



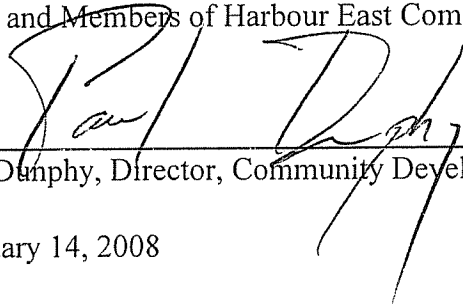
PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Item 8.1.1

Harbour East Community Council
March 6, 2008

TO: Chair and Members of Harbour East Community Council

SUBMITTED BY:


Paul Dunphy, Director, Community Development

DATE: February 14, 2008

SUBJECT: Case 00951: Development Agreement for 155 Ochterloney Street
Downtown Dartmouth

ORIGIN

An application by Heritage Credit Union for a development agreement to permit a drive-through Automated Bank Machine (ABM) at 155 Ochterloney Street, Downtown Dartmouth.

RECOMMENDATION

It is recommended that Harbour East Community Council:

1. Move Notice of Motion to consider a development agreement as provided in Attachment A to this report;
2. Approve the development agreement as contained in Attachment A to this report to permit a drive-through ABM at 155 Ochterloney Street, Dartmouth, and schedule a public hearing; and
3. Require that the development agreement be signed within 120 days, or any extension thereof granted by Council on request of the applicant, from the date of final approval by Council and any other bodies as necessary, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

The Heritage Credit Union has provided banking services and associated offices at 155 Ochterloney Street (Map 1) since their building was constructed in the late 1960's. The site is about 0.3 hectares (+/- 32,000ft²) and located in an area subject to the Downtown Dartmouth Secondary Planning Strategy (MPS) and is zoned Downtown Business District (DB).

Proposal

To better serve their customers the Credit Union would like to install a drive-through automatic bank machine (ABM). No other changes are proposed to their building or to the use at this time.

When the proposal was originally submitted the concept included a drive-through ABM at the front of the building between the facade and the public street, two stacking spaces, and major facade and signage changes. Due to comments received at the public meeting and from staff, the Credit Union relocated the proposed ABM from the front to the side and deferred the facade changes.

Enabling Policy

Some of the key themes repeated throughout the Downtown Dartmouth MPS are encouraging a *pedestrian-oriented* business district of *traditional character* designed at a *human scale*. While drive-through operations are generally inconsistent with these goals, the MPS does recognize potential demands for such uses and provides Council with discretionary authority to consider them by development agreement according to Policy B-3 (Attachment B). Policy B-3 recognizes that the *design* of such facilities can be a key factor in their impact on the pedestrian realm:

B-3(f) Car-oriented uses such as drive-through restaurants and gas stations shall only be permitted where they are specially designed so that any drive through component is clearly secondary to the pedestrian orientation of the use.

DISCUSSION

Staff have reviewed the proposal relative to applicable plan policy and determined that it is consistent with the intent of the Downtown Dartmouth MPS. In regard to the design of the ABM facility, staff are of the opinion that it complies with clause B-3(f) to ensure drive-throughs are secondary to the pedestrian orientation of the use. During staff's review, key concerns were raised as follows:

Pedestrian Concerns

As shown in Schedule B of the draft development agreement (Attachment A), the site plan illustrates the proposed drive-through ABM on the side of the building, near the rear. This positioning allows pedestrians to enter the establishment from the sidewalk without crossing the waiting or exit lines of the drive-through, minimizing on-site circulation conflicts between pedestrians and vehicles. Also, the stacking lane is not located between the building and the public street, a scenario which would detract from the pedestrian-orientation of the streetscape.

Safety Concerns

Principles of *Crime Prevention Through Environmental Design* (CPTED) suggest the drive-through should be located at the side of the building (instead of the rear), where a reasonable level of natural surveillance is available from Ochterloney Street. The agreement also requires adequate and appropriate lighting to provide security for ABM users.

Traffic Concerns

To reduce the possibility that queuing vehicles will back up over the public sidewalk or the roadway, the draft development agreement requires a minimum of four stacking spaces. Finally, the development agreement restricts use of the drive-through facility to ABM users, and does not allow the drive-through window to be used for any other uses such as restaurants or coffee shops, which may require additional vehicle queuing space.

