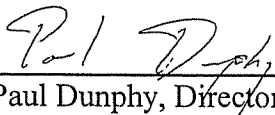




PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

North West Planning Advisory Committee
June 6, 2007

TO: Chair and Members of North West Planning Advisory Committee

SUBMITTED BY: 
Paul Dunphy, Director of Community Development

DATE: May 22, 2007

SUBJECT: **Case 00949: Development Agreement - 91 Dartmouth Road,
Bedford**

ORIGIN

Application by Christine Dib-Kahil and Philip Kahil to create a flag lot by development agreement at 91 Dartmouth Road in Bedford.

RECOMMENDATION

It is recommended that North West Community Council:

1. Give Notice of Motion to consider the proposed development agreement, enclosed as Attachment "D" of this report, to enable the creation of a flag lot at 91 Dartmouth Road (PID 40111221), Bedford, and schedule a public hearing;
2. Approve the proposed development agreement provided as Attachment "D"; and
3. Require the agreement be signed and delivered within 120 days, or any extension thereof granted by North West Community Council on request of the applicant, from the date of final approval of said agreement by North West Community Council and any other bodies as necessary, whichever is later, including any appeal periods. Otherwise this approval shall be void and any obligations arising hereunder shall be at an end.

BACKGROUND

Location, Designation, Zoning and Surrounding Land Uses:

- The subject property is located on the south side of Dartmouth Road just west of Dartmoor Crescent in Bedford (Map 1).
- The property falls within the plan area of the Bedford Municipal Planning Strategy (MPS) and is designated Residential (Map 1).
- The subject property is located within the Residential Single Dwelling Unit (RSU) Zone under the Bedford Land Use By-law (LUB). This zone permits single unit dwellings, special care facilities and existing two unit dwellings (Map 2).
- The subject property is predominantly surrounded by single unit dwellings although it backs onto a portion of the Sunnyside Elementary School (Eaglewood Site) property to the south.
- All surrounding properties, including the portion of the school site that abuts the subject property are zoned RSU (Map 2).
- The property is approximately 19,700 square feet in area and has 90 feet of frontage on Dartmouth Road.

Synopsis of Proposal:

The application is to create one flag lot to be accessed from Dartmouth Road. A flag lot, as shown and described in Attachment "B", is an irregular shaped lot with reduced frontage. The applicants intend to construct a single unit dwelling on the proposed flag lot within the area identified as "Building Envelope" on the attached site plan (Map 4). The application proposes that the pole section of the flag lot be located to the east of the existing dwelling and run over the existing driveway. The proposal calls for the existing driveway to extend through the pole section to the Building Envelope and for both properties to share this driveway access from Dartmouth Road.

Enabling Policy and Policy Intent:

Policy R-27 (Attachment "A") of the Bedford MPS enables Council to consider applications for flag lots through the development agreement process. The main policy intent is to enable infill development within residential areas while ensuring that land use impacts on adjacent residential properties are mitigated. The policy requires any such development agreement to specify an appropriate building envelope for the proposed dwelling as well as set a maximum building height and footprint not to exceed that of the surrounding dwellings. The policy also requires minimum yard setbacks in accordance with requirements set out in the RSU Zone.

DISCUSSION

The following is an evaluation of the proposed development in relation to applicable policies (Attachment "A") of the Bedford MPS. A proposed development agreement is provided as Attachment "D" of this report.

Issues:

Staff have identified the following considerations for more detailed discussion based on the applicable policies of the Bedford MPS:

Neighbourhood Compatibility

Policies R-27 and Z-3 require that the development agreement ensure a future dwelling constructed on the proposed flag lot is compatible with adjacent uses in terms of its use, bulk, scale and height. Both lots would meet the minimum area and frontage requirements set out in the Bedford LUB although the application would require a reduced sideyard on the remainder lot. This is discussed in more detail later in this section. The following measures have been included in the development agreement to address neighbourhood compatibility issues and minimize impact on adjacent residential properties:

- The dwelling must be located within the area specified as 'Building Envelope' on the attached Site Plan (Map 4).
- The minimum sideyards have been increased from 8 feet to 12 feet to lessen any potential impact on adjacent residential properties.
- The existing trees and vegetation within the required 12 foot sideyard be maintained as a buffer and visual screen for the adjacent residential properties.
- The future dwelling may be two storeys above grade and built to a maximum height of 22 feet (the average estimated height of surrounding dwellings).
- The future dwelling will be restricted to a maximum building footprint of 1189 square feet (the average estimated footprint for surrounding dwellings).

Access

Access from Dartmouth Road to the proposed property will be gained via the 'pole' portion of the flag lot. A large portion of the driveway used by the existing dwelling is located within the proposed location of the 'pole'. The application seeks the ability to use the existing driveway access from Dartmouth Road for both lots resulting from the proposed subdivision. The proposed development agreement requires that a permanent easement be granted in favour of the remainder property at the time of subdivision to enable access to both properties via the existing driveway access. HRM engineering staff have reviewed the proposal to utilize the existing driveway access and have identified no concerns other than the need for an easement.

Servicing and Site Construction

The existing dwelling is serviced with both municipal sewer and water services. HRM engineering staff and the Halifax Regional Water Commission have reviewed the proposal and determined that a single unit dwelling on the proposed lot can be serviced from a technical perspective at the property owner's expense.

To ensure proper grading and drainage of the site during construction, the proposed development agreement requires that a grade alteration permit be issued under the former Town of Bedford Grade Alteration By-law prior to construction commencing.

Civic Numbering

HRM civic numbering staff have determined that there are insufficient addresses in this area of Dartmouth Road to provide the proposed lot with a new civic number. As a result it will be necessary to renumber 93 and 95 Dartmouth Road. The proposed development agreement requires that the applicants provide compensation in the amount of \$50 per affected household to offset the inconvenience of having these addresses changed.

