated with processing this planning application can be accommodated within the approved operating budget for C310.

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 amendment to the LUB as contained in Attachment "A". This is the recommended course of action.

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- 2. Council may choose to alter the proposed amendments to the LUB contained in Attachment "A". This may necessitate further report(s). In the event revisions are requested an additional public hearing may be required.
- 3. Council may choose to refuse the proposed amendments to the Land Use By-law.

ATTACHMENTS

Map 1	Location of C-1 (Local Business) Zones on Halifax Peninsula
Attachment "A"	Amendments to the Halifax Peninsula Land Use By-law
Attachment "B"	Experts from the Halifax Municipal Planning Strategy and
	Halifax Peninsula Land Use By-law
Attachment "C"	Minutes from the December 5, 2008, Public Information Meeting

A copy of this report can be obtained online at <u>http://www.halifax.ca/commcoun/cc.html</u> 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 :

Brian White, Planner I, 490-4793

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Report Approved by:

Austin French, Manager of Planning Services, 490-6717



ATTACHMENT A Amendments to the Land Use By-Law for Halifax Peninsula

BE IT ENACTED by the Peninsula Community Council of the Halifax Regional Municipality that the Land Use By-law for Halifax Peninsula is hereby amended as follows:

1. By adding the following word at the beginning of clause (c) of Section 49(1):

restaurant,

2. By adding the following new Section immediately following Section 55:

RESTAURANTS

- 55A Notwithstanding Section 49 (1)(c), restaurants may be permitted provided that:
 - (a) they do not exceed a gross floor area of 1,000 square feet;
 - (b) an opaque fence having a minimum height of five feet is constructed abutting any residentially zoned property;
 - (c) lighting facilities, if provided, are directed away from any abutting residentially zoned property;
 - (d) any commercial refuse container is enclosed in a structure which visually screens it from the street and any abutting residentially zoned property;
 - (e) any commercial patio is not located in yards abutting any residentially zoned property;
 - (f) any take-out area does not exceed ten (10) percent of the gross floor area of the restaurant; and
 - (g) vehicle drive through order and pick up windows are not permitted.

THIS IS TO CERTIFY that the by-law of which this is a true copy was duly passed at a duly called meeting of the Peninsula Community Council of Halifax Regional Municipality held on the _____ day of ______, A.D., 2009.

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GIVEN under the hand of the Municipal Clerk and under the Corporate Seal of the said Municipality this _____day of ______, A.D., 2009.

> Julia Horncastle Acting Municipal Clerk

ATTACHMENT B Experts from the Halifax Municipal Planning Strategy and Halifax Peninsula Land Use By-law

Section II - City Wide Objectives and Policies

Commercial Facilities

3.1.1 Neighbourhood shopping facilities in residential environments should service primarily local and walk-in trade, and should be primarily owner-occupied. They shall be required to locate at or adjacent to the intersections of local streets rather than in mid-block. Neighbourhood shopping facilities may include one business, for example a corner store or a cluster of businesses. This policy shall serve as a guideline for rezoning decisions in accordance with Implementation Policies 4.1 and 4.2 as appropriate.

Section XI - Peninsula North Secondary Planning Strategy

2. Commercial Facilities

- Objective A variety of appropriately located commercial facilities to serve the needs of both the resident and working populations of Peninsula North and the City as a whole.
- 2.2.2 Notwithstanding the medium density residential designation and Policy 1.3 the property at the southwest corner of North and Windsor Streets, zoned commercial immediately prior to the adoption of this Section, shall be zoned to a local business zone in order to limit the intensity of commercial development.

Halifax Peninsula Land Use By-law

C-1 ZONE - LOCAL BUSINESS ZONE

- 49(1) The following uses shall be permitted in any C-1 Zone:
- (a) R-1, R-2, R-2T and R-3 uses;
- (b) stores for the purpose of retail trade and rental excluding:
 - (I) motor vehicle dealers;
 - (ii) motor vehicle repair shops
 - (iii) adult entertainment uses; and

- (iv) amusement centres.
- bank, public hall, office, municipal building, hairdresser, beauty parlour; receiving (c) office of a dry cleaner or dyer;
- any use accessory to any of the foregoing uses. (d)
- No person shall in any C-1 Zone carry out, or cause or permit to be carried out, any 49(2)development for any purpose other than one or more of the uses set out in subsection (1).
- 49(3) No person shall in any C-1 Zone use or permit to be used any land or building in whole or in part for any purpose other than one or more of the uses set out in subsection (1).