Public Participation

A public information meeting was held on November 26, 2007. Property owners within the area of notification shown on Map 1 were informed of the meeting by direct mail, an ad was placed in the Herald, and a notice posted on HRM's website. One person attended the meeting and one submitted written comments prior to the meeting. Minutes of the meeting may be found in Attachment C. Both residents expressed concerns about the pedestrian environment downtown, and one was concerned with facade changes proposed in tandem with the ABM.

Should Council decide to hold a public hearing, the same area of notification will be used and notices will be placed online as well as in the newspaper in accordance with the requirements of the Municipal Government Act.

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 and the work can be carried out within the approved budget with existing resources.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

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

ALTERNATIVES

1. Council may choose to approve the proposed development agreement. This is staff's recommended course of action for the reasons described in this report.

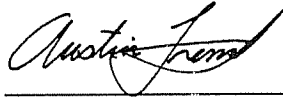
2. Council may choose to refuse the proposed development agreement, and in doing so must provide reasons based on a conflict with MPS policies. This alternative is not recommended as staff are satisfied that the proposed development agreement is consistent with policies and intent of the MPS.

ATTACHMENTS

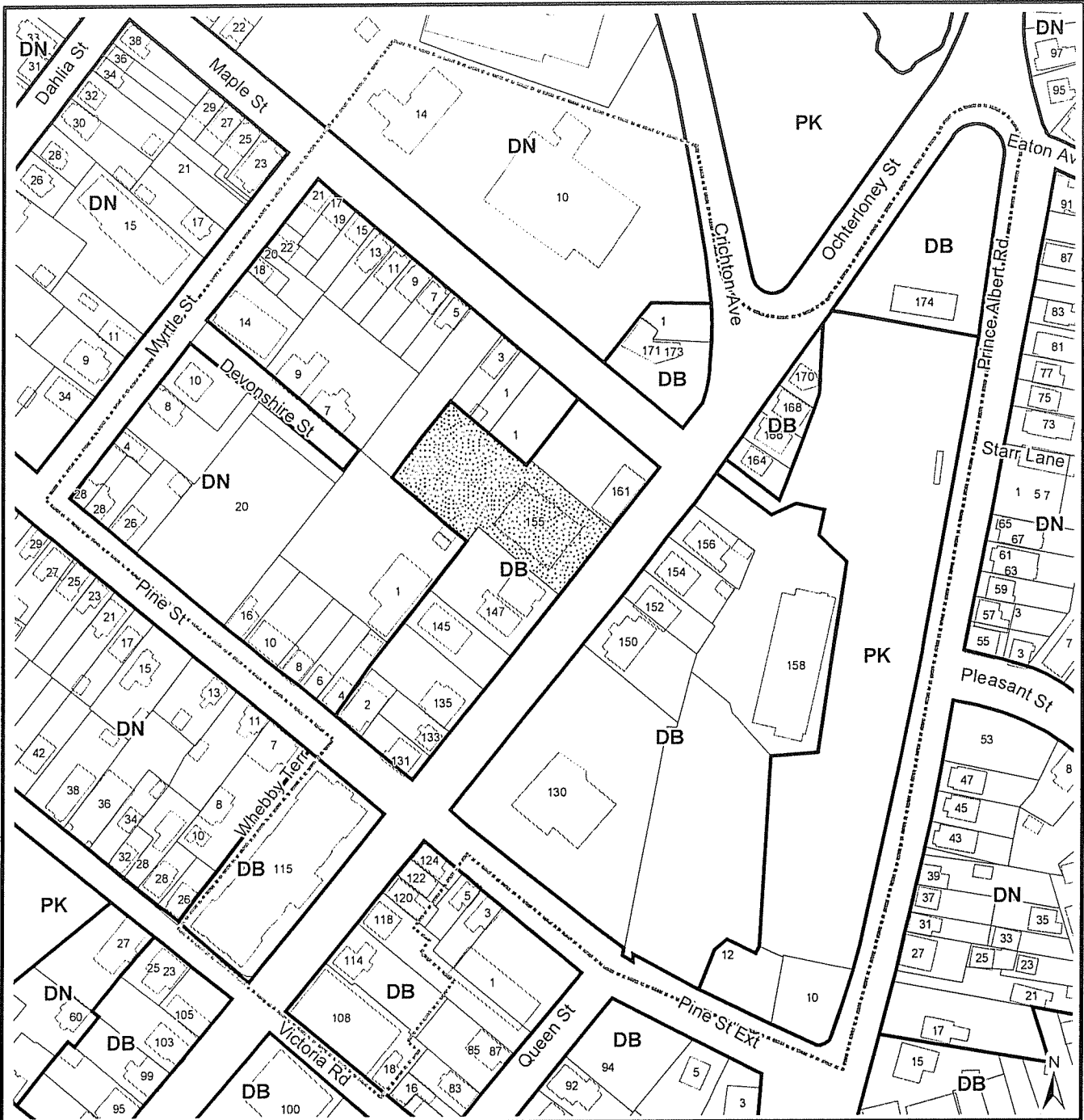
Attachment A: Draft Development Agreement
Attachment B: Policies of the Downtown Dartmouth Secondary Planning Strategy
Attachment C: Minutes of the Public Information Meeting
Map 1: Location and Zoning Map