Yard Encroachment- Existing Dwelling

The subject property is of a sufficient size (19,700 sq. ft) and has sufficient frontage (90 ft.) to create a flag lot and a remainder lot under the requirements of the Bedford LUB. However, the location and orientation of the existing dwelling would cause a portion of the southeast side of the house to encroach upon the 8 foot minimum side yard required for the remainder lot. The applicants have indicated that they would be willing to relocate or renovate the existing dwelling in order to meet the setback requirement if necessary but have requested that the development agreement permit the dwelling to remain at its current location if possible.

Policy R-27 requires that minimum yard setbacks be provided in accordance with zone requirements and the definition of 'flag lot' established in the Bedford LUB requires that the pole portion of the flag lot be a minimum width of 30 feet. However, Planning Staff feel that some flexibility to the side yard requirement is warranted given that the encroachment would be adjacent to the 30 foot wide pole section of the flag lot which the development agreement restricts from housing any structures. Also, the Development Officer has indicated that a variance request to allow this encroachment into the sideyard would be looked upon favourably provided that the development agreement prohibits the construction or placement of any structure within the pole section of the flag lot.

Planning Staff believe that permitting the encroachment through the development agreement would not compromise the intent of the Land Use By-law given the likelihood of the Development Officer granting a variance to permit the encroachment. Since the adjacent property that would be affected by the encroachment is the proposed flag lot that will be owned by the applicants and the area immediately affected by the encroachment will not be built upon, Staff do not foresee any negative impact associated with this request. Permits and Inspections Staff have reviewed the application and identified building alterations that must be completed as a result of the close proximity of the dwelling in relation to the property line. These building requirements include a reduction in unprotected openings (doors, windows, etc.) and fire resistance measures. The proposed development agreement requires that these building alterations be completed prior to subdivision approval.

Public Information Meeting:

A public information meeting was held on October 25, 2006 at Basinview Drive Community Elementary School. Minutes of the meeting constitute Attachment C. The notification area is indicated on Map 3. If Community Council sees fit to hold a public hearing regarding this

application, ads will be placed in the newspaper and property owners within the notification area identified on Map 3 will be contacted individually.

Conclusion:

It is the opinion of Staff that the proposed development agreement meets the policy intent for flag lot development as set out in the MPS and that all issues, such as neighbourhood compatibility, are reasonably dealt with through the proposed development agreement. Staff are satisfied that a dwelling built within the proposed building envelope and according to the maximum height and footprint established in the proposed agreement would be compatible with the adjacent residential land uses. Staff are also satisfied that enabling the encroachment of the existing dwelling into the required sideyard would not impact upon the safety and enjoyment of the subject properties or adjacent properties.

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, 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. This is the recommended course of action.
2. Council may choose to refuse the proposed development agreement, and in doing so, must provide reasons based on a conflict with MPS policies. This alternative is not recommended as Staff are satisfied that the proposed development agreement is consistent with the policies and intent of the MPS.
3. Council may choose to approve the proposed development agreement subject to modifications. This may necessitate further negotiation with the applicants.

ATTACHMENTS

Map 1	Generalized Future Land Use Map
Map 2	Zoning
Map 3	Notification Area
Map 4	Site Plan

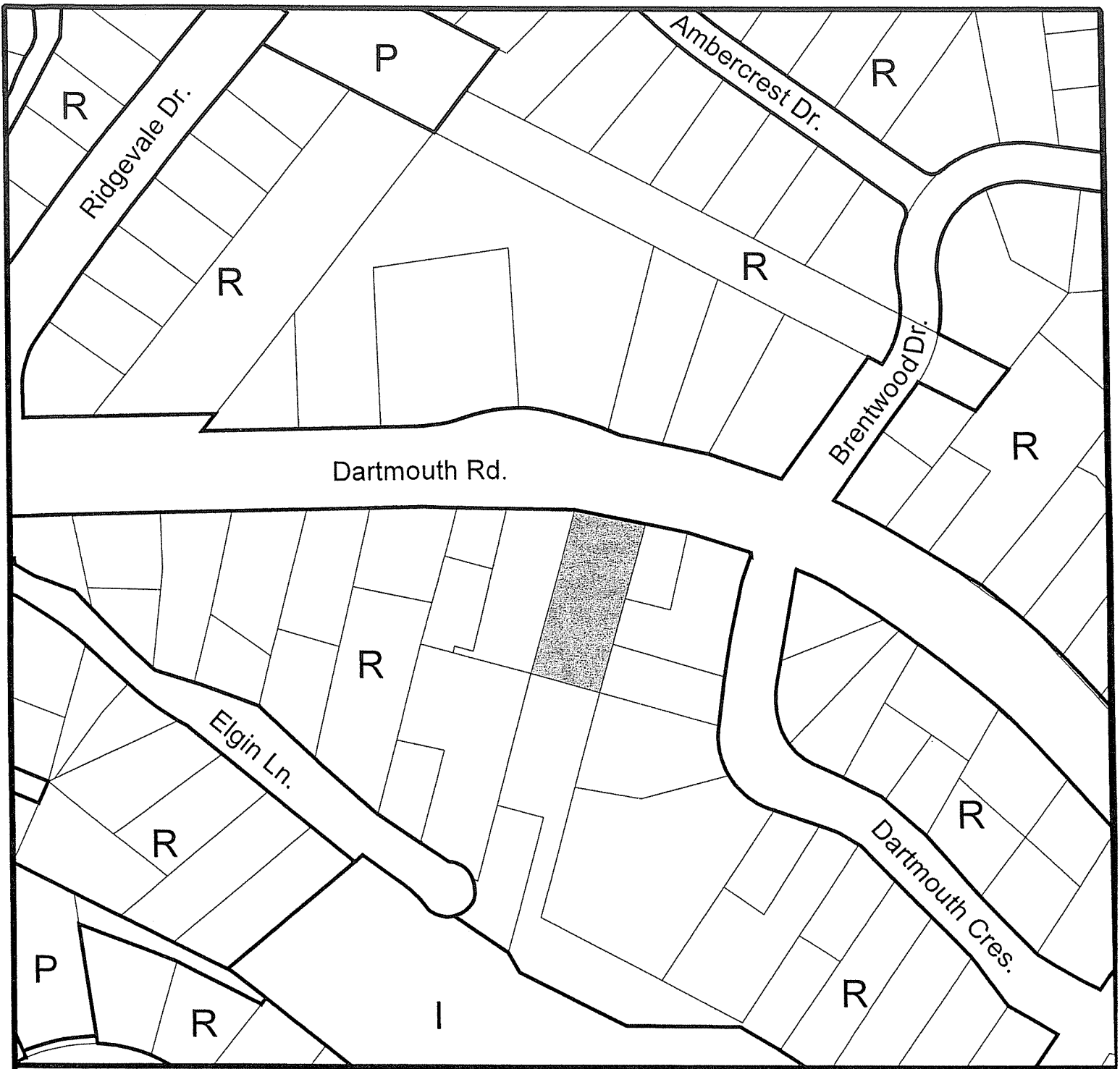
Attachment A	MPS Policies
Attachment B	LUB Requirements for RSU Zone/Bedford LUB 'Flag Lot' Definition
Attachment C	Public Information Meeting Minutes - October 25, 2006
Attachment D	Development Agreement for 91 Dartmouth Road

