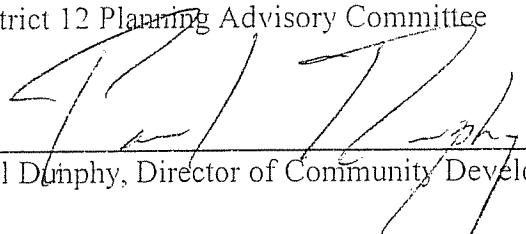




PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

District 12 Planning Advisory Committee
February 26, 2009

TO: District 12 Planning Advisory Committee

SUBMITTED BY: 
Paul Dunphy, Director of Community Development

DATE: February 5, 2009

SUBJECT: Case 01233: Discharging Agreement - 5511 Charles Street, Halifax

ORIGIN

Application by D.D. Charles Creighton Limited to discharge the existing development agreement at 5511 Charles Street, Halifax.

RECOMMENDATION

It is recommended that the District 12 Planning Advisory Committee recommend that Peninsula Community Council:

1. By resolution, approve the discharging agreement, presented as Attachment "A" to this report, for lands located at 5511 Charles Street, Halifax; and
2. Require that the discharging agreement be signed within 120 days, or any extension thereof granted by Community Council on the request of the applicant, from the date of final approval by Community Council and any other bodies as necessary, whichever is later, otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

The subject property (PID #40619975) is bounded by Gottingen Street, Charles Street, and Creighton Street, in Halifax. It is designated HDR (High Density Residential) and is zoned R-3 (Multiple Dwelling Zone) under the Halifax Municipal Planning Strategy (MPS) and Halifax Peninsula Land Use By-law (LUB), respectively (see Map 1). On April 25, 1991, the Council of the former City of Halifax approved a development agreement on the property to allow a 35 unit multiple unit dwelling at 5511 Charles Street, in addition to the 23 unit building already existing on the property at 2535 Creighton Street. This development agreement is still in effect.

DISCUSSION

In 1991, the subject lands were contained under Schedule "C" of the Peninsula Land Use By-law. Schedule "C" limited the development of multiple unit dwellings to 25 units, unless otherwise approved by Council through a development agreement process. When the Peninsula North Plan for Area 7 was adopted in 1995, the Schedule "C" designation was removed. Should Council approve the discharging agreement, the property will revert back to the R-3 Zone requirements of the LUB.

Although the existing development agreement only permits 35 dwelling units, there are currently 36 dwelling units in the building. The property owner is attempting to gain authorization for the additional unit. There are no provisions in the development agreement to allow for an additional unit, however, it would be permitted in the R-3 Zone. If the existing agreement is discharged, the property owner can apply for a permit to allow the additional dwelling unit to remain.

It should be noted that on April 30, 1992, Council approved an amending agreement to allow for the subdivision of the lands and the creation of 25 commercial parking spaces. This amending agreement was not registered, and as such has no effect on the lands and does not need to be discharged.

A previous, expired, development agreement also exists on the property. This agreement for a 59 unit building was approved by Council on April 20, 1988, but the building was not constructed in the required time period. Although it is no longer in effect, for clarity, the discharging agreement will also include the discharge of this first agreement.

Public Information Meeting

No public information meeting was held. Such meetings are not typically held for applications to discharge a development agreement.

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 could choose to enter into a discharging agreement and allow the subject property to revert back to the R-3 (Multiple Dwelling Zone) under the Halifax Peninsula Land Use By-law.
2. Council could choose not to discharge the existing development agreement. Development on the property would continue to be subject to the conditions of the development agreement.

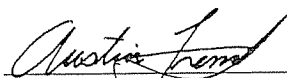
ATTACHMENTS

Map 1	Location and Zoning
Attachment "A"	Draft Discharging Agreement
Attachment "B"	Existing Development Agreement