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 : Hanita Koblents, Planner I, 490-4181





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



Map 1 - Location and Zoning

155 Ochterloney Street
Dartmouth

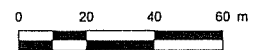
-  Subject area
-  Area of notification

Downtown Dartmouth Plan Area

Zone

- DN Downtown Neighbourhood
- DB Downtown Business District
- PK Park and Open Space

HALIFAX
REGIONAL MUNICIPALITY
PLANNING AND
DEVELOPMENT SERVICES



This is an unofficial reproduction of a portion of the Zoning Map for the Downtown Dartmouth Plan area.

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

Attachment A - DRAFT DEVELOPMENT AGREEMENT

THIS AGREEMENT made this day of , 2008,

BETWEEN: **HERITAGE CREDIT UNION LIMITED**
a body corporate, in 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 155 Ochterloney Street, PID #00128637, in Downtown Dartmouth, and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Developer has requested that the Municipality enter into a development agreement to allow for a drive-through Automated Bank Machine (ABM) on the Lands pursuant to the provisions of the Municipal Government Act and pursuant to Policy B-3 of the Downtown Dartmouth Secondary Planning Strategy;

AND WHEREAS the Harbour East Community Council approved this request at a meeting held on , 2008 , referenced as Municipal Case Number 00951;

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

- 1.1.1 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.
- 1.1.2 This Agreement shall only be applicable if a Drive-through ABM is installed on the Lands as per the conditions stated in this agreement.

1.2 Applicability of Land Use By-law

Except as otherwise provided for herein, the development and use of the Lands shall comply with the requirements of the Land Use 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 applicable Land Use By-law.
- 2.2 For the purpose of this Agreement the following definitions shall also apply:
- (a) **ABM:** Automated Bank Machine
 - (b) **Drive-through:** relating to or conducting exchanges with clients who drive up to a window and remain in their automobiles.
 - (c) **Driveway:** a private way across land used for vehicular access from a public street.
 - (d) **Land Use By-law:** the Land Use By-law for Downtown Dartmouth.
 - (e) **Stacking Lane:** an on-site queuing lane for motorized vehicles, which is separated from other vehicular traffic and pedestrian circulation by barriers, markings or signs.

PART 3: USE OF LANDS AND DEVELOPMENT PROVISIONS

3.1 Schedules

The Developer shall develop the Lands in a manner, which, in the opinion of the Development Officer, is generally in conformance with the following schedules attached to this Agreement and the plans filed in Halifax Regional Municipality as case number 00951. The schedules are:

- (A) Legal Description of the Lands
- (B) Site Plan

3.2 Land Use Provisions

- 3.2.1 In addition to permitted uses listed in the Downtown Business District (DB) Zone (Section 10) of the Land Use By-law, as may be amended from time to time, a Drive-through ABM may be permitted on the Lands provided that:
- (a) Drive-through shall be located on one side of the building as generally shown on Schedule B.
 - (b) Drive-through is restricted to ABM users, and shall not be used for any other type of business, including but not limited to Drive-through restaurants, coffee shops, etc.
 - (c) Should the Lands cease to be used for a banking business, the Drive-through ABM and all its associated elements e.g. signage, lane markings, etc., shall be removed.
 - (d) At least one other ABM is available on the Lands to provide ABM services to walk-in users.
 - (e) Stacking Lane for the Drive-through, as generally shown on Schedule B, shall:
 - i) have enough storage to accommodate a minimum of four vehicles;

- ii) be located at the side or rear of the property; and
- iii) not block the movement of other vehicles on the Lands.
- (f) Adequate lighting shall be installed to provide a sense of security along the Stacking Lane, but shall not trespass onto neighbouring properties.