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 : Joseph Driscoll, Planner I, Community Development, 869-4262



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



Map 1
Generalized Future Land Use

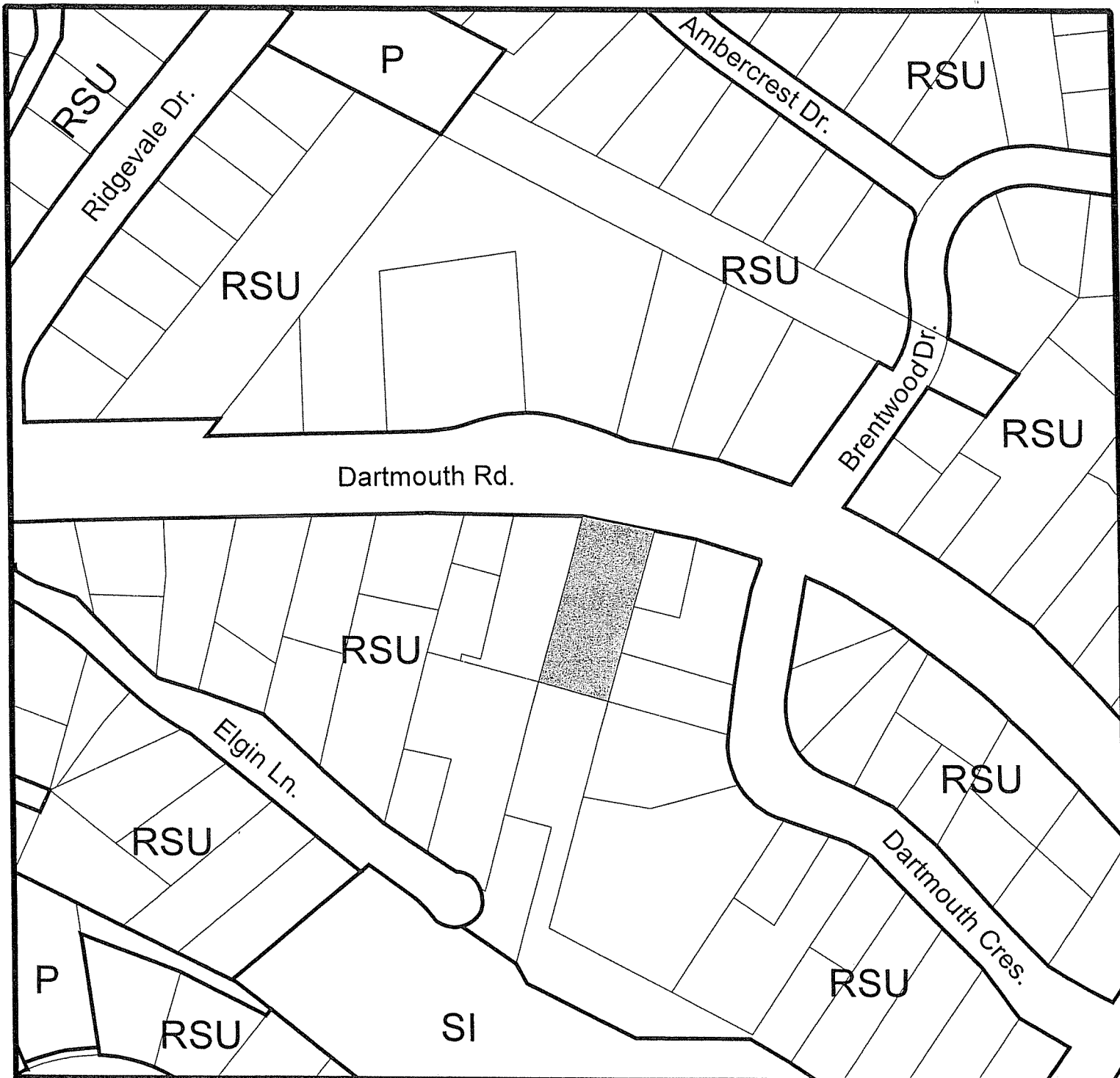


Subject Property



- R Residential Designation
- P Park and Recreation Designation
- I Institutional Designation