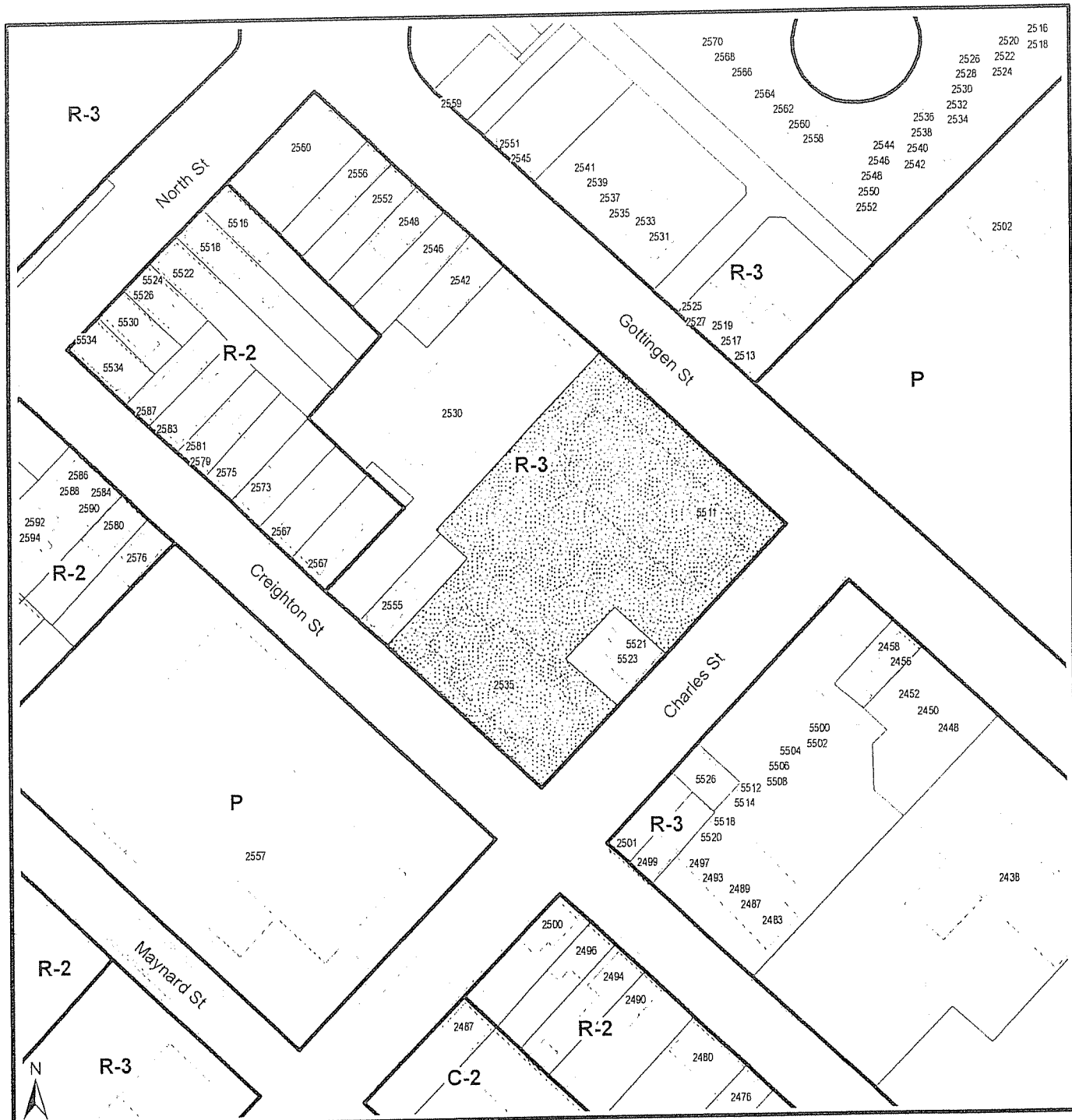
A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by : Patricia Hughes, Planner I, Community Development. 490-1948

Report Approved by:




Austin French, Manager of Planning Services. 490-6717



Map 1 - Location and Zoning

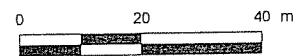
5511 Charles Street
Halifax

 Subject area

Halifax Peninsula
Land Use By-Law Area

Zone

- R-2 General Residential
- R-3 Multiple Dwelling
- C-2 General Business
- P Park and Institutional



This map is an unofficial reproduction of a portion of the Zoning Map for the Halifax Peninsula Land Use By-Law Area

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

Attachment A

THIS DISCHARGING AGREEMENT made this day of , 2009,

BETWEEN:

D.D. CHARLES CREIGHTON LIMITED

a body corporate, in the Province of Nova Scotia
(hereinafter called the "Developer")

OF THE FIRST PART

- and -

HALIFAX REGIONAL MUNICIPALITY,

a municipal body corporate, in the Province of Nova Scotia
(hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located at 5511 Charles Street, Halifax (PID #40619975), and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the former City of Halifax granted approval of a development agreement with Rose Argand and Charles Place Developments Limited on April 20, 1988, to allow for a 59 unit apartment building on the Lands, which was recorded at the Registry of Deeds in Halifax as Document Number 19710 in Book 4726 at Pages 1108-1113 (hereinafter called the "First Agreement");