3.2.2 Notwithstanding 3.2.1(a), the Drive-through may be relocated on the other side of the building, provided that all other requirements of this Agreement can be met.

3.2.3 All signage shall be in accordance with the Downtown Dartmouth Land Use By-law.

3.3 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, garbage removal and snow removal/salting of walkways and driveways.

4.0 AMENDMENTS

All amendments to this Agreement shall be deemed substantive and the Agreement may only be amended in accordance with the approval requirements of the Municipal Government Act.

5.0 ENFORCEMENT AND RIGHTS AND REMEDIES ON DEFAULT

5.1 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.

5.2 Failure to Comply

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

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

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

6.0 REGISTRATION, EFFECT OF CONVEYANCES AND DISCHARGE

6.1 Registration

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

6.2 Subsequent Owners

- 6.2.1 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 are the subject of this Agreement until this Agreement is discharged by the Council.
- 6.2.2 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.

6.3 Completion of Development

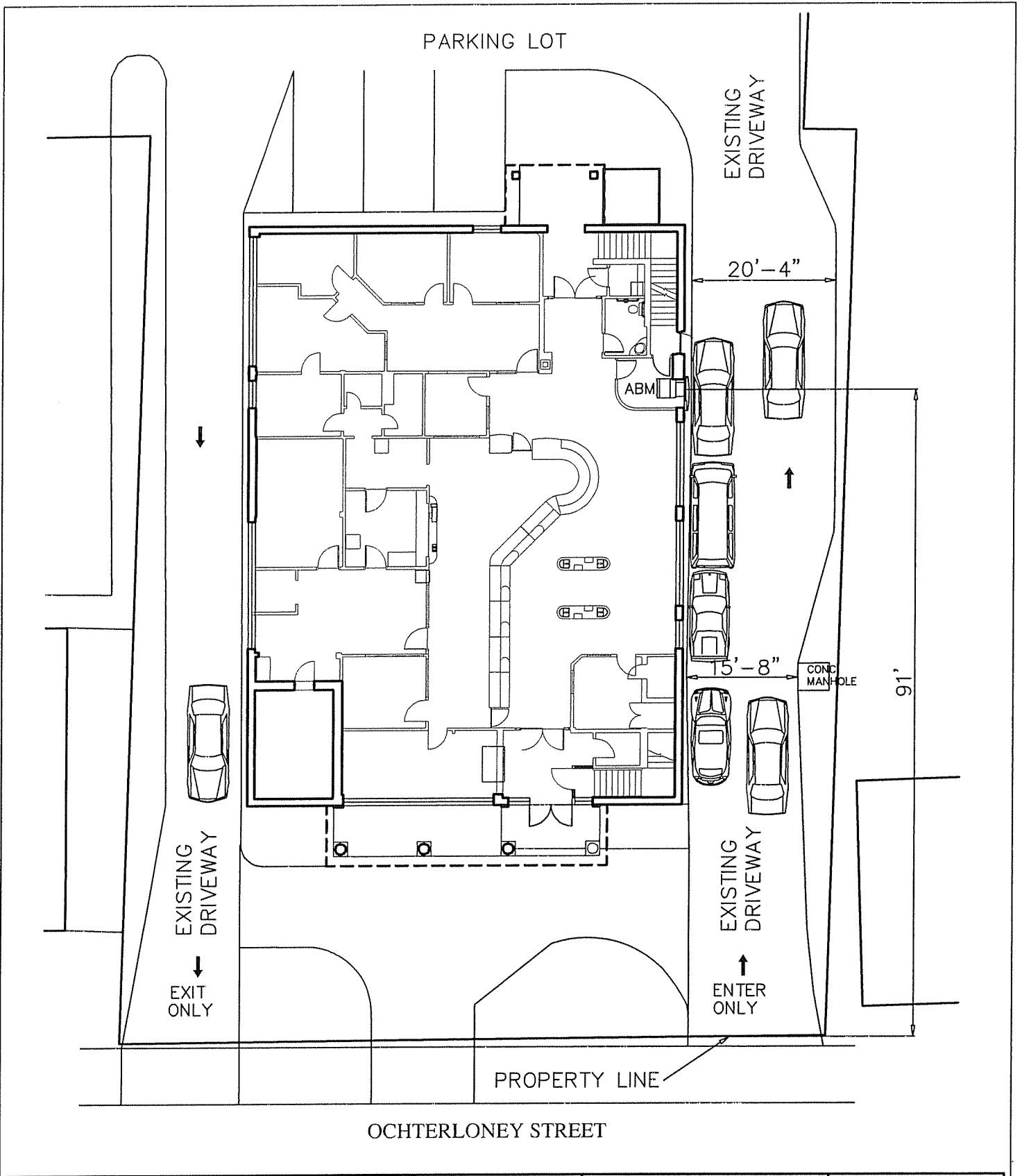
- 6.3.1 If the Developer fails to complete the development within five (5) years from the date of registration of this Agreement at the Registry of Deeds, the Municipality may, by resolution of Council:
 - (a) retain the Agreement in its present form;
 - (b) negotiate a new Agreement; or
 - (c) discharge this Agreement.
- 6.3.2 Upon the completion of the development, Council may review this Agreement, in whole or in part, and may:
 - (a) retain the Agreement in its present form;
 - (b) negotiate a new Agreement; or