Map 2
Zoning



Subject Property

- RSU Single Dwelling Unit Zone
- P Park Zone
- SI Institutional Zone

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Planning Services





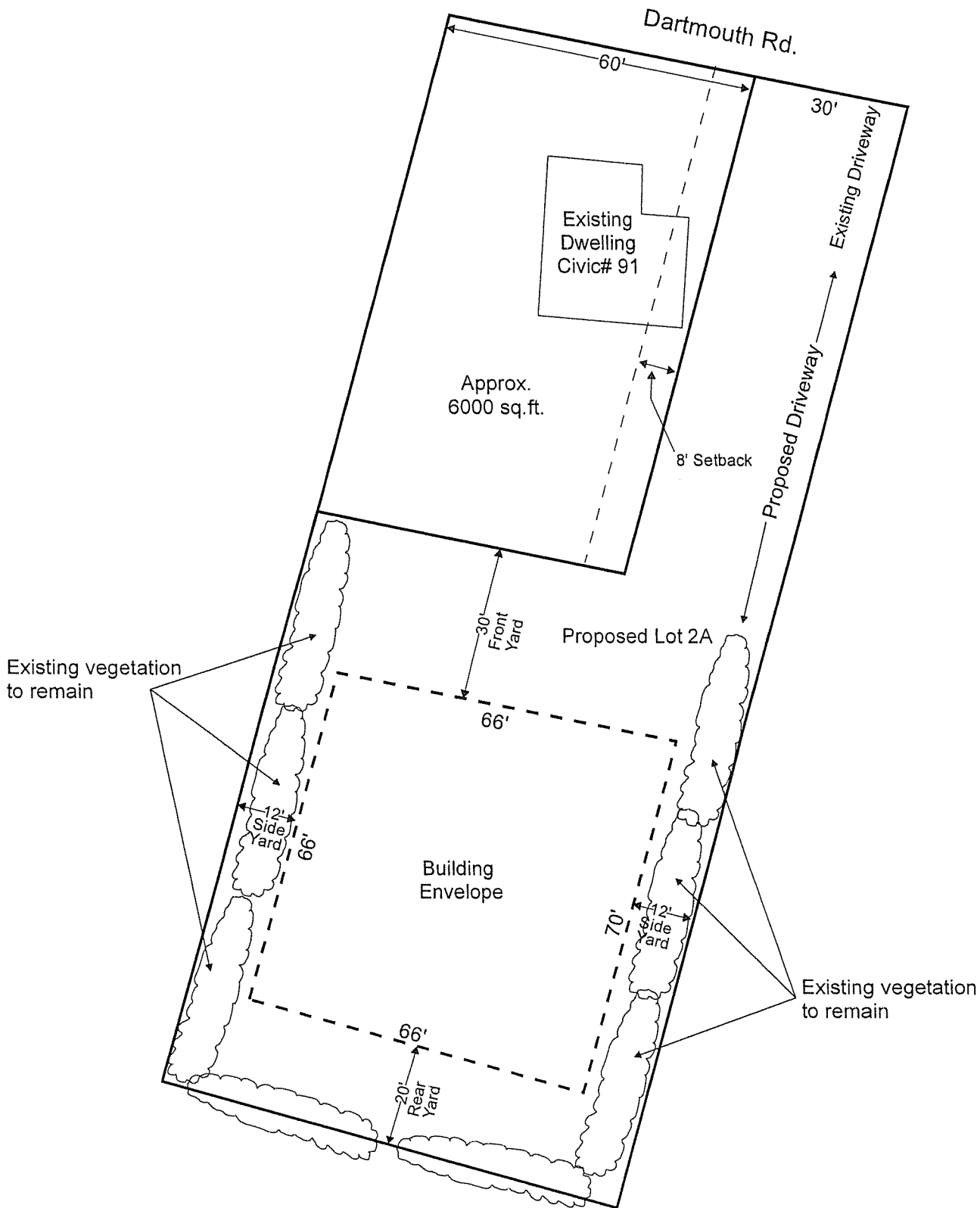
Map 3



Notification Area



Planning Services



Map 4
Site Plan

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Attachment "A"
Relevant MPS Policy

Policy R-27:

It shall be the intention of Town Council to consider applications to infill within existing residential areas. Infilling shall be encouraged to enable efficient use of municipal infrastructure. Town Council shall permit reduction of lot frontage requirements for subdivision of lots which existed prior to the adoption of this strategy, provided the existing land uses are in conformance with the zoning on the property. Infilling activity within existing residential neighbourhoods shall be regulated through provisions in the Land Use By-law. Council shall permit the creation of flag lots by development agreement. Such development agreements will require that:

- the application for a development agreement shall include the specifications for the building envelope for the proposed dwelling such that the new dwelling shall not exceed the average height and building footprint of the existing dwellings which abut the vacant lot;
- the minimum rear yard separation distances between the proposed new dwelling and the existing dwellings shall be 40 feet;
- minimum front, side and rear yards shall be provided in accordance with the zone requirements
- minimum lot area shall be 6,000 sq. ft.; and,
- the lot must be located within an area which is zoned for residential land use

Policy Z-3:

It shall be the policy of Town Council when considering zoning amendments and development agreements [excluding the WFCDD area] with the advice of the Planning Department, to have regard for all other relevant criteria as set out in various policies of this plan as well as the following matters :

1. That the proposal is in conformance with the intent of this Plan and with the requirements of all other Town By-laws and regulations, and where applicable, Policy R-16 is specifically met;
2. That the proposal is compatible with adjacent uses and the existing development form in the neighbourhood in terms of the use, bulk, and scale of the proposal;
3. That provisions are made for buffers and/or separations to reduce the impact of the proposed development where incompatibilities with adjacent uses are anticipated;
4. That provisions are made for safe access to the project with minimal impact on the adjacent street network;
5. That a written analysis of the proposal is provided by staff which addresses whether the proposal is premature or inappropriate by reason of:
 - i) the financial capability of the Town to absorb any capital or operating costs relating to the development;
 - ii) the adequacy of sewer services within the proposed development and the surrounding area, or if services are not provided, the adequacy of physical site conditions for private on-site sewer and water systems;