AND WHEREAS the former City of Halifax granted approval of a development agreement with Rose Argand and Charles Place Developments Limited on April 25, 1991, to allow for a 35 unit apartment building on the Lands, which was recorded at the Registry of Deeds in Halifax as Document Number 20372 in Book 5076 at Pages 661-665 (hereinafter called the "Second Agreement");

AND WHEREAS the Developer has requested that the First Agreement and the Second Agreement be discharged;

AND WHEREAS, pursuant to the procedures and requirements contained in the *Halifax Charter*, the Peninsula Community Council approved this request by resolution at a meeting held on the day of 2009, referenced as Municipal Case Number 01233;

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

1. The First Agreement and the Second Agreement are hereby discharged and shall no longer have any force or effect.
2. Any future development of the Lands shall conform with all applicable provisions and requirements of the Halifax Peninsula Land Use By-law, as amended from time to time, and any future subdivision of the Lands shall conform with all applicable provisions and requirements of the Regional Subdivision By-law, as amended from time to time.

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, A.D., 2009.

Signed, sealed and delivered in the presence of:

per: _____

Sealed, Delivered and Attested by the proper signing officers of Halifax Regional Municipality duly authorized on that behalf in the presence of

per: _____

D.D. CHARLES CREIGHTON LIMITED

per: _____

HALIFAX REGIONAL MUNICIPALITY

per: _____

MAYOR

per: _____

ACTING MUNICIPAL CLERK

55

20372 ✓

667

THIS AGREEMENT made this 29th day of April, 1971

APPROVED AS TO FORM
[Signature]
By ~~Secretary~~

BETWEEN:

MRS. ROSE ARGAND, of Halifax,
in the County of Halifax,
Province of Nova Scotia,

- and -

CHARLES PLACE DEVELOPMENTS LIMITED,
a body corporate, in the County of
Halifax, Province of Nova Scotia,
(hereinafter called the "Developers")

OF THE FIRST PART

- and -

CITY OF HALIFAX,
a municipal body corporate,
(hereinafter called the "City")

OF THE SECOND PART

WHEREAS the Developers wishe to obtain permission to construct a 35-unit apartment building on a lot which contains an existing 23-unit building in the City, pursuant to Section 83(c) of the Peninsula part of the Land Use Bylaw;

AND WHEREAS a condition of the granting of approval of Council is that the Developers enter into an agreement with the City;

AND WHEREAS the Council of the City, at its meeting on the 25th day of April, 1971, approved the said development agreement to permit the Developers to maintain the existing 23-unit building and to construct a separate 35-unit building, subject to the registered owner of the lands described herein entering into this agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the granting by the City of the development agreement requested by the Developers, the Developers agree as follows:

1. The Developers are the registered owners of the lands known as 2502-18 Gottingen Street and 2535 Creighton Street, Block G-R-A, in the City of Halifax, described in Schedule "A" hereto (hereinafter called the "lands").

2. The Developers shall construct on the lands a building, which in the opinion of the Development Officer, is substantially in conformance with Plan(s) No. P200/18201-05 inclusive, filed in the City of Halifax Development and Planning Department as Case No. 6266, and shall not develop or use the lands for any other purpose other than 58 apartment units in two structures together with a two storey parking structure including any use permitted in the R-3 (Multiple Dwelling) Zone.

3. The Developers shall landscape all lands not occupied by the buildings and attendant driveways and parking areas and such landscaping shall be substantially in accordance with the aforementioned plans and without limiting the generality of the foregoing shall include a six(6) foot high shadow board fence along the common property line to the rear of the properties known as Civic No. 5521 Charles Street and 2555 Creighton Street.

4. The "development" shall be completed (completion is defined as fulfilling the terms of the entire agreement) within 2 years from the date of final approval by Halifax City Council or any other bodies as necessary, whichever approval is later, including any applicable appeal periods. If the "development" has not been completed by the applicable time, this agreement will terminate unless specifically extended, upon request of the applicant, by resolution of City Council and all rights and obligations arising hereunder shall be at an end.

5. Notwithstanding any other provision of this agreement, the Developers shall not undertake or carry out any development on the lands which does not comply with all City of Halifax laws, including, without restricting the generality of the foregoing, the Building Code Ordinance and the Fire Prevention Ordinance and no permit shall be issued for any such development.