- (c) discharge this Agreement on the condition that for those portions of the development that are deemed complete by Council, the Developer's rights hereunder are preserved and the Council shall apply appropriate zoning pursuant to the Municipal Planning Strategy and Land Use By-law for Downtown Dartmouth, 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., 2008.

Signed, sealed and delivered)	HERITAGE CREDIT UNION LIMITED
in the presence of:)	
)	
per: _____)	per: _____
)	

Sealed, Delivered and Attested)	HALIFAX REGIONAL MUNICIPALITY
by the proper signing officers of)	
Halifax Regional Municipality)	
duly authorized on that behalf)	per: _____
in the presence of)	MAYOR
)	
per: _____)	per: _____
)	MUNICIPAL CLERK



FORMA DESIGNERS INC. <small>www.formadesigners.com</small> <small>116 BROOK STREET HALIFAX NS B4N 1A1</small> <small>TEL: 902.471.7706/456.3164 FAX: 902.479.1628</small>	PROJECT	DRAWING	DES/DRAWN AB
	NEW ABM DRIVE-THRU HERITAGE CREDIT UNION	SCHEDULE B - SITE PLAN	SCALE 1"=20'
	155 OCHTERLONEY STREET DARTMOUTH, NS		DATE FEB. 4/08
			PROJECT SHEET 5007 .1-F

**Attachment B:
RELEVANT POLICIES OF THE DOWNTOWN DARTMOUTH SECONDARY
PLANNING STRATEGY**

Policy B-3

Commercial projects not permitted by the Downtown Business District Zone may be considered by Council through the development agreement process. This process shall be used to assess whether the proposal is consistent with the pedestrian orientation and traditional character of the business district. The following criteria shall be used in evaluating a proposal for such uses:

- a) that the development is in keeping with the character of the area, in terms of traditional building design and placement in relation to the street (refer to Urban design Policy D-1);*
- a) that height limits and design features are incorporated to ensure proposed buildings are pedestrian oriented and are in keeping with the scale of adjacent buildings. As a guideline proposed commercial or mixed use buildings should not exceed five to seven stories;*
- b) that a mix of uses should be encouraged including residential components, with the ground floor dedicated to commercial or other uses aimed at serving the general public. The ground floor of buildings should incorporate design elements to reinforce a human scale and enhance street level activity.*
- c) that any signs are consistent with the heritage theme and reflect a pedestrian-oriented scale;*
- e) that parking areas do not visually detract from the streetscape and adequate consideration is given to landscaping and other surface treatments for parking areas on the site. Wherever possible, parking areas should be enclosed within a building;*
- f) Car-oriented uses such as drive-through restaurants and gas stations shall only be permitted where they are specially designed so that any drive through component is clearly secondary to the pedestrian orientation of the use.*