- iii) the adequacy of water services for domestic services and fire flows at Insurers Advisory Organization (I.A.O.) levels; the impact on water services of development on adjacent lands is to be considered;
 - iv) precipitating or contributing to a pollution problem in the area relating to emissions to the air or discharge to the ground or water bodies of chemical pollutants;
 - v) the adequacy of the storm water system with regard to erosion and sedimentation on adjacent and downstream areas (including parklands) and on watercourses;
 - vi) the adequacy of school facilities within the Town of Bedford including, but not limited to, classrooms, gymnasiums, libraries, music rooms, etc.;
 - vii) the adequacy of recreational land and/ or facilities;
 - viii) the adequacy of street networks in, adjacent to, or leading toward the development regarding congestion and traffic hazards and the adequacy of existing and proposed access routes;
 - ix) impact on public access to rivers, lakes, and Bedford Bay shorelines;
 - x) the presence of significant natural features or historical buildings and sites;
 - xi) creating a scattered development pattern which requires extensions to trunk facilities and public services beyond the Primary Development Boundary;
 - xii) impact on environmentally sensitive areas identified on the Environmentally Sensitive Areas Map; and,
 - xiii) suitability of the proposed development's siting plan with regard to the physical characteristics of the site.
6. Where this plan provides for development agreements to ensure compatibility or reduce potential conflicts with adjacent land uses, such agreements may relate to, but are not limited to, the following:
- i) type of use, density, and phasing;
 - ii) traffic generation, access to and egress from the site, and parking;
 - iii) open storage and landscaping;
 - iv) provisions for pedestrian movement and safety;
 - v) provision and development of open space, parks, and walkways;
 - vi) drainage, both natural and subsurface;
 - vii) the compatibility of the structure(s) in terms of external design and external appearance with adjacent uses; and,
 - viii) the implementation of measures during construction to minimize and mitigate adverse impacts on watercourses.
7. Any other matter enabled by Sections 73 and 74 of the Planning Act.
8. In addition to the foregoing, all zoning amendments and development agreements shall be prepared in sufficient details to:
- i) provide Council with a clear indication of the nature of the proposed development; and
 - ii) permit staff to assess and determine the impact such development would have on the proposed site and the surrounding community.
9. To assist in the evaluation of applications to enter into development agreements, Council shall encourage proponents to provide the following information:
- a) a plan to a scale of 1":100' or 1":40' showing such items as:

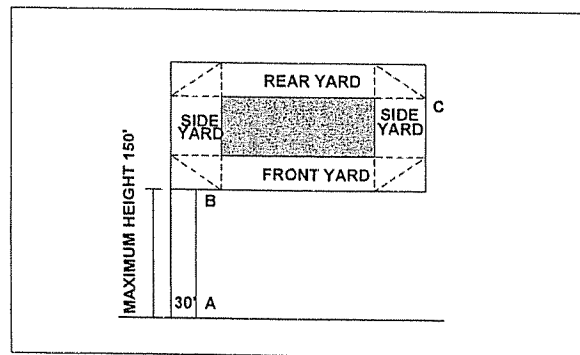
- i) an overall concept plan showing the location of all proposed land uses;
 - ii) each residential area indicating the number of dwelling units of each type and an indication of the number of bedrooms;
 - iii) description, area, and location of all proposed commercial, cultural, mixed-use projects proposed;
 - iv) location, area, shape, landscaping and surface treatment of all public and private open spaces and/or park areas;

 - v) plan(s) showing all proposed streets, walkways, sidewalks, bus bays and bike routes;
 - vi) a description of any protected viewplanes; and,
 - vii) an indication of how the phasing and scheduling is to proceed.
- b) For individual phases of a development more detailed concept plans are to be provided indicating such items as maximum building heights, location and configuration of parking lots, landscaping plans, and any additional information required to be able to assess the proposal in terms of the provisions of the Municipal Planning Strategy.
- c) Plans to the scale of 1":100' showing schematics of the proposed sanitary and storm sewer systems and, water distribution system.
- 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-July 2/02; Effective-Aug 17/02)**

Attachment "B"
LUB: Flag Lot Definition and RSU Zone

PART 2 DEFINITIONS

Flag Lot - means a lot shown on an approved plan of subdivision the configuration of which resembles the figure below where the "Pole" A to B section of the lot cannot exceed one hundred and fifty (150) feet in length and shall be a minimum width of thirty (30) feet and where the "C" portion of the flag lot excluding the "pole" shall contain the required minimum lot area specified in the applicable zone. The "pole" shall also be excluded for the purpose of calculating front, rear, and sideyard setbacks. Minimum yard requirements must be achieved within the "C" portion of the flag lot as illustrated in the diagram.



PART 6 RESIDENTIAL SINGLE DWELLING UNIT (RSU) ZONE

No development permit shall be issued in a Residential Single Dwelling Unit (RSU) Zone except for one or more of the following uses:

- a) single detached dwelling units;
- b) neighbourhood parks;
- c) special care facilities for up to 10 residents;
- d) uses accessory to the foregoing uses.
- e) existing two unit dwellings as follows:

Address

- 11 Olive Avenue (LRIS # 419440)
- 37 Olive Avenue (LRIS # 419465)
- 65 Olive Avenue (LRIS # 487868)
- 24 Olive Avenue (LRIS # 40566630)
- 380 & 382 Hammonds Plains Road (LRIS #s 473405, 40080616)
- 384 & 386 Hammonds Plains Road (LRIS #s 473413, 40070765)
- 388 & 390 Hammonds Plains Road (LRIS #s 473421, 417345)
- 20 Emmerson Street (LRIS #433631) (RC-July 8/04;E-July 10/04)**

ZONE REQUIREMENTS RSU

In any Residential Single Dwelling Unit (RSU) Zone, no development permit shall be issued except in conformity with the following requirements:

Minimum Lot Area	6,000 Sq. Ft. serviced;
Minimum Lot Frontage	60 Ft.
Minimum Front Yard	Local and Collector Streets 15 Ft.; 30 Ft. Arterial Streets
Minimum Rear Yard	20 Ft.
Minimum Side Yard	8 Ft.
Minimum Flankage Yard	15 Ft. Local and Collector Streets; 30 Ft. Arterial Streets
Maximum Height of Building	35 Ft.
Maximum Number of Dwelling Units on Lot	1
Maximum Lot Coverage	35%

Attachment "C"
Public Information Meeting Minutes, October 25, 2006

HALIFAX REGIONAL MUNICIPALITY
PUBLIC INFORMATION MEETING
CASE NO. 00949 - 199 Rocky Lake Road

7:00 p.m.
Wednesday, October 25, 2006
Basinview Drive Community Elementary School

IN ATTENDANCE: Andrew Bone, Planner I, HRM Planning Services
Cara McFarlane, Administrative Support, HRM Planning Services

ALSO PRESENT: Christine Dib-Kahil, Applicant
Phillip Kahil, Applicant
Councillor Gary Martin, District 21

PUBLIC IN ATTENDANCE: Approximately 10

The meeting commenced at approximately 7:01 p.m.