REQUIREMENTS

Buildings erected, altered, or used for C-1 uses in a C-1 Zone shall comply with the 50 following requisites:

Lot Frontage	Lot Area	Side Yard
<u>Ft.</u>	Ft	<u>Ft</u>
40	4000	4

SIGNS

Any persons carrying on a business may place upon and parallel to the front of the 51 building a non-illuminated signboard not exceeding 3 feet in height and limited to the space immediately above the ground floor store windows extending the length of such front and appertaining solely to the ownership of the business conducted therein.

Illuminated signs may be erected provided that they do not constitute a nuisance or hazard to the public.

HEIGHT

The basic height of buildings in this zone shall not exceed 35 feet. 52

FRONT YARD SETBACK

The building line laid down for the adjacent residential buildings shall also apply to those 53 buildings hereafter erected or altered to C-1 uses. If, however, it is intended to erect or alter a building for C-1 uses between two existing buildings of C-1 uses, neither of which encroach over the street line, then such erections or alterations may be carried out in line with the two adjacent existing buildings.

REAR YARD SETBACKS: PENINSULA NORTH

53A Any building erected, altered or used for C-1 purposes in the C-1 zone in the **Peninsula North Area**, shall be set back a minimum of 20 feet from a rear lot line.

R-1, R-2, R-2T AND R-3 USES IN C-1 ZONE

- 54 Buildings erected, altered or used for R-1, R-2, R-2T and R-3 uses in a C-1 Zone shall comply with the requirements of their respective zones.
- 55 Lot coverage maximum lot coverage shall be 35 percent.

ATTACHMENT C Public Information Meeting Case # 01200 - December 5, 2008

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In attendance: Councillor Blumenthal Councillor Watts Brian White, Planner Hilary Campbell, Planning Technician Gail Harnish, Planning Services Nemat Sobhani, President of Super Natural Health Products

Call to order and Opening comments

Mr. Brian White called the public information meeting (PIM) to order at approximately 7:00 p.m. at the Bloomfield Centre. Tonight's meeting is to discuss an application by Super Natural Health Food to amend the Halifax Peninsula Land Use By-law (LUB) to allow restaurants in the C-1 (Local Business) Zone.

Overview of planning process

Mr. White reviewed the LUB amendment process using a flowchart:

- we did a preliminary review of the application
- we are now holding a PIM
- staff will do a more detailed review of the application
- staff will draft a report which will be tabled with Peninsula Community Council
- Community Council will either reject the application or will proceed to hold a public hearing
- if they proceed, the public hearing is held
- Community Council will make a decision
- there is an appeal process

Mr. White advised the C-1 zone is a very limited zone and only exists in fourteen locations on the Peninsula. In 1979, City Council removed restaurants as a permitted use in the C-1 zone. Some still exist but they are non-conforming uses. As non-conforming uses, if they burnt down, they would not be able to rebuild.

Mr. Rob Lee questioned why City Council changed the regulations.

Mr. White indicated the planners at the time suggested that restaurants were not a neighbourhood use. The C-1 zone is a neighbourhood zone. They thought restaurants would bring in more customers from outside areas and this would harm to the neighbourhood fabric by bringing in a

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lot of people. The original staff report talked about the demographics in the City not being big enough to support local restaurants as envisioned in Montreal and other major metro areas.

Mr. White displayed a map showing the C-1 zoned properties on the Peninsula. He also displayed photographs of the applicant's property on Young Street. The C-1 zone allows for many different types of residential uses, including R-3 which allows for apartments. It allows all kinds of retail uses such as banks, public halls, offices, municipal buildings, hair dressers, and beauty parlours but excludes uses such as motor vehicle dealers, motor vehicle repair shops, adult entertainment uses, and amusement centres.

Mr. White read into the record the provisions from the LUB for the C-1 zone in terms of signs and lot coverage:

"SIGNS

Any persons carrying on a business may place upon and parallel to the front of the building a non-illuminated signboard not exceeding 3 feet in height and limited to the space immediately above the ground floor store windows extending the length of such front and appertaining solely to the ownership of the business conducted therein.

Illuminated signs may be erected provided that they do not constitute a nuisance or hazard to the public.

Lot coverage - maximum lot coverage shall be 35 percent."

Proposal

Mr. Nemat Sobhani indicated some of the people in attendance have been customers of theirs for the past twenty years. They have been operators of a health food store in Halifax for about twenty-two years. Before they started to renovate, their building looked like a little warehouse and had windows at the bottom and nothing at the top. It was very industrial looking. They have been beautifying it. They put porcelain tiles at the bottom. They have tried to make the building look and give it the historic feel of the North End and the Hydrostone area by giving it the stone look at the bottom.