Attachment C - MINUTES OF THE PUBLIC INFORMATION MEETING

7:00 p.m. Monday, November 26, 2007, Helen Creighton Room, Alderney Gate Library

IN ATTENDANCE: Hanita Koblents, Planner 1, Eastern Region, HRM Planning Services
Sherry Faulkner, Administrative Support, HRM Planning Services
Sharlene Seaman, Administrative Support, HRM Planning Services

ALSO PRESENT: Ken Shea, President, Heritage Credit Union
Kevin Higgins, Branch Manger, Heritage Credit Union
Alberto Berardinelli, Forma Designers
Councillor Gloria McCluskey, District 5

PUBLIC IN

ATTENDANCE: one resident

The meeting commenced at approximately 7:10 p.m.

Opening remarks/Introductions/Purpose of meeting - Hanita Koblents

Ms Koblents explained the Downtown Dartmouth Secondary Planning Strategy requires development agreements for drive-throughs and other car-oriented uses. These applications are evaluated according to policy B-3 of the strategy. B-3 (f) states that car-oriented uses must be clearly secondary to the pedestrian orientation.

Presentation - Mr Berardinelli

Mr. Berardinelli showed a rendering of how the building will be refaced and how the site plan will be modified. He explained that the present condition includes a front yard parking area where people currently drive up and park in order to use the ATM just inside the front doors. He said that the proposed use of the site will not be all that different from what exists now in that people will still drive up, but instead of going inside to use the ATM, they will use the drive-through. They are also proposing to improve the facade of the building by removing the columns and re-facing the front with stone tile; they are closing one driveway (there are three driveways now), and adding some landscaping.

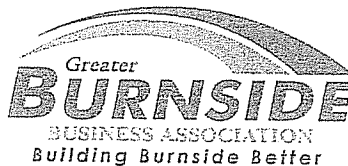
Questions and Comments

A resident of Milverton Rd, Dartmouth spoke to express concern over the need for a drive through at all. He had concerns on the impact of the drive-through on pedestrians and bicyclists in the area. He appreciated having the Credit Union downtown, and appreciated that they were trying to improve their building.

Heritage Credit Union representatives explained that the drive-through was requested by their members, who primarily drive to the building.

Adjournment

The meeting adjourned at approximately 7:30 p.m.



March 6, 2008

To: Chair and Members of Harbour East Community Council

RE: **Highfield Park Pedestrian Overpass**

The Greater Burnside Business Association (the "GBBA") is pleased to provide a response to the report of Cathie O'Toole, Director of Infrastructure and Asset Management, entitled "*Highfield Park Pedestrian Overpass HECC Report*" (the "Report") dated February 28, 2008.

First, the GBBA endorses a strategy which would result in three overpasses being built across Highway 111 to improve pedestrian access and safety while entering and leaving Greater Burnside. We encourage full adoption and implementation of the Report Strategy at the earliest possible opportunity.

Second, the choice of which overpass should be selected as the first priority was discussed at our most recent Board meeting. The majority view was that the Oland Court location should be selected.

This view was primarily based on the fact that the Burnside Drive overpass currently provides a pedestrian route and is reasonably well lit. That said, we agree with prior studies suggesting the Burnside Drive overpass requires improvements in order to be safe for pedestrians and cyclists. Our concurrence with Oland Court as first priority should not be interpreted as any less support for critically necessary improvements to the Burnside Drive Overpass, which we believe should proceed as soon as possible.

The Oland Court location is currently being used by pedestrians with no option to cross other than at grade. The surrounding area is also poorly lit and arguably less safe than crossing the Burnside Drive overpass on foot. We also suspect that improvements to the Burnside Drive overpass would not induce Oland Court pedestrians to change their route, thus any improvements to Burnside Drive are not likely to improve the relatively worse situation at Oland Court.

Burnside has required and has been waiting for improved pedestrian access for a long time and we are excited to see this project moving forward. Thank you for considering our input we and look forward to learning the results of HECC's deliberations on the issue.

Best Regards

Sean Patrick O'Boyle
Chair Buses Bikes and Carpools Committee