1. Opening remarks/Introductions/Purpose of meeting

Andrew Bone introduced himself as the Planner assigned to the application; Gary Martin, Councillor for District 21; Christine Dib-Kahil and Phillip Kahil, Applicants; and Cara McFarlane, Administrative Assistant.

The application is by Christine Dib-Kahil and Phillip Kahil to enter into a development agreement to create a flag lot and permit the construction of a single family dwelling.

A meeting agenda was shown on overhead.

A sign up sheet was passed around to the residents.

The purpose of the meeting is to identify that HRM has received an application, to identify the scope of the proposal and to receive any public feedback on any issues.

2. Overview of planning process

The location of the proposal is 91 Dartmouth Road, Bedford. The property was shown on overhead. There is an existing single unit dwelling on the lot. The property is currently designated residential and zoned RSU (Residential Single Unit). The surrounding properties have similar zoning.

Policy R-27 in the Bedford Municipal Planning Strategy (MPS) states that in the Town of Bedford, in a residentially designated area, Council can consider applications for a flag lot (a lot with reduced frontage). The lot pre-exists the plan; therefore, Council can consider the application.

A development agreement and the process was explained to the public. The development agreement remains with the property until it is removed through a discharge process by Council.

Mr. Bone showed the concept plan on overhead. The main portion of this application is to create a flag lot. A flag lot is a lot that does not have enough frontage to normally be subdivided. In this zone, you would need 120 feet of frontage and 12000 square feet of land area to subdivide. The policy in the MPS states that in the case of some properties, flag lots can be created. This reduces the frontage requirement to 90 feet (30 feet for the flag lot plus 60 feet for the other).

The second part of the proposal is to build a single unit dwelling on the flag lot. Policy allows Council to set the parameters of what that building should look like, where it can be located on the property, and deal with any other issues that may arise. The policy requires front, rear, and side setbacks; therefore, narrowing the building area on the lot. The policy states that the minimum must be no greater than the average square footage and height of the surrounding buildings. Normally buildings in an RSU Zone are to a maximum of 35 feet.

The location of the existing building on the property is closer than normal to do the subdivision; therefore, the property owner would have to relocate the building or tear down a small portion of the house.

3. Presentation of Proposal

At this time, the applicants do not have a detailed architectural design for the proposal.

4. Questions and Comments

One resident asked what the maximum square footage of the building would be. Mr. Bone explained that 1189 square feet was the average footprint that was calculated. This is a rough estimate that was done by a technician. Building footprint estimations were also taken from our computerized mapping system. The house will be two levels with a maximum height of approximately 22 feet. The resident asked if the applicants were going to live in the proposed home. Ms. Dib-Kahil said they plan to.

One resident asked if the driveway would enter onto the Dartmouth Road. Mr. Bone said the driveway access to the flag lot would be to the Dartmouth Road. Mr. Kahil said they do not have access to the property behind them as it is HRM owned.

One resident asked if the existing house would remain on the property. Mr. Bone said it would but through the agreement HRM would allow the front lot to be completely developed under the parameters of the zone. There are not too many controls placed on the front lot because the policy is for the creation of the flag lot. The parameters of the zone are typically an average coverage of the lot, which is a maximum of 35% of 6000 square feet.

One resident asked how big the lot is. Ms. Dib-Kahil said the lot is 90 feet by 220 feet. Mr. Bone said the front property would be 6000 square feet and the back piece would be slightly larger. The applicants are not sure if they would like to share a driveway for the flag lot or create a separate one. The resident asked if there would be two single family dwellings on the property. Mr. Bone said that it would be controlled by the development agreement which is a legal document. At this point in time, there are no other options available for this property under the Bedford MPS. This policy only applies to a select number of lots in Bedford.

One resident asked if the applicants are going to live in one of the dwellings and sell the other. The applicants are not sure. They would like the flag lot developed for future options. Mr. Bone mentioned that HRM can only deal with the construction of the lot not tenancy. Mr. Kahil does not want to rent the building.

Bill Fenton, Bedford, owns property on the opposite side of the Dartmouth Road. He has no objections to this application. It conforms to the policy in the plan. Mr. Bone explained that staff prefers to see enough land to create a larger lot in the rear of the property.

From this point, an internal staff review will be conducted. In a couple of months, a staff report would be prepared with a completed draft development agreement.

Mr. Bone thanked the residents for attending the meeting and sharing their comments.

5. Adjournment

The meeting adjourned at approximately 7:38 p.m.

Attachment "D"
Development Agreement for 91 Dartmouth Road

THIS AGREEMENT made this day of , 2007,

BETWEEN:

CHRISTINE DIB-KAHIL AND PHILIP KAHIL
of the Halifax Regional Municipality,
Province of Nova Scotia (hereinafter called the "Developer")

OF THE FIRST PART

- and -

HALIFAX REGIONAL MUNICIPALITY,

a municipal body corporate,
(hereinafter called the "Municipality")

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located at **91 Dartmouth Road (PID 40111221), Bedford** 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 the creation of a flag lot, as defined by the Bedford Land Use By-law, on the Lands pursuant to the provisions of the Municipal Government Act and pursuant to Policies R-27 and Z-3 of the Bedford Municipal Planning Strategy and Parts 2 and 6 of the Bedford Land Use By-law;

AND WHEREAS the North West Community Council approved this request at a meeting held on _____ 2007, referenced as Municipal Case Number 00949;

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

PART 1: GENERAL REQUIREMENTS AND ADMINISTRATION

1.1 Applicability of Agreement

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

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

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

1.3 Applicability of Other By-laws, Statutes and Regulations

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

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 HRM 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.