Mr. Sobhani stated the health food store has been used by more than the local neighbourhood. They have been serving people from all over Nova Scotia from Cape Breton to Yarmouth who regularly shop there. They have never been a local neighbourhood business just because of the kind of service they offer. There is always the food component in the health food store such as supplements and a place to get a bowl of soup or organic food or coffee. Often a person will sit down with a cookie while a family member shops. They have offered it more as a supplement and ingredients store, and upstairs they have a bakery which they use to make cookies and squares. They also made specialty blends there. They have a licence to operate a bakery on the

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second floor and have been selling those products from a display case. This has always been a part of the business since they moved to Young Street in 1993. They have been operating in the North End for fifteen years.

Mr. Sobhani said all they are trying to do is add the ability for the people in the neighbourhood to walk there from their home, and get their supplements and a cup of coffee and be able to walk around and buy vitamins and have something to munch on while they are asking for staff help. The end result is that it will be a sit down service restaurant. It is a health food store with an area where you can buy food, prepare food, and you can eat food onsite.

Mr. Sobhani noted back in 1979 they decided a food store is not a neighbourhood activity and was a time when people had a different kind of mindset, which he believed is no longer an acceptable mindset. Food is a part of a neighbourhood activity. How many of us don't enjoy going to a kitchen party? Food is a part of the neighbourhood and community building and they want to strengthen the fabric of the North End and the community by having a place where people can come and socialize and enjoy local art. It goes completely in line with what they have been about for the past twenty-three years. They have always been about strengthening the family and health. That is part of their philosophy and food is such a part of that.

Mr. Sobhani said he was only concerned about that particular building on Young Street being able to offer a small food service to go along with the retail activity they have been undertaking for the past twenty-three years. It was disconcerting to him that it would affect the other C-1 zones in the City. It would be a shame if the others prevent them from having their building changed.

Comments and questions

Mr. Pat Fitzgerald said he would be affected by eight sites. There are seven buildings on Isleville Street now. He applauded the plan he was hearing. He wondered what is involved in having this property rezoned to something other than C-1. One of the things he saw as a nightmare is if some of these seven buildings which are very closely located to him on Isleville Street were to open up restaurants. The parking at the present time is very congested. He did not understand why this rezoning had to take place for all the C-1 zoned properties.

Mr. White clarified it is not a rezoning. Staff looked at rezoning this property to C2A. That process (rezoning) involves an MPS amendment by Regional Council. Generally speaking, planning staff would not recommend going to Regional Council for a plan amendment when there is an remedy to resolve the applicant's needs at the Community Council level. This LUB amendment process is a Community Council issue and decision. If the resolution at the end of the day is not to preferrable, for or against, there may be an opportunity to take it to the next level, but at this point in time it (rezoning to C2-A by amending the plan) is not an option.

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It was suggested that would be a better option if it more effectively meets the needs of the neighbourhood.

Mr. White agreed that process would result in a restaurant being located at that location at the end of the day. He was hearing there is a concern about there being additional restaurants on Isleville Street.

Mr. Michael Creager noted it was being said it would affect the other properties and questioned whether there would be individual hearings for the other properties.

Mr. White advised it is an general amendment to the C-1 zone in the LUB, so the word "restaurant" will be returned to the land use by-law if that is the decision of Peninsula Community Council.

Mr. Creager questioned whether the other affected properties were notified of this meeting.

Mr. White responded yes, noting Staff were very careful about making sure every property owner neighbouring each C-1 zone was notified.

An individual stated he lived two doors down and did not receive a notice.

Ms. Hilary Campbell advised there was a 250' buffer applied to the property lines on each side and in some cases if you were across a wide street or depending on your exact location in digital mapping, people may be outside of the notification area.

Councillor Blumenthal questioned whether the property owners of the other C-1 zoned properties were notified.

Mr. White responded yes. He advised that Willman's Fish and Chips are very interested in this amendment as well. They have been there since 1948 but are non-conforming.

An individual noted about ten to fifteen years ago there was a restaurant on the corner of Windsor Street and Almon Street and they had problems with music. He liked what he was hearing in terms of the philosophy about the health food store, but was concerned they would have a restaurant where there was constant coming and going. He was concerned with allowing music in the C-1 zone. They had a big problem with the restaurant across from the Forum and people who lived beside it listened to the music until 2 o'clock in the morning. He asked if this location would be allowed to play music until 2 o'clock in the morning? It is a very residential area in the North End.