5. The City shall issue the necessary permits for the development upon the expiration of the twenty-one (21) day appeal period under Section 71 of the Planning Act, as the same may be amended from time to time, or upon the withdrawal or dismissal of any appeal which may be taken; provided, however, that the City shall not issue any occupancy permit for the development unless and until the development specified in the plans referred to in No. 2 hereof has been completed substantially in accordance with the said plans and the requirements of this have been met.

Time shall be of the essence of this agreement.

This agreement shall be binding upon the parties hereto and their heirs, successors and assigns.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals as of the day and year first above written.

SIGNED, SEALED AND DELIVERED) MRS. ROSE ARGAND
 in the presence of)
Elizabeth Hico) Per Rose Argand
)
) CHARLES PLACE DEVELOPMENTS
Elizabeth Hico) LIMITED
) Per Michael A. Argand
)
) CITY OF HALIFAX
David Williams) Per Jim Williams
) Mayor
) Per Edward Lorr
) City Clerk

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LOT G-R-A

All that certain lot, piece or parcel of land situate lying and being in the City of Halifax, County of Halifax, Province of Nova Scotia, being Block G-R-A as shown on a plan entitled "Resubdivision of Lands of Gordon & Rose Argand", dated the 27th day of March 1987, certified by J. Forbes Thompson N.S.L.S., and being more particularly described as follows:

Bearings refer to Grid North 3° M.T.M., C.M. 64° 30' W.

BEGINNING on the southern boundary of Gottingen Street, said point being the most eastern corner of lands of Philip C. Francis, James L. Francis & Mary A. Francis;

Thence South 46° 36' 31" East along Gottingen Street, a distance of 180.00 Feet, to the northwestern boundary of Charles Street;

Thence South 43° 21' 34" West along Charles Street a distance of 24.94 Feet, to the eastern corner of lands of the Estate of Leroy J. Brown;

Thence North 46° 45' 26" West a distance of 50.00 Feet;

Thence South 43° 21' 34" West a distance of 49.70 Feet;

Thence South 46° 45' 26" East a distance of 50.00 Feet, to Charles Street;

Thence South 43° 21' 34" West a distance of 78.00 Feet, to the northern boundary of Creighton Street;

Thence North 46° 45' 26" West along Creighton Street a distance of 150.00 Feet, to the southern corner of lands of Milton Crosby;

Thence North 43° 21' 34" East a distance of 83.03 Feet;

Thence North 46° 36' 31" West a distance of 30.00 Feet;

Thence North 43° 21' 34" East a distance of 170.00 Feet, to the POINT OF BEGINNING.

Said Block G-R-A contains an area of 40,540 Square Feet.

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX, NOVA SCOTIA

ON THIS 22 day of May, A.D., 1991,
before me, the subscriber personally came and appeared
Elizabeth P. Hill a subscribing witness to the within
and foregoing Indenture, who, having been by me duly sworn,
made oath and said that MRS. ROSE ARGAND AND CHARLES PLACE
DEVELOPMENTS LIMITED, one of the parties thereto, caused the
same to be executed and its Corporate Seal to be thereunto
affixed by the hands of its duly authorized officers in h
presence.

Michael V. ...
A Barrister of the Supreme Court
of Nova Scotia
447 ARDEN COAST

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX, NOVA SCOTIA

ON THIS 29th day of MAY, A.D., 1991,
before me, the subscriber personally came and appeared
ARLENE CAMPBELL a subscribing witness to the
within and the foregoing Indenture, who, having been by me
duly sworn, made oath and said that the City of Halifax, one
of the parties thereto, caused the same to be executed and
its Corporate Seal to be thereunto affixed by the hands of
Ron Wallace, its Mayor, and E. A. Kerr, its City Clerk, its
duly authorized officers in her presence.

B. J. ...
A Barrister of the Supreme Court
of Nova Scotia
BERALD J. ...
A Barrister of the Supreme Court
of Nova Scotia

Province of Nova Scotia
County of Halifax
I hereby certify that the within instrument
was recorded in the Registry of Deeds Office
at Halifax in the County of Halifax, N.S.
at 3:39 o'clock P.M. on the 31st
day of MAY, A.D., 1991 in
Book No. 2076 at Pages 661-665
as document Number 20372
Kelvin A. Dady
Registrar of Deeds for the Registration
District of Halifax County