1.4 Conflict

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.

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 regulations, by-laws or 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 All words unless otherwise specifically defined herein shall be as defined in the Bedford Land Use By-law and Subdivision By-law.

PART 3: USE OF LANDS AND DEVELOPMENT PROVISIONS

3.1 Subdivision of the Lands

An application for subdivision to create the proposed flag lot and remainder lot shall generally conform with the site plan presented as Schedule B.

3.2 Schedules

The Developer shall develop the lands in a manner, which, in the opinion of the Development Officer, is in conformance with the Schedules attached to this agreement and the plans filed in the Halifax Regional Municipality as Case Number: 00949.

The schedules are:

SCHEDULE A Legal Description of the Lands of Christine Dib-Kahil and Philip Kahil, identified as 91 Dartmouth Road, Bedford (PID 40111221)

SCHEDULE B Site Plan

3.3 Requirements Prior to Approval

- 3.3.1 Prior to any clearing, excavation or placement of fill on the Lands, the Developer shall be required to obtain a Grade Alteration Permit as required by the former Town of Bedford Grade Alteration By-law No. 23290.
- 3.3.2 Notwithstanding any other provision of this Agreement, the Developer shall not occupy or use the Lands for any of the uses permitted by this Agreement unless an occupancy permit has been issued by the Municipality. No Occupancy Permit 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.
- 3.3.3 Prior to obtaining subdivision approval for the proposed flag lot, the Developer shall provide the property owners of civic addresses 93 and 95 Dartmouth Road with monetary compensation in the amount of \$50 each to offset the inconvenience of having their properties assigned new civic addresses.

3.3.4 Where the written text of this agreement conflicts with information provided in the attached Schedules, the written text of this agreement shall prevail.

3.4 General Description of Land Use

The use of the Lands permitted by this Agreement are the following:

3.4.1 Uses permitted in accordance with the provisions of the Bedford Land Use By-law, as amended from time to time, except where varied by the terms of this Agreement.

3.4.2 The subdivision of the subject property into two lots such that:

- (a) one of the resulting lots is a 'flag lot' as defined by the Bedford Land Use By-law (herein after referred to as the flag lot) containing a minimum of thirty (30) feet of frontage on Dartmouth Road and approximately 13700 square feet as illustrated in Schedule B. Notwithstanding Schedule B, the Development Officer may permit the property to be smaller provided that all minimum standards of the Single Unit Dwelling (RSU) Zone, except where varied by the terms of this agreement, are adhered to.
- (b) the remainder lot has a minimum of 60 feet of frontage on Dartmouth Road and a minimum area of 6000 square feet.
- (c) all relevant provisions of the Bedford Land Use By-law shall apply to the remainder lot except where varied by this Agreement.
- (d) notwithstanding (c), the Lands are permitted to be subdivided as shown on Schedule B such that the existing dwelling may encroach upon the 8 foot minimum sideyard, provided that the following conditions are met to the satisfaction of the Development Officer:
 - (i) No portion of the existing dwelling or any other structure on the remainder lot may extend over the property line onto the proposed flag lot;
 - (ii) Prior to subdivision approval, the Developer shall obtain a Building Permit and complete all work necessary to ensure that the existing dwelling would adhere to all applicable building standards once the proposed subdivision results in a reduced yard setback.

3.5 Detailed Provisions for Land Use

3.5.1 The proposed flag lot may contain a maximum of one (1) single unit dwelling in total and shall otherwise be subject to the requirements of the RSU Zone, as described in the Bedford Land Use By-law, except where varied by this Agreement.

3.5.2 The minimum side yard setback on the remainder lot shall be reduced to up to 0 metres/0 feet on one side as indicated on the attached Schedule B, if the conditions established in Section 3.4 are met to the satisfaction of the Development Officer.

3.5.3 No structure of any kind shall be permitted to be erected or placed within the 'pole' portion of the proposed flag lot.

3.6 Siting and Scale Requirements

The Developer agrees that any dwelling constructed on the flag lot shall comply with the following:

- (a) Any dwelling proposed for the flag lot shall meet the requirements of the Bedford Land Use By-law, as amended from time to time, except where varied by this Agreement.
- (b) In addition to the requirements of the Bedford Land Use By-law, a dwelling proposed for the flag lot shall meet the following requirements:
 - (i) Shall be located entirely within the area identified as 'Building Envelope' as shown on Schedule B.
 - (ii) Shall not exceed a height of 2 storeys plus basement or 22 feet, whichever is less, measured according to the requirements of the Bedford Land Use By-law.
 - (iii) The total building footprint shall not exceed 1189 square feet.
 - (iv) Shall be sited such that the front facade and main entrance of the dwelling are oriented to face Dartmouth Road.
 - (v) Shall maintain a 40 foot setback from existing dwellings on adjacent properties
 - (vi) Accessory buildings and structures shall be permitted within the rear yard of the dwelling only, and shall otherwise be subject to all applicable provisions of the Bedford Land Use By-law.

3.7 Access and Parking

3.7.1 The existing driveway access to Dartmouth Road shall be utilized by both the remainder lot and the flag lot as illustrated on Schedule B. The remainder property shall access Dartmouth Road via the existing driveway, which will be located within the 'pole' portion of the flag lot. Prior to subdivision approval the Developer shall provide a permanent easement in favour of the remainder lot over the flag lot, to the satisfaction of the Development Officer.

3.7.2 The shared driveway and all parking areas shall have a finished hard surface such as asphalt, concrete, paving blocks or an acceptable equivalent in the opinion of the Development Officer.

3.8 Building and Lighting

The Developer agrees that for any dwelling proposed or constructed on the flag lot, all lighting shall be directed to driveways, building entrances and walkways and shall be arranged so as to divert the light away from streets, adjacent lots and buildings.