Mr. White indicated he understood that restriction relates more to the liquor license than it does to land use.

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The individual asked if the restaurant is set up and the property is sold, whether the new property owner would be able to get a liquor license and stay open until 2 o'clock.

Mr. White advised the amendment to the C-1 zone would permit restaurants but not lounges.

Mr. Lee questioned whether Wilman's Fish and Chips are a restaurant. Mr. White responded yes.

Mr. Lee questioned if people are allowed to go into Wilman's Fish and Chips to eat.

Mr. White responded yes. It is a restaurant that has been there since 1948. It is non-conforming, so if (for example) the restaurant burned down (completely) or ceased operation, they would not be permitted to rebuild/reopen. In 1979, City Council took the word "restaurant" out of the zone and made Willman's and several other restaurants non-conforming but they still exist and are entitled continue operation. However, if they shut down for more than six months, they would not be able to continue.

Mr. Lee questioned if a take-out was the same as a restaurant.

Mr. White responded it is still a restaurant. One of the things he has done is examine the regulations from other municipalities for take-out versus restaurant and their restrictions. In some respects this zone is very restrictive because it has a maximum height of 35' and a maximum lot coverage of 35%, so you would not be able to build a very large restaurant. He clarified these provisions pertain to new construction.

An individual said they were concerned about the parking. A deck will go over the building outside which will take away more of the parking. They are congested on Kaye Street already and it is hard to get out. With more traffic coming through, it will be a mess. She was concerned about traffic. They have young families with small children. There will be way too much traffic. The idea sounds good but she thought it would be a bit bigger than what they have been telling them, and that it would be more than coffee and cookies.

Mr. Sobhani responded the deck is designed so that the legs come onto the building as opposed to the parking lot so they are not losing any parking. Their normal customers have been able to park in the lot. They are at about half of what they were seven to eight years ago.

Mr. White advised he would take a closer look at the traffic issue before the report is tabled with Community Council.

Ms. Gloria Luciano questioned how the size of a footprint is determined.

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Mr. White responded he believed it was based on the foundation of the building excluding temporary structures such as decks.

Mr. Lee questioned if the assessment of the property would increase if this development went ahead.

Mr. White responded it was his understanding it is a commercial tax rate which is assessed by the Province. It is a commercial property and the assessment would not change because it has additional uses on it. If you have a commercially zoned property but you only have a R-1 residential home on it, you are not assessed at the commercial tax rate even though the zoning permits lots of commercial uses. Your property is assessed on what the land use actually is.

Ms. Danielle Belliveau questioned why other locations (Hydrostone Market and Olands) one block away, which generate a lot of traffic, could serve alcohol and food. When were these zoned or were there amendments since then?

Mr. White advised they were all zoned in 1978. The Hydrostone Market is zoned C2A. The C2A zone is designed to be applied to areas where there is a conglomeration of businesses. The property on Kaye Street is one business. It has gone through several ownerships and uses. The neighbourhood commercial zone was designed to be applied to small businesses in residential neighbourhoods.

In response to Ms. Belliveau, Mr. White indicated the C-2 commercial zone is a very intensive zone which allows metal facrication and repair shops and radiator shops, for instance. It is a mix of everything and is perhaps our most permissive zone on Halifax Peninsula.

Mr. Creager commented what is being proposed sounds fine but in ten years time they could have a dry cleaner in their area. He would be concerned if they start to get restaurants on the seven properties on Isleville Street.

Mr. White responded site specific amendments to the land use by-law, although it is rather unlikely that we can figure out a mechanism to do that.

Councillor Blumenthal questioned what the size of the other locations is.

Mr. White responded all of the red areas are small with the exception of the large apartment building. The C-1 zone also permits apartment buildings.

The applicant questioned whether there is a limitation on the number of units for an apartment building in the C-1 zone.

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Mr. White responded there is no specific limit. You have to meet the requirements of the Building Code. As well, there are restrictions on the height of the building which is 35'.

Mr. Lee stated he would support the proposal. It would give the proponent the ability and revenue to upgrade and beautify the property.

Mr. Roger Khoury, restaurant on the corner of Quinpool Road, referenced the 35' height restriction and asked how it was measured.

Mr. White responded there are three different ways to calculate the height on the Peninsula depending upon which area you are in. He would have to check the specifics for his area.

Mr. Khoury questioned if they would be notified of the public hearing.

Mr. White advised we would notify everyone within the boundary of each C-1 zoned property if Community Council decides to proceed to a public hearing.

Adjournment

The meeting adjourned at approximately 7:50 p.m.