3.9 Landscaping

The Developer agrees that landscaping on the flag lot shall comply with the following:

3.9.1 Landscaping or appropriate vegetative cover shall be required in all areas not occupied by buildings, walkways, driveways and parking areas except for areas where natural vegetative cover is maintained.

3.9.2 Further to section 3.9.1, landscaped areas shall be grassed or include landscape features such as mulch, stone, water features, perennials, annuals, shrubs or other vegetation and features deemed acceptable by the Development Officer.

3.9.3 Prior to issuance of an Occupancy Permit the landscaping requirements identified in sections 3.9.1 and 3.9.2 shall be deemed complete in the opinion of the Development Officer.

3.9.4 Notwithstanding 3.9.3, an Occupancy Permit may be issued prior to completion of the required landscaping if the Developer provides a security deposit, in favour of the Municipality and in the form of a certified cheque or automatically renewing non-revocable line of credit issued by a chartered bank, in the amount of 120 percent of the estimated cost to complete the landscaping. The security shall be returned to the Developer upon completion of the work described in sections 3.9.1 and 3.9.2

3.10 Buffering

The Developer agrees that, for purposes of buffering and providing a visual screen to adjacent properties, the flag lot shall comply with the following:

3.10.1 The existing wooded areas within the 12 foot sideyards of the flag lot, as identified on Schedule B, shall be retained, maintained and supplemented over time to act as a natural buffer and visual screen to adjacent properties. Existing trees within this area shall be identified both on-site and on any plan of subdivision and the Lot Grading and Alteration Plan.

- 3.10.2 Notwithstanding 3.10.1, where in the opinion of the Development Officer a tree poses a danger to people or property or is in sever decline, the tree may be removed and replaced with a similar species at the expense of the Developer. At the discretion of the Development Officer, the Developer may be required to engage a Certified Arborist, Landscape Architect, Landscape Technologist, Urban Forester or other person with an equivalent degree or diploma to certify in writing that a tree poses a danger to people or property or is in severe decline prior to granting approval for removal of the tree.
- 3.11.2 Any tree removed without authorization of the Development Officer shall be replaced with two new trees of a similar species at the expense of the developer.

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 building, fencing, walkways, recreational amenities, parking areas and driveways, and the maintenance of all landscaping including the replacement of damaged or dead plant stock, trimming and litter control and garbage removal.

3.12 Public Open Space Dedication

Prior to subdivision approval and in lieu of a park dedication in land equal to 10% of the area of land being subdivided, the Developer shall provide the Municipality with a cash-in-lieu of park land dedication equal to 10% of the assessed market value of the proposed flag lot.

3.13 Outdoor Storage

The Developer agrees that any outdoor storage and refuse containers and propane tanks and electrical transformers located on the flag lot shall, respectively, comply with the following:

- 3.13.1 Outdoor storage and refuse containers located outside the building shall be located in the rear yard or be fully screened from adjacent properties and from streets by means of opaque fencing/masonry walls with suitable landscaping.
- 3.13.2 Propane tanks and electrical transformers shall be located on the site in such a way to ensure minimal visual impact from the adjacent residential properties. These facilities shall be secured in accordance with the applicable approval agencies and be located within the rear yard, or within the sideyards if screened by means of opaque fencing/masonry walls with suitable landscaping.

4.0 STREETS AND MUNICIPAL SERVICES

4.1 General Provisions

All construction shall satisfy Municipal Service Systems Specifications unless otherwise provided for in this Agreement and shall receive written approval from the Development Engineer prior to undertaking the work.

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.

4.3 Site Preparation in a Subdivision

The Developer shall not commence clearing, excavation, blasting or other activities required for the installation of municipal services prior to receiving final approval of the subdivision design unless otherwise permitted by the Development Officer, in consultation with the Development Engineer.

4.4 Municipal Water and Sanitary Sewers

4.4.1 The water distribution system shall conform with all design and construction requirements of the Halifax Regional Water Commission.

4.4.2 The sanitary sewer system shall conform with the design and construction standards of the Municipal Service Systems Manual, unless otherwise acceptable to the Development Engineer.

4.5 Blasting

4.5.1 All blasting shall be in accordance to By-law B-300 (Blasting By-Law) as amended from time to time.

5.0 ENVIRONMENTAL PROTECTION MEASURES

5.1 Site Grading, Stormwater Management and Erosion and Sedimentation Control

Developer agrees that, prior to issuance of subdivision approval, the following items shall be prepared by a qualified Professional Engineer to the satisfaction of the Development Engineer:

- (a) Stormwater Management Plan
- (b) Erosion and Sedimentation Control Plan
- (c) Lot Grading and Drainage Plan

Given the relatively minor scope of the proposal, the Development Engineer shall have discretion to accept a modified submission that, in the opinion of the Development Engineer, fulfills the requirements of the Plans identified in 5.1.

6.0 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 Municipal Government Act.

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 construction as identified in Section 8.3 of this agreement; and
- (b) The length of time for the completion of the development as identified in Section 8.4 of this agreement;

In considering the approval of a non-substantive amendment under Section 6.2, adjacent property owners shall be informed by mail at least 10 days in advance of the proposed amendment being considered by Council.

7.0 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 allow for such an inspection during any reasonable hour within one 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 90 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; and/or
- (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 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/or
- (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; and/or

8.0 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 or Land Registration Office 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 the 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 of the Lands, has not commenced within 8 years from the date of registration of this Agreement at the Registry of Deeds or Land Registration Office , 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 shall mean endorsement of final subdivision approval of the proposed lots.

8.4 Completion of development

Upon the completion of the development or portions thereof, or after 9 years from the date of registration of this Agreement with the Registry of Deeds or Land Registration Office , whichever time period is less, 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 Bedford, as may be 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., 2007.

CHRISTINE DIB-KAHIL AND PHILIP KAHIL

SIGNED, SEALED AND DELIVERED)
in the presence of)

_____)

) Per: _____
Christine Dib-Kahil

) Per: _____
Philip Kahil

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

